

1 Q. Now, you indicated that you had  
2 reviewed some reports concerning the presence of  
3 DNA.

4 A. Yes.

5 Q. Okay. Did you form any conclusion  
6 from those reports?

7 A. That there was material, genetic  
8 material from the suspect present within the vagina  
9 of the victim.

10 Q. Did you form any conclusion or  
11 opinions based on the items you reviewed concerning  
12 whether or not there was a gap between the period  
13 of time of the DNA and the infliction of the knife  
14 wounds?

15 A. The timing of when that material from  
16 the suspect got in, was put into the victim, I  
17 don't know how long it had been there. There  
18 certainly did not seem to be any evidence that this  
19 per -- the victim was killed while being raped.

20 Q. And you didn't find any physical  
21 evidence that there was in fact a sexual assault?

22 A. Assault, no.

23 Q. Okay. Now, there were in addition to  
24 the stab wounds other injuries; is that correct?

25 A. Yes.

1 Q. Okay. Can you describe those injuries  
2 for us.

3 A. In addition to the stabbing injuries  
4 that caused her death, the victim had multiple  
5 blunt force injuries. These are injuries that  
6 happened as a result of an impact of some kind  
7 whether a person is being struck or if they are  
8 being driven into something.

9 She had bruising and scraping on both  
10 sides of her face involving her ears as well. She  
11 had a scrape on her chin. She had bruising on her  
12 arm, scraping on her elbow, scraping on her knee  
13 and bruising of her hand, her right hand, and a  
14 scrape on the back of her left hand.

15 Q. And was there bruising associated with  
16 any of those injuries?

17 A. All of those injuries were both  
18 bruises as well as scrapes.

19 Q. And the -- you indicated that there  
20 were a number of stab wounds. Can you tell us  
21 where the stab wounds were and whether they were  
22 incised or puncture wounds.

23 A. Certainly. The victim had a grouping  
24 of about, of nine wounds over a fairly  
25 circumscribed area on the right side and center of

1 her neck. These were all stabbing injuries meaning  
2 that they were narrow and were deeper than they  
3 were long. They were not slashing type injuries.

4 She also had a stab wound on the left  
5 side of her neck, two stab wounds in the left upper  
6 chest, a single stab wound right by her belly  
7 button, and then a final or a last wound in her  
8 right groin region.

9 Q. Now, we have the wounds up toward the  
10 upper part of her body then we see two additional  
11 stab wounds; is that correct?

12 A. There were the group on the neck, the  
13 two just in the upper left chest region, one by the  
14 umbilicus or belly button, and one in the groin.

15 Q. Is that in the vagina?

16 A. No. This is what technically is  
17 called the inguinal area. It's that crease where  
18 your thigh and abdomen are and just to the right of  
19 the middle of the body, not the vagina, not the  
20 perineum.

21 Q. And that was just a single injury?

22 A. That was a single injury, yes.

23 Q. And could you tell if that injury  
24 appeared to be contemporaneous in time to the other  
25 stab injuries you described?

1 A. It certainly was an injury that was  
2 inflicted on a person who still had blood pressure,  
3 was alive, certainly could be considered  
4 contemporaneous with all of the other injuries.

5 Q. And that was through the clothing?

6 A. Yes.

7 Q. In fact, through two items of  
8 clothing?

9 A. Through the pants and the underpants.

10 Q. And the wounds lined up with both of  
11 the cuts in both of those garments?

12 A. Yes. As if the pants were being  
13 conventionally worn, not turned down, not twisted.

14 Q. And with respect to what you called  
15 the bruising injuries which were the blunt force  
16 injuries you talked about, any opinions you were  
17 able to formulate as to the timing of those with  
18 relation to the stab type injuries?

19 A. The bruising injuries are clearly  
20 fresh injuries. They aren't something that  
21 happened a day before or two days before. There is  
22 some swelling associated with them which means that  
23 there had to be a period of time while the heart  
24 was beating and blood was flowing through that area  
25 of damaged tissue specifically though I cannot tell

Page 17

1 you if it's a matter of 15 minutes, an hour or  
2 more. They are fresh injuries, but I can't give  
3 you a very narrow window of time for them.

4 Q. And did you prepare a report in this  
5 case?

6 A. I wrote a letter stating my opinions,  
7 yes.

8 Q. And when was that?

9 A. I believe that was dated the 28th of  
10 January of this year.

11 Q. And you have that in front of you now?

12 A. Yes, I do.

13 Q. Are you aware whether or not that's  
14 been provided to the State?

15 A. I have no knowledge about that.

16 MR. SCHIECK: Okay. Thank you, that's  
17 all I have, Your Honor.

18 (Whereupon Mr. Schieck

19 completed his direct

20 examination at 2:56 p.m.)

21 MR. OWENS: Thank you. We did get a  
22 copy of that and we appreciate it.

23 ///

24 ///

25 ///

Page 18

1 CROSS-EXAMINATION

2 BY MR. OWENS:

3 Q. Dr. Grey, how are you?

4 A. Good.

5 Q. You appeared in another case a couple  
6 of years ago.

7 A. Yeah, I remember you.

8 Q. You sat through the testimony of

9 Dr. Green and then they decided not to call you.  
10 Is that the one?

11 A. Yeah.

12 Q. Your day job, so to speak, is in Utah?

13 A. That's correct.

14 Q. Do they pay you very well in Utah?

15 A. Okay.

16 Q. They're kind of notorious for not  
17 paying well.

18 A. Forensic pathologist is one of the  
19 higher remunerated areas of medicine.

20 Q. So this is kind of moonlighting for  
21 you?

22 A. Yes.

23 Q. The state allows to you make a little  
24 extra money?

25 A. The rules are as long as it doesn't

Page 19

1 interfere with my duties as the chief medical  
2 examiner and as long as I'm not getting private  
3 income for work that I did for the state.

4 Q. Right. As long as it's like a  
5 separate thing.

6 A. Yes.

7 Q. Which is what this is.

8 A. That is correct.

9 Q. We've been talking about what's a  
10 sexual assault and what's not a sexual assault. To  
11 talk about that you really need to know what the  
12 definition of a sexual assault is in the State of  
13 Nevada, wouldn't you?

14 MR. SCHIECK: I'm going to object,  
15 Your Honor. I didn't ask him any questions about  
16 the definition of sexual assault. I asked him  
17 about physical evidence of injuries associated with  
18 that.

19 THE COURT: I'll overrule the  
20 objection. I think the question is whether there  
21 are any injuries consistent with sexual assault.

22 MR. OWENS: Right.

23 Q. I think all through your report you  
24 referenced in your testimony a moment ago whether  
25 this was sexual assault physical evidence of sexual

Page 20

1 assault. When you're using that term, what do you  
2 mean it to --

3 A. What I would say is I'm using a  
4 medical definition which would be forceful  
5 penetration.

6 Q. Okay. So your definition of sexual  
7 assault is a woman's got to take a few hits before  
8 it's a sexual assault.

9 A. No, no. I'm not saying that. I'm  
10 saying that for me to diagnose sexual assault, I  
11 would want to see evidence of traumatic injuries  
12 consistent with a forceful penetration.

13 Q. Okay. And if the woman's got a knife  
14 at her throat, she doesn't resist, you're not going  
15 to see those injuries?

16 A. I may not.

17 Q. So that's not going to meet your  
18 definition, is it?

19 A. No.

20 Q. The definition in the State of Nevada  
21 is any sexual penetration however slight that's not  
22 one the consent of the woman. It doesn't require  
23 any injuries. Are you aware of that?

24 A. That's a legal definition and I'm not  
25 use ago legal definition, solely a medical

Page 21

1 definition.

2 Q. So if a woman's got a knife at her  
3 throat, then that's not something that you factored  
4 in.

5 A. Not something that I could say has any  
6 medical evidence to support or refute.

7 Q. Or if your assailant said, "You need  
8 to submit to this or I'm going to beat you," that's  
9 not something you factored in either.

10 A. Again nothing medically would allow me  
11 to support or refute such a contention.

12 Q. All right. Let's talk about some  
13 medical things for a few minutes. For the record.  
14 You looked at the autopsy photos.

15 A. Yes.

16 Q. I'm going to put Exhibit No. 42 and I  
17 apologize in advance for the graphic nature of  
18 this. Looking at your screen looking at the  
19 picture of Debbie Panos. You're talking about  
20 physical injury. On first blush when you look at  
21 this, you've got to be thinking physical injuries?

22 A. Of course.

23 Q. So we've clearly got some physical  
24 injuries in this particular case, right?

25 A. Of course.

Page 22

1 Q. And we've clearly got sexual  
2 penetration, don't we?

3 A. We have evidence of sexual activity,  
4 yes.

5 Q. Well, I mean what kind of sexual  
6 activity? We've got semen in the vaginal vault.

7 A. That would be sexual actively.

8 Q. So that would be evidence?

9 A. Yes.

10 Q. And so we've got a woman with the  
11 defendant's semen in her vaginal vault and we've  
12 got extreme injuries to her, don't we?

13 A. Yes.

14 Q. So what you're talking about isn't,  
15 you're not saying there wasn't force used in this  
16 incident.

17 A. That is correct.

18 Q. You're just talking about the timing  
19 of these events. Whether the force was connected  
20 with the sexual assault, whether it came later,  
21 whether it came before. That's what the issue is  
22 for you right here, isn't it?

23 A. Let me see.

24 Q. Let me back up.

25 A. Can I break it down?

Page 23

1 Q. Yeah.

2 A. The issue, there's two issues. One is  
3 is there evidence of forcible sexual penetration as  
4 evidenced by injury either in the vagina, perineum,  
5 or anus. That would be the first thing that I  
6 looked at and thought about and there was no  
7 evidence of that.

8 Q. That is not my question.

9 A. Oh, okay.

10 Q. We've got force here. We've got  
11 sexual penetration.

12 A. Right.

13 Q. What you seem to be saying is you're  
14 not associating this force, this injury with the  
15 sexual penetration.

16 A. This, when you say this injury, if  
17 you're talking about the blunt force injuries.

18 Q. I'm talking about all of the  
19 injuries.

20 A. Okay. Well, then you will need to  
21 specifically separate two types of injuries that  
22 this woman has.

23 Q. You do, don't you? Because we've got  
24 two arenas of injuries for her, don't we?

25 A. Yes.

Page 24

1 Q. Okay. The first one being the  
2 bruising, contusions, abrasions and the second  
3 area --

4 A. Blunt force injuries, yes.

5 Q. The second area being the knifing?

6 A. Correct.

7 Q. So we've had two incidents or  
8 groupings of violence against this woman Debbie  
9 Panos.

10 A. Two different modalities of injury,  
11 yes.

12 Q. And there's a time interval between  
13 them?

14 A. More likely than not, yes.

15 Q. And you mentioned a few minutes ago  
16 probably at least 15 minutes?

17 A. I'm saying I don't know for sure but  
18 probably a number of minutes in order for that  
19 bruising and swelling to show up.

20 Q. Probably about 15.

21 A. That would be one reasonable estimate.

22 Q. All right. Because we know that the  
23 bruising occurs before the knifing which caused her  
24 death.

25 A. Yes.

Page 25

1 Q. So from 15 minutes to maybe even an  
2 hour before that she is subjected to a vicious  
3 beating, isn't she?  
4 A. She has blunt force injuries  
5 inflicted. How they were inflicted I cannot tell  
6 you. Whether they were beating or slamming is -- I  
7 cannot tell you.  
8 Q. All right. Well, not to be too  
9 technical, her face and her body came with force  
10 against some object?  
11 A. That is correct.  
12 Q. Could it have been the defendant's  
13 fist?  
14 A. That's one possibility.  
15 Q. He could have picked up something and  
16 hit her?  
17 A. Yes.  
18 Q. He could have slammed her into  
19 something?  
20 A. Yes.  
21 Q. But somehow that's how she got it.  
22 And it was at least 15 minutes later thereabouts  
23 that then the mortal blows are given with the  
24 knife?  
25 A. More likely than not, yes.

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1 Q. Okay. You said that you reviewed  
2 everything that you thought it was necessary to  
3 review in order to come to your conclusion.  
4 A. Yes.  
5 Q. Your conclusion being the definition  
6 about sexual assault that's different than what  
7 we're looking at here in this case.  
8 A. That is medical rather than legal,  
9 yes.  
10 Q. Okay. You're aware that we talked  
11 about that she had semen, the defendant's semen in  
12 the vaginal vault.  
13 A. That is correct.  
14 Q. You said you had an opportunity to  
15 review some of the documents and some of the  
16 testimony from the prior proceeding.  
17 A. I reviewed the Clark County Coroner's  
18 investigative report and Dr. Green's testimony.  
19 Q. You're aware that the defendant said  
20 when he testified at the prior hearing that he did  
21 not ejaculate into the victim. Were you aware of  
22 that?  
23 A. No.  
24 Q. So you don't know that he just said  
25 that it was oral sex?

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1 A. I don't know.  
2 Q. Okay. Well, in light of what you read  
3 about the findings, the DNA samples that were done,  
4 clearly this was not just oral sex if oral sex even  
5 happened. There was vaginal sex.  
6 A. There was depositing of his genetic  
7 material in her vagina. The specifics as to  
8 whether sperm was scene or not I do not know.  
9 Q. You don't know that?  
10 A. No. I did not see any report. I just  
11 saw the DNA report.  
12 Q. So you didn't read the report that  
13 talks about the presence of sperm as well --  
14 A. I did not see that.  
15 Q. But that would be conclusive that  
16 there was ejaculation?  
17 A. Yes.  
18 Q. Did you read the reports about the  
19 gathering of the evidence and defendant's testimony  
20 about a supposed fight that occurred over some  
21 letter that he found out in the car?  
22 A. I read no investigative reports of  
23 that. That information was provided in a cover  
24 letter that I received from Mr. Chappell.  
25 Q. So you were told that there was some

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1 sort of a fight that occurred outside in the car  
2 over a piece of paper?  
3 A. Yes.  
4 Q. And that is based on what the  
5 defendant's version of events were?  
6 A. Again, the specifics of how that  
7 information was gathered I do not know.  
8 Q. So you didn't look at the actual  
9 photographs or look at the evidence that was seized  
10 from the scene in order to come to your conclusion?  
11 A. The only pictures I saw were the ones  
12 related to the victim's position.  
13 Q. Were you aware of the telephone call  
14 that the victim had made to a day care worker from  
15 the scene pleading for help because she was afraid  
16 of the defendant?  
17 A. Again, through the cover letter I was  
18 aware of that, that that had been reported.  
19 Q. That wasn't something that you  
20 factored in.  
21 A. In terms of my assessment as to  
22 whether there was evidence of a sexual assault on  
23 the victim, I did not factor that in.  
24 Q. How about the letter that he sent to  
25 the victim before his appearance at her home, "One



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1 day soon I'll be at that front door and what in  
 2 God's name will you do then?"  
 3 Were you aware of that threat?  
 4 A. No.  
 5 Q. Were you aware that the day before --  
 6 MR. SCHIECK: I'm going to object.  
 7 This is beyond the scope, Your Honor.  
 8 MR. OWENS: I'm entitled to --  
 9 THE COURT: Let him ask the question  
 10 first.  
 11 MR. OWENS:  
 12 Q. Were you aware that the day before the  
 13 murder of Debbie Panos that she was at a court  
 14 hearing where the defendant turned to her and said,  
 15 "I'm going to kill you"?  
 16 A. No.  
 17 THE COURT: For the record I'll  
 18 overrule the objection.  
 19 MR. OWENS:  
 20 Q. Did you read anything in the defense's  
 21 summary that just minutes before she went back to  
 22 her home there where she was confronted by the  
 23 defendant she was shaking, afraid, and in a fetal  
 24 position on the sofa at a friend's home?  
 25 A. No.

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1 Q. And the defendant's direct threats  
 2 were not something that you even factored in or  
 3 considered in your opinion then?  
 4 A. In terms of the issue of sexual  
 5 assault, no.  
 6 Q. But these would have been events that  
 7 occurred prior to the sexual assault or the sexual  
 8 contact let's call it and you think that those  
 9 would be relevant in determining if this sexual  
 10 contact was consensual or not.  
 11 A. The issue of consent and whether  
 12 consent was coerced or not I cannot answer.  
 13 Q. Let's take a look at a couple other  
 14 pictures here. Up, we're looking at the -- we've  
 15 got the one up here right now, No. 42, and if we  
 16 can I want to kind of zoom in a little bit there.  
 17 We talked about some of those injuries down around  
 18 the neck area there what you see.  
 19 A. If you have a question.  
 20 Q. Can you describe those injuries around  
 21 the neck area.  
 22 A. Those are stab wounds. You can see  
 23 one, two, three, four, five.  
 24 THE COURT: You can touch the screen,  
 25 Doctor.

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1 THE WITNESS: Thanks. Single stab  
 2 wound, three stab wounds, three stab wounds,  
 3 another stab wound there.  
 4 MR. OWENS:  
 5 Q. What other injuries are visible there?  
 6 A. There is an area of what looks like  
 7 slight scraping there and then throughout here you  
 8 see bruising and scraping.  
 9 Q. So when you say scraping, you would  
 10 call that an abrasion also?  
 11 A. That's an abrasion, yes.  
 12 Q. What would cause an abrasion like  
 13 that?  
 14 A. Something rough being either pushed  
 15 across the skin or the skin being pushed across a  
 16 rough surface.  
 17 Q. Okay. How about this area up  
 18 underneath her neck, what's that?  
 19 A. I'm not sure what you're referring  
 20 to.  
 21 THE COURT: If you can point on the  
 22 pictures, Mr. Owens, it will --  
 23 MR. OWENS:  
 24 Q. This area right up here.  
 25 A. This area looks like a little bit of a

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1 bruise and possibly another scrape. It may be one  
 2 of the stab wounds. I'm not sure.  
 3 Q. So we have bruising and an abrasion in  
 4 the neck area.  
 5 A. Yup.  
 6 Q. Up under the chin we have a spot.  
 7 A. There's an abrasion on the chin there  
 8 and again an abrasion there.  
 9 Q. Okay. Let's take another look at that  
 10 a little different angle here, No. 40. Are you  
 11 able to see that there? Can you identify that area  
 12 of abrasion again.  
 13 A. The large area of scraping on the chin  
 14 is here. I do not see what we saw on the other  
 15 side. It may possibly be hidden by this crease or  
 16 fold. We have one of the stab wound there, a stab  
 17 wound and three stab wounds there, the two stab  
 18 wounds of the upper chest, and then bruising on the  
 19 left side of the neck.  
 20 Q. So that area that you've identified  
 21 there you called bruising or contusions, that's  
 22 right on that left, that would be the victim's left  
 23 side; is that correct?  
 24 A. That is the left side of the victim's  
 25 neck.

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1 Q. Right on the neck. And what kind of a  
2 force or trauma would cause that type bruising or  
3 abrasion on the left side of her neck?

4 A. This is again a blunt force injury  
5 meaning that there has been an impact. Whether  
6 that's a blow landing or the victim being slammed  
7 into something, there has been enough force  
8 delivered to this area so that blood vessels  
9 underneath the skin actually rupture and blood  
10 leaks out. That's what a contusion or bruise is.

11 Q. And that could be a grabbing of her  
12 neck forcefully as well, couldn't it?

13 A. Yes.

14 Q. You mentioned some bruising that was  
15 on the forearms. Let's take a look at what's  
16 marked as Exhibit No. 43 now. This would be the  
17 right arm that we're looking at.

18 A. Yes.

19 Q. Can you tell us what we're seeing  
20 there.

21 A. There is a large zone of bruising on  
22 the outer surface of the arm, some bruising more  
23 towards the shoulder region.

24 Q. Once again, this is the result of  
25 trauma from a striking or a grabbing and rupture of

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1 capillaries in that area.

2 A. Some sort of impact causing the  
3 rupture of vessels underneath the skin, yes.

4 Q. And all of the bruising that we've  
5 identified up in that neck area and on the arm  
6 area, these are things -- these are injuries that  
7 occurred some 15 minutes or more before the fatal  
8 stab wound that she received.

9 A. Yes.

10 Q. Do you have any idea of context in  
11 which she received these injuries 15 minutes before  
12 the fatal stabbing?

13 A. I don't understand the question.

14 Q. Do you know how specifically she would  
15 have received these injuries 15 minutes before?

16 A. You mean the process of however she  
17 was injured?

18 Q. Yeah.

19 A. As I said, it could be impacts, a  
20 perpetrator was striking her. It could be that she  
21 was thrown into something or thrown down onto  
22 something. I cannot tell you specifically from the  
23 injuries how they occurred. All I can say is they  
24 are blunt force.

25 Q. Okay. So you're just giving us

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1 different ways but you don't have anything really  
2 specific as to how she got them.

3 A. No.

4 Q. Were you aware or were you made aware  
5 in that report that you got from the defense  
6 attorneys of something kind of similar to this that  
7 occurred about two months earlier between the  
8 defendant and the victim here?

9 A. Specifically no. I know that there  
10 was an ongoing history of domestic violence in the  
11 relationship.

12 Q. Were you told about an incident on  
13 June 1st when he held her down and confined her  
14 arms and held a knife to her throat but then was  
15 interrupted by a roommate?

16 You didn't hear?

17 A. No, not specifically.

18 Q. You didn't hear anything about that?

19 A. No specifically.

20 Q. Certainly grabbing somebody by the  
21 throat could leave injuries.

22 A. Yes.

23 Q. Grabbing somebody by the arms could  
24 create injuries like we're seeing here.

25 A. Yes.

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1 Q. In fact, the defendant testified  
2 that's what he did on this occasion. Are you aware  
3 of this?

4 A. Which occasion?

5 Q. The occasion of the murder.

6 A. No. I did not read his testimony.

7 Q. They didn't send that to you?

8 A. I did not read that testimony.

9 MR. OWENS: If I may, Your Honor, I'd  
10 like to refer to page 82 of the defendant's  
11 testimony in the prior hearing.

12 THE COURT: Okay.

13 MR. SCHIECK: Your Honor, I'm going to  
14 object on relevance grounds. This is not medical  
15 testimony. He's reading some other witness's  
16 testimony.

17 THE COURT: To the extent you're  
18 reading the portion of the defendant's testimony  
19 that describes the day of the murder.

20 MR. OWENS: Yes.

21 THE COURT: And his interaction with  
22 the victim.

23 MR. OWENS: Right.

24 THE COURT: Okay. Overruled.

25 ///

Page 37

1 MR. OWENS:  
 2 Question: So after you had put her  
 3 on the bed, did you get up and straddle  
 4 her and pin her arms down with near her  
 5 knees?  
 6 Answer: I got on top of her, yes,  
 7 sir.  
 8 Question: Did you pin her arms down  
 9 with your knees?  
 10 Well, hold on a second, Your Honor. I  
 11 think that was the June incident. Yeah, I'm going  
 12 to go over to page 102.  
 13 MR. SCHIECK: For the record, the  
 14 previously testimony you read was related to the  
 15 June 1st incident.  
 16 MR. OWENS: June 1st incident, yeah.  
 17 Q. And we're over on page 102. So you've  
 18 told us when you detected that something was  
 19 different. You got up and grabbed her.  
 20 Answer: Yes, I did.  
 21 Question: Grabbed her how?  
 22 Answer: I put my hand in this area  
 23 right here.  
 24 Question: This area meaning in the  
 25 area of her neck.

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1 Answer: Yeah.  
 2 Question: Did you begin to choke her,  
 3 Mr. Chappell?  
 4 Answer: I didn't choke her that she  
 5 couldn't say nothing, nothing like that, she  
 6 couldn't breathe. It wasn't nothing like  
 7 that.  
 8 Question: With both hands did you  
 9 begin to choke her, sir?  
 10 No, no. With only one hand. One  
 11 hand, sir.  
 12 (Remarks off the record.)  
 13 MR. OWENS:  
 14 Question: With both hands did you  
 15 begin to choke her, sir.  
 16 Answer: No, no.  
 17 Question: With only one hand.  
 18 Answer: One hand, sir.  
 19 Question: Which hand?  
 20 Answer: My right hand, sir.  
 21 Question: Did you grasp her neck  
 22 with your right hand? Did you take a hold  
 23 of her neck with her right hand?  
 24 Answer: She was laying down. I was  
 25 on top of her holding her like onto her

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1 neck. I wasn't squeezing it, nothing like  
 2 that.  
 3 Question: She was still laying on the  
 4 sofa.  
 5 Answer: Yes, sir.  
 6 Question: But you were standing at  
 7 that time.  
 8 Answer: I was like on my knees on top  
 9 of her. I wasn't standing up yet.  
 10 Question: Pinning her down?  
 11 Answer: If you call just holding on  
 12 to the front of her neck pinning her down,  
 13 yes, sir.  
 14 Q. You didn't have a chance to review  
 15 that as part of the materials that were given.  
 16 A. No.  
 17 Q. So you don't know that it was after  
 18 that that the defendant in his prior testimony said  
 19 that she willingly performed oral sex on him?  
 20 A. No.  
 21 Q. Grabbing her by the neck is certainly  
 22 something that could have produced the injuries  
 23 that we see here.  
 24 A. Certainly.  
 25 Q. But that doesn't fit the definition

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1 you were looking at of sexual assault.  
 2 A. Again, the medical definition of  
 3 sexual assault, it does not.  
 4 Q. Because you're looking for something  
 5 below the waist?  
 6 A. Yes.  
 7 Q. So if he was pinning her down and  
 8 forcing himself on her leaving these bruises, that  
 9 would have been 15 minutes or more before the  
 10 attack with the knife.  
 11 A. Yes.  
 12 Q. But that doesn't fit your definition  
 13 of sexual assault. That's not what you were asked  
 14 to do.  
 15 A. No. The question I was asked was  
 16 there evidence of sexual assault during her  
 17 killing.  
 18 Q. Well, it wasn't during the killing,  
 19 was it?  
 20 A. No, it was not.  
 21 MR. OWENS: Thank you.  
 22 (Whereupon Mr. Owens  
 23 concluded his cross-examination  
 24 at 3:19 p.m.)  
 25 THE COURT: Mr. Schieck.

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1 REDIRECT EXAMINATION  
 2 BY MR. SCHIECK:  
 3 Q. You were asked a very specific  
 4 question when you were retained, correct?  
 5 A. That was correct.  
 6 Q. That had to do with medical evidence?  
 7 A. That is correct.  
 8 Q. And that's what you're here to testify  
 9 about today.  
 10 A. That is correct.  
 11 Q. And your training is all in medical  
 12 areas.  
 13 A. Yes.  
 14 Q. And in your training in medical area  
 15 as a pathologist and a forensic pathologist, can  
 16 you tell us whether the cause of death was  
 17 choking.  
 18 A. There was no evidence that this victim  
 19 was strangled to death, no.  
 20 Q. Were the bruises to the arms the cause  
 21 of death?  
 22 A. No.  
 23 Q. Were the blunt face trauma to the face  
 24 the cause of death?  
 25 A. No.

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1 Q. The cause of death was the stabbing  
 2 type injuries.  
 3 A. That is correct.  
 4 Q. And you looked for evidence with  
 5 relation to the stabbing type injuries and the  
 6 cause of death in making your analysis and  
 7 answering the question posed to you.  
 8 A. That is correct.  
 9 Q. And you said in your opinion it's at  
 10 least a 15-minute interval between any of the  
 11 bruising type injuries and the injuries related to  
 12 the stabbing which was the cause of death.  
 13 A. I said that there was -- it's likely  
 14 that 15 minutes could have passed if not longer,  
 15 yes.  
 16 Q. And none of the information that was  
 17 read to you or recited by Mr. Owens during his  
 18 cross-examination change your medical findings with  
 19 respect to this case.  
 20 A. No.  
 21 Q. You weren't asked to make any factual  
 22 findings.  
 23 A. No.  
 24 MR. SCHIECK: Thank you. No further  
 25 questions, Your Honor.

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1 (Whereupon Mr. Schieck  
 2 concluded his redirect  
 3 examination at 3:21 p.m.)  
 4 THE COURT: Mr. Owens.  
 5 MR. OWENS: Nothing further.  
 6 THE COURT: No questions from the  
 7 jurors. Dr. Grey, you may step down.  
 8 THE WITNESS: May I be excused?  
 9 THE COURT: You are excused.  
 10 (Whereupon Todd Cameron  
 11 Grey, M.D., was excused  
 12 from the witness stand  
 13 at 3:22 p.m.)  
 14 THE COURT: The State may call its  
 15 next witness. We're going back to the State's case  
 16 now, ladies and gentlemen.  
 17  
 18 CHARMAINE SMITH,  
 19 having been first duly sworn to testify to the  
 20 truth, the whole truth and nothing but the truth,  
 21 was examined and testified as follows:  
 22  
 23 THE CLERK: Would you state and spell  
 24 your name for the record.  
 25 THE WITNESS: Charmaine Smith, common

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1 spelling.  
 2  
 3 DIRECT EXAMINATION  
 4 BY MS. WECKERLY:  
 5 Q. Ma'am, how were you employed back in  
 6 1995?  
 7 A. As an adult parole and probation  
 8 officer.  
 9 Q. Adult parole and probation officer?  
 10 A. Yes.  
 11 Q. And how many years did you work in  
 12 that capacity?  
 13 A. I'm currently employed --  
 14 Q. Okay.  
 15 A. -- with parole and probation.  
 16 Q. As of 1995 how many years had you  
 17 worked in that capacity?  
 18 A. I started in '89 so about seven.  
 19 Q. Okay. And what are your job duties or  
 20 what were your job duties back in 1995?  
 21 A. I supervise parolees and probationers.  
 22 Q. Okay. And what did the supervision  
 23 entail?  
 24 A. We made court -- after the Court  
 25 sentenced him, we make referrals to counseling. We

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1 supervise the individuals that were just recently  
 2 paroled out of prison.  
 3 Q. What's the difference between parole,  
 4 someone who is on parole versus someone who is on  
 5 probation?  
 6 A. A parolee is in prison and they are  
 7 released to the community. Probation is in lieu of  
 8 jail or prison. They're granted a term of  
 9 probation.  
 10 Q. Okay. So they're out of custody but  
 11 under the supervision of a parole or probation  
 12 officer?  
 13 A. Yes.  
 14 Q. Okay. Did you ever supervise an  
 15 individual by the name of James Chappell?  
 16 A. Yes.  
 17 Q. And what date did he come under your  
 18 supervision?  
 19 A. The date of is sentencing. I believe  
 20 he was assigned to me which was 4/27/95.  
 21 Q. So April the 27th of '95?  
 22 A. Yes.  
 23 Q. And when someone comes under your  
 24 supervision, that was the result of a sentencing  
 25 decision made by a judge to grant someone probation

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1 rather than send them to jail or prison?  
 2 A. Yes.  
 3 Q. And that's what happened to this  
 4 individual James Chappell?  
 5 A. Yes.  
 6 Q. What was the offense that he was being  
 7 sentenced for?  
 8 A. He pled guilty to possession of  
 9 burglary tools, a gross misdemeanor.  
 10 Q. And can you explain to the members of  
 11 the jury what a gross misdemeanor is as opposed to  
 12 a felony.  
 13 A. A gross misdemeanor is an offense, a  
 14 lesser offense than a felony and is punishable by  
 15 jail time where felonies are punishable by prison  
 16 time.  
 17 Q. So under a gross misdemeanor you can  
 18 serve up to a year in the county jail as part of  
 19 your punishment?  
 20 A. Yes.  
 21 Q. Or you could be granted probation.  
 22 Would that be correct?  
 23 A. Yes.  
 24 Q. And then a felony is greater than a  
 25 year of prison time or you could be granted

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1 probation on that as well?  
 2 A. Yes.  
 3 Q. And he was actually being sentenced  
 4 for a gross misdemeanor or he was sentenced for a  
 5 gross misdemeanor?  
 6 A. Yes.  
 7 Q. Do you recall or were you provided at  
 8 the time any circumstances of the underlying  
 9 offense that he was charged with.  
 10 A. He was originally arrested for  
 11 burglary, felony; under the influence of a  
 12 controlled substance, felony; and possession of  
 13 burglary tools, gross misdemeanor.  
 14 Q. Okay. So he was actually originally  
 15 arrested for two felonies and one gross  
 16 misdemeanor?  
 17 A. Yes.  
 18 Q. And to your knowledge how was it that  
 19 he was being sentenced on the gross misdemeanor?  
 20 Was there a plea negotiation or what happened?  
 21 A. Yes. He was allowed to plead to a  
 22 lesser offense.  
 23 Q. Okay. And then the two felony charges  
 24 were dismissed?  
 25 A. Yes.

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1 Q. So sort of a reduction in the original  
 2 charges?  
 3 A. Yes.  
 4 Q. What date was it that he entered his  
 5 plea?  
 6 A. March 28, 1995.  
 7 Q. Okay. And then he was sentenced in  
 8 April and on the sentencing date he was granted  
 9 probation. ; is that correct?  
 10 A. Yes.  
 11 Q. When someone is granted probation or  
 12 was granted probation at that time, once the judge  
 13 grants them that sentence of probation, how is it  
 14 that they get in contact with their supervising  
 15 probation officer?  
 16 A. They're directed at the time of  
 17 sentencing they are directed to report to the  
 18 division of parole and probation and attend, at  
 19 that time attend an orientation and fill up a  
 20 report and then the case is assigned to an officer.  
 21 Q. And the orientation tells the  
 22 probationer what, how to do probation. Can you  
 23 explain that?  
 24 A. Yes. The basic rules.  
 25 Q. And one of those rules would be to

1 remain in contact with their officer?  
 2 A. Yes.  
 3 Q. Are other conditions of probation not  
 4 committing new crimes?  
 5 A. Yes.  
 6 Q. And any other conditions that might be  
 7 associated with their probation?  
 8 A. Yes.  
 9 Q. Okay. As to the individual that we're  
 10 speaking of James Chappell, after he was sentenced  
 11 on April the 27th of '95, are you aware of whether  
 12 or not he went to the orientation about how to do  
 13 probation?  
 14 A. He didn't attend the orientation.  
 15 Q. Okay. Did he make contact with you  
 16 the person who was assigned to supervise this case?  
 17 A. No.  
 18 Q. So what did you do to attempt to make  
 19 contact with him?  
 20 A. I did a home visit attempt. The first  
 21 home visit attempt was on 5/8/95 at which time I  
 22 had contact with a baby-sitter and left a business  
 23 card with reporting instructions on it for him.  
 24 Q. To report to you?  
 25 A. Yes.

1 Q. Okay. Did he contact you after you  
 2 went out there on I think you said it was May?  
 3 A. No, he didn't. I believe I spoke with  
 4 him once on the phone, and I think at that time I  
 5 told him to report and he did not.  
 6 Q. Okay. Who contacted you after you  
 7 attempted that home visit?  
 8 A. Deborah Panos called me on 6/12/95.  
 9 Q. And did you have a conversation with  
 10 her about James Chappell the person that you were  
 11 looking for to supervise?  
 12 A. Yes.  
 13 Q. Explain that conversation.  
 14 A. She advised me that she gave the  
 15 business card and reporting instructions to  
 16 Mr. Chappell and she stated that he had stated that  
 17 he was not going to report.  
 18 Q. Did you have any further conversation  
 19 with Deborah Panos?  
 20 A. I had approximately three or four  
 21 phone conversations with her and I saw her in  
 22 person also.  
 23 Q. Okay. The first conversation it  
 24 sounds like you were discussing just sort of the  
 25 whereabouts of James Chappell.

1 A. Yes.  
 2 Q. Did she indicate to you whether or not  
 3 he was living with her at her home?  
 4 A. She advised that he frequented that  
 5 residence but that he didn't actually stay there.  
 6 Q. Okay. So he just came there from time  
 7 to time?  
 8 A. Yes.  
 9 Q. The subsequent conversations that you  
 10 had with her, what were those concerned with?  
 11 A. She was having problems with him  
 12 coming into the residence, you know, uninvited,  
 13 coming in through the window and stealing  
 14 appliances. I think one time she said a TV.  
 15 Q. And she was reporting that to you?  
 16 A. Yes.  
 17 Q. You said you met with her in person as  
 18 well.  
 19 A. She came into my office.  
 20 Q. When she came into your office, what  
 21 was her demeanor like at that point?  
 22 A. She was very emotional and crying.  
 23 Q. And what was she upset about?  
 24 A. She was -- I can't tell you exactly  
 25 her words, but she was in fear for her life.

1 Q. And who did she perceive to be the  
 2 threat to her life?  
 3 A. James Chappell.  
 4 Q. And how long was your discussion with  
 5 her when she came into your office?  
 6 A. My supervisor and I spoke with her  
 7 between 30 and 40 minutes I think.  
 8 Q. Okay. And I assume she discussed her  
 9 relationship with James Chappell and problems she  
 10 was having with him?  
 11 A. Yes.  
 12 Q. Did you make any suggestions to her  
 13 about how to kind of address these problems?  
 14 A. Yes. My supervisor and I recommended,  
 15 strongly recommended that she move from that  
 16 residence and she said that wasn't really an option  
 17 for financial reasons and we also recommended maybe  
 18 she possibly go back to her mother, 'cause her  
 19 mother I believe lived in Arizona.  
 20 Q. When you were having this discussion  
 21 with her, did she ever describe particular specific  
 22 acts of violence that he had committed against her?  
 23 A. Yes. She told of one incident where  
 24 Mr. Chappell took her into I believe it was a  
 25 bedroom area and straddled her and held a knife

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1 over her.  
 2 Q. And from speaking with her, I mean did  
 3 you take her seriously? Were I trying to help her  
 4 with this problem?  
 5 A. Yes.  
 6 Q. And that's why you made the suggestion  
 7 maybe move from the trailer or go back to Arizona.  
 8 A. Yes.  
 9 Q. And was your supervisor at least in  
 10 agreement with these sort of suggestions?  
 11 A. Yes.  
 12 Q. Did there come a point in time when  
 13 you filed what's called a revocation report against  
 14 James Chappell?  
 15 A. Yes.  
 16 Q. And can you explain the members of the  
 17 jury what that is.  
 18 A. A violation report is completed. It's  
 19 a document to advise the Court or the parole board  
 20 depending if it's a parolee or probationer of any  
 21 rules that had been violated.  
 22 Q. Okay. So in this case James Chappell  
 23 was on probation as of April and so you submitted a  
 24 report to advise that judge who placed him on  
 25 probation that he wasn't replying.

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1 A. Yes.  
 2 Q. And what was his noncompliance? What  
 3 was the basis?  
 4 A. The charge was rule 8 laws and  
 5 conduct.  
 6 Q. What does that mean?  
 7 A. It means that he had violated, he had  
 8 actually committed new offense and had outstanding  
 9 bench warrants since the grant of probation.  
 10 Q. Okay. When he was first sentenced to  
 11 probation, did the judge give him a condition of  
 12 probation related to drug treatment?  
 13 A. Yes.  
 14 Q. And at the time he was sentenced in  
 15 April with that sort of condition, he was supposed  
 16 to have completed some sort of drug treatment  
 17 program. Would that be correct?  
 18 A. Yes.  
 19 Q. Was that drug treatment program  
 20 completed at the time you filed your revocation  
 21 report?  
 22 A. No.  
 23 Q. Had he done anything in terms of  
 24 probation at the time you filed your revocation  
 25 report?

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1 A. No.  
 2 Q. The only new thing being some  
 3 additional crimes.  
 4 A. Yes.  
 5 Q. Did you go before the judge or did his  
 6 case go before the judge for revocation?  
 7 A. Yes.  
 8 Q. And what happened at that point?  
 9 A. It was on 8/1/95. The Court  
 10 reinstated Mr. Chappell with an added condition  
 11 that he enroll and successfully complete an  
 12 inpatient substance abuse program.  
 13 Q. Okay. When someone goes before a  
 14 Court for revocation, does that mean basically the  
 15 Court can revoke their probation and put him in  
 16 jail if it's a gross misdemeanor?  
 17 A. Yes.  
 18 Q. But in this case that didn't happen.  
 19 He got a more lenient treatment.  
 20 A. Yes.  
 21 Q. And what do you mean by reinstated?  
 22 What does that mean?  
 23 A. Allowed to continue on community  
 24 supervision probation and imposing the same or the  
 25 original special conditions of counseling and he

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1 had a couple other ones, community service work and  
 2 adult he had.  
 3 Q. Okay. But the condition this time was  
 4 supposed to be an inpatient treatment program.  
 5 A. Yes.  
 6 Q. And did the judge order him to be  
 7 released only to the department of parole and  
 8 probation and then the department was to take him  
 9 to the inpatient treatment program?  
 10 A. Yes.  
 11 Q. After that reinstatement occurred, did  
 12 you ever have a discussion with Deborah Panos about  
 13 the judge's decision to send him to an in patients  
 14 treatment program?  
 15 A. Yes. I believe I saw her in court in  
 16 the courthouse and I advised her that the division  
 17 was recommending he do an inpatient.  
 18 Q. Would that be a 90-day type program  
 19 type of thing?  
 20 A. 90 days.  
 21 Q. And that was the day she was actually  
 22 in court herself?  
 23 A. I believe so.  
 24 Q. And you advised her he's going to have  
 25 to do a 90-day treatment program?



1 A. Yes.  
 2 Q. When someone is sentenced on a gross  
 3 misdemeanor or felony charge, the Department of  
 4 Parole and Probation prepares a sentencing report  
 5 for the judge to review.  
 6 A. Yes.  
 7 Q. And does part of that report include a  
 8 statement by the defendant if they want to write  
 9 one?  
 10 A. Yes.  
 11 Q. Ma'am, I'm showing you what's been  
 12 admitted as State's Exhibit 90. Is that big enough  
 13 for you to read? Does that appear to be the  
 14 statement that James Chappell wrote in connection  
 15 with his gross misdemeanor charge?  
 16 A. Yes.  
 17 Q. Can you read that out loud for the  
 18 members of the jury what he wrote about that charge  
 19 at that time.  
 20 A. I'm pleading guilty to burglary  
 21 tools. I was charged with burglary under the  
 22 influence, burglary tools. The burglary is false.  
 23 The under the influence controlled substance is  
 24 false, and the burglary tools is false too, but I  
 25 took the plea because the other two charges were

1 felonies.  
 2 I have never been convicted of a  
 3 felony and never will be. I am not a bad person  
 4 and I never was. I'm a brand new resident of Las  
 5 Vegas and I feel real bad about myself. I haven't  
 6 been in jail this long in about six years. The  
 7 longest I've ever been in jail is six months and I  
 8 won't ever commit another crime in my life. I  
 9 can't deal with this type of life.  
 10 I stole four cassette tapes and a \$10  
 11 shirt and \$10 pants. It only added up to no more  
 12 than \$60. I committed petty larceny but I ran into  
 13 the wrong Metro officer so she treated me very  
 14 bad.  
 15 I'm in the best city in the world and  
 16 look at me now. I know now that Las Vegas is not  
 17 putting up with any broken laws and I can -- I can  
 18 something here again. I've only been here four  
 19 months. I'm gonna' get a something.  
 20 Q. A job?  
 21 A. And stay out of any trouble. I  
 22 promise, and he signed it and dated it March 30,  
 23 1995.  
 24 MS. WECKERLY: Thank you. I'll pass  
 25 the witness, Your Honor.

1 (Whereupon Ms. Weckerly  
 2 concluded her direct examination  
 3 at 3:39 p.m.)  
 4 THE COURT: Mr. Schieck or  
 5 Mr. Patrick.  
 6 MR. SCHIECK: Thank you, Your Honor.  
 7  
 8 CROSS-EXAMINATION  
 9 BY MR. SCHIECK:  
 10 Q. Let me go over some dates with you.  
 11 Do you have your file with you or some  
 12 documentation with you --  
 13 A. Yes.  
 14 Q. -- that will help you recall some  
 15 different dates.  
 16 You indicated that he pled guilty to  
 17 the -- to the possession of burglary tools charge  
 18 on March 28, 1995.  
 19 A. That's what the presentence report  
 20 lists, yes.  
 21 Q. And it shows that he was originally  
 22 arrested for burglary and under the influence  
 23 additionally?  
 24 A. I'm sorry. What?  
 25 Q. When he was arrested on that case, he

1 was originally arrested on burglary, under the  
 2 influence and possession of burglary tools.  
 3 A. Yes.  
 4 Q. And the burglary would be for entering  
 5 the store where the items were stolen.  
 6 A. Yes.  
 7 Q. And that was a Kmart?  
 8 A. I believe so.  
 9 Q. And under the influence would be that  
 10 he was under the influence of an illegal substance;  
 11 is that correct?  
 12 A. Yes.  
 13 Q. And both of those charges as part of  
 14 the plea negotiation were dismissed.  
 15 A. Yes.  
 16 Q. And the burglary tools that he was  
 17 charged with, does your report indicate what the  
 18 tools were?  
 19 A. I believe it was a pair of pliers.  
 20 Q. So basically what we have is a  
 21 situation where he apparently went into Kmart with  
 22 the intent to steal and took a pair of pliers and  
 23 from his statement apparently opened some CD cases  
 24 and stole CDs?  
 25 A. Yes.

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1 Q. And was under the influence when he  
2 did it.  
3 A. Yes.  
4 Q. And that's the offense that you've  
5 read his statement from a minute ago?  
6 A. Well, I read the offense report.  
7 That's what it had stated.  
8 Q. Okay. And then he was sentenced on  
9 that charge on April 27, 1995.  
10 A. Yes.  
11 Q. Okay. And at that point in time he  
12 received a suspended sentence and was placed on  
13 probation.  
14 A. Yes.  
15 Q. And was given certain conditions to  
16 follow. When -- when did you do the home visit  
17 that you referred to?  
18 A. The home visit attempt I completed  
19 on -- I'm sorry -- May 8, 1995.  
20 Q. So about ten days or so after he was  
21 sentenced, he hadn't reported so you attempted a  
22 home visit?  
23 A. Yes.  
24 Q. And what location did you go for that  
25 home visit?

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1 A. I went on the address that was listed  
2 on the presentence report, 831 North Lamb, No. 125,  
3 Las Vegas.  
4 Q. And that's where you had contact with  
5 a baby-sitter at that location?  
6 A. Yes.  
7 Q. And were there children present at  
8 that location?  
9 A. I think that there were.  
10 Q. If there was a baby-sitter there, it's  
11 fair to assume that kids were there.  
12 A. Yes.  
13 Q. Would that be a fair recommendation?  
14 A. Yes.  
15 Q. And when someone is given probation,  
16 you prepare a presentence report that you give to  
17 the Court, correct?  
18 A. Yes.  
19 Q. And in that report it's going to list  
20 the address where they're going to be living if  
21 they receive probation?  
22 A. Yes.  
23 Q. And that's the address that would have  
24 been given to you as his home address?  
25 A. Yes.

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1 Q. And that's the address you did the  
2 home visit at?  
3 A. Yes.  
4 Q. And it was confirmed that he lived  
5 there but he just wasn't present and you left your  
6 card with the baby-sitter.  
7 A. Yes.  
8 Q. Then later you indicate you received a  
9 call from Deborah Panos and I believe you said that  
10 was on June 12, 2005, that she called you?  
11 A. '95.  
12 Q. I'm sorry. 1995.  
13 A. Yes.  
14 Q. Which would have been over a month  
15 after you left your card for the home visit?  
16 A. I can't you.  
17 Q. There was no home contact in between  
18 that month period?  
19 A. I really don't remember.  
20 Q. Would you have noted that in your  
21 file?  
22 A. Probably.  
23 Q. Okay. There's no notations in your  
24 file.  
25 A. Yeah. I have very few documents.

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1 Q. Okay. But there's nothing in the  
2 documents you do have that shows there was a call  
3 in between.  
4 A. No.  
5 Q. And again this was a gross misdemeanor  
6 probation as opposed to a felony probation?  
7 A. Yes.  
8 Q. What was the underlying sentences that  
9 was given that was suspended?  
10 A. I believe it was one year.  
11 Q. Which is the maximum for a gross  
12 misdemeanor.  
13 A. Yes.  
14 Q. Then you indicated that you had some  
15 additional contact from Ms. Panos after the first  
16 phone call?  
17 A. Yes.  
18 Q. When was it that she came down and  
19 speak with you and your supervisor?  
20 A. June 15, 1995.  
21 Q. And when was it that you filed your  
22 violation report?  
23 A. The violation report I completed is  
24 dated June 30, 1995.  
25 Q. And as of that date he still had not

1 reported.  
 2 A. Yes. I mean no he had not reported.  
 3 Q. And so it was nearly two months after  
 4 he was originally given the probation on April 27th  
 5 that you filed your violation report.  
 6 A. Yes.  
 7 Q. As a condition of being on probation  
 8 in Clark County, is the person required to come in  
 9 and provide you with a your analysis?  
 10 A. We drug test as deemed necessary.  
 11 Q. Was there any requirement in his  
 12 conditions of probation that he submit to such  
 13 testing?  
 14 A. Yes.  
 15 Q. Okay. And if someone comes in and  
 16 they test positive for a controlled subject  
 17 assistants while they're on probation, would that  
 18 prompt you then to file a violation report?  
 19 A. It just depends on the situation.  
 20 Q. Now, you indicated that sometime after  
 21 you filed the violation report that you went before  
 22 the judge and I believe you said that was on  
 23 August 1st of 1995?  
 24 A. Yes.  
 25 Q. And at that time the conditions of

1 probation were modified.  
 2 A. Yes.  
 3 Q. And at some point in time you ran into  
 4 Ms. Panos at the courthouse to your recollection.  
 5 A. Yes.  
 6 Q. You told her that the department was  
 7 recommending an inpatient program for  
 8 Mr. Chappell.  
 9 A. I believe so, yes.  
 10 Q. And by the department I mean the  
 11 department of parole and probation would come into  
 12 court and recommend to the judge this man needs  
 13 inpatient counseling for drug problems.  
 14 A. Yes.  
 15 Q. And that would have been the  
 16 recommendation of the department based on the  
 17 information in your files.  
 18 A. Yes.  
 19 Q. And your supervisor was even involved  
 20 in the conversation with Ms. Panos, correct?  
 21 A. Yes. Not in court, no.  
 22 Q. Okay. But at your office.  
 23 A. Yes.  
 24 Q. And do your recommendations go through  
 25 your supervisor when you make recommendations after

1 filing a violation report?  
 2 A. Yes.  
 3 Q. So would it be fair to assume your  
 4 supervisor had input into that recommendation that  
 5 Mr. Chappell receive inpatient drug treatment  
 6 counseling?  
 7 A. Well, actually the violation report  
 8 didn't recommend the inpatient. The Court did. We  
 9 recommended that he be revoked.  
 10 Q. You indicated earlier you told  
 11 Ms. Panos the department was recommending. Do you  
 12 mean the Court was ordering it?  
 13 A. Yes.  
 14 Q. So the Court reviewed everything that  
 15 you gave them, all the information about  
 16 Mr. Chappell?  
 17 A. Yes.  
 18 Q. And it was the Court that recommended  
 19 inpatient?  
 20 A. Yes.  
 21 Q. When the Court makes a recommendation,  
 22 how is it that -- Mr. Chappell was in custody on  
 23 August 1, 1995; is that correct?  
 24 A. Yes.  
 25 Q. How does a person in custody -- when

1 the Court says you need inpatient drug treatment  
 2 counseling, how does he get to his inpatient drug  
 3 treatment counseling?  
 4 A. Well, I believe he was to remain in  
 5 custody until he was on a waiting list and at that  
 6 time officers would take a representative from the  
 7 inpatient program to the jail took interview the  
 8 person, the probationer or parolee to get them on  
 9 the list for inpatient treatment.  
 10 Q. And after that point in time then  
 11 they're sent when a bed opens up to the inpatient  
 12 drug treatment program?  
 13 A. Yeah.  
 14 Q. Was there a particular program that  
 15 was in place in 1995 that did the inpatient?  
 16 A. I believe it was EOB.  
 17 Q. Is it still EOB?  
 18 A. I don't know.  
 19 MR. SCHIECK: Thank you, that's all I  
 20 have, Your Honor.  
 21 (Whereupon Mr. Schieck  
 22 concluded his cross-examination  
 23 at 3:48 p.m.)  
 24 THE COURT: Ms. Weckerly.  
 25 MS. WECKERLY: Two questions, Your

1 Honor.

2

3 REDIRECT EXAMINATION

4 BY MS. WECKERLY:

5 Q. Ma'am, the date he was reinstated on  
6 probation in order to do the inpatient program,  
7 that was August the 1st he went back to court on  
8 that date?

9 A. Yes.

10 Q. And it's sometime after that that you  
11 see Deborah Panos in court. Were you both there at  
12 the courthouse? I mean you weren't there on a  
13 particular case. You just ran into her?

14 A. Yes.

15 Q. And you recognized her from your prior  
16 meetings with her?

17 A. Yes.

18 Q. And that's when you advised her he  
19 would be doing a 90-day program?

20 A. Yes.

21 MS. WECKERLY: Thank you.

22 (Whereupon Ms. Weckerly

23 concluded her redirect

24 examination at 3:59 p.m.)

25 THE COURT: Mr. Schieck.

1 RECROSS-EXAMINATION

2 BY MR. SCHIECK:

3 Q. Do you recall which court you ran into  
4 her at?

5 A. I can't recall.

6 Q. Back in 1995 municipal court, Justice  
7 Court and District Court were different places. Do  
8 you remember?

9 A. Yes.

10 Q. Do you remember which courthouse it  
11 was?

12 A. It was the old one, 300 Carson Street  
13 is it?

14 THE COURT: South Third Street.

15 MR. SCHIECK: Thank you. That's all I  
16 have, Your Honor.

17 (Whereupon Mr. Schieck

18 concluded his

19 recross-examination at

20 4:00 p.m.)

21 MS. WECKERLY: Nothing else, Your  
22 Honor.

23 THE COURT: Just a minute, ma'am.

24 THE COURT: Counsel approach.

25 (Whereupon, counsel approached

1 the bench, and after a  
2 discussion outside the hearing  
3 of the court reporter, the  
4 following proceedings took  
5 place:)

6 THE COURT: I'd like to ask you a  
7 question, Ms. Smith. Why if Ms. Panos seemed so  
8 scared on June 15, 1995, did parole and probation  
9 wait 15 days to file the revocation report but  
10 recommend to her to move her residence?

11 THE WITNESS: Can you repeat that.

12 THE COURT: Why if Ms. Panos seemed so  
13 scared on June 15, '95, did parole and probation  
14 wait 15 days to file the revocation report but  
15 recommend to her to move her residence?

16 THE WITNESS: We submit -- I submitted  
17 the violation report and I don't remember -- oh, he  
18 was in custody. When he was in custody, then I had  
19 something to charge him on. He was a absconder j.  
20 We didn't know where he was.

21 THE COURT: Okay.

22 THE WITNESS: But because he was  
23 detained in the detention facility, then we put a  
24 hold on him and that resulted in my report. What I  
25 would have done, I would have done an absconder

1 violation report requesting a bench warrant.

2 THE COURT: All right. So is it your  
3 testimony that on or around June 15, 1995, he was  
4 already in custody on a charge and you did a  
5 violation report putting a hold on him for the  
6 charge he was in custody on?

7 THE WITNESS: I believe so. June 1,  
8 1995, he was -- let me see. Yes. June 26th he was  
9 in custody.

10 THE COURT: Does it say there when he  
11 was arrested?

12 THE WITNESS: Let me look. June 26,  
13 1995. Yes. Our hold was placed on the 27th.

14 THE COURT: Okay. All right.

15 Ms. Weckerly do you have any questions based upon  
16 mine?

17 MS. WECKERLY: No, Your Honor. Thank  
18 you.

19 THE COURT: Mr. Schieck.

20 MR. SCHIECK: Yes, Your Honor.

21 THE COURT: Okay.

22

23 RECROSS-EXAMINATION (further)

24 BY MR. SCHIECK:

25 Q. Just so I'm clear on that follow-up

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1 question, you saw Deborah Panos on June 15, 1995,  
 2 with your supervisor in the office.  
 3 A. Yes.  
 4 Q. Correct?  
 5 A. Yes.  
 6 Q. And Mr. Chappell was out of custody at  
 7 that time and you didn't file your violation report  
 8 at that time.  
 9 A. Right.  
 10 Q. He was arrested on June 26th and at  
 11 that time the revocation hold was placed on him.  
 12 A. Yes.  
 13 Q. So you basically were waiting for him  
 14 to come into custody before you filed anything.  
 15 A. No. That was just the time frame that  
 16 it fell. I wasn't waiting for him to go to jail.  
 17 Q. Well, he was arrested on the 26th and  
 18 you put the hold on the 27th.  
 19 A. We didn't want -- we wanted a detainer  
 20 on him so he couldn't leave.  
 21 Q. And then it was a couple days later  
 22 after that before you filed the revocation, the  
 23 violation report on June 30th.  
 24 A. Yes.  
 25 MR. SCHIECK: Thank you. That's all I

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1 have, Your Honor.  
 2 (Whereupon Mr. Schieck  
 3 concluded his further  
 4 recross-examination at  
 5 3:53 p.m.)  
 6 THE COURT: Ms. Weckerly, anything?  
 7  
 8 REDIRECT EXAMINATION (further)  
 9 BY MS. WECKERLY:  
 10 Q. Just to be clear so he was out of  
 11 custody at the time she came to see you on the  
 12 15th?  
 13 A. Yes.  
 14 MS. WECKERLY: All right.  
 15 THE COURT: All right. Ms. Smith,  
 16 you're excused. Thank you very much.  
 17 (Whereupon Charmaine Smith  
 18 was excused from the  
 19 witness stand at 3:53 p.m.)  
 20 THE COURT: Let's take a quick break  
 21 now and we'll finish up before we finish at 5:00.  
 22 We are going to take a recess. During this recess,  
 23 it is your duty not to converse among yourselves or  
 24 with anyone else on any subject connected with the  
 25 trial or to read, watch or listen to any report of

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1 or commentary on the trial by any person connected  
 2 with the trial or by any medium of information,  
 3 including, without limitation, newspaper,  
 4 television, radio, and the internet, and you are  
 5 not to form or express an opinion on any subject  
 6 connected with this case until it is finally  
 7 submitted to you, under instructions by me.  
 8 We'll be in recess for hopefully about  
 9 ten minutes.  
 10 (Whereupon a recess was  
 11 taken at 3:54 p.m. and  
 12 the proceedings resumed  
 13 at 4:14 p.m.)  
 14 THE COURT: All right. We'll be back  
 15 on the record in C131341, State of Nevada versus  
 16 James Chappell. The record will reflect the  
 17 presence of Mr. Chappell with his attorneys;  
 18 State's attorneys. We're in the presence of the  
 19 jury. The State may call their next witness.  
 20 MS. WECKERLY: Thank you, Judge.  
 21 Clair McGuire.  
 22  
 23 CLAIR MCGUIRE,  
 24 having been first duly sworn to testify to the  
 25 truth, the whole truth and nothing but the truth,

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1 was examined and testified as follows:  
 2  
 3 THE CLERK: State and spell your name  
 4 for the record.  
 5 THE WITNESS: Clair McGuire, C-L-A-I-R  
 6 M-C-G-U-I-R-E.  
 7  
 8 DIRECT EXAMINATION  
 9 BY MS. WECKERLY:  
 10 Q. Ms. McGuire, back in the 1990s, did  
 11 you know a lady by the name of Deborah Panos?  
 12 A. Yes, I did.  
 13 Q. What city were you living in when you  
 14 met her?  
 15 A. In Tucson, Arizona.  
 16 Q. An and what were the circumstances?  
 17 How did you meet her?  
 18 A. We met at work.  
 19 Q. Where were you two working at?  
 20 A. We were working in the city of Tucson  
 21 the basement of City Hall.  
 22 Q. And what kind of work were you doing?  
 23 A. Were we were data entry personnel.  
 24 Q. Okay. Did you two become friends  
 25 after a while?

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1 A. Yes, we did.  
 2 Q. And at that time did Deborah have  
 3 kids?  
 4 A. Yes, she had two.  
 5 Q. And did you have children at that  
 6 point?  
 7 A. I did.  
 8 Q. And what sort of things would you two  
 9 do together as friends?  
 10 A. We went to the circus. We went to the  
 11 park. We went to each others houses.  
 12 Q. Stuff with your children as well?  
 13 A. Yes, definitely.  
 14 Q. At some point later on did she have a  
 15 third child?  
 16 A. Yes, she did.  
 17 Q. And that's her daughter Chantel?  
 18 A. Chantel.  
 19 Q. And after you met Deborah Panos, did  
 20 you ever meet someone by the name of James  
 21 Chappell?  
 22 A. Yes.  
 23 Q. And what were the circumstances under  
 24 which you met him?  
 25 A. He was her boyfriend living at the

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1 apartment where she was living.  
 2 Q. So you met him through Debbie?  
 3 A. Yes.  
 4 Q. When you and Debbie were friends and  
 5 going to the Circus, the park and that sort of  
 6 thing, how often were you seeing each other?  
 7 A. We saw each other every day at work  
 8 and also after work. I would give her rides to  
 9 work and home a lot and also on the weekends so we  
 10 saw each other quite frequently.  
 11 Q. To your knowledge did she only much  
 12 the data input job at the city or was she ever  
 13 working some other jobs?  
 14 A. No. She always had two or three jobs.  
 15 Q. What other sort of places did she  
 16 work?  
 17 A. Gosh, I know after the city of Tucson  
 18 or she still stayed with the city of Tucson but she  
 19 went to become a 9-1-1 operator after the position  
 20 she was at with me.  
 21 Q. Okay. Did she ever work for entities  
 22 other than the city?  
 23 A. Yes. She worked at Wal-Mart or  
 24 Kmart. I believe it was Wal-Mart and Sears. She  
 25 worked at quite a few places. I can't remember.

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1 Q. Okay. So she was hard working, had a  
 2 couple jobs.  
 3 A. Uh-huh.  
 4 Q. Is that yes?  
 5 A. Yes, it is.  
 6 Q. Lady in front of you is taking down  
 7 what we're saying so you can't nod or say uh-huh.  
 8 A. Okay.  
 9 Q. Okay. During the time that you knew  
 10 Debbie, did you ever see signs that indicated that  
 11 she was being abused?  
 12 A. Yes.  
 13 Q. What sort of things would you see?  
 14 A. I saw bruises but I also saw when he  
 15 would push her or trip her walking nearby, when  
 16 walking nearby in the house.  
 17 Q. Now, you mentioned two things. You  
 18 mentioned you'd actually see the signs of abuses on  
 19 Debbie's body.  
 20 A. Bruises, yes.  
 21 Q. Where were they typically on her body?  
 22 A. She had them in various places on her  
 23 arms, her face, on her head and her neck.  
 24 Q. Did she ever do anything to try to  
 25 cover them up?

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1 A. She wore a lot of makeup all the time.  
 2 Q. And you mentioned that you actually  
 3 saw her getting abused. Is that true?  
 4 A. Well, I saw tripping and pushing into  
 5 the wall or something as somebody he would walk by  
 6 or she would walk by.  
 7 Q. Okay. Who are we talking about? Who  
 8 is pushing or tripping somebody?  
 9 A. James was tripping Debbie.  
 10 Q. Okay. And who was pushing who into a  
 11 wall?  
 12 A. James would push Debbie into the wall.  
 13 Q. And you witnessed that?  
 14 A. Yes.  
 15 Q. How many times did you see him do that  
 16 sort of thing to her?  
 17 A. Numerous times maybe ten, 15 times  
 18 while we were in Tucson.  
 19 Q. During that time period do you  
 20 remember whether or not James was working? Did he  
 21 ever hold a job?  
 22 A. I only remember him having one job.  
 23 Q. You said that -- and how long -- where  
 24 was that, the one job?  
 25 A. At Bob's Big Boy restaurant. It's

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1 pretty close to where they had lived.  
 2 Q. Okay. Do you know about how long he  
 3 worked for that restaurant?  
 4 A. A very small amount of time.  
 5 Q. Like less than six months or --  
 6 A. Definitely. Less than a month.  
 7 Q. Okay. You mentioned that you worked  
 8 for the city and then Debbie worked for the city  
 9 and you guys were doing data input but then she  
 10 moved on to be a 9-1-1 operator.  
 11 A. Yes.  
 12 Q. Did you stay in your data input job or  
 13 did you move on as well?  
 14 A. I moved on as well. I worked for the  
 15 fire department and then I worked for the court  
 16 system.  
 17 Q. Okay. When you were working for the  
 18 fire department or the court system, did you ever  
 19 become aware of Debbie having to go to the hospital  
 20 as a result of an injury?  
 21 A. Oh, yes. When I was at the fire  
 22 department I would key in the paperwork from the  
 23 personnel from the field. They would write up the  
 24 paperwork and they will bring it into the office  
 25 and I would type it up and I noticed her name at

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1 least three times on papers.  
 2 Q. Okay. And when you noticed her name  
 3 three times on papers, what are these incidents  
 4 that you're looking at? What are they documenting?  
 5 A. Injuries to her that she had sustained  
 6 that they had to treat or that she had gone to the  
 7 hospital.  
 8 Q. Okay. So medical injuries to Debbie?  
 9 A. Yes.  
 10 Q. Did there come a point in time when  
 11 she left her job as a 9-1-1 operator in Tucson?  
 12 A. Yes.  
 13 Q. And do you know the circumstances why  
 14 she left?  
 15 A. She said she had to leave because she  
 16 was involved with James and that he was around  
 17 quite often and because of her job she was not  
 18 allowed to hang around with people who had any  
 19 criminal record or things, bad things to do with  
 20 the police department.  
 21 Q. Okay. So she was working for the  
 22 police department. That's not a good situation for  
 23 her to be working for the police department when  
 24 he's everything negative contact.  
 25 A. Correct.

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1 Q. Did there come a point in time when  
 2 she moved from Tucson to Las Vegas?  
 3 A. Yes.  
 4 Q. And during the time period that she  
 5 moved, did you stay in contact with her?  
 6 A. Yes.  
 7 Q. And did you guys call each other on  
 8 the phone?  
 9 A. Yes, we called each other on the  
 10 phone.  
 11 Q. How often would you say you talked?  
 12 A. Several times a week.  
 13 Q. And were they long conversations?  
 14 A. Sometimes they were short depending on  
 15 the, you know, I had to go to work or she had to go  
 16 to work but we definitely had lengthy  
 17 conversations.  
 18 Q. Okay. Did there come a point in time  
 19 where you ever started visiting her after she moved  
 20 to Las Vegas?  
 21 A. Yes.  
 22 Q. Do you recall when that was  
 23 approximately?  
 24 A. It was a few months after she left. I  
 25 would say March probably.

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1 Q. And so that would be March of 1995.  
 2 A. Yes.  
 3 Q. And did you go to her residence when  
 4 you came to visit?  
 5 A. Yes, I did.  
 6 Q. And was that a trailer or mobile home?  
 7 A. It was yeah, a mobile -- I guess  
 8 whatever you call it mobile home or a trailer.  
 9 Q. Did you stay with her at her  
 10 residence?  
 11 A. I did.  
 12 Q. And did you notice anything different  
 13 about how her residence in Las Vegas looked versus  
 14 how her home in Tucson looked?  
 15 A. She didn't have very much furniture.  
 16 Q. Okay.  
 17 A. Basically.  
 18 Q. Did she say why?  
 19 A. She had said that James had taken it  
 20 out of the house.  
 21 Q. Okay. He had taken some furniture out  
 22 of the home?  
 23 A. Yes.  
 24 Q. Did she say what he did with it?  
 25 A. She said it just disappears, that he



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1 keeps taking furniture and that she had assumed  
2 that he was using it to exchange for drugs or  
3 other -- she didn't really know what he was doing  
4 'cause he wasn't at the house.

5 Q. Do you recall her discussing him  
6 taking anything besides furniture?

7 A. Yes, jackets from before I moved here,  
8 she had told me that he had taken their jackets.

9 Q. Whose jackets?

10 A. The kids. She had bought jackets for  
11 the kids.

12 Q. What were the circumstances of that?  
13 Where did the jackets come from? Like had she just  
14 bought them?

15 A. Yes. She had just bought them.

16 Q. And what happened to them?

17 A. She said they just disappeared. They  
18 still had the tags on them and everything. She  
19 didn't have the coats to take the kids to school or  
20 today care.

21 Q. As you were visiting her in March of  
22 1995 did you notice anything different about how  
23 her face looked?

24 A. Yes. She had a scar on her nose she  
25 did not have when she was in Tucson.

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1 Q. Did there ever come a point in time  
2 when you moved to Las Vegas?

3 A. Yes.

4 Q. When was that approximately?

5 A. I moved in May, April or May I started  
6 moving my stuff there and then in June the first  
7 week of June I moved to Las Vegas with my daughter.

8 Q. Okay. When you say you moved your  
9 stuff there, are you talking about to Debbie's  
10 home?

11 A. Yes.

12 Q. And did you occupy one of the bedrooms  
13 in the home?

14 A. Yes, I did.

15 Q. And you had your stuff there. What  
16 kind of stuff are we talking about?

17 A. Oh, I had all of my stuff. I had  
18 furniture, clothes, my daughter's toys, basically  
19 everything. I was just -- I had moved everything  
20 out of my house to her house. The only reason why  
21 I hadn't physically stayed there is because my  
22 daughter was still in school in Arizona.

23 Q. Were you ever kind of going back and  
24 forth between the two cities?

25 A. Yes.

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1 Q. Did you have a stereo at Debbie's  
2 trailer?

3 A. I did.

4 Q. Did you ever return from Tucson and  
5 notice anything different about your property or  
6 the stuff you brought?

7 A. Yes. One time I returned and all of  
8 my stuff had been searched through, all the boxes  
9 were open. It was just -- it wasn't a complete  
10 mess in my room but I could definitely tell that  
11 everything had been go through.

12 Every time I opened a box, it just  
13 wasn't the way that I pack it and things were  
14 opened and some things were missing.

15 Q. What kind of things were missing?

16 A. My daughter had a Jeep that she would  
17 drive around in. That was missing. I had jewelry  
18 missing and honestly I can't remember what else I  
19 had missing.

20 Q. Did you have a stereo missing?

21 A. I don't remember -- I had a stereo, a  
22 TV and a VCR that was missing. I don't remember if  
23 that was before I moved there or right after.

24 Q. Did you ever have a discussion with  
25 anyone about your missing property?

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1 A. With James.

2 Q. And what did you discuss?

3 A. Oh, we -- I discussed why, where the  
4 property was. He said, "Don't worry about it," and  
5 he said, you know, basically if I paid him, that he  
6 would go and get it 'cause he knew where it was and  
7 that he would be able to return it to me for a  
8 small fee.

9 Q. Okay. And so if you gave him a little  
10 more, money he'll go track down your TV or  
11 whatever?

12 A. He would bring it back.

13 Q. Did you give him more money?

14 A. No, I did not.

15 Q. During the time that you were living  
16 with Debbie, to your knowledge did James Chappell  
17 have a key to the residence?

18 A. I never remember him having a key.

19 Q. But you said he was able to get inside  
20 the residence and get your property at least.

21 A. Well, yes.

22 Q. How did he get inside to your  
23 knowledge?

24 A. He was staying there off and on so  
25 either he was already in the apart -- the trailer

1 or he would break in the trailer.  
 2 Q. Did Debbie ever change the locks on  
 3 the windows and doors?  
 4 A. I don't recall if she did or not.  
 5 Q. Okay. Were you ever home with Debbie  
 6 at a time in the trailer where James was trying to  
 7 get in?  
 8 A. Yes.  
 9 Q. And how would she react to that? Was  
 10 it something that she was happy about?  
 11 A. No. She definitely wasn't happy about  
 12 it. She was frightened and did not want him to  
 13 come into the house.  
 14 Q. So it upset her?  
 15 A. Definitely.  
 16 Q. How long or when was it do you think  
 17 that you stopped living with her at the trailer?  
 18 A. July, the end of July.  
 19 Q. Okay. And that would have been in  
 20 1995?  
 21 A. Yes.  
 22 Q. During the time that you were staying  
 23 there, did you ever have an encounter with James  
 24 when you were home by yourself in the trailer?  
 25 A. Yes, I did.

1 Q. Would you describe that.  
 2 A. Okay. Debbie had called me and said  
 3 that he had, I believe he had just returned, he had  
 4 just gotten out of jail and they were speaking over  
 5 the phone and he told her that she needed to come  
 6 home and she said she's not going to be coming  
 7 home. She was at a friend's house.  
 8 Q. Okay. Let me stop you there.  
 9 A. Yes.  
 10 Q. You were at Debbie's trailer and at  
 11 that time you were living there; is that right?  
 12 A. I was.  
 13 Q. Okay. Where was Debbie when you were  
 14 having this conversation?  
 15 A. Debbie was at a friend's house.  
 16 Q. So she called you at her residence or  
 17 your residence?  
 18 A. Yes.  
 19 Q. And she said that James had just  
 20 called her.  
 21 A. We used to have pagers then so I  
 22 believe -- I don't know the circumstances of how,  
 23 you know, he had gotten in touch with her. She had  
 24 just spoken with him.  
 25 Q. And what information did she relate to

1 you?  
 2 A. She said that he was on the way to the  
 3 house, that if she wasn't there, that he would rape  
 4 me and he would burn the house down so that she did  
 5 not have a house to come home to.  
 6 Q. And so why was she calling you?  
 7 A. To tell me the information because she  
 8 said that he was probably on the way to the house.  
 9 Q. To warn you?  
 10 A. Yes.  
 11 Q. Did he come to the house and knock on  
 12 the front door and you let him in?  
 13 A. No. I locked all the doors and  
 14 windows in the house and then I was still on the  
 15 phone with Debbie when I heard him trying to come  
 16 in so then I went into my bedroom and locked the  
 17 door and stayed in the bedroom.  
 18 Q. When you said you heard him trying to  
 19 come in the trailer, how was it that he was trying  
 20 to get in? Where was it?  
 21 A. I don't know if he originally tried to  
 22 come in through the door or not but he was trying  
 23 to -- he was coming in through the window in the  
 24 front.  
 25 Q. And the window in the front, is a

1 window into which room?  
 2 A. Into Debbie's bedroom.  
 3 Q. So you heard that and then you went in  
 4 your own bedroom and locked the bedroom door?  
 5 A. Yes.  
 6 Q. Okay. What happened after that?  
 7 A. I -- we had three-way calling at the  
 8 time and I called 9-1-1 and Debbie and the 9-1-1  
 9 operator kept asking me questions that I could say  
 10 yes or no to basically, and James came in and he  
 11 came into my door and he didn't break the door  
 12 down. I don't really know how he got in because I  
 13 did lock it but he came in and he kept asking me if  
 14 that was Debbie on the phone and if it was that he  
 15 wanted to talk to her, but I just didn't answer  
 16 until they, the 9-1-1 operator -- 9-1-1 operator  
 17 said that the police were at the door and they  
 18 could not come in because the door was locked.  
 19 Q. Were you scared?  
 20 A. Definitely.  
 21 Q. Was he upset when he was asking you if  
 22 that was Debbie on the phone?  
 23 A. Yes, he was. I could tell he was  
 24 upset. He was pacing back from my room to the  
 25 bathroom.

1 Q. Okay. And someone on the phone or the  
 2 9-1-1 operator tells you that officers are there  
 3 but they can't get inside?  
 4 A. Yes.  
 5 Q. What did you do at that point?  
 6 A. Then I let him speak with Debbie on  
 7 the phone and I gave him the phone and I went out  
 8 and unlocked the door for the police officers. I  
 9 waited in the livingroom while they went into the  
 10 bedroom and arrested him.  
 11 Q. Okay. After they arrested him, did  
 12 you ever go back in your room?  
 13 A. Yes. They brought him out into the  
 14 livingroom and then they brought me back into my  
 15 bedroom.  
 16 Q. And was there anything different about  
 17 your bedroom at that point?  
 18 A. Yes. There was a knife next to my  
 19 bed.  
 20 Q. Had that knife been there before James  
 21 was there?  
 22 A. No.  
 23 Q. Do you recall an incident that  
 24 occurred in June of 1995 where you summoned the  
 25 police for Debbie?

1 A. Yes.  
 2 Q. Can you describe that.  
 3 A. Yes. She -- I was sitting at the  
 4 dining room table and she was sitting on the couch  
 5 in the livingroom, in the front livingroom, and he  
 6 was pacing back and forth in between the bedroom,  
 7 her bedroom and the livingroom and kept asking her  
 8 to come into the bedroom because he wanted to talk  
 9 to her alone and she was very frightened.  
 10 She was crying and saying, you know,  
 11 if he wants to say anything, just say it and, you  
 12 know, what is wrong with you, why are you doing  
 13 this and finally --  
 14 Q. Was he angry?  
 15 A. He was agitated. I have no idea. He  
 16 wouldn't say anything at the time. He just kept  
 17 telling her to come into the bedroom.  
 18 Q. But she seemed scared to you?  
 19 A. Definitely. She was crying.  
 20 Q. And she didn't want to go in the  
 21 bedroom?  
 22 A. And then when she went into the  
 23 bedroom, she told me to call 9-1-1 and when he came  
 24 back out, she finally went into the bedroom with  
 25 him and he closed the door. Somebody closed the

1 door.  
 2 Q. So there was a point when she went  
 3 into the bedroom that she asked you to call 9-1-1?  
 4 A. Uh-huh.  
 5 Q. Is that yes?  
 6 A. Yes.  
 7 Q. And there was a point where she  
 8 finally goes back in that bedroom with him?  
 9 A. Yes.  
 10 Q. And when she was back in the bedroom  
 11 with him, could you hear anything?  
 12 A. No. I was on the phone with the 9-1-1  
 13 operator and I was trying to hear something at the  
 14 door and I couldn't hear anything.  
 15 Q. Okay. But you called the police?  
 16 A. Yes, I did.  
 17 Q. And did they come to the residence?  
 18 A. They did.  
 19 Q. Once they got there, were you the  
 20 person who let them inside the door?  
 21 A. I imagine. To be honest I can't  
 22 remember.  
 23 Q. Okay. Did you go over to the door,  
 24 the bedroom door where Debbie and James had gone  
 25 inside?

1 A. When, after the police officers were  
 2 there?  
 3 Q. Yes.  
 4 A. I don't remember the location where I  
 5 was. The kids were there as well so they could  
 6 have even opened the door. I could have opened --  
 7 I'm not really sure.  
 8 Q. Well, do you remember Debbie or James  
 9 coming out of the bedroom?  
 10 A. Yes, Debbie came out of the bedroom.  
 11 Q. And what did she look like?  
 12 A. She was very flushed, very red and she  
 13 had told me that he had her pinned down. He was  
 14 sitting on top of her chest area with her arms back  
 15 and his knees were on top of her elbows and he had  
 16 a knife up against her throat.  
 17 Q. After the police got there, I assume  
 18 they arrested James.  
 19 A. They did.  
 20 Q. And were all three children were home  
 21 at the time?  
 22 A. Yes, they were.  
 23 Q. So he gets taken into custody and  
 24 Debbie told you what happened.  
 25 A. Yes. I don't remember if it was

1 right -- it was before they left that she had told  
 2 me what happened.  
 3 Q. Did you and Debbie ever go back in the  
 4 bedroom and find the knife?  
 5 A. The police did.  
 6 Q. The police found the knife he had had?  
 7 A. Yes. It was underneath her pillow.  
 8 Q. If you moved out of there I think you  
 9 said at the end of July of 1995 --  
 10 A. I believe it was.  
 11 Q. Okay. So that was about a month  
 12 before she was murdered?  
 13 A. Yeah.  
 14 Q. Were you in close contact with her  
 15 during the last month of her life?  
 16 A. No.  
 17 Q. Okay. How did you learn about her  
 18 murder?  
 19 A. On the news.  
 20 Q. Were you still living in Las Vegas?  
 21 A. I was.  
 22 Q. And it just came on the news one day,  
 23 one morning.  
 24 A. Yes. My boyfriend was watching the  
 25 news while we were getting ready for work and he

1 called me out to the livingroom and I saw Debbie or  
 2 it was James picture.  
 3 Q. What was it like for you?  
 4 A. I was very frightened. I was crying  
 5 and I didn't go to work for a day or two. I just  
 6 couldn't believe it.  
 7 Q. Since that time how has her death  
 8 impacted you?  
 9 MR. SCHIECK: I'll object, Your Honor,  
 10 relevance grounds.  
 11 THE COURT: Overruled. You can answer  
 12 the question.  
 13 THE WITNESS: Answer it?  
 14 THE COURT: You can answer, yes.  
 15 THE WITNESS: Are you asking about  
 16 myself personally?  
 17 MS. WECKERLY:  
 18 Q. Yeah.  
 19 A. Well, it was a very frightening  
 20 situation to go through and now looking back I just  
 21 can't believe that I was even involved in a  
 22 situation like that. I can't believe that anybody  
 23 could be in that situation for such a long period  
 24 of time. It was really hard and, you know, I  
 25 just -- I just don't understand how somebody could

1 do that especially when --  
 2 MR. SCHIECK: I'm going to object,  
 3 Your Honor. This is nonresponsive now.  
 4 THE COURT: I'll sustain the  
 5 objection.  
 6 MS. WECKERLY: Let me ask you this.  
 7 Q. What was Debbie like as a person?  
 8 A. She was a fun person, a fun person to  
 9 be around. Everybody loved being around her. She  
 10 was definitely -- most of the time she was happy.  
 11 I mean people who would just meet her would not be  
 12 able to tell that, you know, anything was going on  
 13 at home.  
 14 Q. And how was she towards her children?  
 15 A. She loved her kids. She did anything  
 16 for her kids.  
 17 Q. She did anything for her kids?  
 18 A. Yes.  
 19 MS. WECKERLY: Thank you. I'll pass  
 20 the witness.  
 21 (Whereupon Ms. Weckerly  
 22 concluded her direct examination  
 23 at 4:37 p.m.)  
 24 THE COURT: Mr. Schieck or  
 25 Mr. Patrick.

1 CROSS-EXAMINATION  
 2 BY MR. PATRICK:  
 3 Q. Hi, Ms. McGuire.  
 4 A. Hi.  
 5 Q. You testified at the previous trial in  
 6 this matter.  
 7 A. I did.  
 8 Q. And did you have a chance to review  
 9 that testimony before you came in today?  
 10 A. I did.  
 11 Q. The incident where you were talking on  
 12 the phone to Debbie and she relayed some threats  
 13 that James allegedly made to you, can we talk about  
 14 that for a second?  
 15 A. Sure.  
 16 Q. James came, actually came to the  
 17 trailer that night.  
 18 A. Correct.  
 19 Q. And gained entry?  
 20 A. Yes.  
 21 Q. And came into your bedroom?  
 22 A. Yes.  
 23 Q. Okay. At any time did he ever  
 24 threaten you?  
 25 A. No.

1 Q. He was asking you questions about  
 2 Debbie and he wanted to talk to Debbie on the  
 3 phone?  
 4 A. Yes.  
 5 Q. About but he never actually threatened  
 6 you?  
 7 A. No.  
 8 Q. I think you said that after the please  
 9 came and you went back in your room there was a  
 10 knife on the floor?  
 11 A. Yes.  
 12 Q. Did you ever actually see James with  
 13 that knife in his hand?  
 14 A. No.  
 15 Q. Did you tell the police about the  
 16 knife?  
 17 A. Well, they are the ones who told me  
 18 about it. They saw it there.  
 19 Q. Did they take took that into evidence?  
 20 A. I don't recall.  
 21 Q. And then the incident where James came  
 22 over and asked Debbie to go in the bedroom --  
 23 A. Yes.  
 24 Q. -- and Debbie went into the bedroom  
 25 with James.

1 A. Yes.  
 2 Q. And you said that you tried to listen  
 3 but you couldn't hear anything coming from the  
 4 bedroom.  
 5 A. Yes.  
 6 Q. So there was no yelling going on.  
 7 A. No.  
 8 Q. I'm sorry. If I can go back just one  
 9 minute to that previous -- never mind.  
 10 So you called the police. We're back  
 11 at the incident where Debbie went in the bedroom.  
 12 I'm sorry.  
 13 You called the police.  
 14 A. Yes.  
 15 Q. And they arrived.  
 16 A. Yes.  
 17 Q. Now, did you knock on the bedroom door  
 18 before or after the police arrived?  
 19 A. I don't really know.  
 20 Q. Okay. But it was you that knocked --  
 21 A. I cannot remember that.  
 22 Q. But you knocked on the door and Debbie  
 23 came out.  
 24 A. I don't remember. I don't recall if I  
 25 had knocked on the door or if the police officers

1 knocked on the door.  
 2 Q. Okay. But in any event, somebody  
 3 knocked on the door. Debbie came out.  
 4 A. Yes.  
 5 Q. And then James was arrested.  
 6 A. Yes.  
 7 Q. Did Debbie talk to the police that  
 8 night?  
 9 A. Yes, she did.  
 10 Q. Were you around when she was talking  
 11 to them?  
 12 A. No, I wasn't.  
 13 Q. Did she tell you anything about her  
 14 talking to the police?  
 15 A. Oh, gosh, I can't remember. I mean  
 16 about the conversations that she had with the  
 17 police?  
 18 Q. No, just about the whole incident.  
 19 About James pinning her down on the bed.  
 20 A. Yes, she told me about that.  
 21 Q. Okay. Did she talk to the police  
 22 about that?  
 23 A. I don't know. I wasn't there.  
 24 Q. But she talked as to the police that  
 25 night?

1 A. Yes, she did.  
 2 Q. Where had you gone to?  
 3 A. I went outside because the kids were  
 4 outside and I was trying to keep them away from all  
 5 the commotion.  
 6 Q. Were you aware that that night Debbie  
 7 wrote out a handwritten statement to the police  
 8 regarding that incident?  
 9 A. Was I aware that she did that?  
 10 Q. Yes.  
 11 A. No. I'm not aware of it.  
 12 Q. Okay. So you're not aware that when  
 13 she wrote out this handwritten incident to the  
 14 police she mentioned nothing about being held down  
 15 with a knife at her throat?  
 16 A. No.  
 17 Q. So you didn't know that she mentioned  
 18 nothing about a knife to the police about this.  
 19 A. No.  
 20 Q. Now, I believe you said that you moved  
 21 in with Debbie about the first week of June.  
 22 A. Physically yes.  
 23 Q. Physically. That was '95?  
 24 A. Yes.  
 25 Q. And you stayed there until

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1 approximately the end of July.  
 2 A. Yes.  
 3 Q. Now, I'm sorry. Now, when Debbie  
 4 called you and told you that James had made threats  
 5 about you --  
 6 A. Uh-huh.  
 7 Q. -- where was she?  
 8 A. She was at a friend's house.  
 9 Q. Do you know what friend?  
 10 A. Lisa.  
 11 Q. Okay. So Lisa was not -- did Lisa  
 12 ever live in the trailer at the same time you did?  
 13 A. No. She didn't live there. She would  
 14 stay there sometimes.  
 15 Q. Okay. So Lisa moved in after you had  
 16 already moved out?  
 17 A. Possibly. I don't know because I  
 18 really didn't speak with Debbie too much after I  
 19 moved out.  
 20 Q. And I believe you testified that you  
 21 told people that it was fairly common for James to  
 22 come and go through the bedroom window into the  
 23 trailer.  
 24 A. Yes.  
 25 Q. That was because he never had a key.

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1 A. Yes.  
 2 MR. PATRICK: That's all I have, Your  
 3 Honor.  
 4 (Whereupon Mr. Patrick  
 5 concluded his cross-examination  
 6 at 4:42 p.m.)  
 7 THE COURT: Ms. Weckerly.  
 8 MS. WECKERLY: Thank you.  
 9  
 10 REDIRECT EXAMINATION  
 11 BY MS. WECKERLY:  
 12 Q. You were asked a question about the  
 13 incident where James held a knife on Debbie and she  
 14 was in the bedroom and you were asked when you  
 15 knocked on the door whether it was before the  
 16 police arrived or after. Do you recall that?  
 17 A. Yes.  
 18 Q. Would looking at your testimony from  
 19 over ten years ago help you refresh your memory on  
 20 that issue?  
 21 A. On knocking on the door?  
 22 Q. On whether you knocked on the door  
 23 before the police arrived or after.  
 24 A. I could look at the testimony. I'm  
 25 not sure.

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1 MS. WECKERLY: This is page 67.  
 2 MR. PATRICK: I'm sorry, Pam.  
 3 MS. WECKERLY: 67.  
 4 Q. Did that refresh your memory as to  
 5 whether the police had arrived before you decided  
 6 to go knock on the door?  
 7 A. The police had -- I stated the police  
 8 had arrived and then I knocked on the door.  
 9 Q. Okay. And so you probably told the  
 10 two that the police were there at that point.  
 11 A. Yes.  
 12 MS. WECKERLY: Thank you.  
 13 (Whereupon Ms. Weckerly  
 14 concluded her redirect  
 15 examination at 4:43 p.m.)  
 16 THE COURT: Mr. Patrick.  
 17 MR. PATRICK: No, Your Honor.  
 18 THE COURT: Just hold on one second,  
 19 ma'am.  
 20 Counsel approach, please.  
 21 (Whereupon, counsel approached  
 22 the bench, and after a  
 23 discussion outside the hearing  
 24 of the court reporter, the  
 25 following proceedings took

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1 place:)  
 2 THE COURT: All right. Let me ask you  
 3 a question if I could, please, Ms. McGuire. After  
 4 James' arrest, did you move out of Debbie's  
 5 apartment from fear for yourself or for other  
 6 potential bad situations occurring?  
 7 THE WITNESS: Both.  
 8 THE COURT: Both. Okay.  
 9 Ms. Weckerly,, do you have any questions based upon  
 10 mine?  
 11 MS. WECKERLY: No. Thank you, judge.  
 12 THE COURT: Mr. Patrick.  
 13 MR. PATRICK: No, Your Honor.  
 14 THE COURT: Thank you very much,  
 15 Ms. McGuire. You're excused. Step down, ma'am.  
 16 (Whereupon Clair McGuire  
 17 was excused from the  
 18 witness stand at 4:45 p.m.)  
 19 THE COURT: How long do you think the  
 20 next witness might be?  
 21 MR. OWENS: Well, we have a couple now  
 22 that we'd be reading testimony so we can take  
 23 whatever we can get through. I mean the next one  
 24 we intend to read the testimony of Paul Weidner.  
 25 THE COURT: Do you have copies of

1 those transcripts?

2 MR. OWENS: Yes.

3 THE COURT: Okay. Do you have a  
4 reader?

5 MR. OWENS: Your Honor, I think she  
6 went out to get one. Let me see what happened.

7  
8 Whereupon an unidentified male,  
9 having been first duly sworn to faithfully and  
10 accurately read the responses set forth in the  
11 transcript did so as follows:

12  
13 THE COURT: All right. "Paul  
14 Weidner," W-E-I-D-N-E-R, "having been first duly  
15 sworn to tell the truth, the whole truth and  
16 nothing but the truth, testified and said as  
17 follows:" Mr. Owens.

18 MR. OWENS:

19 Q. "Will you state your name, please?"

20 A. "Paul Weidner."

21 Q. "Please spell your last name."

22 A. "W-E-I-D-N-E-R."

23 Q. "Is it Officer Paul Weidner?"

24 A. "Detective."

25 Q. "Detective Wiedner, what is your

1 business or occupation?"

2 A. "I'm a homicide investigator with the  
3 city of Lansing Police Department, Lansing,  
4 Michigan."

5 Q. "How long have you been in law  
6 enforcement?"

7 A. "24 years."

8 Q. "How long with the Lansing Police  
9 Department?"

10 A. "24 years."

11 Q. "Were you employed as either a  
12 detective or police officer with the Lansing  
13 Police Department on August the 18th, 1988?"

14 A. "Yes, I was."

15 Q. "What were your duties?"

16 A. "I was a uniform police officer at the  
17 time assigned to the crime suppression  
18 unit."

19 Q. "On August the 18th, 1998, at about  
20 6:45 p.m., did you have occasion to respond  
21 to the 1700 block of South Washington Street  
22 in Lansing, Michigan?"

23 A. "Yes."

24 Q. "What was your reason for going to  
25 that location?"

1 A. "My partner and I had been sent into  
2 the area regarding a disturbance in the 1700  
3 block of South Washington."

4 Q. "Identify for the record your  
5 partner."

6 A. "Officer John Priebe."

7 Q. "Will you spell his name, please?"

8 A. "I believe P-R-I-E-B-E."

9 Q. "What happened after you arrived?"

10 A. "We made contact with the victim. He  
11 stated that he had been assaulted. When we  
12 first arrived, we exited our vehicle. We  
13 encountered a subject that was standing at  
14 his front porch with his shotgun that turned  
15 out to be the victim of our crime."

16 Q. "You have just explained that he was  
17 standing on his front porch."

18 A. "Yes, I believe so."

19 Q. "You are referring to the front porch  
20 of his residence."

21 A. "Yes, 1705 South Washington Avenue."

22 Q. "Did you identify the victim by  
23 name?"

24 A. "His name of Kenneth Gay."

25 Q. "G-A-Y?"

1 A. "G-A-Y."

2 Q. "Are you able to describe whether  
3 Mr. Gay was armed in any fashion when you and  
4 your partner, Officer Priebe, arrived?"

5 A. "According to my report it indicated  
6 that Mr. Gay was armed with a shotgun."

7 Q. "Are you able to describe the demeanor  
8 of the victim, Mr. Gay, at that time?"

9 A. "I recall that he was very upset. My  
10 recollection is that there appeared to be a  
11 lot of tension and the victim was very  
12 upset."

13 Q. "Were there other subjects in the  
14 area?"

15 A. Yes.

16 Q. "Did you have occasion to investigate  
17 the allegations made by Kenneth Gay?"

18 A. "We interviewed Mr. Gay and upon  
19 receiving his statement and information, we  
20 subsequently made an arrest on two  
21 individuals that evening for a assault."

22 Q. "What individuals did you arrest that  
23 evening?"

24 A. "We arrested a James Montell Chappell  
25 and also a -- I believe his name was Harold



1 Smith."

2 Q. "Did you obtain dates of birth for the

3 two arrestees?"

4 A. "Yes, we did."

5 Q. "Let's start with Mr. Chappell, what

6 was his date of birth?"

7 A. "According to my police report,

8 Mr. Chappell's date of birth was 12/27 of

9 '69."

10 Q. "What about the other subject, William

11 Smith?"

12 A. "It's Harold Smith."

13 Q. "I'm sorry."

14 A. "His date of birth was 10/30 of '66."

15 Q. "You mentioned that you interviewed

16 the complaining witness, Mr. Gay?"

17 A. "Yes."

18 Q. "Did he tell you what occurred?"

19 A. "Yes, he did."

20 Q. "What did he tell you?"

21 A. "According to my report, Mr. Gay

22 advised that he was coming home that evening

23 in his vehicle. There is an alley that runs

24 behind his house. He attempted to pull into

25 the alley and encountered several subjects

1 that were in the alley yelling and screaming

2 at him. He stated to us that the subjects

3 began pounding on his vehicle and a brick was

4 thrown at his vehicle. He stated that he

5 encountered these subjects after he got out

6 of his vehicle and was struck in the back

7 with what appeared to be a brick or a rock on

8 the left side and he identified his assailant

9 as Mr. Smith and Mr. Chappell."

10 Q. "Did the complaining witness, Mr. Gay,

11 identify Harold Smith and James Chappell as

12 individuals who had participated in the

13 assault?"

14 A. "Yes. According to my report, he

15 named them by name, that Smith and James

16 Chappell had been involved in the assault."

17 Q. "Did he say specifically whether

18 anything, any object was thrown at him by

19 James Chappell?"

20 A. "He stated according to my report that

21 he also observed Mr. Chappell -- he was hit

22 on the left side of his back with a brick and

23 stated that the subject Chappell threw the

24 brick."

25 Q. "Did you have occasion to examine the

1 back of Kenneth Gay?"

2 A. "Yes. He did receive some injury to

3 the left side. There was an imprint of what

4 appeared to be a brick on his shirt and also

5 he sustained what appeared to be some

6 bruising and some laceration."

7 Q. "Do you happen to recall what type of

8 shirt Mr. Gay was wearing?"

9 A. "I believe it was a tee-shirt; a light

10 colored tee-shirt to the best of my

11 recollection."

12 Q. "Now is it your testimony that his

13 report to you was that the individual, who

14 threw the brick which hit him in the area on

15 the back where he was injured, was James

16 Chappell?"

17 A. "That is -- I'm referring to my police

18 report and that's what my report reflects."

19 Q. "Now, you've mentioned that the two

20 subjects, Harold Smith and James Chappell,

21 were arrested in connection with the

22 incident?"

23 A. "That is correct."

24 Q. "On what charge?"

25 A. "Felonious assault."

1 Q. "Did you have occasion to interview

2 Mr. Chappell, one of the arrestees, after you

3 had commenced the investigation?"

4 A. "My partner, once we arrived at the

5 station, read the accused his Miranda

6 warnings and then did take a statement from

7 him."

8 Q. "Did Mr. Chappell give a statement

9 which was somewhat contradictory of the

10 account given by the victim Kenneth Gay?"

11 A. "Somewhat."

12 Q. "What was the account provided by

13 Mr. Chappell?"

14 A. If "I may refer to my report."

15 MR. OWENS: "May he do so, Your Honor,

16 to refresh his memory?"

17 THE COURT: "Yes."

18 MR. OWENS:

19 Q. "You may, sir."

20 A. "Yes, sir. According to the statement

21 here written by Officer Priebe, it stated

22 that Mr. Chappell told Officer Priebe

23 that we were standing in the alley when the

24 car started driving up the alley. It wasn't

25 going very fast, but it didn't honk and while

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1 I was getting out of the way, Harold yelled  
 2 that he tried to run us over and so he threw  
 3 a brick at the car as it went by. He didn't  
 4 hit the car, but the white guy, complainant  
 5 Gay, came out of his house with a baseball  
 6 bat and under some derogatory statement  
 7 made, if you'd like me to state those?"  
 8 Q. "What were those statements?"  
 9 A. "The victim stated, according to  
 10 Mr. Chappell saying, 'Come on, you niggers,  
 11 I'm not afraid of you.' Harold then threw a  
 12 brick at the white guy and it knocked him  
 13 down. The guy went into his house and Harold  
 14 picked up the bat. The guy came onto the  
 15 porch with a gun and one of the other guys  
 16 threw a bottle at him, which hit him on the  
 17 shoulder."  
 18 "He continues with the police arrived  
 19 and that the guy who threw the bottle ran off  
 20 between the houses. There were four of us  
 21 and I don't know the other two guys that  
 22 left. They were Harold's friends. The one  
 23 that threw the bottle was described as a  
 24 black male, six foot, heavy build with a red  
 25 shirt and blue jeans and he stays on Elm

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1 Street."  
 2 Q. "I take it, from your description of  
 3 Mr. Chappell's statement, that except for  
 4 acknowledging his presence, he didn't admit  
 5 to any active participating in the felonious  
 6 assault?"  
 7 A. "According to his statement, no."  
 8 Q. "However, as you examined your report  
 9 is it very clear that the victim, Mr. Gay,  
 10 identified Chappell as one of the persons who  
 11 had thrown and, in fact, hit him in the back  
 12 with a brick?"  
 13 A. "Yes, it is."  
 14 Q. "Were you ever called upon to testify  
 15 in court on this matter?"  
 16 A. "No."  
 17 Q. "Do you have a personal recollection  
 18 now of the disposition of that charge?"  
 19 A. "No, I do not. I have no idea what  
 20 happened to the charge."  
 21 MR. OWENS: "That concludes direct,  
 22 Your Honor."  
 23 THE COURT: "Thank you. Cross."  
 24 MR. PATRICK:  
 25 Q. "Officer, going back to this date,

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1 this occurred when again, please?"  
 2 A. "It occurred on August 18, 1988."  
 3 Q. "So that's what, almost eight, a  
 4 little more than eight years ago?"  
 5 A. "That is correct."  
 6 Q. "Now, as far as what happened, you  
 7 personally did not see anything, did you?"  
 8 A. "No, we did not."  
 9 Q. "All you did was talk to the victim  
 10 and apparently a witness and apparently you  
 11 talked to James?"  
 12 A. "Yes. Upon our arrival, we conducted  
 13 an investigation and talked with the people  
 14 that were there."  
 15 Q. "Do you recall if the victim -- can  
 16 you describe the victim at all?"  
 17 A. "I just recall him being an older  
 18 white male. He was -- I remember him  
 19 specifically being very irate, very upset,  
 20 but anything else except for the police  
 21 report I could tell you his date of birth and  
 22 so on."  
 23 Q. "And when you first saw him, he  
 24 apparently had a shotgun out?"  
 25 A. "Yes."

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1 Q. "And you learned, during the course of  
 2 your talking to people, at one time he had a  
 3 baseball bat out?"  
 4 A. "He -- yes, he did."  
 5 Q. "When you talked to him, he never  
 6 admitted anything about calling these guys,  
 7 'Come on you bunch of niggers'?"  
 8 A. "If I could review my report  
 9 quickly?"  
 10 Q. "Go ahead."  
 11 A. "No, I do not see anything in the  
 12 report."  
 13 Q. "And based on his statement, he did  
 14 not indicate any responsibility on his part  
 15 for starting any of this, did he?"  
 16 A. "The only thing he indicated,  
 17 according to the report, that he attempted to  
 18 pull in the alley behind his house and he was  
 19 confronted by several subjects in the  
 20 alley."  
 21 Q. "When apparently you guys arrested  
 22 Mr. Smith and Mr. Chappell; is that  
 23 correct?"  
 24 A. Yes.  
 25 Q. "Now, Mr. Smith was not cooperative,

1 was he?"  
 2 A. "According to the report, he was quite  
 3 combative."  
 4 Q. "He didn't give you a statement?"  
 5 A. "No, he did not."  
 6 Q. "Was Mr. Chappell cooperative?"  
 7 A. "He gave us a statement."  
 8 Q. "He was more cooperative than  
 9 Mr. Smith?"  
 10 A. "Well, it would appear so according to  
 11 the report."  
 12 Q. "And while he had not acknowledged  
 13 throwing the brick, apparently the evidence  
 14 is that both he and Smith both threw a brick  
 15 at one point or another."  
 16 A. "Yes."  
 17 Q. "Do you recall who the other witness  
 18 was that you interviewed who was not  
 19 necessarily the victim?"  
 20 A. "I have a name on my police report by  
 21 the name of Dennis -- I think it's  
 22 Werebicky."  
 23 Q. "What did he say he observed?"  
 24 A. "If I may refer to my report?"  
 25 Q. "Go ahead."

1 A. "He stated that he was out and about  
 2 walking his dog when he observed the victims  
 3 drive down the alley and was attacked by the  
 4 black males. The witness stated he stated  
 5 two accused subjects, along with other  
 6 subjects, started beating on the victim's  
 7 vehicle and started throwing rocks at the  
 8 vehicle. He also observed the victim being  
 9 struck with the bricks and observed accused  
 10 Smith throw a brick and strike the victim."  
 11 Q. "He doesn't actually say he observed  
 12 Mr. Chappell throw a brick?"  
 13 A. "That is correct."  
 14 Q. "If you could, Officer, refer if you  
 15 would to page 6 of your report, if you don't  
 16 mind, look down in the lower right-hand  
 17 corner."  
 18 A. "Which would be page 6?"  
 19 Q. "Mine just says page 6 of and I don't  
 20 have the last part of that. I think it's the  
 21 one that has all the little blanks to fill  
 22 in."  
 23 "May I approach, Judge?"  
 24 THE COURT: "Yes."  
 25 MR. PATRICK: Okay. I see. Sorry.

1 THE COURT: That's the witness.  
 2 THE WITNESS: "Okay. I see it. Is it  
 3 a descriptor?"  
 4 MR. PATRICK:  
 5 Q. "It has all the little numbers to fill  
 6 in a report quickly. It says subject injury,  
 7 how did your associate respond to that?"  
 8 A. "Let me find that modus operandi page.  
 9 Means of attack?"  
 10 Q. "No, subject injury, down on the  
 11 further right-hand side. This says the --  
 12 Judge, may I approach?"  
 13 THE COURT: "Yes."  
 14 MR. PATRICK:  
 15 Q. "This is the sheet on Harold Lee  
 16 Smith, this one here."  
 17 A. "Oh, okay. Let me see."  
 18 Q. "How did you fill that out or how did  
 19 you and your associate fill that out?"  
 20 A. "It indicates no injury."  
 21 Q. "Now that is speaking of Mr. Gay, the  
 22 one who was hit by the brick?"  
 23 A. "No, that's speaking of the  
 24 arrestee."  
 25 Q. "Oh, I see. That's probably Mr. Smith

1 then."  
 2 A. "Yes."  
 3 Q. "Okay. Do you know if Mr. Gay had to  
 4 go to the hospital at all?"  
 5 A. "I do not recall."  
 6 Q. "Would you guys have put that in the  
 7 report someplace if he had sustained serious  
 8 injuries of any kind?"  
 9 A. "Yes. If we would have requested the  
 10 Lansing Fire Department and Ambulance to  
 11 arrive at the scene, it would be on the  
 12 report. If he was seeking his own medical  
 13 attention, it may not be."  
 14 Q. "But there is no indication on the  
 15 report that you guys called an ambulance?"  
 16 A. "That is correct."  
 17 Q. "You've indicated that you don't know  
 18 exactly how this eventually got resolved; is  
 19 that correct?"  
 20 A. "You mean how the case was  
 21 adjudicated?"  
 22 Q. "Right."  
 23 A. "No. I have no idea."  
 24 Q. "Would it surprise you if I said there  
 25 was no judgment of conviction for a felony in

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1 this case?"  
 2 A. "One way or the other, it wouldn't  
 3 because I have no idea."  
 4 MR. PATRICK: "Thank you. I have no  
 5 further questions."  
 6 MR. OWENS: "No redirect, Judge."  
 7 THE WITNESS: Thank you.  
 8 THE COURT: All right. Thank you very  
 9 much. All right. Ladies and gentlemen, we're  
 10 going to take our evening recess. During this  
 11 recess, it is your duty not to converse among  
 12 yourselves or with anyone else on any subject  
 13 connected with the trial or to read, watch or  
 14 listen to any report of or commentary on the trial  
 15 by any person connected with the trial or by any  
 16 medium of information, including, without  
 17 limitation, newspaper, television, radio, and the  
 18 internet, and you are not to form or express an  
 19 opinion on any subject connected with this case  
 20 until it is finally submitted to you, under  
 21 instructions by me.  
 22 We'll start back tomorrow at 9:00  
 23 o'clock. Okay.  
 24 (Whereupon the unidentified male  
 25 was excused from the

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1 witness stand at 5:01 p.m.)  
 2 (Whereupon, the jury  
 3 retired from the courtroom  
 4 and the following proceedings  
 5 took place outside their  
 6 presence:)  
 7 THE COURT: Anything outside the  
 8 presence?  
 9 MS. WECKERLY: No, Judge.  
 10 THE COURT: All right. Folks, I'll  
 11 see you in the morning. Thank you.  
 12 (Whereupon the proceedings  
 13 adjourned at 5:01 p.m.)  
 14  
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1 REPORTER'S CERTIFICATE  
 2  
 3 STATE OF NEVADA } ss  
 4 COUNTY OF CLARK )  
 5  
 6 I, Cheryl Gardner, RMR-RPR, CCR 230,  
 7 do hereby certify that I took down in Stenotype all  
 8 of the proceedings had in the before-entitled  
 9 matter at the time and place indicated and that  
 10 thereafter said shorthand notes were transcribed  
 11 into typewriting by me and that the foregoing  
 12 transcript constitutes a full, true and accurate  
 13 record of the proceedings had.  
 14 IN WITNESS WHEREOF, I have hereunto  
 15 set my hand and affixed my official seal of office  
 16 in the County of Clark, State of Nevada, this  
 17 16th day of March,  
 18 2007.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

*Cheryl Gardner*  
 CHERYL GARDNER, RMR-RPR, CCR 230

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1 AFFIRMATION  
 Pursuant to NRS 239B.030  
 2  
 3  
 4 The undersigned does hereby affirm that the  
 5 preceding transcript filed in District Court Case  
 6 No. C131341 does not contain the social security  
 7 number of any person.  
 8  
 9  
 10  
 11  
 12  
 13 Dated this 16th day of March  
 14 2007.  
 15  
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*Cheryl Gardner*  
 Cheryl Gardner, CCR 230, RPR, RMR

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# EXHIBIT 174

445

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.

3 PAM WECKERLY, ESQ.

4

5

6 For the Defendant: DAVID M. SCHIECK, ESQ.

7 CLARK W. PATRICK, ESQ.

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\* \* \* \* \*

1 LAS VEGAS, NEVADA; FRIDAY, MARCH 16, 2007

2 9:00 A.M.

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

4 \* \* \* \* \*

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

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

11 We're going to continue on with the  
12 State's case in chief.

13 The State may call their next witness.

14 MR. OWENS: The State calls Tanya Hobson,  
15 your Honor.

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

20 THE WITNESS: Yes.

21 THE CLERK: Please be seated. State and  
22 spell your name for the record.

23 THE WITNESS: My name is Tanya Hobson,  
24 T-A-N-Y-A, H-O-B-S-O-N.

25 DIRECT EXAMINATION



1 BY MR. OWENS:

2 Q. How are you currently employed?

3 A. I am a social worker and program manager for  
4 Catholic Charities.

5 Q. How long have you worked there?

6 A. 2-and-a-half years.

7 Q. Back in 1995 where were you working?

8 A. Safe Nest, a temporary shelter for domestic  
9 violence.

10 Q. Safe Nest?

11 A. Correct.

12 Q. When you say a temporary shelter for  
13 domestic violence, what does that mean?

14 A. Basically, it's a safe house for abused  
15 woman to come and stay while basically hiding from their  
16 abusers.

17 Q. Was there some series of initials that were  
18 used to describe where you work, or who you worked with  
19 TADV or something?

20 A. Temporary Assistance for Domestic Violence.  
21 It's an acronym.

22 Q. It's an acronym?

23 A. Correct.

24 Q. Was that an acronym for what you did?

25 A. Yes.

1 Q. You weren't working for any governmental  
2 agency?

3 A. No.

4 Q. But you were working with or in conjunction  
5 with a governmental agency and insisting with protective  
6 orders?

7 A. Correct.

8 Q. Can you take a moment and describe for us  
9 the process that you were using, why don't we start by  
10 explaining what a protective order is?

11 A. A protective order is when a victim of  
12 domestic violence calls our hot line at the time and would  
13 like a protective order because the abuser has violated  
14 her or him in any type of way that infringes upon their  
15 physical body.

16 Q. So if you have some sort of report on that,  
17 how would that usually come into you?

18 A. Through our hot line. We have a crises hot  
19 line and the victim would call up.

20 Q. And after the victim would call you up, then  
21 you would do certain things?

22 A. Correct. We would take their statement, and  
23 after the statement was taken we would talk to them and  
24 tell them exactly what would be taking place with the  
25 protective order that they're requesting. And after that

1 we would send it off to the judge.

2 Q. So your contacts with these victims is  
3 usually over the phone?

4 A. Correct.

5 Q. But sometimes they come into your place  
6 there?

7 A. Correct.

8 Q. And you would fill out actually an  
9 application that was then sent to the court?

10 A. Correct.

11 Q. How would the victims find out about you to  
12 be able to know that they should call or come in?

13 A. We have a crises hot line. We have like a  
14 lot of little Posties all over the place. You find out at  
15 the hospital, jails, schools, bathrooms.

16 Q. So if a victim was injured to a point where  
17 they're taken to a hospital, there's a good probability  
18 that somebody would hand them your number to call?

19 A. Correct.

20 Q. And we're talking about victims of domestic  
21 violence?

22 A. Correct.

23 Q. What was the criteria you would use to  
24 determine if you had enough to apply for a protective  
25 order?

1           A.       Well, we took their statement. And we would  
2 take it in detail so we would have enough to describe what  
3 happened for the incident. So it was detailed information  
4 that the victim would give us in reference to what took  
5 place.

6           Q.       What would you then do with that  
7 information?

8           A.       After we spoke -- after I would talk with  
9 her, fill it out, then we would Fax it over to a judge  
10 that would be on call during that night. We had to wake  
11 him up in order to do the protective order, so -- then it  
12 was faxed. He knew it was on the way.

13          Q.       So you fax the protective order application  
14 to the judge?

15          A.       Correct.

16          Q.       What happens next in the process?

17          A.       The judge then signs it. And he will send  
18 us back a copy with the court date on it.

19          Q.       What does that mean, with a court date?

20          A.       The court date, meaning that the person  
21 filing the protective order had a court date that they  
22 would have to come and appear.

23          Q.       It's usually just a couple of days away?

24          A.       Right.

25          Q.       And in order for them to extend that

1 protective order, they need to be present in court?

2 A. Correct.

3 Q. In the meantime, the order gets served on  
4 the perpetrator?

5 A. Correct.

6 Q. And he is supposed to be there too?

7 A. Correct.

8 Q. And they have a short period to protect his  
9 rights so he can have some say in the matter before the  
10 order is extended?

11 A. Correct.

12 Q. Would you typically go to those court  
13 proceedings?

14 A. Myself, no.

15 Q. Would you have somebody that would show  
16 up?

17 A. Not unless we were subpoenaed.

18 Q. Otherwise, you would tell the victim when  
19 they needed to be in court?

20 A. Right. They would have to call us, and we'd  
21 have to call back -- have them call back to get their  
22 court date.

23 Q. Who would take care of notifying the  
24 defendant?

25 A. Usually it would be -- it could have been

1 any one of the staff members that would have the  
2 protective order, and we tell them to call back. Our  
3 staff member would call back -- we're really -- we really  
4 stress that if one staff member didn't do it, the next  
5 would. So we make sure the person would know, but we'd  
6 also tell them to call back to get the court date.

7 Q. So you wanted to make sure something  
8 happened on that?

9 A. Correct.

10 Q. Now -- so, we're talking about two  
11 documents, the application and then the order?

12 A. Okay.

13 MR. OWENS: For the record the document I'm  
14 referring to, Exhibits that were marked in the prior  
15 proceeding No. 81 and 82.

16 THE COURT: All right.

17 MR. OWENS: For the record I'll place  
18 Exhibit No. 81 on the screen to your left there. Can you  
19 see that.

20 Let's zoom in a little bit.

21 BY MR. OWENS:

22 Q. Tell us what we're looking at here, sort of  
23 describe what this is.

24 A. That is a document that I filled out for the  
25 defendant -- for Debra.

1 Q. For Debra -- you have this Panof?

2 A. Correct.

3 Q. You don't know if it was Panos? You put an  
4 "F" there?

5 A. I put it there.

6 Q. If we scoot up a little bit there, what was  
7 the date of the incident?

8 A. 1/9/95.

9 Q. January 9th, 1995?

10 A. Correct.

11 Q. What kinds of information is on this first  
12 sheet?

13 A. Her address, phone number, business number,  
14 the defendant, his date of birth, his address as well.  
15 Who he was to her, in this case it was a boyfriend.

16 Q. Okay. And you showed an address of 839  
17 North Lamb, number 125, for Debra Panos?

18 A. Correct.

19 Q. Then there's some information down her that  
20 says what happened. Can you read that?

21 A. "Plaintiff and defendant were at home, the  
22 plaintiff was sleeping on the sofa when the defendant  
23 asked her to get up and --

24 Q. This is your writing, right?

25 A. I know. I don't have my glasses on.



1 Q. I'll zoom in a little bit here. It's kind of  
2 hard.

3 A. -- "asked her to get up."

4 Q. Let me bring it over to you.

5 A. Thank you.

6 Q. There you go.

7 A. Okay. "The plaintiff was sleeping on the  
8 sofa when the defendant asked her to get up. The  
9 plaintiff didn't hear him. The defendant hit the  
10 plaintiff in the face. The plaintiff then ran into the  
11 room. The defendant called all the -- called the  
12 ambulance and the defendant -- the plaintiff went to the  
13 hospital. The defendant was taken to jail."

14 Q. Okay. And the fact that he was in jail made  
15 serving him with notice of this a lot easier then trying  
16 to track him down?

17 A. Yes.

18 Q. And the next page on there, what kind of  
19 information is on that page?

20 A. It gives -- let's see. We're he is at, the  
21 Detention Center, to make sure he is there, the phone  
22 number, the fax number, the children and who would get --  
23 basically the custody of the children at the time, which  
24 would be the mother.

25 Q. So this order provides not only for the

1 protection of the person that was battered, but also  
2 protects the children, if there's any children involved?

3 A. Correct.

4 Q. And in this case we had three children?

5 A. Yes.

6 Q. What were the names that were listed  
7 there?

8 A. Chantelle, Anthony, and James.

9 Q. Then the next page.

10 A. It just shows that the above children to  
11 reside with the plaintiff for at least 6 months.

12 Q. Talks about her place of employment?

13 A. Talks about her place of employment. It was  
14 G.E. Ordered defendant not to sell, destroy, or damage  
15 property. Then it gives the date, the plaintiff's name,  
16 my name, my signature, and the address which was a P.O.  
17 Box.

18 Q. This was shortly after the first of the  
19 year. Did you get the year wrong on it?

20 A. 1994, 1995.

21 Q. You meant to put 1995 as the date of the  
22 incident?

23 A. Correct.

24 Q. On the back of it there you just have some  
25 additional emergency protective order information. That's

1 about where you are going to send the documents and the  
2 location to people?

3 A. Correct.

4 Q. Let me take that back from you now. This is  
5 the application form. So this is what you faxed to the  
6 judge?

7 A. Yes.

8 Q. And then the judge reviewed this and then  
9 what happened?

10 A. After the judge reviews it he then sets a  
11 court date and he faxes over the client's court date.

12 Q. That would be the temporary protective order  
13 issued by fax?

14 A. Correct.

15 Q. We're going to look at that, Exhibit No. 82  
16 now. This is a document connected with this application  
17 we were just looking at, right?

18 A. Yes.

19 Q. And it gives notice to the Detention  
20 Center?

21 A. Yes.

22 Q. And talks about the application and it sets  
23 a hearing date out?

24 A. Yes.

25 Q. And orders the defendant to refrain from

1 threatening, physically injury or harassing the victim,  
2 and to stay away from the plaintiff's residence?

3 A. Correct.

4 Q. And stay away from the plaintiff's children  
5 during the term of the order; is that correct?

6 A. Correct.

7 Q. On the last page there's a hearing set up  
8 there for January 11st. So this would have been just a  
9 couple days later?

10 A. Correct.

11 Q. So the order went into affect once it was  
12 signed?

13 A. Yes.

14 Q. And then there would have been a hearing  
15 date. Do you know what happened at the hearing date?

16 A. The client didn't show up.

17 Q. The client didn't show up?

18 A. Correct.

19 Q. And what happens when -- and you say the  
20 client, this is the victim?

21 A. Victim.

22 Q. Is it unusual for the victim not to show up  
23 for that date?

24 A. It's more than typical.

25 Q. Why is that?

1           A.       Because they have a -- some of the victims  
2       have a change of heart, feel that they might have talked  
3       with the abuser and he told them that he wasn't going to  
4       do anything anymore, that, you know, I love you, and we  
5       can work this out, and give me another chance type  
6       situation. Usually the victims fall for that.

7           Q.       For whatever reason in this case Debbie  
8       Panos didn't show up for the court hearing, so what  
9       happened?

10          A.       The protective order becomes void.

11          Q.       If she had shown up at the hearing how long  
12       can this order last?

13          A.       It could have been extended. I believe  
14       that's up to the judge how long it can be extended.

15          Q.       But typically thirty days, or up to ninety  
16       days in some situations?

17          A.       Some cases.

18          Q.       Does that sounds about right?

19          A.       Sounds about right.

20          Q.       It depends on the circumstances?

21          A.       Correct.

22          Q.       But in this case, there wasn't any time  
23       because nobody showed up?

24          A.       Nobody showed up.

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

1 THE COURT: Thank you. Mr. Schieck or Mr.  
2 Patrick.

3 CROSS-EXAMINATION

4 BY MR. PATRICK:

5 Q. Good morning.

6 A. Hi.

7 Q. Did you ever meet Ms. Panos?

8 A. No, I didn't.

9 Q. You only talked to her on the phone?

10 A. Only on the phone.

11 Q. How many times?

12 A. Once.

13 Q. She never called back?

14 A. I work the graveyard shift so she may have  
15 called during the evening.

16 Q. You never talked to her again?

17 A. I never talked to her again.

18 Q. Did she ever come into the Safe Nest where  
19 you worked?

20 A. Not that I recall.

21 Q. Now the order that you filled out, like you  
22 said, that was in your handwriting?

23 A. Correct.

24 Q. And the full name of that document is an  
25 application for a temporary protective order, correct?

1 A. Correct.

2 Q. And temporary means it's only good until  
3 that court hearing?

4 A. Correct.

5 Q. Now, after somebody calls and you fill out  
6 that application, do you do any investigation into those  
7 allegations?

8 A. No. Just what they tell me.

9 Q. Do you try and contact the person that they  
10 want the order against and ask for their side of the  
11 story?

12 A. No, sir.

13 Q. Do you have any idea if the police would do  
14 that?

15 A. I have no idea on that.

16 Q. So basically this can be filled out by one  
17 party making whatever allegations over the phone?

18 A. Correct.

19 Q. Now, I believe Mr. Owens mentioned there was  
20 a hearing set up two days later on January 11?

21 A. Yes.

22 Q. And Ms. Panos didn't show up for that  
23 hearing?

24 A. No, she didn't.

25 Q. Therefore, the temporary protective order



1 was vacated?

2 A. Correct.

3 Q. And there was no further action taken?

4 A. Not that I know of.

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

6 THE COURT: Mr. Owens?

7 MR. OWENS: Nothing further.

8 THE COURT: No questions. Thank you very  
9 much. You may step down. You are excused.

10 THE WITNESS: Thank you.

11 THE COURT: State may call their next  
12 witness.

13 MR. OWENS: We're going to take one out of  
14 order.

15 THE COURT: We're taking a witness out of  
16 order, ladies and gentlemen. We'll call somebody on the  
17 defense case in chief.

18 MR. PATRICK: We would call Dr. Lewis  
19 Etcoff.

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

24 THE WITNESS: I do.

25 THE CLERK: State and spell your name for

1 the record.

2 THE WITNESS: Lewis Marvin Etcoff,  
3 E-T-C-O-F-F.

4 DIRECT EXAMINATION

5 BY MR. PATRICK:

6 Q. Good morning, Dr. Etcoff.

7 A. Good morning.

8 Q. Sir, how are you currently employed?

9 A. I am self-employed in private practice as a  
10 licensed psychologist in Las Vegas.

11 Q. How long have you been doing that?

12 A. Since 1984.

13 Q. Could you give us a little idea about your  
14 educational background?

15 A. Yes.

16 I received bachelors and masters degrees from  
17 Brandise University in Massachusetts in 1973 and 1975, and  
18 my doctoral degree in clinical psychology from the  
19 University of Toledo in Toledo, Ohio in 1983.

20 Thereafter, I was in the United States Air Force  
21 where I was trained in my internship as a clinical  
22 psychologist at Wright Paterson Air Force Base from 1983  
23 to --'82 to '83.

24 And therefore was stationed here at Nellis Air  
25 Force Base, which is how I came to Las Vegas. I was

1       honorably discharged from the Air Force in '85, and have  
2       been here in private practice ever since -- and  
3       licensed.

4               Q.       Can you give us an idea of what your  
5       professional experience is?

6               A.       Probably until about 1988 or so, I did a  
7       typical practice that any psychologist just out of school  
8       would do, some psychotherapy, some testing, personality  
9       testing, IQ testing, diagnostics.

10              I -- for awhile I was the chief psychologist at  
11       Montavista Hospital in about 1990 or so, and saw patients  
12       at Charter and Montavista.

13              At about that time I limited my practice just to  
14       assessments, meaning evaluations of adults and children  
15       and have -- haven't done any type of therapy ever since.

16              So my practice since about 1990, has strictly been  
17       in the area of psychological and neuropsychological  
18       evaluations in children, adolescents, and adults. Most of  
19       my practice has been clinical, meaning that someone would  
20       come to me with their child or themselves and say I've got  
21       these problems, what's wrong with me, do I need medicine,  
22       do you need therapy, how do you get better, and/or their  
23       children are having problems at school, they're  
24       inattentive or have communications problems or motor  
25       problems, or memory difficulties, or learning

1 disabilities.

2 And my expertise is in neuropsychology, which is  
3 how the brain processes information, and I try to figure  
4 out why all of these people have problems. To that end, I  
5 see one person a day, Monday through Thursday, and spend  
6 most of the day with them, hours, and try to figure out  
7 what's wrong with them.

8 In the past I did a bunch of evaluations  
9 in this area for the public defender's office, which is  
10 probably why I'm here today. And I also did several  
11 hundred child custody evaluations. I no longer do  
12 criminal or child custody evaluations, but still do  
13 personal injury evaluations, wherein someone is claiming  
14 emotional injuries, or cognitive injuries, or brain  
15 injuries as a result of an accident, and I evaluate them  
16 to see where they have, in fact, been injured and their  
17 injuries are a result of the accident or have other  
18 causes.

19 Q. Are you a member of any professional  
20 associations?

21 A. Yes. I'm a member of the American  
22 Psychological Association, and their divisions of forensic  
23 psychology and clinical neuropsychology.

24 I'm a member of the Nevada State Psychological  
25 Association, where I have been past president and various

1 other offices.

2 I am an adjunct professor of psychology at UNLV  
3 over the past. And I have been training their Ph.D  
4 students for the past 8 years. They spend nine months to  
5 a year in my office, one or two of them at a time, and I  
6 teach them how to do what I do, so when they go off to  
7 their internships they're already pretty good at  
8 assessments.

9 And I'm a member of the National Academy of  
10 Neuropsychology and was recently elected a fellow in the  
11 National Academy of Neuropsychology.

12 Q. You practice both as a psychologist and a  
13 neuropsychologist?

14 A. Yes.

15 Q. What's the difference?

16 A. Most people who get their Ph.Ds are called  
17 doctor of psychology, or EDD, or doctor of education and  
18 become psychologists, and they are usually either clinical  
19 or counseling psychologists. They work with people who  
20 are mentally ill or people who are not so mentally ill,  
21 that need counseling.

22 My training, after my doctorate, before -- before  
23 and after my doctorate, was in how the brain influences  
24 behavior. And so I've taken a lot of extra course work in  
25 how the brain -- how brain damage can change someone's

1 functioning, so I see people with strokes and brain tumors  
2 and head injuries and concussions and so forth.

3 So neuropsychology is a subset of clinical  
4 psychology where we're actually taking a look at brain  
5 dysfunction affects a human being.

6 Q. Have you done any work for the court system  
7 here in Clark County?

8 A. Yes.

9 Q. Could you explain that for us?

10 A. I think, as I previously mentioned, I was  
11 doing a lot of custody evaluations in the mid 90s. I was  
12 doing a lot of criminal forensic evaluations for the  
13 special public defender's office, and the public  
14 defender's office, and the Nevada appellate  
15 post-conviction project -- if I'm saying that  
16 correctly -- were I would be part of a team of  
17 professionals trying to evaluate individuals who have  
18 either been convicted of murder or are on trial for murder  
19 to see what they were like, and what they were all about  
20 to help the jury decide, if they were found guilty, what  
21 their penalty should be, or what, you know, whether they  
22 should have the death penalty or be in prison without a  
23 chance of parole and such. Just explain to the jury what  
24 a person is like as a human being.

25 Q. Have you ever done any consulting work for

1 the Clark County School District?

2 A. Yes. They had me train two psychologists  
3 about 15 years ago. And on occasion I get a case referred  
4 directly from the school district, especially if they are  
5 getting sued, and they want an expert to kind of determine  
6 whether they're on the hook for something they shouldn't  
7 have done or whether they're not.

8 But I don't have any direct relationship with them.  
9 And I hardly ever get direct referrals from their legal  
10 department. Most of the kids I see are just kids who come  
11 to me from pediatrician referrals or school teachers or  
12 principals.

13 Q. Now, during any of this with the school  
14 district or some of your other practice, have you had the  
15 opportunity to observe and evaluate dysfunctional  
16 families?

17 A. Yes.

18 Q. Have you had the opportunity to evaluate  
19 people with learning disabilities?

20 A. That's probably one of the -- maybe the  
21 major thing I do. I see them several times a week.

22 Q. So when you worked for the school district  
23 or the family court system, basically those entities would  
24 ask you to provide an unbiased assessment of an individual  
25 or family situation?

1 A. Yes, exactly.

2 Q. And I think as you just mentioned you had  
3 quite a bit of experience dealing with people who have  
4 been charged with serious crimes?

5 A. Yes.

6 Q. Have you been qualified as an expert in  
7 courts in Las Vegas previously?

8 A. Yes, federal and district.

9 Q. Could you give us an idea of approximately  
10 how many times you've testified?

11 A. It would be a guesstimate of 30 or 40 times  
12 altogether. That's a guesstimate.

13 Q. And all those times as an expert in  
14 psychology or neuropsychology?

15 A. Yes. That's over 20 years.

16 Q. Now approximately ten years ago now I guess  
17 it's been, you were asked to perform an evaluation on  
18 James?

19 A. Correct.

20 Q. Did you have an opportunity to perform that  
21 evaluation?

22 A. I did.

23 Q. Do you remember where the evaluation took  
24 place?

25 A. It was at my office, which was then in Las



1 Vegas on Decatur Boulevard.

2 Q. Do you remember about how long the  
3 evaluation lasted and if any tests or interviews were  
4 given?

5 A. It was probably, at least a half a day. I  
6 don't remember specifically from that long ago, but by  
7 looking at the report that I generated, I interviewed  
8 Mr. Chappell for two hours. He filled out an objective  
9 personality test in my office, which was scored and  
10 interpreted. And we also -- either someone on my staff at  
11 the time, or I administered an intelligence IQ test and an  
12 academic achievement test battery, because he had  
13 records -- it's important to know someone's intellectual  
14 function in cases such as this, and also to know whether  
15 they had learning disabilities that might affect how they  
16 perceive reality or what they feel about themselves.

17 I also, at the time, had reviewed records  
18 from the Las Vegas Metropolitan Police Department and  
19 volunteer statements of a Lisa -- Lisa Duran and letters  
20 from Debra Panos. And I also reviewed Mr. Chappell's  
21 Lansing, Michigan school records and special-ed records.

22 Q. Did you have an opportunity to interview  
23 anybody else besides Mr. Chappell or the documents you  
24 looked at?

25 A. No.

1           Q.       Is that a common procedure for you to  
2 interview several people when you're just evaluating  
3 Mr. Chappell?

4           A.       You want to, as a psychologist, you want if  
5 someone's mother, or brother, or sister, or wife, or  
6 someone who knows them well is around and you really want  
7 to get an outside opinion or a collateral opinion of what  
8 their functioning had been like. I do that all the time  
9 with people in civil cases. I want to know what the  
10 spouse thinks has been the cause of the accident, so to  
11 speak.

12                 And undoubtedly asked, then Deputy Public Defender  
13 Brooks if anyone in his family was available or could they  
14 be brought to Las Vegas so that I could interview them,  
15 but that wasn't possible. So the only person I was able  
16 to interview at the time was Mr. Chappell.

17           Q.       Were you able to get an accurate evaluation  
18 just by talking with Mr. Chappell?

19           A.       As accurate as you can get. I believe -- I  
20 thought he was credible in what he told me.

21                 MR. OWENS: I'll object to his opinions on  
22 credibility.

23                 THE COURT: I'll sustain the objection and  
24 strike that statement.

25                 THE WITNESS: He appeared honest when he

1 spoke.

2 MR. OWENS: Same objection.

3 THE COURT: I will sustained the objection  
4 and strike that statement.

5 THE WITNESS: I don't know how to answer  
6 the question.

7 BY MR. PATRICK:

8 Q. You mentioned you had copies of school  
9 records from Michigan?

10 A. Yes.

11 Q. And letters that were -- had been written to  
12 Debbie?

13 A. I did at the time.

14 Q. Now have you had an opportunity to interview  
15 James or talk to James since that time?

16 A. No.

17 Q. Now, as a result of the documents you had  
18 and talking to James, were you able to produce a detailed  
19 forensic neuropsychological evaluation?

20 A. Yes.

21 Q. And did you a report as a result of that?

22 A. I did.

23 Q. And have you had a chance to review that  
24 report recently?

25 A. Yes.

1 Q. Do you have a copy of that with you today?

2 A. I do.

3 Q. And as we're going through this, would it  
4 help you to refer to that report to refresh your memory?

5 A. Yes.

6 Q. So you'll be referring to that report as we  
7 go through today?

8 A. Yes.

9 Q. Now, when you evaluated James back in '95,  
10 or '96, were you aware that he'd been charged with  
11 murder?

12 A. Yes.

13 Q. Who he was accused of killing was his  
14 girlfriend Debra Panos?

15 A. I knew that. Yes.

16 Q. You were aware that James was in custody?

17 A. Yes.

18 Q. And were you aware that James had a history  
19 of domestic violence regarding Ms. Panos?

20 A. Yes.

21 Q. Did you discuss this with James?

22 A. A little. I didn't ask him, given my  
23 report, every instance that it had ever occurred, but I  
24 knew there had been several. And we spoke briefly about  
25 one or two of the incidents, as I recall.

1 Q. Okay. Did you talk to James about an  
2 instance where Debbie's nose was broken?

3 A. I believe so, yes.

4 Q. Did you talk to him about an event where he  
5 had pinned Debbie down on a bed?

6 A. That also is something I recall.

7 Q. But you didn't go into minute detail of  
8 every time that he would slap her or hit her?

9 A. No, I didn't.

10 Q. But you were aware that there were several  
11 instances?

12 A. I believe so, yes.

13 Q. Was James forthcoming when he would talk to  
14 about these instances of domestic violence?

15 A. Yes.

16 Q. Did he answer all -- any and all of the  
17 questions you had regarding the domestic violence?

18 A. Yes.

19 Q. And this was all information you used when  
20 you did your report?

21 A. Correct.

22 Q. And did you and James discuss that he and  
23 Debbie had three children together?

24 A. We did discuss that.

25 Q. Did you have an opportunity to discuss James

1 and his childhood?

2 A. Yes.

3 Q. And at the time that you interviewed James  
4 he was the primary source of the information about his  
5 childhood?

6 A. Yes. But we also had the Michigan school  
7 records in which there were lots of information that  
8 substantiated or explained further what he had told me.

9 Q. What did you learn about James' father?

10 A. To the best of my recollection and having  
11 read this over this morning, James' father was sort of  
12 never in his life. I think he saw him a couple of times  
13 throughout the years. He just didn't have any involvement  
14 in James' life. I think his father had some criminal  
15 record and a lot of other behavioral and substance related  
16 problems, but that James, for all intents and purposes,  
17 didn't have a dad.

18 Q. Do you remember when James told you when the  
19 first time was he saw his father?

20 A. I believe he was ten, is my best  
21 recollection. If I'm wrong, just tell me what page and  
22 I'll go there.

23 Q. That's fine doctor.

24 A. Ten.

25 Q. Did James relate to a story about his father

1 asking him to help him with criminal endeavors?

2 A. Yes. I think on one occasion his father had  
3 asked him to rob a bank, which he decided he didn't -- was  
4 crazy and he had no intent on doing, and didn't, from what  
5 he told me.

6 Q. Did you talk to James about his mother?

7 A. Yes. His mother -- he didn't really have  
8 much of a recollection of her, because she died in a motor  
9 vehicle accident, to my best recollection, when he was  
10 about 2-and-a-half years old.

11 Q. Were you able to determine, if, at that  
12 time, James had a close relationship with his mother?

13 A. I believe -- you know, he probably -- no, I  
14 imagine he did. But I don't recall at this time whether,  
15 in fact, he did or -- and there was no obvious information  
16 available at that time when I saw him that would tell me  
17 one way or another.

18 Q. Did he discuss with you how her death had  
19 affected him?

20 A. It affected him a lot, because he had to go  
21 live with his siblings and live with his grandmother, who  
22 turned out to be, I guess, a physically abusive woman,  
23 more so perhaps to his older siblings than to him, but  
24 there was a lot of physical abuse in the household.

25 It sounds as if his grandmother had been somewhat

1 neglectful. And certainly looking at school records, he  
2 was a psychological -- psychologically disturbed kid from  
3 early on, who had real difficulty forming attachments  
4 because he didn't have a dad, his mother died when he was  
5 2-and-a-half, and his grandmother wasn't the greatest.  
6 Although you have to give her credit for taking the kids  
7 in.

8 Q. Were you able to come to an opinion as to  
9 how adequate his grandmother was as a parent figure?

10 A. She didn't sound very adequate from the  
11 information I had, but, again, I wasn't there. I can't  
12 tell you how good a parent she was.

13 Q. Did you talk about James' siblings?

14 A. If we talked about the siblings, it was just  
15 in passing. I don't recall anything in depth about the  
16 siblings that we spoke about.

17 Q. In reviewing the school records from  
18 Lansing, were you able to determine whether James had been  
19 placed in special education classes?

20 A. Yes, he had. And he was in special-ed  
21 classes very early on. In grade two, 1977, 1978 a social  
22 worker at Sexton High School had provided a history of the  
23 first couple of years of James' life, which I reprinted in  
24 the report.

25 And it reiterates when his mom died he and his



1 siblings spent much of the time at the grandmother's  
2 house. And the social worker had noted that the mother  
3 frequently visited the kids at grandmothers, and she was  
4 especially close to James. And her death was a very  
5 difficult adjustment for the kids, in particular, James.

6 And that he had no real contact with his dad, who  
7 was frequently in jail for drugs and other violations.

8 And at school, at that time, in grade two, he was  
9 moody, had trouble fitting in with other kids. He was  
10 easily distracted. He was late getting his work in. He  
11 needed to listen better. He wasn't applying himself. He  
12 was way behind in math, in particular, and disruptive in  
13 class and was assigned -- he was also wetting himself and  
14 sucking his fingers, which is indicative of a serious  
15 anxiety and possibly an attachment disorder. Kids in  
16 second grade tend not to do that. They out-grow those  
17 types of behaviors.

18 So he was not doing well, in any fashion,  
19 in school early on and needed a lot of extra services as a  
20 result.

21 Q. Now, if I could direct your attention to  
22 page 6, of your record. Looks like 1, 2 -- the third full  
23 paragraph down. James was evaluated in 4th grade by a  
24 social worker also?

25 A. Yes.

1 Q. And she looks like she was talking about his  
2 problems adjusting in school socially and academically?

3 A. Yes.

4 Q. Can you explain that?

5 A. She had said that he was in the 4th grade  
6 functioning at about second grade level. And he wasn't  
7 playing with kids. He was just socially in a bad way. He  
8 did build a relationship with a new teacher, which was  
9 positive. But then she suddenly left, and the social  
10 worker said he regressed to his old behaviors of not talk  
11 to anyone.

12 So he was really in need of a strong compassionate  
13 adult figure to replace his parents, who he didn't have,  
14 and when he did find one in a teacher she left and he was  
15 back to just being sort of silent.

16 He was isolated. They isolated him to get his work  
17 done because he wasn't getting his work done. He had  
18 trouble adjusting to school socially and academically.  
19 She wrote, quote, "I feel he has a great deal of  
20 difficulty forming meaningful relationships, and I  
21 recommend he be placed in a smaller classroom situation  
22 and should receive individual therapy outside of the  
23 school setting."

24 As a result he was classified as severely learning  
25 disabled and placed in SLD -- severely learning

1 disabled -- classroom in 1980, '81, where he still had  
2 problems.

3 Q. Now in any of the records that you were able  
4 to review or talking to James did you come to a conclusion  
5 whether or not he was ever given that special  
6 psychological care at that age?

7 A. Special psychological care?

8 Q. That therapy.

9 A. I didn't see any records that he was given  
10 therapy. There was nothing there that I recall right now  
11 that he was given therapy.

12 Q. If you could turn to page 7. It looks like  
13 James was actually seen by a school psychologist when he  
14 was in high school. Could you explain what you learned  
15 about the evaluation that that psychologist did.

16 A. The school psychologist saw him when he was  
17 16 years 9 months old. He is now in an emotionally  
18 handicapped classroom. This psychologist wrote, quote,  
19 "the extensive interview revealed a youngster who seems to  
20 feel he has little hope of succeeding in life, especially  
21 as it relates to academic achievement. He did not appear  
22 to have any coping skills to deal with problems he  
23 encounters and tries to endure whatever comes his way by  
24 first pointing action" -- I have know clue what that  
25 meant."

1            "He tends to withdraw and avoid when he encounters  
2 problems and often takes what appears to him be the easy  
3 way out."

4            "He hadn't made progress in the past several years,  
5 and they essentially -- the school psychologist said -- he  
6 has low self-concept, distrusts others, poor coping  
7 skills, low self-image, problem with coping skills,  
8 trouble completing assignments, and past problems of  
9 attendance -- problems with attendance and low  
10 motivation."

11           At that time he had a GPA -- grade point average of  
12 0.65. And was ranked 584 out of 607 students. So  
13 essentially he was failing.

14           Q.        Now, after reviewing these records from the  
15 social worker and a psychiatrist and talking in your  
16 evaluation of James, does all of this fit in?

17           A.        Yes. It's consistent with my test results,  
18 which it should be. If he was like this and that was  
19 accurate, then if I tested him when he's an adult all of  
20 this should be still obvious.

21           Q.        Now, did you talk to James about his  
22 substance abuse -- drug use?

23           A.        Yes.

24           Q.        And do you remember about -- at about what  
25 age James became involved with drugs?

1           A.       Thirteen or fourteen he began using  
2 marijuana -- or thereabouts. And up to 4 joints a day.  
3 Then at 18, he was introduced to rock cocaine, and he  
4 really started using a lot of cocaine rather regularly and  
5 became dependant on cocaine as a youngster.

6           Q.       Now on page 7 of your report under the  
7 heading -- that first paragraph, substance abuse history,  
8 did James ever tell you about whether or not he would do  
9 drugs at home.

10          A.       Yes, he did. Because there was no  
11 supervision and he could do it.

12          Q.       And then I think as you just testified a  
13 minute ago that James became hooked on crack cocaine?

14          A.       Yes.

15          Q.       Could you -- is there a significance  
16 attached to James' drug use and specifically being  
17 addicted to crack?

18          A.       Well, crack cocaine is a very dangerous  
19 substance. If you use it regularly there is a real good  
20 likelihood you'll get psychotic and have paranoid  
21 delusions and be really frazzled and up and have trouble  
22 sleeping. It's a really psychologically destructive drug,  
23 which makes you out of control of your behaviors and your  
24 thoughts and can make you actually think that things are  
25 real when, in fact, they're not. You can become psychotic

1 using it.

2 Q. I believe earlier you mentioned you or your  
3 staff administered some tests while James was at your  
4 place?

5 A. Correct.

6 Q. Now do you remember did you personally  
7 administer the tests?

8 A. I don't remember. It's very possible at  
9 that time, since I had been training people who were  
10 getting advanced degrees that someone -- I was training  
11 someone at that time, and they were helping me and doing  
12 some of that. So that's very possible.

13 Q. Is that common for you to have associates  
14 administer these tests?

15 A. That is how -- yes. I have been doing that  
16 for 21 -- 15 to 21 years. Definitely.

17 Q. Was James given an IQ test?

18 A. He was.

19 Q. Can you describe that and what it's intended  
20 to show?

21 A. An IQ test is a person-to-person test in  
22 which you sit across the desk from someone and you measure  
23 their intellectual abilities.

24 Back then the test that was the most well-known,  
25 well-used was called the Wexler & Jones Intelligence Scale

1 Revised, which has since been updated and renormed and  
2 standardized on a more modern population of people. Back  
3 then that was the appropriate IQ test.

4 And the IQ test was then divided into two different  
5 areas; verbal area, testing verbal language functioning,  
6 and performance area, which was measuring things like  
7 visual thinking and visual motor abilities. Putting  
8 together jigsaw puzzles and putting block designs together  
9 to make a pattern.

10 The IQ test comes out with a verbal IQ, a  
11 performance IQ, and a full-scale IQ.

12 Q. Can you give us the results, please.

13 A. James performed in the borderline range at  
14 the sixth percentile on his verbal IQ, with a verbal IQ  
15 score of 77. An average verbal IQ, literally at the  
16 population is one hundred. So if you have an IQ of one  
17 hundred, you are at the 50 percentile comparing you to  
18 everyone else in your age cohort in the United States.

19 Being at an IQ of 77, his verbal/intellectual  
20 abilities were lower then 94 out of a hundred people his  
21 age.

22 His performance IQ was 91, just within the  
23 average in the twenty-seventh percentile. Which means he  
24 thinks better in visual images and can do puzzles a lot  
25 better than he can think in words.

1                   And finally when you put the two IQ scores  
2 together you have a full-scale IQ, which is the broadest  
3 measure of intellectual abilities, he was an IQ of 80,  
4 which is at the ninth percentile. Just in the low/average  
5 range. Meaning that his overall intellectual abilities  
6 were lower than ninety-one out of hundred people his age.

7                   And his academic skills were low average  
8 in reading. Spelling, they were okay, given his life and  
9 all the troubles he had academically. But his math skills  
10 were terrible and measured in the first percentile. Worse  
11 than 99 out of a hundred people his age at a grade for  
12 equivalent.

13                  So we can say he was learning disabled in  
14 math. And I also diagnosed him as having a mixed  
15 receptive expressive language disorder, which means he  
16 don't understand word concepts, or doesn't have the  
17 ability to think very well in words or express himself in  
18 words, as was evident on the verbal sub-test in the IQ  
19 test.

20                  Where his vocabulary was measured at the  
21 fifth percentile, his practical reasoning skills were  
22 measured at the fifth percentile.

23                  His basic fund of information, what he  
24 learned in life, was measured in the second percentile.

25                  Arithmetic at the ninth percentile.



1 Abstract thinking at the twenty-fifth  
2 percentile.

3 So really, he thinks simplistically, and  
4 people that think simplistically have a hard time problem  
5 solving, especially in stressful situations.

6 Q. Would it be fair to say that people in the  
7 population with a low verbal IQ, such as this, would be  
8 over-represented in our prison population?

9 A. They are for sure.

10 Q. Could you explain?

11 A. Well, it makes common sense. Not only is it  
12 a fact that if you gave IQ tests to the entire prison  
13 population in the United States there would be lots of  
14 people with really bad verbal IQs and probably really bad  
15 IQ scores period.

16 But the verbal IQ -- you know we think in words.  
17 We problem solve, we figure out what we do in certain  
18 situations, how to adapt to things by talking to ourselves  
19 or thinking in words. If you're word facility is bad and  
20 you can't think of how to -- what to do in a situation  
21 you're likelihood of doing the right thing or doing the  
22 best thing or adapting to situations that are challenging  
23 sinks.

24 And so it isn't uncommon for lots of people that  
25 end up in prison to be really lousy problem solvers and

1 when they're faced with something that they have to make a  
2 really smart decision about, they don't do such a good job  
3 doing it with those decisions. And if they also come from  
4 a terrible background, you put a couple of those variables  
5 together and that means they're over-represented in the  
6 prison population.

7 Q. Now would you say that the fact that James  
8 has this language deficit, does that have an affect on his  
9 ability to think things through rather than just act out,  
10 especially in a stressful situation?

11 A. That's what I'm saying.

12 Q. Did you administer then I believe you said  
13 an academic achievement test?

14 A. Yes.

15 Q. Can you explain that to us a little bit?

16 A. Well, the reading test is I would give you a  
17 list of words from very easy to nobody on the face of the  
18 earth has ever seen the word before and it's unlikely that  
19 you can -- synecdoche, is one of them. I don't even know  
20 what it is and I've been giving that test for years.

21 So you just listen to a person read increasingly  
22 complex words until they fail a certain number in a row,  
23 and that score, that raw score, is then put into a  
24 formula, because we've just tested several thousand adults  
25 and we know that you're reading at the twelfth percentile

1 at a 6th grade level if you've gotten to this point.

2 The spelling test is, I would just say, spell cat,  
3 the cat crossed the street, cat, then the words would get  
4 increasingly difficult to words that no one in this room  
5 would ever spell correctly, unless that's what you do for  
6 a living. So that's how the spelling test goes.

7 The arithmetic test is a page where there is mixed  
8 addition, subtraction, simple/complex division,  
9 percentages, a little algebra, a little geometry and the  
10 person has ten minutes to complete as many of those  
11 arithmetic problems as possible and the number correctly  
12 completed is a raw score, which converts to a standard  
13 score, which converts to a grading and age equivalency so  
14 you can tell where they stand.

15 Q. It sounds like James can read and write  
16 better than he can verbalize or communicate?

17 A. Yes.

18 Q. How does that tie in with everything that  
19 we've been talking about his performance IQ?

20 A. Let me correct myself. Read and spell,  
21 writing is altogether more complex than spelling. But  
22 reading is not necessarily correlated very much to IQ.  
23 You can have a low IQ and be a good reader, because  
24 reading is all about phonics and phonics is how the left  
25 temporal lobe of the brain processes sounds.

1           So if you are able to figure out in your brain that  
2           the sound "a" and the sound "i" are different, as they  
3           are, you'll be a good reader.

4           But if I say "a" and "i" and you can't tell the  
5           difference, you may be dyslexic or you'll be a less fluent  
6           reader.

7           So reading has nothing to do with intelligence.  
8           You can be very smart and be a terrible reader, or you can  
9           be very not so smart and be a normal reader.

10          So reading and language, although there is a  
11          correlation that people bad in language are sometimes bad  
12          in reading, and people bad in reading are sometimes bad in  
13          language, there's not a close correlation between the two.  
14          You can be one or the other also.

15          Q.       Now I think we touched upon this before, but  
16          you were aware at the time you evaluated James that he was  
17          in custody?

18          A.       Yes.

19          Q.       That he had been in custody for quite  
20          awhile?

21          A.       Months or -- yes.

22          Q.       Did you know whether or not James had been  
23          through what we call preliminary hearing?

24          A.       I believe he was. He had been through a  
25          preliminary hearing.

1 Q. And that he had been arraigned on the  
2 charges?

3 A. Yes.

4 Q. And were you aware that the State actually  
5 already filed a notice to seek the death penalty at that  
6 time?

7 A. I believe -- I'm not sure I knew that at the  
8 time, but I did know he was being charged with murder with  
9 a deadly weapon, so -- now I know that that would be  
10 sufficient for the State to ask for the death penalty.

11 Q. So would it be safe to say that James  
12 probably had a very good idea of the charges and the  
13 seriousness of what he was facing?

14 A. Yes.

15 Q. Now when a person is facing serious charges  
16 going to court they want to try and make themselves look  
17 as good as possible, would you agree with that?

18 A. To the court, they do. I'm sure to some  
19 degree if they're sent to a doctor they do, but you would  
20 be surprised how most of the people who have been sent to  
21 me aren't necessarily trying to make a good impression on  
22 me they're just trying to get some help and they're being  
23 themselves when they see me.

24 Sometimes they're making a bad impression and they  
25 don't know they're making a bad impression and their

1 behavior in my office is ruining their chances for me to  
2 help them, but they have clue. And other times they're  
3 behaving the way they are and they're helping themselves  
4 because I can see more about their personality  
5 characteristics and know that they're not evil people, for  
6 example.

7 Q. Would you think that -- would you say that  
8 people facing these serious charges when they tell their  
9 story they want their version to be as positive as  
10 possible?

11 A. Sure.

12 Q. Would that take a certain amount of  
13 sophistication?

14 A. The more sophisticated you are, the better  
15 you can do that, for sure. I mean, definitely. It does  
16 that some sophistication to put your best foot forward in  
17 front of whatever setting you're needing to look good in  
18 front of.

19 Q. Now from what you determined about James'  
20 low verbal IQ and mental capacity, do you think, in your  
21 professional opinion, does he have the capacity to have  
22 that type of sophistication?

23 A. I don't think so. He certainly wasn't  
24 sophisticated when I spoke with him. He's not the type of  
25 guy who could con the jury, or con the police. He's

1 just -- he's just who he is. And good and bad, I don't  
2 think he would be that sophisticated.

3 Could he lie, sure. You don't have to be that  
4 sophisticated to lie. But to concoct a story that made  
5 everyone think a certain way, less likely for him.

6 Q. Now did you perform any personality tests?

7 A. Yes.

8 Q. Which test did you perform?

9 A. The Milan Clinical Multi-Axial Inventory 2,  
10 MCMI 2.

11 Q. What is that test intended to measure or  
12 do?

13 A. It measures two, kind of, different areas.  
14 It gives a person -- it's a self-report inventory.

15 So it was like, I think then 150 statements that  
16 you would take by yourself, read the statement, and answer  
17 true or mostly true, or false or mostly false -- either  
18 true or false.

19 They might say I sleep well. And you'd say last  
20 two weeks, true. Or I'm usually unhappy, false, true.  
21 And you would do this a 150 times. And the test was  
22 normed on thousands of individuals, some of whom had major  
23 depressions or anxiety disorders, or acting-out problems,  
24 or impulse problems, or all these different personality  
25 disorders. And you would compare your results from that

1 questionnaire or that test to the normative group on whom  
2 that test was built and developed.

3 Q. Now this test, does it have a built in  
4 mechanism to determine whether or not the person is being  
5 truthful when they take it?

6 A. It has what's called validity scales or  
7 validity indicators. That people can be inclined to  
8 present themselves really well, I really don't have any  
9 problems, and other times, depending on the situation, if  
10 they really want help they'll come in and just complain  
11 about anything and everything to such a degree that it's  
12 not humanly possible that they have that many problems.  
13 That kind of cry for help or over-exaggeration is another  
14 way these validity scales pick that stuff out.

15 And then there are people who just kind of tell it  
16 like it is, and the validity scales shows that they are  
17 not defensive and they are not exaggerating.

18 Q. Now when James took this test, the validity  
19 scale, was it valid?

20 A. Yes.

21 Q. So it would be your opinion that James was  
22 being truthful when he took the test?

23 A. Yes. And we gave it to him on a tape  
24 recorder, because his reading wasn't that great and his  
25 language skills weren't that great, so I wanted to make



1       sure that he could hear a good human voice reading the  
2       questions to him, and the validity scales did show that he  
3       was able to take the test and answer validly.

4               Q.       Now, back in '95, '96 when you gave James  
5       this test, at that time was the test generally accepted as  
6       a valid method in your field?

7               A.       Yes.

8               Q.       Did you -- directing your attention to page  
9       10, of your report -- were there any significant findings  
10      as a result of James being given that test?

11              A.       Yes.

12              Q.       Could you explain those to us?

13              A.       Well, the test is divided into symptoms of  
14      major psychiatric disturbances, such as major depressive  
15      disorder symptoms, lesser depressive disorder symptoms,  
16      bad anxiety symptoms, mania, bipolar disorder symptoms,  
17      abuse symptoms, all of these kind of major acute  
18      psychiatric problem scales.

19              And then there are a larger number of personality  
20      disorder scales which measure how you perceive reality and  
21      react to things in an inflexible kind of way.

22              So there are all these different personality  
23      disorders -- that we'll probably not go into because it's  
24      a little too long -- but there are scales that measure  
25      abnormal personality characteristics and scales measuring

1 big depression, big substance abuse problems. Things like  
2 that.

3 Q. Did the test show anything about James  
4 needing to be dependant upon someone?

5 A. Yes. The test results indicated that he  
6 felt worthless, inadequate, guilt-ridden, sensitive to  
7 humiliation, which is, if you now think of what his school  
8 remarks were like even in 2nd grade or 4th grade, it's  
9 sort of the same thing now that he's grown up.

10 Low self-esteem, doesn't trust people, because he  
11 never had anyone to trust. Dependant, people become  
12 dependant when they don't feel competent, and they tend to  
13 latch onto other people who will take care of them because  
14 they don't have sufficient self-confidence not to become  
15 dependant.

16 So he was dependant. He was mistrustful. He was  
17 apprehensive. He was easily humiliated, shy, worthless,  
18 guilt-ridden, not a happy person.

19 Q. Did you ever come to an opinion if James had  
20 this attachment or dependency toward a particular  
21 person?

22 A. Well, it seemed pretty clear when I spoke to  
23 him about his relationship with Ms. Panos that he was very  
24 dependant on her and was -- this was the one person who  
25 had been in his life for ten years, even with the problems

1       that they had, they had children together, he depended on  
2       her, and, yeah, he was extremely dependant on her. She  
3       was the major figure of support in his life.

4               Q.       Okay doctor now if we could turn to page 11  
5       of your report, you stated that James would feel  
6       persecuted, humiliated, and disparaged by others due to  
7       his low self-image and this feeling of being weak and  
8       ineffectual, will you explain that.

9               A.       If you at base inside of yourself feel  
10      terrible about yourself, you feel like a fraud, then  
11      you're almost on the look out for other people seeing you  
12      that way, so that you're sort of programmed, since you  
13      don't have faith in yourself, you're sort of unconsciously  
14      thinking to yourself, everyone else is going to see this,  
15      they're going to see me as bad as I see me. And so you're  
16      always on the look out, and if someone, you know,  
17      criticizes you or doesn't say hello or yells at you  
18      whether are young or old, it sort of cuts to the core  
19      because inside of you you feel bad and rotten and that  
20      just is a reinforcements of everything you thought was go  
21      to happen when people got to know you. So it's a terrible  
22      kind of way to be, because not only do you dislike  
23      yourself but you are expecting the rest of the world to  
24      dislike you, and you're looking for them to dislike you  
25      and you're ready to pounce on them if they show any type

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

JAMES MONTELL CHAPPELL,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

No. 77002

District Court Case No.

(Death Penalty Case)

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APPELLANT'S APPENDIX

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

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## **CERTIFICATE OF SERVICE**

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

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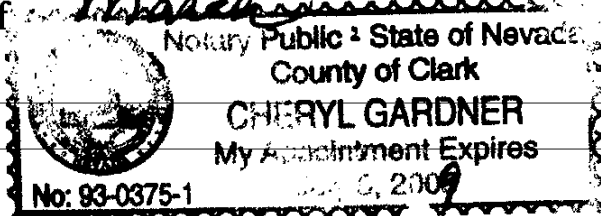
/s/ Sara Jelinek  
An Employee of the  
Federal Public Defender  
District of Nevada

## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 3 ) ss  
 4 COUNTY OF CLARK )

5  
 6 I, Cheryl Gardner, RMR-RPR, CCR 230,  
 7 do hereby certify that I took down in Stenotype all  
 8 of the proceedings had in the before-entitled  
 9 matter at the time and place indicated and that  
 10 thereafter said shorthand notes were transcribed  
 11 into typewriting by me and that the foregoing  
 12 transcript constitutes a full, true and accurate  
 13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto  
 15 set my hand and affixed my official seal of office  
 16 in the County of Clark, State of Nevada, this  
 17 15<sup>th</sup> day of March  
 18 2007.



19  
 20  
 21  
 22  
 23 CHERYL GARDNER, RMR-RPR, CCR 230

1 AFFIRMATION  
 Pursuant to NRS 239B.030

2  
 3  
 4 The undersigned does hereby affirm that the  
 5 preceding transcript filed in District Court Case  
 6 No. C131341 does not contain the social security  
 7 number of any person.

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 12  
 13  
 14 Dated this 15<sup>th</sup> day of March  
 15 2007.

16  
 17  
 18  
 19 Cheryl Gardner, CCR 230, RPR, RMR  
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# EXHIBIT 172

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

FILED IN OPEN COURT

MAR 16 2007 20

**ORIGINAL**

CLERK OF DISTRICT COURT

*Carol Donahoe*

CAROL DONAHOE DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA,

Plaintiff,

vs.

JAMES M. CHAPPELL,

Defendant.

REPORTER'S TRANSCRIPT  
OF  
PENALTY HEARING

BEFORE THE HONORABLE DOUGLAS HERNDON  
DISTRICT COURT JUDGE

MORNING SESSION

DATED: THURSDAY, MARCH 15, 2007

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

317

1 APPEARANCES:

2 For the State: CHRISTOPHER OWENS, ESQ.

3 PAM Weckerly, ESQ.

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6 For the Defendant: DAVID M. SCHIECK, ESQ.

7 CLARK W. PATRICK, ESQ.

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I N D E X  
O F  
W I T N E S S E S

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\* \* \* \* \*

1 LAS VEGAS, NEVADA; THURSDAY, MARCH 15, 2007

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

3 \* \* \* \* \*

4  
5 THE COURT: Anything outside the presence?

6 MR. OWENS: No, your Honor.

7 MR. SCHIECK: No, your Honor.

8 THE COURT: On the record in C-131341,  
9 State of Nevada versus James Chappell. The record will  
10 reflect the presence of Mr. Chappell with his attorneys,  
11 and the State's attorneys, outside the presence of the  
12 jury.

13 Last night I read back through at some  
14 statutes pulled out of the case you talked about,  
15 Mr. Schieck, Sherman vs. State, 114 Nevada 998, as well as  
16 a couple other cases -- Milton, 111 Nevada 900; Zane  
17 Floyd, 118 Nevada 156; Kaczmarek 120 Nevada 314 -- just  
18 looking at cases that dealt with penalty hearing issues  
19 and things of that nature.

20 I think that the normal statute that deals  
21 with sentencing hearings, normal sentencing hearing, it  
22 talks about family members giving victim impact testimony  
23 or relatives, also provides for the fact the court is not  
24 restricted from considering other reliable, relevant  
25 evidence.

1                   So I think that that can be interpreted  
2 as, hey, you can consider whatever relevant evidence you  
3 think is necessary to make an appropriate sentencing  
4 determination and that might include victim impact  
5 evidence outside the family.

6                   But more importantly, the statute that  
7 governs first degree murder cases in penalty hearings,  
8 175.522 specifically supercedes 176.015.

9                   And as the Sherman case kind of outlines,  
10 it's up to the court to decide what's admissible at a  
11 penalty hearing in terms of aggravating and mitigating  
12 evidence as to the offence, the defendant, or the victim.  
13 All three of those things are specifically delineated.

14                  Just from a general proposition, this is  
15 something that's really peculiar to Las Vegas. You have a  
16 lot of folks that live here and they don't have other  
17 family that lives here, so to the extent their death has  
18 an impact on this community, it's really through the close  
19 friends they have and co-workers, or in the way Mr. Owens  
20 referred yesterday, maybe it's teachers, coaches, and  
21 things of that nature that can provide some victim impact  
22 testimony as well.

23                  So I think it's appropriate to have the  
24 testimony that's been provided so far. And to the extent  
25 there are other folks that have similar things, I would



1 allow that testimony as well.

2 All right. Let's go ahead and get the  
3 jury in.

4 MR. SCHIECK: That's, of course, subject  
5 to us continuing to object, if we feel it's  
6 inappropriate.

7 THE COURT: Understood.

8 MR. SCHIECK: And if the Court felt they  
9 were going too far, the court would stop them.

10 THE COURT: Absolutely. As I said  
11 yesterday, to the extent we get to something overly  
12 cumulative in this presentation, I'll cut it off.

13 MR. SCHIECK: Thank you, your Honor.

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

16 The record will reflect the presence of  
17 Mr. Chappell and his attorneys, the State's attorneys.  
18 We're in the presence of our jury. We're going to  
19 continue on with the State's case in chief.

20 The State may call its next witness.

21 MS. WECKERLY: Thank you, Judge.

22 The State calls Officer Osuch.

23 THE CLERK: You do solemnly swear the  
24 testimony you are about to give in this action shall be  
25 the truth, the whole truth, and nothing but the truth so

1 help you God.

2 THE WITNESS: I do.

3 THE CLERK: Be seated. State and spell  
4 your name for the record.

5 THE WITNESS: First name is Paul, Osuch,  
6 O-S-U-C-H.

7 DIRECT EXAMINATION

8 BY MS. WECKERLY:

9 Q. How are you employed, sir?

10 A. With the Las Vegas Metropolitan Police  
11 Department.

12 Q. Are you a detective?

13 A. Yes, I am.

14 Q. How were you employed back in September of  
15 1995?

16 A. At that time I was assigned to property  
17 crimes detail with the Metropolitan Police Department,  
18 detective bureau.

19 Q. On that date were you dispatched to a  
20 location on Bonanza Road?

21 A. Prior to my transfer?

22 Q. Yes.

23 A. Yes. I worked uniform before that. I was a  
24 uniformed patrol officer for the northeast area. I was  
25 dispatched to a Lucky store located at Lamb and Bonanza.

1 Q. Okay. And do you recall the nature of the  
2 call or why you were dispatched to that location?

3 A. It was a shoplifting call.

4 Q. You said it was at a Lucky store?

5 A. Yes, ma'am.

6 Q. When you got there had the store security  
7 officers already had someone in custody?

8 A. Yes, they did.

9 Q. And do you recall what you first did when  
10 you met up with the security officers and the suspect they  
11 had in custody?

12 A. Usually on a shoplifting call it's nothing  
13 really to get excited about. You just find out what you  
14 have, what they took, and hopefully -- if they ascertain  
15 any kind of identification at all. A lot of times you  
16 hope they do most of the work for you, make your job a  
17 little more easier. And they just advised they had one in  
18 custody for shoplifting and had some items outside the  
19 security office that he shoplifted.

20 Q. And what were those items that were  
21 shoplifted, if you recall, generally?

22 A. I believe candy, bubble gum. I believe a  
23 bottle of liquor. I couldn't recall which kind. That's  
24 what stands out.

25 Q. Okay. And did the store security officers

1       advise you, or did you ask the person who was in custody  
2       what their name was?

3               A.       During when we were writing out the  
4       citation, I was in the same room with the shoplifter, and  
5       I asked him if he had any ID, which he stated he didn't.  
6       Then I asked, could you give me your name, date of birth,  
7       and soch (sic), so I can at least start my citation and do  
8       a records check.

9               At that time, before they had cell phones, I had to  
10       call in on a land-line through our records department.

11              He gave me the name Marnell or Morrell.

12              Q.       Ivory Morrell?

13              A.       Yes, ma'am. With the date of birth and his  
14       soch (sic). I ran his records and found no history of him  
15       whatsoever in the system with that name and date of  
16       birth.

17              Q.       When you were responding, this was September  
18       1st of 1995?

19              A.       Yes, ma'am.

20              Q.       Prior to your coming on duty that day or  
21       right when you came on duty that day had you been briefed  
22       about a homicide which had occurred at the Ballerina  
23       Mobile Home Park?

24              A.       Yes, we had. I was assigned to a day shift  
25       unit under Sergeant Bill Yates. Our shift started at 6:45

1 a.m. -- in the morning. And the night before a situation  
2 -- homicide happened at the mobile home park up in our  
3 area of command, pretty much my patrol district. He gave  
4 us a brief general description of the vehicle we were  
5 looking for and the suspect information.

6 Q. Were you also given the victim's name,  
7 Debra Panos?

8 A. Not at that time. No, I wasn't.

9 Q. So you arrived at the Lucky store. You're  
10 given this name Ivory Morrell, and you try to establish  
11 whether or not there's any history associated with that  
12 name, correct?

13 A. Yes, ma'am.

14 Q. What happened after you did that?

15 A. I continued to try to ask what his name was.  
16 There was no way I could find anything about this guy in  
17 the nationwide system, local system. Usually, if you have  
18 a shoplifter once, they -- it's usually not the first time  
19 they've done it.

20 I just went fishing, just went looking. There was  
21 a paraphernalia also that wasn't -- it wasn't in his  
22 custody, but it was with the items on that tray outside  
23 the office.

24 Not knowing that I could identify this guy at the  
25 scene, I was going to continue to issue him a citation for

1 the shoplifting, but the paraphernalia charge -- there was  
2 a glass tube, which people use to ingest crack cocaine,  
3 any kind of stuff that they can inhale -- I was going to  
4 take him to the city jail, book him on that charge, and  
5 this way at least we can get a fingerprint check.

6 It wasn't done as quickly back then as it is now,  
7 but at least try to get identification on him.

8 Q. Because -- did he have any identification on  
9 him?

10 A. No.

11 Q. Just gave you a name?

12 A. Yes.

13 Q. At the time, I think you mentioned that  
14 normally on a petty larceny, someone is issued a citation.  
15 Can you explain that for the jury?

16 A. They -- it's a misdemeanor citation, pretty  
17 much what you get in a traffic ticket. You go there.  
18 It's a misdemeanor crime. It's my discretion whether to  
19 arrest or to issue a citation. On a petit larceny, he was  
20 an adult, which means it's actually a citizen's arrest, so  
21 I just -- I write out the information, fill out the  
22 citation, list the items that was taken issue him a court  
23 date.

24 We had a guideline back then, usually it was a  
25 month down the line that he was issued a court date. I

1 have him sign a citation, not admitting guilt, only a  
2 promise to appear on that date and time for his court  
3 appearance.

4 Q. So a shoplifter typically isn't taken into  
5 custody. They're just given a citation to appear in  
6 court?

7 A. The majority of the time, yes, ma'am.

8 Q. But as you were responding on this  
9 particular incident, because you had questions about  
10 identification and that sort of thing, your decision was  
11 to try to arrest on the paraphernalia?

12 A. Yes, ma'am.

13 Q. What happened in terms of what you did next.  
14 Did you speak with the suspect?

15 A. I was trying to just get his name, but he  
16 was pretty adamant it was who he said he was. Of course,  
17 the interview --

18 THE REPORTER: (Requests the witness speak  
19 more slowly.)

20 MR. OWENS: Your Honor, could we have the  
21 court's indulgence. The equipment wasn't hooked up and we  
22 are going to need it in a moment.

23 THE COURT: Could you help with that.

24 THE LAW CLERK: Absolutely.

25 BY MS. WECKERLY:

1 Q. Sir, I believe you were explaining that you  
2 had a verbal interaction with the suspect?

3 A. Being that we are in a room about the size  
4 of, maybe, the stand up here and where the young lady in  
5 front of me is, maybe a little bigger, you kind of start  
6 interacting with people. And just for the information I  
7 had before, I had a black male fitting the description  
8 with me, I just through it out there. I said, any idea,  
9 you know, maybe tell me what happened up the street at the  
10 Ballerina Mobile Home Park.

11 Q. So he fit the description of the homicide  
12 suspect?

13 A. Generally, yes, ma'am.

14 Q. So you just sort of --

15 A. Threw it out there. Nothing ventured  
16 nothing gained. At that time his demeanor started -- he  
17 got nervous. He got a little bit antsy in the seat. He  
18 was getting very fidgety. I should note at this time he  
19 was in handcuffs, because he was going to go to city jail  
20 on the paraphernalia charge.

21 He just, instead of being laid back like he was in  
22 the beginning, he now got very, very nervous.

23 Q. So prior to your mentioning the Ballerina  
24 Mobile Home Park he seemed relaxed not nervous?

25 A. Very relax.



1 Q. The demeanor changed after you mentioned  
2 that location?

3 A. Yes, ma'am.

4 Q. What happened after that?

5 A. I still -- I advised him I was going to take  
6 him to jail on the paraphernalia charge. It would be my  
7 arrest. I was still going to issue a citation for the  
8 petit larceny. That was already completed. And he asked  
9 me if I could give him a break, I said, no breaks. I  
10 really didn't know who I had in front of me.

11 Q. When he was asking you to give him a  
12 break --

13 A. Not to go to jail.

14 Q. Okay.

15 A. I still didn't know who I had in front of  
16 me. There was no way that I could identify this guy. And  
17 I figured going to the city jail, that's where the  
18 jurisdiction would have been within the city, I was going  
19 to take him to jail.

20 Q. Okay. Was there ever a point when you moved  
21 to a different part of the room to confer with one of the  
22 security officers?

23 A. To finish up my crime report, I had to step  
24 out. They had a little tray table on wheels that they had  
25 their stuff on. I went out there. I had to list the

1 items, list the price. Anything under \$250.00 is a  
2 misdemeanor, so I have to put that on the citation.

3 While I was outside I noticed, not a struggle, but  
4 a little disturbance going on on the inside. There was a  
5 young lady -- I can't remember her name -- security  
6 officer kind of in front of the gentleman that we had in  
7 the office. And I went in and she was going, he was just  
8 fidgeting around, and she went down and she picked up  
9 something underneath his chair. I said what was that.

10 Well, I thought maybe he was trying to discard  
11 dope, narcotics. That's usually what would happen if I  
12 turn my back, they try to get rid of whatever.

13 In this case it wasn't dope or narcotics, it was  
14 four cards and they happened to be social security  
15 cards.

16 Q. When you looked at those social security  
17 cards, did that connect to anything for you?

18 A. That's very strange that somebody would have  
19 social security cards on them, not of his own identity.  
20 Identity theft wasn't quite the issue then as it is now.  
21 I just sat there and went, better make a phone call.

22 My Sergeant Bill Yates, who briefed us earlier that  
23 day, had more information then I had at the beginning of  
24 our shift. I called him and said do you happen, by  
25 chance, to have the name of the victim, and he mentioned

1 it was Panos.

2 I said, well, I have four social security cards  
3 with the last name Panos on them with individual first  
4 names.

5 Q. I take it he didn't have a social security  
6 card with the name Ivory Morrell on it?

7 A. No.

8 Q. These were all four different names. All  
9 Panos. So you called your sergeant to ask the victim's  
10 name on the homicide?

11 A. Yes, ma'am.

12 Q. What were you told?

13 A. That Panos was, indeed, the victim of a  
14 homicide. I said I think I have a little more than a  
15 shoplifting now. My next notification was to our homicide  
16 detail.

17 Q. Did the homicide detectives respond to the  
18 Lucky store?

19 A. Yes, they did.

20 Q. At that point were they in charge of the  
21 suspect?

22 A. Our protocol is at that point we have a  
23 ranking detective on scene, it's his case. So I just lay  
24 back in the background, if they needed someone to protect  
25 the crime scene, that would be me. I wanted to make sure

1 nobody enters the crime scene that didn't need to be  
2 there, that would be me. It wasn't actually a crime  
3 scene, but we did have the suspect there so we treated it  
4 as such.

5 Q. Do you recognize the man that was detained  
6 that day in the courtroom today?

7 A. Yes, ma'am. At the defendant's table.

8 Q. Is he on the side --

9 A. Black male wearing a sweater, shirt, tie,  
10 and glasses.

11 MS. WECKERLY: May the record reflect the  
12 witness has identified the Defendant.

13 THE COURT: The record will so reflect.

14 MS. WECKERLY: Thank you.

15 BY MS. WECKERLY:

16 Q. Sir, I'm showing you State Exhibit 55. Do  
17 you recognize those items?

18 A. Yes, ma'am.

19 Q. They're associated with the incident you  
20 were just speaking about?

21 A. Yes, ma'am.

22 Q. Can you describe for the members of the jury  
23 what's depicted in the photograph?

24 A. All right. Well, a set of car keys.  
25 Obviously to a vehicle.

1 THE COURT: Can you move the photo a  
2 little to the left.

3 THE WITNESS: Thank you.

4 A couple of cylindrical tubes. That was  
5 going to be my paraphernalia charge. Looks like a pill.  
6 Couldn't tell you what it was. Maybe another tube or  
7 something. If it's hollow, then he can ingest drugs. A  
8 lighter.

9 Part of a -- I'm going to assume it's a  
10 coat hanger, which would be like -- used as a pipe cleaner  
11 to clean out the tube that they were going to ingest their  
12 narcotic. And a top copy of a social security card.

13 Q. I'm showing you State's Exhibit 49. Is that  
14 how the defendant appeared on the date he was taken into  
15 custody on shoplifting?

16 A. Yes, ma'am.

17 MS. WECKERLY: I'll pass the witness, your  
18 Honor.

19 THE COURT: Mr. Schieck or Mr. Patrick.

20 MR. SCHIECK: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. SCHIECK:

23 Q. Is it Officer Osuch?

24 A. Yes, sir.

25 Q. Officer Osuch, let me show you again what

1 has been marked a State's Exhibit 55. There is a black  
2 item. It's kind of cut off in the photograph. Was that  
3 associated with this arrest, or is that just --

4 A. I couldn't tell you, sir. I don't know what  
5 that might be.

6 Q. So we can disregard that as anything you  
7 recall being involved with this situation?

8 A. They had it out there for a reason, but I  
9 couldn't tell you what it is.

10 Q. And if I might, you referred to one cylinder  
11 that would be this -- this is the first one?

12 A. That looks more hallow. The darker color  
13 one, if it's hollow, that would be used also. But from  
14 this photo you can't tell.

15 Q. And the pill we see in the photograph, you  
16 don't recall whether that was aspirin or --

17 A. I couldn't tell you what it was, no.

18 Q. He wasn't booked on -- or you weren't  
19 consider booking him on possession of any narcotics?

20 A. No, sir.

21 Q. So is it fair to say that it probably wasn't  
22 a controlled substance or you would have included that in  
23 the charges?

24 A. It probably could have been. Let's say it  
25 is for argument sake. But for one pill, I wouldn't waste

1 the court's time or my time booking in one item for one  
2 pill.

3 Q. And these items were already out when you  
4 got there?

5 A. No, sir.

6 Q. You don't know what pockets they came out  
7 of?

8 A. No, sir.

9 Q. You said at one point you looked back while  
10 you were filling out your report and you noticed kind of a  
11 skirmish going on in the room where the defendant was  
12 at?

13 A. Yes, sir.

14 Q. Did you associate that later or was that  
15 associated later with anything to do with the social  
16 security cards?

17 A. Yes, sir.

18 Q. These items weren't laid out previous to  
19 that incident?

20 A. Well, obviously the social security card  
21 wasn't, sir, no.

22 Q. Okay. And did you pat-down the individual  
23 looking for weapons or anything of that nature?

24 A. Upon arrival, yes, sir, I did.

25 Q. You didn't find any weapons?

1 A. No, sir, I didn't.

2 Q. Other than the fact that the individual was  
3 not giving you a correct name, he wasn't struggling or  
4 uncooperative with you?

5 A. No, sir, not at all.

6 Q. And back -- we talk like it's a hundred  
7 years ago -- but back then, it's 1995, did you have the  
8 ability to -- from your location -- check his records or  
9 look at his scope or determine when he'd been released  
10 from custody or anything of that nature?

11 A. No, sir. If I had a computer operating that  
12 day, I had it in the car. But I'm not going to go out to  
13 the car to do -- and leave him alone. Once I get there,  
14 he's in my custody.

15 Q. And you didn't have any information, at  
16 least at that point, that would have allowed you to access  
17 your computer and find out anything anyway?

18 A. No, sir.

19 Q. Of the items that were there, to your  
20 knowledge, those were all the items the defendant had on  
21 him at the time of the shoplift?

22 A. Yes, sir.

23 Q. There was no money found?

24 A. No, sir. Not that I recall. If there  
25 wasn't anything in impound, he had none.



1           Q.       Back in 1995 when you were called down on a  
2       shoplifting incident like -- similar to this one, did you  
3       have the discretion at that time to consider charging the  
4       individual with burglary if you felt he entered with the  
5       intent to commit a crime? Did you ever charge burglaries  
6       as opposed to petty larceny?

7           A.       Only if the price of the items shoplifted  
8       exceeded the grand larceny limit, which is \$250.00.

9           Q.       As you sit here today, you don't recall what  
10      items were included in the items that were trying to be  
11      shoplifted?

12          A.       I couldn't give you a verbatim list, no,  
13      sir.

14          Q.       You recall there was at least one bottle of  
15      liquor?

16          A.       I remember liquor, candy, gum. Something  
17      sweet.

18          Q.       When I say a bottle of liquor, I'm referring  
19      to a harder liquor as opposed to a bottle of beer?

20          A.       Yes, sir.

21          Q.       Do you recall the size of the bottle?

22          A.       A liter.

23          Q.       A pretty good size bottle of liquor?

24          A.       Something that could be hidden in pants.

25      Yes, sir.

1 MR. SCHIECK: That's all I have.

2 THE COURT: MS. WECKERLY.

3 MS. WECKERLY: No, thank you.

4 THE COURT: No questions from the jurors.  
5 Detective Osuch, I appreciate your time.

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: The State may call it's next  
8 witness.

9 MS. WECKERLY: We're going to call Dina  
10 Freeman.

11 THE COURT: Thank you.

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

16 THE WITNESS: I do.

17 THE CLERK: Be seated. State and spell  
18 your name for the record.

19 THE WITNESS: My first name is Dina,  
20 D-I-N-A. My last name is Richardson,  
21 R-I-C-H-A-R-D-S-O-N.

22 DIRECT EXAMINATION

23 BY MR. OWENS:

24 Q. You were formerly Freeman?

25 A. Yes.

1 Q. You are employed at the police department in  
2 Tucson, Arizona?

3 A. Yes, sir.

4 Q. How long have you worked there?

5 A. 23-and-a-half years.

6 Q. 23-and-a-half years?

7 A. Yes.

8 Q. What kind of job are you doing for the  
9 police department in Tucson?

10 A. Currently I am their training supervisor.

11 Q. What areas of the department are you trained  
12 in?

13 A. I'm a trained 911 call taker and  
14 dispatcher.

15 Q. 911 call taker and dispatcher, is that  
16 pretty much what you've done throughout your career with  
17 the police department?

18 A. Yes.

19 Q. What's the difference between a 911 operator  
20 and a dispatcher in your department there?

21 A. Our 911 call takers take 911 calls from  
22 citizens. And our dispatchers talk only to police  
23 officers.

24 Q. That was how you met the victim in this  
25 case, Debbie Panos?

1 A. Yes.

2 Q. How long did you know her back around 1995,  
3 how long had you known her?

4 A. Around 5 or 6 years.

5 Q. What was her job in the police department?

6 A. She was one of our 911 call takers.

7 Q. So you had been working there for some  
8 period of time before she started working there?

9 A. Yes.

10 Q. Did you develop a relationship with her?

11 A. Yes, I did.

12 Q. And what was the reason she moved to Tucson  
13 there?

14 A. The reason she moved to Tucson.

15 Q. Yes.

16 A. She told me that her step father add  
17 emphysema really bad and so her step father and her mom  
18 moved to Arizona and she wanted to move to Arizona to be  
19 with her mom.

20 Q. Where was she from?

21 A. Lansing, Michigan.

22 Q. What was her living situation at the time  
23 you met her?

24 A. At the time I met her she lived in an  
25 apartment.

1 Q. Did she have children?

2 A. Yes. She had two at the time I met her.

3 Then she had a daughter during the time I knew her.

4 Q. If you could, would you describe for us the  
5 relationship that you had and developed with Debbie over  
6 the time you knew her?

7 A. Initially it started out as a working  
8 relationship. And as time progressed we became pretty  
9 good friends.

10 Q. What would you do together?

11 A. We'd go to dinner, to movies. She'd come to  
12 my house. We'd just hang out, shop. We even took a  
13 vacation together once.

14 Q. How often would you see her?

15 A. Well, I saw her every day at work. But  
16 there was a time -- prior to her moving to Vegas, she was  
17 at my house every day.

18 Q. How was it that you found out about her  
19 murder?

20 A. The department -- the Tucson Police  
21 Department sent an officer out to my house to contact me  
22 and told me that she had been murdered. And to be aware  
23 if I hear any noises or anything, because they had not  
24 located the suspect. And there was a possibility that he  
25 could be on his way to Tucson looking for me or her

1 mother.

2 Q. You or Debbie's mother?

3 A. Yes.

4 Q. So the police were concerned about your  
5 safety?

6 A. Yes.

7 Q. Was it a short time after that you heard he  
8 had been apprehended or caught in Las Vegas?

9 A. Yes.

10 Q. How did you know the defendant, Mr.  
11 Chappell?

12 A. I met him through Debbie.

13 Q. Did you meet him early on in your  
14 relationship with Debbie?

15 A. Yes. He would be sitting in the parking lot  
16 at our job to pick her up quite a bit. That's when she  
17 introduced me to him. I saw him at the kids' birthday  
18 parties.

19 Q. Did you spend time with him?

20 A. Not directly, no, other than at the birthday  
21 parties.

22 Q. So the time you were with Debbie, it was  
23 just Debbie?

24 A. Yes.

25 Q. What can you tell us about the defendant and

1 his lifestyle at the time?

2 A. Um, like I said, I didn't know him  
3 personally directly. I knew he called my house a lot. I  
4 was aware that he didn't work, because of the times he  
5 would call my house throughout the day, if Debbie was  
6 there. And I just knew what she told me.

7 Q. What was that?

8 A. I also knew more than that, because I worked  
9 at the police department so I knew what occurred when he  
10 was detained by police officers.

11 Q. You would hear about it?

12 A. Yes.

13 Q. We'll come back to that in just a minute.  
14 You mentioned that he would call your house looking for  
15 Debbie?

16 A. Yes.

17 Q. What was your assessment of that  
18 relationship, based upon what you saw?

19 A. My perception of it was he pretty much ran  
20 the relationship.

21 Q. He seemed to be a controlling individual?

22 A. Yes.

23 Q. What do you base that on?

24 A. I base that on pretty much what he wanted  
25 her to do is what she did. What he wanted her to buy is

1        what she bought.

2            Q.        And you said you didn't know him to work or  
3        have a job?

4            A.        Not that I was aware of.

5            Q.        She worked at the police department. Did  
6        she have any other jobs?

7            A.        I remember her working at a Sears. I don't  
8        know if it was a call center or something to that  
9        affect.

10          Q.        You know how long she worked there?

11          A.        I truly don't remember.

12          Q.        Was that at the same time she was working  
13        for the police department?

14          A.        Yes.

15          Q.        You mentioned you took a trip with her one  
16        time?

17          A.        Yes.

18          Q.        Where did you go?

19          A.        We went to San Diego.

20          Q.        Who went on the trip?

21          A.        It was myself, my daughter, Debbie, and  
22        another person that we worked with by the name of Rosemary  
23        Pecheco, and another person named Angela Jackson.

24          Q.        How long were you down there in San Diego?

25          A.        It was three or four days. I can't remember



1 exactly.

2 Q. You made some purchases?

3 A. Yes we did. Debbie bought a lot of T-shirts  
4 for herself, her children, and also for James.

5 Q. What happened with the T-shirts?

6 A. When she got back home after she got home  
7 from work she told me that he had sold them all.

8 Q. When was it you became aware of the physical  
9 injuries that Debbie received? How did you find out about  
10 that?

11 A. Well, they where on her face so when she  
12 would come to work, or on her arms, or on her neck.

13 Q. How long had you known her before you  
14 started noticing those things?

15 A. It was immediately after she started work.  
16 It was talk around the office, so to speak.

17 Q. Did she try to cover up the injuries?

18 A. She did, with make-up.

19 Q. Where would they appear?

20 A. Usually on her face, her neck, or her  
21 arms.

22 Q. When you say her arms, what part do you  
23 mean?

24 A. Anywhere from here, to there. From the top  
25 of her arm to the bottom, below her elbow.

1 Q. What was the frequency in which you would  
2 see these bruisers and injuries?

3 A. Wow, often. Several times a month.

4 Q. Was it awhile before you were able to find  
5 out the facts behind how she was getting hurt like that?

6 A. Yes. It was probably about three or four  
7 months after I met her, when her and I started to talk.

8 Q. What did you find out?

9 A. She told me that she was being assaulted by  
10 her boyfriend.

11 Q. That is Mr. Chappell?

12 A. Yes.

13 Q. What did she tell you about that?

14 A. She told me that usually he would be high on  
15 drugs or wanting to be high on drugs, and if she didn't  
16 give him money or keys to her car, that they would end up  
17 in an argue and he would assault her.

18 Q. Did you have some conversations with her  
19 about what she could do, did you try to give her advise?  
20 How did that -- those conversations progress?

21 A. Um, I didn't give her advise per se. I  
22 would tell her only what I wouldn't tolerate. And I  
23 suggested that she contact our department psychologist,  
24 who I know she did go to counseling.

25 Q. Did you notice any change in her based upon

1 the department counselor that she saw?

2 A. Not really.

3 Q. I would like to ask you about several  
4 specific instances and telephone calls that you had  
5 received or other situations you were aware of. There was  
6 one incident in '94 where she called you from a store?

7 A. Yes.

8 Q. Tell us what that was about?

9 A. She called my house about 2:00 in the  
10 morning, crying. Told me that she was at the grocery  
11 store at 22nd and Country Club. She asked me if I could  
12 come get her. I told her, no, because I couldn't leave my  
13 daughter alone at home.

14 I asked her what she was doing there, and she told  
15 me that James had driven her out there so that she could  
16 cash this check and the store refused to cash the check  
17 and that he had left her.

18 So she was stranded there. I asked her where her  
19 kids were. She told me they were home alone. I told her  
20 she needed to go back in that store, explain to that  
21 manager what was going on, and be honest with him. Tell  
22 him the truth. And she did that.

23 The manager then cashed her check. She called me  
24 back and told me that she would take a cab to my house to  
25 drop her money off. She got to my house around 3:00. She

1 dropped off her money and told me she was going home to  
2 her kids and she would talk to me later. And she did.

3 She told me that she needed to leave her money with  
4 me because if she went home with the money he would beat  
5 her up, and she needed to go to bed because she had to go  
6 to work in the morning.

7 Q. You remember the first phone call that you  
8 received from her that was during a fight?

9 A. No. I received a lot of them, so I couldn't  
10 tell you when the first one was.

11 Q. There is a particular one sometime in 1994,  
12 maybe the first half of the year, where you could hear the  
13 defendant's voice in the background?

14 A. Yes.

15 Q. He was making some kind of threat, do you  
16 remember that?

17 A. Yes, I do.

18 Q. What was that -- what happened there?

19 A. Um, he had just gotten back from Michigan.  
20 He had been there for a couple of months at that time.  
21 From what Debbie told me was that her older son had  
22 mentioned to him about some guy that she went out on a  
23 date with, and I could hear the defendant in the  
24 background calling her names. He was calling her bitches,  
25 sluts, whores and everything. And he told her that he

1        didn't care what she did, but she could not fuck around in  
2        front of his children or he would kill her.

3                Q.        Is a what he said that he would kill her?

4                A.        Yes.    He said he would kill her ass, is what  
5        he said, actually.

6                Q.        About August of 1994, there was a phone call  
7        where you also heard some demands or threats?

8                A.        Yes.    She called me from Vegas.

9                Q.        Before the Vegas phone call.    There was a  
10       phone call in August of '94, that would have been a couple  
11       of months before she went to Las Vegas?

12              A.        Yes.    She was still in Tucson.

13              Q.        What did you hear there?

14              A.        She told me he wanted some money or he  
15       wanted to take the car.    She was trying to talk to me on  
16       the phone.    I could hear him in the background.    He told  
17       her that he wanted the car or he wanted some money or he  
18       was go to do an O.J. Simpson on her ass.

19              Q.        What kind of tone was he using?    What did he  
20       sound like through the phone?

21              A.        He sounded angry to me.    His voice was  
22       elevated.

23              Q.        Who was he talking to?

24              A.        He was talking to Debbie.

25              Q.        Then you mentioned a minute ago that she did

1 make a move to Las Vegas?

2 A. Yes, she did.

3 Q. How did that come about?

4 A. She told me that she was going to move here  
5 and she wanted to have a new start. She felt like if she  
6 brought him here with her that he wouldn't know anyone,  
7 therefore, he would get off the drugs and they would live  
8 happily ever after.

9 Q. So your sense of it was she was trying to  
10 help him out?

11 A. Yes, she was.

12 Q. After she came to Las Vegas you had a  
13 telephone call around Thanksgiving time?

14 A. Yes, I did.

15 Q. What happened during that phone call?

16 A. She called me and told me that she had made  
17 a Thanksgiving dinner. They were arguing, and he wanted  
18 her car keys. And I heard him say give me the car keys  
19 Debbie, or I'm going to do an O.J. Simpson on your ass.

20 Q. So it was the same thing you had heard  
21 essentially before?

22 A. Yes.

23 Q. Did you hear other voices in the  
24 background?

25 A. I heard the children in the background.

1 Q. What happened with these phone calls that  
2 you received? How long were you on the phone and how did  
3 they end?

4 A. Usually, it would end, I'd say Debbie, just  
5 give him the keys, then you don't have to worry about it.  
6 And usually she would. And there -- shortly thereafter,  
7 we'd get off the phone. She did have her children there,  
8 so usually our conversations lasted an hour or two.

9 Q. You were trying to be a friend to her?

10 A. Yes.

11 Q. Trying the help her make decisions that  
12 would protect her?

13 A. Yes.

14 Q. You talked to her about going to  
15 counseling?

16 A. Yes.

17 Q. You also offered to have her come stay in  
18 your home?

19 A. Yes.

20 Q. What happened there?

21 A. She would come often. As I said, she would  
22 come to my house ever day. She'd spend the night. She  
23 would get up, she would go home, and then she'd go to work  
24 the next day. Sometimes she wouldn't spend the night.  
25 And other times she would.

1           Q.     You said that there were things you would  
2     hear around the police department because you both worked  
3     there, and you were aware of James and his activities.  
4     Tell us about that.

5           A.     Well, they would do traffic stops. And  
6     there was a time or two where I was the dispatcher. They  
7     would run his name. There was a time or two that I  
8     remember he had a warrant where he was arrested. And it  
9     was usually in what is considered a high drug activity  
10    area. And he would be in Debbie's car.

11          Q.     When you came down to testify we asked you  
12    to bring a packet of information from the police  
13    department -- Tucson Police Department, with you?

14          A.     Yes.

15          Q.     These were certified documents of the  
16    arrests and criminal history of the defendant down in  
17    Tucson?

18          A.     Yes. It was sealed. I didn't open it.

19          Q.     That's your understanding of what that  
20    was?

21          A.     Yes, that's my understanding of that.

22          Q.     This included some incidents that you are  
23    aware of that you are talking about?

24          A.     Yes.

25          Q.     And that included domestic violence as well



1 as narcotics?

2 A. Yes, I would think so.

3 Q. Had you encouraged Debbie to contact the  
4 police during these incidents?

5 A. Yes, I did.

6 Q. What was the result?

7 A. Sometimes she would, other times she  
8 wouldn't.

9 Q. So besides the packet you brought down,  
10 there were a lot of other instances that she didn't call  
11 the police?

12 A. Yes.

13 Q. So there wouldn't have ben a record for  
14 those?

15 A. No.

16 Q. What was the impact of her death on yourself  
17 and the other people at work with you there at the police  
18 department?

19 MR. SCHIECK: Your Honor, I have an  
20 objection to relevance. Especially her testifying to the  
21 impact on other persons.

22 MR. OWENS: I'm referring to other friends  
23 and people she had --

24 THE COURT: Let's confine it to Ms.  
25 Freeman -- or Ms. Richardson, excuse me.

1 MR. OWENS: All right.

2 THE WITNESS: It was devastating for me.  
3 I had day-to-day contact with her. We were friends. I  
4 mean, you know, I loved her, so it had a big impact. I  
5 talked with our department psychologist about it. It was  
6 devastating. It was devastating for my daughter. She  
7 kept this postcard all of these years that Debbie sent to  
8 her. It was an impact.

9 BY MR. OWENS:

10 Q. Does she still have the postcard?

11 A. She still has it today.

12 Q. Is there something that the department did  
13 to assist you?

14 A. Yes. The department assisted me. I also  
15 went to -- I went to a session alone and I attended a  
16 session with my work group. And we called it a debriefing  
17 where people got together and we got to talk about our  
18 feelings. I was a part of that.

19 Q. How many people attended that?

20 A. About 40.

21 Q. People that were affected by the death?

22 A. Yes.

23 Q. What else?

24 A. We have a portrait that's hanging in our  
25 building in our briefing room that's in her honor.

1 Q. Was she well-liked down there?

2 A. She was.

3 Q. What kind of person was she?

4 A. Debbie was a very giving, kind person. She  
5 would give you the shirt off her back, if she could.

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

7 THE COURT: Mr. Schieck or Mr. Patrick.

8 CROSS-EXAMINATION

9 BY MR. PATRICK:

10 Q. Ms. Richardson --

11 A. Yes.

12 Q. -- good morning. Back ten years ago you  
13 testified in the previous trial?

14 A. Yes.

15 Q. Prior to that you'd given a recorded  
16 statement to the police?

17 A. Las Vegas police, yes, I did.

18 Q. Did you have a chance to review that  
19 statement or the testimony that you gave?

20 A. Yes, I did.

21 Q. Now it sounds like you have worked for the  
22 Tucson Police Department for a very long time?

23 A. Yes, I have.

24 Q. The whole time you've worked with them it'  
25 been either as a dispatcher or 911?

1 A. Yes.

2 Q. So during the course of your employment  
3 you've heard people calling in with complaints about  
4 domestic violence?

5 A. Yes, I have.

6 Q. And you're aware how dangerous domestic  
7 violence incidences can be?

8 A. Yes.

9 Q. And that sometimes people can be killed in  
10 domestic violence incidents?

11 A. Yes.

12 Q. So you would never underestimate a domestic  
13 violence call as a 911 operator or dispatcher?

14 A. No.

15 Q. Now, you testified that Debbie made several  
16 calls to you regarding actions that James was doing that  
17 could be classified as domestic violence?

18 A. Yes.

19 Q. But after any of those calls, did you ever  
20 call the police?

21 A. No, I did not.

22 Q. Did you ever talk to James on the  
23 telephone?

24 A. No, not directly, except for when he called  
25 my house and I would give her the phone.

1 Q. But he would leave messages on your phone at  
2 home?

3 A. Yes.

4 Q. And some of the messages would include  
5 things like, I love you Debbie, please come home?

6 A. Yes.

7 Q. You mentioned that you saw James in person  
8 at some birthday parties?

9 A. Yes.

10 Q. That was with his and Debbie's children?

11 A. Yes.

12 Q. Any parties involving your daughter?

13 A. Yes. He did attend a party that involved my  
14 daughter.

15 Q. And did -- you and Debbie obviously talked  
16 about James' drug problem?

17 A. Yes, we did.

18 Q. And I believe you told Las Vegas Police  
19 Department it seemed like James was more violent when he  
20 was on drugs?

21 A. That is what she told me, yes.

22 Q. And you testified that you don't remember if  
23 James ever worked in Tucson?

24 A. Yes. I don't.

25 Q. But it is possible that he had jobs in

1 Tucson?

2 A. Yes, it's possible.

3 Q. And Debbie's parents, they lived in Tucson  
4 also?

5 A. Yes.

6 Q. Did you meet them?

7 A. Yes.

8 Q. Did you ever talk to them about James?

9 A. I talked to Debbie's mother about him.

10 Q. What was Debbie's mother feelings towards  
11 James?

12 A. I don't know. She never really showed any  
13 feelings towards James one way or the other. Her concern  
14 in our conversation was Debbie.

15 Q. Now, you testified that at one point James  
16 had moved back to Tucson -- or moved back the Michigan?

17 A. Yes.

18 Q. Then he came back?

19 A. Yes.

20 Q. Are you aware of the circumstances regarding  
21 James coming back to Tucson?

22 A. No, I'm not.

23 Q. Debbie never talked to you about those?

24 A. No.

25 Q. So you wouldn't know that Debbie paid for

1 James to move back to Tucson from Lansing?

2 A. I didn't know that.

3 Q. Or that Debbie never told you that she  
4 bought concert tickets to induce James to move back?

5 A. No, she didn't.

6 Q. Were you aware that when James was in  
7 Michigan, Debbie flew back and visited him?

8 A. No, I do not.

9 Q. That in fact during that visit she got  
10 pregnant with one of their children?

11 A. No, I did not know that.

12 Q. When you went to San Diego on that trip, did  
13 you take -- did you all take your children with you?

14 A. The only person that took their children was  
15 me.

16 Q. Debbie didn't bring her three kids?

17 A. Debbie did not bring her children.

18 Q. Did she have two or three at that time?

19 A. She had two, I believe -- maybe three. She  
20 might have had three. And the other lady also had four.  
21 None of them brought their children. I only had one  
22 daughter that was older than their children that was more  
23 suitable to travel with us.

24 Q. Do you know where Debbie and James' kids  
25 were during that trip?

1           A.       With James.

2                   MR. SCHIECK: Court's indulgence. That's  
3 all I have.

4                   THE COURT: Anything further, Mr. Owens.

5                   MR. OWENS: No, your Honor.

6                   THE COURT: Ms. Richardson, thank you for  
7 your testimony. You may step down.

8                   MR. OWENS: Plaintiff may call their next  
9 witness.

10                  MS. WECKERLY: May we approach?

11                  THE COURT: Sure.

12                  (Discussion held at the bench.)

13                  THE COURT: Ms. Richardson, grab a seat  
14 real quick.

15                  Quick question: To your knowledge did  
16 Debbie ever call 911?

17                  I'm assuming you are talking about Tucson,  
18 correct?

19                  IMPANELED JUROR: Yes.

20                  THE COURT: Did Debbie ever call 911 in  
21 Tucson during their arguments with James.

22                  THE WITNESS: Yes.

23                  THE COURT: Mr. Owens, any questions based  
24 upon mine.

25                  MR. OWENS: No. There's another jury



1 question.

2 Grab that for me. Mr. Patrick do you have  
3 nay questions based upon mine?

4 MR. PATRICK: No, your Honor.

5 THE COURT: Thank you.

6 Counsel approach.

7 (Discussion held at the bench.)

8 THE COURT: One more question. Did Debbie  
9 mention to you how often James was high and if he did  
10 drugs around her or the children?

11 THE WITNESS: Yes, she did.

12 THE COURT: What did she say in that  
13 regard.

14 THE WITNESS: She told me that he came  
15 home high and was arguing with her, and the kids were  
16 there. And that's what occurred on some of the phone  
17 calls we had.

18 THE COURT: Mr. Owens, anything.

19 MR. OWENS: There's one more.

20 THE COURT: When it's time, I need them  
21 all at once. You can't keep asking based on what somebody  
22 else asks.

23 Counsel approach, please.

24 THE COURT: Any questions based on those?

25 MR. OWENS: No, your Honor.

1 THE COURT: Mr. Patrick.

2 MR. PATRICK: No, your Honor.

3 THE COURT: Thank you.

4 Counsel approach.

5 (Discussion held at the bench.)

6 THE COURT: When Debbie would come and  
7 stay at your home do you know where her children were?

8 THE WITNESS: They were with James.

9 THE COURT: Okay. Mr. Owens anything.

10 MR. OWENS: No.

11 THE COURT: Mr. Patrick.

12 MR. PATRICK: No.

13 THE COURT: Thank you very much. You are  
14 excused, ma'am.

15 Ladies and gentlemen, we'll take a recess  
16 before we get to the next witness.

17 JURY ADMONITION

18 During the recess, ladies and gentlemen,  
19 you are admonished not to converse among yourselves or  
20 with anyone else, including, without limitation, the  
21 lawyers, parties and witnesses, on any subject connected  
22 with this trial, or any other case referred to during it,  
23 or read, watch, or listen to any report of or commentary  
24 on the trial, or any person connected with this trial, or  
25 any such other case by any medium of information

1 including, without limitation, newspapers, television,  
2 internet or radio.

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

6 We'll be in recess for a few minutes.

7 Thank you.

8 (Brief recess taken.)

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

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

14 Ladies and gentlemen, we're going to call  
15 a witness out of order in the defense case in chief.

16 Mr. Schieck.

17 MR. PATRICK: Thank you, your Honor. We  
18 call Dr. William Danton.

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.

1 THE WITNESS: William Danton,  
2 D-A-N-T-O-N.

3 DIRECT EXAMINATION

4 BY MR. PATRICK:

5 Q. Good morning, Dr. Danton.

6 A. Good morning.

7 Q. Could you explain to us how you're currently  
8 employed?

9 A. Yes. I'm in private practice in clinical  
10 psychology. I also teach for the University of Nevada  
11 School of Medicine in Reno.

12 Q. How long have you been doing this?

13 A. Since 1975 I have been teaching at the  
14 University. I was a chief of health at the Mental Health  
15 Hospital -- VA Hospital in Reno. I retired four years  
16 ago.

17 Q. Could you give us an idea of your  
18 educational background?

19 A. Yes. Undergraduate degrees from California  
20 State University at Northridge, graduate degree in  
21 clinical psychology from University of Houston, Houston,  
22 Texas.

23 Q. You mentioned that you were in charge of the  
24 program at the VA Hospital?

25 A. Correct.

1 Q. Could you kind of give us a little more  
2 information on your professional experience?

3 A. Sure. Well, specific to this case, back in  
4 the 80s, I got involved in VA's problem with violent  
5 patients and developed a program and establish a  
6 behavioral emergency committee for dealing with  
7 individuals that -- patients that were problematic in the  
8 hospital setting.

9 Started teaching at the medical school, medical  
10 students on how to deal with those kinds of issues.

11 Produced some media for the VA, regional education  
12 videos on violence and suicide. And I've done an anger  
13 management group at the VA. I did an anger management  
14 group at the VA for fifteen years, primarily domestic  
15 violence referrals from the courts.

16 And in my private practice now, I continue to work  
17 with children's protective services. I do parental  
18 fitness evaluations, and many of those are domestic  
19 violence cases.

20 Q. Are you a member of any professional  
21 organizations?

22 A. I'm a member of the American Psychological  
23 Association. Also I'm board certified from the American  
24 Board of Professional Psychology.

25 Q. And have you been published in any journals

1 or written any books?

2 A. Yes.

3 Q. Explain a few of those, briefly.

4 A. Most of my research is in the area of  
5 comparing medication treatment of anxiety, depression with  
6 psychotherapies. And I've done a number of lectures  
7 however in the area of violent patient, issues of anxiety,  
8 stress control that sort of thing.

9 Q. And you're licensed in Nevada?

10 A. Nevada and California.

11 Q. And California. And I believe you also  
12 mentioned that you were a professor at UNR?

13 A. Yes.

14 Q. Is that in the school of psychology or the  
15 School of medicine?

16 A. School of medicine.

17 Q. What kind of subjects do you teach?

18 A. Violence is my main lecture. I also lecture  
19 on hypnosis -- medical hypnosis.

20 Q. And right. Now your practice is in clinical  
21 psychology?

22 A. Correct.

23 Q. Could you kind of explain a little about  
24 what that entails?

25 A. Sure. Private practice, clinical

1 psychology, most of the people that we see are for anxiety  
2 and depression, also issues of domestic violence, both  
3 victims and perpetrators. That's been most of my  
4 practice.

5 Q. Have you had the opportunity to observe and  
6 evaluate individuals with learning disabilities?

7 A. To a limited degree. I'm not a  
8 neuropsychologist. I didn't do a lot of that work, but I  
9 do evaluate.

10 Q. But you have with individuals regarding  
11 domestic violence?

12 A. I have.

13 Q. And you've had -- have you had a chance to  
14 evaluate individuals that have been charged with serious  
15 crimes?

16 A. Yes.

17 Q. Now have you been previously qualified as an  
18 expert in a court of law in Nevada?

19 A. Yes.

20 Q. Do you know which courts?

21 A. Washoe County.

22 Q. Do you have an estimate as to maybe how many  
23 times?

24 A. Probably say maybe ten to fifteen times.  
25 Some of those are custody cases, child custody cases.

1           Q.     Now, Dr. Danton, we -- I asked you to come  
2     and testify today. And I provided you some materials  
3     before you came down last night?

4           A.     Yes.

5           Q.     What materials were available for you to  
6     review for this case?

7           A.     It was a review of facts of the case, and a  
8     report by Dr. Etcough (ph) a neuropsychologist.

9           Q.     And did you have the opportunity to talk  
10    with James?

11          A.     I did.

12          Q.     When was that?

13          A.     Last night. I talked to him for about 2  
14    hours.

15          Q.     Did you talk to him at all about the report  
16    that you had from Dr. Etcough (ph)?

17          A.     Tendentially. I didn't directly address  
18    that.

19          Q.     Dr. Danton, let's start by, if you could  
20    explain to the jury what the circle of domestic violence  
21    is and how that works?

22          A.     Although there's a fair amount of dispute  
23    about that, that's a bit of the loaded question. But,  
24    typically as it's understood there is an escalation to  
25    violence as coercive power, trying to control a situation,



1 or have power, that's usually followed by a period of  
2 apology and remorse, and where the parties reconcile, and  
3 then the abuse starts over again with whatever dynamic is  
4 feeding that.

5 Q. In a typical domestic violence relationship,  
6 which party would be controlling the finances or the money  
7 in the relationship?

8 A. Well, that is one of questions that we teach  
9 medical students in primary care to ask, is who controls  
10 the finances. And that's a fairly critical question that  
11 identifies an abusive relationship.

12 Q. Who typically controls that?

13 A. Typically the abuser in the relationship.

14 Q. Now we talked this morning about the  
15 motorcycle syndrome. Could you explain that to the jury.

16 A. Sure. This is actually a concept that was  
17 proposed by an analyst some years ago, but it has a lot of  
18 explanatory power I think for what happens in some  
19 relationships.

20 The -- what he wrote about was that -- and this is  
21 particularly prevalent in young girls. They may have a  
22 cold or distant relationship with their fathers, if their  
23 fathers aren't emotionally available. And they want love  
24 and attention, but they get to a point where they just  
25 give up trying to get that and say, to heck with it, I'm

1 not going to try.

2 And the issue then the denial results in an  
3 unconscious need being established where there is a need  
4 for love and approval, but it's not consciously  
5 recognized.

6 So the result of that and why it is called the  
7 motorcycle syndrome, is that they made seek out cold,  
8 distant men, paradoxically, because it is a need to need  
9 it, not a need to have it.

10 So what happens then in that sort of relationship  
11 is young girls may hang out with motorcycle gangs, for  
12 example, where they're treated very, very poorly, but  
13 they're compelled to keep trying to convert these guys or  
14 make them into nice guys and make them love them.

15 The part of this that makes it a syndrome is if one  
16 of those men ever should convert and say, gosh, she really  
17 is a nice woman and I really love her and I want to be  
18 with her, she may become the rejector at that point.

19 Because it's not a need for love and affection,  
20 it's a need to need it. So that sometimes explains these  
21 cycles in relationships that don't seem to make any sense  
22 to the rest of us, where somebody says that they really  
23 want love and affection, but when they get it, they go the  
24 other direction.

25 Q. And is any of this -- did you see any of

1 this in -- from talking to James in his relationship with  
2 Debbie?

3 A. Well, it is James' contention that their  
4 relationship started that way, that he wasn't particularly  
5 interested and had to be kind of coaxed into it. But then  
6 he became extremely dependant on her as the relationship  
7 progressed.

8 Q. Okay. Now how would drugs or drug use fit  
9 into all of this?

10 A. Well, to make sense of that you have to go  
11 back to his personality characteristics. In Dr. Etcough  
12 diagnosed him at a borderline personality. These are  
13 individuals who have great instability in relationships.  
14 They're extremely sensitive to abandonment. Often have  
15 abandonment in their early histories. So that is a big  
16 issue for them.

17 And sometimes you see in with that kind of pain  
18 people medicate with drugs intentionally or  
19 unintentionally, but they feel more comfortable when  
20 they're high or drunk or whatever.

21 So am I getting back to the original question.

22 Q. You're doing fine. Would -- and in general  
23 cases or James case, would drugs maybe be used to control  
24 emotions?

25 A. Yes.

1 Q. Could you explain, maybe in James -- well  
2 you know about James, how that would work?

3 A. Just the threat of abandonment or loss could  
4 be so intense for him -- as to other emotions as well, not  
5 necessarily just that one-- that he would be prone to  
6 using drugs to zone out.

7 Q. Would these emotions, would they be more  
8 acute if he was sober?

9 A. Yes.

10 Q. So this is maybe an escape mechanism?

11 A. Yes. A poor coping skill.

12 Q. And we talked a little about, I think you  
13 had five -- a list of five reasons why an abused person  
14 would go back into abusive relationship or stay in a  
15 abusive relationship. Explain those to us.

16 A. I think I was talking about why sex may have  
17 occurred with those reasons, but, you know, the most  
18 frequent reason that I hear from people -- and we're all  
19 curious about why people stay in these relationship, and  
20 probably everyone in the courtroom has at least an  
21 acquaintance that stayed in a relationship that wasn't  
22 good for them.

23 Why do people do that. And the most frequent  
24 reason that they give me is because I love him or her.  
25 And I don't know what that means always. Sometimes I

1 think it truly is sort of love the abuser, hate the abuse  
2 kind of thing. So that's one reason why people give that  
3 they stay in these relationships.

4 I think it's deeper dynamics though. I try to  
5 describe that with the motorcycle syndrome. I never did  
6 examine Debbie Panos, so I don't know if that was the  
7 nature from her perspective. I just have what James told  
8 me.

9 Do you want me to go into the reasons?

10 Q. Yes, please.

11 A. All right. These are questions I ask myself  
12 about why she might be willing to have sex with him under  
13 these circumstances, and the ones I came up with -- number  
14 one was, reconciliation or forgiveness, which is what I  
15 just described where somebody feels that they are in love  
16 with somebody and that they really want the relationship  
17 to work and they haven't given up on it yet.

18 That doesn't fit terribly well in this case for me,  
19 but it was one hypothesis.

20 The second one was guilty. That she had  
21 had relationships with other men and felt guilty about  
22 that and wanted to somehow apologize for that to him.

23 The third was appeasement. That she felt  
24 threatened by his presence and wanted to appease him to  
25 decrease the threat of the situation, and therefore, went

1 ahead with offering sex.

2 The fourth was learned helplessness.  
3 That's a psychological concept some people think explains  
4 human depression. These experiments go back to a man  
5 named Selicman, who put dogs in -- shut them in boxes and  
6 shocked them. It's a pretty cruel thing to do, but the  
7 experiment showed that after awhile the dog would stop  
8 trying to escape from the chamber. And even if you open  
9 the door to allow the dog to escape, it wouldn't try  
10 anymore. And he thought that that was a model for  
11 depression.

12 So a possibility is that there was learned  
13 helplessness that she simply didn't feel like, what's the  
14 difference, what can I do, other than this.

15 The only issue about that is if there were  
16 affairs with other men, that doesn't fit well with that  
17 hypothesis.

18 Of course the other hypothesis is forced.  
19 He forced her to have sex.

20 Q. After talking with James, I think you  
21 touched on this, but in your professional opinion what is  
22 the most likely of those choices?

23 A. Given the information I have, I think guilt  
24 appeasement makes the most sense.

25 Q. In Dr. Etcough's report it mentions that he

1 gave James an IQ test?

2 A. Yes.

3 Q. And can you -- I know you didn't give the  
4 test, but from Dr. Etcough's report, what opinions do you  
5 get from those IQ tests?

6 A. He tested at 80, I think, which is a very  
7 low end of the low normal range of intelligence. A couple  
8 of standard deviations down. So that suggests that his  
9 ability to reason and perhaps verbal skills ability to  
10 verbally reason with another person or not very good.

11 Q. Would this characterize James as somebody  
12 who would be willing to sit down and talk things over?

13 A. He would probably get frustrated trying to  
14 do that.

15 Q. And from talking to James and knowing that  
16 he had this, how does this kind of fit in with the sexual  
17 relationship between James and Debbie?

18 A. Well, according to James that was typically  
19 how they reconciled after they had spats -- fights.

20 Q. Would be to make up by having sex?

21 A. They had a good physical relationship, but a  
22 very poor communication relationship.

23 Q. Does that fit in with what you know about  
24 James?

25 A. Yes.

1           Q.       What can you tell us about James? You  
2 touched on this a little bit, can you expand about James'  
3 fear of abandonment?

4           A.       He lost his mother I think when he was two.  
5 Didn't have a father figure. His grandmother, although  
6 she was there for them, had lots of kids to take care of  
7 and was into corporal punishment. So he didn't have any  
8 male role models in the household.

9           So all of that kind of stacks the cards. An early  
10 loss like that, it has to do with the establishment of  
11 trust versus mistrust. That in very young children, you  
12 know, as they're bonding to their mother, that normally  
13 happens at 18 months to 2 years, and things can go wrong  
14 with that where the mother is not there anymore all of a  
15 sudden. And the result of that is abandonment anxiety,  
16 which is a reoccurrence of the same kind of anxiety you  
17 see in children that age that go into overwhelming fits of  
18 rage or overwhelming fits of despair.

19           Anyway, theoretically what happens in borderline  
20 personality is that there's a problem with that bond at an  
21 early age, trust never gets established, and the person  
22 becomes very dependant on external anchors to feel okay.  
23 The anchor outside has to sooth them because they're not  
24 capable of soothing themselves on the inside. They don't  
25 have that ability.



1 Q. All of this, would that make James more of a  
2 dependant personality type, do you think?

3 A. In this case, yes.

4 Q. Did -- now if, as you said, after talking to  
5 James you kind of came to the conclusion that James and  
6 Debbie had more of a physical then a verbal relationship,  
7 is that correct to characterize it that way?

8 A. That's his contention, yes.

9 Q. And that sex would be used as a way to maybe  
10 placate James or make things better, or could you kind of  
11 explain what you learned about that from James?

12 A. Just what you said, that he would -- they  
13 would use sex as a way of soothing things.

14 Q. Would it be your opinion that Debbie could  
15 use sex to calm James down if he was angry?

16 A. Yes.

17 Q. Would it be your opinion that she would do  
18 that voluntarily?

19 A. Well, that depends on what you mean by  
20 voluntarily. But if what you mean by that is if there was  
21 no immediate coercive threat, meaning he wasn't saying do  
22 this or this is going to happen, and we draw the line on  
23 somebody responding to an implied threat, I worry about  
24 this guy getting upset with me, so I'm going to have sex  
25 with him, then I would say that it would be voluntary.

1 Q. And this would probably work better than  
2 trying to sit down and rationally discuss it or talk it  
3 out?

4 A. Yes.

5 MR. PATRICK: Court's indulgence.

6 THE COURT: Okay.

7 MR. PATRICK: That's all I have. Thank  
8 you, doctor.

9 THE COURT: Ms. Weckerly.

10 MS. WECKERLY: Thank you.

11 CROSS-EXAMINATION

12 BY MS. WECKERLY:

13 Q. You mentioned the items that you reviewed in  
14 preparation for your testimony?

15 A. Yes.

16 Q. I believe you said you reviewed a summary of  
17 facts of the case?

18 A. Yes.

19 Q. Who was that prepared by?

20 A. That was prepared by the opposing attorneys,  
21 defendant's attorney.

22 Q. Was that a -- something that they had  
23 written themselves or was that police reports and that  
24 sort of thing?

25 A. It was their summary of facts.



1 Q. Have you read any police reports in this  
2 case?

3 A. No.

4 Q. Any witness statements?

5 A. I have not.

6 Q. And the other thing you -- did you read the  
7 autopsy report?

8 A. No.

9 Q. Have you reviewed the autopsy photos?

10 A. No.

11 Q. Have you reviewed any of the prior incident  
12 domestic violence reports?

13 A. No.

14 Q. And the other thing I think you said you  
15 reviewed was Dr. Etcough's report?

16 A. Correct.

17 Q. And I believe he, in his report, indicates  
18 that he interviewed the defendant?

19 A. Yes.

20 Q. You mentioned that you met with the  
21 Defendant and that was the last -- last night that you met  
22 with him?

23 A. Yes.

24 Q. That was for about 2 hours?

25 A. Correct.

1 Q. Have you ever met with him prior to that?

2 A. Never.

3 Q. Had you interviewed him by phone prior to  
4 that?

5 A. No.

6 Q. So your only meeting with him, as you sit  
7 here now, was the 2 hour meeting last night?

8 A. That's correct.

9 Q. You mentioned that there's sort of a cycle  
10 of domestic violence generally speaking?

11 A. Yes.

12 Q. And that starts with someone being abusive  
13 or coercive or trying to control another person?

14 A. Well, it's a cycle of violence. Where it  
15 starts is debatable, but you could start anywhere on that  
16 circle.

17 Q. Would you agree that until there's an act of  
18 violence --

19 A. It would require that.

20 Q. So it starts with someone being abusive to  
21 another person?

22 A. Correct.

23 Q. Perhaps there is a period where they are not  
24 abusive, and the abuse starts up again?

25 A. Yes.

1 Q. In your preparation for your testimony, you  
2 talked about domestic violence in general. Did you review  
3 any of the witness statements that describe the history of  
4 the relationship between the defendant and Debra Panos?

5 A. No.

6 Q. Did you review any reports at all that  
7 discussed prior incidence of domestic violence and how  
8 they occurred over a certain time period?

9 A. No. Just what he described to me.

10 Q. What the Defendant told you?

11 A. Correct.

12 Q. And you didn't review anything else to see  
13 if what he was telling you was accurate?

14 A. I haven't had time to do that. I saw him  
15 last night at 10:00 o'clock.

16 Q. So it's possible you received information  
17 that may more or may not be accurate?

18 A. Yes.

19 Q. You mentioned that some young women have the  
20 motorcycle syndrome?

21 A. Yes.

22 Q. I guess this is a way -- or sort of what  
23 they do is hook up with men that are mean to them?

24 A. Yes, or distant. More to the point distant  
25 or cold. Not emotionally there for them.

1 Q. And the reason -- or the basis for that is  
2 they have some sort tenuous connection to their father?

3 A. Typically they have a poor emotional bond  
4 with their father early on. Not just women, by the way,  
5 there are men.

6 Q. You mentioned that it's Mr. Chappell's  
7 contention that Debra Panos was like this?

8 A. No. It's his contention that early in the  
9 relationship he was more distant, and that he then came to  
10 want to be with her more, that he became more dependant on  
11 her, that that role reversed over time.

12 Q. Is he the one with the syndrome, or is she  
13 the one with the syndrome?

14 A. He is the one with the borderline  
15 personality. So it's sort of a perfect storm. Because he  
16 is going to be sensitive to abandonment, so when she is  
17 moving away from him he's going to panic about that and  
18 want to pull her back in. But when he does that and  
19 becomes dependant, she'll want to push him away. If  
20 indeed that's the case with her.

21 Q. That was sort of my question. Did you ever  
22 interview her family members to find out what her  
23 childhood was like?

24 A. No.

25 Q. Did you interview her friends to find out

1        what her other relationships were like?

2            A.        I have not.

3            Q.        Did you ever review any of her school  
4        records, try to get psychological reports, or even sort of  
5        first-hand acts from friends about how she viewed  
6        things?

7            A.        No.    And that's why I'm saying I'm not  
8        making a diagnosis of her here, because I haven't  
9        interviewed her.    It's just a hypothesis.

10          Q.        You said in a typical domestic violence  
11        relationship typically it's the abuser who controls the  
12        finances?

13          A.        Typically.

14          Q.        Would you agree with me that there is a  
15        difference between being the wage earner and controlling  
16        where the money is spent?

17          A.        Yes.

18          Q.        And it's possible to force money out of  
19        someone who's actually earning it?

20          A.        Yes.

21          Q.        So then you're the one in control, even  
22        though you're out making money?

23          A.        What I'm talking about is in many domestic  
24        violence relationships it is pathonumonic for the person  
25        who is the abuser, since their issue is one of control, to



1 try to control everything, including what happens to all  
2 the money in the relationship. I don't have any opinion  
3 about whether she did that or not. Again I didn't  
4 interview her.

5 Q. Would returning items of furniture or  
6 selling property that belonged to either Debra Panos or  
7 her children in order to get money for himself be a way of  
8 controlling money in that relationship?

9 A. It would -- I suppose it would depend on the  
10 intent. If it was to buy drugs, no. If it way to control  
11 her and what she did and what she could do, yes.

12 Q. It's a means of controlling the situation,  
13 isn't it?

14 A. I'm not clear.

15 Q. It's a means of Mr. Chappell deciding how  
16 things are going to be played out in that relationship, a  
17 way of him controlling Debra Panos because she didn't have  
18 control over her own money?

19 A. If there was a method to that, where, you  
20 know, she would bring home money put it in a bank account  
21 and he would take money, or consistently sell property  
22 just to control the relationship, I would agree with that.  
23 But if the primary intent was to buy drugs, that might be  
24 a different intent.

25 Q. You mentioned that controlled substances are

1 a means for people to feel better and sort of medicate  
2 themselves into a sense of calm or something of that  
3 nature?

4 A. Yes.

5 Q. That would be true for people who are  
6 outside of domestic violence relationships, would it  
7 not?

8 A. Yes.

9 Q. A lot of people use drugs and they're not  
10 abusive?

11 A. True.

12 Q. So that's not necessarily a unique diagnosis  
13 in this situation?

14 A. No.

15 Q. You talked to Mr. Patrick about the ways  
16 that sex could occur, consensually, in this situation?

17 A. Well, the ways that it might have occurred  
18 in this situation.

19 Q. And that the first one you mentioned is  
20 because the victim loves the abuser?

21 A. Yes.

22 Q. And that would assume that the victim wasn't  
23 over the relationship. I assume some domestic violence  
24 victims decide to leave relationships and don't want to be  
25 involved with the person anymore?

1           A.       I tell patients love isn't necessarily a  
2       good reason to be in a relationship, or to be married.  
3       Because it can be based on all the wrong reasons. So she  
4       could still -- or anybody could still love somebody and  
5       decide not to be in the relationship anymore.

6           Q.       And that person could also decide that they  
7       don't want to have sex with that person?

8           A.       Yes.

9           Q.       You also said that another possible reason  
10      is for guilt or unfaith -- guilt because they felt they  
11      have been unfaithful to the person?

12          A.       Yes.

13          Q.       And than you said it's a way to appease or  
14      decrease a threat?

15          A.       Yes, I did.

16          Q.       Those seem like to same thing to me. Can  
17      you explain the difference?

18          A.       Guilty, a feeling of having done something  
19      that wronged this person and wanting to make that up to  
20      them. Appeasement, in terms of wanting to decrease the  
21      fighting or the threat value of the situation. So I see  
22      them as different motives.

23          Q.       And in your estimation you think that this  
24      situation, based on what you heard from the Defendant, not  
25      reading the police report, not talking to her friends, and

1 not reviewing the autopsy photos or anything else, falls  
2 into one of these two categories?

3 A. That made the most sense.

4 Q. Did the defendant give you or speak to you  
5 about what happened on any of the prior incidence of  
6 domestic violence?

7 A. Yes.

8 Q. What did he explain happened during the time  
9 that he broke Debbie Panos' nose?

10 A. I believe that was the incident where he  
11 threw a cup at her.

12 Q. What did he say he did?

13 A. He said that he walked out of the kitchen,  
14 they were arguing, that he threw a cup at her and turned  
15 around and walked back into the kitchen.

16 Q. What did he say the argument was about?

17 A. I don't remember.

18 Q. Did you ask him at all what it was about and  
19 you don't remember, or did he not offer an explanation?

20 A. More a matter of having a limited amount of  
21 time and wanting to -- I wanted to ask him about previous  
22 incidents of domestic violence just to get the nature of  
23 what those were.

24 Q. So they had an argument and he threw a cup  
25 at her and somehow her nose got broken?

1           A.       It was broken. But I think there was a  
2 laceration he described also. He said he then called  
3 911.

4           Q.       He said he called 911?

5           A.       Yes.

6           Q.       And did he say where he was when 911 came to  
7 assist Debra Panos?

8           A.       Again, I didn't go into that in great  
9 detail.

10          Q.       Did he say that she was lying out on a  
11 gurney while he sat inside watching television?

12          A.       No.

13          Q.       So I guess that issue, or that one incident  
14 wasn't resolved with sex, it was resolved because the  
15 police came, right?

16          A.       Well, it sounds like it was resolved because  
17 she was taken to the hospital.

18          Q.       Right. Right. It wasn't deescalated by  
19 some sort of sexual encounter?

20          A.       Right.

21          Q.       How about the incident, did he describe an  
22 incident where he had choked Debra Panos enough to leave  
23 finger marks on her neck?

24          A.       I believe he did mention that.

25          Q.       And what did he say was the issue on that

1 occasion?

2 A. I don't recall.

3 Q. Did he mention whether or not the police  
4 responded on that occasion?

5 A. I -- all I remember is that there were like  
6 four incidents of domestic violence. He described in some  
7 detail the cup incident, and this other incident, and a  
8 couple of incidence in Tucson where he lost control.

9 Q. Did he mention and incident where he threw  
10 her on a bed, got on top of her and held a knife to her  
11 neck?

12 A. I believe he did.

13 Q. What did he say that was about?

14 A. He didn't.

15 Q. Would that have been important in your  
16 analysis of the dynamics of the relationship?

17 A. Well, if I had time to get into that it  
18 might be important, but as it was I was just trying to get  
19 a summary of the domestic violence incidents that  
20 occurred.

21 Q. Did he say how that incident resolved  
22 itself?

23 A. No.

24 Q. Do you know whether or not the police  
25 responded to the trailer on that occasion to assist

1 Debbie?

2 A. I don't.

3 Q. Would it surprise you that they did respond.  
4 They were called by a friend of hers and the officers  
5 responded?

6 A. No.

7 Q. So that's another instance where she didn't  
8 use sex to deescalate a situation or appease him, instead  
9 she wanted the police called?

10 A. She called the police?

11 Q. She asked a friends to call the police, and  
12 they responded. So that would be different than I'm going  
13 to have sex and make everything okay, would it not?

14 A. Right.

15 Q. Okay. You mentioned that there were some  
16 results of IQ testing that you read about in Dr. Etcough's  
17 report?

18 A. Yes.

19 Q. You didn't perform any independent testing  
20 of your own, did you?

21 A. No.

22 Q. Those are based on his findings alone?

23 A. Yes.

24 Q. Nothing new has been done?

25 A. No.

1 Q. Did he describe to you what occurred on the  
2 day that he stabbed Debra Panos to death?

3 A. Yes.

4 Q. What did he say happened?

5 A. May I refer to my notes?

6 Q. Sure.

7 A. I'd asked questions about what happened on  
8 that day, and he said that there had been some kind of mix  
9 up with probation. That he was supposed to have been  
10 remanded, I guess, to substance abuse treatment program,  
11 and instead was released on his own recognizance.

12 Q. Did he tell you about that mix up, what it  
13 was exactly?

14 A. That is all, what I just said.

15 Q. He just said it was a mix up. He didn't say  
16 that he promised to report somewhere by 1:00 o'clock and  
17 he didn't?

18 A. No.

19 Q. No. He didn't say that. Okay. What  
20 happened next, according to him?

21 A. That he went to a friend's house after he  
22 left the jail. The friends had been incarcerated and  
23 wasn't there. He drank two large beers. That he called  
24 the house and she wasn't there.

25 Q. Did he say he called the house from the



1 friend's house or somewhere else?

2 A. He did not say.

3 Q. Okay.

4 A. That he called the house and thought she  
5 wasn't there. That he went over there, and he didn't have  
6 a key and was used to getting into the trailer through a  
7 broken window.

8 Q. When he said he got in through a broken  
9 window, did he explain why that was the case?

10 A. He said he didn't have a key, and he didn't  
11 believe she was there.

12 Q. Did he say she didn't want him to have a  
13 key, and she didn't want to let him in the house?

14 A. He did not.

15 Q. Okay. Did he say that was a normal way or  
16 just the way he was allowed to come in the house?

17 A. That's what was described to me.

18 Q. That was just sort of -- she didn't want him  
19 to have a key, but somehow, in her mind, it was fine if  
20 he'd keep coming in through the window?

21 A. I don't know.

22 Q. What happened -- what did he say happened  
23 next?

24 A. That he climbed through the window and she  
25 was there, that she met him there.

1 Q. What was her reaction, according to the  
2 Defendant when she saw him climbing through the window?

3 A. She helped him in through the window and  
4 according to him she was not wide-eyed with surprise or  
5 anything.

6 Q. She seemed happy to see him, did he say  
7 that?

8 A. He didn't say happy.

9 Q. Not wide-eyed, not surprised, not scared?

10 A. That's all he told me was she was not like  
11 frightened or wide-eyed to have him coming through the  
12 window.

13 Q. You didn't review the testimony of someone  
14 by the name of Mike Pollard, did you?

15 A. No.

16 Q. Would it surprise you that shortly before  
17 Debbie Panos arrived home she was shaking and in a ball on  
18 this person's couch at the prospect of the Defendant being  
19 out of custody or upon learning he was out of custody?

20 A. Would that --

21 Q. Would that surprise you that that's been  
22 described as what occurred in this case, that once she  
23 learned he was out of custody she was extremely fearful  
24 and shaking?

25 A. Well, I hadn't heard that before.

1 Q. That's quite a bit different, wouldn't you  
2 agree, then just acknowledging that he's climbed through a  
3 window?

4 A. Yes.

5 Q. What did he say happen next?

6 A. That he came in and began to argue with her  
7 about her seeing other men.

8 Q. And what did he say? How did he argue with  
9 her?

10 A. That he asked about these male acquaintances  
11 and that she was -- his description was, she was elusive  
12 with me, that she wouldn't be pinned down about whether or  
13 not there was anything going on. She sort of denied there  
14 was any physical relationship going on with the other  
15 men.

16 Q. So she answered him, but not with conveying  
17 information?

18 A. Which in his mind made him more agitated  
19 because he strongly suspected something was going on and  
20 wasn't hearing that.

21 Q. What room did he say this was occurring  
22 in?

23 A. He didn't.

24 Q. What did he say happened next?

25 A. That she started talking about the children,

1       that she came over and put her arm around him and started  
2       talking about let's do this, and let's do that, that we  
3       need --

4               Q.       When you say let's do this and let's do  
5       that, what are you talking about?

6               A.       Well, like get the kids and --

7               Q.       So she was suggesting to him -- according to  
8       the Defendant -- let's both leave here together and go get  
9       those kids?

10              A.       The picture I got was she was trying to say,  
11       look, this is going to be all right. Let's talk about  
12       this, let's talk about that.

13              Q.       That's what he told you?

14              A.       Yes. That she put her arm around him and  
15       according to him initiated sex, that she started kissing  
16       him and she initiated the contact.

17              Q.       And somehow, although he was concerned that  
18       she was seeing other people and that she had been vague  
19       about whether she was seeing other people, he responded to  
20       this, her initiation of sex?

21              A.       Well, again, this hinges on the idea that  
22       this was an MO in this relationship, that this is how this  
23       worked.

24              Q.       And that's based on what the Defendant told  
25       you?

1 A. Based on what the Defendant said.

2 Q. Go ahead.

3 A. So at any rate -- let's see, so -- yeah,  
4 exactly. He said that the relationship had been  
5 repeatedly healed by physical attraction. They weren't  
6 good communicators.

7 Q. Did he give an example of any time that  
8 occurred ever, that the relationship was healed by sex  
9 rather than the police being called or her running to a  
10 friend's house?

11 A. My sense was that that was ongoing in this  
12 relationship.

13 Q. So he never gave a specific instance ever in  
14 the whole two hours of this was a fight --

15 A. We weren't talking about this specifically  
16 for the whole two hours. But in the time I asked him  
17 that, he didn't give me an example.

18 Q. That's sort of the critical issue?

19 A. It became a critical issue, yeah.

20 Q. So I think we left off where he's telling  
21 you that she is initiated sex with him?

22 A. He goes on to describe that she suggested  
23 his favorite sexual position, that he became suspicious  
24 that she had had sex earlier.

25 Q. Why was he suspicious?

1           A.       In the report it says, because of the  
2           condition of her vagina and the smell.

3           Q.       So he said that he perceived a difference  
4           based on senses?

5           A.       Based on his senses. So he stops having sex  
6           with her, and she offers fellatio, which she then  
7           completes.

8           Q.       Can I stop you there. If he's so upset and  
9           so prone to be upset about her being unfaithful, why  
10          wasn't there an outburst or some discussion or something  
11          right when he discovered that there was physical evidence  
12          of her being unfaithful?

13          A.       I think there was in the sense that he  
14          stopped having vaginal intercourse with her.

15          Q.       And you said they started having oral sex?

16          A.       Again, if it goes back, it hinges on this  
17          idea that this is how she chronically appeased him in  
18          these situations where he would get upset.

19          Q.       Did he mention whether or not during or  
20          right after he discovered or thought he discovered that he  
21          felt different to him during sex that he had his hands on  
22          her throat?

23          A.       Did he say that to me?

24          Q.       Yes.

25          A.       No.

1 Q. He didn't talk about that. Did he talk  
2 about ever doing that during this encounter?

3 A. During this encounter, no.

4 Q. Never talked about having his hands on her  
5 throat holding her down on the couch?

6 A. No.

7 Q. Keep going.

8 A. All right. So he went to the bathroom to  
9 clean up, and she was on the phone calling the day care  
10 center at that point.

11 Q. Did he say why she was calling the day care  
12 center?

13 A. To arrange to pick up the children.

14 Q. Did he say whether or not she was asking the  
15 day care worker for help?

16 A. He didn't.

17 Q. Didn't talk about that, her whispering,  
18 please, help me.

19 A. No. They -- he was still upset and arguing,  
20 and I guess Debbie asked the person at day care to call  
21 her back. And when she called back it's my understanding  
22 that the scene was calm, that there wasn't active arguing,  
23 or she didn't hear arguing at that point.

24 Q. And according to the Defendant were things  
25 calm then?

1 A. He was still upset.

2 Q. So was he calm, or not calm? What does that  
3 mean?

4 A. I guess that means he's not calm.

5 Q. How was me not calm. Is he yelling at her?  
6 Is he throwing things at her? Is he hurting her?

7 A. I don't know the answer to that.

8 Q. Did you ask him about that? If he's still  
9 upset did you ask him how was it that you were displaying  
10 to Debbie Panos you were upset about her potentially being  
11 with someone else?

12 A. I asked him to describe for me what  
13 happened. This was his description of what happened.

14 Q. And he didn't give you any details about how  
15 he might have been upset or how he was displaying his  
16 dissatisfaction with her?

17 A. Other than to say that he continued to be  
18 upset with her, no.

19 Q. Then what did he say after he -- I think you  
20 said he had oral -- she asked him if she could give him  
21 oral sex, but then he's still upset afterwards when she is  
22 calling the day care.

23 What happened next?

24 A. Then what he told me was that they left to  
25 go pick up the kids, and when they got in the car he



1 noticed that things were askew. The car had been messed  
2 up. There were beer cans in the car. And there was -- he  
3 didn't tell me this, this was in the report that I  
4 received. What he told me was he found a sexually  
5 explicit letter.

6 Q. What did he say happened with the letter?

7 A. He went into a range.

8 Q. So he said he read the letter, then what  
9 happened?

10 A. He recalls dragging her back into the house,  
11 throwing her down inside the front door.

12 Q. When he was dragging her back in the house,  
13 how did he get her out of the car?

14 A. I don't know.

15 Q. Did you ask him?

16 A. No.

17 Q. So somehow he told you he dragged her back  
18 in the house. Did they go in the front door or the side  
19 door?

20 A. I believe it was the front door at the time.  
21 I didn't know there was a side door.

22 Q. There's two doors into the house. One is  
23 sort of the back door or porch area. One is the front  
24 door to the trailer. And he didn't say?

25 A. No.

1 Q. Did you ask him?

2 A. No.

3 Q. What did he say happened after he was back  
4 in the house?

5 A. That he through her down on the floor.  
6 That he blacked-out, he doesn't remember what happened  
7 after that. And when he nicked him or cut himself that  
8 somehow brought him back to the scene, and than he  
9 remembers looking down and seeing her in a pool of  
10 blood.

11 Q. Let me get this straight. He remembers  
12 leaving P&P, under a mix up. And he remembers going to a  
13 friend's house he went to. And he remembers drinking a  
14 beer there. And then he remembers going -- that he made a  
15 phone call to see Debbie. You remembered that. Then he  
16 remembers going through a window into the trailer where  
17 Debbie was. And that she discovered him and was not upset  
18 to see him.

19 A. Yes.

20 Q. And that they had some discussion and then  
21 there was a sexual encounter, he remembered all of that.

22 A. Yes.

23 Q. He remembered that she asked if she could  
24 give him oral sex?

25 A. Yes.

1 Q. And then he remembers that there was two  
2 calls to the day care, or one call out to the day care and  
3 one returned call. He remembered that.

4 A. Correct.

5 Q. And he remembered that the two mutually  
6 decided that they were going to leave and go to day care.  
7 He remembered that.

8 A. Yes.

9 Q. And he remembered getting in the car?

10 A. Yes.

11 Q. And he remembered he saw a note that upset  
12 him?

13 A. Yes.

14 Q. And he remembered that he got Debra Panos  
15 back inside the house?

16 A. Yes.

17 Q. But he doesn't remember how he killed her?

18 A. Yes.

19 Q. That was his statement to you?

20 A. Yes.

21 Q. But then he remembers right after she's  
22 laying there dead. Did he mention to you how many times  
23 he stabbed her?

24 A. No.

25 Q. Did he mention to you where he got the knife

1       that he used to stab her with?

2           A.       No.

3           Q.       Did he mention to you that he cleaned  
4       himself up in a bathroom inside the trailer after he  
5       stabbed her. Did he remember that?

6           A.       I believe he did say something about  
7       cleaning himself up later at this -- when he was taking  
8       the bicycle back. He made a statement about, as he was  
9       describing this, that I remembered I had to take the  
10      bicycle back because they would be pissed.

11          Q.       So he remembered that detail too?

12          A.       Yes. Which seems odd.

13          Q.       Yes, I agree with you there.

14          A.       Yeah.

15          Q.       Did he mention to you how Debra got a really  
16      large contusion or bruise or her ear?

17          A.       No.

18          Q.       Did he mention to you how she got an  
19      abrasion on her chin?

20          A.       No.

21          Q.       Did he mention to you how she got bruises  
22      all up and down her arms?

23          A.       No.

24          Q.       How about the bruise on her leg?

25          A.       No.

1 Q. How the stab wounds hit her groin area?

2 A. No.

3 Q. How about a stab would to her on her  
4 stomach?

5 A. He didn't mention any of those things.

6 Q. And just his statement, I don't remember any  
7 of that?

8 A. Yes.

9 Q. So that's the part where he blacks out?

10 A. I had another murder case where I was an  
11 expert where that same thing happened, so it does  
12 happen.

13 Q. That's a common thing?

14 A. Not common, but it happens. Certainly it  
15 happens with war veterans as well, they black out.

16 Q. You mentioned that he said what he did  
17 after, or he wakes up or come out of the blackness and  
18 notices that Debra Panos is in front of him and she's been  
19 injured. Did he mention whether or not he got on the  
20 phone to call for assistance for her?

21 A. No.

22 Q. That had to be pretty shocking to see her in  
23 that condition, right, this person he supposedly cared  
24 about?

25 A. Yes.

1 Q. Did he mention whether he ran for help, a  
2 next door trailer at all and tried to give her any kind of  
3 assistance?

4 A. I believe he said he didn't.

5 Q. Because she was obviously injured and he  
6 didn't know how it happened, right?

7 A. Well, I think he knew he had done it. He  
8 was on top of her and there was blood all over him.

9 Q. What did he say he did after that?

10 A. He said that he went to ride the bicycle and  
11 it had a flat tire, and so he couldn't take it back. And  
12 I believe he put the bicycle in the trunk of -- I believe  
13 it's her car, and than drove back over to take the bicycle  
14 to his friend's house.

15 Q. Did he say where he got the car keys from?

16 A. No.

17 Q. So he leaves in her car. He can remember  
18 that?

19 A. Yes.

20 Q. Where did he go?

21 A. Back to take the bicycle back to the people  
22 he had taken it from.

23 Q. Then what did he do?

24 A. He was in a panic. He saw that there was  
25 blood on the steering wheel. There was blood in the car.

1 He couldn't believe --

2 Q. He said there was blood inside the car?

3 A. I believe he did.

4 Q. On the steering wheel and where else?

5 A. Just around the inside of the car.

6 Q. A lot of blood?

7 A. He said there was quite a bit of blood.

8 Q. Okay.

9 A. And that he was surprised when the friends  
10 came out when he was going to give them the bicycle that  
11 they didn't notice that. That he found a rag and got  
12 moisture from the ground and wiped off the bicycle and  
13 returned it to them.

14 Q. He got moisture from the ground?

15 A. A pool of water that was nearby.

16 Q. Like an actual swimming pool?

17 A. I'm sure it's probably a puddle of water  
18 from the driveway or what have you.

19 Q. Then what did he do?

20 A. Wiped off the bicycle. He said that he --  
21 let me refresh his memory here. He was sobbing.

22 Q. Did he mention that he rented her car out to  
23 people at the apartment complex to make a little money for  
24 himself that night?

25 A. He did mention that he went to the apartment

1 complex where he knew there to be an abandoned apartment  
2 and that he got some drugs and alcohol. He didn't say how  
3 he accomplished that. And that he sat there and cried  
4 most of the night, realizing what happened.

5 Q. Not before he negotiated the rental of her  
6 car?

7 A. Well, again, that may have been the behavior  
8 on his part to acquire drugs to stop all of this.

9 Q. And the actually shoplifted a couple of  
10 items that night and went door to door selling them and  
11 negotiated about the price, not withstanding all this  
12 grief he had?

13 A. Yes.

14 MS. WECKERLY: Court's indulgence,  
15 please.

16 THE COURT: Okay.

17 MS. WECKERLY: Nothing further.

18 THE COURT: Mr. Patrick.

19 REDIRECT EXAMINATION

20 BY MR. PATRICK:

21 Q. Doctor, you did ask James about his previous  
22 history of domestic violence with Debbie?

23 A. I did.

24 Q. He was -- was he very forthcoming as to  
25 these events?



1 A. Yes.

2 Q. Do you have any reason to believe that he  
3 would not be telling you any specific events of domestic  
4 violence?

5 A. In fact he volunteered an event from his  
6 youth during that questioning.

7 Q. Now, as -- you didn't have a very long talk  
8 with James. You didn't have a chance to perform any  
9 tests. The test performed by Dr. Etcough, they would be  
10 more of what we call a neuropsych?

11 A. Correct.

12 Q. That is not what you do anyway?

13 A. Correct.

14 Q. Reviewing Dr. Etcough's report before you  
15 talked to James, was what he told you last night  
16 consistent with what Dr. Etcough mentioned he told him?

17 A. Yes.

18 Q. Did you find any inconsistencies between the  
19 two?

20 A. Just in a couple of items which were  
21 probably just inadvertent omissions. Like why he was in  
22 jail for example. One report says something to the affect  
23 he was there for shoplifting, and another report says he  
24 was there for domestic violence. And apparently he was  
25 there for both. So that sort of thing. But other than

1       that, I didn't find anything.

2               Q.       So you asked James about what you thought  
3       were perceived inconsistencies?

4               A.       Yes.

5               Q.       And he was forthcoming and explaining them  
6       to you?

7               A.       He was.

8               Q.       Now the day of the stabbing, it sounds like  
9       James -- the first thing he did when he got out of custody  
10      was go find drugs or alcohol or whatever?

11              A.       Yes.

12                      MS. WECKERLY: Objection. The witness said  
13      he went to go have a beer.

14                      MR. PATRICK: Well, alcohol is a drug.

15                      THE COURT: Well, there's a distinction  
16      between drugs and alcohol.

17      BY MR. PATRICK:

18               Q.       He went to get a couple large beers?

19               A.       Yes.

20               Q.       That fits in his whole drug-dependant  
21      personality?

22               A.       Yes.

23               Q.       It would be, as you testified that's what he  
24      does to alleviate pain?

25               A.       Yes.

1           Q.       Then I believe Ms. Weckerly asked you about  
2 any specific instances where Debbie would use sex to  
3 placate James instead of being involved in a domestic  
4 violence incident?

5           A.       Yes.

6           Q.       And you were aware they had three kids?

7           A.       Yes.

8           Q.       So it was very possible that those three  
9 times sex was used instead of domestic violence?

10           MS. WECKERLY: Objection. Calls for  
11 speculation.

12           MR. PATRICK: It calls for an opinion,  
13 your Honor.

14           THE COURT: I'll sustain the objection.  
15 It does call for speculation.

16 BY MR. PATRICK:

17           Q.       Were you aware if Debbie was ever pregnant  
18 besides those three times?

19           A.       According to James, she was pregnant six  
20 times.

21           Q.       Now also Ms. Weckerly went into great pains  
22 about every minute little detail of what happened the day  
23 James got out of custody. Was it your intent -- you --  
24 we'd already told you that James had been convicted of the  
25 murder, correct?

1 A. Correct.

2 Q. So we weren't asking anything about the  
3 actual murder because that's not what we're here for  
4 today.

5 MS. WECKERLY: Objection, leading.

6 THE COURT: Well, I'm going to overrule  
7 the objection. You can answer the question.

8 THE WITNESS: No, I was told to basically  
9 look at the nature of their relationship and form an  
10 opinion about that based on the information I was given  
11 and my interview with James.

12 BY MR. PATRICK:

13 Q. So was it important to you to know every  
14 minute detail of what happened at that point in time?

15 A. I believe that it had been stipulated that  
16 he had killed her.

17 Q. So you weren't asking James for every minute  
18 details of the killing?

19 A. Correct.

20 Q. Now, the story that James gave you about  
21 when he came in through the window, and there was some  
22 discussion, some sex, more discussion, more sex. That  
23 really fits into our whole domestic violence circle about  
24 the appeasement and the fact that Debbie and James would  
25 use sex instead of talking to solve problems?

1 MS. WECKERLY: Objection, leading.

2 THE COURT: I'll sustained the objection  
3 at this point.

4 MR. PATRICK: You may answer.

5 THE COURT: No.

6 THE WITNESS: No I may not.

7 MR. PATRICK: My fault.

8 BY MR. PATRICK:

9 Q. You testified that James had a low IQ?

10 A. Yes.

11 Q. And because of that they had a physical  
12 relationship?

13 A. Well, they didn't have a relationship based  
14 on good verbal communication, so it was more physical,  
15 yes.

16 Q. And would -- what -- how James described the  
17 actions between the two of them when he came in the  
18 window, does that make sense to you?

19 MS. WECKERLY: Objection, vague.

20 MR. PATRICK: All right.

21 THE COURT: Rephrase that.

22 BY MR. PATRICK:

23 Q. As you explained the relationship of using  
24 sex instead of words to solve their differences, did what  
25 James describe to you that happened when he came in

1 through that window, is that consistent with your --

2 A. It's consistent with the rest of the data I  
3 have, yes.

4 Q. Now, you were starting to answer a question  
5 about people blacking out and a lot of work that you have  
6 done with the veterans?

7 A. Yes.

8 Q. Would you like to finish that and tell us  
9 about that other case, your work with veterans?

10 MS. WECKERLY: Objection, relevance.

11 THE COURT: I'll sustain the objection as  
12 to bringing in the issue of another case. I don't know  
13 exactly what you are going into with regard to veterans.  
14 You can ask another question.

15 BY MR. PATRICK:

16 Q. Could you describe the condition of the fact  
17 that James blacked-out and doesn't remember everything  
18 that happened that day?

19 A. How would that make sense psychologically  
20 speaking?

21 Q. Yes.

22 A. Disassociation, which is common in traumatic  
23 instances such as war, other kinds of trauma. Without  
24 going into details about another case, there -- I was  
25 involved in one where a person had no memory of the

1 crime.

2 MS. WECKERLY: Your Honor, I'd object at  
3 this point in time.

4 THE COURT: I don't want you to go into  
5 describing other cases about things. Describe what  
6 applies to Mr. Chappell and what your opinion is.

7 THE WITNESS: All right.

8 So I'm familiar with disassociation  
9 working with a number of people who have been through  
10 traumatic situations, war, and so forth, where sometimes  
11 they don't remember. In fact, that is one of the  
12 diagnostic criteria for post traumatic stress is that they  
13 may have memories of events that happened.

14 BY MR. PATRICK:

15 Q. Is that necessarily a conscious decision or  
16 not conscious decision?

17 A. There is a difference between suppression  
18 and repression.

19 Suppression is where someone says I don't want to  
20 think about that, so I'm not going to think about it.  
21 I'll put it out of my mind.

22 Repression is thought to be an unconscious  
23 mechanism that happens to a person. They don't  
24 intentionally forget it it just isn't there because they  
25 can't stand having the idea in their mind.

1 Q. What do you know about James in your  
2 opinion, which would describe him?

3 A. It would be more likely that it would be  
4 repression on his part.

5 Q. Then after the killing of Debbie, James went  
6 and found drugs?

7 A. Correct.

8 Q. Now, going back to using drugs as a way to  
9 escape the pain and reality, is that -- do you find that  
10 consistent with James' personality?

11 A. Yes.

12 Q. Is it -- would you say that he would do  
13 whatever it would take to find money to buy drugs?

14 A. I don't know how far he would go, but the  
15 records suggest that he would go pretty far.

16 Q. And that's not surprising to you?

17 A. No.

18 MR. PATRICK: That's all, your Honor.

19 THE COURT: Ms. Weckerly.

20 MS. WECKERLY: Thank you, your Honor.

21 RECROSS-EXAMINATION

22 BY MS. WECKERLY:

23 Q. You read Dr. Etcough's report?

24 A. Yes.

25 Q. You agreed with his findings and his



1 analysis?

2 A. Yes.

3 Q. Are you aware that he has also testified in  
4 this case about this sort of timing of memory loss or  
5 suppressing the exact time of the murder is an easy way  
6 out for people to explain their actions?

7 A. It certainly could be.

8 Q. And it could indicate that the person is not  
9 being entirely candid?

10 A. Yes.

11 Q. And it could also indicate that they're  
12 selectively remembering things for their own benefit?

13 A. Yes.

14 Q. And that could be occurring in this case, as  
15 well?

16 A. Yes.

17 Q. In your conversations with the Defendant?

18 A. Yes.

19 MS. WECKERLY: Thank you.

20 THE COURT: Mr. Patrick, anything  
21 further.

22 MR. PATRICK: No, your Honor.

23 THE COURT: Thank you.

24 Hold on, sir. All right. Grab those,  
25 please, sir.

1 Counsel approach.

2 (Discussion held at the bench.)

3 THE COURT: First off, in your opinion do  
4 you think that Mr. Chappell blacked-out?

5 If you have enough information to answer  
6 take question.

7 THE WITNESS: I would be more on the side  
8 that they did, because I don't believe that he's  
9 sophisticated enough to have constructed the rest of the  
10 story that he told me about that time, about -- there was  
11 a consistency to what he said that fits with that.

12 Although I have to, in all honesty, I  
13 don't have enough data to conclusively say he blacked-out.  
14 There is testing that could be done that might establish  
15 that, but I haven't done it.

16 THE COURT: Secondly, in this style of  
17 relationship is it possible that sex would be used to heal  
18 the relationship after the police were called on domestic  
19 violence?

20 THE WITNESS: Absolutely. That is a  
21 pretty frequent occurrence.

22 THE COURT: Thirdly, did Mr. Chappell  
23 mention whether or not Debbie was alive or dead after the  
24 black-out?

25 THE WITNESS: He -- his words were, she

1 was -- I knew he was very, very badly injured. That  
2 sounded like denial to me.

3 THE COURT: All right. Mr. Patrick, do  
4 you have any questions based on mine?

5 MR. PATRICK: No, your Honor.

6 THE COURT: Ms. Weckerly.

7 MS. WECKERLY: Just one.

8 BY MS. WECKERLY:

9 Q. You're aware that Dr. Etcough testified that  
10 is was his opinion that the Defendant did remember what he  
11 did?

12 A. No.

13 Q. He was asked --

14 MR. SCHIECK: Objection, your Honor. This  
15 is outside the facts of evidence of this point. Dr.  
16 Etcough will be here.

17 MS. WECKERLY: Well, he was asked if he  
18 reviewed that.

19 THE COURT: Overruled. Answer the  
20 question.

21 BY MS. WECKERLY:

22 Q. He was asked in a prior proceeding by the  
23 prosecutor, "but you're also aware of the opinion that to  
24 some extent he probably did remember what he did?

25 And the answer on page 66 from Dr. Etcough's

1 testimony was, yes.

2 A. Yes.

3 Q. So he did say that?

4 A. In his opinion, yes.

5 MS. WECKERLY: Thank you.

6 BY MR. PATRICK:

7 Q. There was nothing there that specifically  
8 said he remembered what -- that he didn't black-out, just  
9 that he may have not remembered -- what -- he  
10 remembered -- James did tell you he remembered a great  
11 deal about that day, correct?

12 A. Yes.

13 Q. So what -- that question doesn't necessarily  
14 relate to what we're talking about those black-outs?

15 A. Sorry.

16 THE COURT: Which question are you  
17 referring to?

18 BY MR. PATRICK:

19 Q. Ms. Weckerly was making the point that what  
20 Dr. Etcough said was that James didn't black-out, but you  
21 don't know -- we need to read the rest of the testimony  
22 for you to make --

23 A. To my knowledge no tests were done that  
24 might specifically speak to that question. So he was  
25 expressing an opinion not necessarily based on testing

1 results. This kind of trauma is horrible under any  
2 circumstances. When a perpetrator might realize what  
3 they've done, I don't imagine anyone would want to  
4 remember having committed that act.

5 So the question is is this person intentionally  
6 putting this out of his mind, I just don't want to  
7 remember this, or is this just something that makes it all  
8 go away. Does the person go into a dissociative state  
9 during the actually killing, and then come back to their  
10 senses again.

11 Again, that doesn't take away responsibility for  
12 the death, but it may mean that they're not able to report  
13 the events that occurred during the actual stabbing and so  
14 forth.

15 Q. As a licensed psychologist, is your opinion  
16 exact same of every other licensed psychologist that you  
17 know?

18 A. No.

19 MR. PATRICK: Thank you. That's all I  
20 have.

21 MS. WECKERLY: Nothing else.

22 THE COURT: Doctor, I appreciate your  
23 time. You're excused.

24 THE WITNESS: Thank you.

25 THE COURT: We'll go ahead and take a

1 lunch recess.

2 JURY ADMONITION

3 During the recess, ladies and gentlemen,  
4 you are admonished not to converse among yourselves or  
5 with anyone else, including, without limitation, the  
6 lawyers, parties and witnesses, on any subject connected  
7 with this trial, or any other case referred to during it,  
8 or read, watch, or listen to any report of or commentary  
9 on the trial, or any person connected with this trial, or  
10 any such other case by any medium of information  
11 including, without limitation, newspapers, television,  
12 internet or radio.

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

16 We'll be in recess. Be back at 2:15 and  
17 we'll get started.

18 Thank you.

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CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

\* \* \* \* \*

I, the undersigned certified court reporter in and for the  
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the  
time and place therein set forth; that the testimony and  
all objections made at the time of the proceedings were  
recorded stenographically by me and were thereafter  
transcribed under my direction; that the foregoing is a  
true record of the testimony and of all objections made at  
the time of the proceedings.



Sharon Howard  
C.C.R. #745

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## AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the  
proceeding

State v. Chappell,  
filed in District Court Case No. C-131341,

☒ Does not contain the social security number of any  
person.

☐ Contains the social security number of a person as  
required by:

(A) NAC 656.350

-or-

(B) For the administration of a public program or for  
an application for a federal or state grant.

Sharon Howard

Sharon Howard, CCR #745

3/15/07

Date

# EXHIBIT 173

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1 CASE NO. C131341  
2 DEPT. NO. III

3 STATE OF NEVADA  
4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,  
6 Plaintiff,  
7 vs. CASE NO. C131341  
8 JAMES M. CHAPPELL  
9 Defendant. AFTERNOON  
10 SESSION  
11 **ORIGINAL**  
12 **MAR 16 2007**  
13 **CLERK OF THE COURT**  
14 **BY Carol Donahoe**  
15 **CAROL DONAHOO DEPUTY**  
16 BEFORE THE HON. DOUGLAS W. HERNDON, DISTRICT JUDGE  
17 THURSDAY, MARCH 15, 2007  
18 2:39 p.m.

18 APPEARANCES:  
19 For the State: CHRIS J. OWENS, Esq.  
20 Chief Deputy District  
21 Attorney  
22 PAM WECKERLY, ESQ.  
23 Deputy District Attorney  
24 For the Defendant: DAVID M. SCHIECK, ESQ.  
25 CLARK W. PATRICK, ESQ.  
Special Public Defenders

Reported by: CHERYL GARDNER, RMR-RPR  
CCR NO. 230

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1 LAS VEGAS, CLARK COUNTY, NV, THURS. MAR 15, 2007  
2 2:39 p.m.  
3 -oOo-  
4 THE COURT: All right. Folks, welcome  
5 back. We will be back on the record in C131341,  
6 State of Nevada versus James Chappell. The record  
7 will reflect the presence of Mr. Chappell with his  
8 attorneys, the State's attorneys. We are in the  
9 presence of the jury. It's my understanding that  
10 we are going to call another witness out of order  
11 for the defense case in chief, right?  
12 MR. SCHIECK: That's correct, you  
13 were.  
14 THE COURT: Who would that be?  
15 MR. SCHIECK: We would call Dr. Todd  
16 Grey, Your Honor.  
17  
18 TODD CAMERON GREY, M.D.,  
19 having been first duly sworn to testify to the  
20 truth, the whole truth and nothing but the truth,  
21 was examined and testified as follows:  
22  
23 THE CLERK: State and spell your name  
24 for the record.  
25 THE WITNESS: Todd Cameron Grey,

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1 G-R-E-Y.  
2 THE COURT: Mr. Schieck.  
3 MR. SCHIECK: Thank you, Your Honor.  
4  
5 DIRECT EXAMINATION  
6 BY MR. SCHIECK:  
7 Q. Dr. Grey, could you tell us how you're  
8 currently employed.  
9 A. I'm the chief medical examiner for the  
10 state of Utah.  
11 Q. And how long have you held that  
12 position?  
13 A. I've been the chief medical examiner  
14 since 1988.  
15 Q. And could you give us a little bit of  
16 your educational background.  
17 A. Certainly. I received an  
18 undergraduate degree in 1976 from Yale University.  
19 I received my medical degree from Dartmouth Medical  
20 School in 1980. I was trained in anatomic  
21 pathology at the University of California in San  
22 Diego and then trained in forensic pathology at the  
23 Dade County Medical Examiner's office in Miami,  
24 Florida.  
25 Q. And are you board certified in any

1 areas?

2 A. Yes. I'm board certified in anatomic  
3 and forensic pathology.

4 Q. Okay. And what is forensic pathology?

5 A. Forensic pathology is a subspecialty  
6 of medicine focused on the investigation and  
7 examination and understanding of sudden and  
8 unexpected death.

9 Q. And how long have you been board  
10 certified in forensic pathology?

11 A. I was board certified in 1986.

12 Q. So over 20 years now?

13 A. Yes.

14 Q. And as in your position as medical  
15 examiner for the state of Utah, what are your  
16 duties?

17 A. The main duty I have is to work as a  
18 forensic pathologist examining people whose deaths  
19 fall under the jurisdiction of the medical  
20 examiner's office in coming to a conclusion about  
21 how they died.

22 Q. And have you been called upon to  
23 testify in courts of law concerning the areas as a  
24 pathologist in forensic pathology?

25 A. Yes, I have.

1 Q. On approximately how many occasions?

2 A. Several hundred.

3 Q. And in what jurisdictions?

4 A. Mostly in Utah but I've testified  
5 around the west, so Nevada, Arizona, California,  
6 Wyoming, Florida, a number of different  
7 jurisdictions.

8 Q. And so we're clear, even though you're  
9 employed by the state of Utah as the Utah state  
10 medical examiner, you're allowed to do private  
11 contract cases.

12 A. Yes. I take vacation time and work  
13 privately on some cases.

14 Q. And that's allowed in your employment?

15 A. Yes.

16 Q. And you in fact were contacted or  
17 retained by our office with respect to the case of  
18 James Chappell.

19 A. That's correct.

20 Q. Were you provided with certain  
21 information?

22 A. Yes.

23 Q. Okay. Can you tell the ladies and  
24 gentlemen of the jury what you were provided to  
25 review with respect to this case.

1 A. Certainly. I was given an autopsy  
2 report concerning the examination of Deborah  
3 Panos. I also received investigative reports from  
4 the Clark County Coroner's Office. I reviewed  
5 photographs taken of Ms. Panos's body at the scene  
6 of death as well as at the autopsy; a transcript of  
7 testimony of the doctor who did the autopsy on  
8 Ms. Panos at trial as well as transcripts of  
9 closing arguments by the prosecution and defense in  
10 the original trial.

11 Q. And were you offered the opportunity  
12 to view anything else you felt necessary to review  
13 by our office?

14 A. For the question that I was asked to  
15 answer I didn't think I needed anything more, no.

16 Q. And what question were you asked to  
17 answer?

18 A. The question I was specifically asked  
19 to consider was whether there was any evidence that  
20 would support the State's contention that the  
21 victim was sexually assaulted during her killing.

22 Q. And you indicated that you had  
23 reviewed the autopsy report, reports from the  
24 coroner's office, as well as crime scene and  
25 autopsy photographs.

1 In making that review, were you able  
2 to determine whether or not a cause of death was  
3 determined?

4 A. Yes.

5 Q. Okay. And what was the cause of death  
6 based on those reports?

7 A. It was very clear that Ms. Panos died  
8 as a result of multiple stab wounds.

9 Q. And you did not obviously perform the  
10 autopsy.

11 A. No, I did not.

12 Q. You're basing your opinions solely  
13 upon what you've been provided in the report of the  
14 previous pathologist.

15 A. That is correct.

16 Q. In forming your opinion, what factors  
17 did you take into account on the question that was  
18 posed to you?

19 A. The information that I considered was  
20 first a finding of DNA material from the suspect  
21 recovered from the vagina of the victim. I also  
22 considered the autopsy report and specifically any  
23 descriptions of the vaginal area, the perineum, or  
24 the anal region. I also considered the autopsy  
25 photographs of the victim's body and the injuries

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1 depicted there.

2 Q. In reviewing those items, did you find  
3 any physical evidence that would support sexual  
4 assault during the course of the homicide?

5 A. No.

6 Q. Did you note an absence of any such  
7 findings?

8 A. Yes.

9 Q. What findings would you normally be  
10 looking for in making such an assessment?

11 A. The things you would look for first,  
12 is there any direct trauma on the vagina, the  
13 perineum, or the anus, and in this case there was  
14 neither a description of any such injuries nor  
15 documentation of that injuries photograph -- such  
16 injuries photographically.

17 I would also look for any evidence of  
18 injuries in areas that might be damaged if the  
19 person was trying to gain access to the vagina or  
20 anus, so scratches on the inner surfaces of the  
21 thighs, something on the buttocks like they would  
22 be pulled apart. I saw, again, saw no evidence of  
23 any such injury.

24 Q. Are you familiar with Dr. Sheldon  
25 Green and his work?

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1 A. Yes.

2 Q. Do you have an opinion as to the  
3 thoroughness of his work?

4 A. He is an experienced and competent  
5 forensic pathologist.

6 Q. Did his report denote any such  
7 findings?

8 A. No.

9 Q. If such findings were present, would  
10 it be something that a competent pathologist would  
11 note in his report?

12 A. Certainly.

13 Q. Is it something that's likely to be  
14 missed during an autopsy done by a competent  
15 pathologist?

16 A. I would hope not.

17 Q. When you say you would hope not, is  
18 there a protocol?

19 A. Any murder victim, female murder  
20 victim, you are certainly going to want to look at  
21 those areas of the body to see if there is any  
22 evidence that would support such a contention.  
23 That would be very standard practice for any  
24 experienced and competent pathologist.

25 Q. In addition to the autopsy photographs

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1 and the findings from the autopsy, you said you  
2 also reviewed crime scene photographs, photographs  
3 taken prior to the autopsy.

4 A. That is correct.

5 Q. Was the victim depicted in those  
6 photographs?

7 A. Yes. I saw a number of photographs  
8 that showed Ms. Panos's body at the scene of death.

9 Q. Anything about those photographs that  
10 factor into the opinion that you've rendered to the  
11 question asked?

12 A. Yes.

13 Q. And what is that?

14 A. The photographs of the victim at the  
15 scene show her lying on her back on the floor with  
16 bloodstains around her. She is completely  
17 clothed. She has a top on. She has her pants on.  
18 The only thing which seems to have been taken off  
19 the body is she is not wearing shoes.

20 The clothing is on her in a way that  
21 is what you would describe as conventional like  
22 somebody who would normally dress would appear if  
23 they were lying there.

24 Q. Did you note the presence or absence  
25 of any knife markings or wounds to the body that

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1 corresponded to the clothing?

2 A. Yes.

3 Q. And what did you note in that respect?

4 A. The pants and underpants had a stab  
5 wound in the right groin region and there was a  
6 surrounding bloodstain corresponding to that stab  
7 wound. This injury to the clothing is directly  
8 over an area of stabbing injury on the body.

9 Q. Okay. What does that indicate?

10 A. That would indicate that the pants  
11 were worn again in a conventional fashion. They  
12 were not twisted so that they were pulled out of  
13 normal position. They were present, pulled up  
14 around the waist when the stab wound was inflicted  
15 in the groin region.

16 Q. Were you able to form an opinion from  
17 the items that you reviewed as to whether or not  
18 the stab wounds appeared to be contemporaneous in  
19 nature?

20 A. All of the injuries that were  
21 described in Dr. Greens's report as well as  
22 photographically appear to be fresh injuries. None  
23 of them in his report appear to be post-mortem  
24 injuries so that somebody was killed, some time  
25 went by, and then another injury was inflicted.