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Respondent.

Case No. 55716

1

1 **DECLARATION OF P. DAVID WESTBROOK**

2 1. I am an attorney duly licensed to practice law in the State of Nevada and the
3 Deputy Public Defender assigned to represent LESEAN TARUS COLLINS on appeal
4 currently pending before this Court.
5

6 2. During my preparation of the opening brief in this matter, I discovered that on
7 November 2, 2009, a 15-minute portion of the record had been placed under seal by the
8 Court. My need for this transcript formed the basis of my last continuance.
9

10 3. I have contacted District Court 12 on numerous occasions in an attempt to
11 obtain this transcript, both by telephone and email. A copy of my email communications
12 with District Court 12 is attached. The emails explain in detail both the importance of the
13 transcript, and the necessity for redacting it before it is un-sealed.
14

15 4. I have been assured that chambers is working on the issue. Judge Leavitt is
16 planning to obtain the JAVs Recording and review it, however; I have been given no
17 timeline for the completion of this review. I have also asked to meet with the judge in
18 person regarding this issue, but I have not yet received a response.
19

20 5. I cannot complete the opening brief in this case without this transcript. The
21 transcript will impact the key issue on appeal and proceeding without it would deny
22 Lesean Collins effective assistance of counsel. In addition, the production of this
23 transcript must be handled with the utmost care to avoid prejudicing his defense in his
24 pending murder case.
25

26
27 ///

28 ///

1 I declare under penalty of perjury that the foregoing is true and correct to
2 the best of my information and belief.

3 EXECUTED on the 9th day of May, 2011.
4

5 
6 P. DAVID WESTBROOK
7

8
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that this document was filed electronically with the Nevada
11 Supreme Court on the 9th day of May, 2011. Electronic Service of the foregoing
12 document shall be made in accordance with the Master Service List as follows:
13

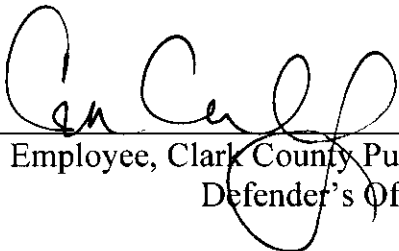
14 CATHERINE CORTEZ MASTO
15 STEVEN S. OWENS

P. DAVID WESTBROOK
HOWARD S. BROOKS

16 I further certify that I served a copy of this document by mailing a true and
17 correct copy thereof, postage pre-paid, addressed to:
18

19 LESEAN TARUS COLLINS
20 NDOC No. 85039
21 c/o High Desert State Prison
22 P.O. Box 650
23 Indian Springs, NV 89070

24 BY


Employee, Clark County Public
Defender's Office
25
26
27
28

Carrie Connolly

From: David Westbrook
Sent: Monday, May 09, 2011 5:50 PM
To: Carrie Connolly
Subject: Collins Motion. Please print the attached email string and include it as an exhibit.
Attachments: Collins_May 9 Extension.rtf

Hi Dee-- thanks for calling me back so quickly! Per our phone conversation, here is another synopsis of the issue:

There are two cases involved: our case is an arson case. In addition, Collins has a pending murder case being handled in a different department. His attorney in the murder case is Ivette Maningo. The murder case has not yet gone to trial. Our case, the arson case, resulted in a conviction following a jury trial and I am doing the appeal now.

One of the main issues on appeal in the arson case concerns a request for a continuance that was made by the defense attorneys. In order to justify the request, the attorneys felt it necessary to share certain aspects of their defense strategy. The District Attorney was excused, and there was around 18 minutes of ex parte argument. Ivette Maningo was also present during this argument because the arson case and the murder case are related. In fact, the same prosecutor is handling both cases. Ms. Maningo apparently made some kind of record regarding the murder case as well.

The court denied the continuance and the transcript was sealed. I discovered the existence of the transcript during my research on the appellate brief. I contacted Sue on or before April 11th to see if I could meet with the judge to review the argument and determine whether it was relevant to the appeal. The judge offered to unseal the transcript in its entirety, but that would likely irrevocably prejudice the active murder case. Sue contacted me on April 12th to inform me that the judge was ordering the CD so she could refresh her memory. I didn't hear anything else for a few weeks, so I contacted chambers again on May 5th. That's when you and I began talking.

I would like to meet with the judge to review the JAVs recording and determine whether a transcript needs to be produced. I can meet anytime after Tuesday of this week. Ms. Maningo would also like to be present as well. If we decide to produce a transcript, it should remain under seal until it is redacted with Ms. Maningo's input. Once we have an acceptable redaction, I will file a Motion to Unseal the Redacted Transcript and enter into the record. That will allow me to produce the transcript to the Supreme Court as part of the appellate record.

Again, I am filing a motion to continue my brief today, so if I can get a solid date to meet with the judge, it will help me determine how much of a continuance I need.

Tanks again!

-David

-----Original Message-----

From: David Westbrook
Sent: Mon 5/9/2011 9:43 AM
To: Deaton, Sue
Subject: RE: C253455 - Lesean Collins

Hi Sue (or Dee):

Any luck finding out the status of the Collins JAVS recording? My Supreme Court deadline is today, so I am going to have to continue the case. I'd like to be able to give the Court an accurate estimate of how long it will take to get a redacted transcript. Again, I would prefer meeting with Judge Leavitt in person before any decision is made regarding the transcript. That would allow me to bring Ivette Maningo along to review the record; she has Collins' active case and needs to be involved in redacting the transcript. The transcript cannot simply be "unsealed" because it would likely prejudice the active murder case.

5/9/2011

If you need me, I can be reached at 439-4165.

Thanks!

David Westbrook
Senior Deputy Public Defender
(702) 439-4165

-----Original Message-----

From: Deaton, Sue [mailto:DeatonS@clarkcountycourts.us]
Sent: Fri 5/6/2011 10:11 AM
To: David Westbrook
Subject: RE: C253455 - Lesean Collins

I am temping for Sue and will check this out and get back to you.

Dee Grimm, PTH District Court XII
(702) 671-4372 Office
(702) 671-4371 Fax

From: David Westbrook [mailto:westbrpd@ClarkCountyNV.gov]
Sent: Thursday, May 05, 2011 9:11 PM
To: Deaton, Sue
Subject: RE: C253455 - Lesean Collins

Hey Sue-- just wondering if the judge has had time to obtain and review the JAV recording in this case. Please let me know. Thanks!

David Westbrook
Senior Deputy Public Defender
(702) 439-4165

-----Original Message-----

From: Deaton, Sue [mailto:DeatonS@clarkcountycourts.us]
Sent: Tue 4/12/2011 2:21 PM
To: David Westbrook
Subject: RE: C253455 - Lesean Collins

Judge is getting CD of sealed portion to listen to so she can refresh her memory. We haven't forgotten.

Sue K. Deaton
Judicial Executive Assistant to
the Honorable Michelle Leavitt
District Court XII
(702) 671-4372 Office
(702) 671-4371 Fax

From: David Westbrook [mailto:westbrpd@ClarkCountyNV.gov]
Sent: Tuesday, April 12, 2011 2:24 PM
To: Deaton, Sue
Subject: Re: C253455 - Lesean Collins

5/9/2011

Anything new on the transcript?

On Apr 11, 2011, at 12:30 PM, "Deaton, Sue"
<DeatonS@clarkcountycourts.us> wrote:

I haven't done anything yet. Give me time this afternoon to run it by the Judge again.

Sue K. Deaton
Judicial Executive Assistant to
the Honorable Michelle Leavitt
District Court XII
(702) 671-4372 Office
(702) 671-4371 Fax

From: David Westbrook [mailto:westbrpd@ClarkCountyNV.gov]
Sent: Monday, April 11, 2011 12:32 PM
To: Deaton, Sue
Subject: Re: C253455 - Lesean Collins

There is... Collins apparently discussed his strategy in his pending murder case during the sealed hearing, and the same DA who handled the arson trial is handling the murder trial. The transcript must remain sealed, at least until Ivette Maningo clears the transcript. Unsealing the transcript could cause big problems in the murder trial.

I'd be glad to come discuss this with the Judge. Is she available?

On Apr 11, 2011, at 12:05 PM, "Deaton, Sue" <
mailto:DeatonS@clarkcountycourts.us> DeatonS@clarkcountycourts.us>
wrote:

Judge said no reason for it to remain under seal now.

Sue K. Deaton
Judicial Executive Assistant to
the Honorable Michelle Leavitt
District Court XII
(702) 671-4372 Office
(702) 671-4371 Fax

From: David Westbrook
[mailto:westbrpd@ClarkCountyNV.gov]
Sent: Monday, April 11, 2011 10:44 AM
To: Deaton, Sue
Subject: RE: C253455 - Lesean Collins

5/9/2011

If I do need to produce part of the transcript as part of my appeal, I will be filing a motion to unseal portions of the transcript. My motion will be accompanied by a redacted version of the transcript, which I will have approved by Ivette Maningo (Collins' attorney on his pending trial) before filing the motion. Of course, my motion will also be filed under seal.

From: Deaton, Sue [<mailto:DeatonS@clarkcountycourts.us>]
Sent: Monday, April 11, 2011 10:05 AM
To: David Westbrook
Subject: C253455 - Lesean Collins

You can have 18 minute portion of Nov. 2, 2009 transcript. I'll have my Court Recorder prepare that portion and notify you when it's available.

Sue K. Deaton
Judicial Executive Assistant to
the Honorable Michelle Leavitt
District Court XII
(702) 671-4372 Office
(702) 671-4371 Fax