

1 you?

2 A. No. Because she told me on the phone she
3 was going to come many times. I knew something had to be
4 going on at the house, but I didn't know what was going
5 on.

6 Q. Did you think he was messing around with
7 other men?

8 A. I sensed it, but I didn't know for sure, so
9 I couldn't keep throwing it in her face when I was talking
10 to her. I asked her straight out, if you're dating
11 somebody let me know. She said, no, I'm not dating
12 nobody. I'm not seeing nobody. I don't want nobody else.
13 That was her exact words to me.

14 Q. Now in the State's opening statement they
15 talked about some letters you sent to her from jail. Did
16 you send her letters from jail?

17 A. Many.

18 Q. The State referred to thing that you said in
19 those letters. What kind of things did you say to her?

20 A. I asked her how she was doing? How the kids
21 were doing. I told her I loved her, I missed her. I told
22 her she meant the world to me.

23 Q. Were those things true?

24 A. Yes, sir, very much.

25 Q. Did you also say degrading things to her in

69

1 those letters?

2 A. Like the last two letters I put some bad
3 words in there.

4 Q. Did you call her a slut?

5 A. I told her if she was out there messing
6 around --

7 Q. James, did you call her a slut?

8 A. Yes, I did.

9 Q. Did you call her a whore?

10 A. I wrote that, yes.

11 Q. Did you ask her questions like, are you
12 easy?

13 A. Yes.

14 Q. Why did you say these things to her?

15 A. Because so many things were happening while
16 I was in jail. I was very depressed, upset, lonely, hurt
17 devastated. She once told me on the phone that she would
18 never abandon me in Las Vegas.

19 Q. James, did you see her on August 30th,
20 1995?

21 A. Yes, sir.

22 Q. Where did you see her?

23 A. At the city court house.

24 Q. Did she come to your court appearance that
25 day?

70

1 A. Yes, sir.

2 Q. Did she testify against you?

3 A. No, sir.

4 Q. Did you plead guilty that day to domestic
5 battery?

6 A. Yes, sir.

7 Q. Do you know on August 30th or August 31st
8 that you would be released from custody?

9 A. Absolutely not.

10 Q. But you were released from custody, weren't
11 you?

12 A. Yes, sir.

13 Q. And when you were released from custody,
14 what did you do?

15 A. I walked from downtown to around Bonanza and
16 Lamb.

17 Q. How far is that, if you know, and how long
18 did it take you to walk out there?

19 A. From around Las Vegas Boulevard, and Bonanza
20 and Lamb, it would take about 45 minutes, 50 minutes.

21 Q. Why did you walk out there?

22 A. I was happy to be out. I just wanted to see
23 my girl and my children.

24 Q. Where were you going?

25 A. I didn't go home at first.

71

1 Q. Where did you go?

2 A. To Vera Johnson project apartments.

3 Q. What did you do there at the Vera Johnson
4 Apartments?

5 A. Went over there and just talked to a couple
6 of people.

7 Q. Who did you talk to?

8 A. Some man over there named Ben and a couple
9 other people.

10 Q. How far is Vera Johnson complex from where
11 you lived at the Ballerina Sunrise place, if you know?

12 A. It's only, like, 2 blocks, so approximately
13 it would take like probably 15 minutes to get from there
14 to home.

15 Q. Did you borrow a bicycle there?

16 A. Yes, I did.

17 Q. Once you had the bicycle what did you do?

18 A. I went home.

19 Q. Now when you went home, this is the home at
20 839 North Lamb?

21 A. Yes, sir.

22 Q. This is the trailer that you shared with
23 Debra?

24 A. Yes, sir.

25 Q. Did you expect her to be there?

72

1 A. No, I did not, because I called twice before
 2 I went home.
 3 Q. Where did you call from, if you recall?
 4 A. I called from downtown, and I called from
 5 Vera Johnson Apartments.
 6 Q. Nobody answered?
 7 A. No, sir.
 8 Q. So you arrived at the trailer and what do
 9 you do?
 10 A. I put the bike on the side of the house.
 11 Q. James, I'm sorry, but your hands are in
 12 front of your mouth and the jury needs to hear this.
 13 A. I put the bike on the side of house and went
 14 to the window.
 15 Q. James, I'm going to interrupt you for a
 16 second and show you a picture again, State's Exhibit 1,
 17 which is a picture of the trailer. Is one of those
 18 windows there where you went to?
 19 A. Yes.
 20 Q. Is one of these windows where you entered
 21 the place?
 22 A. Yes.
 23 Q. Why did you go into your place through the
 24 window?
 25 A. I had been through the window through many

73

1 of our residences in Arizona and Michigan, and I didn't
 2 figure nothing was wrong with that.
 3 Q. Did you have a key to get inside to place?
 4 A. I used to, but I lost it.
 5 Q. You started climbing in the window and what
 6 happened?
 7 A. I started climbing through the window and
 8 Debbie walked in the doorway and she asked me why didn't I
 9 knock at the door. I said I didn't know you were home. I
 10 said I just called, why didn't you answer the phone. She
 11 said I just got here.
 12 Q. Do you know what time this is?
 13 A. No, sir. I wasn't paying attention to the
 14 time. I know I had to be back downtown at 1:00 o'clock.
 15 Q. So you get in the window, right?
 16 A. Yes, sir.
 17 Q. What happens? You get into the window and
 18 do you guys talk or what?
 19 A. Yeah, we talked.
 20 Q. What else did you do?
 21 A. I got on my knees in front of her and she
 22 was sitting on the couch. I asked her what had she been
 23 doing while I was in jail. She said working full time and
 24 watching the kids.
 25 Q. What happened next?

74

1 A. We talked about a couple of things that was
 2 said over the phone. She told me about a couple of things
 3 that her friends did while I was in jail.
 4 Q. Were you glad to see her?
 5 A. Absolutely.
 6 Q. Did you think anything was okay?
 7 A. Yes.
 8 Q. How long did you all talk?
 9 A. About 20 minutes.
 10 Q. What did you all do then?
 11 A. We kissed a couple of times.
 12 Q. Then what happened?
 13 A. We started taking each other's clothes off.
 14 We began to have sex on the couch.
 15 Q. Where was the couch?
 16 A. Excuse me?
 17 Q. Where was the couch where were you having
 18 sex?
 19 A. It was along the wall right at the corner of
 20 the kitchen.
 21 Q. It was not in the master bedroom?
 22 A. No.
 23 Q. I guess it had been a long time since you
 24 had sex?
 25 A. A very long time.

75

1 Q. But you had sex with her probably hundreds
 2 of thousands of times with her before?
 3 A. A million, billions of times.
 4 Q. And you loved her?
 5 A. Extremely. She was the world to me.
 6 Q. What happened?
 7 A. When I entered her her vagina was all loose
 8 and wet and smelly and wasn't nothing like it used to
 9 be.
 10 Q. What did you think? What did that mean to
 11 you?
 12 A. I immediately thought that she had been
 13 messing around on me.
 14 Q. You thought she was messing around with
 15 other men?
 16 A. Yes, sir.
 17 Q. What did you do?
 18 A. I got up. I grabbed her and asked her who
 19 she had been with. She said nobody. She said I swear to
 20 God on my grandmother grave I ain't been with nobody.
 21 That was her exact words.
 22 Q. Did you believe her?
 23 A. Absolutely not.
 24 Q. So what do you do then?
 25 A. I walked away from her and started walking

76

1 is facing the death penalty even though (1) there is no finding by any jury that he acted with
2 premeditation and deliberation; and (2) there is no aggravating circumstance other than a
3 felony murder aggravating circumstance of NRS 200.033(4) or NRS 200.033(13). Under
4 explained in McConnell, this situation fails to narrow application of the death penalty and
5 is invalid under Zant, 462 U.S. at 877, Lowenfield v. Phelps, 484 U.S. 231, 241-46 (1988)
6 and the Nevada Constitution. Accordingly, the aggravating circumstance is invalid and there
7 are no remaining aggravating circumstances, so the sentence of death must be vacated.

8 Chappell's sentence of death must also be vacated because the State was permitted
9 to divide the three felony murder aggravating circumstances by using two as the basis for
10 felony murder and one as the basis of an aggravating circumstance. In McConnell, this Court
11 held: "We further prohibit the State from selecting among multiple felonies that occur during
12 'an indivisible course of conduct having one principal criminal purpose' and using one to
13 establish felony murder and another to support an aggravating circumstance." McConnell,
14 120 Nev. at 1069-70, 102 P.3d at 624-25. Although the State did not divide its aggravating
15 circumstances in response to McConnell, as known by the fact that McConnell had not been
16 decided at the time the State performed its division, the result is the same: the State used
17 some felony -murder circumstances to establish felony murder and used an additional felony-
18 murder circumstance to establish an aggravating circumstance. This result is not permitted
19 under McConnell, so the aggravating circumstance here is invalid and must be vacated.

20 **P. The Judgment Must Be Reversed Because of Cumulative Error.**

21 Chappell's constitutional rights to a fair trial, a fair penalty hearing, due process,
22 confrontation, cross-examination, and his right to be free from cruel and unusual punishment
23 were denied by the multiple errors which occurred during his trial. U.S. Const. amend. V,
24 VI, VIII, XIV; Nevada Const. art. I, Sec. 3, 6 and 8; art. IV, Sec. 21.

25 "The cumulative effect of errors may violate a defendant's constitutional right to a fair
26 trial even though errors are harmless individually." Butler v. State, 120 Nev. 879, 102 P.3d
27 71, 85 (2004); U.S. v. Necoechea, 986 F.2d 1273, 1282 (9th Cir. 1993) (although individual
28 errors may not separately warrant reversal, "their cumulative effect may nevertheless be so

1 prejudicial as to require reversal”).

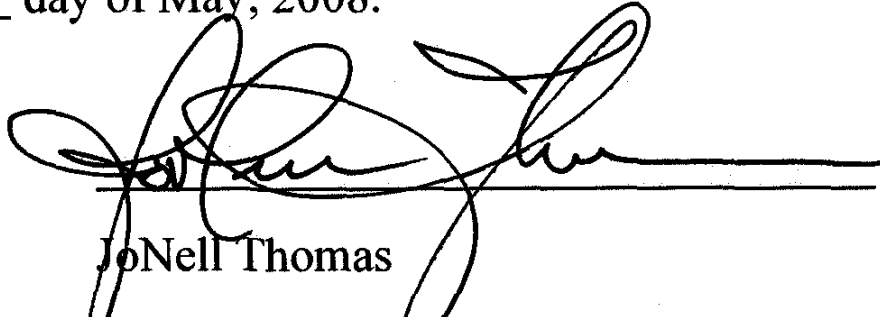
2 Chappell submits that the majority of the errors presented here are stand alone claims
3 with sufficient prejudice to warrant reversal. If this Court concludes that no single issue,
4 however, warrants reversal of his conviction and sentencing of death, the cumulative effect
5 of the multiple errors which occurred before and during the first guilt phase and second
6 penalty hearing warrant reversal of his conviction and sentence of death on federal and state
7 constitutional grounds.

8 “The Supreme Court has clearly established that the combined effect of multiple trial
9 errors violates due process where it renders the resulting criminal trial fundamentally unfair.”
10 Parle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007) (citing Chambers v. Mississippi, 410 U.S.
11 284 (1973); Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). “The cumulative effect of
12 multiple errors can violate due process even where no single error rises to the level of a
13 constitutional violation or would independently warrant reversal.” Id. (citing Chambers, 410
14 U.S. at 290 n.3). “[W]here the combined effect of individually harmless errors renders a
15 criminal defense ‘far less persuasive than it might [otherwise] have been,’ the resulting
16 conviction violates due process.” Id. (quoting Chambers, 410 U.S. at 294, 302, 303).
17 Reversal here should be granted because of the cumulative errors. In making this argument,
18 Chappell incorporates each of the claims raised in this direct appeal from the original
19 judgment and in the appeal from the order of the district court denying relief on the guilt
20 phase issues presented in his post-conviction petition for a writ of habeas corpus.

21 **VII. CONCLUSION**

22 Chappell respectfully submits that both his judgment of conviction and sentence of
23 death must be vacated for the reasons set forth herein.


24 Respectfully submitted this 19th day of May, 2008.

25
26 
27 JoNell Thomas
28 Attorney for James M. Chappell

1
2
3 **CERTIFICATE OF COMPLIANCE**

4 I hereby certify that I have read this appellate brief, and to the best of my knowledge,
5 information, and belief, it is not frivolous or interposed for any improper purpose. I further
6 certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in
7 particular NRAP 28(e), which requires every assertion in the brief regarding matters in the
8 record to be supported by appropriate references to the record on appeal. I understand that
9 I may be subject to sanctions in the event that the accompanying brief is not in conformity
10 with the requirements of the Nevada Rules of Appellate Procedure.

11 Dated this 19th day of May, 2008.

12
13 
14 JoNell Thomas
15 Attorney for Appellant
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on the 19 day of May, 2008, I duly deposited for mailing,

4 postage prepaid, at Las Vegas, Nevada, a true and correct copy of the above and foregoing

5 **OPENING BRIEF**, addressed to the following:

6

7 David Roger
Clark County District Attorney
8 200 Lewis
Las Vegas, NV 89155

9

10 Catherine Cortez Masto
Nevada Attorney General
11 100 North Carson Street
Carson City, Nevada 89701-4717

12

13 

14 Kathleen Fitzgerald
15 An Employee of the Special Public Defender

16

17

18

19

20

21

22

23

24

25

26

27

28



2

EXHIBIT 159

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49478

District Court Case No. C131341

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 8, 2010

Tracie Lindeman, Clerk of Court

By: A. Grierson
Deputy Clerk

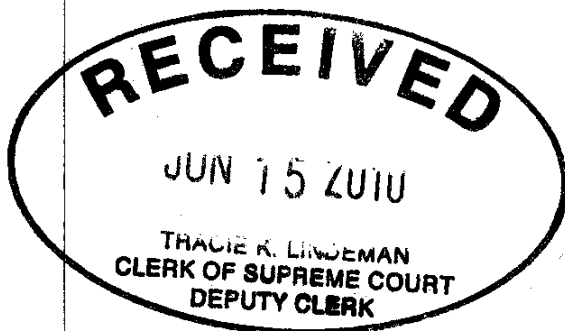
cc (without enclosures):

Hon. Douglas W. Herndon, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 11 2010

Heather J. Quinn
Deputy District Court Clerk



RECEIVED

JUN 10 2010

CLERK OF THE COURT

FILED

JUN 15 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Grierson
DEPUTY CLERK

10-14569

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49478

District Court Case No. C131341

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 20th day of October, 2009.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "Rehearing denied."

Judgment, as quoted above, entered this 16th day of December, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 8th day of June, 2010.

Tracie Lindeman, Supreme Court Clerk

By: _____
Deputy Clerk

A. Ingerson

EXHIBIT 160

56

1 0001
2 JAMES MONTELL CHAPPELL
3 BACK NO. 52338
4 Ely State Prison
5 P.O. Box 1989
6 Ely NV 89301
7 PETITIONER IN PROPER PERSON¹

FILED
JUN 22 2010
Chloe L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES MONTELL CHAPPELL,	}	CASE NO. C 131341
10 Petitioner,		DEPT. NO. HT ✓
11 vs.		
12 WARDEN OF ELY STATE PRISON,		
13 and THE STATE OF NEVADA,	}	
14 Respondent.		

PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

DATE: June 20, 2010
TIME: 9:00 pm

- 18 1. Name of institution and county in which you are presently imprisoned or where and
19 how you are presently restrained of your liberty: Ely State Prison, White Pine County, Ely
20 Nevada
- 21 2. Name and location of court which entered the judgment of conviction under attack:
22 Eighth Judicial District Court, Clark County, Las Vegas Nevada
- 23 3. Date of judgement of conviction: 5/10/2007
- 24 4. Case number: C 131341
- 25 5. (a) Length of sentence: Death

27 ¹Prepared with the assistance of JoNell Thomas, Deputy Special Public Defender. A full
28 review of the record was not conducted prior to filing this Petition as it is anticipated that an
attorney will be appointed and new counsel will be filing a supplemental petition with additional
issues and points and authorities in support thereof.

RECEIVED
JUN 22 2010
CLERK OF THE COURT

1 (b) If sentence is death, state any date upon which execution is scheduled: Sentence
2 stayed pending appeal

3 6. Are you presently serving a sentence for a conviction other than the conviction under
4 attack in this motion? Yes _____ No XX

5 If "yes", list crime, case number and sentence being served at this time: N/A

6 7. Nature of offense involved in conviction being challenged: Burglary, Robbery with
7 use of a Deadly Weapon, and Murder with Use of a Deadly Weapon

8 8. What was your plea? (Check one)

9 (a) Not guilty XX

10 (b) Guilty _____

11 (c) Guilty but mentally ill _____

12 (d) Nolo contendere _____

13 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment
14 or information, and a plea of not guilty to another count of an indictment or information, or if
15 a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

16 10. If you were found guilty after a plea of not guilty, was the finding made by: (check
17 one) N/A

18 (a) Jury XX

19 (b) Judge without a jury _____

20 11. Did you testify at the trial? Yes XX No _____

21 12. Did you appeal from the judgement of conviction? Yes XXX No _____

22 13. If you did appeal, answer the following:

23 (a) Name of court: Nevada Supreme Court

24 (b) Case number or citation: 49478

25 (c) Result: Conviction and Sentence Affirmed

26 (d) Date of result: 10/20/2009

27 (e) Issues raised:

28 (i) Whether Chappell's Conviction For First Degree Murder Must Be Reversed

1 Because The Jury Was Not Properly Instructed On The Elements Of The Capital Offense

2 (ii) Whether Chappell's Conviction For First Degree Murder Must Be Reversed

3 Because The Jury Was Not Properly Instructed On The Elements Of Felony Murder

4 (iii) Whether Chappell's Sentence of Death Must Be Vacated Because NRS
5 177.055(3) Is Unconstitutional

6 (iv) Whether Chappell Was Entitled To Review By The District Attorney's Death
7 Review Committee

8 (v) Whether Chappell's Death Sentence Is Unconstitutional Because of the Trial
9 Court Failed to Dismiss Jurors For Cause Who Would Always Impose A Sentence of
10 Death

11 (vi) Whether Chappell's Conviction Is Unconstitutional Because The State Was
12 Permitted To Introduce Unreliable Hearsay Evidence During The Penalty Hearing In
13 Support of The Aggravating Circumstance and as Other Matter Evidence

14 (vii) Whether The District Court Erroneously Admitted Presentence Investigation
15 Reports

16 (viii) Whether The District Court Allowed Improper Victim Impact Testimony

17 (ix) Whether The District Court Erred In Allowing Admission of Chappell's Prior
18 Testimony

19 (x) Whether The State Committed Prosecutorial Misconduct By Making
20 Arguments Based Upon Comparative Worth Arguments

21 (xi) Whether The State Committed Extensive Prosecutorial Misconduct

22 (xii) Whether The District Court Failed To Instruct The Jury That The State Was
23 Required To Establish Beyond On Beyond a Reasonable Doubt That Mitigating
24 Circumstances Did Not Outweigh Aggravating Circumstances

25 (xiii) Whether The Jury's Failure to Find Mitigating Circumstances Was Clearly
26 Erroneous and Requires That the Death Sentence Be Vacated

27 (xiv) Whether There Is Insufficient Evidence To Support The Sexual Assault
28 Aggravator

1 (xv) Whether The Sexual Assault Aggravating Circumstance Is Invalid Under
2 McConnell v. State

3 (xvi) Whether The Judgment Must Be Reversed Because of Cumulative Error.

4 14. If you did not appeal, explain briefly why you did not: N/A

5 15. Other than a direct appeal from the judgement of conviction and sentence, have you
6 previously filed any petitions, applications or motions with respect to this judgement in any
7 court, state or federal? Yes XX No

8 16. If your answer to No. 15 was "yes," give the following information:

9 (a) as to any first petition, application or motion:

10 (1) Name of court: Nevada Supreme Court

11 (2) Nature of proceeding: Direct Appeal from trial (JOC 12/31/1996)

12 (3) Grounds raised:

13 (i) The trial court abused its discretion by allowing the State to introduce evidence
14 of prior domestic batteries by Chappell when that evidence was not relevant.

15 (ii) The trial court abused its discretion by allowing state witnesses to testify
16 regarding the state of mind of Panos, thereby improperly impeaching Chappell's
17 credibility.

18 (iii) The trial court abused its discretion by allowing the State to introduce
19 testimony regarding a shoplifting incident that occurred the day after the killing.

20 (iv) The trial court abused its discretion by allowing the State to introduce
21 character evidence that Chappell was unemployed and a chronic thief and this evidence
22 was admitted without the scrutiny of a pre-trial Petrocelli hearing.

23 (v) The cumulative effect of the trial court's evidentiary rulings was to allow the
24 State to introduce overwhelming character evidence at trial, thereby denying Chappell his
25 due process rights to a fair trial.

26 (vi) The State discriminated against the defendant by uising peremptory
27 challenges to selectively exclude the only two black persons qualified for the jury pool.

28 (vii) The State failed to prove beyond a reasonable doubt the charges of burglary,

1 robbery, and first degree murder.

2 (viii) The trial court committed reversible error by denying defendant's motion
3 to strike the Notice of Intent to Seek Death Penalty.

4 (ix) The prosecutor committed misconduct during the closing argument by
5 attacking the defendant's post arrest silence.

6 (4) Did you receive an evidentiary hearing on your petition, application or motion?

7 Yes XX No

8 (5) Result: conviction and sentence affirmed

9 (6) Date of result: 10/30/1998

10 (7) If known, citations of any written opinion or date of orders entered pursuant to such
11 result: Chappell v. State, 114 Nev. 1404, 972 P.2d 838 (1998)

12 (b) as to any second petition, application or motion, give the same information:

13 (1) Name of court: United States Supreme Court

14 (2) Nature of proceedings: Petition for Writ of Certiorari

15 (3) Grounds raised:

16 (i) The state discriminated against petitioner by using peremptory challenges to
17 selectively exclude the only two black persons qualified for the jury pool

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes No XX

20 (5) Result: Denied

21 (6) Date of result: October 4, 1999

22 (7) If known, citations of any written opinion or date of orders entered pursuant to such
23 result: Chappell v. Nevada, 528 U.S. 853 (1999)

24 (c) As to any third or subsequent additional applications or motions, give the same
25 information as above.

26 (c) as to any third petition, application or motion, give the same information:

27 (1) Name of court: Eighth Judicial District Court

28 (2) Nature of proceeding: Petition for Writ of Habeas Corpus (Post Conviction)

1 (3) Ground(s) raised:
2 (i) Trial counsel was ineffective in failing to call witnesses to testify on behalf of
3 Chappell
4 (ii) Trial counsel failed to timely object to the system of jury selection that systematically
5 excluded African Americans and wherein African Americans are under represented.
6 (iii) Trial counsel failed to object to unconstitutional and improper jury instructions.
7 (iv) Trial counsel failed to object to numerous instances of improper closing argument
8 at the trial.
9 (v) Trial counsel failed to make contemporaneous objections on valid issues thereby
10 precluding meaningful appellate review.
11 (vi) Appellate counsel failed to raise on direct appeal that a number of jury instructions
12 given to the jury during the trial hearing were unconstitutional and improper.
13 (vii) Appellate counsel failed to raise the use of overlapping aggravating circumstances
14 on direct appeal.
15 (viii) Appellate counsel failed to raise the issue of improper closing argument on direct
16 appeal
17 (4) Did you receive an evidentiary hearing on your petition, application or motion?
18 Yes XX No
19 (5) Result: The district court denied the petition as to the trial phase issues and granted
20 the petition as to the sentencing phase issues; ordered a new sentencing hearing
21 (6) Date of result: April 2, 2004
22 (7) If known, citations of any written opinion or date of orders entered pursuant to such
23 result: June 3, 2004
24 (d) as to any fourth petition, application or motion, give the same information
25 (1) Name of court: Nevada Supreme Court
26 (2) Nature of proceeding: The State filed an appeal from the district court's order for a
27 new sentencing hearing after the post conviction hearing. Petitioner/Defendant Chappell filed
28 a cross-appeal from the denial of a new trial after the post conviction hearing.

1 (3) Grounds raised:
2

3 (4) Did you receive an evidentiary hearing on your petition, application or motion?

4 Yes ☐ No ☒ XXX

5 (5) Result: The Nevada Supreme Court affirmed the district court's decision to deny a
6 new trial and grant a new sentencing hearing

7 (6) Date of result: April 7, 2006

8 (7) If known, citations of any written opinion or date of orders entered pursuant to such
9 result: Case No. 43493

10 (f) Did you appeal to the highest state or federal court having jurisdiction, the result or
11 action taken on any petition, application or motion?

12 (1) Direct appeal from trial and first penalty hearing: Yes ☐ No ☐

13 Citation or date of decision: _____

14 (2) Direct appeal from second penalty hearing Yes ☐ No ☐

15 Citation or date of decision: _____

16 (3) Third petition, application or motion? Yes ☐ No ☐

17 Citation or date of decision: _____

18 (e) If you did not appeal from the adverse action on any petition, application or motion,
19 explain briefly why you did not. (You must relate specific facts in response to this question.
20 Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition.
21 Your response may not exceed five handwritten or typewritten pages in length.) N/A

22 17. Has any ground being raised in this petition been previously presented to this or any
23 other court by way of petition for habeas corpus, motion, application or any other post-
24 conviction proceeding? Yes: ☒ NO: ☐

25 If yes, identify: Chappell incorporates all claims raised in his previous post conviction
26 petition concerning the guilt phase of his trial and the guilt phase issues of his first direct appeal

27 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional
28 pages you have attached, were not previously presented in any other court, state or federal, list

1 briefly what grounds were not so presented, and give your reasons for not presenting them. (You
2 must relate specific facts in response to this question. Your response may be included on paper
3 which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five
4 handwritten or typewritten pages in length.)

5 (a) Ineffective assistance of original trial counsel - including but not limited to,
6 failure to properly prepare Chappell for his testimony at trial (which was also used
7 against him during his second penalty trial), and failure to object to questions implicating
8 Chappell's right to remain silent, and other issues to be addressed following the
9 appointment of counsel.

10 (b) Ineffective assistance of original appellate counsel

11 (c) Ineffective assistance of penalty phase trial counsel - including but not limited
12 to failure to present expert testimony on the fact that semen may be secreted without
13 ejaculation, which was necessary to confront the testimony of Detective James Vaccaro;
14 failure to investigate and call as witnesses court personnel who could have testified that
15 Chappell would not have had the opportunity to meet with Panos and threaten her during
16 court proceedings - as alleged by the State at the penalty trial; failure to object to the
17 admission of two PSI reports on statutory and constitutional grounds, including the
18 statement from Panos's mother that "The SOB does not deserve to live;" failure to object
19 to victim impact evidence on the ground that no notice, under SCR 250, was provided of
20 such testimony from non-family members; failure to object to prosecutorial misconduct;
21 failure to object to a comparative value or comparative worth argument; failure to object
22 to an argument on the role of mitigating circumstances; and failure to object to the jury
23 instruction on Nevada's weighing equation and failure to proffer a correct instruction;.

24 (d) Ineffective assistance of penalty phase appellate counsel

25 (e) The conviction for first-degree murder is unconstitutional because the jury was
26 not properly instructed on the elements of first-degree murder.

27 (f) The conviction for first-degree murder is unconstitutional because the jury was
28 not properly instructed on felony-murder.

1 These issues were not raised previously as this is the first post conviction proceeding concerning
2 the second penalty trial.

3 19. Are you filing this petition more than 1 year following the filing of the judgement of
4 conviction or the filing of a decision on direct appeal? Yes: No: XX

5 If yes, state briefly the reasons for the delay. (You must relate specific facts in response
6 to this question. Your response may be included on paper which is 8 ½ by 11 inches attached
7 to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

8 20. Do you have any petition or appeal now pending in any court, either state or federal,
9 as to the judgement under attack? Yes No XX

10 If yes, state what court and the case number: N/A

11 21. Give the name of each attorney who represented you in the proceeding resulting in
12 your conviction and on direct appeal:

13 Trial and first direct appeal: Clark County Public Defender's Office: Howard Brooks,
14 Michael Miller, Morgan Harris, Kedric Bassett, and Will Ewing

15 Post Conviction Proceedings: David Schieck

16 Second Penalty Hearing and appeal: Clark County Special Public Defender's Office:
17 David Schieck, Clark Patrick, and JoNell Thomas

18 22. Do you have any future sentences to serve after you complete the sentence imposed
19 by the judgement under attack? Yes No XX If yes, specify where and when it is
20 to be served, if you know: N/A

21 23. State concisely every ground on which you claim that you are being held unlawfully.
22 Summarize briefly the facts supporting each ground. If necessary you may attach pages stating
23 additional grounds and facts supporting same.

24 (a) Ground one: I was denied my rights under the Sixth and Fourteenth Amendments as
25 I did not receive due process of law or effective assistance of counsel at trial and at the first
26 penalty hearing, including but not limited to

27 (i) failure to properly prepare Chappell for his testimony at trial (which was also
28 used against him during his second penalty trial), and

- 1 (ii) failure to object to questions implicating Chappell's right to remain silent
2 (iii) The conviction for first-degree murder is unconstitutional because the jury
3 was not properly instructed on the elements of first-degree murder.
4 (iv) The conviction for first-degree murder is unconstitutional because the jury
5 was not properly instructed on felony-murder.
6 (v) any other issues to be addressed following the appointment of counsel.

7 I am indigent and do not understand the law and need counsel appointed to help me file
8 a supplemental petition with additional issues and points and authorities and supporting facts.

9 (b) Ground two: I was denied my rights under the Sixth and Fourteenth Amendments
10 as I did not receive due process of law or effective assistance of counsel on direct appeal from
11 the first trial concerning the guilt phase of the trial..

- 12 (i) issues to be addressed following the appointment of counsel

13 I am indigent and do not understand the law and need counsel appointed to help me file
14 a supplemental petition with additional issues and points and authorities and supporting facts.

15 (c) Ground three: I was denied my rights under the Sixth and Fourteenth Amendments
16 as I did not receive due process of law for effective assistance of counsel at the second penalty
17 hearing, including but not limited to:

18 (i) failure to present expert testimony on the fact that semen may be secreted
19 without ejaculation, which was necessary to confront the testimony of Detective James
20 Vaccaro;

21 (ii) failure to investigate and call as witnesses court personnel who could have
22 testified that Chappell would not have had the opportunity to meet with Panos and
23 threaten her during court proceedings - as alleged by the State at the penalty trial;

24 (iii) failure to object to the admission of two PSI reports on statutory and
25 constitutional grounds, including the statement from Panos's mother that "The SOB does
26 not deserve to live;"

27 (iv) failure to object to victim impact evidence on the ground that no notice, under
28 SCR 250, was provided of such testimony from non-family members;

1 (v) failure to object to prosecutorial misconduct;
2 (vi) failure to object to a comparative value or comparative worth argument;
3 (vii) failure to object to an argument on the role of mitigating circumstances; and
4 (viii) failure to object to the jury instruction on Nevada's weighing equation and
5 failure to proffer a correct instruction;

6 (ix) any other issues to be addressed following the appointment of counsel

7 I am indigent and do not understand the law and need counsel appointed to help me file
8 a supplemental petition with additional issues and points and authorities and supporting facts.

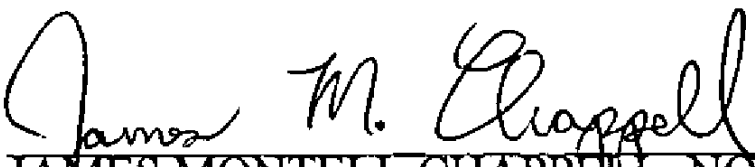
9 (d) Ground four: I was denied my rights under the Sixth and Fourteenth Amendments
10 as I did not receive due process of law or effective assistance of counsel on appeal from the
11 second penalty hearing.

12 (i) issues to be addressed following the appointment of counsel

13 I am indigent and do not understand the law and need counsel appointed to help me file
14 a supplemental petition with additional issues and points and authorities and supporting facts.

15 WHEREFORE, Petitioner prays that the court grant Petitioner relief to which he may be
16 entitled in this proceeding; and pursuant to NRS 34.820 moves this Court for an Order to appoint
17 counsel to assist Petitioner in these proceedings.

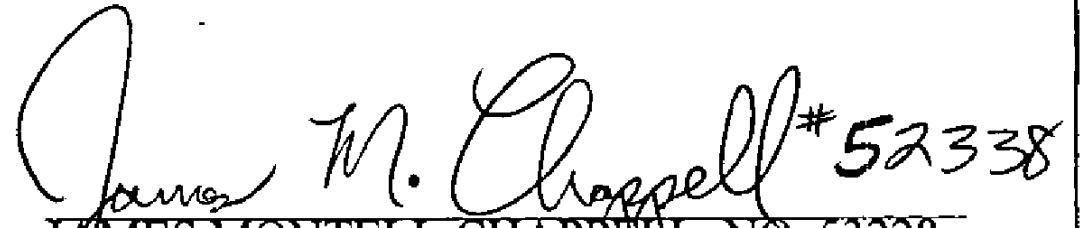
18 EXECUTED at Ely State Prison on June 20, 2010

19  #52338
20 JAMES MONTELL CHAPPELL, NO. 53228
21 Ely State Prison
22 P.O. Box 1989
23 Ely NV 89301
24
25
26
27
28

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

VERIFICATION

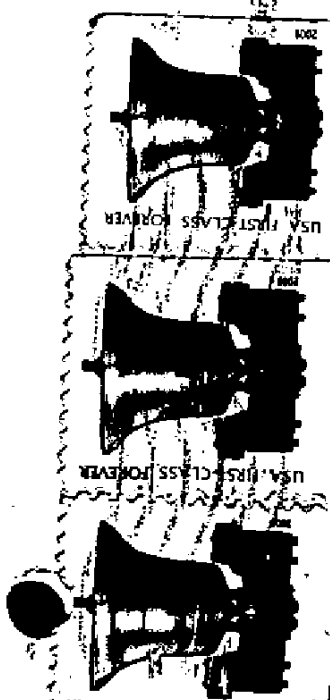
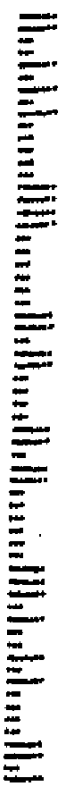
Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


JAMES MONTELL CHAPPELL, NO. 53228
Ely State Prison
P.O. Box 1989
Ely NV 89301

Mr. James M. Chappell #52338
ELY State Prison
P.O. Box 1989
ELY, Nevada 89301

Clark County Clerk
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada
89155

#910133301



AA04123

EXHIBIT 161

JChappell CORA007942

Jim Gibbons
Governor

Philip A. Galeoto
Director

John Allan Gonska
Chief



455-6273
SOUTHERN COMMAND

□ 215 E. Bonanza Rd.
Las Vegas, NV 89101

□ 820 Belrose St.
Las Vegas, NV 89107

□ 810 Belrose St.
Las Vegas, NV 89107

□ 4906 E. Tropicana Ave.
Las Vegas, NV 89121

Division of Parole and Probation

Amended Presentence Investigation Report

May 02, 2007

The Honorable Douglas W. Herndon

Department III, Clark County

Eighth Judicial District

Prosecutor: Christopher J. Owens, Chief DDA and Pamela C. Weckerly, DDA

Defense Attorney: David M Schieck, and Clark W. Patrick, Appt.

PSI: 250520

I. CASE INFORMATION

Defendant: James Montell Chappell

Date of Birth: 12-27-1969

Age: 37

SSN: 373-80-2907

Address: NDOC

City/State/Zip: Las Vegas, NV

Months/Years: 10 years

Phone: None

Driver's License: None

State: N/A

Status: N/A

POB: Lansing, MI

US Citizen: Yes

Notification Required Per NRS 630.307: No

Case: C131341

ID: 1212860

PCN: 07250016

P&P Bin: 1000808273

FBI: 284 918 JA6

SID: NV01780406

Resident: Yes

Offense Date: 08-31-1995

Arrest Date: 09-01-1995

Jury Verdict Date: 10-16-1996

Penalty Decision Count III: 03-21-2007

Sentencing Date: 05-10-2007

II. CHARGE INFORMATION

Offense: Count I - Burglary(F)

NRS: 205.060

NOC: 00299

Penalty: By imprisonment in the NDOC for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

Previously sentenced on 12-30-1996

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

Category: B RELEASED TO: _____

JChappell

PRESENTENCE INVESTIGATION REPORT

PAGE 2

JAMES MONTELL CHAPPELL

C131341

Offense: Count II - Robbery With Use Of A Deadly Weapon (F)

NRS: 200.380, 193.165:

Category: B

NOC: 00118

Penalty: By imprisonment in the NDOC for a minimum term of not less than 2 years and a maximum term of not more than 15 years, plus an equal and consecutive minimum term of not less than 2 years and a maximum term of not more than 15 years for Use of a Deadly Weapon. Previously sentenced on 12-30-1996

Offense: Count III - Murder of the First Degree With Use of a Deadly Weapon (F)

NRS: 200.010, 200.030, 193.165

Category: A

NOC: 00095

Penalty: By Death, only if one or more aggravating circumstances are found and if any mitigating circumstances which are found do not outweigh the aggravating circumstances. Otherwise, by imprisonment in the NDOC for Life With or Without the Possibility of Parole. If the penalty is fixed at Life With the Possibility of Parole, eligibility for parole begins when a minimum of 20 years have been served or a definite term of 50 years with eligibility for parole after 20 years has been served, plus an equal and consecutive sentence for Use of a Deadly Weapon.

III. PLEA NEGOTIATIONS

MA- Found guilty by Jury Verdict

IV. DEFENDANT INFORMATION

Physical Identifiers:

Sex: M

Race: B

Height: 5'11

Weight: 180

Hair: Black

Eyes: Brown

Scars: None

Tattoos : None

Aliases: James M. Montell

Additional SSNs: None

Additional DOBs: None

Social History: The defendant refused to be interviewed on May 02, 2007. Therefore the following social history was obtained from the original Presentence Report that was prepared on December 05, 1996.

Childhood: His father abandoned the family while he was an infant and his mother was killed by a police officer when he was two years old. He was then raised by his maternal grandmother who provided a good family life.

Immediate Family Members- Names and Addresses:

Unknown

Marital Status: Single

Prior Marriages/Long Term Relationships: He was involved in a long term relationship with the victim in the instant offense.

PRESENTENCE INVESTIGATION REPORT

PAGE 3

JAMES MONTELL CHAPPELL

C131341

Children : Three, age nineteen (son), seventeen (son) and fifteen (daughter)

Custody Status of Children: They have all been raised by their maternal grandmother.

Monthly Child Support Obligation: None

Employment Status: N/A

Number of Months Employed In The 12 Months Prior To Instant Offense: 0

Income: None

Other Sources: None

Assets: None

Debts: None

Education: He completed high school through the tenth grade.

Military: No

Health and Medical History: He had no health concerns

Mental Health History: He attended domestic violence counseling in 1992.

Gambling History: Unknown

Substance Abuse History: He began consuming alcohol at age thirteen and drank three times per week. He began using marijuana at twelve or thirteen and started using cocaine at age eighteen. He became heavily involved in cocaine use in subsequent years. He had a drug problem at the time of the instant offense. He was not high at the time he committed the offense but smoked cocaine later that day. He had never been involved in any substance abuse counseling.

Gang Activity/Affiliation: None

V. CRIMINAL RECORD

As of March 27, 2007, records of the Las Vegas Metropolitan Police Department (SCOPE), the Federal Bureau of Investigation (FBI), the Nevada Criminal Justice Information System (NCJIS) and the National Crime Information Center (NCIC) reflect the following information:

CONVICTIONS: **FEL:** 2 **GM:** 1 **MISD:** 6

INCARCERATIONS: **PRISON:** 1 **JAIL:** 5

OUTSTANDING WARRANTS AND LEVEL OF OFFENSE : 0

-WARRANT NUMBER AND JURISDICTION: N/A

-EXTRADITABLE: N/A

PRESENTENCE INVESTIGATION REPORT
JAMES MONTELL CHAPPELL
CC# C131341

PAGE 4

SUPERVISION HISTORY:**CURRENT:** Probation Terms: 0

Parole Terms: 0

PRIOR TERMS:

Probation: **Revoked:** 1 **Discharged:** **Honorable:** 1 **Other:** 0
Parole: **Revoked:** 0 **Discharged:** **Honorable:** 0 **Other:** 0

Adult:

Arrest Date:	Offense:	Disposition:
05-15-1988 (Lansing, MI)	Felony Stolen Vehicle (F)	11-12-1988; Convicted Motor Vehicle/Unlawful Use (M) 6 months jail.
08-18-1988 (Lansing, MI)	Assault Excluding Sexual (F)	09-20-1988; Convicted Assault or Assault and Battery (M) \$150 fine, 15 days jail.
06-15-1993 (Tucson, AZ)	Disorderly Conduct (M)	10-12-1993; Convicted (M) community service, restitution.
02-23-1994 (Tucson, AZ)	Domestic Violence/Assault (M)	03-04-1994; Convicted (M) \$2,500 fine, 180 days jail, 12 months probation.
02-18-1995 (LVMPD)	1. Burglary (F) 2. Under the Influence of Controlled Substance (F) 3. Possession of Burglary Tools (GM) RMD: 02-27-1995	1. Dismissed. 2. Convicted ITS Drugs (M) \$500 fine. 3. CC#C126882, 04-27-1995 Convicted Possession of Burglary Tools (GM) 1 years CCDC, suspended, probation NTE 2 years. 06-27-1995; Probation violation. 08-01-1995; Probation reinstated. 09-02-1995; Probation violation. 10-26-1995; Probation Revoked. 06-20-1996; Expired sentence.
09-01-1995 (LVMPD)	1. Murder (F) 2. Grand Larceny Auto (F) RMD: 10-04-1995 1. Burglary (F) 2. Robbery With Deadly Weapon (F)	Instant Offense; CC#C131341 12-30-1996 sentenced on Count I - 120/48 months NDOC, Count II - 180/72 months months NDOC plus an equal and consecutive 180/72 months NDOC for the deadly Weapon enhancement, consecutive to Count I.

In addition to the above the defendant was convicted of the following misdemeanor offense of Petty Larceny that was satisfied by a short jail term.

RESENTENCE INVESTIGATION REPORT

PAGE 5

JAMES MONTELL CHAPPELL

CC# C131341

JChappell
CORADO 07946

Additionally, the defendant was arrested or cited in Arizona and Nevada between May 15, 1988 and August 1, 1995 for the following offenses for which no disposition is noted, prosecution was not pursued or charges were dismissed: Obstruct Judicial, Congressional, Legis., Possession of Narcotic, Possession of Marijuana, Sell Narcotics, Possession of Drug Paraphernalia (2), Trespassing, Failure to Appear, Under the Influence of Controlled Substance, FTA - (24), Battery Domestic Violence (2), Petty Larceny (3), Possession of Narcotic Paraphernalia.

Institutional/Supervision Adjustment: On April 27, 1996 the defendant was placed on probation in CC#C126882. He was charged with probation violation after he was cited for Possession of Narcotic Paraphernalia and Battery Domestic Violence. He was reinstated to probation and ordered to complete an in-patient substance abuse counseling program. On August 31, 1995 he was released from custody and on September 01, 1995 he was arrested for the instant offense. His probation was subsequently revoked.

Supplemental Information: N/A

VI. OFFENSE SYNOPSIS

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

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

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

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

On September 11, 1995, an officer was dispatched to a local supermarket regarding a shoplifting incident. Upon arrival, he observed the defendant, who had been detained after attempting to shoplift several items. He identified himself as Ivri Marrell. It was later learned he was in fact Mr. Chappell who was wanted regarding the above murder. Two puncture wounds were observed on his hand. The store security officers advised the defendant had a set of keys, one of which belonged to a Toyota. When asked where the vehicle was he defendant replied "I parked it in back of the apartments across the street". The detectives subsequently found the victim's vehicle parked behind an apartment complex. Witnesses stated that they had observed the defendant parked the vehicle at that location on August 31, 1995. The defendant was then placed under arrest and transported to the Clark County Detention Center where he was booked accordingly.

JChappell
CORR007947
PRESENTENCE INVESTIGATION REPORT
JES MONTELL CHAPPELL
CC# C131341

PAGE 6

VII. CO-DEFENDANT'S/OFFENDER'S INFORMATIONVIII. DEFENDANT'S STATEMENT

On May 02, 2007, an attempt was made to interview the defendant at the High Desert State Prison. He refused to be interviewed.

IX. VICTIM INFORMATION/STATEMENT

The victim, Deborah Panos, was a twenty-six year old female, leaving behind three children. Her mother was interviewed in 1996 when the first Presentence Report was prepared and stated there was no way to express her grief stating it is a "grief you live with every day". She lost her only child and has been raising her three grandchildren. She stated when the victim "finally got up the nerve after years and years of abuse", he was released and committed the instant offense. "The SOB does not deserve to live" she related. Living with the loss is a "very, very hard thing and her voice is in our mind all the time". It was difficult hearing her grandchildren, especially the youngest, talk about "Mommy being in heaven". She further related the defendant didn't have to commit the crime but could have gone back to stealing and using drugs. She stated he was arrested many times, even in Tucson, AZ, for violence to victim and the Court slapped his hand and told him to go to counseling. The defendant just laughed and did what he wanted to do. When asked about financial costs, she stated the cost was \$11,434.90 to transport the body to Michigan for the funeral. (VC2167293)

An attempt was made to call the victim's mother on April 30, 2007 but the phone was busy all day. Additionally, she did not respond to a Victim Impact letter mailed to her. However, contact was made with the Aunt of the victim who indicated her sister was extremely ill and that they do not plan to attend sentencing.

X. CONCLUSION

The defendant's prior criminal history consists of domestic violence, theft and drug related offenses. During the instant offense he violently killed his girlfriend and the mother of his children by stabbing her thirteen times during a domestic dispute less than one day after he was released from custody after being arrested for a previous domestic battery. He was previously sentenced to prison on Counts I and II, and the jury has determined he should be sentenced to death for Count III.

XI. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: In Custody, High Desert State Prison

CTS: 3,976 DAYS: 09-01-1995 to 05-10-2007 (CCDC/NDOC) 4,269 Days
(293 days credited to CC#C126882)

JChappell CORA007948

PRESENTENCE INVESTIGATION REPORT
JAMES MONTELL CHAPPELL
#: C131341

PAGE 7

XII. RECOMMENDATIONS

190 Day Regimental Discipline Program: N/A **Deferred Sentence Per NRS 453.3363: N/A**

FEEES

Administrative Assessment: \$25 **Chemical/Drug Analysis N/A** **DNA: \$150 and submit to testing**

Domestic Violence: N/A **Extradition: N/A**

SENTENCE

COUNT I: BURGLARY-Sentenced on December 30, 1996 to a maximum term of 120 months with minimum parole eligibility of 48 months.

COUNT II: ROBBERY WITH USE OF A DEADLY WEAPON-Sentenced on December 30, 1996 to a maximum term of 180 months with minimum parole eligibility of 72 months, plus an equal and consecutive maximum term of 180 months with minimum parole eligibility of 72 months for the Use of a Deadly Weapon, consecutive to Count I

COUNT III: MURDER IN THE FIRST DEGREE WITH USE OF A DEADLY WEAPON:

Minimum Term: N/A

Maximum Term: Death as imposed by Jury on 03-21-2007

Location: NDOC

Concurrent With: Count I

Probation Recommended: N/A

Probation Term: N/A

Fine: N/A

Restitution: \$11,434.90

____ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

 X Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

Respectfully Submitted,

JOHN ALLAN GONSKA, CHIEF

PREPARED AND APPROVED BY:



Charles C. Combs for Kathleen Houlihan
Parole and Probation Specialist IV
Unit VII
Southern Command, Las Vegas, Nevada

EXHIBIT 162

6 ~~14~~ 600dBadge # 1480786
I.D.# 467VICTIM OF
DOMESTIC
VIOLENCE.

42 + 43

Juror Questionnaire

Dear Prospective Juror:

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

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

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

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

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

Summary of Case

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

Procedure

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

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

reasonable doubt. Mr. Chappell is presumed innocent.

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

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

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

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

NO

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

Questions About You

3. Your full name Lois Jean Ochoa Race Caucasian

4. Age 38 Place of birth California Marital Status M.

5. Children 2

	Age	Sex	Education	Occupation
(a)	<u>18</u>	<u>F.</u>	<u>Basic High School</u>	<u>still currently in a Special Ed Program</u>
(b)	<u>15</u>	<u>M</u>	<u>Basic High</u>	<u>Student</u>
(c)				
(d)				

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

7. Highest educational grade completed 12 / 1yr college

8. Any special schooling or training? NO

9. Any courses or training in a legal field? NO
10. Your occupation and relevant duties for the last ten years:
9-93 to Present cage cashier
6-91 to 9-93 Housewife
1986 - 6-91 waitress
11. What is your spouse's occupation, if you have a spouse?
Ceramic Tile Installer
12. Have you ever been in business for yourself? If yes, please explain.
NO
13. Ever been a supervisor or boss? If yes, explain.
NO
14. Ever served in the military? If yes, please provide some details.
NO
15. Do you attend religious services? If yes, what church or service, and how often?
NO
16. Have you ever changed religions? If so, why?
NO
17. Any relatives who are judges or attorneys? If yes, what is your relationship to them and how often do you talk to them?
NO
18. Any relatives in law enforcement? If yes, what is your relationship, and how often do you talk to them?
NO
19. Ever been a juror before? If yes, what did you think of the experience?
NO
20. Have you or any member of your family ever had a drug or alcohol problem?
Yes, I had a problem with alcohol in my 20's & have been straight for 8 years
21. Have you or any members of your family ever been arrested? If so, why? And what

happened? Yes. Thirteen years ago at the age of 25, I
was arrested on a controlled substance charge.
The case was dismissed

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

23. Have you or any one you know been a victim of domestic violence?
Yes My 1st spouse abused me.

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

NO

Opinions, Interests, & Views

25. What do you think of the criminal justice system? Most of the
time it works

26. What are your hobbies and interests? Computer & Sewing

27. Do you consider yourself to be a leader or a follower? leader Why?
Because I don't like trailing behind. I like to make
my own decisions.

28. What do you like to read? Novels, my Bible, magazines.

What do you think of each of the following:

29. Defense attorneys I think they are doing their job to try
to protect their clients

30. Public Defenders Same as above

31. State Prosecutors Trying to ~~keep~~ put criminals where

they need to be

32. Federal Prosecutors same as above

33. Police officers Thankful for their presence in our Society

34. Judges unbiased persons in a Court of law.

35. The Death Penalty it would depend on the circumstances

36. The statement: "An Eye for an Eye." To me this does not necessarily mean kill & be killed. I believe in proper punishment for the crime committed.

37. The statement: "You Shall Not Kill." I don't believe a person should be free to kill anyone they meet.

38. The statement: If a prosecutor has taken the trouble of bringing someone to trial, then the person must be guilty. Not necessarily. I must know all the evidence 1st.

39. The statement: A defendant in a criminal trial should be required to prove his innocence: No. The prosecutor must prove guilt

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

41. The statement: The Death Penalty is appropriate in all cases where somebody murders somebody: Not necessarily. depends on the circumstances of the event.

42. The statement: A defendant's background should be considered in deciding whether or not the death penalty is an appropriate punishment: No

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

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

No Criminals come in every race, creed, & color.

45. The statement: It's Ok for black people and white people to date each other and have children together. If they're in love & committed to one another. All people are the same under the skin.

46. The statement: It may be Ok for people of different races to date each other, but I would have a hard time dealing with my child doing it: No. I am married to a hispanic. If my child was happy with any person I would be ok.

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

The only thing is that I have severe psoriasis & receive chemo-therapy once a week.

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

Yes. I would like to do my duties as a citizen. I feel I am a fair person & would want someone like me on a jury if the tables were turned around.

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

yes

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

yes

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

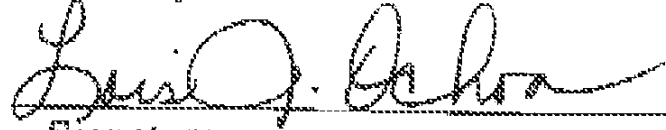
52. Are you a member of any organization that advocates or opposes the imposition of the death penalty? NO

Explanation Area

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

Oath

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

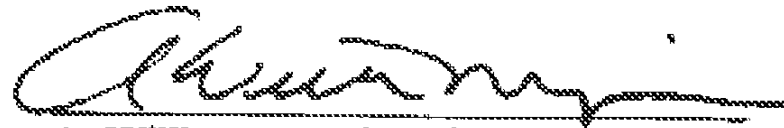

Signature

10-2-96

Date

Admonition

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



A. William Maupin, District Judge

EXHIBIT 163

JChappell11 CORA005579

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES CHAPPELL,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
S.C. CASE NO. 61967 on 08/20/14 08:44 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

~~~~~  
APPELLANT'S OPENING BRIEF  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR
RESPONDENT

STEVE WOLFSON, ESQ.
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101
(702) 671-2500

TABLE OF CONTENTS

Table of Authorities iii

Issues Presented for Review viii

Statement of the Case 1

Jurisdictional Statement 1

Statement of Facts 7

Arguments

 I. 7

 II. 10

 III. 12

 IV. 32

 V. 37

 VI. 38

 VII. 43

 VIII. 45

 IX. 47

 X. 53

 XI. 54

 XII. 59

Conclusion 60

Certificate of Compliance 61

Certificate of Service 62

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT

<u>Arave</u> , 507 U.S. 463, 113 Sup. Ct. 1534, 123 L. Ed. 2d 188 (1993)	49
<u>Evitts v. Lucey</u> , 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985)	52
<u>Furman v. Georgia</u> , 408 U.S. 238, 92 Sup. Ct. 2726, 33 L. Ed. 2d 346 (1972) . .	51
<u>Gregg v. Georgia</u> , 428 U.S. 153, 96 Sup. Ct. 2909, 49 L. Ed. 2d 859 (1976) . . .	50
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S. Ct 2781, 6 L. Ed 2d 560 (1979)	19
<u>Lockhart v. Fretwell</u> , 506 U. S. 364, 113 S. Ct. 838, 122 L. Ed. 2d 180 (1993) . .	11
<u>Mathews v. Eldrige</u> , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).	52
<u>Ohio Adult parole Authority v. Woodward</u> , 523 U.S. 272, 118 S.Ct. 1244 (1998)	52
<u>Strickland v. Washington</u> , 466 U. S. 668, 104 S. Ct. 205 (1984)	10
<u>Trop v. Dulles</u> , 356 U.S. 86, 78 Sup. Ct. 590, 2 L. Ed. 2d 859 (1958)	51
<u>U.S. v. Olano</u> , 507 U.S. 525, 113 S. Ct 1562, 123 L. Ed 2d 229 (1993)	37
<u>Walton v. Arizona</u> , 497 U.S. 639, 110 S. Ct. 3047, 11 L. Ed. 2d 511 (1990) . . .	51
<u>Woodson</u> , 428 U.S. 280, 96 Sup. Ct. 2978, 49 L. Ed. 2d 944 (1976)	49
<u>Zant</u> , 462 U.S. 862, 103 S. Ct 2733, 77 L. Ed 2d 235 (1983)	49

NEVADA REVISED STATUTES

NRS 48.045	39
NRS 176.355(1)	47

STATE OF NEVADA

<u>Archanian v. State</u> , 122 Nev. 1019, 145 P.3d 1008 (2006)	33
<u>Beck v. State</u> , 105 Nev. 910, 784 P.2d 983 (1989)	39
<u>Big Pond v. State</u> , 101 Nev. 1, 692 P.2d 1288 (1985)	59
<u>Bishop v. State</u> , 95 Nev. 511, 597 P.2d 273 (1979)	50
<u>Bonacci v. State</u> , 96 Nev. 894, 620 P.2d 1244 (1980)	46
<u>Brown v. State</u> , 81 Nev. 397, 404 P.2d 428 (1965)	46
<u>Buffalo v. State</u> , 111 Nev. 1139, 901 P.2d 647 (1995)	18
<u>Burke v. State</u> , 110 Nev. 1366, 887 P.2d 267 (1994)	11
<u>Cipriano v. State</u> , 111 Nev. 534, 894 P.2d 347 (1995)	39
<u>Collier v. State</u> , 101 Nev. 473, 705 P.2d 1126 (1985)	40
<u>Crawford v. State</u> , 107 Nev. 345, 811 P.2d 67 (1991)	46
<u>Davis v. State</u> , 107 Nev. 600, 602, 817 P. 2d 1169 (1991)	10
<u>Dechant v. State</u> , 10 P.3d 108, 116 Nev. 918 (2000)	58
<u>Doleman v. State</u> , 112 Nev. 843, 921 P.2d 278 (1996)	17
<u>Earl v. State</u> , 111 Nev. 1304, 904 P.2d 1029 (1995)	41
<u>Guy v. State</u> , 108 Nev. 770, 839 P.2d 578 (1992)	40
<u>Hollaway v. State</u> , 116 Nev. 732, 6 P.3d at 987 (2000)	49
<u>Jackson v. Warden</u> , 91 Nev. 430, 537 P.2d 473 (1975)	12

<u>Jacobs v. State</u> , 91 Nev. 155, 532 P.2d 1034 (1975)	43
<u>Jiminez v. State</u> , 106 Nev. 769, 801 P.2d 1366 (1990)	40
<u>Johnson v. State</u> , 122 Nev. 1344, 148 P.3d 767 (2006)	36
<u>Jones v. State</u> , 113 Nev. 454, 937 P.2d 55 (1997)	41
<u>Kirksey v. State</u> , 112 Nev. 980, 923 P.2d 1102 (1996)	10
<u>Lozada v. State</u> , 110 Nev. 349, 871 P. 2d 944 (1994)	10
<u>McConnell v. State</u> , 120 Nev. 1043, 102 P.3d 606 (2004)	5
<u>Nunnery v. State</u> , 127 Nev. 263 (2011)	45
<u>Origel–Candido v. State</u> , 114 Nev. 378, 956 P.2d 1378 (1989)	18
<u>Riley v. State</u> , 110 Nev. 638, 878 P.2d 272 (1994)	21
<u>Sandburn v. State</u> , 107 Nev. 399, 812 P.2d 1279 (1999)	39
<u>Shults v. State</u> , 96 Nev. 742, 616 P.2d 3 88 (1980)	44
<u>State of Nevada v. Love</u> , 865 P.2d 322, 109 Nev. 1136 (1993)	10
<u>Taylor v. State</u> , 109 Nev. 849, 858 P.2d 843 (1993)	39
<u>Wesley v. State</u> , 112 Nev. 503, 916 P.2d793 (1996)	36
<u>Wilkins v. State</u> , 96 Nev. 367, 609 P.2d 309 (1980)	18
FEDERAL JURISDICTIONS	
<u>Agard v. Portuondo</u> , 117 F.3d 696 (2 nd Cir. 1997)	39
<u>Chambers v. E.K. McDaniel</u> , 549 F.3d 1191 (9 th Cir. 2008)	54

<u>Coleman v. Calderon</u> , 210 F.3d 1047 (9th Cir. 2000)	57
<u>Harich v. Wainwright</u> , 813 F.2d 1082 (11th Cir.1987)	8
<u>Hendricks v. Vasquez</u> , 974 F.2d 1099 (9th Cir.1992)	8
<u>Hoots v. Allsbrook</u> , 785 F.2d 1214 (4th Cir.1986)	12
<u>Morris v. California</u> , 966 F.2d 448 (9th Cir.1991)	8
<u>Polk v. Sandoval</u> , 503 F.3d 903 (9th Cir. 2007)	55
<u>Porter v. Wainwright</u> , 805 F.2d 930 (11th Cir. 1986)	9
<u>Smith v. McCormick</u> , 914 F.2d 1153 (9th Cir.1990)	8
<u>U.S. v. Leon, v. Reyes</u> , 177 F.3d 816 (9 th Cir. 1999)	37
<u>U.S. v. Baynes</u> , 687 F.2d 659 (3 rd Cir. 1982)	12
<u>U.S. v. Tucker</u> , 716 F.2d 576 (9 th Cir. 1983)	12
<u>U.S. v. Gray</u> , 878 F.2d 702 (3d Cir.1989)	12
<u>U.S. v. Rodriguez-Estrada</u> , 877 F.2d 153 (1 st . Cir. 1989)	41
<u>U.S. v. Weatherless</u> , 734 F.2d 179, 181 (4 th Cir. 1984)	41
OTHER JURISDICTIONS	
<u>Biondo v. State</u> , 533 South 2d 910-911 (FALA 1988)	41
<u>Daniel v. Overton</u> , 845 F. Supp. 1170 (E.D. Mich. 1994)	54
<u>Mickle v. Henrichs</u> , 262 F. 687 (D. Nev. 1918)	50
<u>Patterson v. State</u> , 747 P.2d 535, 537-38 (AK. 1987)	41

People v. Terrell, 310 NE 2d 791, 795 (Illinois Ap. Ct. 1994) 41

People v. Hawkins, 410 N.E. 2d 309 (IL. 1980) 41

ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN FAILING TO HOLD AN EVIDENTIARY HEARING.**
- II. STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL.**
- III. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE THIRD PENALTY PHASE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**
- IV. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF PENALTY PHASE TRIAL COUNSEL AND APPELLATE COUNSEL FOR FAILURE TO OBJECT TO THE CUMULATIVE VICTIM IMPACT PANEL IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**
- V. PENALTY PHASE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO IMPROPER PROSECUTORIAL ARGUMENTS DURING THE PENALTY PHASE IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**
- VI. PENALTY PHASE COUNSEL AND PENALTY PHASE APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE SEVERAL INSTANCES OF IMPROPER PROSECUTORIAL ARGUMENT WHICH SHOULD HAVE BEEN RAISED SIMULTANEOUSLY IN MR. CHAPPELL'S APPEAL IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**
- VII. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF PENALTY PHASE COUNSEL AND APPELLATE COUNSEL FOR FAILURE TO OBJECT TO IMPROPER IMPEACHMENT IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH**

AMENDMENTS TO THE UNITED STATES CONSTITUTION.

- VIII. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN ALLOWING THE ADMISSION OF EVIDENCE OF SEVERAL BAD ACTS THUS VIOLATING APPELLANT'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS AND WARRANTING REVERSAL OF HIS PENALTY PHASE.**
- IX. THE DEATH PENALTY IS UNCONSTITUTIONAL.**
- X. MR. CHAPPELL'S CONVICTION AND DEATH SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, TRIAL BEFORE AN IMPARTIAL JURY AND A RELIABLE SENTENCE BECAUSE THE PROCEEDINGS AGAINST HIM VIOLATED INTERNATIONAL LAW. U.S. CONST. AMENDS. V, VI VIII AND XIV; NEV. CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.**
- XI. CHAPPELL'S CONVICTION AND SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEE OF DUE PROCESS, EQUAL PROTECTION OF THE LAWS, EFFECTIVE ASSISTANCE OF COUNSEL AND RELIABLE SENTENCE BECAUSE THE JURY INSTRUCTIONS GIVEN AT TRIAL WERE FAULTY AND WERE NOT THE SUBJECT OF CONTEMPORANEOUS OBJECTION BY TRIAL COUNSEL, NOT RAISED ON DIRECT APPEAL BY APPELLATE COUNSEL, NOT RAISED BY PENALTY PHASE APPELLATE COUNSEL, AND NOT RE-RAISED BY PENALTY PHASE COUNSEL.**
- XII. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON CUMULATIVE ERROR.**

JURISDICTIONAL STATEMENT

Argument on the petition was held and Mr. Chappell's Petition for Writ of Habeas Corpus was denied on October 19, 2012 (21 ROA 4706). The Findings of Fact, Conclusions of Law and Order was filed on November 16, 2012 (20 ROA 4527). Mr. Chappell filed a timely notice of appeal on October 22, 2012 (20 ROA 4515). This Opening Brief follows.

STATEMENT OF THE CASE

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

was presented during the preliminary hearing that would support the aggravating circumstance (1 ROA 256). The State opposed the motion, but did not address the sexual assault issue (2 ROA 309-319). The Court denied the motion.

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

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

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

The judgment of conviction was filed on December 31, 1996 (9 ROA 2190).

Chappell filed a timely notice of appeal on January 17, 1997, which was docketed as number 29884 (9 ROA 2200). On December 30, 1998, this Court issued its opinion affirming the conviction (9 ROA 2273); Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998). This concluded that the district court erred in failing to hold a Petrocelli hearing, but found admission of evidence of uncharged misconduct to be harmless. Id. at 1406, 972 P.2d at 840. It also concluded that there was sufficient evidence to support the aggravating circumstances of burglary, robbery and sexual assault, but insufficient evidence to support the aggravating circumstance of torture or depravity of mind. Id. at 1407, 972 P.2d at 841. In addressing the robbery aggravating circumstance, this Court noted Chappell's argument that the evidence showed that he took Panos' car as an afterthought and therefore could not be guilty of robbery, but rejected that argument because this Court had held "that in robbery cases it is irrelevant when the intent to steal the property is formed." Id. at 1408, 972 P.2d at 841. Although this Court found torture or depravity of mind aggravating circumstance to be invalid, it re-weighed the remaining three aggravating circumstances and the two mitigating

circumstances, found the aggravating circumstances clearly outweighed the mitigating circumstances, and found that a sentence of death was proper. Id. at 1410-1411, 558 P.2d at 842. This Court also rejected other issues raised by Chappell on appeal. Id. This Court denied rehearing on March 17, 1999 (9 ROA 2288).

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

Meanwhile, on October 19, 1999, Chappell filed a proper person post-conviction petition for writ of habeas corpus (9 ROA 2258). A supplemental petition was filed on April 30, 2002 (10 ROA 2417). Among other issues, Chappell contended that his conviction was invalid because the jury instruction defining premeditation and deliberation was constitutionally infirm as it did not provide a rational distinction between first and second degree murder (10 ROA 2456-2459)(citing Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)). He also asserted that the sentence of death was unconstitutional because of the use of overlapping aggravating circumstances (10 ROA 2465). The State filed its response to the petition on June 19, 2002 (10 ROA 2481). The evidentiary hearing took place before the Honorable Michael Douglas on September 13, 2002 (11

ROA 2554). Subsequently, on June 3, 2004, the district court entered its Findings of Fact, Conclusions of Law and Order (11 ROA 2745). It denied the petition as to the guilt phase issues, granted the petition as to the sentence, and ordered a new sentencing hearing (11 ROA 2748, 2278).

On June 18, 2004, the State filed its notice of appeal to this Court (11 ROA 2757). On June 24, 2004, Chappell filed a notice of cross-appeal (11 ROA 2761).

On April 7, 2006, this Court issued its Order of Affirmance in which it upheld the district court's decision (11 ROA 2783). Of relevance to this petition, is this Court's conclusion that there was no merit to the arguments presented concerning jury instructions (11 ROA 2790)(citing Garner v. State, 116 Nev. 770, 788-789, 6 P.3d 1013, 1025 (2000)). This Court also found the aggravating circumstances of burglary and robbery to be invalid under McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004)(11 ROA 2792-2795). The remittitur issued on may 4, 2006 (11 ROA 2797).

The second penalty phase began on March 12, 2007 (19 ROA 3932).

Following closing arguments, the jury returned their verdicts (15 ROA 3737, 3821). They found the aggravating circumstance of murder committed during the perpetration of a sexual assault (15 ROA 3737, 3822). The mitigating special verdict form listed the following mitigators: Chappell suffered from substance

abuse, he had no father figure in his life, he was raised in an abusive household, was the victim of physical abuse as a child, he was born to a drug/alcohol addicted mother, he suffered from a learning disability, and was raised in a depressed housing area (15 ROA 3739-3740, 3822-3823). The jury did not find the mitigating circumstance that Chappell's mother was killed when he was very young, that he was the victim of mental abuse as a child, and other mitigating circumstances that were asserted to exist by Chappell's counsel (15 ROA 3755). The jury found that the mitigating circumstances did not outweigh the aggravating circumstance (15 ROA 3738, 3822-3823). The special verdict form for the weighing equation did not indicate that it was the State's burden to establish beyond a reasonable doubt that the mitigating circumstances did not outweigh the aggravating circumstances (15 ROA 3738). The jury returned a sentence of death (15 ROA 3741).

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

The Opening Brief was filed on June 9, 2008. was filed on October 23, 2008. This Court filed its Order of Affirmance on October 20, 2009. The Order

Denying Rehearing was filed on December 16, 2009. On May 11, 2010, the Petition for Writ of Certiorari was denied. On June 8, 2010, this Court filed its remittitur.

Chappell filed a timely Petition for Writ of Habeas Corpus on June 22, 2010. A supplemental brief was filed on February 15, 2012 (20 ROA 4562). The State's Response was filed on May 16, 2012 (20 ROA 4431). A Reply brief was filed on July 30, 2012 (20 ROA 4491). Argument on the petition was held and Mr. Chappell's Petition for Writ of Habeas Corpus was denied on October 19, 2012 (21 ROA 4706). The Findings of Fact, Conclusions of Law and Order was filed on November 16, 2012 (20 ROA 4527). Mr. Chappell filed a timely notice of appeal on October 22, 2012 (20 ROA 4515). This Opening Brief follows.

STATEMENT OF FACTS

The statement of facts are enunciated in Mr. Chappell's supplemental brief (20 ROA 4569-4582).

ARGUMENT

I. MR. CHAPPELL IS ENTITLED TO A REVERSAL OF THE DISTRICT COURT'S DENIAL OF THE POST-CONVICTION WRIT BASED UPON THE DISTRICT COURT'S REFUSAL TO GRANT AN EVIDENTIARY HEARING.

On February 15, 2012, Mr. Chappell filed a sixty-two page supplemental brief in support of defendant's writ of habeas corpus. Mr. Chappell specifically

requested the district court entertain an evidentiary hearing so that he could ineffective assistance.

On February 15, 2012, Mr. Chappell filed a motion for the authorization to obtain expert services and payment of fees at state expense (20 ROA pp. 4485).

In the motion, Mr. Chappell requested permission to retain an expert on the effects of fetal alcohol disorder. There was evidence that Mr. Chappell's mother may have been addicted to drugs and alcohol. Yet, there was no indication of the voluminous file that counsel investigated the possibility of fetal alcohol syndrome. Mr. Chappell also requested permission to obtain a full neurological examination of Mr. Chappell including but not limited to a PET Scan.

Additionally, Mr. Chappell filed a motion for the appointment of an investigator (20 ROA 4550).

At the conclusion of the briefing, a status check was held on August 29, 2012. At the August 29, 2012 hearing, Mr. Chappell and the State agreed that the district court should entertain oral argument on the briefs and the motions for the appointment of an investigator and experts (20 ROA 4415).

Oral argument was heard on October 19, 2012. During the argument, the district court indicated that she was "not persuaded" that there was ineffective assistance of counsel (20 ROA 4418). At the conclusion of the relatively brief oral

argument, the district court denied Mr. Chappell's request for the appointment of experts and an investigator. Mr. Chappell was denied the opportunity to present evidence at a meaningful evidentiary hearing. Mr. Chappell's writ was denied.

Mr. Chappell would respectfully request that this Court consider the denial of his reasonable requests to supplement the record proving ineffective assistance of counsel. Mr. Chappell's issues enunciated within this brief establish that he was entitled to his reasonable requests for experts/investigator and an evidentiary hearing.

A petitioner is entitled to an evidentiary hearing where the petitioner raises a colorable claim of ineffective assistance. Smith v. McCormick, 914 F.2d 1153, 1170 (9th Cir.1990); Hendricks v. Vasquez, 974 F.2d 1099, 1103, 1109-10 (9th Cir.1992). See also Morris v. California, 966 F.2d 448, 454 (9th Cir.1991) (remand for evidentiary hearing required where allegations in petitioner's affidavit raise inference of deficient performance); Harich v. Wainwright, 813 F.2d 1082, 1090 (11th Cir.1987) ("[W]here a petitioner raises a colorable claim of ineffective assistance, and where there has not been a state or federal hearing on this claim, we must remand to the district court for an evidentiary hearing."); Porter v. Wainwright, 805 F.2d 930 (11th Cir. 1986) (without the aid of an evidentiary hearing, the court cannot conclude whether attorneys properly investigated a case

or whether their decisions concerning evidence were made for tactical reasons).

In the instant case, an evidentiary hearing was necessary to question counsel. Mr. Chappell's counsel fell below a standard of reasonableness. More importantly, based on the failures of counsel, Mr. Chappell was severely prejudiced, pursuant to Strickland v. Washington, 466 U. S. 668, 104 S. Ct. 205, (1984).

Under the facts presented here, an evidentiary hearing was mandated to determine whether the performance of counsel were effective, to determine the prejudicial impact of the errors and omissions noted in the petition, and to ascertain the truth in this case.

II. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

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

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

Lozada v. State, 110 Nev. 349, 353, 871 P. 2d 944, 946 (1994). (Citing Strickland v. Washington, 466 U. S. 668, 104 S. Ct. 205, (1984)). Once the defendant establishes that counsels performance was deficient, the defendant must next show that, but for counsels error the result of the trial would probably have

been different. Strickland, 466 U.S. at 694, 104 S. Ct. 2068; Davis v. State, 107 Nev. 600, 601, 602, 817 P. 2d 1169, 1170 (1991). The defendant must also demonstrate errors were so egregious as to render the result of the trial unreliable or the proceeding fundamentally unfair. State v. Love, 109 Nev. 1136, 1145, 865 P.2d 322, 328 (1993), citing Lockhart v. Fretwell, 506 U. S. 364, 113 S. Ct. 838 122 2d, 180 (1993); Strickland, 466 U. S. at 687 104 S. Ct. at 2064.

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

The constitutional right to effective assistance of counsel extends to a direct appeal. Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance of appellate counsel is reviewed under the “reasonably effective assistance” test set forth in Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S.Ct. 2052 (1984).

In the instant case, Mr. Chappell’s proceedings were fundamentally unfair.

The defendant received ineffective assistance of counsel. Based upon the following arguments:

///

III. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF

**COUNSEL DURING THE THIRD PENALTY PHASE IN
VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION.**

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

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

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

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

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

Defense counsel, whether appointed or retained is obligated to inquire thoroughly into all potential exculpatory defenses in evidence, mere possibility that investigation might have produced nothing of consequences for the defense does not serve as justification for trial defense counsels failure to perform such investigations in the first place. The fact that defense counsel may have performed impressively at trial would not have excused failure to investigate claims that might have led to complete exoneration of the defendant.

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

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

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

In Love, the District Court reversed a murder conviction of Rickey Love based upon trial counsel's failure to call potential witnesses coupled with the

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

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

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

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

In essence, counsel weighed the decision to relieve the two mitigation witnesses of their obligation to testify based on employment hardship versus the defendant’s opportunity to have his life spared at a penalty phase. Nothing could be more important in the penalty phase. Penalty phase counsel had argued to the district court that trial counsel from the first trial was ineffective for failure to call these two witnesses. Yet, the two witnesses were then released. The difficulty with the issue is compounded by a review of the third penalty phase. Interestingly enough, the defense called a few witnesses out of order, in the State’s case in

chief. Curiously, no attempts were made to put Mr. Ford and Mr. Morrell on the stand out of order. Most certainly, the district court would have accommodated the defense request, had defense counsel simply orally informed the court of the dilemma. Then, the witnesses would have undoubtedly provided the mitigation evidence which was so obviously necessary.

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

Chappell's best friend in Michigan. Chappell grew up with Mr. Ford and he was around Debra and Chappell during the first five years of our relationship. He also knew about Chappell's employment history and could have testified at both the trial and penalty phase (10 ROA 2417).

Post conviction counsel explained, "Mr. Ivory Morrell [sic] was also a friend of Chappell and Debra in Michigan and stayed in contact with them in Arizona. He could have testified to Debra's behavior in the relationship with Chappell" (10 ROA 2431). The affidavits of these two individuals are as important today as they were during the original petition (11 ROA 2683). Penalty phase

counsel knew that this Court recognized the significance of these two individuals potential testimony. Upon their affidavits, Mr. Chappell received a new penalty phase. It was clearly ineffective assistance of counsel for failure to present these witnesses. The same analyses that was provided by this Court and the district court almost a decade ago applies today. More importantly, penalty phase counsel was aware of the significant influence of the potential testimony of the two witnesses.

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

The prosecutor stated,

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

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

The prosecutor did note that Clairaxom's prior testimony was read into

the court record (16 ROA 3803).

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

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

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

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

The defense called their mitigation investigator who attempted to tell the jury the potential testimony of Ford and Morrell. Unfortunately, the testimony of a

mitigation investigator does not equate to the mitigation witnesses themselves.

B. FAILURE TO OBTAIN AN EXPERT

In the instant case, the sole aggravator found by the jury was that the murder was committed while Chappell was engaged in the commission of a sexual assault.

On appeal from the penalty phase, appellate counsel argued that there was insufficient evidence to establish the sole aggravator beyond a reasonable doubt .

This Court explained,

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

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

Apparently, this Court used this fact to determine there was sufficient evidence to convict of sexual assault.

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

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

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

“yes” (14 ROA 3425).

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

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

In the instant case, Dr. Etcoff examined and tested Mr. Chappell. Mr. Chappell had an extremely low IQ. There was evidence that Mr. Chappell’s mother may have been addicted to drugs and alcohol. A proper investigation should have been conducted to determine whether James was born to a mother who was ingesting narcotics and/or alcohol during her pregnancy. There is no indication in the voluminous file that counsel investigated the possibility of fetal alcohol syndrome. Additionally, Mr. Chappell’s father was involved in controlled substances and criminal activities. Every one of Mr. Chappell’s siblings were involved with controlled substances.

During closing argument, defense counsel explained, “his mother was

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

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

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

Mr. Chappell specifically requests funding to determine whether Mr.

Chappell suffered from fetal alcohol syndrome and requests permission for brain imaging.

D. FAILURE TO PROPERLY PREPARE EXPERT WITNESSES PRIOR TO PENALTY PHASE

The defense called Dr. Etcoff as a mitigation witness. Dr. Etcoff had interviewed Mr. Chappell for two hours almost a decade before his second penalty phase testimony. On cross-examination, it became painfully obvious that Dr. Etcoff had not been properly prepared. It was obvious that the defense had failed to provide a mountain of relevant evidence to Dr. Etcoff. On cross-examination, Dr. Etcoff admitted he had relied upon Mr. Chappell's statements. In fact, Dr. Etcoff believed that the couple was splitting up which had occurred in the last few months prior to the victim's death (15 ROA 3550). Dr. Etcoff admitted that he did not know that the domestic violence had been going on for a lengthy period of time (15 ROA 3550). Dr. Etcoff believed that the problems in the relationship occurred shortly before the murder because Mr. Chappell told him so (15 ROA 3551). Dr. Etcoff admitted that he was unaware that the problems had been occurring for years (15 ROA 3551). In fact, Dr. Etcoff admitted that he was not provided evidence that the domestic violence was occurring on a weekly basis which resulted in injuries to Debra Panos (15 ROA 3551).

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

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

sense now that he had an opportunity to be cross-examined regarding all the information he was unaware of (15 ROA 3556).

In fact, Dr. Etkoff was asked whether Mr. Chappell's story seemed "bogus" because there was semen found in Debra's vagina when Mr. Chappell denied ejaculation (15ROA 3557). Having concluded that Mr. Chappell's story was "bogus", Dr. Etkoff further concluded that the defense had not even provided him photos in the case (15 ROA 3557). At the conclusion of cross- examination, Dr. Etkoff explained that Mr. Chappell's statements that the fight occurred when he located the letters in Debra's car makes less sense (15 ROA 3558).

On redirect examination, defense counsel asked:

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

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

In essence, Dr. Etkoff provided opinions to the jury on direct examination that were entirely refuted after cross examination. Dr. Etkoff apparently provided opinions that he withdrew based upon his lack of knowledge of the case. The excerpts from the penalty phase demonstrate that Dr. Etkoff was not provided relevant information to provide his opinion. Surely, in pre trial interviewing and/or

preparation defense counsel would have provided Dr. Etkoff's with the long history of domestic violence. That fact was uncontradicted during the penalty phase. Numerous witnesses described years of domestic violence. Yet, the defense expert was unaware of these facts.

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

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

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

Here, more than ten years after Dr. Etkoff had requested permission to speak to the defendant's family, penalty phase counsel never made family members available to Dr. Etkoff

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

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

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

Dr. Danton discussed domestic violence during his testimony. Unbelievably, Dr. Danton testified that he first met with Mr. Chappell (for two

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

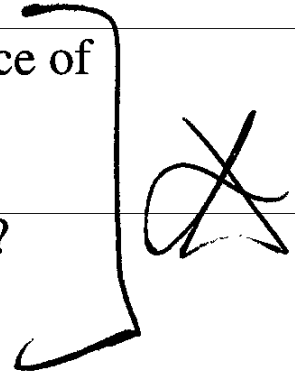
During Dr. Danton's testimony, he surmised that Mr. Chappel may have blacked out during the actual murder. This testimony would corroborate Mr. Chappel's trial testimony wherein he claimed he did not remember the actual facts of the stabbing. However, a juror asked a question of Dr. Danton. The juror asked "first off, in your opinion do you think that Mr. Chappell blacked out? If you have enough information to answer the question". (14 ROA 3371). Dr. Danton stated that he would be more on the side that Mr. Chappell did in fact black out (14 ROA 3371). However, Dr. Danton then stated, "although I have to, in all honesty, I don't have enough data to conclusively say he blacked out. There is testing that

could be done that might establish that, but I haven't done it" (14 ROA 3371).

Additionally, Dr. Etcoff was extensively questioned as to whether he really believed if Mr. Chappell had blacked out. The State feverishly argued that Mr. Chappell was lying about his testimony that he had blacked out during the actual murder. During Dr. Danton's testimony, he was later confronted with Dr. Etcoff's opinion that Mr. Chappell had not blacked out. Again, Dr. Danton confirmed, "to my knowledge no tests were done that might specifically speak to that question" (14 ROA 3373). Here, the defense witnesses appear to be directly contradicting each other. Yet, the testing had not been conducted. More importantly, it is clear that defense counsel had not properly pretrialled the expert witnesses, otherwise counsel would have noticed that their witnesses were contradicting each other. Yet, defense counsel failed to confer with Dr. Danton and ensure that the testing was aware of was conducted. Further proof of the failure to properly prepare for the penalty phase.

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

- Q: So you didn't read the report that talks about the presence of sperm as well?
- A: I did not see that.
- Q: But that would be conclusive that there was ejaculation?
- A: Yes (13 ROA 3230).



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

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

Q: And that is based on what the defendants's version of events were?

A: Again, the specifics of how that information was gathered I do not know

Q: So you didn't look at the actual photographs or look at the evidence that was seized fro the scene in order to come to your conclusion?

A: The only pictures I saw were the ones related to the victims position (13 ROA 3230).

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

that he had not read Mr. Chappell's testimony (13 ROA 3232).

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

E. FAILURE TO PROPERLY PREPARE A LAY MITIGATION WITNESS

The defense called Benjamin Dean as a mitigation witness (15 ROA 3706).

Mr. Dean attended school with Mr. Chappell (15 ROA 3706). Not only did Mr. Dean grow up with Mr. Chappell but he also knew Debra (15 ROA 3709). On direct examination, Mr. Dean was asked about the couple's relationship and he stated, "I didn't see any problems with them..." (15 ROA 3708). However, on cross-examination Mr. Dean was severely impeached with his prior affidavit. On cross-examination Mr. Dean was asked whether he believed Debra was controlling and manipulating. Mr. Dean responded indicating he had never said that (15 ROA 3709). On cross-examination Mr. Dean was asked whether Debra wanted to keep Mr. Chappell away from his old friends. Mr. Dean denied saying that (15 ROA 3709). Mr. Dean denied ever stating that Debra was verbally abusive to James. However, having denied making any of these statements the prosecution then

showed Mr. Dean his signed affidavit from March of 2003 (15 ROA 3709). In the affidavit, Mr. Dean affirmed that Debra was controlling (15 ROA 3709). The affidavit described Debra as manipulative and that she did not like his old friends (15 ROA 3709). The affidavit stated that Debra was abusive (15 ROA 3709). Mr. Dean had no credible answer for why his previous affidavit described Debra in such a poor light yet he denied making any of those statements in front of the jury.

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

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

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

On March 15, 2007, defense counsel specifically objected to victim impact

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

First, on appeal, this Court explained, “however, Chappell did not object on the grounds of insufficient notice and thus the second claim is reviewed for plain error effecting his substantial rights”. See, Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006). The failure to trial penalty phase counsel to object mandated a higher standard of review on appeal. Trial penalty phase counsel was therefore ineffective for failing to object.

Additionally, appellate counsel failed to inform the Supreme Court that the victim impact statements were overly cumulative. For instance, the State provided live testimony of a witness and then having questioning the witness, asked the

witness to read a statement that had been prepared prior to testimony. The written statements appeared to explain the same victim impact that had already been testified to.

Mr. Mike Pollard previously testified at the first trial. His testimony was read to the jury in its entirety (13 ROA 3114). Over the defense objection, the State was then permitted to call Mr. Pollard to provide live testimony (15 ROA 3678). The State admitted, “your honor, earlier in the case we read some testimony. We were unable to locate Mr. Mike Pollard. Later that day he - - we got a call from him so he’s available. We would like to call him for a few brief questions with regard to impact” (15 ROA 3678). Unfortunately, Mr. Pollard’s live testimony mirrored his testimony that was read in terms of the victim impact. This was objected to by trial penalty counsel but not raised on appeal. This is proof that the district court permitted overly cumulative presentation of victim impact that was not even associated with the victims family.

In both Mr. Pollard’s live testimony and his previously read testimony, he indicated that he worked at GE Capital (15 ROA 3679; 13 ROA 3115). In both testimonies he indicated he met Debra at work (15 ROA 3679, 13 ROA 3115). In both testimonies he indicated that he had become close friends with the victim (15 ROA 3679, 13 ROA 3116). In both testimonies, Mr. Pollard discussed that Debra

had been on his sofa shortly before the murder (15 ROA 3679, 13 ROA 3131). In his live testimony, Mr. Pollard indicated that he had felt saddened that Debra's children would grow up without a mother (15 ROA 3679). In his live testimony, he described Debra as "a very sweet person" who was very friendly (15 ROA 3679). In his live testimony, Mr. Pollard explained that he ended up quitting his job because he could not concentrate and that he had to move out of Nevada, based on the victim impact (15 ROA 3679). In his previously read testimony, he described Debra as a kind hearted person who was very friendly (13 ROA 3134). In his previously read testimony he described how Debra loved her children very much (13 ROA 3134). Mr. Pollard described Debra as kind hearted and happy go lucky (13 ROA 3134).

Moreover, cumulative impact testimony is present during the testimony of Carol Monson (15 ROA 3681). Ms. Monson was Debra's Aunt. Ms. Monson testified regarding victim impact for approximately ten pages. Thereafter, Ms. Monson was permitted to read letters from other witnesses including Christina Reese, Ms. Dorris Waskowski (15 ROA 3684). Having read the letters from Ms. Reese and Ms. Waskowski, the State had Ms. Monson read further updated letters from both of these witnesses (Reese and Waskowski). If that wasn't sufficiently cumulative, the State had Ms. Monson read her own letter that is almost four

further pages of text (15 ROA 3681-3686). Here, Ms. Monson was permitted to provide live testimony explaining the impact Debra's death had upon her. Then, she was permitted to read two prior letters written by individuals who had been impacted by Debra's death. Then, Ms. Monson was asked to read updated letters from those two individuals. Then, Ms. Monson was asked to read a letter that she had prepared.

The district court claimed it would preclude cumulative victim impact statements. Here, the cumulative effect was overwhelming. This was not raised on appeal to this Court.

"A district court's decision to admit particular evidence during the penalty phase is within the sound discretion of the district court and will not be disturbed absent an abuse of that discretion" Johnson v. State, 122 Nev. 1344, 1353, 148 P.3d 767, 774 (2006) (quoting, McConnell v. State, 120 Nev. 1043, 1057, 102 P.3d 606, 616 (2004)(quotation marks omitted). In the instant case, the district court abused its discretion when it permitted this continuously cumulative victim impact. This was specifically objected to by counsel at the penalty phase. On appeal, appellate counsel complained that the district court had permitted an excessive amount of victim impact. The supreme Court disagreed. On appeal, this Court held that individuals outside the victims families can present victim impact.

See, Wesley v. State, 112 Nev. 503, 519, 916 P.2d793, 804 (1996). However, the Court cannot permit people to provide live testimony and then have their testimony read into evidence and then provide live testimony which mirrors the previously read testimony, regarding victim impact. The court cannot permit individuals to provide live testimony regarding the impact and thereafter read lengthy statements mirroring the impact. Clearly, the district court permitted overly cumulative victim impact over Mr. Chappell's objection.

It was ineffective assistance of trial counsel to fail to object to the notice requirement which was raised on direct appeal. It was ineffective assistance of appellate counsel from the second penalty phase for failure to inform the supreme court regarding the extent to the cumulative victim impact that was presented. Had this Court known the extent of the error, Mr. Chappell's penalty phase would have been reversed.

V. PENALTY PHASE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO IMPROPER PROSECUTORIAL ARGUMENTS DURING THE PENALTY PHASE IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Specifically, in appellant's Opening Brief on appeal from the second penalty phase, appellate counsel complained of excessive prosecutorial misconduct. On appeal, counsel noted that trial counsel did not object to this misconduct and

therefore the court had to consider the matter for plain error. U.S. v. Olano, 507

U.S. 525, 731 (1993); U.S. v. Leon, v. Reyes, 177 F.3d 816, 821 (9th Cir. 1999).

The following is a list of arguments raised by penalty phase appellate counsel

which were not objected to at the penalty phase.

1. Misstating the role of mitigating circumstances
2. "Don't let the defendant fool you"
3. Justice and Mercy arguments

This Court specifically noted that Mr. Chappell failed to object to the comparative worth, role of the mitigating circumstances, the mercy argument, and the argument that Chappell conned the jury. This Court considered these arguments for plain error. Penalty phase counsel made numerous errors that taken as a whole must result in reversal.

VI. PENALTY PHASE COUNSEL AND PENALTY PHASE APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE SEVERAL INSTANCES OF IMPROPER PROSECUTORIAL ARGUMENT WHICH SHOULD HAVE BEEN RAISED SIMULTANEOUSLY IN MR. CHAPPELL'S APPEAL IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

During the cross-examination of Dr. Etcoff, testimony was elicited that Mr. Chappell had complained he had been arrested for a domestic violence incident in front of his children (15 ROA 3541-3542). The prosecutor questioned Dr. Etcoff stating:

Q: Because it probably marked his otherwise sterling reputation he had with his children at that point to see the police for the tenth time taking their father off in handcuffs (15 ROA 3542).

Defense counsel objected and the court sustained the objection. This issue was not raised on appeal.

NRS 48.045(2) provides, Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

NRS 48.045 states, "[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. See, Taylor v. State, 109 Nev. 849, 853, 858 P.2d 843, 846 (1993). See also, Beck v. State, 105 Nev. 910, 784 P.2d 983 (1989). However, an exception to this general rule exists. Prior bad act evidence is admissible in order to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. See, NRS 48.045(2). It is within the trial court's sound discretion whether evidence of a prior bad act is admissible.... Cipriano v. State, 111 Nev. 534, 541, 894 P.2d 347, 352 (1995). See also, Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).

In the instant case, there is no evidence that Mr. Chappell was arrested ten times in front of his children. However, undoubtedly the jury would have believed that the children were exposed to approximately ten arrests because the prosecutor posed the question in that manner. First, it is improper for a prosecutor to elude to facts outside of the record which deny the defendant a right to a fair hearing.

Agard v. Portuondo, 117 F.3d 696, 711 (2nd Cir. 1997)(holding that alluding to facts that are not in evidence is prejudicial and not at all probative)(cert. granted on other grounds, 119 Sup. Ct. 1248 (1999)). This Court has frequently condemned prosecutors from eluding to facts outside of the record. See, EG, Guy v. State, 108 Nev. 770, 780, 839 P.2d 578, 585 (1992)(cert. denied, 507 U.S. 109 (1993)); Sandburn v. State, 107 Nev. 399, 408-409, 812 P.2d 1279, 1286 (1999); Jiminez v. State, 106 Nev. 769, 772, 801 P.2d 1366, 1368 (1990); Collier v. State, 101 Nev. 473, 478, 705 P.2d 1126, 1129 (1985).

There was absolutely no proof that Mr. Chappell had been arrested ten times in front of his children. It was highly improper for the prosecutor to make such as assertion. The average juror has confidence that the obligations of the prosecutor will be faithfully observed. Consequently, improper suggestions, insinuations, and especially assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.

This issue was not raised on appeal from the penalty phase. This question was highly improper. The statement violated NRS 48.045(b) and has been denounced by both state and federal courts. Had this issue been raised on appeal, this Court would have reversed Mr. Chappell's sentence of death.

Next, during closing argument, the prosecution described how Mr. Chappell "choose evil" (16 ROA 3778). The prosecution also stated that Mr. Chappell is "a despicable human being" (16 ROA 3779). This comments were neither objected to at the penalty phase nor raised on appeal. The attorneys were therefore ineffective. It is improper for prosecutors to ridicule or disparage the defendant. Indeed "the prosecutor's obligation to desist from the use of pejorative language and inflammatory rhetoric is as every bit as solemn as his obligation to attempt to bring the guilty to account" U.S. v. Rodriguez-Estrada, 877 F.2d 153, 159 (1st. Cir. 1989).

This Court has long recognized that a prosecutor has a duty not to ridicule or belittle the defendant. See. Earl v. State, 111 Nev. 1304, 904 P.2d 1029, 1033 (1995), Jones v. State, 113 Nev. 454, 937 P.2d 55, 62 (1997). In U.S. v. Weatherless, 734 F.2d 179, 181 (4th Cir. 1984), the Court stated that it was beneath the standard of a prosecutor to refer to the accused as a "sick man". (Cert denied, 469 U.S. 1088 (1984)). Court have held it improper for a prosecutor to

characterize defendants as “evil men”. See, People v. Hawkins, 410 N.E. 2d 309 (Illinois 1980). A prosecutor referring to the defendant as a maniac exceeded the bounds of propriety. People v. Terrell, 310 NE 2d 791, 795 (Illinois Ap. Ct. 1994). Improper for a prosecutor to refer to the defendant as “slime”. Biondo v. State, 533 South 2d 910-911 (FALA 1988). Reversing conviction where prosecutor referred to the defendant as “crud”. Patterson v. State, 747 P.2d 535, 537-38 (Alaska, 1987). Condemning prosecutor’s remarks referring to the defendant as a “rabid animal”. Jones v. State, 113 Nev. 454, 468-69 937 P.2d at 62.

In the instant case, the comments made by the prosecutor taken as a whole must result in a reversal. Here, the prosecutor stated that the defendant had been arrested ten times in front of his children, which hurt his “sterling reputation”. The defendant was referred to as a “despicable human being”. The defendant “choose evil”. These comments were not objected to during the penalty phase or on appeal from the penalty phase. If this Court had been aware that these comments had been made (and not isolated) the result of the appeal from the penalty phase would have resulted in reversal. Mr. Chappell received ineffective assistance of penalty phase trial counsel and appellate counsel.

VII. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF PENALTY PHASE COUNSEL AND APPELLATE COUNSEL FOR FAILURE TO OBJECT TO IMPROPER IMPEACHMENT IN

**VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

Mr. Chappell called Fred Scott Dean as a mitigation witness. Mr. Dean was important to Chappell's mitigation because he had known Mr. Chappell throughout his life (15 ROA 3696-3697). Mr. Dean admitted that he had been convicted of federal drug trafficking and drug possession (State and Federal convictions) (15 ROA 3701). However, on cross-examination, the prosecutor elicited the following testimony from Mr. Dean:

Q: How long were you prison for?

A: Twelve years.

Q: That's a long time.

A: Yes sir.

Q: What kind of charges?

A: Like I said drug possession, and the other one was interstate drug trafficking.

Q: Were there other charges that were dismissed as part of your deal there?

A: There was no pretty much deal. That was just - - it was plead to the lesser charge versus the charge that I was charged with. Yes.

Q: So you plead to a lesser charge?

A: Yes.

Q: And the lesser charge was?

A: 12-30 - well, it was 20-30 the judge sentenced me to 12-30.

Q: And that was a drug charge?

A: Yes sir.

Q: What was the more serious charge that was reduced/

A: I was trying to think of how they titled it, possession of drugs over 65 grams.

Q: Was this cocaine?

A: Yes sir.

Q: 65 grams is a lot of cocaine.

A: Yes sir.

Q: So this was drug trafficking or this was trafficking quantity?

A: Yes sir.

Q: And the minimum sentence would have been a lot more severe if you hadn't done the deal?

A: When you say deal, what do you mean by that?

Q: Taking the lesser plea.

A: I would have been worse, yes sir (15 ROA 3702).

NRS 50.095 impeachment by evidence of conviction of a crime:

1. The purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which the witness was convicted.

This Court and the federal courts have made it abundantly clear that impeachment with a felony conviction cannot go into the facts in details of the conviction. Here, Mr. Dean freely admitted that he had drug convictions. The prosecutor went into significant detail. This was highly improper.

For example, in Jacobs v. State, 91 Nev. 155, 532 P.2d 1034 (1975), this Court held that an inquiry into the credibility of a witness may be attacked by evidence that a witness has been convicted of a crime however it was error to allow questioning concerning the actual term that was imposed. Although a witness may be impeached with evidence of prior convictions, the details and

circumstances of the prior crimes are not an appropriate subject of inquiry. Shults v. State, 96 Nev. 742, 616 P.2d 3 88 (1980).

The prosecutor elicited numerous answers which were in violation of the statute and case law. This statute mirrors the federal statutes on point. Neither counsel for Mr. Chappell at the penalty phase or on appeal objected. Mr. Chappell received ineffective assistance of counsel for failure to object to this issue.

Pursuant to the prejudice standard enunciated in Strickland, the result of the appeal would have mandated reversal had this issue been properly raised.

VIII. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN ALLOWING THE ADMISSION OF EVIDENCE OF SEVERAL BAD ACTS THUS VIOLATING APPELLANT'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS AND WARRANTING REVERSAL OF HIS PENALTY PHASE.

During the State's case in chief, Ladonna Jackson was called as a witness.

Ms. Jackson knew Mr. Chappell from the Vera Johnson Housing project (13 ROA 3198). Over defense counsel's object, Ms. Jackson was allowed to testify that Mr. Chappell made money "by stealing" (13 ROA 3203). Defense counsel objected and the court overruled the objection. The State is required to place the defendant on notice of evidence to be used at the penalty phase. There is no indication in the record that Mr. Chappell was on notice that Ms. Jackson would provide her opinion that Mr. Chappell was a thief. See, Nunnery v. State, 127 Nev. Adv. Op.

69(October 27, 2011).

NRS 48.045(2) provides, Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Once the court's ruled that evidence is probative of one of the permissible issues under NRS 48.045(2), the court must decide whether the probative value of the evidence is substantially outweighed by its prejudicial effect.

NRS 48.045 states, "[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. See, Taylor v. State, 109 Nev. 849, 853, 858 P.2d 843, 846 (1993). See also, Beck v. State, 105 Nev. 910, 784 P.2d 983 (1989). However, an exception to this general rule exists. Prior bad act evidence is admissible in order to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. See, NRS 48.045(2). It is within the trial court's sound discretion whether evidence of a prior bad act is admissible.... Cipriano v. State, 111 Nev. 534, 541, 894 P.2d 347, 352 (1995). See also, Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).

"The duty placed upon the trial court to strike a balance between the prejudicial effect of such evidence on the one hand, and its probative value on the other is a grave one to be resolved by the exercise of judicial discretion.... Of course the discretion reposed in the trial judge is not unlimited, but an appellate court will respect the lower court's view unless it is manifestly wrong." Bonacci v. State, 96 Nev. 894, 620 P.2d 1244 (1980), citing, Brown v. State, 81 Nev. 397, 400, 404 P.2d 428 (1965).

In the instant case, Mr. Chappell should not have had to defend against unfounded allegations made during the penalty phase. It was ineffective assistance of appellate counsel for failure to raise this issue.

IX. THE DEATH PENALTY IS UNCONSTITUTIONAL¹

Mr. Chappell's state and federal constitutional rights to due process, equal protection, right to be free from cruel and unusual punishment, and right to a fair penalty hearing were violated because the death penalty is unconstitutional. U.S. Const. Amend. V, VI, VII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

Nevada law requires that execution be inflicted by an injection of a lethal

¹Mr. Chappell acknowledges that this Court has consistently denied this issue. However, Mr. Chappell presents this issue to preserve it for federal review.

drug. NRS 176.355(1). Competent physicians cannot administer the lethal injection, because the ethical standards of the American Medical Association prohibit physicians from participating in an execution other than to certify that a death has occurred. American Medical Association, House of Delegates, Resolution 5 (1992); American Medical Association, Judicial Council, Current Opinion 2.06 (1980). Non-physician staff from the Department of Corrections will have the responsibility of locating veins and injecting needles which are connected to the lethal injection machine.

In recent executions in states employing lethal injection, prolonged and unnecessary pain has been suffered by the condemned individual by difficulty in inserting needles and by unexpected chemical reactions among the drugs or violent reactions to them by the condemned individual.

The following lethal injection executions, among others, have produced prolonged and unnecessary pain: Stephen Peter Morin: March 13, 1985 (Texas), Randy Woolls: August 20, 1986 (Texas), Raymond Landry: December 13, 1988 (Texas), Stephen McCoy: May 24, 1989 (Texas), Rickey Ray Rector: January 24, 1992 (Arkansas), Robyn Lee Parks: March 10, 1992 (Oklahoma), Billy Wayne White: April 23, 1992 (Texas), Justin Lee May: May 7, 1992 (Texas) John Wayne Gacy: May 19, 1994 (Illinois), and Tommie Smith: July 18, 1996

(Indiana).

Because of inability of the State of Nevada to carry out Mr. Chappell's execution without the infliction of cruel and unusual punishment, the sentence must be vacated.

A. NEVADA'S DEATH PENALTY SCHEME DOES NOT NARROW THE CLASS OF PERSONS ELIGIBLE FOR THE DEATH PENALTY.

Under contemporary standards of decency, death is not an appropriate punishment for a substantial portion of convicted first-degree murderers. Woodson, 428 U.S. at 296. A capital sentencing scheme must genuinely narrow the class of persons eligible for the death penalty. Hollaway, 116 Nev. 732, 6P.3d at 996; Arave, 507 U.S. at 474; Zant, 462 U.S. at 877; McConnell, 121 Nev. At 30, 107 P.3d at 1289. Despite the Supreme Court's requirement for restrictive use of the death sentence, Nevada law permits broad imposition of the death penalty for virtually and all first-degree murderers. As a result, in 2001, Nevada had the second most persons on death row per capita in the nation. James S. Liebman, A Broken System: Error Rates in Capital Cases, 1973-1995 (2000); U.S. Dept. Of Justice, Bureau of Justice Statistics Bulletin, Capital Punishment 2001; U.S. Census Bureau, State population Estimates: April 2000 to July 2001, <http://eire.census.gov/pspest/date/states/tables/ST-eest2002-01.php>. Professor

Liebman found that from 1973 through 1995, the national average of death sentences per 100,000 population, in states that have the death penalty, was 3.90. Liebman, at App. E-11.

Mr. Chappell recognizes that this Court has repeatedly affirmed the constitutionality of Nevada's death penalty scheme. See Leonard, 117 Nev. at 83, 17 P.3d at 416 and cases cited therein.

B. THE DEATH PENALTY IS CRUEL AND UNUSUAL PUNISHMENT.

Mr. Chappell's death sentence is invalid under the state and federal constitutional guarantees of due process, equal protection, and a reliable sentence because the death penalty is cruel and unusual punishment and under the Eighth and Fourteenth Amendments. He recognizes that this Court has found the death penalty to be constitutional, but urges this Court to overrule its prior decisions and presents this issue to preserve it for federal review.

Under the federal constitution, the death penalty is cruel and unusual in all circumstances. See Gregg v. Georgia, 428 U.S. 153, 227 (Brennan, J., dissenting); *id.* at 231 (Marshall, J., dissenting); *contra id.* at 188-195 (Opn. of Stewart, Powell and Stevens, JJ.); *id.* at 276 (White, J., concurring in judgment). since stare decisis is not consistently adhered to in capital cases, e.g., Payne v.

Tennessee, 111 S.Ct. 2597 (1991), this court and the federal courts should reevaluate the constitutional validity of the death penalty.

The death penalty is also invalid under the Nevada Constitution, which prohibits the imposition of "cruel or unusual" punishments. Nev. Const. Art. 1 § 6. While the Nevada case law has ignored the difference in terminology, and had treated this provision as the equivalent of the federal constitutional prohibition against "cruel and unusual punishments, e.g. Bishop v. State, 95 Nev. 511, 517-518, 597 P.2d 273 (1979), it has been recognized that the language of the constitution affords greater protection than the federal charter: "under this provision, if the punishment is either cruel or unusual, it is prohibited. "Mickle v. Henrichs, 262 F. 687 (D. Nev. 1918). While the infliction of the death penalty may not have been considered "cruel" at the time of the adoption of the constitution in 1864, "the evolving standards of decency that make the progress of a maturing society. "Trop v. Dulles, 356 U.S. 86, 101 (1958) have led in the recognition even by the staunchest advocates of its permissibility in the abstract, that killing as a means of punishment is always cruel. *See* (Furman v. Georgia, 408 U.S. 238, 312 (White, J., concurring); *See* Walton v. Arizona, 110 S.Ct. 3047, 3066 (1990) (Scalia, J., concurring). Accordingly, under the disjunctive language of the Nevada Constitution, the death penalty cannot be upheld.

C. EXECUTIVE CLEMENCY IS UNAVAILABLE.

Mr. Chappell's death sentence is invalid because Nevada has no real mechanism to provide for clemency in capital cases. Nevada law provides that prisoners sentenced to death may apply for clemency to the State Board of Pardons Commissioners. See NRS 213.010. Executive clemency is an essential safeguard in a state's decision to deprive an individual of life, as indicated by the fact that ever of the 38 states that has the death penalty also has clemency procedures. Ohio Adult parole Authority v. Woodward, 523 U.S. 272, 282 n. 4 (1998) (Stevens, J., concurring in part, dissenting in part). Having established clemency as a safeguard, these states must also ensure that their clemency proceedings comport with due process. Evitts v. Lucey, 469 U.S. 387, 401 (1985). Nevada's clemency statutes, NRS 213.005-213.100, do not ensure that death penalty inmates receive procedural due process. See Mathews v. Eldrige, 424 U.S. 319, 335 (1976). As a practical matter, Nevada does not grant clemency to death penalty inmates. Since 1973, well over 100 people have been sentenced to death in Nevada. Bureau of Justice Statistics Report, Capital Punishment 2006 (December 2007 NCJ 220219).

The failure to have a functioning clemency procedure makes Nevada's death penalty scheme unconstitutional, requiring the vacation of Mr. Chappell's sentence.

X. MR. CHAPPELL’S CONVICTION AND DEATH SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL PROTECTION, TRIAL BEFORE AN IMPARTIAL JURY AND A RELIABLE SENTENCE BECAUSE THE PROCEEDINGS AGAINST HIM VIOLATED INTERNATIONAL LAW. U.S. CONST. AMENDS. V, VI VIII AND XIV; NEV. CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.²

1. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize the right to life. Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, Art. 3 (1948) [hereinafter “UDHR”]; International Covenant on Civil and Political Rights, adopted December 19, 1966, Art. 6, 999 U.N.T.S. 171 (entered into force March 23, 1976) [hereinafter “ICCPR”]. The ICCPR provides that “[n]o one shall be arbitrarily deprived of his life.” ICCPR, Art. 6.

2. The United States Government and the State of Nevada are required to abide by norms of international law. *The Paquet Habana*, 20 S.Ct. 290 (1900)(“international law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdictions”). The Supremacy Clause of the United States Constitution specifically requires the State

² Mr. Chappell acknowledges that this Court has consistently denied this issue. However, Mr. Chappell presents this issue to preserve it for federal review.

of Nevada to honor the United States' treaty obligations. U.S. Constitution, Art.

VI.

3. Nevada is bound by the ICCPR because the United States has signed and ratified the treaty. In addition, under Article 4 of the ICCPR no country is allowed to derogate from Article 6. Nevada is bound by the UDCR because the document is a fundamental part of Customary International Law. Therefore, Nevada has an obligation not to take life arbitrarily.

XI. CHAPPELL'S CONVICTION AND SENTENCE ARE INVALID UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEE OF DUE PROCESS, EQUAL PROTECTION OF THE LAWS, EFFECTIVE ASSISTANCE OF COUNSEL AND RELIABLE SENTENCE BECAUSE THE JURY INSTRUCTIONS GIVEN AT TRIAL WERE FAULTY AND WERE NOT THE SUBJECT OF CONTEMPORANEOUS OBJECTION BY TRIAL COUNSEL, NOT RAISED ON DIRECT APPEAL BY APPELLATE COUNSEL, NOT RAISED BY PENALTY PHASE APPELLATE COUNSEL, AND NOT RE-RAISED BY PENALTY PHASE COUNSEL.

In the instant case, Mr. Chappell is entitled to a reversal of his conviction based upon an unconstitutional instruction being used to convict Mr. Chappell of first degree murder.

The jury instruction given defining premeditation and deliberation was constitutionally infirm and denied Mr. Chappell due process and equal protection under the United States and Nevada Constitutions. The instruction failed to

provide the jury with any rational or meaningful guidance as to the concept of premeditation and deliberation and thereby eliminated any rational distinction between first and second degree murder. The instruction given does not require any premeditation at all and thus violates the constitutional guarantee of due process of law because it is so bereft of meaning as to the definition of two elements of the statutory offense of first degree murder as to allow virtually unlimited prosecutorial discretion in charging decisions.

The United States Court of Appeals for the Ninth Circuit considered an identical issue in Chambers v. E.K. McDaniel, 549 F.3d 1191, (9th Cir. 2008). In Chambers, the Court held that the defendant's federal constitutional right to due process was violated because the instruction given to convict him of first degree murder was missing an essential element and that the error was not harmless. 549 F.3d 1191, 1193. In Chambers, the defendant argued that the Nevada State Court's rejection of his due process argument regarding the jury instruction on premeditation "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" Id. at 1199.

In Chambers, the Ninth Circuit explained,

In Polk v. Sandoval, 503 F.3d 903, 911 (9th Cir. 2007), we held that

the same jury instruction on premeditation at issue here was constitutionally defective, and the Nevada court's failure to correct the error was contrary to clearly established federal law, as determined by the Supreme Court. Id. (Internal quotation marks omitted)

In the instant case, an instruction lacking an essential element of first degree murder was used to convict Mr. Chappell.

The Byford instruction states,

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements willfulness, deliberation, and premeditation must be proven beyond a reasonable doubt before an accused can be convicted of first degree murder.

Willfulness is the intent to kill. There need be not appreciable space of time between the formation of the intent to kill and the act of the killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituted the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is

premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder in the first degree.

At trial, Mr. Chappell was given the following instruction:

Premeditation is a design, a determination to kill, formed in the mind of the killer at any moment before or at the time of killing.

Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. If the jury believes from the evidence that the act constituting the killing was preceded by and is the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder (Instruction 22).

In Chambers, the Court explained, “[E]ven though a constitutional error occurred, Chambers is not entitled to relief unless he can show that ‘the error had substantial and injurious effect or influence in determining the jury’s verdict.’” *Id.* at 1200. If there is grave doubt as to whether the error has such an effect the petitioner is entitled to the writ. Coleman v. Calderon, 210 F.3d 1047, 1051 (9th Cir. 2000).

In Chambers the Court concluded,

Chambers' federal constitutional due process right was violated by the instructions given by the trial court at his murder trial, as they permitted the jury to convict him of first-degree murder without finding separately all three elements of that crime: willfulness, deliberation, and premeditation. The error was not harmless. The Nevada Supreme Court's decision denying Chambers' petition for an extraordinary writ and rejecting his due process claim was contrary to clearly established federal law. 549 F.3d 1191 (9th Cir. 2008).

In the instant case, the Kazalyn 116 Nev. 215, 994 P.2d 700 (2000) instruction given during Mr. Chappell's trial may well have caused a jury to return a verdict of first degree murder when a verdict less than first degree murder was probable. Hence, had the correct jury instruction been provided, a reasonable juror could have found that Mr. Chappell was acting rashly, rather than a cold calculated judgement after premeditation and deliberation had occurred.

Therefore, the fact that all three elements of first degree murder were not enunciated to the jury in the form of an instruction mandates that Mr. Chappell should receive a new trial. Trial counsel was ineffective for failing to object to the giving of the Kazalyn instruction, direct appeal counsel was ineffective for failing to raise this issue on direct appeal, penalty phase counsel should have re-raised this issue before the district court prior to Mr. Chappell's third penalty phase, and counsel on appeal from the penalty phase was ineffective for failing to raise this

issue.

XII. MR. CHAPPELL RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BASED UPON CUMULATIVE ERROR.

In Dechant v. State, 10 P.3d 108, 116 Nev. 918 (2000), this Court reversed the murder conviction of Amy Dechant based upon the cumulative effect of the errors at trial. In Dechant, this Court provided, “[W]e have stated that if the cumulative effect of errors committed at trial denies the appellant his right to a fair trial, this Court will reverse the conviction. Id. at 113 citing Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The Court explained that there are certain factors in deciding whether error is harmless or prejudicial including whether 1) the issue of guilt or innocence is close, 2) the quantity and character of the area and 3) the gravity of the crime charged. Id.

Based on the foregoing, Mr. Chappell would respectfully request that this Court reverse his conviction based upon cumulative errors of trial and appellate counsel.

///

///

///

///

JChappell1 CORA005647

CONCLUSION

Based on the foregoing, Mr. Chappell respectfully requests this Court order reversal of his convictions.

DATED this 6th day of January, 2014.

Respectfully submitted:

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point font of the Times New Roman style.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(7)(b). Pursuant to NRAP 32(7)(b)(i), this appellate brief complies because although excluding the parts of the brief exempted by NRAP 32(7)(b), it does not contain more than 37,000 words and 80 pages.

Finally, I hereby certify that I have read this amended appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of January, 2014.

Respectfully submitted by,

/s/ Christopher R. Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 6, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

EXHIBIT 165

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 61967
District Court Case No. C131341

FILED

DEC 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: November 17, 2015

Tracie Lindeman, Clerk of Court

By: Joan Hendricks
Deputy Clerk

cc (without enclosures):

Hon. Carolyn Ellsworth, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 20 2015.

[Signature]
Deputy District Court Clerk

RECEIVED

NOV 20 2015

CLERK OF THE COURT

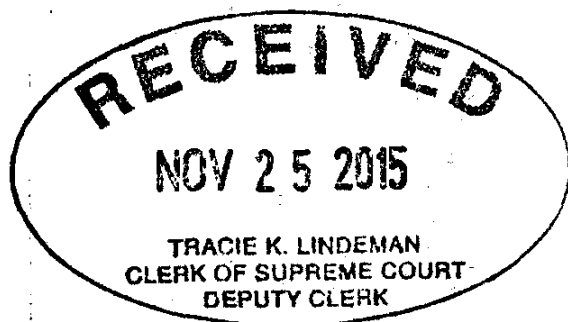
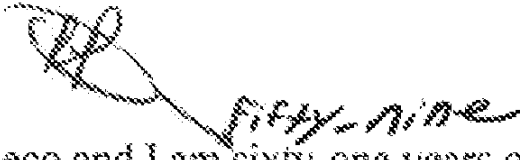


EXHIBIT 166

Declaration of Rosemary Pacheco

I, Rosemary Pacheco, hereby declare as follows:

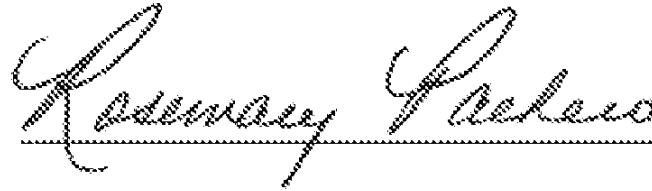
- 
1. My name is Rosemary Pacheco and I am ~~sixty-one~~ *fifty-nine* years old. I currently reside in Pima County, Arizona. I was a coworker of Deborah "Debbie" Panos. We both worked at the Tucson Police Department's (TPD) Communications Division during the 1990s. I retired from the division a little more than five years ago.
 2. I first met Debbie when she came to work at the TPD's communications division in the early 1990s. Debbie was a Public Service Operator (PSO), and I was a Public Service Dispatcher (PSD). Debbie was good at her job and very reliable throughout most of her time at the Communications Division.
 3. I first met James and their sons, JP and Anthony, at a social gathering shortly after Debbie started working at the Division. I was very impressed with James and the way he cared for the children. James communicated with his sons in a very loving manner and he played with them. When one of the boys fell down, James immediately rushed to his side, picked him up and dusted him off, and made sure that he was alright. When it came time for the children to eat, James fixed both of them plates and patiently fed them, and then cleaned them up afterwards. JP and Anthony were both very well behaved, and I could tell that James and Debbie had done a great job with instilling manners and a sense of respect in both children. James and the boys were also immaculately clean, as was Debbie. I used to tell Debbie that she and her family always looked like they stepped out of a fashion magazine. I was so impressed by my first encounter with James that I pulled Debbie aside the next day at work to tell her about it. It's a rare thing to find a man, like James was back then, who was so loving and gentle as a caregiver and partner. I told Debbie that she was lucky. I saw James and the boys on several other occasions for almost a year after my initial encounter, and James was the same loving father to the boys and caring partner to Debbie.

4. James was working at a fast-food restaurant when I first met him. Debbie and James only had one vehicle, which they shared. To help them out, I began driving Debbie to and from work because we worked the same shift most days. James used the car to go to work and care for the children while Debbie was at work. There were endless opportunities for over-time at the TPD's Communication Division because we were always short staffed. Debbie frequently volunteered to work overtime to earn extra money for the family. Debbie told me that she would not have been able to work so much overtime had it not been for James's willingness and ability to take care of the children on his own. When James lost his job at the fast-food restaurant, he became a stay-at-home dad and Debbie worked more overtime hours to make ends meet. From all of Debbie's early accounts, James did an awesome job caring for the kids and taking care of the household while Debbie was at work.
5. There came a time when our colleague Dina Freeman invited Debbie and me to travel to San Diego for a brief weekend getaway, along with Dina's late friend Robin. Debbie initially had no intentions of going along at first, until James insisted that she go. James told Debbie that she worked hard, she deserved to have a break, and he wouldn't take "no" for an answer. He assured Debbie that he and the boys would be alright, and that she should go enjoy herself. I was impressed by James's concern and trust in Debbie to take a trip out of state without him. At the time he was not a jealous person. This was the only leisurely trip that Debbie took during the time that I knew her.
6. It seemed like Debbie and James had a wonderful life in those early times. However, things between them began to take turn a turn for the worse after about eight or nine months. James was working again, but he never had any money and could not explain why. James started demanding that Debbie give him increasingly more money, to the point where it was interfering with Debbie's ability to pay their bills. Debbie told James "no" at times, but he became aggressive and spoke in a threatening way towards her. Debbie told me that she believed that James was on drugs and she did not know what to do.

7. When Debbie became pregnant with their daughter, Chantel, things changed for the better. James was not acting aggressively and went back to being the caring person that he was. James also stopped demanding money from Debbie. Debbie seemed happy again and they both looked forward to having their third child. However, the improvements in their relationship proved to be short lived.
8. James fell back into his drug habit after Chantel was born, and his aggressive behaviors became worse. This was the time period when Debbie began showing up to work with bruises on her person. At first, Debbie made excuses for her injuries by telling me that she slipped and fell, bumped into things, and other things that made no sense. Eventually, Debbie told me the truth about her injuries and that she was being abused by James. The first question that I had was whether James was abusing the children as well, but Debbie insisted that James had never done anything to hurt their children. I then told Debbie that she needed to file a police report and leave James. Debbie rejected these suggestions because she believed that she could work through James's problems. Debbie had an eternal hope that James would get better and return to being the loving man that she once knew. Debbie often told me that James was the love of her life and she could not imagine him not being in the lives of their children.
9. When I dropped Debbie home one day and saw James for the first time in a while, his appearance and demeanor had totally changed. He was no longer the pleasant, clean and normal person that I knew. He was now grungy, unkempt, and displayed empty and angry expressions on his face. James look like many drug addicts that you'd see walking the streets.
10. Debbie also began to change. She went from being a positive, upbeat, and talkative person, to being withdrawn, sad, and cranky. Debbie's emotional state started effecting her job performance. There were times when she'd snap and start yelling at callers in need of police assistance, and her supervisor had to talk to her.

11. Although there was no policy regarding the associations of TPD Communications staff, it was generally frowned upon for an employee to be involved with people who committed crimes or were engaging in domestic violence. When James was stopped and arrested while driving Debbie's car, the police officers handling the case questioned Debbie. This was very embarrassing for Debbie. Debbie was not asked to leave the Communication Division, as far as I know, but I had the sense that she was pushed out.
12. When Debbie told me of her plans to relocate to Las Vegas, she also told me that she had broken up with James. But Debbie ended up moving James to Las Vegas to make sure that he was still a part of the children's lives. Debbie also thought that James had a better chance of overcoming his drug addiction if she could get him away from his negative associations in Tucson. I told Debbie that this was a bad idea because James would find the same associations and problems in Las Vegas. In fact, I warned Debbie that the situation in Las Vegas would be even worse for James, because it was a larger city and had more vice. I was ultimately unable to change Debbie's mind and she went ahead with her plans.
13. I briefly spoke with Debbie by phone on a few occasions after she moved to Las Vegas. Debbie told me that she was working and everything was alright. Debbie did not mention anything about James and I did not ask.
14. I found out about Debbie's death shortly after the incident occurred in 1995. I later took time off from work to attend James's entire trial in 1996. I spoke with Debbie's mother, but I was not approached by the State or defense attorneys.
15. My only contact with anyone related to James's case was with Herbert Duzant of the Federal Public Defender Office. Had I been contacted by James's previous counsel I would have provided them with the information that I have given in this declaration and I would have testified to it.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Pima County, Arizona, on August 9, 2016.

A handwritten signature in cursive script, reading "Rosemary Pacheco", is written over a horizontal dotted line.

Rosemary Pacheco

EXHIBIT 167

Declaration of Dina Richardson

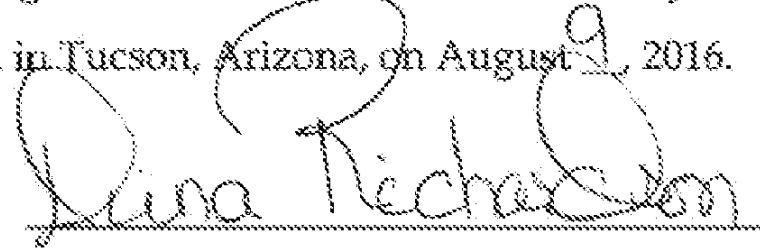
I, Dina Richardson, declare as follows:

1. My name is Dina Richardson. My last name used to be Freeman. I testified at James Chappell's trials both in 1996 and in 2007. I was never interviewed by members of James's defense team prior to or at either trial. If I had been interviewed, I could have provided the following additional evidence.
2. Deborah Panos (Debbie) and I met at the Tucson Police Department, where both of us worked at the 911 call center. We worked together full-time for almost the entire time Debbie lived in Tucson. Debbie and I became friends.
3. Debbie was the breadwinner in her family and did everything in her power to make sure the bills were paid. Debbie was very dedicated to her children and to James. She strived to provide a better life for James, who had lived through a very difficult childhood. Debbie was committed to James and loved him one hundred percent.
4. James was a very good and engaged father. At gatherings he typically was the one playing with the children. I never saw James say or do anything inappropriate with the children. The children were clean, fed, and attended to, largely because of James.
5. I rarely interacted with James in-person, only now and again at our children's respective birthday parties. During these rare interactions James was reserved and usually engaged with the kids, not the adults.
6. Debbie was very protective of James. At one of the children's birthday parties at a local park, a Tucson Police Department colleague imitated James's voice. Even though the person was just kidding around, Debbie had an over-the-top reaction to this, loudly and firmly stating, "You will not make fun of James. No one is to make fun of James again." *DR* *stop that" as she glared at the person.*
7. Debbie told me that her mother did not like black people. My limited experience with Debbie's mother was not consistent with Debbie's claim.

8. Debbie and James's relationship became progressively more volatile during the couple's time in Tucson. This escalation seemed to parallel James's ballooning drug addiction.
9. With regard to the relationship balance between Debbie and James, on the one hand James's behavior seemed to control the entire family dynamic. However, Debbie came and went from home and work as she pleased, even though she had young children. Furthermore, Debbie took one or more vacations without James. For instance, Debbie, another coworker, and I spent a long weekend in San Diego visiting my brother and spending time at the beach.
10. Debbie fell in love with Las Vegas during a trip she made there a few weeks before the move. She told me she was going to "start a new life" --she was going to quit her job and move the children to Las Vegas without James and with financial help from her mother. A week or two before she was supposed to leave town, Debbie informed me that James was going to move to Las Vegas after all. Debbie was fully convinced that if James got away from drug connections in Tucson, he would also leave behind his crack addiction. As it turned out, that didn't happen.
11. James apparently made new drug connections in Las Vegas. While waiting to testify at James's trial in 1996, I encountered two female ~~crack addicts~~ ^{associates of James} who were also waiting to testify. They knew James from the streets. One of the women indicated that she had just been released on a robbery charge and had appeared in court earlier in the day for her own case. As the women were conversing two detectives -- the ones who had taken my original statement -- came around the corner and asked to speak to me. They pulled me aside and told me, "Those ladies are out of your league." They had pulled me away from the women as a courtesy so I did not have to deal with them. The detectives reiterated to me that one of the women had been released from jail on a robbery charge earlier in the day.
12. In my opinion, if Debbie had survived, she would have forgiven James a long time ago. Debbie also would be absolutely livid about James's death sentence. Debbie would have construed James's actions as a function of his bad upbringing and drug use.

13. On June 23, 2016, Tammy Smith, an investigator from the Office of the Federal Public Defender in Las Vegas, interviewed me at my home in Tucson. Prior to my meeting with Ms. Smith, I had never been contacted by an attorneys or investigators working on behalf of James Chappell.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Tucson, Arizona, on August 9, 2016.

A handwritten signature in cursive script, reading "Dina Richardson", written over a horizontal dotted line.

Dina K. Richardson

EXHIBIT 168

Declaration of Angela Mitchell

I, Angela Mitchell, hereby declare as follows:

1. My name is Angela Mitchell and I am sixty years old. I currently reside in Pima County, Arizona. I was a coworker of the late Deborah "Debbie" Panos. We both worked at the Tucson Police Department's (TPD) Communications Division during the 1990s.
2. Debbie and I were hired by the TPD's Communications Division at the same time, and went through the training program together. We became friends almost instantly. I did not have a driver's license at the time, so Debbie occasionally drove me to and from work.
3. I visited with Debbie and her family when they lived at the River Oaks Apartments on East Broadway Boulevard and at the Spring Hills Apartments on East Lakeside Parkway. I may have visited Debbie at her family's trailer home on West Ajo Way on one occasion. Debbie and I used to go out to eat, attended work related gatherings and parties, and we sometimes went to the movies.
4. James was a stay at home dad when I first met Debbie, which was his primary responsibility throughout much of the time that I knew and interacted with them. James was a quiet person and did not say much when I was around, but he was a good caregiver in earlier times. James kept the house and the children clean, and he fed and cared for the children while Debbie was at work. Debbie seemed happy and did not complain about any problems in her household. James was very clean and Debbie kept him and the children dressed in nice name-brand-clothing. James wanted for nothing and Debbie was able to work as much as she needed to without having to worry about cleaning the house, bathing the children, or having to cook when she got home. Things seemed to be going well with Debbie and James for the first year and a half to two years that I knew them.
5. After about one and a half to two years into my friendship with Debbie, James developed a drinking problem. He was drinking forty once bottles of malt liquor beer on a daily

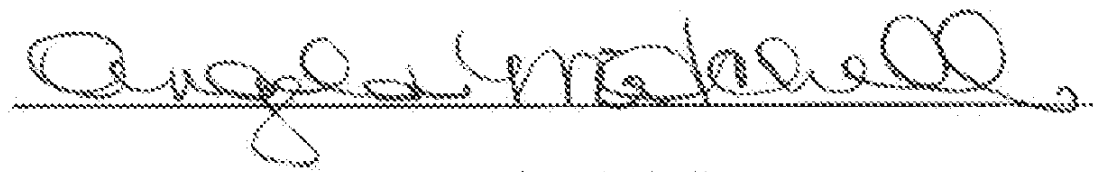
basis. James drank with neighbors and by himself in their apartment. I saw James drinking beer during some of my visits to the family home. This is the time when James began slacking off on his household duties. He stopped keeping the house clean and Debbie was often coming home to a messy kitchen, which was the source of arguments. I told Debbie that she should consider a different approach when dealing with her dissatisfaction, because she spoke to James in a manner that probably made him feel small and less of a man, which is a huge hang-up for many Black men who don't have much going on for themselves and suffer from addiction. I suggested that Debbie refrain from yelling at him, and try having a calm discussion about her concerns to avoid conflicts.

6. Within months of developing a drinking problem, James began smoking crack and spending a lot of time outside of the house, according to what Debbie told me. James was no longer taking care of his household responsibilities and he started acting aggressively and violently towards Debbie. James demanded money from Debbie and often took funds that were intended to pay their bills. James stole food and various items in the house and sold them on the street to get money to purchase crack. This was the time when Debbie started showing up to work with bruises. Debbie was honest with me and told me that James was abusing her.
7. I told Debbie to leave James from the moment that she told me that he was abusing her, because I knew from experience that things would not get better. My first husband, who was also named "James", used to abuse me. Like James and Debbie, we had three children and so there were a few parallels. I told Debbie that if a man hits you once he'll never stop. I suggested that Debbie look into the eyes of her children to develop the strength to leave, like I did, and not turn back. Debbie always responded by telling me that she knew I was right or "I hear what you're saying", but that she loved James and wanted him to be in the lives of their children. James never did anything to harm the children from what I observed and heard from Debbie. Debbie saw something in James that no one else did. Something that was worth holding onto and she was determined to fix him.

8. I recall James going home to Michigan at one point in the middle of their time in Tucson, but Debbie told me that he was only visiting. Debbie never told me that they had broken up. Debbie was a kind and sweet person, but she only told people things that she wanted them to know.
9. Debbie's last year in Tucson was the roughest period for her because James grew increasingly paranoid. James demanded that Debbie come straight home from work and told her to stop spending time with many of her friends and colleagues. James acted like he was afraid that Debbie might meet someone else and leave him, which was ridiculous because Debbie was devoted to him, even as he seemed to be losing his mind. I have experience with being around crack addicted people, and it was clear to me that the drugs were taking over his mind. I had sympathy for James because I know drugs can take you out of your right mind. If James had been in a better environment, things might have gone better for him and Debbie.
10. Near the end of Debbie's time in Tucson, everyone at the job pretty much knew what was going on in Debbie's home. One of the supervisors even went as far as to provide Debbie with counseling resources that she could take advantage of. However, Debbie never followed up.
11. Looking back, I feel that the Communication Division could have done more to assist Debbie. Everyone knew her struggles, but no one stepped up to provide Debbie with meaningful assistance or even an intervention. The Police Department as a whole had a culture of keeping a lid on domestic disputes amongst its employees, including police officers, in an effort to prevent loved ones from being arrested or the employees possibly losing their jobs. I wish more could have been done for Debbie.
12. I was happy when Debbie told me that she was breaking up with James in the fall of 1994, and moving to Las Vegas. Debbie told me that she wanted to have a fresh start for herself and their children, and I was proud of her. I did not stay in touch with Debbie after she left Tucson and had no idea that she took James to Las Vegas until it was announced on the job that she had passed.

13. No one had ever reached out to me in regards to James's case until my recent conversation with Herbert Duzant of the Federal Public Defender Office. Had I been contacted by James's previous counsel I would have provided them with the information that I have given in this declaration and I would have testified to it.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Pima County, Arizona, on August 9, 2016.

A handwritten signature in cursive script, appearing to read "Angela Mitchell", is written over a horizontal dotted line.

Angela Mitchell

EXHIBIT 169

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

ORIGINAL

FILED IN OPEN COURT

March 20 20*07*

CLERK OF THE COURT

DISTRICT COURT

BY

Carol Green

DEPUTY

CLARK COUNTY, NEVADA

* * * * *

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 JAMES M. CHAPPELL,

13 Defendant.

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

17 BEFORE THE HONORABLE DOUGLAS HERNDON
18 DISTRICT COURT JUDGE

19 DATED: MONDAY, MARCH 19, 2007

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

311

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

4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 STATE OF NEVADA,)
10 Plaintiff,) REPORTER'S TRANSCRIPT
11) OF
12 vs.) PENALTY HEARING
13 JAMES M. CHAPPELL,)
14 Defendant.)

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

19 DATED: MONDAY, MARCH 19, 2007

20
21
22
23
24
25 REPORTED BY: Sharon Howard, C.C.R. #745

1

1 APPEARANCES:

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

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

8
9
10
11
12 * * * * *

2

1 INDEX
2 OF
3 WITNESSES

4		
5	NAME: DEPOSITION OF JERI EARNST	PAGE
6	Read into the record	12
7		
8	NAME: DAN GIERSDORF	PAGE
9	Direct Examination By Ms. Weckerly	26
10	Cross-Examination By Mr. Patrick	32
11	Redirect Examination By Ms. Weckerly	35
12	NAME: DEPOSITION OF ALLEN WILLIAMS	PAGE
13	Read into the record	38
14		
15	NAME: TESTIMONY OF JAMES CHAPPELL	PAGE
16	Read into the record	42
17		
18	NAME: SHELDON GREEN	PAGE
19	Direct Examination By Mr. Owens	158
20	Cross-Examination By Mr. Schieck	188
21	NAME: MICHAEL POLLARD	PAGE
22	Direct Examination By Mr. Owens	193
23	Cross-Examination By Mr. Patrick	197
24	Redirect Examination By Mr. Owens	193
25		

3

1	NAME: CAROL MONSON	PAGE
2	Direct Examination By Mr. Owens	203
3		
4	NAME: NORMA PENFIELD	PAGE
5	Direct Examination By Ms. Weckerly	223
6		
7	NAME: WILLY CHAPPELL	PAGE
8	Direct Examination By Mr. Schieck	239
9	Cross-Examination By Ms. Weckerly	259
10	Redirect Examination By Mr. Schieck	262
11	NAME: FRED DEAN	PAGE
12	Direct Examination By Mr. Schieck	264
13	Cross-Examination By Mr. Owens	284
14	NAME: BENJAMIN DEAN	PAGE
15	Direct Examination By Mr. Patrick	303
16	Cross-Examination By Mr. Owens	314
17		
18	NAME: MIRA CHAPPELL-KING	PAGE
19	Direct Examination By Mr. Schieck	318
20	Cross-Examination By Ms. Weckerly	340
21	NAME: CHARLES DEAN	PAGE
22	Direct Examination By Mr. Schieck	350
23		
24		
25		

4

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

2 9:00 A.M.

3 PROCEEDINGS

4 * * * * *

5 THE COURT: Let's go on the record in

6 C-131341, State of Nevada versus James Chappell.

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

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

13 MR. SCHIECK: Yes, your Honor.

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

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

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

5

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

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

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

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

20 THE COURT: Okay. Page 64?

21 MR. SCHIECK: Yes, your Honor.

22 THE COURT: Thank you.

23 MR. SCHIECK: Near the bottom:

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

6

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

3 Answer: "Yes, sir."

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

7 Answer: "Yes, sir."

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

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

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

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

7

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

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

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

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

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

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

8

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

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

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

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

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

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

9

1 didn't see any objections at all.

2 THE COURT: Okay.

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

6 THE COURT: 64 through 65.

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

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

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

17 THE COURT: I will do that.

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

22 We've also agreed that as it is
23 Mr. Chappell was a defense witness that we would be
24 reading the direct examination and the State would be
25 reading the cross-examination, even though this is being

10

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

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

5 Does anybody have anything else?

6 No. Okay.

7 (Jury brought in.)

8 Good morning, ladies and gentlemen.

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

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

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

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

21 THE COURT: All right.

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

25 THE READER: I do.

11

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

4 Mr. Owens.

5 BY MR. OWENS:

6 Q. Will you state your name, please.

7 A. My name is Jeri Earnst.

8 Q. Please spell your name for the record.

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

11 Q. Are you employed?

12 A. Yes, I am.

13 Q. What is your business or occupation?

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

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

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

21 Q. 20 years, plus, in all?

22 A. Yes, sir.

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

25 A. Yes, I was.

12

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

4 A. Yes, I did.

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

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

9 Q. 16th and?

10 A. A-J-O.

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

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

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

16 Q. You said it was at a store?

17 A. Yes.

18 Q. You said it was Fry's?

19 A. Yes.

20 Q. Will you spell that also.

21 A. F-R-Y-S.

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

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

13

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

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

5 A. That was Ed Niekowski.

6 Q. Will you spell Niedkowski, please.

7 A. No.

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

9 A. Okay.

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

12 BY MR. OWENS:

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

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

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

21 A. Yes, sir.

22 Q. Inside or outside the store?

23 A. Outside the store.

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

14

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

4 Q. Tell us what occurred at that time?

5 A. She related to me that --

6 MR. SCHIECK: Object.

7 BY MR. OWENS:

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

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

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

18 A. Yes, I did.

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

22 A. She started crying.

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

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

15

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

3 A. Yes, she did.

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

5 A. Yes, she was.

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

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

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

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

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

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

19 BY MR. OWENS:

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

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

25 Q. So it was your understanding that you were

16

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

3 A. That's correct.

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

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

13 MR. OWENS: Thank you.

14 BY MR. OWENS:

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

17 A. Yes, she did.

18 Q. Was she emotional throughout the
19 interview?

20 A. Yes, she was.

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

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

17

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

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

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

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

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

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

17 A. Yes, she was.

18 Q. You said that she was crying?

19 A. Yes, she was.

20 Q. Did you see tears or her face?

21 A. Yes.

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

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

18

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

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

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

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

12 A. She did.

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

15 A. Yes, she did.

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

18 A. Yes, I did.

19 Q. What was the address that you listened?

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

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

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

19

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

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

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

8 A. That's correct.

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

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

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

17 A. One other officer.

18 Q. Who was the other officer?

19 A. Mark Vernon.

20 Q. Vernon?

21 A. Yes.

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

23 A. That one I can spell. Yes.

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

20

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

21

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

22

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

23

†

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

24

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

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

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

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

12 A. No.

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

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

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

20 A. Right.

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

23 A. I believe he called us at 21:28. I think
24 that she must have got there about ten minutes prior.

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

25

1 9:30?

2 A. 9:28, and I arrived at 9:30.

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

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

7 Q. Roughly 9:00 o'clock?

8 A. Right.

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

11 A. 9:30.

12 Q. How long did you talk to her?

13 A. Probably 25 minutes.

14 Q. I'm sorry?

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

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

18 A. That's correct.

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

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

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

26

1 require medical care in your report?

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

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

8 THE COURT: Redirect.

9 MR. OWENS: No redirect, your Honor.

10 THE COURT: May this witness be
11 discharged?

12 All right. Thank you.

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

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

18 THE COURT: All right.

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

23 THE WITNESS: I do.

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

27

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

3 BY MS. WECKERLY:

4 Q. How are you employed, sir?

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

6 Q. How long have you worked for Metro?

7 A. Just over 14 years now.

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

10 A. Yes, I was.

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

14 A. Yes, I was.

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

17 A. Yes, ma'am.

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

20 A. Yes, it was.

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

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

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

28

1 someone else responded ahead of you?

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

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

7 A. Yes, ma'am.

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

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

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

19 A. Yes, I did.

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

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

29

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

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

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

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

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

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

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

20 Q. Did you speak with this woman?

21 A. Yes, I did.

22 Q. What did she tell you?

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

30

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

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

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

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

14 Q. So from the bleeding from her nose?

15 A. Yes, ma'am.

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

19 A. Yes, I did.

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

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

31

1 still.

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

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

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

11 A. Yes, he was alone.

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

14 A. Yes.

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

17 A. Yes.

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

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

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

32

1 describe him emotionally?

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

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

7 A. None whatsoever.

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

10 A. Yes, I did.

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

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

15 CROSS-EXAMINATION

16 BY MR. PATRICK:

17 Q. Good morning, officer.

18 A. Good morning, sir.

19 Q. You testified at James' last trial?

20 A. Yes, I did.

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

23 A. Yes.

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

33

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

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

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

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

9 A. Yes.

10 Q. Did you locate a cup?

11 A. Yes, I did.

12 Q. That was booked into evidence?

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

15 Q. What did you do with it?

16 A. We just left it there.

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

19 A. Yes, I did.

20 Q. What did she tell you?

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

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

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

34

1 kids in common.

2 Q. Were the kids in the ambulance?

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

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

7 A. Yes, sir, I did.

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

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

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

14 A. Absolutely not.

15 Q. He was cooperative?

16 A. Extremely.

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

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

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

22 THE COURT: Ms. Weckerly.

23 REDIRECT EXAMINATION

24 BY MS. WECKERLY:

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

35

1 out in your mind?

2 A. Yes, it did, extremely.

3 Q. Why is that?

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

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

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

17 THE COURT: Mr. Patrick.

18 MR. SCHIECK: Nothing else, your Honor.

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

20 MS. WECKERLY: May I approach, briefly.

21 THE COURT: Sure.

22 BY MS. WECKERLY:

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

36

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

37

1 MR. OWENS: Allen Williams.
2 THE COURT: Allen Williams. Thank you.
3 All right, Mr. Owens or Ms. Weckerly.
4 BY MR. OWENS:
5 Q. Sir, what is your occupation and
6 assignment?
7 A. I'm a police officer assigned to patrol with
8 the Las Vegas Metropolitan Police Department.
9 Q. How long have you been a police officer?
10 A. Approximately 5-and-a-half years.
11 Q. What divisions have you worked on in your
12 5-and-a-half years?
13 A. Patrol.
14 Q. On June 1st of 1995, at approximately 10:08
15 p.m., were you dispatched by a 911 call to 839 North Lamb,
16 space number 125?
17 A. Yes, I was.
18 Q. That's the Ballerina Mobile Home trailer
19 park?
20 A. Correct.
21 Q. That's here in Las Vegas, Clark County,
22 Nevada?
23 A. Yes.
24 Q. When you arrived at that location did you
25 come into contact with a person by the name of Debra

38

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

39

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

40

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

41

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

42

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

43

44

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

45

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

46

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

47

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

48

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

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

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

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

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

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

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

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

18 A. No.

19 Q. How come?

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

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

23 A. Exactly. Yes, sir.

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

49

1 A. Yes.

2 Q. Describe how that happened?

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

9 Q. So her parents weren't home?

10 A. No.

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

13 A. He were gone for like 2 months.

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

16 A. Yes, sir.

17 Q. How did you get to Tucson?

18 A. Plane.

19 Q. Who paid for the ticket?

20 A. Debra Panos.

21 Q. Where did you fly out from?

22 A. Detroit.

23 Q. You recall the airline?

24 A. Southwest Airlines.

25 Q. Where did you fly to?

50

1 A. Phoenix, Arizona.

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

3 A. A shuttle bus.

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

6 A. Yes, sir.

7 Q. How long did that go on?

8 A. For about 2 months.

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

11 A. She had Anthony in Tucson.

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

14 A. Yes, she did.

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

17 A. Yes, sir.

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

19 A. February 15th, 1990.

20 Q. And that child's name?

21 A. Anthony Michael Panos.

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

24 A. No, sir.

25 Q. Where are the two kids?

51

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

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

6 A. Yes, sir.

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

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

11 Q. And is that where you started living?

12 A. Yes, sir.

13 Q. Did you get any kind of job?

14 A. Yes, sir.

15 Q. Where did you work?

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

17 Q. What did you do there?

18 A. I was a dishwasher and a buser.

19 Q. How long did you keep that job?

20 A. About 4 months.

21 Q. Why did you lose that job?

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

52

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

4 Q. Where was she working at that time?

5 A. The census bureau.

6 Q. Helping to take the census?

7 A. Yes, sir.

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

10 A. Yes, sir.

11 Q. Why did you leave?

12 A. Because her mother and her step father.

13 Q. What do you mean by that?

14 A. They were always in our business.

15 Q. Had you still not reconciled with them?

16 A. No.

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

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

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

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

25 Q. So you eventually went back to Michigan?

53

1 A. Yes, sir.

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

4 A. Plane.

5 Q. How did you afford that?

6 A. Debra paid for it.

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

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

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

14 A. Yes, sir.

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

16 A. It was in '91 sometime.

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

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

20 Q. You guys were keeping in touch still?

21 A. Yes, sir.

22 Q. How were you keeping in touch?

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

54

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

3 A. Yes, sir, very much.

4 Q. When you went back what happened?

5 A. I got a job.

6 Q. Where at?

7 A. Ponchos Mexican Buffet.

8 Q. What were you doing there?

9 A. Prep cooking.

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

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

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

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

17 Q. That was a long-term plan?

18 A. Yes, sir.

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

21 A. Not at that time.

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

24 A. Yes, sir.

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

55

1 excuse me. Did you get Debra pregnant again?

2 A. Yes, sir.

3 Q. When did she have her third child?

4 A. June 26, 1992.

5 Q. Which child was this?

6 A. Chantelle Panos.

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

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

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

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

18 BY MR. SCHIECK:

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

22 A. Yes, sir.

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

56

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

57

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

58

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

59

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

60

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

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

8 A. Yes, sir.

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

11 THE COURT: All right.

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

14 THE COURT: Thank you.

15 BY MR. SCHIECK:

16 Q. Was that your home in Las Vegas?

17 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Did you find work in Las Vegas?

23 A. Yes, sir.

24 Q. Where did you work?

25 A. Ethel M. Chocolate Factory.

61

1 Q. Where is that?

2 A. Out there around Sunset.

3 Q. How long did you work out there?

4 A. About a month and a half.

5 Q. How come you lost that job?

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

10 Q. They fired you?

11 A. Yes, sir.

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

14 A. Yes, sir.

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

17 A. Yes, sir.

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

20 A. No, it did not.

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

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

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

62

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

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

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

8 A. Never. Never. Never.

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

11 A. No, sir, I did not.

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

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

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

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

63

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

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

8 A. Yes. Right here.

9 Q. Was she bloody?

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

14 Q. Who called 911?

15 A. I did, sir.

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

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

64

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

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

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

17 Q. Who is Claire?

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

19 Q. Was she living with you?

20 A. Yes.

21 Q. How long did she live there?

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

23 Q. Go ahead. I'm sorry.

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

65

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

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

5 A. Yes, sir.

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

8 A. Could I just tell you the first time I went
9 to jail when I got out when I went back.

10 Q. Sure, if you want to.

11 A. First time I went to jail was February 28,
12 1995 I stayed in jail until May 10. Debbie came and
13 picked me up, took me home. When I got out, there was two
14 friends living there.

15 Q. When you say two friends, male friends or
16 female friends?

17 A. Female friends. I went back to jail for
18 that domestic violence on June 1st, 1995, got out June
19 7th. Claire came and picked me up, took me back home.
20 And we were back together. Then I went back to jail June
21 26th on Chantelle's birthday -- her third birthday.

22 Q. When did you get out of jail that time?

23 A. I didn't get out of jail until August
24 31st.

25 Q. Now, from that summer, let's say June 26th,

66

1 when you got arrested until the time got released on

2 August 31st, did Debra accept your phone calls?

3 A. Yes, sir.

4 Q. How often would you call her, approximately,
5 if you can remember?

6 A. Sometimes a couple times a day.

7 Q. Did she ever tell you this relationship was
8 over?

9 A. Never. Never.

10 Q. Did anybody else ever tell you the
11 relationship was over?

12 A. No, sir.

13 Q. Did you ever call that trailer and get mad
14 because of who answered the phone?

15 A. Yes, sir.

16 Q. What was going on?

17 A. There was numerous different women answering
18 the phone. Sometimes the children would pick up the
19 phone, knock it over, and the phone would just be sitting
20 on the floor and I could hear stuff in the background.

21 Q. What would you hear?

22 A. Music, people, voices. Another time there
23 was men answering the phone.

24 Q. Did you know these men?

25 A. Absolutely not.

67

1 Q. Did that make you mad?

2 A. Yes, it did.

3 Q. Why did it make you mad?

4 A. Because when we moved here Debbie told me
5 that I couldn't answer the phone because her mother would
6 get upset about it. I gave her that respect. And then I
7 turn around and go to jail and there's all kinds of people
8 I don't even know answering our phone, hanging up on me.

9 Q. How did you feel about the idea of other men
10 being in the trailer when you called your home?

11 A. I was stunned, hurt, afraid.

12 Q. What were you afraid of?

13 A. My children.

14 Q. What were you afraid of about your
15 children?

16 A. We had numerous baby sitters in Arizona that
17 wouldn't feed our kids sometimes. Some even hit them.

18 Q. You say that you would talk to Debra on the
19 telephone. Did she ever come to visit you that summer in
20 jail?

21 A. Between June 26 and August 31st, is that
22 what you're talking about.

23 Q. Yes, sir.

24 A. No, she didn't.

25 Q. Do you know why she didn't come to visit

68

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES MONTELL CHAPPELL,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

No. 77002

District Court Case No.

(Death Penalty Case)

Electronically Filed
May 02 2019 09:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX

Volume 17 of 31

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

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

INDEX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

Steve S. Owens
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

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

10:2, 35:16,
67:24, 109:5,
147:19,
147:23,
147:25,
153:15,
154:9,
156:22,
159:24,
234:20,
235:14.
contacted 5:8,
5:23.
contaminate
15:15,
57:10.
contaminated
9:7.
context 75:4,
78:21.
continue
226:13,
226:17,
230:16.
control
99:25.
conversations
157:1, 157:8,
157:13.
converse 43:7,
50:19, 128:8,
224:5,
264:14.
conversing
8:20, 9:5.
convict 68:17,
117:10,
117:12,
145:6,
153:18,
237:19.
convicted 11:7,
16:25, 26:10,
26:22, 27:11,
27:19, 30:16,
51:19, 51:25,
57:22, 68:23,
70:14, 72:25,
74:5, 88:5,
95:12,

110:10,
121:12,
122:15,
131:8, 145:5,
145:13,
181:18,
203:20,
203:23,
216:17,
222:1, 227:5,
237:15.
conviction
51:24,
176:22.
convince 176:9,
207:21,
210:23.
convinced
78:9.
cookie
211:20.
cop 254:6,
254:17.
corner 199:12,
242:12.
Coroner 12:23,
12:24,
52:21.
correction
195:13,
195:16,
195:18.
corrections
94:16, 97:8,
98:12,
98:14.
correctly 50:2,
236:18.
correspond
77:8.
cost 90:11.
coughing
159:3.
Counsel 65:2,
74:14,
91:23.
counseled
246:4.
Counseling
111:21,

111:23,
114:14,
118:24,
119:3.
count 60:8,
132:25.
counties
63:7.
country 63:6.
counts 187:5.
County 1:7,
12:23, 13:19,
52:20, 53:15,
136:23,
189:23,
191:11,
218:2,
250:22.
couple 10:21,
25:6, 46:14,
49:21, 62:14,
62:15, 62:17,
184:8,
193:13,
228:10,
233:19,
254:11,
263:3.
course 7:3,
8:11, 9:6,
9:13, 10:2,
50:14, 80:6,
84:8, 95:10,
130:6,
171:10.
courtroom
50:18, 54:13,
98:20,
103:14,
113:9,
135:20,
136:7, 137:9,
146:7, 146:9,
153:5, 200:4,
200:12,
210:18,
243:10,
253:21.
courtroom.
6:5.

281

dealt 93:17.
Dean 13:25,
53:21.
Deborah 18:6.
Debra 12:20,
52:8,
52:18.
deceased
147:21,
154:10.
decent 33:24.
decide 15:1,
56:24, 62:8,
74:1, 75:14,
75:17, 88:21,
95:17,
104:17,
119:22,
125:5, 127:4,
127:19,
138:14,
139:4, 139:8,
139:25,
170:13,
170:17,
173:14,
223:10.
decided 38:25,
123:7,
144:23,
239:19,
261:23.
decides 34:2,
130:11.
Deciding 90:9,
170:12,
259:18.
decisions 15:5,
96:25, 97:1,
99:25, 100:1,
170:6,
212:11,
212:14,
213:12.
deem 125:8.
defect 34:6.
Defendant 1:19,
2:5, 4:24,
13:15, 24:9,
51:25, 58:8,

68:23, 70:2,
92:1, 107:9,
107:17,
108:19,
115:5,
141:16,
141:19,
142:13,
142:15,
142:23,
144:11,
149:17,
182:25,
232:7,
232:10,
233:22,
246:17,
253:14.
defender 13:18,
13:20, 53:15,
53:17,
109:11.
defenders
109:10.
defending
109:14.
defense 23:8,
44:3, 45:14,
58:5, 65:15,
86:21, 88:7,
90:7, 95:25,
102:4,
129:25,
191:12,
265:10,
266:18,
267:2, 267:4,
267:11.
definite
227:10.
Definitely
71:3, 187:8,
192:13,
194:1,
196:14,
198:8.
definition
150:5.
degree 11:8,
16:4, 17:9,

27:19, 29:4,
51:21, 51:24,
68:17, 68:23,
69:5, 70:15,
74:5, 87:2,
92:10, 95:12,
110:10,
117:11,
133:6,
171:22,
175:19,
177:1, 183:1,
202:9,
218:10,
222:6,
222:11,
225:23,
227:18,
228:2,
230:5.
degrees 265:6,
265:22.
deliberate
177:8.
deliberating
39:16.
deliberation
73:14, 73:21,
76:21,
138:19.
Dennis 14:1,
53:22.
deny 133:11,
134:8,
229:17,
230:12,
267:7.
Department
6:12, 6:14,
12:24, 49:13,
52:22, 170:1,
267:4.
depend 36:17.
dependent
75:20.
depending 39:8,
259:9.
Depends 71:5,
87:20, 90:5,
161:11,

283

courts
192:15.
cousin 26:21,
28:10,
136:23,
137:1,
209:14,
238:23,
239:20.
cousins 26:10,
121:11,
121:19,
122:17,
126:4,
136:15,
187:5.
cove 33:13.
cover 102:9,
203:6.
coward
199:11.
credence
60:14.
credibility
85:11.
crimes 11:7,
27:11, 35:3,
121:25,
151:14,
153:18.
criminal 6:16,
6:21, 15:19,
32:15, 35:17,
49:15, 61:9,
85:24, 94:12,
109:5,
113:25,
171:8,
181:10,
186:24,
234:20,
266:25.
crossed
249:16.
CSI 136:2.
culture 242:23,
242:24,
242:25.
cup 39:22.
curious 109:12,

209:16.
currently
64:18, 149:5,
188:3,
191:5.
Curtis 22:11,
135:3, 146:1,
155:12,
263:20.
custody 4:6,
154:2,
159:19,
188:3,
231:6.
cuts 232:20.
cutter
211:20.
< D >.
DA 136:16,
136:21,
136:23,
137:2, 154:5,
192:20.
Dad 24:1, 91:1,
199:7,
262:21,
262:22.
daily 137:17,
170:6,
183:18,
212:11.
damage 126:17,
242:6.
damaged
123:14.
Daniel 12:25,
52:22.
Danton 14:4,
53:25.
Darlene 21:8.
Darren 12:25,
52:23.
date 38:15,
41:25, 51:19,
187:21.
DATED 1:30.
daughter 29:2,
29:5, 30:19,

160:13,
174:8.
daughters
174:1.
David 2:5,
13:18, 21:18,
53:14.
Davie 21:2,
29:22,
255:10,
261:3,
263:22,
265:3,
265:4.
Davita 22:11,
135:3.
Davy 19:23.
day 33:12,
33:14, 34:8,
36:22, 39:6,
42:19, 62:20,
129:15,
230:20,
231:2.
daycare
42:19.
daylight
63:22.
days 11:24,
33:14, 33:15,
33:18, 34:13,
35:23, 36:1,
40:7, 62:5,
62:15, 63:13,
79:18,
100:13,
126:14.
de-ja-vue
51:13.
dead 180:8.
deadly 11:8,
11:9, 51:20,
51:21, 68:24,
117:11.
deal 5:20,
91:17, 97:11,
123:10,
142:25.
dealing 16:5,
116:6.

282

165:2, 166:7,
246:20,
248:2,
266:1.
depressed
151:16.
depressing
81:24.
DEPT. 1:3.
depth 156:25.
Dersdorff
12:25,
52:22.
described
102:20.
describing
199:20,
212:2.
description
113:2.
Desert 231:1.
deserve
244:15.
deserved
242:3.
deserves
126:25,
258:7.
design 94:23.
designed 14:9,
15:23,
51:6.
designing
36:12.
desire 14:24,
56:23.
desk 98:21.
despite
209:19.
detail 157:3.
detailed 151:8,
157:7.
detention
160:6.
determination
11:11,
165:11,
202:22,
255:2.
determine

51:23, 73:19,
80:17, 88:16,
107:12,
117:14,
216:2.
determines
73:13.
determining
69:14.
developer
41:20.
dictate
215:1.
die 244:15,
244:16.
died 83:8,
83:14.
Diego 207:12.
differ 31:11,
60:20.
difference
100:19,
133:12,
135:24,
208:15,
259:23.
different
15:21, 84:20,
97:14,
108:10,
108:18,
116:5, 120:5,
120:9,
124:22,
127:15,
142:25,
144:16,
147:1, 150:2,
204:25,
210:3,
211:23,
216:9,
222:25,
223:1,
225:16,
229:4, 232:2,
256:10,
258:1,
262:22.
differently

156:9.
difficult
35:21, 37:18,
42:6, 83:23,
101:7,
102:10,
132:14,
137:23,
213:20,
242:20.
difficultly
120:5.
difficulty
33:6,
189:4.
Dina 12:21,
52:19.
direct 162:11,
233:3.
direction
268:14.
dirt 159:6.
disagrees
133:20.
Discipline
96:11,
96:13.
discover 73:11,
208:17.
discovered
15:13.
discretion
90:1.
discriminated
214:25.
discrimination
215:23,
215:25.
discuss 44:1,
92:5, 211:5,
211:7.
discussed
91:14,
117:18,
145:18,
161:4, 196:7,
202:8.
discussing
76:21,
115:14,

284

138:17.
Discussion
65:3, 67:22,
74:15, 76:22,
77:9, 86:10,
138:23,
263:15.
dislike 9:3.
dismissed
238:12.
disparity
225:9.
displayed
151:21.
disregard
201:16.
dissatisfaction
107:5.
District 1:6,
1:28, 6:13,
11:3, 22:20,
49:14, 51:15,
234:17.
disturbing
152:1.
divorced
147:17,
194:16.
do. 16:20,
56:17.
doctor 174:2.
doctors
116:7.
document
238:16.
doing 36:18,
47:1, 63:3,
66:24, 87:16,
121:2,
122:17,
122:23,
126:1,
135:10,
160:5, 160:6,
171:3,
183:22,
190:22,
190:23,
191:2,
237:14,

242:16,
247:2,
255:12.
dollars
126:17.
Domestic 29:3,
29:14, 29:24,
71:12, 71:16,
71:20, 71:23,
72:4, 72:7,
72:13, 80:2,
113:16,
118:17,
119:7,
119:25,
133:4,
146:14,
146:23,
179:1, 179:4,
179:9,
179:19,
187:25,
188:2, 203:6,
203:8,
252:9.
Donner
148:15.
Donald 21:20.
done 8:4,
11:25, 38:10,
39:18, 41:21,
48:2, 78:18,
81:14, 87:5,
107:2,
123:10,
127:2,
174:14,
245:25,
247:2,
255:24,
261:11.
Donna 55:6.
door 8:25.
Doreen 21:12,
208:20.
doth 232:2.
doubt 32:18,
61:12, 61:18,
130:8,
130:22,

131:9,
150:14,
182:2,
182:22.
Douglas 1:27,
6:13,
49:12.
Down 7:13,
8:15, 12:6,
33:11, 33:13,
37:8, 38:12,
45:18, 48:22,
49:10, 50:2,
65:6, 106:17,
133:23,
136:17,
162:14,
180:4,
185:16,
192:16,
210:2, 240:5,
243:11,
243:15,
245:1,
257:21.
downstairs
48:7, 49:9,
129:20.
downtown 12:10,
52:10, 52:13,
106:20.
dozen 46:19.
drama 135:20.
dramas
243:11.
drank 197:2.
draw 78:18.
drink 43:1.
drop 40:6.
dropped
42:11.
Drugs 26:4,
28:3, 28:19,
30:5, 30:17,
74:10, 83:4,
84:2, 84:5,
99:16, 99:19,
99:21,
121:13,
126:5,

285

136:13,
136:14,
153:16,
160:3,
160:13,
162:22,
195:8,
195:21,
198:10,
198:12,
238:24,
252:24.
Engelbrecht
55:22,
65:6.
engine 36:16,
36:18,
48:10.
English
67:14.
enough 7:6,
49:24, 54:7,
54:8, 54:13,
67:3, 82:14,
93:23,
109:18,
150:3, 175:2,
196:21,
229:16,
240:13,
261:5,
261:17,
264:8,
267:6.
enter 73:10.
entire
121:10.
entity 12:14.
environment
216:1.
EOC 215:17.
Equal 110:25,
215:20.
equation
211:23.
escape
199:10.
escorted 6:5.
Especially
3:18, 48:3,

65:23, 78:20,
151:13.
ESQ 2:2, 2:3,
2:5, 2:6.
Essentially
31:17,
60:22.
estimate
265:23.
Esuebio
19:19.
et 14:18.
Etcoff 14:3,
53:24.
ethical 8:20,
9:4, 9:10,
50:19.
ethnic
142:25.
evaluate 94:19,
113:8,
161:13.
evaluating
151:22.
evening 233:19,
233:20,
263:16.
evenings
39:18.
event 36:9,
200:11.
eventually
103:5.
Everybody 5:24,
15:4, 16:13,
16:14, 17:21,
31:8, 32:18,
32:19, 32:20,
35:23, 44:9,
49:10, 50:17,
57:21, 60:17,
61:12, 61:15,
76:25, 89:10,
116:11,
120:16,
198:7,
230:19,
264:2,
264:4.
everyday

36:19.
Everyone 5:15,
56:22, 76:23,
104:12,
123:18,
150:21,
259:21.
evidentiary
6:20.
Evil 244:25.
ex-boyfriend
190:22.
ex-husband
195:7,
195:15,
195:20,
198:10.
ex-military
227:22,
227:24.
ex-police
85:2.
ex-special
227:22.
ex-wife
83:15.
Exactly 69:16,
136:24,
259:7, 260:1,
260:5.
example 16:9.
except 131:3,
184:22,
185:11.
exclamation
184:9.
exclude
139:19.
excluding
139:25.
excuse 33:20,
33:24, 47:12,
48:20, 48:23,
62:6, 62:12,
65:5, 129:10,
129:18,
134:14,
226:8,
226:11,
229:1,

287

164:12,
164:20,
164:21,
168:4, 179:1,
179:9,
179:12,
179:18,
235:5, 238:4,
238:19,
241:22,
243:2,
247:9.
drunk 157:10.
Duane 21:16.
due 5:17, 5:19,
36:6,
64:10.
Duffy 13:4,
53:1.
DUI 30:18.
Duran 12:18,
52:16,
55:10.
During 7:3,
8:10, 8:11,
9:5, 9:13,
10:14, 13:24,
42:19, 43:6,
43:10, 50:14,
53:20, 80:6,
119:2, 128:7,
128:11,
131:14,
161:1, 224:4,
224:8,
264:13,
264:17,
266:8.
dirty 151:5,
175:18.
< E >.
ear 231:10.
Earlier 54:15,
131:21,
153:14,
159:4,
206:19.
early 190:11,

219:7,
264:8.
easier 47:25,
214:22.
East 12:5,
12:7, 52:9,
52:10.
easy 81:22,
124:24,
150:22,
172:12.
Ed 13:4,
53:1.
editing
36:11.
educated
209:19.
education
209:19.
educational
217:25.
effect 15:25,
108:15,
108:19,
117:4.
effected
112:10.
efficient
54:18,
65:13.
Eight 36:20,
36:22, 42:8,
194:15,
194:20.
Eighth 6:13,
49:13.
either 5:19,
7:13, 58:11,
73:18, 98:2,
143:1,
212:25,
233:22,
240:2, 242:5,
255:6,
266:5.
element
89:25.
elements
61:11.
elevators 8:24,

128:5.
eligible 98:8,
134:4,
202:9.
Elko 217:10.
elsewhere
30:12.
emotion
170:22.
emotional
108:12.
emotions
152:16.
empathize
151:15,
155:16.
emphasize
184:9.
employed
234:10.
employee 40:3,
96:14, 96:15,
215:23.
employees
96:11, 96:15,
97:4, 179:12,
179:15.
enabler
246:1.
end 28:9, 30:7,
31:22, 39:15,
41:5, 60:24,
69:2, 78:4,
79:17,
103:21,
131:16,
175:6, 184:9,
214:6,
215:5.
ended 159:14,
159:16,
160:5,
252:16.
enforce 175:2,
181:18.
enforcement
31:2, 81:1,
85:1, 93:18,
94:4, 111:21,
122:5,

286

229:20,
263:23.
excused 54:15,
65:25,
128:25,
135:1,
226:16,
229:16,
230:12.
excuses
62:13.
excusing
48:13.
executive
9:21.
exhibits 8:6,
50:10.
exists 32:10,
61:1, 61:5,
61:6.
exited
162:12.
expand 180:6,
238:10.
expect 200:9.
expedite 14:9,
14:11.
enabling
46:13.
experience
85:17, 86:4,
93:13, 113:1,
113:5, 113:8,
113:15,
114:9, 116:6,
116:22,
126:20,
137:22,
146:14,
146:21,
164:8, 168:2,
195:2, 200:1,
209:6,
210:13,
219:2,
220:18,
242:18,
243:21,
251:25,
252:23,

256:14.
experienced
147:15.
experiences
107:6,
194:6.
experimental
93:25,
99:13.
experimentation
99:15.
expert 36:17.
expires
35:15.
explain 108:21,
117:5, 163:3,
204:22,
212:25,
225:10,
239:20,
240:9,
246:21.
explained 69:1,
117:10,
175:3,
202:12,
240:6.
explaining
54:6.
explanation
167:7,
212:17,
213:1.
explore 72:4.
explored
240:11.
exposed 80:1.
expound
225:10.
express 43:17,
128:18,
224:15,
264:24.
expressed
33:6.
expressing
115:12.
expunged
17:5.
extent 25:17,

35:21, 50:23,
65:24,
229:2.
extra 178:17.
eye 75:12,
86:12, 86:14,
86:15,
102:14,
102:20,
102:21,
145:5,
171:17,
180:23,
229:8,
252:3.
eyes 219:17.
< F >.
factor 38:22,
74:11, 109:6,
109:23.
factored
261:9.
factors 70:18,
77:25, 88:6,
90:1, 90:4,
104:13,
104:14,
104:15,
107:13,
124:11,
127:5,
145:17,
148:24,
149:12,
149:18,
175:12,
245:3, 245:7,
253:14,
267:12.
factual 90:12,
221:25.
fail 7:17,
7:24.
fairly 99:19,
122:5,
123:20,
153:20,
160:10,

288

161:14,
190:8,
235:18,
235:20,
236:2,
266:19.
fairness
225:24.
faith 116:24.
fall 127:12.
fallen 235:4.
falls 252:8.
familiar 84:16,
218:1.
families
209:18.
fan 135:19,
247:17.
far 8:25,
66:14, 86:10,
91:10, 91:14,
120:16,
138:4, 157:2,
157:25,
191:9, 227:5,
227:15,
266:17.
farm 188:20.
fashion 9:3,
35:16.
fate 104:9,
104:11.
Father 29:2,
29:5, 72:8,
72:11, 147:8,
156:19,
157:2,
194:16,
196:21,
203:5,
234:12,
252:4.
favor 103:19,
113:13,
215:1.
favorably
98:9.
fearful
199:20.
feed 84:11.
feeling 74:23,
168:25,
211:17,
259:10,
259:21.
feelings 100:3,
112:4, 113:5,
138:17,
149:7,
153:22,
166:6,
168:14,
168:17,
169:6, 171:7,
176:5,
197:25,
205:2,
220:19,
227:3, 244:7,
249:14,
252:23.
feels 31:4,
130:24,
140:1,
235:19.
fees 38:11.
fell 126:15,
172:25,
202:22,
248:13,
252:2.
fellow 54:5,
70:5, 150:15,
200:21.
felon 16:25.
felony 57:23,
59:18,
154:7.
felt 79:2,
87:19, 89:12,
107:22,
108:25,
140:11,
141:8,
167:19,
169:10,
186:14,
190:8, 208:6,
209:22,
209:24,
214:16,
214:21,
240:1, 250:2,
255:23.
Feuerhammer
21:16.
few 6:23,
14:12, 33:11,
35:23, 49:8,
91:10, 95:11,
111:11,
142:8, 224:2,
230:3,
231:12,
237:25.
field 23:16.
Fifth 174:13.
fight 29:14.
figure 32:3,
87:5, 164:4,
226:13.
figuring
258:13.
fill 11:13,
47:22,
134:25.
filled 14:8,
15:7, 49:17,
54:8, 56:20,
67:7, 68:10,
103:10.
filling 49:4,
258:2.
filter 15:24.
Final 61:20,
92:7,
264:9.
finally 43:18,
61:8, 128:19,
224:16,
264:25.
financial
44:15, 45:19,
64:10,
93:7.
find 8:16,
14:25, 15:2,
42:6, 50:17,
61:3, 65:23,
71:15, 73:12,
289

132:4,
150:17,
224:14,
230:5, 263:1,
264:23.
formed 102:18,
103:5,
203:14,
221:23,
221:24,
223:15.
forming
103:15.
forms 72:18,
77:20,
133:15,
134:6, 139:8,
141:5,
144:19,
229:25,
230:3, 259:9,
259:11,
262:10,
266:9.
formulating
196:9.
forth 8:18,
15:9, 16:4,
31:20, 33:12,
39:11, 43:25,
57:8, 65:21,
268:11.
forty 63:21.
forward 63:5,
264:11.
found 122:7,
126:11,
126:13,
182:25,
208:9,
209:15,
214:5,
227:18,
259:6.
fourteen 9:18,
14:25.
frame 232:10.
Frankly 148:10,
232:3.
Franks 56:3.
fraud 28:11.
Fred 13:25,
53:21.
Frederick
17:23.
free 78:1,
139:24,
225:10.
Freeman 12:21,
52:19.
French 20:9,
28:6, 41:1,
47:16,
49:1.
frequently
98:25,
262:25.
Friday 61:23.
friends 23:2,
24:2, 80:24,
80:25,
241:24.
front 6:25,
14:17, 39:25,
49:22, 56:19,
98:21, 152:3,
176:6.
full 14:20,
15:8, 36:10,
57:7, 87:11,
214:14,
261:5.
funnel
162:13.
futuristic
136:2.
< G >.
gang 28:23,
30:11,
190:20.
garage
105:21.
Garcia 20:15,
28:18, 66:17,
240:21,
240:22,
245:24,
263:22.

gave 102:21,
191:12,
220:19.
Ge 12:11.
Gene 21:6.
General 57:19,
82:18, 90:21,
116:24,
127:4,
176:18.
Generally
14:16, 39:1,
44:13, 44:17,
103:19,
211:18,
230:19.
generated
215:11.
gentleman
38:21, 48:9,
228:12,
267:1.
Gentlemen 6:7,
6:12, 13:17,
14:7, 16:23,
43:6, 48:18,
53:13, 65:10,
127:24,
128:7, 224:2,
224:4,
264:13.
geographically
12:3.
George 19:3,
158:23.
Gernot 55:4.
gets 5:3,
65:24,
101:24,
151:8,
238:15,
257:23,
259:1,
265:8.
getting 81:17,
91:16,
152:12.
girl 91:16,
137:1,
180:7.

291

79:15, 79:17,
101:5,
123:13,
130:6, 130:7,
132:1, 209:9,
213:8, 215:1,
233:6,
233:17,
233:20,
238:19.
finder 216:8.
finders 32:2.
Fine 39:23,
46:20, 66:25,
77:1, 129:17,
129:23,
159:2, 160:6,
206:16,
240:24,
243:24,
244:5.
finish 39:10,
39:14, 264:1,
264:5.
finished
231:14,
264:7.
fire 96:14.
firearm
162:16.
firing 96:8.
firm 41:25,
96:6.
fit 81:15,
86:15, 95:4,
100:7, 240:1,
240:9,
240:12,
250:3.
fits 236:9,
240:5, 240:6,
240:8,
240:9.
five 5:6,
11:24, 17:6,
33:14, 33:15,
34:13, 36:1,
63:13, 64:21,
79:18, 190:4,
199:16.
Flagstaff
163:8.
flake 265:7.
flat-out
133:8.
flight 41:17.
flights
41:21.
floor 49:7,
128:4.
Florida
180:8.
fluid 39:9.
focused
109:1.
focusing
11:22.
folks 10:22,
30:24, 34:21,
34:24, 44:14,
44:25, 45:15,
46:18, 47:13,
49:8, 49:11,
54:4, 65:23,
111:9,
134:18,
134:25,
226:8.
follow 31:9,
60:18, 61:1,
61:5, 69:8,
123:16,
130:5,
130:12,
130:16,
131:3,
131:15,
131:21,
133:17,
150:7,
150:10,
157:22,
157:25,
176:1, 176:7,
176:10,
177:5,
193:24,
200:17,
202:14,
202:19,
212:6, 218:7,
248:9.
follow-up
131:25.
followed
82:15.
follower
205:14,
225:13,
227:10,
229:1,
229:3.
following
69:22, 70:6,
70:23,
213:25.
follows 13:24,
53:20,
215:23.
Forbes 21:18.
force 178:9,
263:4.
forced 246:5.
forces 178:15,
227:22.
forcibly
105:22.
Ford 13:24,
53:20.
foreclosed
134:6,
262:3.
foregoing
268:10,
268:14.
foreperson
25:10,
58:19.
forfeit
110:1.
forfeited
246:22.
forgery 28:4.
forget 200:6,
200:9.
forgot 40:15.
form 22:20,
43:16,
103:10,
128:17,

290

girlfriend
204:3, 204:8,
204:10,
252:10.
girls 234:13.
Given 31:10,
70:1, 71:24,
113:2,
120:17,
127:5,
144:13,
159:19,
164:15,
210:16,
213:6,
214:14,
236:10,
238:4,
239:12,
240:6, 240:7,
240:8,
240:12,
240:15,
254:18,
261:17.
giver 64:14,
197:18.
gives 177:22.
giving 33:25,
63:10, 67:3,
92:14,
107:21,
176:11,
201:5,
240:11,
261:15.
glad 122:4.
gleaned
233:24.
glimpses
218:6.
goal 92:7.
God 16:19,
56:16, 245:1,
263:6.
Goods 87:3.
goods 60:4.
gotten 253:2.
grab 128:4.
grace 245:1.
graduate
207:12,
210:2.
Grand 26:14.
grandson 160:3,
164:12.
grant 228:22.
graphic
151:19.
graveyard
64:13, 64:19,
182:9.
great 8:7,
15:21, 15:22,
16:2,
97:11.
greater 35:17,
239:11.
Green 12:24,
52:21.
grew 91:2,
94:1, 147:15,
195:1, 199:4,
200:1.
Grey 14:4,
53:25.
Grindstaff
20:19, 28:22,
47:17,
49:2.
ground
217:13.
group 48:7,
56:23, 70:20,
112:23,
205:10,
227:11.
guarantee
15:20.
guess 45:9,
47:2, 54:4,
68:9, 69:12,
71:3, 81:13,
133:24,
175:25,
213:3, 213:5,
246:22,
249:15,
252:13,
258:11.

guide 246:4.
guilt 11:14,
43:25,
191:20.
guilty 87:24,
109:16,
120:13,
122:7, 171:9,
173:8, 183:1,
217:17,
227:18,
258:25,
259:6.
gun 76:14,
87:16.
guy 44:11,
48:10, 63:23,
81:21, 105:6,
123:7,
123:13,
126:13,
128:24,
131:1,
148:1.
< H >.
half 46:19,
188:25.
halfway
165:6.
hall 8:21.
hand 14:15,
14:19, 14:21,
16:15, 28:6,
28:18, 28:22,
29:12, 37:1,
56:11,
57:21.
handled 105:1,
236:2.
hands 3:23,
3:25, 17:17,
24:10, 24:13,
27:17, 31:6,
32:11, 32:21,
33:2, 35:7,
48:4, 58:6,
58:11, 58:14,
58:19, 60:16,

292

61:6, 61:18,
106:4,
106:6.
happen 40:19,
103:13,
105:9,
120:20,
123:1,
138:14,
145:2,
190:21,
191:17,
214:9, 220:6,
241:11,
242:4, 243:5,
248:18.
happened 74:9,
117:8,
153:23,
168:15,
199:14,
207:14,
216:20,
216:22,
218:2,
219:14,
220:16,
235:2,
248:18,
252:6.
happening
6:24.
happy 116:16,
116:20,
217:12.
harbor
168:14.
harrowing
220:22.
Hard 7:10,
50:1, 67:13,
67:16, 67:19,
99:18,
100:15,
101:20,
112:2, 114:9,
124:17,
124:18,
146:16,
151:9,
151:23,
152:2,
174:23,
176:3, 176:5,
194:19,
209:13,
242:9,
243:24,
259:22,
259:24,
262:13.
hardcore
229:19.
hardship 45:19,
45:20.
harsh 92:10,
185:20.
hash 92:15,
92:25.
hate 87:3,
246:11,
246:15.
Haupt 18:12,
22:15.
Hawaii 30:5,
250:19,
251:3.
He'll 8:10,
97:24,
228:4.
head 7:12,
49:25, 96:25,
241:24,
252:2,
262:14.
headquarters
251:5.
heart 232:20.
Heather
55:18.
heed 201:15.
Heiner 12:25,
52:23.
heinous 148:14,
240:13.
held 65:3,
67:22, 74:15,
263:15.
Hello 135:8,
135:9,
178:4.
help 8:10,
16:19, 43:22,
50:13, 56:16,
162:11,
216:12,
216:13,
246:1.
helped 8:14.
helpful 66:8.
Henck 18:24,
26:6, 66:14,
120:25,
125:25,
263:19.
Henderson 13:4,
53:1, 94:6,
98:18.
hereby 268:8.
Herndon 1:27,
6:14, 49:12,
69:1, 69:9,
121:10,
202:13.
hesitate
4:11.
Hibbard 18:10,
66:13, 93:4,
96:5, 101:13,
129:22,
130:1, 132:7,
132:8,
132:10,
133:12,
134:9,
263:19.
hide 57:9.
High 14:21,
16:4, 156:8,
156:9,
156:15,
156:17,
231:1,
241:12.
highly 99:4.
hike 117:1.
hinders 40:5.
hinted 88:7.
hiring 96:9.
Hispanic

293

184:3, 214:5,
214:8, 229:9,
236:16,
239:19.
imposed 81:20,
82:16, 82:19,
163:12.
imposing 125:6,
134:6,
156:4.
imposition
69:21.
impressed
210:16.
impression
82:18.
impressions
197:21.
impressive
178:24.
improper
231:21.
in-law 30:17.
In-laws
187:4.
in. 16:14,
219:16.
incapacity
5:19.
incarcerated
97:19.
incident 52:7,
191:16,
253:3.
incidents
40:14,
106:17.
incision
37:17.
inclination
130:14.
inclined
214:20.
include 12:18,
51:20, 52:2,
52:12, 98:7,
184:13,
184:16,
185:18,
186:8.
including 43:8,
43:14, 45:19,
46:2, 49:23,
62:14, 128:9,
128:15,
224:6,
224:12,
246:17,
264:15,
264:21.
income 64:14,
64:19.
inconvenience
33:7.
inconvenient
35:21,
63:1.
independent
62:12.
indicate 20:5,
109:25,
130:5,
133:19,
134:5,
137:21,
216:24,
229:2, 230:1,
236:22,
247:21,
266:8.
indicates
21:21, 22:8,
123:24,
261:14.
indicating
46:17,
116:15,
132:3,
217:17.
indication
229:5.
individual
183:16.
individually
35:3,
46:21.
individuals
45:4, 131:7,
186:23,
232:5,
262:19.
indulgence
4:20, 45:25,
46:22, 66:22,
101:8.
influence
94:15,
112:16,
148:5.
informed
127:19.
initial
131:14.
innocence
11:14,
43:25.
innocent 43:25,
171:9,
173:7.
insanity 101:2,
101:4,
132:24,
133:7.
inserted
166:4.
instance
16:5.
instances 95:6,
104:4,
106:19,
187:9.
Instead 47:20,
139:1.
instinct 15:11,
57:12.
Institute
90:22.
instructed
131:24.
instruction
70:24, 73:12,
213:6.
instructions
8:12, 8:13,
31:9, 31:10,
31:21, 32:1,
60:18, 60:20,
60:23, 69:8,
69:22, 71:6,
73:15, 74:1,

295

143:9.
history 71:12,
71:23, 72:7,
80:1, 179:18,
197:4, 203:7,
266:25.
hit 157:10,
241:24,
242:8,
252:2.
hobbyist
135:19.
Hobson 12:19,
52:16.
Hold 32:20,
61:15, 69:9,
79:19, 90:17,
106:21,
136:4, 149:8,
176:2,
178:20,
202:17.
holes 238:9.
Home 12:6,
34:1, 52:9,
62:8, 105:3,
105:19,
199:21.
homicide
217:21,
218:2.
honest 8:8,
15:8, 46:6,
57:7, 103:8,
213:19,
228:22,
258:20.
honestly
258:16.
HONORABLE
1:27.
hope 37:12,
107:3, 123:2,
198:22.
hopeful 11:23,
264:7.
Hopefully 12:1,
62:5,
123:1.
hopes 210:2.
hoping 235:23,
258:12.
horrible
244:13,
258:8.
Hotel 207:8.
hour 39:7.
hour-and-a-half
39:7.
hours 91:10,
95:11.
house 64:3,
64:20,
219:16,
251:1.
Houston 105:14,
106:20,
106:21.
Howard 1:42,
14:2, 53:23,
268:25.
huge 104:14.
Huh-uh 7:9,
50:1.
human 79:4,
86:25, 103:5,
108:4, 186:5,
239:14.
hundred 87:24,
185:20.
hung 121:23,
226:25.
husband 27:5,
36:8, 37:10,
42:11, 64:9,
111:19,
113:22,
114:13,
118:17,
119:13,
147:8,
147:15,
156:19,
157:1, 157:5,
187:2,
188:22.
76:20, 77:2,
78:14, 86:25,
97:15,
102:14,
138:6,
138:17,
140:8,
165:17,
184:5,
187:23,
237:4, 245:5,
248:6, 257:2,
257:10.
ideas 77:3,
77:8.
identified
7:23.
identify 7:25,
50:5.
identity
255:16.
ill 252:23.
imagine 15:18,
202:4,
252:5.
impartial
56:23, 76:1,
80:7, 107:17,
108:16,
108:20,
117:22,
137:23,
146:17,
146:19,
146:21,
158:10,
162:23,
164:7, 195:4,
204:18,
205:8.
importance
88:23,
104:14,
212:13.
impose 68:16,
72:22, 73:23,
89:23, 95:21,
125:20,
132:14,
154:25,

294

124:12,
130:5,
130:12,
130:16,
131:3,
131:15,
131:22,
133:17,
150:11,
175:6, 175:7,
176:1, 177:5,
193:25,
200:18,
212:6.
insurance 86:2,
91:3, 91:7,
117:1,
181:8.
integrity
16:4.
intelligent
16:3,
34:21.
intended
57:2.
intent
226:14.
intentional
110:10,
110:14,
117:12.
intentionally
202:5.
interest
46:12.
interested
66:4,
258:25.
interesting
171:6,
171:16,
259:4.
interests
232:2.
interfere 84:7,
244:2.
internalize
151:15.
internet 43:15,
128:16,
224:13,
264:22.
interpret
31:15, 68:2,
124:14,
129:14.
interpreter
67:24, 68:5,
68:6, 129:9,
129:11.
introduce 6:24,
10:5, 51:2.
introducing
54:10.
investigate
215:24.
investigator
215:12,
215:16,
215:18.
involve 29:7,
96:8.
involvement
126:8,
162:22,
164:12,
164:14,
165:8.
involves 51:17,
52:7,
71:16.
involving
82:1.
issue 3:9,
16:19, 45:8,
56:16, 72:4,
74:12, 109:7,
111:15,
141:23,
201:10,
232:16,
233:7.
issues 8:11,
31:22, 38:22,
40:9, 42:24,
44:9, 44:23,
45:10, 46:14,
50:14, 56:24,
57:4, 76:21,
113:3,
114:12,
138:1.
itself 70:2,
77:13,
149:16,
249:23.
Ivory 13:25,
53:21.
< J >.
Jackson 12:19,
22:6, 22:16,
52:17, 54:23,
59:12,
64:7.
jail 12:10,
52:13, 72:15,
188:24,
190:24,
191:3,
191:11,
191:17,
191:18,
232:4, 252:4,
252:17.
James 1:17,
3:6, 6:9,
11:5, 13:1,
13:22, 13:24,
20:19, 22:4,
48:15, 49:16,
51:18, 52:24,
53:18, 53:20,
55:22,
134:21,
233:13,
234:5.
Jamie 20:11.
janitor
234:16.
Jeep 37:10.
Jeffery
148:14.
Jerry 12:21,
18:8,
52:19.
job 32:2, 61:3,
85:7, 93:10,
97:4, 97:11,

296

97:14, 97:16,
98:25, 99:4,
109:13,
164:3,
213:12,
214:24,
216:12,
216:13.
jobs 182:10.
John 55:20,
63:18,
180:9.
Johnson 20:23,
29:1, 47:17,
49:2, 74:20,
79:24,
263:18.
Joseph 55:8.
judged 108:5.
judges 63:7,
89:10,
231:24.
judging 78:20,
79:16.
Judgment 78:15,
79:3, 86:25,
107:24,
108:2, 115:7,
124:25,
125:5, 140:5,
140:8,
158:18,
165:18,
165:20,
166:19,
169:12,
184:5, 184:6,
184:12,
184:16,
186:8,
186:16,
214:7, 248:7,
248:9,
253:18,
257:5,
257:11.
judgmental
184:12.
judgments
78:22.

Judicial 6:13,
49:13,
63:5.
Judy 54:25.
jump 76:14,
76:24,
87:15.
juries 58:19,
184:2.
jurisdiction
187:16.
justice 15:19,
35:2, 35:7,
35:11, 35:14,
80:24, 81:1,
81:4, 94:12,
105:8,
113:25,
161:23,
171:8,
186:24,
234:20,
256:7.
justifiable
132:20.
justification
70:11, 70:14,
202:5.
justify 100:13,
101:3,
101:15,
229:16,
230:12.
justifying
102:9.
juvenile 17:13,
160:6,
188:14.
< K >.
Kaleikini-johns
on 66:12.
Kaleikni-johnso
n 18:6.
Karalee 19:7.
Kary 55:24.
keep 8:7,
14:19, 39:13,
66:19, 76:9,

76:18, 88:10,
96:18, 99:5,
99:21,
102:25,
107:20,
119:15,
135:12,
138:12,
139:2,
139:20,
187:3, 198:3,
198:21,
212:7,
230:19,
238:6, 248:4,
259:13.
keeping 76:21,
263:7,
265:9.
keeps 8:6,
50:10.
kept 265:15.
kick 46:8,
46:16, 46:19,
225:14,
225:23,
225:25.
kids 64:21,
179:12.
kill 148:25,
183:4, 184:2,
185:17,
237:19,
244:18,
244:21.
killed 40:14,
40:18, 91:16,
167:7, 180:8,
204:2, 205:3,
208:20,
228:18.
killers 148:16,
148:21,
206:5.
killing 110:11,
110:14,
216:17.
kills 226:24,
229:8.
Kimberly 12:20,

297

230:14.
leaving
216:23.
Lee 13:1,
21:10,
52:23.
left 8:9, 38:8,
50:7, 50:12,
86:7, 101:22,
116:23,
185:13,
225:11,
242:19.
Legal 8:11,
8:12, 23:16,
23:17, 31:21,
50:14, 60:22,
69:10, 73:12,
116:24,
162:1,
202:10,
243:11,
247:17.
legally
132:19.
legislator
172:19,
222:13,
222:17.
legislature
149:4,
230:6.
lengthy 14:10,
31:25.
lenient 73:18,
81:5, 81:12,
82:4, 92:15,
92:23, 97:20,
132:15.
Leslie 8:14,
9:9, 9:12,
9:15, 9:17,
9:20, 48:6,
50:16, 50:22,
50:24,
129:19.
less 31:4,
33:19, 60:14,
62:5, 80:7,
97:20, 98:9,

99:4, 99:16,
109:20,
113:13,
119:8,
119:11,
119:12,
120:13,
126:21,
157:13,
157:14,
164:22,
179:20,
214:21,
238:3.
letting
44:14.
levels
133:13.
Lewis 14:3,
53:24.
Lexus 233:20.
Lien 71:4,
141:3.
Light 111:1,
130:15,
136:8.
lightly
150:21.
likely 99:17,
118:9,
157:13,
157:14,
214:10.
likes 89:10,
227:16,
243:12,
261:14,
265:24.
likewise
201:25.
limitation
43:8, 43:14,
128:9,
128:15,
224:6,
224:12,
264:15,
264:21.
limited 74:4,
262:2.

limiting 149:2,
149:4.
Linda 55:10.
line 37:18,
89:4, 180:4,
267:4.
lines 31:3,
178:15,
228:24.
Lisa 12:18,
18:15, 18:17,
18:22, 20:9,
52:16.
list 10:10,
13:23, 45:18,
45:20, 46:4,
47:3,
53:19.
listened
239:25.
listening 77:5,
81:16,
102:15,
117:19,
132:12,
196:9,
211:24,
211:25,
212:13.
literally
86:16.
litigation
116:2,
232:18.
littler
33:19.
live 84:17,
174:4, 174:8,
183:17,
213:14,
235:24,
241:3,
246:23,
248:22,
256:3,
256:5.
lived 121:22,
240:25.
livelihood
36:17.

299

52:17.
kinds 95:16,
113:4,
135:17,
135:25,
182:15.
Kisha 14:1,
53:22.
Kitchen
55:24.
Knowing 72:24,
73:24, 110:9,
153:7,
155:18,
259:6,
262:16.
knowledge
218:13.
known 102:17,
179:3,
179:5.
knows 22:19,
24:9,
24:12.
< L >.
LA 41:18.
Labbranch 18:22,
25:23, 37:5,
47:14,
48:24.
Ladies 6:6,
6:12, 13:17,
14:7, 16:22,
43:6, 48:18,
53:13, 65:10,
127:24,
128:7, 224:2,
224:4,
264:13.
Ladonna 12:19,
52:17.
Lady 45:20,
81:21, 176:5,
181:7, 207:8,
216:21,
216:23,
226:3.
Lamb 12:7,

52:11.
land 16:6.
language
67:11.
large 36:7.
Larry 13:3,
18:24,
52:25.
Larsen 55:14.
Las 3:1, 40:20,
59:25, 63:20,
146:5,
157:17,
195:10,
241:1,
250:21.
Last 7:21,
36:5, 36:13,
61:23, 62:15,
62:17, 62:18,
62:20, 68:10,
128:24,
132:2, 189:3,
205:25,
225:4, 226:3,
228:12,
236:13,
258:4, 258:9,
258:14,
258:17,
259:8, 261:8,
265:22.
lasts 33:18,
62:4.
Late 9:23,
9:24, 89:6,
192:9,
219:6.
later 8:13,
15:13, 17:5,
39:13, 39:16,
40:10, 62:15,
102:23,
126:15,
231:11.
Laura 12:21,
20:23, 52:18,
55:12.
lawful
238:21.

laws 32:7,
94:24,
157:21,
240:10.
lawsuit
116:12.
lawyer 116:16,
181:8.
lawyers 43:9,
116:7,
116:10,
128:10,
136:15,
224:7,
264:16.
layout 73:15.
lead 247:4.
leading
229:14.
leaking
37:11.
lean 144:20,
201:7.
leaning 139:17,
141:4,
148:10,
257:17.
learn 15:5,
47:11, 48:3,
57:4,
213:23.
learned 73:2,
97:13,
179:18.
least 5:7,
88:14,
104:17,
130:4,
199:23,
231:13,
259:21,
261:22,
262:4,
266:12.
leave 4:4,
34:9, 41:22,
62:7, 65:9,
123:9,
226:15,
226:17,

298

livelihoods
212:12.
lives 15:3,
15:25, 33:13,
57:3, 64:15,
137:3, 154:8,
239:8.
living 79:8,
111:25,
121:21,
122:12,
159:11,
207:9,
211:21,
222:18.
loan 64:9.
Locally 25:24,
26:16, 26:23,
26:25, 27:13,
27:20, 28:4,
28:16, 28:20,
29:4, 29:19,
30:9, 30:21,
30:22, 40:19,
59:3, 174:4,
234:24.
lock 188:15.
logically
152:14.
Long 17:10,
27:21, 37:19,
37:20, 58:25,
76:23, 85:19,
85:20, 93:9,
106:11,
123:14,
132:17,
139:18,
159:16,
168:9,
178:22,
190:25,
192:7,
201:10,
206:23,
219:5,
240:25,
241:10,
241:14,
243:16,

254:8,
255:18.
long-time
217:25.
longer 5:18,
39:4, 62:18,
122:18,
213:4,
217:15,
230:21,
230:23.
look 34:12,
44:8, 46:9,
90:10, 98:8,
103:9,
119:24,
120:18,
132:23,
151:18,
155:14,
166:10,
167:16,
197:4, 198:6,
209:20,
213:12,
214:10,
227:4, 228:1,
229:20,
232:25,
233:5,
266:20.
looked 103:8.
looking 75:24,
76:8, 81:15,
90:6, 155:20,
170:8,
224:23,
225:19,
233:1,
246:25,
247:1,
266:23.
loop 238:9.
Lori 20:7,
218:25.
Los 41:11.
lose 145:8.
losing 47:3.
lots 25:21,
238:9.

loud 7:6,
7:14.
love 209:12.
lower 133:23.
Luanna 12:18,
52:16.
Luck 78:18,
207:8,
216:21,
216:23.
Luke 21:2.
Lunch 39:7,
65:12,
111:10,
126:3,
127:25,
128:21,
129:20,
134:10,
134:19.
Lusila 19:15.
lying 164:4.
< M >.
Ma'am 24:19,
25:19, 26:20,
30:14, 37:1,
111:12,
146:3, 177:9,
177:17,
194:5,
199:3.
Madison 7:18,
7:19, 7:21,
16:25, 17:1,
17:3, 17:6,
17:9, 17:11,
17:14, 17:23,
33:21, 33:23,
36:2, 44:11,
47:13,
48:23.
mail 28:10.
main 151:7.
mainly 143:9.
maintain 4:12,
267:17.
maintained
66:9.

300

majority 187:12.
male 108:15,
204:16.
malpractice
34:7, 62:14,
62:16,
115:25,
181:8.
man 88:5,
117:10,
156:20,
180:8, 183:4,
184:2.
manage
169:24.
manager 96:16,
169:23,
170:1.
manner 210:14,
220:20,
245:18.
Marabel 14:2,
53:23.
marijuana
247:8.
Mark 18:4,
115:20,
203:15.
marks 150:17.
married
137:2.
Martino 19:25,
66:16, 199:2,
203:3, 225:2,
225:8,
226:20,
226:21,
228:14,
228:21,
228:22,
229:15,
230:14.
Mary 55:16.
mass 46:16,
46:20.
masters
215:13.
Mateo 136:23.
matter 3:14,
4:5, 13:12,
69:13, 73:3,
130:25,
131:1,
132:25,
183:22,
213:25,
228:6,
260:3.
matters
45:19.
Matts 21:12,
30:3, 30:4.
maxim 86:13.
McCartroll 13:1,
52:24.
McGuire 12:19,
52:17.
McKown 19:17,
38:1, 39:24,
46:2, 47:16,
49:1.
Meaning 86:15,
86:16, 105:5,
229:7.
means 38:24,
39:1, 39:17,
140:22,
140:23,
141:4,
166:10,
204:7,
266:15.
mechanics
243:23.
media 25:3,
84:14.
mediator
215:18,
216:4, 216:5,
216:9.
Medical 34:7,
62:13, 62:16,
115:25,
174:10,
181:7.
medium 43:13,
128:14,
224:11,
264:20.

meets 100:5.
member 31:2,
123:4,
234:19,
239:2,
249:11.
members 25:16,
25:18, 58:22,
115:13,
138:17,
150:15,
153:15,
153:17,
153:23,
155:24,
163:3, 190:9,
190:20,
208:21,
209:18,
211:3,
231:18,
238:1.
memory
152:22.
mention 97:7,
157:5, 181:4,
251:24.
mentioned
10:16, 58:16,
99:7, 115:24,
116:19,
117:3, 121:9,
147:7, 148:7,
151:13,
152:20,
155:15,
159:7, 160:2,
161:23,
179:25,
190:13,
199:3,
228:10,
238:8,
238:23,
254:6.
mercy 244:14,
246:23.
messed 190:2.
met 8:14,
50:16, 69:6,

301

68:10, 68:21,
135:13,
153:14,
174:20,
234:19,
263:25,
264:1,
267:22.
Morrell 13:25,
53:21.
mortgage 174:2,
174:5.
Mother 41:3,
72:9, 72:15,
194:7, 194:8,
194:16,
196:21,
196:25,
216:25,
255:13,
255:14,
255:15.
mother-in-law
147:12,
147:20,
157:5.
motions
38:25.
Motors 90:22.
Mountain
188:21.
mouth 86:8,
116:23,
242:19.
move 5:20,
6:17, 6:20,
14:16, 14:20,
49:8, 49:10,
54:16, 65:10,
65:16, 65:21,
66:1, 67:23,
231:12,
264:11.
moved 42:18,
91:23,
116:12,
192:17.
Moving 66:5,
250:18.
municipal
38:12, 146:6,
157:18.
Munson 12:22,
52:19.
murdered
206:20,
262:8.
murdering
202:5,
202:6.
murders
138:10.
myself 56:22,
59:18, 75:17,
105:20,
213:14,
227:24,
257:9.
< N >..
Nakanishi
23:23, 45:12,
47:17,
49:2.
Nakanushi
21:6.
name 6:13,
7:17, 8:1,
11:2, 13:17,
22:14, 25:22,
37:4, 49:12,
50:3, 50:5,
51:14, 53:14,
54:21, 54:22,
56:8, 181:5,
231:22.
names 10:13,
10:19, 12:18,
48:21.
naming 54:11.
Nancy 21:10.
narcotics
26:10.
narrow 151:6.
natural
130:14.
nature 10:19,
68:18, 75:7,
108:5,

108:11,
149:15,
229:14.
nearly 63:21.
necessarily
70:13, 75:13,
88:9, 109:1,
124:2, 150:1,
218:14,
230:21,
256:8.
necessary 3:14,
4:12, 61:11,
61:17,
165:22,
198:18,
263:5.
needed 4:7,
44:1, 93:23,
253:6.
needs 46:3,
127:19.
Negative 109:4,
112:5, 112:9,
179:24,
234:19.
neglected
93:5.
negligent
160:15.
neighborhood
123:18.
Neil 18:2.
Neither
163:25.
nephew 27:5,
28:23, 59:13,
187:2,
189:20,
189:21.
nephews
187:5.
nervous 75:2.
neutral 15:1.
Nevada 1:7,
1:10, 3:1,
3:6, 6:8,
14:4, 32:1,
48:15, 49:16,
53:25, 61:2,

303

69:20, 73:20,
130:17,
148:20,
202:11,
202:17,
213:7, 214:8,
236:15.
Metro 162:7,
162:10,
162:13,
162:15,
163:4.
Mexicans
190:4.
Meyrick 19:5,
66:14,
165:16,
169:22,
263:20.
Michael 19:17,
20:17,
21:23.
Michelle 12:21,
52:19.
Michigan
5:16.
Middle 14:16,
37:1,
37:14.
midnight
37:10.
Mike 12:19,
13:1, 13:4,
52:17, 52:23,
53:1.
mile 121:22.
miles 52:10.
military 178:6,
228:13,
229:19.
Mills 18:17,
26:20, 66:13,
111:12,
263:19.
minds 229:23.
mine 24:2,
201:4,
259:13.
minorities
143:15.
minute 10:21,
32:24, 45:25,
49:19, 50:9,
183:5.
minutes 8:7,
39:20, 50:11,
111:11,
224:2,
233:9.
Mira 14:1,
53:22.
misdemeanor
59:23,
146:11.
misdemeanors
154:8.
misheard
149:24.
missed 36:6,
59:11,
121:14.
mitigate
101:18.
mitigates
99:24.
mitigating
74:11, 100:9,
100:14,
100:16,
101:5,
101:14,
119:25,
132:23,
267:12.
Mitigation
78:1, 88:6,
100:8,
100:12,
102:5, 130:9,
132:19,
132:25,
133:5, 133:6,
133:9,
133:21,
133:25,
134:3,
139:3.
mixed 179:12.
MLK 241:4.
Mobile 12:6,
52:9.
molestation
155:25.
molesting
30:19.
Molly 9:21.
mom 137:3,
194:17,
199:7,
211:11.
moment 8:4,
66:22,
149:23.
momentarily
6:17.
Moncha 12:22,
52:19.
Monday 1:30,
3:1, 38:24,
42:12,
61:24.
Mondays 39:1.
money 64:5,
256:2.
Monica 85:3.
month 34:7.
months 34:6,
62:16, 62:17,
255:19.
moral 183:13,
186:1,
192:11,
217:12.
morale 40:8.
Morales 19:13,
47:15,
48:25.
morals 183:10,
183:18.
Morin 20:13,
28:14, 66:17,
230:17,
234:9,
237:13,
263:21.
morning 6:6,
11:2, 38:18,
38:24, 39:1,
41:25, 51:12,
53:13, 63:21,

302

61:10, 69:3,
69:5, 95:24,
121:15,
134:21,
148:19,
175:12,
215:19,
222:18,
222:21,
223:1,
233:13,
234:5,
268:8.
New 17:4,
41:11, 49:11,
54:4, 105:14,
106:19,
122:13,
175:15,
177:3,
181:14,
211:22.
news 24:21,
81:16, 81:24,
82:1, 91:22,
151:13,
153:1, 218:6,
265:7.
newspaper
24:24.
newspapers
43:14,
128:15,
224:12,
264:21.
Next 8:2,
11:24, 12:1,
26:5, 27:24,
28:21, 28:25,
33:16, 36:1,
41:11, 47:2,
59:5, 61:22,
61:24, 62:10,
65:16, 79:17,
108:17,
141:2, 225:1,
228:4,
230:16,
243:15.
nicer 156:14.

137:22,
147:3, 148:4,
154:11,
157:12,
181:9,
198:18,
211:14,
226:4, 228:3,
231:14,
242:4, 244:1,
250:25,
256:13,
267:15.
notice
249:17.
November
206:25.
nowhere 91:6.
null 36:23.
numbers 7:21,
9:19, 9:20.
< O >..
o'clock 38:17,
39:2, 39:4,
39:12,
230:20.
O'hartz 18:19,
18:21,
22:15.
Oakley 241:3.
Oakland 251:5,
251:7.
oath 8:3, 8:5,
50:8, 50:9,
56:12.
object 110:23,
164:16,
206:10.
objecting
233:24.
Objection
44:21, 45:16,
71:25, 72:2,
82:5, 82:7,
92:18, 97:23,
98:4, 165:4,
206:11,
231:17.

304

objections 268:12, 268:15.
objectors 182:12.
obligate 236:16.
obligated 236:24.
obligation 50:22.
obligations 8:20, 9:4, 9:10, 50:19.
observed 207:19.
Obviously 4:9, 5:20, 13:11, 14:7, 14:20, 16:7, 33:4, 34:21, 46:12, 56:25, 70:1, 72:5, 75:25, 76:5, 114:17, 115:4, 116:5, 149:16, 195:20, 253:2, 260:4.
occasion 97:10, 98:24, 104:25, 137:17.
occasionally 218:6.
occupation 90:25, 91:6, 93:5, 169:23, 250:11.
occur 207:6.
occurred 12:8, 52:8, 84:17, 187:10, 207:7, 209:16.
occurring 112:20.
odds 35:15.
offence 17:13, 30:17.
office 11:3, 12:23, 13:19, 13:21, 22:20, 49:7, 51:15, 52:21, 53:15, 53:17, 67:24, 68:6, 98:23, 109:11, 129:9, 129:11, 154:5, 162:2, 192:20, 192:21.
Officer 4:14, 12:25, 52:23, 60:15, 64:9, 85:3, 93:8, 94:7, 94:16, 94:17, 97:8, 98:12, 98:15, 128:25, 163:19, 195:13, 195:16, 198:12, 239:10, 239:12, 254:19.
OFFICERS 12:25, 31:5, 31:6, 52:22, 60:16, 85:10, 85:12, 195:18, 198:19, 231:9, 232:3.
often 82:14, 82:16, 99:1, 136:25, 137:2, 188:11.
Ohio 204:24.
old 29:16, 42:7, 42:20, 64:15, 187:19, 194:15, 194:21, 196:21, 197:12, 199:13.
older 29:15, 168:11, 197:23.
Once 9:18, 54:10, 157:10, 172:5, 184:4, 202:16, 244:19, 248:17, 264:7.
one. 243:15.
ones 10:15, 44:22, 45:18, 191:5, 265:15.
ongoing 29:3, 45:20.
open 76:9, 76:18, 76:22, 88:10, 91:13, 96:18, 99:5, 99:21, 102:25, 103:4, 104:2, 107:20, 111:3, 117:19, 119:15, 123:24, 124:6, 132:11, 138:13, 139:2, 139:20, 170:21, 173:13, 198:22, 201:11, 212:8, 218:17, 238:6, 248:4, 259:13.
open-minded 198:4.
Open-minded 15:1, 92:5, 103:7, 196:5,

305

264:9.
Part-time 162:1.
partake 129:13.
participate 207:22.
particular 12:7, 12:14, 32:15, 83:23, 132:16, 208:2, 214:12, 216:1, 218:12.
particularly 121:18.
parties 43:9, 89:7, 128:10, 137:24, 216:6, 216:14, 224:7, 264:16.
partly 211:21.
party 232:17, 233:22.
passage 5:17.
passed 189:17.
passing 5:19, 86:25, 184:5, 248:9.
past 3:19, 23:16, 24:4, 36:20, 73:3, 253:3, 263:1.
path 245:2.
patience 13:13, 51:13, 53:7.
patient 49:5.
Paul 12:22, 13:1, 52:20, 52:23.
pay 38:11, 66:5, 109:20, 218:2, 256:1.
PD 163:8.
pearls 209:21.
pen 249:16.
penalties 120:17.
pencil 249:16.
pending 41:25, 191:5, 191:8.
Penfield 12:22, 52:20.
Pennsylvania 26:11, 29:24, 121:17, 122:19, 256:6.
per 218:7.
percent 87:24, 143:6, 143:15.
Perez 17:25, 66:11, 66:24, 67:25, 129:6, 129:19, 129:20, 134:16, 135:1.
perfectly 130:21.
Perhaps 81:20, 142:9, 251:14, 262:3.
period 37:19, 93:21, 182:18.
Perkins 13:1, 52:23.
permanent 242:6.
personal 15:4, 15:25, 31:11, 57:2, 57:15, 60:20, 108:11, 110:5, 112:3, 154:20,

218:13, 229:21.
personality 118:11, 229:18, 229:22.
personally 23:17, 45:5, 70:10, 75:17, 78:16, 88:19, 166:1, 192:1, 248:15.
personnel 4:5, 8:19, 10:1, 50:18.
perspective 6:22, 144:15.
pertain 60:19, 152:14.
pertains 152:14, 229:17, 230:13.
Petit 19:1, 37:16, 47:14, 48:24.
ph 13:4, 37:11, 53:1.
phase 6:20, 127:15.
Philadelphia 29:24, 263:9.
philosophical 77:13.
phone 9:19, 9:20.
photo 36:12.
photographers 36:8.
photographs 151:19, 151:20.
photography 36:5, 36:9, 36:10, 44:13.
photos 155:13.

307

197:8.
open-minded 56:23.
opening 8:25.
openings 231:14.
operating 12:12.
opinionated 183:21.
opinions 77:3, 104:12, 141:17, 142:14, 143:3, 144:17, 229:21.
opportunity 67:6, 129:13, 249:8.
opposed 46:18, 82:14, 92:15, 103:20, 110:21, 178:25, 182:15, 233:22, 259:1, 266:14.
option 69:24, 72:17, 72:20, 72:21, 73:10, 76:6, 110:15, 110:17, 110:21, 214:1, 221:8, 227:19, 240:11, 240:12, 247:22.
options 11:13, 69:13, 76:2, 92:5, 110:22, 138:5, 138:10, 139:14, 221:11, 221:16, 221:17, 222:6, 225:12, 240:11, 257:9, 257:20, 260:17, 260:20, 265:12.
Order 4:8, 4:12, 4:13, 40:6, 230:16, 247:19.
Orleans 105:15, 106:19.
Osuch 13:1, 52:23.
Others 15:22, 40:4.
ought 31:11, 60:21.
out-sources 63:19.
outcome 42:1, 211:23.
Outside 3:7, 3:8, 4:16, 4:23, 43:20, 50:23, 75:25, 81:15, 129:4, 157:11, 233:15, 265:1.
owe 259:20.
own 34:4, 48:10, 63:15, 75:19, 113:8, 113:9, 131:4, 143:3, 150:8, 192:5, 219:16, 227:10, 227:13, 227:14, 229:3, 266:15.
owner 36:5, 44:12.
owners 40:3, 40:4.
Owens 44:12.

306

pick 33:22, 202:2, 254:22, 259:22.
pick-pocket 106:5.
picked 118:8, 151:5, 258:12, 258:18, 258:19.
picture 129:14, 148:1.
pictures 155:18, 213:19.
piece 72:3.
pill 247:10.
Pinon 19:15, 40:10, 47:16, 49:1.
place 10:14, 37:11, 47:5, 199:21, 216:1, 221:22, 262:15, 268:11.
places 230:15.
placing 232:17.
plain 112:7.
plainly 143:11, 143:23.
Plaintiff 1:12.
plan 230:22.
planet 35:15.
plate 36:10.
play 231:10.
played 10:14.
pleas 191:20.
pleasant 252:20.
Please 7:24, 9:8, 10:18, 14:22, 17:20, 46:23, 49:10, 50:1, 50:5, 51:10, 54:20, 56:11, 57:6, 57:14, 65:2, 65:8, 66:5, 135:2, 206:13.
pleasure 41:13, 62:10.
plenty 66:20.
pocket 106:4, 106:7.
poignant 233:3.
point 5:2, 5:10, 9:18, 11:11, 43:23, 66:10, 77:11, 116:13, 117:16, 139:18, 139:23, 148:2, 150:16, 171:11, 176:17, 194:16, 202:23, 207:20, 208:17, 211:13, 213:23, 264:8, 267:9.
point. 117:12, 139:20, 173:8, 206:18.
points 108:12, 184:9.
policeman 126:20.
politicians 82:1.
Pollard 12:20, 52:17.
popular 135:22.
position 3:13, 4:6, 41:20, 45:14, 108:2, 170:5, 232:6, 232:9, 232:17, 267:18.
Positive 105:4, 105:5.
Possession 38:6.
possessions 157:10.
possibilities 98:7, 262:4.
possibility 11:18, 11:19, 11:20, 11:25, 33:16, 52:3, 52:4, 73:10, 73:16, 73:23, 109:3, 210:25, 260:19.
possible 15:1, 15:9, 15:16, 73:14, 73:20, 92:9, 95:12, 103:6, 103:8, 131:18, 131:25, 132:4, 132:11, 132:17, 168:22, 172:6, 175:14, 201:12, 236:15, 246:18, 251:18, 262:10.
Possibly 71:18, 108:20, 108:25, 133:9, 164:24, 260:23, 266:6.
pot 241:13.
potential 6:15, 10:23, 11:17,

308

69:11, 80:18,
117:19,
123:25,
148:21,
160:23,
172:10,
172:19,
174:17,
175:20,
196:2,
202:11,
221:11,
236:7.
potentially
13:6, 53:3,
247:2.
power 262:25.
practices
181:6.
preceding
6:14.
precept
171:10.
precious
246:17.
preconceived
237:4.
predict
97:24.
prediction
164:17.
preferable
166:8.
prejudice 77:24,
102:16,
147:4.
prejudged
251:17.
prejudice 3:9,
84:4, 84:6.
prejudiced
84:2.
prejudicial
3:17.
Preliminary
31:21,
219:24,
219:25.
premeditated
240:14.

presence 3:8,
4:16, 4:23,
4:24, 6:10,
43:21, 48:16,
48:17, 129:5,
134:22,
134:23,
233:14,
233:15,
234:6, 234:7,
265:1.
Present 4:25,
17:22, 21:9,
22:14, 22:19,
50:13, 54:21,
54:24, 55:1,
101:25,
148:24,
149:11,
149:24,
161:5,
175:13,
194:14.
presented
88:19, 90:5,
90:6, 90:12,
92:6, 117:23,
122:6, 124:7,
127:1,
132:12,
136:7,
177:12,
177:16,
201:15,
216:4.
presenting
151:18.
Presently
64:3.
presiding
49:12.
presumed
43:25.
Pretty 3:20,
10:1, 37:18,
91:13, 92:25,
99:14, 101:1,
101:20,
121:25,
145:18,

151:19,
155:14,
170:12,
189:8,
189:11,
196:5,
210:16,
211:12,
242:9, 252:6,
254:22.
prevalent
179:7.
prevent
205:7.
previously
85:18.
primarily
26:15.
primary
243:25.
principle
32:16, 32:19,
44:1, 75:13,
76:11.
principles
32:14, 43:24,
61:8, 61:10,
173:9,
183:17.
prior 5:7,
25:8, 58:17,
154:8,
178:5.
Prison 30:19,
82:3, 94:12,
94:15, 97:15,
98:7, 98:8,
122:18,
188:4, 189:9,
189:22,
190:18,
190:22,
210:23,
210:25,
211:12,
217:6,
235:11,
235:13,
244:25,
257:7.

309

13:20, 53:14,
53:16, 109:9,
109:11,
163:9,
215:13,
258:8.
punish 243:3.
punished
101:24.
punishments
11:17, 52:1,
77:16, 86:11,
86:20, 92:9,
92:11, 95:12,
117:19,
124:22,
132:11,
132:17,
172:6,
176:25,
181:14,
201:12,
251:18.
purpose 11:10,
51:22, 95:3,
172:16.
pursuant
15:17.
pursued
116:2.
pushed 252:2,
265:15.
put 4:11, 15:8,
16:17, 56:14,
57:8, 71:2,
72:15, 100:4,
110:24,
133:1, 133:9,
136:17,
144:15,
166:8, 184:8,
188:15,
199:6, 200:2,
204:2, 205:3,
226:11,
228:6, 229:9,
243:11,
243:14,
243:24.
puts 81:16.

putting 119:20,
119:21,
227:9.
< Q >.
qualifications
16:18,
56:15.
qualify
246:23.
qualities
246:24.
Que 180:9.
questioned
263:25.
questioning
6:22, 8:4,
13:11, 15:23,
47:22, 50:20,
57:1, 80:5,
121:10,
130:4, 131:4,
131:14,
223:14,
226:18,
228:24,
229:11,
264:5, 265:6,
266:9.
questionnaires
33:4, 33:5,
48:19,
58:17.
quick 44:9,
45:4, 57:20,
65:2, 126:2,
224:18.
quicker 66:2.
quickly 51:1.
quid 86:16.
quite 8:8,
46:6, 68:9,
105:1,
204:24,
228:21.
quo 86:17.
< R >.

race 109:2,
138:1,
141:16,
141:18,
141:23,
142:13,
142:23,
143:1,
144:12.
racial 108:18,
109:6, 120:5,
120:9, 138:2,
228:24.
radio 43:15,
128:16,
224:13,
264:22.
raise 14:14,
16:15, 33:2,
33:21, 46:17,
48:4, 56:11,
57:21.
raised 33:23,
35:3, 44:9,
44:22, 45:10,
46:5.
raising 159:14,
159:16.
Ramirez 19:19,
66:15,
173:24,
173:25,
178:3, 225:2,
225:15,
225:24,
226:19,
227:15,
228:13,
228:21,
229:18,
230:13,
263:21.
ran 112:10,
168:10,
199:11.
range 52:1,
77:16, 78:9,
87:11,
127:12,
146:23,

311

pro 78:8,
86:17.
Probably 6:18,
10:12, 35:16,
38:21, 39:4,
60:10, 68:21,
80:4, 85:9,
87:3, 109:20,
115:4, 120:6,
152:9,
158:21,
179:21,
192:9, 232:4,
232:22,
232:24,
235:23,
248:18,
261:3,
266:13.
Probation
12:11, 13:3,
17:6, 52:14,
52:25.
problems 4:10,
44:20, 77:13,
79:16, 99:8,
159:9,
159:12,
160:3, 168:3,
179:4,
179:15,
228:20,
228:23,
231:1, 231:2,
237:22,
262:19,
265:8.
procedure
222:21.
proceed 31:19,
68:7.
proceeding
3:16, 6:16,
6:21, 11:10,
32:3, 32:16,
61:9, 61:12,
124:8.
proceedings
7:3, 8:12,
9:6, 9:14,

11:22, 13:24,
34:22, 34:23,
49:15, 49:20,
50:15, 53:20,
162:4,
171:12,
172:22,
210:14,
268:10,
268:12,
268:16.
processing
151:9,
151:11.
produce
124:13.
production
169:25.
productive
235:24.
professional
15:3, 15:25,
57:15.
program
246:6.
programmed
204:21.
progressed
179:8.
progresses
77:9.
prohibit 9:4.
prohibited
8:19.
prohibitions
9:11.
project
92:16.
prolong
47:10.
prompt 128:5.
prone 205:10.
proof 32:21.
proper 127:1,
215:24,
232:24,
238:16,
246:8,
248:14.
property 59:21,

59:22,
137:12.
proportional
225:24.
proposing
46:7.
prosecuted
30:17, 126:5,
154:4.
prosecuting
11:5,
51:16.
prosecution
86:21.
prosecutions
192:14.
prosecutor
11:3,
192:19.
prosecutors
51:16,
192:20,
236:2.
prospect
172:10.
prospectively
133:21.
protect 5:9.
protection
137:13.
protector
194:24.
prove 61:17,
130:17.
proven 150:13,
171:9,
173:7.
provide 15:16,
86:21.
provided 69:2,
69:9.
proving 32:17,
61:11,
61:16.
pry 57:3.
prying
154:19.
psychiatrist
13:7, 53:4.
public 13:18,

310

214:14.
rank 178:20.
rate 106:19.
rates 117:2.
rather 60:19,
63:3, 79:17,
137:9, 152:7,
201:5, 232:4,
263:24.
reach 216:10.
read 12:18,
31:25, 33:5,
43:11, 93:12,
128:12,
142:10,
142:18,
146:3,
193:19,
195:6, 224:9,
264:18.
readily
229:10.
reading 10:8,
24:21, 84:19,
172:3,
236:18.
ready 9:22.
real 10:6,
16:9, 31:21,
44:8, 45:4,
57:20, 65:2,
135:24,
190:5,
224:18.
realistic
266:25.
realistically
200:9.
realize 33:7,
33:8, 34:22,
63:2, 102:3,
107:14,
115:2,
175:18,
230:7.
Really 4:6,
36:10, 44:1,
44:15, 57:13,
66:3, 79:25,
106:25,

133:22,
149:7,
158:13,
226:22,
232:5,
244:13,
248:8, 257:4,
259:13,
261:8,
263:5.
reason 15:2,
17:14, 33:22,
33:23, 33:24,
38:20, 44:15,
46:5, 46:6,
46:17, 62:7,
132:19,
132:20,
163:1,
196:25,
225:13,
226:14,
227:9,
228:13,
265:10.
reasonable
32:18, 61:12,
61:17, 130:8,
131:9,
150:14,
182:21,
182:22,
216:11.
reasoning
34:11.
reasons 45:10,
45:11, 46:9,
62:24,
266:16,
266:17.
recall 25:14,
35:4, 68:12,
68:17,
111:15,
120:7,
154:16,
231:20.
receive 31:19,
102:6, 145:6,
210:20,

228:17.
received 31:23,
180:14,
208:3,
210:22.
receives
101:19.
receiving
60:4.
recent
188:13.
recently 42:18,
123:6,
188:13.
recess 4:21,
6:3, 42:23,
43:4, 43:6,
43:19,
127:25,
128:7,
128:21,
128:23,
134:19,
224:2, 224:4,
224:17,
233:9,
233:11,
263:16,
264:13.
recognize
133:15.
recollection
130:4.
reconsidered
48:5.
record 3:5,
3:7, 4:22,
4:23, 5:9,
6:8, 6:9,
7:23, 20:5,
43:20, 48:14,
48:15,
128:22,
134:20,
134:21,
233:12,
233:14,
234:4, 234:6,
265:2, 265:9,
267:10,

312

268:15.
 recorded 7:2,
 268:13.
 records 17:3,
 17:15,
 146:8.
 recovered
 83:14.
 redeem
 246:24.
 redeemed
 244:12.
 redemption
 154:15,
 154:18,
 228:8.
 reduced
 59:22.
 refer 22:16.
 referred 43:10,
 128:11,
 224:8,
 264:17.
 Reffer 14:1,
 53:22.
 reflect 3:7,
 4:24, 6:9,
 48:15,
 134:22,
 233:14,
 234:6.
 regard 74:7,
 82:8, 109:9,
 225:15,
 229:11.
 regarded
 132:14.
 regarding
 123:23,
 164:22,
 185:8,
 240:5.
 Regardless
 125:5, 125:6,
 130:10,
 131:12,
 169:6,
 251:13.
 regular
 254:13.

regurgitation
 217:10.
 reject 78:2,
 88:8.
 related 118:21,
 121:11,
 149:18.
 relates
 57:16.
 relationship
 252:14.
 relative
 136:12.
 relatives
 121:25,
 136:12,
 192:11.
 release
 44:18.
 released
 122:17,
 122:21.
 relentless
 217:11.
 Religious
 154:21,
 183:7, 183:9,
 183:11,
 183:17,
 186:1,
 211:12.
 religiously
 186:18.
 relish 79:7.
 remain 197:8.
 remaining 48:2,
 202:3.
 remark
 132:13.
 remarks 130:2,
 132:8,
 224:21.
 Remember 24:20,
 83:9, 83:11,
 84:23, 85:20,
 85:22, 85:23,
 152:21,
 152:25,
 166:5,
 194:20,

194:21,
 196:21,
 199:16,
 199:17,
 199:18,
 203:17,
 204:1,
 204:18,
 204:20,
 205:23,
 206:1,
 212:17.
 remembering
 48:11.
 remembers
 200:7.
 reminds
 209:11.
 render
 184:16.
 Reno 13:8,
 14:4, 53:5,
 53:25.
 repeat 7:8,
 54:10.
 repentant
 244:12.
 repercussions
 211:3.
 rephrase 92:19,
 98:5, 164:18,
 233:21.
 report 7:10,
 43:11, 48:22,
 49:6, 65:8,
 123:13,
 128:12,
 224:9,
 264:18.
 REPORTED 1:42,
 7:2, 49:24.
 REPORTER 7:1,
 7:24, 49:22,
 268:2,
 268:7.
 REPORTER'S
 1:12.
 reporting
 179:6.
 represent 5:14,

313

30:7, 36:15,
 36:25, 37:1,
 37:14, 37:22,
 37:23, 39:25,
 40:25, 41:4,
 41:9, 41:16,
 42:3, 42:9,
 42:14, 111:9,
 134:16.
 nude 9:2.
 ruin 263:3.
 Ruis 135:2,
 135:4, 135:6,
 142:8,
 224:22,
 224:25,
 225:6,
 226:8.
 rule 68:4,
 202:19.
 rules 217:13,
 222:18,
 223:1,
 223:3.
 run 47:4, 47:7,
 47:9, 89:6,
 112:11,
 211:22.
 running 9:23,
 9:24.
 runs 98:22,
 162:11.
 rush 253:17.
 .
 < S >.
 Sackmary 18:2,
 36:15, 47:14,
 48:24.
 sad 129:12.
 safe 263:7.
 Salak 20:21,
 66:17,
 247:15,
 247:16,
 250:9,
 263:22.
 salvage
 244:16.
 San 136:23,

207:12,
 239:3.
 sane 240:13.
 Santa 85:3.
 sat 207:18.
 save 246:18.
 saving
 246:19.
 savings
 63:22.
 saw 27:17,
 48:11,
 188:12.
 Says 69:23,
 102:18,
 102:20,
 103:18,
 130:25,
 150:17,
 157:25,
 169:23,
 184:23,
 201:5,
 215:12,
 227:11,
 249:20,
 251:11,
 262:10,
 267:13.
 scared
 146:24.
 scenario
 104:7.
 scene 26:15,
 151:19,
 160:5,
 217:10.
 Schechter
 55:8.
 schedule
 39:19.
 scheduled 41:7,
 41:10, 41:18,
 41:19.
 scheduling
 38:22.
 Schick 54:2.
 school 26:11,
 64:20,
 121:13,

207:12,
 210:2,
 234:17,
 241:12.
 Scott 21:20,
 22:2,
 22:16.
 se 218:7.
 sealed 17:3,
 17:13,
 17:15.
 search 36:16,
 36:18, 48:10,
 178:13,
 238:19,
 238:20.
 Seat 31:18,
 66:11, 67:2,
 128:4,
 224:25.
 Seated 6:25,
 8:2, 8:9,
 15:13, 33:10,
 49:21, 50:7,
 50:12,
 56:18.
 seating
 264:10.
 seats 66:10,
 135:1.
 Second 14:17,
 28:8, 40:17,
 41:4, 54:16,
 65:20,
 106:22,
 117:3,
 231:17,
 257:7, 257:9,
 258:7,
 266:7.
 section
 185:7.
 seeing 146:14,
 152:10,
 155:17,
 194:21.
 seem 14:10,
 78:4, 232:15,
 238:12,
 257:23,

315

5:23, 10:6,
 51:2.
 representation
 265:3.
 representing
 116:16.
 request 66:7.
 requested
 36:9.
 required 89:22,
 202:18,
 213:1,
 246:12.
 requirement
 110:24,
 132:16.
 requirements
 69:6, 69:10,
 69:20,
 148:19,
 202:10,
 202:12,
 202:17,
 236:14.
 requires 64:16,
 88:14, 158:5,
 228:3.
 rescue
 178:13.
 resentment
 220:23.
 reservations
 158:4,
 247:24,
 247:25.
 reserved
 148:13,
 148:25.
 residency
 174:12.
 Resident
 174:10,
 217:25,
 218:5.
 resolution
 216:11,
 220:2.
 resolve
 114:13.
 resolved

235:9.
 resources
 64:16.
 respect 82:12,
 144:18,
 211:24,
 212:5, 213:9,
 246:15.
 responded
 120:6.
 responses
 225:24.
 responsibility
 79:18,
 159:22,
 217:20,
 235:20,
 245:13.
 rest 38:11,
 51:14,
 205:17,
 215:4,
 219:17.
 Restate
 92:21.
 restrained
 4:1.
 restrains
 3:24.
 restraints
 3:10, 3:11,
 3:14, 3:16,
 3:18, 3:21,
 3:22, 4:9.
 restroom 39:21,
 43:1.
 result 32:4,
 159:13,
 208:8.
 retail 64:8,
 137:19,
 143:5,
 143:10.
 retire
 250:24.
 Retired 12:23,
 52:21, 85:4,
 91:3, 250:9,
 250:12,
 251:6.

retirement
 250:14.
 return 89:13,
 141:11.
 revealing
 5:13.
 reversed 5:6.
 revoked
 188:9.
 ridicule
 205:10,
 205:18.
 ridiculous
 106:20.
 Rights
 215:20.
 rigid 228:2,
 266:4.
 Rius 22:9.
 River 162:11.
 rob 107:10.
 robbed 105:3,
 105:11,
 105:18.
 robbery 11:8,
 30:9, 51:20,
 59:13,
 188:25,
 189:13,
 190:2,
 190:3.
 Robert 21:25.
 role 10:14,
 66:8,
 246:8.
 roll 17:20,
 54:19.
 Rosales 14:2,
 53:23.
 Rosehill 19:11,
 23:11, 45:13,
 47:15,
 48:25.
 rough 109:13.
 route 72:25.
 row 14:16,
 14:17, 14:18,
 26:13, 26:19,
 27:2, 27:17,
 28:8, 29:22,

314

266:2.
 seemed 131:18,
 132:3, 258:5,
 266:8.
 seeming
 160:6.
 Seems 82:1,
 100:12,
 179:7, 182:7,
 182:14,
 266:11.
 seen 24:24,
 25:3, 103:9,
 144:16,
 146:23,
 159:19,
 263:10.
 select 52:2,
 103:21.
 selected 9:19,
 222:22.
 selecting
 33:10, 51:23,
 57:5,
 77:20.
 selection 6:18,
 8:16, 33:9,
 161:1.
 self 191:12.
 self-defense
 220:9.
 self-employed
 64:3.
 selling
 121:13.
 semblance
 227:13.
 send 34:2,
 34:4, 62:9.
 senior
 189:17.
 sense 176:18,
 210:13,
 225:17.
 sent 34:10,
 163:20.
 sentence 73:18,
 74:2, 81:20,
 89:13, 92:15,
 95:21,

101:15,
 101:18,
 102:5,
 122:18,
 132:15,
 140:12,
 154:25,
 166:8,
 166:16,
 175:13,
 202:2,
 203:24,
 228:3,
 244:11.
 sentences
 92:23, 92:25,
 103:23,
 154:2.
 sentencing
 11:11, 70:19,
 73:9, 73:10,
 155:24.
 Separate 40:14,
 45:7, 107:14,
 113:8,
 113:10,
 113:11,
 152:14,
 152:15,
 153:4, 169:2,
 209:13,
 216:7,
 230:7.
 separating
 45:18.
 sergeant
 178:21.
 serial 148:16,
 148:21.
 series 132:2.
 serious 13:12,
 34:23,
 121:25,
 247:8,
 260:3.
 serve 32:25,
 34:12, 34:24,
 35:25, 46:18,
 61:22, 61:25,
 62:25, 63:4,

63:10, 63:13,
 141:15,
 206:1, 249:8,
 256:18,
 257:22.
 served 52:5,
 256:8.
 serves 95:2,
 172:16.
 service 25:8,
 33:25, 37:25,
 46:3, 58:18,
 63:19, 163:9,
 178:6.
 services 18:13,
 18:20, 21:21,
 22:7, 33:11,
 34:1, 34:2,
 48:22, 62:8,
 63:20, 128:3,
 129:21.
 serving 33:6.
 set 78:17,
 86:19, 86:20,
 87:4, 88:22,
 206:4, 223:1,
 223:13,
 268:11.
 sets 98:23.
 setting 151:4,
 176:19,
 195:2,
 200:1.
 settle 116:12,
 214:21.
 settlement
 216:15.
 seventeen 48:7,
 56:10, 57:20,
 60:13.
 seventeen.
 47:19.
 Several 63:20,
 68:11,
 133:13,
 140:15,
 148:25,
 149:25,
 150:2, 196:8,
 241:23,

316

254:16,
265:12.
severe 101:1,
250:1,
250:4.
severed
142:20.
severing
92:2.
shake 49:25.
shaking 7:12.
shalt 183:4,
184:1,
185:17.
share 244:8.
sharing 77:3.
Sharon 1:42,
6:25, 7:7,
19:25, 49:22,
55:14,
268:25.
She'll 7:7,
7:8,
174:14.
sheet 215:12.
Sherry 12:20,
52:18.
shoddy 90:7.
shoot 36:7.
shooting 33:2,
228:15.
shop 143:16.
shoplifters
137:16,
143:6,
143:16.
shoplifting
60:4,
143:2.
short 10:6.
shortly
121:22.
shot 204:8,
226:25.
shouldn't
184:5,
186:10,
186:12,
186:19,
207:21.
show 150:2,
164:13,
249:17.
shown 71:22,
87:23,
155:14,
164:20.
shows 135:17,
135:25.
sibling 194:23,
197:23.
siblings
197:15,
197:24.
sic 40:8.
sick 152:10,
152:12.
side 96:15,
96:16,
113:13,
116:17,
116:18,
163:23,
168:18,
225:3,
231:25,
234:1, 243:3,
255:6.
sides 80:7,
84:12, 90:14,
96:15,
100:11,
101:24,
115:6,
117:22,
119:19,
124:11,
142:2, 161:5,
163:21,
165:8,
168:25,
172:22,
177:16,
195:22,
196:9,
200:13,
232:1, 232:2,
232:8, 234:2,
237:8,
239:16,
240:1,
253:25,
255:1.
significant
93:23,
200:11.
similar 111:14,
113:4,
119:7.
simply 31:5.
Simpson 12:20,
52:18.
single 36:22,
40:3, 41:2,
42:4,
42:17.
sister 29:15,
30:17, 60:3,
156:8,
168:10,
190:22,
190:23,
199:7,
251:25,
253:2.
sister-in-law
30:16,
154:8.
sit 16:8,
37:19, 83:23,
114:22,
117:10,
134:4,
141:23,
142:1, 151:3,
158:18,
170:20,
201:4,
226:15,
228:4,
264:2.
sites 36:21.
sitting 3:20,
8:21, 68:22,
78:15, 91:25,
95:11, 140:8,
161:1,
165:18,
171:11,
173:17,

317

117:15,
123:23,
132:14,
132:24,
152:5,
159:15,
171:6,
171:16,
175:4, 176:6,
176:16,
182:11,
189:12,
192:11,
199:20,
209:15,
211:13,
213:24,
218:6,
235:14.
sorts 146:25.
sought
111:22.
Sound 94:3.
sounded 84:16,
236:24.
sounding
211:13,
211:15.
sounds 93:25,
94:1, 122:21,
136:9,
257:16.
source 25:2,
64:19.
space 12:7,
213:4.
Spanish 67:9.
speaking 7:23,
50:6,
234:18.
special 13:18,
13:20, 53:14,
53:16,
109:10,
178:15,
254:23.
specific 82:6,
82:8, 109:2,
130:7,
142:25,
171:20.
specifically
72:2,
160:19.
specified
36:18,
36:21.
specify
136:16.
spectrum
100:13,
103:21.
speculating
266:15.
spend 231:17.
spending
252:16.
spent 190:24.
spill 12:1,
93:18,
220:20,
256:14.
spills 33:16,
61:23.
spoke 233:7,
239:5.
spoken 4:10,
24:12, 24:16,
58:10,
236:21.
spot 71:2,
75:5,
134:15.
spots 47:22.
Spring
188:20.
Sprosty 21:23,
47:18,
49:3.
squad 178:13.
Squires 19:7,
22:24, 45:11,
47:15,
48:25.
stabbed 226:25,
227:6.
stabbing
228:15.
stack 47:6.
Staff 6:24,

9:5, 36:7,
178:21.
staffing
231:2.
stage 3:18.
stairs 8:15.
Staley 55:12.
stance
211:13.
stand 16:14,
39:10, 39:14,
56:11, 67:2,
67:18,
126:21,
136:8,
254:19.
standard 75:22,
90:18,
130:17,
136:4,
150:8.
stands 51:25.
start 9:22,
14:16, 36:2,
47:23,
134:15,
135:4,
150:14,
249:14,
259:6.
started 14:13,
31:17, 39:2,
64:9, 128:1,
199:15,
210:17,
258:13.
starters
64:14.
starting 62:14,
117:12,
117:16,
173:10,
242:15.
stated 58:13,
206:19.
statement
180:23,
180:24,
221:25,
240:8,

319

180:19,
181:24,
182:1, 205:8,
206:7,
231:19,
232:11,
255:4, 255:5,
257:11.
situation
64:10, 70:13,
75:19, 75:25,
86:20, 93:16,
93:22,
111:20,
116:5,
125:19,
151:18,
165:19,
167:11,
167:25,
168:7,
188:23,
190:21,
197:25,
206:21,
217:16,
241:7,
244:15,
244:17,
244:23,
263:8.
situations
5:20, 83:5,
83:20,
146:16,
153:19,
167:14.
Six 33:15,
33:18, 34:6,
34:13, 36:1,
40:7, 42:21,
46:18, 62:5,
62:15, 63:13,
178:23,
199:16,
255:19.
sixteen 47:13,
47:20.
sixteenth
128:4.
slap 82:2.
slate 173:10.
sleep 109:11.
sleeping
126:14.
slightest
238:12,
238:14.
slippery
44:14.
slopes 44:14.
small 8:22,
36:4, 40:2,
44:12, 63:19,
204:24.
smile 103:9.
smirk 103:9.
Smith 12:20,
13:5, 19:3,
20:7, 26:14,
27:25, 50:4,
52:18, 53:2,
66:14, 66:16,
158:23,
161:20,
218:24,
218:25,
225:4, 226:3,
226:9,
230:15,
263:20.
smoothly
90:6.
snap 96:25,
97:1, 97:3.
Socialize
23:3.
socialized
24:3.
society
78:22.
soda 39:22.
soft 180:1.
sole 25:2,
64:14,
172:18.
solely 153:5.
solemnly 16:16,
56:13.
somehow 10:14,

318

24:15,
57:15.
sometime
168:12.
Sometimes
46:15, 47:10,
81:4, 82:1,
82:2, 112:15,
175:2,
205:12.
Somewhat 14:10,
57:2, 100:11,
239:8.
somewhere
26:16, 26:23,
27:14,
59:3.
son 27:5, 28:3,
28:19, 30:11,
42:6, 42:7,
42:18, 84:25,
93:15, 94:11,
94:14, 97:7,
98:11, 99:8,
115:25,
122:11,
187:2,
187:15,
187:19,
191:6, 195:7,
195:12,
195:20,
198:9, 241:7,
243:5,
245:25,
246:9,
247:7.
son-in-law
94:4,
98:18.
Sorry 38:1,
39:25, 42:16,
47:19, 71:9,
260:12.
sort 47:3,
68:15, 70:3,
114:17,
115:6,
116:23,
117:9,
242:15,
262:20.
statements
171:18,
266:19.
states
170:12.
statistics
261:18,
266:20.
Stay 39:16,
39:17, 67:25,
231:7,
267:8.
stayed 235:5.
Staying 182:10,
191:3,
231:3.
steal 123:8,
126:18,
144:8.
stealing
144:5.
Steamship
250:16,
250:17,
251:2.
stenographicall
y 268:13.
step 30:19,
160:12,
209:20,
213:20.
step-daughter
159:8,
164:12.
steps 215:24.
Steve 8:9,
50:12,
50:13.
stick 119:4.
Stio 55:16.
stipulate
44:18, 45:4,
47:6, 129:10,
129:15.
stole 105:18.
Stolen 59:21,
59:22,
60:4,
stop 39:9,

155:19,
244:14,
244:19.
stopped
244:25.
stopping
123:18.
story 163:23,
164:1.
straight
128:3.
straightens
235:24.
strange
151:4.
strangled
204:11.
street
192:16.
strenuously
57:6.
stretch
42:25.
strike 73:6,
206:12.
string
209:21.
strong 63:9,
110:17,
110:20,
110:22,
117:8,
118:10,
183:21,
185:19,
186:1,
220:19.
Strongly 155:4,
163:11,
178:25,
180:23,
203:10.
structure
149:1.
struggle
104:3.
stuck 37:10.
stuff 10:7,
60:8, 235:5,
241:13,
243:13,
247:11.
Styrofoam
39:22.
subject 43:9,
43:17,
128:10,
128:18,
224:7,
224:15,
264:16,
264:24.
submit 36:21,
265:20.
submitted
43:18,
128:19,
224:16,
264:25.
subpoena 40:15,
192:2.
subpoenaed
114:5.
Substance 80:1,
80:11, 83:13,
83:16, 93:14,
111:15,
112:20,
194:7,
262:17.
sudden 48:11.
sue 35:8.
sued 35:8,
249:1, 249:2,
256:21.
suffered
112:16.
suffering
228:15.
sufficiently
134:8,
230:11.
suggest 45:3.
suggesting
141:21.
suit 90:11.
sum 225:25.
summed 6:15,
49:14.
Sunga 21:14,

320

30:10, 47:18,
49:3.
supervisor
250:14.
support 4:7,
63:23,
192:12,
209:3, 210:8,
213:5,
217:12.
supported
207:19.
supporting
64:20.
supportive
208:24,
210:10.
supposed 41:22,
75:1, 124:14,
157:22.
surface
168:18.
surgery 37:15,
41:6.
surrounding
223:9.
sustain 72:1,
92:18, 132:5,
206:11.
sustained
82:7.
SWAT 239:2.
sway 210:17.
swear 16:14,
16:16, 50:8,
56:13.
sworn 5:3.
sympathetic
262:18,
262:19,
262:23.
sympathy
44:16.
synopsis
10:7.
system 15:19,
15:20, 35:2,
35:7, 35:11,
35:14, 78:5,
78:17, 78:25,

80:25, 81:1,
81:4, 81:12,
94:12, 94:13,
94:15, 99:9,
113:25,
116:13,
116:24,
129:13,
154:20,
160:15,
171:8, 180:1,
186:24,
234:20,
238:9.
< T >.
table 3:20,
69:15, 69:18,
76:6.
tactical
265:10,
267:11.
taken. 4:21,
43:19,
128:21,
134:19,
224:17,
233:11.
talked 72:16,
76:1, 86:11,
102:13,
102:14,
120:17,
122:14,
143:4, 176:4,
185:25,
201:2,
204:15,
207:20,
212:3, 241:7,
244:7,
245:24,
246:3.
Tamar 22:6,
54:23.
Tanya 12:19,
52:16.
target
112:13.

taste 86:8,
116:23,
242:19,
242:22.
taxes 109:20.
Taylor 18:8,
66:12, 83:1,
89:21,
263:19.
teach 24:2.
team 36:8.
Technically
46:11,
252:8.
teenagers
99:13.
television
43:14,
128:15,
224:12,
264:21.
tells 57:12,
127:11.
Templeton
21:25.
Temporary
195:18.
ten 143:11,
233:9.
tend 15:14,
57:10, 60:14,
97:19, 119:8,
119:11,
151:14,
165:1,
179:19,
198:11.
tendency
155:16,
155:19.
tends 143:1,
225:13.
Tentatively
41:18,
41:24.
term 11:20,
52:5, 159:16,
230:11.
terms 16:10,
39:6, 54:10,

321

today 6:19,
9:14, 15:9,
15:17, 18:14,
18:21, 20:6,
21:22, 22:8,
33:21, 34:4,
37:8, 41:18,
42:11, 48:20,
49:6, 62:6,
62:9, 62:15,
65:7, 65:9,
74:24, 121:3,
180:9, 227:6,
258:18,
258:23,
266:5.
together 23:4,
24:2, 24:3,
121:23,
126:16,
197:2,
209:21.
tomorrow 6:19,
9:14, 9:22,
34:5, 231:13,
263:18,
263:24,
264:5,
267:21.
took 157:10,
157:11,
194:23,
210:1.
tooth 86:12.
top 7:18,
36:15, 36:25,
96:25, 111:9,
134:16.
topics 80:5.
total 116:5.
touch 115:2.
touched
156:19.
touching 16:18,
56:15.
tough 185:21.
tougher
180:4.
toward 71:4,
201:7, 211:3,

252:23,
257:17.
towards 40:8,
92:6,
131:16.
town 190:16,
204:24,
207:9,
256:3.
track 8:6, 8:7,
50:10,
122:21,
160:7,
210:19.
traffic
162:11.
trafficker
238:15.
trafficking
26:10,
126:5.
trail 187:13,
217:11.
training
178:18.
TRAN 1:1.
trannie
37:11.
transaction
16:6.
transcribed
268:14.
TRANSCRIPT
1:12, 7:24.
transportation
42:11.
traumatic
209:6, 209:7,
219:18.
treat 212:14.
treated 17:12,
122:5,
123:20,
153:20,
160:9, 190:8,
212:15,
235:18,
235:20.
treatment
93:23,

113:22,
153:24.
trials 35:13,
146:11.
tried 11:6,
29:3, 180:11,
246:4.
tries 183:17.
triggers
168:23.
trouble 25:21,
69:22, 70:6,
188:14,
201:23.
True 164:2,
256:9, 257:1,
268:15.
truly 16:17,
56:14.
Trust 15:11,
33:8, 63:2,
143:11,
143:24,
144:7.
truth 88:20,
90:13,
164:4.
truthful
232:23.
Truthfully
74:25.
Try 7:9, 31:15,
34:7, 57:9,
96:20, 103:4,
103:7,
103:17,
104:6, 123:8,
127:25,
136:6, 137:8,
143:1, 176:8,
176:15,
177:6, 177:9,
177:13,
188:13,
211:15,
216:10,
231:13,
243:7, 246:1,
262:13.
Frying 33:22,

323

101:24,
116:2, 116:6,
117:23,
130:16,
131:7,
176:24,
234:2,
266:23,
266:25.
Terry 56:5.
testified
192:1, 192:3,
192:4.
testify 5:18,
8:6, 10:11,
51:4, 114:3,
146:15,
191:24,
192:2,
207:24,
219:21.
testifying
146:25.
testimony 12:4,
31:5, 31:24,
52:12, 60:15,
85:14, 94:16,
94:17, 98:14,
164:22,
197:5,
197:11,
198:12,
198:17,
238:3,
239:12,
254:18,
268:11,
268:15.
Tetonis 56:5,
64:23,
128:23.
Texas 175:24,
181:17,
222:14,
222:15,
227:16,
230:2.
Thanks 89:17,
215:7.
theft 28:11,

255:16.
theirs 103:4,
182:19.
themselves
10:5, 51:2,
54:10, 92:10,
114:13,
216:15.
theories
267:5.
thereafter
268:13.
therein
268:11.
Theus 19:21,
27:4, 66:15,
182:4,
193:13,
225:16,
225:25,
230:15,
263:21.
They'll 10:10,
31:20, 51:3,
229:22.
They've 99:25,
231:1.
thinking 86:18,
108:21,
110:12,
128:4,
167:10,
179:22,
187:4,
226:15,
233:6,
233:18,
233:25,
266:12.
thinks 44:4,
227:17,
230:4,
230:6.
third 14:18,
29:22,
49:7.
Thirteen 45:9,
241:2.
Thirty 93:11,
126:17.

thirty-three
48:2.
thirty-two
226:12.
Thomas 13:7,
53:4.
thou 183:4,
184:1,
185:17.
though 10:16,
14:9, 32:7,
44:16, 103:5,
127:8, 155:5,
158:3,
160:18,
165:7,
186:18,
220:11,
222:24,
222:25,
223:16.
thoughtful
266:21.
thoughts
94:23.
thousands
36:17.
threaten
143:2.
three 7:21,
45:4, 45:17,
98:7, 110:21,
136:15,
136:19,
185:10,
234:13.
throughout
10:2, 39:6.
throw 104:18,
133:1.
Thursday 38:24,
41:11.
Thursdays 39:3,
39:5.
tickets 60:7.
tie 126:16.
tired 182:6,
182:8.
Tod 14:3,
53:24.

322

39:14, 54:17,
62:18, 62:21,
62:22, 66:4,
79:15, 97:23,
100:6,
102:16,
237:19.
Tuesday
42:12.
Tuesdays 39:3,
39:5.
turn 37:25,
38:4, 38:11,
118:24,
225:23,
242:15.
turned 114:18,
119:3,
242:12.
Turner 12:20,
52:18.
TV 24:24,
135:16,
135:25,
137:7.
Twelve 44:25,
92:2, 139:1,
158:19,
173:18,
181:25,
206:8.
Twenty-five
243:18.
Two 26:9,
30:15, 37:21,
40:13, 40:14,
80:5, 118:20,
121:10,
126:14,
133:17,
135:1,
159:14,
163:21,
168:11,
182:10,
194:22,
195:20,
197:14,
197:24,
232:1,

244:21,
257:9,
257:19,
259:22,
260:17,
262:3,
265:12,
265:16,
266:14.
two-and-a-half
250:21.
two. 34:9,
62:21,
64:4.
tying 249:21.
Type 15:21,
15:22, 26:2,
34:23, 36:9,
50:1, 63:5,
71:4, 106:4,
133:21,
169:23,
227:25,
229:21,
250:15,
256:10,
267:2.
types 15:18,
27:6, 126:24,
155:17,
262:19.
< U >.
ultimately
57:10.
unable 5:5,
141:18,
154:25,
155:3.
Unacceptable
71:21,
72:14.
uncle 27:19,
58:23,
206:20,
210:20,
216:17,
216:25,
254:6.

uncomfortable
67:3, 75:9,
78:20,
150:19,
165:21,
166:15,
172:12,
248:8.
undercover
85:3.
underlined
166:9.
underneath
203:18,
205:9.
undersigned
268:7.
understandable
31:16.
understanding
35:12, 67:14,
135:24,
167:25.
understood
130:21,
140:21,
193:19,
251:10.
undo 35:25,
61:21, 61:25,
63:13.
undue 32:25,
46:5.
unequivocally
73:1.
unfair 176:17,
210:14,
220:20,
261:4.
unfortunate
216:16,
241:6.
Unfortunately
54:12, 79:5,
79:6, 143:8,
143:17,
158:11,
158:12,
249:17.
Unless 39:13,

324

60:9, 82:5,
101:1, 129:9,
188:6.
unlikely
96:25.
unnecessarily
57:3.
unpopular
205:17.
until 6:3,
37:10, 43:18,
76:10,
103:16,
128:19,
138:13,
139:3,
165:11,
171:9, 173:7,
212:8,
212:14,
213:17,
224:16,
228:4,
230:22,
231:8,
250:14,
254:23,
259:14,
259:18,
264:25.
Urnst 12:21,
52:19.
Utah 154:7.
.
< V >.
valley 63:20,
63:24.
Van 180:9.
Vancouver
41:19,
41:23.
variety 8:11,
62:17,
228:23.
Vegas 3:1,
40:21, 59:25,
63:20, 146:5,
157:17,
195:10,

241:1,
250:21.
vehicle 105:3,
105:21.
verdict 9:7,
15:15, 57:10,
78:12, 89:14,
89:15, 89:16,
127:1,
141:12,
150:17,
153:9,
153:12,
175:14,
186:15,
248:16.
versus 3:6,
6:9, 48:15,
49:16, 96:15,
97:15,
134:21,
150:9,
225:20,
233:13,
234:5.
veteran
229:20.
victim 12:13,
29:8, 52:7,
101:21,
102:1,
104:25,
108:18,
116:1, 120:4,
120:8, 123:5,
151:15,
155:16,
192:1,
194:10,
205:4,
206:17,
220:25,
221:3, 227:1,
228:19,
241:22,
249:4,
255:13,
255:21,
257:8.
victimized

25:13.
victims 35:5,
146:14,
146:24.
Victor 17:25.
views 186:1,
267:3.
violation
216:3.
violence 29:3,
29:14, 71:13,
71:16, 71:20,
71:23, 72:4,
72:7, 72:13,
80:2, 113:16,
118:17,
119:8,
119:25,
133:4,
146:15,
146:23,
151:9, 168:3,
179:1, 179:4,
179:10,
179:12,
179:19,
203:6, 203:8,
252:9.
violent 151:14,
189:14,
219:3.
visit 99:2,
217:5,
217:15,
235:14,
254:11.
voice 118:7.
void 36:23.
volunteer
162:14,
162:15.
volunteered
122:4.
volunteers
162:7,
162:10.
vote 95:21,
100:23,
130:14,
131:11,

211:4.
whenever
4:12.
Whichever
125:7.
White 20:25,
29:12,
251:23,
254:5,
263:23.
whole 16:13,
60:9, 151:5,
197:3,
201:17,
217:10,
217:11,
232:20,
263:4.
Wichner 12:22,
52:20.
wife 36:8,
64:20,
147:11,
159:21,
181:1,
234:15,
243:12.
William 13:4,
14:4, 53:1,
53:25.
Williams 13:2,
52:24.
willing 32:6,
34:24, 46:18,
63:4, 76:9,
76:24, 76:25,
77:7, 88:10,
88:12, 88:25,
103:3,
104:17,
104:21,
104:22,
110:3, 139:2,
172:21,
217:13,
259:14,
261:22.
Willy 13:25,
53:21.
Winchells 13:2,

52:24.
wish 43:1,
47:21, 54:7,
63:8, 63:9,
74:25, 107:3,
212:4, 213:9,
255:25.
wishful
128:4.
withhold
57:9.
within 45:20.
Without 5:12,
11:18, 34:24,
43:8, 43:14,
52:3, 73:24,
74:7, 76:14,
128:9,
128:15,
133:25,
140:23,
152:25,
174:21,
182:21,
210:25,
224:6,
224:12,
229:10,
246:1,
257:17,
261:4,
264:15,
264:21,
265:16,
266:6.
witness 10:12,
13:6, 39:10,
39:11, 40:15,
53:3, 94:20,
112:24,
207:3, 219:3,
219:8.
witnessed
157:1.
witnesses 5:4,
5:5, 5:6,
5:18, 8:5,
10:11, 10:20,
10:23, 12:17,
13:23, 24:12,

31:20, 43:9,
51:3, 51:4,
51:8, 52:15,
53:19, 54:11,
58:10, 67:17,
128:10,
224:7,
264:16.
wonder 57:13.
wandered
109:11.
word 166:4.
words 213:6.
worked 12:13,
12:15, 31:2,
36:22, 52:15,
93:9, 114:15,
144:3,
161:23,
244:4,
251:3.
working 23:15,
36:20, 40:7,
64:3, 64:19,
137:18,
195:21,
241:18,
241:19.
works 35:12,
50:19, 62:23,
63:23, 94:5,
94:15, 174:9,
181:1.
world 63:7,
97:17.
worry 89:11.
worst 97:16.
worth 126:17,
198:17.
wrestles
242:13,
242:14.
wrist 82:2.
write 31:14,
206:4,
235:14,
249:15.
writing 182:14,
204:1,
204:20.

325

327

140:17,
140:18,
140:20,
140:22,
140:23,
161:10,
171:25,
174:21,
182:21,
182:22,
205:22,
212:25,
226:23,
227:3, 228:5,
229:3, 229:6,
230:1,
232:12,
236:24,
251:12,
266:1.
voted 180:20.
voting
201:23.
vs 1:15.
.
< W >.
waist 3:10,
3:11, 3:13,
3:16, 3:22.
wait 76:9,
88:23,
103:15,
138:12,
254:23,
259:14,
259:18,
260:11,
260:14,
260:16.
waiting 29:3,
109:20,
187:15.
walked
128:23.
walking 3:19.
wanted 5:3,
5:9, 5:15,
5:24, 33:3,
117:7, 123:7,

191:14,
257:22,
261:10,
265:2.
wanting 218:18,
266:20.
wants 196:12,
200:24,
230:24,
265:5.
Ware 21:4.
warrant
150:4.
Washington
21:8.
watch 42:6,
43:11,
128:12,
135:16,
162:4, 224:9,
243:10,
264:18.
watched
208:7.
watching
151:13.
water 39:22.
weapon 11:8,
11:9, 51:20,
51:21, 68:24,
106:2,
117:11.
wedding 36:5,
36:6.
Wednesday 36:5,
39:4, 41:24,
42:12.
week 11:25,
12:1, 12:2,
33:16, 40:7,
41:12, 61:24,
62:10, 62:15,
68:10,
188:13,
228:4, 258:2,
258:4, 258:9,
258:14,
258:18,
259:8, 265:7,
265:22.

weekend
239:6.
weeks 37:21,
208:20.
weigh 85:14,
92:6, 104:17,
255:1.
weighing
211:25.
weight 31:4,
60:14, 70:17,
84:8, 88:9,
88:17, 98:13,
110:24,
127:18,
130:10,
132:16,
133:22,
164:22,
198:11,
198:18,
238:3,
239:11,
254:18.
Welcome 6:12,
9:1, 49:11.
Wells 55:20,
63:18,
65:5.
Wendelina
21:14.
Whatever 3:24,
4:7, 34:5,
35:9, 38:23,
62:6, 62:10,
74:9, 74:10,
75:22, 84:9,
107:21,
127:18,
153:4,
157:25,
163:1,
198:17,
215:16,
226:25,
227:11,
230:24.
whatsoever
81:1, 85:13,
207:5,

Wroblewski
22:4.
wrote 81:5,
100:10,
123:3,
142:11,
142:17,
144:21,
154:14,
160:21,
171:5, 171:8,
171:15,
171:17,
174:1,
174:15,
194:5,
203:18,
204:18,
205:2,
205:22,
206:2, 236:9,
240:5, 253:1,
253:5,
253:13,
261:17.
Wyoming 28:4.
.
< Y >.
year 36:13,
174:14,
243:18,
251:25,
254:12.
Years 3:16,
11:19, 11:20,
11:21, 17:7,
29:14, 36:20,
36:22, 52:4,
52:5, 52:6,
64:15, 93:11,
106:12,
143:11,
168:11,
178:23,
185:20,
191:1,
194:15,
194:21,
197:12,

207:1, 241:2,
241:23,
250:21,
262:5.
York 17:4,
41:11.
young 195:2,
195:3,
234:13,
252:6.
younger 194:21,
194:23,
197:15,
197:24.
yourself 7:8,
7:25, 31:1,
50:5, 81:21,
123:5,
183:13,
205:13.
yourselves
43:7, 93:18,
128:8, 224:5,
264:14.
Youth 188:22.
.
< Z >.
zones 26:11,
121:13.

326

328

EXHIBIT 156

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 49478

JAMES M. CHAPPELL

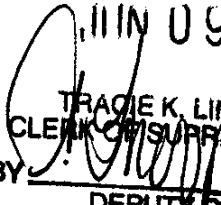
Appellant,

vs.

THE STATE OF NEVADA

Respondent.

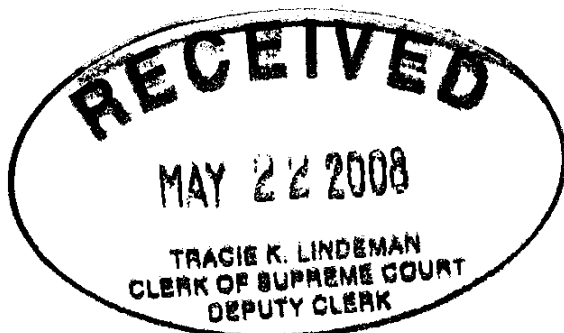
FILED

MAY 09 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

Appeal from a Judgment of Conviction and Sentence of Death
Eighth Judicial District Court, Clark County
The Honorable Douglas Herndon, District Judge

APPELLANT'S OPENING BRIEF

David M. Schieck
Special Public Defender
JoNell Thomas
Deputy Special Public Defender
330 South Third Street, 8th Floor
Las Vegas, NV 89155
Attorneys for James M. Chappell



08-12894

AA04014

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 49478

JAMES M. CHAPPELL

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

**Appeal from a Judgment of Conviction and Sentence of Death
Eighth Judicial District Court, Clark County
The Honorable Douglas Herndon, District Judge**

APPELLANT'S OPENING BRIEF

David M. Schieck
Special Public Defender
JoNell Thomas
Deputy Special Public Defender
330 South Third Street, 8th Floor
Las Vegas, NV 89155
Attorneys for James M. Chappell

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

TABLE OF CONTENTS

I. Introduction 1

II. Statement of the Case 1

III. Statement of the Issues 1

IV. Procedural History 2

V. Statement of Facts 7

VI. Argument 32

 A. Chappell's Conviction For First Degree Murder Must Be Reversed Because
 The Jury Was Not Properly Instructed On The Elements Of The Capital
 Offense 32

 B. Chappell's Conviction For First Degree Murder Must Be Reversed Because
 The Jury Was Not Properly Instructed On The Elements Of Felony Murder ... 35

 C. Chappell's Sentence of Death Must Be Vacated Because NRS 177.055(3) Is
 Unconstitutional 36

 D. Chappell Was Entitled To Review By The District Attorney's Death Review
 Committee 38

 E. Chappell's Death Sentence Is Unconstitutional Because of the Trial Court
 Failed to Dismiss Jurors For Cause Who Would Always Impose A Sentence
 of Death 39

 F. Chappell's Conviction Is Unconstitutional Because The State Was Permitted
 To Introduce Unreliable Hearsay Evidence During The Penalty Hearing In
 Support of The Aggravating Circumstance and as Other Matter Evidence 45

 G. The District Court Erroneously Admitted Presentence Investigation Reports

 H. The District Court Allowed Improper Victim Impact Testimony

 I. The District Court Erred In Allowing Admission of Chappell's Prior
 Testimony

 J. The State Committed Prosecutorial Misconduct By Making Arguments Based
 Upon Comparative Worth Arguments

 K. The State Committed Extensive Prosecutorial Misconduct

 L. The District Court Failed To Instruct The Jury That The State Was Required
 To Establish Beyond On Beyond a Reasonable Doubt That Mitigating
 Circumstances Did Not Outweigh Aggravating Circumstances

1	M.	The Jury's Failure to Find Mitigating Circumstances Was Clearly Erroneous and Requires That the Death Sentence Be Vacated	
2			
3	N.	There Is Insufficient Evidence To Support The Sexual Assault Aggravator	
4	O.	The Sexual Assault Aggravating Circumstance Is Invalid Under McConnell v. State	
5	P.	The Judgment Must Be Reversed Because of Cumulative Error	
6			
7	VII.	Conclusion	80
8		Certificate of Compliance	81
9		Certificate of Mailing	82
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Case Authority

Adams v. Texas, 448 U.S. 38, 45 (1980)	44
Antwine v. Delo, 54 F.3d 1357, 1371 (8th Cir. 1995)	67
Apprendi v. New Jersey, 530 U.S. 466, 483 (2000)	72
Archanian v. State, 145 P.3d 1008, 1015 (Nev. 2006)	62, 71, 72
Arizona v. California, 460 U.S. 605, 618 n.8 (1983)	34, 35
Atkins v. Virginia, 536 U.S. 304, 311 (2003)	39
Barclay v. Florida, 463 U.S. 939, 960 (1983)	37
Barefoot v. Estelle, 463 U.S. 880, 898-03 (1983)	49
Berger v. U.S., 295 U.S. 78	64, 66
Berman v. U.S., 302 U.S. 211, 212 (1937)	32, 35
Blakely v. Washington, 542 U.S. 296 (2004)	70, 71
Bolden v. State, 124 P.3d 191 (Nev. 2005)	35
Bradley v. State, 109 Nev. 1090, 1094, 864 P.2d 1272, 1275 (1993)	33
Buchanan v. Angelone, 522 U.S. 269, 277 (1998)	67
Bullington v. Missouri, 451 U.S. 430, 446 (1981).	49
Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)	4, 33, 34, 56
Caballero v. Seventh Judicial Dist. Court, 167 P.3d 415, 419 n.21 (Nev. 2007)	50
Cabana v. Bullock, 474 U.S. 376, 388 n.5 (1986)	38
Caldwell v. Mississippi, 472 U.S. 320, 330 (1985)	38, 62, 67
California v. Brown, 479 U.S. 538, 545(1987)	61
Chambers v. Mississippi, 410 U.S. 284 (1973)	80
Chambers v. State, 113 Nev. 974, 983, 944 P.2d 805 (1997)	75
Chapman v. California, 386 U.S. 18 (1967)	35
Chappell v. Nevada, 528 U.S. 853 (1999)	4
Chappell v. State, 114 Nev. 1403, 972 P.2d 838 (1998)	3, 4, 36, 37

1	Clemons v. Mississippi, 494 U.S. 738, 749 (1990)	38
2	Coleman v. State, 111 Nev. 657, 662-63, 895 P.2d 653, 657 (1995)	65
3	Crawford v. Washington, 541 U.S. 36, 54 (2004)	47
4	Cristy v. Horn, 28 F.Supp.2d 307, 318-19 (W.D. Pa. 1998)	68
5	Darden v. Wainwright, 477 U.S. 168, 168 (1986)	67
6	Depew v. Anderson, 311 F.3d 742, 749 (6th Cir. 2002)	67
7	Doyle v. Ohio, 426 U.S. 610 (1976)	65
8	Doyle v. State, 116 Nev. 148, 157, 995 P.2d 465, 471 (2000)	32, 35
9	D'Agostino v. State, 107 Nev. 1001, 1003-04, 823 P.2d 283, 285 (1991)	50
10	Eddings v. Oklahoma, 455 U.S. 104 (1982)	73
11	Emmons v. State, 107 Nev. 53, 62, 807 P.2d 718, 724 (1991)	54
12	Evans v. State, 598 N.E.2d 516, 519 (Ind. 1992)	74
13	Ficklin v. Hatcher, 177 F.3d 1147, 1152 (9th Cir. 1999)	35
14	Floyd v. State, 118 Nev. 156, 42 P.3d 249 (2002)	52, 54, 55, 70
15	Furman v. Georgia, 408 U.S. 238 (1972)	37, 78
16	Gallego v. State, 117 Nev. 348, 369, 23 P.3d 227, 241 (2001)	49
17	Garner v. State, 116 Nev. 770, 788-89, 6 P.3d 1013, 1025 (2000)	5, 33
18	Gregg v. Georgia, 428 U.S. 153, 158 (1976)	62, 78
19	Griffith v. Kentucky, 479 U.S. 314, 321 n.6 (1987)	32, 35
20	Hall v. Catoe, 601 S.E.2d 335, 340-41 (S.C. 2004)	63
21	Hardaway v. State, 112 Nev. 1208, 1211, 926 P.2d 288, 290 (1996)	76
22	Hardison v. State, 104 Nev. 530, 763 P.2d 52 (1988)	54
23	Harris v. Blodgett, 853 F.Supp. 1239, 1287-91 (W.D. Wash. 1994)	38
24	Harrison v. U.S., 392 U.S. 219, 222 (1968)	56
25	Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000)	54
26	Herman v. State, 122 Nev. ___, 128 P.3d 469 (2006)	51
27	Hicks v. Oklahoma, 447 U.S. 343 (1980)	50
28	Hitchcock v. Dugger, 481 U.S. 393 (1987)	73

1	In re Winship, 397 U.S. 358, 361-63 (1970)	34, 75
2	Irvin v. Dowd, 366 U.S. 717, 722 (1961)	44
3	Johnson v. Mississippi, 486 U.S. 578, 584-85 (1988)	61
4	Johnson v. State 118 Nev. 787, 803-04, 59 P.3d 450, 461 (2002) ..	32, 35, 37, 62, 71-72
5	Johnson v. State, 148 P.3d 767, 773 (2006)	49
6	Kaczmarek v. State, 120 Nev. 314, 339, 91 P.3d 16, 33 (2004)	52, 54
7	Laird v. Horn, 414 F.3d 419, 425-28 (3rd Cir. 2005)	33
8	Lane v. State, 110 Nev. 1156, 1166, 881 P.2d 1358, 1365 (1994)	55
9	Lara v. Ryan, 455 F.3d 1080, 1085-1086 (9th Cir. 2006)	35
10	Leonard v. State, 114 Nev. 1196, 1214, 969 P.2d 288, 289 (1998)	49
11	Lesko v. Lehman, 925 F.2d 1527, 1545-46 (3d Cir. 1991)	70
12	Leslie v. Warden, 118 Nev. 773, 780, 59 P.3d 440, 445 (2002)	34, 35
13	Lewis v. Jeffers, 497 U.S. 764, 774 (1990)	37
14	Lockett v. Ohio, 438 U.S. 586, 601 (1978)	62, 63, 67
15	Lowenfield v. Phelps, 484 U.S. 231, 241-46 (1988)	79
16	Magwood v. Smith, 791 F.2d 1438, 1449-50 (11th Cir. 1986)	74
17	Mason v. State, 118 Nev. 554, 561-62, 51 P.3d 525 (2002)	53
18	McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004)	5, 53, 77-79
19	McKoy v. North Carolina, 494 U.S. 433, 444 (1990)	63
20	Miller v. Lockhart, 65 F.3d 676, 684 (8th Cir. 1995)	68
21	Mills v. Maryland, 486 U.S. 367, 375 (1988)	63
22	Montana v. Egelhoff, 518 U.S. 37, 53 (1996)	80
23	NAACP v. Alabama, 357 U.S. 449, 456-58 (1958)	38
24	Nay v. State, 167 P.3d 430 (Nev. 2007)	35, 36
25	Neder v. U.S., 527 U.S. 1 (1999)	35
26	Nibert v. State, 574 So.2d 1059, 1062 (Fla. 1990)	74
27	Ortega-Rodriguez v. U.S., 507 U.S. 234, 246-49 (1993)	38
28	Oyler v. Boles, 368 U.S. 448, 456 (1962)	39

1	Parker v. Dugger, 498 U.S. 308 (1991)	73
2	Payne v. Tennessee, 501 U.S. 808 (1991)	54, 55, 59-61
3	Penry v. Lynaugh, 492 U.S. 302 (1989)	73
4	People v. Payne, 187 A.D.2d 245, 248 (N.Y. App. Div. 1993)	68
5	Peterkin v. Horn, 176 F.Supp.2d 342, 372-73 (E.D. Pa. 2001)	70
6	Pointer v. Texas, 380 U.S. 400, 405 (1965)	48
7	Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007)	33
8	Presnell v. Zant, 959 F.2d 1524, 1529-31 (11th Cir. 1992)	70
9	Proffitt v. Wainwright, 685 F.2d 1227, 1253-54 (11th Cir. 1982)	48, 49
10	Ring v. Arizona, 536 U.S. 584, 589, 609 (2002)	72
11	Rodgers v. State, 948 So.2d 655, 663 (Fla. 2007)	49
12	Roper v. Simmons, 543 U.S. 551, 594 (2005)	39
13	Ross v. Oklahoma, 487 U.S. 81, 85 (1988)	45
14	Russeau v. State, 171 S.W.3d 871 (Tex. Crim. App. 2005)	49
15	Salinger v. U.S., 272 U.S. 542, 548 (1926)	47
16	Sanders v. State, 585 A.2d 117, 134 (Del. 1990)	75
17	Second, Gardner v. Florida, 430 U.S. 349 (1977)	48
18	Sochor v. Florida, 504 U.S. 527, 539 (1992)	37
19	Specht v. Patterson, 386 U.S. 605 (1967)	49
20	State v. Bell, 603 S.E.2d 93, 115-116	49
21	State v. Gallion, 654 N.W.2d 446, 454 (Wis. Ct. App. 2002)	63
22	State v. Kirkley, 302 S.E.2d 144, 158	74
23	State v. Koskovich, 776 A.2d 144, 182 (N.J. 2001)	63
24	State v. McGill, 140 P.3d 930 (Ariz. 2006)	49
25	State v. Muhammad, 678 A.2d 164, 179 (N.J. 1996)	63
26	State v. Storey, 901 S.W.2d 886, 902 (Mo. 1995)	62, 63
27	State v. Thompson, 65 P.3d 420, 425-29 (Ariz. 2003)	33
28	Strickland v. Washington, 466 U.S. 668 (1984)	56

1	Stringer v. Black, 503 U.S. 222, 232 (1992)	75
2	Stromberg v. California, 283 U.S. 359 (1931)	35, 36
3	Sullivan v. Louisiana, 508 U.S. 275, 281-282 (1993)	72
4	Summers v. State, 148 P.3d 778, 782 (Nev. 2006)	48, 49
5	Tennessee v. Street, 471 U.S. 409, 415 (1985)	48
6	Thomas v. State, 148 P.3d 727, 733-34 (2006)	49
7	Thomas v. State, 83 P.3d 818, 826 (Nev. 2004)	70
8	Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007)	34, 35
9	Tucker v. Zant, 724 F.2d 882, 889 (11th Cir. 1984)	68
10	U.S. v. Agurs, 427 U.S. 97, 110-11 (1976)	67
11	U.S. v. Armstrong, 517 U.S. 456, 464 (1996)	39
12	U.S. v. Brown, 441 F.3d 1330, 1361 (11th Cir. 2006)	49
13	U.S. v. Drummond, 481 F.2d 62, 64 (2d Cir. 1973)	68
14	U.S. v. Gonzalez, 488 F.2d 833, 836 (2d Cir. 1973)	68
15	U.S. v. Johnson, 378 F.Supp.2d 1051, 1059-62 (N.D. Iowa 2005)	49
16	U.S. v. Jordan, 357 F.Supp.2d 880 (E.D. Va. 2005)	49
17	U.S. v. Leon-Reyes, 177 F.3d 816, 821 (9th Cir. 1999)	64
18	U.S. v. Mills, 446 F.Supp.2d 1115, 1135 (C.D. Cal. 2006)	49
19	U.S. v. Pelullo, 105 F.3d 117, 125 (3d Cir. 1997)	56
20	U.S. v. Reid, 53 U.S. 361, 364-65 (1851)	47
21	Viereck v. U.S., 318 U.S. 236, 247-48 (1943)	64
22	Wainwright v. Witt, 469 U.S. 412 (1985)	44
23	Wesley v. State, 112 Nev. 503, 519-20, 916 P.2d 793, 804 (1996)	55
24	Whitfield v. State, 107 S.W.2d 253, 259 (Mo. 2003)	72
25	Williams v. New York, 337 U.S. 241 (1949)	48, 49
26	Woldt v. People, 64 P.3d 256, 265 (Colo. 2003)	72
27	Woodson v. North Carolina, 428 U.S. 280, 301 (1976)	39
28	Zant v. Stephens, 462 U.S. 862 875-76, 890 (1983)	38, 79

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

Statutory Authority

NRS 47.130(a) 50

NRS 175.156(5) 51

NRS 175.552 54

NRS 176.035(1) 35

NRS 176.105 32, 35

NRS 177.055(3) 36-38

NRS 200.030 33

NRS 200.030(4) 71

NRS 200.035 70

Other Authority

Capital Sentencing, 54 Ala. L. Rev. 1091, 1126-27, 1129 n.214 (2003) 72

Richard A. Rosen, Felony Murder and the Eighth Amendment Jurisprudence of Death,
31 B.C.L. Rev. 1103, 1124 (1990) 78

Tipping the Scales: Seeking Death Through Comparative Value Arguments,
63 Wash. & Lee L. Rev. 379 (2006) 63

1 **I. INTRODUCTION**

2 In this capital case, Appellant James Chappell challenges the constitutionality of his
3 sentence of death, which occurred as the result of a second penalty phase trial which
4 followed a finding of ineffective assistance of counsel for the penalty phase of his first trial.
5 Chappell was convicted of murdering his long-time girlfriend, who was also the mother of
6 his three children. The only aggravating circumstance for the second penalty phase trial was
7 murder committed during the perpetration of a sexual assault. As there was insufficient
8 evidence to establish this aggravating circumstance, the sentence of death must be vacated
9 and a sentence less than death imposed. In the alternative, Chappell is entitled to a new
10 penalty hearing because of the substantial constitutional violations which occurred during
11 the penalty trial. Finally, this Court should revisit two issues previously considered
12 concerning the guilt phase of Chappell's trial based upon new authority which establishes
13 that this Court's prior rulings were erroneous.

14 **II. STATEMENT OF THE CASE**

15 This is a direct appeal from a judgment of conviction, pursuant to a jury verdict,
16 imposing a sentence of death based upon a conviction for one count of first degree murder.

17 **III. STATEMENT OF THE ISSUES**

- 18 A. Whether Chappell's Conviction For First Degree Murder Must Be Reversed Because
19 The Jury Was Not Properly Instructed On The Elements Of The Capital Offense
- 20 B. Whether Chappell's Conviction For First Degree Murder Must Be Reversed Because
21 The Jury Was Not Properly Instructed On The Elements Of Felony Murder
- 22 C. Whether Chappell's Sentence of Death Must Be Vacated Because NRS 177.055(3)
23 Is Unconstitutional
- 24 D. Whether Chappell Was Entitled To Review By The District Attorney's Death Review
25 Committee
- 26 E. Whether Chappell's Death Sentence Is Unconstitutional Because of the Trial Court
27 Failed to Dismiss Jurors For Cause Who Would Always Impose A Sentence of Death
- 28 F. Whether Chappell's Conviction Is Unconstitutional Because The State Was Permitted
To Introduce Unreliable Hearsay Evidence During The Penalty Hearing In Support
of The Aggravating Circumstance and as Other Matter Evidence
- G. Whether The District Court Erroneously Admitted Presentence Investigation Reports

- 1 H. Whether The District Court Allowed Improper Victim Impact Testimony
2 I. Whether The District Court Erred In Allowing Admission of Chappell's Prior
3 Testimony
4 J. Whether The State Committed Prosecutorial Misconduct By Making Arguments
5 Based Upon Comparative Worth Arguments
6 K. Whether The State Committed Extensive Prosecutorial Misconduct
7 L. Whether The District Court Failed To Instruct The Jury That The State Was Required
8 To Establish Beyond On Beyond a Reasonable Doubt That Mitigating Circumstances
9 Did Not Outweigh Aggravating Circumstances
10 M. Whether The Jury's Failure to Find Mitigating Circumstances Was Clearly Erroneous
11 and Requires That the Death Sentence Be Vacated
12 N. Whether There Is Insufficient Evidence To Support The Sexual Assault Aggravator
13 O. Whether The Sexual Assault Aggravating Circumstance Is Invalid Under McConnell
14 v. State
15 P. Whether The Judgment Must Be Reversed Because of Cumulative Error.

16 **IV. PROCEDURAL HISTORY**

17 Appellant James Chappell was charged, on October 11, 1995, via Information with
18 one count each of burglary, robbery with use of a deadly weapon, and open murder with use
19 of a deadly weapon. I ROA 38. The State based its murder charge on alternative theories
20 of felony murder and premeditated and deliberate murder. I ROA 39. On November 8,
21 1995, the State filed its Notice of Intent to Seek Death Penalty. I ROA 44. It charged
22 aggravating circumstances of murder in the course of a robbery, murder in the course of a
23 burglary, murder while the person was engaged in sexual assault or the attempt thereof, and
24 torture or depravity of mind. I ROA 44-45. Prior to trial, Chappell filed a motion to dismiss
25 several of the aggravating circumstances. I ROA 250. He argued in part that the aggravating
26 circumstance of sexual assault should be dismissed because Chappell was not charged with
27 sexual assault and no evidence was presented during the preliminary hearing that would
28 support the aggravating circumstance. I ROA 256. The State opposed the motion, but did
not address the sexual assault issue. II ROA 309-19. The Court denied the motion.

The jury trial began on October 8, 1996, and was presided over by the Honorable A.
William Maupin. II ROA 355. The jury was instructed on theories of premeditated murder

1 and felony murder. VII ROA 1703, 1721, 1722. The premeditation instruction informed the
2 jury that “[p]remeditation need not be for a day, an hour or even a minute. It may be as
3 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
4 that the act constituting the killing as been preceded by and has been the result of
5 premeditation, no matter how rapidly the premeditation is followed by the act constituting
6 the killing, it is willful, deliberate and premeditated murder.” VII ROA 1722. The jury was
7 also instructed on robbery in general and was instructed specifically that a “taking constitutes
8 robbery whenever it appears that, although the taking was fully completed without the
9 knowledge of the person from whom taken, such knowledge was prevented by the use of
10 fear.” VII ROA 1711. On October 16, 1996, the jury returned verdicts of guilty on charges
11 of burglary, robbery and first degree murder. VII ROA 1747-49. No special verdict form
12 was given to the jury, so it is unknown as to whether the jurors relied upon the premeditation
13 theory, the felony murder theory, or both in finding Chappell guilty of first degree murder.

14 The penalty phase of the first trial began on October 21, 1996. VII ROA 1757. On
15 October 24, 1996, the jury returned its verdicts in which it found mitigating circumstances
16 of murder committed while the defendant was under the influence of extreme mental or
17 emotion disturbance and “any other mitigating circumstances.” IX ROA 2126, 2170-71. It
18 found aggravating circumstances of burglary, robbery, sexual assault, and torture or depravity
19 of mind and returned a verdict for death. IX ROA 2127-29, 2167-69. Formal sentencing
20 took place on December 30, 1996. IX ROA 2179. The district court sentenced Chappell to
21 the maximum terms for burglary and robbery with use of a deadly weapon and ordered that
22 those sentences run consecutively to the death sentence. IX ROA 2188.

23 The judgment of conviction was filed on December 31, 1996. IX ROA 2190.
24 Chappell filed a timely notice of appeal to this Court on January 17, 1997, which was
25 docketed as number 29884. IX ROA 2200. On December 30, 1998, this Court issued its
26 opinion affirming the conviction. IX ROA 2273; Chappell v. State, 114 Nev. 1403, 972 P.2d
27 838 (1998). This Court concluded that the district court erred in failing to hold a Petrocelli
28 hearing, but found admission of evidence uncharged misconduct to be harmless. Id. at 1406,

1 972 P.2d at 840. It also concluded that there was sufficient evidence to support the
2 aggravating circumstances of burglary, robbery and sexual assault, but insufficient evidence
3 to support the aggravating circumstance of torture or depravity of mind. Id. at 1407, 972
4 P.2d at 841. In addressing the robbery aggravating circumstance, this Court noted Chappell's
5 argument that the evidence showed that he took Panos's car as an afterthought and therefore
6 could not be guilty of robbery, but rejected that argument because this Court had held "that
7 in robbery cases it is irrelevant when the intent to steal the property is formed." Id. at 1408,
8 972 P.2d at 841. Although this Court found the torture or depravity of mind aggravating
9 circumstance to be invalid, it reweighed the remaining three aggravating circumstances and
10 the two mitigating circumstances, found the aggravating clearly outweighed the mitigating,
11 and that a sentence of death was proper. Id. at 1410-11, 558 P.2d at 842. The Court also
12 rejected other issues raised by Chappell on appeal. Id. This Court denied rehearing on
13 March 17, 1999. IX ROA 2288.

14 Chappell's petition for certiorari was denied on October 4, 1999. Chappell v. Nevada,
15 528 U.S. 853 (1999). This Court's remittitur issued on November 4, 1999. X ROA 2353.

16 Meanwhile, on October 19, 1999, Chappell filed a proper person post-conviction
17 petition for a writ of habeas corpus. IX ROA 2258. The post-conviction matter was assigned
18 to the Honorable Mark Gibbons. X ROA 2354. A supplemental petition was filed on April
19 30, 2002. X ROA 2417. Among other issues, Chappell contended that his conviction was
20 invalid because the jury instruction defining premeditation and deliberation was
21 constitutionally infirm as it did not provide a rational distinction between first and second
22 degree murder. X ROA 2456-59 (citing Byford v. State, 116 Nev. 215, 994 P.2d 700
23 (2000)). He also asserted that the sentence of death was unconstitutional because of the use
24 of overlapping aggravating circumstances. X ROA 2465. The State filed its response to the
25 petition on June 19, 2002. X ROA 2481. The evidentiary hearing took place before the
26 Honorable Michael Douglas on September 13, 2002. XI ROA 2554. Subsequently, on June
27 3, 2004, the district court entered its Findings of Fact, Conclusions of Law and Order. XI
28 ROA 2745. It denied the petition as to the guilt phase issues, granted the petition as to the

1 sentence, and ordered a new sentencing hearing. XI ROA 2748, 2778.¹ On June 18, 2004,
2 the State filed a notice of appeal to this Court. XI ROA 2757. On June 24, 2004, Chappell
3 filed a notice of cross-appeal. XI ROA 2761. On April 7, 2006, this Court issued its Order
4 of Affirmance in which it upheld the district court's decision. XI ROA 2783. Of relevance
5 to this appeal is this Court's conclusion that there was no merit to the arguments presented
6 concerning jury instructions. XI ROA 2790 n.20 (citing Garner v. State, 116 Nev. 770, 788-
7 89, 6 P.3d 1013, 1025 (2000)). This Court also found the aggravating circumstances of
8 burglary and robbery to be invalid under McConnell v. State, 120 Nev. 1043, 102 P.3d 606
9 (2004). XI ROA 2792-95. The remittitur issued on May 4, 2006. XI ROA 2797.

10 Prior to the second penalty hearing, several pretrial motions were filed which are
11 relevant to this appeal.² Chappell filed a motion to strike the sexual assault aggravator. XII
12 ROA 2801. The State opposed the motion. XII ROA 2890. The district court denied the
13 motion. XII ROA 2905, 3019; XV ROA 3840.

14 Chappell filed a motion to remand for consideration by the Clark County District
15 Attorney's Death Review Committee. XII ROA 2817. The State opposed the motion. XII
16 ROA 2884. The district court denied the motion. XII ROA 2905, 3015; XV ROA 3837.

17 Chappell filed a motion for discovery of potential penalty hearing evidence. XII ROA
18 2826. The State opposed the motion. XII ROA 2888. The district court denied the motion.
19 XII ROA 3026. On February 23, 2007, the State filed its notice of evidence in support of
20 aggravating circumstances. XII ROA 3032.

21 Jury selection began on March 12, 2007. XIX ROA 3932. During the course of the
22 trial, Chappell objected to the use of hearsay evidence during the penalty hearing on
23

24 ¹The parties stipulated that these were the findings, conclusions and order of Judge
25 Douglas and agreed that the order should be executed by the Chief Judge of the Eighth
26 Judicial District Court due to Judge Douglas's appointment to this Court. XI ROA 2748.

27 ²Judge Cherry briefly presided over the case and heard procedural matters, such as the
28 setting of the trial date. XII ROA 2912, 2915, 2921. It appears that he may have reviewed
the pretrial motions, but he did not rule upon them. XII ROA 2919, 2922.

1 Confrontation Clause grounds and noted that this Court had recently rejected this argument,
2 but presented it so as it preserve the issue for further review. XIII ROA 3050. Chappell also
3 objected to the presentation of victim impact evidence by persons who were not family
4 members of Panos. XIII ROA 3107-08, 3177; XV ROA 3678. The district court found that
5 it had discretion to admit victim impact evidence from non-family members. XIII ROA
6 3272-73. Over an objection by defense counsel, the district court permitted the State to use
7 Chappell's testimony from the first trial. XV ROA 3632. Defense counsel had argued that
8 the testimony was the result of ineffective assistance of counsel. The district court also
9 overruled defense counsel's objection to questions asked by the prosecution and answered
10 by Chappell concerning the allegation that Chappell had a lot of time to think about his
11 testimony and to decide what he would say. XV ROA 3632. Chappell's counsel argued that
12 this was a comment on Chappell's right to remain silent but the district court rejected the
13 argument after noting that the claim was found to be without merit in post-conviction
14 proceedings. XV ROA 3632-33.

15 Jury instructions were read in open court on March 21, 2007. XV ROA 3742.
16 Following closing arguments, the jury returned their verdicts. XV ROA 3737, 3821. They
17 found the aggravating circumstance of murder committed during the perpetration of a sexual
18 assault. XV ROA 3737, 3822. The mitigating special verdict form listed the following
19 mitigators: (1) Chappell suffered from substance abuse; (2) he has had no father figure in his
20 life; (3) he was raised in an abusive household; (4) was the victim of physical abuse as a
21 child; (5) he was born to a drug/alcohol addicted mother; (6) he suffered from a learning
22 disability; and (7) was raised in a depressed housing area. XV ROA 3739-40, 3822-23. The
23 jury did not find the mitigating circumstance that Chappell's mother was killed when he was
24 very young, that he was the victim of mental abuse as a child, and other mitigating
25 circumstances that were asserted to exist by Chappell's counsel. XV ROA 3755. The jury
26 found that the mitigating circumstances did not outweigh the aggravating circumstance. XV
27 ROA 3738, 3822-23. The special verdict form for the weighing equation did not indicate
28 that it was the State's burden to establish beyond a reasonable doubt that the mitigating

1 circumstances did not outweigh the aggravating circumstance. XV ROA 3738. The jury
2 returned a sentence of death. XV ROA 3741.

3 Formal sentencing took place on May 10, 2007. XIX ROA 4015, 4018. The
4 judgment of conviction was filed the same day. XV ROA 3854. The district court ordered
5 the judgment stayed pending appeal. XIX ROA 4019; XV ROA 3861. A timely notice of
6 appeal was filed on June 8, 2007. XIX ROA 3872. This Opening Brief now follows.

7 **V. STATEMENT OF THE FACTS**

8 The State alleged that Chappell killed his girlfriend, Deborah Panos, who was also the
9 mother of his three children, because she intended to end their relationship. IV ROA 864.
10 In support of this theory, the State claimed that Chappell had a history of violence toward
11 Panos and that on August 31, 1995, after he was released from jail, he entered her trailer
12 through a window, had a fight with Panos that resulted in her being beaten and stabbed to
13 death, and then stole her car and social security cards belonging to her and their children. IV
14 ROA 864-86 (guilt phase opening statement). The State also noted that Chappell's semen
15 was found in Panos's body. IV ROA 887-88. It asserted that Chappell was guilty of
16 burglary, robbery with use of a deadly weapon, and first degree murder with use of a deadly
17 weapon. IV ROA 889. It relied upon theories of both premeditated murder and felony
18 murder in urging the jury to return a verdict of first-degree murder. VII ROA 1627-29
19 (closing argument). In support of the felony-murder by robbery theory, the State relied upon
20 Chappell's taking of Panos's car and social security card, which occurred after her death.
21 VII ROA 1623-24, 1629. In support of its premeditation theory, the State relied upon Jury
22 Instruction Number 22 which stated that "premeditation need not be for a day, an hour, or
23 even a minute. It may be an instantaneous as successive thoughts of the mind." VII ROA
24 1630. See also VII ROA 1689. The State also argued that evidence of premeditation existed
25 because Panos was stabbed 13 times, he did not seek medical attention for her after she had
26 been stabbed, and he got high on crack cocaine following her death. VII ROA 1635-36.

27 Chappell acknowledged responsibility for Panos's death, but asserted that he did not
28 commit the offense of burglary because he lived in the trailer and entered through a window

1 only because he did not have a key, and no one was home when he arrived at the trailer after
2 having been in jail. IV ROA 892 (opening statement). The defense case was that Panos
3 arrived home and was happy to see him, they had consensual sex, and then later had an
4 argument because Chappell was jealous over the fact that Panos was seeing other men while
5 Chappell was in jail. IV ROA 892-93. Later, Chappell discovered a letter by another man
6 that implied sexual things to Panos, he went into a fit of rage, and killed Panos by stabbing
7 her. IV ROA 894. Chappell contended that the evidence did not support a finding of first
8 degree murder, that he took the car after Panos was dead because he did not know what to
9 do besides leaving, and he was not guilty of burglary because he entered his home without
10 any intent to commit an offense. IV ROA 892, 895. He asked the jury to return a verdicts
11 of guilty on the lesser included charges of voluntary manslaughter with use of a deadly
12 weapon and grand larceny auto. IV ROA 896; VII ROA 1660. During closing arguments,
13 Chappell's counsel noted that he took full responsibility for killing Panos and therefore the
14 issue at hand concerned premeditation, deliberation and intent. IV ROA 1641, 1645.

15 The State and Chappell's trial counsel entered into a stipulation as to certain facts
16 concerning August 31, 1995: Chappell entered a trailer rented to Panos through a window;
17 Chappell engaged in sexual intercourse with Panos; Chappell caused the death of Panos by
18 stabbing her with a kitchen knife and the act was not an accident; and Chappell was jealous
19 of Panos because he believed she was giving attention to or receiving attention from other
20 men. IV ROA 844-45, 850; VI ROA 1312-13.

21 Evidence introduced at trial which is relevant to this appeal includes the following:
22 A "sexual assault kit," which consisted of samples of biological evidence was taken from
23 Panos's body. IV ROA 998. There was no testimony by either the coroner or the crime
24 scene analyst assigned to assist with the autopsy which suggested in any way that there was
25 bruising, cuts or other trauma in the area of Panos's vagina. IV App 962-1003. Panos was
26 fully clothed when her body was discovered. IV ROA 996, 1024.

27 Chappell and Panos began dating in high school and had three children together. V
28 ROA 1231, 1279; VI ROA 1367-68. They began their relationship in Michigan and

1 continued it as they lived in Arizona and Nevada. V ROA 1234-35, VI ROA 1368, 1372-74,
2 1383. There were previous occasions in which the two fought, broke-up and then reunited.
3 V ROA 1235-40, 1257, 1311, 1321; VI ROA 1357, 1376-78, 1390. Chappell was possessive
4 of Panos. V ROA 1247. Panos loved Chappell. V ROA 1250.

5 Chappell testified that after he was released from jail, he returned home to the trailer
6 that he shared with Panos. VI ROA 1397. He climbed through the window because he had
7 called shortly before and Panos did not answer and he had lost his key to the trailer. VI ROA
8 1397. Upon entering, he learned that Panos was in fact already home. They talked and
9 everything was okay between them. VI ROA 1398. They then had sex on the couch. He
10 began to think that she had been messing around on him, so he grabbed her and asked her
11 who she had been with. VI ROA 1399. She said she had not been with anyone else and then
12 performed oral sex on Chappell. VI ROA 1400. The sexual acts were consensual and he did
13 not pressure her into having sex with him. VI ROA 1400. They got dressed, called the
14 daycare center, and then left the trailer to pick up the children. VI ROA 1401-03. While in
15 the car he found a letter to Panos from another man and read about the man having sex with
16 her. VI ROA 1404-05. He was shocked and devastated, so he returned the car to their home,
17 went back inside with her, and stabbed her with the knife. VI ROA 1405. Chappell did not
18 recall details about the stabbing, did not know how many times he stabbed her or hit her and
19 did not know why he killed her. VI ROA 1406. He was very upset, blacked out during the
20 attack and then left immediately when he realized what had happened. VI ROA 1407, 1464.
21 The letter that he read in the car was found next to her body. VI ROA 1407.

22 Dr. Lewis Etkoff, a psychologist, testified that Chappell was remorseful over Panos's
23 death and sad over her death. VI ROA 1543. He noted that Chappell had an IQ of 80, which
24 means that 91 out of 100 people have more intellectual skills. VI ROA 1546. His language
25 score was especially low. VI ROA 1548-49. Dr. Etkoff described Chappell's personality
26 issues, which includes low self-worth, little self-respect, social awkwardness, distrust of
27 others, and fear of humiliation and rejection. VI ROA 1553. He had no relationship with
28 his father and his mother died before he was three years old. He had a personality

1 characteristic of being hugely frightened and enormously afraid of being abandoned in a
2 relationship, and was paranoid as a result. VI ROA 1554, 1571.

3 As noted above, the first jury considered this evidence and returned verdicts of guilty
4 on the charges of first degree murder, robbery and burglary.

5 The testimony presented by the State during the second penalty hearing largely
6 followed the evidence presented at the first trial, though a significant amount of hearsay
7 evidence was also admitted that was not presented during the guilt phase of the first trial.

8 Michele Mancha testified that she worked with Panos and they were friends. XIII
9 ROA 3089. Panos confided in her and told her about various incidents concerning Chappell:
10 he broke her nose with a plastic cup; he took things of value from her trailer after climbing
11 in through her window as he did not have a key to the trailer; he slapped her in the face while
12 in the parking lot of her work. XIII ROA 3089-95. Mancha believed that Panos was trying
13 to distance herself from Chappell. XIII ROA 3092. She testified that in June 1995, Panos
14 said that Chappell choked her and the next day Mancha saw marks on her neck. XIII ROA
15 3096-97. Mancha also reported that Panos told her in June 1995 that Chappell sat on her and
16 put a knife to her throat. XIII ROA 3098. She next asserted that Panos planned to move
17 from her trailer and thought she had 90 days to do so as Chappell was supposed to be in
18 custody, but he was let out less than 24 hours later. XIII ROA 3099. They had also planned
19 to send Chappell back to Michigan, but he refused to go unless he could take his daughter
20 with him. XIII ROA 3099. She asserted that Panos called the jail everyday to make sure that
21 Chappell was still in custody and she was in the process of leaving her trailer and moving
22 with the children. XIII ROA 3101.

23 Mancha also testified about court proceedings, even though she was not present at
24 those proceedings. XIII ROA 3102. She asserted that Panos had a restraining order against
25 Chappell and that Panos had been subpoenaed to testify against Chappell based upon the
26 choking incident. XIII ROA 3103. Mancha claimed that Panos told her that Chappell
27 threatened to kill Panos after she told him that it was over, that he was supposed to go to a
28 90-day drug rehabilitation program, and that they had time to get her possessions from the

1 trailer and move. XIII ROA 3103-04. Mancha stated that they were all scared and she tried
2 to call Chappell's probation officer, Charlene Sumner, to tell her about the threat to Panos.
3 XIII ROA 3105. On cross-examination Mancha acknowledged that Chappell had a problem
4 with drugs and that he stole stuff from the trailer to buy drugs. XIII ROA 3109.

5 The Court permitted Mancha to give victim impact testimony, over an objection by
6 the defense. XIII ROA 3107-08. She testified about her feelings at the time she learned that
7 Panos had been killed, informed the jury that she was a wreck for days after, and that even
8 ten years later it was still awful and that she misses Panos every day. XIII ROA 3108.

9 Mike Pollard's testimony from the first penalty hearing was read into the record. XIII
10 ROA 3114. He testified that he worked with Panos and was friends with her. XIII ROA
11 3115-16. He did not ever meet Chappell, but he did see Chappell slap Panos while in the
12 parking lot of her employer. XIII ROA 3118. This incident happened after the time that he
13 broke her nose. XIII ROA 3119. There were other times when Panos was upset and Pollard
14 believed this to be because of conversations or interactions with Chappell. XIII ROA 3120.
15 Pollard asserted that Panos told him she was planning to move from her trailer and wanted
16 to be gone before Chappell was released from custody. XIII ROA 3125. Pollard recited
17 incidents in which Panos told him that Chappell took items from her and their children and
18 either returned them to stores to receive cash or sold the items to other people. XIII ROA
19 3125. Pollard asserted that Panos was concerned about Chappell's release and that she
20 repeatedly called the jail to find out when he would be released. XIII ROA 3128. Pollard
21 claimed that Panos had tried to get Chappell to leave the state and had purchased a ticket for
22 him to go to Michigan. XIII ROA 3128. Pollard also testified that Panos realized that
23 Chappell would not leave, so she was planning to move out of the trailer even though she
24 was in the process of buying it. XIII ROA 3129.

25 Pollard saw Panos on August 31, 1995. XIII ROA 3129. They got off work around
26 noon and planned to barbecue at a park. XIII. ROA 3131. She left Pollard's house and
27 returned about 20 minutes later. XIII ROA 3131. Pollard claimed that she sat in a ball, held
28 her knees and shivered. XIII ROA 3131. She said that Chappell was out and that he had left

1 a message on her voice mail. XIII ROA 3131. Pollard told her to wait a few minutes until
2 he was out of the shower and he planned to go with her to her trailer so she could pick up
3 clothing, pick up the children from daycare, and then stay with him for a few days. XIII
4 ROA 3132. She had stayed with Pollard in the past when she was afraid. XIII ROA 3132.
5 Nonetheless, when Pollard got out of the shower, Panos was gone. XIII ROA 3133. He did
6 not have a car so he could not follow her. XIII ROA 3133. He tried to phone her, but did
7 not get a response. XIII ROA 3133. Pollard never met Chappell because he was always in
8 and out of jail, but he was aware of claims that Chappell took Panos's furniture, televisions
9 and VCRs. XIII ROA 3135.

10 After Pollard's testimony was read, he was located and then called as a witness for the
11 purpose of giving victim impact evidence. XV ROA 3678. This testimony was given over
12 a defense objection. XV ROA 3678. He testified that upon learning of Panos's death he was
13 saddened for Panos and especially sad for her kids because they had to grow up without a
14 mother. XV ROA 3679. He quit his job because he could no longer concentrate when he
15 looked over and saw her empty desk. XV ROA 3679. He moved out of Nevada and still
16 thinks of Panos and is still angry over the fact that if she would have waited for him he might
17 have been able to save her. XV ROA 3679.

18 Lisa Larsen (formerly Duran), a co-worker and friend of Panos's, testified that she
19 lived with Panos in the summer of 1995. XIII ROA 3169. She recalled the incidents in
20 which Chappell slapped Panos, he broke her nose, and she arrived at work with bruises on
21 her arms. XIII ROA 3170. She asked Panos why she did not get out of the relationship and
22 Panos responded that she could not because her kids needed their father. XIII ROA 3170.
23 Chappell was incarcerated during most of the summer of 1995. XIII ROA 3170. Panos
24 instructed Larsen to accept his telephone calls and try not to make him angry. XIII ROA
25 3170. Larsen recited details from telephone calls and noted once incident in which Chappell
26 asked "what other nigger she was laying up with underneath" when told that Panos was not
27 home. XIII ROA 3171. After Larsen responded that she would not tell him anything like
28 that, he told her to tell Panos that he called and that when he got out, she was not going to

1 have any kind of life or anything. XIII ROA 3171. In a later call, Chappell told Larsen that
2 once he got out, Panos would not have any friends and that he was upset because Panos had
3 stopped accepting his calls and writing. XIII ROA 3171. Larsen also described Panos's plan
4 to move from her trailer before Chappell got out of custody. XIII ROA 3172.

5 Larsen testified that on August 30, 1995, Panos told Larsen she had been to court and
6 she told Chappell it was done, it was over with, and she wanted to get on with her life. XIII
7 ROA 3172. The next day Panos and Larsen planned to meet at the trailer in the afternoon.
8 XIII ROA 3172. She saw Chappell driving Panos's car, tried to reach Panos by telephone,
9 then went to the trailer and eventually called the police. XIII ROA 3173.

10 Over a defense objection, Larsen testified that she shut down after Panos's death, went
11 to therapy for about a year, and learned information about domestic violence because she felt
12 guilty that she did not help Panos after she told Larsen that Chappell was going to get her.
13 XIII ROA 3177. She could not be in the house anymore and could not be at work because
14 she was reminded of Panos. Larsen was afraid that Chappell would get out of custody and
15 then come after her, so she started seeing a therapist and got on medication. XIII ROA 3178.
16 This caused her to miss seven or eight months of work. XIII ROA 3178. Although Panos
17 was killed almost a decade earlier, Larsen still has anger issues. XIII ROA 3178.

18 On cross-examination Larsen acknowledged that Panos was planning to move in with
19 J.R., who was a man that she had been dating while Chappell was in custody. XIII ROA
20 3182. On occasions, Panos had told Larsen that she loved Chappell. XIII ROA 3183.

21 Charmaine Smith, a Parole and Probation Officer, testified that she was assigned to
22 be Chappell's probation officer on April 27, 1995. XIII ROA 3235. He had been convicted
23 of the gross misdemeanor offense of possession of burglary tools. XII ROA 3235. He was
24 allowed to plead to that offense after being charged with two felonies and a gross
25 misdemeanor. XIII ROA 3235. Smith claimed that Chappell did not report for probation and
26 did not meet the conditions of his probation. XIII ROA 3236. She talked with Panos three
27 or four times. XIII ROA 3236. Panos came to her office on one occasion and was upset
28 because of Chappell and she said she was in fear for her life. XIII ROA 3236. Smith recited

1 allegations that Panos told her that Chappell once straddled her and held a knife to her. XIII
2 ROA 3236. Smith suggested that Panos move away and return to Arizona.

3 Based upon Chappell's failure to comply with the terms of his probation, Smith sought
4 revocation of his grant of probation. XIII ROA 3237. The court reinstated Chappell to his
5 probation with an added condition that he enroll and successfully complete an impatient
6 substance abuse program. XIII ROA 3237. The judge ordered that he be released only to
7 the Department of Parole and Probation and then the department was to take him to the
8 impatient treatment program. XIII ROA 3237. Smith explained the 90 day program to Panos
9 when they were in court. XIII ROA 3237. On cross-examination Smith testified that
10 Chappell listed Panos's address as his address. XIII ROA 3239.

11 William Duffy, a former Parole and Probation Officer, testified about his failure to
12 place Chappell in the custody of an impatient drug treatment center, as ordered by the court
13 as a condition of Chappell's release from custody. XIV ROA 3407-13.

14 Latrona Smith, a daycare director, testified about her conversation with Panos on the
15 day she was killed. XIII ROA 3190. Smith asserted that Panos called, was crying, and asked
16 her to call Panos with some kind of excuse so that she could leave the house. She called
17 Panos five minutes later and Panos said she was on her way. XIII ROA 3191-92.

18 The testimony of Deborah Turner was read into the record. XIII ROA 3194. She
19 testified that on the afternoon Panos was killed, Chappell sold shrimp and a pie to her and
20 she rented the car he was driving for \$15. XIII ROA 3195. His demeanor did not seem
21 different than other days when she had seen him. XIII ROA 3196. On cross-examination
22 Turner acknowledged that Chappell was a crack head. XIII ROA 3197. She was aware of
23 other occasions in which Chappell rented out the car for an hour or two in exchange for rock
24 cocaine. XIII ROA 3198.

25 The testimony of Ladonna Jackson was read into the record. XIII ROA 3198. She
26 saw him on the afternoon of August 31, 1995, and he behaved as he usually did. XIII ROA
27 3201. She testified about renting Chappell's car and the fact that he made his money
28 stealing. XIII ROA 3203. He also traded items that he stole for crack. XIII ROA 3204. She

1 testified that Chappell sold his children's diapers because he wanted drugs (but she did not
2 provide explanation as to how she knew the diapers belonged to his kids). XIII ROA 3204.

3 Kimberly Sempson testified that she detained Chappell on charges of shoplifting on
4 August 31, 1995. XIII ROA 3205. She saw him drop a social security card. XIII ROA
5 3207. On cross-examination she noted that Chappell had a small metal pipe in his pocket
6 that was probably used to smoke crack. XIII ROA 3207.

7 Paul Osuch, a LVMPD detective, testified that in September, 1995, he was dispatched
8 to the Lucky store at Lamb and Bonanza on a shoplifting call. XIV ROA 3275. He decided
9 to arrest Chappell, who was the suspect in the shoplifting case, because he had drug
10 paraphernalia in his possession. XIV ROA 3276. He mentioned the killing at the trailer
11 park, which was nearby, and noticed that Chappell became nervous. XIV ROA 3276. He
12 later saw four social security cards that had been in Chappell's possession and noticed the
13 last name of Panos on the cards. Osuch confirmed that this one the last name of the person
14 killed at the trailer and notified the homicide detectives. XIV ROA 3284.

15 Detective James Vaccaro testified as to details concerning his investigation. XIV
16 ROA 3413-25. Relevant to this appeal are the facts that a sexual assault kit was collected
17 at the autopsy, XIV ROA 3420; he knew that Chappell stated he had both consensual vaginal
18 and consensual oral intercourse with Panos, XIV ROA 3415; a torn up letter was found near
19 Panos's body, XIV ROA 3423-24; the letter was written to Panos from someone named
20 Devon and a portion of the letter was found outside, XIV ROA 3429; Chappell's DNA was
21 found inside of Panos's vagina, XIV ROA 3425; and letters from Chappell to Panos during
22 the period of his incarceration were recovered, XIV ROA 3426-27. He also testified that the
23 presence of semen indicated that Chappell ejaculated into Panos. XIV ROA 3425.

24 Russell Lee testified about his discovery of Panos's body inside the trailer. XIII ROA
25 3186. She was dressed and he observed a puncture mark in her clothing. XIII ROA 3187.

26 Dr. Green, a pathologist, testified as to details concerning Panos's injuries. XV ROA
27 3670. She had bruises on her neck and face, right arm, shoulder, right hand and the back of
28 her right wrists. XV ROA 3671. She also had 13 stab wounds. XV ROA 3671. The cause

1 of death was knife wounds to the neck. XV ROA 3674. He believes the bruises were
2 probably caused 15 to 30 minutes prior to the stabbings. XV ROA 3674.

3 Substantial evidence was also presented by the State concerning allegations about
4 matters took place prior to the events of August 31, 1995:

5 Clair McGuire testified she worked with Panos in Tucson in the 1990s. XIII ROA
6 3242. She met Chappell and knew him to be Panos's boyfriend. XIII ROA 3243. She
7 sometimes saw bruises on Panos's body and once saw Chappell trip Panos and push her into
8 the wall. XIII ROA 3243. While Panos worked several jobs, she recalled that Chappell only
9 had one job and was there less than a month. XIII ROA 3244. Panos had worked as a 911
10 operator but had to quit because she was involved with Chappell and she was not allowed to
11 hang around with people who had a criminal record. XIII ROA 3244. McGuire visited with
12 Panos in Las Vegas in March of 1995. XIII ROA 3244. She noticed that Panos did not have
13 very much furniture and she said that Panos said that Chappell had taken it out of the house.
14 XIII ROA 3244. She assumed he was selling it to get money for drugs. XIII ROA 3245.
15 She also said that Panos said that new jackets she purchased for the kids had disappeared.

16 McGuire moved to Las Vegas in May 1995, and stayed with Panos. XIII ROA 3245.
17 When she returned from a trip to Tucson she noticed that someone had been through her
18 boxes and some items were missing. XIII ROA 3245. She discussed the missing items with
19 Chappell and he said that he knew where they were and that for a small amount of money he
20 would be able to return them to her. XIII ROA 3245. She did not give him the money. XIII
21 ROA 3245. To her knowledge, Chappell did not have a key to the trailer. XIII ROA 3245.
22 He stayed at the trailer on and off and would sometimes break in. XIII ROA 3246. She
23 claimed that Panos was upset on one occasion in which Chappell tried to come into the trailer
24 and noted that there was another occasion in which she talked with Panos on the telephone,
25 Panos said that Chappell had gotten out of jail and wanted Panos to come home to the trailer,
26 but Panos stayed at a friend's house instead. XIII ROA 3246. McGuire said that Panos told
27 her that Chappell would rape McGuire and burn the house down so that Panos did not have
28 a house to come home to. XIII ROA 3246. McGuire locked all of the doors and windows

1 and was still on the telephone with Panos when she heard Chappell trying to come inside the
2 house through the front window. XIII ROA 3246. They used three-way calling to call 911
3 and then McGuire told Chappell that the police were at the door after Chappell came into her
4 locked bedroom. XIII ROA 3246. The officers could not get inside because the doors were
5 locked. XIII ROA 3247. Chappell then talked with Panos on the telephone as McGuire
6 unlocked the door. XIII ROA 3247. The police entered and arrested Chappell. XIII ROA
7 3247. She noticed that there was a knife next to her bed and it was not there before he came
8 in. XIII ROA 3247. There was another incident in June 1995 in which Chappell was angry
9 and told Panos to go into her bedroom with him. XIII ROA 3247. McGuire called 911 and
10 the police came to the trailer. XIII ROA 3247. Panos told them that Chappell held a knife
11 to her throat and pinned her down while sitting on top of her chest. XIII ROA 3247. The
12 police arrested Chappell. XIII ROA 3247.

13 Over a defense objection, McGuire testified that it was a very frightening situation and
14 she could not believe that anybody could be in that situation for such a long period of time.
15 XIII ROA 3248. She recalled that Panos was fun, happy, and she would do anything for her
16 kids. XIII ROA 3248.

17 On cross-examination, McGuire testified that Chappell never threatened her and did
18 not threaten her on the night he came into her bedroom. XIII ROA 3248. She did not ever
19 see the knife in his hands. XIII ROA 3249. In regards to the incident in which McGuire
20 claimed that Chappell pinned down Panos, McGuire acknowledged that she was unaware that
21 when Panos wrote her statement to the police about that matter that she did not state that
22 Chappell pinned her down or that he had a knife. XIII ROA 3249.

23 The testimony of Detective Paul Weidner, of the Lansing Michigan Police
24 Department, was read into the record. XIII ROA 3251. He testified that on August 18, 1988,
25 he arrested Chappell for assault. XIII ROA 3251. The arrest was based upon the allegation
26 that Chappell and a friend threw a brick at a man's car and threw a brick or rock at the man
27 after he got out of his car. XIII ROA 3252. Chappell gave a statement in which he said that
28 his friend threw a brick at the car, but did not hit it, after the man drove his car down an alley

1 and almost ran them over. XIII ROA 3253. The man came out of his house with a bat and
2 said "come on, you niggers, I'm not afraid of you" and then the friend threw a brick at the
3 man and knocked him down. XIII ROA 3253. The friend picked up the man's bat when he
4 went back into his house and then the man came out of the house with a gun. XIII ROA
5 3253. Other friends were present when this happened, but some of them ran off when the
6 police arrived. XIII ROA 3253. The man identified Chappell as the person who threw a
7 brick. XIII ROA 3253. The officer was not called to testify at court and did not know the
8 disposition of the charges. XIII ROA 3253. The officer did not personally witness anything.
9 XIII ROA 3253. Another witness to the incident reported that it was another man, not
10 Chappell, who threw the brick at the man. XIII ROA 3253. There were no injuries to the
11 man who was hit. XIII ROA 3253.

12 Dina Richardson testified that she knew Panos for five or six years in Tucson and they
13 both worked with the police department in the 911 department. XIV ROA 3294. She
14 learned of Panos's murder after being contacted by the Tucson Police Department out of
15 concern that they had not yet caught the person who murdered Panos and they thought he
16 might try to look for Richardson or Panos's mother. XIV ROA 3295. She met Chappell
17 through Panos but did not spend much time with him. XIV ROA 3295. Richardson's
18 perception of the relationship between Chappell and Panos was that he ran the relationship,
19 was controlling, and she did what he wanted her to do. XIV ROA 3296. She noted an
20 incident in which Panos asserted that Chappell sold t-shirts which Panos had purchased in
21 San Diego and times when Panos came to work with bruises. XIV ROA 3298. Richardson
22 claimed that Panos eventually told her that she had been assaulted by Chappell and it usually
23 happened when he was high on drugs or wanted to be high on drugs and if she did not give
24 him money, they would end up in an argument and he would assault her. XIV ROA 3299.

25 Richardson testified about a time in 1994 when Panos called her and claimed that
26 Chappell had left her stranded at a grocery store after it refused to cash a check. XIV ROA
27 3300. She was then able to cash the check and she took the money to Richardson before
28 going home to her kids because she believed that Chappell would beat her up if she came

1 home with the cash. XIV ROA 3301. Richardson recalled another time in 1994 when she
2 was on the telephone with Panos and she could hear Chappell calling Panos names in the
3 background because he was upset that she dated another man while he was in Michigan.
4 XIV ROA 3301. She heard Chappell say that he did not care what she did, but she could not
5 fuck around in front of his children or he would kill her ass. XIV ROA 3302. She recalled
6 another telephone call around August 1994 in which she heard him in the background as he
7 told Panos that he wanted the car or wanted some money or was going to do an O.J. Simpson
8 on her ass. XIV ROA 3302.

9 Panos decided to move to Las Vegas and told Richardson that she was doing so
10 because she wanted to have a new start and felt that if she brought Chappell here with her
11 that he would not know anyone, he would get off the drugs, and they would live happily ever
12 after. XIV ROA 3303. In November 1994, Richardson was talking on the telephone with
13 Panos and heard Chappell say that he wanted her car keys or he was going to do an O.J.
14 Simpson on her ass. XIV ROA 3303. She also heard the voices of their children in the
15 background. XIV ROA 3303. Richardson heard things about Chappell from officers at the
16 police department. She recalled a time or two when she heard that he was stopped in high
17 drug activity areas. XIV ROA 3305. She also heard that there was also a domestic violence
18 call. XIV ROA 3306.

19 Over objection, Richardson gave a victim impact statement and testified that Panos's
20 death was devastating for her as they had daily contact and were friends. XIV ROA 3307.
21 She talked with her department psychologist and attended a debriefing with about 40 other
22 people who were affected by Panos's death so they could all talk about their feelings. XIV
23 ROA 3307. There is a portrait of Panos that hangs in the police department briefing room
24 that is in her honor. XIV ROA 3307.

25 On cross-examination Richardson testified that based upon her experiences with 911
26 she is aware of how dangerous domestic violence incidents can be, but she did not ever call
27 the police after talking with Panos or hearing the telephone calls with Chappell speaking in
28 the background. XIV ROA 3309. There were times when Chappell would leave messages

1 on Richardson's answering machine and would say things like "I love you Debbie, please
2 come home." XIV ROA 3310. She also saw Chappell in person at some birthday parties.
3 XIV ROA 3310. Richardson thought that Chappell was more violent when he was on drugs.
4 XIV ROA 3310. She was unaware of details concerning Panos's urging of Chappell to move
5 back to Tucson from Lansing Michigan and the fact that Panos visited Chappell in Lansing
6 and became pregnant with their third child during that visit. XIV ROA 3312. She testified
7 that Panos left the children with Chappell when she went on vacation to San Diego. XIV
8 ROA 3313. When Panos stayed the night at Richardson's house, the children stayed home
9 with Chappell. XIV ROA 3315.

10 Tanya Hobson testified that in 1995 she worked at Safe Nest, which was a temporary
11 shelter for domestic violence victims. XIV ROA 3454. She assisted Panos in obtaining a
12 temporary protective order on January 9, 1995 after Panos claimed that Chappell hit her.
13 XIV ROA 3460. A hearing date was scheduled for January 11, 1995, but Panos did not
14 appear. XIV ROA 3464. It is not unusual for a person to fail to appear at the hearing
15 because of reconciliation with the other party. XIV ROA 3464. The protective order became
16 void after she did not appear. XIV ROA 3465. On cross-examination Hobson testified that
17 the application for the protective order was taken over the telephone and she did not conduct
18 any investigation concerning the allegations. XIV ROA 3467.

19 The testimony of Jeri Earnst was read. XV ROA 3633. He was a police officer in
20 Tucson and had contact with Panos in 1994. XV ROA 3634. She told him that she had a
21 fight with her boyfriend because he sold a new dresser that she had purchased for their
22 daughter and he hit her and knocked her to the floor. XV ROA 3635. She refused to get
23 medical help. XV ROA 3635. She would not return to her trailer until Chappell was gone.
24 XV ROA 3635. He was arrested for domestic violence. XV ROA 3636. Earnst offered to
25 help Panos get into a shelter, but she never called him. XV ROA 3636.

26 Officer Dan Giersdorf testified that he was dispatched to the trailer on January 9,
27 1995. XV ROA 3637. He saw Panos being loaded into an ambulance and saw that she had
28 a large cut over her eye and a swollen nose. XV ROA 3638. She stated that she got into a

1 fight with Chappell and he hit her in the face with a cup. XV ROA 3638. Giersdorf went
2 inside the trailer and Chappell said that he "hit that bitch in the face." XV ROA 3638.
3 Chappell was then arrested. XV ROA 3639. On cross-examination, he testified that Panos
4 stated that she had been in her relationship with Chappell for nine years and they had three
5 children together. XV ROA 3639. In his previous testimony he did not state that Chappell
6 referred to Panos as a bitch. Giersdorf did not perform a field sobriety test. XV ROA 3639.

7 The testimony of Officer Allen Williams was read. XV ROA 3640. He testified
8 about the June 1, 1995, incident in which it was alleged that Panos said that she got into an
9 argument with her boyfriend, he pinned her arms down with his knee and threatened her with
10 a knife. XV ROA 3640. He arrested Chappell for domestic violence. XV ROA 3641.

11 The State presented additional victim impact evidence through Panos's aunt, Carol
12 Monson. XV ROA 3681. She testified that they had a very close family and always did
13 everything together. XV ROA 3681. Panos was a sweet person, very giving, generous and
14 would think of others before herself. XV ROA 3681. She loved elderly people and was
15 close with her grandmother. XV ROA 3682. Monson described how she learned of Panos's
16 death, her immediate reaction, and the reaction in the following days. XV ROA 3682-83.
17 She described the impact of the loss on Panos's mother and other family members and the
18 toll on her marriage. She read letters from other family members that were written both at
19 the time of the first trial and at the time of the current hearing. XV ROA 3683-84. These
20 letters referenced family get-togethers, Christmas and birthdays. XV ROA 3685. Monson
21 also read her own letter, which also referenced past family gatherings at birthdays and
22 holidays and discussed the fact that Panos's children had a difficult time handling the fact
23 that their mother was not there for birthdays, holidays, school events and other major things
24 that occurred in their growing years.³ XV ROA 3685-86.

25 Norma Penfield, Panos's mother, also gave a victim impact statement. XV ROA
26

27 ³During pretrial proceedings the district court ordered that the State talk to Monson
28 and explain the legalities of what she could and could not say. XV ROA 3843.

1 3686. She discussed Panos's childhood, her love for children and older people, and her
2 personality. XV ROA 3687. Penfield asserted that Panos moved to Las Vegas because the
3 police advised her to leave Arizona for her own safety. XV ROA 3687. Penfield noted the
4 financial assistance that she gave to Panos. XV ROA 3687. She then told the jury about how
5 she learned of Panos's death, how she acquired custody of the children, and Panos's funeral.
6 XV ROA 3688. She discussed the reactions on Panos's three children to her death and noted
7 that her daughter Chantelle, who was then three years old said she wanted to die so she could
8 go to heaven and be with her mom. XV ROA 3688. She testified that the children do not
9 want any mention of Chappell, they get angry, and the oldest child signed a letter stating that
10 he did not want any contact with Chappell. XV ROA 3688. Penfield also read a letter that
11 she prepared. XV ROA 3689. She remarked that Panos's death was brutal and senseless and
12 she could not image how one human being could be so harmful to another. XV ROA 3689.

13 In response to questions from jurors, Penfield testified that Panos always had excuses
14 for helping out Chappell and that Penfield told Panos to get away but Panos did not listen.
15 XV ROA 3690.

16 Chappell's testimony from the first trial was then read to the jury. XV ROA 3641-68.
17 The testimony is set forth above and is not repeated here. The State read in an exchange,
18 which is set forth in the argument section below, concerning the fact that Chappell has had
19 a lot of time to think about his testimony. XV ROA 3654. Chappell's counsel had objected
20 to this testimony. XV ROA 3632, but the district court found the testimony to be admissible.
21 XV ROA 3632.

22 Chappell's counsel called several witnesses to testify on his behalf. Dr. Todd Grey,
23 a chief medical examiner for the state of Utah, testified that he reviewed the autopsy report,
24 investigative reports of the Coroner's office, photographs on Panos's body at the scene of
25 death, a transcript of the testimony of the autopsy doctor, and transcripts of the opening and
26 closing statements of the prosecution and defense from the first trial. XIII ROA 3225. It was
27 clear that Panos died as the result of multiple stab wounds. XIII ROA 3225. In making an
28 assessment as to whether she was sexually assaulted prior to her death, Grey considered the

1 DNA recovered from Panos's vagina, the description of the vaginal area in the autopsy report
2 and the autopsy photographs. XIII ROA 3225-26. He did not find any evidence of sexual
3 assault during the course of the homicide. XIII ROA 3226. Coroner Green's report did not
4 denote any findings that would indicate a sexual assault. If such findings were present, Dr.
5 Green would have noted them in his report. XIII ROA 3226. Photographs of the scene of
6 death supported his conclusion as Panos was fully dressed and there were stab wounds in the
7 clothing that matched stab wounds to the body, all of which indicated that she was fully
8 clothed when she was killed. XIII ROA 3226. There was no evidence that she was killed
9 while being raped and no evidence of a sexual assault. XIII ROA 3227. On cross-
10 examination Grey explained that he was using the medical definition of sexual assault, which
11 would be forceful penetration. XIII ROA 3228. Bruises on Panos's upper body could have
12 been caused 15 minutes or more prior to her death. XIII ROA3234.

13 Dr. William Danton, a clinical psychologist, testified that he reviewed Dr. Etkoff's
14 report and talked with Chappell. XIV ROA 3321. He explained the circle of domestic
15 violence and noted that typically the abuser controls the finances in the relationship. XIV
16 ROA 3322. He also explained the "motorcycle syndrome" in which some women have a
17 cold or distant relationships with their fathers, they want love and attention, and then
18 unconsciously seek out cold and distant men because of the need to have the need for love
19 and approval, rather than actual love and approval. XIV ROA 3323. If the man in this type
20 of relationship converts and determines that he loves the woman and wants to be with her,
21 then the woman rejects the man. XIV ROA 3323. He then analyzed the relationship between
22 Panos and Chappell and explained Chappell's drug use in this context. XIV ROA 3324.
23 Because of Chappell's borderline personality disorder, the threat of abandonment or less
24 could be so intense for him that he would be prone to using drugs. XIV ROA 3325. Dr.
25 Danton also explained the reasons why a person might stay in an abusive relationship and
26 why such a person might engage in sex with the other person in the relationship. XIV ROA
27 3325. The primary reason is that the person still loves the other person. XIV ROA 3325.
28 Other reasons might include feelings of guilt, appeasement, helplessness, or force. XIV

1 ROA 3326-27. Based upon his review of materials in this case, he believed that
2 guilt/appeasement theory made the most sense. XIV ROA 3327. He also noted that
3 Chappell described a relationship with Panos which was very poor in communication but
4 which was good physically, and noted that this situation would be consistent with Chappell's
5 very low IQ. XIV ROA 3328.

6 Dr. Danton further explained that Chappell had a sense of abandonment which was
7 caused in part by the death of his mother at age two, the lack of a father figure, and the fact
8 that his grandmother had a lot of kids to take care of and used corporal punishment. XIV
9 ROA 3329. The early loss of his mother resulted in an abandonment anxiety, which happens
10 with borderline personality and the person becoming very dependant on external anchors too
11 feel okay. XIV ROA 3329. He would also rely on others to soothe because he is not able
12 to soothe himself on the inside, resulting in a dependant personality type. XIV ROA 3329.
13 Chappell would use sex as a type of soothing. XIV ROA 3330. Panos could have used sex
14 as a way to calm Chappell down if he was angry and might do so even if there was not an
15 immediate coercive threat. XIV ROA 3330.

16 On cross-examination Dr. Danton recited details of his conversation with Chappell,
17 including his recitation of facts concerning the night Panos was killed. XIV ROA 3345-49.
18 Chappell told him that they initially argued, but then they talked and she then initiated sex.
19 XIV ROA 3349. Chappell stated that they first had vaginal sex, he then became upset
20 because he believed that she had had sex with another man, and she then offered fellatio.
21 XIV ROA 3351. She then went to the bathroom, cleaned up and talked to the woman from
22 the day care center. XIV ROA 3352. They then went to the car where Chappell discovered
23 a sexually explicit letter and went into a rage. XIV ROA 3354.

24 Dr. Lewis Etkoff, a psychologist, testified about his evaluation of Chappell prior to
25 the first trial. XIV ROA 3476. Etkoff learned of Chappell's childhood history and noted the
26 following facts: Chappell's father had no involvement in his life, though he did have a
27 criminal record and a lot of other behavioral and substance related problems. XIV ROA
28 3481. Chappell first met his father when he was 10 years old, at which time his father asked

1 him to help rob a bank. XIV ROA 3481. Chappell declined to do so. XIV ROA 3482.
2 Chappell's mother died in an automobile accident when he was about two and a half years
3 old. XIV ROA 3482. He then moved with his siblings to the home of his grandmother, who
4 was physically abusive and neglectful. XIV ROA 3482. His school records support a
5 finding that he was psychologically disturbed early on and had difficulty forming
6 attachments. XIV ROA 3483. School records further indicated that he was placed in special
7 education classes very early on. XIV ROA 3483. Records from a social worker stated that
8 in only grade two, Chappell was moody, had trouble fitting in with other kids, was not
9 performing well at academic subjects, was wetting himself and sucking his fingers, which
10 are indicative of a serious anxiety and possibly an attachment disorder. XIV ROA 3484. He
11 was evaluated again in fourth grade, at which time he was functioning on a second grade
12 level and he did not play with other kids. He built a relationship with a new teacher, but she
13 suddenly left and he regressed to his old behaviors of not talking to anyone. The school
14 isolated him to get his work done and recognized that he had a great deal of difficulty in
15 forming meaningful relationships. XIV ROA 3485. The social worker recommended that
16 he be placed in a smaller classroom and that he receive individual therapy outside of the
17 school setting. XIV ROA 3485. He was classified as severely learning disabled and placed
18 in a special class. There was no record indicating that he received the recommended therapy.
19 XIV ROA 3486.

20 Chappell was later evaluated by a school psychologist when he was in high school.
21 XIV ROA 3486. The psychologist noted that Chappell was in an emotionally handicapped
22 classroom and that he felt he had little hope of succeeding in life, especially in academics,
23 and that he did not appear to have coping skills to deal with problems he encountered. XIV
24 ROA 3486. He further noted that Chappell had a low self-concept, distrusted others, and had
25 problems with attendance and motivation. XIV ROA 3487.

26 These findings were consistent with Etcoff's evaluation. XIV ROA 3487. Etcoff
27 further noted that Chappell began using alcohol at 13 or 14 years old and was using rock
28 cocaine on a regular basis by age 18. XIV ROA 3488. He became hooked on crack cocaine.

1 Etcoff informed the jury that with regular use of cocaine, there is a real good likelihood that
2 the person will get psychotic, have paranoid delusions, become frazzled, and have trouble
3 sleeping. XIV ROA 3488. It is a psychologically destructive drug which makes the person
4 out of control of his behaviors and thoughts and can make the person think that things are
5 real when in fact, they are not. XIV ROA 3488. Chappell had a verbal IQ of 77, which is
6 lower than 94 out of 100 people his age. XIV ROA 3490. His overall IQ was 80, which is
7 lower than 91 out of 100 people his age. XIV ROA 3491. Chappell's language deficit had
8 an effect on his ability to think things through rather than just act, especially in stressful
9 situations. XIV ROA 3493. Additional tests were conducted on Chappell which resulted in
10 findings that he felt worthless, inadequate, was guilt ridden, sensitive to humiliation, had low
11 self-esteem, and did not trust others. XIV ROA 3501. He was dependent on others,
12 mistrustful, apprehensive, and easily humiliated. XIV ROA 3501. He was extremely
13 dependant on Panos for his emotional support. XIV ROA 3502. Etcoff believed that
14 Chappell was especially anxious because he was dependant on a woman who starting
15 withdrawing from him, which would also result in the withdrawal of their three children from
16 his life, and he was using cocaine. XIV ROA 3503. His drug use would help suppress his
17 emotions and suppress disturbing memories. XIV ROA 3503.

18 Chappell described his relationship with Panos to Etcoff. XIV ROA 3504. He loved
19 her and believed that she loved him, but acknowledged that they were having problems and
20 that he had been abusive. XIV ROA 3504. He felt that she began to withdraw from their
21 relationship when he was in jail on burglary charges and he concocted fantasies of her doing
22 things that made him really upset. XIV ROA 3504. By the time of his release, he worked
23 himself into a very irrational frenzy as he believed that Panos had cheated on him, and just
24 as his mother had left him, the only person in his life he could depend on was also leaving
25 and he lost it. XIV ROA 3505. His thoughts in jail would be especially painful for him to
26 handle because he was not able to suppress them with drugs. XIV ROA 3506.

27 When Chappell met with Etcoff he broke down crying, was remorseful and was a
28 wreck. XIV ROA 3506. He was angry at himself and very emotional. XIV ROA 3507.

1 Etcoff believed that if Chappell could turn back the clock and undue his actions he would as
2 he now knows that it was the worst thing he could have done for her, their children, and
3 himself. XIV ROA 3507. Etcoff believes that Chappell was delusional when he stated that
4 he did not ejaculate when he had vaginal sex with Panos. XV ROA 3587.

5 During cross-examination the State focused on impeaching Etcoff's testimony on
6 direct examination that Chappell's free will was limited because of his IQ, mental state and
7 experiences. XV ROA 3518-25. The State also focused upon the fact that information
8 concerning Chappell's criminal history and full details concerning his relationship with
9 Panos were not given to Etcoff. XV ROA 3548-56.

10 Chappell's older brother Rick testified that their mother was killed in 1973, when Rick
11 was about three and a half and Chappell was two years old. XV ROA 3690. They have an
12 older brother, an older sister and one younger sister. XV ROA 3691. Their father was not
13 around much and did not live with them. XV ROA 3691. After their mother was killed they
14 lived with their grandma in Lansing Michigan. XV ROA 3691. Rick lived there until he was
15 around 14 years old, when he went to a juvenile boys facility. XV ROA 3691.

16 Their grandmother was very abusive and hit Rick with broom sticks, a bed board,
17 extension cords and her hands. XV ROA 3691-92. Rick did not know if his grandmother
18 also beat Chappell with extension cords. XV ROA 3692. Chappell was beat with bed
19 boards, branches or switches and belts. XV ROA 3693. There was no real father figure in
20 their home, though they did have a couple of uncles. XV ROA 3691. Their home was not
21 nurturing. XV ROA 3693. In addition, their grandmother worked a lot and had a lot of other
22 personal time to herself. XV ROA 3693. She provided a shelter, food and clothing for the
23 children but did not talk with them, help with schoolwork, get involved in activities or with
24 friends. XV ROA 3693. There was not much supervision in their home, though their two
25 uncles would sometimes stay with them. XV ROA 3694. Their uncle Anthony was killed,
26 which was difficult on all of them, including Chappell. XV ROA 3694.

27 They did not speak about their mother in their home. Rick was told to shut-up when
28 he asked questions about her. XV ROA 3694. They learned from people on the streets that

1 their mother had a drug problem. XV ROA 3694. His grandmother talked about their father
2 and was really negative, saying that he was a “no good nigger” and that he was always a liar,
3 he was no good, and “you’re going to be just like your dad.” XV ROA 3694.

4 Chappell did not do well in school and attended a special education school for his
5 elementary education. XV ROA 3692. Rick was unable to help Chappell with his
6 schoolwork because he had his own problems with homework and their grandmother also
7 refused to help them with schoolwork. XV ROA 3692. Chappell also had problems with his
8 urine and problems with his development. XV ROA 3693.

9 The neighborhood they lived in was a low income area that eventually had a lot of
10 vacant houses as no one wanted to live in that neighborhood. Eventually his grandmother
11 had to leave her house because the housing project was condemned. XV ROA 3692.

12 Chappell had a few friends from the neighborhood. XV ROA 3693. Drugs were
13 easily accessible in the neighborhood and Rick started using drugs when he was around nine
14 years old. XV ROA 3693. He did not know Chappell to be involved with drugs prior to the
15 time that Rick left for the boys school. XV ROA 3693. Rick and their sister Carla both had
16 problems with cocaine and he believes their sister Mira had problems with alcohol and
17 marijuana. XV ROA 3695. Rick was on parole for an armed robbery offense and also had
18 a stolen vehicle offense. XV ROA 3693. He believes that Chappell was internally angry and
19 that it took a lot for him to express his anger. XV ROA 3695. He did not communicate to
20 express himself or talk about his problems. XV ROA 3695. There was no adult in the house
21 to go to if they had problems. XV ROA 3695.

22 Rick knew Panos, saw her together with Chappell, saw that they got along and did not
23 ever see him get violent with her while in Lansing. XV ROA 3694. Chappell lived with
24 Rick and his wife for a few weeks after he returned from Tucson. XV ROA 3696. Panos
25 called Chappell and sent him money so that he could return to Tucson. XV ROA 3696.

26 Fred Dean was a friend of Chappell’s from Lansing Michigan. XV ROA 3697. They
27 were about the same age and lived near each other. XV ROA 3697. They were not in the
28 same class because Chappell attended special education classes. XV ROA 3697. As

1 children they hung out together almost every day. XV ROA 3698. Chappell was not allowed
2 to have friends over to his house until after his grandmother was gone. XV ROA 3698. The
3 only supervision was by Chappell's brother Ricky. XV ROA 3698. Chappell's uncles would
4 sometimes be there. XV ROA 3699. One of his uncles was killed near the neighborhood
5 after he was stabbed to death. XV ROA 3699. He recalled that Chappell's grandmother
6 would whoop him with an extension cord. XV ROA 3699. Chappell and Fred spent time
7 trying to get alcohol and marijuana while they were in junior high and high school. XV ROA
8 3699. Fred recalled that Chappell met Panos after he moved to South Lansing from the
9 housing project. XV ROA 3700. Chappell still visited Fred after moving away from the old
10 neighborhood and he socialized with Chappell and Panos as she was often with Chappell and
11 their group. XV ROA 3700.

12 Benjamin Dean, who is Fred's brother, also knew Chappell as they grew up near each
13 other in Lansing. XV ROA 3706. As children they hung out at Chappell's house because
14 there were no adults there. They knew his grandmother's work and bingo and horse track
15 schedule and would leave before she returned. XV ROA 3707. As teenagers they would
16 smoke weed and sometimes drink. XV ROA 3707. Chappell started using marijuana around
17 age 13 or 14. XV ROA 3708. Benjamin recalled that Chappell was in special education
18 classes during elementary school. XV ROA 3708. Benjamin knew Panos and saw her with
19 Chappell. XV ROA 3708. He did not see any problems between them. XV ROA 3709.

20 Charles Dean, who is a brother of Benjamin and Fred, testified that he knew Chappell
21 from Lansing. XV ROA 3718. The neighborhood they lived in abutted the train tracks, was
22 one of the worse off of the neighborhood areas, and was a pretty bad place to live. XV ROA
23 3719. Their friends and neighbors James Ford and Ivory Morrell were in Las Vegas to testify
24 for Chappell but had to return to Michigan. XV ROA 3708, 3719.

25 Mira Chappell King testified that she is Chappell's younger sister. XV ROA 3710.
26 She lived with Chappell and their siblings with their grandmother. XV ROA 3710. They had
27 necessities but their grandmother did not give them affection or attention, kiss them, say "I
28 love you," tuck them into bed or things like that. XV ROA 3170. Their grandmother was

1 rarely at home as she worked and went to the horse races and bingo. XV ROA 3711. Their
2 neighborhood consisted of run down houses and many of the houses were empty and
3 abandoned. XV ROA 3711. Their grandmother used extension cords and switches to
4 discipline Chappell and his siblings. XV ROA 3711. She never had anything nice to say and
5 always said "stupid" and "idiot." XV ROA 3712. Chappell went to special education classes
6 and was teased by his friends because of that. XV ROA 3712. Their grandmother did not
7 put much effort into helping Chappell and did not help the four children with their
8 homework. XV ROA 3712. While they were growing up she did not see Chappell have any
9 problems with being violent. XV ROA 3712. Their grandmother did not talk about their
10 mother or explain how she was killed. XV ROA 3712.

11 Mira saw Chappell and Panos while they were dating in high school. XV ROA 3714.
12 They later lived together with Chappell and Mira's grandmother. XV ROA 3714. They lived
13 together when Chappell and Panos's oldest child was a baby. XV ROA 3715. She saw
14 Chappell as being very loving to the baby, cooked for him, watched him and cared for him
15 while Panos worked. XV ROA 3715.

16 All four siblings had problems with drugs. They all used marijuana and alcohol as
17 teenagers. XV ROA 3714. As she was growing up she saw Chappell be argumentative, but
18 not violent. XV ROA 3715. She also learned that their mother had been involved with
19 drugs. XV ROA 3715.

20 Marabel Rosales, a defense investigator, testified that Ford and Morrell had been
21 present in Las Vegas to testify but had to return to Michigan because of job commitments and
22 fear that they would be fired if they did not return. XVI ROA 3767. They were both very
23 upset and very disappointed that they could not testify. XVI ROA 3767. They would have
24 testified that they knew Chappell as a child and as a teenager. XVI ROA 3767. They also
25 knew Chappell when he was dating Panos. XVI ROA 3767. There was great animosity from
26 Panos's parents because Chappell was black, so they had to sneak around to date and then
27 Panos was kicked out of her parent's home after JP was born. XVI ROA 3768. Chappell
28 and Panos then lived with Ford for awhile. XVI ROA 3768. Chappell was a great father to

1 JP, he loved his son, took care of him, made sure that he was fed and pretty much lived for
2 his son. XVI ROA 3768. After hearing about everything that happened in Las Vegas and
3 Tucson, they said that he was not the person they knew in Lansing. XVI ROA 3768. On
4 cross-examination Rosales was questioned about an affidavit which Ford had signed in which
5 he stated that Panos was very controlling of Chappell, he had heard her screaming and
6 recalled an incident in which she referred to Chappell using "the N word." XVI ROA 3768.

7 Chappell gave a statement in allocution in which he expressed his remorse. XVI ROA
8 3769.

9 In its rebuttal case the State presented a reading of the prior testimony of Chappell's
10 grandmother, Clara Axam. XVI ROA 3771. She testified that Chappell's mother was killed
11 in a car accident when he was two years old and that he had a hard reaction to her death.
12 XVI ROA 3771. He did not talk for a year or more after her death. XVI ROA 3771.
13 Chappell treated his grandmother well as a child and was not violent, but was slow and did
14 not understand things as fast as a normal child. XVI ROA 3771. He was sent to special
15 education classes in fifth grade and stayed there until high school. XVI ROA 3771. Axam
16 knew Panos and felt that she was a very nice lady. XVI ROA 3771. Axam believed that
17 Chappell should be punished based upon what happened to Panos but wanted Chappell to
18 continue to be a part of her life. XVI ROA 3772.

19 The State introduced a presentence investigation report (PSI) for a gross misdemeanor
20 offense, a PSI for this case, and a prison visiting log. XVI ROA 3772. Trial counsel did not
21 object to the admission of the two PSIs, but did object to admission of Chappell's statements
22 that were given during the PSI interviews.⁴ XVI ROA 3770. The reports include
23 information about arrests for which Chappell was not convicted and his statement. There
24 was no indication that Chappell was given Miranda warnings prior to his interview for the
25 presentence investigation report, no indication that his counsel was present, and no indication
26

27 ⁴The presentence reports are included in the Record on Appeal near the end of
28 unnumbered Volume XVIII, immediately prior to the district court's minutes.

1 that the statement was not required. Page 5 of the 1996 report includes a statement by
2 Panos's mother in which she stated "The SOB does not deserve to live."

3 Norma Penfield, Panos's mother, then took the stand again in response to the
4 testimony that Penfield did not like Chappell because of his race. XVI ROA 3772. She
5 stated that she did not like Chappell because he did not support Panos or the kids and because
6 of his actions. XVI ROA 3772.

7 VI. ARGUMENT

8 A. Chappell's Conviction For First Degree Murder Must Be Reversed Because The 9 Jury Was Not Properly Instructed On The Elements Of The Capital Offense

10 The failure of the trial court to instruct the jury on the element of deliberation violated
11 Chappell's rights to due process, equal protection, and a reliable sentence under the state and
12 federal constitutions. U.S. Const. Amends. V, VIII, XIV; Nev. Const. Art. I, Secs. 3, 6, 8;
13 Art. IV, Sec. 21.

14 The premeditation and deliberation instruction used at the guilt phase of Chappell's
15 trial for first-degree murder (the Kazalyn instruction), VII ROA 1722, misstated the law and
16 allowed the jury to issue a finding of guilt, and ultimately impose the death penalty, in an
17 unconstitutional manner.⁵ The concept of "instantaneous" premeditation creates a reasonable

18
19 ⁵This issue is properly presented in this appeal as Chappell is on direct appeal and
20 does not yet have a final judgment. See Johnson v. State, 118 Nev. 787, 802 n.31, 59 P.3d
21 450, 460 n. 31 (2002) (a conviction becomes final when judgment has been entered, the
22 availability of appeal has been exhausted, and a petition for certiorari to the Supreme Court
23 has been denied or the time for such a petition has expired) (citing Griffith v. Kentucky, 479
24 U.S. 314, 321 n.6 (1987)); Doyle v. State, 116 Nev. 148, 157, 995 P.2d 465, 471 (2000)
25 (same); Berman v. U.S., 302 U.S. 211, 212 (1937) ("Final judgment in a criminal case means
26 sentence. The sentence is the judgment"). See also NRS 176.105 ("If a defendant is found
27 guilty and is sentenced as provided by law, the judgment of conviction must set forth: (a) The
28 plea; (b) The verdict or finding; (c) The adjudication and sentence, including the date of the
sentence, any term of imprisonment, the amount and terms of any fine, restitution or
administrative assessment, a reference to the statute under which the defendant is sentenced
and, if necessary to determine eligibility for parole, the applicable provision of the statute;
and (d) The exact amount of credit granted for time spent in confinement before conviction,
if any." A judgment of conviction is not final until there is a written judgment setting forth

1 likelihood of convictions and sentences for first-degree murder without any rational basis for
2 distinguishing it from second degree murder. See NRS 200.030; State v. Thompson, 65 P.3d
3 420, 425-29 (Ariz. 2003) (defining premeditation simply as “instantaneous” constitutes due
4 process violation). The definition of first-degree murder is contrary to the statutory
5 definition of first degree murder because it fails to include both the elements of
6 “premeditation and deliberation” contained in NRS 200.030(1); Byford, 116 Nev. 215, 994
7 P.2d at 712-13; cf. Laird v. Horn, 414 F.3d 419, 425-28 (3rd Cir. 2005) (due process
8 violation from jury instruction omitting intent element of offense).

9 This Court has held that Byford is not a constitutional ruling and is not to be given
10 retroactive application. Garner, 116 Nev. at 782, 6 P.3d at 1025. This Court’s holding in
11 Garner, however, should be reconsidered in light of the recent decision of the Ninth Circuit
12 Court of Appeals in Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007). In Polk, the Ninth
13 Circuit held that this Court’s holdings in Byford and Garner, that no constitutional violations
14 occurred due to the use of the Kazalyn instruction, was contrary to clearly established federal
15 constitutional law as determined by the United States Supreme Court. Polk, 503 F.3d at 909-
16 11 (citing Sandstrom v. Montana, 442 U.S. 510, 521 (1979); Francis v. Franklin, 471 U.S.
17 307, 326 (1985); In re Winship, 397 U.S. 858 (1970)). If Garner is not overruled by this
18 Court, defendants will have no choice but to pursue their federal constitutional claims in
19 federal court, where they will obtain relief from their judgments upon a showing of prejudice.
20 This process will result in unnecessary delay and expense, will deprive this Court of the
21 opportunity to make the first assessment of prejudice, and will greatly delay the time for
22 retrials. Accordingly, reconsideration is warranted.⁶

23 _____
24 the plea; the verdict or finding; and the adjudication and sentence, including the date of
25 sentence and a reference to the statute under which the defendant is sentenced. Bradley v.
26 State, 109 Nev. 1090, 1094, 864 P.2d 1272, 1275 (1993) (citing NRS 176.035(1)).

27 ⁶Chappell recognizes that this Court found this issue to be without merit during the
28 post-conviction appeal. XIROA 2790. Reconsideration is warranted, however, based upon
the Ninth Circuit’s subsequent decision in Polk and because it would be a fundamental

1 Reconsideration is also warranted because this Court's holdings in Byford and Garner
2 that constitutional rights were not implicated by the Kazalyn instruction were erroneous. A
3 ruling that a definition confuses the distinction between first degree, capital-eligible murder,
4 and second degree murder, is necessarily a ruling that implicates the federal constitutional
5 guarantees cited. Consequently, the State is given virtually unlimited discretion in charging
6 because there is no way to distinguish between first and second degree murder, Byford, 994
7 P.2d at 713, and it is also likely that the jury will arbitrarily convict similarly situated
8 defendants for first-degree murder and impose the death penalty in violation of the equal
9 protection guarantee of the constitution.

10 Chappell was prejudiced by the use of the Kazalyn instruction. The record reflects
11 that Chappell, a man with a low IQ and substantial mental or personality disabilities, killed
12 his long time girlfriend, who was the mother of their three children, during the heat of an
13 argument over a letter to her from another man that Chappell discovered shortly before she
14 was killed. IV ROA. 892-94; VI ROA. 1403-05, 1546. He used a common kitchen knife
15 that was found in their home and did not bring a weapon with him. The first trial jury found
16 a mitigating circumstance of murder committed while the defendant was under the influence
17 of extreme mental or emotion disturbance, thus establishing that the jury had significant
18 concerns about Chappell's mental state at the time of the offense. IX ROA 2126, 2170-71.
19 Had the jury been properly instructed, there is a reasonable likelihood that they would have
20 found him guilty of a lesser offense of second-degree murder or voluntarily manslaughter.

21 The State was relieved of its burden of proving each of the material elements of felony
22 murder. Chappell's conviction must therefore be reversed. Sandstrom, 442 U.S. at 521;
23 Francis, 471 U.S. at 326; In re Winship, 397 U.S. 858. Under these circumstances, the State
24 cannot establish beyond a reasonable doubt that the unconstitutional jury instruction did not

25 _____
26 miscarriage of justice not to do so. See Arizona v. California, 460 U.S. 605, 618 n.8 (1983)
27 (it is not improper to depart from the law of the case if a court believes its prior holding is
28 "clearly erroneous and would work a manifest injustice"); Leslie v. Warden, 118 Nev. 773,
780, 59 P.3d 440, 445 (2002); Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007).

1 contribute to the jury's verdict. See Chapman v. California, 386 U.S. 18 (1967); Neder v.
2 U.S., 527 U.S. 1, 18 (1999).⁷

3 **B. Chappell's Conviction For First Degree Murder Must Be Reversed Because The**
4 **Jury Was Not Properly Instructed On The Elements Of Felony Murder**

5 The failure of the trial court to instruct the jury on the element of felony murder
6 violated Chappell's rights to due process, equal protection, and a reliable sentence under the
7 state and federal constitutions.⁸ U.S. Const. Amends. V, VIII, XIV; Nev. Const. Art. I, Secs.
8 3, 6, 8; Art. IV Sec. 21.

9 The State charged Chappell with felony murder based in part upon robbery, argued
10 that he was guilty of felony murder based upon robbery, obtained an instruction on felony
11 murder, and obtained a verdict of first degree murder which was likely premised on the
12 robbery allegation. I ROA 38-39; VII ROA 1711, 1747-49. The felony murder theory was

14 ⁷It is anticipated that the State will argue that Chappell's conviction may still stand
15 based upon a belief that the first jury may have found Chappell guilty under a theory of
16 felony murder. The jury did not return a special verdict, so it is impossible to know the basis
17 of the jury's decision. This Court has recently issued conflicting decisions on the standard
18 to be utilized in this situation. Cf. Nay v. State, 167 P.3d 430 (Nev. 2007) (using a "beyond
19 a reasonable doubt" standard and citing Neder v. U.S., 527 U.S. 1 (1999)) with Bolden v.
20 State, 124 P.3d 191 (Nev. 2005) (using a "absolute certainty" standard and citing Keating v.
Hood, 191 F.3d 1053 (9th Cir. 1999)). The Bolden standard is correct. Stromberg v.
California, 283 U.S. 359 (1931); Ficklin v. Hatcher, 177 F.3d 1147, 1152 (9th Cir. 1999);
Lara v. Ryan, 455 F.3d 1080, 1085-1086 (9th Cir. 2006).

21 ⁸Just as the lack of proper instruction on premeditation and deliberation issue is
22 properly before this Court, so to is this issue. Chappell is on direct appeal and does not yet
23 have a final judgment. See Johnson, 118 Nev. at, 802 n.31, 59 P.3d at 460 n. 31; Griffith,
24 479 U.S. at 321 n.6 (1987); Doyle, 116 Nev. at 157, 995 P.2d at 471; Berman, 302 U.S. at
212; NRS 176.105.

25 Chappell recognizes that this Court found that felony murder could be premised on
26 afterthought robbery, albeit in the context of the discussion of aggravating circumstances, on
27 direct appeal. Chappell, 114 Nev. at 14087, 972 P.2d at 841. Consideration of this issue as
28 it concerns the conviction for first degree murder is warranted because it would be a
fundamental miscarriage of justice not to do so. See Arizona v. California, 460 U.S. at 618
n.8; Leslie, 118 Nev. at 780, 59 P.3d at 445; Tien Fu Hsu, 173 P.3d 724.

1 premised on the theory that (1) Chappell entered the trailer through a window with intent to
2 commit an offense; and (2) he took Panos's car after she had been killed. I ROA 39. The
3 jury was specifically instructed that it could find Chappell guilty of robbery even if the intent
4 to commit robbery was formed after the murder and it could find Chappell guilty of felony
5 murder based upon that robbery. VII ROA 1711, 1721. See also VII ROA 1623, 1628-29
6 (State's closing argument)

7 On direct appeal this Court considered this issue in the context of reviewing the
8 aggravating circumstance of the felony murder robbery. Chappell, 114 Nev. at 1408, P.2d
9 at 841. It rejected Chappell's argument that the aggravating circumstance was invalid
10 because the evidence showed that Chappell took the car as an afterthought and found that "it
11 is irrelevant when the intent to steal the property is formed." Id. This theory, however, was
12 soundly rejected in Nay v. State, 167 P.3d 430 (Nev. 2007) as Chappell was essentially
13 overruled on this point. In Nay, this Court found that "[r]obbery does not support felony
14 murder where the evidence shows that the accused kills a person and only later forms the
15 intent to rob that person." Id. at 435.

16 The jury here was instructed that it could find felony murder based upon afterthought
17 robbery and the jury returned a verdict of guilty on the charge of first degree murder. As it
18 is impossible to know which theory the jury relied upon in reaching its verdict, Chappell's
19 judgment of conviction for the offense of first degree murder must be reversed. Bolden; 124
20 F.3d 191; Stromberg, 283 U.S. 359; Ficklin, 177 F.3d at 1152; Lara, 455 F.3d at 1085.

21 **C. Chappell's Sentence of Death Must Be Vacated Because NRS 177.055(3) Is**
22 **Unconstitutional**

23 NRS 177.055(3) is unconstitutional because it grants this Court the unfettered
24 discretion to impose a sentence of less than death upon the finding of a constitutional
25 violation. This Court's failure to impose a lesser sentence here violated Chappell's rights to
26 due process, equal protection, and a reliable sentence and the state and federal constitutions.
27 U.S. Const. Amends. V, VIII, XIV; Nev. Const. Art. I, Secs. 3, 6, 8; Art. IV Sec. 21.

28 Chappell was sentenced to death by the first jury. IX ROA. 2127, 2167. On direct

1 appeal this Court struck the aggravator based on torture or depravity of mind, but affirmed
2 Chappell's conviction and sentence. Chappell, 114 Nev. 1403, 972 P.2d 838. On appeal
3 from the partial grant and partial denial of his post-conviction petition for a writ of habeas
4 corpus, he raised constitutional issues concerning his conviction and death sentence. This
5 Court did not address all of these issues, but did reverse his death sentence based upon a
6 finding of ineffective assistance of trial counsel. XI ROA 2783-96. This Court did not elect
7 to set aside Chappell's death sentence and impose a sentence of imprisonment for life
8 without the possibility of parole, as it was entitled to pursuant to NRS 177.055(3).
9 Chappell's sentence of death is unconstitutional because NRS 177.055(3) is invalid on its
10 face and as applied under the facts of this case.

11 NRS 177.055(3) grants this Court two options upon finding constitutional error in a
12 capital case. It may a remand case for a new penalty hearing or set aside the death sentence
13 and impose a sentence of life without the possibility of parole. This remand procedure
14 provided this Court with complete and unfettered discretion to re-sentence Chappell to life
15 imprisonment or to subject him to the risk of another death sentence after remand. See
16 Johnson v. State 118 Nev. 787, 803-04, 59 P.3d 450, 461 (2002). The absence of standards
17 and the absence of any rational narrowing of death eligibility in the statute renders NRS
18 177.055(3) unconstitutional.

19 NRS 177.055(3) allows this Court to act as a sentencer, see Sochor v. Florida, 504
20 U.S. 527, 539 (1992). Under Furman v. Georgia, 408 U.S. 238 (1972), a sentencing scheme
21 in a capital case must channel the discretion of the sentencing body, comport with
22 contemporary standards of decency and allow the sentencer to make an individualized
23 sentencing determination. Lewis v. Jeffers, 497 U.S. 764, 774 (1990); Barclay v. Florida,
24 463 U.S. 939, 960 (1983). The sentencing scheme of NRS 177.055(3) fails to comport with
25 any of Furman's constitutional principles: it does not supply any standards to channel the
26 sentencer's discretion; its arbitrariness is offensive to contemporary standards of decency;
27 and there are no criteria to allow the court to arrive at an individualized sentence by
28 considering mitigators. The absence of any standards to guide the court's discretion is

1 exacerbated by the inherent limitations on an appellate court's ability to weigh the mitigators
2 presented to the jury. Caldwell v. Mississippi, 472 U.S. 320, 330 (1985); Cabana v. Bullock,
3 474 U.S. 376, 388 n.5 (1986). This procedure also violates the Eighth Amendment's
4 requirement of meaningful appellate review of death sentences. Clemons v. Mississippi, 494
5 U.S. 738, 749 (1990); Zant v. Stephens, 462 U.S. 862 875-76, 890 (1983).

6 NRS 177.055(3) grants this Court unfettered discretion to sentence a defendant to life
7 imprisonment or to remand the case and allow the State to seek another death sentence. Such
8 unfettered discretion is unconstitutional. See Harris v. Blodgett, 853 F.Supp. 1239, 1287-91
9 (W.D. Wash. 1994); Ortega-Rodriguez v. U.S., 507 U.S. 234, 246-49 (1993); NAACP v.
10 Alabama, 357 U.S. 449, 456-58 (1958). The failure to channel the Court's discretion violates
11 the Eighth Amendment because it may literally mean the difference between life and death.
12 Chappell's sentence of death is unconstitutional because NRS 177.055(3) is unconstitutional.

13 **D. Chappell Was Entitled To Review By The District Attorney's Death Review**
14 **Committee**

15 Chappell's state and federal constitutional rights to due process and equal protection,
16 and his right to be free from cruel and unusual punishment were violated because the State
17 refused to submit this case for consideration before the District Attorney's Death Review
18 Committee, even though similarly situated defendants received such review. U.S. Const.
19 amend. V, VI, VIII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

20 Chappell contended that the Committee should review the prosecution's original 1995
21 decision to seek the death penalty because three of the four original aggravating
22 circumstances were no longer applicable and because Chappell had adjusted well to prison
23 and had not been subject to disciplinary actions during his decade of incarceration. XII ROA
24 2821. Despite the fact that over a decade had lapsed since Chappell was initially charged
25 with death penalty, the State refused to resubmit this matter to its Death Review Committee
26 and instead relied upon the original 1995 decision to seek death against him. XII ROA 2885
27 (citing Schoels v.State, 114 Nev. 981, 966 P.2d 735 (1998)). The district court denied
28 Chappell's motion. XII ROA 2905, 3015; XV ROA 3837.

1 In evaluating whether a defendant should be subject to the death penalty,
2 considerations of *contemporary* standards of decency must be considered. See Roper v.
3 Simmons, 543 U.S. 551, 594 (2005); Atkins v. Virginia, 536 U.S. 304, 311 (2003); Woodson
4 v. North Carolina, 428 U.S. 280, 301 (1976). The 1995 decision to seek the death penalty
5 should not govern the 2007 prosecution as the intervening twelve years render the former
6 decision dated and an unreliable reflection upon the contemporary standards of decency.

7 The State relied upon the Separation of Powers doctrine in arguing that it should not
8 have been required to submit this matter to further review by its Committee. XII ROA 2885.
9 A prosecutor's discretion, however, is subject to constitutional constraints. U.S. v.
10 Armstrong, 517 U.S. 456, 464 (1996) (citing U.S. v. Batchelder, 442 U.S. 114, 125 (1979)).
11 The Due Process Clause of the federal constitution prohibits a prosecutorial decision that is
12 based on "an unjustifiable standard such as race, religion, or other arbitrary
13 classification[.]" Id. (quoting Oyler v. Boles, 368 U.S. 448, 456 (1962)). Chappell
14 respectfully submits that his due process rights, as well as his rights against cruel and unusual
15 punishment, were violated by the State's arbitrary decision not to submit cases that were
16 reversed on appeal for review by the prosecutor's death review committee. He further
17 submits that the failure of the State to treat him in the same manner as other defendants who
18 faced capital proceedings at the same time as his trial resulted in a violation of his rights to
19 equal protection of the laws.⁹

20 **E. Chappell's Death Sentence Is Unconstitutional Because of the Trial Court Failed**
21 **to Dismiss Jurors For Cause Who Would Always Impose A Sentence of Death**

22 The trial court violated Chappell's state and federal constitutional rights an impartial
23 jury, and a reliable sentence by refusing challenges for cause of potential jurors who
24 indicated their firm intent to impose a sentence of death. U.S. Const. Amends. VI, VIII,

25 ⁹The State's reliance on Schoels was misplaced. First, the State cited to a concurring
26 opinion of one justice without noting that limitation in its opposition. See Schoels, 114 Nev.
27 at 990-91, P.2d at 741-42 (concurring opinion of Justice Shearing). In addition, the Schoels
28 court did not address the issue of whether the State is required to reconsider its decision to
seek the death penalty upon reversal of a sentence of death.

1 XIV; Nev. Const. Art. I, Secs. 3, 6, 8.

2 The district court erred, and violated Chappell's constitutional rights, by failing to
3 grant a challenge for cause of prospective juror Bundren. The following exchange makes it
4 clear that the potential juror would not consider sentences of life with or without the
5 possibility of parole:

6 MS. WECKERLY [The Prosecuting Attorney]: You think you'd automatically pick out a
7 punishment without hearing the information?

8 PROSPECTIVE JUROR [Ms. Bundren]: I think I would.

9 MS. WECKERLY: And I take it, it didn't matter what the judge's instructions would be, you
(sic) do it anyway?

10 PROSPECTIVE JUROR: I'd do what I thought was right.

11 MS. WECKERLY: So there is no way you could see yourself looking at all four
12 punishments in this situation?

13 PROSPECTIVE JUROR: I don't think so. I can't say positive, but I don't think so.

14 MS. WECKERLY: That's sort of the question.

15 PROSPECTIVE JUROR: I really don't think so. I quite honestly cannot see how I could not
punishment (sic) somebody that committed a murder.

16 MS. WECKERLY: You understand that not all murders are eligible for the death penalty?

17 PROSPECTIVE JUROR: I'm not familiar with things like that. I was just, off the
18 questionnaire it said he used a weapon, things like that. And he murdered her, so that's what
I would be going by.

19 MS. WECKERLY: And there are people that commit first degree murder with a weapon that
20 are not eligible, legally, for the death penalty. Is that something you could accept?

21 PH: I would have to, if it's not an option.

22 MS. WECKERLY: Okay. So in that type of situation, you're saying you'd follow the law?

23 PROSPECTIVE JUROR: I can follow the law, sure.

24 MS. WECKERLY: And the law also tells you in and (sic) penalty hearing or this type of
situation that you have to at least consider -- not telling you what weight you have to give
25 certain pieces of information -- but you have to at least listen to information that's presented
in a hearing like this. Would you be able to do that?

26 PROSPECTIVE JUROR: I could always listen.

27 MS. WECKERLY: After that, of course, the decision is left to you and your fellow jurors.
28 I assume you can make a decision at that point?

1 PROSPECTIVE JUROR: I could.

2 MS. WECKERLY: Thank you, ma'am. Pass for cause, your Honor.

3 THE COURT: Mr. Patrick.

4 MR. PATRICK: Ms. Bundren, Ms. Weckerly asked you, you said you would automatically
5 pick a penalty.

6 JP: I would automatically pick a penalty -- just off the questionnaire.

7 MR. PATRICK: What penalty would you automatically pick?

8 PROSPECTIVE JUROR: Death.

9 MR. PATRICK: In your questionnaire you said you've always thought this way about the
10 death penalty?

11 PROSPECTIVE JUROR: I have.

12 MR. PATRICK: I think the last think you wrote on the questionnaire was that you are not
13 open minded enough to think there's an excuse?

14 PROSPECTIVE JUROR: I'm very narrow minded about that.

15 MR. PATRICK: What you're telling us is your mind is made up?

16 PROSPECTIVE JUROR: It pretty much is.

17 MR. PATRICK: There's not much chance we'll change that, is there?

18 PROSPECTIVE JUROR: Not by going off the questionnaire, no.

19 MR. PATRICK: We'd challenge for cause, your Honor.

20 THE COURT: Let me ask you a question, Ms. Bundren, because a couple of times you kind
21 of put a caveat to your statement about saying, off the questionnaire. You understand there's
22 going to be a hearing where witnesses, evidence is going to come in. Both sides have to
23 present whatever they want to examine the witnesses on. And that's the evidence that you're
24 going to rely upon to make a decision, not --

25 PROSPECTIVE JUROR: Not the questionnaire. Right.

26 THE COURT: That being the case, can you listen to the evidence presented in the hearing.

27 PROSPECTIVE JUROR: I could.

28 THE COURT: And after having listened to that evidence, is it your statement today that you
would be able to consider all of the forms of punishment?

PROSPECTIVE JUROR: I could if it was different from the statement.

THE COURT: I don't know that it's different from the statement, but obviously it's more
expansive. You're going to get more information about things during the penalty hearing.
So I don't want to say it's going to be different. I'm just going to say that I would expect

1 you'll receive more information about everything involved here.
2 So what I need to know is if you'll be able to consider all forms of punishment.
3 PROSPECTIVE JUROR: I could consider it.
4 THE COURT: Okay, yes or no?
5 PROSPECTIVE JUROR: Yes.
6 19 ROA 3907-09. Chappell respectfully submits that it is clear from this exchange that
7 prospective juror Bundren would always return a sentence of death in the case of first degree
8 murder and that she would not sincerely consider the alternative sentences of life with or
9 without the possibility of parole. The district court erred in failing to grant the defense
10 motion for cause. 19 ROA 3916. Ms. Bundren sat on the jury which imposed the sentence
11 of death against Chappell. 12 ROA 3046.
12 Likewise, the district court erred in failing to grant a defense challenge for cause of
13 prospective juror Hibbard as he was unwilling to consider mitigating circumstances other
14 than insanity:
15 MR. PATRICK [defense counsel]: Just because somebody was on drugs, would you still be
16 able to keep an open mind about things they had to say?
17 PROSPECTIVE JUROR: If you're asking if it mitigates what they do, no it doesn't. They
18 have to control their actions and make decisions. They've got to be accountable for those
19 decisions.
20 MR. PATRICK: In your questionnaire when they asked you what your feelings were about
21 the death penalty, you put, good.
22 PROSPECTIVE JUROR: If the penalty meets the crime. That's what I'm trying to say, the
23 penalty should fit the crime.
24 MR. PATRICK: Again, on the mitigation, you were asked there's mitigating circumstances
25 and aggravating circumstances. You wrote that you could listen to both sides of that/
26 PROSPECTIVE JUROR: Yeah. Mitigation seems to be a broad spectrum now a days to
27 justify a lot of things. I don't believe that mitigating circumstances for death penalty murder.
28 I would have a hard time accepting mitigating circumstances for murder.
MR. PATRICK: So anything in a person's background or any drug activity, doesn't make
any difference to you?
PROSPECTIVE JUROR: No.
MR. PATRICK: At all?

1 PROSPECTIVE JUROR: Not at all.

2 MR. PATRICK: Would you say you'd vote automatically for the death penalty?

3 PROSPECTIVE JUROR: I would have to hear the facts. Murder is a pretty severe action.
4 Unless there's insanity at the time of committing it, I don't know how you justify that.

5 MR. PATRICK: So besides insanity, you wouldn't be able to find any mitigating
6 circumstances?

7 PROSPECTIVE JUROR: It would be difficult.

8 MR. PATRICK: Court's indulgence.

9 THE COURT: Okay.

10 MR. PATRICK: I'll challenge at this time.

11 THE COURT: Let me ask you a question, Mr. Hibbard. The question isn't so much whether
12 you think there are mitigating circumstances for the murder that justify a crime. The question
13 here is sentence, punishment. Are there things out there in your mind that you would be able
14 to consider that you think would be appropriate consideration as to mitigate what sentence
15 somebody receives?

16 PROSPECTIVE JUROR: I think pretty hard about the victim, not so much the person. The
17 victim doesn't have a lot of choices left.

18 THE COURT: In understand. But the question in terms of how he gets punished, both sides
19 might be able to present evidence that they think --

20 PROSPECTIVE JUROR: The victim didn't choose his or her punishment.

21 THE COURT: I realize that. Would you be able to consider things that the defense brings
22 up that they argue in mitigation of what sentence somebody should receive, or are you saying
23 you wouldn't consider those at all?

24 PROSPECTIVE JUROR: I'm saying that I think that bringing up a cover for justifying
25 committing murder is very difficult for me to understand.

26 THE COURT: All right. Thank you.

27 19 ROA 3957-58. The court denied the challenge for cause after concluding the following:

28 Well, I'm going to deny the challenge as to Mr. Hibbard. There's a
difference -- there's several levels of what they need to be able to do here.
Number one is can they consider -- do they recognize and consider all four
forms of punishment. And he indicated he could.
Two, will you follow the instructions of the court. He indicated he
would. And will you consider all the evidence. He indicated he would.
Whether somebody agrees or disagrees with whether or not they think, you
know, prospectively some type of mitigation is a good or a bad thing they're
going to give weight to is really kind of a little lower down because you can't
tell them the evidence yet. So they're kind of having to guess, well, do I think
there's mitigation for murder or not, without having heard any facts of the
case.

1 I don't think the jurors need to say your mitigation is going to be good
2 or bad to make them eligible to sit on the case. It's important that they indicate
3 they will consider all the evidence, consider all forms of punishment and are
4 not foreclosed to imposing just one penalty or another. So I think that he
5 sufficiently answering things, so I'll deny the challenge for cause as to Mr.
6 Hibbard.

7 19 ROA 3966. Chappell respectfully submits that it was clear from the record that
8 prospective juror Hibbard was unwilling to consider mitigating evidence and that he was
9 therefore not eligible to serve on the jury. The district court erred in failing to grant the
10 defense challenge for cause of this juror.

11 Finally, the district court erred in failing to grant a defense challenge for cause of
12 potential juror Ramirez. Ramirez expressed his belief that the death penalty was not enforced
13 enough; that he comes from Texas and the concept that certain factors would have to be
14 considered before a sentence of death could be imposed was news to him; that it was hard
15 for him to say whether he would be able to follow the judge's instructions and hold the State
16 to its burden; that he believes in an eye for an eye; that he agreed with the system in Texas
17 where jurors did not have four choices as to the punishment, but only one choice which was
18 the death penalty; and he doubted that if he were in Chappell's position that he would want
19 12 people like him sitting on the jury. 19 ROA 3976-78. Despite his strong convictions and
20 the clear message that he would impose the death penalty, the district court denied the
21 defense challenge for cause. 19 ROA 3990. The district court erred in doing so.

22 In Wainwright v. Witt, 469 U.S. 412 (1985), the United States Supreme Court held
23 that "the proper standard for determining when a prospective juror may be excused for cause
24 because of his or her views on capital punishment . . . is whether the juror's views would
25 'prevent or substantially impair the performance of his duties as a juror in accordance with
26 his instructions and his oath.'" Id. at 424 (quoting Adams v. Texas, 448 U.S. 38, 45 (1980)).
27 It is apparent from voir dire that these three jurors should have been dismissed for cause
28 because their views would prevent or substantially impair the performance of their duties.
It is well settled that the Sixth and Fourteenth Amendments guarantee a defendant on trial
for his life the right to an impartial jury. Witt, 469 U.S. at 424; Irvin v. Dowd, 366 U.S. 717,

1 722 (1961). Because Juror Bundren actually sat on Chappell's jury, his sentence of death
2 must be overturned. Ross v. Oklahoma, 487 U.S. 81, 85 (1988). Likewise, Chappell was
3 prejudiced by the failure to remove Hibbard and Ramirez from the jury panel because
4 Chappell had to use his peremptory challenges against these prospective jurors and had they
5 been removed for cause he could have used those challenges against other prospective jurors,
6 such as Juror Bundren. Finally, Chappell was prejudiced because the examination of these
7 jurors took place in the presence of the other potential jurors, and by failing to remove these
8 jurors for cause the jurors who sat on Chappell's jury received the implicit message that the
9 views of these jurors were acceptable under the law.

10 **F. Chappell's Conviction Is Unconstitutional Because The State Was Permitted To**
11 **Introduce Unreliable Hearsay Evidence During The Penalty Hearing In Support**
of The Aggravating Circumstance and as Other Matter Evidence

12 Chappell's conviction and death sentence are invalid under state and federal
13 constitutional guarantees of confrontation, cross-examination, compulsory process, due
14 process of law, equal protection, and a reliable sentence due to the trial court's improper
15 admission of testimonial hearsay statements. Likewise, Chappell's constitutional rights to
16 due process, a fair penalty hearing, and a reliable trial were violated by the introduction of
17 unreliable hearsay statements. U.S. Const. Amends. V, VIII & XIV; Nev. Const. Art. I, Secs.
18 3, 6, 8; Art. IV, Sec. 21.

19 Chappell was deprived of his constitutional rights due to the admission of testimonial
20 hearsay statements by declarants that he received no opportunity to confront or cross-
21 examine. Out-of-court statements by witnesses that are testimonial are barred, under the
22 Confrontation Clause, unless witnesses are unavailable and petitioner had prior opportunity
23 to cross-examine them, regardless of whether such statements are deemed reliable by court.
24 Considered singly and cumulatively, the introduction of inadmissible hearsay against
25 petitioner was prejudicial. Charmaine Smith, a Parole and Probation Officer, testified that
26 Panos told her that she was upset with Chappell and in fear for her life. XIII ROA 3236. She
27 also reported a claim that Panos said Chappell had previously held a knife to her. XIII ROA
28 3236. Detective Vaccaro testified about tests revealing the presence of DNA in Panos's

1 vagina and the meaning of those tests. XIV ROA 3425. Clair McGuire testified about
2 statements that Panos made to police officers in which she stated that Chappell held a knife
3 to her throat and pinned her down while sitting on top of her chest. XIII ROA 3247.
4 Lansing Police Department Detective Weidner testified about statements made by a man who
5 was allegedly assaulted by Chappell in 1988. XIII ROA 3251-53. These statements were
6 introduced both as evidence of the alleged aggravating circumstance and as "other matter"
7 or character evidence.

8 Chappell was also deprived of his constitutional rights due to the admission of non-
9 testimonial hearsay statements. Chappell had no opportunity to confront or cross-examine
10 the declarants of these statements. Moreover, much of this evidence was unreliable, highly
11 suspect and impalpable. Substantial evidence of this nature was introduced during the
12 second penalty phase trial. Specifically, Michele Mancha testified that Panos told her about
13 various incidents involving Chappell, Panos's alleged plan to leave Chappell, Panos's report
14 of calling the jail to ensure that Chappell was still in custody. XIII ROA 3089-3101. She
15 was also permitted to testify as to Panos's reports regarding court proceedings, even though
16 Mancha was not present at those proceedings; report that Panos had a restraining order
17 against Chappell, even though in fact that restraining order was no longer in effect as Panos
18 did not appear for her court appearance; and report an alleged threat to Panos by Chappell,
19 while he was in custody, during a court proceeding for which Mancha was not present. XIII
20 ROA 3102-05. Mike Pollard also testified as to conversations he had with Panos in which
21 she allegedly claimed that she was leaving Chappell, that he stole items from her and their
22 children, and that Panos repeatedly called the jail because she was concerned about
23 Chappell's release. XIII ROA 3114-29. Pollard also claimed that Panos said that she
24 received a telephone message from Chappell and recited the contents of that alleged message.
25 XIII ROA 3131. Lisa Larsen also presented testimony about her conversations with Panos,
26 including Panos's alleged plan to move before Chappell got out of custody and her alleged
27 conversation with Chappell in court the day before she was killed. XIII ROA 3169-72.
28 Latrona Smith testified that on the day Panos was killed, she called Smith and asked her to

1 call back with some kind of excuse so that she could leave the house. XIII ROA 3191-92.
2 Clair McGuire testified about statements that Panos had to quit her job as a 911 operator in
3 Tucson because of Chappell's criminal record and statements by Panos that Chappell had
4 sold her furniture and their children's jackets to get money for drugs. XIII ROA 3244-45.
5 McGuire further stated that Panos said that Chappell would rape McGuire and burn the house
6 down so that Panos would not have a house to come home to. XIII ROA 3246. These
7 statements were introduced both as evidence of the alleged aggravating circumstance and as
8 "other matter" or character evidence.

9 Chappell was prejudiced by this highly inflammatory and inadmissible evidence.
10 Although this evidence was highly damaging, Chappell was not able to challenge it through
11 cross-examination of the persons making the statements.

12 The Sixth Amendment to the United States Constitution provides in relevant part: "In
13 all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the
14 witnesses against him." The United States Supreme Court has repeatedly recognized that a
15 defendant's Sixth Amendment right to confront his accusers "is most naturally read as a
16 reference to the right of confrontation at common law, admitting only those exceptions
17 established at the time of the founding." Crawford v. Washington, 541 U.S. 36, 54 (2004).
18 See also Salinger v. U.S., 272 U.S. 542, 548 (1926); U.S. v. Reid, 53 U.S. 361, 364-65
19 (1851) (overruled on other grounds by Rosen v. U.S., 245 U.S. 467, 470 (1918)). Under the
20 common law, the rule governing testimony by deceased witnesses was clear: absent a prior
21 opportunity for cross-examination, a deceased's statements were inadmissible. As
22 incorporated into the Sixth Amendment, this rule recognized only two exceptions: when that
23 testimony consisted of the "dying declaration of a party murdered," 1 Joseph Chitty, a
24 Practical Treatise on the Criminal Law 390 (London 1819), and "when it can be proved on
25 oath, that the witness is detained and kept back from appearing by the means and
26 procurement of the prisoner." Geoffrey Gilbert, the Law of Evidence 125 (6th ed. London
27 1801); see also Crawford, 541 U.S. at 56 n.6 (dying declarations), 62 (forfeiture by
28 wrongdoing).

1 A defendant's right to confront and cross-examine the witnesses against him is a
2 central procedural safeguard whose "very mission [is] to advance the accuracy of the truth-
3 determining process in criminal trials." Tennessee v. Street, 471 U.S. 409, 415 (1985) (citing
4 Dutton v. Evans, 400 U.S. 74, 89 (1970)). It is "an essential and fundamental requirement
5 for the kind of fair trial which is this country's constitutional goal." Pointer v. Texas, 380
6 U.S. 400, 405 (1965).

7 Chappell recognizes that in Summers v. State, 148 P.3d 778, 782 (Nev. 2006), this
8 Court held in a 4-3 decision, that hearsay testimony is admissible in a capital penalty hearing.
9 In doing so, this Court relied upon the United States Supreme Court's 1949 decision in
10 Williams v. New York, 337 U.S. 241 (1949). Williams, however, should no longer be
11 deemed controlling. This was a due process case decided nearly six decades ago that has
12 been repeatedly limited by subsequent cases. "The United States Supreme Court has not
13 addressed this precise issue [of the application of Crawford to capital sentencing] but has
14 given very clear indications that Williams v. New York is no longer viable. Summers, 148
15 P.3d at 785 (Rose C.J., joined by Maupin and Douglas, JJ., concurring in part and dissenting
16 in part). Williams should not be given rigid adherence given the undeniable evolution of the
17 United States Supreme Court's jurisprudence on this matter over the succeeding decades.
18 Id. There are many strong arguments for reconsidering and limiting Williams' reach. First,
19 when Williams was decided, the Supreme Court had not yet held that the Confrontation
20 Clause applied to the states, thus the Court did not analyze the issue presented under the
21 Confrontation Clause. Second, Gardner v. Florida, 430 U.S. 349 (1977), confirms that
22 Williams has less sweeping application under the Court's post-Furman capital sentencing
23 jurisprudence – indeed, the Eleventh Circuit has extended the Confrontation Clause to capital
24 sentencing based on precisely this reading of Gardner. Proffitt v. Wainwright, 685 F.2d
25 1227, 1253-54 (11th Cir. 1982).

26 The precedential force of Williams, at least with respect to capital cases, cannot be
27 evaluated outside the context of the Supreme Court's ongoing reevaluation of the Sixth
28 Amendment in recent years. When Williams was issued, capital sentencing proceedings

1 looked nothing like today's proceedings. They were formally characterized as informal
2 procedures, with extraordinary discretion, and the Supreme Court's holding was premised
3 on the idea that there was no real distinction between capital sentencing and ordinary
4 sentencing. Williams, 337 U.S. at 252. That premise is no longer valid. See Barefoot v.
5 Estelle, 463 U.S. 880, 898-03 (1983) (upholding the admission of demonstrably unreliable
6 evidence against a due process attack because of "the benefit of cross-examination" to
7 expose the flaws in such testimony); Specht v. Patterson, 386 U.S. 605 (1967) (non-capital
8 defendant was entitled to procedural protections, including the right of confrontation, in
9 facing an enhanced sentence for his crime which was contingent on proof of additional facts
10 in a separate proceeding); Bullington v. Missouri, 451 U.S. 430, 446 (1981).

11 Other courts recognize that Crawford applies to the eligibility phase of a capital
12 penalty trial. See Rousseau v. State, 171 S.W.3d 871 (Tex. Crim. App. 2005); State v. Bell,
13 603 S.E.2d 93, 115-116 (N.C. 2004); U.S. v. Jordan, 357 F.Supp.2d 880 (E.D. Va. 2005);
14 U.S. v. Johnson, 378 F.Supp.2d 1051, 1059-62 (N.D. Iowa 2005); State v. McGill, 140 P.3d
15 930 (Ariz. 2006). Still other courts have found that the Confrontation Clause applies to both
16 the eligibility and selection phases of a capital penalty trial. Proffitt, 685 F.2d at 1254-55;
17 U.S. v. Brown, 441 F.3d 1330, 1361 (11th Cir. 2006); U.S. v. Mills, 446 F.Supp.2d 1115,
18 1135 (C.D. Cal. 2006); Rodgers v. State, 948 So.2d 655, 663 (Fla. 2007).

19 Again, Chappell recognizes that in Summers, 148 P.3d at 779, this Court held, in a 4-3
20 decision, that Crawford does not apply to the penalty phase of a capital trial. See also
21 Johnson v. State, 148 P.3d 767, 773 (2006); Thomas v. State, 148 P.3d 727, 733-34 (2006).
22 He respectfully submits that these decisions are erroneous, clearly contrary to controlling
23 federal authority, and should be overruled. In the alternative, he presents this issue here so
24 that it may be preserved for federal review.

25 Chappell further contends that both the testimonial and non-testimonial hearsay
26 statements which were introduced here were unreliable and rose to the level of highly suspect
27 and palpable evidence, which may not be introduced in a capital case. See Gallego v.
28 State, 117 Nev. 348, 369, 23 P.3d 227, 241 (2001); Leonard v. State, 114 Nev. 1196, 1214,

1 969 P.2d 288, 289 (1998). Unverified and unreliable evidence of a suspect nature must not
2 be allowed in a capital penalty hearing. D'Agostino v. State, 107 Nev. 1001, 1003-04, 823
3 P.2d 283, 285 (1991). As a matter of Due Process and the right to a fair trial, both of which
4 are guaranteed by the state and federal constitutions, this evidence should not have been
5 permitted. See Hicks v. Oklahoma, 447 U.S. 343 (1980) (a federal due process violation may
6 be caused by depriving a person of a liberty interest under state law).

7 Particularly prejudicial here was the repeated testimony by Panos's friends that
8 Chappell threatened to kill her the day before she was murdered and that Panos told Chappell
9 that their relationship was over and she wanted to get on with her life. XIII ROA 3103-04
10 (Mancha); XIII ROA 3172 (Larsen). The friends were not present when these statements
11 were allegedly made by Chappell, but were instead assertions by the friends of what they
12 claim Panos said she heard Chappell say while they were in court. No evidence was
13 introduced by any person who was present in court, including Chappell's probation officer
14 who was present for the court proceeding. XIII ROA 3237. Although this testimony was
15 highly damaging, it is highly suspect in that Panos did not make this statement to the
16 probation officer, prosecutor, bailiff or judge at a time when they were agreeing that
17 Chappell should be sent to a drug rehabilitation program rather than prison or jail. Had
18 Chappell actually threatened to kill Panos in this context, it is probable that she would have
19 told one of these people about his threat and urged them to keep him in custody. Likewise,
20 this Court may take judicial notice of the fact that it is the general policy of the courts of this
21 jurisdiction that inmates who are in custody are not allowed conversations with their
22 girlfriends, or anyone else other than counsel, during court proceedings and it is therefore
23 highly unlikely that such a conversation actually took place between Chappell and Panos.
24 See Caballero v. Seventh Judicial Dist. Court, 167 P.3d 415, 419 n.21 (Nev. 2007); NRS
25 47.130(a). The State relied extensively on this evidence during the closing arguments and
26 relied upon this evidence in arguing that Panos would not have had consensual sex with
27 Chappell as it asserted the existence of the aggravating circumstance. See e.g. 16 ROA 3785.
28 Reversal is warranted based upon the introduction of this highly prejudicial testimony.

1 **G. The District Court Erroneously Admitted Presentence Investigation Reports**

2 Chappell's conviction and death sentence are invalid under state and federal
3 constitutional guarantees of due process of law, equal protection, and a reliable sentence due
4 to the trial court's improper admission of two presentence investigation reports. U.S. Const.
5 Amends. V, VIII & XIV; Nev. Const. Art. I, Secs. 3, 6, 8; Art. IV, Sec. 21.

6 The State introduced a presentence investigation report for a gross misdemeanor
7 offense and a presentence investigation report for this case as evidence. XVI ROA 3772.
8 Introduction of this evidence was plain error as such evidence is not admissible under
9 Nevada law.

10 Shortly before the penalty phase trial, this Court reversed a defendant's conviction
11 after it found that the prosecution committed plain error when it read a presentence report to
12 the jury during the penalty phase of the defendant's trial. Herman v. State, 122 Nev. ___, 128
13 P.3d 469 (2006). In Herman, the prosecutor read from the presentence report during the
14 penalty phase, providing the jury with specific instances of his 17 prior arrests. Id. at ___, 128
15 P.3d at 474-75. On appeal, this Court noted that pursuant to NRS 175.156(5), a presentence
16 report cannot be made part of the public record. Id. at ___, 128 P.3d at 474. Although the
17 State did not submit the presentence report as a formal copy, the fact that the report was
18 "essentially read into the record and transcribed" was "tantamount to entering it into and
19 making it part of the public record." Id. at ___, 128 P.3d at 474. This Court also noted that
20 "[w]hile some of these arrests tend to indicate a pattern of conduct by [the defendant], ... the
21 totality of their presentation makes the recitation substantially more prejudicial than
22 probative." Id. at ___, 128 P.3d at 475.

23 Chappell was prejudiced by the introduction of this evidence. The reports included
24 information about arrests for which he was not convicted, including charges of possession
25 of narcotics, criminal trespass, battery domestic violence and possession of narcotics for sale.
26 XVIII ROA (1995 report). The 1996 report noted that Chappell had been arrested 17 times
27 and convicted five times. XVIII (1996 report). The State also introduced written statements
28 by Chappell that were included in the PSI and then used these statements against Chappell.

1 XVI ROA 3780; XVIII ROA (1995 and 1996 reports). The report included incorrect
2 information, including a statement by Panos's friend that she was worried when she saw
3 Chappell driving near Panos's home because she "had a Protective Order stopping the
4 defendant from coming to her house." XVIII ROA (1996 report at page 4). The report also
5 includes a statement by the PSI author that Chappell "battered this woman repeatedly for
6 several years and when she finally attempted to make him stop by complaining to the police
7 and obtaining [a] Protective Order, he went to her house, entered through a bedroom
8 window, and killed her with a steak knife." XVIII ROA (1996 report at page 7). The author
9 was not called as a witness and did not have any direct knowledge of the events at issue. His
10 opinion was not fairly supported by the evidence and should not have been presented to the
11 jury. Most significantly, the 1996 report included a statement from Panos's mother as to her
12 thoughts on whether Chappell should receive the death penalty: "The SOB does not deserve
13 to live." XVIII ROA (1996 report at page 5). It is well established that such evidence is not
14 admissible and this statement would not have been before the jury had the PSI been excluded
15 as evidence. See Floyd v. State, 118 Nev. 156, 174, 118 Nev. 156, 42 P.3d 249, 261 (2002),
16 Kaczmarek v. State, 120 Nev. 314, 339, 91 P.3d 16, 33 (2004).

17 Chappell objected to the introduction of his statements on the grounds that no Miranda
18 warnings were given prior to the time that they were obtained and it was unfair to introduce
19 the statements under these circumstances. XVI ROA 3770. It does not appear that
20 Chappell's counsel from his first trial was present when this statement was given and there
21 is no indication on the statement form that it is a voluntary or elective statement, that the
22 defendant has the right to decline writing a statement, or that he has a right to consult with
23 counsel while writing the statement. Under these circumstances, as well as the reasons set
24 forth in Herman, the district court erred and violated Chappell's constitutional rights by
25 allowing these statements to be introduced at trial.

26 **H. The District Court Allowed Improper Victim Impact Testimony**

27 The trial court violated Chappell's state and federal constitutional rights to a fair and
28 reliable sentencing hearing, due process and right to be free from cruel and unusual

1 punishment by permitting the State to introduce excessive victim impact testimony. U.S.
2 Const. Amends. VI, VIII, XIV. Nev. Const. Art. I, Secs 6, 8; Art. IV Sec. 21.

3 An extraordinary amount of victim impact evidence was introduced against Chappell.
4 As set forth in detail above, the jury heard victim impact evidence not only from Panos's
5 mother, who testified to the impact of Panos's death upon herself, her sister Carol Monson
6 and brother-in-law Maynard Monson, and the three children of Panos and Chappell; but also
7 heard victim impact testimony from Panos's aunt Carol Monson (who also testified as to
8 impact on Panos's mother and other family members), cousin, friend Michele Mancha, friend
9 Mike Pollard, friend Lisa Larsen, friend Clair McGuire, friend Dina Richardson (who also
10 testified as to victim impact on 40 additional people at the Tucson Police Department). XIII
11 ROA 3107-08, 3177-78, 3248; XIV ROA 3307; XV ROA 3678-79, 3681-89. In addition,
12 letters from Panos's cousin and aunt were read into the record and admitted as exhibits. XV
13 ROA 3694-85. These letters referenced family gatherings at birthdays and holidays. XV
14 ROA 3685. Chappell objected to the presentation of victim impact evidence by persons who
15 were not family members of Panos. XIII ROA 3107-08, 3177; XV ROA 3678. The district
16 court found that it had discretion to admit victim impact evidence from non-family members.
17 XIII ROA 3272-73.

18 This victim impact evidence exceeded that for which notice was provided in the
19 State's Notice in Evidence in Support of Aggravating Circumstances as the State only
20 referenced victim impact evidence by Panos's mother, aunt and uncle, children and family
21 members Al Granger, Christina Rees and Doris Wichtoski. XII ROA 3037. The State made
22 no mention of its intention to elicit victim impact testimony from Panos's friends and co-
23 workers. "SCR 250(4)(f) requires the State to file, no later than 15 days before trial, a notice
24 of evidence in aggravation 'summarizing the evidence which the state intends to introduce
25 at the penalty phase of trial . . . and identifying the witnesses, documents, or other means by
26 which the evidence will be introduced.'" McConnell, 120 Nev. at 1071, 102 P.3d at 626.
27 See also Mason v. State, 118 Nev. 554, 561-62, 51 P.3d 525 (2002) (finding that SCR
28 250(4)(f) applies to any evidence which the State intends to introduce at the penalty phase

1 of trial and rejecting the State's 'substantial compliance' argument). "Consistent with the
2 constitutional requirements of due process, defendant should be notified of any and all
3 evidence to be presented during the penalty hearing." Emmons v. State, 107 Nev. 53, 62, 807
4 P.2d 718, 724 (1991), modification on other grounds recognized by Harte v. State, 116 Nev.
5 1054, 13 P.3d 420 (2000). Chappell's due process rights were violated by the admission of
6 victim impact evidence from witnesses who were not identified as giving this evidence in the
7 State's notice.

8 Chappell's rights were further violated by the introduction of this evidence because
9 it exceeded the limited scope of victim impact evidence allowed by Payne v. Tennessee, 501
10 U.S. 808 (1991). This Court recognizes that in Payne, the United States Supreme Court held
11 "that there is no per se Eighth Amendment bar to a capital jury's consideration of a
12 prosecutor's argument or evidence related to the victim's personal characteristics or the
13 emotional impact of the crime on the victim's family." Kaczmarek, 120 Nev. at 338, 91 P.3d
14 at 33. This Court has held that "the district courts have discretion to admit such evidence
15 under NRS 175.552, so long as it does not render the proceeding fundamentally unfair." Id.
16 (citing Floyd, 118 Nev. at 174, 42 P.3d at 261). NRS 175.552(3)¹⁰ provides that "evidence
17 may be presented concerning aggravating and mitigating circumstances relevant to the
18 offense, defendant or victim and on any other matter which the court deems relevant to
19 sentence, whether or not the evidence is ordinarily admissible." "Nevertheless, NRS
20 48.035(1) remains applicable in a capital penalty proceeding and provides that even relevant
21 evidence 'is not admissible if its probative value is substantially outweighed by the danger
22 of unfair prejudice, or confusion of the issues or of misleading the jury.'" Floyd, 118 Nev.

23
24 ¹⁰In contrast, NRS 176.015 limits victim impact evidence to the direct victim, the
25 surviving spouse, parents or children of a person who was killed as a direct result of the
26 commission of the crime, and any other relative or victim who requests in writing to be
27 notified of the hearing. Chappell submits that it is a violation of his state and federal
28 constitutional rights to due process of law and equal protection to limit victim impact
testimony for non-capital cases while not limiting victim impact evidence in capital cases.
But see Hardison v. State, 104 Nev. 530, 763 P.2d 52 (1988).

1 at 174-75, 42 P.3d at 261. In Floyd, this Court approved of the district court's ruling limiting
2 victim impact witnesses to one per murder victim and prohibiting victim impact evidence
3 from other people who were at the scene. Id. at 175, 42 P.3d at 262.

4 Chappell recognizes that this Court has previously permitted victim impact testimony
5 by neighbors, co-workers, and other persons outside of the victim's family. Wesley v. State,
6 112 Nev. 503, 519-20, 916 P.2d 793, 804 (1996); Lane v. State, 110 Nev. 1156, 1166, 881
7 P.2d 1358, 1365 (1994). The testimony here, which was presented by both family and non-
8 family members, exceeded that in Wesley and Lane and should not have been permitted. In
9 the alternative, Wesley and Lane should be overruled as to this issue in that they permitted
10 victim impact testimony beyond that allowed by Payne.

11 This evidence was unduly prejudicial to Chappell and therefore violated the due
12 process clause. Payne, 501 U.S. at 825. As set forth in detail below, at pages 56 to 63, the
13 State's closing argument built an entire theme around this evidence as it argued that Panos
14 was a worthwhile person and Chappell was not. The evidence here went far beyond briefly
15 portraying Panos's character to the jury and informing the jury of the impact of her loss, and
16 instead became a primary focus of the penalty hearing. Chappell's sentence of death must
17 therefore be vacated

18 **I. The District Court Erred In Allowing Admission of Chappell's Prior Testimony**

19 The trial court violated Chappell's state and federal constitutional rights a fair and
20 reliable sentencing hearing, due process, right to be free from cruel and unusual punishment
21 and right to effective assistance of counsel by permitting the State to introduce Chappell's
22 testimony from his original trial. U.S. Const. Amends. VI, VIII, XIV; Nev. Const. Art. I,
23 Secs. 6, 8; Art. IV Sec. 21.

24 Over Chappell's objection, the district court permitted the State to use his testimony
25 from the first trial. XV ROA 3632. Defense counsel had argued that the testimony was the
26 result of ineffective assistance of counsel. The district court did not hold a hearing regarding
27 this issue or otherwise hear argument concerning the claim of ineffective assistance of
28 counsel, but instead permitted the State to introduce this evidence. It was error to do so.

1 Prior testimony is not admissible if it implicates a constitutional violation during the
2 trial in which it was obtained. Byford, 116 Nev. at 225, 994 P.2d at 707; Harrison v. U.S.,
3 392 U.S. 219, 222 (1968); U.S. v. Pelullo, 105 F.3d 117, 125 (3d Cir. 1997). An assertion
4 of ineffective assistance of counsel is a claim of a constitutional violation under the Sixth
5 Amendment. See Strickland v. Washington, 466 U.S. 668 (1984). Under these
6 circumstances, the district court should have conducted a full inquiry concerning whether the
7 decision to testify, and preparation for testimony at the first trial, were the result of the
8 effective assistance of counsel. Its failure to do so warrants reversal of the sentence of death.

9 **J. The State Committed Prosecutorial Misconduct By Making Arguments Based**
10 **Upon Comparative Worth Arguments**

11 The State violated Chappell's state and federal constitutional rights a fair and reliable
12 sentencing hearing, due process, right to be free from cruel and unusual punishment, and
13 right to be free from prosecutorial misconduct by making arguments comparing Chappell's
14 worth to the worth of Panos. U.S. Const. Amends. VI, VIII, XIV. Nev. Const. Art. I, Secs.
15 3, 6, 8; Art. IV, Sec. 21.

16 Chappell's death sentence is unconstitutional because of prosecutorial misconduct in
17 argument at sentencing comparing his worth to that of the victim. During closing arguments
18 of the penalty phase the prosecutors made repeated and extensive comparisons between the
19 life of the defendant and the life of the victim in arguing that the death penalty should be
20 imposed against Chappell:

21 Debbie loved life. She loved life. She loved people, but she was afraid.
22 She was very scared and had a lot of reason to be afraid.

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

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

We have in Debbie Panos an individual who had every reason to be
bitter and dysfunctional. Yet, what did we hear about her. She not only was
up, she was a person that other people loved to be around. She loved people.

1 She worked at jobs. She worked two jobs. Sometime she worked three jobs
2 to take care of her family, her three little children that she dearly loved.

3 She was enough of a giver beyond this, outside of this sphere and
4 difficulty she had, that people liked being around her. How did they describe
5 her. That she was giving. That she was compassionate. That she would do
6 anything for other people.

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

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

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

22 What an amazing difference of choices we have in this case, ladies and
23 gentleman. Debbie loved clowns. That makes sense, doesn't it. She liked
24 things that made her happy. She liked things that made other people happy.

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

XVI ROA 3778-79.

We've listened to days now, from people that knew him, both sides of
this, and some people in the middle of it, some people that just went out there.
The police, observed it. Weren't friends of Debbie. Weren't friend (sic) of
his. Other individuals that saw this think, and the way that he was acting and
the way he was treating Debbie. And there was nothing, nothing redeeming
about this man that came out.

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

XVI ROA 3779.

Opposition is a principle that has always been with us. And a lot of
times, when you really think about it, it's the decisions we make against
opposition that really define us, do (sic) they. It's choices that people make

1 in times of difficulty. Those are the people we call heroes. Like the
2 grandmother here, maybe both grandmothers, who stepped in a situation that
was thrust upon them and stood up and did a very heroic thing for these
children.

3 The ripple affect (sic) of the defendant's actions are just amazing. I
4 mean, it's more than just Debbie's death and the horrible way she died. It's a
horror, that she was gurgling in her own blood. There is no way to sugarcoat
5 that. I don't care if it was 15 second (sic) of (sic) 15 minutes, it was a horror.
And like her mother said on the stand or her aunt, probably the last thing she
6 was thinking of was her children. What would she be thinking. Who is going
to take care of them. I'm not going the (sic) be there to take care of them. I
7 love them so much - the ripple effect.

8 XVI ROA 3781-3782.

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

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

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

17 What about her family. What about her little children. Her daughter
said she wanted to die so that she could be with her mother. The ripple affect
18 (sic) in this, where is the parole for the rest of her family. They have no
parole.

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

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

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

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

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

9 XVI ROA 3786-87.

10 The United States Supreme Court has concluded that a prosecutor may appropriately
11 argue, and a jury may appropriately consider, "victim impact" evidence concerning the
12 victim's personal characteristics at a capital sentence hearing. Payne, 501 U.S. at 823. The
13 use of victim impact evidence in this case, however, far exceeded that authorized by Payne
14 and Chappell is therefore entitled to a new penalty hearing.

15 In his closing arguments, the State repeatedly emphasized the comparative worth of
16 the lives of the Panos and Chappell. The State consistently and systematically contrasted the
17 apparently virtuous and productive life of Panos with Chappell's allegedly worthless
18 existence, and asked jurors to impose a death sentence on that basis.

19 If the State had merely used victim impact evidence to illustrate the "victim's
20 uniqueness as an individual human being," Payne, 501 U.S. at 823 (internal quotations
21 omitted), his actions would be beyond scrutiny. Likewise, the State could further have
22 independently challenged Chappell's character and criminal history, and there would be no
23 grounds for objection. The problem is that the State did not stop there. Instead, the State
24 drew repeated comparisons between the value and worth of the victim's life and that of the
25 defendant, an argument which was designed to secure a death sentence from the jury. The
26 way in which Panos led her life was repeatedly contrasted with the way Chappell had led his.
27 Likewise, the way in which Panos's family and friends led their lives was also contrasted
28 with the way Chappell had led his. The State purposely contrasted the life of the victim with
the life of the defendant in order to exhort the jury to return a death sentence on the basis of
the latter's relative lack of worth.

1 Chappell is not challenging the fact that victim impact evidence has an important and
2 legitimate place in capital sentencing proceedings. The United States Supreme Court in
3 Payne v. Tennessee made it clear that “if the State chooses to permit the admission of victim
4 impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects
5 no per se bar.” Payne, 501 U.S. at 827. “A state may legitimately conclude that evidence
6 about the victim and about the impact of the murder on the victim's family is relevant to the
7 jury's decision as to whether or not the death penalty should be imposed.” Id. Victim impact
8 evidence, however, is limited in that it is supposed to allow the jury “a quick glimpse of the
9 life” that a defendant “chose to extinguish”; it demonstrates the full impact of a crime, not
10 only on the victim, but also on loved ones left behind. Id. at 822 (internal quotations
11 omitted). While states plainly “remain free to devise new procedures and new remedies to
12 meet felt needs,” id. at 824-25, neither Payne nor any other Supreme Court case has held that
13 victim impact evidence may be used without limit, constraint, or reference to the harm caused
14 by the crime to those aggrieved. To the contrary, the Payne Court clearly limited the
15 introduction and use of victim impact evidence by prohibiting victim impact evidence “that
16 is so unduly prejudicial that it renders the trial fundamentally unfair.” Id. at 825.

17 Of particular importance to this case, the Supreme Court has disapproved of the use
18 of victim impact evidence to make comparative human worth arguments. The Payne Court
19 noted the concern “that the admission of victim impact evidence permits a jury to find that
20 defendants whose victims were assets to their community are more deserving of punishment
21 than those whose victims are perceived to be less worthy.” Id. at 823. It concluded that “[a]s
22 a general matter . . . victim impact evidence is not offered to encourage comparative
23 judgments of this kind -- for instance, that the killer of a hardworking, devoted parent
24 deserves the death penalty, but that the murderer of a reprobate does not.” Id. at 823. It is
25 designed to show instead each victim's “uniqueness as an individual human being,” whatever
26 the jury might think the loss to the community resulting from his death might be. Id.

27 The Payne Court also set forth a framework for determining the legitimate and
28 illegitimate uses of victim impact evidence. The Court found that “in the majority of cases

1 . . . victim impact evidence serves entirely legitimate purposes.” Id. at 825. But it also
2 concluded that “in the event that evidence is introduced that is so unduly prejudicial that it
3 renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment
4 provides a mechanism for relief.” Id. at 825. Victim impact evidence that emphasizes the
5 harm a murder caused the victim, his family, and his loved ones is unquestionably legitimate.
6 However, the comparative worth argument presented in this case, calling for a death sentence
7 based on the relative value of Panos’s and Chappell’s lives, falls squarely within the category
8 of prosecutorial conduct that may be so prejudicial that it renders a trial fundamentally unfair.

9 Victim impact evidence must be used to further the traditional purposes of sentencing:
10 that a sentence reflect such factors as the nature and severity of the crime, the criminal
11 history of the defendant, the defendant’s characteristics and history, and the consequences
12 of the crime upon the unique lives of the victim and her family. To permit a sentence of
13 death to be returned on the explicit and pointed comparative worth argument in this case
14 pushes Payne so far that the major objective of victim impact evidence is lost, which is
15 “informing the sentencing authority about the specific harm caused by the crime in question.”
16 Payne, 501 U.S. at 825.

17 The comparison between Panos and Chappell that formed the focus of closing
18 argument was intended to tell the jury that Panos’s life was put to good use, that Chappell’s
19 was not, and that Chappell should be executed based upon their comparative worth or value.
20 Arguments of comparative worth are not authorized by Payne and constituted prosecutorial
21 misconduct. The comparative worth argument relied on here fell within the category of
22 factors that the United States Supreme Court has prohibited as unduly prejudicial in the death
23 penalty sentencing context. See Johnson v. Mississippi, 486 U.S. 578, 584-85 (1988)
24 (quoting Zant, 462 U.S. at 885) (prohibiting death penalty decisions predicated on mere
25 caprice or on factors that are constitutionally impermissible or totally irrelevant to the
26 sentencing process). See also California v. Brown, 479 U.S. 538, 545(1987) (O'Connor, J.,
27 concurring). The argument here was not a permissible basis under the Due Process Clause
28 on which to condemn Chappell to death.

1 In addition to violating the limits of Payne, the argument here also violated the
2 Supreme Court's decision in Caldwell, 472 U.S. at 328-41. The law requires jurors to use
3 a certain type of analysis in making their sentencing decision. By making a comparative
4 value argument, the State encouraged jurors to use a different analysis. Urging jurors to
5 misapply to the law infected the penalty phase hearing with arbitrariness in violation of the
6 Eighth Amendment, in violation of Caldwell.

7 The type of analysis required of a capital jury is well established and mandated by
8 controlling authority by the United States Supreme Court as well as state statutes. Post-
9 Furman, the Supreme Court insists that state sentencing procedures not "create a substantial
10 risk that the death penalty will be inflicted in an arbitrary and capricious manner." Lockett
11 v. Ohio, 438 U.S. 586, 601 (1978). State sentencing schemes must provide a meaningful way
12 to distinguish between "the cases in which [death] is imposed from the many cases in which
13 it is not." Id. at 601 (citing Gregg v. Georgia, 428 U.S. 153, 158 (1976)). In Nevada, jurors
14 must determine unanimously and beyond a reasonable doubt whether aggravating
15 circumstances exist, determine individually whether mitigating circumstances are present,
16 and then determine unanimously and beyond a reasonable doubt that any mitigating
17 circumstances do not outweigh the aggravating circumstances before a sentence of death may
18 be considered. Johnson, 118 Nev. at 802-803, 59 P.3d 450; Archanian v. State, 145 P.3d
19 1008, 1015 (Nev. 2006). Following that determination, jurors may consider "character"
20 evidence or "other matter" evidence in determining the sentence to be imposed. Id. The
21 State's comparative worth argument was contrary to this firmly established scheme in that
22 it urged the jury to sentence Chappell to death for reasons contrary to this scheme. Instead
23 of weighing aggravating and mitigating circumstances, the jurors were instead urged to
24 weigh the value of Chappell's life against the value of Panos's life. Although such an
25 argument could be made in the vast majority of murder cases, it does nothing to assist the
26 jurors in determining if the defendant is one of the "worst of the worst," or one of the few
27 first degree murderers who should receive the death penalty. Accordingly, no narrowing
28 function is served by such an argument. See State v. Storey, 901 S.W.2d 886, 902 (Mo.

1 1995). The use of victim impact evidence in this manner taints the sentencing process with
2 arbitrariness. See Hall v. Catoe, 601 S.E.2d 335, 340-41 (S.C. 2004); State v. Koskovich,
3 776 A.2d 144, 182 (N.J. 2001)

4 The comparative worth argument presented by the State also influenced the jurors to
5 improperly use mitigation evidence. The law requires jurors to give consideration to
6 mitigating evidence. McKoy v. North Carolina, 494 U.S. 433, 444 (1990); Mills v.
7 Maryland, 486 U.S. 367, 375 (1988); Lockett v. Ohio, 438 U.S. 586, 608 (1978). The
8 arguments here minimized the importance of the mitigating evidence presented by Chappell
9 and instead urged the jurors to find that Chappell should have risen above his circumstances
10 and bettered his life, as had his victim Panos. Arguments which create the risk that jurors
11 will misuse mitigation evidence violate Caldwell.

12 Other courts recognize that arguments such as this are improper. See Hall, 601 S.E.2d
13 at 341 (South Carolina court finding that the prosecutor impermissibly compared the
14 defendant's life to the victims' lives, the argument was emotionally inflammatory and
15 directed the jurors to conduct an arbitrary balancing of worth, thus entitling the defendant to
16 a new sentencing hearing); Koskovich, 776 A.2d at 182 (New Jersey court holds that the
17 court's directive to jurors that they balance the victim's background against that of defendant
18 was akin to asking the jury to compare the worth of each person, which is inherently
19 prejudicial and might prompt jurors to impose the death penalty arbitrarily); State v.
20 Muhammad, 678 A.2d 164, 179 (N.J. 1996) ("Victim impact testimony may not be used . .
21 . as a means of weighing the worth of the defendant against the worth of the victim."); State
22 v. Storey, 901 S.W.2d 886, 902 (Mo. 1995) (en banc) (finding ineffective assistance of
23 counsel because of the failure to object to prosecutor's arguments: "Whose life is more
24 important to you? Whose life has more value? The Defendant's or [the victim's]?"). See also
25 State v. Gallion, 654 N.W.2d 446, 454 (Wis. Ct. App. 2002) (expressing a concern for the
26 use of comparative value arguments at jury sentencing proceedings as an unconstitutional use
27 of victim impact evidence, although there is no death penalty in this jurisdiction). See also
28 Note Tipping the Scales: Seeking Death Through Comparative Value Arguments, 63 Wash.

1 & Lee L. Rev. 379 (2006).

2 The misconduct which occurred here was pervasive and constituted the theme of the
3 prosecutor's closing argument. As a matter of plain error, this Court should reverse
4 Chappell's judgment based upon the extreme prejudice to the jury's deliberations caused by
5 this patently improper argument.

6 **K. The State Committed Extensive Prosecutorial Misconduct**

7 The State violated Chappell's state and federal constitutional rights a fair and reliable
8 sentencing hearing, due process and right to be free from cruel and unusual punishment by
9 committing prosecutorial misconduct throughout the closing arguments. U.S. Const.
10 Amends. VI, VIII, XIV. Nev. Const. Art. I Secs. 3, 6, 8.

11 In addition to the comparative worth arguments that are set forth above, the
12 prosecutors committed additional misconduct which warrants reversal of Chappell's
13 conviction. It is well established that misconduct by a prosecuting attorney during closing
14 arguments may be grounds for reversal. See Berger v. U.S., 295 U.S. 78 91935). The
15 prosecuting attorneys represent a sovereign whose obligation is to govern impartially and
16 whose interest in a particular case is not necessarily to win, but to do justice. Berger, 295
17 U.S. at 88. The prosecuting attorney may "prosecute with earnestness and vigor – indeed,
18 he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.
19 It is as much his duty to refrain from improper methods calculated to produce a wrongful
20 conviction as it is to use every legitimate means to bring about a just one." Id. A prosecutor
21 should not use arguments to inflame the passions or prejudices of the jury. Viereck v. U.S.,
22 318 U.S. 236, 247-48 (1943). Although trial counsel did not object to this misconduct, this
23 Court may consider this issue as a matter of plain error. U.S. v. Olano, 507 U.S. 725, 731
24 (1993); U.S. v. Leon-Reyes, 177 F.3d 816, 821 (9th Cir. 1999).

25 **Comment on Chappell's Right To Remain Silent**

26 The State introduced Chappell's prior testimony, including a cross-examination by the
27 State that constituted commentary on Chappell's right to remain silent.:

28 Q You've had a substantial period of time to think about today, haven't you?

1 A Yes, sir.
2 Q You've known for quite awhile, haven't you, that at some point you would
3 take the witness stand and give the jury your version of what happened?
4 A Yes, sir.
5 Q Once you had made that decision, whenever it was, you've given a lot of
6 attention to what you would tell the jury?
7 A I didn't make up anything, sir.
8 Q I didn't say you made up anything, Mr. Chappell. Have you thought a lot
9 about what you would tell the jury?
10 A No.
11 Q Have you thought a lot about how you would act on the witness stand?
12 A No, sir.

13 XV ROA 3654. Chappell's counsel argued that this was a comment on his right to remain
14 silent but the district court rejected the argument after noting that the claim was found to be
15 without merit in post-conviction proceedings. XV ROA 3632-33. The district court's
16 reliance upon these ruling was misplaced as the post-conviction rulings do not support this
17 conclusion. In its post-conviction ruling, the district court concluded that issues concerning
18 the guilt phase of the trial were without merit because of overwhelming evidence of guilt.
19 XI ROA 2746. The court did not rule on the merits of this issue. On appeal from the district
20 court's order granting in part and denying in part Chappell's post-conviction petition, this
21 Court noted "that overwhelming evidence supported Chappell's conviction and that any
22 errors in . . . the prosecutor's remarks were harmless beyond a reasonable doubt, whether
23 Chappell's trial counsel objected to them or not." XI ROA 2790.

24 The use for impeachment purposes of a defendant's silence at the time of arrest and
25 after receiving Miranda warnings violates the Due Process Clause of the Fourteenth Amendment.
26 Doyle v. Ohio, 426 U.S. 610 (1976). Likewise, this Court has found that the State may not
27 comment on a defendant's silence, even if no Miranda warnings are given. Coleman v. State,
28 111 Nev. 657, 662-63, 895 P.2d 653, 657 (1995). The prosecutor here committed
misconduct by introducing testimony which violated Chappell's constitutional rights.

1 **Misstating Role of Mitigating Circumstances**

2 The prosecutor committed misconduct by misstating the role of mitigating
3 circumstances, commenting on matters that were not in evidence, and improperly minimizing
4 the mitigating evidence that was presented:

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

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

19 XVI ROA 3781.

20 It's probably a certain prejudice that we all sort of internalize to some degree
21 the idea that a murder between two people who knew each other isn't that bad.
22 It's not as bad or scary as a stranger murder. Because if a stranger had climbed
23 through Debbie Panos' window, raped her, had beat her up, stabbed her to
24 death and then stole her car, there wouldn't be (sic) a whole lot of commentary
25 about marijuana houses on the street he grew up on. There wouldn't be a
26 whole lot of commentary about, well, maybe she liked him, or maybe she
27 wanted him back. Wouldn't we discussing that at all. We'd be discussing the
28 violence of the act of that day. And that's what this case it about.

 XVI ROA 3797.

 Now certainly the fact that he had this troubled up-bringing and he was
in an environment that apparently a lot of people were doing drugs than (sic),
would make his life more difficult. But it doesn't mean that he didn't have
chance, after chance, after chance to address the very drug problems that the
defense now asks you to give him some credit for.

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

 XVI ROA 3799.

 These arguments constituted misconduct. See Berger, 295 U.S. at 88 (describing the
role of prosecutors as unique because they are "representative not of an ordinary party to a
controversy, but a sovereignty whose obligation to govern impartially is as compelling as its

1 obligation to govern at all” and a prosecutor is a “servant of the law” meaning prosecutors
2 must “refrain from improper methods calculated to produce wrongful conviction”); U.S. v.
3 Agurs, 427 U.S. 97, 110-11 (1976) (directing prosecutors to serve the “overriding interest”
4 of justice before consideration of its secondary interest – vigorous prosecution); Caldwell,
5 472 U.S. at 328-41 (holding that the Eighth Amendment protects defendants from
6 prosecutorial arguments that misinform juries on their roles in sentencing phase of capital
7 trials); Darden v. Wainwright, 477 U.S. 168, 168 (1986) (noting protections given to
8 defendants by the Due Process Clause’s fair trial standards).

9 Defendants have a constitutional right to the presentation and consideration by the jury
10 of any facts that may mitigate the jury’s finding that death is the appropriate punishment.
11 Lockett v. Ohio, 438 U.S. 586, 604 (1978). A Caldwell violation is established if the
12 prosecutor argues in such a manner as to “foreclose the jury’s consideration of . . . mitigating
13 evidence” because the jurors are misled on their duty to consider this evidence. Depew v.
14 Anderson, 311 F.3d 742, 749 (6th Cir. 2002); Buchanan v. Angelone, 522 U.S. 269, 277
15 (1998) (holding that a prosecutor’s argument that undercut the defendant’s mitigation case
16 so significantly, and at times inaccurately, foreclosed the jury’s consideration of mitigating
17 evidence, thereby altering the jury’s role assigned to it in violation of the Eighth
18 Amendment). In addition to the Eighth Amendment Caldwell violation, the arguments here
19 also violated Chappell’s Fifth and Fourteenth Amendment rights. See Antwine v. Delo, 54
20 F.3d 1357, 1371 (8th Cir. 1995); Darden, 477 U.S. at 181.

21 **“Don’t Let The Defendant Fool You” Arguments**

22 Additional misconduct was committed as the prosecutors argued that the jurors would
23 be conned by Chappell, and they would be taking the easy way out, if they imposed a
24 sentence less than death

25 Don’t be coned. (sic) It’s interesting, Dr. Etcoff in the beginning of his
26 testimony said, you know, the defendant, he’s just not sophisticated enough to
27 lie. I would know that. Then we heard on cross-examination all of these
28 things the defendant flat out liked to him about, that the doctor didn’t know.
And here’s a Ph.D. person who just got totally coned (sic) by the defendant,
and he coned (sic) the system, and he coned (sic) the system, and he coned
(sic) Mr. Duffy, sat across from him for two hours saying he really wanted to

1 do something about that drug problem enough that Duffy let him go, and he
2 went straight out over to kill Debbie.

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

9 XVI ROA 3786-87.

10 And it wasn't just Dr. Duffy that got snowed by the defendant. Dr.
11 Etcoff was snowed just as well. . . .

12 XVI ROA 3801.

13 Arguments that Chappell "conned" others constituted misconduct. See Cristy v. Horn,
14 28 F.Supp.2d 307, 318-19 (W.D. Pa. 1998) (holding that an argument that labeled the
15 defendant as "the Great Manipulator," to whom prison was just a "revolving door," only
16 served to inflame the jurors). See also U.S. v. Gonzalez, 488 F.2d 833, 836 (2d Cir. 1973)
17 (condemning remarks such as "you have to be born yesterday" to believe appellant's defense,
18 and the defense is "an insult to your intelligence,"); U.S. v. Drummond, 481 F.2d 62, 64 (2d
19 Cir. 1973) (condemning remarks such as the defendant's "testimony is so riddled with lies
20 it insults the intelligence of 14 intelligent people sitting on the jury"). Inflammatory
21 arguments of this type misdirect the focus of jurors away from the facts and the law. Miller
22 v. Lockhart, 65 F.3d 676, 684 (8th Cir. 1995); Tucker v. Zant, 724 F.2d 882, 889 (11th Cir.
23 1984) (Due Process Clause does not tolerate misleading arguments). This argument was also
24 improper and prejudicial because it was directed at the jurors and put them in the untenable
25 position of "them" against Chappell. People v. Payne, 187 A.D.2d 245, 248 (N.Y. App. Div.
26 1993) (improper to suggest that defendant was trying to "sucker us," because the "message
27 was that although the defendant has rights, those rights must be carefully measured because
28 it is 'us' against him.").

29 Justice and Mercy Arguments

30 The prosecutor committed misconduct in arguing that the jury should not consider
31 mercy:

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

3 XVI ROA 3780.

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

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

19 This from the person who spent his days taking her money and going
20 and getting high for the day. What punishment accounts for all of that. What
21 punishment is justified for taking the life of a 26-year-old young woman, a
22 mother of three. Or how about what punishment accounts for Norma
23 Penfield's loss the (sic) day. She lost her daughter. James Chappell brutally
24 murdered her only child that day. What compensates her.

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

He got to sit and worry about himself and formulate the best spin on
events, the best version. And that's all he has ever done his whole life. He got
to tell the doctors about his problems and his troubled childhood. It's so
typical of how he spent his whole life.

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

25 XVI ROA 3802.

26 We've all said and you all know at this point that the punishment should
27 fit the crime. And when you consider the decade of torment that he inflicted
28 on this woman, the loss that he imposed on three young children, the loss that
he imposed on her mother, and his attitude after the fact, there's only one

1 punishment and that's the death penalty.

2 XVI ROA 3802.

3 It was misconduct for the prosecutor to argue that mercy for Chappell was not an
4 appropriate consideration. Presnell v. Zant, 959 F.2d 1524, 1529-31 (11th Cir. 1992);
5 Peterkin v. Horn, 176 F.Supp.2d 342, 372-73 (E.D. Pa. 2001); Lesko v. Lehman, 925 F.2d
6 1527, 1545-46 (3d Cir. 1991) (holding unconstitutional an argument that urged jurors to
7 settle the score between the defendant and the victims). This Court has also condemned
8 arguments of this type. Thomas v. State, 83 P.3d 818, 826 (Nev. 2004) (finding a
9 prosecutor's argument was improper because it informed jurors that the "defendant is
10 deserving of the same sympathy and compassion and mercy that he extended to [the
11 victims]."). It was also misconduct to argue that the only manner to achieve justice for Panos
12 and her family was to impose a sentence of death against Chappell. These arguments acted
13 to inflame the emotions and passions of the jury. Young, 470 U.S. at 9 n.7 (citing ABA
14 Standards of Criminal Justice 4-7.8); see also ABA Standards for Criminal Justice 3-5.8
15 ("The prosecutor should not make arguments calculated to appeal to the prejudices of the
16 jury"); Floyd, 118 Nev. at 173, 42 P.3d at 261 ("any inclination to inject personal beliefs into
17 arguments or to inflame the passions of the jury must be avoided. Such arguments clearly
18 exceed the boundaries of proper prosecutorial conduct."). The prosecutor's comments here
19 did nothing to aid the jury in determining whether the death penalty was an appropriate
20 sentence under NRS 200.035, but instead urged the jurors to return a sentence of death as
21 vindication, which was based upon the inflamed passions of the jury.

22 Based upon each of these incidents of misconduct, as well as the cumulative impact
23 of the misconduct, Chappell's sentence of death should be reversed.

24 **L. The District Court Failed To Instruct The Jury That The State Was Required**
25 **To Establish Beyond On Beyond a Reasonable Doubt That Mitigating**
Circumstances Did Not Outweigh Aggravating Circumstances

26 Chappell's death sentence is invalid under the reliability guarantees of the Eighth
27 Amendment, the federal due process clause, under Blakely v. Washington, 542 U.S. 296
28 (2004), and under the Nevada constitution because the jury was not instructed that it was

1 required to find that aggravating circumstances must outweigh mitigating circumstances
2 beyond a reasonable doubt. U.S. Const. Amends. V, VI, VIII, XIV; Nev. Const. Art. I, Secs.
3 3, 6, 8; Art. IV, Sec. 21.

4 The United States Supreme Court held in Blakely that any fact not found in the guilt
5 phase jury instructions which operates to increase the penalty imposed above the statutory
6 maximum must be submitted to the jury and proven beyond a reasonable doubt. Blakely, 542
7 U.S. at 301-02. The factors necessary to support eligibility for the death penalty in Nevada,
8 in addition to the conviction on all the elements of first degree murder, as (1) the existence
9 of one or more aggravating factors, and (2) that the aggravating factors are not outweighed
10 by the mitigation. NRS 200.030(4); Johnson, 118 Nev. at 802-803, 59 P.3d 450; Archanian,
11 145 P.3d at 1015. Those factors must be proved to and found by a jury beyond a reasonable
12 doubt. Chappell's jury was instructed that aggravating factors must be proved beyond a
13 reasonable doubt:

14 Instruction No. 6:

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

17 The Defendant has alleged certain mitigating circumstances are present
18 in this case. It shall be your duty to determine:

- 19 (a) whether the aggravating circumstance is found to exist; and
- 20 (b) whether a mitigating circumstance or circumstances are found
21 to exist; and
- 22 (c) based upon these findings, whether the Defendant should be
23 sentenced to a definite term of 100 years imprisonment, life
24 imprisonment with or without the possibility of parole or death.

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

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

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

XV ROA 3747. The jury was not instructed, however, that it had to find that aggravation

1 was not outweighed by mitigation beyond a reasonable doubt, or by any standard at all, in
2 order to find Chappell eligible to receive the death penalty. Id. The law is now clear,
3 however, that every fact necessary to imposition of an increased punishment must be proved
4 to and found by a jury beyond a reasonable doubt. Ring v. Arizona, 536 U.S. 584, 589, 609
5 (2002); Apprendi v. New Jersey, 530 U.S. 466, 483 (2000); Johnson, 118 Nev. at 802-803.
6 Other states are in accord. Whitfield v. State, 107 S.W.2d 253, 259 (Mo. 2003); Woldt v.
7 People, 64 P.3d 256, 265 (Colo. 2003). See also B. Stevenson, The Ultimate Authority on
8 the Ultimate Punishment: The Requisite Role of the Jury in Capital Sentencing, 54 Ala. L.
9 Rev. 1091, 1126-27, 1129 n.214 (2003).

10 Chappell's sentence must therefore be reversed, because an error with respect to the
11 burden of proof is structural, which results in reversal without any attempt to analyze
12 prejudice. Sullivan v. Louisiana, 508 U.S. 275, 281-282 (1993). In the alternative, Chappell
13 was prejudiced by the instruction as the jury found seven mitigating circumstances, only one
14 aggravating circumstance, and the State cannot establish beyond a reasonable doubt that the
15 jury would have returned a death sentence had it been properly instructed.

16 **M. The Jury's Failure to Find Mitigating Circumstances Was Clearly Erroneous**
17 **and Requires That the Death Sentence Be Vacated**

18 The jury failed to find mitigating factors that were clearly established and uncontested.
19 The jury's failure to find these mitigating circumstances was clearly erroneous and resulted
20 in an unreliable sentence that must be vacated U.S. Const. Amends. V, VI, VIII, XIV; Nev.
21 Const. Art. I, Secs. 3, 6, 8; Art. IV, Sec. 21.

22 As noted above, one or more of the jurors found seven mitigating circumstances:
23 Chappell suffered from substance abuse; he had no father figure in his life; he was raised in
24 an abusive household; he was the victim of physical abuse as a child; he was born to a
25 drug/alcohol addicted mother; he suffered from a learning disability; he was raised in a
26 depressed housing area. XV ROA 3739-40, 3822-23. The jury did not find the mitigating
27 circumstance that Chappell's mother was killed when he was very young, that he was the
28 victim of mental abuse as a child, and other mitigating circumstances that were asserted to

1 exist by Chappell's counsel. XV ROA 3755.

2 As set forth above, the evidence at the penalty phase trial was uncontested as to these
3 mitigating circumstances. This evidence was clear, credible and uncontroverted. The jury's
4 failure to find the existence of this mitigating factor was thus clearly erroneous and renders
5 the death sentence unreliable.

6 The United States Supreme Court has repeatedly recognized that evidence that a
7 defendant suffered a difficult, abusive childhood and adolescence has significant mitigating
8 value that must be considered by the trier of fact in determining whether a sentence of death
9 is the appropriate punishment. Thus, in Eddings v. Oklahoma, 455 U.S. 104 (1982), the
10 Court reversed a death sentence where the trial judge refused as a matter of law to consider
11 evidence of the defendant's troubled childhood. The Court declared: "Just as the State may
12 not by statute preclude the sentencer from considering any mitigating factor, neither may the
13 sentencer refuse to consider, as a matter of law, any relevant mitigating evidence.... The
14 sentencer ... may determine the weight to be given relevant mitigating evidence. But they
15 may not give it no weight by excluding such evidence from their consideration." Id. at 113-
16 14. The Eddings Court also expressly recognized that evidence of a defendant's turbulent
17 childhood has mitigating weight that may not be ignored by the sentencer. Id. at 115 (citation
18 omitted). Similarly, in Parker v. Dugger, 498 U.S. 308 (1991), the Court reversed a death
19 sentence on the grounds that the state supreme court had erred in concluding that the trial
20 judge, in overriding the jury's recommendation of life, had failed to find nonstatutory
21 mitigation. In that case, the defendant had presented the testimony of numerous witnesses
22 indicating, inter alia, "a difficult childhood, including an abusive, alcoholic father..." Id. at
23 314. One factor supporting the Court's conclusion that the sentencing judge must have
24 considered this nonstatutory mitigation was the fact that "substantial evidence, much of it
25 uncontroverted, favoring mitigation" had been presented. Id. at 318. See also Hitchcock v.
26 Dugger, 481 U.S. 393 (1987) (reversing death sentence where advisory jury and sentencing
27 judge did not consider nonstatutory mitigating evidence); cf. Penry v. Lynaugh, 492 U.S. 302
28 (1989) (reversing sentence on grounds that Texas special issues unconstitutionally precluded

1 jury from full consideration of evidence of childhood abuse and mental retardation). See also
2 Smith v. McCormick, 914 F.2d 1153, 1168 (9th Cir. 1990).

3 Several courts have recognized that a sentencer's failure to find mitigating
4 circumstances that are plainly supported by the evidence is reversible error. Thus, in Nibert
5 v. State, 574 So.2d 1059, 1062 (Fla. 1990), the Florida Supreme Court reversed a death
6 sentence and remanded for imposition of a life sentence where the trial judge erroneously
7 rejected mitigating evidence the reviewing court concluded demonstrated that the death
8 sentence was disproportionate, observing:

9 Where uncontroverted evidence of a mitigating circumstance has been
10 presented, a reasonable quantum of competent proof is required before the
11 circumstance can be said to have been established. [citation omitted] Thus,
12 when a reasonable quantum of evidence of a mitigating circumstance is
13 presented, the trial court must find that the mitigating circumstance has been
14 proved.

15 Similarly, in Evans v. State, 598 N.E.2d 516, 519 (Ind. 1992), the Indiana Supreme Court set
16 aside a death sentence and remanded for the imposition of a life sentence on the grounds that
17 the trial court erroneously rejected several nonstatutory mitigating factors. The court
18 observed that the sentencer's rejection of uncontroverted mitigating evidence of parental
19 neglect, abnormal behavior, psychiatric disorder and of the defendant's immediate surrender
20 to authorities demonstrated that "the trial court's conclusion that the death penalty is
21 appropriate was arrived at without the required discrete and individualized consideration of
22 the character of the offender." Id. See also Magwood v. Smith, 791 F.2d 1438, 1449-50
23 (11th Cir. 1986) (habeas relief granted on grounds that the trial judge's rejection of mitigating
24 circumstances was not fairly supported by the record); Gray v. Lucas, 710 F.2d 1048, 1055
25 n. 5 (5th Cir. 1983) (observing that had evidence of defendant's mental illness been presented
26 at the penalty phase, he "would most probably now be entitled to a peremptory instruction
27 to consider a mitigating circumstance that his capacity to conform his conduct to the
28 requirements of law was substantially impaired...."); State v. Kirkley, 302 S.E.2d 144, 158
(N.C. 1983) ("when a mitigating factor is uncontroverted the trial judge must give a
peremptory instruction to the jury on that circumstance. The effect of this type of instruction

1 is to remove the question of whether the mitigating circumstance exists from the jury's
2 determination and to conclusively establish the existence of that factor."); Sanders v. State,
3 585 A.2d 117, 134 (Del. 1990) (requiring jury instruction that a finding of "guilty but
4 mentally ill" mitigates as a matter of law).

5 Just as a jury's consideration of an improper aggravating factor skews its weighing
6 process in assessing punishment and renders the sentence unreliable under the Eighth
7 Amendment, see Stringer v. Black, 503 U.S. 222, 232 (1992), the erroneous failure to find
8 and weigh relevant mitigation that is supported by the evidence infects the formal process
9 of deciding whether death is the appropriate punishment.

10 The failure of the jury to find clearly applicable mitigators mandates one of two
11 findings: either (1) the jurors did not understand the jury instructions defining mitigating
12 circumstances; or (2) the jurors did understand the instructions, but they elected to disregard
13 the instructions and the law defining mitigation. In either event, Chappell was deprived of
14 his rights to due process, equal protection, a reliable sentence, and right to be free from cruel
15 and unusual punishment.

16 **N. There Is Insufficient Evidence To Support The Sexual Assault Aggravator**

17 The State alleged, and the jury found, the aggravating circumstance of murder
18 committed in the perpetration of a sexual assault. There was insufficient evidence, however,
19 to support the existence of this aggravating circumstance. Accordingly, Chappell's
20 conviction is unconstitutional. U.S. Const. Amends. V, VI, VIII, XIV; Nev. Const. Art. I,
21 Secs. 3, 6, 8; Art. IV, Sec. 21; In re Winship, 397 U.S. 358, 361-63 (1970).

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

26 NRS 200.366(1) defines sexual assault as:

27 A person who subjects another person to sexual penetration, or who forces
28 another person to make a sexual penetration on himself or another, or on a
beast, against the will of the victim or under conditions in which the

1 perpetrator knows or should know that the victim is mentally or physically
2 incapable of resisting or understanding the nature of his conduct, is guilty of
sexual assault.

3 In order to find the sexual assault aggravator, the State must prove beyond a reasonable
4 doubt: (1) forced sexual penetration (2) upon another person (3) against the will of the victim
5 (4) or that the victim is physically incapable of resisting or understanding the nature of his
6 conduct. Consent is recognized as a defense to a claim of sexual assault as it negates the
7 necessary elements of the offense. See Hardaway v. State, 112 Nev. 1208, 1211, 926 P.2d
8 288, 290 (1996).

9 Here, the State not only failed to prove any of the elements of a sexual assault, the
10 State did not even charge Chappell with a sexual assault as an offense. The evidence
11 presented during the second penalty hearing failed to establish, beyond a reasonable doubt,
12 that Chappell sexually assaulted Panos. Moreover, the evidence failed to establish, beyond
13 a reasonable doubt, that Panos was killed during the course of the alleged sexual assault.

14 Chappell's testimony from the first trial, which was presented by the State during the
15 second penalty hearing, was that he had consensual intercourse with Panos prior to the
16 circumstances that led to her death. VI ROA 1398-1400. Evidence presented during the
17 penalty phase was consistent with his testimony. Both the coroner and the defense expert
18 acknowledged that although Chappell's DNA was found in Panos's vagina, there was no
19 evidence of bruising or other trauma to her vaginal area. IV App. 962-1003. Panos was fully
20 clothed when her body was found and the stab wounds were inflicted while she was fully
21 clothed. IV App. 996, 1024. Although evidence was presented that Chappell and Panos had
22 difficulties in their relationship, the evidence also revealed that they had been together for
23 nearly 10 years and they had reconciled numerous times following previous disputes during
24 that 10 year period. VI ROA 1357, 1367, 1376-78, 1390. The evidence also revealed that
25 Panos was aware that Chappell had been released from custody prior to the time that she
26 returned to her trailer and that she went to her trailer alone rather than taking her friend with
27 her. XIII ROA 3131-33. Under these circumstances, the State failed to establish beyond a
28 reasonable doubt that Panos did not consent to sexual intercourse with Chappell. Likewise,

1 the State failed to establish a nexus between the sexual assault and the killing. The record
2 was uncontested as to the fact that Panos was fully dressed at the time she was stabbed. Even
3 under the State's theory, the sexual assault occurred well before the stabbings and did not
4 occur during the perpetration of the sexual assault.

5 As there is insufficient evidence to support the sole aggravating circumstance of
6 murder in the perpetration of a sexual assault, Chappell's conviction must be vacated.

7 **O. The Sexual Assault Aggravating Circumstance Is Invalid Under McConnell v.**
8 **State**

9 Chappell's constitutional rights to a reliable sentence and to free from cruel and
10 unusual punishment were violated by application of the sexual assault aggravating
11 circumstance under the circumstances presented here. U.S. Const. amend. V, VIII, XIV;
12 Nevada Const. art. I, Sec. 3, 6 and 8; art. IV, Sec. 21.

13 As noted above, Chappell was charged with first degree murder under theories of
14 premeditated and deliberate murder and felony murder. I ROA 38. The felony murder claim
15 was based upon underlying felony offenses of robbery and burglary. I ROA 39. When the
16 State filed its notice of its intention to seek the death penalty it included aggravating
17 circumstances of robbery, burglary and sexual assault. I ROA 44. The original jury
18 convicted Chappell of first degree murder but did not provide a special verdict form
19 indicating the theory or theories upon which it based its verdict. VII ROA 1747-49. The
20 original jury also found the existence of all three aggravating circumstances. IX ROA 2127-
21 29. In post-conviction proceedings, however, this Court found the robbery and burglary
22 aggravating circumstances to be invalid under McConnell v. State, 120 Nev. 1043, 102 P.3d
23 606 (2004), reh'g denied, 107 P.3d 1287 (2005). Thus, upon remand for a new penalty
24 hearing, the State was limited to the sexual assault aggravating circumstance. Prior to trial,
25 Chappell's counsel argued that this aggravating circumstance was invalid and they sought
26 its dismissal. XII ROA 2801. The district court rejected the argument and ultimately the jury
27 returned a death sentence based upon this sole aggravating circumstance. XV ROA 3737.
28

1 The sexual assault aggravating circumstance is invalid under McConnell because it
2 fails to narrow application of the death penalty in these circumstances, and because it permits
3 the State to divide felony murder aggravating circumstances in that it allowed two to be used
4 for the basis of felony murder and one to be used as an aggravating circumstance.

5 “The Eighth Amendment prohibits the infliction of cruel and unusual punishments.”
6 McConnell, 120 Nev. at 1063, 102 P.3d at 620 (citing U.S. Const. amend VIII). “In 1972,
7 the Supreme Court held that capital sentencing schemes which do not adequately guide the
8 sentencers’ discretion and thus permit arbitrary and capricious imposition of the death
9 penalty violate the Eighth and Fourteenth Amendments.” Id. (citing Gregg v. Georgia, 428
10 U.S. 153 (1976) summarizing Furman, 408 U.S. 238). “As a result, the Court has held that
11 to be constitutional a capital sentencing scheme ‘must genuinely narrow the class of persons
12 eligible for the death penalty and must reasonably justify the imposition of a more severe
13 sentence on the defendant compared to others found guilty of murder.’” Id. at 1063, 102 P.3d
14 at 621-22 (quoting Zant, 462 U.S. at 877). This Court has also concluded that Nevada’s own
15 constitution bans against the infliction of “cruel and unusual punishments” and the
16 deprivation of life” without due process of law” require this same narrowing process.” Id.
17 (citing Nev. Const. art. 1 §§ 6, 8(5)).

18 “Nevada’s current definition of felony murder is broader than the definition in 1972
19 when Furman v. Georgia [408 U.S. 238] temporarily ended executions in the United States.”
20 McConnell, 120 Nev. at 1066, 102 P.3d at 622. “So it is clear that Nevada’s definition of
21 felony murder does not afford constitutional narrowing.” Id. “As Professor Richard Rosen
22 points out: “At a bare minimum, then, a narrowing device must identify a more restrictive
23 and culpable class of first degree murder defendants than the pre-Furman capital homicide
24 case. Id. (citing Richard A. Rosen, Felony Murder and the Eighth Amendment Jurisprudence
25 of Death, 31 B.C.L. Rev. 1103, 1124 (1990)).

26 Under the facts of this case, the original jury may have found Chappell guilty under
27 a theory of felony murder and the sole aggravating circumstance found by the jury in the
28 second penalty hearing is also a felony murder aggravating circumstance. Thus, Chappell