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Electronically Filed
Nov 02 2012 10:03 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

11 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

12 BRIAN KERRY O'KEEFE,)
13)
14 Appellant,)
15)
16 vs.)
17)
18 THE STATE OF NEVADA,)
19)
20 Respondent.)
21)

Case No.: 61631
District Court Case No.: C250630

22 **AMENDED FAST TRACK STATEMENT**

- 23 1. **Name of party filing this fast track statement:** Appellant Brian O'Keefe.
24 2. **Name, law firm, address, and number of attorney submitting this fast**
25 **track statement:** Lance A. Maningo, Esq., Bellon & Maningo, LTD., 732 South
26 Sixth Street, Suite 102, Las Vegas, NV 89101, 702-452-6299.
27 3. **Name if different from trial counsel:** n/a (note: Appellant represented
28 himself at trial, with Lance A. Maningo, Esq. acting as standby counsel.)
4. **Judicial district, county, and district court docket number of lower**
court proceedings: Eighth Judicial District Court, Clark County, Docket No.
C250630.

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- 5. **Name of judge issuing order appealed from:** Honorable Michael Villani.
- 6. **Length of trial:** 5 days.
- 7. **Conviction appealed from:** One count of second degree murder with use of a deadly weapon.
- 8. **Sentence for each count:** A maximum of three hundred months (300) with a minimum parole eligibility of one hundred twenty (120) months, plus a consecutive term of twenty (20) years maximum and eight (8) years minimum for Use of a Deadly Weapon.
- 9. **Date district court announced decision, sentence, or order appealed from:** August 28, 2012.
- 10. **Date of entry of written judgment or order appealed from:** August 30, 2012 (filed September 5, 2012).
- 11. **If this appeal is from an order on a petition for a writ of habeas corpus...:** n/a.
- 12. **If the time for filing the notice of appeal was tolled by a post-judgment motion:** n/a.
- 13. **Date notice of appeal filed:** September 13, 2012.
- 14. **Specify rule governing the time limit for filing the notice of appeal:** NRAP 4(b).
- 15. **Specify statute which grants this court jurisdiction:** NRS 177.015.
- 16. **Specify nature of deposition:** Judgment of conviction entered pursuant to a jury verdict.
- 17. **Pending and prior proceedings in this court:** This case has been the subject of an appeal in the Supreme Court. On March 20, 2009, after appellant's first jury trial, he was found guilty of Second Degree Murder with Use of a

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Deadly Weapon. He appealed the conviction to the Nevada Supreme Court, and the conviction was reversed and remanded. The appeal caption was Brian Kerry O’Keefe vs. The State of Nevada, docket number 53859.

18. **Pending and prior proceedings in other courts:** A writ of habeas corpus has been filed in the United States District Court and is currently pending.

19. **Proceedings raising same issues:** A writ of habeas corpus has been filed in the United States District Court that raises double jeopardy issues and is currently pending.

20. **Procedural history:** The State charged O’Keefe with murder with use of a deadly weapon by way of an Amended Information on February 10, 2009. 1 App. 1-3. On March 16, 2009, a jury trial began, and on March 20, 2009, the jury returned a verdict finding O’Keefe guilty of second degree murder with use of a deadly weapon. (Trial Number 1). 1 App. 4-5. On May 21, 2009, following Trial Number 1, O’Keefe filed a notice of appeal. 1 App. 6-7. He filed a Fast Track Statement in the Nevada Supreme Court on August 19, 2009. 1 App. 8-23. In his Fast Track Statement, O’Keefe argued, among other things, the district court’s ruling on jury instructions were erroneous, and that the District Court improperly allowed a jury instruction regarding felony murder as an alternate theory of second degree murder when felony murder had not been specifically alleged in the Amended Information. 5 App. 1238. On April 7, 2010, the Supreme Court issued an Order of Reversal and Remand regarding this argument. The Supreme Court stated that “the district court abused its discretion when it instructed the jury that second-degree murder includes involuntary killings that occur in the commission of an unlawful act because the State’s charging document did not allege that O’Keefe killed the victim while he was committing

1 an unlawful act and the evidence presented at trial did not support this theory of
2 second-degree murder.” 1 App. 24-28.

3 On August 19, 2010, a Second Amended Information was filed. 1 App.
4 29-31. On August 23, 2012, O’Keefe went to trial again for the charge of murder
5 with use of a deadly weapon. (Trial Number 2). On September 2, 2012, there
6 was a mistrial based upon a deadlock of the jury. 1 App. 35. Trial was reset.

7 On October 3, 2011, O’Keefe filed a Pro Se Motion to Dismiss Appointed
8 Counsel and for Faretta Hearing. 1 App. 36-37. After a Faretta Canvas, the
9 Court granted O’Keefe’s Motion, and found him competent to waive his right to
10 counsel, and allowed him to represent himself with the undersigned counsel as
11 standby counsel. 1 App. 38-59, 60.

12 On March 16, 2012, O’Keefe filed a Motion to Dismiss Based Upon
13 Violations of the Fifth Amendment Component of the Double Jeopardy Clause,
14 Constitutional Collateral Estoppel and Alternatively, Claiming Res Judicata,
15 Enforceable by the Fourteenth Amendment Upon the State’s Precluding State’s
16 Theory of Prosecution by Unlawful Intentional Stabbing with Knife, the Alleged
17 Battery Act Described in the Amended Information. 1 App. 88-113. O’Keefe’s
18 Motion was denied. 1 App. 114-124. O’Keefe verbally renewed his motion on
19 the first day of his trial, and it was again denied. 1 App. 154-168.

20 On June 1, 2012, O’Keefe filed a Motion to Continue Trial. 1 App. 125-
21 130. The Motion was denied on June 5, 2012 at Calendar Call. 1 App. 147, 131-
22 146. During Calendar Call, O’Keefe informed the Court that he was not ready to
23 proceed to trial, and requested that the matter be stayed because of an open case
24 he currently had in the Ninth Circuit regarding violations to his constitutional
25 rights. *Id.* The court denied the request and trial began on June 11, 2012. On
26 June 15, 2012, the jury returned a verdict finding O’Keefe guilty of second degree
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murder with use of a deadly weapon. 2 App. 493-495, 1236-1237. This timely appeal followed.

21. **Statement of facts:** Brian O’Keefe and Victoria Whitmarsh, the alleged victim, dated and cohabitated off and on, and had what could be described as a very tumultuous relationship. 3 App. 622-625. O’Keefe was convicted of a felony battery domestic violence against Whitmarsh and went to prison as a result. 3 App. 600-601.

When O’Keefe was released from prison, he met and began a relationship with Cheryl Morris. 3 App. 618. Morris claimed at trial that O’Keefe said he was upset with Whitmarsh because she put him in prison and he said he wanted to “kill the bitch.” 3 App. 623. Eventually, Morris and O’Keefe’s relationship came to an end so he could be with Whitmarsh once again. 3 App. 626-629.

At about 9:00 p.m. on the evening of the incident, in November 2008, a neighbor who lived in the apartment below O’Keefe and Whitmarsh heard what she described as thumping and crying noises coming from upstairs. 3 App. 665-666. Her husband, Charles Toliver went upstairs to inquire about the noise and found the door to O’Keefe’s apartment open. 3 App. 677-678. He yelled inside to get the occupants’ attention, at which time O’Keefe came out of the bedroom and shouted at Toliver to “come in here...” 3 App. 678. When Toliver entered the bedroom, he saw Whitmarsh lying on the floor next to the bed and saw blood on the bed covers. 3 App. 678-679.

Shortly after 11:00 p.m., police had arrived on the scene. 3 App. 710. When they entered the bedroom, they found Whitmarsh lying on the floor next to the bed and unarmed O’Keefe cradling her in his arms and stroking her head. 3 App. 722. The officers eventually had to subdue him with a taser gun and forcibly carry him out of the bedroom. 3 App. 725. O’Keefe was very emotional

1 and appeared to be extremely intoxicated. 4 App. 761. They arrested him and
2 brought him to the detective bureau. 4 App. 805-806, 813. Detective Wildemann
3 interviewed O'Keefe and stated that during the interview O'Keefe appeared to be
4 intoxicated, however, law enforcement did not obtain a test for his breath or blood
5 alcohol level either before or after the interview. 5 App. 1072.

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7 Whitmarsh had also been drinking on the date of the incident, and at the
8 time of her death, her blood alcohol content was 0.24. 4 App. 875. Medical
9 examiner Dr. Dutra testified that Whitmarsh's toxicology screen indicated that
10 she was taking Effexor and had higher than the therapeutic dosage of Effexor in
11 her system. 4 App. 876. Whitmarsh also had Hepatitis C and advanced Cirrhosis
12 of the liver, which is known to cause bruising due to problems with blood
13 clotting. 4 App. 873-875. Whitmarsh's body displayed multiple bruises at the
14 time she was examined. 4 App. 856-857, 862. She died of one stab wound to her
15 chest. 4 App. 877.

16 **22. Issues on appeal:**

17 A. Whether the district court violated O'Keefe's constitutional rights
18 against Double Jeopardy by forcing him to face a third trial after the Nevada
19 Supreme Court reversed his conviction stating that "the evidence presented at trial
20 did not support this theory of second-degree murder."

21 B. Whether the district court erred, and denied O'Keefe his state and
22 federal constitutional rights to due process and a fair trial, by allowing O'Keefe to
23 represent himself at trial.

24 C. Whether the district court erred, and denied O'Keefe his state and
25 federal constitutional rights to due process and a fair trial, by denying O'Keefe's
26 request to stay the trial based upon his pending writ in federal court, and the fact
27 that he was not ready for trial to begin.
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1 D. Whether the district court erred, and denied O’Keefe his state and
2 federal constitutional rights to due process and a fair trial, by allowing a substitute
3 judge to preside over the trial.

4 E. Whether the district court erred in its rulings on jury instructions.

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6 **23. Legal argument, including authorities:**

7 A. The district court violated O’Keefe’s state and federal constitutional
8 rights against double jeopardy by forcing him to face a third trial after the Nevada
9 Supreme Court reversed his conviction stating that “the evidence presented at trial
10 did not support this theory of second-degree murder.” Under the U.S. and Nevada
11 Constitutions’ Double Jeopardy Clauses, “no person shall be subject to be twice
12 put in jeopardy for the same offense.” NV Const. Sec 8. Additionally, a
13 defendant may not be convicted of both an offense and a lesser included offense.
14 *McIntosh v. State*, 113 Nev. 224, 225, 932 P.2d 1072, 1073 (1997). The Nevada
15 courts apply the U.S. Supreme Court’s *Blockburger* test to determine if a given
16 offense is a lesser included offense of another. *Estes v. State*, 122 Nev. 1123,
17 1143, 146 P.3d 1114, 1127 (2006). Under *Blockburger*, the test “to be applied to
18 determine whether there are two offenses or only one, is whether each provision
19 requires proof of a fact which the other does not.” *Blockburger v. United States*,
20 284 U.S. 299, 304 (1932).

21 NRS 200.030 defines Second Degree Murder as all other kinds of murder
22 that do not constitute First Degree Murder. O’Keefe was charged by way of
23 Amended Information with Murder with Use of a Deadly Weapon (Open Murder)
24 by “willfully, feloniously, without authority of law, and with premeditation and
25 deliberation, and with malice aforethought, kill VICTORIA WHITMARSH, a
26 human being, by stabbing the said VICTORIA WHITMARSH with a deadly
27 weapon, to-wit: a knife. 1 App. 1-3. The Nevada Supreme Court reversed
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1 O'Keefe's conviction based upon an improper jury instruction that stated
2 "Murder of the Second Degree is murder which is: (1) An unlawful killing of a
3 human being with malice aforethought, but without deliberation and
4 premeditation, or (2) Where an involuntary killing occurs in the commission of an
5 unlawful act, the natural consequences of which are dangerous to life, which act
6 is intentionally performed by a person who knows that his conduct endangers the
7 life of another, even though the person has not specifically formed an intention to
8 kill." The Supreme Court stated that the alternate theory of second degree murder
9 was not alleged in the charging document, *and no evidence supported that*
10 *theory.* 1 App. 24-28.

11
12 O'Keefe contends that when the Supreme Court stated that the evidence
13 did not support the alternate theory of second degree murder (an involuntary
14 killing that occurs "in the commission of an unlawful act,") the Court stated that
15 the evidence did not support that Whitmarsh was killed in the commission of an
16 unlawful act. The charging document alleged the unlawful act to be the stabbing
17 of Whitmarsh. In effect, the Supreme Court stated that no unlawful act occurred.
18 As such, O'Keefe cannot be found guilty of second degree murder under any
19 theory, and forcing him to stand trial once again for second degree murder
20 violates his rights against double jeopardy.

21 In *United States v. Smith*, 82 F.3d 1564 (U.S. Ct App, 10th cir., 1996), the
22 defendant was convicted of possession of cocaine base with intent to distribute,
23 and of using or carrying a firearm during and in relation to the drug trafficking
24 offense. During trial, the jury was given an improper instruction on the meaning
25 of "uses". The defendant appealed, and the Supreme Court vacated the judgment
26 and remanded the case. On remand, the court held that (1) the evidence was
27 insufficient to support a conviction for carrying a firearm during and in relation to
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1 the drug trafficking offense; (2) the court could not assume the jury did not
2 convict on a legally erroneous basis, premised on an invalid instruction on “uses”;
3 and (3) double jeopardy principles barred retrial on carrying the firearm charge.
4 The court stated that when a defendant is charged in the disjunctive and one
5 charge is unsupported by any evidence whatsoever, a conviction may be affirmed
6 on the assumption that the jury rejected the “factually insufficient theory” and
7 convicted on the alternative ground for which the evidence was sufficient. The
8 court further stated that “the question then arises whether the evidence would
9 have been sufficient to support a conviction for carrying a firearm under a proper
10 instruction. If so, then we can remand for a new trial without violating double
11 jeopardy principles. However, if the evidence was insufficient so that a directed
12 verdict of acquittal should have been entered, remand would violate the Double
13 Jeopardy Clause.”

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15 In *Saylor v. Cornelius*, 845 F.2d 1401 (US Ct. App. 6th Cir. 1988), Saylor
16 was indicted on one count of murder. The indictment encompassed murder as a
17 principal and as an accomplice, and murder by conspiracy. At his trial under this
18 indictment, considerable evidence was introduced supporting his liability as an
19 accomplice of the actual murderer. No evidence, however, was introduced to
20 show that he participated in any conspiracy to commit the murder. Despite the
21 lack of evidence of a conspiracy, the trial judge instructed the jury on the murder
22 count (and various lesser offenses) only on the theory of Saylor's liability as a
23 conspirator. The prosecution did not object to these instructions nor did it request
24 any charge on Saylor's accomplice liability. The jury found Saylor guilty of
25 murder. Saylor's conviction was reversed on appeal by the Kentucky Supreme
26 Court on the ground that the evidence was insufficient to support the conspiracy
27 instructions and resulting conviction. In a subsequent opinion, the Kentucky
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1 Supreme Court specifically held that Saylor could be retried, based on the theory
2 of accomplice liability. The state supreme court concluded that the trial court
3 merely committed instructional error when it failed to instruct the jury on the
4 alternative theory of guilt, accomplice liability for aiding and abetting the
5 murderer. After his petition for a writ of certiorari was denied by the United
6 States Supreme Court, Saylor filed a petition for a writ of habeas corpus in federal
7 district court under 28 U.S.C. § 2254, claiming that a retrial was barred by the
8 Double Jeopardy Clause. The court ruled that the Double Jeopardy Clause does
9 bar Saylor's retrial. The accomplice theory of liability was charged in the
10 indictment, was relevant to the evidence presented during the trial, and most
11 importantly, up until the time the jury returned from its deliberations and
12 announced its verdict, could have been presented to the jury. Under circumstances
13 such as these, where the first trial ended without a verdict on the relevant charge
14 for reasons of the prosecution's making, a retrial on that charge would violate the
15 protection the Double Jeopardy Clause affords against harassing reprosecution.
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17 In *Shute v. State of Texas*, 117 F.3d 233 (U.S. Ct. App. 5th cir. 1997), Shute
18 was charged with shooting a security officer at a public school. The state indicted
19 Shute for attempted capital murder (the "First Indictment"). This crime consists
20 of all the elements of attempted murder plus the following: (1) The victim was a
21 "peace officer"; (2) the victim was engaged in his official duty at the time of the
22 attack; and (3) the defendant knew the victim was a peace officer. Shute
23 stipulated to his guilt of attempted murder but contested the additional elements.
24 He waived his right to a jury trial and was convicted and sentenced in state court.
25 The state court of appeals reversed, holding that the state had provided
26 insufficient evidence that Hill was engaged in his official duty, as he was acting
27 as a private security guard and not as a peace officer. The state then indicted
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1 Shute for ordinary attempted murder (the “Second Indictment”). The state trial
2 court denied Shute's habeas petition that was based on double jeopardy grounds,
3 but the court of appeals granted relief. In the meantime, the indictment against
4 Shute was dismissed for technical reasons. The state secured a new indictment for
5 attempted murder (the “Third Indictment”). Shute pleaded guilty and was
6 sentenced. He appealed that conviction in state court on the ground that collateral
7 estoppel bars a deadly-weapon finding. That appeal was denied.
8

9 The court stated that “generally, if a defendant obtains a reversal of his
10 conviction, double jeopardy does not bar a retrial.” *Id.* at 238. “If the conviction
11 is reversed for insufficient evidence of guilt, however, double jeopardy does bar
12 retrial. This is because a finding of insufficient evidence of guilt means that the
13 trial court should have entered a judgment of acquittal, which would have barred
14 retrial. *Id.* The Court further stated that for double jeopardy purposes, a lesser
15 included offense is considered to be the same crime as the greater offense.
16 Therefore, had the trier of fact simply acquitted Shute of attempted capital
17 murder, the state could not prosecute him for attempted murder. *Id.*

18 The caselaw is clear that when a conviction is reversed based upon an
19 insufficiency of the evidence, to force a defendant to stand trial again for the same
20 charges is double jeopardy. O’Keefe argues that since the Nevada Supreme Court
21 stated that the evidence did not support a conviction based on the killing
22 occurring during the commission of an unlawful act (the stabbing), the Court
23 ruled that no unlawful act occurred, and as such, O’Keefe should not have been
24 forced to stand trial once again for second degree murder.

25 **B.** The District Court erred, and denied O’Keefe his state and federal
26 constitutional rights to due process and a fair trial, by allowing O’Keefe to
27 represent himself at trial. O’Keefe filed a Motion to Dismiss Appointed Counsel
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1 and for Faretta Hearing. 1 App. 36-37. After the Faretta Hearing, the Court
2 determined that O’Keefe was competent to waive his constitutional rights, and
3 allowed O’Keefe to proceed to his third trial unrepresented by counsel. 1 App.
4 60, 38-59. “The Sixth and Fourteenth Amendments of our Constitution guarantee
5 that a person brought to trial in any state or federal court must be afforded the
6 right to the assistance of counsel before he can be validly convicted and punished
7 by imprisonment.” *Faretta v. California*, 422 U.S. 806, 807 (1975). However,
8 the Sixth Amendment does not provide “merely that a defense shall be made for
9 the accused; it grants to the accused personally the right to make his defense.” *Id*
10 at 819. “When an accused manages his own defense, he relinquishes, as a purely
11 factual matter, many of the traditional benefits associated with the right to
12 counsel. For this reason, in order to represent himself, the accused must
13 ‘knowingly and intelligently’ forgo those relinquished benefits.” *Id.* at 835.

14
15 While O’Keefe did choose to represent himself, he did not do so knowingly
16 and intelligently, which is evidenced by the hearings at which O’Keefe
17 represented himself prior to the trial. At the February 17, 2012 hearing regarding
18 the state’s Motion in Limine to Present Evidence of Other Bad Acts, O’Keefe
19 failed to make proper argument regarding the bad acts the state was attempting to
20 have admitted, and instead kept arguing to the court regarding his double
21 jeopardy issue that is currently before the federal courts. 1 App. 61-87. As such,
22 bad acts were admitted at trial that possibly would not have been admitted had
23 O’Keefe had the knowledge to rebut the state’s arguments. At the February 17,
24 2012, Faretta should have been readdressed since it was clear that O’Keefe was
25 more focused on representing himself regarding his issues before the federal
26 court, and did not knowingly waive his right to an attorney to represent him at the
27 trial.

1 Additionally, O’Keefe, who was not focused on the actual trial when he
2 waived his rights, did not prepare for trial, did not call any witnesses, and did not
3 admit any evidence. He essentially failed to put on a defense because the court
4 allowed him to unintelligently waive his right to an attorney. Based upon the
5 erroneous decision to allow O’Keefe to represent himself, he is entitled to have
6 his conviction reversed.

7
8 **C.** The district court erred, and denied O’Keefe his state and federal
9 constitutional rights to due process and a fair trial, by denying his request to stay
10 the trial. At the calendar call hearing on June 5, 2012, O’Keefe asked the court to
11 postpone the trial due to the fact that he had a pending issue in the federal courts
12 regarding a double jeopardy violation. 1 App. 132-134. His standby counsel, Mr.
13 Maningo, had also filed a Motion to Continue on his behalf. 1 App. 125-130.
14 O’Keefe informed the court that he was not prepared to proceed to trial. 1 App.
15 132-134. The Federal Court had previously denied a pro se request for stay of the
16 instant action. However, after he had been appointed an attorney to represent him
17 on his federal matters, his federal public defender had filed a motion for
18 reconsideration regarding a stay that was pending during the June 5 calendar call.
19 1 App. 141. O’Keefe’s federal public defender was also present at this hearing
20 and informed the court of the importance of postponing the trial during the
21 pendency of the federal action, and due to the fact that O’Keefe was not ready to
22 proceed because of the federal case. 1 App. 141-143. However, the district court
23 denied the motion and determined that trial was going to proceed as scheduled.
24 The district court’s decision not to continue the trial violated O’Keefe’s
25 constitutional rights to a fair trial, and as such, his conviction should be reversed.

26 **D.** The district court erred, and denied O’Keefe his state and federal
27 constitutional rights to due process and a fair trial, by allowing a substitute judge
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preside over the trial. As stated above, during calendar call O’Keefe requested that the trial be continued for multiple reasons. However, Judge Villani was extremely opposed to a continuance, and stated that he had set two weeks aside to accommodate this trial. 1 App. 143. O’Keefe made it clear to the court that he was not ready to proceed and had been focusing all his attention on his federal matters.

As this court is aware, this case has a long history. This is the third time that O’Keefe has stood trial for this charge. Numerous pretrial motions had been filed for all three trials, and countless rulings had been made by Judge Villani through motions, hearings, and trials regarding evidence and testimony issues. It would be impossible for any other judge to have understood the complex history of this case and been aware of all prior rulings going forward to trial.

When trial started, however, Judge Villani was absent, and Judge Bonaventure was taking his place. To receive a fair trial, O’Keefe was entitled to have the judge who had presided over the first two trials and had given rulings on the numerous pretrial motions and hearings hear the third trial. As such, O’Keefe did not receive a fair trial, and his conviction should be reversed.

E. The district court abused its discretion, erred, and violated O’Keefe’s state and federal constitutional rights by refusing instructions proffered by O’Keefe and by overruling instructions which were objected to by O’Keefe. The court rejected O’Keefe’s instruction regarding defining an abandoned and malignant heart. 5 App. 1148-1151. O’Keefe requested an instruction more specifically defining an abandoned and malignant heart in addition to the state’s implied malice instruction. The failure to give the instruction proffered by the defense, and the giving of instructions objected to by the defense deprived O’Keefe of his state and federal constitutional rights to have the jury properly

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instructed on the elements of the offense and deprived him of a fair trial. *See Sandstrom v. Montana*, 442 U.S. 510 (1979).

24. **Preservation of issues:** All issues raised herein were preserved by timely objections at the time of trial and/or by pretrial motions, as set forth above.

25. **Issues of first impression or of public interest:** Yes. O’Keefe respectfully requests full briefing so that each of these issues may be adequately set forth and so appropriate legal authority may be cited in support of each of the issues presented.

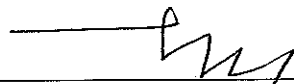
CERTIFICATE OF COMPLIANCE

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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 1st day of tm~~October~~ November, 2012.



LANCE A. MANINGO, ESQ.
Nevada Bar No. 006405

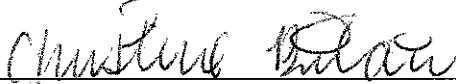
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CERTIFICATE OF MAILING

I, hereby certify that on the 2nd day of November, 2012, I did serve a true and correct copy of the foregoing AMENDED FAST TRACK STATEMENT by depositing same in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717



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