

Evidence of Prenatal Alcohol Exposure

Review of the social history questionnaire Mr. Chappell completed at Dr. Etcoff's request indicates Mr. Chappell informed the psychologist that his mother probably drank and used drugs, and there is a notation that Sharon Axam (maternal aunt) confirmed this information. Counsel in 1996 and 2007 also had the following information in their records concerning Shirley's drug and alcohol use:

- Police were called regarding **child neglect allegations** against the birth mother.
- Mr. Chappell and his siblings went to live with their maternal grandmother Clara Axam one year prior to their mother's death because "there was a neglect referral to the court because of her **ongoing heroin problems**." [William Roger Moore Trial Testimony, 10/22/96]
- When Mr. Chappell was approximately two-and-a-half years old, his mother was **struck and killed** by an Ingham County police cruiser **while walking on I-496 at 4:25 am**. [Newspaper article dated 8/24/73; Death Certificate Photo of Shirley Chappell]

Thus, at the time of trial in 1996 and resentencing in 2007, counsel had information that the birth mother drank alcohol and used drugs.

It has been my forensic experience that information such as the above typically constitutes a "red flag" for possible prenatal alcohol exposure and FASD in the eyes of legal professionals. Had trial counsel investigated this information, witnesses would have provided convergent evidence of prenatal alcohol exposure as they did in recent declarations obtained by current counsel:

- *William Richard Chappell, Sr.* (possible father): "Shirley was a heavy drinker from the time that we met in 1966 until her death in 1973. Shirley regularly drank with her best friend, Barbara Wells, and others. I frequently saw Shirley drunk and smelled alcohol on her breath. Shirley drank alcohol throughout her entire pregnancy with James."
- *James Wells* (possible father): In 1968, Shirley began using heroin. She abused drugs on a daily basis throughout her entire pregnancies with both Jimmy and Myra. Wells did not recall her visiting doctors or receiving prenatal care during the pregnancies.
- *William Richard Chappell, Sr., and James Wells*: While pregnant with James, Shirley used heroin daily, smoked one to one-and-a-half packs of cigarettes daily, and drank alcohol each week, especially heavily on the weekends.
- *Rose Wells-Canon* (family friend): In 1968, Shirley was introduced to James Wells, and they developed a relationship. James was already abusing drugs, and Shirley soon abused drugs with him.
- *Myra Chappell-King* (younger sister): Adults told her that her mother Shirley

abused heroin and alcohol during all of her pregnancies except for LaPriest.

- *Georgette Sneed* (mother's friend): Around the time of her pregnancy with her son James, Shirley "was a junkie. Besides abusing heroin, Shirley also drank alcohol."
- *William Earl Bonds* (friend): "Shirley's lifestyle did not change at all during her pregnancies. She continued to abuse heroin and cocaine on a daily basis while she was pregnant with James. She also continued to engage in prostitution whenever she was short on cash. Shirley also continued to drink alcohol during her pregnancy with James but not as frequently as she abused other drugs. Shirley drank alcohol a couple times a week, as far as I recall, but not on a daily basis because it was not her drug of choice. Shirley liked hard liquor and usually had several drinks in one sitting when she drank, even while pregnant. Shirley typically abused heroin and cocaine on the occasions when she drank alcohol."
- *William Moore* (probation officer): "James had a very rough start in life. He was born to an alcohol and heroin addicted mother. Drugs and alcohol were a problem for James's aunts, uncles, and other family members as well. A year before her death, it was determined that his mother's substance abuse problems had caused her to neglect her children, so James and his siblings were removed from her custody and placed in the home of their maternal grandmother, Clara Axam. James' mother was killed when he and his siblings were just toddlers and babies, so James' grandmother had to assume permanent custody and raise them by herself. James and his siblings had different fathers who were all absent from the children's lives. James and his siblings had no male role models in or outside the home. James' deficits and behaviors were typical of the other children I have supervised who were prenatally exposed to alcohol and drugs."
- *Sharon Axam* (maternal aunt): "Shirley was a drug addict by the time she became pregnant with James, and it is my understanding that she abused heroin throughout her pregnancy with him."

The information Sharon Axam provided above is particularly notable as she testified during trial in 1996. Had she been asked at the time of her testimony, Sharon Axam could have informed the court regarding Shirley Chappell's use of drugs during the pregnancy.

In his psychological evaluation report (9/28/96), Dr. Etcoff did not mention Shirley Chappell's heroin use, likely because trial counsel did not provide information regarding her heroin use to Dr. Etcoff prior to his evaluation.

Evidence of Central Nervous System Dysfunction

In the 41 pages of cumulative school records that they obtained and provided to Dr. Etcoff in 1996, counsel at both trials had unambiguous documented evidence their client had *chronic* developmental delays, severe learning disability, and pervasive adaptive dysfunction *prior to the onset of his substance abuse* during his teen years, which in combination with their expert's determination that the communication and arithmetic

disorders had a *neurological origin* provided compelling evidence of likely brain damage.

Of particular note, within the cumulative school records file were some records that described Mr. Chappell's functioning at age ten. The records were generated during a referral for special education services. A School Social Work Evaluation report (4/28/80) and accompanying records contained an abundant amount of information regarding early developmental delays and learning disability, showing Mr. Chappell's functional problems had emerged very early in childhood and not only preceded his own substance abuse in adolescence but also preceded many of the adversities and problems that occurred during his teen years including the death of his favorite uncle Anthony and witnessing a murder on the block where he lived.

The 1980 social work report also contained important information about Mr. Chappell's school history up to that point. For example, the report indicated he was initially referred for special education services on June 13, 1977, which was the end of his first grade school year. At that time, his teacher reported: "I have talked to the grandmother several times and a conference was held with the principal, teacher and grandmother. James has a wetting problem and he sucks his fingers." [This information indicated a developmental delay in practical daily living skills.] Mr. Chappell's teacher also reported in 1977: "His actions and reactions are very slow. He asks unrelated questions and will not respond when spoken to." [This information suggested slow processing speed (i.e., one of the cognitive deficits Dr. Connor found in his neuropsychological testing) and developmental delay in communication (consistent with Clara Axam's testimony of delayed speech.)]

At the time of the initial referral for special education services in 1977, Mr. Chappell was functioning at first grade level even though he was in second grade. [This information indicated a possible learning disability.] The social worker noted that since then, he had been receiving numerous special education services "from the building (IEP) team, reading teacher, instructional aides, school counselor, school nurse (received eye glasses), compensatory education, the discipline code and conferences with the grandmother."

The special education referral in 1980 included a Multidisciplinary Team Evaluation Report (4/28/80), which summarized major areas of concern for Mr. Chappell at the time: (a) immaturity involving disruptive behavior and aggressive responses (i.e., social delay), (b) "easily distracted" (an attention control problem similar to the deficit Dr. Connor found in his neuropsychological testing), and (c) "low academic achievement."

The 1980 referral also included an Educational Evaluation (4/4/80), which contained test results. Performance on the Durrell Analysis of Reading Difficulty indicated Mr. Chappell was a year behind age expectations in Oral Reading, Silent Reading, and Listening Comprehension (i.e., third grade equivalence in all three areas). On the Key Math Diagnostic Arithmetic Test, test scores fell mostly at the second grade level (i.e., two grades behind). Regarding Behavioral Adjustment, the record indicated: "On a

one-to-one, James was extremely quiet. He would frequently have periods where he would simply sit and stare. He would do this until I requested he re-attend. Sometimes, he would hear and process questions, and sometimes it seemed as though he simply did not hear me at all. He sat in a very rigid manner and did not fidget." The report concluded: "James seems to be a youngster with good basic abilities who has severe difficulty maintaining his attention on the external world."

The social worker's report in 1980 contained developmental information from grandmother Clara Axam, who omitted any negative information about her daughter Shirley and also tended to minimize negative information about her grandson James. For example, Clara Axam reported there were no problems at birth or during the pregnancy with James, and she tried to downplay her grandson's developmental delays. For example, she said he was "slow" doing his chores, but she felt this was "normal." She indicated that by fourth grade, her grandson had begun playing with the other children in the neighborhood but did acknowledge that previously "he did not join in their games but stood on the sidelines" (i.e., extreme social delay). She characterized her grandson's early development as "normal," attributing his lack of speech to "the loss of his mother," although even before his mother's death it was clear that any child who was not speaking by age two was considerably delayed in speech. When his mother died, Mr. Chappell had been living with his grandmother since 18 months of age due to his mother's drug addiction and child neglect. Given Shirley Chappell's documented issues, it is unlikely she regularly visited her children in the year preceding her death. Therefore, viewed from the perspective of information counsel had in their possession in 1996 and 2007, Clara Axam's explanation for her grandson's delayed speech was improbable.

The 1980 school social worker report indicated that after entering kindergarten, Mr. Chappell began to "relate" to his teacher and some of the other children, but he typically did not play with his classmates, "usually playing by himself or standing on the sidelines." ["Playing by himself" is parallel play, which at age five/six (i.e., his age during kindergarten) was another sign of social delay.]

The 1980 social worker report noted that none of the interventions that had been tried with Mr. Chappell were effective, as his behavior seemed to be "deteriorating." He was "in constant conflict with several of the other students" and often had to be "isolated" to keep him away from the other boys so he could get his work done. Concluding her 1980 report, the social worker stated: "James has had a great deal of difficulty adjusting to school, both socially and academically. I feel that he has a great deal of difficulty forming meaningful relationships and recommend that he be placed in a smaller classroom situation and should receive individual therapy outside the school setting."

A School Psychological Evaluation (4/16/80) provided additional information relevant to the current legal matter. For example, the school psychologist indicated Mr. Chappell did not communicate well with the teachers or the aide and often had "great difficulty expressing himself" along with "long periods of silence even in a one-to-one

situation" (i.e., another sign of developmental delay in communication). The school psychologist provided no reason for the developmental delay and instead noted its inconsistency with Mr. Chappell's apparently average intelligence: "There are indications that this boy has a basically pretty good intellectual ability, but is functioning at a dull normal level." Based on the Bender-Gestalt and the House-Tree-Person test, the school psychologist concluded Mr. Chappell had interpersonal problems (i.e., another aspect of social delay) and "a real split here between his feelings and his cognitive awareness." The school psychologist concluded his report with the following summary and recommendation: "James is a ten-year-old boy who at the present time is functioning in the low average level of intellectual ability where basically he seems to have good intellectual capacity. He does not relate. He is very withdrawn and uses withdrawal as a defense. He has a poor self-concept and there seems to be some rather brittle intellectual controls, which will not carry him through in terms of relating to other people. It is recommended that an IEPC be called to decide what services should be offered to James."

Progress reports in elementary school, which involved special education supports from second grade on, contained the following information:

- First Grade (1975/76): Grades included Below Satisfactory in Reading and Spelling and Needs Improvement in Math, Citizenship, Work Habits, and Effort. The teacher commented: "James needs (to) settle down and do his own work. He is having (trouble) in Reading and Math..." At the end of the year, Mr. Chappell received Needs Improvement in Math as well as Citizenship, Work Habits, and Effort. Reading Readiness was rated as Improving. His teacher wrote: "James needs to work on addition & subtraction facts. He also needs to read books over the summer. James is having trouble with missing addends ($3+X=7$)."
- Second Grade (1977/78): Grades were mostly Satisfactory in Reading, although some skills were marked "Needs Improvement." Many skills in Language Arts and Spelling needed improvement. Math grades were mixed (Satisfactory and Needs Improvement). Teacher remarks indicated ongoing self-regulation problems: "James is often reminded to get busy. Often, given extra time to complete work – especially reading packet. Often talks with those around him." Second Quarter comments were: "James varies between working hard and being very lax, especially with reading work." Third Quarter comments were: "James changes moods very quickly, needs to rely on himself more." Fourth Quarter comments were: "James needs to buckle down. Needs to practice reading as much as possible. Also needs to continue to practice math (adding and subtracting with borrowing – and carrying, telling time, multiplying..."
- Third Grade (1978/79): Grades in Reading and Language Arts were mostly Satisfactory, with a couple Improving areas. In Math, grades indicated Improving at the beginning of the year and generally Satisfactory by the end of the year. Teacher comments on 11/21/78 were: "When James works he does a nice job. He is easily distracted and is late getting his work in on time." Comments on 1/26/79

were: "James is still inconsistent in his work habits. When he is thinking his math skills have shown improvement. Third Quarter comments were: "James is showing growth in Reading and Math. He is having difficulty in classroom behavior." On 6/13/79, comments were: "James needs to work on listening when others are talking. I think he has learned quite a lot this year."

- Fourth Grade (1979/80): Grades across the school year reflected many skills in Reading and Language Arts that Needed Improvement. In Math, most skills Needed Improvement. His teacher wrote: "James is not applying himself! He has real difficulty in Math but should be doing much better in Reading. Reminding him to wear his glasses is important. He is very disruptive in class & needs to be encouraged to be more respectful and considerate – as I know he can be with your kind help." A note in February 1980 indicated: "James is so disruptive to himself and others that it is difficult to assess his progress. Suspended for disruptive behavior Feb. 15, 1980." A note in April 1980 indicated: "James is not improving."
- Fifth Grade (1980/81): Grades were mostly Satisfactory marks in Reading skills and mostly Improving in Language Arts. Math grades were mixed. On March 27, 1981, his teacher wrote: "James needs to exhibit self-control in the classroom."
- Sixth Grade (1981/82): The progress report indicated a fourth grade reading level (i.e., two grade levels below age expectations). His teacher wrote: "Needs to improve with respect towards adults. Needs to concentrate on completing assignments on time." Mr. Chappell was promoted to Seventh Grade.

Although progress reports in seventh and tenth grades showed increasing learning difficulties, despite special education services throughout junior high and into high school, by that point in time Mr. Chappell had started abusing drugs, which likely had some influence on his functioning. His self-regulation problems became increasingly severe with each year of advancing age.

Given the 41-page cumulative education file containing ample evidence of Mr. Chappell's early developmental delays, special education services, and serious functional/behavioral problems prior to the onset of his substance abuse in adolescence, it is perhaps relevant that trial counsel in 1996 and resentencing counsel in 2007 did not ask Dr. Etcoff to assess Mr. Chappell for possible brain damage and/or determine the reason for the numerous functional and behavioral difficulties.

Even if trial counsel failed to review the cumulative school record file, Dr. Etcoff's report alone revealed to counsel at both trials that:

- Screening tests (i.e., WAIS-R and WRAT3) indicated a Full Scale IQ of 80, with a significant discrepancy between Verbal and Performance IQs (77 and 91 respectively), and achievement test results that fell in the average range for Reading and Spelling but in the moderately impaired range for Arithmetic (1st percentile).

- There was documented evidence that Mr. Chappell had a severe learning disability, likely attention-deficit/hyperactivity disorder, and multiple developmental delays and adaptive problems (e.g., toileting problem, infantile finger-sucking, slow processing speed, communication and social delays, comprehension difficulties, self-control problems, interpersonal issues, and placement in a “severely learning disabled” classroom) that preceded substance abuse in adolescence.
- Mr. Chappell’s substance abuse, which began in his early teens, could not explain the pervasive functional symptoms noted above.
- Mr. Chappell’s receptive language disorder and arithmetic disorder were “*neurologically-based*,” which meant Mr. Chappell had brain damage.

Testimony at the 1996 trial further revealed evidence of developmental delays. During her testimony in 1996, Grandmother Clara Axam described her grandson James as a “slow” child who did not understand and learn things as quickly as normal children did. Clara Axam also testified that her grandson had a speech delay in childhood after his mother’s death in 1973: “[I]ike he wouldn’t talk” for “[p]robably a year or more.” She attributed this delay to the death of his mother when he was two and a half. [See discussion below for why this attribution was unlikely.] Clara Axam’s testimony was consistent with the records and provided evidence of early developmental delay to counsel in 1996. Thus, in addition to the information noted above from their defense expert Dr. Etcoff, counsel also had information from this witness that their client was developmentally delayed in early childhood and possibly may have had an intellectual disability.

Regarding Mr. Chappell’s early developmental delays, the only additional information counsel in 2007 had that was different from what was obtained in 1996 appears to have been the following:

- Willie Chappell, Jr., (brother) testified in 2007 that James had problems “dealing with his urine” growing up.
- Clara Axam (maternal grandmother) testified in 1996 that James went to “normal school” until fifth grade when he was placed in a “special education school where he stayed until high school.” [Ms. Axam’s testimony was inaccurate. Counsel in 2007 had access to school records that indicated Mr. Chappell began receiving supportive services in second grade).]
- Myra Chappell King (younger sister) testified in 2007 that other children teased her brother James for being “slow.”

Had counsel in 1996 and 2007 investigated their client’s learning disability, witnesses would have given them information similar to the following declarations:

- *Myra Chappell-King*: James was mentally slower than his siblings, was diagnosed with a learning disability, and was placed in special education. Younger sister Myra recalled James struggling with reading and needing assistance during his

school years. Myra read at a higher level than James did although she was a year younger. Myra helped James when James wanted to read various materials.

- *James Ford*: James could not read well and had problems with word pronunciations throughout his childhood and early adulthood. He often asked his friend James Ford to read things for him, even when he was in his early twenties. "James was a special education student throughout his time in school."
- *Joetta Ford*: James struggled with reading throughout his childhood and as a young adult. He would bring neighbor Joetta Ford, letters and other materials and ask her to read them to him. James did this even into his twenties.

Had counsel in 1996 and 2007 investigated their client's executive control problems, witnesses would have provided information similar to the following declarations:

Sensory Integration

- *Willie Richard Chappell, Jr.*: James had a poor sense of direction. He could only travel to places where he had already been, and could easily become lost when traveling to someplace new.
- *Terrance Wallace*: "James had a poor sense of direction and had a difficult time getting around town on his own. James was driven around to most of the places that he needed to go. James used public transportation, but only to places where he had previously travelled. James had a hard time traveling to new places. You could not give him an address or verbal instructions on how to get somewhere because he would get lost."

Processing Speed

- *Myra Chappell-King*: Compared to his siblings, it took James "a longer time to learn and catch onto things. It wasn't that James couldn't learn how to keep himself up, he just needed more time to learn than everyone else."
- *James Ford*: "James was mentally slower than his family members and among our friends, and he needed assistance."
- *Benjamin Dean*: "It was obvious that James was mentally slow from the time that I first met him in the 1970s."
- *Charles Dean*: "It was obvious to me that James was mentally slow from the time that I first met him in the mid-1970s."
- *Fred Dean*: James was mentally slow.
- *Sheron Barkley*: James's neighborhood friends would consider James the most likely not to succeed because James was "mentally slow, emotionally damaged, and not equipped to take care of himself."
- *Phillip Underwood*: "James was noticeably slower than his other siblings."
- *William Roger Moore*: James's siblings Ricky and Myra were higher functioning,

smarter and more intentional in their actions than James. James “was calmer and more compliant.”

Attention Control

- *Sheron Barkley*: James sometimes had “episodes where he drooled on himself while looking off into the distance. [He] looked like a zombie on these occasions, and it was sometimes hard to get his attention. You’d have to call his name several times and touch him to snap him out of it.”
- *Benjamin Dean*: “James was also not a focused person and had a short attention span.”
- *Willie Richard Chappell, Jr.*: “James had a short attention span and experienced difficulty focusing on anything for more than a few minutes besides watching music videos on television.”
- *Myra Chappell-King*: “James was very hyperactive throughout his childhood and into adulthood. It was difficult for James to sit still and focus for any extended period of time. . . . He had a short attention span.”
- *Harold Kuder*: “James had problems with reading, writing, and mathematics. James also had a short attention span and was easily distracted in the classroom. Whenever James had problems understanding or focusing on the work, he often became disruptive in class by talking to other students or becoming the class clown.”
- *Charles Dean*: “James had a short attention span, which caused him to be unfocused.”

Had counsel in 1996 and 2007 investigated their client’s adaptive functioning, witnesses would have given them information similar to the following declarations:

Communication

- *Sheron Barkley*: James “spoke slowly or in a delayed manner.” There was gap before he answered questions. He used one-word-answers and simple phrases during conversations. He misused words, spoke in unusual word patterns, and was often teased about the way that he spoke. He had no idea he was being used as the butt of jokes.
- *Willie Richard Chappell, Jr.*: “James didn’t speak much when he was a small child and throughout his elementary school years. He had a limited vocabulary and spoke like children who were younger than he was.”
- *Benjamin Dean*: “James spoke slowly and sometimes seemed like he had trouble getting his words out. James used few words and spoke in simple phrases. The words that James used usually had no more than two or three syllables. James could easily get lost in a conversation, especially if a person was speaking too quickly or changing subjects.”
- *Myra Chappell-King*: “James had a difficult time with his pronunciation when

growing up. He often became frustrated and sometimes gave up when trying to pronounce unfamiliar words." During conversations, James would sometimes withdraw and zone out into his own little world.

- *Terrance Wallace*: "James usually spoke using short words, phrases, and slang. James did not have a large vocabulary and did not speak descriptively. James also used words incorrectly when trying to imitate others."
- *Charles Dean*: "James spoke at a slow pace and sometimes had difficulty getting his words out. James had a limited vocabulary. He also used words that were simple and had few syllables. James had difficulties following conversations at times, especially if a person was speaking quickly or switching between subjects....James did not talk much when he was in elementary and junior high school. Whenever he came around our group of friends, he silently stood off to the side watching us with his body slightly turned to the side. James followed behind us wherever the group went without saying anything. James was like the group's shadow. We tried to get him to talk more, but it took a while for him to be comfortable enough to say more."
- *Fred Dean*: James spoke slowly, and used simple words like somebody younger would. James made up his own nonsensical words and phrases. He did not understand his peers' jokes or follow along during their group conversations. As a result, James was the butt of jokes and was teased about being slow.
- *Phillip Underwood*: "[James] often just stared off into the distance without responding or acknowledging that he was spoken to."

Daily Living Skills

- *Terrance Wallace*: "James frequently needed assistance with tasks that most people take for granted. For example, James could not read well and often needed me to read things for him and fill out job applications and paperwork. . . . When James didn't understand words on an application, while in the presence of others, he pretended like he couldn't see the words on a page. . . . James feared embarrassment and tried to avoid exposing his shortcomings whenever possible....James was never good at math. It took him a while to figure out how much money he needed to purchase items or how much change to get back." Terrance helped James get his first two jobs as a cook with the Michigan Youth Corps and at a hamburger restaurant. Terrance drove James to work: "James had a hard time keeping jobs. He was usually unemployed and without a source of income. James lived off of his grandmother, his friends, and Debbie....James was unemployed so often that he tried his hand at selling drugs to earn money. However, it was short-lived because James did not know the value of money. Besides not being a street person or fitting the typical image of a drug dealer, James was terrible at math and was constantly cheated by junkies in their purchases. At times it seemed like James was giving the drugs away. The dealers that James worked for knew that he was slow and not really cut out for the work, so he was not harmed. They just fired him, like all of James's other employers."

- *Myra Chappell-King*: Clara bought clothes and other items for James, who did not shop by himself.
- *Phillip Underwood*: "It was a difficult task to wake James up and get him ready for school in the morning."
- *Charles Dean*: James' struggles with reading and writing, made him feel embarrassed. James would wear bizarre and mismatched clothes while thinking he was cool and impressing others. James had poor personal hygiene. He also had odd hairstyles, which he felt very proud about. When James was a drug dealer, he would smoke crack laced with marijuana and get high on his own supply. The dealers he worked with soon fired him...."James was very dependent on his family and friends around the community. Everyone loved James and did their best to look out for and protect him as best as we could. James's disabilities made him immature and somewhat vulnerable. This is why everyone tried to talk him out of leaving the state with Debbie. We knew that he would not be able to survive without the assistance of his family and friends."
- *Fred Dean*: James wet the bed into his teenage years, so his room always smelled.
- *James Ford*: "James suffered from bladder problems. He wet his bed until he was in his mid-teens, and there was a strong scent of urine usually present in the room. He had wetting accidents when he was awake as well. James was unable to care for himself. He was usually collecting unemployment compensation and was totally dependent on his grandmother Clara. James was only able to get low paying jobs that did not require much skill or knowledge, even then he could not hold them for long. He lost his jobs after a few weeks or a couple of months. It was hard for James to reason and figure things out on his own at times, and he often called his friend James Ford for advice and explanations to help him think through things whenever he encountered issues he did not know how to handle. These were issues that most people could easily figure out, but they were not obvious to James. He had no concept of racism and prejudice, so Ford had to explain things to him in the best way he could. Debbie was the breadwinner for the family and covered the rent and expenses for herself, the children, and James. Debbie provided James with an allowance, bought him shoes and clothing. She did many things he could never have done for himself. All James had to do was babysit the children while she was at work."
- *Myra Chappell-King*: "James suffered from a bladder problem because he wet his bed until he was in his mid-teens. James also used to urinate into plastic bottles and keep them in his room for days at a time. James had no money management skills, was usually broke right after he received his paycheck, never had a bank account and did not understand the concept of saving money, and spent his money recklessly. James was a very unselfish person and people sometimes took advantage of him when he had money to spend. When James was sixteen, he was unkempt and uninterested in his own appearance. He wore clothes with mismatched colors and patterns, and his hair was frequently unkempt in a nappy Afro hairdo. After James dropped out of school, he worked low-end jobs that did not require many skills. James washed dishes, worked as a stock boy, prepared

food at restaurants, and he had a few other jobs where he was not given much responsibility. These jobs did not pay much, and James never earned enough money to live independently or later take care of his family. James never managed to hold down a job for long and he was frequently let go after short periods of time. James used his allowance, the money Debbie gave him, to buy alcohol and marijuana. James was a good imitator and learned cooking this way....“There was a disproportionate balance of responsibilities and power in James’s relationship with Debbie. Debbie was the breadwinner for their household and took care of all the responsibilities. Debbie helped James leave our grandmother’s home. James dependence on our grandmother was replaced by his dependence on Debbie....James was pretty much a house dad, as his only responsibility in the relationship was to babysit their children while Debbie was at work. However, James was not able to provide the children with much in the way of a structured environment when Debbie was not around. At times it seemed more like he was more their big brother than their father, and Debbie was everyone’s mother.”

- *Michael Chappell*: “I tried to get James to consider the difficulties he was about to face in a hostile environment and without the support of his family. The family looked out for James and made sure he was alright.”
- *Sheron Barkley*: “James couldn't take care of himself, much less a family.”
- *Sharon Axam*: James would take or demand money from Debbie, sell items from their home, or return purchased items in order to get money for crack.

Socialization

- *Willie Richard Chappell, Jr.*: “James was a very immature person and acted like someone who was younger than his actual age. James acted like he was six years old when he was ten and eight years old when he was thirteen. . . . James did not know when he was insulting others by the things he said. He had a poor ability to read people's emotions and recognize that they might be offended by something he said or did. For example, he sometimes walked up to girls and said, ‘good morning sluts’ in the same way that the Dolomite character did in movies.”
- *Myra Chappell-King*: During disagreements, James usually gave in to Debbie's demands....James did not make friends outside of his neighborhood’s social circle. The people in the neighborhood protected James and made him feel safe.
- *James Ford*: James was immature for his age and enjoyed clowning around with folks. He sometimes went overboard and did not know when to stop joking. James was not comfortable or trusting of people he did not know. Almost everyone that he spent time around were from the vicinity of his home on Nellers Court....“James was a loving dad and had a great relationship with his children. He was also immature. He interacted with his kids in a child like manner. He allowed them to run around the house and do whatever they wanted to do. James was not able to provide for the kids with a structured environment or discipline. James was like a big kid himself and Debbie was everyone's mother.”
- *Phillip Underwood*: He was a shy child and did not talk much, keeping to himself

during the 1970s. He was sensitive and it didn't take much for him to cry.

- *Carla Chappell*: "James was called a 'cry baby' when he was a young child and during his elementary school years because he cried a lot. James was also afraid of people, especially strangers, but also people he had met before. James was also a very sensitive child, and it was very easy to hurt his feelings and make him cry just by teasing him."
- *Michael Chappell*: "James was never a lady's man, and I only knew him to have two girlfriends throughout the time that I know him."
- *William Earl Bonds*: "James was also less interactive than his siblings. James did not talk much. He did not run up to me and Shirley's other friends to jump on our lap, play, or ask for things like his other siblings did. James rarely smiled or laughed. James just quietly sat looking at everything going on around him with a puzzled look on his face."
- *Benjamin Dean*: "James was not a street-wise person and was very gullible. Kids in the neighborhood enjoyed playing tricks on James, and he was often the butt of jokes because you could tell him almost anything and he'd believe it. James was a follower and often went along with the crowd. It did not take much to get James to follow an idea, no matter how silly it was. James often followed friends when they came up with ideas to go into a fast food restaurant and throw toilet paper all over the bathroom. . . . James also had difficulty reading social cues and figuring out when he was going too far with his pranks and silly behaviors. James was very childish and at times did not know when to stop playing around. . . . James was not into girls and acted awkward whenever he was around them when we were growing up. James's relationship with Debbie Panos was the only real one he ever had. James briefly dated Nicole Elliot in high school, but that relationship ended before it had a chance to get started."
- *Fred Dean*: James usually followed along with the ideas that the Dean brothers came up with, because the brothers were the leaders. James did come up with his own game called 'The Dash' which involved throwing various liquids on people's clothing. The game was considered childish.
- *Harold Kuder*: James was often teased for various reasons: being slow, the way he dressed, the way he spoke, and other things. He was also uncoordinated and couldn't run fast. It was not difficult to make James cry. James sometimes cried just from being teased. . . . "James was a social misfit. He was not an outgoing person and was unable to make many friends outside of the neighborhood. James's friends in school were primarily people he knew from the neighborhood. James was uncomfortable and shy with people he did not know."

Opinion:

At the time of trial in 1996 and resentencing in 2007, counsel had the following evidence that Mr. Chappell suffered from an FASD condition:

- (a) Shirley Chappell was a documented heroin addict whose children had been removed by the state because of child neglect, which raised a red flag of possible FASD given the high association between heroin and alcohol abuse.^{33, 34} Counsel also knew from Sharon Axiom that Shirley Chappell had started abusing heroin prior to James Chappell's birth. Had counsel in 1996 and 2007 investigated Shirley Chappell's alcohol and drug use during the pregnancy with her son James, declarations show they would have found convergent evidence from numerous people confirming prenatal alcohol exposure.**
- (b) In the cumulative education file alone, there was evidence that despite what appeared to be average or low average intellectual functioning in elementary school, Mr. Chappell exhibited a severe learning disability that was impervious to special education services and also exhibited pervasive developmental delay (e.g., self-regulation, social and emotional functioning, communication, and daily living skills). All of these problems emerged in early childhood, many years before Mr. Chappell's own substance abuse and many of his childhood adversities could have damaged his brain. The early onset of Mr. Chappell's developmental disabilities suggested a high likelihood his brain damage occurred prior to birth. Had counsel in 1996 and 2007 interviewed witnesses who observed Mr. Chappell's functioning, they would have found evidence of functional disabilities across the lifespan.**
- (c) There was uncontested evidence from expert Dr. Etcoff that at least two of Mr. Chappell's developmental disorders (i.e., communication and arithmetic) stemmed from "neurological origin[s]," which constituted clear notice of brain damage.**
- (d) Had counsel in 1996 and 2007 asked an expert in neuropsychology and FASD to administer neuropsychological testing to Mr. Chappell, results would have indicated pervasive central nervous system dysfunction similar to what Dr. Connor found, qualifying Mr. Chappell for a diagnosis of Cognitive Disorder NOS and/or Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure (ND-PAE). Had counsel in 1996 and 2007 retained a medical expert in FASD to conduct a diagnostic evaluation of Mr. Chappell, results would have been similar to Dr. Davies' conclusion that Mr. Chappell met criteria for Alcohol Related Neurodevelopmental Disorder (ARND). ARND is a medical defect, and Cognitive Disorder NOS and ND-PAE are a mental disease or defect. Results of the current record review are consistent with these diagnoses.**

³³ Green J, Jaffe JH, Carlisi JA, et al. (1978) Alcohol use in the opiate use cycle of the heroin addict. *International Journal of Addiction*, 13, 1021-33.

³⁴ McCusker M. (2001) Influence of hepatitis C status on alcohol consumption in opiate users in treatment. *Addiction*, 96, 1007-14.

(3) How would FASD (i.e., ARND) affect Mr. Chappell's ability to control his actions on the day of the crime?

Current habeas counsel retained neuropsychologist Paul Connor, PhD, to conduct comprehensive testing of Mr. Chappell. Dr. Connor's report dated July 13, 2016, indicates 24 cognitive tests plus adaptive assessment. Overall, testing revealed deficits in six broad cognitive domains: Academic Achievement (especially in arithmetic), Learning and Memory (verbal and visual), Visuospatial Construction and Organization (i.e., sensory integration), Attention, Processing Speed, and Executive Functioning (especially in tasks involving relatively limited external structure).

In addition, there were deficits in three adaptive domains: Communication (based on direct testing of expressive language skills and two of three rater reports), Daily Living Skills (based on direct testing and rater reports), and Socialization (based on rater reports). Regarding adaptive functioning, Terry Wallace (friend), James Ford (friend), and Myra Chappell-King (sister) each responded independently to structured adaptive assessment with the Vineland Adaptive Behavior Scales-II, which targeted age 25 with respect to their observations of Mr. Chappell's behavior. With respect to coping, which is most directly relevant to offense conduct, both friends rated Mr. Chappell's coping capacity as equivalent to that of a twelve-and-a-half year old.

Myra Chappell-King was unable to provide enough ratings of her brother's coping behavior to generate a score.

According to Dr. Connor, Mr. Chappell's neuropsychological test profile met Centers for Disease Control (CDC) diagnostic guidelines for the central nervous system dysfunction in FAS. [Published in 2004, the CDC guidelines are more stringent than the Institute of Medicine (IOM) guidelines in effect in 1996 and markedly more stringent than FAE guidelines would have been prior to 1996.

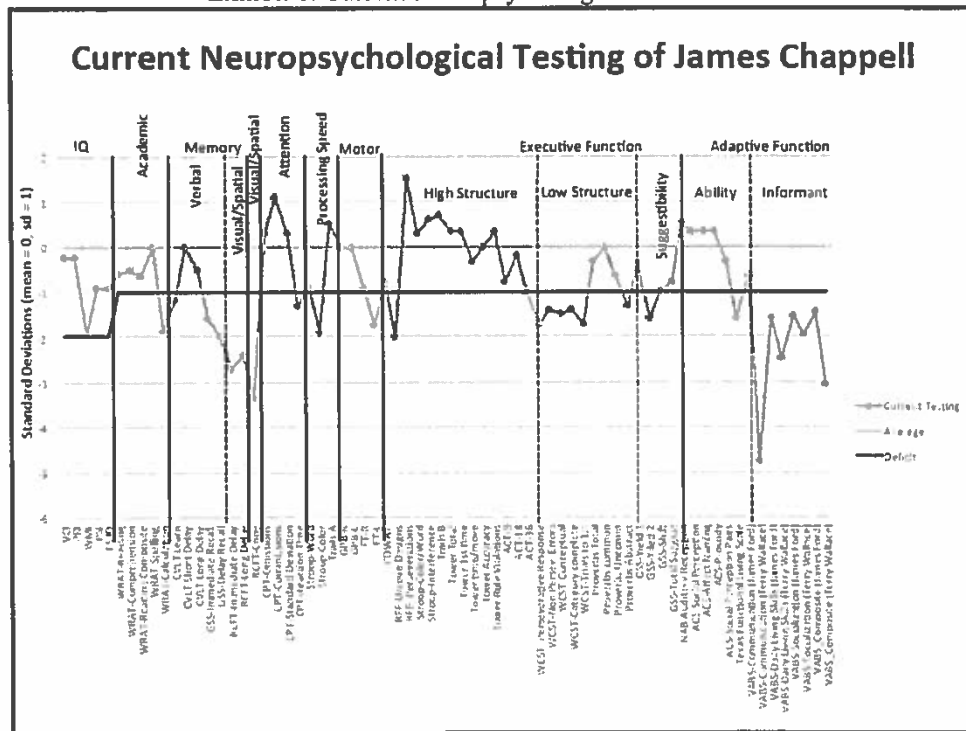
Thus, Mr. Chappell's neuropsychological test profile not only would have met IOM's FASD guidelines for central nervous system dysfunction in 1996 but also met pre-IOM diagnostic guidelines as well.]

In his report, Dr. Connor noted four similarities between Mr. Chappell's test results and profiles typically seen in FASD.

First, test results overall reflected the classic FASD "patchy" profile of relative strengths and weaknesses due to intermittent alcohol exposure in utero.

Exhibit 1 below (produced by Dr. Connor) graphically represents Mr. Chappell's pattern of test performance, with direction of deficit made consistent (i.e., lower scores = more deficient performance). Scores on the tests have been converted to standard deviations from the mean (mean = 0; standard deviation = 1). Average or mean scores of 0 for each test are shown by the horizontal green line. The horizontal red line indicates the cutoff

Exhibit 1. Current Neuropsychological Test Results

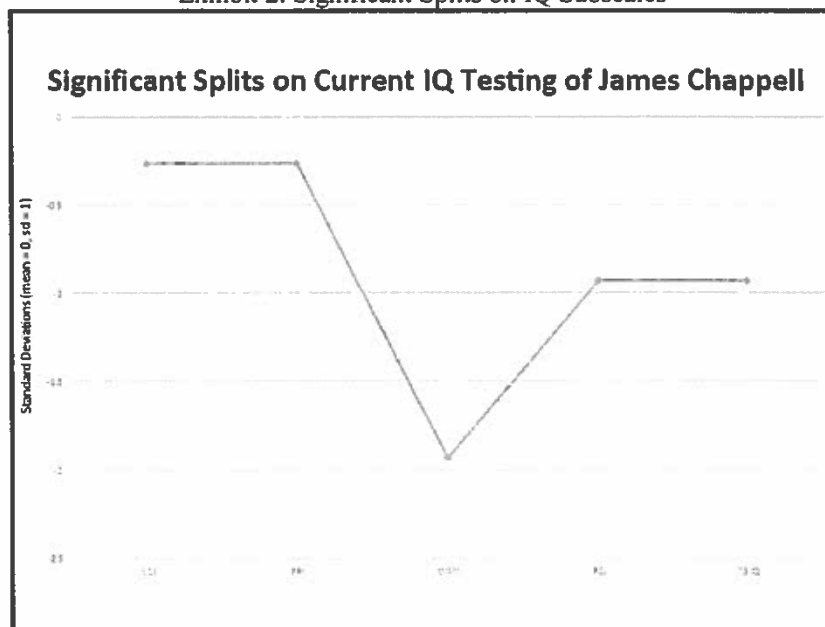


As can be seen above, Mr. Chappell's overall test profile reflects severe, pervasive brain damage with some relative strengths but a large number of cognitive weaknesses that together have marked negative impact on his adaptive functioning.

Dr. Connor noted that 40 percent of Mr. Chappell's test scores on cognitive measures fell at or below the cutoff point for a designation of "impairment" based on CDC diagnostic criteria. In addition, 28 percent of the scores fell in the moderately to severely impaired range.

Second, in addition to the overall “patchy” pattern in the test profile, there was a similar patchy pattern in Mr. Chappell’s IQ test results, which contained statistically significant “splits” or discrepancies among subscale scores (see Exhibit 2 below).

Exhibit 2. Significant Splits on IQ Subscales



Significant splits in IQ domain scores reveal uneven brain functioning (i.e., strong versus weak areas of cognitive processing), which like the overall neuropsychological profile is consistent with intermittent alcohol exposure during gestation. As Dr. Connor noted, because of the significant discrepancy between domain performances, Full Scale IQ, measured at 86, should not be considered representative of Mr. Chappell's overall intellectual functioning.

Subtest analysis by Dr. Connor indicated relative strength on a visuospatial task and a couple language-based tasks. In contrast, he performed within the mildly impaired range on tasks of speeded translation of information and short-term attention and memory. Weakest performance was on a task involving orally presented arithmetic, where his performance fell within the mild to moderate range of impairment. Importantly, Mr. Chappell's most significant weakness in IQ testing was Working Memory, which fell within the range of intellectually deficient performance.

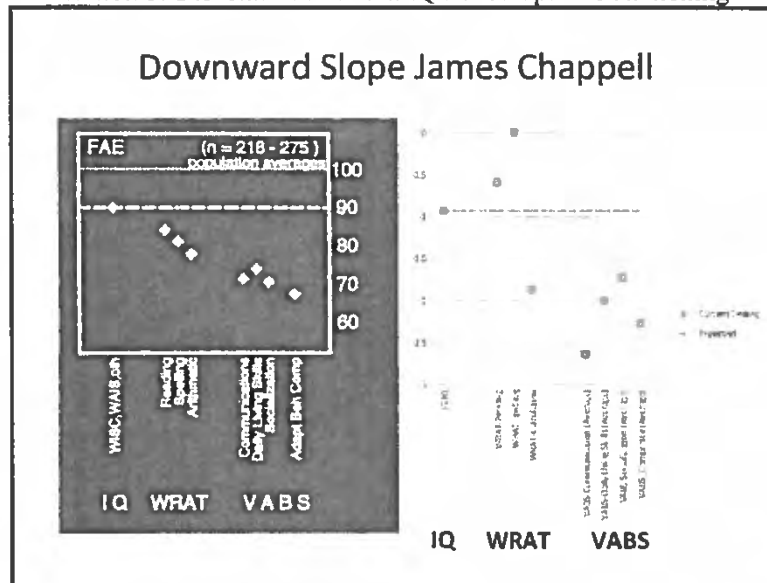
Comparing current IQ performance with previous testing, Dr. Connor noted that when Mr. Chappell was 16 or 17, his intellectual functioning fell within the borderline to low average range (specific scores were not provided). In Dr. Etcoff's testing in 1996, Mr. Chappell demonstrated significant discrepancies between verbal and non-verbal intellectual skills, similar to current testing (see Table 1 below).

| Table 1: COMPARISON OF CURRENT AND PRIOR IQ TESTING | | | | | | |
|---|---------|---------|---------|-----|-----|---------------------------|
| Year | Test | VCI/VIQ | PIR/PIQ | WMI | PSI | FSIQ |
| 10/1986 | | | | | | Borderline to low average |
| 6/1996 | WAIS-R | 77 | 91 | | | 80 |
| 5/2016 | WAIS-IV | 96 | 96 | 71 | 86 | 86 |

Mr. Chappell's IQ test results, including the "splits" and relative Working Memory weakness, are consistent with FASD.

The third aspect of Mr. Chappell's neuropsychological test results that are consistent with FASD involves a direct causal relation between executive functioning and adaptive functioning. Exhibit 3 graphically compares Mr. Chappell's test performance to that of a research sample of persons diagnosed with FAE, the equivalent of ARND. The research sample is shown on the left side of the exhibit, and Mr. Chappell's test results are shown on the right side. The tests represented along the bottom of the exhibit are the Wechsler IQ test, Wide Range Achievement Test (WRAT), and Vineland Adaptive Behavior Scales (VABS). The horizontal black line depicts the mean score for each test, which is a standard score of 100. In individuals without brain damage, it is typical for IQ, achievement test, and adaptive assessment test scores to all fall around a standard score of 100. In FAE, mean full-scale IQ tends to fall around 90, with achievement somewhat lower than that, and adaptive functioning falling significantly lower. Thus, there is a "disconnect" between IQ and adaptive functioning in FASD that is explained by the predictive power executive dysfunction has on the latter. Mr. Chappell's test results reflect such a disconnect.

Exhibit 3. Disconnect Between IQ and Adaptive Functioning



As can be seen above, although his reading and spelling skills have improved during his incarceration (which is often seen in those with FASD who are incarcerated for long periods of time), Mr. Chappell's pattern of test scores show downward progression as the context becomes less structured. IQ testing - with one-on-one examiner monitoring, specific test guidelines, and a controlled environment - is the most highly structured setting. The school environment is somewhat less structured due to the presence of numerous children and other distractions. In contrast, the "real world" tends to involve very little structure and monitoring.

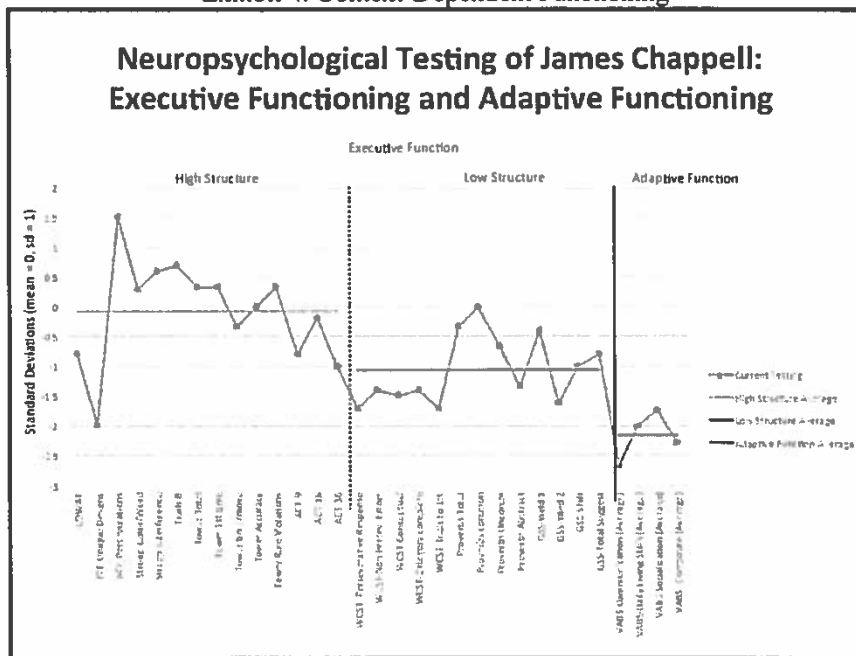
The downward progression in performance based on decreasing external structure represents a hallmark FASD pattern, which demonstrates it is executive functioning rather than IQ that determines behavior in unstructured situations. In fact, research has found executive functioning *predicts* adaptive behavior.³⁵ Thus, it is Mr. Chappell's numerous deficits in executive functioning rather than his IQ that determines his adaptive behavior (e.g., coping capacity).

Fourth, as noted above, the context-dependent aspect of executive control in FASD also can be seen in the internal pattern of executive function tests as well. That is, the more external structure and guidance an examinee receives for each test, the better he/she tends to do compared to performance on tests involving less structure and guidance.

Exhibit 4 below displays Mr. Chappell's executive function test results along with Vineland results. In the exhibit, the executive function tests administered by Dr. Connor are categorized by the amount of structure provided for each test. "High structure" tests involved more examiner guidance from Dr. Connor than "low structure" tests. The horizontal green line represents the average test score for the high structure tests, and the horizontal purple line represents the average test score for the low structure tests. The horizontal red line represents the average score for results on the Vineland assessments.

³⁵ Ware, A.L., Crocker, N., O'Brien, J.W., Deweese, B.N., Roesch, S.C., Coles, C.D.,...Mattson, S.N. (2012). Executive function predicts adaptive behavior in children with histories of heavy prenatal alcohol exposure and attention deficit/hyperactivity disorder. *Alcoholism: Clinical and Experimental Research*, 36, 1431-1441.

Exhibit 4. Context-Dependent Functioning



As can be seen above, Mr. Chappell's executive function scores generally fall around the mean in the context of high structure (i.e., his performance is not impaired on novel tasks when there is sufficient external structure). However, in contexts involving novel tasks and relatively less structure and examiner guidance, test performance generally declines to 1 standard deviation below the mean (i.e., mild impairment). In the real world, which tends to be completely unstructured, Mr. Chappell's everyday adaptive functioning falls more than 2 standard deviations below the mean (i.e., moderate impairment). Such results, which are consistent with the FASD literature, indicate that in non-routine situations involving minimal structure, Mr. Chappell's adaptive behavior will resemble that of an individual with intellectual disability.

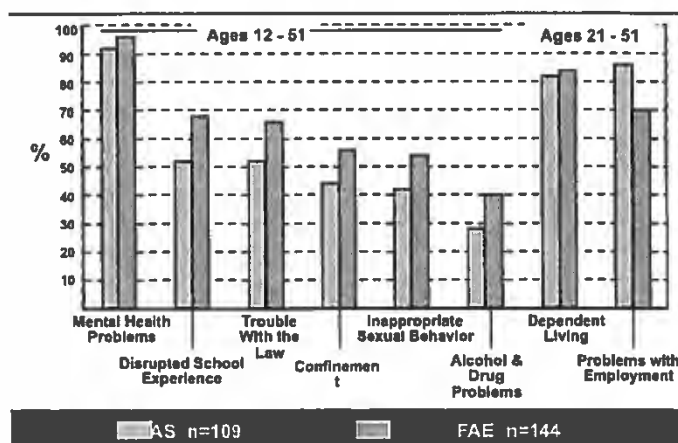
Executive dysfunction is recognized on the Substance Abuse and Mental Health Services Administration (SAMHSA) website³⁶ (see Appendix B) as the central reason why those with FASD have life course difficulties. Moreover, childhood adversity interacts with executive dysfunction to increase the risk of a negative developmental trajectory, including such things as trouble with the law and substance abuse [see Exhibit 6 below].

³⁶ <http://store.samhsa.gov/shin/content//SMA06-4238/SMA06-4238.pdf>, retrieved 7/21/16

Exhibit 6. Negative Developmental Trajectory in FASD

FASD Leads to a Negative Life Course Trajectory (i.e., "Secondary Disabilities")

[Streissguth et al., 1996]



In Mr. Chappell's case, Dr. Matthew Mendel (report dated 6/27/16) evaluated Mr. Chappell and concluded he had been exposed to "a truly extraordinary number of deficits, traumas, and losses over the course of his childhood" (e.g., mother's heavy use of heroin and alcohol during her pregnancy with him, mother's death when he was a young child; absence of a father/father-figure; raised in a neighborhood where violence, drugs, and prostitution were commonplace; marked poverty; extreme physical abuse; physical neglect of basic needs; emotional neglect; and loss of an uncle who was his sole provider of love and affection). Thus, Mr. Chappell's childhood involved all of the risk factors associated in the FASD literature with increased risk of secondary disabilities. Due to an interaction between this adversity and his executive dysfunction, he developed all of the secondary disabilities except inappropriate sexual behavior.

The SAMHSA website references research that describes the negative impact of executive dysfunction in FASD on behaviors implicated in offense conduct (i.e., lack of impulse control and trouble thinking of consequences, difficulty connecting cause and effect and planning accordingly, problems empathizing and taking responsibility, inability to delay gratification and make good judgments, and poor emotional control and tendency to engage in explosive episodes).

As noted, Dr. Connor's neuropsychological testing found Mr. Chappell's working memory was significantly impaired. Working memory is the key executive skill responsible for holding relevant neural information in mind while manipulating, synthesizing, and processing it for the purpose of completing a task. Working memory is

where intentions are formed and planning occurs while at the same time strong urges and emotions emanating from the limbic system are controlled.³⁷ In the legal context, working memory is equivalent to “reflection,” “reasoning,” and “impulse control.”

As Exhibits 3 and 4 demonstrate, even under the best of circumstances (e.g., a highly structured and controlled test setting), Mr. Chappell’s executive control over his behavior is significantly impaired due to his FASD. If he was experiencing any degree of stress at the time of the offense, executive control over his thoughts (e.g., intentions, planning, goals) would have been even more impaired.³⁸

It was known at the time of trial in 1996 that Mr. Chappell was under stress at the time of the offense (i.e., he perceived his girlfriend Deborah Panos was cheating on him). Further, Mr. Chappell testified that he was overcome by jealous rage at the time he killed Deborah Panos.

In 1991 when Dr. Streissguth spoke at a death penalty conference in Virginia, she told the conference attendees that those with FASD did not have the cognitive capacity to cope effectively with stress and other negative emotions.³⁹ Today, we know from neuroimaging research why this is the case. Alcohol exposure in utero affects formation of the hypothalamic-pituitary-adrenal system (H-P-A axis) in the developing fetal brain, increasing sensitivity to stress. As a result, those with FASD are “hard-wired” at the time of birth to be *hyper-reactive* to stress. If, simultaneously there also is impaired executive control and impaired coping capacity, as testing has found in Mr. Chappell, the combination of hyper-reactivity to stress and impaired executive control can have catastrophic consequences when working memory in the dorsolateral prefrontal cortex of the brain is unable to exert top-down control over intense limbic-driven emotional reactions.

Opinion:

Because Mr. Chappell’s executive control over his behavior is significantly impaired due to his FASD, and because Mr. Chappell was under stress at the time of the offense, it is likely Mr. Chappell’s ARND influenced his ability to control his actions at the time of the instant offense.

(4) How would FASD influence Chappell’s behavior with respect to his prior domestic abuse of his girlfriend Deborah Panos?

Review of the record indicates Mr. Chappell had a history of several domestic violence incidents against Deborah Panos.

³⁷ Pennington, B. F., Bennetto, L., McAleer, O., and Roberts, R. J. (1996). Executive functions and working memory: Theoretical and measurement issues. In: G. R. Lyon and N. A. Krasnegor (Eds.), *Attention, memory, and executive function* (pp. 265-282). Baltimore, MD: Paul Brookes Publishing Co.

³⁸ LeBlanc, V.R. (2009). The effects of acute stress on performance: Implications for health professions research. *Academic Medicine*, 84, S25-S33.

³⁹ Streissguth et al., 1991, op. cit.

For the same reasons Mr. Chappell's impaired executive control would have influenced his behavior at the time of the instant offense, his executive dysfunction similarly would have influenced his prior domestic abuse of Deborah Panos. That is, during times of intense negative emotion such as anger or rage, Mr. Chappell's executive control impairments would have limited his capacity to control his emotions and impulses.

By 1996, research had identified numerous adaptive behavior impairments associated with the executive deficits in FASD (e.g., state and trait regulation problems and tendency to overreact, which tended to manifest in mood swings and explosive rage episodes, impulsivity, and poor judgment).^{40, 41, 42} If executive functioning under highly structured situations such as test settings is impaired, as it is in Mr. Chappell, capacity of the frontal lobes to exert top-down control over strong emotions and unconscious impulses generated by the limbic system, is likewise impaired.

Opinion:

Thus, at the time of the prior domestic abuse of his girlfriend Deborah Panos, it is likely Mr. Chappell's ARND influenced his ability to control his actions.

(5) How would Chappell's FASD affect/influence his drug addiction?

As shown in Exhibit 6 above, it was well appreciated in 1996 and 2007 that those with FASD were at high risk of developing substance abuse problems such as seen in Mr. Chappell's history.^{43, 44, 45} In other words, FASD makes one more vulnerable to the effects of drug abuse and addiction.

We now know from research that those with FASD are hard-wired prior to birth with a biological craving for alcohol and central nervous system depressants.⁴⁶ In fact, DSM-5 now indicates that prenatal alcohol exposure is associated with "an increased risk for later tobacco, alcohol, and other substance use disorders" (p. 801).

Jonathan Lipman, PhD (report dated 7/7/16) was retained by current habeas counsel to review the neuropharmacological influences on James Chappell's life, including the time of the offense. Dr. Lipman concluded Mr. Chappell began using and abusing drugs very early in his life and continued to abuse alcohol and cocaine with marijuana during his teen years, prior to adulthood and prior to full maturation of his brain. Dr. Lipman opined that the psychotoxicity resulting from that abuse likely interfered with tertiary brain development and personality maturation. Thus, based on this information, Mr. Chappell's substance abuse likely had an additive and cumulative negative effect on the brain damage he was born with due to prenatal alcohol exposure. However, substance abuse

⁴⁰ Streissguth & LaDue, op. cit.

⁴¹ Streissguth, LaDue, & Randels, op. cit.

⁴² Streissguth, Bookstein, Sampson, & Barr, op. cit.

⁴³ Ibid.

⁴⁴ Streissguth, LaDue, & Randels, op. cit.

⁴⁵ Streissguth, Bookstein, Sampson, & Barr, op. cit.

⁴⁶ Cullere, M.E., Spear, N.E., & Molina, J.C. (2014). Prenatal ethanol increases sucrose reinforcement, an effect strengthened by postnatal association of ethanol and sucrose. *Alcohol*, 48, 25-33.

could not have begun affecting Mr. Chappell's brain development until his teen years, leaving only prenatal alcohol (and drug) exposure as the explanation for the multiple developmental delays and learning disability in his early childhood years.

Opinion:

Thus, compared to individuals who are not exposed to alcohol in utero, Mr. Chappell's FASD condition increased his likelihood of developing a substance abuse problem.

Thank you for the opportunity to evaluate Mr. Chappell.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Natalie Novick Brown', with a stylized, flowing script.

Natalie Novick Brown, PhD

Appendix A Record Review

- School Grades Chart, James M. Chappell
- School Testing Chart, James M. Chappell
- Excerpts from I-File from Ely State Prison for James Chappell
- Excerpts of Medical Records from Ely State Prison for James Chappell
- Trial testimony re Stipulations (10/11/1996)
- Excerpt from Lansing School District's Cumulative Report, Metropolitan Readiness Test, James Chappell
- Personal Behaviors Checklist PBCL-FABS, Michael Chappell
- Personal Behaviors Checklist PBCL-FABS, Ricky Chappell
- Personal Behaviors Checklist PBCL-FABS, Terrance Wallace
- Counsel Facts Timeline, 1996
- Counsel Facts Timeline, 2007
- Domestic Violence Timeline
- Substance Abuse Timeline
- Social History Chronology
- Juvenile Record, James M. Chappell
- Death Certificate, Shirley Axam-Chappell
- Dr. Paul Connor, Final Report (7-15-2016)
- Dr. Matthew Mendel, Final Report (6-27-2016)
- Dr. Jonathan Lipman, Final Report (7-6-2016)
- Dr. Lewis Etcoff, Supplemental Report (09-28-1996)
- Dr. Lewis Etcoff, Declaration (7-11-2016)

School records, James M. Chappell

- 1976-1977 Moores Park School, Semester Report
- 1979-1980 Moores Park School, Student Progress Report
- 09-05-1980 Class assignment
- 09-0-1980 Daily Progress Report
- 1981, Forest View School, Student Progress Report
- 1982, Maple Grove School, Certificate of Completion-6th grade
- 06-14-1978 Lansing School District Environmental Education Center, Certificate
- 1978, Moores Park School, Certificate for Field's Day
- Junior Citizen's Award, Officer Friendly Program
- Lansing School District, Cumulative School Record
- 1977 Moores Park School, Certificate

Declarations of:

- Benjamin Dean (4-17-16)
- Carla Chappell (4-23-16)
- Charles Dean (4-19-16)
- Ernestine 'Sue' Harvey (7-2-16)
- Fred Dean (6-11-16)

- Georgette Sneed (5-14-16)
- Harold Kuder (4-17-16)
- James Ford (5-19-16)
- James Wells (1-22-16)
- Joetta Ford (5-18-16)
- Michael Chappell (5-14-16)
- Myra Chappell-King (5-20-16)
- Phillip Underwood (4-17-16)
- Rodney Axam (4-16-16)
- Rose Wells-Canon (4-16-16)
- Sharon Axam (4-18-16)
- Sheron Barkley (4-16-16)
- Terrance Wallace (5-16-16)
- William Earl Bonds (5-13-16)
- William Roger Moore (4-17-16)
- Willie Richard Chappell, Jr. (5-16-16)
- Willie Richard Chappell, Sr. (4-16-16)

Trial and 2nd Penalty Trial Testimony of:

- Trial Testimony, Mike Pollard (10-21-1996)
- Trial Testimony, Deborah Turner (10-11-1996)
- Trial Testimony, LaDonna Jackson (10-11-1996)
- Trial Testimony, Lawrence Martinez (10-11-1996)
- Trial Testimony, Paul Osuch (10-11-1996)
- Trial Testimony, Michelle Mancha (10-21-1996)
- Trial Testimony, Dr. Lewis Etcoff (10-15-1996)
- 2nd Penalty Trial Testimony, Dr. Todd Grey
- 2nd Penalty Trial Testimony, Benjamin Dean
- 2nd Penalty Trial Testimony, Charles Dean
- 2nd Penalty Trial Testimony, Fred Dean
- 2nd Penalty Trial Testimony, Myra King
- 2nd Penalty Trial Testimony, Willie Chappell, Jr.
- 2nd Penalty Trial Testimony, Maribel Rosales
- 2nd Penalty Trial Testimony, Dr. William Danton
- 2nd Penalty Trial Testimony, Dr. Lewis Etcoff
- Trial Testimony, Sharon Axam (10-22-1996)
- Trial Testimony, Clara Axam (10-22-1996)
- Trial Testimony, James Chappell (10-14-1996)
- Trial Testimony, William Roger Moore (10-22-1996)

Appendix B FASD and the Criminal Justice System

FETAL ALCOHOL SPECTRUM DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

There was a part of me that was angry, but I also knew that the police department and the justice system were uninformed about how vulnerable and easily swayed people [with an FASD] are.

—Mother whose son with an FASD was wrongly convicted of a crime

FETAL ALCOHOL SPECTRUM DISORDERS



FASD is an umbrella term describing the range of effects that can occur in an individual prenatally exposed to alcohol. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a clinical diagnosis. It refers to conditions such as fetal alcohol syndrome (FAS), alcohol-related neurodevelopmental disorder (ARND), and alcohol-related birth defects (ARBD).

REASONS PEOPLE WITH AN FASD GET IN TROUBLE WITH THE LAW

Studies show that people with an FASD have specific types of brain damage that may cause them to get involved in criminal activity. These individuals show:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends).

Persons with an FASD may break the law without intending to do so. For example, they may touch people when it is unwanted and think they are just being friendly. They may take things that do not belong to them because they like them.

People can take advantage of individuals with an FASD. They may talk them into committing crimes. Females with an FASD may be involved with destructive men for food, shelter, attention, or drugs.² These relationships put them at risk for arrest.

NUMBER OF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM WITH AN FASD

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems screen for FASD or conduct a full diagnostic assessment. Researchers

at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.³

The number of people with an FASD in the criminal justice system is assumed to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.²

ISSUES RELATED TO FASD IN THE CRIMINAL JUSTICE SYSTEM

Laws vary by State and case law is binding only in the State or circuit where the case was decided. Only Supreme Court cases are binding nationally. However, several general issues can arise for attorneys and judges dealing with persons with an FASD:

- **Competency to stand trial**, which is the ability to understand the charges, participate in a trial, and assist in one's own defense. Persons with an FASD may not understand the charges against them. They may find criminal proceedings confusing. They may have problems with time management and come to court late or not at all. Several cases address competency and FASD.⁴⁻⁶
- **Validity of expert testimony regarding diagnosis.** Questions arise about the types of exams that are sufficient to determine a diagnosis of an FASD. For example, what if maternal alcohol use during pregnancy is unknown?^{7, 8}
- **Diminished capacity.** Capacity refers to the ability to understand right and wrong and to understand the

WHAT YOU NEED TO KNOW



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
www.samhsa.gov



SAMHSA
Fetal Alcohol Spectrum Disorders
Center for Excellence

likely outcome at the time of the act. Some crimes require evidence of intent for the person to be found guilty. Defense lawyers may argue that persons with an FASD cannot form the intent to commit crimes because they cannot foresee the likely outcome.⁸

- **Effect of FASD on sentencing.** Lawyers have appealed the death penalty by arguing that FASD was not introduced as evidence to support a lesser sentence.¹⁰⁻¹²
- **Ability to testify.** Persons with an FASD are highly suggestible and may not be able to give accurate testimony. They are prone to making false confessions.¹³
- **Recidivism.** Offenses do not appear to get worse, such as from auto theft to robbery. However, persons with an FASD tend to repeat crimes of opportunity, such as shoplifting. Their thought process seems to be, "I want. I take."¹⁴

WAYS THE CRIMINAL JUSTICE SYSTEM CAN ADDRESS THE NEEDS OF PERSONS WITH AN FASD

Because of their disabilities, persons with an FASD may repeat the same mistakes many times. Thus, support to improve functioning might be more appropriate than rehabilitation. This approach focuses on education, job training, and family support, rather than punishment. Medication may also help. In some cases, adults with an FASD who had multiple jail stints for petty, impulsive acts avoided jail when given appropriate medical treatment.⁹

Understanding how persons with an FASD respond to certain situations can help. Due to sensory issues, they can become overwhelmed by bright lights, causing them to panic and run from the police or resist arrest. Because they are eager to please,

many unknowingly waive their rights by signing forms that they do not understand. In addition, they may consent to being searched or take responsibility for the crimes of others to win favor.

Sentencing is also an issue. Some persons with an FASD respond well to the intense structure and rules of prison. Others are vulnerable to attack, exploitation, and manipulation by other inmates. Some do not understand prison rules and break them. Because corrections officers may not understand FASD, they may punish inmates with an FASD for failing to follow directions. It is critical to offer training on FASD to all corrections staff so they can learn strategies to respond to inmates with an FASD.

Once on probation, persons with an FASD may have trouble meeting probation requirements. They can have problems managing time, recalling appointments, and making plans. Therefore, they may need a greater level of supervision. A relative or support person may need to be assigned to follow up on probation requirements. Highly structured probation that includes supervised living, life skills education, and drug and alcohol treatment can be very effective.¹⁵ In fact, supervision can help prevent crime. Many clients with an FASD can remain crime free with intense supervision.¹⁴

Other effective alternatives to prison include halfway houses, group home treatment centers, or electronic monitoring at home. In such cases, emphasis must be placed on creating a well-structured environment with predictable rules and consequences. In these settings, persons with an FASD can continue to participate in the community but their behavior will be more closely monitored.¹⁶

REFERENCES

1. Streissguth, A. P.; Barr, H. M.; Kogan, J., et al. 1996. *Understanding the Occurrence of Secondary Disabilities in Clients With Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE)*. Final Report to the Centers for Disease Control and Prevention. Tech. Rep. No. 96-66. Seattle: University of Washington, Fetal Alcohol and Drug Unit.
2. Burd, L.; Marsolf, J. L.; and Judson, T. 2004. Fetal alcohol spectrum disorder in the corrections system: Potential screening strategies. *Journal of FAS International* 2:41.
3. Page, K. 2003. The invisible havoc of prenatal alcohol damage. *Journal of the Center for Families, Children & the Courts*, 67-90.
4. *Drum v. Johnson*, 142 F.3d 302. (5th Cir. 1998).
5. *People v. Fleming*, 2003 WL 21675890. (Mich. App.).
6. *State v. Lee*, 220 Wis. 2d 716, 583 N.W. 2d 674 (Cr. App. Wisc. 1998).
7. *State v. Riten*, 126 Wash. 2d 136, 892 P.2d 29 (1995).
8. *Castro v. State of Oklahoma*, 71 F.3d 1502 (10th Cir. 1995).
9. *Inflibek v. State*, 613 So. 2d 1027 (Fla.).
10. *Floyd v. State*, 2002 WL 58547, 27 Fla. L. Weekly S75 (Fla. 2002).
11. *State v. Huberstroh*, 69 P.2d 676 (Nev. 2003).
12. *Silva v. Woodford*, 279 F.3d 825 (9th Cir. 2002).
13. Moore, T. E., and Green, M. 2004. fetal alcohol spectrum disorder (FASD): A need for closer examination by the criminal justice system. *Criminal Reports* 19, Part 1, 99-108.
14. Boulding, D. 2001. Mistakes I have made with FAS clients.
15. Jeffery, M. T. No date. *Suggestions for more user-friendly court hearings*.
16. Connor, P. 2004. Prisons: A warehouse for individuals with FASD. *Iceberg* 14(2):3-5.

Stop and think. If you're pregnant, don't drink.

For more information, visit fasdcenter.samhsa.gov or call 866-STOPFAS.

01/06

**Appendix C
Resume**

**Natalie Novick Brown, PhD, SOTP
Northwest Forensic Associates, LLC**
Mailing Address: 12345 Lake City Way NE, #106 Seattle, WA 98125
206-361-6000 (office) / 425-275-1238 (cell) / 888-807-5991 (fax)
drnatiebrown@gmail.com

LICENSES - PSYCHOLOGY

| | |
|---------|------------|
| #PY1965 | Washington |
| #PY6219 | Florida |
| #14-12P | Arkansas |

CERTIFICATION

Certified Psychologist, Association of State/Provincial Psychology Boards (CPQ #3258)
Certified Sex Offense Treatment Provider (Washington State SOTP #FC112)
Polygraph Examiner / Certified in Post-conviction Sex Offender Testing (PCSOT)
Certified Psychologist/Evaluator for Department of Corrections, Division of
Developmental Disabilities, Department of Social & Health Services (Washington State)
Certified Parenting Evaluator, University of Washington Department of Psychiatry and
Behavioral Sciences
National Register of Health Service Providers in Psychology, #49892

EDUCATION

| | |
|---------|---|
| 2003-04 | International School of Polygraph (Fort Lauderdale, FL) and Post-Conviction Sex offender Polygraph Training |
| 1995-96 | Internship, Sex Offense Treatment Provider (SOTP) |
| 1994-95 | Post-Doctorate in FASD, U. of Washington Fetal Alcohol and Drug Unit |
| 1993-94 | Parenting Evaluation Training Program, University of Washington |
| 1989-94 | Ph.D. in Clinical Psychology, University of Washington |
| 1978-79 | M.H.A. in Health Care Administration, University of Washington |
| 1974-75 | M.L.S. in Library and Information Sciences, University of Washington |
| 1964-68 | B.A. in Sociology (Psychology minor), UCLA |

CLINICAL EXPERIENCE

Assessment: James Chappell
Page 39 of 49

Natalie Novick Brown, PhD
Northwest Forensic Associates, LLC

- 2007 – present **Program Director / Chief Psychologist: FASDExperts**
Pre- and post-conviction case review, assessment/evaluation, consultation, and testimony re Fetal Alcohol Spectrum Disorders (FASD)
- 1994 – present **Clinical and Forensic Psychologist / Expert Witness**
- **Adult and juvenile sex offense and risk assessment evaluation** (criminal state and federal prosecution; civil commitment cases under Sexually Violent Predator law]
 - **Adult, adolescent, and child psychological evaluation** (general psychological assessment, competency, dependency, FASD, neurodevelopmental disability, child abuse/neglect)
 - **Parenting evaluation** (court-appointed and stipulated cases involving such issues as physical and sexual abuse allegations, neglect, parental alienation, and relocation)
 - **Private therapy practice, 1995-present** (adult and adolescent therapy involving multiple issues, including sexual offending and SVP, developmental delay, parenting, and FASD)
- 2005 – present **Clinical Assistant Professor** (courtesy staff), Department of Psychiatry and Behavioral Sciences, School of Medicine, University of Washington, Seattle
- Research involving FASD prevention, intervention, and assessment
 - Assessment of recidivists referred by King County Mental Health Court and King County Drug Court to screen for FASD/organic brain impairment; consultation regarding FASD secondary disabilities; supervision of doctoral students and psychologists in training re FASD
- 1994 - 1995 **Postdoctoral Fellowship / Faculty Appointment** (1994-2000), Fetal Alcohol and Drug Unit (Dr. Ann Streissguth), University of Washington
- Research on maternal substance abuse and treatment needs
 - Evaluation/treatment of FAS/FAE patients with sex offense and non-sexual criminal issues; research on Secondary Disabilities related to FAS/FAE in Washington State Prison system
- 1992 - 1994 **Pre-doctoral Internships** (University of Washington)

- Specialized training and certification in forensic evaluation and expert testimony (18 months)
- Specialized training in pain management, Pain Clinic, University of Washington (2 months)
- Specialized training in individual psychotherapy, Group Health Cooperative, Seattle (2 months)
- Specialized training in rehabilitation psychotherapy (including traumatic brain injury), University Hospital, University of Washington (2 months)

PRE-DOCTORAL WORK EXPERIENCE

1979-89 Hospital CEO / Clinic Administrator
1975-79 Hospital Medical Librarian

RESEARCH

2005 – present Clinical Assistant Professor (courtesy appointment), Fetal Alcohol and Drug Abuse Unit, Department of Psychiatry and Behavioral Medicine, University of Washington
Research on suggestibility; research in conjunction with Parent-Child Assistance Program (PCAP)

1994 - 1995 Postdoctoral Fellow: Fetal Alcohol Unit, University of Washington
Research on FASD in Washington State prison system (men's and women's correctional facilities at Shelton and Purdy)

1991 - 1994 Dissertation: Relation between Psychological Correlates of Alcoholism Risk and Stress-Response Dampening Across the Blood Alcohol Curve

1991 - 1993 Research Coordinator: Prediction of High Risk Drinking in Young Adults

1990 - 1992 Research Coordinator: Alcohol and Social Influence

1989 - 1991 Research Coordinator: Self-Esteem in Young Adults

PEER-REVIEW

Criminal Behaviour and Mental Health

Wiley Online

International Journal of Law and Psychiatry

International Academy of Law and Mental Health, Harvard University

Addiction

Society for the Study of Addiction

PUBLICATIONS

Grant, T.M., Brown, N.N., & Dubovsky, D. (2015). Screening for Fetal Alcohol Spectrum Disorders: A critical step toward improving treatment success. In: *Suchtgefährdete Erwachsene mit Fetalen Alkoholspektrumstörung*. G. Becker, K. Hennicke, & M. Klein (Eds). Berlin, Germany: De Gruyter Publisher.

Greenspan, S., Brown, N.N., & Edwards, W. (2015). FASD and the concept of "intellectual disability equivalence." In M. Nelson & M. Trussler (Eds.), *Law and ethics in fetal alcohol spectrum disorder*. Amsterdam: Springer.

Brown, N.N., Burd, L., Grant, T. M., Edwards, W., Adler, R., & Streissguth, A. (2015). Prenatal alcohol exposure: An assessment strategy for the legal context. *International Journal of Law and Mental Health*, 42, 144-148.

Brown, N.N., & Connor, P.D. (2014). Executive dysfunction and learning in children with fetal alcohol spectrum disorders (FASD). *Cognitive Sciences*, 8, 47-105.

Brown, N.N., & Connor, P.D. (2014). Impact of executive functioning on learning in fetal alcohol spectrum disorders (FASD). In: Bennett, K.P. (Ed.), *Executive functioning: Role in early learning processes, impairments in neurological disorders and impact of cognitive behavior therapy (CBT)*. Hauppauge, NY: Nova.

Grant, T., Graham, J.C., Ernst, C.C., Peavy, K.M., & Brown, N.N. (2014). Improving pregnancy outcomes among high-risk mothers who abuse alcohol and drugs: Factors associated with subsequent exposed births. *Children and Youth Services Review*, 46, 11-18.

Brown, N.N., Clarren, S., & Grant, T. (Winter 2014). Fetal alcohol spectrum disorders: What judges and other legal professionals need to know. *Judges' Page, Court Appointed Special Advocates*.

Rich, S.D., & Brown, N.N. (2014). A case for a diagnostic code for neurodevelopmental disorder associated with prenatal alcohol exposure: A child/adolescent psychiatrist and forensic psychologist speak out. *Psychiatric News*, <http://psychnews.psychiatryonline.org/newsarticle.aspx?articleid=1792237>.

Brown, N.N., & Rich, S.D. (Winter 2013). A neurodevelopmental paradigm for fetal alcohol spectrum disorder. *Judges' Page, Court Appointed Special Advocates*.

Grant, T.M., Brown, N.N., Graham, J.C., & Ernst, C.E. (2013). Substance abuse treatment outcomes in women with fetal alcohol spectrum disorder. *International Journal of Alcohol and Drug Research*, <http://ijadr.org/index.php/ijadr/article/view/112/213>.

Brown, N.N., Wartnik, A., & Rich, S.D. (2013). Diagnosing FASD in the era of DSM-5: Good news for the forensic context. *Fetal Alcohol Forum*, 10, 34-37.

Grant, T.M., Brown, N.N., Dubovsky, D., Sparrow, J., & Ries, R. (2013). The impact of prenatal alcohol exposure on addiction treatment. *Journal of Addiction Medicine*, 7, 87-95.

Grant, T.M., Brown, N.N., Graham, J.C., Whitney, N., Dubovsky, D., & Nelson, L.A. (2013). Screening in treatment programs for Fetal Alcohol Spectrum Disorders that could affect therapeutic progress. *International Journal of Alcohol and Drug Research*, 2, 37-49.

Brown, N.N., Adler, R.S., & Connor, P.D. (2012). Conduct-disordered adolescents with fetal alcohol spectrum disorder: Intervention in secure treatment settings. *Criminal Justice and Behavior*, 39, 789-812.

Brown, N.N., O'Malley, K., & Streissguth, A.P. (2012). FASD: Diagnostic dilemmas and challenges for a modern transgenerational management approach. In S. Aduato & D. Cohen (Eds.), *Prenatal Alcohol Use and Fetal Alcohol Spectrum Disorders: Diagnosis, Assessment, and New Directions in Research and Multimodal Treatment*. Bentham Online Publishing.

Brown, N.N., Gudjonsson, G., & Connor, P. (2011). Suggestibility and Fetal Alcohol Spectrum Disorders (FASD): I'll Tell You Anything You Want to Hear. *Journal of Psychiatry and Law*, 39, 39-71.

Brown, N.N. (Spring 2011). Evidence-based interventions in children with Fetal Alcohol Spectrum Disorders. *Paradigm*, 16, 12-17.

Brown, N.N., Wartnik, A.P., Connor, P.D., & Adler, R.S. (2010). A proposed model standard for forensic assessment of FASD. *Journal of Psychiatry and Law*, 38, 383-418.

Brown, N.N. (June 2008). FASD Experts: Multidisciplinary Forensic Assessment for a Multidimensional Condition. *Iceberg*, 18.

Brown, N.N. (2007). ADHD and FASD: Comorbidity and Its Effect on Sexual Behavior Problems. In K O'Malley (Ed.), *ADHD and FASD: Diagnosis, natural history, and therapeutic issues across the lifespan*. Hauppauge, NY: Nova Pub.

Brown, N.N. (1998). FAS: Preventing and treating sexual deviancy. In A.P. Streissguth & J. Kanter (Eds.), *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities*. Seattle: University of Washington Press.

Novick (Brown), N.J. (1996). *Sexual victimization and inappropriate sexual behavior in children: Recommendations for evaluation and treatment*. Proceedings of 1996 International Conference on Fetal Alcohol Syndrome, Seattle, Washington.

Novick (Brown), N.J., & Streissguth, A.P. (1995). Identifying clients with possible fetal alcohol syndrome: Fetal alcohol effects in the treatment setting. *Treatment Today*, 7(3), 14-15.

Novick (Brown), N.J., & Streissguth, A.P. (1995). Some thoughts on the treatment of adults and adolescents impaired by fetal alcohol exposure. *Treatment Today*, 7(4), 20-21.

Novick (Brown), N.J., Cauce, A.M., & Grove, K. Competence self-concept. In B.A. Bracken (Ed.), *Handbook of self-concept*. New York: Wiley.

Novick (Brown), N.J., & Brown, J.D. (1992). *The influence of self-esteem on response to mood*. Paper presented, 100th Annual Convention of the American Psychological Association, Washington, D.C., August, 1992.

Brown, J.D., Novick (Brown), N.J., Lord, K.A., & Richards, J.M. (1992). When Gulliver travels: Social context, psychological relatedness, and self-appraisals. *Journal of Personality and Social Psychology*, 62, 717-727.

Norris, J., Novick (Brown), N.J., & Kerr, K.L. (1992). *Alcohol and violent pornography: Impact of social influence on sexual arousal*. Poster presented at the Research Society on Alcoholism Meeting, San Diego, California, June, 1992.

Brown, J.D., & Novick (Brown), N. (1991). *Social context, psychological relatedness, and self-appraisals*. Paper presented at the 99th Annual Convention of the American Psychological Association, San Francisco.

INVITED PRESENTATIONS, WORKSHOPS, TRAININGS

- | | |
|----------|--|
| 09/11/15 | FASD: Identification, Assessment, and Treatment. Co-presented with Therese Grant and Paul Connor. Western State Hospital, Tacoma, WA. |
| 08/20/15 | FASD and Sexually Inappropriate Behavior. FASD Train-the-Trainer Workshop for Casey Family Programs, Indian Child Welfare, University of Washington, Seattle, WA. |
| 07/13/15 | (1) One Size Does Not Fit All: Forensic Assessment of Sex Offenders with FASD. XXXIV International Conference on Law and Mental Health, Vienna, Austria (2) FASD in the Courtroom: FASDExperts Approaches Its Eighth Year (3) Panel: The Central Role of Neuropsychology in Forensic FASD Assessment (4) Panel: Forensic Assessment of FASD: |

The Impact of Suggestibility. XXXIV International Conference on Law and Mental Health, International Academy of Law and Mental Health, Vienna, Austria.

- 06/25/15 (1) Plenary: Identifying Fetal Alcohol Syndrome (2) Panel: Fetal Alcohol Syndrome: Experts and Presentation at Evidentiary Hearing. Capital Habeas Unit (CHU) National Conference, Denver, CO.
- 05/29/15 FASD: What You Should Know. Court Improvement Training Academy (CITA), University of Washington Law School, Suquamish Nation, Poulsbo, WA.
- 10/23/14 Insights from Poverty to Death Row: ND-PAE Diagnosis and DSM-5. American Academy of Child and Adolescent Psychiatry Annual Meeting, San Diego, CA.
- 05/23/14 Plenary: Forensic Assessment of FASD: Update on Diagnosis and Latest Research. FASD and the Law Conference, Woodbury, MN
- 05/14/14 FASD: Diagnosis and Intervention. Washington State Developmental Disabilities Administration, Seattle, WA
- 04/29/14 Sex Is *Not* a Four-Letter Word: FASD and Sexuality. Living With FASD: 2014 Summit Conference (international webinar)
- 02/05/14 FASD: Dawn of a New Era in Diagnosis. Minnesota Organization on FAS (MOFAS), MN (webinar)
- 11/26/13 Fetal Alcohol Spectrum Disorder. Washington State Developmental Disabilities Administration, Kent, WA
- 10/16/13 Neurodevelopmental Disorders in the DSM-5. Skype workshop for Pathways Counseling Center, St. Paul, MN
- 09/27/13 FASD: Back (and to) the Future: 1973 – 2013. 40th Anniversary Professional Summit, New Jersey Task Force on FASD, Atlantic City, NJ
- 09/25/13 FASD: Practical Supports for the Legal Context. 2013 FASD Summit, The Arc of Arkansas, Little Rock, AR
- 08/28/13 Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Missoula, MT
- 08/22/13 Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Fargo, ND
- 08/04/13 FASD: Moving Beyond Prevention to Practical Supports. The Arc: 2013 National Convention. Bellevue, WA

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| 07/26/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Boise, ID |
| 07/15/13 | FASD and Criminal Justice: Cognitive and Social Deficits Associated With FASD. 33 rd International Congress on Law and Mental Health, Amsterdam, Netherlands. |
| 06/25/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center. Cheyenne, WY |
| 06/25/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Cheyenne, WY |
| 05/03/13 | Understanding and Treating Developmentally Delayed Sex Offenders. American Institute for the Advancement of Forensic Studies; St. Paul, MN |
| 04/06/13 | Seeking the Standard of Care in Custody Assessments in WA State. AFCC-WA Spring Conference; Seattle, WA |
| 09/06/12 | Understanding the Link Between FASD and Sexual Offending. Indian Health Service; Seattle, WA |
| 07/20/12 | Forensic Assessment of Developmental Disabilities. American Institute for the Advancement of Forensic Studies; St. Paul, MN |
| 07/13/12 | FASD and Competency. WI Association of Criminal Defense Lawyers; Stevens Point, WI |
| 04/19/12 | Changing Public Policy in the Juvenile Courts: What Works? Fifth National Biennial Conference on Adolescents and Adults with FASD: It's a Matter of Justice, Vancouver, BC, Canada |
| 03/29/12 | Fetal Alcohol Spectrum Disorders. Death Penalty Institute, Lexington, KY |
| 02/03/12 | Alcohol Related Birth Disorders and the Law. Mid-year ABA Conference, Interagency Coordinating Committee on FASD in Collaboration with U.S. Dept. of Justice and Minnesota Organization on FAS, New Orleans, LA |
| 02/02/12 | FASD and Neurobehavioral Issues in the Criminal Justice System. Capital Defense Project of SE Louisiana, New Orleans, LA |
| 11/18/11 | Assessing and Understanding Fetal Alcohol Spectrum Disorders in Capital Clients. Virginia Bar Assoc., 19 th Annual Capital Defense Workshop, Richmond, VA |
| 10/07/11 | FASD and the Criminal Justice System. Seattle City Attorney's Office and University of Washington, Seattle, WA |

- 09/21/11 FASD: Preventing and Treating Sexual Deviancy. Indian Health Service FASD Training, Seattle, WA
- 07/09/11 FASD and Competency. Capital Mitigation – Beyond Atkins, Center for American and International Law; Houston, TX
- 06/23/11 FASD in the Courtroom. Ninth Annual Statewide Conference, Arizona Public Defenders Association; Tempe, AZ
- 05/20/11 FASD and Intellectual Disability/Mental Retardation. Metropolitan Public Defender, Oregon Capital Resource Center, Oregon Criminal Defense Lawyers Association; Portland, OR
- 03/11/11 Forensic Aspects of Fetal Alcohol Spectrum Disorders. Sponsored by Pathways Counseling Center, MOFAS, Minnesota DOC, MN Community Corrections Association, & American Institute for the Advancement of Forensic Studies; St. Paul, MN
- 10/27/10 FASD: Its Relevance Throughout the Legal Process from Competency to Stand Trial to Clemency. 2010 Appellate Judicial Attorneys Institute, Burlingame, CA
- 10/02/10 Forensic Assessment of FASD in the Habeas Context. Federal Defenders Annual Death Penalty Conference, Boise, ID
- 07/16/10 Team Approach to Litigating FASD (plenary). Center for American and International Law, Plano, TX
- 07/10/10 Fetal Alcohol Spectrum Disorder in the Courtroom: The 20th Anniversary of Dr. Ann Streissguth (plenary + break-out). NAACP LDF, Airlie, VA
- 04/22/10 Forensic Assessment of FASD with State-of-the-Art Facial Analysis, Diffusion Tensor Imaging and MRIs. 7th National Seminar on the Development and Integration of Mitigation Evidence (plenary). American Bar Association, Seattle, WA
- 04/17/10 Suggestibility in FASD: Forensic Assessment and Implications. 4th International Conference on Fetal Alcohol Spectrum Disorder, Vancouver, BC, Canada
- 03/31/10 Fetal Alcohol Spectrum Disorder and Justice. Alcohol Healthwatch, Parnell, New Zealand. (Abbreviated presentations also provided on 4-1-10 to New Zealand Ministry of Health and Ministry of Justice.)
- 02/25/10 Fetal Alcohol Spectrum Disorder (FASD). Texas Criminal Defense Lawyers Association, Austin, TX

- 02/12/10 FASD and Justice: A Multidisciplinary Assessment Model for Adults and Adolescents. CACJ/CPDA Capital Defense Seminar, Monterey, CA.
- 02/06/10 Fetal Alcohol Syndrome: Practical Tools. 3rd Interdisciplinary Program: UW School of Law & Washington Death Penalty Assistance Center, Seattle, WA.
- 03/11/09 FASD in the Legal System: A Multidisciplinary Assessment Model for Adults and Adolescents. 3rd International Conference on Fetal Alcohol Spectrum Disorder, Victoria, BC.
- 11/18/08 Screening for FASD in Family Practice. Family Practitioners, University of Washington/Swedish Hospital, Family Practice Medical Residents In-service.
- 10/25/08 Cross-Examination of Adverse Expert Witnesses in SVP Commitment Trials. Sex Offender Commitment Defense Association (SOCDA), Atlanta, GA
- 05/30/08 Fetal Alcohol Syndrome and Fetal Alcohol Effect: Identifying Clients and Understanding Consequences. Fifth National Seminar on the Development and Integration of Mitigation Evidence, Habeas Assistance & Training Counsel Project, Baltimore, MD
- 11/03/07 Direct and Cross Examination of Experts in SVP Cases. Sex Offender Commitment Defense Association (SOCDA), San Diego, CA
- 08/18/07 Fetal Alcohol Syndrome / Fetal Alcohol Effects. 12th Annual Federal Habeas Corpus Seminar, Nashville, TN
- 05/23/07 Fetal Alcohol Spectrum Disorders: History, Diagnosis, and Mitigation Issues. Capital Federal Public Defender Unit (capital habeas and trial attorneys, Federal District of Nevada)
- 04/14/07 What Attorneys and Policy Makers Need to Know About FAS and FASD. American Bar Association/Harvard Law School National Conference on Children and the Law, Cambridge, MA
- 02/18/07 Fetal Alcohol Spectrum Disorders (FASD). California Attorneys for Criminal Justice/California Public Defender Association (CACJ/CPDA) Annual Death Penalty Conference, Monterey, CA
- 06/30/06 Sexually Violent Predator Evaluation, Risk Assessment, and Testimony, Florida Public Defenders Sexually Violent Predator Conference, Orlando, FL
- 04/19/06 Screening Protocol for Fetal Alcohol Spectrum Disorders (FASD). King County Mental Health / Drug Courts, Seattle, WA

02/26/05 FASD: Problems of Witness Suggestibility and False Confessions.
International FASD Conference, Victoria, British Columbia, Canada

PROFESSIONAL ORGANIZATIONS

| | |
|----------------|--|
| 1990 – present | American Psychological Association (APA) |
| 2008 – present | American Society-Law Society (APA) |
| 2015 – present | International Association of Law and Mental Health (IALMH) |
| 2005 – present | Association for the Treatment of Sex Abusers (ATSA) |
| 2004 – present | Association of Family & Conciliatory Courts (AFCC – National) (WA-AFCC - Washington State; Board of Directors, Treasurer) |
| 2000 – present | American College of Forensic Examiners |
| 2011 – present | Midwest Alliance on Shaken Baby Syndrome (Board of Directors) |
| 2001 – 2003 | Jacksonville Youth Authority Advisory Board |
| 1996 – 2000 | Chairman, Social Issues Committee, Washington State Psychological Association |
| 1994 – 2000 | Washington State Psychological Association, Board of Directors |

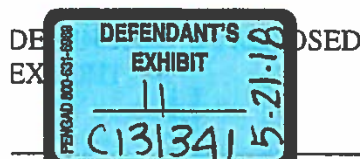
MATERIALS RELIED UPON (Amended)

DOCUMENTS PROVIDED TO NATALIE NOVICK-BROWN, Ph.D.

- School Grades Chart, James M. Chappell
- School Testing Chart, James M. Chappell
- Excerpts from I-File from Ely State Prison for James Chappell
- Excerpts of Medical Records from Ely State Prison for James Chappell
- Trial testimony re Stipulations (10-11-1996)
- Excerpt from Lansing School District's Cumulative Report, Metropolitan Readiness Test, James Chappell
- Personal Behaviors Checklist PBCL-FABS, Michael Chappell
- Personal Behaviors Checklist PBCL-FABS, Ricky Chappell
- Personal Behaviors Checklist PBCL-FABS, Terrance Wallace
- Counsel Facts Timeline, 1996
- Counsel Facts Timeline, 2007
- Domestic Violence Timeline
- Substance Abuse Timeline
- Social History Chronology
- Juvenile Record, James M. Chappell
- Death Certificate, Shirley Axam-Chappell
- Dr. Paul Connor, Final Report (7-15-2016)
- Dr. Julian Davies, Final Report (8-5-2016)
- Dr. Robert M. Thatcher, Final Report (8-1-2016)
- Dr. Matthew Mendel, Final Report (6-27-2016)
- Dr. Jonathan Lipman, Final Report (7-6-2016)
- Dr. Lewis M. Etcoff, Report (6-13-1996)
- Dr. Lewis Etcoff, Supplemental Report (09-28-1996)
- Dr. Lewis Etcoff, Declaration (7-11-2016)
- Nevada Supreme Court Opinion (12-30-1998)

School records, James M. Chappell

- 1976-1977 Moores Park School, Semester Report
- 1979-1980 Moores Park School, Student Progress Report
- 09-05-1980 Class assignment
- 09-0-1980 Daily Progress Report
- 1981, Forest View School, Student Progress Report
- 1982, Maple Grove School, Certificate of Completion-6th grade
- 06-14-1978 Lansing School District Environmental Education Center, Certificate
- 1978, Moores Park School, Certificate for Field's Day



- Junior Citizen's Award, Officer Friendly Program
- Lansing School District, Cumulative School Record
- 1977 Moores Park School, Certificate

Declarations:

- Angela Mitchell (8-9-16)
- Benjamin Dean (4-17-16)
- Bret Robello (9-29-16)
- Carla Chappell (4-23-16)
- Charles Dean (4-19-16)
- Clare McGuire (8-19-16)
- Dina Richardson (8-9-16)
- Ernestine 'Sue' Harvey (7-2-16)
- Fred Dean (6-11-16)
- Georgette Sneed (5-14-16)
- Harold Kuder (4-17-16)
- James Ford (5-19-16)
- James Wells (1-22-16)
- Joetta Ford (5-18-16)
- Lila Godard (8-5-16)
- Louise Underwood (9-22-16)
- Madge Cage (9-24-16)
- Michael Chappell (5-14-16)
- Michael Pollard (9-14-16)
- Myra Chappell-King (5-20-16)
- Phillip Underwood (4-17-16)
- Rodney Axiom (4-16-16)
- Rose Wells-Canon (4-16-16)
- Rosemary Pacheco (8-9-16)
- Sharon Axiom (4-18-16)
- Sheron Barkley (4-16-16)
- Shirley Sorrell (9-23-16)
- Terrance Wallace (5-16-16)
- Verlean Townsend (9-23-16)
- William Earl Bonds (5-13-16)
- William Roger Moore (4-17-16)
- Willie Richard Chappell, Jr. (5-16-16)
- Willie Richard Chappell, Sr. (4-16-16)
- Willie Wiltz, Jr. (7-28-16)

Trial and 2nd Penalty Trial Testimony:

- Trial Testimony, Mike Pollard (10-21-1996)
- Trial Testimony, Deborah Turner (10-11-1996)
- Trial Testimony, LaDonna Jackson (10-11-1996)
- Trial Testimony, Lawrence Martinez (10-11-1996)
- Trial Testimony, Paul Osuch (10-11-1996)
- Trial Testimony, Michelle Mancha (10-21-1996)
- Trial Testimony, Dr. Lewis Etcoff (10-15-1996)
- Trial Testimony, Sharon Axaam (10-22-1996)
- Trial Testimony, Clara Axaam (10-22-1996)
- Trial Testimony, James Chappell (10-14-1996)
- Trial Testimony, William Roger Moore (10-22-1996)
- 2nd Penalty Trial Testimony, Dr. Todd Grey (3-15-2007)
- 2nd Penalty Trial Testimony, Benjamin Dean (3-19-2007)
- 2nd Penalty Trial Testimony, Charles Dean (3-19-2007)
- 2nd Penalty Trial Testimony, Fred Dean (3-19-2007)
- 2nd Penalty Trial Testimony, Myra King (3-19-2007)
- 2nd Penalty Trial Testimony, Willie Chappell, Jr. (3-19-2007)
- 2nd Penalty Trial Testimony, Maribel Rosales (3-20-2007)
- 2nd Penalty Trial Testimony, Dr. William Danton (3-15-2007)
- 2nd Penalty Trial Testimony, Dr. Lewis Etcoff (3-16-2007)

Natalie Novick Brown, PhD, SOTP
Northwest Forensic Associates, LLC
Office: 524 Tacoma Ave. South Tacoma, WA 98402
Mailing Address: 31811 Pacific Hwy South, B-341
Federal Way, WA 98003
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drnataliebrown@gmail.com

Curriculum Vitae

Licensed Psychologist (Washington State: #PY1965)

Certified Psychologist (CPQ #3258), Association of State & Provincial Psychology Boards

Certified Sex Offense Treatment Provider (Washington State SOTP #FC112)

Certified Psychologist/Evaluator for Department of Corrections, Division of Developmental Disabilities, Department of Social & Health Services (Washington State)

Certified Parenting Evaluator, University of Washington Department of Psychiatry and Behavioral Sciences

National Register of Health Service Providers in Psychology, #49892

Certified Polygraph Examiner / Post-conviction Sex Offender Testing (PCSOT)

EDUCATION

| | |
|---------|--|
| 2003-04 | International School of Polygraph (Fort Lauderdale, FL) and Post-Conviction Sex offender Polygraph Training |
| 1995-96 | Internship, Sex Offense Treatment Provider (SOTP) |
| 1994-95 | Post-Doctorate in FASD, University of Washington Fetal Alcohol and Drug Unit, Department of Psychiatry and Behavioral Sciences, School of Medicine |
| 1993-94 | Parenting Evaluation Training Program, Department of Psychology, University of Washington |
| 1989-94 | Ph.D. in Clinical Psychology, University of Washington |
| 1978-79 | M.H.A. in Health Care Administration, University of Washington |
| 1974-75 | M.L.S. in Library and Information Sciences, University of Washington |
| 1964-68 | B.A. in Sociology (Psychology minor), University of California at Los Angeles (UCLA) |

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CLINICAL EXPERIENCE

- 1996 – present **Clinical and Forensic Psychologist**
- Professional consultation/evaluation and related testimony in criminal and civil matters, including adult/juvenile sex offense/risk assessment evaluation (e.g., civil commitment under Sexually Violent Predator laws); adult, adolescent, and child psychological evaluation (general psychological assessment, competency, dependency, FASD, neurodevelopmental disability, child abuse/neglect); post-conviction/commitment treatment planning; parenting evaluation; and independent medical examination (IME)
- Psychological assessment of recidivists referred by King County Mental Health Court and King County Drug Court
- Seattle Police Department: victim assessment and consultation regarding neurodevelopmental impairment
- Group therapy (1996-2000)/individual therapy (1996-present)
- Supervision of doctoral students
-
- 2005 – present **Clinical Assistant Professor** (courtesy staff), Department of Psychiatry and Behavioral Sciences, School of Medicine, University of Washington
- Research involving FASD prevention/intervention/assessment, brain-behavior impairment, and suggestibility.
-
- 1994 - 1995 **Postdoctoral Fellowship / Faculty Appointment** (1994-2000), Fetal Alcohol and Drug Unit (Dr. Ann Streissguth), University of Washington
- Training re FASD and other neurodevelopmental disorders, maternal alcohol use assessment, and lifelong adaptive assessment/secondary disabilities. Courtesy appointment as Clinical Instructor.
-
- 1992 - 1994 **Pre-doctoral Internships** (University of Washington)
- (1) forensic evaluation and expert testimony
 - (2) individual psychotherapy
 - (3) pain management assessment/treatment
 - (4) rehabilitation psychotherapy (including traumatic brain injury)

PRE-DOCTORAL WORK EXPERIENCE

| | |
|---------|---------------------------------|
| 1979-87 | Hospital CEO |
| 1987-89 | Clinic CEO / Board of Directors |
| 1975-79 | Hospital Medical Librarian |

RESEARCH

| | |
|----------------|---|
| 2005 – present | Clinical Assistant Professor (courtesy appointment), Fetal Alcohol and Drug Abuse Unit, Department of Psychiatry and Behavioral Medicine, University of Washington: Research on suggestibility and FASD prevention/treatment under Parent-Child Assistance Program (PCAP) |
| 1994 - 1995 | Postdoctoral Fellow: Fetal Alcohol Unit, University of Washington (research on FASD in Washington State prison system) |
| 1991 - 1994 | Dissertation: Relation Between Psychological Correlates of Alcoholism Risk and Stress-Response Dampening Across the Blood Alcohol Curve |
| 1991 - 1993 | Research Coordinator: Prediction of High Risk Drinking in Young Adults |
| 1990 - 1992 | Research Coordinator: Alcohol and Social Influence |
| 1989 - 1991 | Research Coordinator: Self-Esteem in Young Adults |

PEER-REVIEW

Epigenetics
Taylor & Francis

Criminal Behaviour and Mental Health
Wiley Online

International Journal of Law and Psychiatry
International Academy of Law and Mental Health, Harvard University

Addiction
Society for the Study of Addiction

PUBLICATIONS

Grant, T.M., Graham, J.C., Ernst, C.C., Novick Brown, N., & Carlini, B.H. (submitted). Use of marijuana and other substances among pregnant and parenting women with substance use disorders: Changes in Washington State after marijuana legalization. *Journal of Studies on Alcohol and Drugs*.

Novick Brown, N. (submitted). Fetal alcohol spectrum disorders (FASD) and risk of violence. In J.M. Fabian (Ed.), *Violence risk in criminal offender populations*. Oxford, UK: Wiley.

Brown, J.M., Haun, J., Zapf, P.A., & Novick Brown, N. (in press). Fetal alcohol spectrum disorder (FASD) and competency to stand trial (CST): Suggestions for a 'best practices' approach to forensic evaluation. *International Journal of Law and Psychiatry*.

Brown, J., Baun, J., Novick Brown, N., & Zapf, P.A. (2016). The deleterious effects of fetal alcohol spectrum disorder on competency to stand trial. *The Journal of Special Populations*, 1, 1-7.

Greenspan, S., Novick Brown, N., & Edwards, W. (2016). FASD and the concept of "intellectual disability equivalence." In M. Nelson & M. Trussler (Eds.), *Law and ethics in fetal alcohol spectrum disorder*. Amsterdam: Springer.

Grant, T.M., Novick Brown, N., & Dubovsky, D. (2015). Screening for Fetal Alcohol Spectrum Disorders: A critical step toward improving treatment success. In: *Suchtgefährdete Erwachsene mit Fetalen Alkoholspektrumstörung*. G. Becker, K. Henricke, & M. Klein (Eds). Berlin, Germany: De Gruyter Publisher.

Novick Brown, N., Burd, L., Grant, T. M., Edwards, W., Adler, R., & Streissguth, A. (2015). Prenatal alcohol exposure: An assessment strategy for the legal context. *International Journal of Law and Mental Health*.

Novick Brown, N., & Connor, P.D. (2014). Executive dysfunction and learning in children with fetal alcohol spectrum disorders (FASD). *Cognitive Sciences*, 8, 47-105.

Novick Brown, N., & Connor, P.D. (2014). Impact of executive functioning on learning in fetal alcohol spectrum disorders (FASD). In: Bennett, K.P. (Ed.), *Executive functioning: Role in early learning processes, impairments in neurological disorders and impact of cognitive behavior therapy (CBT)*. Hauppauge, NY: Nova.

Grant, T., Graham, J.C., Ernst, C.C., Peavy, K.M., & Novick Brown, N. (2014). Improving pregnancy outcomes among high-risk mothers who abuse alcohol and drugs: Factors associated with subsequent exposed births. *Children and Youth Services Review*, 46, 11-18.

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Novick Brown, N., Clarren, S., & Grant, T. (Winter 2014). Fetal alcohol spectrum disorders: What judges and other legal professionals need to know. *Judges' Page, Court Appointed Special Advocates*.

Rich, S.D., & Novick Brown, N. (2014). A case for a diagnostic code for neurodevelopmental disorder associated with prenatal alcohol exposure: A child/adolescent psychiatrist and forensic psychologist speak out. *Psychiatric News*, <http://psychnews.psychiatryonline.org/newsarticle.aspx?articleid=1792237>.

Novick Brown, N., & Rich, S.D. (Winter 2013). A neurodevelopmental paradigm for fetal alcohol spectrum disorder. *Judges' Page, Court Appointed Special Advocates*.

Grant, T.M., Novick Brown, N., Graham, J.C., & Ernst, C.E. (2013). Substance abuse treatment outcomes in women with fetal alcohol spectrum disorder. *International Journal of Alcohol and Drug Research*, <http://ijadr.org/index.php/ijadr/article/view/112/213>.

Brown, N.N., Wartnik, A., & Rich, S.D. (2013). Diagnosing FASD in the era of DSM-5: Good news for the forensic context. *Fetal Alcohol Forum*, 10, 34-37.

Grant, T.M., Novick Brown, N., Dubovsky, D., Sparrow, J., & Ries, R. (2013). The impact of prenatal alcohol exposure on addiction treatment. *Journal of Addiction Medicine*, 7, 87-95.

Grant, T.M., Novick Brown, N., Graham, J.C., Whitney, N., Dubovsky, D., & Nelson, L.A. (2013). Screening in treatment programs for Fetal Alcohol Spectrum Disorders that could affect therapeutic progress. *International Journal of Alcohol and Drug Research*, 2, 37-49.

Novick Brown, N., Adler, R.S., & Connor, P.D. (2012). Conduct-disordered adolescents with fetal alcohol spectrum disorder: Intervention in secure treatment settings. *Criminal Justice and Behavior*, 39, 789-812.

Novick Brown, N., O'Malley, K., & Streissguth, A.P. (2012). FASD: Diagnostic dilemmas and challenges for a modern transgenerational management approach. In S. Adubato & D. Cohen (Eds.), *Prenatal Alcohol Use and Fetal Alcohol Spectrum Disorders: Diagnosis, Assessment, and New Directions in Research and Multimodal Treatment*. Bentham Online Publishing.

Novick Brown, N., Gudjonsson, G., & Connor, P. (2011). Suggestibility and Fetal Alcohol Spectrum Disorders (FASD): I'll tell you anything you want to hear. *Journal of Psychiatry and Law*, 39, 39-71.

Novick Brown, N. (Spring 2011). Evidence-based interventions in children with Fetal Alcohol Spectrum Disorders. *Paradigm*, 16, 12-17.

Novick Brown, N., Wartnik, A.P., Connor, P.D., & Adler, R.S. (2010). A proposed model standard for forensic assessment of FASD. *Journal of Psychiatry and Law*, 38, 383-418.

Novick Brown, N. (June 2008). FASD Experts: Multidisciplinary forensic assessment for a multidimensional condition. *Iceberg*, 18.

Novick Brown, N. (2007). ADHD and FASD: Comorbidity and its effect on sexual behavior problems. In K O'Malley (Ed.), *ADHD and FASD: Diagnosis, natural history, and therapeutic issues across the lifespan*. Hauppauge, NY: Nova Pub.

Novick (Brown), N. (1998). FAS: Preventing and treating sexual deviancy. In A.P. Streissguth & J. Kanter (Eds.), *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities*. Seattle: University of Washington Press.

Novick (Brown), N.J. (1996). *Sexual victimization and inappropriate sexual behavior in children: Recommendations for evaluation and treatment*. Proceedings of 1996 International Conference on Fetal Alcohol Syndrome, Seattle, Washington.

Novick (Brown), N.J., & Streissguth, A.P. (1995). Identifying clients with possible fetal alcohol syndrome: Fetal alcohol effects in the treatment setting. *Treatment Today*, 7(3), 14-15.

Novick (Brown), N.J., & Streissguth, A.P. (1995). Some thoughts on the treatment of adults and adolescents impaired by fetal alcohol exposure. *Treatment Today*, 7(4), 20-21.

Novick (Brown), N.J., Cauce, A.M., & Grove, K. (1994). Competence self-concept. In B.A. Bracken (Ed.), *Handbook of self-concept*. New York: Wiley.

Novick (Brown), N.J., & Brown, J.D. (1992). *The influence of self-esteem on response to mood*. Paper presented, 100th Annual Convention of the American Psychological Association, Washington, D.C., August, 1992.

Brown, J.D., Novick (Brown), N.J., Lord, K.A., & Richards, J.M. (1992). When Gulliver travels: Social context, psychological relatedness, and self-appraisals. *Journal of Personality and Social Psychology*, 62, 717-727.

Norris, J, Novick (Brown), N.J., & Kerr, K.L. (1992). *Alcohol and violent pornography: Impact of social influence on sexual arousal*. Poster presented at the Research Society on Alcoholism Meeting, San Diego, California, June, 1992.

Brown, J.D., & Novick (Brown), N. (1991). *Social context, psychological relatedness, and self-appraisals*. Paper presented at the 99th Annual Convention of the American Psychological Association, San Francisco.

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INVITED PRESENTATIONS, WORKSHOPS, TRAININGS

- 05/11/17 FASD in the Capital Context. Capital Habeas Seminar, Chattanooga, TN.
- 06/03/16 Fetal Alcohol Spectrum Disorders in the Parenting Context. 53rd Annual Conference, Association of Family and Conciliatory Courts. Seattle, WA.
- 05/18/16 FASD and Sexual Offending in Indian Country. Webinar, Health and Human Services.
- 04/29/16 Confabulation, Malingering, Memory, and Suggestibility: Clinical and Forensic Considerations. American Institute for the Advancement of Forensic Studies, St. Paul, MN.
- 09/11/15 FASD: Identification, Assessment, and Treatment. Co-presented with Therese Grant and Paul Connor. Western State Hospital, Tacoma, WA.
- 08/20/15 FASD and Sexually Inappropriate Behavior. FASD Train-the-Trainer Workshop for Casey Family Programs, Indian Child Welfare, University of Washington, Seattle, WA.
- 07/13/15 (1) One Size Does Not Fit All: Forensic Assessment of Sex Offenders with FASD. XXXIV International Conference on Law and Mental Health, Vienna, Austria (2) FASD in the Courtroom: FASD Experts Approaches Its Eighth Year (3) Panel: The Central Role of Neuropsychology in Forensic FASD Assessment (4) Panel: Forensic Assessment of FASD: The Impact of Suggestibility. XXXIV International Conference on Law and Mental Health, International Academy of Law and Mental Health, Vienna, Austria.
- 06/25/15 (1) Plenary: Identifying Fetal Alcohol Syndrome (2) Panel: Fetal Alcohol Syndrome: Experts and Presentation at Evidentiary Hearing. Capital Habeas Unit (CHU) National Conference, Denver, CO.
- 05/29/15 FASD: What You Should Know. Court Improvement Training Academy (CITA), University of Washington Law School, Suquamish Nation, Poulsbo, WA.
- 10/23/14 Insights from Poverty to Death Row: ND-PAE Diagnosis and DSM-5. American Academy of Child and Adolescent Psychiatry Annual Meeting, San Diego, CA.
- 05/23/14 Plenary: Forensic Assessment of FASD: Update on Diagnosis and Latest Research. FASD and the Law Conference, Woodbury, MN

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| 05/14/14 | FASD: Diagnosis and Intervention. Washington State Developmental Disabilities Administration, Seattle, WA |
| 04/29/14 | Sex Is <i>Not</i> a Four-Letter Word: FASD and Sexuality. Living With FASD: 2014 Summit Conference (international webinar) |
| 02/05/14 | FASD: Dawn of a New Era in Diagnosis. Minnesota Organization on FAS (MOFAS), MN (webinar) |
| 11/26/13 | Fetal Alcohol Spectrum Disorder. Washington State Developmental Disabilities Administration, Kent, WA |
| 10/16/13 | Neurodevelopmental Disorders in the DSM-5. Skype workshop for Pathways Counseling Center, St. Paul, MN |
| 09/27/13 | FASD: Back (and to) the Future: 1973 – 2013. 40 th Anniversary Professional Summit, New Jersey Task Force on FASD, Atlantic City, NJ |
| 09/25/13 | FASD: Practical Supports for the Legal Context. 2013 FASD Summit, The Arc of Arkansas, Little Rock, AR |
| 08/28/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Missoula, MT |
| 08/22/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Fargo, ND |
| 08/04/13 | FASD: Moving Beyond Prevention to Practical Supports. The Arc: 2013 National Convention. Bellevue, WA |
| 07/26/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Boise, ID |
| 07/15/13 | FASD and Criminal Justice: Cognitive and Social Deficits Associated With FASD. 33 rd International Congress on Law and Mental Health, Amsterdam, Netherlands. |
| 06/25/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center. Cheyenne, WY |
| 06/25/13 | Developmentally Delayed Offenders in the Criminal Justice System. Frontier Regional FASD Training Center, Cheyenne, WY |

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| 05/03/13 | Understanding and Treating Developmentally Delayed Sex Offenders. American Institute for the Advancement of Forensic Studies; St. Paul, MN |
| 04/06/13 | Seeking the Standard of Care in Custody Assessments in WA State. AFCC-WA Spring Conference; Seattle, WA |
| 09/06/12 | Understanding the Link Between FASD and Sexual Offending. Indian Health Service; Seattle, WA |
| 07/20/12 | Forensic Assessment of Developmental Disabilities. American Institute for the Advancement of Forensic Studies; St. Paul, MN |
| 07/13/12 | FASD and Competency. WI Association of Criminal Defense Lawyers; Stevens Point, WI |
| 04/19/12 | Changing Public Policy in the Juvenile Courts: What Works? Fifth National Biennial Conference on Adolescents and Adults with FASD: It's a Matter of Justice, Vancouver, BC, Canada |
| 03/29/12 | Fetal Alcohol Spectrum Disorders. Death Penalty Institute, Lexington, KY |
| 02/03/12 | Alcohol Related Birth Disorders and the Law. Mid-year ABA Conference, Interagency Coordinating Committee on FASD in Collaboration with U.S. Dept. of Justice and Minnesota Organization on FAS, New Orleans, LA |
| 02/02/12 | FASD and Neurobehavioral Issues in the Criminal Justice System. Capital Defense Project of SE Louisiana, New Orleans, LA |
| 11/18/11 | Assessing and Understanding Fetal Alcohol Spectrum Disorders in Capital Clients. Virginia Bar Assoc., 19 th Annual Capital Defense Workshop, Richmond, VA |
| 10/07/11 | FASD and the Criminal Justice System. Seattle City Attorney's Office and University of Washington, Seattle, WA |
| 09/21/11 | FASD: Preventing and Treating Sexual Deviancy. Indian Health Service FASD Training, Seattle, WA |
| 07/09/11 | FASD and Competency. Capital Mitigation – Beyond Atkins, Center for American and International Law; Houston, TX |
| 06/23/11 | FASD in the Courtroom. Ninth Annual Statewide Conference, Arizona Public Defenders Association; Tempe, AZ |

- 05/20/11 FASD and Intellectual Disability/Mental Retardation. Metropolitan Public Defender, Oregon Capital Resource Center, Oregon Criminal Defense Lawyers Association; Portland, OR
- 03/11/11 Forensic Aspects of Fetal Alcohol Spectrum Disorders. Sponsored by Pathways Counseling Center, MOFAS, Minnesota DOC, MN Community Corrections Association, & American Institute for the Advancement of Forensic Studies; St. Paul, MN
- 10/27/10 FASD: Its Relevance Throughout the Legal Process from Competency to Stand Trial to Clemency. 2010 Appellate Judicial Attorneys Institute, Burlingame, CA
- 10/02/10 Forensic Assessment of FASD in the Habeas Context. Federal Defenders Annual Death Penalty Conference, Boise, ID
- 07/16/10 Team Approach to Litigating FASD (plenary). Center for American and International Law, Plano, TX
- 07/10/10 Fetal Alcohol Spectrum Disorder in the Courtroom: The 20th Anniversary of Dr. Ann Streissguth (plenary + break-out). NAACP LDF, Airlie, VA
- 04/22/10 Forensic Assessment of FASD with State-of-the-Art Facial Analysis, Diffusion Tensor Imaging and MRIs. 7th National Seminar on the Development and Integration of Mitigation Evidence (plenary). American Bar Association, Seattle, WA
- 04/17/10 Suggestibility in FASD: Forensic Assessment and Implications. 4th International Conference on Fetal Alcohol Spectrum Disorder, Vancouver, BC, Canada
- 03/31/10 Fetal Alcohol Spectrum Disorder and Justice. Alcohol Healthwatch, Parnell, New Zealand. (Abbreviated presentations also provided on 4-1-10 to New Zealand Ministry of Health and Ministry of Justice.)
- 02/25/10 Fetal Alcohol Spectrum Disorder (FASD). Texas Criminal Defense Lawyers Association, Austin, TX
- 02/12/10 FASD and Justice: A Multidisciplinary Assessment Model for Adults and Adolescents. CACJ/CPDA Capital Defense Seminar, Monterey, CA.
- 02/06/10 Fetal Alcohol Syndrome: Practical Tools. 3rd Interdisciplinary Program: UW School of Law & Washington Death Penalty Assistance Center, Seattle, WA.

- 03/11/09 FASD in the Legal System: A Multidisciplinary Assessment Model for Adults and Adolescents. 3rd International Conference on Fetal Alcohol Spectrum Disorder, Victoria, BC.
- 11/18/08 Screening for FASD in Family Practice. Family Practitioners, University of Washington/Swedish Hospital, Family Practice Medical Residents In-service.
- 10/25/08 Cross-Examination of Adverse Expert Witnesses in SVP Commitment Trials. Sex Offender Commitment Defense Association (SOCDA), Atlanta, GA
- 05/30/08 Fetal Alcohol Syndrome and Fetal Alcohol Effect: Identifying Clients and Understanding Consequences. Fifth National Seminar on the Development and Integration of Mitigation Evidence, Habeas Assistance & Training Counsel Project, Baltimore, MD
- 11/03/07 Direct and Cross Examination of Experts in SVP Cases. Sex Offender Commitment Defense Association (SOCDA), San Diego, CA
- 08/18/07 Fetal Alcohol Syndrome / Fetal Alcohol Effects. 12th Annual Federal Habeas Corpus Seminar, Nashville, TN
- 05/23/07 Fetal Alcohol Spectrum Disorders: History, Diagnosis, and Mitigation Issues. Capital Federal Public Defender Unit (capital habeas and trial attorneys, Federal District of Nevada)
- 04/14/07 What Attorneys and Policy Makers Need to Know About FAS and FASD. American Bar Association/Harvard Law School National Conference on Children and the Law, Cambridge, MA
- 02/18/07 Fetal Alcohol Spectrum Disorders (FASD). California Attorneys for Criminal Justice/California Public Defender Association (CACJ/CPDA) Annual Death Penalty Conference, Monterey, CA
- 06/30/06 Sexually Violent Predator Evaluation, Risk Assessment, and Testimony, Florida Public Defenders Sexually Violent Predator Conference, Orlando, FL
- 04/19/06 Screening Protocol for Fetal Alcohol Spectrum Disorders (FASD). King County Mental Health / Drug Courts, Seattle, WA
- 02/26/05 FASD: Problems of Witness Suggestibility and False Confessions. International FASD Conference, Victoria, British Columbia, Canada

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PROFESSIONAL ORGANIZATIONS

| | |
|----------------|--|
| 1990 – present | American Psychological Association (APA) |
| 2008 – present | American Society-Law Society (APA) |
| 2015 – present | International Association of Law and Mental Health (IALMH) |
| 2005 – present | Association for the Treatment of Sex Abusers (ATSA) |
| 2004 – present | Association of Family & Conciliatory Courts (AFCC – National) (WA-AFCC - Washington State; Board of Directors, Treasurer; Chair: Quality Assurance and Ethics Committee) |
| 2000 – present | American College of Forensic Examiners, Diplomate |
| 2011 – present | Midwest Alliance on Shaken Baby Syndrome (Board of Directors) |
| 2001 – 2003 | Jacksonville Youth Authority Advisory Board |
| 1996 – 2000 | Chairman, Social Issues Committee, Washington State Psychological Association |
| 1994 – 2000 | Washington State Psychological Association, Board of Directors |

JChappell CORA009239

Lewis M. Etcoff, Ph.D., A.B.P.N.

Nevada Licensed Psychologist No. 129

Diplomate, American Board of Professional Neuropsychology #257
Diplomate, American Board of Professional Disability
Consultants, #4-536
Fellow and Diplomate, American Board of Medical
Psychotherapists, 1805-1990

Karen Komper, M.A.
Associate

REFERRAL INFORMATION: James Montell Chappell is a 26-year-old, single, African American male presently incarcerated in the Clark County Detention Center and charged by the State of Nevada with Murder with a Deadly Weapon, Grand Larceny Auto, and Burglary relating to an 08/31/95 alleged crime in which the victim, Deborah Ann Panos was the 10-year girlfriend of the defendant and mother of his three children. I was asked to evaluate Mr. Chappell by Deputy Public Defender Howard S. Brooks on April 23, 1996. Mr. Chappell was evaluated on June 11, 1996.

TEST BATTERY:

REVIEW OF RECORDS:

1. LAS VEGAS METROPOLITAN POLICE DEPARTMENT RECORDS
2. VOLUNTARY STATEMENT OF LISA ANN DURAN
3. LETTERS APPARENTLY FROM THE DEFENDANT TO DEBORAH PANOS
4. LANSING MICHIGAN SCHOOL RECORDS

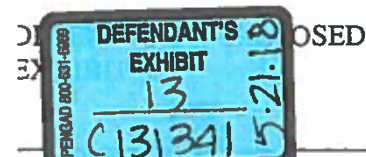
PSYCHOLOGICAL TESTS:

1. WECHSLER ADULT INTELLIGENCE SCALE - REVISED
2. WIDE RANGE ACHIEVEMENT TEST - 3
3. MILLON CLINICAL MULTIAXIAL INVENTORY - II
4. FORENSIC LIFE HISTORY QUESTIONNAIRE (ADMINISTERED BY HOWARD BROOKS)
5. TWO-HOUR FACE-TO-FACE CLINICAL INTERVIEW OF MR. CHAPPELL

CONSENT TO EVALUATE: Mr. Chappell was mailed a written Consent to Evaluation form in which I explained the purposes of this evaluation. In addition, before beginning the face-to-face evaluation, Mr. Chappell and I discussed that this evaluation was ordered by Mr. Brooks, his Deputy Public Defender, for purposes of helping the jury understand Mr. Chappell as a human being. I informed Mr. Chappell that anything he said to me could be used in my report and that information is, therefore, not confidential in the traditional sense. I told Mr. Chappell that his attorney might find my report not beneficial to his case and that the report might not ever be made public. On the other hand, I also warned Mr. Chappell that the report could be made public and

FORENSIC (CRIMINAL) PSYCHOLOGICAL EVALUATION

3885 S. Decatur Blvd. • Suite 1060 • Las Vegas, NV 89103
(702) 876-1977 • FAX (702) 876-0238



RE: CHAPPELL, JAMES MONTELL
 SEPTEMBER 28, 1996
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that I could be cross-examined by the District Attorney in court on the basis of my report. I warned Mr. Chappell that his Miranda Rights apply in this situation and that he should tell me if he felt uncomfortable answering any particular question I asked him. He stated that he understood these instructions, and the evaluation proceeded.

CLIENT PRESENTATION: Mr. Chappell presented as an appropriately attired, clean in appearance, African American male, appearing his stated age. He was cooperative throughout the evaluation and was particularly open about the relationship that he had with his former girlfriend, Ms. Panos. He showed normal motor behavior. His speech was normal in rate, organized, and free of articulation disturbance. His mood was nervous during intellectual and educational testing manifested by nervous laughter. His mood during my interview with him was appropriate to the content of our conversation. He became extremely sad and cried when recounting his killing of his girlfriend. His remorse was very credible and very sincere, in my opinion. He showed anger in a realistic sense in describing how he felt during the time in which he was incarcerated at the Detention Center and Ms. Panos was thought by Mr. Chappell to be going out on him. Mr. Chappell appeared straightforward and credible in his presentation of his family history and his life history. Mr. Chappell is certainly not evidencing any psychotic symptoms. He is intelligent enough to understand right from wrong. He did not appear to evidence any suicidal or homicidal ideation or any form of delusion or obsessive thinking, but was ruminating about his having killed the woman who he felt that he loved so deeply. Intellectual and educational test results appear valid as do personality test results.

TEST SCORES:

WECHSLER ADULT INTELLIGENCE SCALE - REVISED

| SUBTEST | SCALED SCORE | PERCENTILE |
|-----------------------------|---------------------|-------------------|
| VERBAL SUBTESTS | | |
| Information | 4 | 2 |
| Digit Span | 8 | 25 |
| Vocabulary | 5 | 5 |
| Arithmetic | 6 | 9 |
| Comprehension | 5 | 5 |
| Similarities | 8 | 25 |
| PERFORMANCE SUBTESTS | | |
| Picture Completion | 6 | 9 |
| Picture Arrangement | 8 | 25 |
| Block Design | 12 | 75 |
| Object Assembly | 9 | 37 |
| Digit Symbol | 8 | 25 |

Verbal IQ = 77; borderline range (6th percentile)
 Performance IQ = 91; average range (27th percentile)
 Full Scale IQ = 80; low-average range (9th percentile)

FORENSIC (CRIMINAL) PSYCHOLOGICAL EVALUATION

RE: CHAPPELL, JAMES MONTELL
 SEPTEMBER 28, 1996
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WIDE RANGE ACHIEVEMENT TEST - 3

| SUBTEST | STANDARD SCORE | PERCENTILE | GRADE EQUV. |
|----------------|---------------------------|-------------------|------------------------|
| Reading | 88 | 21 | H.S. |
| Spelling | 89 | 23 | 8 |
| Arithmetic | 67 | 1 | 4 |

INTELLECTUAL TEST RESULTS: Mr. Chappell received a WAIS-R Full Scale IQ of 80, suggesting that his overall intellectual abilities fall at the bottom of the low-average range and in the 9th percentile. This means that 91 out of 100 people his age show superior intellectual capabilities in comparison to Mr. Chappell.

Mr. Chappell's visual-spatial thinking skills, as represented in his Performance IQ, are average.

Mr. Chappell's language skills are below-average and measured in the 6th percentile, meaning that his abilities to understand words and concepts as well as express himself using words in logical fashion is worse than 94 out of 100 people his age. It is important to note that there is a strong correlation in the psychiatric and learning disabilities literature suggesting that children as well as adults who have early language problems tend to be overrepresented in groups of adolescents who get into trouble with the law and tend to be overrepresented in groups of aggressive adults. This implies that language deficits may have a very pronounced effect on a person's capability to think things through rather than act feelings out under significant stress. I bring this to the Court's attention because I believe that it has direct bearing on, and explains at least part of the reason why, Mr. Chappell was prone to acting out in a completely self-destructive as well as criminal fashion in the killing of his girlfriend.

ACADEMIC SKILLS: Mr. Chappell's reading and spelling skills fall in the low-average range. He is certainly literate enough to read a newspaper. His spelling is measured at an eighth grade level. My review of his notes to his girlfriend, while containing spelling errors, were essentially quite well-written and expressed well his thoughts and feelings.

Mr. Chappell very obviously has a significant learning disability in the area of arithmetic which he has had his entire life. His arithmetic skills are measured at a fourth grade level, worse than 99 out of 100 adults.

CHILDHOOD/FAMILY HISTORY: I relied upon Mr. Chappell for information in this section of the report and in subsequent sections of the report, as his mother (who I otherwise would have interviewed) died in a tragic accident when Mr. Chappell was two and a half years of age. Mr. Chappell's father has never been available in his life and did not live with Mr. Chappell at any point during his life and, so, could not provide relevant information about Mr. Chappell's upbringing. Mr. Chappell's grandmother who raised him is presently hospitalized, according to Mr. Chappell, suffering broken bones.

Mr. Chappell stated that his biological father, Richard Chappell, presently lives in Lansing, Michigan. Mr. Chappell believes that his father and mother were married at the time of his

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conception. Mr. Chappell doubts that his father ever lived for any length of time with his mother following Mr. Chappell's birth. Mr. Chappell stated that he never lived with his father and remembers first seeing his father at age 10 on one specific day when his father happened to visit. Mr. Chappell's father apparently did not contact his son prior to that visit nor contact his son following that visit except once when Mr. Chappell told me that his father promised to visit him on Christmas but didn't show up, which Mr. Chappell still remembers as a very significant and sad day in his life. Mr. Chappell mentioned that he next saw his father perhaps at age 16 or 17 when his father attended Mr. Chappell's great-grandmother's funeral in Lansing, Michigan. Mr. Chappell told me that he spent approximately two hours at that time with his father and perhaps an hour here and there on several other occasions over the next few months. Mr. Chappell stated that he never spent any significant time with his father.

Mr. Chappell explained that as far as he knows from what his grandmother has told him, his father has been "in and out of prison a lot. He always did drugs. He ran the streets. Even two months ago, my grandmother said he's still using drugs and had a heart attack." Mr. Chappell seemed dejected when he told me that his father "hasn't written or called me even though I'm in jail. It really hurts."

I asked Mr. Chappell to describe the emotional effect on him of not having a father. He answered, "A lot. We had no male role model in the house. We were raised by a woman. Now I don't have the skills to get jobs -- mechanical, construction. I moved to cookin'. I had lots of restaurant jobs." Mr. Chappell stated that he was both sad and angry at his father for not having any real involvement in his life. He gave me an example of one event that occurred at the time that his father was visiting for Mr. Chappell's great-grandmother's funeral. Mr. Chappell stated that he and his father were going to the bank where Mr. Chappell was going to cash his paycheck. Mr. Chappell told me that his father actually asked him to rob the bank with him which Mr. Chappell said he thought was ridiculous and refused to go through with this. He then stated that his father asked him for money which he knew was for drugs. Mr. Chappell said that he gave his father the money anyway, and his father asked him for more. Mr. Chappell said to me, "He just wasn't no good. He let me and my mother down."

Mr. Chappell became very sad as he told me that one of his greatest regrets is not having "had the guts" to ask his grandmother about his father and mother's relationship. He still wants to know what his mother was like and how his mother and father got along.

Mr. Chappell described his mother as someone whom he has no recollection of, as she died in a freeway accident when she was hit by a sheriff's car. Mr. Chappell's grandmother allegedly said to him that there was some financial compensation given to Mr. Chappell's father to help raise the four children who no longer had a parent to raise them. Mr. Chappell stated that his grandmother told him that she believed that his father kept all of the money and certainly gave none of it to the grandmother to help raise his four children.

Mr. Chappell's grandmother received custody of all four children. His grandmother's name is Clara Axam, and she works for the Michigan State Police Department, according to Mr. Chappell, in a decent job. When asked to describe his grandmother as a parent figure, he stated, "She spanked us with switches a lot but took care of us and gave us food and clothing." Mr. Chappell stated that he didn't really feel loved because his grandmother never gave any of the children birthday parties. She played Bingo on the weekends and came home late at night. She

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apparently used physical punishment a great deal, with most of the worst punishment saved for older brother Ricky, age 28, who is presently in prison in Muskegon, Michigan and Carla, the oldest daughter, presently age 30, who is apparently living on the streets, according to Mr. Chappell. Both Carla and Ricky are said to have been hit with extension cords and sticks. On one occasion, Mr. Chappell remembers Carla telling him, "I'll find a place for us all. We'll do this and that. I'll find daddy," meaning that she wanted to escape from grandmother's home where she was being physically abused and where the other kids were all getting hit. James and Myra, age 24, were less ill-behaved than Carla and Ricky, according to Mr. Chappell.

Mr. Chappell denied any specific problems getting along with any of his siblings. He stated that Ricky was "in trouble all the time. He came in late. He took money from my grandmother's purse. He was in Juvey a few times and then some camps, foster homes, jail, and prison."

Mr. Chappell was asked to describe what he was like as a student during elementary school and as a child during those years. He stated, "I was all right." He remembered being in one of several elementary schools and stated that he was sent to the Principal's Office and kicked out of his first elementary school for some form of misbehavior. He thought he might have been a hyperactive child, but, on further questioning, it isn't at all clear that he had Attention Deficit Hyperactivity Disorder. Mr. Chappell believes that he was placed in a special school for which he was picked up in a private bus in second grade at Cavanaugh Elementary School in Lansing, Michigan. He stated that he took some teasing from kids that age who said he was retarded because he was going to a special school. I asked him what effect this teasing had on his development. He answered, "That really hurt."

Mr. Chappell told me that he was placed in special educational classes in seventh grade through the time in which he left high school, following the tenth grade. He attended seventh and eighth grades at Dwight Rich Junior High School and ninth and tenth grades at Sexton High School, both in Lansing, Michigan. He believed that he was a C and D student. He earned no specific honors or awards during those years. He found math to be his hardest subject and was pulled out of regular classes for help in math, reading, and writing, to the best of his recollection. Mr. Chappell denied being a troublemaker either in elementary school or junior high or high school. He said that he had absolutely no fights in elementary school that he could recall. I asked him when he began to misbehave. He answered that at about 12 or 13 years of age, the kids in the neighborhood introduced him to marijuana, and "I began smoking weed, drinkin' a little bit." He remembered one occasion in which his sister, cousin, and a friend ransacked a house down the street for no particular reason. They were caught by the police. He went to Juvenile Court and was incarcerated for one week, after which he was placed on probation. His sister, Myra, got in trouble while incarcerated and had to stay longer. The next time he was in trouble was apparently when he was 16 years of age when he was arrested for trespassing at the high school.

Mr. Chappell denied any arrests prior to age 13.

LANSING, MICHIGAN EDUCATIONAL RECORDS REVIEW: On November 12, 1986, while at Sexton High School in Lansing, Michigan, a Social Work Evaluation was conducted by Theresa Abed, MSW, School Social Worker. The social worker gave a history of the first couple of years of James' life which is useful to reprint herein. Ms. Abed writes, "Before James' natural mother died, he and his siblings spent much of their time at their grandmother's house and, in

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fact, were already living with her at the time of his mother's death; however, Mother had frequently visited the children and was especially close to James. Her death was a very difficult adjustment for the children and, in particular, James. He was only two and a half years old at the time. James does not have contact with his natural father except for the times he has seen him on the street. His father is frequently in jail for drugs and other violations."

In the school year 1977-78 (grade two), James' teacher wrote, "James is often reminded to get busy, often given extra time to complete work, especially reading packet, often talks with those around him. James changes moods very quickly, needs to rely on himself more." In grade three, his teacher wrote, "He is easily distracted and is late getting his work in often. James needs to show work on listening when others are talking."

In grade four, James' teacher wrote, "James is not applying himself. He has real difficulty in math but should be doing much better in reading. He is overly disruptive in class and needs to be encouraged to be more respectful and considerate. Suspended for disruptive behavior February 15, 1980."

In a school Social Work Evaluation, conducted in grade four, Donovan Dosey, Jr., CSW, School Social Worker, noted in the Problems section of this report that James had been originally referred on June 13, 1977 because James was wetting and sucking his fingers. Since that time, teachers have recognized, "His actions and reactions are very slow. He asks unrelated questions and will not respond when spoken to. He is in the fourth grade and functioning at a second grade level." Despite a normal developmental history, the loss of James' mother when he was two and a half years of age was significant, according to the social worker, in that "James would not talk to anyone. His grandmother enrolled him in Head Start where he would not play with anyone or talk to anyone. He finally built a relationship with a new teacher, and when she left suddenly, he regressed to his old behavior, not talking to anyone." This social worker notes that none of the services provided to James in the early years were effective, and "his behavior seems to be deteriorating. James is in constant conflict with several of the other students and is quite often isolated to get his work done and to keep him away from the other boys. James has had a great deal of difficulty adjusting in school, both socially and academically. I feel that he has a great deal of difficulty forming meaningful relationships and recommend that he be placed in a smaller classroom situation and should receive individual therapy outside the school setting."

As a result of this evaluation, James was placed in a SLD (severely learning disabled) classroom in the school year 1980-81 where he still exhibited problems with self-control. Teachers were also concerned with his being withdrawn from other people, having a very low self-concept, and having trouble verbalizing his concerns to others. *(COMMENT: As a result of the lack of James' mother as well as neurologically-based learning disabilities, James, during elementary school, probably met present diagnostic criteria for an Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. Although grandmother and the School District in Lansing, Michigan attempted to help James, he seemed unable to profit from special educational assistance and apparently was never examined by a physician to see whether or not he did have Attention Deficit Hyperactivity Disorder.)*

In high school, his Achievement Test results in the Lansing School District are very poor. For example, in 1985, James scored the lowest possible stanine of one in Reading Comprehension

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and in Math. Below-average stanines of two were found in English and Spelling. A stanine of three, still below-average, was found in the area of Reading Vocabulary.

On October 23, 1986, when James was 16 years/9 months of age and in an emotionally handicapped special educational setting at Sexton High School, the school psychologist, Lutie Papesh, wrote a two-page updated report in which she stated, "The extensive interview revealed a youngster who seems to feel he has little hope of succeeding in life, especially as it relates to academic achievement. He did not appear to have many coping skills to deal with problems he encounters and tries to endure whatever comes his way by purse pointing action. He tends to withdraw and avoid when he encounters problems and often takes what appears to him to be the easy way out. Compared to the evaluation done three years ago, James does not appear to have made much progress. The result of this evaluation indicates James continues to meet eligibility requirements as an Emotionally Impaired student. His emotional problems appear to interfere with his ability to learn. Psychotherapeutic intervention is strongly recommended for him." This school psychologist specifically noted the emotional problems as "low self-concept, depressed, distrusting, few coping skills, low self-image, poor problem-solving skills, difficulty completing assignments, past history of problems with attendance, low motivation."

Last but not least, in high school, during ninth and tenth grades, James' report card of 01/28/87 was reviewed. He had carried 20 credits during those two school years and earned only 7 of those credits with an accumulative GPA of 0.65 and a class rank of 584 out of 607 students, essentially at the very bottom of his high school class.

LEGAL HISTORY: Since age 13, Mr. Chappell admitted to being arrested approximately 15 times. I did not inquire as to the nature of all of these arrests, as I am certain that the Court will have this history available to it.

SUBSTANCE ABUSE HISTORY: Mr. Chappell told me that he began using marijuana at age 12 or 13 and used it continually at about age 13 or 14, approximately four joints per day. He told me that he remembers that each joint cost \$1.00 and, so, they were affordable. He said that there was no supervision at home and that he and his siblings and friends were able to essentially smoke marijuana around the home. He stated that he did cut back from this intensity of use at about age 16 or 17 when he began smoking every other day or only on weekends.

His major drug of choice was cocaine. He began using cocaine at 18 years of age when a friend "rolled a rock into a joint." He stated that the habit of using cocaine began around 1991, when he was approximately 22 years of age and living in Arizona. Someone introduced him to smoking cocaine out of a pipe which he described as a "very high high. I used it daily after awhile in 1992 in Arizona." I asked him what the effects of the cocaine were, as he recalled them. He replied, "You don't feel like being bugged. It's like a paranoid high. You can get really ticked off. I liked to get high by myself late at night when my girlfriend and the kids were asleep." Mr. Chappell denied ever behaving violently as a result of smoking cocaine. He told me that he only stopped using cocaine several days in a row, at most since 1992. As soon as he had enough money, he would purchase more cocaine. He appears to have developed a cocaine dependence which is a severe substance abuse disorder.

PSYCHIATRIC HISTORY: Mr. Chappell stated that he had no significant psychological problems in the form of acute symptoms throughout his childhood and adolescence. He stated

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that it was only about four months before he murdered his girlfriend that he had thought about suicide frequently. The reason for his suicidal thoughts had to do with his belief that his girlfriend and he were drifting apart, and his increasing belief that she had begun to see other men. This belief is clearly elaborated in the letters that I reviewed that Mr. Chappell apparently wrote to Ms. Panos while he was incarcerated at the Clark County Detention Center on shoplifting charges. Mr. Chappell denied any history of psychiatric treatment, psychiatric hospitalization, or the use of psychotropic medications.

MR. CHAPPELL'S RELATIONSHIP WITH MS. PANOS: In regard to Mr. Chappell beginning to have suicidal thoughts while incarcerated at CCDC, he associated to the fact that his suicidal thinking was brought on by what he perceived to be his girlfriend drifting apart from him. He told me, "I loved this woman more than anybody I ever loved in my whole life. More than even my grandmother. She did many things for me. She had a lot of control over me. She was a friend and a lover." He and Ms. Panos had lived together eight of the ten years that they had dated and bore three children. He stated that they planned to marry. I asked him why he killed her, and he responded, "I found out she was cheating on me." He explained that he, she, and the kids moved to Las Vegas in October 1994. He stated that he was placed in jail on February 28, 1995, charged with shoplifting, and stayed in jail until May 10, 1995, when he was released. He stated that Ms. Panos visited him frequently in jail during this period, brought the kids for visits, gave him money, and accepted his telephone calls.

The problems that eventually led to Ms. Panos' murder began, according to Mr. Chappell, on May 10, 1995 when two of Ms. Panos' female friends moved into the apartment. Mr. Chappell said that things were "cool for two weeks" until one of her friends began bringing different men into the home every night. He stated that he didn't like the different strange men in the home and that he talked to Ms. Panos about the situation, but she apparently didn't rectify the situation. Mr. Chappell was disgusted that these men would leave cigarette butts on the floor when he and Ms. Panos didn't smoke. He found beer bottles littering his apartment. He became very angry with the strangers, and he would usually be, at the same time, either high or drunk. He stated, "I tried to take control of the situation," but apparently he and one of his female friends, by the name of Claire, got into an argument, and Claire called the police to the home. The police apparently asked Mr. Chappell to leave his own home. According to Mr. Chappell, eventually Claire was able to place Ms. Panos in the middle of this disagreement with Mr. Chappell. Mr. Chappell admitted that he took Claire's radio from her to "piss her off" so that she would move out of the home. Instead, apparently Ms. Panos backed up her girlfriend which "frustrated me even more. Debbie started hanging out with Claire. I'd be sitting home with the three kids. She wouldn't return until 3:00 or 4:00 in the morning. Didn't call all night. I'm sitting up all night worrying. It's getting to me," stated Mr. Chappell.

To make a long story short, Mr. Chappell stated that Debbie began going out at night with her girlfriends and coming home early in the morning on a regular basis which made Mr. Chappell wonder what she was doing. She apparently denied doing anything to endanger their relationship, but the effect of Debbie's behavior at this point, according to Mr. Chappell, was to make him somewhat paranoid, mistrustful of her intentions and motives, and fearful of their relationship (which he was enormously psychologically dependent upon) coming to an end.

Mr. Chappell told me of the past difficulties that the two of them had together. Her family is of white Italian heritage; apparently, they were not very happy that their daughter, Debbie, was fall-

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ing in love with an African American male. Mr. Chappell told me that he was "called a nigger for a few years." Several years of enmity ensued between Mr. Chappell and Debbie's parents. Mr. Chappell admitted that he had slapped Ms. Panos a few times and was once arrested for domestic violence in Arizona. He stated that she had also hit him and come after him with scissors and a knife on one occasion. He stated that Ms. Panos never required medical attention in Arizona as a result of him hitting her.

In any event, in or around June of 1995, Mr. Chappell stated that Debbie stopped coming home and stayed away for two weeks, with him counting the days. Apparently, she was staying at her friend Lisa's apartment with the children, usually. Apparently, Debbie told her friend that she was afraid of Mr. Chappell, according to what he subsequently heard.

Mr. Chappell went on to tell me that, quite by accident, he received a call from Debbie one evening and hit the redial button. He called back the number from which she had called him and found out that it was from Motel 6. She had told him that she was babysitting for a friend. He stated the motel operator confirmed that a Ms. Panos had stayed at Motel 6 the night before. Mr. Chappell said, "I was cryin', nervous, hurt... totally blown away." He stated that shortly thereafter, Debbie returned, took her clothes and the children and left for a week before he saw her again. Mr. Chappell reacted to this possible loss of someone upon whom he depended so much by getting high on cocaine "to get it out of my head. I didn't want to focus on her sleeping around Las Vegas."

It was on June 26, 1995 that Mr. Chappell was placed again in jail for shoplifting when he was attempting to take what would be a present for his three-year-old daughter's birthday. He was in jail for about a week when someone answered the phone at his home, and he didn't know who the gentleman was. Mr. Chappell became quite "stressed out" and said, "I could feel her being touched. I had dreams of her messing with people." To make Mr. Chappell even more anxious, insecure, and paranoid, he stated that Debbie never visited him in jail throughout the summer, never gave him any money, never took the kids to visit him, and all the while he was writing her cards everyday. On a rare occasion that the two of them did make contact with one another, he stated that Debbie always told him that she loved him and denied that she was sleeping around.

Mr. Chappell told me that he agreed to attend drug rehabilitation, which he recognized he needed, and he was about to be released from jail to enter a drug rehabilitation program when he called home and a man by the name of Willie allegedly answered, saying that he was watching Mr. Chappell's children while Debbie was at work and wouldn't return until 9:00 p.m. Mr. Chappell became incensed and felt that this was clear evidence that Debbie was cheating on him.

On the day that Mr. Chappell got out of jail and on the day that he killed Debbie Panos, he told me that he first drank a couple of beers with the guys at his old hangout, took a bicycle and rode over to his home where he climbed into a bedroom window (because he didn't have a key to the front door). He was met at the window by Debbie Panos, who he says assisted him through the window and asked him why he hadn't knocked on the door. He explained to her that he didn't know she was home. He stated that they began to have sex, and "when I enter her, her vagina is all loose. It wasn't right. I instantly got up. The smell on her wasn't good. I said, 'You been fuckin' huh?' She says, 'No.' I was cryin' and pacin'. She performs oral sex on me. Then I found men's boxers on the bedroom floor. She says it must be Claire or Lisa's friends. I'm really pissed. My mind's spinnin'. We're walkin' out the door, get in the car. I see two boxes with

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cheap beer cans. I asked her whose been drinkin'. She says, 'Lisa and Claire.' The car's trashy -- beer cans on the floor. It's pissing me off. The light's broke off. The ceiling upholstery is ripped. She's blamin' the kids. The gearshift was broke. The air-conditioning was broke. All my tapes were gone. Then I found a letter in the car to her from some guy. He talking about, 'I love the way you did this to me...' This feeling came inside me. She sees me reading the note. All I could picture was my lady in bed with someone else. I got out, grabbed her, took her in the house. She's on the floor at the front door."

Mr. Chappell began to cry uncontrollably as he recollected his murdering his girlfriend. He continued by saying, "She just laid on the floor and covered her face. I still to this day don't remember everything I did to her. It happened so quick. Then I panicked and left." This explanation took a few minutes, as Mr. Chappell was crying profusely and exhibited definite remorse and an enormous feeling of guilt and sorrow for this impetuous and horrible act.

Mr. Chappell admitted that he felt abandoned by Debbie Panos. He believes that she lied to him about not having seen other men. Subsequent to the murder, Mr. Chappell says that he knows that she was seeing three different men. He stated that her friend, Lisa, told the police that Mr. Chappell had said to her, "If I couldn't have her, then nobody else could." Mr. Chappell denied that he ever said anything of the sort to Lisa.

In summary, Mr. Chappell appeared enormously remorseful that he impetuously killed the very person who he thinks he loved so deeply but who, in reality, he was probably extremely dependent upon. His explanation of how his relationship with Ms. Panos deteriorated during spring and summer of 1995 hold together logically and seem credible to me. At the same time, I don't doubt that his depiction of the relationship as being a solid one prior to this time is not completely accurate. I am also certain that Ms. Panos probably left Mr. Chappell for what she felt to be good reason. Whether or not she was cheating on him, I have no idea, but I certainly believe that Mr. Chappell believed that his girlfriend was cheating on him -- a feeling that, while incarcerated, was enormously hard for him to accept.

PERSONALITY TEST RESULTS: The Millon Clinical Multiaxial Inventory - II (MCMI-II) is an excellent objective personality test that Mr. Chappell was administered via audiotape in order to work around his reading difficulties. The MCMI-II measures abnormal clinical personality traits, severe personality traits, and acute psychiatric disorders. Mr. Chappell's MCMI-II is valid and reliable. It suggests that he is dysthymic in mood as a result of feeling personally inadequate, worthless, and guilt-ridden. The MCMI-II depicts him as a socially awkward and introverted man, shy, apprehensive, sensitive to humiliation, and especially sensitive to public humiliation and rejection (which is very relevant to the motive for his murdering his girlfriend).

The MCMI-II depicts Mr. Chappell as having four significant abnormal personality characteristics: avoidant, borderline, schizoid, and self-defeating characteristics. The MCMI-II depicts Mr. Chappell as an intensely mistrustful man who has very strong needs to be dependent upon someone else due to his feeling that he cannot function independently. *(COMMENT: This descriptor of Mr. Chappell is enormously important in regard to his motives for this murder, as it depicts him as both very mistrustful and enormously dependent simultaneously. And, so, if he actually felt that his girlfriend was cheating on him, then he would be frightened that he might lose her*

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[due to his dependency needs and difficulty functioning autonomously] and, at the same time, prone to mistrust her, whether or not the mistrust was justified.)

Additionally, Mr. Chappell appears to have some cognitive eccentricities to the point that he may at times become so anxious that he loses sight of his identity. He is very socially uncomfortable and depends upon others to assume responsibilities that he should shoulder. He avoids social and personal obligations because commitments constitute a threat to his security. He likely felt a conflict between becoming too detached from Debbie and too close to Debbie, as neither closeness was tolerable emotionally to him nor detachment for fear of losing someone who he depended upon so enormously. (COMMENT: This dependency need probably derives from the fact that he lost his mother at age two and a half, never had a father figure in his life, and was raised by a less-than-adequate parent figure in his grandmother.)

Mr. Chappell would be the type of individual to feel persecuted, humiliated, and disparaged by others because his own self-image is one of weakness and ineffectuality. At times, Mr. Chappell can become so self-absorbed that his daydreams blur fantasy with reality. He is also the type of person who wishes to avoid emotional experiences (e.g., his incessant drug use) and also to suppress any event in his life that might evoke disturbing memories and feelings. These defensive efforts would obstruct his having positive social experiences. Others might see him as a socially peculiar individual whose occasional autistic or magical thinking might alienate others. All of this would lead him to maintain a depressive, socially anxious, detached, and ineffectual life pattern.

Most importantly, Mr. Chappell's personality test results suggest that his lack of initiative, self-deprecatory attitude, and avoidance of assertive behaviors lead him to lead a passively dependent lifestyle in which he would be the type of person to attach to someone, like a girlfriend, in order to make him feel safe and secure.

DIAGNOSTIC IMPRESSION: (DSM-IV):

- AXIS I:** COCAINE DEPENDENCE.
 RECEPTIVE LANGUAGE DISORDER.
 DYSTHYMIC DISORDER (PROBABLY LIFELONG).
 ARITHMETIC DISORDER.
 MARIJUANA ABUSE.
 ATTENTION DEFICIT HYPERACTIVITY DISORDER (PROBABLE).
- AXIS II:** BORDERLINE PERSONALITY DISORDER WITH AVOIDANT, SELF-DEFEATING, AND SCHIZOID PERSONALITY FEATURES.
- AXIS III:** PER PHYSICIANS.

SUMMARY AND CONCLUSIONS: In terms of potential mitigating factors, the death of Mr. Chappell's mother when he was two years of age is a significant factor in his life. A second factor of importance is that he never had any involvement of his father throughout his life. Third, his grandmother appears to have been a somewhat inadequate and physically abusive parent figure who unfortunately may not have helped Mr. Chappell develop a sense of self-

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worth. Fourth, Mr. Chappell has a neurologically-based receptive language disorder which has been found in psychiatric and psychological literature to correlate with aggressive acting-out behaviors in children and teens as well as in adults. Fifth, Mr. Chappell developed feelings of low self-worth and personal inadequacy which has resulted in his having a Borderline Personality Disorder due to a combination of factors: the death of his mother and the absence of his father, an inadequate parenting figure (his grandmother), school failure due to language and arithmetic disorders of neurological origin, and the absence of timely or effective treatment of these academic problems. Sixth, the development of Mr. Chappell's Borderline Personality Disorder with avoidant and self-defeating features are a result of his low self-worth, some humiliating childhood experiences (especially in school), and the absence of normal adult role models during his childhood. Seventh, Mr. Chappell's cocaine dependence is an understandable occurrence because he used dependence on a substance like cocaine as a means to escape his feelings of inadequacy and low self-worth. Eighth, as a result of cocaine dependence, Mr. Chappell was unable to have the normal opportunities to learn how to cope with his many problems and to find some successes in his life which would have led to greater self-worth and less anxiety concerning the loss of a loved one. Finally, if Ms. Panos was in fact seeing other men while Mr. Chappell was incarcerated (or even if she wasn't, but Mr. Chappell sincerely believed that she was seeing other men), Mr. Chappell became so fearful and anxious of losing the one person he needed desperately to support him that he was less able to think logically and rationally which contributed to his impetuously taking Ms. Panos' life.

Mr. Chappell's Borderline Personality Disorder was contributing to his unstable mood and difficult interpersonal relationships, and his poor self-image was manifested within his intense, interpersonal relationships characterized by the extremes of over-idealizing Ms. Panos and devaluing Ms. Panos. Secondly, the Borderline Personality Disorder contributed to Mr. Chappell's exploiting Ms. Panos via his own misbehavior. It also contributed to Mr. Chappell's affective instability with his marked shift between normal moods, depressive moods, anxiety, and irritability. The Personality Disorder was manifested in inappropriate intense anger and lack of control of anger, (e.g., the impetuous murder of his girlfriend) and the anger that he felt in the months previous to the time of the murder when he believed that he was losing the one source of strength in his life.

Lewis M. Etcoff Ph.D.

Lewis M. Etcoff, Ph.D.
 Diplomate, American Board
 Of Professional Neuropsychology
 Fellow, American College
 Of Professional Neuropsychology
 Diplomate and Senior Disability Analyst,
 American Board of Disability Analysts

LME/jhs
 T: 09/28/96

FORENSIC (CRIMINAL) PSYCHOLOGICAL EVALUATION

JChappell CORA011145

DISMISSAL ORDER

PC 105
(revised 6/81)

STATE OF MICHIGAN
THE PROBATE COURT FOR THE COUNTY OF INGHAM
JUVENILE DIVISION

File No: D-10273 A

In the Matter of: JAMES M. CHAPPELL, (DOB: 12-27), Minor

At a session of said Court held in the City of Lansing, Michigan, on the

23rd day of January, 19 86

PRESENT: Honorable R. GEORGE ECONOMY, Judge of Probate

It appearing to the Court after having fully reviewed said proceedings and records of said Court relevant hereto, that

- ☐ upon motion of the Prosecuting Attorney, said matter should be dismissed.
- ☒ said minor(s) has/have made a good adjustment and the supervision of this Court is no longer needed.
- ☐ the parent(s) of said minor(s) has/have made an adequate adjustment and this Court's jurisdiction is no longer needed.
- ☐ said minor(s) has/have attained the age of _____ and is/are no longer suitable for, or involved in, any Court programs.
- ☐ said minor(s) will no longer benefit from any Court program.
- ☐ adequate provision has been made for the supervision of said minor(s).
- ☐ said minor(s), having been made a ward(s) of this Court, and having moved to another State, no longer comes under the jurisdiction of this Court.
- ☐ said minor(s) has/have attained the age of _____, and since attaining said age, has/have become involved in a Circuit Court felony.
- ☐ File Number _____ should be dismissed as said minor(s) is/are currently being carried under File Number _____.
- ☐ said minor(s), being in the permanent custody of the Court, has/have been duly placed for adoption, and it appears that said adoption has been completed.
- ☒ with the exception of those Orders which relate to payment owed the Court.

NOW THEREFORE, it is ordered that further proceedings taken herein, with the exception of the above specified, be and the same are hereby dismissed.

R. George Economy
JUDGE OF PROBATE

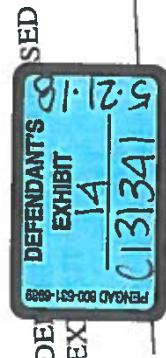
ACL
CC: William R. Moore, JCO; M. Bauer; Bareis; Bkpr.; Legal Guardian/Grandmother;
APA; Ingham County Probate Office

FILED: JAN 2 1986

AMY CHEVYCOZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

A TRUE COPY:

CONNIE COPELAND
RECEIVED JAN 27 1986



JChappell CORA011146

REVIEW SUMMARY

RE: JAMES M. CHAPPELL
DOB: 12-27-61
DOH: 1-14-86

FILE NO.: D-10283 A
CASEWORKER: WM. MOORE
SUPERVISOR: M. BAUER

I. HISTORY

A. Father

Richard Chappell
Address Unknown

B. Mother

Deceased

C. Grandmother/Legal Guardian

Clara Axam
3821 Wedgewood
Lansing, Michigan

D. Original Petition and Date

Larceny in a Building May 25, 1983

E. Additional Court Actions

| | |
|-------------------|---|
| September 7, 1983 | B&E Occupied Dwelling |
| November 18, 1984 | Larceny Over \$100 |
| December 17, 1985 | Breaking and Entering Without Permission |
| | Malicious Destruction-Personal Property Under \$100 |

II. PLACEMENT INFORMATION

| | |
|----------|---|
| 5-25-83 | Grandmother's Home |
| 12-17-84 | Juvenile Home |
| 12-23-84 | Grandmother's Home - He remains there at present. |

III. LAST GENERAL ORDER

In a Court order dated January 31, 1985, the Honorable Robert L. Drake, Judge of Probate, ordered the following:

~~That the probation order dated August 1, 1983 be affirmed~~
~~That said minor be sentenced to seven (7) days in the Ingham County Juvenile Home, with credit given for seven (7) days served.~~

IV. SUMMARY AND EFFECTIVENESS OF CASEPLAN

~~During the past six (6) months, James has not be involved in any delinquent~~

Ingham County
Juvenile Court

FILED: JAN 14 1986

BY: AMY CHERNOZ LANSDALE, for: EMS

A TRUE COPY:

CONNIE COPELAND

JChappell CORA011147

REVIEW SUMMARY
RE: JAMES M. CHAPPELL
FILE NO.: D-10283 A
PAGE 2

activity to the best of this worker's knowledge. The last petition submitted to the Court occurred in December of 1984.

At the last Review of this matter (7-9-85) this worker indicated that James could probably be dismissed from the jurisdiction of the Court towards the end of the year. This worker hoped that James might not get off to his usual poor start at school if the Court stayed involved. Unfortunately, this has not been the case. James has experienced considerable attendance problems during the first semester.

On December 3, 1985, this worker attended a meeting at Student Services. Also at that meeting were James, Ms. Axam, and Mr. McClellan. Mr. McClellan informed James that he was in danger of being "kicked out" of school for the rest of the year unless his attendance improved dramatically.

Since the December 3rd meeting, James' attendance has improved. This worker is well aware how important it is to James to remain in school. Hopefully, the threat of suspension will be a big enough motivator to get Jim in school every day.

On December 27, 1985, James celebrated his sixteenth (16) birthday. James has been under the supervision of the Court for almost two (2) years. This last year he has continued under the Court's jurisdiction only because of his school problems. It now appears that James can no longer benefit from the Court's involvement. He will either go to school, or he will not. If he chooses not to attend school, he will be suspended for the rest of the year.

✓ On 1-10-86, this worker talked to Ms. Axam, grandmother of the minor. This worker informed Ms. Axam that James probably would be dismissed from the Court at the time of his review on 1-14-86. Ms. Axam stated that "with Jim, I think it would be alright." She noted that "Jim will listen to me and do what I tell him."

V. RECOMMENDATIONS

1. That James M. Chappell, DOB: 12-27-69, be dismissed from the jurisdiction of this Court as he has made a good adjustment and no longer requires the supervision of the Court.

William R. Moore
William R. Moore
Juvenile Court Officer

Michele Bauer
Michele Bauer
Casework Supervisor

WRM:emc
January 10, 1986

Ingham County
Juvenile Court

JChappell CORA011148

REVIEW SUMMARY

RE: JAMES M. CHAPPELL

FILE NO.: D-10283 A

DOB: 12-27-81

CASEWORKER: WM. MOORE

DOH: 7-8-85

SUPERVISOR: M. BAUER

I. HISTORY

A. Father

Richard Chappell
Address Unknown

B. Mother

Deceased

C. Grandmother/Legal Guardian

Clara Axam
3821 Wedgewood
Lansing, Michigan

D. Original Petition and Date

Larceny in a Building May 25, 1983

E. Additional Court Actions

| | |
|-------------------|--|
| September 7, 1983 | B&E Occupied Dwelling |
| November 18, 1984 | Larceny Under \$100.00 |
| December 17, 1984 | Breaking and Entering Without Permission |
| | Malicious Destruction-Personal Property Under \$100.00 |

II. PLACEMENT INFORMATION

| | |
|----------|---|
| 5-25-83 | Grandmother's Home |
| 12-17-84 | Juvenile Home |
| 12-23-84 | Grandmother's Home - He remains there at present. |

III. LAST GENERAL ORDER

In a Court order dated January 31, 1985, the Honorable Robert L. Drake, Judge of Probate, ordered the following:

---That the probation order dated August 1, 1983, be affirmed.

---That said minor be sentenced to seven (7) days in the Ingham County Juvenile Home, with credit given for seven (7) days served.

Ingham County
Juvenile Court

FILED: JUL 9 1985

AMY CHERNYCZ LANSDALE *for E.M.*
DEPUTY REGISTER OF JUVENILE DIVISION

A TRUE COPY:

CONNIE COPELAND
Deputy Register of Juvenile Division

JChappell CDRA011149

REVIEW SUMMARY
RE: JAMES M. CHAPPELL
FILE NO.: D-10283 A
PAGE 2

IV. SUMMARY AND EFFECTIVENESS OF CASEPLAN

For the most part, James has performed very well over the last six(6) months. He has not been involved in any delinquent behavior to the best of this worker's knowledge. His grandmother has given this worker consistently good reports on his behavior.

James started off the second semester at Sexton High in rather poor fashion. He was "acting out" in the classroom and not completing his work. Consequently, this worker made arrangements for James to come to the Court after school every day, to work on his school work for a couple of hours. After approximately six (6) weeks of this arrangement, James had made up all of his work. He had also significantly improved his behavior in the classroom. James' grades for the second semester generally show his improved effort:

| | |
|-----------------|---|
| Intro. P.E. | E |
| S.E. Gen. Eng. | A |
| S.E. Math | C |
| S.E. Soc. Prob. | D |
| Gen. Art | C |

On 6-25-85, this worker talked to Clara Axam, guardian of the minor. Ms. Axam was very enthusiastic about James' performance at this time. She said that she has no problem with James following her instructions at home. He is usually at home, but on those occasions when he does go out, he gets home when he is supposed to.

James is presently enrolled in summer job program through the Lansing School District. He works four (4) days a week and attends five (5) hours of school on the fifth day. So far James has not missed any days of work or school.

It is this worker's opinion that James could probable be dismissed from the jurisdiction of the Court at this time. He appears to have made a good adjustment. However, James seems to function better when he knows the Court is in the background watching over him. This worker would feel comfortable with keeping James under the Court's supervision until the end of this year. This would allow him to get started in another school year. If he does reasonably well during the first several months of school and he has not been involved in any delinquent activity, then it would be this worker's intention to seek his dismissal from the Court.

V. RECOMMENDATIONS

1. That the Court order dated January 31, 1985 be affirmed.
2. That this matter be affirmed in six (6) months.

REVIEWED

ingham County
Juvenile Court

William R. Moore
William R. Moore, Juvenile Court Officer
WRM:emc
June 28, 1985

Michelle Bauer
Michelle Bauer, Casework Supervisor

JChappell CORA011150

ORDER — General

PC-20

State of Michigan
The Probate Court for the County of Ingham
JUVENILE DIVISION

In the Matter of JAMES M. CHAPPELL, (DOB: 12-27-)

Minor D-10273 A

At a session of said court held in the City of Lansing, Michigan, on the.....

31st day of January, 19 85

PRESENT: HON. ROBERT L. DRAKE, Judge of Probate

January 10, 1985, having been the date set for Pre-Trial Conference/ Rehearing in the above named cause and all interested parties having been duly before the Court; and the Court having heard testimony and proofs in Court and having fully reviewed said proceedings and records of said Court relevant hereto; and it appearing that the Probation Order, dated August 1, 1983, should remain in full force and effect, with the exception of the date set for Review; and further, that the Court having received and accepted said minor's plea admitting that the material allegations in Counts I and IV of the Rehearing Petition #3 of Det. Richard Cook, Lansing Police Department (#84-17368), filed December 17, 1984, alleging "Breaking and Entering Without Permission" and "Malicious Destruction of Personal Property \$100.00 or Less" respectively, are true and correct; and further, that this Court having found that the material allegations of said Counts I and IV of said Rehearing Petition #3 are true and correct and this Court continues jurisdiction of said minor; and further, it appearing that said matter should be set on for Review; Now Therefore,

IT IS ORDERED, that the Probation Order, dated August 1, 1983, be and is hereby affirmed, with the exception of the date set for Review.

IT IS FURTHER ORDERED, that said minor is sentenced to seven (7) days in the Ingham County Juvenile Home, with credit given for seven (7) days served.

IT IS FURTHER ORDERED, that Counts II and III of the Rehearing Petition #3 of Det. Richard Cook, Lansing Police Department (#84-17368), filed December 17, 1984, alleging "Assault and Battery" be and are hereby dismissed per a plea negotiation and upon motion of the Assistant Prosecuting Attorney.

(OVER... continued)

FILED: JAN 31 1985

AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

6

A TRUE COPY:

CONNIE COPELAND
Deputy Register of Juvenile Division

AA06952

JChappell CORA011151

~~IT IS FURTHER ORDERED, that Supplemental Petition #4 of Det. Richard Cook, Lansing Police Department (#84-17368), filed December 17, 1984, alleging "Breaking and Entering Without Permission" and "Malicious Destruction of Personal Property \$100.00 or Less" be and is hereby dismissed per a plea negotiation and upon motion of the Assistant Prosecuting Attorney~~

IT IS FURTHER ORDERED, that said matter be and is hereby set for a Review, before a Referee, on TUESDAY - JULY 9, 1985, at 10:15 A.M.; further, that attendance of Counsel at said Review shall not be required.


ROBERT L. DRAKE - Judge of Probate

ac1

cc: William R. Moore, JCO
MINOR
Clara Axam, GRANDMOTHER/LEGAL GUARDIAN
Ingham Co. Probate Office
Bareis
Bookkeeper
Neumann, ATTY/MINOR
Assistant Pros. Attorney
Cook, LPD/PET'R (#84-17368)

JChappell CORA011152

IN-HOME DETENTION
CLOSING SUMMARY

Re: James Chappell

File Number: D-10273A

DOB: 12-27-

HD-214

DOR: 01-11-85

Caseworker: B. Moore

HD Monitor: L. Winslow

Duration of Detention: 12-21-84 to 01-07-85

Contacts: Personal - 7 Telephone - 6

I. FAMILY ASSESSMENT

The Chappell family was very cooperative with the Home Detention staff. Mrs. Axom (grandmother) is very concerned about James and appreciates the Court's effort in modifying James' delinquent behavior. Mrs. Axom was diligent in keeping the Home Detention staff informed regarding James' behavior.

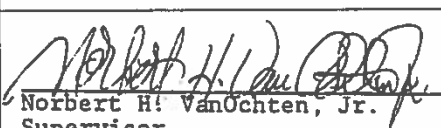
II. SCHOOL

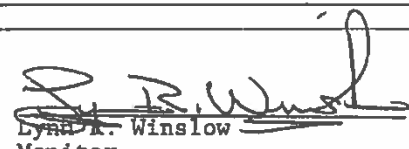
James was not enrolled or attending school while on Home Detention.

III. EVALUATION

James did quite well while on Home Detention. He appeared to put forth a diligent effort to complete community service work and created no problems at home.

It is this worker's recommendation that James be dismissed from Home Detention and continue under the supervision of the Court with Mr. William Moore as the assigned worker.


Norbert H. VanOchten, Jr.
Supervisor
Home Detention Program


Lynn A. Winslow
Monitor
Home Detention Program

LRW/paf
1-17-85

ingham County
Juvenile Court

FILED: JAN 17 1985

AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

A TRUE COPY:

CONNIE COPELAND
Deputy Register of Juvenile Division

JChappell CORA011153

IN-HOME DETENTION
CASEPLAN

Re: James M. Chappell

File Number: D-10273A

DOB: 12-27-69

HD-214

DOR: 01-10-85

Caseworker: B. Moore

HD Monitor: L. Winslow

Placement Date: 12-21-84

I. REASON FOR REFERRAL TO HOME DETENTION

1. Placed on Home Detention following an alleged Breaking & Entering.
2. As an alternative to secure detention.
3. Early release due to overcrowding.

II. FAMILY ASSESSMENT

James' grandmother (Ms. Axom) is very concerned about James' behavior and subsequent Court involvement. She appreciates the Court's efforts and on previous occasion has kept Home Detention staff well informed.

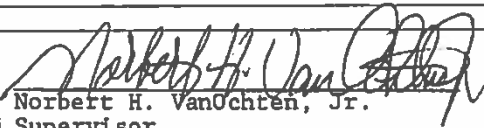
III. SCHOOL

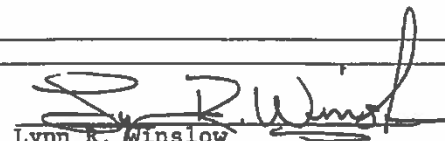
James is not enrolled in a school program at this time.

IV. TREATMENT GOALS

1. To modify delinquent/criminal activity.
2. To know of whereabouts at all times.
3. To insure attendance at all Court hearings and meetings.
4. To insure completion of community service work.

~~Goals to be accomplished through frequent/random contacts with minor, guardian and caseworker. Minor is also responsible for keeping a log of all activities.~~


Norbert H. VanOchten, Jr.
Supervisor
Home Detention Program


Lynn R. Winslow
Monitor
Home Detention Program

ingham County
Juvenile Court

LRW/paf
1-11-85

A TRUE COPY:

CONNIE COPELAND

Deputy Registrar of Juvenile Division

FILED: JAN 15 1985

AMY CHERMYCZ LANGSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

RECEIVED JAN 15 1985

JChappell CORA011154

DISPOSITIONAL SUMMARY

RE: JAMES M. CHAPPELL, Minor
DOB: 12-27-

FILE NO.: D-10273 A
CASEWORKER: William R. Moore
SUPERVISOR: Jonathan L. Dill

I. HISTORY

Father: Richard Chappell

-address unknown-

Mother: Shirley Chapell

(Deceased)

Original Petition and Date: May 25, 1983

Larceny in a Building

Additional Court Actions:

September 7, 1983

Breaking and Entering an Occupied Dwelling

November 18, 1984

Larceny Under \$100.00

December 17, 1984

Count I - Breaking and Entering Without Permission

Count II - Assault and Battery

Count III - Assault and Battery

Count IV - Malicious Destruction of Property
\$100.00 or Less

Count V - Breaking and Entering Without Permission

Count VI - Malicious Destruction of Personal
Property

II. LAST GENERAL ORDER

In a Court Order dated August 1, 1983, the Honorable Robert L. Drake, Judge of Probate, made said minor a temporary ward of the Court and placed him on probation.

A TRUE COPY:

CONNIE COPELAND

Deputy Register of Juvenile Division

III. SUMMARY AND EFFECTIVENESS OF CASE PLAN

During the approximately sixteen (16) months James has been under the supervision of the Court, his performance has been a series of ups and downs. When he is in the right frame of mind he performs quite well at home and in school. When he gets down on himself, he is a completely different person.

One of James' biggest problems has been his inability to say "no" to negative peers. He is easily led by older, more street-smart kids.

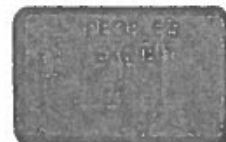
ingham County
Juvenile Court

FILED: JAN 10 1985

AMY CHERNOZ LANSDALE

DEPUTY REGISTER OF JUVENILE DIVISION

*Submitted to Court
10 Jan 1985
Richard L. Dill*



JChappell
CORA011155

Dispositional Summary - Page #2

RE: JAMES M. CHAPPELL, Minor

FILE NO.: D-10273 A

III. SUMMARY AND EFFECTIVENESS OF CASE PLAN (continued)

On every occasion James has gotten into trouble he has been a follower rather than the initiator of the delinquent activity. The fact that James can be identified as being a follower is significant, but this cannot continue to be used as an excuse for his delinquent behavior. Unless James can demonstrate better judgment in the choice of his friends, he appears to be headed towards placement in a residential setting. The six (6) offenses that bring us before the Court today follow closely the Larceny Under \$100.00 petition dealt with on November 18, 1984.

James' performance at Sexton High School so far this school year has been poor. On December 11, 1984, this Worker met with James and Sexton High School officials. At that meeting, the school representatives stated that James' attendance was so poor he was in jeopardy of failing the entire semester. One of his teacher's characterized his classroom behavior as just "sitting around and playing". The teacher also stated that James was often "high, or pretending to be high", in her class.

As mentioned earlier in this report, this Worker has serious reservations as to James' ability to walk away from situations where he can get into trouble. If his current behavior continues, it would be this Worker's intention to refer James to the Michigan Department of Social Services for placement in a residential program.

James was placed on In-Home Detention on December 23, 1984. He remained on In-Home Detention status until January 7, 1985. According to the In-Home Detention Monitor, James lived up to his responsibilities in a mature fashion.

IV. RECOMMENDATIONS

- (1) That said minor be sentenced to seven (7) days in the Ingham County Juvenile Home, with credit for seven (7) days served;
- (2) That the Court Order dated August 1, 1983, be affirmed;
- (3) That this matter be reviewed in six months.

WRM:JLD
1-8-85/ac1

Ingham County
Juvenile Court

William R. Moore
WILLIAM R. MOORE
Juvenile Court Officer

Jonathan L. Dill
JONATHAN L. DILL
Casework Supervisor

JChappell CORA011156

ORDER - CHANGING PLACEMENT OF CHILD WITHIN COURT'S CUSTODY

STATE OF MICHIGAN
THE PROBATE COURT FOR THE COUNTY OF INGHAM
JUVENILE DIVISION

FILE NUMBER: D-10733

IN THE MATTER OF: JAMES M. Chappell (DOB: 12-27-)
Minor (M)

In furtherance of an Order/Hearing dated * December 17, 1984
and the petition of WILLIAM MOORE Juvenile Court Officer
~~it now appearing the best interests of said minor and of the parties interested will~~
best be served thereby,

IT IS ORDERED that the placement of said minor be and is hereby changed from:

INGHAM COUNTY JUVENILE HOME
100 W. WILLARD, LANSING, MI

To: CLARA AXAM (Grandmother) (Legal Guardian)
1527 NEILER COURT, LANSING, MI 48910

IT IS FURTHER ORDERED, that such placement shall continue until

** further Order of the Court

Dated: DECEMBER 22, 1984

James G. Gyle
DIRECTOR OF CHILDREN'S SERVICES

* Insert as checked on the petition form.
** Insert as checked on the petition form.

FILED: DEC 23 1984

AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

12

A TRUE COPY:

PAULINE COPELAND
Deputy Register of Juvenile Division

RECEIVED JAN 8 1985

AA06958

PETITION TO CHANGE PLACEMENT OF CHILD WITHIN COURT CUSTODY

(To be prepared by Juvenile Court Officer in all instances where change of placement of child in Court custody is sought.)

IN THE MATTER OF: JAMES CHAPPELL FILE NUMBER: 0-10273
D.O.B.: 12-27 TEMPORARY WARD: ☒ PERMANENT WARD: ☐

Mother's Name: DECEASED Phone: _____

Address: _____ Zip Code: _____

Father's Name: RICHARD CHAPPELL Phone: _____

Address: UNKNOWN Zip Code: _____

Other (Specify): CLARA AXOM (GUARDIAN) Phone: _____

Address: 1527 NELLER CT., LANSING, MI Zip Code: _____

Change of placement of said minor from: INGHAM COUNTY JUVENILE HOME

Address: 100 W. WILLARD, LANSING, MI Zip Code: _____

To placement with or at: CLARA AXOM

Address: 1527 NELLER CT., LANSING, MI Zip Code: _____

Is requested for the following reason(s): said minor has made a good adjustment at the juvenile home. said minor is placed on FN Home Detention status.

Such placement is within the terms of:

☒ An Order/Hearing dated December 17, 1984.
Home Detention Contract (attached)

Such placement shall continue:
☒ Until further Order of the Court.

() Until _____, 19____, at _____ .M., at which time said minor shall be returned to: _____

Address: _____ Zip Code: _____

Friend of the Court involved? Yes _____ No ☒ Don't Know _____

Ingham County: _____ Other County: _____

ADC ☒ NON-ADC _____ If ADC, SDSS #: _____

William E. Moore Dated: December 23, 1984
Juvenile Court Officer

Approved: Joseph X. Dill Supervisor
Appeal Pending? Yes _____ No ☒
Are Atty./PA in agreement? COPELAND

(Original to Court file) _____ Prosecuting Attorney _____ Counsel _____
cc: Reimbursmt. Officer _____ Attorney for Minor _____ Other _____
ILEC: DEC 28 1984 _____ Attorney for Mother _____ CONFIDENTIAL
Foster Care Dept. _____ Petitioner _____ Attorney for Father _____
Caseworker _____ (Ingham Co.) FOC _____ Attorney for Parents _____
AMY CHERMYCZ LANSDALE

Approved by the Michigan State Court Administrator

STATE OF MICHIGAN

CORRA011118
COUNTY OF INGHAM

PROBATE COURT - JUVENILE DIV.

ORDER APPOINTING

ATTORNEY/GUARDIAN AD LITEM

CASE NO.

D-10273 A & C

In the matter of: JAMES M. CHAPPELL, Minor
(name(s), alias(es), DOB) MYRA LaTRESE CHAPPELL, Minor

(DOB: 12-27-

(DOB: 1-16-

It appears to the court that the person(s) listed below are in need of legal counsel/XXXXXXXXXX. Therefore, the court appoints:

a. MARTIN H. NEUMANN

P-32465

☒ Attorney.

as ☐ Guardian ad Litem.

Name

Bar no.

6810 South Cedar Street, Suite #2-C, Lansing, Michigan 48910

694-0858

Address

City

State

Zip

Telephone no.

Representing: JAMES M. CHAPPELL -and- MYRA LaTRESE CHAPPELL, Said minors

Name

Relationship to child(ren)

b.

Name

Bar no.

☐ Attorney.

as ☐ Guardian ad Litem.

Address

City

State

Zip

Telephone no.

Representing:

Name

Relationship to child(ren)

c.

Name

Bar no.

☐ Attorney.

as ☐ Guardian ad Litem.

Address

City

State

Zip

Telephone no.

Representing:

Name

Relationship to child(ren)

3. This appointment will be for purposes of representation before the Juvenile Division of the Probate Court only, unless otherwise ordered by the Judge of Probate.; further, please be advised that this appointment as Attorney for said minors is in regards to the pending delinquency charges only and will terminate at the time of final disposition of the same.

DECEMBER 17, 1984

Date

Judge of Probate/Bareis

FILED: DEC 17 1984

AMY CHEMYCZ LANSDALE

DEPUTY REGISTER OF JUVENILE DIVISION

A TRUE COPY:

CONNIE COPELAND

Deputy Register of Juvenile Division

CC: Moore, JCO; Neumann; Bareis; Bkpr.; APA

ORDER APPOINTING ATTORNEY/GUARDIAN AD LITEM, Form No. JC-03, Revised 4/80

JCR5, JCR6.3

JChappell
CORAD11159STATE OF MICHIGAN
THE PROBATE COURT FOR THE COUNTY OF INGHAM
JUVENILE DIVISIONIN THE MATTER OF JAMES M. CHAPPELL, (DOB: 12-27)File Number: D-10273 A

Rehearing #3 and Supplemental #4

Det. Richard Cook, LPD (#84-17368) having submitted a Petition(s) alleging that said minor(s) come(s) within the provisions of Act 54 of the Extra Session of 1944, as amended, a Preliminary Inquiry having been made in accordance with Section 11 of said Act.

And a Preliminary Hearing having also this day been held at which appeared the parents and custodian of said minor(s), or such of them as could be located and their presence obtained and said minor(s) also being present, the facts and allegations in said Petition(s) were read and proofs taken thereon, all in accordance with Section 14 of said Act.

And it appearing the interests of the parties and of society will best be subserved thereby, now therefore, in accordance with the Statute in such cases provided, IT IS ORDERED,

- (#1) That the filing of said petition(s) is ~~now~~ authorized and William R. Moore, Juvenile Court Officer, is assigned as Caseworker to investigate said matter, which investigation may include examinations by a Physician, Dentist, Psychologist or Psychiatrist.
- (#2) That said minor(s) be placed in the care and custody of the Director of Child and Youth Services for placement either in the Juvenile Home, his/hers/their own home, a relative's home, a licensed boarding home, or any other such placement deemed necessary for the health and welfare of said child(ren) pending final disposition of said case, or until further Order of the Court; with authority to provide psychological and medical care.
- (#3) That said minor(s) be placed in the care and custody of the Ingham County Juvenile Home, 100 West Willard Avenue, Lansing, Michigan; further, that upon release from the Ingham County Juvenile Home said is placed on In-Home Detention under conditions of a written contract until January 10, 1985, or until further Order of the Court.

DATED: DECEMBER 17, 1984

REFEREE:

Sandra J. Venn
SANDRA J. VENN

NOTICE IS FURTHER GIVEN AS FOLLOWS:

A TRUE COPY:

- (#4) That _____ be appointed as CONNIE COPELAND
That Martin H. Neumann, Atty., be appointed to represent said minor
That _____ be appointed _____
- (#5) That the parties in said matter and Counsel are hereby notified to appear for a Pre-Trial Hearing on the Fourth Floor, Ingham County Building, Lansing, Michigan, at 1:30 P.M. o'clock on THURS., JANUARY 10th, 1985.
- (#6) That determination of liability for reimbursement for the cost of care and/or other expenses is deferred for determination at or following further hearing.
- (#7) That the legal guardian/Grandmother, Clara Axen has/have an appointment to meet with Mr. Frederick R. Bareis, Court Investigator, in his office, third floor, Ingham County Building, 303 West Kalamazoo Street, Lansing, Michigan; on THURS., JANUARY 10th, 1985 at 1:00 P.M.

DATED: DECEMBER 17, 1984

Ronald R. Bareis
JUDGE OF PROBATE

True Copies:

Counsel (or parties): AFA; Neumann, ATTY/MINOR; Bareis; Ekpr.; Foster Care Dept.; Juvenile Home; Assigned Caseworker (Moore, JCO); Cook, LPD/PET'R (#84-17368); C. Axen, GRANDMOTHER/Guardian; Ingham County Probate Office

FILED: DEC 17 1984

AMY CHFMVC714MCHAI C

JChappell CORA011160

STATE OF MICHIGAN

Record Attached

84-17368

THE PROBATE COURT FOR THE COUNTY OF INGHAM

JUVENILE DIVISION

In the Matter of JAMES CHAPPELL, DOB 12-27- 1527 Neller Ct., Lansing, Michigan
Minor(s)

STATEMENT OF SUPPLEMENTAL FACTS RE
PETITION TO SAID COURT TO TAKE
JURISDICTION OF SAID MINOR(S)

NOW COMES Detective Richard Cook of the Lansing Police Department and

by way of a supplemental statement of facts in the above case, upon information and
belief shows unto said court as follows:

COUNT I.
BREAKING AND ENTERING WITHOUT PERMISSION
VIOLATION OF THE PROBATE CODE, CHAPTER 712A.2, Sec.2 (a) (1)

On 12-10-84 at 1852 hours, JAMES CHAPPELL, minor, DOB 12-27- did break and enter
~~a certain building or structure, namely: a house, located at 1521 Herbert Street, City~~
of Lansing, County of Ingham, State of Michigan, without first obtaining permission to
enter from the owner, occupant, agent, or person having immediate control; contrary to
MCLA 750.115; MSA 28.310.

COUNT II
MALICIOUS DESTRUCTION OF PERSONAL PROPERTY - \$100 OR LESS
VIOLATION OF THE PROBATE CODE, CHAPTER 712A.2, Sec.2 (a) (1)

On 12-10-84 at 1852 hours, JAMES CHAPPELL, minor, DOB 12-27-69, did wilfully and
~~maliciously destroy or injure furniture and plants and lamps, front door jam and lock,~~
personal property belonging to or possessed by Patsy J. Andrews of 1521 Herbert Street,
City of Lansing, County of Ingham, State of Michigan, resulting in damage of \$100.00
or less; contrary to MCLA 750.372a, MSA 28.609(1).

in care and custody of Clara Axom

Richard Cook
Detective Richard Cook
Lansing Police Department, 124 W. Michigan
Lansing, MI 48933 372-8400
Subscribed and sworn to before me this 14th day of December A.D. 19 84.

Barbara A. Vile
Notary Public, Ingham Co., Michigan

My Commission Expires 5-11-89

Barbara A. Vile, Notary Public
Ingham County, State of Michigan
My Commission Expires 05-11-89

A TRUE COPY:

SUPPLEMENTAL PETITION #4

CONNIE COPELAND

Deputy Register of Juvenile Delinquency

Petition Dismissed

(see General Order dated 1-31-85)

FILED: DEC 17 1984

AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

3

AA06963

STATE OF MICHIGAN
COUNTY OF Ingham
PROBATE COURT - JUVENILE DIV.

PETITION FOR
REHEARING/REVIEW

CASE NO.
84-17368

Page 2

1. In the matter of
(name(s), alias(es), DOB)

JAMES CHAPPELL, DOB 12-27- 1527 Neller Ct., Lansing, Michigan

2. The names and addresses of parents, guardians or custodians are:

| | |
|----------------------------------|---|
| Father | Address |
| Mother | Address |
| Guardian/Custodian Clara Axom | Address , Lansing, Michigan phone 482-6545 |

3. I request a rehearing/review for the following reasons:

COUNT III ASSAULT AND BATTERY ~~DISMISSED (see G.O. dated 1-31-85)~~

VIOLATION OF THE PROBATE CODE, CHAPTER 712A.2, Sec.2 (a) (1)

On 12-10-84 at 1845 hours, JAMES CHAPPELL, minor, DOB 12-27-69, did commit an assault and battery upon Melissa Andrews at 1521 Herbert Street, City of Lansing, County of Ingham, State of Michigan; contrary to MCLA 750.81; MSA 28.276.

COUNT IV. MALICIOUS DESTRUCTION OF PERSONAL PROPERTY - \$100 OR LESS

VIOLATION OF THE PROBATE CODE, CHAPTER 712A.2, Sec.2 (a) (1)

On 12-10-84 at 1845 hours, JAMES CHAPPELL, minor, DOB 12-27- did wilfully and maliciously destroy or injure foodstuff from a refrigerator, furniture and ceramics, personal property belonging to or possessed by Patsy J. Andrews of 1521 Herbert Street, City of Lansing, County of Ingham, State of Michigan, resulting in damage of \$100.00 or less; contrary to MCLA 750.377a, MSA 28.609.

4. I declare under penalty of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge and belief.

Petitioner's signature
Detective Richard Cook
Print/Type name

Date

Lansing Police Department, 124 W Michigan Ave
Agency/Address
Lansing, MI 48933 372-9400
City, state, zip Telephone no.

5. IT IS ORDERED that:

- ☐ Rehearing/review is authorized
☐ Rehearing/review is denied

Date

(PAGE #2 of REHEARING PET. #3)

Judge of Probate/Referee signature

Do not write below this line - For court use only

PAGE #2 of REHEARING PET. #3

A TRUE COPY:

CONNIE COPELAND

PETITION FOR REHEARING/REVIEW

Form No. JC-15

Revised 11/81

MCL 712.11(1) MCL 712.11(2) MCL 712.11(3) MCL 712.11(4) MCL 712.11(5) MCL 712.11(6) MCL 712.11(7) MCL 712.11(8) MCL 712.11(9) MCL 712.11(10) MCL 712.11(11) MCL 712.11(12) MCL 712.11(13) MCL 712.11(14) MCL 712.11(15) MCL 712.11(16) MCL 712.11(17) MCL 712.11(18) MCL 712.11(19) MCL 712.11(20) MCL 712.11(21) MCL 712.11(22) MCL 712.11(23) MCL 712.11(24) MCL 712.11(25) MCL 712.11(26) MCL 712.11(27) MCL 712.11(28) MCL 712.11(29) MCL 712.11(30) MCL 712.11(31) MCL 712.11(32) MCL 712.11(33) MCL 712.11(34) MCL 712.11(35) MCL 712.11(36) MCL 712.11(37) MCL 712.11(38) MCL 712.11(39) MCL 712.11(40) MCL 712.11(41) MCL 712.11(42) MCL 712.11(43) MCL 712.11(44) MCL 712.11(45) MCL 712.11(46) MCL 712.11(47) MCL 712.11(48) MCL 712.11(49) MCL 712.11(50) MCL 712.11(51) MCL 712.11(52) MCL 712.11(53) MCL 712.11(54) MCL 712.11(55) MCL 712.11(56) MCL 712.11(57) MCL 712.11(58) MCL 712.11(59) MCL 712.11(60) MCL 712.11(61) MCL 712.11(62) MCL 712.11(63) MCL 712.11(64) MCL 712.11(65) MCL 712.11(66) MCL 712.11(67) MCL 712.11(68) MCL 712.11(69) MCL 712.11(70) MCL 712.11(71) MCL 712.11(72) MCL 712.11(73) MCL 712.11(74) MCL 712.11(75) MCL 712.11(76) MCL 712.11(77) MCL 712.11(78) MCL 712.11(79) MCL 712.11(80) MCL 712.11(81) MCL 712.11(82) MCL 712.11(83) MCL 712.11(84) MCL 712.11(85) MCL 712.11(86) MCL 712.11(87) MCL 712.11(88) MCL 712.11(89) MCL 712.11(90) MCL 712.11(91) MCL 712.11(92) MCL 712.11(93) MCL 712.11(94) MCL 712.11(95) MCL 712.11(96) MCL 712.11(97) MCL 712.11(98) MCL 712.11(99) MCL 712.11(100)

JChappell CORA011163

ORDER PRELIMINARY

State of Michigan

The Probate Court for the County of Ingham

JUVENILE DIVISION

In The Matter of JAMES M. CHAPPELL, (DOB: 12-27-66)

Minor D-10273 A

Stephen J. Person, Sear's Security, for Rehearing #2
 having submitted a petition alleging that said minor ~~is~~ comes within the provisions of Act 54 of the Extra Session of 1944, as amended, a preliminary inquiry having been made in accordance with Section 11 of said Act.

~~And a preliminary hearing having also this day been held at which appeared the parents and custodian of said minor(s), or such of them as could be located and their presence obtained; and said minor(s) also being present, the facts and allegations in said petition were read and proofs taken thereon, all in accordance with Section 14 of said Act.~~

And it appearing the interests of the parties and of society will best be subserved thereby, now therefore, in accordance with the Statute in such case provided.

IT IS ORDERED, that filing of said Rehearing Petition #2 is authorized for filing; and further, that said matter be and is hereby referred to the Assigned Caseworker, William R. Moore, for further appropriate action.

IT IS RECOMMENDED, that said minor do fifteen (15) hours of volunteer work on his own, or through Community Services of the Court.

A TRUE COPY:

FILED: NOV 14 1984

CONNIE COPELAND

Deputy Register of Juvenile Division

AMY CHEMYCZ LANSDALE
 DEPUTY REGISTER OF JUVENILE DIVISION

Dated: NOVEMBER 14, 1984 JDX
 CC: Moore, JCO; C. Axam, GRANDMOTHER/LEGAL GUARDIAN;
 CS/R. Cawood; Person, Sear's/PET'R
 1. Delete paragraph if ordered upon inquiry only - ie., Section 11.

Jeffrey P. Damm
 JUDGE Referee

Approved by the Michigan State Court Administrator

| | | |
|---------------------------------|-----------|-----------|
| STATE OF MICHIGAN | REHEARING | CASE NO. |
| CORRA011164 COUNTY OF Ingham | PETITION | |
| PROBATE COURT - JUVENILE DIV. | #2 | D-10273 A |

In the matter of
(name(s), alias(es), DOB)

JAMES MONTELL CHAPPEL

D.O.B. 12-27-69

(minor)

The undersigned hereby alleges the above named child(ren) come(s) within the provisions of MCLA 712A.

Allegations: LARCENY UNDER \$100.00

Did commit the crime of Larceny by taking, concealing, and carrying away from the department one key chain valued at \$5.99 property of Sears, Roebuck and Company located at 3131 East Michigan Ave., Lansing MI 48909 on the date of 9-29-84 at approximately 14:10 hours. Property was taken from the Keyshop where subject was stopped in the shoe department.

3. The undersigned further alleges that the child ☐ is ☐ is not subject to the prior continuing jurisdiction of another court:

Court name

4. The undersigned further alleges that the above named minor(s) is(are) resident(s) of Ingham County, and reside(s) in

the care and custody of Grandmother

and that the names and addresses of the parents, Guardians, or Custodians are as follows:

| | | |
|-------------------------------------|--------------------------------|---------------------------------|
| 5. Father | a. Address | b. Phone: Home Work |
| 6. Mother | a. Address | b. Phone: Home Work |
| 7. Guardian/Custodian CLARA AXAM | a. Address Lansing MI 48910 | b. Phone: Home Work 482-6545 |

8. I request that the juvenile division of the probate court take jurisdiction of said child(ren).

9. I declare that this petition has been examined by me and that the contents thereof are true to the best of my information, knowledge, and belief.

Petitioner's signature: STEPHEN E. PERSON
Agency/Address: Sears Roebuck & Co. 3131 E. MICH. Ave.
Print/Type name: STEPHEN E. PERSON
City, state, zip: Lansing MI 48909
Telephone no.: 351-8000--335

Subscribed and sworn to before me on 10-1-84 Date
County, Michigan.

My commission expires: 10-1-85 Date
Signature: [Signature]
Notary Public

10. A preliminary inquiry and/or hearing having been conducted, the filing of the foregoing petition is hereby authorized.

Date: 11-14-84
JUDGE: [Signature]
Do not write below this line - For court use only
REHEARING #2
FILED: NOV 14 1984
A TRUE COPY

PETITION, Form No. JC-04, Revised 10/79 JCR 4.1
AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION
CONNIE COPELAND
Deputy Register of Juvenile Division

JChappell CORA011165

REVIEW SUMMARY

RE: JAMES M. CHAPPELL, Minor
DOB: 12-27-

FILE NO.: D-10273 A
CASEWORKER: William Moore
SUPERVISOR: Jonathan Dill

I. HISTORY

Father: Richard Chappell -address unknown-
Mother: deceased

Original Petition and Date: Larceny in a Building
May 25, 1983

Additional Court Action and Date: Breaking and Entering of an
Occupied Dwelling
September 7, 1983

II. PLACEMENT INFORMATION

May 25, 1983 -- placed in the grandmother's home; he remains
there at present.

III. LAST GENERAL ORDER

In a Court Order dated August 1, 1983, the Honorable Robert L.
Drake, Judge of Probate, made said minor a Temporary Ward of the
Court and placed him on probation.

IV. SUMMARY AND EFFECTIVENESS OF CASE PLAN

During the past six months, Jim has made significant progress.
He improved in his school performance and he began to show signs of
"coming out of his shell".

This Worker has been providing a couple of hours of work every
week or two this summer so that Jim can have some spending money.
Last week, Jim pulled weeds from the Okemos Group Home garden to
earn his money.

Mrs. Axom, grandmother/legal guardian of the minor, reports
that Jim follows her instructions very well. She says he is
always in the house on time. Generally, she is very pleased with
his performance at this time.

To the best of this Worker's knowledge, Jim has not been involved
in any delinquent activity during the past six months. His grand-

A TRUE COPY:

CONNIE COPELAND

Deputy Register of Juvenile Division

FILED: JUL 4 U 1984
AMY CHEMYCZ LANSDALE
DEPUTY REGISTER OF JUVENILE DIVISION

Ingham County
Juvenile Court

JChappell CORA011166

Review Summary Page #2
RE: JAMES M. CHAPPELL, Minor
FILE NO.: D-10273 A

IV. SUMMARY AND EFFECTIVENESS OF CASE PLAN (continued)

mother reports that she does not believe Jim has been involved in any violation of his probation.

V. RECOMMENDATIONS

- (1) That the Court Order, dated August 1, 1983, be affirmed;
- (2) That this matter be reviewed in six months.

William R. Moore

WILLIAM R. MOORE
Juvenile Court Officer

Jonathan L. Dill

JONATHAN L. DILL
Juvenile Court Officer

JChappell
CORA011167

REVIEW SUMMARY

RE: JAMES M. CHAPPELL, Minor
DOB: 12-27-

FILE NO.: D-10273 A
CASEWORKER: William Moore
SUPERVISOR: Jonathan Dill

I. HISTORY

Father: Richard Chappell -address unknown-

Mother: -deceased-

Original Petition and Date: Larceny in a Building
May 25, 1983

Additional Court Action and Date: B & E Occupied Dwelling
September 7, 1983

II. PLACEMENT INFORMATION

May 25, 1983 - placed in the grandmother's home, he remains
there at present.

III. LAST GENERAL ORDER

In a Court Order dated August 1, 1983, the Honorable Robert L. Drake, Judge of Probate, made said minor a Temporary Ward of the Court and placed him on probation.

IV. SUMMARY AND EFFECTIVENESS OF CASE PLAN

Jim has shown pretty good improvement in all areas of his life, with the exception of school. His grandmother, Mrs. Clara Axom, reports that Jim presents no significant behavioral problems in the home. She is frustrated at his continuing problems at school.

Since the 1983-84 school year started, Jim has experienced the following problems at school:

| | |
|----------|---|
| 9-19-83 | minor involved in disruptive behavior |
| 9-28-83 | minor verbally abusive to a fellow student |
| 10-18-83 | classroom disruption |
| 10-25-83 | minor caught writing on bathroom walls |
| 11-7-83 | minor suspended for three (3) days for accumulating too many discipline points |

A TRUE COPY:

Ingham County
Juvenile Court

FILED:

Jan. 23, 1984

AMY CHEMYCZ LANSDALE

DEPUTY REGISTER OF JUVENILE DIVISION

CONNIE COPELAND

Deputy Registrar of Juvenile Division

JChappell CORA011168

Review Summary - Page #2
RE: JAMES M. CHAPPELL, Minor
FILE NO.: D-10273 A

IV. SUMMARY AND EFFECTIVENESS OF CASE PLAN (continued)

11-23-83 minor suspended for three (3) days for
accumulating too many points
12-15-83 classroom disruption

On January 10, 1984, this Worker attended an Individualized Educational Planning Committee (I.E.P.C.) meeting at Rich Junior High School. School officials informed Jim that he must pass all his classes next semester, and attend summer school, if he wants to be promoted to the 9th grade at Sexton High School next Fall.

Jim has been involved in the Teach and Reach (tutor) Program during the first semester. His grades in his Social Studies class took a drastic upturn during the period he was involved with his tutor. The school has requested that he be assigned a tutor during the second semester.

The minor has also been working with a Volunteer Probation Officer (V.P.O.). Mrs. Axom is very positive about this involvement. She feels that Jim's V.P.O. has helped to pull him out of his shell somewhat. Jim's V.P.O. will continue to work with him for the rest of the school year.

V. RECOMMENDATIONS

- 1) That the Court Order dated August 1, 1983, be affirmed;
- 2) That this matter be reviewed in six (6) months.

William R. Moore
WILLIAM R. MOORE
Juvenile Court Officer

Jonathan L. Dill
JONATHAN L. DILL
Casework Supervisor

WRM:JLD/ac1
1-18-84

Ingham County
Juvenile Court

PC-20

JChappell CORA011169

ORDER — General

State of Michigan

The Probate Court for the County of Ingham

JUVENILE DIVISION

In the Matter of JAMES M. CHAPPELL, (DOB: 12-27-
Minor 0-10273 A

At a session of said court held in the City of Lansing, Michigan, on the
3rd day of November, 1983

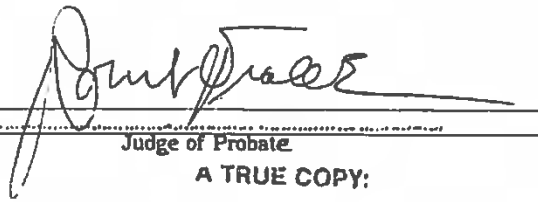
PRESENT: HON. ROBERT L. DRAKE, Judge of Probate

October 17, 1983, having been the date set for Non-Contested Disposition/Rehearing in the above named cause and all interested parties having been duly before the Court, with the exception of said minor's father; and the Court having heard testimony and proofs in Court and having fully reviewed said proceedings and records of said Court relevant hereto; and it appearing that the Probation Order, filed August 1, 1983, should remain in full force and effect; Now Therefore:

IT IS ORDERED, that the Probation Order, filed August 1, 1983, be and is hereby affirmed; and further, that said review date remains set for TUESDAY - JANUARY 24, 1984, at 9:15 A.M.

FILED: Nov. 3, 1983
AMY CHEMYCZ LANSDALE
DEPUTY REGISTER of JUVENILE DIVISION

ACL
CC: Moore, JCO; MINOR; Bareis;
C. Axam, GRANDMOTHER/GUARDIAN;
Warner, LPD/PET'R; Bkpr.;
Ingham County Probate Office;
Father


Judge of Probate
A TRUE COPY:

CONNIE COPELAND
Deputy Register of Ingham County

JChappell CORA011170

DISPOSITIONAL SUMMARY

RE: JAMES M. CHAPPELL
DOB: 12-27-

FILE NO: D-10273
CASEWORKER: Moore
SUPERVIR: Dill

I. HISTORY

Father: Richard Chappell Address: 620 East Baker, Lansing, MI
Mother: Deceased

Original Petition & Date: (May 25-83) Larceny in a Building.

Additional Court Actions: (September 7, 1983) Breaking and Entering -
Occupied Dwelling (house or apartment) with intent to commit. This is
the matter which brings us before the Court today.

II. PLACEMENT INFORMATION

James was placed in the home of his grandmother following the Preliminary
Hearing on May 25, 1983. He remains there at present.

III. LAST GENERAL ORDER

In a Court order dated August 1, 1983, the Honorable Robert L. Drake,
Judge of Probate, made said minor a Temporary Ward of the Court and
placed him on probation.

IV. SUMMARY AND EFFECTIVENESS OF CASEPLAN

It is this worker's opinion that James is functioning quite well at
this time. His attendance at school has been good, but he has had
some problems with being tardy. He has had no major discipline
problems at school so far this year.

On September 27, 1983, this worker contacted Mrs. Carter, School
Counselor, about James' school performance. Mrs. Carter mentioned
some concerns about James being tardy fairly often. Other than that
she said he was doing fine in class.

On October 4, 1983 this worker met with Clara Axom, grandmother of
the minor, to discuss James. Mrs. Axom stated that James was
"no problem at home". She said he did not stay out late or cause her
any particular hassles. She believes he is "too scared to get into
any trouble".

This worker is satisfied that James is making progress at this time.
Hopefully, in the next week or so his tutor and Volunteer Probation
Officer will be assigned.

V. RECOMMENDATIONS

A TRUE COPY:

CONNIE COPELAND

Deputy Registrar of Juvenile Division

1. That the Court Order dated August 1, 1983 be affirmed.

William R. Moore
WILLIAM R. MOORE
JUVENILE COURT OFFICER

Jonathan L. Dill
JONATHAN L. DILL
CASWORK SUPERVISOR

FILED: 10-17-83
AMY CHERNYCZ LANSDALE
DEPUTY REGISTRAR OF JUVENILE DIVISION

EG-M-01
11b

Ingham County
Juvenile Court

JChappell CORA011171

ORDER — General

PC-20

State of Michigan

The Probate Court for the County of Ingham

JUVENILE DIVISION

In the Matter of JAMES M. CHAPPELL, (DOB: 12-27-
Minor 8-10273 A

At a session of said court held in the City of Lansing, Michigan, on the
7th day of September, 19 83

PRESENT: HON. ROBERT L. DRAKE, Judge of Probate

A Preliminary Hearing having been held on this date, and a plea
having been taken on this same date; and it appearing from said
testimony and plea that this minor is subject to the jurisdiction
of this Court; Now Therefore,

IT IS ORDERED, that said minor is hereby determined to come
within the provisions of Act 54 of the Extra Session of 1944, as
amended, and that the Juvenile Court take jurisdiction of said
minor; further, that said matter be and is hereby set for disposi-
tional hearing pursuant to the Preliminary Order.

A TRUE COPY:

FILED Sept. 7, 1983

AMELIA (Amy) CHEMYCZ

DEPUTY REGISTER OF JUVENILE DIVISION

CONNIE COPELAND
Deputy Register of Juvenile Division

AJC
CC: Moore, JCO; Warner, LPD;
Probate Office; Bkpr.;
C. Axam, GUARDIAN/GRAND-
MOTHER; Bareis

Judge of Probate

JChappell CORA011172

ORDER — PRELIMINARY

PC-18

State of Michigan

The Probate Court for the County of Ingham

JUVENILE DIVISION

In The Matter of JAMES M. CHAPPELL, (DOB: 12-27-

Minor D-10273 A

REHEARING #1

Det. Raymond Warner, LPD, having submitted a petition alleging that said minor (X) come s within the provisions of Act 54 of the Extra Session of 1944, as amended, a preliminary inquiry having been made in accordance with Section 11 of said Act.

~~And a preliminary hearing having also this day been held at which appeared the parents and custodian of said minor(s), or such of them as could be located and their presence obtained, and said minor(s) also being present, the facts and allegations in said petition were read and proofs taken thereon, all in accordance with Section 14 of said Act.~~

And it appearing the interests of the parties and of society will best be subserved thereby, now therefore, in accordance with the Statute in such case provided.

IT IS ORDERED, that filing of said Rehearing Petition #1 is authorized; that MONDAY - OCTOBER 17, 1983, at 9:15 A.M., at the Courtroom, Ingham County Building, 4th Floor, 303 West Kalamazoo Street, Lansing, Michigan, is assigned for hearing thereon; and further, that William R. Moore is appointed to investigate and make recommendations to the Court.

NOTICE IS HEREBY GIVEN that determination of liability for reimbursement for the cost of care and/or other expenses is deferred for determination at, or following, further hearing.

FILED

Sept. 7, 1983

AMELIA (Amy) CHEMYCZ
DEPUTY REGISTER OF JUVENILE DIVISION

A TRUE COPY:

CONNIE COPELAND
Deputy Register of Juvenile Division

Dated: SEPTEMBER 7, 1983
CC: Moore, JCO; Warner, LPD; Probate Office;

Judge or Referee

C. Axam, GUARDIAN/GRANDMOTHER; Bareis; Bkpr.
1. Delete paragraph if ordered upon inquiry only - ie., Section 11.

Approved by the Michigan State Court Administrator

STATE OF MICHIGAN

COUNTY OF Ingham
PROBATE COURT - JUVENILE DIV.

PETITION FOR
REHEARING/REVIEW #1

CASE NO.

83-11243

1. In the matter of

(name(s), alias(es), DOB) JAMES MONTELL CHAPPELL, DOB 12-27-

1527 Neller Ct. SA
1521 Herbert, Lansing Michigan

2. I request a rehearing/review for the following reasons:

BREAKING & ENTERING - OCCUPIED DWELLING (HOUSE OR APARTMENT) WITH INTENT TO COMMIT
LARCENY

VIOLATION OF THE PROBATE CODE, CHAPTER 712A.2, Sec. 1 (a) (1)

On 8-10-83, JAMES MONTELL CHAPPELL, minor, DOB 12-27- did break and enter an occupied house at 1521 Herbert Street, City of Lansing, County of Ingham, State of Michigan with the intent to commit a larceny therein: contrary to MCLA 750.110, : MSA 28.305.

In care and custody of ^{grandmother} ~~step-mother~~ Clara Axton SA

3. I declare under penalty of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge and belief.

Petitioner's signature

Date

Lansing Police Department 120 W. Michigan

Agency/Address

Detective Raymond Warner
Print/Type name

Lansing MI 48933
City, state, zip

372-9400

Telephone no.

4. IT IS ORDERED that:

- ☒ Rehearing/review is authorized
☐ Rehearing/review is denied

Date

Judicial Officer/Referee signature

REHEARING #1

FILED Sept 7 1983
AMELIA (Amy) CHEMYCZ

DEPUTY REGISTER OF JUVENILE DIVISION

Do not write below this line - For court use only

CONNIE COPELAND
Deputy Register of Juvenile Division
SEP 12 1983

PETITION FOR REHEARING/REVIEW, Form No. JC-15, Revised 7/80

MCL 712A.21; MSA 27.3178(598.21); JCR 8.5, JCR 9

Cause No. D-10273 A

JUVENILE DIVISION

In the Matter of the Petition Concerning JAMES M. CHAPPELL,
Minor.

At a session of said Court, held at the Probate Office in the City of Lansing in said County, on the 15 day of August A. D. 19 83

Present: HON. ROBERT L. DRAKE, Judge of Probate

Complaint having been made to this Court wherein it is alleged that the said child,..... should be a ward of this Court; and the Court having caused a full examination and investigation to be made of all the facts and circumstances in this case; and due notice of the hearing of the matters alleged in said petition having been given as required by law, and the said child appearing in Court in person, and with its parents or guardians and no jury being demanded, and the Court having taken the testimony of witnesses in open Court, upon due consideration finds and adjudges the said child..... to be of the age of 13 years on the 27th day of December A. D., 1982, and that the material allegations of said petition are true, and

It appearing to this Court that the orders affecting adults hereinafter set forth are necessary for the physical, mental and moral well-being of said child..... and are incidental to the jurisdiction of the Court over such child..... and,

It Is Hereby Ordered, That said child..... be and is ~~(xxx)~~ hereby determined to be a
• TEMPORARY ward of this Court and hereby committed to the care and custody
of the Director of Child and Youth Services for placement with his grandmother/guardian,
~~address~~ Clara Axon, 1627 Neller Court, Lansing, Michigan,
and on probation until the further order of this Court, in the charge and under the probationary su-
pervision of William Moore, Assigned Case-^{WORKER} hereby designated as such Probation Officer,
and who is to report to this Court the conduct of said child.

The conditions of this probation are as follows:

- ~~First: Said child shall not violate any law of the State of Michigan or any ordinance of any municipality, and shall obey all reasonable parental, guardianship or probationary requirements and directions.~~
- ~~Second: Said child shall not leave the State of Michigan without the written consent of this Court.~~
- ~~Third: Said child shall regularly attend public, or equivalent parochial school, and attempt to the best of his ability to obtain an education thereby, unless excused by said Probation Officer.~~
- ~~Fourth: Said child shall report in person to said Probation Officer at his office at
303 West Kalamazoo Street in the City of Lansing Michigan AS-DIRECTED.
.....~~

It Is Further Ordered, That the Court having received and accepted said minor's plea admitting that the material allegations in the Petition of Officer Robert Olko, Meridian Police Department, filed May 25, 1983, alleging Larceny in a Building, are true and correct, and further, that this Court having found that the material allegations in said Petition are true and correct and, further, that this Court takes jurisdiction.

---OVER---

FILED: August 1, 1983

AMY J. CHEMEYCZ
Deputy Register, Juvenile Division

* "Temporary" or "permanent."

A TRUE COPY

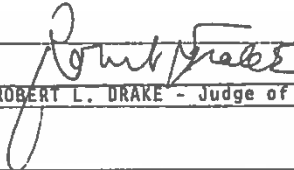
CONNIE COPELAND

JChappell CORA011175

IT IS FURTHER ORDERED, that said minor is hereby assigned to do thirty (30) hours of community service work as arranged by the Assigned Caseworker, William R. Moore.

IT IS FURTHER ORDERED, that said minor cooperate fully with any volunteer probation officer or tutor, as arranged by the Assigned Caseworker, William R. Moore.

IT IS FURTHER ORDERED, that said matter be and is hereby set for a Review, before a Referee, on TUESDAY - JANUARY 24, 1984 at 9:15 A.M.


ROBERT L. DRAKE - Judge of Probate

AJC

CC: Moore, JCO

C. Axom, GRANDMOTHER/LEGAL GUARDIAN

MINOR

Olko, Meridian P.D./PET'R

Ingham County Probate Office

Bareis

Bkpr.

JChappell CORA011176

REPORT OF INVESTIGATIONRE: JAMES M. CHAPPELL, Minor
DOB: 12-27-FILE NO.: D-10273
CASEWORKER: William Moore
SUPERVISOR: Jonathan DillI. REASON FOR REFERRAL TO COURTA. Petitioner's Version:

The Petitioner alleges that said minor took a pair of tennis shoes from the K-Mart Store, located at 2020 West Grand River Avenue, Okemos, Michigan. The Petitioner further alleges that the shoes were the property of the K-Mart Corporation.

B. Child's Version:

The minor admits the allegations in the petition.

C. Present Whereabouts of the Child:

The minor currently resides in the home of his maternal grandmother, Clara Axom, 1527 Neller Court, Lansing, Michigan.

II. PREVIOUS COURT AND POLICE HISTORYA. Court History:

Said minor came before the Court on November 22, 1982, charged with Breaking and Entering - Occupied Dwelling. Filing of the petition was authorized and the matter was referred to the minor's grandmother for further appropriate action.

B. Police History:

The Lansing Police report the following contacts with the minor:

| | | |
|----------|----------------------|----------|
| 6-6-72 | child neglect | ----- |
| 12-23-80 | Larceny (store) | R & R |
| 8-15-81 | Larceny (auto parts) | R & R |
| 8-28-82 | B & E - Residence | Petition |

III. CONTACTSIngham County
Juvenile Court

| | | |
|---------|-----------------------|------------|
| 5-26-83 | Mrs. Axom | telephone |
| 5-31-83 | Minor and grandmother | home visit |
| 6-2-83 | Mrs. Miller (teacher) | telephone |

A TRUE COPY:**CONNIE COPELAND**

Deputy Register of Juvenile Division

DEPUTY REGISTER OF JUVENILE DIVISION

AMELIA (Amy) CHERNYCZ

FILED 6-23-83

JChappell
CORA011177

Report of Investigation - Page #2

RE: JAMES M. CHAPPELL, Minor

FILE NO.: D-10273

III. CONTACTS (continued)

| | | |
|---------|--|--------------|
| 6-7-83 | Mrs. Axom | office visit |
| 6-7-83 | Margaret Lewis (Lansing School Dist.) | telephone |
| 6-9-83 | Mrs. Reed (Rich Junior High) | telephone |
| 6-13-83 | Mrs. O'Conner (School) | telephone |
| 6-20-83 | minor | office visit |

IV. CONTACTS WITH OTHER AGENCIES

Jim has been in counseling, off and on, with Dr. Gene Pernell. Mrs. Axom says she might want to get this set up again.

V. RESPONSE TO PRESENT SITUATION

A. Adjustment Since Referral:

Jim has made a good adjustment since being referred to the Court.

B. Child's Attitude:

Jim has been friendly and cooperative with this Worker.

C. Parent's Attitude:

Mrs. Axom is very concerned about her grandson. She says she is "hurt that Jim would do this to her".

VI. ENVIRONMENT

A. Neighborhood:

The neighborhood is extremely run-down. All of the homes on the block are in extremely poor repair.

B. Home:

The home suffers somewhat from poor housekeeping. It appears to be adequately furnished.

Ingham County
Juvenile Court

JChappell
CORA011178

Report of Investigation - Page #3
RE: JAMES M. CHAPPELL, Minor
FILE NO.: D-10273

VII. FAMILY HISTORY

A. Father:

Richard Chappell, father of the minor, is approximately thirty-six (36) years old. According to Mrs. Axom, Mr. Chappell sees his children very rarely, even though he "lives right down the street". Mrs. Axom states that Mr. Chappell has spent a considerable amount of time in jail at Grayling, Mason and Charlotte for "writing bad checks". She says he has also been involved with "drugs". She does not encourage the minor to see his father.

B. Mother:

Shirley Chappell, mother of the minor, is deceased. She died in August of 1973 in a car accident. At the time of her death, things were not going very well for Mrs. Chappell. According to Mrs. Axom, her daughter was not willing to accept the responsibility of raising her children.

C. Step-Parents:

Clara Axom is the maternal grandmother of the minor. Mrs. Axom took legal custody of Jim and his siblings in 1972. Mrs. Axom is a well-meaning person who does the best she can for her grandchildren.

D. Siblings and Other Members of the Household:

In addition to the minor, the following Chappell children reside with Mrs. Axom: Carla (age 16), Willie (age 15) and Myra (age 11).

E. The Family as a Group:

Mrs. Axom says the children pretty much go their own way unless there is a family problem. When problems arise, they draw together to help each other.

F. Finances:

Mrs. Axom works at the State Police Training Academy. She earns approximately \$600.00 per month. She also receives \$300.00 per month in ADC monies for the children.

Ingham County
Juvenile Court

JChappell
CORA011179

Report of Investigation - Page #4
RE: JAMES M. CHAPPELL, Minor
FILE NO.: D-10273

VIII. PERSONAL HISTORY OF THE CHILD

A. Early Development:

Mrs. Axom states that Jim was "very close to his mother". Her death had a significant effect on him. After his mother died, Jim would often refuse to say anything for long periods of time.

B. Health Information:

The minor enjoys good health. He needs to wear glasses, but usually refuses to do so.

C. School:

Jim was enrolled at Rich Junior High School as a seventh grader this year. He was in the Special Education Program. He did not have much success at school this year because he got so far behind and was unable to catch up.

On June 7, 1983, this Worker had a conversation with Margaret Lewis, school social worker. Mrs. Lewis said that Jim is a "depressed" young man who sleeps alot. He has some significant learning disabilities which will continue to cause him a great deal of frustration in the school setting. Mrs. Lewis also stated that "Jim is not a bad kid". He is not a major discipline problem at school.

D. Hobbies:

Jim is very interested in all sports, especially basketball.

IX. PSYCHOLOGICAL AND PSYCHIATRIC EVALUATIONS

The Lansing School District recently completed a psychological evaluation. The results of that evaluation have not been received at the time of this writing.

X. EVALUATION AND SUMMARY

Jim is a somewhat limited young man who does not see a lot of hope for his future. He is living in an environment that is probably as bad as can be found in Lansing. The neighborhood is extremely run-down. Given this, it is not hard to see how Jim got to be "depressed".

Ingham County
Juvenile Court

JChappell
CORA011180

Report of Investigation - Page #5
RE: JAMES M. CHAPPELL, Minor
FILE NO.: D-10273

X. EVALUATION AND SUMMARY (continued)

Jim is a socially deprived youngster, partly because of his environment, and partly because he has withdrawn into his shell so much. He will need to experience new and exciting things if we are to stimulate him. Hopefully, Jim can come to trust this Worker enough that he will be willing to be brave enough to reach out and take the chance of being hurt. Jim has been very open with this Worker at this point, so there is some reason for optimism.

School will be a major area of concern in the fall. This Worker will attempt to arrange for Jim to have more realistic classes in which he has some chance to succeed. As we are able to raise Jim's self-image, we will also be able to make some real progress on his academics.

XI. RECOMMENDATIONS

- 1) That said minor be made a Temporary Ward of the Court and placed in the care and custody of the Director of Children's Services;
- 2) That said minor be placed on standard probation;
- 3) That said minor be placed in the home of his grandmother, Clara Axom, 1527 Neller Court, Lansing, Michigan;
- 4) That said minor be assigned thirty (30) hours of community service work as arranged by the Assigned Caseworker;
- 5) That said minor cooperate fully with any volunteer probation officer or tutor, as arranged by the Assigned Caseworker;
- 6) That this matter be reviewed in six (6) months.

William R. Moore
WILLIAM R. MOORE
Juvenile Court Officer

Jonathan L. Dill
JONATHAN L. DILL
Casework Supervisor

Ingham County
Juvenile Court
WRM:JLD/ajc
6-21-83

JChappell11
CORA011181STATE OF MICHIGAN
COUNTY OF INGHAM
PROBATE COURT—JUVENILE DIVISION

ORDER OF ADJOURNMENT

CASE NO.

D-10273 A

1. In the matter of : JAMES MONTE CHAPPELL, Minor (DOB: 12-27-
(name(s), alias(es), DOB)2. Date of order: JUNE 21, 1983 Presiding: HONORABLE ROBERT L. DRAKE, Judge of
Probate

3. A hearing on the Petition of Officer R. Olko, Meridian Police Dept., alleging that said minor comes within the provisions of Act 54 of the Extra Session of 1944 and praying that the Juvenile Court take jurisdiction of said minor;

XX set for
was ☐ held on MONDAY - JUNE 27, 1983, at and an adjournment was requested by:
Date/time 2:15 P.M.,

XXX William R. Moore, Juvenile Court Officer,

☐ agreement of the parties☐ the court

for the reason that: said Non-Contested Hearing be set on for a later date as said minor is scheduled to go to the Magic Johnson Basketball Camp; Now Therefore,

4. IT IS ORDERED that the hearing is adjourned to MONDAY - JULY 18, 1983, at 11:00 A.M.
Date and time

FILED 6-21-83

AMELIA (Amy) CHEMYCZ

DEPUTY REGISTER OF JUVENILE DIVISION

AJC

CC: Moore, JCO; Olko, MPD/PET'R;
C. Axom, GUARDIAN/GRANDMOTHER;
Bareis, Bkpr.; Ingham Co. Probate
Office

A TRUE COPY:

CONNIE COPELAND

Deputy Register of Juvenile Division

Judge of Probate

JChappell CORA011182

PC 15

ORDER — PRELIMINARY

State of Michigan

The Probate Court for the County of Ingham
JUVENILE DIVISION

In The Matter of JAMES MONTE CHAPPELL, (DOB: 12-27-

Minor D-10273

Police Dept.,

Robert J. Olko/Meridian / having submitted a petition alleging that said minor (s) comes within the provisions of Act 54 of the Extra Session of 1944, as amended, a preliminary inquiry having been made in accordance with Section 11 of said Act.

~~And a preliminary hearing having also this day been held at which appeared the parents and custodian of said minor(s), or such of them as could be located and their presence obtained; and said minor(s) also being present, the facts and allegations in said petition were read and proofs taken thereon, all in accordance with Section 14 of said Act.~~

~~And it appearing the interests of the parties and of society will best be subserved thereby, now therefore, in accordance with the Statute in such case provided.~~

IT IS ORDERED, that the filing of said petition is authorized and that said matter be and is hereby assigned for hearing on Monday, June 27, 1983, at 2:15 P.M. in the Courtroom, 4th Floor, Ingham County Building, 303 West Kalamazoo Street, Lansing, Michigan; and that William R. Moore, Juvenile Court Officer, is appointed to investigate and make recommendations to the Court.

IT IS FURTHER ORDERED, that said minor be placed in the care and custody of the Director of Child and Youth Services for placement either in the Juvenile Home, his own home, a relative's home, a licensed boarding home, or any other such placement deemed necessary for the health and welfare of said child pending final disposition of said case, or until the further order of the Court.

IT IS FURTHER ORDERED, that said minor be placed with Ms. Clara Axam, grandmother/guardian of said minor, 1527 Neller Court, Lansing, Michigan; pending final disposition of said case or until the further order of the Court.

~~NOTICE IS GIVEN, that determination of liability for reimbursement for the cost of care and/or other expenses is deferred for determination at or following further hearing.~~

FILED MAY 25 1983

TCNJA L COLLAR

DEPUTY REGISTER JUV. DIV.

A TRUE COPY.

CONNIE COPELAND

Deputy Register of Juvenile Division

Dated: May 25, 1983

XXX

CL: Grandmother/gdn.; Moore, Olko/MPD; Probate Office; Bareis; Bkpr.

Index Reference

1. Delete paragraph if ordered upon inquiry only - ie., Section 11.

STATE OF MICHIGAN

CASE NO.

COUNTY OF INGHAM

PETITION

PROBATE COURT - JUVENILE DIV.

D-10273 A

In the matter of JAMES MONTE CHAPPELL; DATE OF BIRTH 12-27-
(name(s), alias(es), DOB)

The undersigned hereby alleges the above named child(ren) come(s) within the provisions of MCLA 712A. 2 SEC.2 (A) (1)
Allegations: LARCENY IN A BUILDING

ON TUESDAY, MAY 24, 1983, JAMES MONTE CHAPPELL, A MINOR, DATE OF BIRTH 12-27-69,
DID COMMIT THE CRIME OF LARCENY IN A BUILDING BY STEALING ONE PAIR TRAX TENNIS SHOES,
PROPERTY WHICH BELONGS TO THE K-MART CORPORATION, FROM THE K-MART STORE, LOCATED AT
2020 W. GRAND RIVER, OKEMOS, MERIDIAN TOWNSHIP, MI; CONTRARY TO MCLA MSA

1. The undersigned further alleges that the child ☐ is subject to the prior continuing jurisdiction of another court:
☒ is not

Court name

2. The undersigned further alleges that the above named minor(s) is(are) resident(s) of INGHAM County, and reside(s) in
the care and custody of grand HIS MOTHER
and that the names and addresses of the parents, Guardians, or Custodians are as follows:

| | | |
|--|---|--|
| 5. Father RICHARD CHAPPELL | a. Address BAKER ST, LANSING, MI | b. Phone: Home Work NONE |
| 6. Mother CLARA AXAM | a. Address 1527 NELLER CT, LANSING, MI 48910 | b. Phone: Home Work 482-6545 322-1200 |
| 7. Guardian/Custodian Sivley Chappell | a. Address David | b. Phone: Home Work |

3. I request that the juvenile division of the probate court take jurisdiction of said child(ren).

4. I declare that this petition has been examined by me and that the contents thereof are true to the best of my information, knowledge, and belief.

Notitioner's signature ROBERT J. OLKO
Agency/Address MERIDIAN POLICE, 5151 MARSH RD
OKEMOS, MI 48864

Print/Type name

City, state, zip

Telephone no.

Subscribed and sworn to before me on MAY 24 1983
Date

Ingham Co. Mich.

County, Michigan.

My commission expires MAY 13, 1986
Date

Signature: Harold W Leonard
Notary Public

0. A preliminary inquiry and/or hearing having been conducted, the filing of the foregoing petition is hereby authorized.

5-25-83
Judge of Probate/Referee

Do not write below this line - For court use only

A TRUE COPY:

FILED May 25, 1983
AMELIA (Amy) CHEMYCZ

CONNIE COPELAND
Deputy Register of Juvenile Division

JCHAPPELL CORA01103

| | | | | | | | | | | | | | | |
|-----------------|------------------------|-----------|---------------|---------------|---------------|--------------|---------------|---------------|---------------|--------------|---------------|---------------|---------------|--------------|
| DATE ORIGINATED | DATE WHEN DATA ENTERED | DATE LEFT | DATE OF DEATH | DATE OF BIRTH | DATE OF ENTRY | DATE OF EXIT | DATE OF DEATH | DATE OF BIRTH | DATE OF ENTRY | DATE OF EXIT | DATE OF DEATH | DATE OF BIRTH | DATE OF ENTRY | DATE OF EXIT |
| | | | | | | | | | | | | | | |

CHAPPELL JAMES MONTELL

CUMULATIVE RECORD FOLDER

FORM NO. CA-60
REVISION 1-60

NECESSARY ENCLOSURES

1. Elementary Insert (CA-60A)
2. Secondary Insert (CA-60B)
3. Health Insert (CA-60C)

OPTIONAL ENCLOSURES

1. Reading Insert (CA-60D)
2. Special Help — such as Guidance Clinic, Remedial Work, Special Education, Social Adjustment, Parent-Teacher Conferences, etc.
3. Test Tabulation Sheets
4. Records
 - a. Anecdotal
 - b. Interviewable Landmarks
 - c. Neighborhood environment
 - d. Where reared — farm, city, town
 - e. Parents' preference of occupation for student
 - f. Associates
 - g. Sociograms
 - h. Sex curiosity and development
 - i. Character and moral traits
 - j. Truancy history
 - k. Vocational placement and guidance
 - l. Statement from part-time employers
 - m. Offenses and disciplinary actions
 - n. Temperament
 - o. Participation in school activities

DO NOT DESTROY

THIS FOLDER WITH NECESSARY ENCLOSURES IS INTENDED TO FOLLOW THE STUDENT THROUGHOUT HIS SCHOOL YEARS. Upon the transfer of the Cumulative Record to another School District a permanent record of the child must be kept on file by the sending District.

TRANSFER RECORD

| NAME AND ADDRESS OF SCHOOL DISTRICT | NAME OR NUMBER OF SCHOOL BUILDING | DATE ENTERED | DATE LEFT | DATE WHEN COMPLETED |
|-------------------------------------|-----------------------------------|-------------------|----------------|---------------------|
| LANSING SCHOOL DISTRICT | MOORE PARK SCHOOL | 9-75 | 1-27-80 | |
| | <i>Carmanville</i> | <i>5-27-80</i> | <i>9-5-80</i> | |
| | <i>Forest View</i> | <i>9-8-80</i> | <i>9/81</i> | <i>LD</i> |
| <i>Springfield School</i> | <i>Maple Hill</i> | <i>9-16-81</i> | | |
| | <i>WIGHT RICH JUNIOR HIGH</i> | <i>SEP 7 1982</i> | | |
| | <i>J.W. Sexton</i> | <i>1-54</i> | <i>1-30-86</i> | <i>9</i> |
| | <i>J.W. Sexton</i> | <i>5/27/86</i> | <i>1-23-87</i> | |

OFFICIAL TRANSCRIPT
LANSING SCHOOL DISTRICT

DATE 9-11-96

AUTHORIZED BY *By: [Signature]*
Records Clerk

*This record is the current record
copy of the record of the
James Chappell consisting
of 10 pages - [Signature]*

DEFENDANT'S
EXHIBIT
15
C131341 5-21-10
OSD

[illegible]

entire

4-6 from the K-444 - K-444 and 4-6 from the K-444 - K-444, approved by the Indiana Div. of Public Instruction, printed by Houghton Mifflin Co. - School Book Division - 1919 East Flood Road, Indianapolis, Indiana. (over)

5

5

JChappell COR 011108

STANDARDIZED
TESTS
FORM NO. 60-107

SECONDARY

LANSING SCHOOL DISTRICT

ACHIEVEMENT TESTS

| NAME | GRADE | TEST | SCORE | PERCENTILE | STANDARD SCORE | GRADE EQUIVALENT |
|----------|-------|----------------|-------|------------|----------------|------------------|
| CHAPPELL | 7 | READING | 115 | 95 | 130 | 8.0 |
| | | LANGUAGE | 110 | 90 | 125 | 7.5 |
| | | ARITHMETIC | 105 | 85 | 120 | 7.0 |
| | | SCIENCE | 100 | 80 | 115 | 6.5 |
| | | SOCIAL STUDIES | 95 | 75 | 110 | 6.0 |
| | | ENGLISH | 90 | 70 | 105 | 5.5 |
| | | MATH | 85 | 65 | 100 | 5.0 |
| | | PHYSICS | 80 | 60 | 95 | 4.5 |
| | | CHEMISTRY | 75 | 55 | 90 | 4.0 |
| | | BIOLOGY | 70 | 50 | 85 | 3.5 |
| | | HEALTH | 65 | 45 | 80 | 3.0 |
| | | PE | 60 | 40 | 75 | 2.5 |
| | | MUSIC | 55 | 35 | 70 | 2.0 |
| | | ART | 50 | 30 | 65 | 1.5 |
| | | DRIVING | 45 | 25 | 60 | 1.0 |
| | | TECHNICAL | 40 | 20 | 55 | 0.5 |

APTITUDE TESTS

SPECIAL TESTING PROGRAMS (including External Testing)

JChappell CORA011105

ELEMENTARY

NAME Chappell, James

ACHIEVEMENT TESTS

5/16 Metropolitan Reading Test

Total Raw Score

Sta

Line A

48

4

[illegible]

APTITUDE TESTS

8

Health Record SCHOOL EXAMINATION

To be filed in CA 39 or CA 60 Folder

To get the most out of every school year, your child should be in the best possible physical and mental health. A child who is below par physically cannot successfully compare with other children and loses some of the benefits of school. Since all of us desire for our children the maximum in both health and education, we recommend that you take your child to his or her physician for a complete examination. Physical defects are frequently discovered which, had they gone unnoticed and uncorrected, would have retarded your child's progress in school.

Parents should fill out this page including the section for child's name, address, etc. The reverse side of this form is to be completed by your physician.

INDIAN COUNTY HEALTH DEPARTMENT

Has student had the following diseases or conditions?

| | NO | YES | YEAR | | NO | YES | YEAR |
|-------------------------------|----|-----|------|------------------------------|----|-----|------|
| Chicken Pox | | X | 1977 | Whooping Cough | | X | |
| Diphtheria | | X | | Appendix Removed | | X | |
| Polio | | X | | Asthma or Other Allergies | | X | |
| German Measles (3 days) | | X | | Sore or Joint Trouble | | X | |
| Epidemic Typhus | | X | | Diabetes | | X | |
| Mumps | | X | | Ear, Nose or Throat Trouble | | X | |
| Pneumonia | | X | | Heart (Rheumatic) | | X | |
| Scarlet Fever or Cholera | | X | | Muscle Weakness or Paralysis | | X | |
| Jaundice | | X | | Speech Disorder | | X | |
| Scarlet Fever or Strep Throat | | X | | | | | |

Hospitalization History

Is all accidents, illness, operations, and medical observations.

| Illnesses | Date | Reason |
|-----------|------|----------|
| Spencer | 1977 | Diabetes |

| | NO | YES | YEAR | EXPLAIN YES ITEMS BELOW: |
|---|----|-----|------|--------------------------|
| Does child have any trouble seeing? | | X | | |
| Does he wear glasses? | | X | | |
| When was he last examined by an eye doctor? | | X | | |
| Does he have any trouble hearing? | | X | | |
| Does he have frequent head or chest colds? | | X | | |
| Has he ever had rheumatoid or been closely attended with a case of TM? | | X | | |
| Has he had a chest X-ray? | | X | | |
| Has he had a skin test for tuberculosis? | | X | | |
| Has he had any other serious illnesses, injuries or operations not specified above? | | X | | |
| Do you know of any physical disorder that should keep him from taking part in ordinary physical activities? | | X | | |
| Does he have difficulty in controlling his behavior? | | X | | |
| Is he now under medical care? | | X | | |
| Has he been under medical care within the past year? | | X | | |
| Give approximate date of last general physical examination by his physician. | | | 1974 | |
| Give approximate date of last visit to his dentist. | | | 1978 | Little dental work. |
| Were necessary corrections completed? | | X | | |
| Has he had his teeth treated with fluoride? | | X | | |

Parent's Signature

Parent's Signature

Name of Child: James P. Chappell Jr.
 Student Name: 4411-1111
 Address: 1522 Polaris Ct.
 Date: 7-17-78

Please file in CA 60 James P. Clark
School A

REQUIRED PHYSICIAN'S STATEMENT

I hereby certify that James P. Clark has been
Name of Child
given the following immunizations as required by Act 12, Public Acts 1960:

| IMMUNIZATIONS | Initial Series Date completed | Boosters Dates |
|----------------------------------|----------------------------------|-------------------|
| Diphtheria - Pertussis - Tetanus | 1973 ^Q | 1974 |
| Diphtheria - Tetanus | | |
| Polio myelitis | 1973 ^Q | 1974 |
| Rubella vaccine | 1973 | |
| Measles Vaccine | 1973 | |
| T. B. Skin Test | 1973 | 1973 |

Date 9/23/75 Physician James P. Clark
Address Leaning, Mich

PAIS

Individual Student Report • Grade 7 • Mathematics

Student: CHAPPELL, JAMES E
 Teacher: SP 15
 School: LANSING PUBLIC SCHOOLS, DIST
 Student ID: 011113

School Year: 1962-63

| Test | Test Score | Percentile | Grade Equivalent |
|--------|------------|------------|------------------|
| 10-11 | 112 | 80 | 7.0 |
| 10-12 | 110 | 75 | 6.8 |
| 10-13 | 115 | 85 | 7.2 |
| 10-14 | 118 | 90 | 7.5 |
| 10-15 | 120 | 95 | 7.8 |
| 10-16 | 122 | 98 | 8.0 |
| 10-17 | 125 | 100 | 8.2 |
| 10-18 | 128 | 100 | 8.5 |
| 10-19 | 130 | 100 | 8.8 |
| 10-20 | 132 | 100 | 9.0 |
| 10-21 | 135 | 100 | 9.2 |
| 10-22 | 138 | 100 | 9.5 |
| 10-23 | 140 | 100 | 9.8 |
| 10-24 | 142 | 100 | 10.0 |
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| 10-26 | 148 | 100 | 10.5 |
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| 10-28 | 152 | 100 | 11.0 |
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| 10-56 | 222 | 100 | 18.0 |
| 10-57 | 225 | 100 | 18.2 |
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| 10-272 | 762 | | |

JChappell COPA011116

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JAMES MONTELL CHAPPELL,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

No. 77002

District Court Case No.

(Death Penalty Case)

Electronically Filed
May 02 2019 09:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX

Volume 28 of 31

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:

Steve S. Owens
Chief Deputy District Attorney
motions@clarkcountyda.com
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/s/ Sara Jelinek
An Employee of the
Federal Public Defender
District of Nevada

1 to a drug/alcohol addicted mother. Apparently, a proper investigation was conducted as the
2 jury found as a mitigating circumstance that Defendant was indeed "born to a drug/alcohol
3 addicted mother." 15 ROA 3740. No further investigation is necessary. Considering this,
4 even if a brain imaging would have revealed that Defendant did have Fetal Alcohol
5 Syndrome,² Defendant cannot demonstrate that the result of his trial would have led to a
6 more favorable outcome at his penalty hearing. As a result, an evidentiary hearing on this
7 claim is unnecessary, Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002), and
8 post-conviction discovery is not available, NRS 34.780.

9 Expenditure of public monies must be made in compliance with Nevada law and not
10 for a "fishing" expedition or to needlessly investigate claims that would not have made a
11 difference in the case.

12 CONCLUSION

13 For the foregoing reasons, Defendant's motion should be DENIED.

14 DATED this 16th day of May, 2012.

15 Respectfully submitted,

16 STEVEN B. WOLFSON
17 Clark County District Attorney
Nevada Bar #001565

18 BY

19 
STEVEN S. OWENS
20 Chief Deputy District Attorney
Nevada Bar #004352

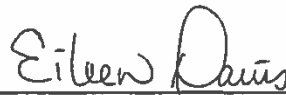
21
22 ²In any event, it is highly unlikely that any expert could provide a definitive diagnosis
23 of Fetal Alcohol Syndrome even if this Court did authorize the great expense that would be
24 required for 3D brain imaging and diagnostic experts. According to the National Task Force
25 on Fetal Alcohol Syndrome and Fetal Alcohol Effect in conjunction with the National Center
26 on Birth Defects and Developmental Disabilities, there are no specific or uniformly accepted
27 diagnostic criteria available for determining whether a person has Fetal Alcohol Syndrome.
28 Centers for Disease Control and Prevention, Nat'l Center on Birth Defects and
Developmental Disabilities, Fetal Alcohol Syndrome: Guidelines for Referral and Diagnosis,
(July 2004), (available at <http://www.cdc.gov>), p. 2-3. Additionally, "diagnostic criteria are
not sufficiently specific [enough] to ensure diagnostic accuracy, consistency, or reliability."
Id. at 2. Further, these Guidelines not only state that "it is easy for a clinician to
misdiagnose" fetal alcohol syndrome, but that there currently exist no diagnostic criteria to
distinguish fetal alcohol syndrome from other alcohol-related conditions. Id. at 3.

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 16th day of May, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CHRISTOPHER R. ORAM, ESQ.
520 South Fourth Street, 2nd Fl.
Las Vegas, Nevada 89101



Employee for the District Attorney's
Office

SSO/Ryan MacDonald/ed

Allen D. Johnson

CLERK OF THE COURT

1 **TRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA

6 Plaintiff

7 vs.

8 JAMES MONTELL CHAPPELL

9 Defendant

CASE NO. C131341

DEPT. NO. V

10
11 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

12
13 MONDAY, OCTOBER 19, 2012

14 RECORDER'S TRANSCRIPT RE:
15 **EVIDENTIARY HEARING: ARGUMENT**

16
17
18
19 **APPEARANCES:**

20 For the Plaintiff:

STEVEN S. OWENS
Chief Deputy District Attorney

21 For the Defendant:

CHRISTOPHER R. ORAM, ESQ.

22
23
24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1

DE
EX



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1 LAS VEGAS, NEVADA, FRIDAY, OCTOBER 19, 2012, 9:58 A.M.

2 * * * * *

3 MR. ORAM: – Your Honor.

4 THE COURT: You're not expecting them to have transported him,
5 right?

6 MR. ORAM: No, I am not, Your Honor. And I believe we can proceed
7 on argument without him.

8 THE COURT: Okay. All right. So, case number C131341, State of
9 Nevada versus James Montell – is it Chapel [phonetic] or Shapell [phonetic]?

10 MR. ORAM: It's Chapell [Chapel], Your Honor.

11 THE COURT: Chapell. All right. And do you have any particular order
12 you want me to hear, because there are the other – there's the petition for writ of
13 habeas corpus argument, but there are all these other motions that are also on?

14 MR. ORAM: Your Honor, perhaps I could just sort of address the case
15 as a whole at first and then get some guidance maybe from the Court or hear the
16 State's argument. I could probably just sort of address all of the arguments
17 because, in essence, what I'm going to be asking the Court to do is hold an
18 evidentiary hearing, and before that evidentiary hearing give me an opportunity to
19 have an investigator, at least one expert, and conduct a PET scan. And so that
20 would be what – the end conclusion of what I'm asking for.

21 THE COURT: Right. So just let me tell you so you can kind of tailor
22 your arguments, I suppose, that I read everything, that I'm not persuaded that there
23 was ineffective assistance or that your other assignments of error, you know, like
24 attacking the constitutionality, et cetera, of the – or of the death penalty scheme in
25 Nevada, or that it's cruel and unusual punishment, those things, I'm not persuaded

1 by any of those arguments.

2 Moreover, I don't see that an evidentiary hearing – and normally I grant
3 them, as you know; we've had many, but I don't see in this case that an evidentiary
4 hearing is going to add anything to what I already have before me. I don't think an
5 evidentiary hearing is warranted in this particular case and so I would be inclined to
6 deny the petition as well as all the motions.

7 So, go ahead.

8 MR. ORAM: Your Honor, if I could also say one housekeeping matter.
9 Mr. Hover, as you know he is in your court, he is also for one – for another case next
10 door –

11 THE COURT: Right.

12 MR. ORAM: – apparently there's a high-profile case – O. J. Simpson is
13 next door – so that case was not called. At some point I may need to go over to just
14 assist Mr. Hover, although it sounds like this particular argument may be relatively
15 short, and it's a busy court next door.

16 Your Honor, I would – again, I recognize that the Court will have read
17 everything. I don't have much to add, although I would be able to argue it this
18 morning. I'm prepared to argue for an hour, if need be, because I – but I would be
19 regurgitating every single thing that is in these.

20 Now, I recognize, as the Court said, in my supplemental brief from page
21 45 on, these are standard death-penalty arguments I would make in every single
22 case of mine, and they are always denied. We do it for federal preservation of the
23 issues.

24 Your Honor, I would – I would ask that an evidentiary hearing be held
25 so that I may flush out the arguments that I have done.

1 THE COURT: Tell me what you would think you would expect to
2 happen in an evidentiary hearing. What evidence do you think would come out in an
3 evidentiary hearing that would change or add to what we have already?

4 MR. ORAM: I would just sort of summarize it this way, Your Honor. I
5 would want to know why defense counsel had not at least met with their – or,
6 excuse me, with their experts – now, I can't tell you whether they did or they didn't –
7 and prepared them in a better fashion, that being Dr. Etcoff, Dr. Danton and Dr.
8 Grey, so that they had a good – had knowledge of the case, knowledge of the facts,
9 so that they weren't so blind-sided. It seemed to me when I was reading their
10 testimony that they testified on direct examination for the defense to one thing, but
11 by the time the skilled prosecutor, Mr. Owens, Christopher Owens, was done with
12 them it seemed that they were almost State witnesses because they didn't seem to
13 know about domestic violence; they didn't know about the facts of the case.

14 THE COURT: All right. So assuming that that's the case, that once
15 they were presented with the facts of the case their opinions were not favorable to
16 the defense, so how would them having all of that ahead of time changed that? In
17 other words, they would have, right, had they, as you say then had all this ahead of
18 time – now, let me digress a little bit.

19 Are you – you're talking about the second – we're focusing here on the
20 second penalty hearing; right?

21 MR. ORAM: That's correct.

22 THE COURT: Because they'd testified in the first hearing many years
23 earlier; correct?

24 MR. ORAM: Some of them did. I'm not sure that Dr. Grey did, Your
25 Honor, and so that I can't – as I'm standing here I cannot accurately answer whether

1 they absolutely testified in the first one. I know Dr. Etcoff did because Dr. Etcoff was
2 examined and said that he had met with the defendant for two hours in preparation
3 for the first penalty phase.

4 THE COURT: So the experts, anyway, took the stand and they testified
5 based upon their knowledge of the facts, and then on cross-examination when
6 additional facts were given to them, then their opinions apparently were changed;
7 right?

8 MR. ORAM: Correct. Yes.

9 THE COURT: Okay. So, had they had all those facts ahead of time
10 their testimony would've been the same. So, how is the failure then – alleged failure
11 to prepare them ahead, how did that prejudice the defendant?

12 MR. ORAM: Well, I think, on two levels, two factors there. First of all it
13 was surprising when you hear the doctors testify I didn't know this was a case really
14 about domestic violence. If I could summarize the case, which I won't do because
15 the Court's gone through it, but if the Court was going to summarize for, let's say, a
16 group of students what the case was about and what the facts of the case were
17 about, I'm sure one of the things the Court would say is that this is a case about a
18 history of domestic violence that then resulted in death. And it was surprising to see
19 experts say I didn't really know that, that fact.

20 That would seem to me to be something that you would sit down with
21 your expert in the first few minutes of talking to your expert and say exactly what I
22 just did, this is a case of a woman who was killed as a result of her significant other
23 being in a rage and this rage had been continuing on for a long period of time. It
24 was sort of that – almost a battered-woman syndrome that you see here. There's
25 battery. She then wants to reconcile. She reconciles and all the friends, family

1 members are always sort of appalled by her reconciliation, why are you going back
2 to this man. So it seems odd to me that there is experts saying I really didn't know
3 that, or – that was odd.

4 Another one that seems odd about the case to me is that you only have
5 the sexual assault as being the only aggravator left in the particular case, and when
6 I look at the Nevada Supreme Court's decision they say one of the five factors that
7 essentially gives a jury the opportunity to say sexual assault occurred, one of those
8 factors is that we have Mr. Chappell lying because Mr. Chappell said he had
9 consensual sex but he did not ejaculate and there is semen found. Therefore, the
10 detective says that must prove that he's lying, and the State says it.

11 There's no objection from the defense, and as I've pointed out it seems
12 like – if I had been defense counsel in that case, I think a reasonable attorney had
13 been looking at that situation would have called – you don't even need to call
14 experts, just start with the high schools. Call a health teacher in here and say can a
15 woman get pregnant without the man ejaculating, and the answer is going to be yes
16 every single time.

17 And so I don't know how that became a factor to prove sexual assault,
18 and that was one that I thought should be dispelled.

19 What I also thought was interesting is when, for example – Court's
20 indulgence. Dr. Etcoff, when he was given that scenario – in other words he did not
21 recognize that, he didn't know the facts well enough so that when Mr. Owens
22 questioned him, or it may have been the other prosecutor questioned him on cross-
23 examination and said, well, what if we – what if I told you that the defendant
24 admitted to having sex but denied ejaculation, yet we can prove that semen is there,
25 does that – what does that prove, and he actually said that proved the defendant's

1 story was bogus. And, to me, that had to just level the defendant. If the jury had to
2 sit there and think, well, the defendant's just lying through his teeth, he must have
3 sexually assaulted the woman.

4 And, so to me it seemed like, boy, you need to dispel that immediately,
5 and that would be one of the biggest things that I would think in an opening
6 argument you'd want to say is just because semen is located doesn't mean the
7 defendant lied. The defendant -- I don't understand why a defendant would admit to
8 stabbing his wife to death, admit to having sex with her shortly before that occurred,
9 within an hour or two, but want to lie about ejaculation. That doesn't make much
10 sense. If you think you're gonna cover up a sexual assault but you won't admit
11 murder, then wouldn't you say I never had sex with that woman, don't know what
12 you're talking about and then you find semen, then you know, okay, he's lying.

13 So I don't understand why that occurred and why the experts were not
14 prepared to meet that challenge and why there were no experts on the side of the
15 defense to answer those questions. It seems like you could dispel that quite easily.
16 It almost seems like a myth occurred in the courtroom.

17 That was very troubling to me and I don't really know why the Supreme
18 Court actually put that as a factor, because, unless I'm missing something, I think -- I
19 think it's a myth, and I think that anybody who has teenage kids would never advise
20 their teenage kids of this fact, that you can't -- a woman couldn't get pregnant unless
21 there's ejaculation. It doesn't make sense to me.

22 And so that was one of the factors, to answer the Court's question, that
23 I would argue necessitates a evidentiary hearing to find out why the lack of
24 preparation. Does that answer the court's question at least as to my argument on
25 that? It does.

1 THE COURT: Okay.

2 MR. ORAM: Your Honor, I'm not sure, because it's so lengthy and
3 because I sort of heard the Court's – what I perceive to be the Court's ruling. And
4 another thing I want to make sure that I'm not doing is if the Court's mind is made up
5 I'm not here to waste the Court's time if I cannot dissuade you from that decision I
6 recognize that and I know that you have read everything and that obviously then we
7 would appeal it. So I'm not sure if you want to hear argument or if you're saying, Mr.
8 Oram –

9 THE COURT: Well, I would like Mr. Owens to address this whole issue
10 of the ejaculation argument. It seemed a bit like a red herring to me, but tell me
11 about that.

12 MR. OWENS: Certainly. And Mr. Oram says he'd like to put defense
13 counsel on the stand and ask them why they didn't prepare their experts more on
14 this ejaculation concept, as well as on perhaps other issues, and that apparently one
15 of them didn't know it was a domestic violence issue. I know two of them talked at
16 length about the pattern of domestic violence and reconciliation between these two

17 But specifically on the ejaculation that's really not what this case was
18 about, whether he ejaculated in her or not. He admitted that they had sexual
19 intercourse; that was not in dispute. What was in dispute was whether it was
20 consensual or not, and so the presence of semen really became a non-issue
21 because in his testimony he said that they had sexual intercourse. He just said that
22 he withdrew prior to ejaculation. Yeah, well so what? The Nevada Supreme Court,
23 yeah, they listed that as one of the factors that they looked at, but there was a
24 number of factors for the Supreme Court to look at to affirm the sexual assault
25 aggravator as well as the jury to look at to find that aggravator in the first place.

1 There's so much other weighty evidence that this issue about
2 ejaculation simply would not have changed the fact that Chappell threatened
3 his girlfriend that he's going to do an O.J. Simpson on her ass. I mean, that alone –

4 THE COURT: Wasn't there testimony from one of the experts, defense
5 experts where he conceded that she could have – in fact that was – wasn't that his
6 opinion, that she could have in fact had sex with him just to – out of fear and that
7 would still be a sexual assault, out of – if she was trying to placate him to try and
8 keep him from harming her –

9 MR. OWENS: Absolutely.

10 THE COURT: -- that would still be sexual assault.

11 MR. OWENS: Absolutely.

12 THE COURT: And didn't the Supreme Court consider that?

13 MR. OWENS: Absolutely. Their doctors testified that they were really
14 looking for physical evidence under the medical definition of sexual assault, vaginal
15 bruising or tearing or something, and they found no evidence of sexual assault, but
16 on cross-examination they admitted that medical science doesn't tell them about the
17 consensual nature of the activity. Absent some medical findings medicine doesn't
18 say whether or not he had a knife to her throat at the time that he did this, whether
19 she was threatened and felt I need to avoid getting beat, I need to agree and give in
20 to this. That's really a jury decision that the medical science is simply not going to
21 help us on.

22 So the jury heard about all these threats. They heard about the victim
23 curling up in a fetal position when she heard the defendant was getting out of jail
24 again. They heard and knew that he came in through the window. They knew that
25 there was this phone call about the – her children and her calling – or asking the

1 woman to call back so that she could have an excuse or reason to get out of there.
2 There's an awful lot of facts and threats that she would – that he would seriously
3 hurt her if she was with another man, and she had been with another man while he
4 was in jail.

5 And that is all the facts that point out whether or not this was
6 consensual, and it's not going to be proven dispositively by any kind of expert or
7 medical science, it's going to be the totality of all the facts and circumstances which
8 haven't changed, which the jury was free to consider to find that this aggravator had
9 been found beyond a reasonable doubt. In fact, two different juries have found that
10 – existence of that aggravator beyond a reasonable doubt now. There's
11 overwhelming evidence.

12 And so, yeah, I would say to now go out and get an expert to testify to
13 what defense counsel admits every high school student is taught, well, that's
14 common knowledge that there could be pre-ejaculate. That's not going to really
15 bear on – or change the outcome of the case. It's not going to bear on the issue of
16 consent here, and so for that reason I don't – I don't think we need to have an expert
17 or an evidentiary hearing. It just is not a significant fact.

18 And I already mentioned the domestic violence, failure to prepare the
19 experts. One of them specifically was called to testify about domestic violence and
20 the nature of this specific relationship over time. We're looking in hindsight at how a
21 skilled prosecutor was able to cross-examine a witness. You can't anticipate in
22 advance every single way in which a witness might potentially get tripped up, and so
23 it's very speculative to say that if they'd been better prepared they might've been
24 able to respond more appropriately to the cross-examination, but the reality is that
25 seldom do people say the exact same thing the exact same way every time and

1 there are always little ways in which a prosecutor can cross-examine someone to
2 find inaccuracies in their testimony or to question the weak parts of their opinion that
3 they are advancing to the jury.

4 That's simply not going to change and it's not something we can fault
5 the attorneys for in hindsight just because the prosecutor might have had some
6 headway. I don't remember anything on the DV issue, but maybe there was a little
7 bit of headway on the ejaculation issue and getting some sort of admission from
8 their expert, but, like I said, it really wasn't relevant to the issue of consent.

9 I don't really see their experts having fundamentally changed their
10 opinion as a result of the cross-examination. Any little inroads that the prosecutor
11 was able to get did not undermine their opinion of the jury that this was consensual
12 'cause there was no evidence that this was forced, that the pattern of the
13 relationship was such that it was consistent that she would continually make up
14 each time with the defendant, and that fundamental opinion did not change for any
15 of the three experts despite any effect of cross-examination.

16 So, none of that would have made a difference in the case; therefore, I
17 think it should all be denied.

18 THE COURT: All right. Oh, and as far as the PET scans and the
19 neurological, again, I mean I don't think there was any showing as to what that
20 would've changed since there was plenty of evidence that he was – his, you know,
21 mother used alcohol when she was pregnant with him, that he had a learning
22 disability, that his IQ was in the low to moderate range, you know, all of those things.
23 And, of course, the jury found those mitigating factors; they just didn't feel that they
24 outweighed the aggravators.

25 So, I just don't see it and I don't – in this case I don't see that an

1 evidentiary hearing is going to change that. So I'll deny that. And the State will
2 prepare the findings of fact, conclusions of law for my review, also to present them
3 to the defense for them to look over, and, as well, will you prepare the orders
4 denying the motions, too.

5 MR. OWENS: I will, and I'll do an order for the transcript from today so
6 I can have that to aid me in doing the findings.

7 MR. ORAM: Thank you very much, Your Honor.

8 THE COURT: Thank you.

9 Oh, let me just say that my – the reasons for denying the petition for
10 writ of habeas corpus are the reasons and arguments that are set forth in the State's
11 opposition.

12 MR. OWENS: Okay. Thank you.

13 MR. ORAM: Thank you, Your Honor.

14 PROCEEDING CONCLUDED AT 10:17 A.M.

15 * * * * *

16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/video proceedings with the sound recording in the above-entitled case.

18 
19 BEVERLY SIGURNIK
20 Court Recorder/Transcriber
21
22
23
24
25


CLERK OF THE COURT

1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 STEVEN S. OWENS
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9 Las Vegas, Nevada 89155-2212
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11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: 95C131341
DEPT NO: V

12 JAMES CHAPPELL,
13 #1212860

Defendant.

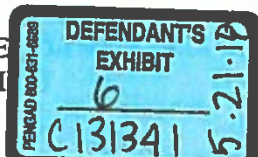
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

DATE OF HEARING: 10/19/12
TIME OF HEARING: 10:00 A.M.

18 This Cause having come on for hearing before the Honorable CAROLYN
19 ELLSWORTH, District Judge, for argument on the 19th day of October, 2012, the Petitioner
20 not being present and in custody, represented by CHRISTOPHER R. ORAM, ESQ., the
21 Respondent being represented by STEVEN B. WOLFSON, District Attorney, by and
22 through STEVEN S. OWENS, Chief Deputy District Attorney, and the Court having
23 considered the matter, including briefs, transcripts, arguments of counsel, and documents on
24 file herein, this Court now makes the following Findings Of Fact and Conclusions Of Law.

25 In 1996, Chappell was convicted and sentenced to death for murdering his ex-
26 girlfriend, Deborah Panos, by entering her mobile home through a window, sexually
27 assaulting her, and then repeatedly stabbing her with a kitchen knife. Chappell v. State, 114
28 Nev. 1403, 972 P.2d 838 (1998). The convictions and death sentence were affirmed on

DEFENDANT'S
EXHIBIT



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1 appeal. Id. Remittitur issued on October 26, 1999. Thereafter, a timely post-conviction
2 petition was filed and an evidentiary hearing was conducted. The district court then denied
3 all post-conviction claims as to guilt, but granted a new penalty hearing due to ineffective
4 assistance of counsel for failing to call certain mitigation witnesses. The decision was
5 affirmed on appeal in an unpublished order on April 7, 2006. (SC #43493). After a new
6 penalty hearing in 2007, the jury again returned a death sentence which was affirmed on
7 appeal in an unpublished order on October 20, 2009. (SC # 49478). Remittitur issued on
8 June 8, 2010. Chappell initiated the current post-conviction proceedings with a pro per
9 petition filed on June 22, 2010.

10 FINDINGS OF FACT

11 This Court finds that all claims regarding ineffective assistance of trial counsel, first
12 penalty hearing counsel, and first appellate counsel are procedurally barred or moot due to
13 the granting of a new penalty hearing. The current petition was filed more than ten years
14 after Remittitur from direct appeal issued on October 26, 1999, in excess of the one-year
15 time bar. Chappell fails to demonstrate good cause or prejudice for this excessive delay, and
16 a petition addressing these claims was already heard and decided by this Court and the
17 Nevada Supreme Court, thus his claims are successive. The State also affirmatively pleads
18 laches under NRS 34.800, and this Court agrees that NRS 34.800 bars review since well over
19 five (5) years have elapsed between the filing of the Nevada Supreme Court's decision on
20 direct appeal and the filing of Chappell's claims in the instant June 22, 2010 petition. In
21 1996, Chappell was granted a new penalty hearing and the Judgment of Conviction was
22 vacated only insofar as the death sentence was concerned. Thus, the convictions have
23 remained valid and final and any claims regarding ineffective assistance of trial counsel, first
24 penalty hearing counsel, and first appellate counsel, are procedurally barred and are hereby
25 denied.

26 Claims of ineffective assistance of counsel during the second penalty hearing are
27 denied as this Court finds no deficient performance such that the outcome of the proceedings
28 would have been different. Even though live testimony from James Ford and Ivri Marrell

1 was not presented, the jury heard a summary of their testimony the substance of which was
2 also presented through other witnesses and therefore this Court finds no prejudice. Chappell
3 fails to demonstrate what a more adequate investigation of his history in Arizona would have
4 shown that would have achieved a better result at his penalty hearing.

5 This Court finds that counsel was not ineffective in failing to retain an expert in pre-
6 ejaculation fluid in order to explain the presence of Chappell's semen in the victim despite
7 his claim that he withdrew prior to ejaculating. Counsel called three separate expert
8 witnesses to rebut the sexual assault aggravator by showing the sexual intercourse was
9 consensual. A fourth expert specifically as to pre-ejaculation fluid containing sperm would
10 not have changed the outcome in light of all the other evidence bearing on the issue of
11 consent.

12 Nor was counsel ineffective in failing to obtain a P.E.T. scan or brain imaging for
13 Fetal Alcohol Syndrome. Counsel did investigate Chappell's overall mental capabilities and
14 presented experts who testified that Chappell had borderline personality disorder and an IQ
15 of 80 in the low/average range. Considering that the jury found that Chappell was born to a
16 drug and alcohol addicted mother, Chappell fails to demonstrate that obtaining a P.E.T. scan
17 and/or brain imaging, even if these tests would have revealed that Chappell did have Fetal
18 Alcohol Syndrome, would have led to a more favorable outcome at his penalty hearing.

19 Simply because the State was able to effectively cross examine Chappell's experts
20 and impeach a lay witness with his prior inconsistent statement, does not demonstrate that
21 defense counsel was in any way ineffective. This claim is belied by the nine witnesses
22 called by counsel whose testimony resulted in the jury's finding of seven mitigating
23 circumstances. Chappell fails to show a reasonable probability that the result of his penalty
24 hearing would have been any different had the witnesses testified differently or had counsel
25 better prepared them.

26 Counsel had no valid reason to object to the admission of the PSI reports, which on
27 direct appeal were found not to have affected Chappell's substantial rights. Even if an
28 objection might have been sustained, Chappell fails to demonstrate that the exclusion or

1 redaction of the PSI's would have changed the outcome of the penalty hearing.

2 The failure to object to lack of notice and cumulative victim impact testimony was not
3 prejudicial. On appeal, the testimony was found not to be overly excessive and this Court
4 finds the alleged errors would not have been found prejudicial under either a plain or
5 harmless error analysis on appeal.

6 The failure to object to allegations of prosecutorial misconduct later raised on appeal
7 did not result in any prejudice. On appeal, each of the instances of alleged improper
8 arguments was found to not constitute error at all. Accordingly, any objection would not
9 have been sustained and would not have resulted in any prejudice on appeal under either a
10 plain or harmless error standard.

11 As to new claims of prosecutorial misconduct, an objection was made and sustained
12 as to the first instance, therefore resulting in no reversible prejudice had the issue been raised
13 on appeal. The other two instances of alleged misconduct actually constitute fair comment
14 on the evidence and any objection would not have been sustained and would not have
15 changed the outcome of the case.

16 Any prejudice from the failure to object to the prosecutor's impeachment of Fred
17 Dean was minimal considering the witness was a convicted felon and the jury still found the
18 existence of seven mitigating circumstances. Chappell has failed to demonstrate the
19 outcome would have been different if the impeachment details had not been elicited.

20 Chappell's claims that the trial judge erred in admitting improper other bad act
21 evidence, that the death penalty scheme in Nevada is unconstitutional, and that the jury was
22 incorrectly instructed on premeditation and deliberation, were appropriate for direct appeal
23 and are thus procedurally barred. Chappell fails to articulate good cause or prejudice to
24 explain his procedural default and these claims must therefore be denied. Many of these
25 claims were raised and denied on direct appeal, and thus are also barred by law of the case.

26 This Court finds that the cumulative prejudice of any alleged errors in counsel's
27 performance at the second penalty hearing is insufficient to have altered the outcome of the
28 case and therefore denies this claim.

1 All of Chappell's claims can be resolved without expanding the record, especially
2 considering Chappell's claims have been either waived, are procedurally barred, or are
3 otherwise not cognizable as bare or conclusory allegations. Even accepting all of Chappell's
4 allegations as true, the alleged errors of counsel would not have changed the outcome of the
5 second penalty hearing. Thus, it is not necessary to expand the record in order to resolve this
6 petition and the request for an evidentiary hearing is denied.

7 Finally, Chappell's motions for discovery and for appointment of various experts and
8 an Investigator are all denied. The discovery request is non-specific, the motions for experts
9 and an Investigator are bare and conclusory, and this Court has determined that an
10 evidentiary hearing and expansion of the record are unnecessary to resolve the claims in the
11 petition. There is no demonstrable need or good cause for a P.E.T. scan or "full neurological
12 exam" in light of a pre-existing neurological examination and mental health experts obtained
13 by prior counsel. Even if brain imaging could reveal that Chappell suffers from Fetal
14 Alcohol Syndrome, which has no specific or uniformly accepted diagnostic criteria, this
15 Court has already accepted such allegations as true and found it would not have changed the
16 outcome, especially considering the jury found as a mitigating circumstances that Chappell
17 was born to a drug and alcohol addicted mother. Chappell fails to make any specific
18 allegation as to what these experts and investigators would uncover that could possibly
19 change the outcome of his case.

20 CONCLUSIONS OF LAW

21 NRS 34.726(1) states that unless good cause is shown for the delay, a petition that
22 challenges the validity of a judgment or sentence filed more than one year after entry of the
23 judgment of conviction, or if appeal has been taken more than one year after the Supreme
24 Court issues its remittitur, is time-barred. Good cause for the delay exists if the petitioner
25 demonstrates to the satisfaction of the court that the delay was not his fault and the dismissal
26 of the petition as untimely would unduly prejudice him. Id. The one-year time bar is strictly
27 construed. Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002).

28 A second or successive petition may be dismissed if the judge or justice determines

1 that it fails to allege new or different grounds for relief and that the prior determination was
2 on the merits. NRS 34.810(2). A defendant must also demonstrate good cause and actual
3 prejudice to overcome the successive petition bar. Id.

4 NRS 34.800 creates a rebuttable presumption of prejudice to the State if a defendant
5 allows more than five years to elapse between the filing of the Judgment of Conviction, or a
6 decision on direct appeal from a Judgment of Conviction, and the filing of a post-conviction
7 petition. The statute requires that the State plead laches in its motion to dismiss the petition.

8 A conviction qualifies as final when judgment has been entered, the availability of
9 appeal has been exhausted, and a Petition for Certiorari to the Supreme Court has been
10 denied or the time for the petition has expired. Colwell v. State, 118 Nev. 807, 59 P.3d 463
11 (2002). The 9th Circuit Court of Appeals has recognized that a conviction remains final even
12 though a case may be sent back for re-sentencing. Phillips v. Vasquez, 56 F.3d 1030 (9th
13 Cir. 1995). A conviction for murder is a final judgment even when the death penalty
14 sentence has been reversed and is not yet final. People v. Jackson, 60 Cal.Rptr. 248, 250,
15 429 P.2d 600, 602 (1967). When a judgment is vacated only insofar as it relates to the death
16 penalty, "the original judgment on the issue of guilt remains final during retrial of the
17 penalty issue and during all appellate proceedings . . ." People v. Kemp, 111 Cal.Rptr. 562,
18 564, 517 P.2d 826, 828 (1974).

19 In order to assert a claim for ineffective assistance of counsel, a defendant must prove
20 that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong
21 test set forth in Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
22 (1984). Under this test, the defendant must show: first, that his counsel's representation fell
23 below an objective standard of reasonableness, and second, that but for counsel's errors.
24 there is a reasonable probability that the result of the proceedings would have been different.
25 See Strickland, 466 U.S. at 687-688, 694. "Effective counsel does not mean errorless
26 counsel, but rather counsel whose assistance is "[w]ithin the range of competence demanded
27 of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432,
28 537 P.2d 473, 474 (1975), *quoting* McMann v. Richardson, 397 U.S. 759, 771 (1970).

1 A defendant who alleges a failure to investigate must demonstrate how a better
2 investigation would have benefited his case and changed the outcome of the proceedings.
3 Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Such a defendant must allege with
4 specificity what the investigation would have revealed and how it would have altered the
5 outcome of the trial. United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991).
6 Furthermore, it is well established that a claim of ineffective assistance of counsel alleging a
7 failure to properly investigate will fail where the evidence or testimony sought does not
8 exonerate or exculpate the defendant. Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989).

9 In Hargrove v. State, 100 Nev. 498, 686 P.2d 222, the Nevada Supreme Court held
10 that claims asserted in a petition for post-conviction relief must be supported with specific
11 factual allegations which, if true, would entitle the petitioner to relief. "Bare" and "naked"
12 allegations are not sufficient, nor are those belied and repelled by the record. Id.

13 In Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975), the Nevada
14 Supreme Court held that where the Court decides an issue on the merits, the Court's ruling is
15 law of the case, and the issue will not be revisited. The Court further stated that "the law of
16 first appeal is the law of the case on all subsequent appeals in which the facts are
17 substantially the same." Id. at 315, 535 P.2d at 798.

18 If a petition can be resolved without expanding the record, then no evidentiary
19 hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State,
20 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). NRS 34.770 provides the manner in which
21 the district court decides a post conviction proceeding: 1. The judge or justice, upon review
22 of the return, answer and all supporting documents which are filed, shall determine whether
23 an evidentiary hearing is required. A petitioner must not be discharged or committed to the
24 custody of a person other than the respondent unless an evidentiary hearing is held; 2. If the
25 judge or justice determines that the petitioner is not entitled to relief and an evidentiary
26 hearing is not required, he shall dismiss the petition without a hearing.

27 The United States Supreme Court recently explained that an evidentiary hearing is not
28 required simply because counsel's actions are challenged as being an unreasonable strategic

1 decision. Harrington v. Richter, 131 S.Ct. 770, 788 (2011). Although courts may not
2 indulge post hoc rationalization for counsel's decision making that contradicts the available
3 evidence of counsel's actions, neither may they insist counsel confirm every aspect of the
4 strategic basis for his or her actions. Id., citing Wiggins v. Smith, 539 U.S. 510, 123 S.Ct.
5 2527 (2003). There is a "strong presumption" that counsel's attention to certain issues to the
6 exclusion of others reflects trial tactics rather than "sheer neglect." Id., citing Yarborough v.
7 Gentry, 540 U.S. 1, 124 S.Ct. 1 (2003). Strickland calls for an inquiry in the *objective*
8 reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. at
9 688, 104 S.Ct. 2052.

10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
12 Relief shall be, and it is, hereby denied. The various motions for discovery, for appointment
13 of experts, and for an Investigator are also denied.

14 DATED this _____ day of November, 2012.

15
16 
17 DISTRICT JUDGE
18

19 STEVEN B. WOLFSON
20 Clark County District Attorney
21 Nevada Bar #001565

22 BY 

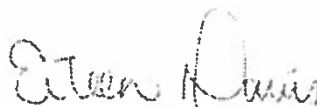
23 STEVEN S. OWENS
24 Chief Deputy District Attorney
25 Nevada Bar #004352
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Findings of Fact, Conclusions of Law, and Order, was made this 14th day of November, 2012, by facsimile transmission to:

CHRISTOPHER R. ORAM, ESQ.
FAX #(702) 974-0623



Employee for the District Attorney's
Office

ORIGINAL

1 SUPP
2 CHRISTOPHER R. ORAM, ESQ.
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7 Attorney for Defendant
8 DONTE JOHNSON

FILED

OCT 12 2009

[Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,
13
14 vs.
15 DONTE JOHNSON,
16 Defendant.

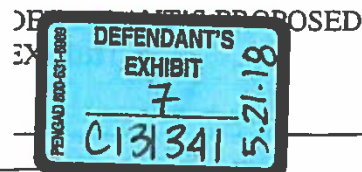
CASE NO. C153154
DEPT. NO. VI

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANTS WRIT OF HABEAS
CORPUS.

19 COMES NOW, Defendant, DONTE JOHNSON, by and through his attorney,
20 CHRISTOPHER R. ORAM, ESQ., and hereby submits this Supplemental Brief in support of
21 Defendant's Writ of Habeas Corpus.
22

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CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101




AA06774

1 This supplement is made and based pleadings and papers on file herein, the affidavit of
2 counsel attached hereto, as well as any oral arguments of counsel adduced at the time of hearing.

3 DATED this 12 day of October, 2009.

4 Respectfully submitted by:

5
6
7 
8 *for* CHRISTOPHER R. ORAM, ESQ.
9 Nevada Bar No. 004349
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12 (702) 384-5563
13 Attorney for Petitioner
14 DONTÉ JOHNSON
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CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
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STATEMENT OF THE CASE

On September 2, 1998 the Honorable Judge Michael Douglas was informed that the Grand Jury had returned a true bill indicting the defendant. On September 16, 1998 a superceding indictment was filed under case number C153154. On September 17, 1998 the defendant was formally arraigned before the Honorable Jeffery Sobel. The defendant waived his right to a trial within sixty days. The matter was set for trial on July 5, 1999.

On June 29, 1999, the defense informed the trial court that they would not be ready for trial and requested a continuance. The trial date was vacated. On July 13, 1999 the trial court entertained the defendant's motion to compel disclosure of existence and substance of expectation or actual receipt of benefits or preferential treatment for cooperation with the prosecution. This matter was concluded.

On October 14, 1999, the State informed the trial court that Charla Severs would not be prosecuted as an accomplice and would not be prosecuted for perjury. The trial court had appointed Mr. Chip Siegel to represent Ms. Severs. On November 18, 1999, the State agreed to provide the inducements of the witnesses pursuant to the defense's motion to compel the disclosure of existence of benefits or cooperation with prosecution. The motion was denied as long as the State continued to provide all evidence pursuant to the motion. On December 20, 1999, defense counsel requested a continuance of the trial date. The defense's motion to continue was granted. A new jury trial was set for June 8, 2000.

On March 2, 2000, the district court denied the defendant's motion for change of venue, denied the defendant's motion to dismiss the State's notice of intent to seek the death penalty because Nevada's death penalty statute is unconstitutional, denied the defendant's motion for inspection of police officer's personnel files, denied defendant's motion to prohibit prosecution

1 from committing misconduct during argument, denied defendant's motion in limine to prohibit
2 any reference to the first phase as the guilt phase, denied defendant's motion to apply heightened
3 standard of review and care because the state is seeking the death penalty, denied defendant's
4 motion to exclude autopsy photographs, (the court would consider the photographs individually at
5 trial) denied defendant's motion in limine to preclude the introduction of victim impact evidence,
6 denied motion to bifurcate the penalty phase, denied defendant's motion in limine to prevent the
7 state from telling a complete story, and denied defendant's pro per motion to disqualify the
8 district court without prejudice (so the special public defender's office could re-file the issue and
9 pursue the matter).
10
11

12 On April 18, 2000, the district court denied the defendant's motion to suppress evidence
13 seized during a warrantless search. On May 23, 2000, defense counsel advised the court that there
14 had been an agreement that the parties would not use co-conspirators statements or the co-
15 defendants statements.
16

17 On June 5, 2000, voir dire commenced. On June 5, 2000, defense counsel stated that they
18 had a challenge for cause of one of the prospective jurors, which the court overruled. Opening
19 statements occurred on June 6, 2000. On June 8, 2000, the court again denied the defense's
20 request for a change of venue. On June 8, 2000, the defense rested without calling any witnesses.
21 On June 8, 2000, jury instructions were read and closing arguments occurred. On June 9, 2000,
22 the jury began deliberation and returned guilty verdicts as to Count one, burglary while in
23 possession of a firearm; Count two, conspiracy to commit robbery and/or kidnapping and/or
24 murder; Counts three-six, Robbery with use of a deadly weapon; Count seven-ten, first degree
25 kidnapping with use of a deadly weapon; Counts eleven-fourteen, murder with use of a deadly
26 weapon.
27
28

1 On June 13, 2000, the district court denied a motion to sever or bifurcate the penalty
2 phase. On June 14, 2000, defense counsel requested the court grant a short continuance so he
3 could work on his closing argument. Defense counsel was admonished. On June 15, 2000, the
4 penalty phase instructions and closing arguments were heard. On June 16, 2000, the jury declared
5 that they were unable to reach a verdict as to punishment.
6

7 On June 20, 2000, defense counsel requested that the jury verdict forms and special
8 verdict forms be made court exhibits. The court ordered the verdict forms be made special
9 exhibits. On July 20, 2000, the court denied the defense's motion for imposition of a life without
10 the possibility of parole sentence. On July 20, 2000, defense counsel requested that the other two
11 judges from the three judge panel read the trial transcript of the guilt phase. The court advised
12 that it would make the trial transcripts available to the judges.
13

14 On July 24, 2000, the three judge panel consisting of Judge Jeffery Sobel, Judge Michael
15 Griffin and Judge Steve Ariat heard the second penalty phase. On July 26, 2000, closing
16 arguments were heard by the three judge panel. The three judge panel returned a verdict, having
17 found the aggravating circumstances outweigh any mitigating circumstance and imposed a
18 sentence of death as to all four murder counts with use of a deadly weapon. On October 3, 2000,
19 formal sentencing was heard. The defendant was sentenced to death for all four murders with
20 consecutive death sentences for the use of a deadly weapon.
21

22 Mr. Johnson appealed his convictions and ultimate death sentences. On December 18,
23 2002, the Nevada Supreme Court filed it's Order of Affirmance in part, vacated in part, and
24 remanded. The Supreme Court affirmed Mr. Johnson's convictions and his sentences other than
25 his death sentences. The Supreme Court vacated his death sentences and remanded for a new
26 penalty hearing. The Nevada Supreme Court overruled Mr. Johnson's death sentences based upon
27
28

1 the United States Supreme Court's decision in Ring v. Arizona, 536 U.S.584, 122 Sup Ct.2428,
2 153 L.Ed.2d 556, (2002) ruling that three judge panels are unconstitutional.

3
4 On remand, the Special Public Defender was appointed to represent Mr. Johnson at his
5 penalty phase. In April 2005, a jury was impaneled and heard the bifurcated penalty phase.
6 On April 27, 2005, the jury heard closing arguments regarding the first portion of the bifurcated
7 penalty phase. The jury found that there was at least one aggravating circumstance as to all four
8 victims and determined that the mitigating circumstances did not outweigh the aggravating
9 circumstances.
10

11 The jury returned for special verdict finding the single aggravating circumstance pursued
12 by the State. Seven mitigating circumstances were found: Johnson's youth at the time of the
13 murders, (he was eighteen years old); he was taken as a child from his mother due to her neglect
14 and placed in foster care; he had no positive or meaningful contact with either parent; he had no
15 positive male role models; he grew up in a violent neighborhood; he witnesses many violent
16 attacks as a child; while a teenager he attended schools where violence was common. Johnson v.
17 State of Nevada, 122 Nev. 1344, at 1350. Therefore, on April 28, 2005, the jury heard opening
18 arguments regarding the second portion of the bifurcated penalty phase.
19

20 On May 5, 2005, the jury returned a verdict sentencing Donte Johnson to death for the
21 first degree murder with use of a deadly weapon of Jeffery Biddle, Tracey Corrinage, Matt
22 Mowen, and Peter Talamentez. Mr. Johnson filed a timely notice of appeal. On Decembr 28,
23 2006 the Nevada Supreme Court affirmed Mr. Johnson's appeal. 122 Nev. 1344,148 P.3d 767,
24 (Dec. 2006).
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STATEMENT OF THE FACTS

In the summer of 1998, Mr. Justin Perkins, had some friends that lived at 4825 Terra Linda, Clark County Nevada.¹ On August 13, 1998, at approximately 7:30-8:00 p.m, Mr. Perkins went to the Terra Linda home and visited with Matt Mowen, Tracey Gorringer, and Jeff Biddle. (Vol. 4, April 22, 2005, A.M. Pp 7-9)

The friends were playing video games and lounging around. (Vol. 4, April 22, 2005, A.M. Pp 9) There was a VCR, playstation and television in the entertainment center. (Vol. 4, April 22, 2005, A.M. Pp 10) Before Mr. Perkins left, he was offered some muscle relaxers, which he refused. (Vol. 4, April 22, 2005, A.M. Pp 11) At approximately 9 p.m. Mr. Perkins left. (Vol. 4, April 22, 2005, A.M. Pp 11) Remaining at the house was Matt Mowen, Jeff Biddle, and Tracey Gorringer. (Vol. 4, April 22, 2005, A.M. Pp 11)

At approximately 6 p.m., on August 14, Mr. Perkins went back to the Terra Linda home. When Mr. Perkins entered the home, he observed Matt Mowen, Tracy Gorringer and Jeff Biddle laying face down with duct tape binding their wrists and ankles. (Vol. 4, April 22, 2005, A.M. Pp 14) Mr. Perkins went to a neighbors home where he requested assistance in contacting authorities. (Vol. 4, April 22, 2005, A.M. Pp 16) Mr. Perkins was informed by a police officer that a fourth victim was also inside. (Vol. 4, April 22, 2005, A.M. Pp 18)

Officer David West and Sargent Randy Sutton were the first responding officers to the crime scene. (Vol. 4, April 22, 2005, A.M. Pp 31-33) The officers had to concern themselves with sweeping the home for possible suspects and any other victims. (Vol. 4, April 22, 2005, A.M. Pp 33) There was no sign of forced entry. (Vol. 4, April 22, 2005, A.M. Pp 41)

Four deceased victims were located inside the Terra Linda residence. (Vol. 4, April 22,

¹ The Statement of facts is from the defendant's third penalty phase in April and May 2005.

1 2005, A.M. Pp 33)The four victims were identified as Jeffrey Biddle, Tracey Gorringer, Matthew
2 Mowen, and Peter Talamentez. (Vol. 4, April 22, 2005, A.M. Pp 108) At the feet of Tracey
3 Gorringer, was a box of black and mild cigars. (Vol. 4, April 22, 2005, A.M. Pp 111) The cigar
4 box was processed for fingerprints. (Vol. 4, April 22, 2005, A.M. Pp 111) Donte Johnson's
5 fingerprint was located on the black and mild box located in the Terra Linda residence. (Vol. 4,
6 April 22, 2005, A.M. Pp 114)
7

8 According to detective Thomas Thowsen, the perpetrators had been motivated in looking
9 for narcotics and money. (Vol. 4, April 22, 2005, A.M. Pp 43) The home had been thoroughly
10 ransacked. (Vol. 4, April 22, 2005, A.M. Pp 43) No paper currency was located in the entire
11 home. (Vol. 4, April 22, 2005, A.M. Pp 44) Detective Thowsen surmised from observing the
12 entertainment center that the thieves had taken a VCR and Play stations.
13

14 During investigation, the police began investigating information connected to the
15 "Everman home". (Vol. 4, April 22, 2005, A.M. Pp 27) The Terra Linda home and Everman
16 home were approximately eight-tenths of a mile apart. (Vol. 4, April 22, 2005, A.M. Pp 27)
17

18 On August 18, detectives made contact with three young males of interest, Mr. Todd
19 Armstrong, Bryan Johnson and Ace Hart. (Vol. 4, April 22, 2005, A.M. Pp 49-50) Mr. Armstrong
20 lived at 4815 Everman.² The legal owner of that address was his mother.(Vol. 4, April 22, 2005,
21 A.M. Pp 52) Mr. Armstrong was friends with Ace Hart and Bryan Johnson. In early August of
22 1998, Donte Johnson, Terell Young and Charla Severs (Donte Johnson's girlfriend) moved into
23 the Everman house.
24

25 Donte Johnson was known as "Deko" and John White.(Vol. 4, April 22, 2005, A.M. Pp
26 53) Consent to search the Everman residence was provided by Todd Armstrong. (Vol. 4, April
27

28 ² During the penalty phase detective Thowsen was permitted to summarize the
testimony of Mr. Armstrong and several other witnesses. (Pp 52)

1 22, 2005, A.M. Pp 53)

2 Donte Johnson and his girlfriend occupied the master bedroom.(Vol. 4, April 22, 2005,
3 A.M. Pp 56) Todd Armstrong allegedly occupied a different bedroom because there was a water
4 bed there.(Vol. 4, April 22, 2005, A.M. Pp 56) Ace Hart stayed in a bedroom and Terell Young
5 stayed in the living room.(Vol. 4, April 22, 2005, A.M. Pp 56) The defendant had been seen with
6 a .380 caliber pistol, a six shot revolver, and a .22 caliber rifle that looked like a sawed off
7 shotgun. (Vol. 4, April 22, 2005, A.M. Pp 57) Mr. Armstrong observed these weapons in a black
8 and green duffle bag. (Vol. 4, April 22, 2005, A.M. Pp 57) The duffle bag was located during the
9 search of the Everman home. (Vol. 4, April 22, 2005, A.M. Pp 57)

12 Also located during the search of the Everman home was a VCR and Playstation. (Vol. 4,
13 April 22, 2005, A.M. Pp 58) Detectives believed the VCR and Playstation located at the
14 Everman home, originated from Terra Linda and were taken during the robbery. (Vol. 4, April
15 22, 2005, A.M. Pp 58-59)

17 At first, Donte Johnson was only going to stay at Everman two or three days but stayed
18 longer. (Vol. 4, April 22, 2005, A.M. Pp 62) Todd Armstrong claimed Donte Johnson was not
19 told to leave because he was scared of him. (Vol. 4, April 22, 2005, A.M. Pp 62) Mr. Armstrong
20 had the only key to the residence. (Vol. 4, April 22, 2005, A.M. Pp 64-65) He claimed that the
21 defendant could climb through a broken bathroom window to get into the home. (Vol. 4, April
22 22, 2005, A.M. Pp 65)

24 Somewhere between the seventh and tenth of August, Matt Mowen came to the Everman
25 home. (Vol. 4, April 22, 2005, A.M. Pp 65) When Matt Mowen arrived, Mr. Armstrong, the
26 defendant and Terell Young were present. (Vol. 4, April 22, 2005, A.M. Pp 65) Matt Mowen
27 made a comment that he had been following a musical group, called Fish Tour and had made a
28

1 lot of money selling acid. (Vol. 4, April 22, 2005, A.M. Pp 66)

2 Mr. Johnson apparently looked around as he had formed an idea when he heard Matt
3 Mowen's comment. (Vol. 4, April 22, 2005, A.M. Pp 66) Over the next several days, Mr.
4 Johnson asked Todd Armstrong where Mowen lived. (Vol. 4, April 22, 2005, A.M. Pp 67) Mr.
5 Johnson and Mr. Armstrong were in a vehicle accompanied by Ace Hart, when Mr. Hart pointed
6 out where Mr. Mowen lived. (Vol. 4, April 22, 2005, A.M. Pp 68) Ace Hart pointed out the Terra
7 Linda home between the tenth and twelfth of August. (Vol. 4, April 22, 2005, A.M. Pp 69)

8 During the search of the Everman home, duct tape was located in the master bedroom.
9 (Vol. 4, April 22, 2005, A.M. Pp 71) Also located during the search was a .22 caliber rifle and
10 black jeans. (Vol. 4, April 22, 2005, A.M. Pp 72) Police also noted freshly dug portion of dirt
11 which caused them to located a blue pager and two motel keys. (Vol. 4, April 22, 2005, A.M. Pp
12 74-75) The pager was later identified as belonging to Peter Talamentez. (Vol. 4, April 22, 2005,
13 A.M. Pp 74-75)

14 According to the summary of the evidence provided by Detective Thowsen, on the
15 morning of August 14, Todd Armstrong awoke in the master bedroom and observed Donte
16 Johnson and Terell Young caring the duffle bags containing guns, duct tape, a VCR and a play
17 station. (Vol. 4, April 22, 2005, A.M. Pp 76-77)

18 When Mr. Johnson and his co-defendant's approached the home one of the individuals
19 was watering the lawn and was ordered inside the home. (Vol. 4, April 22, 2005, A.M. Pp 80)
20 Mr. Armstrong claimed that Donte Johnson admitted to killing one of the men because he was
21 "mouthing off". (Vol. 4, April 22, 2005, A.M. Pp 78-79)

22 Mr. Armstrong said that Donte Johnson confessed to having to kill the other three
23 individuals after killing the man who thought he was "joking around". (Vol. 4, April 22, 2005,
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1 A.M. Pp 83-84) Donte Johnson was laughing according to Mr. Armstrong. (Vol. 4, April 22,
2 2005, A.M. Pp 84)

3
4 Bryan Johnson was a friend of Ace Hart and Todd Armstrong³. (Vol. 4, April 22, 2005,
5 A.M. Pp 85) Mr. Johnson lived at the Everman home for a brief period. (Vol. 4, April 22, 2005,
6 A.M. Pp 88) According to Mr. Bryan Johnson, he observed Donte Johnson smoke black and mild
7 cigars. (Vol. 4, April 22, 2005, A.M. Pp 91) Bryan Johnson previously testified that he heard
8 Donte Johnson confess to the killings. Bryan Johnson stated that Donte explained that he had to
9 kill one of the individuals who was Mexican because he felt like the robbery was a joke. (Vol. 4,
10 April 22, 2005, A.M. Pp 91-95) He then shot the other individuals. Mr. Bryan Johnson said that
11 Donte Johnson explained that the blood squirted up like it was Niagra Falls. (Vol. 4, April 22,
12 2005, A.M. Pp 96) Donte mention ed the fact that he had some of the blood on his pants. (Vol. 4,
13 April 22, 2005, A.M. Pp 97)

14
15 Ms. Lashawnya Wright is the girlfriend of co-defendant, Sikia Smith(also known as tiny
16 bug). (Vol. 4, April 22, 2005, A.M. Pp 97) Ms. Wright previously testified, she did not testify in
17 the penalty phase.⁴ (Vol. 4, April 22, 2005, A.M. Pp 97) On August 13, Ms. Wright entertained
18 Terell Young and Donte Johnson at her apartment. (Vol. 4, April 22, 2005, A.M. Pp 98-99) When
19 Donte and Terell Young left, Donte was caring a duffle bag with duct tape and gloves. (Vol. 4,
20 April 22, 2005, A.M. Pp 99) Prior to leaving the apartment, the two were discussing a "lick," a
21 slang word for robbery. (Vol. 4, April 22, 2005, A.M. Pp 100) When they returned fourteen
22 hours, later Sikia Smith appeared to be scared. (Vol. 4, April 22, 2005, A.M. Pp 101) Ms. Wright
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26 ³ During the penalty phase detective Thowsen was permitted to summarize the
27 testimony of Mr. Bryan Johnson.

28 ⁴ During the penalty phase, detective Thowsen was permitted to summarize the
testimony of Ms. Lashawnya Wright.

1 explained that Sikia Smith sold .380 caliber handgun on approximately August fifteenth or
2 sixteenth of 1999. (Vol. 4, April 22, 2005, A.M. Pp 104)

3
4 Allegedly, when Mr. Johnson saw the Review Journal newspaper he stated, "we made the
5 front page." (Vol. 4, April 22, 2005, A.M. Pp 105) He appeared excited. (Vol. 4, April 22, 2005,
6 A.M. Pp 106) Four empty bullet casings were located at the Terra Linda address. (Vol. 4, April
7 22, 2005, A.M. Pp 109) Mr. Richard Goode tested all four shell casings and determined that they
8 were all fired by the same weapon. (Vol. 4, April 22, 2005, A.M. Pp 109)

9
10 On August 17, 1998, at approximately 10:40 Trooper Robert Honea conducted a traffic
11 stop on a vehicle. (Vol. 4, April 22, 2005, A.M. Pp 117) Later, it was determined that Donte
12 Johnson was the driver of the vehicle and Terell Young (Red) was the passenger. During the stop,
13 Donte Johnson used the name Donte Fletch. (Vol. 4, April 22, 2005, A.M. Pp 117) The Trooper
14 observed the co-defendant with a gun in his hand and then a foot pursuit occurred of both
15 defendants. (Vol. 4, April 22, 2005, A.M. Pp 117-118)(Also see pages 83-86 of April 29th, 2005,
16 Volume 9)

17
18 During the search of 4825 Terra Linda, police noted that Peter Talamentez had a loaded
19 handgun on his person. (Vol. 6, April 26, 2005, A.M. Pp 7) Police also located white baggies
20 with methamphetamine at Terra Linda. (Vol. 6, April 26, 2005, A.M. Pp 11-12)

21
22 Although police had indications that Mr. Armstrong was involved he was never arrested
23 or charged with the instant offenses. (Vol. 6, April 26, 2005, A.M. Pp 23-24) There was evidence
24 that he told the defendant there was money and illegal mushrooms inside the residence. (Vol. 6,
25 April 26, 2005, A.M. Pp 25) When officers arrived at the Everman residence on August 18th, they
26 located Charla Severs, Donte Johnson and Duane Anderson (A.K.A Scale). (Vol. 6, April 26,
27 2005, A.M. Pp 2) The defendant denied living at the residence. (Vol. 6, April 26, 2005, A.M. Pp
28

1 3)

2 The previous testimony of Charla Severs was read to the jury. (Vol. 6, April 26, 2005,
3 A.M. Pp 29-30) Ms. Severs had a moniker "Lala". (Vol. 6, April 26, 2005, A.M. Pp 30) In 1998,
4 Ms. Severs and Donte Johnson were involved in a dating relationship. (Vol. 6, April 26, 2005,
5 A.M. Pp 31-32) Ms. Severs noted that none of the defendants had jobs in the month of July. (Vol.
6 6, April 26, 2005, A.M. Pp 41) Donte Johnson smoked black and mild cigars according to Ms.
7 Severs. (Vol. 6, April 26, 2005, A.M. Pp 41) Donte Johnson would sell crack cocaine and she had
8 observed Donte put the narcotics in a black and mild box one time and gave it to "DJ". (Vol. 6,
9 April 26, 2005, A.M. Pp 46)

10 Ms. Severs had seen the defendant with a duffle bag that had guns in it. (Vol. 6, April 26,
11 2005, A.M. Pp 51-52) Ms. Severs explained that Matt Mowen came by the Everman residence
12 approximately two days prior to the murders looking for some crack cocaine but she did not hear
13 him make any mention of how he made money following a musical group. (Vol. 6, April 26,
14 2005, A.M. Pp 61-64) After Matt Mowen left, Ms. Severs heard Mr. Armstrong say that there
15 was ten thousand dollars and a lot of mushrooms in the home and they should rob the home.
16 (Vol. 6, April 26, 2005, A.M. Pp 65)

17 On the day of the murders, Donte was wearing a black pair of jeans. (Vol. 6, April 26,
18 2005, A.M. Pp 67-68) "Red" is carrying the duffle bag with guns inside when they left. (Vol. 6,
19 April 26, 2005, A.M. Pp 70-71) When Donte returned, he kissed Ms. Severs on the cheek which
20 woke her up. Donte Johnson allegedly stated, "you have to go to sleep after you kill somebody".
21 (Vol. 6, April 26, 2005, A.M. Pp 74) Ms. Severs said that Donte Johnson confessed that he killed
22 the Mexican because he was talking "mess". (Vol. 6, April 26, 2005, A.M. Pp 77-78) Mr.
23 Johnson also said that he kicked the Mexican before shooting him in the back of the head. Mr.
24

1 Johnson allegedly stated the victims made noises when they were shot and blood squirted out of
2 their heads. (Vol. 6, April 26, 2005, A.M. Pp 77-78) Mr. Johnson had been concerned people
3 would hear the gunshots, so he turned the music up very loud. (Vol. 6, April 26, 2005, A.M. Pp
4 80)

5
6 The next day, Ms. Severs said she talked to Donte Johnson, who confessed to killing all
7 four victims by shooting them in the back of the head. (Vol. 6, April 26, 2005, A.M. Pp 81-84)
8 Donte relayed to Ms. Severs that the first two individuals did not have any money or drugs so
9 they called the other two victims over to the house. (Vol. 6, April 26, 2005, A.M. Pp 86)

10
11 Ms. Severs admitted that she originally lied to the police to help Donte. (Vol. 6, April 26,
12 2005, A.M. Pp 93) Ms. Severs also lied to the grand jury to help Donte. (Vol. 6, April 26, 2005,
13 A.M. Pp 95) Ms. Severs had previously stated that Todd Armstrong had gone to the murder scene
14 with the other defendants. (Vol. 6, April 26, 2005, A.M. Pp 104) She claimed that Todd
15 Armstrong had set everything up. (Vol. 6, April 26, 2005, A.M. Pp 104) However, she later
16 claimed that Mr. Armstrong did not go to the murder scene and she did it just to get him in
17 trouble. (Vol. 6, April 26, 2005, A.M. Pp 105)

18
19 Ms. Severs originally told the Grand Jury that the defendant did not have black jeans on.
20 She knew that there was blood on them and she didn't want to get him in trouble. (Vol. 6, April
21 26, 2005, A.M. Pp 107) Ms. Severs told Channel 8 news that Donte did not go to the murder
22 scene and in fact she had gone to the murder scene. (Vol. 6, April 26, 2005, A.M. Pp 113)

23
24 Eventually, Ms. Severs was arrested on a material witness warrant and a warrant for
25 possession of a stolen vehicle. Ms. Severs was promised that if she stayed out of trouble the case
26 for possession of a stolen vehicle would be dropped against her. (Vol. 6, April 26, 2005, A.M. Pp
27 119) Ms. Severs admits she has approximately five aliases. (Vol. 6, April 26, 2005, P.M. Pp 37)

28

1 When Ms. Severs was arrested and placed in the Clark County Detention Center she
2 hoped her testimony would gain her release. (Vol. 6, April 26, 2005, P.M. Pp 8) Ms. Severs
3 admitted that she committed perjury in front of the Grand Jury even though she had told the
4 Grand Jury at least three times that she promised to tell the truth. (Vol. 6, April 26, 2005, P.M. Pp
5 28) Ms. Severs was never charged with perjury for her lies to the Grand Jury. (Vol. 6, April 26,
6 2005, P.M. Pp 29)

7
8 Todd Armstrong smoked crack cocaine on a daily basis. (Vol. 6, April 26, 2005, P.M. Pp
9 18-19)

10
11 When the defendants came home from Terra Linda after the robbery, Ms. Severs
12 explained that Mr. Armstrong was upset there was no cocaine or money in the house and Mr.
13 Armstrong expected some. (Vol. 6, April 26, 2005, P.M. Pp 32-33) In fact, Mr. Armstrong said
14 where is my cocaine. (Vol. 6, April 26, 2005, P.M. Pp 33)

15
16 Mr. Berch Henry works for the DNA laboratory with the Las Vegas Metropolitan Police
17 Department. (Vol. 6, April 26, 2005, P.M. Pp 58) Mr. Henry had analyzed the work conducted by
18 Mr. Thomas Wahl. (Vol. 6, April 26, 2005, P.M. Pp 59) A cigarette butt located at the Terra
19 Linda residence had the DNA of Donte Johnson identified on it. (Vol. 6, April 26, 2005, P.M. Pp
20 70-71) There is no way to tell when the DNA was left on the cigarette butt. (Vol. 6, April 26,
21 2005, P.M. Pp 71) A pair of black Calvin Klein jeans was tested and the DNA was determined to
22 originate from Tracey Gorringer. (Vol. 6, April 26, 2005, P.M. Pp 72-73)

23
24 An autopsy of the victims provided evidence that the barrel of the murder weapon was
25 within about an inch of the skin of the victims. (Vol. 6, April 26, 2005, P.M. Pp 90) All four
26 victims died as a result of a single gunshot wound. (Vol. 6, April 26, 2005, P.M. Pp 92-104)

27 Mr. Talamentez also had a laceration behind his left ear and an abrasion to his nose. (Vol.
28

1 5, April 26, 2005, P.M. Pp 106) These injuries were caused by blunt force trauma. The toxicology
2 report of all victims demonstrated the presence of methamphetamine, amphetamine, and cocaine.
3
4 Vol. 6, April 26, 2005, P.M. Pp 113-114) Mr. Matthew Mowen also had alcohol in his system.
5 Vol. 6, April 26, 2005, P.M. Pp 114) At the conclusion of the medical examiners testimony, the
6 State rested.

7 The defense case in mitigation.

8
9 The defense called Moises Zamora. Mr. Zamora is married to Dante Johnson's sister,
10 Johnnisha Zamora. (Vol. 6, April 26, 2005, P.M. Pp 118) Mr. Zamora knew Donte Johnson by
11 his real name, John White. (Vol. 6, April 26, 2005, P.M. Pp 118) Mr. Zamora is half Hispanic
12 and explained that the defendant did not treat him any differently because of his background.
13 Vol. 6, April 26, 2005, P.M. Pp 120-122) Mr. Zamora felt that Donte accepted him like a
14 brother. (Vol. 6, April 26, 2005, P.M. Pp 122) Mr. Zamora briefly lived with Donte Johnson and
15 described him like a family member who he loved. (Vol. 6, April 26, 2005, P.M. Pp 123-124)

16
17 Donte Johnson has a child named Allen. Allen's communication with his father while he
18 has been incarcerated, was very important to him. (Vol. 6, April 26, 2005, P.M. Pp 127)

19 The defense called Arthur Cain, Mr. Johnson's uncle. (Vol. 6, April 26, 2005, P.M. Pp
20 132) Mr. Cain described Donte's mother, Eunice as "slow" and she attended special ed classes in
21 school. (Vol. 6, April 26, 2005, P.M. Pp 139) People often teased Donte Johnson's mother
22 because she was "slow". (Vol. 6, April 26, 2005, P.M. Pp 139) They referred to her as "retarded
23 or stupid". (Vol. 6, April 26, 2005, P.M. Pp 139) Eunice eventually married John White (the
24 defendant's father). (Vol. 6, April 26, 2005, P.M. Pp 140) Mr. Cain became aware that Eunice
25 had begun to use alcohol and drugs. (Vol. 6, April 26, 2005, P.M. Pp 142) He was also aware that
26 there was physical violence between Mr. White and Eunice. (Vol. 6, April 26, 2005, P.M. Pp
27
28

1 42) Eventually, Donte Johnson was taken from his mother and went to live with his
2 grandmother, "big momma". (Vol. 6, April 26, 2005, P.M. Pp 145)

3 Eunice and Cain testified for the defense. (Vol. 6, April 26, 2005, P.M. Pp 151) Eunice
4 described Donte Johnson as her oldest child. (Vol. 6, April 26, 2005, P.M. Pp 152) Eunice stated
5 that she drank alcohol when she was pregnant with Donte. (Vol. 6, April 26, 2005, P.M. Pp 152)
6 Eunice described her husband as violent and that her children would see her being beaten by him.
7 (Vol. 6, April 26, 2005, P.M. Pp 156) Donte would try to defend his mother but he was too little.
8 John White actually knocked Eunice's teeth out. (Vol. 6, April 26, 2005, P.M. Pp 156) John
9 White also attempted to throw her out of a window at the Frontier and Donte ran for help, which
10 she believed saved her. (Vol. 6, April 26, 2005, P.M. Pp 157)

11 Eunice explained that she was having a problem taking care of her children because she
12 was smoking PCP at the time. (Vol. 6, April 26, 2005, P.M. Pp 161) She would get high when
13 her kids were present. (Vol. 6, April 26, 2005, P.M. Pp 162) Her children were taken from her
14 and sent to foster care but eventually ended up living with her mother. (Vol. 6, April 26, 2005,
15 P.M. Pp 163)

16 Johnnisha Zamora is the younger sister of Mr. Johnson. (Vol. 6, April 26, 2005, P.M. Pp
17 66) Johnnisha remembers her mother would smoke drugs in front of the children and her father
18 would beat her mother in front of the children. (Vol. 6, April 26, 2005, P.M. Pp 168) Sometimes
19 when her mother would see a ghost, the children would be locked in the closet while she was
20 screaming. There were no lights inside the closet. (Vol. 6, April 26, 2005, P.M. Pp 169) At one
21 point, the children were forced to live in a shed. (Vol. 6, April 26, 2005, P.M. Pp 170) There were
22 approximately five or six of them living in a shed with no toilet, running water, or furniture. (Vol.
23 6, April 26, 2005, P.M. Pp 171-173) Johnnisha observed John White beating Donte Johnson and
24

1 Donte not understanding why he was being beaten. (Vol. 6, April 26, 2005, P.M. Pp 177)

2 When the Donte went to live with his grandmother, his grandfather did not spend time
3 with Donte. (Vol. 6, April 26, 2005, P.M. Pp 180) Johnnisha and Donte observed a lady who was
4 found dead with a "pole shoved up her private." (Vol. 6, April 26, 2005, P.M. Pp 182) Donte and
5 Johnnisha observed a police shootout where a man was killed upstairs. (Vol. 6, April 26, 2005,
6 P.M. Pp 183)

7
8 When the children would walk to school they would be chased almost everyday by
9 bullies. (Vol. 6, April 26, 2005, P.M. Pp 184) They observed a lot of street violence. (Vol. 6, April
10 26, 2005, P.M. Pp 184) The bullies would throw rocks and beat them up. (Vol. 6, April 26, 2005,
11 P.M. Pp 185) Johnnisha testified that she loved her brother. (Vol. 6, April 26, 2005, P.M. Pp 192)

12 The defendant's other sister, Eunisha White testified for the defense. (Vol. 7, April 27,
13 2005, 11:17 A.M. Pp 3) Ms. White observed her mother being abused by her father. (Vol. 7,
14 April 27, 2005, 11:17 A.M. Pp 5) She observed Mr. White strangle her mother with his hands and
15 on one occasion grab her by the neck and hold her over a balcony. (Vol. 7, April 27, 2005, 11:17
16 A.M. Pp 6) Ms. White remembered having to live in the shack with lots of other people. (Vol. 7,
17 April 27, 2005, 11:17 A.M. Pp 9) Eventually, the children went to live with their grandmother,
18 but even then, sometimes they went without food. (Vol. 7, April 27, 2005, 11:17 A.M. Pp 13-14)

19 Ms. Keonna Atkins was the cousin of Donte Johnson. (Vol. 7, April 27, 2005, 11:17 A.M.
20 Pp 18) Ms. Atkins remembers how they would be chased by bullies. (Vol. 7, April 27, 2005,
21 11:17 A.M. Pp 50-51) On one occasion, there was a burglary and a perpetrator came through the
22 window and groped Ms. Atkins. (Vol. 7, April 27, 2005, 11:17 A.M. Pp 52) The perpetrator
23 confronted the children which upset Donte (he was seven or eight years old). (Vol. 7, April 27,
24 2005, 11:17 A.M. Pp 51-52)

1 Donte's grandmother, Jane Edwards testified that she attempted to take care of
2 approximately ten children in her home, including Donte. (Vol. 7, April 27, 2005, 11:17 A.M. Pp
3 62-64)
4

5 The defendant's son, Allen White, told the jury that he loved his father and read a letter to
6 the jury that he had written to his father. (Vol. 7, April 27, 2005, 11:17 A.M. Pp 73-75)
7

8 On April 27, 2005 the jury heard closing arguments regarding the first portion of the
9 penalty phase.(Vol. 7, April 27, 2005, P.M.) The jury found that there was at least one
10 aggravating circumstance as to all four victims.(Vol. 7, April 27, 2005, P.M.) The jury began the
11 second portion of the penalty phase on April 28, 2005. On April 28, 2005 opening arguments
12 were heard regarding the second portion of the penalty phase
13

14 The State called Los Angeles police officer Jimmy Grayson (second portion of the penalty
15 phase). On June 8, 1993, Officer Grayson was involved in the investigation of a bank robbery at
16 Sen Fed Bank in Marina Del Ray, California. (Vol. 8, April 28, 2005, P.M. Pp 38-40) There were
17 four suspects in a ryder van. There was a police pursuit of the getaway van and Donte Johnson
18 was identified as the driver. (Vol. 8, April 28, 2005, P.M. Pp 41-42) During the bank robbery one
19 of the robbers stood near the door with a sawed off shotgun. (Vol. 8, April 28, 2005, P.M. Pp 43)
20 Ms. Sandra Gatlin worked for Sen Fed Bank on June 8, 1993, as assistant bank manager. (Vol. 8,
21 April 28, 2005, P.M. Pp 59-60) She remembered how she felt fear and described that some of the
22 robbers jumped the counters where the tellers were working. (Vol. 8, April 28, 2005, P.M. Pp 61-
23 62)
24

25 Donte Johnson received a total of four years commitment to the California youth authority
26 for the bank robbery. (Vol. 8, April 28, 2005, P.M. Pp 36) Once Donte Johnson was released
27 from custody, he was on parole. (Vol. 8, April 28, 2005, P.M. Pp 38) However, Donte Johnson
28

1 became an absconder and his parole was suspended and a warrant issued. (Vol. 8, April 28, 2005,
2 P.M. Pp 38)

3
4 On May 4, 1998, Officer Charles Burgess responded to a shooting call at the 2100 block
5 of east Fremont. (Vol. 9, April 29, 2005, Pp 20) When Officer Burgess arrived he noticed Derrick
6 Simpson lying motionless on the road. (Vol. 9, April 29, 2005, Pp 21) He had suffered from
7 gunshot wounds. (Vol. 9, April 29, 2005, Pp 22) Officer Burgess asked the victim what had
8 occurred and he stated "that a black male named Deko shot him". (Vol. 9, April 29, 2005, Pp 23)
9 The State introduced a judgement of conviction in which Donte Johnson was adjudicated guilty
10 of battery with use of a deadly weapon connected with the shooting. (Vol. 9, April 29, 2005, Pp
11 28)

12
13 On February 24, 2001, Officer Alexander Gonzales was working in the Clark County
14 Detention Center in the disciplinary housing unit. (Vol. 9, April 29, 2005, Pp 47-48) Officer
15 Gonzales claimed that he witnessed a fight wherein Mr. Reginald Johnson and Donte Johnson
16 threw Oscar Irias over the second story tier. (Vol. 9, April 29, 2005, Pp 52-53) Officer Gonzales
17 claimed that he could observe the fight through a window. (Vol. 9, April 29, 2005, Pp 55)

18
19 Oscar Irias had disciplinary problems including being written up for masturbating on a
20 toilet and attacking his roommate for no apparent reason. (Vol. 9, April 29, 2005, Pp 65) It was
21 also noted that Oscar was a psych patient with a violent temper. (Vol. 9, April 29, 2005, Pp 71)
22 After being thrown over the tier, Oscar went into his cell and was shaken up but had no other
23 significant injuries. (Vol. 9, April 29, 2005, Pp 75-76)

24
25 Prisoner George Cotton observed Oscar Irias fall from the second tier on February 24,
26 2001. (Vol. 10, May 2, 2005, Pp 8-11) Mr. Cotton heard someone yell help, help, and then saw
27 Oscar fall and then jump up and run in his cell. (Vol. 10, May 2, 2005, Pp 15-16) Mr. Cotton
28

1 indicated that Donte Johnson was not involved in the incident. (Vol. 10, May 2, 2005, Pp 18) Mr.
2 Cotton has two convictions for robbery with use of a deadly weapon. (Vol. 10, May 2, 2005, Pp
3 19)
4

5 Prisoner Permaine Lytle also heard Oscar yell for help. (Vol. 10, May 2, 2005, Pp 30) He
6 explained that the Officers were unable to see what had occurred from their vantage point. (Vol.
7 10, May 2, 2005, Pp 34) Mr. Lytle is currently serving life without parole consecutive to life
8 without parole for first degree murder with use of a deadly weapon. (Vol. 10, May 2, 2005, Pp
9 35)
10

11 Mr. Reginald Johnson told the jury that he was solely responsible for the attack on Oscar
12 Irias. (Vol. 10, May 2, 2005, Pp 44-48) Mr. Reginald Johnson explained, "I assaulted him and
13 heped him over the tier." (Vol. 10, May 2, 2005, Pp 48) Mr. Reginald Johnson pled guilty for his
14 role in the assault. (Vol. 10, May 2, 2005, Pp 48) Reginald Johnson told the jury he attacked
15 Oscar because he did not like child molesters. (Vol. 10, May 2, 2005, Pp 49) Mr. Reginald
16 Johnson denied that Donte Johnson had any involvement in the crime. (Vol. 10, May 2, 2005, Pp
17 50-60) Subsequently, Reginald Johnson and Oscar Irias were again placed together in a holding
18 cell and Reginald Johnson beat him up for a second time. (Vol. 10, May 2, 2005, Pp 60) During
19 Reginald Johnson's cross-examination, he became so heated the Court called a recess. (Vol. 10,
20 May 2, 2005, Pp 63-64)
21
22

23 Reginald Johnson's attorney, Ms. Gloria Navarro testified that she is employed with the
24 Clark County District Attorney's Office. (Vol. 10, May 2, 2005, Pp 84) Mr. Reginald Johnson
25 informed her that Donte Johnson was not involved with the crime. (Vol. 10, May 2, 2005, Pp 85-
26 86) Pursuant to an independent investigation, Ms. Navarro concluded that Officer Gonzales was
27 unable to see the fight, as he had claimed. (Vol. 10, May 2, 2005, Pp 94) Ms. Navarro testified
28

1 Reginald Johnson entered a plea of guilty because she guaranteed him that the charges against
2 Donte would be dismissed with prejudice. (Vol. 10, May 2, 2005, Pp 111)

3 The State called several witnesses to provide victim impact statements. (Vol. 10, May 2,
4 2005, Pp 99) Juanita Aguilar provided victim impact regarding her son, Peter Talamentez. (Vol.
5 10, May 2, 2005, Pp 101-103) Marie Biddle provided an impact statement regarding her son Jeff.
6 (Vol. 10, May 2, 2005, Pp 105-112) Sandy Viau provided victim impact regarding her son Tracey
7 Corrinage. (Vol. 10, May 2, 2005, Pp 113-120) Jennifer Mowen provided victim impact
8 regarding her brother, Matthew. (Vol. 10, May 2, 2005, Pp 121-124) Lastly, Mr. David Mowen
9 provided victim impact regarding his son, Matthew. (Vol. 10, May 2, 2005, Pp 124-132)
10

11 The State then rested their case in the second part of the penalty phase. (Vol. 10, May 2,
12 2005, Pp 134)
13

14 Penalty Mitigation in the second portion of the penalty phase

15 Keonna Atkins testified again, for the defense. (Vol. 10, May 2, 2005, Pp 135) Ms. Atkins
16 explained that during their youth, there were Blood and Crip gangs that were very violent in the
17 area. (Vol. 10, May 2, 2005, Pp 137) There were shoot outs and gang members often harassed
18 them. (Vol. 10, May 2, 2005, Pp 138) Donte Johnson became the protector of the family. (Vol.
19 10, May 2, 2005, Pp 141) Ms. Atkins learned that Donte had become a gang member because of a
20 threat to rape her by Baby Sonny. (Vol. 10, May 2, 2005, Pp 143) Donte had become a member or
21 "jumped in" to the six deuce brims. (Vol. 10, May 2, 2005, Pp 144) Ms. Atkins felt that Donte's
22 participation in the gang had provided protection for her. (Vol. 10, May 2, 2005, Pp 146) Donte's
23 sister also confirmed that he joined a gang to protect the family. (Vol. 10, May 2, 2005, Pp 158)
24 Donte's sister also reported that Donte took care of her growing up and made sure others did not
25 harm her. (Vol. 10, May 2, 2005, Pp 163-164)
26
27
28

1 The defense recalled Moises Zamora who told the jury that he was a cripple and Donte was a
2 blood. (Vol. 10, May 2, 2005, Pp 172) Mr. Zamora explained he had similar experiences to
3 Donte growing up in South Central LA. (Vol. 10, May 2, 2005, Pp 173)

4 The defense called Martin Jankowski, a professor of sociology at the University
5 California, Berkeley and an expert in gangs. (Vol. 10, May 2, 2005, Pp 193-194) Professor
6 Jankowski lived and worked with gangs for ten years. (Vol. 10, May 2, 2005, Pp 197) He also
7 authored a book on gang culture entitled, "Islands in the Street". (Vol. 10, May 2, 2005, Pp 198)
8 Professor Jankowski indicated that violence is an integral part of the gang environment. (Vol.
9 10, May 2, 2005, Pp 205) Professor Jankowski offered insight into the gang culture throughout
10 his testimony.
11

12 The defendant's first cousin, Donna Revomer explained that she was very frightened to
13 walk in her neighborhood until Donte Johnson joined the gang. (Vol. 10, May 2, 2005, Pp 236)
14 Her fear level improved after Donte joined the gang. (Vol. 10, May 2, 2005, Pp 237)

15 The defense recalled Donte's grandmother, Jane Edwards. (Vol. 10, May 2, 2005, Pp 239)
16 The defense also recalled the defendant's son Allen White. (Vol. 10, May 2, 2005, Pp 243) Allen
17 told the jury that he loved his father. (Vol. 10, May 2, 2005, Pp 244)

18 The defense called parole agent, Mr. Craig Clark from the California youth authority.
19 (Vol. 10, May 2, 2005, Pp 153) Officer Clark explained the area in which Donte lived was filled
20 with gang activity and that there was always a chance of being beaten up, ridiculed, or harassed
21 by enemies. (Vol. 10, May 2, 2005, Pp 168) Officer Clark indicated that there were several gangs
22 in the area that Mr. Donte Johnson was raised. (Vol. 10, May 2, 2005, Pp 169) Donte Johnson
23 was always polite, cordial, and respectful to other members of the parole staff. (Vol. 10, May 2,
24 2005, Pp 179) In fact, Officer Clark like Donte Johnson. (Vol. 10, May 2, 2005, Pp 179)

1 Ms. Nancy Hunterton administered a program at the Clark County Detention Center that
2 was attended by Donte Johnson. (Vol. 10, May 2, 2005, Pp 194-195) The class was called life
3 skills, and Donte participated in the class in approximately 2000. (Vol. 10, May 2, 2005, Pp 195)

4 Mr. James Esten was retired from the California department of corrections. (Vol. 10, May
5 2, 2005, Pp 216) Mr. Esten personally reviewed the records of Donte Johnson and toured Ely
6 State penitentiary. (Vol. 10, May 2, 2005, Pp 221) Mr. Esten described the type of living
7 conditions and prison environment that Donte would live in for life. Mr. Esten did not notice any
8 significant write-ups on Donte Johnson while at Ely State penitentiary. (Vol. 10, May 2, 2005, Pp
9 254)
10

11 Dr. Thomas Kinsora, a psychologist in clinical neuropsychology, testified on behalf of
12 Mr. Donte Johnson. (Vol. 11, May 3, 2005, Pp 14) Dr. Kinsora explained that the environment
13 that Donte Johnson grew up in and the factors of his environment played an important role in
14 who he became. (Vol. 11, May 3, 2005, Pp 38) Dr. Kinsora explained that Donte Johnson had
15 grown up in an impoverished area of Los Angeles, Donte had even been reduced to looking in
16 trash cans for food. (Vol. 11, May 3, 2005, Pp 46) Dr. Kinsora noted that Donte Johnson's
17 mother would regularly smoke crack cocaine in front of the children. (Vol. 11, May 3, 2005, Pp
18 47) Social services talked with Donte who complained that he was frequently beaten but didn't
19 know why. (Vol. 11, May 3, 2005, Pp 48)
20

21 Dr. Kinsora also noted that Donte was a very small child and he had no father figure or
22 male role model at home. (Vol. 11, May 3, 2005, Pp 66-67) Therefore, Donte felt responsible for
23 protecting the women at home and this was difficult based upon his stature. (Vol. 11, May 3,
24 2005, Pp 67) At thirteen years old, Donte Johnson witnessed a friend stabbed to death with a
25 screwdriver by a rival gang member. (Vol. 11, May 3, 2005, Pp 69) At age fifteen, he had a friend
26
27
28

1 shoot himself in the head in front of Donte because he felt that he had disappointed the gang.

2 (Vol. 11, May 3, 2005, Pp 69) In 1992, Donte witnessed a girl in his neighborhood shot in the
3 face by a Crip gang member as she exited a bus. (Vol. 11, May 3, 2005, Pp 70)

4 Dr. Kinsora compared South Central Los Angeles to a war zone equivalent of something
5 you would see in a third world country. (Vol. 11, May 3, 2005, Pp 76) Dr. Kinsora explained
6 that Donte committed the bank robbery because an older member of the gang had ordered him to
7 do so and Donte did not want to appear afraid and let the gang down. (Vol. 11, May 3, 2005, Pp
8 78)

9
10 Dr. Kinsora stated "I don't think there is any brain damage in talking to him and reading
11 some of his writings." (Vol. 11, May 3, 2005, Pp 86) The doctor concluded that there is no
12 organic brain disorder. (Vol. 11, May 3, 2005, Pp 101)

13
14 Dr. Kinsora admitted that he relied upon a report prepared by Tina Francis a defense
15 mitigation expert. (Vol. 11, May 3, 2005, Pp 112) On page 31 of Tina Francis' report it reflects
16 that Donte Johnson moved to Las Vegas because he could make more money selling marijuana
17 and crack in Las Vegas than in Los Angeles. (Vol. 11, May 3, 2005, Pp 125) There was an
18 objection by the defense throughout this testimony, that Dr. Kinsora should not be examined
19 over issues in Tina Francis' report. (Vol. 11, May 3, 2005, Pp 126) The Court permitted the
20 prosecutor to cross-examine Dr. Kinsora on Tina Francis' report because he claimed he had relied
21 upon it. (Vol. 11, May 3, 2005, Pp 129) Eventually, the court precluded the state from
22 introducing any more evidence from Tina Francis' report. (Vol. 11, May 3, 2005, Pp 130) At the
23 conclusion of Dr. Kinsora's testimony, the defense rested their mitigation case.
24
25

26 The State called a rebuttal witness, Ms. Cheryl Foster. (Vol. 11, May 3, 2005, Pp 133)
27 Ms. Foster is the warden of Southern Desert Correction Center. (Vol. 11, May 3, 2005, Pp 134)

28

1 Ms. Foster testified extensively regarding the inner workings of the Nevada Penitentiaries.

2 The defendant informed the Court he did not want to provide allocution. (Vol. 11, May 3,
3 2005, Pp 196) Thereafter, the jury was once again instructed on the law and closing arguments
4 were heard.

5 The jury returned a special verdict, finding a single aggravating circumstance pursued by
6 the State. Seven mitigating circumstances were found: Johnson's youth at the time of the
7 murders, (he was eighteen years old); he was taken as a child from his mother due to her neglect
8 and placed in foster care; he had no positive or meaningful contact with either parent; he had no
9 positive male role models; he grew up in a violent neighborhood; he witnessed many violent
10 attacks as a child; while a teenager he attended schools where violence was common. Johnson v.
11 State of Nevada, 122 Nev. 1344, at 1350.

12 On May 5, 2005, the jury returned a verdict sentencing Donte Johnson to death for the
13 first degree murder with use of a deadly weapon of Jeffery Biddle, Tracey Corrinage, Matt
14 Mowen, and Peter Talamentez. (Vol. 12, May 4, 2005)

15 ARGUMENT

16 I. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

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

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

21 Lozada v. State, 110 Nev. 349, 353, 871 P. 2d 944, 946 (1994). (Citing Strickland v.
22 Washington, 466 U. S. 668, 104 S. Ct. 205, (1984)). Once the defendant establishes that counsels
23 performance was deficient, the defendant must next show that, but for counsels error the result of
24

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

8 The United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S.Ct.
9 2052 (1984), established the standards for a court to determine when counsel's assistance is so
10 ineffective that it violates the Sixth Amendment of the U.S. Constitution. Strickland laid out a
11 two-pronged test to determine the merits of a defendant's claim of ineffective assistance of
12 counsel.

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

1 In meeting the prejudice requirement of ineffective assistance of counsel claim, Mr.
2 Johnson must show a reasonable probability that, but for counsel's errors, the result of the trial
3 would have been different. Reasonable probability is probability sufficient to undermine
4 confidence in the outcome. Kirksey v. State, 112 Nev. at 980. "Strategy or decisions regarding
5 the conduct of defendant's case are virtually unchallengeable, absent extraordinary
6 circumstances." Mazzan v. State, 105 Nev. 745, 783 P.2d 430 Nev. 1989); Olausen v. State, 105
7 Nev. 110, 771 P.2d 583 Nev. 1989).
8

9 The Nevada Supreme Court has held a defendant has a right to effective assistance of
10 appellate counsel on direct appeal. Kirksey v. Nevada, 112 Nev. 980, 923 P.2d 1102 (1996).
11

12 The constitutional right to effective assistance of counsel extends to a direct appeal. Burke
13 v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance of
14 appellate counsel is reviewed under the "reasonably effective assistance" test set forth in
15 Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S.Ct. 2052 (1984). Effective
16 assistance of appellate counsel does not mean that appellate counsel must raise every non-
17 frivolous issue. See Jones v. Barnes, 463 U.S. 745, 751-54, 77 L.Ed. 2d 987, 103 S. Ct. 3308
18 (1983). An attorney's decision not to raise meritless issues on appeal is not ineffective assistance
19 of counsel. Daniel v. Overton, 845 F. Supp. 1170, 1176 (E.D. Mich. 1994); Leaks v. United
20 States, 841 F. Supp. 536, 541 (S.D.N.Y. 1994), aff'd, 47 F.3d 1157 (2d Cir.). To establish
21 prejudice based on the deficient assistance of appellate counsel, the defendant must show that the
22 omitted issue would have a reasonable probability of success on appeal. Duhamel v. Collins, 955
23 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132. In making this determination, a court must
24 review the merits of the omitted claim. Heath, 941 F. 2d at 1132.
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1 In the instant case, Mr. Johnson's proceedings were fundamentally unfair. The defendant
2 received ineffective assistance of counsel. Based upon the following arguments:

3 **II. MR. JOHNSON IS ENTITLED TO A NEW TRIAL BASED UPON INEFFECTIVE**
4 **ASSISTANCE OF COUNSEL WHEREIN TRIAL COUNSEL FAILED TO**
5 **PROPERLY INVESTIGATE IN THE THIRD PENALTY PHASE.**

6 Mr. Johnson's conviction is invalid under the federal and state constitutional guarantees
7 of due process, equal protection, and effective assistance of counsel, due to the failure of defense
8 counsel to conduct an adequate investigation. U.S. Const. Amends. V, VI, VIII & XIV; Nevada
9 Constitution Art. I and IV.

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

23 In the instant case, Mr. Johnson's trial counsel failed to properly investigate the facts of
24 the case prior to trial.

25 In State of Nevada v. Love, 865 P.2d 322, 109 Nev. 1136, (1993), the Supreme Court
26 considered the issue of ineffective assistance of counsel for failure of trial counsel to properly
27 investigate and interview prospective witnesses. In Love, the District Court reversed a murder
28 conviction of Rickey Love based upon trial counsel's failure to call potential witnesses coupled
with the failure to personally interview witnesses so as to make an intelligent tactical decision
and making an alleged tactical decision on misrepresentations of other witnesses testimony.

1 Love, 109 Nev. 1136, 1137.

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

9 In the instant case, Mr. Johnson argues that the following facts show a lack of reasonable
10 investigation by his trial counsel. Defense counsel failed to properly investigate several issues
11 that should have been presented at the third penalty phase.

12 **A. FAILURE TO PRESENT ANY MITIGATION ON FETAL ALCOHOL**
13 **DISORDERS.**

14 Donte's mother, Eunice told the jury that she consumed alcohol when she was pregnant
15 with Donte. (A.A. Vol. 6, April 26, 2005, P.M., Pp 152). In the instant case, counsel for Mr.
16 Johnson failed to present or investigate the prospect that Mr. Johnson had suffered from Fetal
17 Alcohol Disorder. Fetal Alcohol Spectrum Disorders are a group of disorders that can occur in a
18 person who's mother drank alcohol during pregnancy. The effects can include physical problems
19 and problems with behavior and learning. Often, persons with this type of disorder have a mix of
20 these problems. The Center for Disease Control and Prevention has described some of the
21 symptoms of Fetal Alcohol Spectrum Disorder as being shorter than average height, low body
22 weight, and poor judgment and reasoning skills.

23 A review of the file reveals that counsel failed to obtain or conduct testing on Donte
24 Johnson to determine whether he suffered from Fetal Alcohol disorder. Donte Johnson's mother
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1 testified she abused alcohol during her pregnancy. Donte Johnson was of very small stature
2 according to the record. Donte Johnson has showed poor reasoning and judgement skills as
3 displayed by the record. Donte Johnson is in the process of requesting funds from the county in
4 an effort to have an expert appointed to determine whether Donte Johnson suffered from Fetal
5 Alcohol Spectrum Disorder. It was ineffective assistance of counsel for counsel to fail to obtain
6 an expert to make such a determination given the fact that the record provides evidence that Mr.
7 Johnson displayed signs of Fetal Alcohol Disorder.
8

9
10 **B. FAILURE OF COUNSEL TO OBTAIN A PET SCAN.**

11 In the instant case the defense presented evidence in mitigation regarding the defendant's
12 environment. However, the defense never cause the defendant's brain to be properly analyzed. In
13 fact, the defense called Dr. Kinsora who speculated that the defendant did not suffer from brain
14 damage. It was incumbent upon the defense to have the defendant properly analyzed.
15

16 A Positron Emission Tomography Scan (PET Scan) is a nuclear medicine imaging
17 technique which produces a three dimensional picture of the functional process in the body. PET
18 Neuroimaging is based on an assumption that areas of high radioactivity are associated with brain
19 activity. What is actually measured indirectly is the flow of blood to different parts of the brain,
20 which is generally believed to be correlated, and has been measured using the tracer oxygen. It
21 can also assist in examining links between specific psychological processes or disorders in brain
22 activity ("A Close look into the Brain," Julich Research Center, 29 April 2009.)
23

24 In the instant case, the defense should have investigated in an effort to determine whether
25 Mr. Johnson suffered from internal difficulties within the brain. A review of the file fails to
26 reveal that counsel attempted to obtain an analysis of Mr. Johnson's brain. Mr. Johnson is
27 currently requesting funding to conduct this testing.
28

1 **C. FAILURE TO PRESENT EVIDENCE THAT THE CO-DEFENDANT**
2 **SIKIA SMITH AND TERELL YOUNG RECEIVED SENTENCES OF**
3 **LIFE.**

4 In the instant case, the defense failed to properly argue proportionality as an issue in
5 mitigation. The defense failed to present evidence from either Mr. Smith or Mr. Young's
6 attorneys regarding the outcome of their penalty hearings. Neither of the co-defendants received
7 sentences of death.

8 In fact, on April 27, 2005, defense counsel attempts to argue in the penalty phase that the
9 two other defendants did not receive the death penalty. The State objects and defense counsel
10 argues, "it's mitigation if they receive life." The State's objection was sustained.

11 In the instant case, a reasonable investigation would have proved that both co-defendants
12 did in fact receive sentences of less than death as Ms. Alzora Jackson attempted to argue to the
13 jury. However, there was no such evidence in the record. Therefore, the State's objection was
14 sustained. A simple investigation would have revealed that both the co-defendants did in fact
15 receive sentences of less than death. The judgment of conviction and sentencing transcripts could
16 have been introduced. Defense counsel for both co-defendants should have been called as
17 witnesses to establish that their clients did not receive death sentences for these acts.

18 Therefore, it was ineffective assistance of counsel not to introduce evidence of the co-
19 defendants sentences in an effort to argue proportionality. Appellate counsel was also ineffective
20 for failure to raise this issue on appeal.

21 **D. FAILING TO OFFER MITIGATORS WHICH HAD BEEN FOUND BY**
22 **THE FIRST JURY.**

23 In the instant case, post conviction counsel made contact with Mr. David Figler. Mr.
24 Figler was trial counsel at the first trial and at the second penalty hearing before the three judge
25 panel. Mr. Figler informed post conviction counsel that the first jury filled out a mitigation form
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1 finding more than thirty (30) mitigators including one indicating the defendant's role in the
2 instant case (see attached affidavit).

3 After discussing the matter with Mr. Figler, Mr. Johnson has made attempts to obtain the
4 penalty phase verdict forms from the first jury trial. Unfortunately, the requested verdict forms
5 provided by the court clerk were the guilt verdict forms from the first trial. Further efforts to
6 obtain the mitigation form have yet to result in the location of the verdict form. However, once an
7 investigator is appointed, the investigator can go through the entire court file in order to locate the
8 mitigation form which the court clerks have not been able to locate (see attached affidavit).

9
10 At the third penalty phase, the jury did not find anywhere near thirty mitigating factors
11 for Donte Johnson. In fact, they only offered eleven mitigators in the third penalty phase. (A.A.
12 Vol. 7 April 27, 2005 Pp. 14, instruction No. 10) Hence, it was ineffective assistance of counsel
13 in the third penalty phase for the failure to offer all of the mitigating factors found by the first jury
14 (the first jury was unable to reach a verdict as to Donte Johnson's penalty).

15
16 The failure to properly investigate is compounded during first portion of the penalty phase
17 closing argument where the state explains to the jury,

18
19 "The evidence is unequivocal that it is the defendant, Donte Johnson, that fired the
20 fatal rounds into each one of the victims heads. To argue before you that the
21 evidence is anything else, cite to me the facts". Mr. Whipple then states, "judge,
22 I'll object (A.A. Vol. 7, April 27, 2005, P.M.)

23 Upon information and belief, Mr. Figler has told post-conviction counsel that he specifically
24 recalls the jury in the first penalty phase finding a mitigator regarding the defendant's role in the
25 crime. If counsel had been effective, in the third penalty phase, counsel would have introduced
26 that citation in the record to dispel the prosecutor's statement that the evidence is unequivocal
27 that Donte Johnson fired the fatal rounds into the victims head.

28 Additionally, there is no evidence in the file that counsel in the third penalty phase made

1 an effort or actually interviewed the hold out juror(s) from the first hung jury. Had defense
2 counsel properly investigated, and interviewed the jury from the first penalty phase, they would
3 have recognized that jurors had found many more mitigators than the jury did in the third penalty
4 phase.

5 **E. FAILURE TO PRESENT EVIDENCE FROM THE DEFENDANT'S FATHER.**

6 In the instant case, the defense presented mitigation evidence that Donte Johnson had
7 been abused by his father and had observed his father be abusive to his mother. Donte Johnson
8 was clearly neglected and abused by his father. The defense should have presented testimony
9 from the father even if the examination was hostile to demonstrate to the jury the type of
10 upbringing Mr. Johnson endured.
11

12 In summary, the mitigation evidence that counsel unreasonably failed to investigate and
13 present is the same type of evidence that has been found to have a reasonable probability of a
14 more favorable outcome in the penalty phase of a capital trial. Eg, Rompilla v. Beard, 545 U.S.
15 374, 390-93 (2005); Wiggins v. Smith, 539 U.S. 510, 533-37 (2003); Tennard v. Dertke, 542
16 U.S. 274, 284 (2004)(mitigating evidence as capital sentencing hearing defined as evidence
17 having "any tendency to make the existence of any fact that is of consequence to the
18 determination of the action more probable or less probable than it would be without the
19 evidence.")(citation omitted); Williams v. Taylor, 529 U.S. 362, 396-98 (2000); Boyde v. Brown,
20 44 F.3d 1159, 1176-80 (9th Cir. 2005)(counsel ineffective for failing to present much larger body
21 of mitigating evidence).
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23

24 Additionally, the Court should be concerned regarding the failure to properly obtain
25 important experts for the penalty phase as noted above. Eg, Daniels v. Woodford, 428 F.3d 1181,
26 1209-10 (9th Cir. 2005)(counsel ineffective in selection and preparation of expert and capital
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28

1 sentencing); Paine v. Massie, 339 F.3d 1194, 1202-03 (10th Cir. 2003); Roberts v. Dretke, 356
2 F.3d 632, 639-41 (5th Cir. 2004); Jennings v. Woodford, 290 F.3d 1006, 1013 (9th Cir.
3 2002)(failure to provide experts with available medical records constitutes ineffective assistance);
4 Silva v. Woodford, 279 F.3d 825, 841-42 (9th Cir. 2002); Wallace v. Stewart, 184 F.3d 1112,
5 1118 (9th Cir. 1999); Bloom v. Calderon, 132 F.3d 1267, 1271-72 (9th Cir. 1997); Clayborn v.
6 Lewis, 64 F.3d 1373, 1385-87 (9th Cir. 1995); Hendricks v. Calderon, 70 F.3d 1032, 1043 (9th
7 Cir. 1995).
8

9
10 Mr. Johnson is therefore entitled to an evidentiary hearing to prove his allegations of
11 ineffective assistance of trial and appellate counsel for failure to investigate and present
12 mitigation evidence in violation of the United States constitution amendments IV, VI, VIII, XIV;
13 Nevada Const. Art. I, Sec. 3,6, and 8; Art. IV, Sec. 21.

14 **III. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL AND**
15 **APPELLATE COUNSEL FOR FAILURE TO PRECLUDE THE STATE FROM**
16 **INTRODUCING AN INADMISSIBLE BAD ACT.**

17 Mr. Johnson's conviction is invalid under the federal and state constitutional guarantees
18 of due process, equal protection, and effective assistance of counsel, a fair penalty hearing, and a
19 right to be free from cruel and unusual punishment were violated by providing the State a
20 mitigation report from Tina Francis which was used to impeach a defense expert. U.S. Const.
21 Amends. V, VI, VIII & XIV; Nevada Constitution Art. I and IV.
22

23 On August 17, 1998, at approximately 10:40 Trooper Robert Honea conducted a traffic
24 stop on a vehicle. (A.A. Vol. 4, April 22, 2005, A.M. Pp 117) Later it was determined that Donte
25 Johnson was the driver of the vehicle and Terell Young (Red) was the passenger. During the stop,
26 Donte Johnson used the name Donte Fletch. (A.A. Vol. 4, April 22, 2005, A.M. Pp 117) The
27 Trooper observed the co-defendant with a gun in his hand and then a foot pursuit occurred of
28

1 both defendants. (A.A. Vol. 4, April 22, 2005, A.M. Pp 117-118). Defense counsel objects to the
2 introduction of this evidence in the first part of the penalty phase, stating the evidence had never
3 been subject to pre-trial scrutiny even though it was used in the first trial. (A.A. Vol. 4, April 22,
4 2005, A.M. Pp 117)
5

6 Defense counsel claimed it was error to let the evidence into the first trial. The State was
7 permitted to introduce this bad act because a gun was located in the back of the vehicle but it
8 happened not to be the murder weapon. (A.A. Vol. 4, April 22, 2005, A.M. Pp 118)
9

10 NRS 48.045(2) provides, Evidence of other crimes, wrongs, or acts is not admissible to
11 prove the character of a person in order to show that the acted in conformity therewith. It may,
12 however, be admissible for other purposes, such as proof of motive, opportunity, intent,
13 preparation, plan, knowledge, identity, or absence of mistake or accident.
14

15 Once the court's ruled that evidence is probative of one of the permissible issues under
16 NRS 48.045(2), the court must decide whether the probative value of the evidence is substantially
17 outweighed by its prejudicial effect.
18

19 NRS 48.045 states, "[E]vidence of other crimes, wrongs, or acts is not admissible to
20 prove the character of a person in order to show that he acted in conformity therewith. See, Taylor
21 v. State, 109 Nev. 849, 853, 858 P.2d 843, 846 (1993). See also, Beck v. State, 105 Nev. 910, 784
22 P.2d 983 (1989). However, an exception to this general rule exists. Prior bad act evidence is
23 admissible in order to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or
24 absence of mistake or accident. See, NRS 48.045(2). It is within the trial court's sound discretion
25 whether evidence of a prior bad act is admissible.... Cipriano v. State, 111 Nev. 534, 541, 894
26 P.2d 347, 352 (1995). See also, Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).
27

28 "The duty placed upon the trial court to strike a balance between the prejudicial effect of

1 such evidence on the one hand, and its probative value on the other is a grave one to be resolved
2 by the exercise of judicial discretion.... Of course the discretion reposed in the trial judge is not
3 unlimited, but an appellate court will respect the lower court's view unless it is manifestly
4 wrong." Bonacci v. State, 96 Nev. 894, 620 P.2d 1244 (1980), citing, Brown v. State, 81 Nev.
5 397, 400, 404 P.2d 428 (1965).

7 It is ineffective assistance of trial counsel in the first trial to permit the
8 introduction of this bad act without a Petrocelli hearing and it was ineffective assistance of
9 appellate counsel for failing to raise this issue on direct appeal from the first trial. Additionally, it
10 was ineffective assistance of trial counsel not to attempt to preclude this evidence prior to the
11 third penalty phase.

13 The State argued that the gun should be permitted because it appeared similar to a gun
14 described by Charla Severs in that it looked sort of like a sawed off shotgun. However, the Court
15 asked the prosecution if she ever identified the gun and she did not. (A.A. Vol. 4, April 22, 2005,
16 A.M. Pp 119-120) The court did taken notice that it was not the murder weapon and Ms. Severs
17 never identified the gun. (A.A. Vol. 4, April 22, 2005, A.M. Pp 121) The judge rules, "It's
18 tenuous. Like I said, you can bring it in in the second part. In this part I don't agree." (A.A. Vol.
19 4, April 22, 2005, A.M. Pp 122) Hence, it was ineffective assistance of trial counsel to not realize
20 that a pre-trial motion was necessary to preclude the evidence. Additionally, appellate counsel
21 was ineffective for failing to raise this issue on appeal.

24 **IV. TRIAL COUNSEL WAS INEFFECTIVE FOR PROVIDING THE STATE A**
25 **MITIGATION REPORT FROM TINA FRANCIS WHICH WAS USED TO**
26 **IMPEACH A DEFENSE EXPERT.**

27 Mr. Johnson's conviction is invalid under the federal and state constitutional guarantees of
28 due process, equal protection, and effective assistance of counsel, , a fair penalty hearing, and a

1 right to be free from cruel and unusual punishment were violated by providing the State a
2 mitigation report from Tina Francis which was used to impeach a defense expert. U.S. Const.
3 Amends. V, VI, VIII & XIV; Nevada Constitution Art. I and IV.
4

5 Appellate counsel was ineffective for failing to raise the following issue on appeal. The
6 defense presented the expert testimony of Dr. Kinsora, who admitted that he had relied upon a
7 report prepared by Tina Francis, the defense mitigation expert (A.A. Vol. 11, May 3, 2005,
8 Pp.112). Dr. Kinsora was impeached with Tina Francis' mitigation report regarding there being
9 nothing in the report to suggest that Donte's mother used drugs or alcohol during her pregnancy
10 (A.A. Vol. 11, May 3, 2005, Pp.113). Additionally, Dr. Kinsora was questioned regarding bad act
11 evidence contained in Ms. Francis' report wherein Donte Johnson allegedly took a small caliber
12 gun gave it to a co-defendant in another case because the co-defendant was angry with a
13 cheerleader. (A.A. Vol. 11, May 3, 2005, Pp.121)
14

15 Dr. Kinsora was further examined regarding Donte's grandmother stating that he should
16 be treated as an adult by the California authorities. (A.A. Vol. 11, May 3, 2005, Pp.122-123) Dr.
17 Kinsora was cross-examined regarding Tina Francis' report reflecting that Donte Johnson moved
18 to Las Vegas because he could make more money selling marijuana and crack in Las Vegas than
19 in Los Angeles. (A.A. Vol. 11, May 3, 2005, Pp.125) There was an objection by defense counsel
20 regarding this portion of testimony. Defense counsel argued that these issues were the work
21 product of Tina Francis. The court overruled the objection. (A.A. Vol. 11, May 3, 2005, Pp.126)
22

23 Eventually, the trial court began precluding the State from introducing any more evidence
24 from Tina Francis' report (A.A. Vol. 11, May 3, 2005, Pp.130). Yet, the damage was done. The
25 defense had permitted a mitigation experts information and report to be used against the
26 defendant. It was ineffective assistance of counsel to cause the report to be prepared and for the
27
28

1 State to be permitted to use evidence in the report against the defendant's expert.

2 The discovery statute that previously required defense counsel to turn over reports of non-
3 testifying experts was declared unconstitutional by the Nevada Supreme Court. See Binegar v. 8th
4 Judicial District Court, 112 Nev. 544, 551-52, 915 P.2d 889, 894 (1996).

6 In assessing a claim of ineffective assistance of trial counsel, the court is required to look
7 at counsel's performance as a whole which includes commutative assessment of counsel's
8 multiple errors and admissions during the penalty phase of trial. See eg. Boyde v. Brown, 404
9 F.3d 1159, 1176 (9th Cir. 2005) Citing Cooper v. Fitzharris, 586 F.2d 1325, 1333 (9th Cir. 1978)
10 See also Harris Exrel. Ramseyer v. Wood, 94 F.3d 1432, 1438-39 (9th Cir. 1995). In the instant
11 case, the defense should have never placed their own expert in a situation where he was cross-
12 examined regarding facts in a mitigation experts report. Defense counsel should have reviewed
13 the notes and discussed with Ms. Tina Francis the nature of any facts contained in the report.
14 Appellate counsel was ineffective for not raising this issue on appeal as it was objected to during
15 trial. It was ineffective assistance of counsel for the mitigation experts report to have been
16 provided to the prosecution so that the State could use it against the defense's expert witness.

19 V. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR
20 TRIAL COUNSEL TO DISAGREE AMONG THEMSELVES IN FRONT OF THE
21 JURY.

22 During closing argument, defense counsel argued in contradiction to each other. First, one
23 defense attorney stated in closing arguments,

24 "I also brought Mr. Esten in here for a very important reason, and that is to show
25 you that there are no drugs in prison. We know for a fact that those individuals,
26 that Mr. Johnson and those other individuals were simply loaded on drugs. There
are no drugs in prison."(A.A. Vol. 12, May 4, 2005, Pp 47)

27 ...
28 "He was loaded on drugs when these homicides occurred, and in prison,
there are no drugs. You saw the way they search the inmates as they come and go,
there are no drugs in prison. That's another reason that society is protected." (A.A.

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13 cheerleader. (A.A. Vol. 11, May 3, 2005, Pp.121)
14

15 Dr. Kinsora was further examined regarding Donte's grandmother stating that he should
16 be treated as an adult by the California authorities. (A.A. Vol. 11, May 3, 2005, Pp.122-123) Dr.
17 Kinsora was cross-examined regarding Tina Francis' report reflecting that Donte Johnson moved
18 to Las Vegas because he could make more money selling marijuana and crack in Las Vegas than
19 in Los Angeles. (A.A. Vol. 11, May 3, 2005, Pp.125) There was an objection by defense counsel
20 regarding this portion of testimony. Defense counsel argued that these issues were the work
21 product of Tina Francis. The court overruled the objection. (A.A. Vol. 11, May 3, 2005, Pp.126)
22

23 Eventually, the trial court began precluding the State from introducing any more evidence
24 from Tina Francis' report (A.A. Vol. 11, May 3, 2005, Pp.130). Yet, the damage was done. The
25 defense had permitted a mitigation experts information and report to be used against the
26 defendant. It was ineffective assistance of counsel to cause the report to be prepared and for the
27
28

1 State to be permitted to use evidence in the report against the defendant's expert.

2 The discovery statute that previously required defense counsel to turn over reports of non-
3 testifying experts was declared unconstitutional by the Nevada Supreme Court. See Binegar v. 8th
4 Judicial District Court, 112 Nev. 544, 551-52, 915 P.2d 889, 894 (1996).

6 In assessing a claim of ineffective assistance of trial counsel, the court is required to look
7 at counsel's performance as a whole which includes commutative assessment of counsel's
8 multiple errors and admissions during the penalty phase of trial. See eg. Boyde v. Brown, 404
9 F.3d 1159, 1176 (9th Cir. 2005) Citing Cooper v. Fitzharris, 586 F.2d 1325, 1333 (9th Cir. 1978)
10
11 see also Harris Exrel. Ramseyer v. Wood, 94 F.3d 1432, 1438-39 (9th Cir. 1995). In the instant
12 case, the defense should have never placed their own expert in a situation where he was cross-
13 examined regarding facts in a mitigation experts report. Defense counsel should have reviewed
14 the notes and discussed with Ms. Tina Francis the nature of any facts contained in the report.
15 Appellate counsel was ineffective for not raising this issue on appeal as it was objected to during
16 trial. It was ineffective assistance of counsel for the mitigation experts report to have been
17 provided to the prosecution so that the State could use it against the defense's expert witness.

19 V. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR
20 TRIAL COUNSEL TO DISAGREE AMONG THEMSELVES IN FRONT OF THE
21 JURY.

22 During closing argument, defense counsel argued in contradiction to each other. First, one
23 defense attorney stated in closing arguments,

24 "I also brought Mr. Esten in here for a very important reason, and that is to show
25 you that there are no drugs in prison. We know for a fact that those individuals,
26 that Mr. Johnson and those other individuals were simply loaded on drugs. There
27 are no drugs in prison."(A.A. Vol. 12, May 4, 2005, Pp 47)

28 "...
"He was loaded on drugs when these homicides occurred, and in prison,
there are no drugs. You saw the way they search the inmates as they come and go,
there are no drugs in prison. That's another reason that society is protected." (A.A.

1 Vol. 12, May 4, 2005, Pp 47-48)

2 ...

3
4 "The drugs that Mr. Johnson was on, those were mind altering drugs, and
5 those drugs are not in prison, and that is another reason why we in society are
6 protected, and that's why I brought Mr. Esten in here to talk to you." (A.A. Vol.
7 12, May 4, 2005, Pp 48)

8 Therefore, defense counsel found it ultimately important to call an expert witness in an
9 effort to convince the jury that Mr. Johnson would not be able to consume the same type of drugs
10 that caused the behavior for which he was convicted. Thereafter, in a subsequent argument by the
11 other defense attorney, counsel states,

12 "There is one thing my learned co-counsel that I beg to differ; he said there are
13 no drugs in prison. I beg to differ. And you know how they get in prison? The
14 guards, you know, how often do we pick up a paper and see where guards have
15 brought drugs into prisons? Inmates can get them in their. You know, they are
16 human beings and they make mistakes just like any body else." (A.A. Vol. 12,
17 May 4, 2005, Pp 73)

18 It was ineffective assistance of counsel for both defense counsel to disagree on a theory.
19 Mr. Whipple actually called a witness for the very "important purpose" of establishing that there
20 are no drugs in prison. Specifically, no mind altering drugs that Mr. Johnson was on at the time of
21 the shootings. Thereafter, co-counsel argues that Mr. Whipple is wrong and therefore implying
22 that the defense witness was inaccurate as was the argument of Mr. Whipple. Mr. Whipple
23 believed that the jury would be concerned with future dangerousness if they thought Donte
24 Johnson would have access to mind altering drugs. Co-counsel argued that Donte would have
25 access to drugs in the prison because of the nature of the guards activities.

26 It was ineffective assistance of trial counsel to disagree in front of the jury as to such an
27 important point. Additionally, it was ineffective assistance of appellate counsel to fail to raise this
28 issue on appeal.

1 VI. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL
2 WHEN TRIAL COUNSEL REFERRED TO THE VICTIMS AS KID/KIDS.

3 Mr. Johnson's conviction is invalid under the federal and state constitutional guarantees
4 of due process, equal protection, and effective assistance of counsel, a fair penalty hearing, and a
5 right to be free from cruel and unusual punishment were violated due to defense counsel referring
6 to the victims as "kids". U.S. Const. Amends. V, VI, VIII & XIV; Nevada Constitution Art. I and
7 IV.
8

9 During closing arguments the defense attorney explains that it didn't matter whether
10 Donte Johnson laughed about the murders or not after one of the "kids" are killed. Defense
11 counsel further stated, "Does it make it any worse? The poor kid is dead." (A.A. Vol. 12, May 4,
12 2005, Pp 54) Defense counsel was ineffective for referring to the victims as kids because on
13 appeal, appellate counsel argued prosecutorial misconduct on the basis that the prosecutor
14 referred to the victims as "kids". The Supreme Court noted,
15

16 "Second, Johnson contends that the prosecutor violated a pre-trial order by the
17 District Court when he referred to the victims as "boys" or "kids" during rebuttal
18 argument. He is correct that the prosecutor violate the order but we conclude he
19 was not prejudiced. The meaning of the term "boys" or "kids" is relative in our
20 society depending on the context of its use and the terms do not inappropriately
21 describe the victims in this case. One of the four victims was seventeen year old;
22 one was nineteen years old; and two others were twenty years old. Referring to
23 them as "young men" may have been the most appropriate collective description.
24 But we conclude that the State's handful of references to them as "boys" or "kids"
25 did not prejudice Johnson." Johnson v. State, 122 Nev. 1344, 1356, (2006).

26 In fact, pre-trial, Johnson filed a motion in limine regarding these references, which was
27 argued by the parties and ruled on by the district court. Id. (Footnote 23). In the instant case, it was
28 ineffective assistance of trial counsel to refer to the victims as "kids" even after trial counsel had
filed a pre-trial motion to preclude the prosecution from arguing the same. Defense counsel found
it appropriate to motion the Court to preclude these type of references and then complained on

1 appeal that the State violated the court order. Yet, so did defense counsel. It was ineffective
2 assistance of counsel to raise this issue and not follow the court's order.

3
4 **VII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL**
5 **WHEN HIS ATTORNEYS SUCCESSFULLY MOTIONED THE COURT FOR A**
6 **BIFURCATED PENALTY HEARING.**

7 Johnson's state and federal constitutional rights to due process, equal protection, a fair
8 penalty hearing, and a right to be free from cruel and unusual punishment were violated because
9 the trial attorneys provided ineffective assistance of counsel for successfully motioning the court
10 for a bifurcated penalty hearing. U.S. Const. Amend. V, VI, VIII, XIV; Nevada Const. Art. I, Sec.
11 3, 6 and 8; Art. IV, Sec. 21.

12 In the first penalty phase, the jury was unable to reach a verdict. Prior to the third penalty
13 phase, trial counsel successfully petitioned the court for a bifurcated penalty phase. As a result,
14 Mr. Johnson was severely prejudiced.

15 Under the Nevada death penalty scheme the jury may impose a sentence of death only if it
16 finds at least one aggravating circumstance and further finds that there are no mitigating
17 circumstances sufficient to outweigh the aggravating circumstance or circumstances found (NRS
18 75.554(3)).

19
20 Support for a bifurcated penalty phase is found in a decision by the United States Supreme
21 Court. In Buchanan v. Angelone, 522 U.S. 269, 118 S. Ct. 757, 139 L. Ed. 2d 702,(1998), the
22 Court explained:

23
24 Petitioner initially recognizes, as he must, that our cases have distinguished
25 between two different aspects of the capital sentencing process, the eligibility
26 phase and the selection phase. Tuilaepa v. California, 512 U.S. 967, 971, 129 L.
27 Ed. 2d 750, 114 S. Ct. 2630 (1994). In the eligibility phase, the jury narrows the
28 class of defendants eligible for the death penalty, often through consideration of
aggravating circumstances. Id., at 971. In the selection phase, the jury determines
whether to impose a death sentence on an eligible defendant. Id., at 972.

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1 Mr. Johnson's attorneys were ineffective for demanding a bifurcated penalty phase and
2 severely prejudiced Mr. Johnson in doing so. On appeal from the third penalty phase, appellate
3 counsel argued that inmate disciplinary reports from the Clark County Detention Center were
4 improperly admitted over defense objection in violation of Crawford v. Washington, 541 U.S. 36,
5 124 Sup. Ct. 1354, 158 L.Ed. 2d 177 (2004). In Summers v. State, 122 Nev. 1326, 148 P.3d 778,
6 (2006), in the dissenting opinion, it was reasoned that capital defendants have a Sixth
7 Amendment right to confront the declarants of testimonial hearsay statements. However, in the
8 instant case, on appeal from the third penalty phase a concurring opinion provides,
9

10
11 For the reasons stated in my concurring and dissenting opinion in Summers v.
12 State, I believe that capital defendants have a sixth amendment right to confront
13 the declarants of testimonial hearsay statements admitted throughout an
14 unbifurcated capital penalty hearing. Where the hearing is bifurcated into death
15 eligibility and selection phases, however, I believe that the right to confrontation
16 extends only to evidence admitted in the eligibility phase. Here, because the
17 evidence at issue in Johnson's case- - inmate disciplinary reports- - was admitted
18 during the selection phase only, I concur in the majorities conclusion that it was
19 not error under the confrontation clause and Crawford v. Washington to admit the
20 reports into evidence. 122 Nev. 1344, 1360. (Internal citations omitted).

21 Hence, if defense counsel had not moved for a bifurcated hearing three of the seven
22 justices would have determined that the disciplinary reports admitted were testimonial hearsay
23 and required confrontation in violation of Crawford v. Washington.
24

25 The following are further examples of why Johnson's attorneys should not have requested
26 a bifurcated hearing. During the settling of jury instructions for the second portion of the third
27 penalty phase, the State and the defense stipulated that the jury would not be advised as to the
28 definition of reasonable doubt because they were previously instructed on reasonable doubt in the
first portion of the penalty phase (A.A. Vol. 12 May 4, 2005). It was ineffective assistance of trial
and appellate counsel to not insure that the jury be advised of the reasonable doubt instruction at
every part of a criminal case where jury instructions are provided to the jury. If the penalty phase

1 had not been bifurcated, this would not have presented itself as an issue. When the jury retired to
2 deliberate to determine the fate of Donte Johnson, they should have been instructed on the
3 definition of reasonable doubt.
4

5 During the opening arguments in the penalty phase, the prosecutor stated, "During the
6 second phase of this hearing, we will have the opportunity to present additional evidence about
7 Donte Johnson's upbringing. That will be in the second phase of this proceeding. "(A.A. Vol. 5
8 April 25, 2005, 11:15 AM, Pp 24) Additionally, during the first portion of the penalty phase,
9 defense counsel objects stating, "I need to object. They keep suggesting that there is something
10 that the jury hasn't heard, and that is in violation of this Courts order, they have done it twice."
11 (A.A. Vol. 7 April 25, 2005, Pp 80) The prosecution then states, "The jury had already been
12 admonished in voir dire that there are two phases in the proceeding and that facts and evidence
13 will be presented in both phases." (A.A. Vol. 7 April 25, 2005, Pp 80)
14

15 In the instant case, the State cleverly informed the jury that if they determined that a
16 second portion of the penalty phase was necessary, they were going to hear additional bad acts
17 and/or character evidence of the defendant. This naturally would make a jury curious as to what
18 they have yet to hear. This is exactly the objection by trial counsel. There would be an
19 overwhelming temptation amongst a reasonable jury to find that the mitigators do not outweigh
20 the aggravators in order to determine what the nature of the evidence was. Appellate counsel was
21 ineffective for failing to raise this issue on appeal. Trial counsel was ineffective for obtaining a
22 bifurcated penalty phase.
23

24 Additionally, the bifurcated hearing provided the prosecution the opportunity to comment
25 during the second portion of the penalty phase on mitigators that the jury had found. (See May 4,
26 2005, Pp 35). Lastly, the bifurcated penalty phase gave the opportunity for the State to make two
27
28

1 opening arguments, two closing arguments, and two rebuttal closing arguments. Whereas, if the
2 case was not bifurcated, the prosecution would make one opening argument, one closing
3 argument, and a rebuttal argument. Additionally, the State would not be given an opportunity to
4 comment and question on mitigators already found by the jury.
5

6 **VIII. MR. JOHNSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL FOR**
7 **THE FAILURE TO OFFER A MITIGATION INSTRUCTION.**

8 Johnson's state and federal constitutional rights to due process, equal protection, a fair
9 penalty hearing, and a right to be free from cruel and unusual punishment were violated because
10 the trial attorneys failed to request an appropriate mitigation instruction U.S. Const. Amend. V,
11 VI, VIII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.

12 In the instant case, jury instruction number three stated,
13

14 The jury must find the existence of each aggravating circumstance, if any,
15 unanimously and beyond a reasonable doubt. The jurors need not find mitigating
16 circumstances unanimously (A.A. Vol. 7 April 27, 2005, P.M.,Pp 11).

17 In the instant case, the jury should have been advised that mitigating circumstances do not
18 need to be found beyond a reasonable doubt which they were instructed on. However, the jury
19 should have been told, "a mitigating circumstance is found if any one juror believes that it exist."
20 The jury was instructed that a mitigator need not be found unanimously. However, that fails to
21 explain to the jury that a mitigating circumstance can be found by a single juror. The jurors who
22 read the instruction as a whole may believe that a majority of jurors necessarily were needed to
23 find a mitigator.

24 Mr. Johnson acknowledges that a similar issue was considered by the Nevada Supreme
25 Court in Jimenez v. State, 112 Nev. 610, 918 P.2d 687 (1996). In Jimenez, the petitioner argued
26 that the jury instructions would lead a reasonable juror to the belief that a mitigating circumstance
27 must be found unanimously. 112 Nev. 610, 624.
28

1 In a capital case, a sentencer may not be precluded from considering any relevant
2 mitigating evidence. Mills v. Maryland, 46 U.S. 367, 374-75, 100 L.Ed.2d 384, 108 Sup. Ct.
3 860 (1988). This rule is violated if the jury believes it cannot give mitigating evidence any effect
4 unless they unanimously agree upon the mitigating circumstance. Id. at 375. In Jimenez, the
5 Nevada Supreme Court held,

7 "...there was no basis in the instruction for jurors to believe that there own
8 individual views on the existence and nature of mitigating circumstances could not
9 be applied by each of them in weighing the balance between aggravating
circumstances and mitigating circumstances." Id. at 625.

10 Admittedly, the jury instructions do not state that a mitigating circumstance must be found
11 unanimously. However, counsel for Mr. Johnson tried the instant case in 2005. The Nevada
12 Supreme Court's decision in Jimenez v. Nevada was decided in 1996. Hence, counsel should
13 have been aware of the Jimenez decision and insured that the jury was properly instructed that
14 each individual juror could find the existence of a mitigator even though eleven other jurors
15 disagreed. Appellate counsel was ineffective for failing to raise this issue on appeal. Trial counsel
16 was ineffective for failing to offer such a jury instruction.

18 **IX. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE ON**
19 **APPEAL THE PROSECUTION IMPROPERLY IMPEACHING A DEFENSE**
20 **WITNESS.**

21 Johnson's state and federal constitutional rights to due process, equal protection, a fair
22 penalty hearing, and a right to be free from cruel and unusual punishment were violated because
23 appellate counsel failed to raise on appeal the prosecution improperly impeaching a defense
24 witness. U.S. Const. Amend. V, VI, VIII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec.
25 21.

27 During the penalty phase of this matter, the prosecutor improperly elicited evidence of a
28 misdemeanor conviction of Mr. Johnson's mitigation witness. Upon defense counsel's objection,

1 the prosecutor argued that he was specifically eliciting the information regarding Mr. Zamora's
2 prior arrest for impeachment purposes. The district court sustained the objection but provided no
3 admonishment to the jury.
4

5 The following questions and answers during Dr. Zamora's cross-examination by the prosecutor,
6 illustrates the impermissible impeachment:

7 Prosecutor: Your not a convicted felon
8 Mr. Zamora: No
9 Prosecutor: You don't have any felony convictions or misdemeanor
10 convictions?
11 Mr. Zamora: I have misdemeanor convictions.
12 Ms. Jackson: Your honor that's not a proper question for impeachment.
13 The Court: That is correct (A.A. Vol. 9, April 29, 2005).

14 NRS 50.095 states as follows:

15 "Impeachment by evidence of conviction of a crime.

- 16 1. For the purpose of attacking credibility of a witness, evidence that he has convicted of
17 a crime is admissible but only if the crime was punishable by death or imprisonment for
18 more than one year under the law under which he was convicted.
19 2. Evidence of a conviction is inadmissible under this section if a period of more than 10
20 years has elapsed since:
21 (a) The date of the release of the witness from confinement; or
22 (b) The expiration of the period of his parole, probation, or sentence, whichever is
23 the later date.
24 3. Evidence of a conviction is inadmissible under this section if the conviction has been
25 the subject of a pardon.
26 4. Evidence of juvenile adjudication is inadmissible under this section.
27 5. The pendency of an appeal therefrom does not render evidence of a conviction
28 inadmissible. Evidence of the pendency of an appeal is inadmissible.
29 6. A certified copy of a conviction is prima facie evidence of the conviction."

30 It is important to note that the prosecutor introduced the mitigation witness's prior
31 misdemeanor arrest, in direct violation of NRS 50.095.

32 This Nevada Supreme Court has held that, "[o]n appeal from denial of a writ of habeas
33 corpus, where during preliminary hearing counsel for defendant asked witness for State if he had
34 ever been arrested, and objection to question was sustained and counsel refused to cross-examine

1 witness unless counsel could attack witness's credibility, defendant was not denied right to
2 confront witness because pursuant to the statute, credibility may be attacked only by showing
3 conviction of felony, not by mere arrest." Johnson v. State, 82 Nev. 338, 418 P.2d 495 (1966),
4 cited, Plunkett v. State, 84 Nev. 145, at 148, 437 P.2d 92 (1968), Azbill v. State, 88 Nev. 240 at
5 247, 495, P.2d 1064 (1972), Bushnell v. State, 95 Nev. 570 at 572, 599 P.2d 1038 (1979).
6

7 In the instant case, the defense attorney clearly objected to this improper impeachment
8 evidence of an important mitigation witness. The rules and caselaw clearly demonstrate the error
9 made by the prosecutor. Appellate counsel was ineffective for failing to raise this issue on direct
10 appeal.
11

12 **K. THE DEATH PENALTY IS UNCONSTITUTIONAL**

13 Johnson's state and federal constitutional rights to due process, equal protection, right to
14 be free from cruel and unusual punishment, and right to a fair penalty hearing were violated
15 because the death penalty is unconstitutional. U.S. Const. Amend. V, VI, VII, XIV; Nevada
16 Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21.
17

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

20 Under contemporary standards of decency, death is not an appropriate punishment for a
21 substantial portion of convicted first-degree murderers. Woodson, 428 U.S. at 296. A capital
22 sentencing scheme must genuinely narrow the class of persons eligible for the death penalty.
23 Hollaway, 116 Nev. 732, 6P.3d at 996; Arave, 507 U.S. at 474; Zant, 462 U.S. at 877;
24 McConnell, 121 Nev. At 30, 107 P.3d at 1289. Despite the Supreme Court's requirement for
25 restrictive use of the death sentence, Nevada law permits broad imposition of the death penalty
26 for virtually and all first-degree murderers. As a result, in 2001, Nevada had the second most
27 persons on death row per capita in the nation. James S. Liebman, A Broken System: Error Rates
28

1 in Capital Cases, 1973-1995 (2000); U.S. Dept. Of Justice, Bureau of Justice Statistics Bulletin,
2 Capital Punishment 2001; U.S. Census Bureau, State population Estimates: April 2000 to July
3 2001, <http://eire.census.gov/pspest/date/states/tables/ST-est2002-01.php>. Professor Liebman
4 found that from 1973 through 1995, the national average of death sentences per 100,000
5 population, in states that have the death penalty, was 3.90. Liebman, at App. E-11.

7 The sates with the highest death rate for the death penalty for this period were as follows:
8 Nevada - 10.91 death sentences per 100,000 population; Arizona - 7.82; Alabama - 7.75; Florida
9 7.74; Oklahoma - 7.06; Mississippi - 6.47; Wyoming - 6.44; Georgia - 5.44; Texas - 4.55. Id.
10 Nevada's death penalty rate was nearly three time the national average and nearly 40% higher
11 than the next highest state for this 12 year period. Such a high death penalty rate in Nevada is due
12 to the fact that neither the Nevada statues defining eligibility for the death penalty nor the case
13 law interpreting these statues sufficiently narrows the class of persons eligible for the death
14 penalty in this state.

16 Johnson recognizes that this Court has repeatedly affirmed the constitutionality of
17 Nevada's death penalty scheme. See Leonard, 117 Nev. at 83, 17 P.3d at 416 and cases cited
18 therein. Nonetheless, the Court has never explained the rationale for its decision on this point and
19 has yet to articulate a reasoned and detailed response to this argument. This issue is presented
20 here both so that this Court may consider the full merits of this argument and so that this issue
21 may be fully preserved for review by the federal courts.

24 **B. THE DEATH PENALTY IS CRUEL AND UNUSUAL PUNISHMENT.**

25 Johnson's death sentence is invalid under the state and federal constitutional guarantees of
26 due process, equal protection, and a reliable sentence because the death penalty is cruel and
27 unusual punishment and under the Eighth and Fourteenth Amendments. He recognizes that this
28

1 Court has found the death penalty to be constitutional, but urges this Court to overrule its prior
2 decisions and presents this issue to preserve it for federal review.

3
4 Under the federal constitution, the death penalty is cruel and unusual in all circumstances.
5 See Gregg v. Georgia, 428 U.S. 153, 227 (Brennan, J., dissenting); id. at 231 (Marshall, J.,
6 dissenting); contra, id. at 188-195 (Opn. of Stewart, Powell and Stevens, JJ.); id. at 276 (White,
7 J., concurring in judgment). since stare decisis is not consistently adhered to in capital cases, e.g.,
8 Payne v. Tennessee, 111 S.Ct. 2597 (1991), this court and the federal courts should reevaluate the
9 constitutional validity of the death penalty.
10

11 The death penalty is also invalid under the Nevada Constitution, which prohibits the
12 imposition of "cruel or unusual" punishments. Nev. Const. Art. 1 § 6. While the Nevada case
13 law has ignored the difference in terminology, and had treated this provision as the equivalent of
14 the federal constitutional prohibition against "cruel and unusual punishments, e.g. Bishop v.
15 State, 95 Nev. 511, 517-518, 597 P.2d 273 (1979), it has been recognized that the language of
16 the constitution affords greater protection than the federal charter: "under this provision, if the
17 punishment is either cruel or unusual, it is prohibited. "Mickle v. Henrichs, 262 F. 687 (D. Nev.
18 1918). While the infliction of the death penalty may not have been considered "cruel" at the time
19 of the adoption of the constitution in 1864, "the evolving standards of decency that make the
20 progress of a maturing society. "Trop v. Dulles, 356 U.S. 86, 101 (1958) have led in the
21 recognition even by the staunchest advocates of its permissibility in the abstract, that killing as a
22 means of punishment is always cruel. See (Furman v. Georgia, 408 U.S. 238, 312 (White, J.,
23 concurring); See Walton v. Arizona, 110 S.Ct. 3047, 3066 (1990) (Scalia, J., concurring).
24 Accordingly, under the disjunctive language of the Nevada Constitution, the death penalty cannot
25 be upheld.
26
27
28

1 The death penalty is also unusual, both in the sense that is seldom imposed and in the
2 sense that the particular cases in which it is imposed are not qualitatively distinguishable from
3 those in which it is not. Further, the case law has so broadly defined the scope of the statutory
4 aggravating circumstances that it is the rare case in which a sufficiently imaginative prosecutor
5 could not allege an aggravating circumstance. In particular, the "random and motiveless"
6 aggravating circumstance under NRS 200.033(9) has been interpreted to apply to "unnecessary"
7 killings, e.g. Bennett v. State, 106 Nev. 135, 143, 787 P.2d 797 (1990), a category which includes
8 virtually every homicide. Nor has the Court ever differentiated, in applying the felony murder
9 aggravating factor, between homicides committed in the course of felonies and homicides in
10 which a felony is merely incidental to the killing. CF. People v. Green, 27 Cal.3d 1, 61-62, 609
11 P.2d 468 (1980). Given these expansive views of the aggravating factors, they do not in fact
12 narrow the class of murders for which the death penalty may be imposed, nor do they
13 significantly restrict prosecutorial discretion in seeking the death penalty: in essence, the present
14 situation is indistinguishable from the situation before the decision in Furman v. Georgia, 408
15 U.S. 238 (1972) when having the death penalty imposed was "cruel and unusual in the same way
16 that being struck by lightning is cruel and unusual." Id. at 309 (Stewart, J., concurring). There is
17 no other way to account for the fact that in a case such as Faessel v. State, 108 Nev. 413, 836
18 P.2d 609 (1992), the death penalty is not even sought and the defendant receives a second-degree
19 murder sentence; in Mercado v. State, 100 Nev. 535, 688 P.2d 305 (1984), the perpetrator of an
20 organized murder in prison receives a life sentence; and appellant, convicted of killing the
21 woman he loved in a drug-induced frenzy, is found deserving of the ultimate penalty the state can
22 exact.

23
24 The United States Supreme Court, unfortunately, has continued to confuse means with
25
26
27
28

1 ends: while focusing exclusively upon the procedural mechanisms which are supposed to
2 produce justice, it has neglected the question whether these procedures are in fact resulting in the
3 death penalty being applied in a rational and even-handed manner, upon the most unredeemable
4 offenders convicted of the most egregious offenses. The fact that this case was selected as one of
5 the very few cases in which the death penalty should be imposed is a sufficient demonstration
6 that these procedures do not work. Accordingly, this Court should recognize that the death
7 penalty as currently constituted and applied results in the imposition of cruel or unusual
8 punishment, and the sentence should therefore be vacated.
9

11 **C. EXECUTIVE CLEMENCY IS UNAVAILABLE.**

12 Johnson's death sentence is invalid because Nevada has no real mechanism to provide for
13 clemency in capital cases. Nevada law provides that prisoners sentenced to death may apply for
14 clemency to the State Board of Pardons Commissioners. See NRS 213.010. Executive clemency
15 is an essential safeguard in a state's decision to deprive an individual of life, as indicated by the
16 fact that ever of the 38 states that has the death penalty also has clemency procedures. *Ohio Adult*
17 *parole Authority v. Woodward*, 523 U.S. 272, 282 n. 4 (1998) (Stevens, J., concurring in part,
18 dissenting in part). Having established clemency as a safeguard, these states must also ensure that
19 their clemency proceedings comport with due process. Evitts v. Lucey, 469 U.S. 387, 401 (1985).
20 Nevada's clemency statutes, NRS 213.005-213.100, do not ensure that death penalty inmates
21 receive procedural due process. See Mathews v. Eldridge, 424 U.S. 319, 335 (1976). As a practical
22 matter, Nevada does not grant clemency to death penalty inmates. Since 1973, well over 100
23 people have been sentenced to death in Nevada. Bureau of Justice Statistics Report, Capital
24 Punishment 2006 (December 2007 NCJ 220219).
25

27 Johnson is informed and believes and on that basis alleges that since the reinstatement of
28

1 the death penalty, only a single death sentence in Nevada has been commuted and in that case, it
2 was commuted only because the defendant was mentally retarded and the U.S. Supreme Court
3 found that the mentally retarded could no longer be executed. It cannot have been the legislature's
4 intent to create clemency proceedings in which the Board merely rubber-stamps capital sentences.
5 The fact that Nevada's clemency procedure is not exercised on behalf of death-sentenced inmates
6 means, in practical effect, that it does not exist. The failure to have a functioning clemency
7 procedure makes Nevada's death penalty scheme unconstitutional, requiring the vacation of
8 Johnson's sentence.
9

10
11 **XI. MR. JOHNSON'S DEATH SENTENCE IS INVALID UNDER THE STATE AND**
12 **FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS, EQUAL**
13 **PROTECTION, AND A RELIABLE SENTENCE, BECAUSE THE NEVADA**
14 **CAPITAL PUNISHMENT SYSTEM OPERATES IN AN ARBITRARY AND**
15 **CAPRICIOUS MANNER. U.S. CONST. AMENDS. V, VI, VIII AND XIV; NEV.**
16 **CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.**

17 In support of this claim, Mr. Johnson alleges the following facts, among others to be
18 presented after full discovery, investigation, adequate funding, access to this Court's subpoena
19 power and an evidentiary hearing:

20 1. Mr. Johnson hereby incorporates each and every allegation contained in this
21 petition as if fully set forth herein.

22 2. The Nevada capital sentencing process permits the imposition of the death penalty
23 for any first degree murder that is accompanied by an aggravating circumstance. NRS
24 200.020(4)(a). The statutory aggravating circumstances are so numerous and so vague that they
25 arguable exist in every first-degree murder case. See NRS 200.033. Nevada permits the
26 imposition of the death penalty for all first-degree murders that are "at random and without
27 apparent motive." NRS 200.033(9). Nevada statutes also appear to permit the death penalty for
28 murders involving virtually every conceivable kind of motive: robbery, sexual assault, arson,

1 burglary, kidnapping, to receive money, torture, to prevent lawful arrest, and escape. *See* NRS
2 200.033. The scope of the Nevada death penalty statute is thus clear: The death penalty is an
3 option for all first degree murders that involve a motive, and death is also an option if the first
4 degree murder involves no motive at all.
5

6 3. The death penalty is accordingly permitted in Nevada for all first-degree murders,
7 and first-degree murder, in turn, are not restricted in Nevada within traditional bounds. As the
8 result of unconstitutional form jury instructions defining reasonable doubt, express malice and
9 premeditation and deliberation, first degree murder convictions occur in the absence of proof
10 beyond a reasonable doubt, in the absence of any rational showing of premeditation and
11 deliberation, and as a result of the presumption of malice aforethought. Consequently, a death
12 sentence is permissible under Nevada law in every case where the prosecution can present
13 evidence, not even beyond a reasonable doubt, that an accused committed an intentional killing.
14

15 4. As a result of plea bargaining practices, and imposition of sentences by juries,
16 sentences less than death have been imposed for offenses that are more aggravated than the one
17 for which Mr. Johnson stands convicted; and in situations where the amount of mitigating
18 evidence was less than the mitigation evidence that existed here. The untrammelled power of the
19 sentencer under Nevada law to declines to impose the death penalty, even when no mitigating
20 evidence exists at all, or when the aggravating factors far outweigh the mitigating evidence,
21 means that the imposition of the death penalty is necessarily arbitrary and capricious.
22

23 5. Nevada law fails to provide sentencing bodies with any rational method for
24 separating those few cases that warrant the imposition of the ultimate punishment from the many
25 that do not. The narrowing function required by the Eighth Amendment is accordingly non-
26 existent under Nevada's sentencing scheme, and the process is contaminated even further by
27
28

1 Nevada Supreme Court decisions permitting the prosecution to present unreliable and prejudicial
2 evidence during sentencing regarding uncharged criminal activities of the accused. Consideration
3 of such evidence necessarily diverts the sentencer's attention from the statutory aggravating
4 circumstances, whose appropriate application is already virtually impossible to discern. The
5 irrationality of the Nevada capital punishment system is illustrated by State of Nevada v.
6 Jonathan Daniels, Eighth Judicial District Court Case No. C126201. Under the undisputed facts
7 of that case, Mr. Daniels entered a convenience store on January 20, 1995, with the intent to rob
8 the store. Mr. Daniels then held the store clerk at gunpoint for several seconds while the clerk
9 begged for his life; Mr. Daniels then shot the clerk in the head at point blank range, killing him.
10 A moment later, Mr. Daniels shot the other clerk. Mr. Daniels and two friends then left the
11 premises calmly after first filling up their car with gas. Despite these egregious facts, and despite
12 Mr. Daniels' lengthy criminal record, he was sentenced to life in prison for these acts.

13
14
15 6. There is not rational basis on which to conclude that Mr. Daniels deserves to live
16 whereas Mr. Johnson deserves to die. These facts serve to illustrate how the Nevada capital
17 punishment system is inherently arbitrary and capricious. Other Clark County cases demonstrate
18 this same point: In State v. Brumfield, Case No. C145043, the District Attorney accepted a plea
19 for sentence of less than death for a double homicide; and in another double homicide case
20 involving a total of 12 aggravating factors resulted in sentences of less than death for two
21 defendants. State v. Duckworth and Martin, Case No. C108501. Other Nevada cases as
22 aggravated as the one for which Mr. Johnson was sentenced to death have also resulted in lesser
23 sentences. See Ewish v. State, 110 Nev. 221, 223-25, 871 P.2d 306 (1994); Callier v. Warden,
24 111 Nev. 976, 979-82, 901 P.2d 619 (1995); Stringer v. State, 108 Nev. 413, 415-17 836 P.2d
25 609 (1992).
26
27
28

1 7. Because the Nevada capital punishment system provides no rational method for
2 distinguishing between who lives and who dies, such determinations are made on the basis of
3 illegitimate considerations. In Nevada capital punishment is imposed disproportionately on
4 racial minorities: Nevada's death row population is approximately 50% minority even though
5 Nevada's general minority population is less than 20%. All of the people on Nevada's death row
6 are indigent and have had to defend with the meager resources afforded to indigent defendants
7 and their counsel. As this case illustrates, the lack of resources afforded to indigent defendants
8 and their counsel. As this case illustrates, the lack of resources provided to capital defendants
9 and their counsel. As this case illustrates, the lack of resources provided to capital defendants
10 virtually ensures that compelling mitigating evidence will not be presented to, or considered by,
11 the sentencing body. Nevada sentencers are accordingly unable to, and do not, provide the
12 individualized, reliable sentencing determination that the constitution requires.
13

14 8. These systemic problems are not unique to Nevada. The American Bar
15 Association has recently called for a moratorium on capital punishment unless and until each
16 jurisdiction attempting to impose such punishment "implements policies and procedures that are
17 consistent with . . . longstanding American Bar Association policies intended to (1) ensure that
18 death penalty cases are administered fairly and impartially, in accordance with due process, and
19 (2) minimize the risk that innocent persons may be executed . . . " as the ABA has observed in a
20 report accompanying its resolution, "administration of the death penalty, from being fair and
21 consistent, is instead a haphazard maze of unfair practices with no internal consistency" (ABA
22 Report). The ABA concludes that this morass has resulted from the lack of competent counsel in
23 capital cases, the lack of a fair and adequate appellate review process, and the pervasive effects of
24 race. Like wise, the states of Illinois and Nebraska have recently enacted or called for a
25 moratorium on imposition of the death penalty.
26
27
28

1 9. The United Nations High Commissioner for Human Rights has recently studied
2 the American capital punishment process, and has concluded that "guarantees and safeguards, as
3 well as specific restrictions on Capital Punishment, are not being respected. Lack of adequate
4 counsel and legal representation for many capital defendants is disturbing." The High
5 Commissioner has further concluded that "race, ethnic origin and economic status appear to be
6 key determinants of who will, and who will not, receive a sentence of death." The report also
7 described in detail the special problems created by the politicization of the death penalty, the lack
8 of an independent and impartial state judiciary, and the racially biased system of selecting juries.
9

10 The report concludes:
11

12 The high level of support for the death penalty, even if studies have
13 shown that it is not as deep as is claimed, cannot justify the lack of
14 respect for the restrictions and safeguards surrounding its use. In
15 many countries, mob killings and lynching enjoy public support as a
16 way to deal with violent crime and are often portrayed as "popular
17 justice." Yet they are not acceptable in civilized society.

18 10. The Nevada capital punishment system suffers from all of the problems identified
19 in the ABA and United Nations reports - the under funding of defense counsel, the lack of a fair
20 and adequate appellate review process and the pervasive effects of race. The problems with
21 Nevada's process, moreover, are exacerbated by open-ended definitions of both first degree
22 murder and the accompanying aggravating circumstances, which permits the imposition of a
23 death sentence for virtually every intentional killing. This arbitrary, capricious and irrational
24 scheme violates the constitution and is prejudicial *per se*.

25 ///

26 ///

27 ///

28 ///

1 **XII. MR. JOHNSON'S CONVICTION AND DEATH SENTENCE ARE INVALID**
2 **UNDER THE STATE AND FEDERAL CONSTITUTIONAL GUARANTEES OF**
3 **DUE PROCESS, EQUAL PROTECTION, TRIAL BEFORE AN IMPARTIAL**
4 **JURY AND A RELIABLE SENTENCE BECAUSE THE PROCEEDINGS**
5 **AGAINST HIM VIOLATED INTERNATIONAL LAW. U.S. CONST. AMENDS.**
6 **V, VI VIII AND XIV; NEV. CONST. ART. I SECS. 3, 6 AND 8; ART IV, SEC. 21.**

7 In support of this claim, Mr. Johnson alleges the following facts, among others to be
8 presented after full discovery, investigation, adequate funding, access to this Court's subpoena
9 power and an evidentiary hearing:

10 1. Both the Universal Declaration of Human Rights and the International Covenant
11 on Civil and Political Rights recognize the right to life. Universal Declaration of Human Rights,
12 G.A. Res. 217, U.N. Doc. A/810, Art. 3 (1948) [hereinafter "UDHR"]; International Covenant on
13 Civil and Political Rights, adopted December 19, 1966, Art. 6, 999 U.N.T.S. 171 (entered into
14 force March 23, 1976) [hereinafter "ICCPR"]. The ICCPR provides that "[n]o one shall be
15 arbitrarily deprived of his life." ICCPR, Art. 6. Other applicable articles include, but are not
16 limited to ICCPR, Art. 9 ("[n]o one shall be subjected to arbitrary arrest"), ICCPR, Art. 14 (right
17 to review of conviction and sentence by a higher tribunal "according to the law"), ICCPR, Art. 18
18 ("right to freedom of thought"), UDHR, Art. 18 (right "freedom of thought"), UDHR, Art. 19
19 (right to "freedom of opinion and expression"), UDHR, Art. 5 and ICCPR, Art. 6 (prohibition
20 against cruel, inhuman or degrading treatment or punishment); *See also* The Convention against
21 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10,
22 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987). In support of such claims, Mr.
23 Johnson reasserts each and every claim and supporting fact contained in this petition as if fully
24 set forth herein.
25

26 2. The United States Government and the State of Nevada are required to abide by
27 norms of international law. The Paquet Habana, 20 S.Ct. 290 (1900) ("international law is part of
28

1 our law and must be ascertained and administered by the courts of justice of appropriate
2 jurisdictions"). The Supremacy Clause of the United States Constitution specifically requires the
3 State of Nevada to honor the United States' treaty obligations. U.S. Constitution, Art. VI.
4

5 3. Nevada is bound by the ICCPR because the United States has signed and ratified
6 the treaty. In addition, under Article 4 of the ICCPR no country is allowed to derogate from
7 Article 6. Nevada is bound by the UDCR because the document is a fundamental part of
8 Customary International Law. Therefore, Nevada has an obligation not to take life arbitrarily.
9

10 4. A recent United Nations report on human rights in the United States lists some
11 specific ways in which the American legal system operates to take life arbitrarily. Report of the
12 Special Rapportuer on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/1998/681 (Add.
13 3)(1998) [hereinafter "Report of Special Rapportuer"]. United Nations Special Rapportuer Bacre
14 Waly Ndiaye found "[m]any factors other than the crime itself, appear to influence the imposition
15 of the death sentence [in the United States]." Class, race and economic status, both of the victim
16 and the defendant are key elements. *Id.*, at 62. Other elements Mr. Ndiaye found to unjustly
17 affect decisions regarding whether the convicted person should live or die include:
18

- 19 a. the qualifications of the capital defendant's lawyer;
20 b. the exclusion of people who are opposed to the death penalty from juries;
21 c. varying degrees of information and guidance given to the jury, including
22 the importance of mitigating factors;
23 d. prosecutors given the discretion whether or not to seek the death penalty;
24 e. the fact that some judges must run for re-election.
25

26 5. The reasons why Mr. Johnson's conviction and sentence are arbitrary and,
27 therefore, violate International Law are described throughout this petition; Mr. Johnson
28

1 incorporates each and every and supporting facts as if fully set forth herein. However, to assist
2 the court, Mr. Johnson provides the following examples of how his conviction and sentence are
3 arbitrary in nature (they specifically correspond to the arbitrary factors listed above from the
4 Report of Special Rapportuer):
5

6 a. People who were opposed to the death penalty were excluded from Mr.
7 Johnson's jury;

8 b. A single aggravating action (burglary) was allowed to be used against Mr.
9 Johnson in multiple ways in order to justify the imposition of the death penalty, while mitigating
10 factors were not fully considered;
11

12 c. The prosecutor had discretion in whether or not to seek the death penalty;

13 d. The judge presiding over Mr. Johnson's trial was elected;

14 e. The Nevada Supreme Court which reviewed the case is elected;

15 f. Finally, an additional factor not listed in the Report of the Special
16 Rapporteur but clearly an indication of the arbitrary nature of the imposition of the death sentence
17 in Nevada, members of the judiciary admit that they do not read briefs regarding the death penalty
18 cases before them.
19

20 6. These violations of international law were prejudicial *per se*. In the alternative,
21 the State cannot show beyond a reasonable doubt that these violations did not affect Mr.
22 Johnson's conviction and sentence and thus relief is required.
23

24 **XIII. MR. JOHNSON IS ENTITLED TO A REVERSAL OF HIS CONVICTIONS AND**
25 **SENTENCE OF DEATH BASED UPON CUMULATIVE ERROR.**

26 Johnson's state and federal constitutional right to due process, equal protection, a fair
27 trial, a fair penalty hearing, and right to be free from cruel and unusual punishment due to
28 cumulative error. U.S. Const. Amend. V, VI, VIII, XIV; Nevada Const. Art. I, Sec. 3, 6 and 8;

1 Art. IV, Sec. 21.

2 "The cumulative effect of errors may violate a defendant's constitutional right to a fair
3 trial even though errors are harmless individually." Butler v. State, 120 Nev. 879, 900, 102 P.3d
4 71, 85 (2004); U.S. v. Necoechea, 986 F.2d 1273, 1282 (9th Cir. 1993) (although individual errors
5 may not separately warrant reversal, "their cumulative effect may nevertheless be so prejudicial
6 as to require reversal"). "The Supreme Court has clearly established that the combined effect of
7 multiple trial errors violates due process where it renders the resulting criminal trial
8 fundamentally unfair." Parle v. Runnels, 505 F.3d 922, 927 (9th Cir. 2007) (citing Chambers v.
9 Mississippi, 410 U.S. 284 (1973); Montana v. Egelhoff, 518 U.S. 37, 53 (1996)). "The
10 cumulative effect of multiple errors can violate due process even where no single error rises to
11 the level of a constitutional violation or would independently warrant reversal." Id. (Citing
12 Chambers, 410 U.S. at 290 n.3).

13 Each of the claims specified in this supplement requires vacation of the sentence and
14 reversal of the judgement. Johnson incorporates each and every factual allegation contained in
15 this supplement as if fully set forth herein. Whether or not any individual error requires the
16 vacation of the judgment or sentence, the totality of these multiple errors and omissions resulted
17 in substantial prejudice.

18 In Dechant v. State, 116 Nev. 918, 10 P.3d 108,(2000), the Court reversed the murder
19 conviction of Amy Dechant based upon the cumulative effect of the errors at trial. In Dechant,
20 the Court provided, "[W]e have stated that if the cumulative effect of errors committed at trial
21 denies the appellant his right to a fair trial, this Court will reverse the conviction. Id. at 113 citing
22 Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). The Court explained that there are
23 certain factors in deciding whether error is harmless or prejudicial including whether 1) the issue
24
25
26
27
28

1 of guilt or innocence is close, 2) the quantity and character of the area and 3) the gravity of the
2 crime charged. Id.

3
4 Based on the foregoing, Mr. Johnson would respectfully request that this Court reverse his
5 conviction based upon cumulative errors of counsel.

6 **XIV. MR. JOHNSON IS ENTITLED TO AN EVIDENTIARY HEARING**

7 A petitioner is entitled to an evidentiary hearing where the petitioner raises a colorable
8 claim of ineffective assistance. Smith v. McCormick, 914 F.2d 1153, 1170 (9th Cir.1990);
9 Hendricks v. Vasquez, 974 F.2d 1099, 1103, 1109-10 (9th Cir.1992). See also Morris v.
10 California, 966 F.2d 448, 454 (9th Cir.1991) (remand for evidentiary hearing required where
11 allegations in petitioner's affidavit raise inference of deficient performance); Harich v.
12 Wainwright, 813 F.2d 1082, 1090 (11th Cir.1987) ("[W]here a petitioner raises a colorable claim
13 of ineffective assistance, and where there has not been a state or federal hearing on this claim, we
14 must remand to the district court for an evidentiary hearing."); Porter v. Wainwright, 805 F.2d
15 930 (11th Cir. 1986) (without the aid of an evidentiary hearing, the court cannot conclude
16 whether attorneys properly investigated a case or whether their decisions concerning evidence
17 were made for tactical reasons).

18
19
20 In the instant case, an evidentiary hearing is necessary to question trial counsel and
21 appellate counsel. Mr. Johnson's counsel fell below a standard of reasonableness. More
22 importantly, based on the failures of trial and appellate counsel, Mr. Johnson was severely
23 prejudiced, pursuant to Strickland v. Washington, 466 U. S. 668, 104 S. Ct. 205, (1984).

24
25 Under the facts presented here, an evidentiary hearing is mandated to determine whether
26 the performance of trial counsel and appellate counsel were effective, to determine the prejudicial
27 impact of the errors and omissions noted in the petition, and to ascertain the truth in this case.
28


CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

CONCLUSION

Based on the foregoing, Mr. Johnson's writ in the instant matter must be granted based upon violations of the United States Constitution Amendments Five, Six, Eight, and Fourteen.

DATED this 12 day of October, 2009.

Respectfully submitted by:


CHRISTOPHER R. ORAM, ESQ.
for Nevada Bar No. 004349
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101
Attorneys for the Petitioner
DONTÉ JOHNSON

CHRISTOPHER R. ORAM
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)


CHRISTOPHER R. ORAM, being first duly sworn, deposes and says:

I am an attorney duly licensed to practice law in the State of Nevada. I am counsel for the Defendant in the above-entitled matter. I have personal knowledge of all matters contained herein and am competent to testify thereto. As post-conviction counsel in the instant case the undersigned made contact with Mr. David Figler. Mr. Figler was trial counsel at the first trial and at the second penalty hearing before the three judge panel for Mr. Donte Johnson. Mr. Figler informed the undersigned that the first jury filled out a mitigation form finding more than thirty (30) mitigators including one indicating the defendant's role in the instant case.

After discussing the matter with Mr. Figler, the undersigned has made attempts to obtain the penalty phase verdict forms from the first jury trial. Unfortunately, the requested verdict forms provided by the court clerk were the guilt verdict forms from the first trial. Further efforts to obtain the mitigation form have yet to result in the location of the verdict form. However, once an investigator is appointed, the investigator can go through the entire court file in order to locate the mitigation form which the court clerks have not been able to locate.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: October 12, 2009



Christopher R. Oram, Esq.
Attorney for Defendant,
Donte Johnson

CHRISTOPHER R. ORAM
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2 CHRISTOPHER R. ORAM, ESQ.
3 Nevada State Bar #004349
4 520 S. Fourth Street, 2nd Floor
5 Las Vegas, Nevada 89101
6 (702) 384-5563
7 Attorney for Defendant
8 DONTÉ JOHNSON

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11
12 Plaintiff,
13 vs.
14 DONTÉ JOHNSON,
15 Defendant.

CASE NO. C153154
DEPT. NO. VI

RECEIPT OF COPY

17 RECEIPT OF A COPY of the attached SUPPLEMENTAL BRIEF IN SUPPORT OF
18 DEFENDANT'S WRIT OF HABEAS CORPUS is hereby acknowledged this 12 day of
19 October, 2009.

22 DAVID ROGER, DISTRICT ATTORNEY
23 By Karondia Hill
24 DEPUTY DISTRICT ATTORNEY
25 200 Lewis Avenue
26
27
28

Lewis M. Etcoff, Ph.D., ABPN
Diplomate, American Board of
Professional Neuropsychology

3885 So. Decatur Blvd., #1060
Las Vegas, Nevada 89103
(702) 876-1977

LIFE HISTORY QUESTIONNAIRE

DIRECTIONS: This is a lengthy questionnaire that will take about an hour to fill out. It is vitally important to your defense that you complete this questionnaire as accurately and as thoroughly as possible because the information you provide is essential for your defense. You may not be able to understand some of the questions, but do the best you can. Your defense team will review the information.

Thank you very much.

Lewis Etcoff Ph.D.

Lewis M. Etcoff, Ph.D., ABPN
Diplomate, American Board of
Professional Neuropsychology

THIS QUESTIONNAIRE COMPLETED BY HOWARD BROOKS
WHO INTERVIEWED JAMES CHAPPELL AT 9:30 PM
6/10/90 AT CLARK CO DETENTION CENTER.

Howard S. Brooks



AA06842

IDENTIFYING INFORMATION

YOUR NAME JAMES CHAPPEL TODAY'S DATE 6-12-96
YOUR DATE OF BIRTH 12 27 69
CITY, STATE WHERE YOU WERE BORN LANSING MICH.
MOST RECENT ADDRESS 839 N LAMB LAS VEGAS
(WHERE VICTIM LIVED)
NAME AND ADDRESS OF LAST EMPLOYER
ETHEL M CHOCOLATE FACTORY
HENDERSON. (10/94-11/94)
MOTHER'S NAME SHIRLEY CHAPPELL (died 1973)
(Police on hit her)
MOTHER'S CURRENT ADDRESS _____
MOTHER'S CURRENT TELEPHONE NUMBER _____
MOTHER'S CURRENT AGE _____
FATHER'S NAME RICHARD CHAPPELL
FATHER'S CURRENT ADDRESS UNKNOWN - LIVES IN
LANSING MICH
FATHER'S CURRENT TELEPHONE NUMBER _____
FATHER'S CURRENT AGE NO CONTACT WITH DAD
SINCE 1991
If you were raised by one or more step or adopted parents,
please list names, current addresses and phone numbers (if you
know them), and how old you were when they were your
step/adopted parents.
NAME CLARA OXDM (GRANDMOTHER) (LEGAL GUARDIAN)
RELATIONSHIP (STEP OR ADOPTED) ↑
CURRENT ADDRESS: 3821 WEDGEWOOD DRIVE, LANSING, MICH.
CURRENT TELEPHONE NUMBER 517-882-5524
HOW OLD WERE YOU FROM _____ TO _____
(SHE WAS 20 YEARS)

NAME _____

RELATIONSHIP (STEP OR ADOPTED) _____

CURRENT ADDRESS _____

CURRENT TELEPHONE NUMBER _____

HOW OLD WERE YOU FROM _____ TO _____

NAME _____

RELATIONSHIP _____

CURRENT ADDRESS _____

CURRENT TELEPHONE _____

HOW OLD WERE YOU FROM _____ TO _____

Please list the names, addresses, and telephone numbers and ages each of your brothers, sisters, half brothers, and sister, step brothers and sisters.

| | NAME | ADDRESS | TELEPHONE | AGE |
|----------------------------------|-------------------|---|-----------|-----------|
| SOME FATHER SOME MOTHER | 1. CARL CHAPPELL | LANSING, MICH. | NONE | 30 (DEAD) |
| | 2. RICKY CHAPPELL | IN PRISON MUSKOGEE MICH. FOR ROBBERY. | - | 28 |
| | 3. MYRA CHAPPELL | LANSING MI. | - | 24 |
| | 4. | | | |
| | 5. | | | |

Please list the names, addresses and telephone numbers of your relatives (if still alive):

1. Paternal grandfather: NOT KNOWN } FROM ARKANSAS
2. Paternal grandmother: "
3. Maternal grandmother: CLARA OXAM SEE PAGE 1.
4. Maternal grandfather: "SUGAR" REAL NAME NOT KNOWN.

Aunts:

| NAME | ADDRESS | TELEPHONE |
|---------------------|----------------|-----------|
| 1. SHARON AXAM | LANSING, MICH. | - |
| 2. LOUISE UNDERWOOD | LANSING, MICH. | |
| 3. - | | |

Uncles:

| NAME | ADDRESS | TELEPHONE |
|----------------------|------------------------------------|-----------|
| 1. RODNEY AXAM | LIVES WITH GRANDMOTHER, CLARA AXAM | |
| 2. PHILIP UNDERWOOD | " " " | |
| 3. WILLIAM UNDERWOOD | CAMPDEN, CA. | NOT KNOWN |

Cousins:

| NAME | ADDRESS | TELEPHONE |
|--------------------------|----------------|-----------|
| 1. KEITH AXAM | LANSING, MICH. | |
| 2. OTHERS NOT IN CONTACT | | |
| 3. 1 IN PRISON. | | |

Do you recall the name or names of the churches you or your family belonged to while you were growing up?

DOES NOT REMEMBER.

- Name of Church: _____ State _____ City or town: _____
- Name of Church: _____ State _____ City or town: _____
- Name of Church: _____ State _____ City or town: _____

If you were active in any of these churches, tell us what you did (for example, altar boy; youth group; choir).

Did you ever work with the sick, the elderly, the disabled in a community program: Yes _____ No ☒ If yes, explain.

DID NOT
2ND WHEN
MOM DIED.

BIRTH HISTORY

1. To your knowledge, did your mother drink alcohol or use drugs while she was pregnant with you? Yes _____ No _____
Unsure, but possibly X SHARON OXAM DOES NOT SAY = YES.

2. Did your mother suffer any significant medical problems while she was pregnant with you? Yes _____ No _____
If yes, do you know what illness (es) she suffered? NOT KNOWN.

3. Were you a "wanted pregnancy" or did your mother become pregnant without really wanting a baby? ?

4. Were you born early _____ about on time _____ late _____
don't know ✓?

5. Did you have a birth weight: under 5 lbs. _____ over 5 lbs. X don't know _____?

6. When you were born did you breath right away _____ or have breathing problems _____? ?

7. Did you require oxygen at birth: Yes _____ No _____ don't know _____? ?

8. At birth, did you have any significant medical problems? Yes _____ No X don't know _____

9. If you did have a significant medical problem at birth, do you recall the name of the problem and the type of treatment you received?

10. Below are a list of possible medical problems which may complicate birth. Please check any problem you think you had:

- a. _____ very low birth weight
- b. _____ very premature birth
- c. _____ lack of oxygen (baby born blue)
- d. _____ emergency c-section: baby in distress
- e. _____ jaundice (baby placed under light)
- f. _____ head disfigured
- g. _____ respiratory problems (breathing) first week of life
- h. _____ seizures (epilepsy)
- i. _____ heart abnormality
- j. _____ fetal alcohol syndrome

- k. _____ baby born addicted to drug mother was taking
 l. _____ hydrocephalus
 m. _____ spinal bifida
 n. _____ cerebral palsy

CHILDHOOD

MEDICAL HISTORY:

At any time during childhood or adolescence (birth to age 19) did you have any of the following problems?
 (Check each one you think you had)

NEUROLOGICAL

| | | |
|--------------------------------|----------|---------------------------|
| _____ oxygen deprivation | <u>X</u> | hyperactivity |
| _____ brain infection | <u>X</u> | reading problem |
| _____ head injury (concussion) | <u>X</u> | spelling problem |
| _____ unconsciousness | <u>X</u> | arithmetic problem |
| _____ seizures (epilepsy) | <u>X</u> | trouble paying attention |
| _____ meningitis | _____ | mental retardation |
| _____ encephalitis | <u>X</u> | special classes in school |
| _____ hydrocephalus | _____ | clumsy, uncoordinated |
| _____ spina bifida | _____ | cerebral palsy |
| | _____ | other |

For each problem you had (above), tell us as much as you remember about it: when the problem began, how it was treated (doctor, hospital), were you hospitalized, etc.

Problem 1: (name of problem) HYPERACTIVITY
 (explanation) NOT SCHOOL DISCIPLINED OFTEN.

Problem 2: (name of problem) READING PROBLEM
 (explanation) HAD PROBLEMS. CAN READ NOW. NO HIGH SCHOOL DEGREE. LEFT SCHOOL AT 16 - FINISHED 10TH GRADE.

Problem 3: (name of problem) SPECIAL CLASSES
 (explanation) READING SPECIAL ED

Problem 4: (name of problem) _____
 (explanation) _____

Problem 5: (name of problem) _____
 (explanation) _____

OTHER MEDICAL PROBLEMS DURING AGES BIRTH TO 19

| | |
|--|---|
| <input type="checkbox"/> heart problem | <input type="checkbox"/> pneumonia |
| <input type="checkbox"/> immune system disease | <input type="checkbox"/> poisoning |
| <input type="checkbox"/> kidney problems | <input type="checkbox"/> scarlet fever |
| <input type="checkbox"/> lung disease | <input type="checkbox"/> whooping cough |
| <input type="checkbox"/> polio | <input type="checkbox"/> venereal disease |
| <input type="checkbox"/> cancer | <input type="checkbox"/> lead poisoning |
| <input type="checkbox"/> asthma | <input type="checkbox"/> hearing problem |
| <input type="checkbox"/> diabetes | <input checked="" type="checkbox"/> vision problems — <i>NEED close</i> |
| <input type="checkbox"/> rheumatic fever | <input type="checkbox"/> poor nutrition |
| <input type="checkbox"/> tuberculosis | <input checked="" type="checkbox"/> alcohol/drug use |
| <input type="checkbox"/> hospitalizations | <input checked="" type="checkbox"/> bed wetting |
| <input type="checkbox"/> accidents | <input type="checkbox"/> speech problems |
| <input type="checkbox"/> other | |

For each problem you checked above, please tell us as much as you know about it: what age you had it; how were you treated (doctor, hospital); if hospitalized, in what city or town, and in what year?

Problem 1: (name of problem) Vision Problems.
 (explanation) NEED glasses. HAD glasses in elementary school.

Problem 2: (name of problem) ALCOHOL / DRUGS
 (explanation) STARTED when 12. — MARIJUANA. COCAINE CRACK. CONTINUED UNTIL KILLING.

Problem 3: (name of problem) BED WETTING.
 (explanation) UP TO 3-9 YEARS OLD.

Problem 4: (name of problem) _____
 (explanation) _____

Problem 5: (name of problem) _____
 (explanation) _____

FAMILY NEURO PSYCHIATRIC HISTORY

To your knowledge, have any of your relative (natural parents, full or half brothers or sisters; natural grandparents, aunts, uncles, cousins) had any of the following problems:

☒ significant depression CARLO.
☒ suicidal behavior ME
 actual suicide
 manic depression (Bipolar Disorder)
 hearing voices
☒ paranoia ME - WHEN USING DRUGS
 schizophrenia
 out of touch with reality
☒ significant alcohol abuse ME. UNCLE ROBERT.
☒ significant drug abuse ME CARLO, ALICE, AUNT SARAH, LOUISE
 significant anxieties, fears LESS OF COUSINS
 mental hospitalization
☒ nervous breakdown AUNT LOUISE
 antisocial behavior
☒ imprisonment ME, COUSIN LONNIE, BROTHER ALICE, DAD ALICE.
☒ a real problem controlling temper UNCLE ROBERT, ME.
☒ physically abusive SISTER CARLO ABUSED. GRANDMOTHER WAS A SPANKEE
 sexually abusive (perpetrator)
 sexually abused (victim)
☒ hyperactivity ME
 mental retardation
 seizure disorder
 head injury (concussion)
 coma
 recurring stealing
 gambling problem
 other

For any problem checked, please tell us which relative had this problem:

| | PROBLEM | RELATIVE (DAD.MOM.BROTHER) |
|----|---------|----------------------------|
| 1. | | |
| 2. | | SEE ABOVE. |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |

FAMILY HISTORY

FATHER

If you grew up either living with or seeing your natural father, how did the two of you get along? Was your father positively or negatively involved in your upbringing? Explain and be thorough.

He was not involved at all.
He would call 1X 3 yrs

Was your father the type of person who could express his love for you, support you and take pride in your accomplishments? Yes No X Explain:

How did your father discipline you as a youngster? Verbally? Physically? Was he abusive? Did he ever hit you with his hand, fist, an object?

NOT KNOWN.

What did your father do during your childhood to support the family?

Nothing

Did your father work steadily or was he often out of work? Why?

OUT OF WORK. SPENT YEARS IN PRISON.

Did your father drink excessively or use drugs?

Yes X No
If yes, what was he like when drunk or high?

Did your father show love and respect to your mother or did he show little love or respect? Explain.

No

Did your father favor any of the children? Yes _____ No X
If yes, who was favored? _____. How did this
affect you? _____

Did your father and mother verbally argue a lot? Yes _____ No (X)
If yes, about what types of things? _____

Did your father ever hit your mother? Yes _____ No X
If yes, did he hurt her a lot? Yes _____ No X
Did he hit her more than once? Yes _____ No X

Did your father take an active interest in your education?
Yes _____ No X

Was your father ever seriously ill _____ physically disabled
_____ mentally disabled _____ criminally involved X?

If yes to any of the above, how old were you and how did your
father's problem (s) affect you?

MOTHER

If you grew up living with your natural mother or seeing her
frequently, describe your relationship with her. Mention its
strengths and weaknesses.

SHE DIED WHEN JAMES

2 1/2.

Was your mother able to express her love for you or was she not
very affectionate?

How did your mother usually discipline you? _____

Was your mother ever abusive in her discipline (hitting hard or a lot; hitting with objects)? Yes ☒ No ☐
Explain: _____

Did your mother work during part of your childhood or did she stay home and take care of the children? _____

Did your mother have any serious emotional problems you can recall (very angry; very sad; very scared)? Yes ☒ No ☐
Explain: _____

Did your mother drink or use drugs excessively or regularly? Yes ☒ No ☐
If yes, how did she behave when drunk or high and how did it affect you and the family? _____

Did your mother favor any of her children or did she treat them all pretty much alike? _____

Was your mother ever seriously ill ☒ physically disabled ☒ emotionally disabled ☒ during your childhood? Please check all that apply).

If your mother suffered any of the above, how did it affect you and the family? _____

SIBLINGS

Did you get along normally with all of your brothers and sister (step siblings too) or were there significant problems with any of them? If there were problems, please describe them.

FIGHTS WITH BROTHER.
GOOD RELATIONSHIP WITH SISTERS.

Did any of your siblings beat you, threaten you, or do any physical or emotional harm to you? If yes, who and what was done to you?

FATHER WHIPPED A LOT.
BROTHER WOULD FIGHT TO DEATH.

Did anyone in your extended family ever touch you in a sexual way? Yes _____ No X
If yes, who did it? How old were you? How long did it go on? How did it end? What was the nature of the touching?

Did anyone outside of your family ever touch you in a sexual way? Yes _____ No X
If yes, who? When? How old were you? How long did it last? How did it end? What was the nature of the abuse?

ENVIRONMENTAL FACTORS

As a child did you always have:

1. enough food to eat? Yes X No _____
2. good enough clothes? Yes X No _____
3. a roof over your head? Yes X No _____
4. medical attention if required? Yes X No _____

Did you ever live in poverty? Yes X No _____

If yes, how old were you and what was it like?

HOUSE 1000 MICE & RATS. BRO
DIED OF TUB. TB.

Did you ever live in dangerous neighborhoods (where there was violence, threats of violence, drug sales, gangs)? Yes X

No _____

If yes, how did the neighborhood affect your life?

WANTED TO LIVE IN BETTER PLACES.

Did the parents who raised you divorce once or more than once:

Yes _____ No X

How did the divorce (s) affect you emotionally:

EDUCATIONAL HISTORY

You may not recall all of the information we're about to ask you, but do the best you can.

Elementary school (s): List the names and locations of each elementary school (kindergarten through sixth grade) you attended.

1. School name MOORE ~~PRATT~~ PRATT LANSING grade K-3 city, state LANSING MI.
2. School name MOORE GRAND grade 5-6 city, state LANSING MI.
3. School name CARON/BUSS grade 4 city, state LANSING MI.
4. School name _____ grade _____ city, state _____

During these years did you have any problems learning, paying attention in class or staying out of trouble? If yes, explain.

In reading, were you above average _____ average _____ below average X ?

In spelling, were you above average _____ average _____ below average X ?

In arithmetic, were you above average _____ average _____ below average X ?

In handwriting, were you above average _____ average X below average _____ ?

In sports, were you above average _____ average X below average _____ ?

Did you ever stay back and repeat a grade? Yes _____ No X
If yes, which grade and why?

Were you placed in special classes for problems in reading, spelling, math, behavior? Yes X No _____
If yes, why?

Were you ever called hyperactive by any of your teachers, friends, or parents during elementary school? Yes X No _____

If yes, were you ever placed on any of the following medications: Ritalin _____ Cylert _____ Dexadrine _____ Elavil _____ Norpramine _____ Desipramine _____ Other _____

No.

Did you get into a good amount of trouble at school during the elementary years? If so, why were you getting into trouble?
NOT REALLY.

Did you receive any awards, citations, or special recognition in elementary school such as good grades, athletics, attendance, being well behaved, etc.? Yes _____ No ☒
If yes, explain why you received the awards _____

Did you get into a lot of fights or not many fights with peers during elementary school? Explain _____ NO.

Were you ever cruelly teased or beaten up by your peers during elementary school? Yes ☒ No _____
If yes, explain. TEASER BY FRIENDS. NO ONE
BUT WITH SLOW STUDENTS.

Did any of your teachers treat you cruelly during elementary school? Yes _____ No ☒
If yes, how did the ridicule affect you? _____

Did you ever have a speech problem (stutter, mumble)? Yes _____ No ☒
If yes, were you made fun of? Yes _____ No _____
How did you deal with the problem? Did it make you sad or angry? _____

Were you uncoordinated and clumsy during elementary school? Yes _____ No ☒
If yes, did the other kids make fun of you? Yes _____ No _____

If yes, how did you handle it? Did you get sad, angry? Did you fight or avoid your peers? Explain.

Were you either very fat, very skinny, or somehow so different that other kids teased and tormented you? Yes _____ No X
Explain: _____

Did you ever do so poorly in school that you felt stupid and badly about yourself? Yes _____ No X
Explain: _____

Did you use alcohol or drugs during elementary school? Yes _____ No ✓
If yes, which substances did you use, which grades, and how often? _____

Did your parents ever discipline you harshly for problems you had during elementary school? Yes _____ No ✓
If yes, which parent (s) disciplined harshly, why, and what did the parent do?
FRANCO MONTAGNA WOULD PUNISH BECAUSE SCHOOLWORK
NOT DONE.

JUNIOR HIGH AND HIGH SCHOOL HISTORY

List the names and locations of each junior and senior high school you attended (seventh through 12th grade).

1. School name PWILBT NICH JR H.S. grades 7-8 city, state LANSING MICH.
2. School name SEXTON H.S. grades 9-10 city, state LANSING MICH.
3. School name _____ grades _____ city, state _____
4. School name _____ grades _____ city, state _____

What were your average grades each year? Check the column that best applies.

| | A'S AND B'S | B'S AND C'S | C'S AND D'S | D'S AND F'S |
|------|-------------|-------------|-------------|-------------|
| 7th | | | | |
| 8th | | | | |
| 9th | ✓ | | | |
| 10th | | | | |
| 11th | | | | |
| 12th | | | | |

Were you ever required to have your parents come to school because of trouble you'd gotten into? If yes, about how many times, during which grades, and for what problems?

YES - GRANDMOM - SKIPPING CLASS. NOT
CONTINUING BEHAVIOR. NOT FINISHING ASSIGNMENTS.

Were you ever suspended from school? Yes ☒ No ☐
If yes, about how many times? 3X For what reasons?
SAME AS ABOVE.

Did you win any awards in junior or senior high school? If so, what kind? academic good behavior sports attendance organizational
Explain further why you received the award (s):

NO.

What clubs or organizations were you involved in during junior or senior high? (athletics, academics, service organizations)

NO.

Did you hold any offices in these clubs or organizations?

NO.

If you graduated high school, what year did you graduate?

If you didn't graduate high school, which was the last grade you finished? 10

If you didn't graduate high school, why didn't you graduate?
GRANDMOM MADE THEM GO TO VOCATIONAL
ED

ARREST HISTORY

Prior to age 13, were you either arrested or accused of any of the following:

- ☐ fire setting (serious)
- ☐ shoplifting
- ☐ breaking and entering
- ☐ vandalism - destruction of property
- ☐ using illegal substances
- ☐ selling illegal substances
- ☐ stealing from family
- ☐ stealing from friends, neighbors
- ☐ major theft
- ☐ used a weapon in fights
- ☐ running away from home overnight more than once
- ☐ frequent truancy from school
- ☐ sexually assaulted anyone
- ☐ physically assaulted anyone
- ☐ driving while intoxicated or on drugs
- ☐ other

If yes, what were the charges against you? _____
In what city, state? _____

Were you ever placed on probation prior to age 13? Yes _____ No

If yes, what city and state? _____

Since age 13, were you either arrested or accused of any of the following:

NOIN AGE 13.

- ☐ serious fire setting
 - ☐ shoplifting
 - ☐ breaking into car
 - ☐ stealing anything from a car
 - ☐ stealing the car itself
 - ☒ breaking into a home or store
 - ☒ stealing anything from the home or store
 - ☒ destroying property in a home or store
 - ☒ using illegal drugs
 - ☒ selling illegal drugs
 - ☐ physically assaulting another person
 - ☐ using a weapon in the assault
 - ☐ knifing anyone
 - ☐ shooting anyone
 - ☐ sexually assaulting anyone
 - ☐ being a gang member
 - ☐ taking part in gang violence
 - ☐ other
- NOIN HOUSE*

Approximately, how many times were you arrested since age 13?

15X SINCE 13 INCLUDING ADULT.

List, as best you remember, your age, the town/city, and the reason for each arrest, beginning with your first arrest.

First: age 13 city LANSING charges VANDALISM
2nd: age _____ city _____ charges _____
3rd: age _____ city _____ charges _____
4th: age _____ city _____ charges _____
5th: age _____ city _____ charges _____

Concerning your first arrest, what was the outcome: charges dropped; probation X time spent in correctional facility _____

which facility _____ location of facility _____ dates of incarceration _____
Never again arrested or juvenile

2nd: probation _____ time spent in correctional facility _____
which facility _____ location of facility _____ dates of incarceration _____

3rd: probation _____ time spent in correctional facility _____
which facility _____ location of facility _____ dates of incarceration _____

4th: probation _____ time spent in correctional facility _____
which facility _____ location of facility _____ dates of incarceration _____

ALCOHOL USE HISTORY

Recent use of alcohol:

_____ I have never had a drink of alcohol
_____ Until my recent arrest I drank 6-7 days a week _____
4-5 days a week X 2-3 days a week _____ once a week or less _____

If you drink, usually what and how much do you drink in a sitting?

_____ hard liquor: _____ 1-3 oz. _____ over 3 oz.
X Beer: X 1-3 bottles _____ 4-6 bottles _____ 7-12 bottles _____
Over 12 bottles _____
Wine: _____ 1-2 glasses _____ 3-4 glasses _____ 3 or more glasses _____

Have you received treatment for alcohol abuse? NO When?

Where? _____
How long were you treated? _____ Type of treatment? _____

Has anyone ever suggested you receive treatment? Yes _____ (No)

If yes, who suggested it to you? _____ When? _____

Duration of significant use: SINCE 13

| | |
|---------------|--------------------------|
| _____ none | _____ 5-10 years |
| _____ 1 year | _____ more than 10 years |
| _____ 2 years | _____ more than 15 years |
| _____ 3 years | _____ more than 20 years |
| _____ 4 years | _____ more than 25 years |

Have you ever attended AA or ALANON? NO If so, when?

Length of sobriety: 9 Mo. Most recent? _____ Longest: _____
SINCE PLACED IN JAIL

Drinking of alcohol has caused the following problems in your life:

- _____ often find that when you start drinking you end up drinking much more than you were planning to.
- _____ Have tried to cut down or stop drinking alcohol.
- _____ Spend a lot of time drinking, being high or hung-over.
- _____ Have drunk alcohol in a situation in which it might have been dangerous to drink at all (i.e. driving while you were really too drunk to drive).
- _____ Have had alcohol-related accidents.
- _____ Have often been intoxicated or high or very hung-over while you were doing something important, like being at school, work or taking care of children.
- _____ Have had job problems as a result of drinking too much alcohol.
- _____ You drink so often that you started to drink instead of working or spending time at hobbies or with your family or friends.
- _____ Notice a personality change when you drink too much.
- _____ Find you need to drink a lot more in order to get high than you did when you first started drinking.
- _____ Tend to get into fights if you drink too much alcohol.
- _____ Have or are having legal problems as a result of drinking too much.
- _____ Have had the shakes when you cut down or stopped drinking, with your hand shaking so much that other people have been able to notice it.

ALCOHOL NOT A PROBLEM

____ After not drinking for a few hours or more, you drink to keep yourself from getting the shakes or becoming sick.
____ Have alcohol-related medical problems.
____ Have had symptoms such as:
____ convulsions ____ blackouts
____ hallucinations ____ delirium tremors (D.T.'s)
____ Others: _____

DRUG USE HISTORY:

Use of drugs has caused you problems in your life: Yes (Circled) No _____

Have you received treatment for drug abuse and/or gone through drug withdrawal? Yes _____ No ✓
Where? _____

Type of treatment? _____

How long did you receive treatment? TAKEN TO GET TREATMENT OF
FOB IN LAB JERBS

Have you ever attended Narcotics Anonymous? Yes _____ No X
If yes, when? _____

Use of drugs has caused the following problems in my life:

- X Loss of job (s)
- X Marriage and family problems
- ____ Personality change
- ____ Fights
- ____ Accidents
- ____ Drug-related medical problems

DOCUMENTS WITH VICTIM.

Have significantly used drugs for:

____ 1-5 years X 11-15 years ____ over 20 years
____ 6-10 years ____ 16-20 years ____ Never

Have you ever regularly used any of the following drugs?
(Please check).

1. X marijuana or hashish
2. ____ quaaludes
3. ____ Valium
4. ____ Xanax
5. ____ Librium
6. ____ Other sedatives, anxiolytics
7. ____ speed, crystal meth
8. ____ heroin
9. ____ morphine
10. ____ opium
11. ____ methadone

12. ☐ Percodan
13. ☐ Demerol
14. ☒ cocaine (snort, freebase, IV, crack)
15. ☐ LSD, mescaline, peyote, STP, mushrooms, PCP
16. ☐ sniff glue or other inhalants
17. ☐ steroids
18. ☐ laughing gas
19. ☐ diet pills
20. ☐ exstacy

Were you using any of these drugs (or alcohol) separately or in combination at the time this crime was committed? Yes ☐ No ☒
 Which substances were you using? _____
 How much of each? _____

MARRIAGE AND FAMILY RELATIONSHIPS

NEVER TECHNICALLY MARRIED.

Current marital status: ☐ married ☐ single ☐ divorced
☐ widow/widower ☐ engaged ☐ living together

Number times married: _____ Number times divorced: _____

Number years married for each time married:

marriage: 1 _____ 2 _____ 3 _____ 4 _____ 5 _____ 6 _____

Number of years single since divorce or death of spouse: _____

Number of natural offspring: _____ Number of stepchildren: _____

List the age, sex, and relationship of the people living with you:

| AGE | SEX | RELATIONSHIP |
|---------------|-----|----------------|
| JAMES PANDS | M | SON 8 yrs old. |
| ANDREW PANDS | M | SON 6 yrs |
| CHANTEL PANDS | F | DAUGHTER 3 |

Do you (check one): ☐ rent ☐ own ☐ lease

☐ house ☐ apartment ☐ condominium

☐ mobile home ☐ room ☐ hotel/motel

other: _____

Years lived in your present residence? _____ Years lived in Nevada? _____

Reason (s) moved to Nevada: _____

LIVE IN NISSON
 -20-
 WITH
 VICTIM'S MOM.

SPOUSE / VICTIM : DEBORA CANO
Occupation: G.E. - BILL COLLECTION.
Health: GOOD.
Personality: BEAUTIFUL.
Areas you get along: _____
Areas you do not get along: _____
Special problems: _____

CHILDREN

Health: GOOD
Areas that you get along: _____
Areas you do not get along: _____
Special problems: _____

Quality of family relationship: _____ excellent ☒ good _____ fair
_____ poor

Quality of marital relationship: _____ excellent _____ good
_____ fair ☒ VARIED
_____ poor

Present family/home life problems: (check all that apply)

- ☒ divorce AS OF RECENT OF SPOUSE.
☒ separation
_____ bad marriage
_____ family member with health problem
_____ family member with emotional problem
_____ family member with drug abuse problem
_____ family member with alcohol abuse problem
_____ problems with in-laws/relatives
_____ child with special needs
_____ unfaithful spouse
_____ misbehaving children
_____ financial problems
_____ not receiving alimony
_____ not receiving child support
_____ overcrowding
_____ living in dangerous neighborhood
_____ dislike current residence
_____ problems with neighbors
_____ discipline of children
_____ handling family finances
_____ other: _____

(TALK WITH JAMES)

MILITARY HISTORY

Year entered _____
Branch _____
Years in services _____
Rank at discharge _____
Type of discharge _____
Year discharged _____
Basic training completed where: _____
1st assignment location: _____
job at first assignment: _____
Did you receive any letters of reprimand or article 15's at
first assignment? Yes _____ No _____
If yes, why? _____

2nd assignment location: _____
job at 2nd assignment: _____
Any LOR's or Article 15's? Yes _____ No _____
If yes, why? _____

Were you ever seen for a drug or alcohol problem while in the
military? Yes _____ No _____

Were you ever seen at the mental health clinic? Yes _____ No _____
If yes, were you ordered there _____ or did you go voluntarily
_____?
Why? _____

If you left the military with anything other than an honorable
discharge, please explain: _____

EMPLOYMENT HISTORY

Beginning with jobs you held as a teenager, please list
separately each job you held with as much information as you
remember about each job:

First job: MICHELON WOOD CAMP. SCHOOL CAFETERIA
Company name: MICHELON WOOD CAMP. SCHOOL CAFETERIA Address: LANSING, MICH.
Your boss: CHAD BETHANY Your job title: COOK
Approximate money earned per hour: 3.25
Dates of employment: from JUNE to AUGUST 1985
Significant co-worker's name: TAMM WALLACE

WENT TO MOST RECENT &
STARTED WORKING BACK.

Second job:

Company name: _____ Address: _____
Your boss: _____ Your job title _____
Approximate money earned per hour _____
Dates of employment: from _____ to _____
Significant co-worker's name: _____

Third job:

Company name: NEST FLEET INC Address: CANNING MICH
Your boss: _____ Your job title LABOR
Approximate money earned per hour _____
Dates of employment: from _____ to _____
Significant co-worker's name: WILLIE WINTER 1992
MOSELEY

Fourth job:

Company name: MCDONALDS Address: TULSON AZ
Your boss: _____ Your job title CASHIER
Approximate money earned per hour _____
Dates of employment: from OCT 4.25 HA
Significant co-worker's name: _____ to DEC 1993

Fifth job:

Company name: PIZZA HUT Address: S. 1050 WASH.
Your boss: _____ Your job title WAITER
Approximate money earned per hour _____
Dates of employment: from JAN 3.25 HA + TIPS
Significant co-worker's name: _____ to MAY 1994

Sixth job:

Company name: STAL M Address: HENDERSON
Your boss: LODY Your job title LIVE CROW
Approximate money earned per hour _____
Dates of employment: from OCT 6.00 HA
Significant co-worker's name: BOB to NOV 1994

JChappell CORA004083

VER

3³⁰ PM FILED IN OPEN COURT
March 21 20 07
CHARLES J. SHORT
CLERK OF THE COURT
BY Carol Green
DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant.

Case No. C131341

Dept No. III

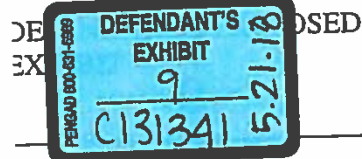
SPECIAL VERDICT

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

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

DATED this 21 day of March, 2007.

[Signature]
FOREPERSON



811

256

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VER

3³⁰ FILED IN OPEN COURT
March 21 2007
 CHARLES J. SHORT
 CLERK OF THE COURT
 DISTRICT COURT BY Carol Green
 CLARK COUNTY, NEVADA DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES MONTELL CHAPPELL,

Defendant.

Case No. C131341

Dept No. III

SPECIAL VERDICT

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

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

_____ The mitigating circumstances DO outweigh the aggravating circumstance

DATED this 21 day of March, 2007.

[Signature]
 FOREPERSON

115

1 VER

5:30pm

FILED IN OPEN COURT

March 21 2007

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

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES MONTELL CHAPPELL,

11 Defendant.

Case No. C131341

Dept No. III

14 SPECIAL VERDICT

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

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

1 addicted mother.
2 6. James Chappell suffered a learning disability.
3 7. James Chappell was raised in a depressed
4 housing area.
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8 DATED this 21 day of March, 2007.

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11 FOREPERSON
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258
JChappell CORA004087

1 VER

3:30pm
OPEN COURT
March 21 2007
CLERK OF THE COURT
BY Carol Green DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MONTELL CHAPPELL,

12 Defendant.

Case No. C131341

Dept No. III

14 VERDICT

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

19 ☒ Death

20 ☐ Life in Nevada State Prison Without the Possibility of Parole

21 ☐ Life in Nevada State Prison With the Possibility of Parole

22 ☐ A definite term of 100 years imprisonment, with eligibility for parole beginning
23 when a minimum of 40 years has been served

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

25 
26 FOREPERSON

JUDGMENT ENTERED

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Functional and Behavioral Assessment
Case of James Montel Chappell
(DOB: 12/27/1970)

August 3, 2016

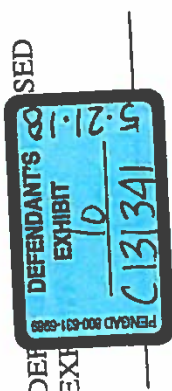
James Chappell is a 46-year-old man referred for lifelong functional and behavioral assessment by the Office of the Federal Public Defender, District of Nevada.

Mr. Chappell is diagnosed by Dr. Julian Davies with Alcohol Related Neurodevelopmental Disorder (ARND), which is a medical condition that falls under the fetal alcohol spectrum disorder (FASD) umbrella.

Mr. Chappell is incarcerated at Ely State Prison in Ely, Nevada. In 1996, he was convicted and sentenced to death for the 1995 murder of Deborah Panos. A new sentencing hearing held in 2007 also resulted in the death penalty. I have been asked by current habeas counsel to review Mr. Chappell's documented lifelong behavior and functioning and respond to the following consultative questions:

- 1) At the time of Mr. Chappell's trial in 1996 and resentencing in 2007, what was known in the legal field about FASD and ARND?
- 2) At the time of trial in 1996 and resentencing in 2007, what evidence was available to counsel to suggest Chappell suffered from an FASD condition?
- 3) How would FASD (i.e., ARND) affect Mr. Chappell's ability to control his actions on the day of the crime?
- 4) How would FASD influence Chappell's behavior with respect to his prior domestic abuse of his girlfriend Deborah Panos?
- 5) How would Chappell's FASD affect/influence his drug addiction?

I am a clinical and forensic psychologist with specialized training and over 20 years forensic and clinical experience in FASD and other medical conditions involving developmental disabilities. Input regarding the above questions is typical for mental health professionals such as myself who have developed expertise via formal training, review of the relevant literature, and experience in the developmental/behavioral manifestations of FASD.



My resume is attached as an appendix to this report.

Opinions

Based on review of records listed in Appendix A, it is my opinion to a reasonable degree of psychological certainty that:

- 1) By the time of trial in 1996 and resentencing in 2007, a great deal of information was known in the legal field about the nature and cause of FASD. Not only had decades of research confirmed that alcohol caused serious birth defects that affected executive control and lifelong adaptive functioning, awareness that alcohol could produce serious brain damage was widely known in the general population.**
- 2) At the time of trial in 1996 and resentencing in 2007, counsel had the following evidence that Mr. Chappell suffered from an FASD condition:**
 - a) Shirley Chappell, Mr. Chappell's mother, was a documented heroin addict whose children had been removed by the state because of child neglect, which raised a red flag of possible FASD given the high association between heroin and alcohol abuse.^{1, 2} Counsel also knew from Sharon Axam, Mr. Chappell's maternal aunt, that Shirley Chappell had started abusing heroin prior to James Chappell's birth. Had counsel in 1996 and 2007 investigated Shirley Chappell's alcohol and drug use during the pregnancy with her son James, declarations show they would have found convergent evidence from numerous people confirming prenatal alcohol exposure.**
 - b) In the cumulative education file alone, there was evidence that despite what appeared to be average or low average intellectual functioning in elementary school, Mr. Chappell exhibited a severe learning disability that was impervious to special education services and also exhibited pervasive developmental delay (e.g., self-regulation, social and emotional functioning, communication, and daily living skills). All of these problems emerged in early childhood, many years before Mr. Chappell's own substance abuse and many of his childhood adversities could have damaged his brain. The early onset of Mr. Chappell's developmental disabilities suggested a high likelihood his brain damage occurred prior to birth. Had counsel in 1996 and 2007 interviewed witnesses who observed Mr. Chappell's functioning, they would have found evidence of functional disabilities across the lifespan.**

¹ Green J, Jaffe JH, Carlisi JA, et al. (1978) Alcohol use in the opiate use cycle of the heroin addict. *International Journal of Addiction*, 13, 1021-33.

² McCusker M. (2001) Influence of hepatitis C status on alcohol consumption in opiate users in treatment. *Addiction*, 96, 1007-14.

- c) There was uncontested evidence from expert Dr. Etcoff that at least two of Mr. Chappell's developmental disorders (i.e., communication and arithmetic) stemmed from "neurological origins," which constituted clear notice of brain damage.
 - d) Had counsel in 1996 and 2007 asked an expert in neuropsychology and FASD to administer neuropsychological testing to Mr. Chappell, results would have indicated pervasive central nervous system dysfunction similar to what Dr. Paul Connor recently found, qualifying Mr. Chappell for a diagnosis of Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure (ND-PAE) (based upon the current DSM-5) or Cognitive Disorder NOS (utilizing the DSM-IV which was used in 1996 and 2007). Had counsel in 1996 and 2007 retained a medical expert in FASD to conduct a diagnostic evaluation of Mr. Chappell, results would have been similar to Dr. Julian Davies' conclusion that Mr. Chappell met criteria for Alcohol Related Neurodevelopmental Disorder (ARND). ARND is a medical defect, and ND-PAE and Cognitive Disorder NOS are mental diseases or defects. Results of the current record review are consistent with these diagnoses.
- 3) At the time of the instant offense, it is likely Mr. Chappell's ARND influenced his ability to control his actions.
 - 4) At the time of the prior domestic abuse of his girlfriend Deborah Panos, it is likely Mr. Chappell's ARND influenced his ability to control his actions.
 - 5) Compared to individuals who are not exposed to alcohol in utero, Mr. Chappell's FASD condition likely increased his likelihood of developing a substance abuse problem.

Procedures

This report is based upon review of records available to trial counsel in 1996, records available to counsel in 2007, and additional records obtained by current habeas counsel, including newly received declarations from witnesses who were available both in 1996 and 2007. I have not interviewed or tested Mr. Chappell and instead relied on neuropsychological testing by colleague Paul Connor, PhD, with whom I often work in FASD cases. I also consulted with Julian Davies, MD, regarding his diagnosis of Mr. Chappell.

Appendices:

- A. Record Review
- B. FASD and the Criminal Justice System (website publication by the Substance Abuse and Mental Health Systems Administration, Department of Health and Human Services)
- C. Resume

Data Synthesis and Opinions

It is my understanding from Dr. Julian Davies that he has examined and diagnosed James Chappell with ARND, which is a medical defect. The central nervous system dysfunction associated with that medical defect is diagnosed in DSM-5 as ND-PAE. In 1996 and 2007, the DSM-IV labeled the diagnosis Cognitive Disorder NOS. Both ND-PAE and Cognitive Disorder NOS constitute a mental disease or defect.

Federal habeas counsel has requested responses and opinions regarding five consultative questions.

The opinions expressed in this section are held to a reasonable degree of psychological certainty.

1) At the time of Mr. Chappell's trial in 1996 and resentencing in 2007, what was known in the legal field about FASD and ARND?

FASD is an umbrella term for conditions caused by prenatal alcohol exposure. Fetal Alcohol Syndrome (FAS) is the most well known of these conditions.

FASD diagnoses reflect prenatal-onset, permanent brain damage. Thus, FASD has lifelong effects on behavior and functioning.

It was known in 1996 and 2007 that because of the pervasive brain damage in FASD, this population was at high risk to commit crimes in unstructured contexts involving high stress and/or unexpected events.³ The functional source of this problem was impaired *executive control* in the frontal lobes, which produced *context-dependent* variability in behavior that led to substantial adaptive deficits in real-world behavior.⁴ The frontal lobes coordinate and control working memory, sensory integration, and other higher-level information processing in the brain. Executive functioning involves a complex set of skills that include (a) selecting which stored memories are relevant to a current situation and coordinating those memories with new information from the environment; (b) identifying similarities and differences between things or events; (c) considering options and choosing between good versus bad actions; (d) changing or shifting one's choice/plan after foreseeing there will be negative consequences (i.e., linking cause and effect) while at the same time (e) modifying emotions to fit socially acceptable norms; and (f) overriding socially unacceptable impulses. Executive skills play a dominant role in voluntary movement as the frontal lobes also contain the primary motor cortex, which regulates actions like walking away or reacting aggressively. Executive dysfunction appears to be a universal deficit in FASD.

³ Streissguth, A.P., Aaso, J.M., Clarren, S.K., Randels, S.P., LaDue, R.A., & Smith, D. F. (1991). Fetal alcohol syndrome in adolescents and adults. *Journal of the American Medical Association*, 17, 1961-1967.

⁴ Ibid.

FAS was first identified in peer-reviewed medical journals in 1968⁵ (France) and 1973⁶ (United States). In 1977, after many more publications had identified FAS in newborns, concern over the association between prenatal alcohol exposure and birth defects prompted the National Institute of Alcohol Abuse and Alcoholism (NIAAA) to issue a health advisory in 1977 to medical practitioners that six or more alcoholic drinks per day during pregnancy could produce a child with serious birth defects. Later, research in the 1980s would find much less exposure could cause FASD conditions.⁷

In 1978, after numerous publications in peer-reviewed medical journals around the world, the U.S. Congress was so alarmed about the birth defects in FAS, not the least of which was organic brain damage, it mandated a status report on the condition (i.e., *Third Special Report to Congress on Alcohol and Health: Fetal Alcohol Syndrome*), which was published jointly by the Department of Health and Human Services (HHS) and the National Institute on Alcoholism and Alcohol Abuse (NIAAA). As the report noted, by 1978 there were approximately 250 published case reports around the world that had established a direct link between prenatal alcohol exposure and FAS; by 1979, over 600 cases of FAS had been reported worldwide.⁸ Throughout the 1980s, additional special reports on FAS were submitted to Congress.

Since its identification in the United States over four decades ago, FAS always has involved three categories of diagnostic criteria: growth deficiency in height and/or weight, dysmorphic facial characteristics, and central nervous system (CNS) abnormalities. In 1980, diagnostic criteria were standardized by the Fetal Alcohol Study Group of the Research Society on Alcoholism in 1980⁹, which described three general characteristics: “A pattern of characteristic facial features, pre-/postnatal deficit in height and weight, and central nervous system damage.” In 1989, Sokol and Clarren¹⁰ made those diagnostic criteria more explicit: (a) prenatal and/or postnatal growth retardation determined by weight and/or length below the 10th percentile; (b) a characteristic face with short palpebral fissures, thin upper lip, and elongated flattened midface and philtrum; and (c) CNS involvement, including neurological abnormalities, developmental delays, behavioral dysfunction, intellectual impairment, and skull or brain malformations.

Those with CNS abnormalities and prenatal alcohol exposure histories who did not display the external physical signs of FAS (i.e., facial abnormalities and growth deficits) were diagnosed with Fetal Alcohol Effect(s) (FAE). Similar to FAS with respect to the CNS criterion, an FAE diagnosis required some cognitive deficits plus a history of

⁵ Lemoine, P., Harousseau, H., Borteyru, J.P., & Menuit, J.C. (1968). Les enfants de parents alcooliques: Anomalies observees. A propos de 127 cas. [Children of alcoholic parents: Anomalies observed in 127 cases.] *Ouest Medical*, 21, 476-482.

⁶ Jones, K.L., Smith, D.W., Ulleland, C.N., & Streissguth, A.P. (1973). Pattern of malformation in offspring of chronic alcoholic mothers. *Lancet*, 1, 1267-1271.

⁷ Little, R.E. (1977). Moderate alcohol use during pregnancy and decreased infant birth weight. *American Journal of Public Health*, 67, 1154-1156.

⁸ Abel, E. (1979). Prenatal effects of alcohol on adult learning in rats. *Pharmacological and Biochemical Behavior*, 10, 239.

⁹ Rosett, H.L. (1980). A clinical perspective of the fetal alcohol syndrome. *Alcoholism: Clinical and Experimental Research*, 4, 119-122.

¹⁰ Sokol, R.J., & Clarren, S.K. (1989). Guidelines for use of terminology describing the impact of prenatal alcohol on the offspring. *Alcoholism: Clinical and Experimental Research* 13, 597-598.

prenatal alcohol exposure.¹¹ As there was no difference between the brain damage in FAS versus FAE, those with FAE tended to show the same functional impairments and behavior problems as those with FAS.¹²

Diagnostic criteria were made even more specific in April 1996 with the publication of the Institute of Medicine (IOM) diagnostic guidelines,¹³ which included the same three symptom categories but specified which facial features would constitute the “face” of FAS (i.e., short palpebral fissures, flattened philtrum, and thin upper lip).^{14, 15, 16} The IOM criteria included diagnostic criteria for five conditions under the FASD umbrella: FAS with confirmed prenatal exposure, FAS without confirmed prenatal exposure, Partial FAS, ARND, and Alcohol Related Birth Defects. [The latter condition focused solely on damage to physical structures outside the central nervous system, such as organs, limbs, and skeletal structure.] With the 1996 IOM publication, original terminology (e.g., “FAE”) began to be replaced with newer terms such as “Partial FAS” and “ARND.” Eventually, the umbrella term “Fetal Alcohol Spectrum Disorders (FASD)” began to be promulgated as an inclusive term for all IOM diagnostic categories.

Under the 1996 IOM guidelines, diagnostic criteria for the CNS abnormality in FASD remained somewhat broadly defined before and after the IOM criteria, which required either central nervous system neurodevelopmental abnormalities (e.g., structural or neurological evidence of brain damage) or evidence of a complex pattern of behavior or cognitive abnormalities that are inconsistent with developmental level and cannot be explained by familial background or environment alone, such as learning difficulties; deficits in school performance; poor impulse control; problems in social perception; deficits in higher level receptive and expressive language; poor capacity for abstraction or metacognition; specific deficits in mathematical skills; or problems in memory, attention, or judgment.

Thus, since the IOM guidelines were published in 1996, the year of Mr. Chappell’s trial, he could have been diagnosed with either FAE or ARND. The medical diagnosis would have been noted on Axis III of the DSM-IV, and the central nervous system sequelae would have been diagnosed by a psychologist or psychiatrist on Axis I as “Cognitive Disorder Not Otherwise Specified (294.9),” with the prenatal alcohol exposure etiology noted on Axis III.

By the time of trial in 1996 (and even more so in 2007), it was well appreciated in the general population and, by extension, in the medical, mental health, and legal fields that

¹¹ Streissguth, A.P., Sampson, P.D., & Barr H.M. (1989). Neurobehavioral dose-response effects of prenatal alcohol exposure from infancy to adulthood. *Annals of the New York Academy of Sciences*, 562,145–158.

¹² Ibid.

¹³ Stratton, K.; Howe, C; and Battaglia, F., eds. *Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention, and Treatment*. Washington, D.C.: National Academy Press, 1996.

¹⁴ Ibid.

¹⁵ Bertrand, J., Floyd, R. L., Weber, M. K., O'Connor, M. J., Riley, E. P., Johnson, K. A., . . . National Task Force on FAS/FAE. (2004). *Fetal alcohol syndrome: Guidelines for referral and diagnosis*. Atlanta, GA: Centers for Disease Control and Prevention.

¹⁶ Astley, S.J. (2004). *Diagnostic guide for fetal alcohol spectrum disorders: The 4-digit diagnostic code*. 3rd Ed. Seattle, WA: University of Washington Publication Services.

prenatal alcohol exposure could lead to serious birth defects. For example, in 1981, the Surgeon General of the United States issued a national health advisory recommending that pregnant women or women considering getting pregnant should abstain from using alcohol because of possible harm to their unborn children. The advisory noted adverse effects “with only 1 ounce/day of absolute alcohol or 2 drinks.” Beginning with its 14th edition in 1982, the Merck Manual – a medical reference used widely around the world – began including information about FAS, noting the most serious consequence of prenatal alcohol exposure was mental retardation. In 1985, the first non-medical book on FAS was published (i.e., *A Poison Stronger Than Love*, by Anastasia Shkilnyk). In 1988, a major treatise used in graduate schools in the United States (*Diagnostic Clinical Neuropsychology - Revised*, by Erin Bigler) to train neuropsychologists described FAS diagnostic criteria and associated brain abnormalities.

Meanwhile, Congress had been receiving the HHS and NIAAA reports on FAS referenced above on an almost-annual basis, which in 1988 led Congress to pass the Alcoholic Beverage Labeling Act, PL 100-690. This law, which required every alcoholic beverage container sold in the United States to have a warning label (i.e., “According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects”), was quite controversial because it was vigorously opposed by the alcohol beverage industry. This controversy, and the dangers of drinking during pregnancy, were widely publicized in the media around the time of its passage (1987 and 1988).

In 1989, *The Broken Cord* by Michael Dorris was published. This book, the first lay publication about FAS and its impact on a family, was widely publicized in the media and became very popular. In fact, it is referred to today as a “classic” in FASD literature as it describes from a personal and poignant perspective how devastating the condition is to families as well as to the affected individuals.

In the legal context, all of this widespread media attention to FASD in the late 1980s culminated in a plenary presentation by Dr. Ann Streissguth at the 1991 NAACP Legal Defense Fund conference in Airlie, Virginia. [Dr. Streissguth, a pioneer researcher in FASD and the supervisor of my postdoctoral fellowship in FASD, was part of the team of medical and mental health professionals who first identified FAS in 1973. Since that time, she had devoted her professional career to investigating developmental and behavioral manifestations of FASD in longitudinal research studies that tracked how aging affected the adaptive difficulties in FASD.]

The most debilitating aspect of FASD was known by 1996 to be structural (“organic”) brain damage and associated CNS impairments, which were understood to be permanent and lifelong.¹⁷ It also was known that if prenatal alcohol exposure did not result in outright intellectual disability (i.e., “mental retardation” in 1996 terms,) which was seen in a minority of cases, it could cause pervasive CNS dysfunction with severe effects on functioning and adaptive behavior.¹⁸ The neurodevelopmental and behavioral effects in

¹⁷ Streissguth, Sampson, & Barr, op. cit.

¹⁸ Ibid

FAE were known to be produced at lower exposure levels than the morphologic or growth effects in FAS¹⁹ but could be equally or more devastating to offspring.²⁰ In other words, while the physical manifestations served as useful markers for FASD, it was understood by 1996 that the degree of brain damage, CNS dysfunction, and long-term outcomes were variable and not always directly proportional to the degree of physical manifestations or specific FASD diagnosis.²¹

By the time of trial in 1996, the estimated prevalence of FAS was thought to be around 1-3 cases per 1,000 live births.^{22, 23} Prevalence rates for FAE were unknown but thought to be 2 to 10 times that amount.²⁴ It was well recognized at the time that catchment data from the Birth Defects Monitoring Program of the Centers for Disease Control tended to underestimate FAS incidence in infants because FAS facial features at that age were not as identifiable as they were during the elementary school years. Likewise, CNS dysfunction also was difficult to identify until elementary school.^{25, 26, 27} [This is something DSM-5 now notes.] Another problem that challenged official prevalence estimates was the stigma associated with drinking during pregnancy. Because it was well appreciated in the general population by 1990 that alcohol intake in pregnancy could cause birth defects, women – especially those who tended to abuse alcohol – were likely to underreport alcohol consumption when interviewed during pregnancy.²⁸ Based upon more accurate epidemiological techniques than were available in 1996, it now is estimated that 24 to 48 per 1000 children (i.e., 2.4 to 4.8%) in the United States suffer from one of the conditions under the FASD umbrella²⁹ and that approximately one-fourth of juveniles and adults arrested for crimes have an FASD condition.^{30, 31}

Another FASD milestone occurred in 1996. The Centers for Disease Control published the results of a large research study on the adverse developmental outcomes (“Secondary Disabilities”) associated with FASD. Conducted by Dr. Ann Streissguth and colleagues at the University of Washington, the study identified the negative developmental trajectory in FASD in the context of certain risk factors (i.e., lack of early diagnosis and associated developmental disabilities services, experiencing abuse and domestic violence, and being

¹⁹ Riley, E.P., & Vorhees, C.V. (1986). *Handbook of behavioral teratology*. New York, NY: Plenum Press.

²⁰ Streissguth, Sampson, & Barr, op. cit.

²¹ Ibid.

²² Abel, E.L., & Sokol, R.J. (1987). Incidence of fetal alcohol syndrome and economic impact of FAS-related anomalies. *Drug and Alcohol Dependency*, 19, 51-70.

²³ National Institute for Alcoholism and Alcohol Abuse (1990). *Seventh Special Report to the US Congress: Alcohol and Health*. Washington, DC: US Department of Health and Human Services.

²⁴ Ibid.

²⁵ Sokol, R.J., & Clarren, S.K. (1989). Guidelines for use of terminology describing the impact of prenatal alcohol on the offspring. *Alcoholism: Clinical and Experimental Research*, 13, 597-598.

²⁶ Abel & Sokol, op. cit.

²⁷ Little, B.B., Snell, L.M., Rosenfeld, C.R., Gilstrap, L.C., & Gant, N.F. (1990). Failure to recognize fetal alcohol syndrome in newborn infants. *American Journal of Diseases of Children*, 144, 1142-1146.

²⁸ Morrow-Tlucak, M., Emhart, C.B., Sokol, R.J., Martier, S., & Ager, J. (1989). Underreporting of alcohol use in pregnancy: Relationship to alcohol problem history. *Alcoholism: Clinical and Experimental Research*, 13, 399-401.

²⁹ May, P.A., Baete, A., Russo, J., Elliott, A.J., Blankenship, J., Kalberg, W.O., Buckley, D., Brooks, M., Hasken, J., Abdul-Rahman, M.P., Robinson, L.K., Manning, M., & Hoyme, H.E. (2014). Prevalence and characteristics of fetal alcohol spectrum disorders. *Pediatrics*, 134, 855-866.

³⁰ Fast, D.K., Conry, J., & Looock, C. (1999). Identifying fetal alcohol syndrome among youth in the criminal justice system. *Journal of Developmental and Behavioral Pediatrics*, 20, 370-372.

³¹ MacPherson, P.H., Chudley, A.E., & Grant, B.A. (2011). Fetal alcohol spectrum disorder (FASD) in a correctional population: Prevalence, screening and characteristics. Research Report R-247. Ottawa, Ontario: Correctional Service Canada.

raised in an unstructured, non-nurturing home environment). Among the most surprising findings were that individuals with FASD were at high risk to commit crimes, engage in substance abuse, and have mental health histories that included inappropriate sexual behaviors.

In 1997, Fetal Alcohol Syndrome: A Guide for Families and Communities, by Ann Streissguth, was published by HHS and NIAAA. This book contained a developmental view of FASD and noted the Secondary Disabilities study that had just been published. Dr. Streissguth wrote on Page 241 of this book: "As of 1997, several authors have described FAS/FAE from a criminal justice perspective (see Barnett, 1997; Dagher-Margosian, 1997; Fehr, 1995; LaDue & Dunne, 1997; and Novick, 1997)."

In 2004, the Centers for Disease Control published a very detailed diagnostic manual for FAS that quantified diagnosis and removed some of the ambiguities in the 1996 IOM publication. The CDC manual is used today throughout the United States.

In 2005, the U.S. Surgeon General issued a second national health advisory on alcohol use in pregnancy in order to "raise public awareness about this important health concern." The Advisory noted the empirical evidence that prenatal alcohol exposure could result in a spectrum of birth defects that could affect a child's growth, appearance, cognitive development, and behavior.

In 2006, the Substance Abuse and Mental Health Services Administration (SAMHSA) published information on its website for criminal justice professionals regarding the relevance of FASD across the legal spectrum, from competency to stand trial, to diminished capacity, testimonial capacity, and sentencing (included as Appendix B).

In 2012, the American Bar Association³² (ABA) passed a resolution describing FASD and its relevance in the criminal justice system. Several years before passing that resolution, ABA began publishing a compilation of legal case law around the United States that involved an FASD defense. That list shows that by 1996, a number of cases had involved a focus on FASD at the trial and post-conviction levels, and by 2007 there were many more cases. In fact, as early as 1990, the United States Supreme Court in *Sullivan v. Zebley*, 493 U.S. 521, 533-34 n.13 (1990) described "fetal alcohol syndrome" as a "well-known childhood impairment."

Opinion:

By the time of trial in 1996 and resentencing in 2007, a great deal of information was known in the legal field about the nature and cause of FASD. Not only had decades of research confirmed that alcohol caused serious birth defects that affected executive control and lifelong adaptive functioning, awareness that alcohol could produce serious brain damage was widely known in the general population.

³² Resolution on FASD Approved by the ABA House of Delegates – August 7, 2012, ABA website: <http://www.americanbar.org>.

2) At the time of trial in 1996 and resentencing in 2007, what evidence was available to counsel to suggest Chappell suffered from an FASD condition?

For the sake of perspective, DSM-5 now notes the following information regarding the diagnosis ND-PAE (p. 800):

“Although about one-half of young children prenatally exposed to alcohol show marked developmental delay in the first three years of life, other children affected by prenatal alcohol exposure may not exhibit signs of CNS dysfunction until they are preschool- or school-age. Additionally, impairments in higher order cognitive processes (i.e., executive functioning), which are often associated with prenatal alcohol exposure, may be more easily assessed in older children. “When children with FASD reach school age, learning difficulties, impairment in executive function, and problems with integrative language functions usually emerge more clearly, and both social skills deficits and challenging behavior may become more evident. In particular, as school and other requirements become more complex, greater deficits are noted....The CNS dysfunction seen in individuals with ND-PAE often leads to decrements in adaptive behavior and to maladaptive behavior with lifelong consequences.”

In 1996, trial counsel hired Dr. Lewis Etcoff to conduct a psychological evaluation of Mr. Chappell for the purpose of mitigation, and a week before trial, counsel asked Dr. Etcoff to testify about Mr. Chappell’s intentions at the time of the offense. In anticipation of his testimony, Dr. Etcoff reviewed a 41-page cumulative school record provided to him by trial counsel, asked Mr. Chappell to complete a social history questionnaire, and conducted IQ and personality testing with Mr. Chappell.

In his recent declaration (7/11/16), Dr. Etcoff indicated he was not provided names of witnesses who could corroborate Mr. Chappell’s self-report or provide additional insight regarding his life, and when Dr. Etcoff asked trial counsel for names of witnesses to interview, he was told only Mr. Chappell was available. In 2007, resentencing counsel simply asked Dr. Etcoff to review his prior report and interview notes before testifying and did not provide him any new records to supplement what he had read in 1996. Dr. Etcoff indicated counsel in 1996 and 2007 did not ask him to conduct neuropsychological testing to assess Mr. Chappell for brain damage or ask him to consider the possibility of prenatal alcohol exposure and/or FASD: “...if I had been asked by either set of defense counsel [i.e., 1996 and 2007] about such a diagnosis, I would have informed counsel that they needed to retain an expert with knowledge [of] Fetal Alcohol Syndrome and Fetal Alcohol Effects.”

As explained in detail below, the information provided to Dr. Etcoff suggested that Mr. Chappell might suffer from FASD, and indicated the need for further testing and investigation regarding the possibility that Mr. Chappell suffered from FASD.