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C253455

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3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

[Signature]
CLERK OF COURT

5
6 **STATE OF NEVADA,**

7 **Plaintiff,**

8 **vs.**

9 **LESEAN T. COLLINS,**

10 **Defendant.**

)
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) **CASE NO. C-253455**
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) **DEPT. XII**
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11
12 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**

13 **FRIDAY, NOVEMBER 6, 2009**
14 ***TRANSCRIPT OF PROCEEDINGS***
15 ***TRIAL BY JURY - DAY 3***

16
17
18 ***APPEARANCES:***

19 **For the State:**

JOSHUA L. TOMSHECK, ESQ.
JACQUELINE JEANNEY, ESQ.
Deputy District Attorneys

20
21 **For the Defendant:**

TIERRA D. JONES, ESQ.
ABIGAIL PAROLISE, ESQ.
Deputy Public Defenders

22
23
24
25 **RECORDED BY: KERRY ESPARZA, COURT RECORDER**

1 FRIDAY, NOVEMBER 6, 2009 AT 11:31 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: He's in custody.

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: Good morning. This hearing is taking place outside the
7 presence of the jury panel. Remember, I told you this morning I was going to
8 ask you whether you were going to testify or not.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: What have you decided?

11 THE DEFENDANT: I will, Miss -- Ma'am.

12 THE COURT: You will testify?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Had to find that out before I could number the
15 instructions. You had an opportunity to discuss it with your lawyers?

16 THE DEFENDANT: Uh, pretty much; yes.

17 THE COURT: Okay.

18 THE DEFENDANT: Pretty much; yes.

19 THE COURT: Do you have any questions of me?

20 THE DEFENDANT: Not at the moment, ma'am.

21 THE COURT: Okay. Well, now is the time to ask because it's not like
22 I'm going to ask any of your questions -- answer any of your questions later.

23 THE DEFENDANT: Uh, that would be a no-no.

24 THE COURT: Pardon?

25 THE DEFENDANT: That would be a no.

1 THE COURT: Okay. And remember, you're going to be subject to cross
2 examination by the Deputy District Attorney.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. And just so the record's really clear, you understand
5 these are the same D.A.'s that are prosecuting you in your murder case?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. All right. At this point, is there any objection to the
8 verdict form?

9 MS. PAROLISE: No, Your Honor.

10 THE COURT: The verdict form will be lodged with the Clerk of the Court
11 and I'll just go get copies for us and then we'll settle the instructions. There's
12 20.

13 [A short break is taken at 11:33 a.m.]

14 [Trial resumes at 11:47 a.m.]

15 THE COURT: I know these are a little messy. Sue has gone down to
16 another copier and they'll be clean for the jury panel.

17 The record reflect, Mr. Collins is present in the courtroom with us.
18 This hearing is continuing to take place outside the presence of the jury panel.

19 [Outside the presence of the jury panel]

20 THE COURT: Is the State prepared with Court's Proposed Instructions 1
21 through 20?

22 MR. TOMSHECK: Yes, Judge.

23 THE COURT: Any objection to those instructions?

24 MR. TOMSHECK: No, Your Honor.

25 THE COURT: Do you have any other instructions that you would like to

1 propose at this time?

2 MR. TOMSHECK: We do not.

3 THE COURT: Is the Defense familiar with the Court's Proposed
4 Instructions 1 through 20?

5 MS. PAROLISE: Yes, Your Honor, we had some objections that we'd like
6 to put on the record.

7 THE COURT: Okay. Go ahead.

8 MS. PAROLISE: Let's see. Specifically, the Defense objects to the
9 instruction: It is not a defense to a charge of arson. Do you need the number,
10 Your Honor?

11 THE COURT: Right. I can find it. It's Number 8.

12 MS. PAROLISE: Thank you, Your Honor. And our objections,
13 specifically, to this instruction were that this is not a Nevada case, first and
14 foremost. It's true that the Nevada Supreme Court cited to it but it was on
15 another issue.

16 Our problem is, is that, there are some circumstances where the
17 Defendant, not being present at the time the fire, was discovered, would be a
18 defense; and I think it's confusing to the jury. I think, in this circumstance, it is
19 a defense, because there's no testimony and there's no evidence in the record
20 that the fire was discovered after it commenced.

21 THE COURT: Okay. And again, I'll tell you -- I don't understand that
22 argument. There's no evidence that the fire was discovered after it was
23 commenced. That's what all the evidence is. That the first people that went
24 to the house saw that their -- or felt the door; the door was hot; they smelled
25 the smoke; determined it was on fire. So the fire commenced, then it was

1 discovered.

2 MS. PAROLISE: It's my --

3 THE COURT: Am I just not understanding?

4 MS. PAROLISE: Well, Your Honor, it's -- I believe the evidence was at
5 7:05, Officer Vital discovered the fire. He felt the doorknob. That's when he
6 knew it was hot. The fire inspector came in here and testified that he
7 approximated the start of the fire at 7:06.

8 THE COURT: Okay.

9 MS. PAROLISE: That's when he said the offense occurred.

10 THE COURT: Okay. And I told you I'd take your word for that because I
11 couldn't recall if he said exactly that, but I could recall that the officer said
12 7:05. So I'll take your word. Mr. Tomscheck.

13 MR. TOMSHECK: Judge, the actual proffered instruction doesn't have
14 the word: Commence. It talks about after the fire was --

15 THE COURT: Discovery.

16 MR. TOMSHECK: Right. And I provided cases. I let the Defense borrow
17 them and I haven't got them back, so I can't provide the Court with specific
18 citations. The California case.

19 MS. JONES: I think you gave that one to the Judge.

20 MR. TOMSHECK: You may have my copy, Judge.

21 THE COURT: Sorry.

22 MR. TOMSHECK: The actual case that was --

23 MS. PAROLISE: *People v. Sherman*.

24 MR. TOMSHECK: *People v. Sherman*. It's a California case. It's an older
25 decision. It has been cited by the Nevada Supreme Court in *O'Bryant v. State*.

1 The citation of that case is 72 Nev. 100. It essentially talks about -- that it's
2 not a defense that the Defendant wasn't present at the time the fire's
3 discovered. It's one of the things it talks about in the California case. It's
4 obviously good law. It's been recognized as good law in the State of Nevada.

5 Factually, I can probably conceive of some situation where it could
6 be a defense. It's just not this case. We have evidence that the Defendant's
7 there at the time it occurred. And regardless of whether or not Ms. Parolise
8 may have asked Investigator Lomprey, yesterday: Is it your understanding
9 about something occurring at 7:06? That doesn't matter.

10 He wasn't there on the day; he went to the house three days later.
11 The evidence is that there is a fire call -- there was a call for service out at that
12 address. They went out there at 7:05; the fire was reported. So the
13 Defendant's there within a few minutes of that.

14 The thrust of the instruction is, he doesn't have to be there at the
15 time the fire's called in. That's what -- that's what the instruction says. I think
16 that's obvious. And under the circumstances, it's a wholly appropriate
17 instruction.

18 THE COURT: And the Court agrees, an Instruction Number 8 will be
19 given. Any other objections?

20 MS. PAROLISE: Yes, Your Honor, two more. We also object to this
21 instruction: It's not necessary that the State prove the Defendant actually
22 committed an arson in the house. It goes on, it says: The gist of the crime of
23 burglary. And our objection is that this is redundant. It's already covered in
24 the other burglary instructions.

25 THE COURT: It's Instruction Number 11 and the Court overruled that

1 objection -- is going to give Instruction Number 11.

2 MR. TOMSHECK: And Judge, just if I could make a brief record about
3 that --

4 THE COURT: I'm sorry.

5 MR. TOMSHECK: I think the Defense's position was, it's covered
6 elsewhere in the instructions and, candidly; I don't know where. I mean, I've
7 read all the other instructions. That's the only instruction that talks about that
8 particular issue.

9 THE COURT: I think they think it's redundant with Number 9. I don't
10 agree. I think Instruction Number 11 clearly lays out that a burglary is
11 committed before you enter a building when you enter with the intent to
12 commit a felony, therein.

13 Okay. Any other instructions that you object to?

14 MS. PAROLISE: And my last objection would be: To every person who,
15 in the commission of a burglary, commits any other crime may be prosecuted
16 for each crime separately. I think that this is a redundant instruction also.

17 I don't think that it -- I think that the Indict- -- or the Indictment
18 makes it clear that each of these are charged separately, and that that would
19 be our objection to that one, Your Honor.

20 THE COURT: Do you want to say anything?

21 MR. TOMSHECK: What instruction is she referring to?

22 THE COURT: Number 10.

23 MR. TOMSHECK: Number 10? Same thing as I said to Number 11,
24 that's not anywhere else in the instructions. That's a correct statement of the
25 law. It's an appropriate instruction.

1 THE COURT: Number 10 will be given. Does Defense have any
2 additional instructions that they would like to present at this time?

3 MS. PAROLISE: Yes, Your Honor.

4 THE COURT: Have they been marked?

5 MS. PAROLISE: We have four instructions.

6 THE COURT: Why don't you have them all marked by the Clerk right
7 now. She'll mark them as Court Exhibit next-in-line.

8 MS. PAROLISE: I'm sorry, five instructions, Your Honor.

9 THE COURT: Five?

10 MS. PAROLISE: Five instructions.

11 THE COURT: And, you know what, you can stand up here with me so
12 we can work off of these, then we can make sure we're talking about the same
13 instruction. You can hand me that one, April. You can start that one.

14 Okay. So the Defense proposes Court's Exhibit Number 4?

15 MS. PAROLISE: That's correct, Your Honor.

16 THE COURT: And this is the expert --

17 MS. PAROLISE: Did you want --

18 THE COURT: Yes. Do you want to stand up here, too?

19 MR. TOMSHECK: I've seen a copy of it, Judge.

20 THE COURT: It's the expert opinion instruction.

21 MS. PAROLISE: That's correct, Your Honor, and it's our opinion. It's our
22 contention that Captain Lomprey was an expert witness. The State's position
23 was that he has not been an expert witness, however, it is our position he was
24 an expert witness.

25 Q He did testify to having specialized training. He also testified

1 as to the origin of the fire. That fire -- three separate fires were set and that
2 they did not communicate with each other, and this is all -- this is all expert
3 testimony, Your Honor. That's why we're asking for this instruction.

4 MR. TOMSHECK: Judge, that's an issue we've already talked about,
5 whether he was or is not an expert. It's the State's position he was -- did not
6 testify about anything that an expert witness would. He wasn't asked opinion
7 questions. He wasn't asked to draw any conclusions. He was simply asked
8 what his background is, what his training is, and what he did in this case.

9 No different than a crime scene analyst who testifies or a detective
10 who testifies about having, for instance, in a case of a detective, specialized
11 training in interviewing people and the interview they conducted, and
12 ultimately, what they did in the case.

13 So it's the State's position that he didn't testify as an expert, thus,
14 giving an instruction such as that would be inappropriate.

15 I don't, per se, have any objection to it, other than the fact that
16 there wasn't any expert testimony in this trial making that particular instruction
17 irrelevant.

18 THE COURT: Okay. So Court's Exhibit Number 4 will be rejected. The
19 next one is Court's Exhibit Number 5: If evidence is susceptible to two
20 constructions or interpretations.

21 MS. PAROLISE: That's correct, Your Honor, and I believe it's our
22 position on that one that that's a correct statement of the law. It is not
23 specifically covered in the beyond a reasonable doubt instruction and that's
24 why we're asking for it.

25 THE COURT: Well, I noted my objection to this because it talked about

1 innocence, a few times in this instruction. And in a criminal trial, we talk about
2 guilty or not guilty, so I had a problem with that, and then the State objected.

3 MR. TOMSHECK: Additionally, Judge, in addition to what Your Honor
4 just said, they cite a case from 1972, *Crane v. State*. It's 88 Nev. 684.

5 Subsequent through that, in 1976, the Nevada Supreme Court
6 decided *Bails v. State*. It's 92 Nev. 90 something. I can't even read my own
7 writing, but it's a 1976 case. It's Bails, B-A-I-L-S and it talks about, in a case,
8 where there's a mixture of direct and circumstantial evidence.

9 It is not error for the Court not to give that proffered instruction
10 and is appropriate not to give it if they're fully instructed on the State law and
11 other instructions, which, it's the State's position that they are in this case.

12 MS. PAROLISE: And, Your Honor, this is -- if I could respond to that.
13 This is a purely circumstantial case. There was no direct evidence. No one
14 testified they saw Lesean Collins set this fire and that's why we're asking for
15 it.

16 THE COURT: Okay. Court's Exhibit Number 5 will be rejected. Court's
17 Exhibit Number 6: If reasonable doubt exists as to whether a person's conduct
18 is disallowed by law, such doubt must be resolved in favor of the accused.

19 And I told you, I did think this was accurate, but this would be an
20 issue of law that would be brought to the Court before and the State would be
21 required to dismiss it, because whether a person's conduct is disallowed by
22 law, the only way I could think of this is if the State passed a law after the
23 person committed the crime, obviously, they can't be charged with that crime.
24 Do you agree?

25 MS. PAROLISE: We do not agree, Your Honor. We -- it is our

1 position it's a correct statement of the law. It's not covered --

2 THE COURT: I think it is, too.

3 MS. PAROLISE: And it's not covered in the other instructions that were
4 given. I think that it's particularly important in a case like this where there is
5 no direct evidence. There's no forensic evidence. It's mostly -- it's mostly
6 testimony.

7 THE COURT: Okay. So then it's coming back to -- it's a circumstantial
8 case and then it's up to the jury as to whether they -- what weight to give to
9 the evidence --

10 MS. PAROLISE: Correct, Your Honor.

11 THE COURT: -- direct and circumstantial. And it's up to them to give the
12 amount of weight they want to give to any evidence. So I have a problem with
13 this instruction. I was not inclined to give it. Does the State want to say
14 anything?

15 MR. TOMSHECK: Briefly, Judge. The case they cite is *Demain v. State*,
16 *103 Nev. 121*. That's a case where a Defendant was charged with battery by
17 a prisoner, and ultimately the question was whether or not he was in lawful
18 custody at the time. That's the type of situation you're talking about.

19 THE COURT: Okay.

20 MR. TOMSHECK: There is a conclusion drawn that he wasn't in lawful
21 custody at the time. Obviously, it would be incumbent upon the State not to
22 proceed -- that type of situation.

23 That's not what we have here. We have something that's
24 obviously unlawful conduct. The question is not whether or not the Defendant
25 was allowed to commit the acts he did, it's whether or not he did it. It's --

1 THE COURT: Right.

2 MR. TOMSHECK: It's an identity case. He says he didn't start the fire.
3 The proposed instruction has nothing to do with the facts of this case.

4 THE COURT: And I agree. I don't think this is a case of whether the
5 person's conduct is disallowed or not. I mean, this is a case of -- he admitted
6 to one of the counts, Count 3. And Count 1 and 2, he's contended it was not
7 him; he did not do it.

8 So, it's not an issue of whether his conduct is disallowed or not, so
9 Court's Exhibit Number 6 is rejected. Number 7 is -- okay. I'm not quite sure
10 why you put Number 7 as one that you're proposing because I gave you this
11 instruction.

12 MS. PAROLISE: Then it was a mistake, Your Honor.

13 THE COURT: And just so you know, in fact, I put it right after the
14 State's. Okay. The State's instruction is Number 4 and then Number 5 is your
15 instruction.

16 MS. PAROLISE: And that was my mistake, Your Honor.

17 THE COURT: Okay. So you want to withdraw Court's Exhibit
18 Number 7?

19 MS. PAROLISE: Please.

20 THE COURT: Okay. I'll just put withdrawn. The objection is withdrawn.

21 MS. PAROLISE: Yes, Your Honor.

22 THE COURT: The proposal is withdrawn. You can still keep it marked.

23 Number 8. Number 8. Court's Exhibit Number 8: Every person
24 charged with -- oh, yeah, I see. Every person charged with the commission of
25 a crime shall be presumed innocent until the contrary is proved by competent

1 evidence beyond a reasonable doubt and --

2 MS. PAROLISE: That's --

3 THE COURT: -- and I told you the reasons I wasn't going to do this, is
4 because the Supreme Court's clear pronouncements that the reasonable doubt
5 instruction is supposed to be given exactly as it is given; that I'm not supposed
6 to deviate from it in any way, shape or form, and that, attorneys have even
7 been held in contempt of court for not complying with their admonition that we
8 instruct the jury pursuant to Instruction Number 15.

9 So while I do believe this is correct, I have an obligation to give
10 Instruction Number 15.

11 MS. PAROLISE: Okay.

12 MR. TOMSHECK: Judge, the State would concur that the proposed
13 instruction comes from NRS 175.201. It is a statutory definition, however, it's
14 included in the commonly given Jury Instruction Number 15 which is the
15 reasonable doubt instruction which comes from 175.211.

16 And the case the Court's referring to, I think, most recently, that
17 talks about that you can't attempt to quantify, supplement or clarify the
18 statutory language is *Evans v. State*. It's very clear that we can't change or
19 alter it in anyway.

20 THE COURT: Right. And I thought their -- maybe that's after *Randolph*
21 *v. State*. *Randolph* was a case that I had. But Instruction Number 15 also
22 starts out with: The Defendant is presumed innocent until the contrary is
23 proved. This presumption, placed upon the State, the burden of proving,
24 beyond a reasonable doubt, every material element of the crime charged in that
25 the Defendant is the person who committed the offense.

1 So -- and it also says at the very bottom: If you have a reasonable
2 doubt as to the guilt of the Defendant, he's entitled to a verdict of not guilty.

3 So Number 8 will be rejected. Other than that, any proposed instructions?

4 MS. PAROLISE: No, Your Honor.

5 THE COURT: Okay.

6 MS. PAROLISE: And at this time, would you like us to proffer the
7 affidavit we talked about yesterday?

8 THE COURT: That's right. And you're going to proffer it under seal and
9 have an envelope and a caption on it?

10 COURT CLERK: Well, I'll seal all of it.

11 THE COURT: Okay.

12 COURT CLERK: Because I have to do some stuff with it.

13 MS. PAROLISE: Thank you.

14 MR. TOMSHECK: Judge, while we're doing that, there's one thing that
15 was brought up yesterday and that was the Defense's motion for mistrial. I
16 just want the Court, at some point, to make a record should Mr. Collins testify,
17 that I think that that completely cures that issue, given the fact they're going to
18 hear about his prior felony convictions.

19 THE COURT: Right. I think it cures a lot of issues, and so, I'll wait until
20 he testifies in order to make that record.

21 MS. PAROLISE: And --

22 THE COURT: And I know --

23 MR. TOMSHECK: If I could just ask the Court to remind me on that
24 issue.

25 THE COURT: When we were doing jury instructions, I think I made it

1 pretty clear to both sides that if he chose to testify it was going to cure a lot of
2 the issues that the Defense had raised.

3 MS. JONES: And, Your Honor, just -- now that we know Mr. Collins is
4 going to testify -- me and Mr. Tomsheck had spoke this morning -- Mr.
5 Tomsheck informs me that he intends to play my client's interview with North
6 Las Vegas Police Department should he testify in this case.

7 And I know the Court hasn't seen the interview, however, I have
8 seen the interview. And the interview begins with my client being asked
9 questions regarding this case. There's a point where my client decides to
10 conclude the interview if he's not going to be arrested.

11 At that point, he is informed that he's going to be arrested. At
12 that point he asks to speak to a sergeant, and basically, he has to be taken
13 down by five officers in the interview. It is Defense's position that that is
14 prejudicial as it indicates some sort of resisting arrest, which he was originally
15 charged with in the criminal complaint, he was not charged with in the
16 Indictment.

17 THE COURT: I thought you said, just to cut to the chase, you weren't
18 going to get into all that.

19 MR. TOMSHECK: I don't know what I'm going to get into because I have
20 no idea what he's going to say.

21 THE COURT: Okay.

22 MR. TOMSHECK: Depending on what he says, it might --

23 THE COURT: All right. Then, you know what, if you -- because I don't
24 know. We talked about it yesterday and you said there was some resisting
25 issues. Mr. Tomsheck said: I don't have any plan on going into any resisting

1 issues.

2 If you -- before you start your cross examination, if you feel you
3 want to show the video of him being taken down by five officers, you need to
4 approach the Court and ask.

5 MR. TOMSHECK: Just so the Court's aware, factually, Ms. Jones'
6 representation isn't actually how it occurred. I mean, there's parts of that that
7 are correct, but that's not exactly what happened. I don't know that a decision
8 could be made prior to cross. I can assure --

9 THE COURT: I don't think you can either.

10 MR. TOMSHECK: I can assure the Court that prior to playing it, I'll
11 certainly get a clear ruling on what's admissible and what's not.

12 THE COURT: Right, because I have no idea what he's going to say.

13 MS. JONES: And, Judge, I understand that. And, Judge, I just wanted
14 to make a record about that because there is also a section of the interview
15 where the interview begins to talk about Mr. Collins' murder case.

16 They bring in another detective who begins to question him about
17 the murder case, and it would also be our position that that murder case has
18 nothing to do with this case. That part of the investigate -- interview is not
19 relevant and we would ask that the video be stopped before that part of the
20 interview begins.

21 THE COURT: Okay. And again, you know, it's hard for me to make --
22 generally, I'd say: Yeah, there's no reason for us to play the interview
23 regarding the murder, but I know there are some things that are intertwined
24 with this case, and so, I have to wait and see what he says.

25 MS. JONES: And, Your Honor, if we could just get a ruling though,

1 before the video is played --

2 THE COURT: Absolutely.

3 MS. JONES: -- just so we could make a record of it now.

4 THE COURT: In fact, I'll ask Mr. Tomsheck to have me clear the
5 courtroom if he plans to do anything that's going to ruffle your feathers, and he
6 knows what's going to ruffle your feathers. Okay.

7 MS. JONES: Thank you, Your Honor.

8 THE COURT: And the jury's been asked to come back at 1 o'clock. You
9 okay, Mr. Collins? You're still going to testify?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. We'll see -- is he going to have lunch?

12 THE DEFENDANT: I'm going to skip lunch this time.

13 THE COURT: Well, you're always complaining you didn't get anything to
14 eat.

15 THE DEFENDANT: Well, right now -- well, I can wait on -- right now, I
16 could wait on everything.

17 THE COURT: Okay.

18 MS. JONES: And, Your Honor, that would actually be my position as I
19 need to speak with him before he prepares to testify.

20 THE COURT: Okay. You want the courtroom?

21 MS. JONES: Me and Ms. Maningo would like to speak with him and Ms.
22 Parolise.

23 THE COURT: Okay. All right. We'll turn the recording off and you can
24 have the courtroom and we'll leave, but --

25 MS. JONES: Thank you, Your Honor.

1 THE COURT: -- with the exception of the C/O's, obviously.

2 MS. JONES: We understand that, Your Honor.

3 THE COURT: Okay.

4 THE DEFENDANT: Thank, Your Honor.

5 [Defense counsel confer with client in courtroom]

6 [Trial resumes at 1:14 pm.]

7 THE COURT: Let the record reflect this hearing is taking place outside
8 the presence of the jury panel.

9 [Outside the presence of the jury]

10 THE COURT: Is Mr. Collins going to come in and join us this time?

11 MS. JONES: No, Your Honor. Well --

12 MS. PAROLISE: Well, he's indicated that he does not want to testify,
13 however, I don't know if we --

14 THE COURT: Well, I'm going to make a record of what I was told that
15 happened and both sides can agree and add anything they want.

16 CORRECTION OFFICER: All right. He wants to come back in and sit
17 down, so what's the deal for this?

18 MS. JONES: In --

19 THE COURT: Let him come back in and sit down.

20 MS. JONES: We've undressed him, Your Honor.

21 CORRECTION OFFICER: I just want to make -- yeah, he didn't want to
22 wear his thing. He dressed back in his clothes for the thing.

23 THE COURT: You got to be kidding me?

24 CORRECTION OFFICER: Yeah, he said --

25 THE COURT: So in between the break --

1 CORRECTION OFFICER: -- he didn't want to wear it, Judge.

2 THE COURT: -- he got back in blue stuff?

3 COURT CLERK: Just within the last two minutes.

4 CORRECTION OFFICER: Yeah, he said he took it off and he said:

5 That's it.

6 THE COURT: Within the last two minutes?

7 CORRECTION OFFICER: Uh-huh.

8 THE COURT: He got undressed back there?

9 MS. PAROLISE: Yes.

10 MS. JONES: Yes.

11 THE COURT: Okay. Bring him in. Is he dressed?

12 MS. PAROLISE: Yes.

13 MS. JONES: He's in the blue.

14 THE COURT: Okay. The record reflect that Mr. Collins is back in the
15 courtroom. Mr. Collins.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: What's the deal? Why are you now in blues?

18 THE DEFENDANT: Huh?

19 THE COURT: The record reflect this hearing is taking place outside the
20 presence of the jury panel.

21 [Outside the presence of the jury panel]

22 THE COURT: Why are you in prison garb now?

23 THE DEFENDANT: Well, I changed my mind about testifying.

24 MS. JONES: You still need to be dressed.

25 THE COURT: Okay. And I'm going to make a record of what I was told

1 happened. It's the policy in this Court that any Defendant, regardless of who
2 they are, when they take the stand and testify, they follow certain procedures.
3 One of them is, you have to be strapped in. The jury cannot see you.

4 We have practiced it. We've sat over there. We know the jury
5 cannot see you. There is no prejudice, whatsoever. It's a safety and security
6 measure. It's my understanding that they went over there to do that; that you
7 hopped up out of the chair; that you caused quite a raucous in here, and I was
8 immediately -- they immediately came back to get me out of chambers.

9 Is that a pretty accurate representation, Ms. Jones? I mean, I hate
10 to -- you know, as an officer of the Court, you got to tell me if that's what
11 happened in here.

12 MS. JONES: And, Your Honor, what happened is, they were attempting
13 to strap him into the chair. He did not want to be strapped into the chair.

14 And, Your Honor, I did not know that that was the Court's policy,
15 so I don't believe that Mr. Collins was notified that that's the way that this was
16 going to work. I know that I didn't tell him that.

17 THE COURT: Nor would I ever inform an inmate of what my policies
18 regarding security are before I do it.

19 MS. JONES: And, Your Honor, I understand that. I'm just saying, I
20 didn't know and that -- and I know that I didn't tell him that. And then at that
21 point he -- at that point, he did attempt to get up. And at that point, there was
22 an exchange with your marshal and then, at that point, he was taken to
23 holding. He informed the Court -- he said he did not want to testify and he was
24 taken to holding.

25 THE DEFENDANT: When did that become a policy, Ms. Leavitt -- Judge

1 Leavitt?

2 THE COURT: What?

3 THE DEFENDANT: When did it become a policy? Because the last time I
4 was in your courtroom, right --

5 THE COURT: That's what I do.

6 THE DEFENDANT: Okay. I didn't know that, because the last time I was
7 in your courtroom -- I mean, I read the newspaper and stuff and all that. But
8 the last time I was in your courtroom, I walked from here, I walked to the
9 podium and I sat down and I -- no; I didn't walk from here.

10 THE COURT: We weren't even in this building.

11 THE DEFENDANT: I know. I know we was in the old one.

12 THE COURT: Okay. Right.

13 THE DEFENDANT: We were in the old one.

14 THE COURT: So there's different issues in this building that I have to be
15 concerned about. Okay, and I don't have to tell you anything --

16 THE DEFENDANT: I didn't say --

17 THE COURT: -- except that's what you're going to do if you want to sit
18 up there. There is no prejudice to you, none whatsoever. None. So if you
19 don't want to testify because I want to make sure that everybody in the
20 courtroom is safe and secure, that's your decision. What's your decision?

21 THE DEFENDANT: Well, I thought it was -- my decision is -- no; but I
22 want to put this on record. I thought it was -- I think it's very prejudice
23 because the simple fact, if I can't get up, which, for your safety and the rest of
24 the people safety, and the jury's safety -- if I can't get up, and I'm supposed to
25 be innocent until proven guilty --

1 THE COURT: That's right.

2 THE DEFENDANT: -- then I'm supposed to be able to wear my clothes --

3 THE COURT: Right.

4 THE DEFENDANT: -- and present myself as a person that's free to give
5 'em an open mind and an open look, and a person going through a situation,
6 then I should be able to walk over there and demonstrate that I am free. By me
7 being already over there -- when they come over there -- when there's people
8 already taking the stand coming from the streets -- that's coming from the
9 streets and walking all the way in here and taking the stand.

10 And it's already bad enough that I have the same clothes on and
11 everybody else changes their clothes every day, but then I have the same
12 clothes on for two days, and then I asked them to change the top, but I still
13 have the same clothes on. And I'm told that the pants -- don't worry about the
14 pants because the pants -- nobody really looks at the pants.

15 But the jurors do look at me and my demeanor and my situation,
16 that I have the same stuff on every day, and that right there could have caused
17 prejudice towards me.

18 THE COURT: Okay. Well, let me tell you --

19 THE DEFENDANT: But as they walk through there, they get to --

20 THE COURT: -- I do that for everybody.

21 THE DEFENDANT: -- take the stand. I don't.

22 THE COURT: And not even -- not just inmates, not just Defendants.
23 Sometimes there's other witnesses that I have already in the witness stand
24 before the jury comes in. It's not just inmates. It just depends on how the
25 Court goes. But I'll tell you right now --

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: -- no matter what. You are not going to get up from there
3 and walk across the courtroom; you're not. It's not going to happen. Okay.

4 Because of your specific situation, there is no way I'm going to let
5 you get up, unless you want me to have all these officers escort you over
6 there. So that's your decision. I think the best thing is for you to go back in
7 there and change into how you looked before. You looked perfectly fine. You
8 looked a lot better than you had the other days. Go up there, follow the
9 Court's procedures because I'm not going to -- I'm not wavering.

10 You are not going to tell me how to run this courtroom. You're just
11 not going to. So if that's what you want to do, great. We'll give you five
12 minutes to do that because I'm told it only took you about two minutes to rip
13 your clothes off and get back into your blues, or you can just take the stand in
14 your blues. It's up to you. But I have to worry about everybody in the
15 courtroom.

16 THE DEFENDANT: Okay. Well --

17 THE COURT: And you know what, Mr. Collins, let me just tell you
18 something.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I'm going to tell you something. You know what I told the
21 Court Marshal right before we came in here?

22 THE DEFENDANT: Ma'am?

23 THE COURT: Don't worry about Mr. Collins, he's not going to give you
24 one bit of trouble. And what did you do? Oh, my gosh --

25 THE DEFENDANT: I didn't respond to what she said.

1 THE COURT: -- you went crazy.

2 THE DEFENDANT: I didn't respond to what she said. I didn't even
3 comment to what she said, but that's not what happened. What happened
4 was -- all I did was stand up and your sheriff became very, very loud and
5 demanding; and it wasn't even necessary.

6 All he had to do is say: Don't move, Lesean. The first words that
7 came out of his mouth is: I know you're not going to get up, Lesean.

8 And the minute that he went to strap -- to show me that he was
9 going to strap me in, I say -- can I -- can I demonstrate to you what I -- what
10 happened?

11 CORRECTION OFFICER: No.

12 COURT MARSHAL: No, you don't need to demonstrate.

13 THE COURT: No; you can sit down.

14 THE DEFENDANT: Okay. I said -- I said -- I said: Oh, I'm not testifying
15 and I stood up.

16 THE COURT: Okay. That's your choice. Remember I told you it's your
17 choice.

18 THE DEFENDANT: Okay. That's what I did.

19 THE COURT: But let me tell you --

20 THE DEFENDANT: Okay. I just stood up --

21 THE COURT: We'll waive any --

22 THE DEFENDANT: -- and then he became a radical and -- and started
23 yelling at me and: You're not going to get up out of here, whoa, whoa, whoa,
24 and you gotta -- you didn't have to do all that. You didn't have to do all that.

25 THE COURT: Yeah, he did when you --

1 THE DEFENDANT: I'm not the same person --

2 THE COURT: -- jumped up out of the seat --

3 THE DEFENDANT: -- I used to be.

4 THE COURT: -- he absolutely had to do that.

5 THE DEFENDANT: I don't know why because most people, if they're not
6 gonna -- there's not -- there's no evidence of me being violent, ever, in this
7 courtroom. I've never showed any violent tendencies, in this courtroom, here.
8 Yes, I am in the county jail, but there's no violence that I'm showing towards
9 here.

10 There's four officers right there, four. There were four officers
11 right there. There is nothing -- I -- I -- I showed no -- posed no threat for him to
12 talk to me in a manner that he talked to me. All I did was stand up --

13 THE COURT: See, I'm not --

14 THE DEFENDANT: -- there -- there was --

15 THE COURT: -- going to let my guard down no matter who you are.
16 Okay? And I made a mistake by telling the marshal you weren't going to give
17 me any lick of trouble, so you taught me a very valuable lesson.

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I'm not going to let my guard down no matter who it is.
20 Okay? And let me tell you, you're -- you are in custody right now on a murder
21 charge too.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And regardless of the fact that that has nothing to do with
24 this case, I have to be cognizant of that and cognizant of that for all the people
25 in the courtroom. I would be derelict in my duties if I was not. Okay?

1 THE DEFENDANT: Yeah.

2 THE COURT: All right. So what are you going to do? You're going to be
3 strapped in that chair. It gets lowered. The door will be shut and the jury will
4 come in and you'll be sitting in the jury -- in the witness box.

5 [Defense Counsel and Defendant confer]

6 THE COURT: Mr. Collins, Mr. Collins, what are you going to do?

7 THE DEFENDANT: Yes; yes. I'm going to go change and then I'm gonna
8 -- like you said: The five guards can uh, escort me over there.

9 THE COURT: I'm going to sit right here because I'm going to watch
10 everything you do. Go back there, change, and then I'm going to sit and watch
11 how you act, and you're going to go sit and you're going to follow my rules; do
12 you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. And now, I want to make sure a C/O is placed right
15 there and there's a C/O behind this door right now.

16 CORRECTIONS OFFICER: Yes, ma'am. Let's go.

17 THE COURT: Did he actually just say he wants the five C/O's to escort
18 him up to the witness stand? [Indiscernible].

19 COURT CLERK: I'm sorry, Judge.

20 THE COURT: Did he really just say he wants the five C/O's --

21 COURT CLERK: Yes.

22 THE COURT: -- to escort him up to the witness stand?

23 COURT CLERK: I believe that's what he said.

24 MS. JONES: You're strapped in.

25 THE COURT: We can go off, Kerry.

1 [Trial resumes at 1:28 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: Let the record reflect, Mr. Collins has changed back into
4 his street clothes. He has a suit and tie on.

5 COURT MARSHAL: Go ahead and sit down and lock your fingers behind
6 your head. Yeah, just like that. An officer's going to hold onto your hands.
7 There's a Velcro strap. It's not like it's that big a deal. It's not going to hurt or
8 anything. You want to grab it on that side? Got it?

9 CORRECTIONS OFFICER: Yeah.

10 COURT MARSHAL: Okay. I'm going to put your hands down.

11 THE COURT: You can put your hands down, Mr. Collins.

12 [Witness chair is being automatically elevated as it lifts up Defendant]

13 COURT MARSHAL: All right. Scoot up a little bit. Is that as far as you
14 want to go?

15 THE DEFENDANT: Just following your instructions.

16 THE COURT: Okay. You've got to be up -- you have to be up far enough
17 so you can --

18 COURT MARSHAL: Scoot up a little bit more so the speakers --

19 THE COURT: -- speak into the microphone. Okay. See how the jury
20 cannot see you?

21 THE DEFENDANT: I have a problem with that.

22 COURT MARSHAL: Counselor, if you want to step --

23 THE DEFENDANT: That's not the problem I have.

24 COURT MARSHAL: -- into the jury box --

25 THE COURT: You have no problem with that, but I'm told you went

1 crazy when they tried to strap you down.

2 THE DEFENDANT: That's not what happened.

3 THE COURT: Okay. All right. Well, I'm glad you don't have a problem.
4 Everything's good now; right?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: You're all good? Look, I'm even letting your attorneys sit
7 up in the jury box and see if they see anything prejudicial.

8 COURT MARSHAL: You want him up higher? You want -- he's good just
9 like he is?

10 MS. JONES: I think that's fine.

11 COURT MARSHAL: Okay.

12 THE COURT: Okay. So there's no objection by the Defense. And when
13 we come in, remember Mr. Collins, your attorneys are going to get an
14 opportunity to question you first, then the DA, then your attorneys again, then
15 the DA. When you're done, I won't be telling you to step down. We'll take a
16 recess.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay? Okay. Mr. Collins, when the Clerk swears you in,
19 just raise your right hand. Don't stand up. Okay? So when she says she's
20 going to swear you in, raise your right hand, take the oath and just state your
21 name, spell your first and last name for the record. Okay? All right. You can
22 bring the jury panel in.

23 THE DEFENDANT: Before you do it, can I ask them a question? It was
24 an issue before Court and I never got to ask [phonetic] them. I don't know
25 what happened.

1 MS. JONES: May I approach, Your Honor?

2 THE COURT: Sure.

3 [Defense Counsel and Defendant confer]

4 MS. JONES: Your Honor, there is one matter we'd like to address before
5 we bring the jury in. Your Honor, it's our understanding that if Mr. Collins does
6 testify, the State does intend to ask him specific questions concerning whether
7 he would -- there would be a reason for this house to be burned or anything like
8 that that may elicit testimony that gets into Mr. Collins' murder case as the
9 Court is aware. We would just like a specific ruling from the Court on whether
10 or not the State is going to be allowed to ask those type -- those type of
11 questions?

12 THE COURT: I have no idea what I'm going to allow them to -- allow
13 them to ask, because I don't know what you're going to ask him yet, and cross
14 is limited to direct examination. The scope is limited to direct.

15 So, I don't know what you're going to ask him, and you keep
16 wanting me to make rulings about what I'm going to let Mr. Tomscheck ask and
17 what I'm not going to let him ask. I'm not going to do that. If you want a
18 hearing after direct examination, great, I'll give you a hearing.

19 MS. JONES: Okay.

20 THE COURT: Then I'll have been able to hear direct examination.

21 MS. JONES: Okay.

22 THE COURT: Okay?

23 THE DEFENDANT: And do you mean -- okay. So, if you do enter -- so, if
24 you say -- I don't understand it.

25 THE COURT: I cannot make a ruling yet because I don't know what your

1 attorneys are going to ask you on direct examination. I don't know. But I've
2 told you over and over again, and I'm sure your lawyers have told you over and
3 over again, the downfalls of testifying. Okay?

4 And you want to testify, and I told you it was your decision and
5 your decision alone. And I told you I would let you do it no matter what
6 anybody in this room thought, and that's what I'm going to let you do.

7 THE DEFENDANT: I was under the interpretation that it has nothing to
8 do with my murder case.

9 THE COURT: Well, same here. I don't know if it has anything to do with
10 your murder case; so, we'll see.

11 MS. JONES: And, Your Honor, may I approach, just very briefly?

12 THE COURT: Uh-huh. It seems like you're real concerned it has
13 something to do with your murder case.

14 [Defense Counsel conferring with Defendant]

15 THE DEFENDANT: Your Honor, sorry for wasting the Court's time. I
16 cannot testify.

17 THE COURT: Okay.

18 THE COURT: All right. You don't want to testify?

19 THE DEFENDANT: Cannot; yes, ma'am.

20 THE COURT: Okay.

21 THE DEFENDANT: No.

22 THE COURT: All right. This is your last chance because we're not --

23 THE DEFENDANT: This is my last. They explained that.

24 THE COURT: Yeah. So the officers are going to take you down, they're
25 going to put you down at counsel table and you can bring the jury panel in.

1 And I'm going to -- the State's going to -- your attorneys are going to rest.
2 We're going to go right into jury instructions.

3 [Defendant removed from the witness stand]

4 THE COURT: Okay. The record reflect that Mr. Collins has decided he is
5 not going to exercise his right to testify. We're going to bring the jury panel in.
6 I just want to ask the Defense one last time, are you going to request a *Carter*
7 instruction?

8 MS. JONES: Yes, Your Honor.

9 MS. PAROLISE: Yes, Your Honor.

10 THE COURT: Okay. Then it will be marked as -- now we have to redo all
11 the instructions, so now it's going to take us awhile because, remember, we've
12 already settled them, we've already numbered them. Because I came in here
13 and asked him if he was going to testify, so now I need to do the instructions.

14 THE DEFENDANT: Your Honor, I'm very, very sorry.

15 THE COURT: No problem. I told you --

16 THE DEFENDANT: I apologize to the Court.

17 THE COURT: -- it was your right.

18 THE DEFENDANT: I apologize to the Court.

19 THE COURT: It's your right.

20 MR. TOMSHECK: Judge, I wouldn't have a problem with you
21 supplementing the instructions and just having it say number -- whatever,
22 30-A and adding it at the end.

23 COURT CLERK: Yeah, but we got to make copies.

24 THE COURT: We have to make copies and we have to attach them. I
25 can make it -- I can make it 21 and attach it. I'll just make it 21.

1 COURT CLERK: We'll restaple and everything. That's fine.

2 THE COURT: We just need to -- there's 21.

3 COURT CLERK: Make an adjustment real quick.

4 THE COURT: We just need to make copies.

5 COURT CLERK: Let's hope our copier --

6 THE COURT: Okay.

7 COURT MARSHAL: Go ahead and sit down. Thank you.

8 THE DEFENDANT: Yes, sir.

9 [A short break is taken at 1:37 p.m.]

10 [Trial resumes at 1:45 p.m.]

11 [Outside the presence of the jury]

12 THE COURT: Any objection by the State?

13 MR. TOMSHECK: We're pondering. I mean, provided he can't move it,
14 Judge, I certainly --

15 THE COURT: I mean, I can -- I can order him to stay, obviously.

16 MR. TOMSHECK: I'll submit it to your discretion, Judge.

17 THE COURT: I could order him to stay and I can continue deliberations
18 till next week.

19 MR. TOMSHECK: Well, provided we get done by 5 o'clock, he'd be free
20 to go if you didn't keep him tonight, we could just have him come back and
21 deliberate on Monday.

22 THE COURT: Well remember, his plane leaves at 5 o'clock? So he has
23 to leave at 3:30.

24 MR. TOMSHECK: Just let him go, Judge.

25 THE COURT: No objection?

1 MS. JONES: No objection, Your Honor.

2 MS. PAROLISE: No objection, Your Honor.

3 THE COURT: Okay. So I'm going to ask the Court Marshal to excuse
4 him and then Katelyn Kraut will become Juror Number 1, but we'll just leave
5 her in the same spot that she's in. You can bring them in. Make sure Mr.
6 Jonas has the thanks of the Court.

7 MS. PAROLISE: Just what -- just ten seconds. Your Honor, we just
8 wanted to make one more -- one more record. Mr. Collins has a 6th
9 Amendment right to testify here today. He also has a 5th Amendment right to
10 not incriminate himself --

11 THE COURT: Absolutely.

12 MS. PAROLISE: -- for the murder trial coming up. So by function of the
13 arson trial going before the murder, he's forced to choose between those two
14 constitutional rights and I would just like to make a record of that right now.

15 THE COURT: Your -- tell me how so.

16 MS. PAROLISE: Well, because he does want to testify today but he's
17 choosing not to because of what could possibly implicate the murder. These
18 cases are closely intertwined, lots of the same witnesses. Certainly, one
19 location involved is exactly the same and it's the possibility of opening the door
20 for that much more serious case. Testimony regarding the much more serious
21 case that's keeping him from testifying today, Your Honor.

22 MR. TOMSHECK: By that rationale, Judge, neither trial could go first
23 because the same implication would arise should you try the murder case first.
24 Certainly, there was nothing brought forth from the State, during the trial, or
25 even the Defense witness that they called, that would impinge upon any of his

1 Constitutional Rights.

2 It's the Defendant's own right to testify. He's certainly limited to
3 what's admissible and the State would be limited to what's proper in cross
4 examination. The fact that he committed two crimes doesn't get him the
5 benefit of -- depending where his trials go.

6 THE COURT: I agree. I agree, and I also made it very clear that I did not
7 make any ruling on what I would ask this -- what I would allow the State to
8 ask.

9 I obviously am not going to tell the State they cannot ask anything
10 but then allow the Defense to have a heyday, saying whatever they want, and
11 then hamstringing the State by not allowing them to go into things that they
12 know are relevant just because it has to do with the murder case; so I'm not
13 going to do that.

14 So, he wants to testify, you guys know what you have to do to
15 limit the direct examination so the scope of cross examination is limited. That's
16 up to his lawyers.

17 So, you know, I know you guys brought up one point. And one
18 thing that was brought out during the testimony was, you know, why in the
19 world would he burn down this house? Because he had all these lovely things
20 in the house, one being his grandmother's blanket?

21 And I know that the State has made an allegation that in the
22 murder case, he wrapped up the murder victim in his grandmother's afghan and
23 disposed of her that way; so you all knew that.

24 MS. PAROLISE: That's correct, Your Honor.

25 THE COURT: When you brought that evidence in about how he's got all

1 this stuff in this house that belonged to him, why in the world would he burn it
2 down?

3 MS. PAROLISE: It was actually through conversations with the State
4 while we were waiting here that we thought that --

5 THE COURT: That's correct.

6 MS. PAROLISE: -- that we thought that the State may ask a question
7 that could elicit some -- some -- some testimony that would regard the murder
8 trial.

9 THE COURT: Right, but the State never said they would.

10 MS. PAROLISE: Well, in conversations with the State, it sounded like
11 there were questions as that that would possibly lead to that.

12 MS. JONES: Which were the questions that I brought up to, Your Honor,
13 that we were requesting the prior ruling on to better inform Mr. Collins about
14 whether or not he was going to testify. But without that ruling, we're left not
15 knowing what the State's going to ask and we're not knowing what they're
16 going to bring in, and Mr. Collins -- we were advised of that when we did
17 speak with him that we --

18 THE COURT: You know what I can tell -- I can tell you: I don't think the
19 murder case has anything to do with this case, based upon what I've heard so
20 far. So I would limit the State from asking those questions unless you open the
21 door to something that makes it relevant.

22 I don't know any judge in this building that will give you a ruling
23 about what someone can ask a witness on cross examination without hearing
24 direct.

25 MR. TOMSHECK: And, certainly, we're precluded from inquiring into

1 what the Defendant's going to testify to, but I can certainly represent --

2 THE COURT: Right.

3 MR. TOMSHECK: -- to the Court, if he testifies consistently with what
4 he told the police -- I think that there's a very good argument that certain
5 aspects of the homicide would become relevant and admissible.

6 THE COURT: Okay.

7 MS. JONES: In reference to what he told the police, Your Honor, that's
8 the reason we made the record about his interview and about the State
9 bringing in that interview, and without knowing whether or not the State
10 intends to bring in that interview, whether or not they're going to be allowed to
11 play the interview, and not only the interview, but the interview in its entirety.
12 Those are still questions that we have left that are unanswered that may have
13 opened the door when we didn't know whether or not they would open the
14 door.

15 But if we just ask him about his interview, does that open the door
16 to the entirety of the statement coming in? Does that open the door to the
17 murder portion of the statement? A portion of the statement? Those are
18 questions that we don't know the answer to and if we --

19 THE COURT: Well, if you want to make a proffer of his testimony right
20 now and tell me every question and answer he's going to give me then I'll give
21 you a ruling, but until then, you cannot ask me to give you a ruling on
22 something that I don't know.

23 I can tell you generally, I'm not going to let the State ask him
24 about the pending murder case. Generally, that's what I'm going to say, but
25 I'm not going to be held to it, and then you think you have that ruling and then

1 go ahead and ask Mr. Collins whatever you want knowing that the State is
2 hamstrung because they have a ruling that says they can't ask anything
3 regarding the murder case.

4 No, I'm not going to allow the State to try their murder case in this
5 case. Absolutely not. I'm going to let them try what is in front of me, but I
6 don't know what you're going to ask him that may bring those issues up. I just
7 don't know.

8 But if you're asking me if they ask him about the interview with
9 North Las Vegas Police, do I think that means the entire interview comes in?
10 Probably not. And I certainly don't think him fighting with five officers would
11 be appropriate for the jury to see so --

12 MS. PAROLISE: And that was that -- we just wanted to make that
13 record, Your Honor.

14 THE COURT: Okay. Which -- and I want to say that goes -- I guess that
15 goes more to how you adamantly tried, over and over again, to get a
16 continuance, because you didn't want this case to go before the murder case.
17 So I want that to be perfectly clear.

18 Let's bring the jury panel in. Mr. Collins, this is your last chance.
19 As soon as that jury panel comes in, I'm reading these instructions. Evidence is
20 closed. We don't supplement the evidence; you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Bring them in.

23 [Jurors enter the courtroom at 1:52 p.m.]

24 THE COURT: The parties stipulate to the presence of the jury panel as
25 now impaneled?

1 MS. JONES: Yes, Your Honor.

2 MR. TOMSHECK: Yes.

3 MS. JEANNEY: Yes, Judge.

4 [In the presence of the jury panel]

5 THE COURT: Does the Defense rest?

6 MS. JONES: We do, Your Honor.

7 THE COURT: Okay. State have any rebuttal?

8 MR. TOMSHECK: No, Your Honor.

9 THE COURT: Okay. At this time, ladies and gentlemen, you have heard
10 all of the evidence. You have been given copies of the jury instructions. As I
11 told you in the beginning, I'm going to read the jury instructions to you. I'm
12 required to do so by law. You can follow along, you can take notes, and you
13 will be able to take these with you when you go back to deliberate upon your
14 verdict. When I'm done reading the instructions, both sides will have an
15 opportunity to speak to you in their closing argument.

16 [Jury instructions read by The Court at 1:54 p.m.]

17 THE COURT: The State can address the jury in their closing argument.

18 MS. JEANNEY: Thank you, Your Honor.

19 ***CLOSING ARGUMENT BY THE STATE***

20 ***BY MS. JEANNEY:***

21 Good afternoon, Ladies and Gentlemen of the Jury. On behalf of
22 the State of Nevada, Mr. Tomscheck and I would like to thank you for your time
23 and your patience this week. We do appreciate it.

24 This is a case of State of Nevada versus Lesean Collins. And in
25 every criminal case, the State has a responsibility to prove to you two things:

1 We call these things: The what and the who. Number one is: The what. Was
2 a crime committed? And number two is: The who. Did the Defendant, in this
3 case, Lesean Collins, commit those crimes? And in this case, we're going to
4 start with the who, and to get to the who, we first need to look back at the
5 facts.

6 In the summer of 2008, Lesean Collins and Shalana Eddins had
7 been dating for over ten years. They had four young sons together, and
8 Shalana was then pregnant with their fifth son, but something had changed in
9 that relationship. The Defendant had changed. He had become intimidating,
10 he had become possessive, and he had become controlling.

11 Shalana told the Defendant that she no longer wanted to be with
12 him but he wouldn't take no for an answer, and because of those actions,
13 Shalana was in fear of her life and she told you that. And because of that, she
14 took her and her four boys and they started staying at one of her girlfriend's
15 house, who lived about ten minutes from where they lived.

16 But on September 29th of 2008, Shalana returned to the 1519
17 Laguna Palms residence because she needed to do some laundry. In order to
18 feel safe, she told you that she unplugs the garage door because she knows
19 that that's the only way that the Defendant has access to the house, by the
20 garage control opener that she had given him.

21 Now, while she's there, she speaks to the Defendant on the phone
22 and at some point, he said: Hey, I got to go and they hang up. Right after
23 that, she hears an individual in her backyard. That individual jumps the fence
24 and Shalana said that they're pressed against her window as if they're listening
25 to what she's saying.

1 She calls the Defendant back. She tells him she thinks someone's
2 in the backyard, this is scaring her, and she's going to call the police. And she
3 asks him: Is it you back there? And Defendant tells her: No; that it's not him.
4 So she warns him, she says: Okay, well, then I'm going to call the police and
5 she hangs up the phone.

6 Right after she hangs up that phone, she hears a knock on -- or a
7 banging on the door. And Shalana tells you, she didn't call the police because
8 she knew that Lesean Collins was in her backyard. She never thought it was
9 anybody else.

10 And, lo and behold, right after she tells him she's going to call the
11 police, he starts banging on the door and she tells him she will not let him in
12 and this infuriates him. So then, he tries to get access through the garage by
13 using his garage opener, but like I told you, like Shalana told you, she had
14 unplugged it so that infuriates him even more.

15 So for a period of time he's back there, from the front door to the
16 garage, front door to the garage, trying to get into that house and he's getting
17 angrier and angrier and angrier.

18 Finally, he begins banging on that door. Shalana finally lets him in.
19 And as soon as she lets him in, he's going through the house, he's rummaging
20 through all the belongings, and he finds their oldest son's backpack on the
21 ground. He opens that backpack, rummages through it, and finds a house key.
22 As soon as he finds that house key, he leaves, and Shalana follows him out.

23 When she follows him out, she finds that the tires on her Expedition
24 have been slashed, so she then calls the police. And when the police come,
25 Shalana no longer feels comfortable with the Defendant's handgun on the top

1 of her china cabinet in her house. She's already told you she's in fear of her
2 life. So she goes in, she takes that handgun and she hands it over to the
3 police.

4 In the morning of September 30th of 2008, Shalana again returns
5 with her four sons to the 1519 residence because they need to get ready for
6 school. She gets the children ready for school and she notices, when she
7 enters, that the Defendant's clothes are in a bag in front of the laundry room.
8 She leaves them there. She doesn't think anything of it.

9 She then takes the boys to school and takes the youngest to the
10 babysitter and she continues to receive harassing phone calls from the
11 Defendant. He's angry: Why did you call the police on me? I don't know why
12 you called the police on me. Still getting angrier and angrier and angrier. It
13 bothers Shalana so much that she goes and gets a temporary protective order,
14 that morning, against the Defendant in this case.

15 She finally gets to work, sometime around 11:30, at her place of
16 employment. While she's there, she gets a threatening phone call from the
17 Defendant. He's very angry and he states to her on her voice mail: Give me
18 my shit -- give me my mother fucking shit. I know you got my shit. If you
19 don't give me my shit, I'm going to knock all this shit off.

20 And this bothers Shalana, but she's already gotten the temporary
21 protective order so she keeps on working.

22 While at work, around 4:20, Shalana leaves her desk. When she
23 leaves her desk, she goes to the copy room, makes some copies and returns.
24 When she returns, she notices, immediately, that her cell phone is gone. She
25 had placed it right on the top of the desk.

1 So she runs downstairs to check on her car and she sees that her
2 tires, again, have been slashed. And she tells you, the reason why she
3 immediately thought to go check on her car is, whenever they would get into
4 fights, he would always threaten -- he would constantly threaten to slash her
5 tires, and that's what he did.

6 As soon as she recognizes that her tires have been slashed, she
7 then goes and she runs back in and she checks the video surveillance and she
8 sees the Defendant, and she watches what he was doing. And he was outside
9 of her work and he was watching her as she worked and then he went in,
10 when she left her desk, and he stole her cell phone.

11 All of these facts greatly bother Shalana. So what she does is, she
12 goes inside and she calls her children and she calls her father, Robert Eddins,
13 and then she calls the police.

14 When she calls her little boys, she tells them: Put your shoes on
15 and go directly next door to the neighbor, and that's where Darlene Heer comes
16 in. Darlene Heer testified and she told you that at 5 o'clock p.m., the children
17 show up at the door saying that their mother had told them to go next door to
18 the neighbor's, so she takes them in.

19 At some point, Darlene goes to that residence with one of the boys
20 because they had forgotten something, so she enters the residence and
21 everything is fine. There's nothing on fire. She's not smelling any smoke. She
22 sees nothing, so she doesn't think anything of it. She takes the little boy and
23 they return back to her house.

24 And while they're in their house, the four little -- or the three little
25 boys, because one's a baby, he -- he doesn't know what's going on, but the

1 three little boys are watching outside of the window. And they tell Darlene --
2 they alert Darlene that their father is outside of their house, so Darlene walks
3 out there and she approaches the Defendant. And you'll hear her 9-1-1 call
4 when she's talking to the police.

5 She tells the police the Defendant is in a blue Ford Taurus. When
6 she goes out there, she asks him what -- she asks him what he's doing and the
7 Defendant tells her: It's none of your business. And she asks him again:
8 What are you doing?

9 And he makes it very clear what he's doing. He tells her: I'm
10 waiting for my wife to get home from work. And then he tells her again: I
11 have a gun. I'm going to kill my wife. At that point, Darlene Heer goes back
12 into the house and calls the police.

13 And you can take that CD filled with the 9-1-1 calls, back into the
14 evidence room, or into the jury room when you're doing your deliberations and
15 you'll hear that when she initially makes contact, they can't hear her, and so
16 she hangs up. She calls -- there's a phone call, the second time. And in that
17 second conversation, that conversation happens just seconds later at 6:47 p.m.
18 That's the first time she is able to make successful contact with the police and
19 have a conversation.

20 Now, while this is going on at Darlene Heer's residence -- I'm sorry,
21 and then Officer Vital receives the dispatch call at 6:52, which would be five
22 minutes after Darlene called. Now while that's going on at Darlene's house,
23 Robert and Vivian are communicating as well. Robert testifies that while he's
24 at work, he gets a phone call from Shalana and he goes to her place of
25 employment. While he's there, he receives two phone calls from the

1 Defendant. Both of these phone calls are between 6 and 6:30 p.m.

2 The first phone call, the Defendant tells Mr. Eddins: You can tell
3 your daughter that we're even now. At this point, Robert knows that his
4 grandsons are at Darlene Heer's house, and he knows that they need to get a
5 family member over to Ms. Heer's house to pick up the boys, so he calls
6 Vivian. And between 6 and 6:30, Vivian receives that phone call from Robert,
7 and she agrees to go pick up the children at the neighbor's house.

8 While she's approaching the neighborhood, she sees the
9 Defendant, Lesean Collins, driving a blue sedan at a high rate of speed, leaving
10 the neighborhood. She makes contact with the children at Darlene Heer's
11 house and she -- you heard her testify. She tells you that Ms. Heer's was very
12 upset, very frantic, very scared about what was going on -- constantly looking
13 in and out of the windows. She makes contact with those children to make
14 sure they're okay.

15 In the meantime, Robert had gotten a second phone call from the
16 Defendant, and at this time, Mr. Eddins testified that it was about at 6:30, the
17 Defendant called him and he tells him: I heard your daughter's house is on fire.

18 Never, one time, in that telephone conversation, when the
19 Defendant is telling Robert Eddins that his daughter's house is on fire, he never
20 asks about his children, the children that him and Shalana share, in common.
21 Never, one time, asks about his children. Not concerned about them at all.

22 At that point, Robert then called Vivian to ask her to check on the
23 house, and that phone call happened at about 6:40. So Vivian does receive
24 that second phone call from Robert to go check on the house and she tries to
25 enter, but Officer Vital goes first. And when Officer Vital is approaching the

1 door, he told you that the windows were starting -- the blinds were starting to
2 bow out. And he then goes to enter the house, on the front door, by turning
3 the knob and he recognizes that the house is on fire because of the heat that
4 he could feel through the knob.

5 Vivian calls back Robert and tells him: Yes, the house is actually
6 on fire, and then, at that point, Robert and Shalana leave Shalana's place of
7 employment, for the house.

8 You heard from Officer Vital. He was one of the first officers that
9 responded to the scene. At 6:52, dispatch indicates that there's a man with a
10 handgun outside of 1519 Laguna Palms. So at 6:52, nothing had been said
11 about a fire. The only reason he thought he was going to that house was
12 about a man with a handgun.

13 So Officer Vital responds to the residence and he speaks with
14 Darlene Heer's, and Darlene Heer's tells him about the conversation that she
15 had with the Defendant; that he was waiting for his wife to come home; that
16 he had a gun and he was going to kill his wife. He tries to enter the house and
17 Officer Vital testifies that that was sometime around 7, and he realizes that the
18 house is on fire.

19 At 7:05, the Fire Department is alerted that there is a fire at the
20 1519 Laguna Palms residence. That's 35 minutes after Lesean Collins called
21 Robert Eddins and told him that Shalana's house was on fire.

22 While the fire is burning, Vivian is watching from the neighbor's
23 house and she calls the Defendant to find out what's going on, and that's
24 when she listens to his ring tone. And the Defendant has rapped, and his rap
25 states: If you can't stand the heat, get out of the kitchen or you're going to

1 get burned like my baby's mama's house.

2 You also heard from Jeff Lomprey. Mr. Lomprey is a Captain for
3 the North Las Vegas Fire Department, responsible for fire investigations. He
4 conducted what's called an origin and cause investigation and learned that
5 three separate and distinct fires were set. The first fire, in Shalana's bedroom,
6 actually on top of her bed. The second fire, the master bedroom closet, where
7 a specific pile of Shalana's clothing had been set on fire. And third, the living
8 room couch.

9 The investigation concluded and there was a lot of damage done to
10 the inside of the house, so much so that Shalana and her four boys never got
11 to go back and live in that house. They were actually forced to move
12 somewhere else.

13 Shalana was afforded the opportunity to go in about a month and a
14 half later, after the investigation had been conducted. And when they went in,
15 they saw the damage, but Shalana noticed that the Defendant's clothes, that
16 clothes -- those clothes that were right outside the laundry room in that bag
17 were fine; and there was no damage done to the laundry room. The laundry
18 room was a room in the house that was completely fine, but those clothes
19 were gone.

20 The results of the investigation was that, it was an incendiary fire,
21 which means, arson, an intentional act, willful and malicious, set with an open
22 flame, with a human hand, with the intent to destroy the house and its
23 contents.

24 Let's talk a little bit about motivation. What motivation do any of
25 these six people have to come in here and testify? You saw Ms. Eddins, very

1 emotional. She wants the Defendant to have a relationship with her children.
2 When their fifth son was born two months premature, she called him and she
3 let him know that he was fine and that he was going to make it.

4 Vivian Furlow, Darlene Heer -- Darlene got up there and told you,
5 she doesn't want to be here. The only reason why Darlene Heer's came was
6 because she was under subpoena. She did not want to come and testify.
7 Manuel Vital, Jeff Lomprey, just part of their job. Patricia Brewer, a little bit
8 different. Mr. Tomsheck asked Ms. Brewer: Well, why are you here? And she
9 told you, she's here to help Lesean Collins out.

10 There's things about Ms. Brewer's testimony that do make sense.
11 For instance, the first thing is, she stated that the Defendant was very angry at
12 Shalana that day, on September 30th of 2008. She also states that they did, in
13 fact, go to Shalana's work, and that the Defendant did slash Shalana's tires.

14 She also states that the Defendant was driving her blue Ford Taurus
15 that day, and she also stated that there came a point and time, that day or
16 evening, that the Defendant took that blue Ford Taurus by himself. She was
17 not with him.

18 But there's also things about Ms. Brewer's testimony that don't
19 make a whole lot of sense and that's because they're nonsense. For instance,
20 the first thing she said: Well, Lesean was with her when he got the news
21 about the fire.

22 Okay. Well, that's clearly not accurate, because Robert Eddins
23 was on the phone and had a telephonic conversation with the Defendant and
24 immediately alerted Vivian Furlow that she needed to go get those kids. And
25 who did Vivian Furlow see exiting that neighborhood in a blue Ford Taurus

1 sedan out of that neighborhood? Lesean Collins.

2 So Ms. Brewer could not have been with him because Vivian
3 Furlow saw him leaving the scene at 1519 Laguna Palms and there was no one
4 else in that car.

5 Ms. Brewer also stated that the Defendant got upset and he
6 immediately had to leave, but it's clear that Lesean Collins never checked on
7 his children that night. He never went to the scene of the crime and he never
8 contacted anyone. He never contacted Shalana. He never contacted Robert.
9 He never contacted Vivian, all three people that he knew very well. But did he
10 ever contact any of those three people to make sure his four little boys were
11 okay? No; he didn't.

12 Let's talk about the Defendant's motivation in this case. The
13 Defendant was angry. He was very angry. He was possessive, controlling,
14 intimidating. He was upset. Shalana no longer wanted to be with him. He
15 wouldn't take no for an answer. He became increasingly furious when she
16 wouldn't let him into the house. He was furious over his gun -- that his gun
17 was missing, and his actions were becoming more and more serious as those
18 two days went on.

19 Now, if all that isn't enough for you, if all that evidence and all
20 those facts that I just talked about isn't enough, in addition to all that, you
21 have the Defendant's own statement. And you don't have one statement to
22 Shalana Eddins and you don't have only one statement only to Darlene Heer's
23 or Robert Eddins or Vivian Furlow. You've got four statements to four different
24 people.

25 Shalana Eddins angry, again, we all know what he said to Shalana.

1 I've said it multiple times. Darlene Heer. He first tells Darlene: I'm waiting for
2 my wife, Shalana Eddins. I have a gun. I'm going to kill my wife. How much
3 more clear does that need to be?

4 Robert Eddins, first phone call: You can tell your daughter that
5 we're even now. Second phone call: I heard your daughter's house was on
6 fire. And then again, Vivian Furlow, the rap left on his voice mail just minutes
7 after all this had gone on: If you can't stand the heat get out of the kitchen or
8 you're going to get burned like my baby's mama's house.

9 This is the who. In this case, there's only one person who had
10 changed. There's only one person who had slashed Shalana Eddin's tires.
11 Only one person who went to Shalana's place of employment and watched her
12 from outside as she was working and stole her cell phone.

13 There's only one person who threatened her because the gun was
14 given to the police. There's only one person who told Darlene Heer's that he
15 wanted to kill his wife. There's only one person that Darlene Heer and Vivian
16 Furlow saw at 1519 or leaving the neighborhood that night. Only one person
17 who made those calls to Robert Eddins and alerted him that that fire was going
18 on.

19 There's only one person who rapped about what he did on his
20 ringtone to his phone. That person is the man at that table, the Defendant in
21 this case, Lesean Collins. That is who the who is, in this case.

22 So what we're really left with is, the what, what he did. In this
23 case, the Defendant is charged with three crimes. The first crime is Malicious
24 Injury to Vehicle, the second crime is Burglary, and the third crime is First
25 Degree Arson. Each crime is broken into what we call elements that make it

1 easier for us to explain and understand.

2 Elements for Malicious Injury to Vehicle are as follows: Any person
3 who willfully breaks, injures, tampers with, or removes any part or parts of any
4 vehicle for the purpose of injuring, defacing, or destroying such vehicle or
5 temporarily or permanently preventing its useful operation, or for any purpose,
6 against the will or without the consent of the owner of such vehicle, or who
7 shall, in any manner, willfully or maliciously interfere with or prevent the
8 running or operation of such a vehicle, which resulted in damage of \$250 or
9 more, but less than \$5,000, is guilty of Malicious Injury to Vehicle.

10 So what evidence do we have, in this case, of this crime? Well, we
11 know that the Defendant had left Shalana a threatening voicemail before he
12 came to work telling her that he was going to knock all this shit off. We also
13 know that as soon as she sees her phone is missing, she immediately goes
14 downstairs and sees that her tires have been slashed, which makes her then go
15 look and see the video surveillance and see that the Defendant had just been
16 there.

17 Not only that, the Defendant admitted to Detective Lomprey that he
18 had put Shalana's tires on flat. The Defense, in their very opening statement,
19 conceded that the Defendant had committed this crime. And Patricia Brewer,
20 the woman who was with him, admits that he did it. The only thing that the
21 Defense is basically contesting is the price, but you have the receipt from
22 Discount Tire that Mr. Eddins brought in, and you'll see that the amount is 700
23 -- over 751 dollars.

24 The next crime is Burglary. The elements of Burglary are that the
25 Defendant entered 1519 Laguna Palms with the intent to commit a crime

1 therein, and the crime that's alleged in this Indictment is Arson. So what
2 evidence do we have that he entered 1519 Laguna Palms?

3 Well, first of all, we knew -- we know he had a key, because on
4 September 29th, just the night before, he had gone into the oldest son's
5 backpack and stole the key out and then exited. We also know that he had to
6 have been there because the clothes that were placed for him right at the
7 laundry room door, after Shalana, who was the last person to leave that
8 residence that morning, are gone. The Defendant's clothes are not there.

9 And he admitted to Robert Eddins that he had been in the house
10 with the intent to commit a crime, therein. Well, again, he warned Shalana
11 that he was going to do something. He told Darlene Heer that he was waiting
12 for his wife to come home so that he could kill her.

13 All of these things show that the Defendant's fury and -- that show
14 how furious he was and his intent to commit a crime. It was only a matter of
15 time before Lesean Collins struck again. And when he did strike again, he lit a
16 fire, and that's what brings us to the arson.

17 The elements of arson are as follows: A person who willfully and
18 maliciously sets fire to or burns or causes to be burned, or who aids, counsels
19 or procures the burning of any: One, dwelling house or other structure or
20 mobile home, whether occupied or vacant. Or Two: Personal property which
21 is occupied by one or more persons, whether the property of himself or of
22 another, is guilty of Arson in the First Degree.

23 Now what evidence do we have in this case of Arson? Well, the
24 first thing is we heard the testimony from Mr. Lomprey. He told you that three
25 incendiary fires were lit. The first one: Shalana's bed in the master bedroom.

1 Second one: Shalana's closet, specifically, her clothing. And the third one:
2 the living room couch. He told you that this was Arson, an intentional act,
3 willful and malicious, set with an open flame, with a human hand, with the
4 intent to destroy the house and its contents. And, lastly, by the Defendant's
5 own words in his ringtone.

6 What this case is about is about accountability. When the
7 Defendant went to Shalana Eddins' place of employment, and like he said, put
8 her tires on flat, he committed the crime of Malicious Injury to Vehicle. The
9 State requests that you hold him accountable for that decision.

10 When he entered 1519 Laguna Palms, with the intent to commit
11 Arson in that home, he committed the crime of Burglary, and we ask that you
12 hold him accountable for that crime.

13 And lastly, when Lesean Collins goes into that house and sets, not
14 one, not two, but three separate fires in a home where his family slept, where
15 his family stayed, his four young sons, and his wife who was pregnant with
16 their fifth baby. When he went in and did that, he committed the crime of
17 Arson and we ask that you hold him accountable for those decisions and find
18 him guilty of the crime that he's charged with. Thank you.

19 THE COURT: Thank you. Ms. Jones.

20 MS. JONES: And if we could just switch this over.

21 THE COURT: Sure.

22 ***CLOSING ARGUMENT BY THE DEFENSE***

23 ***BY MS. JONES:***

24 Good afternoon, Ladies and Gentlemen. The State just talked to
25 you about what they believed that they proved in this case, but, ultimately, you

1 are the decision makers of what it is that the State has proven in this case.

2 And, Ladies and Gentlemen, the first thing that we all know from
3 sitting here for the last three days is that Lesean and Shalana do not have a
4 perfect relationship. I don't think there's a person in this room who will say
5 that they have a perfect relationship. They don't.

6 You saw, for the last three days, this is no *Brady Bunch* type
7 situation. This is not a perfect situation. This is a relationship, but it's not a
8 perfect relationship. Does that mean that Shalana Eddins deserves to have her
9 home burned down? No; that's not what that means. Shalana Eddins did not
10 deserve to have her home burned down. Nobody deserves to have their home
11 burned down.

12 And, Ladies and Gentlemen, it is a tragedy what happened to
13 Shalana Eddins. It is a tragedy that her home was burned down, but Lesean
14 Collins is not the person who burned down her house. Someone is responsible
15 for burning down Shalana Eddins' house and that person does need to be held
16 accountable for that. We don't know who that person is. What we do know is
17 that that person is not Lesean Collins.

18 Let's talk about Lesean Collins and Shalana and their family. You
19 heard Shalana tell you, on Wednesday, that Lesean Collins is a father to his
20 children. You heard her say that she wanted him to be a father to his children.
21 Specifically, she said: He played the part of a father. She said that when she
22 was sitting there on Wednesday. She talked to you about how he would take
23 his children to and from school. She talked to you about how he would pick
24 those children up after school.

25 She told you that on September 29th, she and Lesean Collins had a

1 disagreement. They had an argument. She told you that even after he left,
2 that night, the next day, he called her and what he asked her was: How are
3 you going to get the kids from school? Because when he called her, she was
4 already on her way taking the kids to school, so everybody knew the kids were
5 going to get to school. But he wanted to know how was she going to get the
6 kids from school because that was his job.

7 He and Shalana Eddins had had an argument but that wasn't
8 interfering with him trying to get his kids home from school because he was a
9 father to his children. You heard Shalana say, several times: Sean wanted to
10 be a family. She said that. I asked her. She said: Sean wanted to be a
11 family. I think I asked her that question twice and that was her response. She
12 also told you that she wanted him to be a father to his children.

13 She told you that she -- he helped her out and that she wanted him
14 to be a father to his children. She told you that she has kept contact with him
15 during this entire period. She told you that they've been in contact since the
16 arson at her house. She told you that he's been in contact with his kids and
17 he's been in contact with her, and she is the mother of his children.

18 Let's talk about Lesean and Shalana. We all know they have a 10-
19 to 12-year relationship. I don't think anybody's exact on how long, but we
20 know this relationship went on for a significant amount of time. We will --
21 everyone will acknowledge that the relationship wasn't always good on either
22 side.

23 Shalana told you that there was some good days and there was
24 some bad days, and you can gather, from the information that you heard, there
25 were bad days on both parts. There were bad days on Lesean's part and there

1 were bad days on Shalana's part, but together, they have produced five
2 children. They had four as of September 30, 2008, and she explained to you
3 that she has given birth to their fifth child since this arson.

4 She told you that she has stuck around for this entire term of the
5 relationship for 10 to 12 years. Even though it wasn't always good, she stuck
6 around, and there were some good days. She was still in this relationship,
7 according to her testimony, until the summer of 2008.

8 She told you that she had let Lesean Collins live at the Laguna
9 Palms residence. She told you that. She told you that he was living there. We
10 have no reason to believe that someone who's living in a house doesn't have
11 belongings in that house, and she told you that he was living there.

12 She also told you that she and Lesean Collins have had continued
13 contact during this entire period of time. She told, you even since the arson,
14 she has been in contact with him. Do you contact the person that you think
15 burned your house? We don't know.

16 Let's talk about September 29th of 2008. Lesean and Lashana had
17 an argument. She acknowledged that when she was on the stand. She said
18 that they had an argument. She said that she threw a rock and broke the
19 window of the car that he was driving, indicating she was clearly upset after
20 they had had this argument. She was upset with him.

21 And after they had the argument, she throws the rock. She broke
22 the window in the car. You heard Trish Brewer testify about the broken
23 window because the car belongs to her sister. Shalana told you about that
24 exact same window. She said: Yes, I threw a rock and broke that window.

25 Even after they have the fight and she's clearly upset, Lesean is still

1 trying to help her get the kids home from school on September 30th. Shalana
2 told you that he called her and said: How are you going to get the kids home
3 from school? But Shalana is still clearly upset with Lesean, based upon the
4 argument that they had had on September 29th.

5 Now, the State wants you to get lost in all of these other things
6 that are going on with Lesean and Shalana. So let's talk about those other
7 things right now. The State wants to make sure that you know that Lesean
8 and Shalana had a bad relationship, but that relationship was bad on both
9 parts. You have separate instances where that relationship was bad. That
10 relationship still maintained for 10 to 12 years. That relationship produced five
11 children. So we know there were some good times in that relationship.

12 Shalana Eddins came in here and said that she was in fear for her
13 life. Let's talk about what we know about Shalana Eddins being in fear for her
14 life. She said that she told Lesean he couldn't live there and she was in fear for
15 her life. But she also told you that when Lesean came, she was still talking to
16 him; there's still constant communication.

17 She told you she has caller I.D. Before she picks up her phone,
18 Shalana Eddins knows who's on the other end of that phone. She told you that
19 there's some calls she didn't take, but there's a lot of calls that she did.
20 Because you heard a lot of testimony about all the calls that are going back and
21 forth. She said he's calling her. She said she's calling him. She acknowledged
22 that there is constant contact. Is she calling the guy that has put her in fear for
23 her life?

24 On September 29th when Lesean shows up at the house, she has
25 already been on the phone with him. When he shows up at the house, she

1 says he's beating -- or banging on the door because she had unplugged the
2 garage door opener that she had given him to access the house because he
3 was living there.

4 But what does she do? She doesn't call the police and tell them:
5 Somebody's banging on my door and I'm in fear for my life. What does she
6 do? She opens the door and lets him in. She has now let the person that has
7 brought her in such fear for her life into her house.

8 You know that she called the police after she realized something
9 had happened to her tires, but she didn't call them when she thinks
10 somebody's out there banging on her door. She lets Lesean in the house.

11 When Lesean leaves the house, she walks out there with him. She
12 said she went outside with him. She said that while they were outside, that's
13 when she threw the rock and broke the window in Tanya Green's car. She's
14 told you about a numerous amount of calls that are going back and forth. She
15 knows Lesean Collins is calling her and she's talking to him.

16 She told you that he was living there. She told you he had the
17 garage door opener. He didn't have a key but he had the garage door opener
18 and he was accessing the house through the garage. But even after she
19 unplugs that garage door opener, she lets him in the front door. She opens the
20 door and lets him in.

21 She also told you, that since her home was burned on September
22 30th, she's been in contact with Lesean Collins. She has given birth to their
23 fifth child. She has provided him with pictures of that child. She has provided
24 him with updates on the child. She told you that the child was born early. She
25 told you that she contacted him and made sure that he knew about that.

1 The State also talked to you about that September 29th thing. As
2 we already went over, she let him in the house. She doesn't call the cops until
3 later. She calls the cops after she follows Lesean out of the house and realizes
4 that something has happened to her tire, then she calls the cops.

5 But when she hears somebody banging on her door and she's in
6 fear for her life, she doesn't call the cops. She opens the door and lets Lesean
7 right in her house.

8 The State is talking about -- she got a restraining order on him.
9 Well you heard her say it was never served on him. He doesn't know that she
10 had a restraining order on him. He never knew about any restraining order that
11 she had gotten on him because it was never served on him.

12 The State wants to talk to you about Lesean stole Shalana's cell
13 phone. Well, Shalana said -- and the State just got up here and told you --
14 there's a video of him doing it. Did you see a video? I didn't. There was no
15 video shown of Lesean taking Shalana's cell phone. She said he did it, but
16 there was no video.

17 She said and the State said that there is a video of him walking into
18 her office and taking her cell phone. She never saw it and Lesean Collins is not
19 charged with that. That's another one of these things that the State wants you
20 to get hung up on.

21 The State also wants you to believe that Lesean Collins had a gun
22 when he was outside of the Laguna Palms residence and he's approached by
23 Darlene Heer. Darlene Heer, you saw Darlene Heer. Darlene Heer testified, oh,
24 she went out there. Lesean Collins told her that he had a gun. When she first
25 calls 9-1-1, she talks to him and she calls him later: And oh, my God, he has a

1 gun and he says: He's going to kill his wife.

2 You heard Shalana tell you, on Wednesday, that she took a gun
3 that she claims belongs to Lesean Collins, off the top of the china cabinet, and
4 gave it to the police on the night of September 29th. So how does Lesean
5 Collins have a gun on September 30th that Darlene Heer swears that she saw?
6 Shalana told you, she gave the gun to the police officers.

7 And this is an Arson and a Burglary case. This is not a shooting.
8 It is irrelevant whether or not Lesean Collins had a gun on September 30th,
9 which you know that he didn't, because Shalana said she gave it to the police
10 on September 29th.

11 We are not here to talk about all these extra things that the State
12 wants you to get lost in. The State wants you to get lost in all those things,
13 this horrible relationship, he's running around with a gun, and all these things.
14 That's not why we're here.

15 What are we here for? We are here to determine whether or not
16 the State has proven the element of the crimes that they have charged Lesean
17 Collins with, beyond a reasonable doubt. That's what we're here for. All that
18 other stuff has nothing to do with why we're here.

19 The State has charged Lesean Collins with an Arson. They have to
20 prove that he intentionally set fire to Shalana Eddins' house. Who came in here
21 and told you that he set a fire to Shalana Eddins' house? Nobody. The State
22 had all these situations where he could have done it, but nobody has proven to
23 you that Lesean Collins set fire to Shalana Eddins' house.

24 The State has to prove to you, beyond a reasonable doubt, that he
25 intentionally set this fire at her house. The State wants to talk to you about

1 some voicemail that Shalana had where he says: I'm going to knock all this
2 shit off. I didn't hear any voicemail. Shalana says he left it, but you didn't
3 hear it. You have never heard Lesean Collins tell Shalana: I'm going to knock
4 all this shit off.

5 The State also wants you to believe that when Lesean Collins is
6 saying that, if he said it, he's talking about a gun. How would Lesean Collins
7 know that his gun was missing if he wasn't at the house when Shalana gave it
8 to the cops? How does he know that? The State wants you to believe that
9 that's what he's referring to.

10 I don't know how to make that leap from: Knock all this shit off,
11 to a gun that he doesn't even know is gone, but that's what the State wants
12 you to do. The State never says if he said: Give me all my shit. Maybe he's
13 talking about the stuff he has in the house.

14 Shalana told you he lives there. Shalana told you about a bag of
15 clothes of his. Shalana testified that some of his mother's belongings are in
16 that house -- his deceased mother. Maybe he's talking about that when he
17 says he wants all of his stuff back.

18 The State intends to prove that he committed an Arson by a call
19 that he made to Robert Eddins saying: Tell your daughter that we're even.
20 Well, you heard Robert Eddins say he had cut the tires. Lesean had cut the
21 tires on Shalana's car. Shalana had broken the window in the car that he was
22 driving the night before. Now they're even. The window or the tires. Now
23 they're even. That does not mean -- him saying: Tell your daughter that we're
24 even does not mean: I burned down her house. Lesean Collins did not burn
25 down Shalana Eddins' house.

1 The State wants you to rely on some call tone that Vivian Furlow
2 testified about. You never heard a call tone. You have never heard a call tone
3 that was left on Lesean's cell phone that Vivian Furlow heard. What you did
4 hear was Vivian Furlow say she doesn't call him on the regular. She didn't
5 even have his number.

6 So how would Vivian Furlow be able to tell you that she heard a
7 message that he left and that she knew it was him and he had recorded this
8 rap, if she didn't call him? She didn't call him. She didn't even have his
9 number.

10 Vivian Furlow told you that this call was made after the fire if she
11 ever called him. And you heard Vivian Furlow, Vivian Furlow couldn't even get
12 the times right of when she was notified to go pick up the kids. In her
13 statement, when it's fresh in her mind, she says 6:40. She told you she was
14 already there at 6:30.

15 We don't know what time Vivian Furlow did these things. She can
16 guarantee you that she heard Lesean Collins' voice on a call tone when she's
17 never called him before.

18 Let's talk about -- the State intends to prove this up through the
19 nosey neighbor, Ms. Darlene Heer. Ms. Darlene Heer is Shalana Eddins'
20 neighbor. Ms. Darlene Heer says she saw Lesean outside. Lesean -- she went
21 right out there and she approached him.

22 The State wants you to believe that she's scared. She doesn't
23 want to get involved. She so doesn't want to get involved and she's so scared
24 that she told you that when he's outside, he's in a car and he's alone. What
25 does she do? Marches right out there and approaches him.

1 She told you that, at that moment, she had his kids at her house.
2 So she knows the kids are safe. What reason does she have to approach him?
3 And if she doesn't want to get involved and she's so afraid of him, why would
4 she run right out of the house and approach him?

5 And you heard it for yourself, she calls 9-1-1. The 9-1 -- they get
6 disconnected because the 9-1-1 lady can't even hear her. So she knows 9-1-1
7 is not on their way out there because the lady couldn't even hear what she was
8 saying. The lady asked her to hang up -- to go in the house. The call gets
9 disconnected. She knows they're not on their way. By the second time she
10 calls them, she said: Lesean Collins has a gun and he's going to kill Shalana.
11 He said he was out there waiting for her and he's going to kill her.

12 Well, you heard Shalana tell you that Lesean had a gun and she
13 gave it to the police on September 29th. Lesean didn't even know that because
14 he wasn't there. So how would he have a gun out there on September 30th?
15 We all know that nobody killed Shalana Eddins. You saw her on Wednesday.
16 But Ms. Heer's story had gotten that elaborate by the second time she called
17 9-1-1, 'cause they weren't on their way out there the first time.

18 The State wants you to believe that Lesean Collins knew about this
19 fire before it was ever reported. The State can't establish that, because they
20 can't establish any sort of firm timeline as to when these things happened.
21 Nobody knows what time those kids arrived at Darlene Heer's house. Nobody
22 knows that.

23 Robert Eddins testifies that when Lesean calls him to tell him that
24 the house was on fire, this was after he had called Vivian to pick up the
25 children. Well, if you believe what Vivian Furlow is saying, she says that

1 Robert called her at 6:40. That's what she said in her statement. If you
2 believe that, then it's after that. You don't know how long after that.

3 Robert Eddins said after he got this message, he called Vivian and
4 Vivian had to tell him, when she went over to the house with the detectives,
5 and the door was too hot to touch. If Robert Eddins knew about this fire, why
6 didn't he tell Vivian? Why wasn't he calling over there to tell Vivian: Hey, the
7 house is on fire? He said he's calling over there to check on the kids and
8 Vivian had to tell him that she went over there with the detectives and the
9 doorknob was too hot; they couldn't touch it.

10 The State has charged Lesean Collins with a Burglary. They have
11 to prove that he entered the Laguna Palms residence with the intent to commit
12 a crime. Well, you heard Shalana testify that she took -- sent her kids home
13 after school because Lesean -- she thought Lesean would be there to watch
14 them because that's what they did every day.

15 Lesean went over there and watched those children after they got
16 out of school until their mom came home at 5:30. She told you that she sent
17 them home, not so that the nine-year-old could watch him, but because she
18 thought Lesean was going to be there to watch them. So if Lesean Collins
19 went in that house, he went in that house to watch his kids because that's
20 what he did every day.

21 Shalana also told you that he still had items of his in that house.
22 She told you that he had items that belonged to his deceased mother in the
23 house. She told you that he had things like that. Lesean Collins did not
24 commit this Arson, so there's no way he went into the house with the intent to
25 commit the Arson.

1 Malicious Injury to the Vehicle. The State has to prove that Lesean
2 Collins cut Shalana's tire. You heard in opening statement, Lesean Collins had
3 cut three of Shalana's tires. You heard Detective Lomprey say that he told him
4 that. But you also heard Detective Lomprey say that when you asked him
5 about the arson, he said he did not do the arson. He told Detective Lomprey
6 that he cut the tire, but he didn't do the arson. That's the reason he denied
7 committing the Arson.

8 The question we have to ask ourselves is why? Why would Lesean
9 Collins do that? Why would he set fire to the home where his children were
10 residing with their mother? The whole 10 to 12 years of this relationship you
11 heard about how he's maintained contact with his children, Shalana wanted
12 him to be a father to his children. He was living there. Why would he set fire
13 to the place where his children resided?

14 Why would he set fire to the master bedroom? You heard Shalana
15 say that when he was there he shared that bedroom with her. Why would he
16 set fire to the bedroom that they shared together?

17 Why would Lesean Collins take everything from his children?
18 Shalana told you that there wasn't a lot left in this house. Why would the
19 father take everything away from his children? Why would he burn down a
20 home that had some of his mother's belongings when his mother's deceased
21 and those things cannot be replaced? Why would he burn that down? Why
22 would Lesean Collins make his kids homeless? He wouldn't. Lesean Collins
23 would not take everything away from his own children. And he didn't. Why
24 not? Because he wasn't there.

25 You heard Trish Brewer say that she was with him at the time that

1 he received the call about the fire, and he wasn't there when he received the
2 call about the fire. You heard Lesean Collins say he cut three of Shalana's
3 tires. He told detectives that. He told them that when they first interviewed
4 him, but he did not burn her house down, which is exactly what he told them.
5 He did not burn down Shalana Eddin's house.

6 I know Shalana wants someone to be punished for burning down
7 her house and I agree with her. The person who burned down Shalana's house
8 should be punished, but that person is not Lesean Collins. He didn't burn down
9 her house and the person who did it is the person that should be punished.

10 Ladies and Gentlemen, we are not here to pass any sort of
11 judgment on Lesean and Shalana's relationship. The only duty that you have is
12 to determine whether or not the State has proven every element of every crime
13 that they charged, beyond a reasonable doubt. That is the only reason that we
14 are here.

15 We're not here to determine if their relationship was bad. We're
16 not here to determine if it was good. We're not here to determine whether --
17 how they were parenting their children. We are not here for any of that.

18 The State has to prove to you Lesean set fire to that house. They
19 don't have any evidence that supports that. They have a lot of speculation, but
20 that's not good. The State has to prove to you that Lesean Collins set
21 Shalana's house on fire; that he's the person who did that. And why would he
22 do that to his kids' home when he's the father who's looking out for them,
23 who's taking them to and from school because their mother works.

24 He's the person that their mother has decided they should maintain
25 a relationship with for 10 to 12 years, even through the bad times of their

1 relationship. He's the person who wanted to be a family. You heard Shalana
2 tell you that. He wanted to be a family. So why would he burn down their
3 family home?

4 Malicious Injury to a Vehicle. Lesean said he just cut three of
5 Shalana's tires. The only thing you're here to determine is whether or not the
6 damage was more than \$250. The Burglary, the State has to prove that he
7 entered with the intent to commit a crime. If Lesean Collins is in that house it
8 was to watch his kids. You heard Shalana tell you, she sent them home after
9 school thinking their dad was going to be there to watch them because that is
10 normally the way things worked.

11 The State has shown you a voice -- they talk to you about a
12 voicemail and a call tone. You haven't heard any of those things. You never
13 heard any voicemail that was left to Shalana and you never heard any call tone
14 that Vivian Furlow claims that she heard. You didn't hear it.

15 The State has proven to you that Lesean Collins and Shalana had a
16 rocky relationship. They've proven that to you. They've proven to you that
17 Lesean Collins was in that neighborhood that day when he saw Ms. Heer's.
18 They've proven that, and they have proven to you that he wasn't very nice to
19 Ms. Heer's when he saw her. Those are not crimes.

20 Lesean Collins is guilty of being in a bad relationship with Shalana
21 Eddins; he's guilty of that. He's guilty of being mean to Ms. Heer's when he
22 saw her and he's guilty of being in that neighborhood that day; but those are
23 not crimes.

24 What Lesean Collins is not guilty of is Arson, because he didn't
25 set fire to Shalana Eddins' house, and the State hasn't given you any evidence

1 that says that he did. He's not guilty of a Burglary because he was at that
2 house to watch his kids when they got out of school. After he starts being
3 harassed by Ms. Heer; he leaves. That is not a Burglary.

4 So the only verdict for you to return, in this case, is not guilty.

5 THE COURT: Mr. Tomscheck, you can begin your rebuttal.

6 ***REBUTTAL ARGUMENT BY THE STATE***

7 ***BY MR. TOMSHECK:***

8 Why? Why would this man, right here, set fire to the home where
9 he shared, from time to time, with his children? Where he lived, from time to
10 time, with his girlfriend over the course of many years? Why would he do
11 that? Why would he rob them of their home, their shelter, their food, their
12 clothing; why would he do that? I don't know.

13 I don't know why anybody would do something like that, but I can
14 tell you, it's the exact same reason why the exact same person, would, in the
15 exact same fashion, take away the car that he drives them to school with, take
16 away the transportation that they get to and from the grocery store with, take
17 away the second biggest asset that they have in their lives. And this is a man
18 who admits that on the day he's accused of setting this fire, he did precisely
19 that.

20 He went to where she worked. While she was at work, he took
21 out a knife and he stuck it in the tires. He admits he let the air out of those
22 tires. He tells the police that and his lawyers just told you that. That's the
23 kind of individual we're dealing with. And I would suggest to you there's a
24 really obvious reason why there's no admission that he set fire to that house.
25 We're going to talk about that in just a moment.

1 What we are here to determine is precisely what Ms. Jones told
2 you we are. We're here to determine whether or not the State has proven that
3 the Defendant committed the three crimes for which he's charged, beyond a
4 reasonable doubt.

5 And as you sit here today, I can understand that that concept of
6 beyond a reasonable doubt may be somewhat difficult to define. But I'd ask
7 you to take comfort in the fact that as you sit here, at this point, in this
8 process, you don't have to define it, because Judge Leavitt defined reasonable
9 doubt for you just a moment ago when she read those jury instructions.

10 And granted, she reads them pretty quickly, so I just want to talk to
11 you about Jury Instruction Number 15, beyond a reasonable doubt, what that
12 means.

13 Jury Instruction 15 says: Reasonable doubt is one based on
14 reason. It is not mere possible doubt, but is the kind of doubt that would
15 govern or control a person in the more weighty affairs of life. If, in the minds
16 of jurors, after you've compared and considered all the evidence, you have an
17 abiding conviction of the truth of the charge; there is not a reasonable doubt.

18 What does that mean? It's a lot of lawyer talk, but when you get
19 to the end of it, if as you sit here today, having heard the evidence, seen the
20 witnesses, listened to the testimony, seen the exhibits introduced; you have an
21 abiding conviction that that man walked into 1519 Laguna Palms and set the
22 house on fire; there's not a reasonable doubt. He's guilty.

23 The next sentence in that instruction -- instruction tells you: For
24 doubt to be reasonable, it must be actual, not mere possibility or speculation.
25 So we could hypothesize all day long that someone else in the few minutes

1 between when he drove away and the flames started burning up that building,
2 someone else snuck in there and set that fire. You could speculate on that. If
3 you want to believe that. You could create some imaginary person that went in
4 there and did that. But for a doubt to be reasonable, it's got to be actual. It
5 can't be that speculation.

6 So what do we actually have to consider in this case? Well, we
7 have the testimony of the witnesses that you heard during this trial. There's a
8 jury instruction that talks to you about the credibility and believability of
9 witnesses that you hear from. It's Jury Instruction Number 17.

10 It talks to you about, when you consider someone who testifies
11 during a trial, you can consider the reasons for which they give the testimony
12 they do. What their fears, their motives, their interests, their feelings are, what
13 opportunity they had to observe what they're testifying about, and their
14 relationship to the parties.

15 And I'd ask you to do that for all of the witnesses that you heard in
16 this case because you heard, repeatedly, from the Defense from the outset,
17 that this individual, Lesean Collins, was in a relationship with Shalana Eddins,
18 and that he isn't Ozzie and that she isn't Harriett. And we know that.

19 But the fact is, it doesn't matter. The only reason that matters is
20 for this: I don't care if they're Cliff and Claire Huxtebel [phonetic]. I don't care
21 if they're Wilma and Barney Flintstone. I don't care if they're Homer and Marge
22 Simpson. This is real life. This isn't a television show. Ozzie and Harriet don't
23 commit crimes against each other. Who does? People that are in relationships
24 like Lesean Collins and Shalana Eddins. People that are contentious. People
25 that cut each other's tires. People that throw rocks at each other.

1 Those are the type of people, in the real world, that light houses on
2 fire when their relationship gets out of whack and they get in such a state that
3 they have to lash out at one another. They try to do so in the most harsh way
4 they can. That's the type of person we're dealing with in this case when we're
5 talking about the Defendant.

6 What I would ask you to do is consider that concept, the idea that
7 was brought, from the very beginning of this trial, that you can't believe
8 Shalana Eddins because she isn't Harriett. And I ask you, what did Shalana
9 Eddins really tell you about the actual fact of the fire? Nothing.

10 Shalana Eddins told you that they're in a bad relationship and that
11 they're fighting at the time this happened. Is that important? Sure. But when
12 it comes to whether or not this Defendant actually lit a match or flicked a
13 lighter and set flame to that house, what does she tell you? Not a thing
14 because she wasn't there, because this man, by his own admission, cut her
15 tires and left her at work.

16 So who do we have to talk about when we talk about the
17 witnesses who are actually present at the time this crime was committed?
18 There's just a handful. And I would suggest to you that there's only one
19 witness in this case, you can, in no way, fashion an argument that she's -- has
20 a credibility or bias problem as it relates to one of the people in this case.

21 Could you say Jeff Lomprey wants to solve the crime? Sure.
22 Could you say Manuel Vital is a police officer of North Las Vegas who wants to
23 make an arrest? Fine. Could you say Robert Eddins is Shalana's dad? Sure.
24 Could you say Vivian Furlow is her friend? Absolutely.

25 But who is Darlene Heer? Who is she? According to the Defense,

1 she's the nosey neighbor that wants to get involved, and I suppose the way
2 she picked to do that was to sit in her own home on a Tuesday night at 5
3 o'clock and have three little boys come knock on her door. That's not a nosey
4 neighbor. That's a lady who, unfortunately for her, is in the wrong place at the
5 wrong time. She's living next door to where this man is creating chaos.

6 When those boys come to the door and knock, she's interjected
7 into the situation, and kicking and screaming a year later, she told you she
8 didn't want to be here. When I asked her if she wanted to testify, she said:
9 Heck, no. She only did because she was subpoenaed and compelled to come
10 to Court and tell you what actually happened.

11 And what did she tell you? She tells you when those kids come to
12 her house, it's at the direction of their mother. She lets them in because she
13 feels sorry for those three little boys. She says they're nervously looking out
14 the window and what do they see? This Defendant in a car, the same car that
15 Vivian Furlow sees him in; the same car that his own alibi witness says he
16 would have been driving on the day this fire was set.

17 They say: That's my dad. And what does she do? Not as a nosey
18 neighbor, but as a bystander who's concerned for the health and safety of
19 three little boys, she goes outside and she asks him. In the brief moments she
20 speaks to him, the few snippets of a second that she talks to him; what does
21 that conversation consist of: I'm here for my wife. I'm going to kill my wife.
22 I've got a gun. That's how mad this man is against the owner of the house he
23 ultimately sets on fire.

24 In the brief conversation he has with a woman he doesn't even
25 know, he lets her know exactly who he's upset with and exactly what frame of

1 mind he's in; the precise frame of mind that someone would be in if they were
2 about to set fire to a house. Which brings me to a point that Ms. Jones was
3 talking about the State wants you -- what the State wants you to get lost in --
4 the things we want you to consider.

5 Here's the facts: In a case like this, you are limited to the facts.
6 Ms. Jeanney and I don't get to make them up. We don't get to create the
7 evidence. We don't get to pick our witnesses. We're stuck with the people
8 that were there and what they say.

9 And because everything happened, in the day leading up to
10 September 30th, they got in a fight; rocks were thrown; a cell phone was taken;
11 mean things were said; a voicemail was overheard. Because those are the
12 facts, you are entitled to hear them. And we, as the State of Nevada, are
13 obligated to give you them. That's not what we want you to get lost in. What
14 we want you to get lost in, is the fact that this is a serious situation in a court
15 of law, for which someone must be held accountable.

16 Did you see video about a cell phone? No. Why not? Ms. Jones
17 told you: He's not charged with taking a cell phone. If he was charged with
18 taking a cell phone, I can assure you, you would have seen the video.

19 And think about what she says about Darlene Heer's, the fact
20 about the gun, how could he have possibly have had a gun the day after when
21 Shalana gave it away the day before? No one ever said that Darlene Heer's
22 saw a gun. What you heard was that he was upset that his gun was given
23 away and that he said he had a gun. Those were his words to his ex-
24 girlfriend's next door neighbor at the time he started this fight.

25 The Defense also told you, a few moments ago, that the State

1 can't give you a timeline. Can we give you an exact timeline? Of course not.
2 People aren't checking their watches in a dynamic fast-moving situation that is
3 life altering and emotional, but we have a pretty good one; don't we?

4 Between 4:30 and 5 o'clock, this man is at her work. They admit
5 that. He cuts her tires. A short time later, we're told that the boys from 1519
6 knocked on Darlene Heer's door, around 5 o'clock, right after their mother sees
7 the damage to her car and tells them to go over there.

8 We know that it's between 5 o'clock and 6:45 that the Defendant
9 shows up. We know that because the boys and Darlene Heer sees him outside
10 the residence. We know that it's a few moments after that that he drives
11 away, and you have a precise timeline for when Darlene Heer's called
12 9-1-1 because you have the 9-1-1 call.

13 At the beginning of all those recordings is that annoying little
14 computerized voice that tells you, it's 6:46, she dials the phone for the first
15 time, and they ask her to go where she can talk and it's more clearly heard.

16 And although Ms. Jones expects you to believe that Darlene Heer
17 fabricated this amazing story by the time she calls back, the timeline on that
18 9-1-1 call tells you that it's precisely one minute later. It's 6:47 when she calls
19 the police and gives the information that is heard.

20 We know that it's at 6:52 that Manuel Vital is assigned that call,
21 less than five minutes after the call comes in. We know that within a few
22 moments of that, he comes to the residence; he talks to the people outside,
23 and they approach 1519 Laguna Palms.

24 We know it's at exactly 7:05 when they touch that doorknob and
25 figure out that the house is hot, because that's when the dispatcher on that

1 9-1-1 call calls and says: Send a fire truck for a house fire. That's a precise
2 timeline. It's in evidence and you have it to consider.

3 What you are presented within a situation like this, is where we
4 know that a crime has been committed. When Ms. Jeanney talked to you
5 about the things the State has to show, there's the what and the who. We
6 know what the what is. Somebody went in that house and set it on fire.
7 They're not disputing that that happened. They can't. That happened. There
8 was damage to that house. You got 49 photographs about what happened
9 inside that house. The question is whether or not this guy did it.

10 And when you go back and deliberate, I would submit to you, that
11 either he did it, and it's been proven, beyond a reasonable doubt, or Lesean
12 Collins is the single most unlucky man in the history of the world. Because you
13 have to believe, either he set that house on fire or he just happened to be at
14 that neighborhood at precisely the time the fire started.

15 Either he set that fire or it's just a coincidence that it's in the
16 middle of a contentious domestic relationship that that fire started. Either he
17 set that fire or it's just a big oblivious ball of, who knows what, that happens
18 to him at the time that that fire starts.

19 You have to believe that either he set the fire or he just happened
20 to blurt out things to Detective Lomprey that only the Defendant would know
21 because he tells Lomprey, the Arson Investigator, the Captain from North Las
22 Vegas, that he never went in the room without knowing what room it was set
23 in.

24 You have to know that he was there because he tells Lomprey that
25 he talked to that nosey female neighbor. Either the Defendant did exactly what

1 the State charged him with or he is just so, so unlucky.

2 And the last thing I want you to consider before you go back and
3 deliberate is this: You have a Jury Instruction Number 14 that talks about
4 something that the State doesn't have to prove, the motive for committing a
5 crime. And why doesn't the State have to prove a motive when we ask you to
6 find people guilty of the crimes they're charged with?

7 It's a really obvious reason, because sometimes some people do
8 things that don't make sense. Sometimes people do bad things to people and
9 property for which there is no reason.

10 If I shoot and kill someone for no reason at all, I'm still guilty of it,
11 even though I didn't have a motive. But that jury instruction also tells you that
12 motive is something you can and that you should consider. And I'd ask you to
13 consider what motive does anyone in this world, other than that man have, for
14 setting a fire in that house?

15 He's in a fight with the person that lives in that house. He goes to
16 where she works and slashes her tires. Immediately thereafter, he's seen at
17 the house. Immediately after that, he's seen driving away, and he does all of
18 that with the mindset of someone who has the motive of creating damage to
19 the property of the person he's angry at, Shalana Eddins.

20 In the course of this trial, you heard no testimony about any other
21 person in this world who would have had a motive to set that house on fire, let
22 alone have the opportunity, in the exact middle of that timeline, to do it.

23 Ladies and Gentlemen, there is but one person who had that
24 motive. One man who had that opportunity. There is one example of someone
25 who could have done it and who did do it.

1 There is only one logical conclusion at the end of this case. There's
2 only one way to hold the right person accountable, and the one way you can
3 do that is by returning the one verdict that's appropriate.

4 Ladies and Gentlemen, you have the opportunity to do that by
5 saying just one word and that is: Guilty.

6 THE COURT: Thank you. At this time the Clerk's going to swear in the
7 Officers of the Court, who will take charge of the jury. When you go back to
8 deliberate upon your verdict, you're now able to take your notebooks, your
9 notes and your jury instructions.

10 [The Officers of the Court are sworn in by the Clerk]

11 THE COURT: Now, ladies and gentlemen, you are excused to deliberate
12 upon your verdict. You can follow the Court Marshal. Thank you very much.

13 [Jurors exit courtroom to begin deliberations at 3:10 p.m.]

14
15 [Proceedings adjourned at 3:11 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/visual recording in the above-entitled case.

23
24 
25 Kerry Esparza, Court Recorder/Transcriber
District Court, Department XII

1 **TRAN**

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3 **ORIGINAL**

JUN 18 4 02 PM '10

4 *Sharon L. Shuman*
CLERK OF THE COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

11 **LESEAN T. COLLINS,**

12 **Defendant.**

)
)
) **CASE NO. C-253455**
)
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) **DEPT. XII**
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13
14 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**

15 **THURSDAY, FEBRUARY 18, 2010**

16 **TRANSCRIPT OF PROCEEDINGS**
17 **SENTENCING**

18 **APPEARANCES:**

19 **For the State:**

JOSHUA L. TOMSHECK, ESQ.
Deputy District Attorney

20
21 **For the Defendant:**

TIERRA D. JONES, ESQ.
Deputy Public Defender

22
23
24
25 **RECORDED BY: KERRY ESPARZA, COURT RECORDER**

RECEIVED

JUN 18 2010

CLERK OF THE COURT

1 THURSDAY, FEBRUARY 18, 2010 -- 9:13 A.M.

2
3 THE COURT: Good morning.

4 MS. JONES: Good morning, Your Honor, we're ready to go on Collins on
5 page 6.

6 THE COURT: State versus Lesean Collins, C-253455.

7 CORRECTION OFFICER BOOKER: He refused.

8 THE COURT: Oh.

9 CORRECTION OFFICER BOOKER: He refused.

10 THE COURT: He didn't want to come to Court today?

11 THE COURT: What's wrong?

12 CORRECTION OFFICER BOOKER: It's just his way. He does it
13 periodically.

14 THE COURT: Okay. Want to continue it a week?

15 MS. JONES: Your Honor, I would ask that we continue this.

16 THE COURT: Isn't he coming up for trial?

17 MR. TOMSHECK: That was continued until September, Judge.

18 THE COURT: Okay. All right. I'll continue it a week.

19 MR. TOMSHECK: A week's fine with the State. I would ask, and I'll
20 submit to the Court, a written order so that he come, because I talked to the
21 C/O. If you provide them with a written order, they'll forcefully bring him if he
22 continues to refuse.

23 MS. JONES: And Judge, I would just ask that we continue this for the
24 week, and then, if he refused to be transported next week, then I would ask
25 that we take other measures. I would ask that we give him one last

1 opportunity to come to Court on his own.

2 THE COURT: Okay. We'll give him one last opportunity to come. He'll
3 be told, and if not, then the SERT team will bring him.

4 MS. JONES: I understand, Judge.

5 THE COURT: I just have never had this problem with him, so I don't
6 understand why he's -- usually he behaves very well in Court, so -- Who's
7 laughing? Okay.

8 MR. PONTICELLO: But not at that.

9 THE COURT: He does.

10 MR. PONTICELLO: No.

11 THE COURT: All right.

12 MR. PONTICELLO: Mr. Hillman said something very funny and that's the
13 truth --

14 THE COURT: Okay.

15 MS. KHAMSI: Blame it on Roger.

16 THE COURT: Well, then he has to share with the rest of us. I'm
17 assuming the State is seeking habitual treatment?

18 MR. TOMSHECK: Absolutely, Judge.

19 THE COURT: You have the priors?

20 MR. TOMSHECK: I do.

21 THE COURT: Have they been -- do you want to leave them with the
22 clerk so she can mark them?

23 MR. TOMSHECK: I believe the defense wanted an opportunity to look at
24 them. I can --

25 THE COURT: Okay.

1 MS. JONES: No, I mean, I just want a copy of them. I know they're all
2 Clark County JOC's.

3 THE COURT: Okay. That's fine.

4 MR. TOMSHECK: I do have them now.

5 THE COURT: All right. That's fine. You can bring them in a week.

6 MR. TOMSHECK: Thank you, Judge.

7 THE COURT: Will you prepare the order?

8 MR. TOMSHECK: Absolutely.

9 THE COURT: Okay.

10 COURT CLERK: February 25th at 8:30.

11 MR. TOMSHECK: Thank you; have a good day.

12 MS. JONES: Thank you, Your Honor.

13 THE COURT: Thank you.

14
15 [Proceeding concluded at 9:15 a.m.]
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/visual recording in the above-entitled case.

24 
25 _____
Kerry Esparza, Court Recorder/Transcriber
District Court, Department XII

1 **TRAN**

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4 *Ann D. Schuman*
CLERK OF THE COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **STATE OF NEVADA,**

9 **Plaintiff,**

CASE NO. C-253455

10 **vs.**

DEPT. XII

11 **LESEAN T. COLLINS,**

12 **Defendant.**

13
14 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**

15 **TUESDAY, MARCH 2, 2010**
16 **TRANSCRIPT OF PROCEEDINGS**
17 **CONTINUED SENTENCING**

18 **APPEARANCES:**

19 **For the State:**

JOSHUA L. TOMSHECK, ESQ.
JACQUELINE JEANNEY, ESQ.
Deputy District Attorneys

20
21 **For the Defendant:**

TIERRA D. JONES, ESQ.
Deputy Public Defender

22
23
24 **RECORDED BY: KERRY ESPARZA, COURT RECORDER**

FILED

JUN 1 8 25

CLERK OF THE COURT

1 TUESDAY, MARCH 2, 2010 -- 8:35 A.M.

2
3 THE COURT: State versus Lesean Collins, C-253455. Lesean Collins.
4 He's present, in custody. Are we ready to proceed?

5 MS. JONES: I don't think --

6 MS. THOMAS: No.

7 MS. JONES: I don't think Mr. Tomsheck's here.

8 MS. THOMAS: Mr. Tomsheck is coming this morning.

9 [Item trailed at 8:36 a.m.]

10 [Item recalled at 8:40 a.m.]

11 THE COURT: State versus Lesean Collins, C-253455. He's present; he's
12 in custody. This is the date and time set for entry of judgment and imposition
13 of sentencing.

14 Mr. Collins, any legal cause or reason why judgment should
15 not be pronounced against you at this time?

16 THE DEFENDANT: No.

17 THE COURT: By virtue of the verdicts returned in this matter, I hereby
18 adjudicate you guilty of Count 1, First Degree Arson; Count 2, Burglary, and
19 Count 3, Malicious Injury to a Vehicle. Okay. State wish to address the Court?

20 MR. TOMSHECK: Judge, pursuant to the Notice of Habitual Criminal
21 Treatment that we filed with the Court, November 6th, of 2009, I have certified
22 copies of the Judgments of Convictions and related Court documentation I'd
23 like to provide to the Court.

24 For the record, that's from C-154516, C-166115, and C-
25 184264; if I can approach.

1 THE COURT: You may.

2 MS. JONES: And Your Honor, my client has suffered a leg injury while
3 he's been in custody. He would ask the Court if he could sit down during these
4 proceedings.

5 THE COURT: Sure.

6 THE DEFENDANT: Thank you.

7 THE COURT: Have you seen these -- the judgment of --

8 MS. JONES: I have not, Judge.

9 THE COURT: You have copies for the defense?

10 MR. TOMSHECK: I offered them to her last time we were here and she
11 said they were on Blackstone. Said she'd get her own, but if she wants to take
12 the time and look at those; we can trail 'em.

13 MS. JONES: Can I see the ones of the State?

14 THE COURT: Well, these are mine. These are mine. They're going to be
15 marked and made part of the record.

16 MR. TOMSHECK: I don't mind her taking a few moments to peruse
17 them, Judge. They're all local convictions.

18 THE COURT: Okay. Anyone here that has both sides here and a client --

19 MS. JONES: May I approach, Judge?

20 [Item trailed at 8:42 a.m.]

21 [Item recalled at 8:56 a.m.]

22 THE COURT: Can we recall Mr. Collins? Can we recall Mr. Collins?
23 State versus Lesean Collins, C-253455. You can sit down.

24 MS. JONES: Your Honor, actually my client has requested that he be
25 allowed to be excused from these proceedings?

1 THE COURT: No. You can't be -- you can't avoid sentencing by asking
2 to be refused. What's your problem today?

3 MS. JONES: No, Judge, he wishes for the sentencing to proceed, but he
4 wishes for the sentencing to proceed --

5 THE DEFENDANT: Yeah.

6 MS. JONES: -- in his absence.

7 THE COURT: Why? How -- sit down. Well, what's your problem today?

8 THE DEFENDANT: Well, the only reason why I didn't come last time, it
9 wasn't because that -- it's 'cause I blew my leg out; right.

10 THE COURT: Okay.

11 THE DEFENDANT: This leg. The day before that, I walked by myself. I
12 had to walk all the way down here and uh --

13 THE COURT: You're going to have to walk all the way back whether we
14 proceed with sentencing or not. How did you blow your leg out?

15 THE DEFENDANT: Playing basketball.

16 THE COURT: Okay. You can have --

17 THE DEFENDANT: Somebody went under me.

18 THE COURT: Pardon?

19 THE DEFENDANT: Playing basketball, somebody went under me.

20 THE COURT: Okay. You can have a seat. You can sit down during --

21 THE DEFENDANT: That's -- that's okay.

22 THE COURT: Okay. So your leg's good enough to stand up?

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay.

25 THE DEFENDANT: I'm forced to do it now.

1 THE COURT: No you're not. Have a seat.

2 THE DEFENDANT: That's okay.

3 THE COURT: Okay. Then stand up. All right. So you've had an
4 opportunity to review the JOC's that have been marked as State's Exhibits 1,
5 2, and 3?

6 MS. JONES: Yes, Your Honor; I have.

7 THE COURT: Go ahead, Mr. Tomscheck.

8 MR. TOMSHECK: Judge, I'm sure it'll come as no surprise to anyone
9 that I'm going to ask for Habitual Criminal Treatment for this Defendant, and
10 I'm going to take a little bit longer to address his sentencing than I would on
11 most, and there's a couple reasons for that.

12 One is, I think this is a Defendant who warrants more
13 attention from the Court than most, and two, because frankly, it'll take quite a
14 bit of time to go through his criminal history, based on the criminal resume that
15 he's built over the years.

16 Judge, I'm going to ask you to sentence him as a Habitual
17 Criminal on Count 1, the Arson count, and I'm going to ask you to sentence to
18 a period of 10 years to life in the Nevada Department of Corrections. And
19 here's why. If you look at the Defendant's criminal history, dating back to the
20 time he became an adult; he has built a rather amazing criminal history and a
21 criminal resume, almost second to none, in those that I have seen in the time
22 that I have been prosecuting.

23 And what I mean by that is, he hasn't necessarily racked up
24 the amount of felony convictions as a lot of Defendants you see, but his arrest
25 record is amazing. He's been cited and/or arrested for anything to jaywalking

1 to murder, from sex assault, to riding a bike on the wrong street of the road. I
2 can't really come up with an NRS that he hasn't been cited or arrested for.

3 He's been arrested for severe offenses over the course of his
4 criminal history and he's, oftentimes, received a great benefit, in that, if you
5 look at the PSI -- the details of each of his individual arrests; he's arrested for
6 very serious offenses and ultimately pleads to less than serious offenses.

7 If you look at his first adult arrest date from August of 1994,
8 he was arrested for Assault with Use, Resisting a Police Officer, which was
9 amended to Assault with a Deadly Weapon, Battery by a Prisoner, and
10 Possession of a Stolen Vehicle. He was ultimately adjudicated guilty of a
11 misdemeanor and received a jail sentence.

12 He's received nine incarceration sentences at either the Clark
13 County Detention Center or the North Las Vegas Detention Center over the
14 course of his adult life. If you look at every arrest subsequent to that, it's a
15 serious offense for which he ultimately pleads to a less than serious offense.

16 His felony convictions are ones that he has pled to or been
17 adjudicated at trial of -- and they're rather minimal offenses when you look at
18 the fact that almost every single time this individual comes into contact with
19 the police -- either fights, he resists, or he runs.

20 I've never seen an individual who's been arrested for
21 Obstructing an Officer more times than this Defendant. He's been arrested at
22 least 14 times for that offense. I've never seen an individual who has been
23 charged with Evading a Police Officer more than this Defendant.

24 I can't even count how many times he's been charged for
25 evading, but he's been adjudicated guilty of misdemeanor evading offenses,

1 felony evading offenses, and gross misdemeanor escape offenses. Obviously,
2 when a Defendant has this type of criminal history, you will have numerous
3 prosecutors that will have the daunting task of having to hold him accountable
4 for what he's done.

5 And as one of the prosecutors who's had that responsibility; I
6 had an opportunity to go into his criminal history and read a sentencing
7 transcript from the last time the Defendant was sentenced on a felony offense.
8 That was June 7th of 2005. And the reason I bring that to the Court's attention
9 is because, in that instance, he was given yet another opportunity. He
10 ultimately went to prison, got out, and committed the offenses he did here.

11 And at the time he was sentenced, his public defender
12 addressed the Court and said, and I'll quote from the June 7th, 2005 transcript,
13 at page 12: That this isn't the type of individual who should be adjudicated as
14 a habitual felon, because when we see the type of habitual offender that this
15 Court should send to prison for a long, long time, we look at violent offenders,
16 people that are strong armed robbers, people that are breaking into houses,
17 people that are convicted of the same type of offense over and over and over
18 again, and they never get the message.

19 Lo and behold, Judge, in the intervening 5 years between
20 when he was sentenced on that case to today, he's become very one of those
21 things. He's currently facing a charge for Murder. He's facing a charge for
22 Robbery. He's been charged and convicted of the same offense over and over
23 again. He broke into a house in this case and burned it down. He robbed his
24 children of their home and the mother of his children from her home. It's a
25 very serious offense.

1 This is a Defendant whose criminal past personifies the
2 definition of menace to society, Judge. He is a habitual criminal who squarely
3 fits within the definition of the statute, and he has earned a right to be
4 sentenced to 10 years to life.

5 THE COURT: You want to say anything, Mr. Collins?

6 THE DEFENDANT: Aren't --

7 MS. JONES: Judge, can I have one moment with him before he speaks,
8 just very briefly.

9 THE COURT: Go ahead.

10 THE DEFENDANT: First of all, um, the only thing that I apologize is uh,
11 being in jail now. I apologize to my son; that's the only thing I apologize to.
12 Second of all, you talkin' about uh -- I heard the DA talking about me running
13 from the police. Well, you know what I'm sayin', I don't need your pity, you
14 know what I'm sayin'? But I did enter a gang and that's what I did and during
15 that gang, the Gang Unit did, you know what I'm sayin'?

16 THE COURT: Address me, not Mr. Tomsheck.

17 THE DEFENDANT: Oh, my fault. Well, anyways, when I did -- you know
18 what? When I did enter the gang, you know what I'm sayin'? The Gang
19 Unit's, it's kind of rough, so the Gang Unit gets you, you know what I'm
20 sayin'?. Sometimes they want to rough you up a little bit. I got tired of that,
21 so that's why I had all those evasions when I ran from the police.

22 And yes, I was doing things wrong out there, but then I was
23 cited, you know what I'm sayin'? When the police did shoot at us, and uh,
24 when they did shoot at us, that's the reason why -- when I lost my left -- my
25 left eye -- that's how I lost my eye, to the police.

1 I didn't loose an eye to a gang; I didn't use a lie in uh -- my
2 eye to robbery. I didn't loose my eye -- and second of all, that wasn't my
3 house. Why you sayin' that it was -- I broke into a house. I didn't break into a
4 house; I broke into my house. Wasn't no house that I burglarized or anything,
5 and uh, and I didn't break into no house.

6 As far as 10 to life, I don't care if you give me life; it really
7 doesn't matter, you know what I'm sayin'? What you give me, 'cause I didn't
8 even have a trial, you understand? My -- my attorneys filed an ineffective in
9 the beginning and told you that they wasn't ready to go to trial and I still was
10 forced to go to trial; and I lost, you know, so it wasn't like they could even
11 defend me through this whole trial. No one could rebuttal anything that I said.
12 I had -- I couldn't take the stand.

13 There was a whole bunch of issues in the case that I couldn't
14 do, but you're talking about giving me 10 to life? You're going to give me 10
15 to life for a trial that I couldn't even defend myself. The robbery and murder
16 has nothing to do with this case and it's just that -- that's a whole new case --
17 has nothing to do with it, in my eyes, anyways.

18 I know I can't change your mind, you know, you're going to
19 give me whatever it is you have -- the case already beforehand. I came before
20 you six, seven years ago; you heard the case.

21 THE COURT: Right. I was the one who --

22 THE DEFENDANT: The case wasn't a strong case.

23 THE COURT: -- and I was the one who said that you weren't appropriate
24 for habitual treatment at that time and you just couldn't wait to prove me
25 wrong.

1 THE DEFENDANT: Well, okay. Proving you wrong would be -- if it
2 wasn't circumstantial evidence if people -- nobody ever said I did anything in
3 the trial. You just heard the whole trial and my lawyer still, you know what I'm
4 sayin'? Couldn't do the proper -- they couldn't argue the proper facts because
5 they wasn't ready, you know, they just wasn't ready to argue the proper facts.
6 Didn't even know everything that was going out there.

7 So if 10 to life is -- which -- a little ding, that sound
8 appropriate, you know, because I see that you're still -- it seems that you're --
9 you're talking about that because you didn't give it to me last time. I thought
10 the reason you didn't give it to me last time wasn't because that reason. I
11 thought the reason why you didn't give it to me last time because I didn't fit
12 the script or wasn't --

13 THE COURT: That's -- that's correct. Didn't think --

14 THE DEFENDANT: And this time right here.

15 THE COURT: -- it was appropriate.

16 THE DEFENDANT: I just went to trial and you just watched me go to
17 trial. My lawyer just claimed ineffective and the case wasn't even a strong
18 case. It got dismissed in the beginning. It's not even a strong case -- was --
19 nobody ever said that I did anything in this trial -- said I ever actually put
20 anything on fire, you know what I'm sayin'?

21 And uh -- I didn't break in no house, you know, I have my
22 keys and everything. You heard the statements and everything. You heard the
23 statement being played. I had my keys to my house and everything. And I've
24 been arguin' with this woman, you know, you know who I'm talkin' about --
25 Shalana. I've been arguin' with Shalana for 12 years.

1 I don't just wake up one day and think: Oh well, I'm going to
2 set my house on fire, take away the kids' stuff, take away everything that
3 belongs to me. Take away all my mom's -- my mom's stuff that uh -- 'cause
4 she had all my mother's stuff -- my mother died in 2004, so all of my mom's
5 stuff -- there's nobody else living.

6 All that stuff was in the house, so I would set it on fire to
7 burn up everything that I ever got. Now everything that I have of my mother --
8 only thing that I have living -- the only thing that I have -- including my clothes;
9 those were all my clothes and everything. I don't have nothing now.

10 But uh -- why would I do that? I mean, I can't argue my case
11 but -- 'cause I don't want to go into that, but I'm not gonna just burn up my
12 whole house and burn everything up just -- and I don't got nothin'.

13 What I'ma [sic] go to? Start over? I just got out of prison,
14 so what I'm -- what I'm supposed to do? I had to -- I didn't have to, but I went
15 home because that's where my home was. I wasn't forced into the home; I
16 was welcomed into the home.

17 Now that we dun [sic] went to trial and I've lost trial and uh,
18 he's bringing up these -- well, the prosecutors bringing out these accusations of
19 me doing this over and over and over, and over. Yes, I'm runnin' from the
20 police. My lawyer told you last time: Yes, there's a reason why Lesean runs
21 from the police. Lesean runs from the police for the simple fact that they beat
22 him every time.

23 And he said: Why do Lesean have all these batteries -- all
24 these batteries? Okay. Well, when you run from the police, it's likely if you
25 wrestle with them, you're going to get a battery charge, because they don't

1 like it that you ran from 'em. So if you wrestle or resist in any way, you'll get
2 a battery charge. You're going to get that charge and when I get that charge; I
3 have to deal with it. So yes, I pled to a lesser offense. What am I supposed to
4 do? I don't know the law; I didn't go to school for this, you know, I know the
5 streets. I don't know the law. That's all I gotta say.

6 MS. JONES: And Judge, I would just like to point out, this Court is very
7 familiar with my client's relationship with Ms. Eddins who is the victim in this
8 case; so I don't think we need to get into that and go into detail. This Court is
9 aware, and this Court presided over the trial in this case, so you've heard all of
10 the evidence in this case.

11 However, my client is in an unfortunate position where
12 there's not a lot that he can say about the facts in this case, because we do
13 intend to appeal the conviction in this case, so there's not a lot he can say to
14 defend against the facts in this case; and those are something for a different
15 day.

16 But Judge, I'd like to point out, I picked up this case in
17 probably the beginning of 2009, so over the last year, I've gotten to know Mr.
18 Collins. And the person that I've gotten to know is not somebody that the jury
19 could've gotten to know in the three days that we were in trial.

20 The history that he has with the victim in this case, the
21 history that he's had since the time that he was 16 -- those are things that just
22 couldn't have been known from the three days that we were in trial. Those are
23 things that -- it takes a significant amount of time for anybody to know.

24 But one of the things that I've come to know over this time,
25 is that he did begin his gang contact at an early age, and he -- by beginning his

1 gang contact at an early age, he has had many negative contacts with law
2 enforcement. And when he had those negative contacts with law enforcement
3 at an early age, it influenced the behavior that he has with law enforcement
4 today.

5 And as the Court can see, he has suffered an injury at the
6 hands of law enforcement that he's going to have to live with for the rest of his
7 life, and based upon some of those contacts, that is the reason for the negative
8 attitude that he has. And that's the reason for a lot of the arrests that he's
9 incurred over the years. And a lot of the arrests that he's incurred that -- in --
10 that deal with law enforcement.

11 But I don't think my client should be punished for arrests or
12 he should be punished for crimes that he was charged with that the DA's
13 Office decided that they wanted to plead down. The DA's Office negotiated
14 those cases with him to plead those down to lesser offenses, and he pled to
15 the lesser offenses. I wasn't there; Mr. Tomsheck wasn't there.

16 We don't know the reason for the negotiations in those
17 cases. But I don't think my client should be punished for the fact that he pled
18 some of his cases down from more serious offenses and actually pled to a
19 lesser offense. I don't think that that makes him a habitual criminal.

20 My client does acknowledge that he has had a lot of arrests,
21 but as the Court is aware, a lot of those things have been negotiated. A lot of
22 those things were not proceeded on and a lot of those things were negotiated
23 for different reasons that we don't even know what they are, and he should
24 not be punished for that.

25 The murder conviction that he's facing has absolutely nothing

1 to do with this case. He has not been convicted of that. He has a trial date
2 set in that and he has every right to stand trial and that charge be proven
3 beyond a reasonable doubt in front of a jury. That should not be something
4 that we should consider as to whether or not he's a habitual criminal.

5 Because just because you're arrested on something, that
6 doesn't mean that you did it. That means that you were arrested for
7 something, and at this stage, that's exactly what that is. He's been arrested.
8 He's in District Court, ready, awaiting trial. That case has not been proven
9 against him.

10 Your Honor, he only has three felonies. He has three felony
11 convictions and two of those convictions are for drugs. And if the Court looks
12 back at his criminal history, he participated in Drug Court while he was on
13 probation, which indicates that the victims of those cases was him. The
14 victims weren't anyone else. The victim is him. He was using drugs and based
15 upon that, he was victimizes himself.

16 He had participated in the Drug Court Program but drugs
17 continued to be a problem for them -- for him. I don't believe the Habitual
18 Criminal Statute was designed to prosecute people who are using drugs. The
19 Habitual Criminal Statute was not designed for somebody to do a 10 to life
20 because they were using drugs.

21 The statute was designed to take people off the streets who
22 are out committing crimes against other people who are repeatedly committing
23 crimes against other people and who have racked up a numerous amount of
24 felonies, based upon the fact that they are committing these violent crimes
25 against other people.

1 The State is talking about how many misdemeanors my client
2 has. If the Legislature intended for misdemeanors to make you a habitual
3 criminal, they would have a misdemeanor statute where you could be treated
4 as a habitual criminal. Only felonies --

5 THE COURT: They do.

6 MS. JONES: -- can be considered for habitual --

7 THE COURT: No, you can consider petty larcenies.

8 MS. JONES: You can consider petty larcenies but there's --

9 THE COURT: There is a statute that --

10 MS. JONES: There's no other misdemeanor --

11 THE COURT: -- deals with that.

12 MS. JONES: -- statute. They consider felonies. And based upon the
13 number of felonies he has and the fact that two of them were for drugs, where
14 he was using drugs, I don't believe my client is eligible for habitual criminal
15 treatment. My client is maintaining his innocence in this case, and based upon
16 that, I would ask the Court not to adjudicate him as a habitual criminal, and to
17 sentence him to the minimum penalties on each of the counts and to run those
18 concurrent, based upon the fact that this was all one series of events.

19 There was no two separate events that occurred, so I would
20 ask the Court to sentence him to minimal penalties and run those sentences
21 concurrent.

22 THE COURT: You had an opportunity to review these JOC's and you
23 have no objection to these?

24 MS. JONES: No, Your Honor; I don't.

25 THE COURT: Anything else?

1 MS. JONES: My client has one last thing he'd like to say.

2 THE COURT: Go ahead.

3 THE DEFENDANT: I was kinda upset. I'd like to apologize to everybody
4 including the crowd. In the beginning I was kinda upset when I just -- when I
5 first stood up. I want to apologize to everybody. I guess this happens, you
6 know, a lot of pressure on me right now. I like to apologize to everybody
7 'cause uh -- I think I was a little outta -- I know I was outta line, how I came
8 forth.

9 THE COURT: Okay. In accordance with the laws of the State of Nevada,
10 this Court does now sentence you as follows: In addition to \$25 administrative
11 assessment, \$150 DNA fee, order that you submit to genetic marker testing.
12 At this time, the Court's going to make a determination that it's appropriate to
13 sentence you under the Habitual Statute.

14 As to Count 1, the Court's going to sentence you to a term of
15 life in the Nevada Department of Corrections with a parole eligibility after
16 serving the minimum of 10 years. As to Count 2, life in the Nevada
17 Department of Corrections with parole eligibility beginning after a minimum of
18 10 years is served, concurrent to Count 1. Count 3, 12 months in the Clark
19 County Detention Center to run concurrent to Count 1 and 2.

20 How much credit does he have?

21 MS. JONES: Your Honor, he actually has more credit than what's
22 indicated on the PSI because he's never been out of custody on this case.

23 MR. TOMSHECK: I believe he was released on this case and held on the
24 murder though.

25 MS. JONES: When was he released?

1 MR. TOMSHECK: I think that's why it only reflects the [indiscernible].

2 MS. JONES: But you have issued a warrant for him after he was
3 indicted. And he's been in custody --

4 THE COURT: Has he been continuously in custody since he was
5 arrested?

6 MR. TOMSHECK: He has. I don't have an objection of him getting all
7 the time. I think that's why --

8 THE COURT: Sure.

9 MR. TOMSHECK: -- the PSI indicates that figure though, Judge.

10 THE COURT: All right. So how much time is he entitled to?

11 THE DEFENDANT: It don't matter, Judge.

12 MS. JONES: Well, we have to do the math.

13 MR. TOMSHECK: He was originally arrested October 2nd of 2008, so
14 credit from then till today.

15 THE COURT: So it looks like we're going to have to figure it out.

16 COURT CLERK: I'm going to pull it up on the computer.

17 THE COURT: Okay

18 THE DEFENDANT: 60 days. I'll take 60 days. Your Honor.

19 THE COURT: You ought to be kidding me. The last time I sentenced
20 you, your lawyer came back about 10 times regarding the credit for time
21 served. Don't worry; we're going to get it right.

22 MS. JONES: Your Honor, I have 516 days.

23 COURT CLERK: October 22nd --

24 MR. TOMSHECK: October 2nd of 2008.

25 COURT CLERK: 2008. 516 days.

1 THE COURT: With 516 days credit for time served. And the JOC's will
2 be marked and made part of the record.

3 MS. JONES: Thank you, Judge.
4

5 [Proceeding concluded at 9:15 a.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/visual recording in the above-entitled case.

23 
24 _____
25 Kerry Esparza, Court Recorder/Transcriber
District Court, Department XII

FILED

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JUN 3 10 48 AM '11

ORIGINAL

Ann L. Schuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

LESEAN T. COLLINS,

Defendant.

CASE NO. C-253455

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 2, 2011

TRANSCRIPT OF PROCEEDINGS

**DEFENDANT'S MOTION TO ALLOW ATTORNEYS FOR LESEAN COLLINS TO
REVIEW SEALED VIDEO OF NOV. 2, 2009 MOTION ARGUMENT IN CAMERA**

APPEARANCES:

For the State:

FRANK M. PONTICELLO, ESQ.
Chief Deputy District Attorney

For the Defendant:

DAVID P. WESTBROOK, ESQ.
Deputy Public Defender

RECORDED BY: KERRY ESPARZA, COURT RECORDER

08C253455
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Transcript of Proceedings
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1 THURSDAY, JUNE 2, 2011 AT 9:13 A.M.

2
3 THE COURT: State versus Lesean Collins, C-253455.

4 MR. WESTBROOK: Good morning, Your Honor --

5 THE COURT: Good morning.

6 MR. WESTBROOK: -- David Westbrook on behalf of Mr. Collins. I
7 assume he's still in the prison. No reason for him to be sent over for this
8 particular --

9 THE COURT: Of course.

10 MR. WESTBROOK: -- motion.

11 THE COURT: Okay. Let me just -- the Defense -- there's a sealed portion
12 that took place, prior to his trial, that I conducted in this matter and so -- that
13 obviously the DA was excused from the courtroom and --

14 MR. PONTICELLO: Judge --

15 THE COURT: -- so they were asking --

16 MR. PONTICELLO: I'm sorry --

17 THE COURT: Oh --

18 MR. PONTICELLO: -- before we get into this --

19 THE COURT: Somebody's going to be here?

20 MR. PONTICELLO: No. We don't -- we never were served with a
21 motion. We only found out about it yesterday. It's being handled --

22 THE COURT: I don't think there is a motion.

23 MR. PONTICELLO: Sorry?

24 MR. WESTBROOK: There was --

25 THE COURT: There's not --

1 MR. WESTBROOK: -- it was e-filed to my knowledge.

2 MR. PONTICELLO: Defendant's motion --

3 THE COURT: Okay.

4 MR. PONTICELLO: -- to allow attorneys for Lesean Collins to review
5 sealed video of November 2nd, 2009 motion and argument.

6 THE COURT: It's really simple. It's --

7 MR. PONTICELLO: Okay.

8 MR. WESTBROOK: Yeah.

9 THE COURT: You know, I'm sorry --

10 MR. WESTBROOK: We're just asking to be able to view it.

11 THE COURT: -- I didn't even -- I knew what the issue was because they
12 called and talked to Sue and wanted me to unseal it. And so, first I go: Okay,
13 if they want me to unseal it it's unsealed. Then they freaked out and said: We
14 don't want the DA to see it.

15 So then I said: Okay. Well, I have to review it because how -- he's
16 appellate counsel now. How do you need it, for purposes of appeal, but then
17 you get to keep it from the DA? Did not make sense to me. So I reviewed it
18 because they were, you know, it had been awhile. I can't remember that far
19 back and so I reviewed it in it's -- I reviewed the entire thing -- took notes.

20 Not one time during that period -- what they're worried about is
21 whether the attorney disclosed any information about his pending murder case
22 because the DA, at the time, was prosecuting him for the case he was found
23 guilty of in here --

24 MR. WESTBROOK: Arson case.

25 THE COURT: -- and a pending murder charge. So they, of course, they

1 didn't want the DA to hear any trial strategies from his murder case.

2 MR. WESTBROOK: Right.

3 THE COURT: None were revealed. You want me to tell you, that whole
4 sealed portion, I think, is relevant for purposes of appeal. I think you need to
5 see it but there's no basis for me to keep it from the DA.

6 MR. WESTBROOK: Well, I wasn't --

7 THE COURT: And I'll tell you why because the attorney -- we -- you
8 know what we talked about? She made her record over and over again about
9 why she didn't want to proceed. This came to me from overflow.

10 MR. WESTBROOK: Right. I understand, Judge.

11 THE COURT: Okay. It came to me from overflow and then they came in
12 here and said: Well, we're not prepared to go because we were in trial last
13 week. I listened to the whole thing. No strategy regarding his pending murder
14 case came out at all. It was basically -- I really think you need it for purposes
15 of appeal, but I can't tell the State that you get it but we're going to hold it
16 from the State.

17 MR. WESTBROOK: I think my motion, of course, I wasn't
18 communicating directly with Your Honor, I was communicating --

19 THE COURT: Of course.

20 MR. WESTBROOK: -- through a secretary and then a back up secretary.

21 THE COURT: Right. So it got quite complicated, at times, trying to
22 understand what he wanted.

23 MR. WESTBROOK: Right. So I did put on a written motion. I'm not sure
24 why no one received it but I -- I have been told that it was filed. I think I have
25 a file stamp copy. The file wasn't transported this morning but I've seen a file

1 stamped copy, so I don't know why it wasn't sent over. But what I was
2 explaining in my motion is: Ms. Maningo was present at the time the record
3 was made even though --

4 THE COURT: She --

5 MR. WESTBROOK: -- she wasn't the attorney in this case --

6 THE COURT: She didn't say anything.

7 MR. WESTBROOK: -- she was the attorney in the murder case. Okay.
8 She said nothing on the record 'cause her recollection --

9 THE COURT: I --

10 MR. WESTBROOK: -- was that she either said something on the record
11 or that she informed the defense counsel in the arson case -- the counsel from
12 my office --

13 THE COURT: Uh-huh.

14 MR. WESTBROOK: -- what to say or what her issues were. And that
15 that might have come out on the record, and my only request was that we be
16 able to review the -- the JAVS recording prior to making a motion to unseal.
17 Now the State's issue, Mr. Owens wrote.

18 THE COURT: But you see how unfair that is?

19 MR. WESTBROOK: Well, but it -- but it --

20 THE COURT: I mean, clearly, I think it goes to the issue -- I did not grant
21 them a continuance, clearly, that's an issue on appeal.

22 MR. WESTBROOK: That is the issue --

23 THE COURT: Am I right?

24 MR. WESTBROOK: -- correct. That's absolutely right.

25 THE COURT: You need this then.

1 MR. WESTBROOK: Okay.

2 THE COURT: There's no question in my mind, you need this.

3 MR. WESTBROOK: And I agree, and we would move to unseal it after
4 hearing it. And since it's our lawyers talking and since we, you know, they
5 were present in the first place; they just don't remember exactly what was
6 said. There's no prejudice to the State letting us review it before we move
7 whether or not to unseal it.

8 Now the State has a good point.

9 THE COURT: Okay. The issue on appeal is: The motion to continue
10 should have been granted?

11 MR. WESTBROOK: Correct.

12 THE COURT: The State's entitled to have it too even if you don't like it;
13 they're entitled to it because it can be used to oppose the issue that you're
14 going to raise. The Court should have granted the motion to continue --

15 MR. WESTBROOK: Sure, but we haven't --

16 THE COURT: -- right?

17 MR. WESTBROOK: -- we haven't asked to unseal it yet. We're asking to
18 review it to see if we can unseal it and you know, the State is certainly entitled
19 -- if it turns out that we want to unseal it and use -- use a portion of it --

20 THE COURT: Here's the problem.

21 MR. WESTBROOK: -- or all of it --

22 THE COURT: You're not going to -- you're probably not --

23 MR. WESTBROOK: -- then they're entitled --

24 THE COURT: -- going to want to unseal it.

25 MR. WESTBROOK: I'm sorry.

1 THE COURT: You're probably not going to want to unseal it because it
2 may not be -- you may not think it's beneficial to you.

3 MR. WESTBROOK: Well, I may not; I don't know.

4 THE COURT: Well, quite frankly, it's -- might be beneficial to the State. I
5 don't know who it's going to be beneficial to because I don't know what your--
6 I know that the motion to continue has to be an issue on appeal.

7 MR. WESTBROOK: It is.

8 THE COURT: Okay. And there's no reason to not unseal it and give it to
9 both sides. You don't get to decide whether it gets unsealed or not.

10 MR. WESTBROOK: Well, we can decide whether or not we get to
11 request it and it's our lawyers on the tape. It was sealed from the State and
12 the problem that's going to happen here is, if it turns out --

13 THE COURT: Cause you guys told me you were going to reveal strategy
14 in a pending murder case and the same prosecutor was here, so clearly, that
15 prosecutor had to be excluded --

16 MR. WESTBROOK: Correct.

17 THE COURT: -- but you didn't. Sorry, you didn't reveal any strategy --

18 MR. WESTBROOK: Okay.

19 THE COURT: -- from the murder case.

20 MR. WESTBROOK: And of course, I have no way of knowing that; I'm
21 just the appellate attorney who wasn't present during the recording. Ms.
22 Maningo is concerned and the worst thing for both the State and the Defense
23 would be if there is something in there, that from Ms. Maningo's perspective, is
24 an issue.

25 Now I know that Your Honor looked at the thing but it's really her

1 call and not even mine. I mean, she's the one who knows what's going on in
2 her case. None of us do. I don't -- is the case in here? I don't know that it is.

3 THE COURT: No.

4 MR. WESTBROOK: Okay. So I mean --

5 THE COURT: I got this from overflow.

6 MR. WESTBROOK: Yeah, none of us in here know what might be
7 potentially damaging on that. Ms. Maningo knows cause it's her case. I'm at a
8 disadvantage. And furthermore, I don't think the State would like to be in a
9 situation where --

10 THE COURT: You know, let me say: I'm not for sure because you know
11 how cases get reassigned --

12 MR. WESTBROOK: Right.

13 THE COURT: -- so I -- at the time it was not mine.

14 MR. WESTBROOK: Okay.

15 THE COURT: I believed it was in Department 9 and now Department 9
16 doesn't have a criminal calendar so I can't say for sure that I don't have it.

17 MR. WESTBROOK: Well, whether it is or not, I'm sure you don't have
18 any present knowledge of what's going on in the murder case.

19 THE COURT: No.

20 MR. WESTBROOK: And of course I got, you know, just limited
21 knowledge from my conversations with Ms. Maningo which is very limited,
22 indeed. So I just wanted to give her, in particular, even more than me, a
23 chance to vet it and listen to it so that no mistakes are made that might affect
24 the prosecution of the murder case. Because if there are mistakes, then Ms.
25 Maningo might have grounds to exclude the DA's Office. I'm pretty sure they

1 wouldn't want that, so as a safety measure, letting her listen to this sealed
2 testimony, which she was present for, causes nobody any harm but it may
3 prevent potential issues down the road.

4 Now listen, as an appellate attorney, I love issues, okay. But we're
5 not moving to unseal this, just to make it very clear. We have not moved to
6 unseal anything. My original conversation with your secretary, Your Honor,
7 was to unseal the portions related to this case if they're relevant.

8 I wanted to listen to it to determine that before making any kind of
9 a motion because, again; I wasn't there. You know, Ms. Jones was there.
10 She's currently at the Legislature and is unavailable and doesn't have a great
11 memory of what happened.

12 The other attorney from our office who was there is no longer in
13 our office so we're in a situation where I think listening to it first would be the
14 safest course.

15 THE COURT: Because I've reviewed the entire thing. Ms. Maningo
16 doesn't speak 'cause I knew what the issue was. I remember her being here.
17 No, no strategy. I'm telling you, all it was, was Ms. Jones telling me -- cause I
18 made her state, specifically, for the record, what it was that she needed in
19 order to be more prepared or in order to proceed without a motion to continue
20 and that's all it was, was her making a record of specific issues that she didn't
21 have or the investigation that she had to do.

22 Because, basically, I was getting -- we needed to do more
23 investigation, period. So I said: No, you don't get a motion to continue after
24 you've been sent to overflow and told two different judges you're ready to go.
25 You don't get to come to the third one and say you're not ready to go. So it

1 was basically her saying, specifically, what she needed to do.

2 There was a specific witness that she was contending she was not
3 ready to cross examine, so we went through that. But there's -- but the issue
4 on appeal is that the Court shouldn't have granted the motion to continue. I
5 think both sides are entitled to it. Ms. Maningo did not talk.

6 MR. WESTBROOK: All right, Judge. Well --

7 THE COURT: I mean, if she whispered; I can't say. I didn't look at the
8 video.

9 MR. WESTBROOK: Of course if her whisper's not on the video.

10 THE COURT: I guess if you want me to watch the video; I just listened.
11 Wait, you know what, I watched the video on the computer as I listened to it,
12 but I'll be honest; I don't really pay attention to the video; I just listen.

13 MR. WESTBROOK: Well, for the record, my motion is to review it prior
14 to filing a motion to unseal, of course, the Court can grant or deny that motion,
15 obviously. If it's --

16 THE COURT: I think you're entitled to it.

17 MR. WESTBROOK: Okay. But I --

18 THE COURT: I don't understand why you don't want it.

19 MR. WESTBROOK: Well, I want to review it before I ask whether or not
20 it's unsealed and it's --

21 THE COURT: Well, see how that's not fair?

22 MR. WESTBROOK: It's fair because it was our lawyers who were there
23 in the first place.

24 THE COURT: No, because, guess what; your lawyers didn't do what
25 they told me they were excluding the DA for. No strategy regarding the murder

1 case was ever revealed to the Court.

2 MR. WESTBROOK: I understand that, Judge --

3 THE COURT: So --

4 MR. WESTBROOK: -- but reasonable minds can differ as to what was
5 revealed and what wasn't. I mean, then that's -- that's my whole point and
6 since it would be our motion, I want to be educated about what happened prior
7 to making a motion which might ultimately damage my client. Might help him
8 greatly, I don't --

9 THE COURT: I mean, you guys both can look at it then and both can
10 look at it and listen to it and make a decision as to whether -- at this point,
11 there -- I don't think there's any reason for me to keep it sealed. You have no
12 basis to keep this sealed.

13 MR. WESTBROOK: Okay.

14 THE COURT: What -- there's no basis to keep it sealed. I'm the one who
15 gets to decide whether it stays sealed.

16 MR. WESTBROOK: Okay.

17 THE COURT: Okay. There's no basis for it to be sealed.

18 MR. WESTBROOK: Well, I've made my record and of course the Court --

19 THE COURT: And I -- and I gave -- I mean, I -- I listened to the whole
20 thing --

21 MR. WESTBROOK: Okay.

22 THE COURT: -- you know, a couple times to make sure so --

23 MR. WESTBROOK: Well, I don't want to make it anymore difficult than
24 necessary. I made my motion to review it, in camera, without the State
25 present prior to moving whether or not to release it.

1 THE COURT: Does the State object to that?

2 MR. PONTICELLO: Yes.

3 THE COURT: I don't know it just seems kind of strange --

4 MR. PONTICELLO: Yes.

5 THE COURT: -- that you --

6 MR. PONTICELLO: Yes.

7 THE COURT: -- think you get to control whether something gets sealed
8 or unsealed?

9 MR. WESTBROOK: Well, it's already sealed and usually it has to be
10 unsealed based on the motion which has not been filed. I've not ever moved to
11 unseal it.

12 THE COURT: Yeah, but it doesn't make sense that you can -- you know
13 what -- I don't know what you've done. I know that you called the office. I
14 thought you asked for it to be unsealed. I said: Well, of course it can be
15 unsealed for purposes of appeal. I wasn't going to keep it sealed or away from
16 you --

17 MR. WESTBROOK: It --

18 THE COURT: -- it didn't make sense to me.

19 MR. WESTBROOK: I understand that, Judge and that's thus -- thus the
20 third party --

21 THE COURT: Then, apparently --

22 MR. WESTBROOK: -- miscommunication.

23 THE COURT: -- then apparently you freaked out because I said it could
24 be unsealed. Then you wanted me to look --

25 MR. WESTBROOK: Well, I freaked out.

1 THE COURT: Well, you know what I mean.

2 MR. WESTBROOK: I might have freaked out; you're actually probably
3 right.

4 THE COURT: Like -- I wasn't talking to you so I just hear --

5 MR. WESTBROOK: I know, Judge.

6 THE COURT: Okay. Mr. Westbrook doesn't want you to unseal it.

7 MR. WESTBROOK: Well, I -- I made -- I made my motion to view it in
8 camera without the State present.

9 THE COURT: Here's the thing. I see no reason. It's up on appeal to
10 keep this sealed. It goes to a motion to continue which I have to believe is the
11 big issue on appeal.

12 MR. WESTBROOK: It is, Judge.

13 THE COURT: Okay. So both sides can look at it; it's unsealed. I see no
14 reason to keep it sealed. There's no basis to keep it sealed.

15 MR. WESTBROOK: Thanks, Judge.

16 THE COURT: Has he gone to trial on that other case?

17 MR. WESTBROOK: No, and I don't think it's set to do.

18 THE COURT: All these years later?

19 MR. WESTBROOK: Murder trials, Judge.

20 THE COURT: Okay.

21 MR. WESTBROOK: I'm not even sure when it's set. I don't -- I think at
22 one point it was set for June but now I don't even know if that's still the case.

23 THE COURT: Okay. But you don't know who has the murder case now?
24 What department?

25 MR. WESTBROOK: Mr. Tomscheck had it. He's leaving the office and

1 now I don't know who has it.

2 THE COURT: Right. But I mean in what department it's in.

3 MR. WESTBROOK: No; I don't.

4 THE COURT: Cause I thought it was in Department 9 when I was trying
5 this case.

6 MR. WESTBROOK: Which means it would probably have been moved
7 out; right?

8 THE COURT: Exactly.

9 MR. WESTBROOK: Yeah. I -- actually I don't know, Judge. I have no
10 idea.

11 THE COURT: That's why I said: I can't speak for whether I have it or
12 not at this time.

13 MR. WESTBROOK: I understand.

14 THE COURT: Cause I could.

15 MR. WESTBROOK: I understand.

16 THE COURT: I just haven't seen Mr. Collins in years so -- okay.

17 MR. WESTBROOK: Thanks, Judge.

18 MR. PONTICELLO: Would you like us to prepare the order to unseal --

19 THE COURT: Sure.

20 MR. PONTICELLO: -- the record?

21 THE COURT: And I think I have one cd of it already. So Kerry will just
22 burn another cd. I -- Kerry, didn't I give it back to you?

23 COURT RECORDER: It's with myself or with Sue.

24 THE COURT: Okay.

25 MR. WESTBROOK: And for the record, my record is: I object to

1 unsealing it without first allowing us to view it in camera. My motion to view it
2 in camera, alone without the DA, was denied.

3 THE COURT: I already reviewed it in camera for you.

4 MR. WESTBROOK: Thanks, Judge, appreciate it.

5 THE COURT: Okay.

6 COURT CLERK: Grant it as to --

7 THE COURT: His motion is not granted. His motion is denied and it's
8 ordered unsealed.

9 COURT CLERK: State versus --

10 MR. PONTICELLO: State to prepare order.

11 THE COURT: Okay.

12

13 [Proceeding concluded at 9:26 a.m.]

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/visual recording in the above-entitled case.

24

25


Kerry Esparza, Court Recorder/Transcriber
District Court, Department XII

1 TRAN

2 ORIGINAL

FILED

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Ann D. Robinson
CLERK OF THE COURT


3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9
10 Plaintiff,
11 vs.
12 LESEAN T. COLLINS,
13 Defendant.

CASE NO. C-253455

DEPT. XII

08C253455
TRANS
Transcript of Proceedings
1603751



14 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

15 MONDAY, NOVEMBER 2, 2009

16 **TRANSCRIPT OF PORTION OF PROCEEDINGS**
17 **SEALED PORTION OF PROCEEDING OF JURY TRIAL HELD ON**
18 **NOVEMBER 2, 2009**

19 **[ORDERED UNSEALED FOR VIEWING BY BOTH PARTIES**
20 **ON JUNE 15, 2011 BY COURT]**

21 APPEARANCES:

22 For the State: [NOT PRESENT]

23 For the Defendant: TIERRA D. JONES, ESQ.
24 ABIGAIL L. PAROLISE, ESQ.
25 Deputy Public Defenders

RECORDED BY: KERRY ESPARZA, COURT RECORDER

RECEIVED
JUL 01 2011
CLERK OF THE COURT

14

847

1 MONDAY, NOVEMBER 2, 2009 AT 2:34 P.M.

2
3 [Sealed Portion of Proceeding Commenced and Transcribed]

4 THE COURT: Okay. Cause you're the one that told me you hadn't been
5 given an opportunity to prepare for cross examination, so Ms. Jones it's your
6 witness?

7 MS. JONES: It is my witness, Judge.

8 THE COURT: Had you been -- have you been given enough time to
9 prepare for cross examination?

10 MS. JONES: No, Your Honor, our position is that, based upon all of the
11 facts in this case, Ms. Furlow, as the State indicated earlier -- the State
12 informed the Court of what they intend for her to testify to and she testified to
13 it at the Grand Jury. But without interviewing all of Mr. Collins' witnesses, as
14 well as being given the opportunity to do other investigative work, we don't
15 know that we know all of the facts that would be required to effectively cross
16 examine Ms. Furlow.

17 I mean, Ms. Furlow is the girlfriend of the victim's father. And as I
18 indicated to the Court, her testimony has changed between her statement and
19 the Grand Jury, and as far as her involve -- any other involvement she may
20 have had with the children in this case or with anything such as that, we have
21 not -- had -- been given that information, therefore, we do not have the ability
22 to effectively cross examine her about that.

23 THE COURT: Okay. So when you're talking about the fact that you
24 haven't had all of these witnesses 'cause Mr. Collins just barely started talking
25 to you.

1 MS. JONES: Well, the problem is, Mr. Collins did not have all of the
2 adequate phone numbers and addresses for all the witnesses and that was part
3 of the delay but as the --

4 THE COURT: Did you tell Judge Smith that your client was not
5 cooperating with you and had just started cooperating with you and giving you
6 -- 'cause I can -- I can have Kerry pull it up and we can play it if the State's not
7 accurate.

8 MS. JONES: We told Judge Smith that Mr. Collins had not been fully
9 cooperating because at some -- at one point in this case, Mr. Collins did believe
10 that this case was going to negotiate.

11 THE COURT: Okay.

12 MS. JONES: And it is our position that Ms. Furlow's going to testify
13 about a call she made to Mr. Collins. If we would have had an adequate
14 opportunity to obtain his cell phone records, we would be able to prove or
15 disprove that that call was ever made.

16 THE COURT: Okay. But she testified about that at the Grand Jury?

17 MS. JONES: She did. And we have been in the process of trying to
18 locate the phone itself.

19 THE COURT: Okay. So she testified to that at the Grand Jury which,
20 let's see -- the Grand Jury transcript, April 7th, 2009. So you've known about
21 that since April 7th, 2009. So you haven't been impeded, in any way, in getting
22 his cell phone records?

23 MS. JONES: The -- as far as the cell phone records, we were under the--
24 under the assumption -- operating under the assumption of trying to find the
25 cell phone itself and then when it was brought to our attention by Mr. Collins

1 that he has been unable to locate the person who does have that cell phone.

2 THE COURT: Okay. And why would you need the actual cell phone?

3 MS. JONES: Because we believe that we could get the cell phone and
4 Mr. -- we believe that there may be other information on the cell phone that
5 could be of use to us.

6 THE COURT: Like?

7 MS. JONES: Such as --

8 THE COURT: What if it has to do with this witness? I mean, because
9 right now you're talking in generalities. I want, specifically, why you have not
10 been able to prepare for the cross examination of Ms. Furlow and you've told
11 me a couple things.

12 MS. JONES: And I mean, You Honor, based upon our defense position in
13 this case, it -- we would like to investigate what Ms. Furlow's tie to the
14 children and any contact she may have had with the children. Ms. Eddins has
15 not made those children available to us. We have not been able to interview
16 those children and Ms. Furlow is the person who picked up the children.

17 THE COURT: Okay. But -- and have you attempted to do that? 'Cause
18 you --

19 MS. JONES: We've attempted to contact Ms. Eddins on a couple
20 occasions and she has not --

21 THE COURT: And she's not cooperating and not letting you talk to the
22 kids?

23 MS. JONES: No; but we have not even been able to speak with her to
24 ask her for permission --

25 THE COURT: Okay.

1 MS. JONES: -- to speak with the kids.

2 THE COURT: Nor does she ever have to talk to you; right?

3 MS. JONES: I agree with that.

4 THE COURT: Okay. So that's not preventing you from preparing for trial
5 because that's something that you come across and you have to live with;
6 right?

7 MS. JONES: Correct.

8 THE COURT: Okay. What else? Ms. Furlow doesn't have to talk to you
9 if she doesn't want to; right?

10 MS. JONES: We agree, Your Honor.

11 THE COURT: Has she talked to you?

12 MS. JONES: No.

13 THE COURT: Have you tried to talk to her?

14 MS. JONES: No.

15 THE COURT: Okay. Do you -- do you think she would have talked to
16 you; is that why you didn't try contacting her?

17 MS. JONES: I don't believe she would have spoken to us.

18 THE COURT: Okay. That's fair. So what is it that's prevented you from
19 preparing for Ms. Furlow's cross examination today other than -- you couldn't
20 get Mr. Collins' actual cell phone and you weren't able to get his cell phone
21 records even though I believe you could have gotten them.

22 MS. JONES: And Your Honor, based upon the whole entire investigation,
23 as a whole, we don't know exactly what ties these witnesses may have to Ms.
24 Furlow that we could cross examine her about or exactly if she has spoken to
25 any of them. We don't -- those are questions that we don't have the answers

1 to.

2 THE COURT: So you can't really give me any specifics as far as what
3 was lacking in your preparation for cross examination?

4 MS. JONES: Of Ms. Furlow?

5 THE COURT: Uh-huh.

6 MS. JONES: Besides the things that I already listed that's all we have,
7 Your Honor.

8 THE COURT: Okay. And the only thing I can get at is the cell phone
9 records and you knew about that phone call and you could have gotten a court
10 order or a subpoena to get -- or actually you just need the consent of your
11 client to get the cell phone records; right?

12 MS. PAROLISE: Well --

13 THE COURT: And you knew about that. I just -- one attorney at a time,
14 so Ms. Jones. And you knew about that since April of this year; is that
15 correct?

16 MS. JONES: Correct, Your Honor.

17 THE COURT: Okay. So the fact that you have to cross examine her
18 today has nothing to do with -- I mean, you had plenty of time to get those cell
19 phone records if you thought you needed them to cross examine her; correct?

20 MS. JONES: Correct, Your Honor.

21 THE COURT: And you knew you had a firm trial setting.

22 MS. JONES: And Your Honor, when we got that firm trial setting in
23 August, we had every intention of attempting to be ready, but I think, based
24 upon possible negotiations in this case, as well as me and Ms. Parolise being in
25 trial the entire week before that, was the reason that we were not prepared for

1 trial.

2 THE COURT: Okay. And tell me that you would not be preparing for a
3 trial like this just the week before. That -- because you were in trial the week
4 before, it didn't prevent you from preparing for a trial --

5 MS. JONES: It did not totally --

6 THE COURT: -- that you've known about since June of '09 --

7 MS. JONES: Your Honor.

8 THE COURT: -- when Judge Smith gave you the firm date?

9 I just want to -- actually it was August 12th of '09 when Judge
10 Smith gave you the firm date.

11 MS. JONES: Correct, Your Honor. We would not have only begun
12 preparing -- that last week would have given us an opportunity to follow up
13 with our investigator on the things that could have been done and our
14 investigator had to investigate the other trial that we were both in trial on as
15 well as -- she didn't have the opportunity to follow up on those things.

16 And if the Court looks, the record will reflect my investigator did
17 appear at overflow on Thursday in front of Judge Barker to try to attempt to
18 obtain the accurate addresses and phone numbers from Mr. Collins' witnesses,
19 and she has been working on this case, non-stop since Thursday, to attempt to
20 have that stuff ready.

21 THE COURT: Okay. And Mr. Collins was not cooperating with you in
22 giving you those addresses, phone numbers and names prior to last week
23 'cause you made a representation to Judge Smith he wasn't cooperating;
24 correct?

25 MS. JONES: Direct -- not directly before but before calendar call. He did

1 believe that this case was going to negotiate and there was actually an offer on
2 the table so -- and based upon that, he did not believe that we would need that
3 information.

4 THE COURT: That's a little bit different than he's not cooperating. So I
5 just want to know what you told Judge Doug Smith. Did you tell him that Mr.
6 Collins was not cooperating and therefore, you were not ready to go?

7 MS. JONES: He was not cooperating in the sense -- he did not provide
8 the addresses for the witnesses because he did believe that we didn't need
9 them because he did have the intentions of negotiating his case. He contacted
10 Ms. Parolise about getting an offer in this case.

11 We spoke with his special public defender who represents him on
12 the murder because the offer involved both cases. Herself and myself have
13 been in contact with Mr. Tomsheck to get an offer and we actually attempted
14 to go see Mr. Collins to relay that offer to him on Thursday but the jail was on
15 lockdown.

16 THE DEFENDANT: Your Honor, can I say something, please?

17 THE COURT: Okay. So basically it all goes back to -- Mr. Collins wasn't
18 cooperating and, you know, I agree with Judge Doug Smith that's -- that's his
19 deal. If he doesn't want to cooperate than he has to live with the outcome.

20 Go ahead, Mr. Collins.

21 THE DEFENDANT: Your Honor, it wasn't even -- the situation I had for
22 the last two months, I was thinking about taking a deal already but the thing
23 about it was --

24 THE COURT: And that's your decision to take it or not to take it.

25 THE DEFENDANT: Yeah; I was thinking about taking a deal, whether or

1 not, but I had to check with my family. So then when I went to check with my
2 family everything was -- we was still trying to figure out: Should I take the
3 deal or not? But then when I contact Ms. Parolise, she told me that that I had
4 the murder case, so how was I going to do it? Am I going to plea in this case
5 or plea in a murder case? How am I going to do it?

6 So I had to talk to Yvette to try to figure out a package deal. Why
7 not just do a package deal on both cases? So I had the idea and I gave them
8 the sentence that I wanted to have and when everything came to push to
9 shove --

10 THE COURT: You gave your lawyer the sentence you wanted to have?

11 THE DEFENDANT: Correct. I mean I got -- I got to put it on the table
12 what I wanted --

13 THE COURT: Okay.

14 THE DEFENDANT: -- decisions I wanted to take. So when I put it on --
15 put it on the table and told him what sentence I wanted to take -- when I came
16 back, I didn't like that sentence.

17 THE COURT: Oh.

18 THE DEFENDANT: So then, when I didn't like the sentence but I had
19 pulled -- I'm the one who pulled the investigator off 'cause I told her -- I say:
20 Well, I'm funna [sic] try to plea in a case, but it isn't like -- I got two different
21 investigators with the same witnesses.

22 I got the same witnesses on both cases. I got the same district
23 attorney -- that's the same district attorney, but I got two different lawyers on
24 this case. So since I have all this going for me, I've been already told -- my
25 murder investigator -- about different witnesses, which, at the same time, this

1 case right here is going to go into -- it's -- it goes into my other murder case
2 because the things that happened in this case right here has to do with my
3 murder case, but they just happened on two different -- two different days.

4 So since they happened on two different days, we was trying to
5 get me a package deal on both of the cases. They can't --

6 THE COURT: Okay.

7 THE DEFENDANT: -- well, she didn't get to make it --

8 THE COURT: So, if -- you don't --

9 THE DEFENDANT: -- Yvette came down there and told me.

10 THE COURT: -- you don't like the deal. You tried to offer something to
11 the State -- you don't like it, so it's your decision not to take the deal and
12 that's fine; right?

13 THE DEFENDANT: Correct; correct.

14 THE COURT: Okay.

15 THE DEFENDANT: Now the witnesses --

16 THE COURT: We need to get started so --

17 THE DEFENDANT: -- that they're talking about, the witnesses. I got one
18 out of -- one out of town witness.

19 THE COURT: Okay.

20 THE DEFENDANT: This witness is an eyewitness to this whole case;
21 right?

22 THE COURT: Okay.

23 THE DEFENDANT: And this --

24 THE COURT: And you told your attorneys who this witness is?

25 THE DEFENDANT: Right; I told him who but I didn't know her last name,

1 so since I didn't know her last name, I had to go through my sister and find out
2 what her last name was. So when I found out her last name, we was already
3 going to trial, it was when, Thursday? Was Thursday when I --

4 THE COURT: So you waited --

5 THE DEFENDANT: -- well, it was Wednesday.

6 THE COURT: -- how many months to ask your sister about this? What
7 was his name?

8 THE DEFENDANT: About the girls? I haven't had contact. I haven't had
9 contact to even find her.

10 THE COURT: Okay. Well, this doesn't seem --

11 THE DEFENDANT: The number --

12 THE COURT: -- to be real relevant to this and I think Mr. Collins is just
13 trying to delay. We're moving forward. If you wanted to get these
14 eyewitnesses you could have called your sister. There's phones in the jail.
15 You know that.

16 THE DEFENDANT: Well, you know --

17 THE COURT: And because you didn't call her that's not my fault.

18 THE DEFENDANT: You didn't get to let me finish telling you what
19 happened.

20 THE COURT: Okay. I'm sorry.

21 THE DEFENDANT: Her phone has a block on it, Judge. It has a block on
22 it and this phone number changed to another phone number. How I end up
23 getting the other number --

24 THE COURT: Your mom has a block so you can't call her.

25 THE DEFENDANT: My mother's dead.

1 THE COURT: I'm sorry; I'm sorry. I thought you said: My mom.

2 THE DEFENDANT: No; I said: My sister's phone has a block on it.

3 THE COURT: Okay.

4 THE DEFENDANT: Okay. She's -- she's my sister in law, okay.

5 THE COURT: Okay.

6 THE DEFENDANT: My sister in law phone has a block on it; she has her
7 own line. I had some -- I had to find out what the phone number is the whole
8 time.

9 Now, the whole time that this been going on, this case was
10 supposed to be -- this case got dismissed. Since this case got dismissed, we
11 didn't even think we were going to throw this -- I didn't think that we was
12 going to go to this case till after my murder case, okay?

13 Now, but late August or whatever or not, they said that's when the
14 District Attorney said he didn't want to let the case go behind, okay, then, I
15 prepared for it. It took me just as long just to find out a phone number on her.
16 I had to go through a dude that I don't even like to get the phone number.

17 THE COURT: Okay.

18 THE DEFENDANT: But this is an eyewitness. This girl was with me that
19 day.

20 THE COURT: Okay.

21 THE DEFENDANT: And she witnessed the whole thing.

22 THE COURT: We kind of gone beyond what I think is appropriate --

23 THE DEFENDANT: Excuse me, ma'am.

24 THE COURT: -- to be ex parte. I mean, I asked your attorney's. I had
25 the State of Nevada leave because I asked your attorneys to tell me,

1 specifically, what they needed to do or what they couldn't do in order to be
2 prepared for this cross examination; we've gone beyond that --

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: -- and we've gotten into you telling me all about other
5 witnesses. And so, I'm going to bring the State of Nevada back in but it
6 appears as though you've gotten this witnesses name and your attorneys have
7 it.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Anything else?

10 THE DEFENDANT: She's out of state.

11 THE COURT: Anything else before I bring the State back in?

12 MS. JONES: And Your Honor, are we only addressing, right now, the
13 cross examination of Vivian Furlow?

14 THE COURT: Sure.

15 MS. JONES: Okay.

16 THE COURT: Right. Because I was told that although you had the
17 weekend you weren't able to prepare. Did you prepare, at all, for her cross
18 examination?

19 MS. JONES: I'm ready to go forward, Your Honor.

20 THE COURT: Okay. And anything else besides you would have wanted
21 the phone records and his cell phone?

22 MS. JONES: I apologize, Your Honor. I did prepare for Ms. Furlow's
23 testimony in the assumption that if we had to go forward today -- but there are
24 a couple of things we would like to have, but if we have to go forward today; I
25 did prepare for that.

1 THE COURT: Okay. Because I'm confused and maybe it's because your
2 co-counsel answered the question. My question was: Are you prepared to go
3 forward with cross examination? Now you're telling me: Yes. I was told: No.
4 And then I excused the State and said: If the answer's no, I need to know why
5 you're not prepared and specifics.

6 MS. JONES: And I apologize, Your Honor, for the reasons that we
7 previously stated, we are not prepared, but if we do have to cross examine her
8 today then we will go forward. But it is still our position that we're not
9 prepared to try this case and that we would be ineffective for trying this case.

10 THE COURT: Okay. Are you -- but you're prepared for the cross
11 examination of Ms. Furlow?

12 MS. JONES: If we are forced to go forward we will go forward, but we
13 are not prepared.

14 THE COURT: Okay.

15

16 [Sealed proceeding concluded at 2:48 p.m.]

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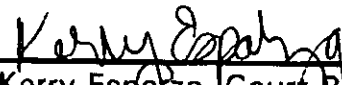
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/visual recording in the above-entitled case.

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Kerry Esparza, Court Recorder/Transcriber
District Court, Department XII

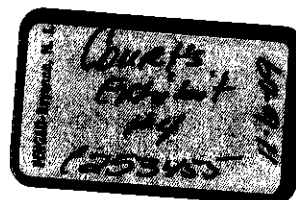
INSTRUCTION NO. _____

A person who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the expert and the reasons given for his or her opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Repeted

11/6/09

Michimally [Signature]



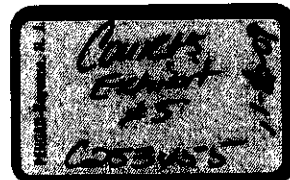
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INSTRUCTION NO. _____

If evidence is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other to his innocence, it is your duty, under the law, to adopt that interpretation which will admit of the defendant's innocence, and reject that which points to his guilt.

Crane v. State, 88 Nev. 684 (1972)

Rejected
Michael D. Smith
11.5.09



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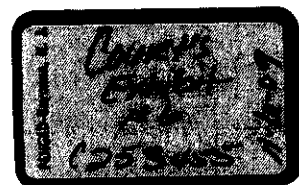
INSTRUCTION NO. _____

If reasonable doubt exists as to whether a person's conduct is disallowed by law, such doubt must be resolved in favor of the accused.

Dumaine v. State, 103 Nev. 121 (1978)

"within the statute"

Repealed
Michael Dummitt
11.5.09



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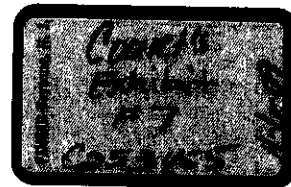
INSTRUCTION NO. _____

If you find that the State has failed to prove beyond a reasonable doubt that the defendant willfully and maliciously set fire to and therefore caused to be burned, a certain residence, the master bedroom therein, located at 1519 Laguna Palms Avenue, Las Vegas, Clark County, Nevada, you must return a verdict of not guilty.

Crawford v. State, 121 Nev. 744 (2005)

Brooks v. State, 180 P.3d 757 (Nev. 2008)

*withdrew
- Michelle Grant*

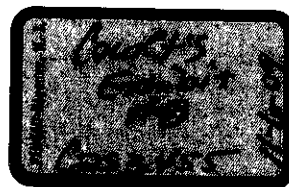


INSTRUCTION NO. _____

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a

NRS 175.201

*Reported
Minimally Documented
11.5.09*



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IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN TARUS COLLINS,

No. 55716

Appellant,

vi.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S APPENDIX - VOLUME IV - PAGES 734-831

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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 18th day of August, 2011. Electronic Service of the foregoing

document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

P. DAVID WESTBROOK
HOWARD S. BROOKS

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

LESEAN TARUS COLLINS
NDOC No. 85039
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89018

BY Cheryl S. Ziesema
Employee, Clark County Public
Defender's Office