

1 when I saw the look on his face, and the blood everywhere, and
2 the knife in the middle of the bed.

3 We also know that he was angry because we know that
4 he knocked her around for at least an hour before he
5 ultimately stabbed her to death. Dr. Dutra testified that
6 there were multiple blunt force traumas in this case. And you
7 have all the exhibits back there, you'll see the photographs.
8 Specifically, she had very noticeable bruising to her abdomen.
9 Those are not consistent with being self-inflicted. Those are
10 considered with -- or those are consistent with the defendant
11 having knocked her around for an hour.

12 She also had injuries to her back. Again, not
13 consistent with having been self-inflicted. They're
14 consistent with an argument occurring in the hour leading up
15 to her death, a physical argument. She also had bruising to
16 her buttocks. Again, not consistent with having been
17 self-inflicted. These injuries were inflicted at the hands of
18 the defendant, leading up to her death.

19 She has a grab mark around her right wrist. Again,
20 not self-inflicted. And then, she has grab marks on her bicep
21 -- her left bicep. You can actually see what appears to be
22 the fingerprint -- the finger imprint in her arm. I mean,
23 look at those photographs. She had multiple bruises to her
24 legs, her ankle. In the hour leading up to her death, the
25 defendant acted with anger, with malice.

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1 The evidence at the scene was consistent with a
2 physical argument occurring in the hour leading up to her
3 death. The -- there were three blinds lying on the floor.
4 You can see them in some of the other photographs. Those were
5 the blinds that fell down from the patio door. If you look
6 closely at the photographs of the closet, you can see where
7 the doors have come off the tracks.

8 And you also heard the testimony of Joyce Toliver,
9 Charles Toliver, "Cookie," and Jimmy Hathcox, that all
10 corroborated this. They said that the noise -- Joyce tells
11 you the noise began around 9:00 p.m. She said, I was just
12 about to watch Days of our Lives, I believe is what she said.
13 I said, well, do you have any idea how long it continued on?
14 And she said, yeah, my other soap opera had just come on, so
15 it had to have been at least an hour.

16 She said that it was so loud that she couldn't even
17 hear her TV, even after turning it up. The noise was so loud
18 that it woke Charles Toliver up from his sleep. And again,
19 Jimmy Hathcox. The noise was so loud; the look on his face
20 was so disturbing, he thought to himself, I hope he's not over
21 there beating the crap out of her. Well, he was.

22 As further evidence of his malice in this case, he
23 stabbed her. He didn't spit on her. He didn't shove her. He
24 stabbed her. He stabbed her with an eight-inch kitchen knife.
25 That implies malice alone. Then, after he stabs her, he

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1 watches her bleed out on the bed, moves her to the floor, and
2 for no apparent reason at all, removes her pants.

3 She bled out over the course of 10 to 30 minutes.
4 This man did nothing to stop -- nothing to help. Two cell
5 phones were laying on the kitchen counter, 30 to 40 feet from
6 the bedroom. He never once went to those cell phones and made
7 a 9-11 call. He never once plead for help from the neighbors.

8 Then, when help finally does come, or potential
9 help, all he says to Cookie is, come get her, come get her.
10 He doesn't say, go call 9-11, Cookie. He doesn't say, go get
11 me some medical help. He just says, come get her. Then, when
12 Cookie goes to get Todd to help with the situation, he tells
13 Todd, get the fuck out of here, and takes a swing at him.
14 That's now not only somebody that's not seeking help; it's
15 somebody that's preventing help. That's malice.

16 Then, when the police finally show up, the people
17 that probably actually could help, he's combative. Over the
18 course of five to six minutes, he ignores their commands to
19 come out of the bedroom. They explain to him at least two to
20 three different times, sir, we cannot get in there to help
21 Victoria Whitmarsh as long as you're in there, and we don't
22 know if you're armed. We need you to come out.

23 Todd Conn was the first one trying to explain this
24 to him. He wasn't confrontational with him; he was a crisis
25 intervention officer. He wouldn't even identify himself. He

ROUGH DRAFT TRANSCRIPT

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1 just kept screaming, you get the fuck in here, you get the
2 fuck in here. Then, he gives them the name of Veronica, not
3 Victoria. He gives them a false name.

4 Once they finally do get into the room, after three
5 to four minutes of challenging him to come out, he still
6 refuses to obey their commands. He would not let them get to
7 her to render aid. He laid on top of her. He had to be tased
8 two different times, just to get him out of the room. And
9 even after being tased, he's struggling with officers, to the
10 point where they drop him on his forehead in the living room.

11 And remember, Officer -- or Detective Ballejos told
12 you, medical won't go into that -- they won't go into the
13 scene until they know that it's static; until there's no
14 longer a danger to them. As long as all of this is going on,
15 they can't get to her to render aid. She's lying there,
16 bleeding to death, and this man is doing nothing to stop it,
17 and everything to prevent any sort of help.

18 Then, when they finally get him out on the porch,
19 Detective Ballejos now goes up to him and says, what's her
20 blood type? He won't give him that information. Makes
21 another attempt at getting a name. He gives Detective
22 Ballejos the same name he gave Officer [inaudible] -- or Conn,
23 I'm sorry; Veronica. The officers spend several minutes
24 trying to verify that name, realize that's not her true name.
25 So, even after he's out of the apartment, he's still impeding

ROUGH DRAFT TRANSCRIPT

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1 their abilities to get her help.

2 AS further evidence of the malice that he possessed
3 at the time of this incident, look at his reaction to the
4 detective when they finally told Brian -- or the defendant,
5 I'm sorry, that she passed. There's a long bout of fake
6 crying. No actual tears, no runny nose, no nothing. Then he
7 says, can I have some more coffee, please?

8 Throughout the course of that interview, he only
9 asked how she was two to three times. He never shed any
10 tears. He trashed her throughout the entire interview. All
11 he cared about was making sure they knew about her mental
12 health history, her medical conditions that implied she's
13 somehow unclear, his plight that he suffered after she sent
14 him to prison.

15 And then, he never tells the detective what
16 happened. If this was an accident, if this was self-defense,
17 why not come out and give the full story? He never does. And
18 the bits and pieces he does give are inconsistent. At some
19 point, the detective tells him, well, did she stab herself, or
20 was there a struggle over the knife? He never gives an
21 answer.

22 Ladies and gentlemen, the State submits to you that
23 the malice in this case is exhibited by the defendant's
24 conduct before, during, and after Victoria Whitmarsh suffered
25 that stab wound on November 5th of 2008.

ROUGH DRAFT TRANSCRIPT

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1 If you find that there was malice, that negates a
2 claim of self-defense. You have two instructions. I believe
3 it's instruction number 11 and instruction number 14 on self-
4 defense. They tell you that, to benefit from a claim of self-
5 defense, you have to have acted solely based on your fears;
6 not with malice. And malice is contradictory to an accident.

7 So, at this point, the State's submitted evidence of
8 second degree murder, an intentional killing with malice
9 aforethought. The only issue left is, was a deadly weapon
10 used? Obviously, there was a deadly weapon used. The knife
11 killed Victoria Whitmarsh. It's an eight-inch kitchen knife.

12 So, when you go back to the jury room and you begin
13 your deliberations, the State is going to ask that on that
14 verdict form, you mark the box "Guilty of murder of the second
15 degree, with use of a deadly weapon." Thank you.

16 THE COURT: Thank you very much. Let's just take a
17 ten-minute recess, and then you can get ready, Mr. O'Keefe.

18 And don't converse among yourselves, or anyone else,
19 on any subject connected with the trial; read, watch, or
20 listen to any report or commentary on the trial, by any person
21 connected with the trial, or any medium of information,
22 including, without limitation, newspapers, television, radio.
23 Don't form or express any opinion on the trial until the cause
24 is finally submitted to you.

25 We'll take ten minutes. Then we'll come back, and

ROUGH DRAFT TRANSCRIPT

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1 hear Mr. O'Keefe, and probably hear Mr. Lalli, all right?

2 Thank you.

3 THE MARSHAL: All rise for the jury.

4 (Outside the presence of the jury panel)

5 THE COURT: All right. We'll take ten minutes then,
6 and come back. All right? Thank you.

7 MR. LALLI: Thank you.

8 (Court recessed at 10:04 a.m. until 10:12 p.m.)

9 (Outside the presence of the jury panel)

10 THE MARSHAL: All rise for the jury.

11 (Within the presence of the jury panel)

12 THE MARSHAL: Ready, Judge. Department 17 back in
13 session. Please be seated. Come to order.

14 THE COURT: Parties, stipulate to the presence of
15 the jury?

16 MR. LALLI: Yes, Your Honor.

17 MR. O'KEEFE: Yes, Your Honor.

18 THE COURT: All right. Mr. O'Keefe, your argument.

19 MR. O'KEEFE: Thank you, Your Honor.

20 (Pause in the proceedings)

21 THE COURT: Oh, we're missing one.

22 MR. LALLI: (Inaudible) stipulating.

23 THE COURT: Yeah. Withdraw the stipulation.

24 MR. LALLI: Withdraw the stipulation.

25 THE COURT: Withdraw that.

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(Pause in the proceedings)

THE MARSHAL: As you were.

THE COURT: Now, do the parties stipulate to the presence of the jury?

MR. LALLI: Now I stipulate, Your Honor.

MR. O'KEEFE: Yes, I do, Your Honor.

THE COURT: Thank you, Mr. O'Keefe. And proceed.

MR. O'KEEFE: Thank you, Your Honor.

DEFENSE'S CLOSING ARGUMENT

MR. O'KEEFE: Wow. I want to try to keep it simple, folks, without breaking down, showing any emotion. I'm so tired -- beyond tired. You can only imagine, I'm sure.

Also, I want to start out, if i may -- really briefly, I want to thank Mr. Maningo for all his assistance he's done. I had taken over the case for personal reasons, folks. It was nothing of his doing.

In actuality, too, I understand exactly -- and I appreciate the State's professionalism. And I understand they have a job to do, and I hold nothing against them. My whole battle has been, just present all the facts, and let the jury decide. I understand if they feel a crime's been committed. It's their duty to charge someone. But at the same time, it's the right of a defendant to be heard.

This is hard. If at any time, I've offended any of you, please forgive me, sincerely. Also, quickly, I want to

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003557

1 thank the Judge. He's been very gracious, and helpful, and
2 understanding. So, with all that said, I'll be quick. And
3 just let me state some things, and let you decide and see,
4 folks.

5 November 5th of 2008 was definitely a tragedy,
6 folks. A tragedy did occur, you know. A historical event
7 happened that day, too. President Obama was elected. We all
8 know that. We watched it together, me and V. Stayed up until
9 about 1:30 November 5th, drinking wine. She just had her
10 birthday two days before. I asked her to go to bed. I wanted
11 her to take a break.

12 MR. LALLI: I'm sorry, Your Honor. I'm going to
13 have to interpose an objection. The defendant is arguing
14 facts that are not in the record.

15 THE COURT: Well, with that understanding, I'm sure
16 Mr. O'Keefe will keep it that way, but I'm going to let him
17 proceed a little on this.

18 MR. O'KEEFE: Thank you, Your Honor.

19 I explained to the detectives in the interview
20 clearly that day, Victoria did go over to Vons and get wine.
21 She got up late that day. I even showed -- you've seen, the
22 detective stipulated; I had a whole list of phone calls I had
23 made that day. One of the calls was a prospects of a job. I
24 even told the detective, you know, it was celebration. You
25 know,

ROUGH DRAFT TRANSCRIPT

003558

1 She was very depressed. She was very, very ill,
2 folks. And I accepted her the way she was, the hep C and
3 everything. A lot of people were leery of that.

4 You know, the State's basing their case, folks, as
5 the detective admitted yesterday, on a voluntary statement
6 that he took when I was in extreme intoxication. The
7 detective admitted that he's trained to try to get you to
8 admit things, which I never, ever admitted.

9 And he admitted at the end, you heard it yourselves
10 -- and look at the video the very end. He even says, I'm
11 going to write it the way I feel, because he couldn't get me
12 to say what he wanted me to say. And he even admitted that if
13 you just say what he wants you to say one time, that's the
14 story for sure.

15 I [inaudible] over, and I do believe that there was
16 a big break in between. And this tape's been edited to death.
17 There is things that you've never even seen. You know,
18 Even --

19 MR. LALLI: Your Honor, I object. The -- it is true
20 that the tape was edited. That was with the -- at the urging
21 of both parties, with the acquiescence of the Court. It is
22 improper for the defendant to suggest that the State edited
23 anything out of that statement.

24 THE COURT: Okay. That's what my understand is
25 also. So, the jury will understand that. Proceed, Mr.

ROUGH DRAFT TRANSCRIPT

003559

1 O'Keefe.

2 MR. O'KEEFE: Okay. I'll move on. Okay. I'll try
3 it a different way then, if the State's going to proceed that
4 way constantly.

5 Folks, we went out that day to Paris. I told them
6 over and over. The State wants to proceed on this case on
7 malice aforethought, an ill will, hatred murder. Malice is
8 ill will. They're trying to imply -- imply means they're
9 suggesting simply, ill will. Cheryl Morris testified
10 yesterday, folks, you heard her, that on Father's Day of 2008,
11 Victoria was searching me out everywhere.

12 Now, also, they kept bringing up on the video that I
13 said, "the bitch." Excuse me, folks, but that's what was
14 said. I said that my friends said I should stay away from the
15 bitch. Watch that part. I wasn't calling her a bitch. My
16 friends say, that crazy bitch, you should stay away from her.
17 They knew she was ill, mentally ill, extremely -- a host of
18 mental illnesses. Catch that part, folks. It wasn't me
19 personally calling her. I said in the video, "my friends." I
20 wanted to point that out, because I caught that this morning.

21 I didn't want to kill V. The State hasn't proven
22 that I stabbed V. Folks, who would want to get a knife and
23 stab someone if you know that they had hep C, and get it all
24 over you? The cops even testified, they were scared to death.
25 They found out possible HIV, hep C. Man, they really didn't

ROUGH DRAFT TRANSCRIPT

003560

1 want to really come in and help, I felt. I kept screaming,
2 come in; not, get out.

3 There's so many things, so I've got to go slow, and
4 a little bit at a time here, and get this right. Cheryl
5 Morris testified on Father's Day that I got a phone cal. It
6 was V searching me out. But I wanted to kill her?

7 In the video -- also brings me to another point.
8 Yeah, I did have to change the course of my life, folks. 40
9 years-old, and I finally get in trouble with someone that, you
10 now, I fall for. There was no -- hey, that's part of the
11 game, you know. I fell in love the way she was. Things
12 happen. We all make -- you know, I moved on. It didn't
13 matter to me. You know, and I became very successful. I was
14 making good money. I was happy.

15 And actually, I was happy she contacted me. Cheryl
16 wasn't happy with that. She felt she got kicked to the curb.
17 I was honest with her though. She even testified when I told
18 her, I couldn't live with myself. I thought it was wrong.
19 Took two or three hours, but I said, hey, you know what, I
20 don't feel -- I got to tell you the truth. That was Victoria.
21 Boy, she went ballistic. but anyway, that's neither here or
22 there.

23 My point being is, folks, they want to proceed on
24 the fact that I wanted to pay back and kill her. Folks, I'm
25 sorry. I'm an alcoholic. I'm not a killer.

ROUGH DRAFT TRANSCRIPT

003561

1 Let's talk about these wounds. Think about the
2 detective here, folks. There was so much evidence that he
3 could have collected, and he admitted to that yesterday. He's
4 trained. He admitted, folks, I'm trained to get you to spill
5 your beans. Boy, you know, I've always known, a drunk tells
6 the truth right off the bat. Not only that, a drunk's really
7 loud.

8 You can't forget also, the neighbors said, there was
9 no shouting, there was no yelling. They admitted straight out
10 that they heard a temper fit going on. We all know her
11 bipolar (sic). You heard the Judge read yesterday to you.
12 Her temper fits or anger fits, anger -- she was in there up to
13 no good. She was going to do something. I happened to walk
14 in on it.

15 You'll see the car. I told them to get the video
16 from Paris to see when we left. They could have seen it. Got
17 in the seat, laid it back. She was mad. She wanted to eat.
18 Pulled up to the apartment, slams the door. We're here,
19 whatever, goes up.

20 Now, you got to remember, they're taking this
21 statement from a man that's under stress and extremely drunk,
22 and I didn't know what was going on. I didn't want to throw
23 her under the bus at the same time, folks. Because i didn't
24 stab her, and I didn't know what the hell was going on. They
25 want to put it like that I tried to claim or say that she

ROUGH DRAFT TRANSCRIPT

003562

1 stabbed herself.

2 No. I told them over and over, I was trying to grab
3 the knife; I got cut multiple times. And I couldn't get it.
4 I was too drunk, too slow. After swinging my jacket, I let it
5 go, and I tried to grab her, and I pushed her back on the bed.
6 I'm right-handed, folks. She's right-handed. The sharpness
7 of the blade goes back. It's an impossibility. They don't
8 want to admit that when I pushed her back, and she fell down
9 on the bed, it went in. I didn't even know.

10 The detective clearly knew that they have a policy
11 that -- they should have, in a felony case, possible alleged
12 homicide, he had a duty. He could have -- he should have took
13 my blood. They said the medics tested my -- they tased me,
14 had me on the porch. They checked the tasing. They could
15 have took my blood, breath right there on the spot, and shared
16 it.

17 Not only at the alleged crime scene; when they took
18 me down to the station and they did all the other tests. Boy,
19 they wanted to swab me, fingerprint me, they wanted to
20 photograph me, fingers. They did all other tests, but they
21 didn't do the critical test. Even when they brought me to the
22 jail and booked me, they put me in the psycho ward -- mental
23 ward; detox. They didn't want to tell me that. They didn't
24 want to tell me that they actually knew. They wanted to lie
25 about it.

ROUGH DRAFT TRANSCRIPT

003563

1 They have a nurse on duty here 24 hours a day, 7
2 days a week at CCDC, and they're supposed to draw your blood.
3 Folks, common sense. If they would have took my blood draw
4 and seen, Victoria at the time of the death was a .24; three
5 times at the time of death when they did the autopsy. They
6 say alcohol evaporates so much per hour. They didn't do the
7 autopsy for a day and-a-half -- until a day and-a-half later.
8 She would have been .3 something, probably. And I was way
9 more than her. Way more.

10 My point being is, if they would have took -- and
11 got a definitive proof of my alcohol standing, it would have
12 proved a lot of things. Sloppiness, motor skills, why I
13 couldn't get the knife. These statements, I was saying
14 things. I was confused. But boy, as soon as they got it,
15 boy, they were holding to it; no, that's what you said.

16 And these calls on the 9-11. Again, I'll allege
17 right now, because a proper witness wasn't called, they've got
18 proof right now of a 9-11 call that they never let play.

19 MR. LALLI: I'm going to object, Your Honor.

20 THE COURT: Objection sustained.

21 MR. LALLI: That's not what the 9-11 call says.

22 THE COURT: Objection sustained. Go onto something
23 else.

24 MR. O'KEEFE: This whole case has been about
25 collection of evidence that they learn how to collect what

ROUGH DRAFT TRANSCRIPT

003564

1 they want, when they want it. They didn't go to Vons and get
2 the receipt to prove that the wine -- and they -- we had a
3 Vons card. They could have got that. I told them over -- go
4 to Vons, get the -- they would have seen the time of day.

5 Folks, they didn't go to Paris. I know from a
6 previous incident, and I'll get to that later, that they only
7 had the video -- it only lasts for four days, and they rewrite
8 over it. The casinos. All the footage they've got is secure
9 for four days.

10 I kept saying, get -- please -- take -- I mean, if
11 you notice, maybe I was being -- but I was under a lot of
12 stress. And I kept trying to say I was scared to death
13 because I went through a situation, and I know how the police
14 are. They don't want to hear the truth. You're here, you're
15 convicted, or take a deal. No deals. Because for me, death,
16 or I walk out.

17 He didn't get the Vons. He didn't take proper
18 photographs. He admitted, yeah, I could have took a little
19 more. Because, think about this, folks. It wasn't a
20 stabbing. It was a partial puncture. The blade was eight
21 inches. The handle was another four. 12 inches. I'm
22 right-handed. If I would have stabbed her, it would have been
23 on the other side of the body, and It would have been a
24 different angle of the sharpness.

25 Think about it. If I would have stabbed her -- and

ROUGH DRAFT TRANSCRIPT

003565

1 they even testified, it didn't hit any cartilage or bone,
2 folks. And if i had ill will, hatred, it would have gone all
3 the way in. I wouldn't need a knife.

4 They don't want to admit that the neighbor did,
5 regardless of what they say, 15 minutes later, seen me come up
6 the stairs. No blood on me, no weapon, no nothing. And I was
7 drunk and tired. I was up the night before. We watched -- I
8 was up until 4:00 in the morning watching the election, the
9 final results. 4:00 in the morning on November 5th. I laid
10 down on the couch for a couple hours. She came out. The day
11 started. Phone calls all day. I showed that.

12 She went to Vons while I was finishing. Talked to
13 the -- a job prospect. I told them that. I was happy. She
14 just had her birthday. She was down. She got news from her
15 sister she was denied on her SSI for the third time. And
16 yeah, finally, maybe she'd get approved. But you know, she
17 was hurting for money. She had no job. She had nothing. No
18 car.

19 She was concerned, what are you going to -- what am
20 I going to do next week? I hate this place. This is what it
21 was come down -- I hate this area. What are you going to do
22 being gone, you work 6, 7 days a week -- and I would have been
23 working at the Hard Rock, seven days a week, long-term.

24 Folks, you just don't stab somebody once if you've
25 got ill will, hatred. And it wasn't even a stab, it was a

ROUGH DRAFT TRANSCRIPT

003566

1 partial puncture. Wrong side of the body; the physical
2 evidence shows it. No prints on that knife. You heard
3 Detective Guenther, the specialist, 34 years. He said he
4 threw that knife under the kitchen sink, I think he said;
5 every test possible.

6 That knife was not wiped off. And it never moved.
7 I didn't care about the knife. If I stabbed her, don't you
8 think you would hide it? Don't you think you would run out of
9 the place? I stayed right there. Cookie's testimony changed
10 all the priors. He came in, and I was saying, come help me.
11 The light switch; my blood on it.

12 I'm not disputing. I'm not disputing one minute
13 that that's not my blood or her blood, and the facts that it
14 was me and her. I'm disputing that there's a difference here.
15 They have to prove that I stabbed her. I didn't stab her.
16 I'm -- it's the total wrong area. It's not even a full stab,
17 four and-a-quarter inches. It's ludicrous.

18 The cops even admit themselves this whole standoff,
19 9-11 deal. Hostage standoff, negotiations, they turned it
20 into; and we stacked on this, and the State wants [inaudible],
21 and you see this little circle, and they move here; come on.
22 Move along with it. Let's get to the facts. I'm in there
23 saying, come in and help me. I'm extremely drunk. They
24 announce it on the 9-11. They already knew I was.

25 They should have been taking my blood right away and

ROUGH DRAFT TRANSCRIPT

003567

1 showing nit. They didn't want to, because it would have
2 ruined the voluntary statement legally. If it would have came
3 back a .3 something, it would have been thrown out the door.
4 They're basing their whole case on the video.

5 MR. LALLI: I'm going to object, Your Honor. That's
6 an improper standard.

7 THE COURT: All right. Move onto something else.

8 MR. O'KEEFE: We know this for a fact, folks. I was
9 in the car. I can't dispute what they heard. I won't even
10 begin to try.

11 You will see -- watch that video. Watch it multiple
12 times you need, please. I tell them the middle of the video
13 somewhere -- I tell the cop, no, wait, 9-11 -- I meant I was
14 calling, I was screaming. Yeah, boom, boom, boom; I was
15 trying to explain the detail after Cookie ran in, and all --
16 everything was going on.

17 But the State wanted to allege that I'm saying
18 during the night, I got off the -- I don't even know what she
19 was saying. I don't even know what case she was talking
20 about. I walk in, and it happened that quick, folks. It
21 happened so fast, my head's still spinning. I knew she was a
22 cutter, and I knew she had a knife and she was in there.

23 When the police checked out my place, they found no
24 weapons, no guns, no drugs, no nothing that a normal criminal
25 would truly have. They found nothing like that. The only

ROUGH DRAFT TRANSCRIPT

003568

1 knives -- they had no combat -- and I had no military knives,
2 no nothing. The only knives that they found -- or knife they
3 found, was her knife. The same knife she used to use. Those
4 were her knives. Those weren't mine. 10:31:17*

5 She had no defensive wounds. They said that
6 normally, a person would be [inaudible]. It's [inaudible].
7 There is no scrapings under her nails; they told that.

8 State's only going on what they heard from the video
9 and the neighbors. But again, the neighbors keep saying over
10 and over, folks, there was no arguing, there was no fighting,
11 the door was wide open. The TV wasn't even on, the radio.
12 There was -- why would a [inaudible] -- a drunk is not quiet.
13 He can't think [inaudible] the knife right where it was, and
14 then try to hide it. I didn't wipe it. My prints are on it.

15 Now, imagine this. One puncture wound on the wrong
16 side of the body, but they want to say that I stabbed her, and
17 my hand slipped off. Okay. If there's one puncture wound,
18 how did I get two cuts? That is totally inconsistent.
19 Physical, there's no way (sic). I think you're smart enough
20 to see that.

21 Now, if I had stabbed her multiple times, it would
22 have -- maybe one here, and then one here. There was only one
23 puncture, and she had that knife in her hand. Right-handed,
24 too. And when she went down, her arms are so flexible --
25 mine, I can't even [inaudible]. But they don't want to talk

ROUGH DRAFT TRANSCRIPT

003569

1 about that. They didn't want to get proper to show. If they
2 would have shown the [inaudible] on my finger [inaudible]
3 thumb, it's a physical impossibility, and the detective was
4 smart enough to know that.

5 The blood, breath is so critical, because it truly
6 aids a lot in my defense. But at the same time, it was just
7 simply wrong to get drunk, folks. I'm an alcoholic; not a
8 killer.

9 [Inaudible] hepatitis C [inaudible]. Why
10 [inaudible] a knife if you wanted to kill someone? I mean, if
11 I wanted to kill her, it just doesn't make sense, why would I
12 wait until that day? It doesn't -- and again, you've got to
13 really remember, she located -- was looking for me. And I
14 accepted her the way she was. I loved her the way she was.
15 It didn't -- I put myself at risk.

16 I can't explain, as I said, what was going on in my
17 mind, folks. I'm not even going to try to say. I just urge
18 you to watch the video. Second degree malice murder, folks.
19 State has to prove beyond a reasonable doubt that I did the
20 act, that I got the knife. There's no prints. They said it's
21 not wiped.

22 And another [inaudible] on that knife is, don't you
23 think there would be more of my blood if I was holding it just
24 [inaudible] things? [Inaudible] so much testimony [inaudible]
25 little spot on the handle or whatever. If I'm holding that

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1 knife, and had that [inaudible] my fingers were [inaudible]
2 from trying to grab the [inaudible]. It doesn't make sense at
3 all.

4 Now, again the temper tantrum, that's what she did
5 when she was [inaudible]. She admitted it. It was her
6 [inaudible], and I can understand it. You know, folks, an
7 intentional stabbing.

8 So, the State is claiming that I got a knife, and I
9 just walked in, and I just decided to stab her. And I told
10 you before, I think, on day one, to go home and lay on the bed
11 [inaudible], she's laying [inaudible] imagine this, folks.
12 And if [inaudible], there's no way, if she's laying on her
13 stomach, her right side's going to be there. If I stabbed
14 her, it would be on this side.

15 If the blade's going to go -- if she's laying on her
16 back, it's the same -- there's no way. It's a -- there's no
17 -- it doesn't even -- it's ludicrous. But second degree
18 malice murder is I had ill will, spite, knowledge.

19 I knew [inaudible] that there's elements to it. The
20 act, the unlawfulness, the knowledge, and the intent.
21 Conscious disregard for it. Knowing that if I stabbed her, I
22 knew for a fact if she was going to die, and I was conscious
23 and aware of that.

24 And I was .3, .4. That's another reason why they
25 didn't want to get it. There was no stabbing. I didn't even

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1 have the knife, folks. Their whole story is based on -- it's
2 totally ridiculous, folks. It's a tragedy, that's for sure.
3 Their family has been through hell, and so has mine.

4 The State wants a V for victory for when they treat
5 it like a sporting event. V is for Victoria, folks. Thank
6 you.

7 THE COURT: Thank you, Mr. O'Keefe. Mr. Lalli, your
8 rebuttal argument, please.

9 MR. LALLI: Thank you.

10 STATE'S REBUTTAL CLOSING ARGUMENT

11 MR. LALLI: Everything we know about domestic
12 violence is that it is about power, and it's about controlling
13 people. And for years, Brian O'Keefe exercised that power
14 over Victoria Whitmarsh, and he controlled her. He controlled
15 her.

16 I want to address some of the things that the
17 defendant has said. He ended with discussing the elements of
18 second degree murder. He said that there are four of them.
19 Second degree murder is extremely a simple crime to
20 understand. This is not a first degree murder the State is
21 alleging. It's not a deliberate, where there's a deliberation
22 in mind. We're not [inaudible] prove premeditation, or
23 planning.

24 A second degree murder is a spur of the moment
25 killing. And there are two elements involved. Judge

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1 Bonaventure told us all in instruction number 4. Murder of
2 the second degree is the unlawful killing of a human being; if
3 somebody kills someone else. Malice aforethought, either
4 expressed or implied.

5 Expressed malice is a fancy way of saying, you
6 intend to kill the person. I intend to kill you, and that's
7 why I stabbed you, and you died. That's expressed malice.
8 That's second degree murder.

9 Implied malice is even broader. There doesn't have
10 to be, or there isn't an intent to kill, necessarily. It
11 could just be, I want to stab you. I don't want to kill you,
12 I want to stab you, but the act is so reckless that I should
13 have known that death could result.

14 So, I just want to stab you because I'm mad at you,
15 because I'm angry with you, because it's been so many years
16 and I'm tired of hearing your mouth, and I'm tired of hearing
17 about your problems, and I'm tired of you complaining. And
18 maybe I don't want to kill you, but I want to stab you, and
19 that person dies. That is second degree murder.

20 And it is that type of murder that -- either
21 expressed malice, because I think there is evidence of an
22 intention to kill; or implied malice. It doesn't matter what
23 you find, it is still second degree murder in the State of
24 Nevada.

25 The defendant has talked a lot about intoxication

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1 during this trial. He talked to you about it in jury
2 selection; is it important that the police collect all the
3 evidence that's possible? He talked about it during the
4 course of the trial, and he also talked to you about it in his
5 closing argument.

6 Now, if Metro was trying to cover up the fact that
7 Brian O'Keefe was intoxicated on the day that he killed
8 Victoria Whitmarsh, they sure did a bad job. If their intent
9 was to hide it from you, or to hide it from anybody who was
10 looking at this case, shame on them, because they didn't
11 accomplish the mission.

12 They've identified witnesses who came into this
13 courtroom and told you, I saw Brian O'Keefe on the day of the
14 murder, and he was intoxicated. He was very drunk. It's in
15 Metro's CAD printout; their event printout. I think the
16 number is 408, or "he was very 408." The defendant had said
17 that numerous times. If they are trying to hide the fact that
18 Brian O'Keefe was intoxicated on the day that this crime had
19 (sic), I guess they forgot to cross that part out of the CAD
20 report.

21 The police officers who responded to the scene, they
22 told you that he was intoxicated. Marty Wildemann, the
23 investigating detective, the homicide detective; he told you
24 the defendant was intoxicated. And if they were trying to
25 hide that fact, why did they videotape his interview with him,

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1 where it is abundantly clear that he's intoxicated? And I
2 would suggest to you, it is perhaps the best evidence of his
3 intoxication.

4 We see how the intoxication affected him, how it
5 manifested himself. He was a sloppy, mean, manipulative drunk
6 on that video. That's what it shows. And if he is a chronic
7 alcoholic, he could very well have had a blood alcohol level
8 of .30; or if he was a guy who hardly drank at all, his blood
9 alcohol level could have been a .08, and he would have acted
10 the same way. The number itself makes no difference.

11 And the fact of the matter is that Metro doesn't do
12 it. Detective Wildemann has never done a blood draw. The
13 defendant was certainly able to communicate during the course
14 of the interview.

15 But there's another reason why the defendant's blood
16 alcohol level is of absolutely no import to this case. He
17 told you that it's absolutely critical to his defense. Well,
18 Judge Bonaventure has told you in the instructions that it's
19 not. And I would just read for you what Judge Bonaventure
20 tells all of us in instruction number 16. And it talks about
21 voluntary intoxication.

22 Voluntary intoxication just means, I decided to have
23 some drinks, or I decided to get high on my own. Somebody
24 didn't force me to drink some beer, you know, pour some
25 alcohol down my throat. So, it wasn't -- we're not talking

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1 about a force situation, and that's not what occurred here.
2 The defendant has told you that he drinks. He's an alcoholic.
3 So, it's voluntary intoxication. That's what we're talking
4 about.

5 But what instruction number 16 says is that, "No act
6 committed while a person, while in the state of voluntary
7 intoxication, shall be deemed less criminal by reason of his
8 condition." We talked a little bit about it in voir dire.
9 You know, Ms. Mercer and myself asked some of you, do you
10 think being under the influence should be an excuse for a
11 crime?

12 And I don't think there's one person who said that
13 it should. All of you who we asked that question to said,
14 yeah, I don't think it should be a defense. I don't think it
15 should be an excuse. Well, guess what. The law in the State
16 of Nevada is that it's not an excuse. It doesn't matter. The
17 defendant's level of intoxication in this case is irrelevant.
18 Judge Bonaventure is telling you that in instruction number
19 16.

20 Just to clarify one point that the defendant did
21 say. Victoria's blood was approximately 2.4 (sic), and that's
22 my recollection of blood it was. Certainly, your recollection
23 will control. Her blood alcohol was .24 at the time of death.
24 Dr. Dutra, the pathologist who testified for you, said that
25 the body doesn't bruise after death. You can't bruise,

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1 because the body's not working anymore, basically.

2 Well, the same thing applies to your blood alcohol
3 level. Upon your death, your body loses the ability to
4 metabolize alcohol. And the blood alcohol level that you have
5 at your death was your blood alcohol level when you died. So,
6 Victoria's blood alcohol was no higher than the 2.4 that it
7 was at her death.

8 When he stood before you and delivered his closing
9 argument, the defendant told you numerous times, I accepted
10 Victoria the way that she was. I accepted her. I didn't want
11 to throw her under the bus in any way. And perhaps that's why
12 he didn't tell Detective Wildemann on the day of the murder
13 what he's kind of suggesting happened now, that she fell on a
14 knife.

15 Really, he accepted her the way that she was.
16 That's really interesting. It is so very telling when you
17 watch his interview how the defendant interacted with the
18 woman in the room, Detective Kyger; how he referred to her as,
19 "young lady, young lady."

20 He wasn't slipping. He was doing that on purpose.
21 He was attempting to antagonize her, degrade her; whatever it
22 was. But it shows you how he feels about women. "Write this
23 down," commanding her, directing her. "Look into this."

24 So much so, that at one point, Detective Wildemann
25 has to say, hey, stop it; knock it off. And you're talking

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1 about a strong woman. You're talking about a homicide -- a
2 female homicide detective. You think she's not tough, hanging
3 out with a squad of mostly male homicide detectives, and the
4 defendant is treating her that way, imagine how he treated
5 Victoria.

6 And think about it, because there's evidence of how
7 he perceived her in this case. In the law, there is this
8 concept called chattel. And chattel is something that you
9 own. It's some non-real property that you own. So,
10 everything I own is my chattel. That's how he treated
11 Victoria.

12 Do you remember what happened when the police
13 officer finally enter that room where Victoria is, and he is
14 lying next to her, or over her? He doesn't say, hey, help
15 her, she's bleeding out. Hey, you know, give her a hand.
16 What does he say? Don't look at her. Don't look at her.
17 This is mine. This is my lady. This is that power and
18 control that we see in domestic violence.

19 And twice during the interview with the police, the
20 defendant is confronted with this idea that Victoria could be
21 dead. One of those, he brings up himself, when he's
22 describing this hep C that she has.

23 And is it possible to switch over to the -- to the
24 computer? Oh, I'm sorry. Can we go to counsel table?

25 THE CLERK: All right.

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1 MR. LALLI: Thank you.

2 (Portion of taped interview of Brian O'Keefe played)

3 MR. LALLI: "She's sick, she's going to die." Hey,
4 today's Tuesday, and my car's in the shop, and everything
5 else. That's how he's talking about this woman he supposedly
6 loves, that's got this condition where she's going to die.
7 That's how he really feels about her?

8 Remember, if you will, his reaction to when
9 Detective Wildemann tells him that Victoria is in fact dead,
10 this woman that he loves, that he has accepted.

11 (Portion of taped interview of Brian O'Keefe played)

12 MR. LALLI: "Can I have some coffee?" Hey, this
13 woman you love so much, she just died. Can I have some
14 coffee, please? That's how you'd expect somebody who really
15 accepted Victoria -- that's how you expect them to react.

16 In his argument today, he said, well, I didn't
17 really want to tell the police what happened because I never
18 wanted to throw Victoria under the bus. Really?

19 Well, here's just a sampling of some of the things
20 that he said about Victoria in that interview. She's the one
21 who said she wanted to kill herself. I got out of prison, and
22 she called me. She went to Vons to get wine, and used my
23 cards. The Union was giving him cards to be able to use for
24 food, because he was out of work.

25 She tried to kill me. Two nights ago, she got real

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1 mad. Victoria accused me of being jealous. She stabbed
2 herself, and she did a lot more than that. He was sure
3 throwing Victoria under the bus in that interview.

4 There were, during the course of this trial,
5 arguably two theories that were advanced by the defendant, and
6 they tend to be moving targets. During the course of the
7 interview, he says at least twice, Victoria attacked me. So,
8 back on the day of the crime, I guess one of the defenses was
9 self-defense. Judge Bonaventure instructs you on self-
10 defense. That's not the defendant's theory, so I would tell
11 you to just disregard all of that. This isn't a self-defense
12 case.

13 We heard an awful lot about suicide. But now, today
14 in his closing argument, the defendant seems to admit that
15 Victoria did not kill herself. He said that. Now, it's
16 simply, it was this accident, that somehow she fell on the
17 knife. But I want to talk briefly about suicide and accident.

18 But more importantly, I want to talk to you about
19 where this evidence comes from. Because any evidence of
20 suicide on that day, or accident, comes from one source; and
21 that source is the defendant. So, to accept those, to embrace
22 those, you have to believe that Mr. O'Keefe was truthful
23 during that interview.

24 And I would just remind you that nothing he has said
25 in this courtroom is evidence. Statements of counsel, or

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1 questions, or statements of people who represent themselves,
2 is not evidence. It is not evidence. That is his version of
3 what occurred on that day.

4 Well, first of all, what are his motivations? Who's
5 on trial here today? Well, Mr. O'Keefe's on trial. And
6 certainly, you have to understand his motivation in presenting
7 his defense to you in doing that. But it is so incredibly
8 telling, this story of this accidental death, how somehow she
9 fell down on a knife, is not what he told the police. Because
10 he is asked very pointed questions routinely and repeatedly
11 through that interview.

12 And what does he tell Detective Wildemann? I don't
13 know how she got stabbed. I don't know what happened in the
14 apartment. I don't know how I got the cut on my hand. I
15 don't know how she got covered with blood. And he's very
16 strategic in the information that he's willing to provide. He
17 wants to talk about the Paris. Well, what does Paris have to
18 do with that murder?

19 And he's angry, still to this day, at the police,
20 because they didn't go to Paris and get that video. The video
21 of what; him drinking at Paris? He's angry that they didn't
22 go to the Vons. Who cares about the Vons? It has absolutely
23 no relevance to this case.

24 This case is about what happened in that apartment.
25 They want to know -- he wants to know, you know, hey, I was

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1 calling the Union all day. Who cares? Who cares? Tell us
2 about what happened with that knife. That was something he
3 was unwilling to do on the night of this murder.

4 All of the evidence that you have seen repudiates
5 the ideas of accident and suicide. We admitted through a
6 stipulation Victoria's psychiatric records. Well, why did we
7 do that? Well, that's part of who Victoria was. That's who
8 Victoria was. She was a tortured person. She was a cutter.
9 When she would be depressed, she would cut herself.

10 If you know anything about depression, it's what
11 those who suffer from that illness do. It releases serotonin,
12 as it brings comfort to them. We know that Victoria was not
13 suffering from depression at that time. She was taking her
14 medications. She was taking her Effexor. And Dr. Dutra told
15 you that. He told you what Effexor is. Effexor is an
16 antidepressant. It was found in Victoria's blood at the time
17 of her death. She was stable at the time.

18 During his argument to you, the defendant said, you
19 know, on this particular day, Victoria was up to no good; and
20 he was -- kind of made that motion to you that maybe she was
21 slicing herself.

22 Fortunately, there are photographs of almost her
23 entire body. And I'd ask you to look at them. You see her
24 wrists. I'm showing you State's Exhibit number 88 and State's
25 Exhibit 93. She's not cutting herself. She's not cutting her

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1 wrists. I don't know why he said that to you. There's no
2 evidence of that. She was not suicidal on this day.

3 The importance of Victoria's psychiatric history is
4 that it shows us how vulnerable she was. You heard from
5 Elynne Greene, who was the domestic violence expert who
6 testified in the early part of this trial. And she talked
7 about those victims of domestic violence; those people who are
8 caught in the cycle of violence. They are vulnerable people.
9 They are people with low self-esteem. They are people with
10 problems. She described for you Victoria Whitmarsh. She was
11 the perfect victim for this defendant.

12 Was this a suicide? No, and the defendant is even
13 telling you that today in his closing argument. What about
14 accident? Accident is interesting. If I met you for the
15 first time today, and we were friends, and we were having a
16 conversation, and you said, hey, Chris, what are you doing
17 next week? And I said, I'm trying a murder case, and it was a
18 stabbing case. And you said, really? What's the -- what's
19 the defense? And I said, the defense is that the victim fell
20 on the knife and died; you'd laugh at me. I mean, you'd
21 chuckle.

22 And that first instinctual reaction is really an
23 appropriate one, because it's ridiculous. It's ludicrous. It
24 makes absolutely no sense at all, but yet, that's the defense
25 that the defendant is bringing you today; she fell on the

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1 knife.

2 Dr. Dutra, in response to some very thoughtful
3 questions from the jury -- it wasn't anything that I had asked
4 him, but some very thoughtful questions from the jury, he was
5 asked about that. What happens -- if this was an accidental
6 -- somebody fell on this knife, would we expect the type of
7 wound track that we had? And Dr. Dutra said, no, you
8 wouldn't.

9 And during the course of this autopsy -- I apologize
10 for the photo, but it is so telling as to the wound angle.
11 This is State's Exhibit number 130. No, you're not going to
12 have that type of an angle. And more importantly, you're not
13 going to have that clean, singular sort of wound track in
14 Victoria's body. It's going to be jagged, there's going to be
15 irregularities in it.

16 And Dr. Dutra's an interesting guy. He's been a
17 doctor since the 1970's. He was trained at USC. He has
18 expertise in forensic pathology. He's worked at hospitals.
19 Dr. Dutra's telling you, there's no way this is an accident.
20 And in fact, "By virtue of me saying this is a homicide, I
21 have ruled out that it was an accident." And not in response
22 to anything that the State asked him, because the defendant
23 wanted to talk about Dr. Benjamin, who was the doctor who
24 actually did the autopsy.

25 She agreed with that, because it was Dr. Benjamin's

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003584

1 opinion that this was a homicide; not an accidental death.
2 But think of the coincidences, that this woman just happened
3 to fall on this knife, the same day that the defendant was in
4 an argument with his girlfriend.

5 On that same day that they're fighting about -- who
6 knows what? Arguing about how much money he had spent at the
7 -- or gambled at the Paris, just happens to be coincidentally
8 on that same day she fell on a knife. And they were arguing
9 about his gambling at the Paris that night. He tells us that
10 in the interview.

11 (Portion of taped interview of Brian O'Keefe played)

12 MR. LALLI: "Why did you spend so much money at
13 Paris?" They were arguing on this day. Just so happens that
14 she fell on that knife the same day. Their relationship was
15 strained at this period of time. There's one bed in this
16 house, but there's also a bed made up out on the couch, where
17 he told you he was sleeping.

18 I'm showing you State's Exhibit number 5. They
19 weren't sleeping together. This wasn't a loving couple at
20 this time. He's out, sleeping on the couch. What a
21 coincidence, during this time in their relationship, she fell
22 on a knife.

23 Isn't it a coincidence that she fell on this knife
24 just minutes after Johnny Hathcox -- I'm sorry, Jimmy Hathcox,
25 sees the defendant with that look on his face, and then hears

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1 that disturbance, and thinks to himself, wow, I wonder if he's
2 beating the crap out of her. What a coincidence that she fell
3 on the knife at the same time.

4 What a coincidence that she fell on a knife the same
5 day she had all of that blunt force trauma on her body. The
6 injury on her head, which Dr. Dutra told you was fresh. The
7 grabbing wound on her arm, which Dr. Dutra told you was fresh.
8 The bruise on the upper part of her arm, which Dr. Dutra told
9 you was fresh. The bruises on her chest, which Dr. Dutra told
10 you were fresh. The bruise on the side of her body, which Dr.
11 Dutra told you was fresh.

12 The injuries to her back and buttocks, which Dr.
13 Dutra told you were fresh. The injury on the side of her leg,
14 which Dr. Dutra told you were fresh. Isn't it a coincidence
15 that the same day she was subjected to this unthinkable
16 beating that was heard in the apartment below, and was heard
17 by Mr. Hathcox next-door -- isn't it a coincidence that on
18 that same day, when no one was in that apartment except the
19 defendant, she happened to fall on a knife?

20 Who stabbed whom? And the defendant says, hey, my
21 fingerprints aren't on the knife. I didn't handle it. I
22 guess he forgot about the DNA evidence, that clearly has his
23 blood on the handle. There's no doubt about that. Take the
24 population of the earth, and multiply it by 100. There's only
25 one person in that group whose blood that could be, and it's

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003586

1 Brian O'Keefe. It's on the handle of the knife.

2 And Forensic Scientist Bas was very clever in how
3 she collected it. She collected a swab of blood from the
4 bottom of the knife, where those cuts on his finger were,
5 which is where we would expect blood to be. Who was the
6 person stabbed? It was Victoria Whitmarsh. The same degree
7 of certainty.

8 His statement to Officer Hutcherson tells us what he
9 did to Victoria. "I swear to God, V, I didn't mean to hurt
10 you." And think about how these statements were collected.
11 Officer Hutcherson sitting in his patrol car, writing things
12 down as he's hearing them.

13 To understand what happened in that apartment, all
14 you have to do is look at the defendant's consciousness of
15 guilt. You know, if this was a suicide, there's no problem
16 for him. He's not criminally on the hook. If this was an
17 accident, if it was truly an accident, he faces no criminal
18 liability.

19 The only problem for him is that this was a
20 malicious killing. And when you act in a manner consistent of
21 guilt, it is suggestive of guilt. If this was a suicide or an
22 accidental killing, wouldn't he have been happy to see the
23 police?

24 And Ms. Mercer did an excellent job of marshaling
25 that evidence for you. That's not how a person acts if he has

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1 nothing to hide, if he did nothing wrong. That person doesn't
2 try to square-up with and fight with a neighbor, who could
3 come over and help. That's not what somebody who is not
4 guilty does. Feigning emotion in an interview. There's no
5 reason to feign emotion.

6 And then, there is one other thing that the
7 defendant says, "Let's go to the ten years," as he is sitting
8 in that car. After he has murdered Victoria Whitmarsh, he's
9 in the patrol car with Officer Hutcherson, "Let's go do the
10 ten years," an obvious reference to, he's going to prison. He
11 knows it. And I would submit that you know it, too.

12 Everything we know about domestic violence is that
13 it is about power and controlling people. Today, the
14 defendant has no power. That power is vested in you. And I
15 ask you to use that power for justice today. Justice requires
16 that he be convicted of second degree murder for killing
17 Victoria Whitmarsh. Thank you.

18 THE COURT: All right. Thank you very much, Mr.
19 Lalli. The clerk will swear the officer to take charge of the
20 jury.

21 MARSHAL SWORN

22 THE COURT: All right, ladies and gentlemen. The
23 case --

24 (Pause in the proceedings)

25 THE COURT: The case is now submitted to you, and

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1 our marshal will be the officer in charge of your
2 deliberation. Please retire with him, and he'll show you
3 where to go, and he'll take all the exhibits. The alternate
4 jurors, please remain in the courtroom.

5 (Jury retires to deliberate at 11:10 a.m.)

6 (Outside the presence of the jury panel)

7 THE COURT: All right. Mr. Mikuski, is it?

8 ALTERNATE JUROR NO. 1: Yes.

9 THE COURT: You're Alternate Juror number 1. And
10 Beverly, you're Alternate Juror number 2. Now, I can either
11 do one of two things. I could just have you hang around here
12 all day, and it's -- or what I could do, and which I think I'm
13 going to do, is I'm going to give you the admonition. And
14 then I'm going to allow you to go to the jury commissioner,
15 sign your vouchers, and go home, with the understanding though
16 that -- see, they're going to deliberate now.

17 Maybe something will happen -- not -- maybe they
18 won't reach a verdict by tonight, then I'm going to let them
19 go home for the weekend. I'm not going to sequester them.
20 I'm going to let them go home. And then, I'm going to have
21 them come back about 8:30, 9:00 o'clock on Monday, if that
22 happens.

23 Now, if something should happen during the weekend,
24 very important for you, Eric, to be available. You understand
25 that?

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1 ALTERNATE JUROR NO. 1: Yes.

2 THE COURT: And there's no excuses. You understand?
3 And also, you too, Beverly. You're Alternate Juror number 1.
4 So, I might very well on Monday, if something happens, and it
5 might not, have the clerk call you and say, get over here
6 right away, and then we're going to begin deliberation anew.
7 You understand that?

8 ALTERNATE JUROR NO. 1: Yes.

9 THE COURT: So, you promise me you'll be available
10 between 8:30 and 10:00 in case I call you. You understand?

11 ALTERNATE JUROR NO. 1: Yes.

12 THE COURT: Please. And you, too, okay? So, I'm
13 going to give you the admonition. And once I give you the
14 admonition, you go to the clerk right here, give them numbers
15 where you could be reached on Monday. And then, you go to the
16 jury commissioner, sign your voucher, and go home. All right?

17 Now, don't converse among yourselves, or anyone
18 else, on any subject connected with the trial; read, watch, or
19 listen to any report of, or commentary on the trial, by any
20 person connected with the trial, or by any medium of
21 information, including, without limitation, newspapers,
22 television, radio. And you are not to form or express any
23 opinion on any subject connected with the trial until the
24 cause is finally submitted to you.

25 So, come over here.

ROUGH DRAFT TRANSCRIPT

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1 THE MARSHAL: They already got their numbers. I
2 already got their numbers.

3 THE COURT: Oh, you already got numbers? Good.

4 THE MARSHAL: Yes, sir.

5 THE COURT: You need to leave the badges I guess,
6 right?

7 THE MARSHAL: Right. Just leave them on your chair.

8 THE COURT: Leave them on the chair, and yeah.

9 ALTERNATE JUROR NO. 2: Could I give a second phone
10 number because --

11 THE COURT: Yes, please.

12 ALTERNATE JUROR NO. 2: -- my cell is not --

13 THE COURT: Absolutely. I want a third one, too.
14 All right. Thank you very much. Take your badge off. Now,
15 just go to the jury commissioner now.

16 ALTERNATE JUROR NO. 2: Thank you.

17 THE COURT: All right. So, they're going to be
18 deliberating now. I'm going to provide lunch to them about
19 11:30, quarter-to-12:00. So, you'll have numbers -- Mr.
20 Maningo, you'll have numbers where you could be reached?
21 And --

22 MR. MANINGO: Yes, sir.

23 MR. LALLI: We will.

24 THE COURT: -- [inaudible]. Anything else to come
25 before the Court before we take our recess?

ROUGH DRAFT TRANSCRIPT

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1 MR. LALLI: Not on behalf of the State.

2 MR. O'KEEFE: No, Your Honor.

3 THE COURT: All right. Thank you very much. We'll
4 be in recess.

5 (Court recessed at 11:14 a.m. until 1:57 p.m.)

6 (Outside the presence of the jury panel)

7 (Pause in the proceedings)

8 THE MARSHAL: All right, guys. Places, everyone.

9 (Pause in the proceedings)

10 THE MARSHAL: All rise for the jury.

11 (Within the presence of the jury panel)

12 THE MARSHAL: Department 17 is back in session.
13 Please be seated and come to order.

14 THE COURT: All right. Ladies and gentlemen, have
15 you selected a foreperson?

16 THE FOREPERSON: Yes.

17 THE COURT: Who's the foreperson? Please stand up.
18 Have you arrived at a verdict?

19 THE FOREPERSON: Yes, we have, Your Honor.

20 THE COURT: Please hand the verdict to the marshal.
21 Remain standing, if you will. I'm going to talk to you again.

22 (Pause in the proceedings)

23 THE COURT: Mr. Foreman, would you please read the
24 verdict aloud, starting from the very top?

25 THE FOREPERSON: "We the jury in the above entitled

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1 case find the defendant, Brian Kerry O'Keefe, as follows:
2 guilty of murder in the second degree with use of a deadly
3 weapon." Dated this 15th day of June, 2012.

4 THE COURT: Thank you very much. Hand that back to
5 the marshal. Ms. Clerk, would you read the verdict aloud, and
6 inquire of the jury if that is their verdict? You can sit
7 down, sir.

8 THE CLERK: District Court, Clark County, Nevada.
9 The State of Nevada, plaintiff, versus Brian Kerry O'Keefe,
10 defendant. Case number C-250360, Department 17.

11 Verdict: "We the jury in the above entitled case
12 find the defendant, Brian Kerry O'Keefe, as follows: guilty of
13 murder of the second degree with use of a deadly weapon."
14 Dated this 15th day of June, and signed by the jury
15 foreperson.

16 Ladies and gentlemen of the jury, is this your
17 verdict, so say you one, so say you all?

18 THE JURY: Yes.

19 THE COURT: All right. Would any of the parties
20 like the jury polled?

21 MS. MERCER: No, Your Honor.

22 MR. O'KEEFE: No, Your Honor.

23 THE COURT: All right. In view of the fact that the
24 jury has found the defendant guilty as charged, we're going to
25 enter that upon the minutes. I guess we have to refer this

ROUGH DRAFT TRANSCRIPT

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1 back to the Department of Parole and Probation for a renewed
2 PSI I guess. I mean, that should be the -- and any motions
3 you want to file --

4 MR. O'KEEFE: Your Honor, if I may just request
5 speedy trial transcripts. If I could get those moving along.

6 THE COURT: Well, let's get the jury out of here
7 first.

8 MR. O'KEEFE: Yes, sir.

9 THE CLERK: Sentencing date?

10 THE COURT: Yeah, because the old PSI is not good
11 anymore. So, let's set a sentencing date in about, I don't
12 know, 60 days. Yeah.

13 THE CLERK: August 16th, 8:15.

14 THE COURT: You know, we have an old -- you know, a
15 little -- I'm not going to go into it all, but there's a
16 little history. Mr. O'Keefe was found guilty a while back,
17 and then he appealed it, and the Supreme Court reversed. And
18 then he was tried again. I think it was a hung jury, if I'm
19 not mistaken. But this is the third time, and thank you very
20 much.

21 As I indicated to you before, there's only two times
22 you can serve your country, in war and jury service. But for
23 you, we can't resolve cases. Mr. O'Keefe felt he was -- you
24 know. He felt he was not guilty, he had a right to trial, and
25 he was given it. But I want to thank you very much.

ROUGH DRAFT TRANSCRIPT

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1 You're excused from my jury admonition. If you
2 happen to want to talk to talk to somebody, be free to do so.
3 I want to thank very much Mr. Lalli, I don't think he's here,
4 and Ms. Mercer. And I want to thank Mr. Maningo. It's a
5 thankless job to be a standby lawyer. I can see him chomping
6 at the bit, wanting to advocate. But he did his job.

7 And Mr. O'Keefe had a right to represent himself.
8 And quite frankly, you know, for the record, he was a
9 gentleman. He treated everybody with respect, and I
10 appreciate that. So, you know, I want the record to reflect
11 that, that he treated himself professionally, and respect --
12 he treated everybody -- he treated the Court with respect, he
13 treated the DA, and he treated the jury with respect.

14 But that being said, he's convicted now. And as I
15 said, you're released from my admonition. Go to the marshal,
16 go back to the jury commissioner, sign your vouchers. And you
17 did a very good service here. Thank you so much. I mean, I
18 don't care what the verdict was. You did your service, and go
19 back there now. And as I said, you're released. If somebody
20 want to talk to you, fine. If not, don't worry about it.

21 THE MARSHAL: All rise for the jury.

22 (Jury excused at 2:05 p.m.)

23 (Outside the presence of the jury panel)

24 THE COURT: All right. Is there anything else to
25 come before the Court before we take our recess?

ROUGH DRAFT TRANSCRIPT

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1 MS. MERCER: No, Your Honor.

2 THE COURT: Mr. O'Keefe?

3 MR. O'KEEFE: No, Your Honor.

4 THE COURT: All right. Well, good -- I mean, I
5 don't know, good luck. I mean, [inaudible] a very serious
6 charge.

7 MR. O'KEEFE: Absolutely, Your Honor.

8 THE COURT: I don't know. One jury -- 12 people
9 found you guilty; is that correct?

10 MR. O'KEEFE: Yes, sir.

11 THE COURT: The third -- the second trial was an 11
12 to 1 hung? I don't even know. Was that --

13 MR. O'KEEFE: It was --

14 MS. MERCER: 11 to 1, or 10 to 2.

15 MR. O'KEEFE: It was 10 to 2, Your Honor.

16 THE COURT: It was 11 --

17 MS. MERCER: Depending on who you spoke to.

18 UNKNOWN MALE SPEAKER: 10 to 2.

19 THE COURT: Or 10 guilty -- and 2 -- or 1 or 2, they
20 didn't show beyond a reasonable doubt.

21 MS. MERCER: Correct.

22 THE COURT: Now, you've got 12 more. So, the
23 evidence is what the evidence is. But that's not going to
24 stop you, Mr. O'Keefe. I'm sure you're going to be litigating
25 this for about the next 20 years.

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1 MR. O'KEEFE: Yes, sir.

2 THE COURT: All right. Good luck.

3 MR. O'KEEFE: If I could, Your Honor -- with all due
4 respect, could I put that -- request an oral motion for the
5 trial transcript now to get it started? May I?

6 THE COURT: What's the --

7 MR. O'KEEFE: Would that be all right, Ms. Mercer?

8 MS. MERCER: He has to do it a court order.

9 THE COURT: Yeah. You know what, I'm going to
10 accommodate you. See if we get an expedited trial transcript,
11 because he does have a federal writ that he's got to resolve.
12 And so, I'll sign it, all right? Just who's going to --
13 [inaudible] you prepare the order, all right?

14 MR. MANINGO: I will, Your Honor.

15 THE COURT: And then get it to the chambers, and
16 I'll sign it, and we'll try to get an expedited trial
17 transcript.

18 MR. MANINGO: Absolutely.

19 THE COURT: Well --

20 MS. MERCER: Thank you.

21 MR. O'KEEFE: Your Honor, thank you.

22 MR. MANINGO: Thanks.

23 MR. O'KEEFE: It was an honor being with you.

24 THE COURT: Thank you.

25 (Court adjourned at 2:06 p.m.)

26

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ACKNOWLEDGMENT

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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Julie Lord

JULIE LORD, TRANSCRIBER

8/24/12

DATE

ROUGH DRAFT TRANSCRIPT

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1 the second trial, page 57 of the transcript; the Supreme Court of
2 Nevada reversed this case because they know well themselves how
3 does an involuntary manslaughter become second degree murder by the
4 unlawful act? It wasn't proved. I have the transcript. You'll be
5 amazed. And he stated they reversed this case because the evidence
6 didn't support it.

7 Not only was the instruction improper, but the evidence
8 did not support this and did not support what, Your Honor?
9 Instruction 18 on second degree murder. Their theory that was the
10 State's theory of an intentional stabbing by a battery.

11 Collateral estoppel, I need to claim my attorney never
12 did. She did not claim res judicata on the reversal. The issue
13 too has been decided by the Nevada Supreme Court on April 7th, 2010
14 and it was reversed. And they said I did no unlawful act and that
15 is the definition of battery.

16 Your Honor, in the closing argument -- now collateral
17 estoppel only there. They used the same prosecutions the theory of
18 an intentional stabbing on both trials.

19 Now I filed in the Federal Court and Judge Navarro
20 responded on that and she said they're definitely -- you got the
21 orders, you know -- she said it appears that there's double
22 jeopardy protection clause problem, but you know I'm fighting them
23 now that they're like your attorney basically should have -- should
24 have brought this up. They're basically running around about way
25 that my attorney was ineffective. I've been trying to tell you the

1 whole time.

2 I was reprosecuted on the same offense that they
3 acquitted me of. They acquitted me of the battery act, Your Honor.
4 Let's totally be honest here. We know what the Prosecutor was
5 saying. They know. They also know that a felony domestic violence
6 is three misdemeanors. They know that. They had all that evidence
7 and they reversed the case and they said all the evidence presented
8 at trial. Not in the club, not in the ballroom; at trial did not
9 support this theory of second degree murder. It's the instruction
10 is irrelevant.

11 Now collateral estoppel, constitutional collateral
12 estoppel applies here, Your Honor, because the ultimate fact
13 required to sustain a need -- needed for the general intent
14 required for the second degree malice murder is I've been acquitted
15 of it. In fact, collateral estoppel now applies to the State's
16 through Benton versus Maryland, a 1969. You know that. It's an
17 issue that's not left up to the State.

18 Collateral estoppel was an off-spring of the parent
19 double jeopardy. It is a Fifth Amendment -- Amendment. It's a
20 violation of that. I've already been violated and I'll be further
21 violated again. Basically it comes down to this, we're rehashing
22 the same evidence, Your Honor, with all due respect. This is all
23 being rehashed. Everything to do with battery. The
24 [indecipherable] battery cannot even be -- should not have even be
25 brought up in the second trial.

1 I mean, I'll have too -- I'm going too -- I'm planning --
2 you know, I'm trying to deal with the State's motion in response
3 here. I had an attorney who didn't properly address or bring up --
4 I mean, she did some good work. I'm not saying, but she didn't
5 address the proper issues. I kept arguing her with.

6 I mean, on remand, Your Honor, you know yourself, Your
7 Honor, you know better than me. I'm not trying to tell you. I
8 mean no disrespect. I'm trying to -- I learned the law, I'm trying
9 to teach you guys how. You guys know better than that. You know
10 better than me, but I am saying that on remand she should have
11 filed a motion challenging the second degree malice murder charge.

12 THE COURT: Sir, listen --

13 THE DEFENDANT: She should have challenged --

14 THE COURT: -- you're going --

15 THE DEFENDANT: -- bad acts.

16 THE COURT: -- you're going to some other areas here. The
17 issue is --

18 THE DEFENDANT: Okay, but --

19 THE COURT: Hang on. Hang on. You've already addressed the
20 clear and convincing evidence issue. I'd ask you to address the
21 issue --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- under 480.045. You're getting into all these
24 collateral issues. You're done addressing it, please tell me or
25 focus in --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- on the area.

3 THE DEFENDANT: All right. Your Honor, again trying to focus
4 in. Clear and convincing no. Absolutely they haven't. I mean, a
5 lot of these -- all these acts the whole when the police wrote all
6 the reports and wrote everything, no one knew about her true mental
7 state. She was totally crazy, bipolar. Well, she wasn't a bad
8 person. See, I don't want to sit here and talk bad about her, but
9 I mean there's a lot of things that were never known. They were
10 never known. A lot of this is hearsay now. God bless her soul,
11 she's dead. I mean, I have the right to confront their witness now
12 based on her true mental known status that no one ever knew at the
13 time that no one wanted to address.

14 Sally Loehrer knew at the time and hid it, but you know
15 that's between here -- neither here nor there. I'm saying there's
16 so many violations of Federal law, Fifth and Sixth Amendment and
17 Fourteenth Amendment, my due process the enforcer.

18 Your Honor, you're trying to allow the State on the third
19 trial to bring in misdemeanor convictions, sir, to prove a felony
20 act in NRS 48.061 even says that you cannot do that, subsection 2.
21 There's so many -- they can't even proceed on the theory of -- the
22 misdemeanor battery is an unlawful intention act of supposedly the
23 intentional stabbing described in the amended information. The
24 battery act I've been acquitted of. This is nothing more than
25 malicious prosecution. Let's face it, the State --

1 THE COURT: Sir, I need you to address -- first off you need
2 to look at me when I talk to you.

3 THE DEFENDANT: Yes, sir, Your Honor. I apologize.

4 THE COURT: Hang on.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Listen very carefully. You have a right under
7 Faretta to represent yourself. However, if you researched the case
8 law it will also tell you that you must follow the same rules as an
9 attorney. If Mr. Maningo was arguing this matter, he would address
10 me, he would look at me and show me respect, okay. And so if you
11 continue in this course, I'm going to take you off the case to
12 represent yourself because its looked like you've researched the
13 law and it's good. You should also research that you're under the
14 duty to act as an attorney. Do you understand that, sir?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay. And first off you had said I'm trying to
17 admit this. No, the State is. Maybe you misspoke, okay. The
18 State is seeking. I'm not trying to do anything. I'm trying to
19 listen to arguments of both sides and make the appropriate
20 decision. Do you understand that?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Okay. You've already addressed that you don't
23 believe the State has proven these other incidents by clear and
24 convincing evidence, and I understand your argument. You have any
25 further argument in why this does not follow under 48C.045? The

1 State is seeking to admit this to rebut any claim of self defense
2 that it was an accident or seeking to admit it for intent and
3 motive, and that's what I need you to focus on.

4 THE DEFENDANT: Okay. Yes. The propensity evidence is not
5 allowed. You cannot use other acts to try to prove the current
6 charge, Your Honor.

7 Again it's a cross over, Your Honor, with all due
8 respect. I mean, what they're trying to do here is violate the
9 law. They're abusing the law. They're looking for exceptions to
10 exceptions and they're trying to get you to push yourself out on a
11 limb and give them a favorable ruling.

12 Your Honor, again in all sincerity, these acts have all
13 been noticed and Phillip Smith the State at the time the State
14 Prosecutor's motion he listed every one of these acts. He
15 specifically asked you, Your Honor, I only want the felony.
16 There's a history of the CV's. I don't want them all.

17 He had all this in his possession; the State did. Their
18 knowledge -- they noticed them, they listed them, they had it.
19 Your Honor, you don't think that if he legally could have used all
20 these acts that they're trying to bring in now that he would have
21 not done that? You think he was just giving me a break and being
22 nice? No, he wasn't --

23 THE COURT: Sir, can you please address --

24 THE DEFENDANT: -- Your Honor.

25 THE COURT: -- can you please address if you have an argument

1 as to why these are irrelevant to the issue of rebutting self
2 defense, rebutting accident and also why --

3 THE DEFENDANT: Okay, Your Honor, yes.

4 THE COURT: -- these don't go to intent or motive.

5 THE DEFENDANT: Yes, okay.

6 THE COURT: Sir, I'm trying to give you a full hearing.

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: If you listen to me carefully, you would
9 understand that. So please address why these other incidents do
10 not fall within the exception regarding self defense accident,
11 intent, motive and anything else under 480.045.

12 THE DEFENDANT: Because they're trying to use them for motive
13 and intent and they've already used it for motive and intent, and
14 the jury at that time acquitted me, Your Honor. Again, in the
15 Nevada Supreme Court acquitted me of second degree.

16 They've already used them. They had them, they used them
17 for motive and intent. They've already used them for it.

18 THE COURT: Okay. Anything else, sir?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: All right. Any rebuttal argument by the State?

21 MS. MERCER: I don't think I have any further argument unless,
22 Your Honor, has any question for me.

23 THE COURT: I don't have anything further.

24 We had this evidentiary hearing last year some time,
25 correct?

1 MS. MERCER: Yes.

2 THE COURT: And for various reasons it's been bumped a couple
3 of times.

4 MS. MERCER: It was April 27th, Your Honor.

5 THE COURT: And thank God I kept my notes and I do have them
6 here and I found my legal pad and --

7 MR. LALLI: There's also a transcript of that, Your Honor.

8 THE COURT: I've got very detailed notes here. What I'm going
9 to do is I'm going to review these notes and you will have a
10 written decision hopefully this afternoon. I have another hearing
11 at 10 today. If not this afternoon, definitely on Tuesday. I do
12 not have a trial next week, so I can have this finalized by
13 Tuesday.

14 Mr. O'Keefe, again you have the right to represent
15 yourself, but I'll tell you that in your argument you were all over
16 the place and it wasn't as coherent as Mr. Maningo could have
17 presented this. And you may know the dates and perhaps some of the
18 facts better than Mr. Maningo does today, but you know I'm going to
19 advise you again that I think his argument on this issue would have
20 been more coherent.

21 And I could sift through what you're saying and
22 understand it, but I think in front of a jury you would be in a
23 better position to argue the facts in the nuances of this case,
24 but that's up to you. But if you want to reconsider, that's fine.
25 If you don't, that's fine too. But I think if you look back on

1 your presentation, you'll see that it wasn't as organized as it
2 should be or as Mr. Maningo would have presented it. And that
3 would be to your disadvantage if you go to trial in this case, all
4 right.

5 And so I'll have a written decision hopefully this
6 afternoon. If not, Tuesday.

7 MS. MERCER: Thank you, Your Honor.

8 MR. LALLI: Thank you, Your Honor.

9 THE DEFENDANT: Oh yes, Your Honor, I have a housekeeping
10 matter.

11 THE COURT: All right.

12 THE DEFENDANT: I sole apologize.

13 THE COURT: It's okay.

14 THE DEFENDANT: Skye Campbell here, the old investigator, I
15 need to have her appointed, Your Honor. She came in here today.
16 She's agreed. Craig Retke the old investigator doesn't want --
17 he's too busy. He doesn't want anything to do with the case
18 basically and as you had instructed also told -- she came here
19 today with willingness to, you know, take on the case. It'll be
20 the investigator, but we just want to bring it to your attention
21 and have you appoint her.

22 MR. LALLI: I object to the reference to her as old, but other
23 than that I don't --

24 THE DEFENDANT: I apologize.

25 MR. LALLI: -- I don't -- I don't -- we don't oppose the

1 Defendant having an investigator.

2 THE COURT: I would suggest then that you submit an order, Mr.
3 O'Keefe, for her appointment. I'll sign that. And I understand
4 you need to go through the rules of Drew Christensen as far as the
5 amount you can charge, etcetera; do you understand that?

6 Is that a yes?

7 MS. CAMPBELL: Yes. I'm sorry.

8 THE COURT: All right. So, Mr. O'Keefe, before she can get
9 paid on your case, make sure you submit the appropriate order for
10 my signature.

11 THE DEFENDANT: Okay.

12 THE COURT: All right.

13 THE DEFENDANT: Okay.

14 THE COURT: So your oral motion is granted.

15 THE DEFENDANT: Thank you, Your Honor.

16 MR. LALLI: Thank you, Your Honor.

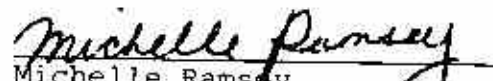
17 MR. MANGANO: Thank you, Your Honor.

18 [Proceeding concluded at 9:36 a.m.]

19 * * * * *

20 ATTEST: I hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my
22 ability.

23 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
24 Procedure, I acknowledge that this is a rough draft transcript,
25 expeditiously prepared, not proofread, corrected or certified to be an
accurate transcript.


Michelle Ramsey
Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE,

12 Defendant.
13

CASE NO. C250630

DEPT. XVII

14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 THURSDAY, MARCH 29, 2012

16 RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

17 DEFENDANT'S PRO PER MOTION TO DISMISS BASED UPON VIOLATION(S)
18

19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney

22 For the Defendant:

Pro Se

23
24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, MARCH 29, 2012

2 [Proceeding commenced at 8:17 a.m.]

3
4 THE COURT: Brian O'Keefe. Mr. O'Keefe's present in custody.

5 MR. LALLI: Good morning, Your Honor. Christopher Lalli on
6 behalf of the State.

7 THE COURT: All right. Mr. O'Keefe, this is your motion to
8 dismiss. Do you have anything additional to add to your brief?

9 THE DEFENDANT: I just want to verify that you did get the
10 additional copy, Your Honor. It was a little heavily darkened -- a
11 darker copy was delivered last week.

12 THE COURT: Yes.

13 THE DEFENDANT: Okay. Great. I made sure Mr. Lalli received
14 one too.

15 The only thing that I have is that I have not received a
16 file served opposition for EDCR 3.20 within seven days. I have
17 received nothing from Mr. Lalli which the law quite clearly states
18 that's an admission and that my motion is meritorious.

19 These are constitutional issues, Your Honor. Double
20 jeopardy, collateral estoppel is off-spring of double jeopardy
21 Fifth Amendment.

22 THE COURT: Let me stop you right there. So you're saying you
23 did not get their opposition?

24 THE DEFENDANT: I did not receive and I want to say on the
25 record that a week later I filed another motion or dropped off and

1 this was last Thursday, Your Honor, and the Clerk of the Court sent
2 it out Friday, this last Friday, and I received it Monday night.

3 Now, Mr. Lalli clearly had his --

4 THE COURT: Received what Monday night?

5 THE DEFENDANT: Just three days ago, Your Honor.

6 THE COURT: What did you receive Monday night, the opposition?

7 THE DEFENDANT: No. No. No. I sent -- I had Mr. Lalli
8 personally served and you, Your Honor, on the 16th. On the 22nd I
9 had dropped off another motion at the Clerk of the Court. The
10 investigator dropped it off. They filed that motion a week -- they
11 received it a week after.

12 My whole point is they received that motion. They kept
13 it for the day. They filed it. They mailed it the next day. I
14 have it here. They mailed it on Friday and I received it Monday
15 night. My point being is Your Honor clearly the State could have
16 responded and I could have received something within the seven day
17 deadline. I mean --

18 THE COURT: I'm not showing any new pending motions on my
19 calendar.

20 THE DEFENDANT: There is one, Your Honor. I have a copy of
21 it. I gave it --

22 THE COURT: Hang on. I'm going to have Cliff pick up -- the
23 Marshal's going to pick up the motion you received back from the
24 Clerk's Office. Stay right there, sir.

25 THE DEFENDANT: Yeah, I'm just setting this down, Your Honor.

1 All right. Thanks for the Court's indulgence, sir. This is the
2 one that I filed --

3 THE COURT: Hang on. Let me look at it.

4 THE DEFENDANT: It was mailed and I received it Monday night.
5 This is a week after Mr. Lalli's motion.

6 MR. LALLI: Your Honor, may I inquire whether there is proof
7 of service in my office and if so, what date with respect to the
8 motion the Court just received?

9 THE COURT: The motion was filed March 22nd, 2012. There's a
10 receipt of copy. On this copy it's unsigned.

11 MR. LALLI: That's not dated.

12 THE COURT: Well, we're checking right now.

13 [The Court conferring with the Clerk]

14 THE COURT: All right, sir, my Court Clerk pulled this up on
15 Odyssey. Again, it was filed March 22nd, okay. It's your motion to
16 seal records. There is no receipt of copy on file or is that blank
17 or -- receipt of copy has been scanned. However, it's blank.
18 There is no certificate of mailing and the motion is set for
19 hearing April 10th.

20 MR. LALLI: April 10th, Your Honor?

21 THE COURT: Yes.

22 THE DEFENDANT: Yes, Your Honor. Now that is for --

23 THE COURT: Hang on. Hang on.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So what I'm going to do is State has apparently

1 not received a copy of it. They have access to Odyssey and they
2 will print it out today and file the appropriate response.

3 MR. LALLI: Your Honor, may I have until April 3rd to file a
4 response to that?

5 THE DEFENDANT: Okay. Now that's the motion to seal, Your
6 Honor. That is not the motion to dismiss. The motion to dismiss,
7 Marshal Clifford just brought you the receipt of copy. My point I
8 was trying to make is EDCR 3.20 says the State has to file an
9 opposition, served and filed within seven days.

10 Now they received that motion. They signed for it and I
11 was just trying to prove that I since then filed another motion and
12 the Clerk wouldn't file it at that time. She said she would mail
13 it to us, set the date. She wouldn't sign the receipt of copy
14 which -- and you know I'm just saying they did what they said and
15 they mailed it to me.

16 Now my point being is Mr. Lalli was served that motion
17 and his clerk, they signed for it. Right here, this receipt of
18 copy for the motion to dismiss.

19 Now in Pope versus Nevada, 31d of the Nevada Rules of
20 Appellate procedure when the State fails to respond on
21 constitutional issues, Your Honor, it's a serious thing. And they
22 dismissed -- they reversed the case.

23 Now at the trial level EDCR 3.20 is the same -- serves
24 the same function.

25 MR. LALLI: Your Honor, may I short circuit this?

1 THE COURT: Actually, I'll do that here. Sir, this matter was
2 filed March 16th which is a Friday, okay. I seriously doubt you
3 would have had it back on March 16th because the filing date was
4 12:04 p.m. So if you served -- if you sent it to the D.A.'s Office
5 even on that day they would not have received it on March 19th.

6 THE DEFENDANT: My investigator --

7 THE COURT: Sir, I'm talking.

8 THE DEFENDANT: -- hand delivered it.

9 THE COURT: I'm talking, all right. And so if they received
10 it either March 19th even March 16th their response was filed March
11 21st. So if they received it on the 19th, they filed it a response
12 within two days, okay.

13 So your -- if there's any -- if you're making an oral
14 motion right now I'm not going to accept it. You need to file a
15 written motion, but you might want to look at the timing of this
16 and see if it's a waste of time on your part. I'm not saying don't
17 file it, but you need to look at your calendar.

18 Now let's go to the motion to dismiss. You have anything
19 additional to add to your written motion?

20 THE DEFENDANT: Anything additional to add to what's in the
21 motion. The motion is packed. The only thing I could say then if
22 that's all you're allowing me to do orally is I'm asking you to
23 honor and stare decisis, stand by things decided.

24 In my first trial, Your Honor, it was -- I was taken to
25 trial on the theory of intentional stabbing, the act. The law says

1 you determine the intent once the act is committed. The jury, the
2 tier fact at that time said I did no stabbing. NRS 193.190 to
3 constitute a crime there has to be a unity of act and intent. They
4 took away the actus reus, the physical component.

5 Now you well know, Your Honor, on direct appeal any
6 underlying act that they were trying to throw in the Nevada Supreme
7 Court said I did no unlawful act which is the definition of
8 battery. They acquitted me of the physical act described in the
9 amended information which was the physical act of stabbing.

10 The State reprosecuted me on the same theory, willful
11 means intentional, willfully. They said I didn't do it
12 intentionally which means it was an accident. Second degree malice
13 murder is an unintentional murder, Your Honor, in the commission of
14 a so called act that the Nevada Supreme Court said the evidence did
15 not prove that I did beyond a reasonable doubt. It's over.

16 Not only did they violate the theory of prosecution, they
17 rehashed the same evidence they brought in the first trial.

18 Now in the reversal order, the Nevada Supreme Court
19 clearly said the evidence presented at trial did not support this
20 theory of second degree murder. What theory? Theory number -- or
21 instruction number 18, the State's theory. What evidence? All the
22 evidence they presented that tried to prove criminal -- criminal
23 culpability; the video, the domestic violence. It goes on and on
24 and on, but all the evidence they presented, the tier fact
25 acquitted me of it.

1 And then on top of it on direct appeal, the Supreme Court
2 acquitted me of second degree. They re prosecute me --

3 THE COURT: Actually, the Supreme Court said that there is an
4 error in the jury instruction. They could not determine which
5 theory the jury found you guilty; that's what the opinion states.

6 The second trial was a hung jury. I think it 11 to 1 or
7 10 to 2, okay. On those bases, there's no double jeopardy
8 violation. Anything else to add, sir?

9 THE DEFENDANT: Your Honor, they're prohibited from rehashing
10 any evidence. The same bad acts we just got done and litigated and
11 you have a ruling that C207835, the felony battery domestic
12 violence could be reintroduced again. No, it cannot, Your Honor.
13 This is the same --

14 THE COURT: Okay. Well, sir, this --

15 THE DEFENDANT: Your Honor --

16 THE COURT: -- I've ruled on that motion. If you're saying
17 that I was in error, the proper procedure is a motion for
18 reconsideration or a Writ to the Supreme Court. This is not the
19 time for you to rehash that motion. You need to file the proper
20 procedures.

21 THE DEFENDANT: You asked me, Your Honor, with all due
22 respect, sir. Please, Your Honor, you have to --

23 THE COURT: No, sir, listen. I said you have anything
24 additional to add to your motion to dismiss. If you feel I made an
25 error in the motion for 480.045 you file a motion for

1 reconsideration or you file a Writ to the Supreme Court. You have
2 done neither of those. We are here on a motion to dismiss, okay.
3 Do you have anything additional to add?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Okay. Mr. Lalli, do you have anything additional
6 to add?

7 MR. LALLI: No, Your Honor. I'll submit it on my opposition.

8 THE COURT: The Court does not find any issue of double
9 jeopardy in this particular matter. The State is not precluded
10 from bringing up the matter under 480.045 which I've already made a
11 ruling on that. The Supreme Court reversal does not preclude
12 retrial in this matter, so motion to dismiss is denied.

13 And, State, could you file the opposition to the motion
14 set for April 10th?

15 MR. LALLI: Your Honor, may I have until -- may I just have a
16 week from today to file that; that would be actually April 5th?

17 THE COURT: That'll be fine. Just make sure that Mr. O'Keefe
18 gets a copy of the opposition.

19 MR. LALLI: Yes, Your Honor. He -- with respect to the
20 instant opposition that we filed, one was faxed to him on the same
21 day that it was filed. So there was appropriate service of that.

22 THE COURT: All right.

23 MR. LALLI: Thank you.

24 THE COURT: Thank you. And, State, please prepare the order.


25 MR. LALLI: We'll do that. Thank you.

1 [Proceeding concluded at 8:30 a.m.]

2 * * * * *

3
4 ATTEST: I hereby certify that I have truly and correctly
5 transcribed the audio/video proceedings in the above-entitled case
6 to the best of my ability.

7 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
8 Procedure, I acknowledge that this is a rough draft transcript,
9 expeditiously prepared, not proofread, corrected or certified to be
10 an accurate transcript.

11 
12 Michelle Ramsey
13 Court Recorder/Transcriber
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CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE,

12 Defendant.
13

)
)
) CASE NO. C250630
)
)

) DEPT. XVII
)
)
)
)

14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 TUESDAY, JUNE 5, 2012

16 RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

17 CALENDAR CALL
18

19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney

22 For the Defendant:

LANCE A. MANINGO, ESQ.,
(Stand-by counsel)

23 For the Defendant:

RYAN NORWOOD, ESQ.,
Federal Public Defender

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 5, 2012

2 [Proceeding commenced at 9:26 a.m.]

3
4 THE COURT: All right. Let's do O'Keefe. This is time set
5 for calendar call. Mr. O'Keefe is present in custody as Mr.
6 Maningo as stand-by counsel. Mr. Lalli for the State.

7 This is time set for calendar. State ready?

8 MR. LALLI: Yes, Your Honor.

9 THE COURT: Defense ready? Mr. O'Keefe?

10 THE DEFENDANT: I'm sorry, Your Honor. I didn't hear you.

11 THE COURT: Are you ready to go to trial?

12 THE DEFENDANT: I have a comment I want to put out there, Your
13 Honor. Of course, you know, I've always been forthright and honest
14 with you, sir. I am claiming a valid violation of my Federal
15 Constitutional Rights Fifth Amendment double jeopardy violation in
16 the Federal Courts, Your Honor.

17 You're aware that right now we are requesting an
18 emergency stay. Basically I'll be concise more, Your Honor. If
19 this was the first trial, I would understand that you would
20 probably want to proceed, but being the third trial, Your Honor,
21 I'm not going any where. I have no problem if you agree, if Mr.
22 Lalli stipulates to postpone this and let the action be heard in
23 the 9th Circuit.

24 Your Honor, with all due respect I understand that you've
25 warned me and told me to be prepared. I'm not going to lie. I'm

1 not really totally prepared, but that's not your problem, Your
2 Honor. If you deem that we are to proceed with trial Monday, then
3 we have to proceed; that's the way it is and we'll let the 9th
4 Circuit deal with it later.

5 However, again, I must stress that the -- you know,
6 again, Your Honor, I'm not going any where. This has had -- I got
7 a motion this morning from my Federal Public Defender and I'm
8 amazed at all the thousands of hours that have been spent in this
9 already. And again, Your Honor, like I said the 9th Circuit feels
10 there is something really there; that there's a valid substantial
11 claim has been made.

12 Again, Your Honor, I know I'm sounding like a parrot.
13 I'm not going any where. For judicial economy and administration
14 just good judgment reasoning, I would think the right thing to do
15 if the State's stipulates to this, sir, to just postpone this 'til
16 March, status check and -- and let's see what happens. If the 9th
17 Circuit deems that no -- there's no issue, then lets proceed, Your
18 Honor, and let the chips, you know, lay where they fall.

19 MR. MANINGO: And, Your Honor, we -- Mr. --

20 THE COURT: Hang on. I want to make sure Mr. O'Keefe --

21 MR. MANINGO: I'm sorry.

22 THE COURT: -- is completed.

23 THE DEFENDANT: Again, I do want to state to you at no time
24 have I ever meant any disrespect to you and --

25 THE COURT: I haven't interpreted. Just go on with your

1 argument.

2 THE DEFENDANT: But, you know, I do feel that again the
3 economy is in extreme dire emergency state right now and, you know,
4 I'm not trying any tricks. I'm not trying any ploys. Again, the
5 decision ultimately is yours. You did tell me be ready and, you
6 know, that's not your fault, Your Honor. That's a different
7 argument.

8 The argument is if I'm ready to go; no, I'm not really
9 ready to go, Your Honor. I'm asking that you postpone this to
10 possibly March. I think would be an adequate time. Again, I'm not
11 going any where. I've said what I had to say, Your Honor. The
12 decision ultimately be yours.

13 I do want to point out that Mr. Maningo is here as stand-
14 by and my AFPD, Ryan Norwood, is here. If you have any questions
15 that you would like to direct for him, I don't know. That's up to
16 you. I've said what I had to say, Your Honor.

17 THE COURT: Okay, sir, we had the Faretta canvassing December
18 16th, 2011 and your trial is set for June 11. So you've had six
19 months or more than six months since you decided to represent
20 yourself. Why haven't you prepared yourself for trial?

21 THE DEFENDANT: Well, I have been preparing somewhat, Your
22 Honor, but again with all due respect, sir, I put it this way, Your
23 Honor, I put my heart thousands of hours into my Federal habeas
24 petition. To be concise on the matter, Judge Gloria Navarro agreed
25 that there was an issue, but she felt that the procedural error had

1 been done.

2 Now, the 9th Circuit had wrote against her and said no it
3 didn't need to be done. Basically what I'm getting at, Your Honor,
4 I put it this way, if the 9th Circuit agrees with me and feels that
5 there really is an issue which I believe there is a valid Federal
6 Constitutional violation going on here, I will be violated again by
7 the laws and trees of the United States Constitution.

8 Apparently the 9th Circuit is what I'm getting at, sir, I
9 feel if they agree with me, you know, I was going to fight more for
10 the petition. I kind of put all my eggs in the basket, my hopes.
11 And again, Your Honor, I'm not worried any more. If you say we're
12 not going to stop, I'll be there Monday, you know. It'll be what
13 it'll be. You know, I'm just being forthright and honest with you
14 in telling you. Maybe it was a mistake. Maybe it wasn't.

15 Again, I'm not going any where. The decision ultimately
16 is yours. You're in an impasse. I understand exactly. You know,
17 you hear case after case. I would never want your job. It's a big
18 decision for you. Again, the State may not want it. They may want
19 to proceed. I mean, I don't know how the State actually feels
20 about it. Again, I just got this mail this morning. I had been
21 getting delayed mail. Mr. Norwood mailed this on the 1st. He
22 should --

23 THE COURT: The mail you're referring to is that pleadings to
24 --

25 THE DEFENDANT: This is my --

1 THE COURT: Hang on. Hang on. Hang on.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you referring to pleadings regarding your
4 action in Federal Court?

5 THE DEFENDANT: Yes, which ties directly to --

6 THE COURT: Hang on.

7 THE DEFENDANT: -- this case.

8 THE COURT: I understand. I understand your legal argument.

9 THE DEFENDANT: I got this --

10 THE COURT: Okay, but the pleading -- the items you have been
11 having trouble receiving, you were here a couple of days ago or
12 last week or so.

13 THE DEFENDANT: Last week, Your Honor.

14 THE COURT: Okay. They're relating to pleadings of Federal
15 Court; is that correct, yes or no?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Thank you. Anything -- anything else,
18 Mr. O'Keefe?

19 THE DEFENDANT: Just for the record, after the holiday weekend
20 and after coming to the last Tuesday of last week, I met for the
21 first time my Federal Public Defender and I got my mail
22 [indecipherable] a couple of days ago. So, you know, I'm just
23 placing that on the record, Your Honor.

24 Again, you know, the decision is yours. You know, I'm
25 just stating that I'm not going any where, Your Honor. I'm not

1 trying to get out of anything. You know, the decision is yours.

2 THE COURT: Okay. The items that you have been receiving from
3 your Federal PD, I'm not going to ask for the specifics, I'm not
4 going to ask what he has told you, all right; is it correct that
5 they all relate to your Federal action?

6 THE DEFENDANT: Pertaining to this case, Your Honor.

7 THE COURT: I understand that, but they're relating to the
8 Federal proceedings in front of Judge Navarro and in front of the
9 9th Circuit; is that correct?

10 THE DEFENDANT: Yes. The mail I received this morning.

11 THE COURT: All right. Okay. Well, during these last few
12 months that you've talked about this Federal proceeding, you have
13 mentioned sometimes you're not getting your mail or mails delayed
14 or perhaps mails been lost. I just want to make sure those
15 mailings are relating to your Federal actions; is that correct?

16 THE DEFENDANT: Yes, Your Honor. I did have a couple of items
17 I --

18 THE COURT: That's all I needed, yes or no; it's very simple.
19 Were they related to your Federal actions?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Thank you. All right. Mr. Maningo, as stand-by
22 counsel do you have anything to add?

23 MR. MANINGO: No. Just that the timing of this motion, Your
24 Honor, happened because of what was going on in the 9th Circuit.
25 Mr. Norwood agreed to come to enlighten the Court and all of us

1 what's happening in the 9th Circuit and what Mr. O'Keefe's Federal
2 matters. Nothing really to add. If Mr. O'Keefe's ready, I'm
3 ready.

4 THE COURT: All right. Mr. Lalli?

5 MR. LALLI: Your Honor, the Court will recall that I had this
6 placed on calendar the beginning of last week to inform Mr. O'Keefe
7 and the Court that I had two trials set on the same day. And I
8 informed the Court that if all parties were saying this was going
9 and there was no request by any party that it would be continued,
10 then I would be ready to go and I would seek to have my other trial
11 wherein a Defendant is charged with murder and wanted to go to
12 trial next week; that Defendant is Michael Mills in Case Number C-
13 11-272028. I put it on calendar specifically to get guidance from
14 the Court in arranging that schedule.

15 Having received assurances from the Court that we would
16 be proceeding as scheduled and giving Mr. O'Keefe the opportunity
17 to ask for a continuance at that time which he did not do, I then
18 informed Judge Miley that this case would be going, that the Court
19 had previously indicated that it was a priority and would not be
20 continued absent intervention from the 9th Circuit. Based upon
21 those representations, the Mills' case was reset, so that trial was
22 vacated.

23 We are in the midst meeting with witnesses. Doing those
24 things we need to do to be prepared for trial next week. Subpoenas
25 were issued well over a month ago. Those have been served by my

1 investigator. There have been many, many hours spent in preparing
2 for this case.

3 Now I am aware that Mr. O'Keefe through Federal counsel
4 has filed a motion in the 9th Circuit to have this matter stayed.
5 And what I can inform the Court is that Mr. O'Keefe had previously
6 in pro per person requested a stay of these proceedings, this trial
7 here, from the 9th Circuit which the 9th Circuit denied.

8 So, the motion that now the Defendant has filed in front
9 of the 9th Circuit is a motion to reconsider that previous denial.
10 There are a number of factors the 9th Circuit looks at. One of
11 which is the likelihood of success on the merits. And the Court
12 knows the procedural posture of this case better than anyone. You
13 have a Defendant who was tried. His conviction was reversed by the
14 Nevada Supreme Court; that is not a double jeopardy bar to a
15 retrial. Not under any scenario. Not at all. Not under State law
16 or Federal law.

17 Then you have a situation where there's a retrial and
18 depending on who you talk too it is an 11 to 1 vote for guilt or 10
19 to 2 vote for guilt. Either way, the overwhelming majority of
20 those jurors would have voted to convict Mr. O'Keefe.

21 Based upon the jury's inability to reach a verdict, the
22 Court declared a mistrial and now we're set for trial today. The
23 Court is well aware that does not pose a double jeopardy bar to a
24 further prosecution. Those are the issues that are pending. Those
25 are the legal issues in front of the 9th Circuit.

1 So, I can't imagine under any scenario where that would
2 be a successful cause of action in the 9th Circuit. So, perhaps the
3 most important factor that the 9th Circuit will consider to
4 determine whether or not these proceedings are stayed is likelihood
5 of success on the merits. If you stop at that factor alone, I
6 think the analysis is over and there would be an unwillingness for
7 the 9th Circuit to issue a stay here.

8 We are opposing the motion in the 9th Circuit. Our
9 response is due I believe today and I believe it will be filed
10 today through our appellate division. I understand the 9th Circuit
11 will issue a decision on that Friday, but we are opposed to it
12 because I made this issue my calendar -- I made that issue aware to
13 everybody, made it known to everybody last week and, you know, now
14 I'm just -- our office doesn't have the resources to -- to prepare
15 for trial and just have it go away willy-nilly because the
16 Defendant's not willing to say he needs a continuance when given
17 the opportunity.

18 THE COURT: Thank you. Mr. Norwood, you're not appearing in
19 this case are you?

20 MR. NORWOOD: I'm not representing Mr. O'Keefe in State Court,
21 but I came today because I know the ongoing Federal proceedings and
22 the matter of some concern.

23 THE COURT: Well, they denied the motion for stay on May 9th of
24 this year; is that correct?

25 MR. NORWOOD: Correct. He --

1 THE COURT: And then you have a motion pending for
2 reconsideration:

3 MR. NORWOOD: The motion for reconsideration. The motion that
4 Mr. -- Mr. O'Keefe has represented himself pro se throughout most
5 of the Federal proceedings. My office only became involved very
6 recently. I've only had my hearings in this case for about a week.

7 The 9th Circuit -- he filed this double jeopardy petition
8 which was initially denied in the District Court, he appealed it.
9 The 9th Circuit does it automatic -- automatically grant you the
10 right to appeal habeas corpus denial. Only have to determine that
11 you're entitled to something called a certificate of appealability
12 which means that they have to first determine that there is some
13 merit to the underlying issue and also some merit to the underlying
14 procedural dismissal -- dismissal of the issue.

15 So, the 9th Circuit is already made that determination.
16 They've determined that there's an issue presented in Mr. O'Keefe's
17 double jeopardy petition that is of some merit that's debatable
18 amongst jurors of reason.

19 I filed a motion for reconsideration of the stay because,
20 you know, Mr. O'Keefe, you know, his request was a 2-page
21 handwritten motion that didn't have any case law authority. I'm
22 not in a position to regent to what the 9th Circuit is going to do,
23 but for the reasons I set forth in the motion I think that the case
24 law is -- is in favor of a stay in these circumstances where
25 there's already a determination that there's an issue of some merit

1 here. And when there are dangers including a danger of the 9th
2 Circuit losing it's jurisdiction if the case goes forward in this
3 Court.

4 So I'm not going to offer any predictions as to what the
5 9th Circuit's going to do. They set up an expedited briefing
6 schedule. The State's going to respond today. I'll respond
7 tomorrow. They'll probably make a decision by the end of the week,
8 but it seems that one of the concerns here is about, you know,
9 having to prepare for a trial that's not going to happen and I
10 think that if we go ahead with the trial here even assuming our
11 innuendo there everyone is otherwise ready, there is a real danger
12 the 9th Circuit is going to come in and grant the stay which means
13 that the preparations are going to go to not.

14 Even if the stay is not granted, the 9th Circuit is still
15 going to ultimately pass upon the issues raised in his petition, so
16 that there's a danger then that if a third trial happens that
17 that's going to go.

18 So I'm -- I'm going to be seeking the stay no matter what
19 happens in this Court, but I think the Court should be aware of
20 it's background in determining whether or not to grant a
21 continuance.

22 The last thing I would note is that I know Mr. O'Keefe is
23 -- is, you know, is saying that he's willing to go ahead to have
24 the trial if the Court makes that determination and I'm sure he is,
25 but his preference which he has expressed to me which I've

1 represented to the 9th Circuit is that he would like a stay or a
2 continuance to be granted in this Court in the first instance;
3 that's what he's asking for.

4 THE COURT: All right. I would note that the first trial in
5 this matter was March '09. The second trial is August 23rd, 2010
6 and I believe we had a subsequent trial setting which had to be --
7 I believe -- which had to be vacated because Ms. Palm withdrew.
8 And then on December 16th, 2011 Defendant had stated he wished to
9 represent himself. He had a Faretta hearing and so at that point I
10 appointed Mr. Maningo as stand-by counsel for Mr. O'Keefe.

11 This matter has been pending long before March '09. He's
12 known that this trial's been set at least since December 16th, 2011
13 and so any oral request to continue the trial is -- is denied.
14 Long ago said this was going forward. I'm setting aside two weeks
15 on my calendar and if the 9th Circuit issues a stay on Friday, then
16 so be it and then the matter stayed. If they don't issue a stay,
17 then we'll proceed to trial on Monday morning.

18 And so we're going to go Monday at -- at 9:30. And if
19 either party has any jury instructions, please provide those Monday
20 at 9:30 to the Court. Any special instructions please provide
21 those case citations, all right.

22 MR. LALLI: Your Honor, shall I provide those to Mr. Maningo
23 or would you like me to have an investigator serve Mr. O'Keefe at
24 the jail with those instructions or shall I wait until Monday when
25 Court to give --

1 THE COURT: Mr. Maningo -- I would just give them in open
2 Court 'cause we're always having an issue in not getting them.

3 MR. LALLI: Very well.

4 THE COURT: This way it'll be given in open Court. If you
5 have them early, Mr. Maningo, would you be so kind as to forward
6 them onto Mr. O'Keefe?

7 MR. MANINGO: I will do that. And, Your Honor, my voice is
8 limited as stand-by counsel, but you've mentioned that barring an
9 oral motion to continue the trial --

10 THE COURT: I was sort of interpreting today as an oral motion
11 to continue the trial.

12 MR. MANINGO: And we did file a written motion.

13 THE COURT: Which is set for Thursday of next week isn't it?

14 MR. MANINGO: Correct. That was -- that was my issue. I mean
15 is there a point in us coming? I would --

16 THE COURT: No.

17 MR. MANINGO: -- I would just echo the fact that, and Mr.
18 Norwood hit on it, that Mr. O'Keefe did say that he was not ready,
19 Your Honor, and that he was devoting his time and energies towards
20 his Federal relief rather than this trial; that coupled with what's
21 going on in the 9th Circuit.

22 I would just add to the record as stand-by counsel I
23 think warrants a continuance. I full -- I can further argue that
24 on Thursday.

25 THE COURT: I'm going to vacate that date. I did review the

1 motion. I don't think we need to have it Thursday, but the bottom
2 line is the basis for your motion is that he has this Federal
3 action pending. There was nothing else in the motion beyond that
4 and so, we never know what they're going to do. We don't know if
5 they're going to rule in a timely fashion or not and we need to get
6 this trial going. I told everyone back in December this matter's
7 going forward. Mr. O'Keefe insisted in representing himself.

8 And also, Mr. O'Keefe, you recall during the Faretta
9 canvass I advised you that you would be held to the same standard
10 as an attorney and as an attorney Mr. Maningo would know as well as
11 Mr. Norwood would know that just because you filed motions with the
12 9th Circuit it doesn't tell you to stop preparing for trial. And
13 any attorney would know that you continue moving forward for trial.

14 You've had three -- two trials, three or four trial
15 settings, you've had since December. So I don't find any good
16 cause to continue this trial. And so the hearing for Thursday is
17 off calendar 'cause I did read it, Mr. Maningo, and it's basically
18 because you have a pending matter in the 9th Circuit.

19 MR. MANINGO: Yes, sir.

20 THE COURT: Okay. If they come down on Friday and it's
21 stayed, so be it, okay.

22 MR. LALLI: Thank you, Your Honor.

23 THE COURT: See everybody on Monday.

24 MR. LALLI: Thank you.

25 THE COURT: 9:30; right, Carol?

1 THE CLERK: Yes.

2 [Proceeding concluded at 9:46 a.m.]


3 * * * * *

4
5 ATTEST: I hereby certify that I have truly and correctly
6 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

7 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
8 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
9 an accurate transcript.

10
11 
12 Michelle Ramsey
Court Recorder/Transcriber

1 ASTA


CLERK OF THE COURT

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,

8 Plaintiff(s),

Case No: 08C250630
Dept No: XVII

9 vs.

10 BRIAN K. O'KEEFE,

11 Defendant(s).
12

13
14 **CASE APPEAL STATEMENT**
15

16 1. Appellant(s): Brian Kerry O'Keefe

17 2. Judge: Michael Villani

18 3. Appellant(s): Brian Kerry O'Keefe

19 Counsel:

20 Brian Kerry O'Keefe #1447732
21 330 S. Casino Center Blvd.
Las Vegas, NV 89101

22 4. Respondent: The State of Nevada

23 Counsel:

24 Steven B. Wolfson, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
(702) 671-2700

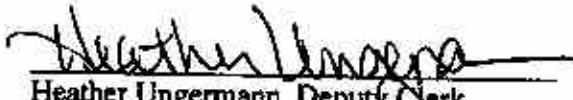
27 5. Respondent's Attorney Licensed in Nevada: Yes

28 6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: December 19, 2008
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Judgment of Conviction
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 53859
8 12. Child Custody or Visitation: N/A
9

10 Dated This 4 day of September 2012.

11 Steven D. Grierson, Clerk of the Court
12

13 
14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. C-250630

DEPT. NO. XVII

TRANSCRIPT OF
PROCEEDINGS

BEFORE THE HONORABLE SENIOR JUDGE JOSEPH BONAVENTURE

ROUGH DRAFT TRANSCRIPT OF
JURY TRIAL - DAY 5

FRIDAY, JUNE 15, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER LALLI, ESQ.
ELIZABETH A. MERCER, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANT:

BRIAN KERRY O'KEEFE
Pro Per

LANCE MANINGO, ESQ.
Stand by counsel for defendant

COURT RECORDER:

MICHELLE RAMSEY
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

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CLERK OF THE COURT

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1 LAS VEGAS, NEVADA, FRIDAY, JUNE 15, 2012, 9:17 A.M.

2 (In the presence of the jury panel)

3 THE COURT: All right. Parties, stipulate to the
4 presence of the jury?

5 MR. LALLI: Yes, Your Honor.

6 MR. O'KEEFE: Yes, Your Honor.

7 THE COURT: All right. Thank you. Ladies and
8 gentlemen, as you know, the State rested it's case yesterday;
9 defense rested. And I indicated to you, we worked on jury
10 instructions. Now, I'm about to instruct you of what the law
11 is on this particular case.

12 Now, I'd like to orally instruct you, but every word
13 on these instructions are pretty, you know, complicated, some,
14 and every instruction is significant. So, I think it's best
15 that I read these instructions to you. But be assured, you
16 will be given these instructions when you go into the jury
17 deliberation room, along with all the exhibits admitted in
18 evidence, and forms of verdict for your convenience.

19 So, I'll read the instructions. Then, we're going
20 to hear some closing arguments. Since the State has the
21 burden of proof, they have so-called, two bites of the apple.
22 The State will give an argument. Then, the defense will give
23 their closing argument. And then, the State is allowed to
24 give a rebuttal argument.

25 So, we're going to have three arguments, then the

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1 case will be submitted to you. All right? So, that's the
2 situation. And again, I want to thank you very much for your
3 indulgence. So, let me read these instructions.

4 (Jury Instructions read; not transcribed)

5 THE COURT: That completes the instructions, ladies
6 and gentlemen. Who's going to go on behalf of the State?

7 MR. MERCER: Me, Your Honor.

8 THE COURT: Mercer?

9 MS. MERCER: Yes.

10 STATE'S CLOSING ARGUMENT

11 MS. MERCER: Good morning, ladies and gentlemen. In
12 every criminal case, there are two things that the State is
13 required to prove: that the crimes alleged in the information
14 were committed, and that the crimes were committed by the
15 defendant.

16 This case is not a, whodunit. There is no disputing
17 it was Brian O'Keefe. This case is a, what is it? And before
18 I get into what it is, I want to talk about what it's not, and
19 why you know it's not.

20 This case is not an accident. It wasn't self
21 defense. For you to believe that this case was an accident,
22 you would have to believe that all of the following
23 circumstances occurred. During the struggle over the knife,
24 the knife somehow ends up, tip-up, on the bed. Victoria
25 Whitmarsh has her arm up for some reason, and she falls onto

ROUGH DRAFT TRANSCRIPT

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1 the tip of that knife.

2 But the knife doesn't bend, it doesn't twist, it
3 doesn't move. It somehow manages to penetrate right between
4 her ribs, hitting no bones. Most importantly, you would have
5 to believe that, for no apparent reason at all, that knife
6 went no further than four and-a-half inches deep into her body
7 when she fell on top of it.

8 We know that didn't happen, because you've heard the
9 testimony of Dr. Dutra in this case. He testified that, had
10 she fallen onto the knife, had this been the result of an
11 accident, there would have been secondary marks; there would
12 have been secondary injuries to the stabbing. He told you
13 that there would have been torsional injuries; evidence that
14 the knife twisted and moved. This is a clean stab wound.
15 Look at the evidence. There are no secondary marks.

16 But most importantly, we know that this isn't an
17 accident or self defense, because what this is is a malicious
18 killing of Victoria Whitmarsh by the defendant, Brian O'Keefe.
19 This is a second degree murder. Second degree murder is
20 defined of the unlawful killing of a human being with malice
21 aforethought. To convict the defendant, you have to believe
22 that, A, he killed Victoria Whitmarsh, and that when he did
23 that, he acted with malice aforethought. Two things.

24 We know that the defendant killed Victoria
25 Whitmarsh. We know that based upon the location of the DNA on

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1 the knife. We know that based upon the injuries to the
2 defendant's hands. We know that based upon his mumblings in
3 the vehicle to Officer Hutcherson, when he didn't realize that
4 anybody was listening. And then, of course, Victoria
5 ultimately died from that stab wound.

6 You heard testimony from Jennifer Bas, the DNA
7 analyst employed with the forensic lab. She testified that on
8 the handle of the knife when she swabbed, there was a mixture
9 of DNA. But the majority of that was the defendant, Brian
10 O'Keefe's. He was the major contributor. And his -- I
11 believe the statistics she gave was one in 650 billion.
12 That's the defendant's DNA on that handle, not Victoria
13 Whitmarsh's.

14 Then, the second area that she swabbed, JB4B. It's
15 right here, close to the handle, on the blade. It's a single
16 profile; all of the defendant's. That's consistent with the
17 wound on his hand, which I'll get to in a minute. But most
18 importantly, when she swabbed the tip of that knife, the only
19 DNA on the tip of that knife belonged to Victoria Whitmarsh.
20 The tip of that knife never made contact with Brian O'Keefe.
21 This wasn't self defense.*

22 And then, you've heard testimony from Detective
23 Marty Wildemann, the homicide detective. He said that, in
24 most stabbing cases when someone thrusts that knife into the
25 body of a human being, their hand will slip, and it will cut

ROUGH DRAFT TRANSCRIPT

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1 their hand.

2 Look at the location of the injuries on the
3 defendant's hand. Right where he would have been gripping the
4 handle of that knife. Right where, when he thrust that knife
5 into her body, the blade would have cut his hands. There are
6 no injuries to the palms of his hands, as if he were to grab
7 the knife. If you grab the knife from somebody's hand, the
8 blade is going to slice your palm. We don't have that here.

9 And then, you've heard from Officer Hutcherson. He
10 was sitting in the car with the defendant. For a while, he
11 was ranting and raving. He falls asleep. And then, when he
12 wakes up, he starts making spontaneous utterances, mumblings
13 to himself. "I swear to God, V, I didn't mean to hurt you.
14 Let's go do the ten years."

15 "I didn't mean to hurt you" implies that he's the
16 one that thrust that knife into her body. "Let's go do the
17 ten years." He knew he was going to prison. He knew he was
18 in trouble.

19 And then, of course, you heard from Dr. Dutra that
20 the stab wound is what resulted in her death. She bled to
21 death. It was four and-a-half inches deep. You have the
22 photo showing the trajectory of the injury. When you look at
23 the rob, you can tell that it's going from front to back -- or
24 back to front, at a downward angle. Again, inconsistent with
25 an accident. He also testified that it probably took between

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1 10 and 30 minutes for her to bleed out.

2 So, you've established that -- we established that
3 Brian O'Keefe killed Victoria Whitmarsh. The only thing left
4 is, did he do it with malice aforethought? The Judge gave you
5 the instructions on malice aforethought. It means the
6 intentional doing of a wrongful act, without legal cause or
7 excuse, or what the law considers adequate provocation. It
8 can arise from anger, hatred, revenge, particular ill will,
9 spite, or grudge towards the person killed.

10 It does not imply deliberation, or a lapse of
11 considerable time. And that's important. The State's not
12 alleging that when Brian O'Keefe woke up on November 5th of
13 2008, he intended to murder Victoria Whitmarsh. What we are
14 alleging is that at the time he thrust that knife into her
15 body -- at the time he stuck that knife four and-a-half inches
16 into her body, he had malice in his heart, and it was an
17 intentional act.

18 There are two types of malice. Expressed malice,
19 meaning the stabbing was done with the specific intent to
20 kill; and implied malice. An example would be a stabbing of
21 someone out of anger, or to teach them a lesson, or to get
22 revenge for something they had done to you. The law doesn't
23 make any distinction between the two. As long as you find
24 that there is either expressed or implied, and that there's an
25 intention killing, then the appropriate verdict is second

ROUGH DRAFT TRANSCRIPT

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1 degree murder in this case.

2 We know that at the time the -- on November 5th of
3 2008, the defendant acted out of revenge. We know that from
4 the testimony of Cheryl Morris. Cheryl Morris told you that
5 she had an approximately eight to nine-month relationship with
6 the defendant.

7 She told you that, throughout the course of that
8 relationship, he quite frequently got intoxicated, became
9 drunk. That every time he became intoxicated or drunk, his
10 thoughts would turn to Victoria Whitmarsh. He said that
11 whenever he began talking about her, he would talk about her
12 at first with sadness, lamenting the loss of the relationship.
13 Then he'd get a little bit more upset when he considered what
14 happened to him as a result of her calling the police in
15 November -- or April of 2004.

16 THE COURT: Again -- sorry to interrupt. I want to
17 remind you that evidence of other crimes, wrongs, or acts is
18 not admissible to prove the character of a person in order to
19 show that he acted in conformity therewith. It may, however,
20 be admissible as proof of motive, intent, or absence of
21 mistake or accident. I'm sorry to interrupt you. Proceed
22 now.

23 MS. MERCER: Thank you, Your Honor.

24 And then she said that, ultimately, he would end up
25 completely outraged, incensed at the damage that she had

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1 caused to his life when he was sent to prison on that felony
2 battery domestic violence charge.

3 She said that in those same conversations, he would
4 brag about his ability to kill with a knife, how the
5 government had trained him to kill people in Grenada. He
6 never talked about killing with knives, never talked about
7 manual strangulations, or any other methods of murder; just
8 with a knife. He even demonstrated how skilled he was at
9 killing people with a knife.

10 Cheryl's testimony is corroborated by the
11 information, the verdict form, and the judgment of conviction,
12 which have been admitted into evidence as State's Exhibits
13 133, 133A, and 133B. What's important to remember is that
14 that relationship with Cheryl Morris only ended two months
15 prior to this incident; two months prior to November 5th of
16 2008. And when you're deliberating, consider whether, in two
17 months, the defendant, Brian O'Keefe, was able to let go of
18 that hatred, let go of that anger with Victoria for sending
19 him to prison.

20 And if you for one second believe that he did,
21 listen to his interview. Listen to the interview that was
22 conducted with the homicide detectives and Brian O'Keefe. And
23 when you listen to that interview, listen closely, because
24 many of the most telling statements that he makes are mumbled
25 under his breath. I had to listen to the statement numerous

ROUGH DRAFT TRANSCRIPT

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1 times to pick up on them. So, listen closely. And if you
2 need to, listen to it multiple times.

3 But when he talks about the past with Victoria --
4 and he spends more time talking about his past with Victoria
5 and the damage that she did to his past, then he does asking
6 how she's doing, or expressing any concern, or sadness over
7 the loss of her life.

8 He tells the detectives, I had to change my skills
9 because of the situation we were in. He's talking about how
10 he had to change his jobs, how he became a laborer afterwards.
11 I went to prison. I lost everything. That's approximately 13
12 minutes into that taped interview. Then he goes into talking
13 about how his friends warned him about getting back with her,
14 and how they were dissatisfied over his choice to rekindle
15 that relationship. He refers to her as, "this bitch."

16 And then he goes into -- he tells the detectives,
17 look in my closet. Look at all the court documents I had to
18 file. I fought that case so hard. She wrongfully accused me;
19 things of that nature. That's approximately 14 minutes in.
20 And then, towards the end of the interview, the middle part of
21 the end, he tells the detectives, I've hurt a lot of ways,
22 because I've lost. I lost my job. And then he says, but it
23 doesn't matter anyways, because I'm going to lose it all
24 again. I'm going to have to fight this again.

25 Brian O'Keefe never forgave Victoria Whitmarsh for

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1 sending him to prison, for making him a felon, for forever
2 altering his life. And when he thrust that knife in her body,
3 those were the thoughts in his head. Those were the emotions
4 in his heart.

5 We also know that the defendant was angry that day.
6 They had been drinking. There's no disputing that. When you
7 see the interview, he's intoxicated. He's drunk. We know
8 from Cheryl Morris that when he gets drunk, he gets angry.
9 And we know that they were arguing, because in that statement
10 to the detectives, he says that Victoria was upset with him --
11 well, first says upset, and then says, no, that didn't make
12 her angry, because I actually won. But she says, why do you
13 spend so much money at Paris?

14 Then, at some point in the interview, when the
15 detective's trying to get him to stay on point, he starts
16 twisting his head back and forth, and making some mumblings to
17 himself. They're very faint. They're very quiet. Listen
18 closely.

19 These are statement that he attributes to Victoria
20 on that night. "I hate the fucking west side, you fucking
21 piece of shit. Yeah, well, we got to live in this fucking
22 place. Why can't we go to the east side? I want to go to my
23 husband's house. I'm going to take the car." How do you
24 think that Brian O'Keefe, the defendant in this case,
25 responded to those statement by Victoria Whitmarsh? He was

ROUGH DRAFT TRANSCRIPT

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1 angry.

2 Then, at another point in the interview, he admits
3 that there was yelling and screaming going on inside that
4 apartment. It's right after Detective Wildemann tells him,
5 Brian, what the hell are you doing? He says, "I'm really
6 trying to think about what happened. I'm really trying to
7 think about how things occurred."

8 He says something about -- he goes to the bathroom,
9 or he sees her in the bathroom. And then he says, "And then
10 there's yelling and screaming, and boom, boom, boom." But
11 again, these are statements that he's whispering so softly
12 that Detective Wildemann doesn't even hear them. So, listen
13 closely. That's approximately 26 minutes into the interview.

14 You also know that he was angry with Victoria
15 Whitmarsh because you heard the testimony of Jimmy Hathcox.
16 He said that he'd never seen a look like that on the
17 defendant's face before. He said it was a mean look. He said
18 that that look, coupled with the noises he heard coming from
19 the apartment next-door -- coming from the apartment of Brian
20 O'Keefe, the defendant in this case, and Victoria Whitmarsh,
21 he thought to himself, man, I hope he's not over there beating
22 the crap out of her.

23 You also know that he was angry based on Cookie's
24 testimony, Charles Toliver. He told you, man, that look
25 scared me. I ran as fast as I could out of that apartment

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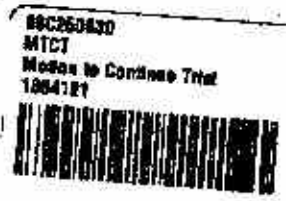
FILED

JUN 1 11 16 AM '12

John A. Harrison
CLERK OF THE COURT

MOT
BELLON & MANINGO, LTD.
LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY
Nevada Bar No.: 11107
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 452-6299
Facsimile: (702) 452-6298
Email: lam@bellonandmaningo.com
Attorney for Defendant
BRIAN O'KEEFE

DISTRICT COURT
CLARK COUNTY, NEVADA



THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN O'KEEFE,

Defendant.

Case No.: C250630
Dept. No.: 17

MOTION TO CONTINUE TRIAL

COMES NOW Defendant BRIAN O'KEEFE, by and through his attorney of record, LANCE A. MANINGO, ESQ., of BELLON & MANINGO, LTD., and moves this court for a continuance of the trial currently set for June 11, 2012.

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BELLON & MANINGO, LTD.
732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 FAX

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JUN 01 2012
CLERK OF THE COURT

003450

BELLON & MANINGO, LTD.
732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
703-452-6299 • 702-452-6298 FAX

1 This Motion is made and based upon the papers and pleadings on file herein, the
2 attached Memorandum of Points and Authorities, the attached Affidavit of LANCE A.
3 MANINGO, ESQ., and such oral argument as the Court may entertain at the time of the hearing in
4 this matter.

5 DATED this 30th day of May, 2012.

6 BELLON & MANINGO, LTD.

7
8 By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
732 S. Sixth Street, Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

9
10
11
12 **NOTICE OF MOTION**

13
14 TO: THE STATE OF NEVADA, Plaintiff; and

15 TO: DAVID ROGER, ESQ., Chief Deputy District Attorney

16 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
17 will bring the foregoing Motion to Continue Trial on for hearing before the above-entitled
18 Court on the 11 day of June, 2012, at the hour of 8:15 A.m. in the
19 District Court, Department XVII, or as soon thereafter as counsel may be heard.
20

21
22 DATED this 30th day of May, 2012.

23 BELLON & MANINGO, LTD.

24
25 By: 

LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
AMANDA S. GREGORY, ESQ.
Nevada Bar No.: 11107
732 S. Sixth Street, Ste. 102
Las Vegas, Nevada 89101
Attorney for Defendant
BRIAN O'KEEFE

26
27
28
003451

AFFIDAVIT OF LANCE A. MANINGO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

LANCE A. MANINGO, ESQ., being first duly sworn according to law, deposes and states as follows:

1. That your affiant is an attorney duly licensed to practice law in the State of Nevada and am a partner of BELLON & MANINGO, LTD. Your affiant makes this affidavit based upon his own personal knowledge except as to those matters stated upon information and belief and as to those matters your affiant believes them to be true.

2. That your affiant is the standby counsel assigned to the matter of the State of Nevada v. Brian, Case No.: C250630.

3. That the Defendant is seeking relief in Federal Court.

4. That the Defendant currently has an open case in the United States Court of Appeals for the Ninth Circuit, Case No.: 12-15271.

5. That your affiant has consulted with the Defendant and his Federal Public Defender on the instant matter.

6. That it is in the best interests of the Defendant to have this trial continued until the conclusion of his federal case.

7. The request to continue the trial is not brought for the purpose of harassment or to cause undue delay.

////

////

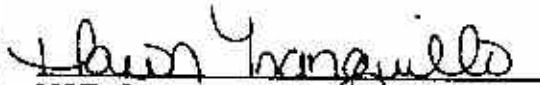
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8. That your affiant has discussed this continuance with the Defendant and Defendant is agreeable to said continuance.

FURTHER AFFIANT SAYETH NAUGHT.


LANCE A. MANINGO, ESQ.

SUBSCRIBED AND SWORN to before me
this 31st day of May, 2012.


NOTARY PUBLIC in and for
said County and State.



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Motion to Continue Trial is necessary as the Defendant is involved in federal habeas appellate proceedings in United States Court of Appeals for the Ninth Circuit. Given the circumstances outlined herein, the trial date should be continued.

II.

STATEMENT OF THE CASE

Defendant BRIAN O'KEEFE was charged with one (1) count of Murder, one (1) count of Degrees of Murder, and one (1) count of Use of a Deadly Weapon or Tear Gas in Commission of a Crime.

////

////

1 On or about March 16, 2009 Mr. O'Keefe's first jury trial on the above charges began. It
2 was heard over the next 3 days until he was given a verdict of Guilty to the charge of Second
3 Degree Murder With Use of a Deadly Weapon.

4 Mr. O'Keefe appealed his conviction but the case was remanded back to the Clark County
5 District Court and set for trial on August 23, 2010. After 9 consecutive days of trial, the jury was
6 declared deadlocked and a new trial date was set to be ordered.
7

8 Mr. O'Keefe's case was once again set for trial on January 24, 2011. After a number of
9 Motions and Hearings set by both the State and defense counsel, this trial was reset to June 6, 2011.
10 Before the new trial date, Mr. O'Keefe was appointed new counsel.

11 Mr. Maningo was confirmed as counsel of record on June 2, 2011 and due to the change of
12 defense counsel, trial was yet again reset to the current date of June 11, 2012. Presently, Mr.
13 Maningo is stand-by counsel.
14

15 Mr. O'Keefe has filed an appeal in the United States Court of Appeals for the Ninth Circuit.

16 It is necessary for this trial to be continued pending conclusion of Mr. O'Keefe's current
17 federal case. It is believed that Mr. O'Keefe's federal public defender is requesting a stay of this
18 State level trial in the federal courts.
19

20 III.

21 ARGUMENT

22 The Court has discretion in matters of trial scheduling. Judicial efficiency and fundamental
23 fairness to Mr. O'Keefe warrant a continuance of this trial.
24

25 ////

26 ////

27 ////

28 ////

BELLON & MANINGO, LTD.

732 SOUTH SIXTH STREET, SUITE 102

LAS VEGAS, NEVADA 89101

702-452-8259 • 702-452-8258 FAX

IV.

CONCLUSION

Based upon the foregoing, Defendant requests that the trial date be vacated and a new trial be set.

DATED this 30th day of May, 2012.

BELLON & MANINGO, LTD.

By: 

LANCE A. MANINGO, ESQ.

Nevada Bar No.: 006405

AMANDA S. GREGORY, ESQ.

Nevada Bar No.: 11107

732 S. Sixth Street, Ste. 102

Las Vegas, Nevada 89101

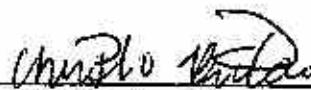
Attorney for Defendant

BRIAN O'KEEFE

CERTIFICATE OF MAILING

I, do hereby certify that on the 31st day of May, 2012, I did deposit a true and correct copy of the foregoing MOTION TO CONTINUE TRIAL in the United States mail, first-class postage fully prepaid, addressed as follows:

Clark County District Attorneys Office
200 Lewis Avenue
Las Vegas, Nevada 89101



An Employee of Bellon & Maningo, Ltd.

003455

ORIGINAL

JURL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT

JUN 12 2012

CLARK COUNTY, NEVADA

BY Carol Donahoe
CAROL DONAHOO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C250630

DEPT. NO. XVII

-vs-

BRIAN KERRY O'KEEFE,

Defendant.

D0C250630
JURL
Jury List
1878847



JURY LIST

- | | |
|--------------------|---------------------|
| 1. Quinn Swift | 8. Pamela Hulbert |
| 2. Michael Ferraro | 9. Jason Ansuini |
| 3. James Simeon | 10. Marc Humphries |
| 4. D. Denyce Brown | 11. Joseph McCrink |
| 5. Deborah Leonard | 12. Nella Humphries |
| 6. Dawson Derfelt | |
| 7. Thomas Roche | |

ALTERNATES

- | | |
|-----------------|--------------------|
| 1. Eric Mikuski | 2. Beverly Billich |
|-----------------|--------------------|

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 15 2012 at 1:58 p.m.

DISTRICT COURT
CLARK COUNTY, NEVADA

BY Carol Donahoo
CAROL DONAHOO, DEPUTY

1 VER

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4
5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 BRIAN KERRY O'KEEFE,

9 Defendant.
10
11

CASE NO: C250360

DEPT NO: XVII

12 VERDICT

13 We, the jury in the above-entitled case, find the Defendant, BRIAN KERRY
14 O'KEEFE, as follows:

15 *(please check the appropriate box, selecting only one)*

16 ☒ Guilty of Murder of the Second Degree With Use of a Deadly Weapon

17 ☐ Guilty of Murder of the Second Degree Without Use of a Deadly Weapon

18 ☐ Not Guilty

19 DATED this 15 day of June, 2012

20
21
22 J. J. [Signature]
23 FOREPERSON
24
25
26
27
28

003457

FILED

JUL 17 2012

[Signature]
CLERK OF COURT

BELLON & MANINGO, LTD.
LANCE A. MANINGO, ESQ.
Nevada Bar No.: 006405
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 452-6299
Facsimile: (702) 452-6298
Email: lam@bellonandmaningo.com
Standby Counsel for Defendant
BRIAN O'KEEFE

DEC250630
REQT
Request
1984285



DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
BRIAN O'KEEFE,)
)
Defendant.)

Case No.: C250630
Dept. No.: XVII

REQUEST FOR ROUGH DRAFT TRANSCRIPTS

TO: COURT RECORDER - MICHELLE RAMSEY

BRIAN O'KEEFE, DEFENDANT named above, by and through his stand by counsel of record, LANCE A. MANINGO, ESQ., of BELLON AND MANINGO, LTD., requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

Dates of proceeding: 12/16/2011
02/17/2012
03/29/2012
06/05/2012
06/11/2012
06/12/2012
06/13/2012
06/14/2012

BELLON & MANINGO, LTD.
732 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 FAX

RECEIVED
JUL 17 2012
CLERK OF THE COURT

BELLON & MANINGO, LTD.
782 SOUTH SIXTH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
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06/15/2012

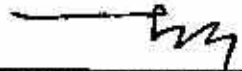
Portions of Transcript Requested: hearing for Defendant's *Faretta* canvass, hearing on Defendant's Motion to Dismiss, hearing on State's Motion to Admit Prior Bad Acts, Jury trial, all evidence presented and any arguments presented outside the presence of the jury and closing arguments by all counsel.

This notice requests a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and the reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must personally serve a copy of this form on the above named court reporter and opposing counsel, and that the above named court reporter shall have ten (10) days from the receipt of this notice to prepare and submit to the district court the rough draft transcript requested herein.

DATED this 9th day of July, 2012.

BELLON & MANINGO, LTD.



LANCE A. MANINGO, ESQ.
Nevada Bar No. 006405
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Standby Counsel for Defendant
BRIAN O'KEEFE

BELLON & MANINGO, LTD.
732 SOUTH 8TH STREET, SUITE 102
LAS VEGAS, NEVADA 89101
702-452-6299 • 702-452-6298 Fax

RECEIPT OF COPY

RECEIPT of the above named Defendant's REQUEST FOR
ROUGH DRAFT TRANSCRIPTS is hereby acknowledged this ____ day of
July, 2012.


MICHELLE RAMSEY

RECEIPT OF COPY

RECEIPT of the above named Defendant's REQUEST
FOR ROUGH DRAFT TRANSCRIPTS is hereby acknowledged this 17 day
of July, 2012.



CLARK COUNTY DISTRICT ATTORNEY



CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO. C250630

10 vs.)

DEPT. XVII

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)
13)

14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 FRIDAY, DECEMBER 16, 2011

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:**

17 **ALL PENDING MOTIONS**
18

19 **APPEARANCES:**

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney
ELIZABETH A. MERCER, ESQ.,
Deputy District Attorney

23 For the Defendant:

LANCE A. MANINGO, ESQ.,

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; FRIDAY, DECEMBER 16, 2011

2 [Proceeding commenced at 8:54 a.m.]

3
4 THE COURT: All right, Mr. O'Keefe is here with Mr. Maningo.
5 This is time set for Faretta Canvassing. Do you still wish to
6 represent yourself in this matter?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 THE COURT: All right. Under the Sixth Amendment of the
9 United States Constitution you're entitled to an assistance of an
10 attorney at all stages of a criminal proceeding. You have the
11 right to represent you and conduct your own defense. The Court
12 cannot force a lawyer upon you should you insist that you want to
13 conduct your own defense. You're given this right under the United
14 State's Supreme Court decision of Faretta versus California; that
15 you must first knowingly and voluntarily waive and give up your
16 right to the assistance of an attorney before you can represent
17 yourself; do you understand that, sir?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: And you do understand you have a right to an
20 assistance of an attorney at all stages of a criminal proceeding?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Understand that you have a right to an assistance
23 of an attorney at no cost if you are unable to pay for an attorney?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And, sir, for the record what's your age?

1 THE DEFENDANT: Forty-eight, Your Honor.

2 THE COURT: What's your level of education?

3 THE DEFENDANT: Thirteen and a half, fourteen years, sir.

4 THE COURT: Sir, do you presently have any health issues that
5 place you under medication?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You have any medical conditions that might affect
8 your ability to represent yourself?

9 THE DEFENDANT: Not that I'm aware of, Your Honor.

10 THE COURT: And, sir, are you aware of any mental health
11 issues?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you under -- under any type of medication for
14 mental health issues?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Have you ever been under medication for mental
17 health issues?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: And are you presently taking any medication at
20 this time?

21 THE DEFENDANT: No, Your Honor. None.

22 THE COURT: Sir, have you been coerced or threatened in any
23 way to waive your right to an attorney?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: And, sir, why have you decided that you wish to

1 represent yourself?

2 THE DEFENDANT: It's a personal issue, Your Honor. It's a
3 personal case now. Personal matter and I just desire to defend
4 myself. Keep it simple.

5 THE COURT: I'm just curious. Are you displeased with the
6 services you have received from Mr. Maningo?

7 THE DEFENDANT: I rather not comment on that, Your Honor.

8 THE COURT: And so well are you pleased with his services,
9 we'll put it that way?

10 THE DEFENDANT: I have nothing personal against Mr. Maningo.
11 What I greatly feel I was wrongfully charged and it's a lot of
12 years have gone by. Nothing's getting done. There's a lot of
13 issues that just keep getting ignored and my gosh, I'm going to
14 have to file stuff possibly pro nunc tunc or pro tunc to get airs
15 corrected.

16 I mean, it's just I know the case, Your Honor. I was the
17 only person there. I am the Defendant. I know everything from the
18 beginning to where we stand right now, sir. I desire not to wait
19 any longer. I'm ready to proceed. I've been studying the law for
20 over two years just on specific issues. I'm not trying to impress
21 anyone. I don't want credit, but you will be outstanced at my
22 Writ. You will be amazed; that's all I have to say.

23 THE COURT: But you understand Mr. Maningo had nothing to do
24 with the charges being filed against you?

25 THE DEFENDANT: I understand that, Your Honor, but --

1 THE COURT: And he's advised me that he will be ready for
2 trial June of next year.

3 THE DEFENDANT: Well, see, Your Honor, you're -- you're taking
4 it on the motion already. You're probably going to deny my Writ --

5 THE COURT: Sir --

6 THE DEFENDANT: -- and that this isn't going to proceed.

7 THE COURT: -- sir, listen to me. No Writ has been filed. No
8 Writ is on calendar today, so I'm not denying anyone's Writ.

9 THE DEFENDANT: Yes, Your Honor. You're absolutely right.

10 THE COURT: Do you understand the criminal laws complex area
11 of the law where experience and professional training is both
12 required and desirable?

13 THE DEFENDANT: Yes, Your Honor. It's very -- yes, sir.

14 THE COURT: Sir, do you understand that self representation is
15 often unwise and Defendant may -- and the Defendant may conduct the
16 defense to his or her detriment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Sir, do you have any experience or familiarity
19 with the legal proceedings besides this particular case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And what are those?

22 THE DEFENDANT: Battery domestic violence case, Judge Vega,
23 2006.

24 THE COURT: Actually, you've had a couple of domestic violence
25 convictions, correct; misdemeanors and felony?

1 THE DEFENDANT: One felony, Your Honor, [indecipherable] of
2 course, the felony includes two misdemeanors with -- three, total
3 of three misdemeanors that were enhanced to a felony.

4 THE COURT: Sir, have you ever had any legal training either
5 through any trade schools, community colleges, high school, in
6 prison system?

7 THE DEFENDANT: Self education in the last four years, Your
8 Honor.

9 THE COURT: Okay, but no formalized legal training?

10 THE DEFENDANT: Manuals.

11 THE COURT: Sir, do you know the difference between an opening
12 statement and a closing argument?

13 THE DEFENDANT: Absolutely, Your Honor.

14 THE COURT: Sir, do you now how to object to a question that
15 you deem to be improper?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You understand that you have 30 days within which
18 to file an appeal from an entry of order denying -- denying post
19 conviction relief if we get to that point from previous trials --

20 THE DEFENDANT: Yes, Your Honor. Absolutely.

21 THE COURT: -- to see if anything's been filed? And also
22 there's certain time limitations if you are found guilty in this
23 case, there are time limitations in which you have to file a notice
24 of appeal; do you understand that, sir?

25 THE DEFENDANT: Yes, sir. Thirty days from the judgment of

1 conviction, Your Honor.

2 THE COURT: And do you understand that the -- an attorney
3 representing you is trained in the law, has the skill and
4 experience of properly conducting a defense on your case?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that an attorney knows the
7 elements of the offense you have been charged with and the possible
8 defenses that may be presented on your behalf?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And, sir, often times criminal trials present
11 difficult choices as to strategy and tactics and even attorneys can
12 differ as to the proper defense to make in a case. What I hear
13 from you is you are not trained to make those choices. An attorney
14 knows the degrees of -- the State must prove -- must meet to prove
15 your guilt beyond a reasonable doubt and by investigation review of
16 the State's evidence maybe determined that the State can not prove
17 its case; you understand that, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you aware of the dangers and disadvantageous
20 and consequences of self representation?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Sir, I must advise you that you must know and
23 comply with the same procedural rules as lawyers; do you understand
24 that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: I can not help you comply with those rules.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You must follow all legal rules even though you
4 may not know them; do you understand that, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You will not be able allowed to complain later on
7 appeal about the competency of the effectiveness of your
8 representation; do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You understand that I can not grant you or will
11 the jail grant you any special library privileges?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And, sir, do you understand that the effectiveness
14 of your defense maybe diminished or decreased by your dual role as
15 an attorney and as an accused?

16 THE DEFENDANT: Yes, I thought about it greatly. Yes, Your
17 Honor. I understand.

18 THE COURT: Sir, do you understand a Defendant such as
19 yourself who maybe unfamiliar with all the legal procedures, may
20 allow the Prosecutors an advantage in this case?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: And that you may not be able to make effective use
23 of all of your legal rights; do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You may make tactical decisions that produce

1 unintended consequences.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Once you decide on self representation, sir, and
4 if I grant your motion, you may not change your mind in the middle
5 of the proceedings and request an attorney.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Sir, if stand-by counsel is appointed, stand-by
8 counsel is not required to advise or provide you with legal advice;
9 do you understand that, sir?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Do you wish the Court to appoint stand-by counsel
12 to assist you?

13 Sir, stand-by counsel, if you don't request any
14 assistance, they won't get involved in your case, but in the event
15 you may have some questions, they would be there to answer your
16 questions for you? Are you requesting stand-by counsel?

17 THE DEFENDANT: I have no -- can I get more clarification on
18 appointment, Your Honor, before I answer the question, sir, with
19 all due respect?

20 THE COURT: What's your question, sir?

21 THE DEFENDANT: Okay. There's certain documents I'm going to
22 need if I would keep -- I'm just saying just for argument right now
23 -- if I would choose to keep Mr. Maningo on as stand-by counsel, I
24 want it to be clarified that there's certain documents I need and I
25 need -- I'll produce a list properly, and I need those documents.

1 So, if I keep him as stand-by, you know, I need access to specific
2 documents, Your Honor, is all I'm saying.

3 I basically have no problem with him staying on, but he
4 can not affect, you know, my discovery requests. Can we come to an
5 agreement there? Otherwise, I'm just going to have to say I'm on
6 my own. I don't need stand-by counsel, and I think I'm trying to
7 be very --

8 THE COURT: Sir --

9 THE DEFENDANT: -- mature and professional and honest about
10 it, you know. I'm just saying I have no problem. I actually have
11 no problem with my documents staying there in the event something
12 and just produce it on a list and saying I'm not going to bother
13 him for anything unnecessary, but then I'll produce a list, this,
14 this, this, get it to me.

15 If -- if the Court feels that's like infringing on the
16 Faretta, then at that point I'll just have to go on my own and --
17 and I won't use him as stand-by counsel, Your Honor.

18 THE COURT: I don't believe it's appropriate for Mr. Maningo
19 to be your runner or your copy assistance, but you have the right --
20 -- you have the right since I'm going to deem you indigent to file a
21 motion and to seek an appointment of an investigator. If you have
22 a list of documents, photographs --

23 THE DEFENDANT: Right. I understand that. I didn't mean
24 personally Mr. Maningo. I understand. He's an attorney. That's
25 what the investigator is for, Judge. I understand that.

1 THE COURT: Okay, so I'm not quite clear right now as what you
2 do or do not want Mr. Maningo to do or any other attorney because
3 you can't have it both ways. You can't represent yourself and have
4 him do half your case.

5 THE DEFENDANT: Right. I'll just go with the investigator and
6 go on my own.

7 THE COURT: Okay. Are you sure?

8 THE DEFENDANT: I'm positive. Absolutely.

9 THE COURT: Again, you're going to need to file the
10 appropriate motion to have an investigator appointed; do you
11 understand that?

12 THE DEFENDANT: And I do have something for your already this
13 morning.

14 THE COURT: Well, it has to be filed to the proper procedure -
15 - procedures; do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, do -- you must determine also how to subpoena
18 witness to testify on your half -- on your behalf; do you
19 understand that, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you know how to subpoena an individual?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And also understand that the Deputy District in
24 this case are trained to observe the jurors and select the ones
25 they believe are favorable to their case; do you know how to

1 disqualify a juror, sir?

2 THE DEFENDANT: Absolutely, Your Honor.

3 THE COURT: Sir, do you know the consequence if you decide to
4 testify on your own behalf?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Sir, and do you understand what the charges are
7 that have been filed against you?

8 THE DEFENDANT: Absolutely, Your Honor.

9 THE COURT: And what was that charge?

10 THE DEFENDANT: Second degree malice murder, Your Honor.

11 THE COURT: Well, according to the second amended information,
12 its murder of the second degree with use of a deadly weapon; do you
13 understand that, sir?

14 THE DEFENDANT: Yes, Your Honor. NRS 200.010, 200.030, Your
15 Honor; 193.165, Your Honor. Yes.

16 THE COURT: Do you understand the -- the offense that has been
17 filed against you may include a lesser included offenses, sir?

18 THE DEFENDANT: Shouldn't now, but yes, Your Honor.

19 THE COURT: And that's up to you to decide not me?

20 THE DEFENDANT: I guess I can try.

21 THE COURT: Do you understand that, sir?

22 THE DEFENDANT: That becomes a legal argument. I don't agree
23 with that, Your Honor. You're asking -- you want me to answer that
24 in the affirmative.

25 THE COURT: No. I'm saying, do you understand that there may

1 be lesser included offenses to this charge?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Sir, do you understand the nature of the charge
4 against you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand any possible defenses that you
7 may have to the charge?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You understand any mitigating factors that you
10 maybe able to assert in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You understand that an attorney can research the
13 law for similar cases and present possible defenses; do you know
14 how to research the law, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You know the range of punishment for this
17 particular charge if you were found guilty?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Does the Defendant qualify for habitual treatment?
20 Does anyone know?

21 MR. LALLI: I think he -- he does, Your Honor. He does. He
22 has two Nevada felony priors. One is the domestic violence third
23 offense which is a 2006 conviction. The other is for burglary
24 which is a 2004 conviction. So he does qualify.

25 THE COURT: You understand, sir, that the State may seek to,

1 if you were found guilty of another felony, you may seek to have
2 you treated under the criminal -- criminal habitual enhancement
3 statute?

4 THE DEFENDANT: I guess you can -- yes, Your Honor.

5 THE COURT: Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Sir, do you also understand that its typically
8 very unwise to represent yourself in any criminal proceedings?

9 THE DEFENDANT: Yes, Your Honor. But it also can be very
10 positive, Your Honor.

11 THE COURT: I understand, Your Honor.

12 THE DEFENDANT: Very positive.

13 THE COURT: Well, the Court does find that you are competent
14 to waive your constitutional right to be represented by an
15 attorney, sir. And, sir, are you waiving this right freely and
16 voluntarily and knowingly?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The Court also so finds. And, sir, do you wish to
19 have stand-by counsel appointed?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Anything from the State?

22 MR. LALLI: No, Your Honor.

23 THE COURT: Mr. Maningo?

24 MR. MANINGO: No, Your Honor. May I just have a moment with
25 Mr. O'Keefe?

1 THE COURT: Sure.

2 MR. MANINGO: I just -- I just want to explain -- I
3 represented other clients as stand-by counsel. If I could just
4 have a moment with him just to explain what I would do; is that
5 appropriate?

6 THE COURT: Absolutely. And, Mr. O'Keefe, if you do request
7 stand-by counsel, I am inclined to grant that request and have Mr.
8 Maningo act as your stand-by counsel.

9 MR. MANINGO: Thank you.

10 [Defense attorney conferring with Defendant]

11 MR. MANINGO: Thank you, Your Honor.

12 THE COURT: Mr. O'Keefe, do you wish to have stand-by counsel
13 appointed?

14 THE DEFENDANT: Yes, Your Honor. I'll take Mr. Maningo if
15 you'll still grant that, Your Honor.

16 THE COURT: All right. I will grant that request, sir.

17 Mr. Maningo, if you need a different type of order
18 appointing you to this case as stand-by, please submit it to
19 chambers and I'll have that signed for you.

20 MR. MANINGO: Thank you, sir. And there is already and
21 investigator appointed --

22 THE COURT: All right.

23 MR. MANINGO: -- or approved through either I think Your Honor
24 or Mr. Christensen's office.

25 THE COURT: And what was that investigator's name?

1 MR. MANINGO: Craig Retke.

2 THE COURT: Mr. O'Keefe, you're representing yourself now. Do
3 you wish to use that investigator in this case? If you don't, you
4 need to file the appropriate motion.

5 THE DEFENDANT: No. He was already assigned, Your Honor. And
6 I have -- I have no problem with Mr. Retke -- I have no problem
7 with him staying on. There's to be no need for any unnecessary
8 extra.

9 THE COURT: Okay. We do have a trial date.

10 THE DEFENDANT: July 11th.

11 THE COURT: June 11th, not July.

12 THE DEFENDANT: July.

13 THE COURT: And we have a calendar call June 5th; do you
14 understand that?

15 THE DEFENDANT: Your Honor, yes I do, Your Honor, but may I
16 take the Court's indulgence. Please, Your Honor, I know it can be
17 done. You have the empowerment. It's properly presented. I have
18 one for Mr. Lalli. Could you just sign this? It's just for copies
19 of the inmate accounts. There's already an account set and I've
20 already properly wrote them.

21 The law library supervisor said I need to contact inmate
22 account which I did. Clearly right here, Your Honor. It's very
23 simple, real quick. And they said -- clearly they said, yeah, just
24 get an order of the Judge sign the document. So I printed it out
25 really nice and made a copy. There's one for you and one for him.

1 If you can just sign it and file it in open Court, it would be --
2 it's --

3 MR. LALLI: Your Honor, I object to the Court signing any
4 order without the State having had the opportunity to review it.

5 THE DEFENDANT: And there's a copy for Mr. Ialli right there.

6 THE COURT: What I'm going to do is if we have copies for
7 everybody.

8 THE DEFENDANT: Yes, sir, there is.

9 THE COURT: Hang on. If not, my law clerk will make them
10 right now. We'll put this on calendar first week of January so the
11 State can file any objections or whatever motions you have there,
12 sir, okay. And I just don't sign things until I read them. Okay,
13 do you understand that?

14 THE DEFENDANT: Well, it's for copies, Your Honor --

15 THE COURT: I understand that, but --

16 THE DEFENDANT: -- that I need to get --

17 THE COURT: -- we're going to review it. If it's -- I'm not
18 going to except any ex parte motions at this time, okay. So if you
19 wish to submit that, please do so. What I'm going to do, sir -- if
20 you have a copy now for the Court --

21 THE DEFENDANT: Yes, I do. I got a copy.

22 THE COURT: Okay.

23 THE DEFENDANT: I --

24 MR. MANINGO: May I approach, Your Honor?

25 THE COURT: Yes. What I'm going to do is I'll have my Court

1 Clerk file -- have this filed and we'll set it -- do you have a
2 motion, sir, you just have an order?

3 THE DEFENDANT: It was just an order. They just said that if
4 we could just get you to sign it. This copy my copies and defer
5 the cost to Drew Christensen's office. There's an account for
6 indigent for pro se litigants. It's very simple. It's just very -
7 - it's just -- you know, I have just a couple of hundred dollars in
8 my account and --

9 THE COURT: Okay, sir, hang on. Your order says, order
10 granting ex parte motion incidental costs, okay. I'm reading it.
11 You wrote it.

12 THE DEFENDANT: Right and I specified that.

13 THE COURT: All right. Hang on. It says, granting ex parte
14 motion, okay. Any motions in this case I want them in writing,
15 okay. So your oral motion is not accepted at this time. So please
16 file a written motion and then we'll put it on calendar. State has
17 any objection, they'll file it and then we can have a hearing on it
18 and I'll make a decision, okay.

19 THE DEFENDANT: I was just orally [indecipherable] I just
20 hoping that you would.

21 THE COURT: But your order is --

22 THE DEFENDANT: Yes, Your Honor. You're absolutely right,
23 Your Honor.

24 THE COURT: Hang on. Let me finish my sentence, okay. Your
25 order is incomplete or it's -- it's not appropriate because its

1 identifying that I've reviewed something that does not exist, okay.
2 And sometimes in open court I will probably accept oral motions as
3 I would with any attorney, but the way your order is written it's
4 inappropriate.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay.

7 THE DEFENDANT: Okay.

8 THE COURT: So I'm not going to put it on calendar. You're
9 going to file the appropriate motion, all right.

10 THE DEFENDANT: Absolutely.

11 THE COURT: And then we'll have a hearing, okay.

12 THE DEFENDANT: If I choose to do that. Otherwise, I'll just
13 pay it myself, Your Honor.

14 THE COURT: Do whatever.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Whatever you decide.

17 THE DEFENDANT: Whatever I have to do. Yes, sir, Your Honor.

18 THE COURT: All right.

19 MR. LALLI: Your Honor, there -- there is one remaining issue
20 and that is the calendaring of a time to argue the bad act motion.

21 THE COURT: Yes.

22 MR. LALLI: The admissibility now that we've had the
23 evidentiary hearing. As the Court knows I'm in a six week capital
24 case with Your Honor starting --

25 THE COURT: January.

1 MR. LALLI: -- January, so January 10th. We're actually
2 starting that on Tuesday.

3 THE COURT: Let's argue that motion on January 5th, Thursday.
4 Do you know what motion we're referring to, sir?

5 THE DEFENDANT: The State's motion in limine for other bad
6 acts for other crimes.

7 THE COURT: Right. And we had an evidentiary hearing I
8 believe one or two days.

9 THE DEFENDANT: I will be -- if Mr. Lalli has no objection
10 could we get a later date, Your Honor, because I would like to now
11 be appointed pro se. I would like to file my own motion and
12 opposition to dismiss the State's motion to enter in limine motion
13 for other crimes.

14 THE COURT: Sir, the time for oppositions in that motion have
15 come and gone. You can argue against the request by the State,
16 okay. This is one of the things when we represent yourself, we
17 don't give you special rules. You're under the same rules as an
18 attorney and if Mr. Maningo asked to file another opposition to the
19 motion, I would deny that, okay 'cause the time for filing that has
20 come and gone.

21 And that's one of the problems of self representation; do
22 you understand that, sir?

23 THE DEFENDANT: That's fine. I'll just go off Ms. Palm's
24 motion and I'll just orally argue it.

25 THE COURT: All right. We'll see you on January 5th.

1 MR. LALLI: Well, I was wondering if the Court would have any
2 desire to perhaps do that at the end of February after the trial.
3 I understand that it's been bumped a number of times.

4 MR. MANINGO: And, Your Honor -- I'm sorry -- I think that
5 might be more appropriate. I've been preparing for that -- for
6 that motion and that argument. Mr. O'Keefe hasn't. I mean, if
7 Your Honor's granting his request to represent himself, then I'll
8 yield to what Mr. O'Keefe wants, but I know that he hasn't had all
9 the file documents in his possession that I have had and he may
10 need more time to review those himself.

11 THE COURT: All right. All right, February 17th, 8:45.

12 MR. LALLI: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. MANINGO: Thank you, Your Honor.

15 THE DEFENDANT: Thank you, Your Honor. Happy holidays to you
16 too, sir.

17 THE COURT: You too, sir.

18 THE DEFENDANT: Thank you, Your Honor.

19 [Proceeding concluded at 9:17 a.m.]

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1 ATTEST: I hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
4 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
5 an accurate transcript.

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8 Michelle Ramsey
9 Court Recorder/Transcriber
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CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

CASE NO. C250630

10 vs.)

DEPT. XVII

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)
13

14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 FRIDAY, FEBRUARY 17, 2012

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:**

17 **CONTINUED HEARING: MOTION IN LIMINE TO PRESENT**

18 **EVIDENCE OF OTHER BAD ACTS**

19 **APPEARANCES:**

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Chief District Attorney
ELIZABETH A. MERCER, ESQ.,
Deputy District Attorney

23 For the Defendant:

24 LANCE A. MANINGO, ESQ.,
(Stand-by counsel)

25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 17, 2012

2 [Proceeding commenced at 8:56 a.m.]

3
4 THE COURT: Good morning everyone. This is -- this is a
5 continued hearing on motion by the State to present evidence of
6 other bad acts previously filed. Mr. O'Keefe's here with stand-by
7 counsel.

8 We had exhibits in evidence, argument at previous
9 hearing. I located my notes for the State had presented
10 information regarding various prior acts. Had the State completed
11 their presentation --

12 MS. MERCER: We have, Your Honor.

13 THE COURT: -- as far as prior acts?

14 MS. MERCER: Yes, Your Honor.

15 THE COURT: Okay. And where are we at as far as defense?
16 Were we -- I don't know if it's just for argument, is that why we
17 continue this for?

18 MS. MERCER: Well, in the -- at the January 20th, 2011 hearing
19 Your Honor had indicated that you were -- that you would likely --
20 whatever we can prove you would probably let in because you found
21 that it was relevant given his -- the previous defenses asserted by
22 the Defendant. It was just an issue whether or not we could prove
23 them by clear and convincing evidence. And so I'm not really sure
24 --

25 THE COURT: Okay.

1 MS. MERCER: -- what it's -- I guess today it's just on for --

2 THE COURT: I don't know if I said if any can prove because I
3 mean there's quite a few acts and there's a timeframe.

4 MS. MERCER: You said you'd be inclined to let some of them
5 in.

6 THE COURT: Right.

7 MS. MERCER: Correct. Yeah.

8 THE COURT: Yes. Okay. I guess at this point we'll just have
9 argument. So, any argument by the State for me to allow all of the
10 events in or some of them?

11 MS. MERCER: What specifically would you like me to address?
12 Just whether or not we feel that we've proven them --

13 THE COURT: Correct.

14 MS. MERCER: -- by clear and convincing evidence?

15 THE COURT: Yes.

16 MS. MERCER: Okay. Well, with regards to the January 7th of
17 2003 incident, the incident where he slapped Victoria in the face
18 and caused her to have a nose bleed, the State believes that that
19 was proven by clear and convincing evidence.

20 Your Honor heard from David Whitmarsh, Victoria's ex-
21 husband, regarding the excited utterances that she made to him
22 about how she sustained the injuries.

23 In addition, you heard 9-1-1 call that was placed by
24 David with regard to that incident and the background of that 9-1-1
25 call you can actually hear Victoria as well as the Defendant. She

1 says I think my nose is broken. Something to that effect on that
2 9-1-1 call.

3 In addition, David testified to the bruises and swelling
4 that he observed on Victoria after she ran into his apartment.
5 David also testified that after the victim ran to his apartment,
6 the Defendant followed and he was banging on the door making
7 threats. He also testified that when the police showed up there
8 was some sort of a scuffle and he saw the Defendant and the police
9 officer on the ground as they were trying to place him under arrest
10 in the patrol car.

11 Your Honor also received photos of Victoria's injuries
12 from that incident and you've heard from Officer, I believe it was
13 Pointon [phonetic], I'm not sure how you pronounce it, but he
14 observed a nose bleed and he described it as an active nose bleed.
15 He said she was holding an ice pack on her nose and that she was
16 crying hysterically and that Victoria relayed to him that he
17 smacked her on the face.

18 Do you want me to go incident by incident or --

19 THE COURT: Let's do that 'cause you have to prove each by
20 clear and convincing, argue that and I'll let the defense have
21 their opportunity to argue that. You didn't.

22 MS. MERCER: Okay.

23 THE COURT: And also now that you proved them by clear and
24 convincing, but also whether or not it's under 48.045, so --

25 MS. MERCER: Okay.

1 THE COURT: -- go ahead.

2 MS. MERCER: The next incident was the August 4th, 2003
3 incident that we advised Your Honor that we were no longer seeking
4 to go into that incident.

5 So the next one will be the November 14th of 2003
6 incident. In that case, the Defendant pled guilty misdemeanor
7 battery domestic violence and we admitted asserted by the Court
8 records that exhibited that plea of guilty, so obviously it's the
9 State's -- State's position that that has most certainly been
10 proven by clear and convincing evidence.

11 You also heard from Officer Radmonovich [phonetic] who
12 was responding to another incident in the area when he heard the
13 sound of breaking glass and commotion. He and his partner went to
14 go see what was going on. When they made contact with the
15 occupants of the apartment, they came into contact with Ms. Mott
16 [phonetic] and Defendant and Victoria Whitmarsh, they said that --
17 that Victoria was hysterical and that she had visible injuries.
18 She relayed the events to him. He went through those events as
19 relayed to him by Victoria.

20 Your Honor also received an offer of proof with regards
21 to Honey Mott's [phonetic] testimony or expected testimony in
22 regards to that incident. And you received Exhibit 4 which was the
23 certified Court records.

24 The events that had been relayed to the officer where the
25 -- Victoria was grabbed by the arm and pushed down in the kitchen,

1 she was struck in the head with a fist and told her neighbor. They
2 also learned that the neighbor heard the commotion, went to the
3 apartment when she saw Victoria running out, she kind of grabbed
4 her and brought her into the apartment. And once they were inside
5 of Honey Mott's [phonetic] apartment the Defendant came over trying
6 to get in and he ultimately broke out the window of the apartment
7 and entered.

8 The injuries observed on Victoria under that incident
9 were bruising and redness around her neck and a lump on her head;
10 that was per the officer's testimony.

11 Then with regards to the November 26th of 2003 incident,
12 Your Honor also heard quite a bit of evidence with regards to this
13 incident as well as medical records. There was David Whitmarsh's
14 testimony that he saw the victim go downstairs to get her stuff
15 from Brian O'Keefe because he moved out and was staying with David
16 at the time and that she never came back. A few days later he
17 started getting threatening phone calls from the Defendant
18 regarding the return of some property. David ultimately ended up
19 calling the 9-1-1 dispatch to request a well care check because he
20 hadn't seen or heard from Victoria in a few days and he was
21 worried.

22 He said that he made -- that he came into contact with
23 Victoria when she was taken to the hospital following the domestic
24 violence incident; that she was very excited. She was crying. She
25 was black and blue from head to toe. Your Honor received the

1 photos that were taken by David Whitmarsh regarding that incident.
2 You also received medical records that were marked as Exhibit 7.
3 It would be the State's position that those would come in under the
4 Flores State that we previously cited too because they are non-
5 testimonial. And they're obviously business records.

6 You also heard from Officer Pinney [phonetic]. He
7 noticed bruising on Victoria. Some appeared old. Some appeared
8 new. While he was trying to talk to Victoria when he initially
9 responded to the incident, the Defendant was interrupting and
10 telling her to be quiet and don't say anything; things of that
11 nature.

12 When he spoke to the Defendant to try to get his side of
13 the story, the Defendant claimed that nothing happened. He was
14 uncooperative during the course of the investigation and then
15 ultimately was -- his demeanor was documented as being crying and
16 apologetic. That case was ultimately dismissed pursuant to
17 negotiations because he pled in another case, but given the
18 evidence offered by the State at the Petrocelli Hearing that the
19 State would submit that it's been proven by clear and convincing
20 evidence.

21 And I believe there was also testimony from Detective
22 Morgenstern regarding that incident when he was testifying to the
23 April 29th of 2004 incident. Mr. Lalli questioned him with regards
24 to him having confronted the Defendant with the photos from that
25 November 2003 incident and asking him, well didn't you claim that

1 nothing happened here when he spoke to the detectives too. And she
2 said, yeah. And he ultimately admitted that he had lied to the
3 officers that he had, in fact, caused those November 2003 injuries.

4 The next incident would be the April 2nd 2004 incident;
5 that was the incident in which he ultimately ended up being charged
6 and convicted for the battery domestic violence third offense.
7 Once again the State would submit obviously that we've proven that
8 by clear and convincing evidence that he was, in fact, convicted
9 and we offered the judgment of conviction in that case, the verdict
10 form and the information setting forth the specific allegations
11 that he was convicted of. Those were certified copies.

12 You also heard from Sergeant Price who testified that the
13 first time he responded, there was no probable cause to make an
14 arrest because he didn't observe any injuries and it was basically
15 he said, she said; that he had taken the Defendant and dropped him
16 off in the area of a friend's house because he told both parties
17 that he needed to have cooling off period. He didn't want it
18 escalating any further.

19 Then about an hour and fifteen minutes to an hour and a
20 half later, he gets another call to go back to Victoria's residence
21 because there's been a battery. He said that when he returned
22 later the victim had visible injuries; that was the case in which
23 the allegations where he slapped Victoria in the face repeatedly
24 and broke her glasses. He noted -- he noted that the glasses were
25 broken.

1 The next incident would be a day later on April 3rd 2004.
2 The allegation was that he went back to her residence and he was
3 upset with her for having reported the April 2nd incident to the
4 police. He slapped her in the face. Your Honor received Exhibit 9
5 which was the certified copies of the Muni records documenting that
6 he, in fact, pled guilty to that offense. So once again the State
7 would submit its clearly met it's burden of proving that allegation
8 by clear and convincing evidence.

9 The last incident is the May 29th 2004 incident in which
10 the Defendant was charged with multiple offenses. He was found
11 guilty of burglary and battery by a jury at the jury trial. Those
12 were the certified copies of judgment of conviction, the verdict
13 form and the information were admitted as State's Exhibit 10 at the
14 hearing. Once again we would submit that the allegations of
15 burglary and battery were proven by clear and convincing evidence.

16 You heard from -- how do you pronounce this name, Chris?

17 MR. LALLI: Moniot.

18 MS. MERCER: Detective Moniot, the -- one of the sexual
19 assault detectives was assigned to the case, he testified that he
20 came into contact with Victoria at the hospital; that she was
21 crying, she was holding herself, she was walking very gingerly.
22 She had numerous injuries that he testified too.

23 You also heard from Detective -- Detective Morgenstern
24 who interviewed the Defendant. In that case, he claimed that they
25 had an argument, but he had no idea how she received the injuries.

1 It was that statement that caused him to confront the Defendant
2 with the November 2003 photos. The allegations in that case where
3 the over several hours he had physically abused Victoria Whitmarsh.

4 And, Your Honor, as we stated previously it's the State's
5 position that all of those incidents are relative and highly --
6 relevant and highly probative in this case because the Defendant's
7 -- defenses have been kind of a quasi self defense accident-type
8 allegation. He claims that there was a, I believe, a struggle in
9 that he accidentally stabbed the victim when he was trying to get
10 the knife from her. She fell on the -- she fell onto the knife
11 while they were struggling over it.

12 The cases that we cited to in our brief clearly indicate
13 that more than any other type of case in domestic violence homicide
14 cases, those prior incidents are extremely probative because they
15 show -- they go to intent and the Defendant's motive because it
16 shows that over a period of years he has beaten this women and
17 expressed ill-will towards her.

18 Several of the cases also found they come in when the
19 Defendant claims self defense or accident specifically the --
20 Court's indulgence, Your Honor -- in the Benjamin case the
21 Defendant and the victim had a toxic relationship fraught with
22 physical abuse by the Defendant against the victim. They were both
23 alcoholics. They'd broken up recently, but then one night decided
24 to start drinking again. He claimed that he acted in self defense
25 and he couldn't remember very many of the details leading up to her

1 death.

2 And the Court found that it was relevant because it
3 tended to prove the Defendant intentionally murdered his wife and
4 that he had a motive to do so and that the killing was not an
5 accident or a mistake.

6 In the Illgen case, the Defendant's defense was that he
7 actually shot his wife. The Court found that the prior acts of
8 domestic violence by the Defendant against the victims were
9 relevant because it tended to show that it was an intentional act
10 on his part, not an accident; that same principle would seem to
11 apply in this case.

12 They also found that it was relevant to prove motive and
13 they define that as a hostility showing him likely to do violence
14 against the victim.

15 In the State versus Laprade case that we cited; it's a
16 Vermont case. The Court noted that in these types of cases without
17 admitting that evidence of domestic violence, a jury is left
18 without the knowledge of the acts that occurred within a
19 relationship and they don't -- they're not given the full picture.
20 And these types of cases it's important to present them with a full
21 picture so that they can determine whether or not it constitutes
22 murder.

23 And I think that's about it, Your Honor. Unless you have
24 specific questions for me.

25 THE COURT: I think in the -- Ms. Palm did the original

1 opposition. And if I recall from her opposition is that she argued
2 she couldn't prove these. I think that's been established to a
3 certain extent. I think one of her complaints was that if we bring
4 in all of these priors there's a likelihood that the jury will look
5 at it as propensity evidence versus anything under 48C.045.
6 Anything to add to that argument that you've -- anything addition
7 that you've -- I just want you to address what was brought up in
8 her brief?

9 MS. MERCER: Well, Your Honor, I think that the potential that
10 that might occur could be remedied with a limiting instruction to
11 the jury that they're not supposed to consider as evidence that --
12 evidence of propensity; that they're only to consider it for the
13 issues that we're asking it that they be admitted for.

14 It's hard -- it would be hard for us to take the position
15 that only certain ones of these incidents should be admitted
16 because this was such a long abusive relationship between the two
17 and I think the length of that abuse is quite possibly the most
18 telling regarding whether or not this was an accident or
19 intentional.

20 THE COURT: All right. Thank you. Mr. O'Keefe, if you could
21 handle those incidents in the same order please.

22 THE DEFENDANT: Well, Your Honor, my approach is going to be a
23 little bit different, Your Honor.

24 THE COURT: Mr. O'Keefe, listen, as far as -- we have a couple
25 of prongs that I have to look at. For each of the incidents, the

1 State must prove by clear and convincing evidence that they
2 occurred. Then we'll deal with the issue of whether or not they
3 fit under 480.045 and whether or not they're relevant and whether
4 or not there's undue prejudice. So let's deal with the first issue
5 is your position on whether or not the State has met their first
6 burden of proving these allegations by clear and convincing
7 evidence.

8 THE DEFENDANT: Well then, Your Honor, what you're doing then
9 is you're telling me how to run my defense.

10 THE COURT: No, sir, what I'm doing is I'm conducting this
11 hearing the way I want too and I would tell Mr. Maningo if he was
12 handling this that please address the clear and convincing prong
13 first, then we'll deal with the 480.045/relevance versus probative
14 value, second. So, if you can go down each incident and if you
15 have any argument that the State has failed to prove these events
16 by clear and convincing evidence, I want to hear your argument.

17 THE DEFENDANT: Okay. On the first event January 7, 2003,
18 they haven't proved it. It's all hearsay. The photos that they
19 supposedly state they have, Your Honor, are supposedly by her
20 husband. Where are the police photos? In fact, that incident also
21 if my memory serves me right, is -- is a resisting arrest. It has
22 nothing to do. So, so they haven't proved it.

23 Number two is out, the 8 -- it's out, Your Honor, of
24 4/8/03.

25 Number three, the November 14th, that act I did plead

1 guilty. I mean, it's in the records. Who are we kidding? I pled
2 guilty to a misdemeanor battery.

3 THE COURT: And so are you stating that the State has met
4 their burden on that one of clear and convincing?

5 THE DEFENDANT: No. Actually they haven't because that act is
6 -- is part of the felony domestic violence battery, C237835.
7 That's included in the offense already. I mean, I pled guilty to
8 it. Yes, I did because at that time it was the thing to do. They
9 offered me, you can walk out the door. The facts were never
10 actually really litigated. Yes, I -- you know, it's a misdemeanor
11 conviction, battery domestic violence. You're trying to bring into
12 a felony Court of law to prove a case, it's going to be your wrong.

13 No, they haven't proved it. I pled guilty to it, Your
14 Honor, but they haven't proved it. It was a lot of hearsay. A lot
15 of statements -- a lot of statements were made by the alleged
16 victim. We now know about her mental health; that was never
17 manifested back then, but no I don't feel they've met it.

18 Eleven twenty-six, that case was dismissed. That case
19 was absolutely dismissed by the State. The State was the one who
20 wanted to get rid of the case because the illegal entry, no
21 warrant, no nothing; that's absolutely out the door. It's
22 dismissed case.

23 The April 2nd 2004 that was again a situation where -- let
24 me see, is that C4/04 --

25 THE COURT: That was the battery domestic violence --

1 THE DEFENDANT: Yes.

2 THE COURT: -- felony.

3 THE DEFENDANT: That's the felony battery domestic violence,
4 right. You know, I took that to trial. I didn't take the stand.
5 I didn't feel I had too. Yes, the jury did convict me, but at that
6 time my Court appointed attorney didn't even call any witnesses.
7 She stood up and she said the defense rests.

8 THE COURT: The question is at this hearing --

9 THE DEFENDANT: Okay.

10 THE COURT: -- the State established that --

11 THE DEFENDANT: No, they didn't prove it, Your Honor. No,
12 they did not prove it. They didn't even see the evidence. I mean,
13 I was found guilty by the jury. No, Your Honor.

14 The thing also on that, the event that sticks out in my
15 mind, Your Honor, is they tried to say that I did three years in
16 prison on that. I didn't thirteen months at fire camp. I mean,
17 it's just absolute ludicrous. They know that.

18 The next event, Your Honor, 04/03 that was a misdemeanor.
19 I pled guilty to that in City Court and the ironic thing about that
20 is that on those two events on 02 -- 0 -- number 5 and number 6,
21 04/02 and 04/03 I was arrested and went to Court on that event in
22 the City and for both events and pled to a misdemeanor on both and
23 they brought that case up a year later and charged me with it. Did
24 they prove it? No. No. I mean, that's the answer that you're
25 looking for, Your Honor. I mean, you know.

1 Going on to number 7 the May 29th 2004, that's a battery,
2 Your Honor. I remember the report that you guys thought it was a
3 battery DV or whatever. No, it was a battery. I was found guilty
4 of a battery lesser included offense. Sally Loehrer, the Judge at
5 that time, Your Honor, sentenced me credit time served. They threw
6 me over to Stuart Bells and he sentenced me on the burglary. How I
7 got convicted of a felony burglary is beyond me of my own place,
8 but I did. So, that's -- that was a simple battery. Not a battery
9 domestic violence, Your Honor.

10 I was kind of thrown out the way you wanted to go through
11 there. I apologize for that. I wasn't prepared for that, Your
12 Honor, but I know it's going to be your ruling; that's -- now, can
13 I continue on now, Your Honor?

14 THE COURT: Yes.

15 THE DEFENDANT: Okay, now --

16 THE COURT: Well, if you're going to address how it does or
17 does not fit under 480.045 and whether or not these are unduly
18 prejudicial.

19 THE DEFENDANT: Your Honor, the probative still out weighs the
20 prejudicial. I mean -- or the prejudicial its just so out weighed.
21 I mean, it's -- per 48.061 even you're trying to bring in domestic
22 violence events to prove the current charge. And on top of it,
23 Your Honor, these are misdemeanor convictions; misdemeanors.

24 When we first litigated these at the beginning of the
25 first trial on February 10th, Phillip Smith, then Prosecutor for the

1 State specifically stated in his motion and in arguing it that he
2 only wanted the felony domestic violence for motive and intent.
3 Now you're trying to do the reversal two trials later the State and
4 now you want to bring them in when the law the case has been
5 established that no bodily act was done. It's getting way out of
6 hand here.

7 He argued that he needed the felony domestic violence.
8 He scheduled the Petrocelli hearing so he could prove his motive
9 and intent of the intentional stabbing at the first trial. The two
10 of the fact at that time the jury had acquitted me of first degree
11 intentional stabbing.

12 Now as you know, Your Honor, remember I was found guilty
13 of second degree malice murder. Now that was their theory. The
14 instruction the case was reversed on, they said it doesn't matter.
15 The State didn't allege the battery, but Phillip Smith at that --
16 Prosecutor Smith at that time in his closing arguments specifically
17 stated, Your Honor, specifically the circumstantial evidence that
18 shows a battery or something that precipitated the stabbing.

19 In closing argument, he specifically used battery. Now
20 when the Supreme Court of Nevada reversed this case and said, sorry
21 you didn't say battery, but the evidence presented at trial did not
22 support this theory. What theory? The theory on second degree
23 murder.

24 In fact, Prosecutor Lalli made a judicial admission at
25 the end of the second trial admitting fact on August 31st, day 7 of

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

2
3 **BRIAN K. O'KEEFE,**
 Appellant,
4 vs.
5 **THE STATE OF NEVADA**
 Respondent.

Supreme Court No.:
District Court Case No.: 08C250630
Electronically Filed
Dec 01 2015 10:57 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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7 **APPELLANT'S APPENDIX - VOLUME XVIII - PAGES 3400-3599**

8
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O'Keefe, Brian

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"Evidentiary Hearing Request" (Amended Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since) filed on 10/03/14	4995-5007
"Reply" to State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 filed on 10/27/14	5052-5061
"True Pretrial Detainee's" Reply to State's Opposition(s) Admitting the State has a Jurisdictional Defect by the Aung of a Notice of Appeal Which Divests Jurisdiction of the Matter Appealed; i.e., O'Keefe's Pretrial Habeas Matter Appealed to the 9 th Circuit on the Subject Matter of the Amended Information Already Named a Double Jeopardy Violation filed on 10/01/14	4989-4994
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Amended Notice of Appeal filed on 10/29/15	5565-5568
Appendix of Exhibits for: Motion to Dismiss based Upon Violation(s) of the Fifth Amendment Component of the Double Jeopardy Clause, Constitutional Collateral Estoppel and, Alternatively, Claiming Res Judicata, Enforceable by the Fourteenth Amendment Upon the States Precluding State's Theory of Prosecution by Unlawful Intentional Stabbing with Knife, the Alleged Battery Act Described in the Amended Information filed on 03/16/12	3225-3406
Case Appeal Statement filed on 03/14/14	4850-4851
Case Appeal Statement filed on 04/11/14	4862-4863
Case Appeal Statement filed on 05/21/09	0334-0336
Case Appeal Statement filed on 08/04/15	5476-5477
Case Appeal Statement filed on 08/12/15	5484-5485
Case Appeal Statement filed on 09/02/14	4925-4926
Case Appeal Statement filed on 09/04/12	3536-3537
Case Appeal Statement filed on 09/24/12	4625-4628
Case Appeal Statement filed on 10/20/15	5547-5548
Case Appeal Statement filed on 10/21/15	5554-5556
Case Appeal Statement filed on 11/04/15	5572-5573
Case Appeal Statement filed on 11/24/14	5070-5071
Certificate of Mailing filed on 05/03/11	3048

1	Certificate of Service filed on 06/29/15	5454
2	Clerks Certificate Judgment Reversed and Remanded filed on 05/06/10	1023-1027
3	Criminal Bindover filed on 12/26/08	0004-0020
4	Criminal Order to Statistically Close Case filed on 07/31/13	4662
5	Defendant O'Keefe's Opposition to Motion in Limine to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence Pursuant to 48.061 filed on 01/18/11	2877-2907
6	Defendant's Brief on Admissibility of Evidence of Alleged Victim's History of Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation (With Knives and Scissors), and Erratic Behavior filed on 03/20/09	0293-0301
7	Defendant's Motion to Require Court to Advise the Prospective Jurors as to the Mandatory Sentences Required if the Defendant is Convicted of Second Degree Murder filed on 03/04/09	0196-0218
8	Defendant's Motion to Settle Record filed on 03/24/09	0317-0322
9	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
10	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
11	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
12	Defendant's Supplemental Proposed Jury Instructions filed on 03/20/09	0290-0292
13	Defendant's Supplemental Notice of Witnesses filed on 08/16/10	1294-1296
14	District Court Amended Jury List filed on 03/19/09	0245
15	District Court Jury List filed on 03/16/09	0239
16	Ex Parte and/or Notice of Motion and Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit 3:14-CV-00385-RCJ-WGC Against Judge Michael Villani for proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 08/28/14	4903-4912
17	Ex Parte and/or Notice of Motion filed on 08/28/14	4913
18	Ex Parte Application for Order Requiring Material Witness to Post Bail filed on 03/10/09	0232-0236
19	Ex Parte Motion for an Order Shortening Time filed on 08/16/10	1292-1293
20	Ex Parte Motion for Appointment of Counsel Pursuant to NRS 34.750 filed on 09/15/14	4950-4952
21	Ex Parte Motion for Defense Costs filed on 06/30/10	1037-1043
22	Ex Parte Motion for Production of Documents (Specific) Papers, Pleadings and Tangible Property of Defendant filed on 01/13/14	4714-4720
23	Ex Parte Motion for Reimbursement of Legal Cost of Faretta Canvassed Defendant to Above Instant Case filed on 12/13/13	4701-4707
24	Ex Parte Motion for Release of Medical Records filed on 04/08/11	3041-3042
25	Ex Parte Motion to Extend Prison Copywork Limit filed on 06/24/15	5438-5441
26	Exhibits to Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 09/15/14	4954-4980
27	Ex-Parte Motion for Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma Pauperis filed on 01/21/14	4722-4747
28		

1	Ex-Parte Motion to Extend Prison Copywork Limit filed on 01/28/14	4764-4767
2	Filing in Support of Motion to Seal Records as Ordered by Judge filed on 04/19/12	3438-3441
3	Findings of Fact, Conclusion of Law and Order filed on 10/02/15	5528-5536
4	Information filed on 12/19/08	0001-0003
5	Instructions to the Jury (Instruction No. 1) filed on 09/02/10	1399-1426
6	Instructions to the Jury filed on 03/20/09	0246-0288
7	Judgment of Conviction (Jury Trial) filed on 09/05/12	4623-4624
8	Judgment of Conviction filed on 05/08/09	0327-0328
9	Judicial Notice Pursuant NRS 47.140(1)-NRS 47.150(2) Supporting Pro-Se Petition Pursuant NRS 34.360 filed on 03/12/15	5082-5088
10	Jury List filed on 06/12/12	3456
11	Jury List filed on 08/25/10	1396
12	Letters in Aid of Sentencing filed on 05/04/09	0324-0326
13	Motion by Defendant O'Keefe filed on 08/19/10	1329-1334
14	Motion for Complete Rough Draft Transcript filed on 04/03/12	3430
15	Motion for Judicial Notice the State's Failure to File and Serve Response in Opposition filed on 02/24/14	4800-4809
16	Motion for Judicial Ruling filed on 05/24/10	1028-1030
17	Motion for Leave to File Supplemental Petition Addressing All Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 06/15/15	5420-5422
18	Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals has not Issued any Remand, Mandate, or Remittitur filed on 07/23/14	4871-4889
19	Motion to Continue Trial filed on 06/01/12	3450-3455
20	Motion to Dismiss Counsel filed on 10/03/11	3164-3168
21	Motion to Modify and/or Correct Illegal Sentence filed on 01/27/14	4749-4759
22	Motion to Place on Calendar filed on 10/26/11	3169-3182
23	Motion to Place on Calendar filed on 11/28/11	3184-3192
24	Motion to Withdraw as Counsel filed on 04/29/11	3044-3047
25	Motion to Withdraw Counsel filed on 11/28/11	3193-3198
26	Motion to Withdraw Counsel for Conflict and Failure to Present Claims when I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant Chapter 34 filed on 06/08/15	5148-5153
27	Motion to Withdraw filed on 09/14/10	1434-1437
28	Notice of Appeal filed on 03/13/14	4843-4849
	Notice of Appeal filed on 04/11/14	4858-4861
	Notice of Appeal filed on 05/21/09	0332-0333
	Notice of Appeal filed on 07/31/15	5467-5472
	Notice of Appeal filed on 08/11/15	5478-5483
	Notice of Appeal filed on 08/29/14	4923-4924
	Notice of Appeal filed on 10/21/15	5552-5553
	Notice of Appeal filed on 11/03/15	5569-5571

1	Notice of Appeal filed on 11/21/14	5067-5069
2	Notice of Change of Address filed on 06/06/14	4864-4865
3	Notice of Defendant's Expert Witness filed on 02/20/09	0180-0195
4	Notice of Defendant's Witnesses filed on 03/06/09	0224-0227
5	Notice of Entry of Findings of Fact, Conclusion of Law and Order filed on 10/06/15	5537-5546
6	Notice of Expert Witnesses filed on 03/05/09	0222-0223
7	Notice of Motion and Motion by Defendant O'Keefe for a Reasonable Bail filed on 09/24/10	1441-1451
8	Notice of Motion and Motion by Defendant O'Keefe for Discovery filed on 08/02/10	1211-1219
9	Notice of Motion and Motion by Defendant O'Keefe for Evidentiary Hearing on Whether the State and CCDC have Complied with Their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/02/10	1220-1239
10	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1064-1081
11	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1099-1116
12	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/02/10	1199-1210
13	Notice of Motion and Motion by Defendant O'Keefe to Dismiss on Grounds of Double Jeopardy Bar and Speedy Trial Violation and, Alternatively, to Preclude State's New Expert Witness, Evidence and Argument Relating to the Dynamics or Effects of Domestic Violence and Abuse filed on 01/07/11	2785-2811
14	Notice of Motion and Motion by Defendant O'Keefe to Preclude Expert Testimony filed on 08/16/10	1284-1291
15	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1047-1063
16	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1082-1098
17	Notice of Motion and Motion by defendant O'Keefe to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/03/11	1682-2755
18	Notice of Motion and motion by Defendant O'Keefe to Suppress his	

1	Statements to Police, or, Alternatively, to Preclude the State from	
2	Introducing Portions of his Interrogation filed on 08/02/10	1152-1198
3	Notice of Motion and Motion for Leave of Court to File Motion for	
4	Rehearing – Pursuant to EDCR, Rule 2.24 filed on 08/29/14	4914-4921
5	Notice of Motion and Motion in Limine to Admit Evidence of Other Bad	
6	Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence	
7	Pursuant to 48.061 filed on 01/06/11	2762-2784
8	Notice of Motion and Motion to Admit Evidence of Other Crimes filed on	
9	02/02/09	0150-0165
10	Notice of Motion and Motion to Admit Evidence of Polygraph	
11	Examination Results filed on 03/29/12	3412-3415
12	Notice of Motion and Motion to Dismiss based Upon Violation(s) of the	
13	Fifth Amendment Component of the Double Jeopardy Clause,	
14	Constitutional Collateral Estoppel and, Alternatively, Claiming Res	
15	Judicata, Enforceable by the Fourteenth Amendment Upon the States	
16	Precluding State's Theory of Prosecution by Unlawful Intentional	
17	Stabbing with Knife, the Alleged Battery Act Described in the Amended	
18	Information filed on 03/16/12	3201-3224
19	Notice of Motion and Motion to Seal Records filed on 03/22/12	3416-3429
20	Notice of Motion and Motion to Waive Filing Fees for Petition for Writ of	
21	Mandamus filed on 12/06/13	4695-4697
22	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
23	09/23/15	5517-5519
24	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
25	09/29/15	5525-5527
26	Notice of Motion filed on 01/13/14	4721
27	Notice of Motion filed on 01/21/14	4748
28	Notice of Motion filed on 01/27/14	4760
	Notice of Motion filed on 02/24/14	4810
	Notice of Motion filed on 03/04/14	4833
	Notice of Motion filed on 06/08/15	5154-5160
	Notice of Motion filed on 07/23/14	4890
	Notice of Motion filed on 08/29/14	4922
	Notice of Motion filed on 09/15/14	4953
	Notice of Witness and/or Expert Witnesses filed on 02/03/09	0166-0167
	Notice of Witnesses and/or Expert Witnesses filed on 02/17/09	0178-0179
	NV Supreme Court Clerks Certificate/ Judgment Affirmed filed on	
	02/06/15	5072-5081
	NV Supreme Court Clerks Certificate/Judgment Affirmed filed on	
	07/26/13	4653-4661
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	06/18/14	4866-4870
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	03/12/15	5089-5093
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	

1	09/28/15	5520-5524
2	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on 10/29/14	5062-5066
3	O'Keefe's Reply to State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/13/10	1256-1265
5	Opposition to State's Motion to Admit Evidence of Other Bad Acts filed on 02/06/09	0169-0172
6	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
7	Order Authorizing Contact Visit filed on 08/12/10	1253-1254
8	Order Denying Defendant's Ex Parte Motion to Extend Prison Copywork Limit filed on 08/13/15	5486-5488
9	Order Denying Defendant's Ex-Parte Motion for Reimbursement of Incidental Costs Declaring Defendant Ingigent and Granting Forma pauperis filed on 03/11/14	4840-4842
10	Order Denying Defendant's Motion for Relief From Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issues any Remand, Mandare or Remittature filed on 09/04/14	4927-4929
12	Order Denying Defendant's Motion to Dismiss filed on 04/11/12	3434-3435
13	Order Denying Defendant's Motion to Seal Records and Defendant's Motion to Admit Evidence of Plygraph Examination filed on 05/24/12	3448-3449
14	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
16	Order Denying Defendant's Pro Per Motion for Judifical Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
17	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
20	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
21	Order Denying Defendant's Pro Per Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 07/15/15	5461-5463
24	Order Denying Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 11/19/15	5574-5575
25	Order Denying Motion to Disqualify filed on 10/06/14	5037-5040
26	Order filed on 01/30/09	0149
26	Order filed on 11/06/10	1462-1463
27	Order for Petition for Writ of Habeas Corpus filed on 10/15/14	5051
27	Order for Production of Inmate Brian O'Keefe filed on 05/26/10	1032-1033
28	Order for Return of Fees filed on 11/10/11	3183

1	Order for Transcripts filed on 04/30/12	3442
2	Order Granting and Denying in Part Defendant's Ex-Parte Motion for Production of Documents (Specific) Papers, Pleadings, and Tangible Property of Defendant filed on 02/28/14	4818-4820
3	Order Granting Ex parte Motion for Defense Costs filed on 07/01/10	1044-1045
4	Order Granting Request for Transcripts filed on 01/20/11	2966-2967
5	Order Granting Request for Transcripts filed on 04/27/11	3043
6	Order Granting Request for Transcripts filed on 09/14/10	1430-1431
7	Order Granting Request for Transcripts filed on 09/16/10	1438-1439
8	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe for Discovery filed on 08/23/10	1394-1395
9	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 09/09/10	1427-1429
10	Order Granting, in Part, the State's Motion to Admit Evidence of Other Bad Acts filed on 03/13/12	3199-3200
11	Order Releasing Medical Records filed on 04/08/11	3039-3040
12	Order Requiring Material Witness to Post Bail or be Committed to Custody filed on 03/10/09	0230-0231
13	Order Shortening Time filed on 08/16/10	1283
14	Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis filed on 12/06/13	4663-4694
15	Petition for Writ of Habeas Corpus or in the Alternative Motion to Preclude Prosecution from Seeking First Degree Murder Conviction Based Upon the Failure to Collect Evidence filed on 01/26/09	0125-0133
16	Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based On Subject-Matter of Amended Information Vested in Ninth Circuit by notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since filed on 09/15/14	4940-4949
17	Petitioner's Supplement with Exhibit of Oral Argument Scheduled by the Ninth Circuit Court of Appeals for November 17, 2014, Courtroom #1 filed on 10/01/14	4984-4988
18	Pro Se "Reply to State's Opposition to Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence filed on 03/04/14	4821-4832
19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168

1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
	Receipt of Copy filed on 05/24/10	1031
3	Receipt of Copy filed on 06/13/11	3163
4	Receipt of Copy filed on 06/30/10	1036
	Receipt of Copy filed on 08/02/10	1240
5	Receipt of Copy filed on 08/02/10	1241
	Receipt of Copy filed on 08/02/10	1242
6	Receipt of Copy filed on 08/02/10	1243
	Receipt of copy filed on 08/13/10	1255
7	Receipt of Copy filed on 09/14/10	1432
8	Receipt of Copy filed on 09/17/10	1433
	Receipt of Copy filed on 09/21/10	1440
9	Receipt of File filed on 07/01/10	1046
10	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
11	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
12	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
13	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
14	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
15	Request for Certified Transcript of Proceeding filed on 09/09/09	0772-0723
	Request for Rough Draft Transcript filed on 05/21/09	0329-0331
16	Request for Rough Draft Transcripts filed on 11/20/12	4629-4631
	Return to Writ of Habeas Corpus filed on 01/29/09	0135-0145
17	Second Amended Information filed on 08/19/10	1326-1328
18	State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/07/14	4768-4791
19	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
20	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
21	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
22	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
23	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
24	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
25	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	
26		
27		
28		

1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . Rule 2.4 filed on 09/12/14	4935-4939
3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 09/12/14	4930-4934
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
7	State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/10/10	1248-1252
8	State's Opposition to Motion to Dismiss and, Alternatively, to Preclude Expert and Argument Regarding Domestic Violence filed on 01/18/11	2908-2965
9	State's Opposition to Motion to Preclude Expert Testimony filed on 08/18/10	1320-1325
10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since (Post Conviction), Amended Petition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducing at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 08/16/10	1268-1276
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
14	State's Response to Defendant's Pro Per Post-Conviction Petition for Writ of Habeas Corpus filed on 06/02/15	5145-5147
15	State's Response to Defendant's Pro Per Supplemental Petition for Writ	

1	of Habeas Corpus and Evidentiary Hearing Request, "Motion for Leave to	
2	File Supplemental Petition Addressing all Claims in the First Instance	
3	Required by Statute for Judicial Economy with Affidavit," "Reply to	
4	State's Response to Defendant's Pro Per Post Conviction Petition for	
5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
11	State's Response to Defendant's Reply in Support of Supplemental Post-	
12	Conviction Petition for Writ of Habeas Corpus filed on 09/03/15	5511-5516
13	State's Response to Defendant's Supplement to Supplemental Petition for	
14	Writ of Habeas Corpus (Post-Conviction) filed on 07/31/15	5473-5475
15	State's Supplemental Opposition to Motion to Seal Records filed on	
16	04/17/12	3436-3437
17	Stipulation and Order filed on 02/10/09	0173-0174
18	Substitution of Attorney filed on 06/29/10	1034-1035
19	Supplement to Supplemental Petition for Writ of Habeas Corpus (Post-	
20	Conviction) filed on 07/13/15	5459-5460
21	Supplement with Notice Pursuant NRS 47.150 (2); NRS 47.140 (1), That	
22	the United State's Supreme Court has Docketed (#14-10093) The Pretrial	
23	Habeas Corpus Matter Pursuant 28 U.S.C. § 2241 ©(3) From the Mooting	
24	of Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in	
25	Want of Jurisdiction While Appeal Pending filed on 06/17/15	5433-5437
26	Supplemental Appendix of Exhibits to Petition for a Writ of Habeas	
27	Corpus Exhibits One (1) Through Twenty Five (25) filed on 06/12/15	5161-5363
28	Supplemental Notice of Defendant's Expert Witnesses filed on 07/29/10	1117-1151
	Supplemental Notice of Expert Witness filed on 05/17/12	3443-3447
	Supplemental Notice of Expert Witnesses filed on 01/03/11	2756-2760
	Supplemental Notice of Expert Witnesses filed on 08/13/10	1266-1267
	Supplemental Notice of Expert Witnesses filed on 08/16/10	1297-1305
	Supplemental Notice of Witnesses filed on 01/14/11	2872-2875
	Supplemental Notice of Witnesses filed on 03/10/09	0228-0229
	Supplemental Notice of Witnesses filed on 03/11/09	0237-0238
	Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed	
	on 04/08/15	5094-5144
	Supplemental Petition for Writ of Habeas Corpus filed on 06/15/15	5364-5419
	Verdict filed on 03/20/09	0289
	Verdict filed on 06/15/12	3457
	Verdict Submitted to the Jury but Returned Unsigned filed on 09/02/10	1397-1398
	Writ of Habeas Corpus filed on 01/30/09	0147-0148

TRANSCRIPTS

Document	Page No.
Transcript – All Pending Motions and Calendar Call filed on 02/04/11	2996-3038
Transcript – All Pending Motions filed on 07/10/09	0351-0355
Transcript – All Pending Motions filed on 08/30/12	3461-3482
Transcript – All Pending Motions filed on 11/23/10	1464-1468
Transcript – All Pending Motions on 07/10/09	0348-0350
Transcript – Calendar Call filed on 02/04/11	2968-2973
Transcript – Calendar Call filed on 08/30/12	3520-3535
Transcript – Continued Hearing: Motion in Limine to Present Evidence of Other Bad Acts filed on 08/30/12	3483-3509
Transcript – Defendant's Petition for Writ of Habeas Corpus (Post Conviction) filed on 10/29/15	5560-5564
Transcript – Defendant's Pro Per Motion to Dismiss Based Upon Violation(s) filed on 08/30/12	3510-3519
Transcript – Defendant's Motion to Settle Record filed on 07/10/09	0342-0345
Transcript – Entry of Plea/Trial Setting filed on 07/10/09	0356-0358
Transcript – Jury Trial – Day 1 filed on 10/14/09	0724-1022
Transcript – Jury Trial – Day 1 filed on 07/10/09	0582-0651
Transcript – Jury Trial – Day 1 filed on 07/10/09	0652-0721
Transcript – Jury Trial – Day 1 filed on 09/04/12	4278-4622
Transcript – Jury Trial – Day 1 filed on 11/23/10	1579-1602
Transcript – Jury Trial – Day 2 filed on 07/10/09	0515-0581
Transcript – Jury Trial – Day 2 filed on 11/23/10	1603-1615
Transcript – Jury Trial – Day 2 on 09/04/12	4001-4227
Transcript – Jury Trial – Day 3 filed on 07/10/09	0462-0514
Transcript – Jury Trial – Day 3 filed on 11/23/10	1616-1738
Transcript – Jury Trial – Day 3 on 09/04/12	3779-4000
Transcript – Jury Trial – Day 4 filed on 07/10/09	0408-0461
Transcript – Jury Trial – Day 4 filed on 11/23/10	1739-2032
Transcript – Jury Trial – Day 4 on 09/04/12	3600-3778
Transcript – Jury Trial – Day 5 filed on 07/10/09	0359-0407
Transcript – Jury Trial – Day 5 filed on 09/04/12	3538-3599
Transcript – Jury Trial – Day 5 filed on 11/23/10	2033-2281
Transcript – Jury Trial – Day 6 filed on 11/23/10	2282-2507
Transcript – Jury Trial – Day 7 filed on 11/23/10	2508-2681
Transcript – Jury Trial – Day 8 filed on 11/23/10	1469-1470
Transcript – Jury Trial – Day 9 filed on 11/23/10	1471-1478
Transcript – Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 10/29/15	5557-5559
Transcript – Motions Hearing – August 17, 2010 filed on 11/23/10	1479-1499
Transcript – Motions Hearing – August 19, 2010 filed on 11/23/10	1500-1536
Transcript – Motions Hearing – August 20, 2010 filed on 11/23/10	1537-1578

1	Transcript – Notice of Motion and Motion by Defendant O’Keefe to	
2	Preclude the State from Introducing at Trial Improper Evidence and	
3	Argument filed on 02/04/11	2974-2989
4	Transcript – Partial Transcript of the Jury Trial - Day 2 filed on 03/18/09	0240-0244
5	Transcript – Petrocelli Hearing filed on 05/19/11	3049-3162
6	Transcript – Proceedings filed on 01/02/09	0028-0124
7	Transcript – Sentencing August 16, 2012 filed on 12/03/12	4632-4635
8	Transcript – Sentencing August 28, 2012 filed on 12/03/12	4636-4652
9	Transcript – Sentencing filed on 07/10/09	0337-0341
10	Transcript – Status Check: Availability of Dr. Benjamin for Trial filed on	
11	02/04/11	2990-2995

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 6th day of January, 2011, by facsimile transmission to:

PATRICIA PALMESQ
FAX: 386-9114

/s/ T. SCHESSLER
Secretary for the District Attorney's
Office

ts/dvu

TO: Patricia Palm, Esq. COMPANY 20

NOTE

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,
#1447732

Defendant

CASE NO: DHC250630

DEPT NO: XVII

SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: BRIAN KERRY O'KEEFE, Defendant; and

TO: PATRICIA PALM, ESQ., Counsel of Record;

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

NAME

ADDRESS

ARMBRISTER, TODD

6344 BURGUNDY ST., LVN

BALLEJOS, J.

L.V.M.P.D. #8406

• BAS, JENNIFER

L.V.M.P.D. #8944

• BESSE, TORIAS

1254 N. TORREY PINES #1154, LVN

BUNN, CHRISTOPHER

L.V.M.P.D. #4407

COLLINS, CHRISSEA

L.V.M.P.D. #9255

CONN, TODD

L.V.M.P.D. #8101

• CONNOR, MICHAEL

801 BIRNBROOK DR., HENDERSON, NV

P:\WPDK\S\NOTICE\821-822-4810.doc

003401

TO: Patricia Palm, Esq. COMPANY

1	DAHN, ROBBIE	I.VMPD P#5947
2	DUNCAN, J.	I.VMPD P#7157
3	DUTRA, DR. TIMOTHY	CCME, 1704 PINTO LN., I.VN
4	EBBERT, LINDA	SANF/TMC
5	EGGLESTON, LINDA	3864 ALGONQUIN #2, I.VN
6	FONABUENA, R.	I.VMPD P#6834
7	FORD, DANIEL	I.VMPD P#4244
8	GUENTHER, ED	I.VMPD P#5891
9	HATHCOX, JIMMY	3955 CHINCHILLA AVE., I.VN
10	HODSON, R.	I.VMPD P#3711
11	HORN, D.	I.VMPD P#1928
12	HUTCHERSON, C.	I.VMPD P#12996
13	KELLY, S.	I.VMPD P#6836
14	KOLACZ, ROBIN	MGR./CASA SALVATORE APTS.,
15	KYGER, TERESA	I.VMPD P#4191
16	MALDONADO, J.	I.VMPD P#6920
17	MONIOT, T.	I.VMPD P#4664
18	MORGENSTERN, K.	I.VMPD P#4665
19	MORRIS, CHRYL	C/O DAWN BARLOW/CCDA'S OFFICE
20	MOTT, HONEY	1500 STARDUST RD. #A-2016, I.VN
21	MURPHY, KATE	I.VMPD P#9756
22	NEWBERRY, DANIEL	I.VMPD P#4956
23	OELAND, A.	I.VMPD P#6942
24	PAZOS, E.	I.VMPD P#6817
25	PENNY, B.	I.VMPD P#6042
26	POINTON, C.	I.VMPD P#7160
27	PRICE, RICHARD	I.VMPD P#5626
28	RADMANOVICH, S.	I.VMPD P#6420

TO: Patricia Palm, Esq. COMPANY

1 RAMIREZ, V. LVMPD P#4916
2 RUMERY, S. LVMPD P#6734
3 SANTAROSA, B. LVMPD P#6930
4 STALLINGS, JOHN CCME, 1704 PINTO LN., LVN
5 STEIBER, R. LVMPD P#3542
6 TAYLOR, SEAN LVMPD P#8718
7 TINIO, NORMA 2992 ORCHARD MESA, HENDERSON, NV
8 TOLIVER, CHARLES 1013 N. JONES #101, LVN
9 TOLIVER, JOYCE 2218 DISK LANE, NVN
10 WHITMARSH, ALEXANDRA 7648 CELESTIAL FLOW, LVN
11 WHITMARSH, DAVID 7648 CELESTIAL GLOW, LVN
12 WILDEMANN, MARTIN LVMPD P#3516
13 WONG, T. LVMPD P#6812

14 These witnesses are in addition to those witnesses endorsed on the Information and
15 any other witness for which a separate Notice has been filed.
16

BY

David Roger
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF FACSIMILE TRANSMISSION

22 I hereby certify that service of the above and foregoing, was made this 14th day of
23 January, 2011, by facsimile transmission to:

24 PATRICIA PALM, ESQ.
25 FAX: 386-9114

26 /s/Deana Daniels
27 Secretary for the District Attorney's
28 Office

ORDER GRANTING, IN PART, THE STATE'S MOTION
TO ADMIT EVIDENCE OF OTHER BAD ACTS

C250630

Exhibit 18

003404

ORIGINAL

FILED

MAR 13 2012

Ch. J. Lalli
CLERK OF COURT

1 **ORDER**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **CHRISTOPHER J. LALLI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005398**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

88C250630
0838
Order Granting Motion
1700702



9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **BRIAN KERRY O'KEEFE,**
13 **#1447732**

14 **Defendant.**

CASE NO: 08C250630

DEPT NO: XVII

15 **ORDER GRANTING, IN PART, THE STATE'S MOTION TO ADMIT EVIDENCE**
16 **OF OTHER BAD ACTS**

17 **DATE OF HEARING: February 17, 2012**

18 **TIME OF HEARING: 8:45 A.M.**

19 **THIS MATTER** having come on for hearing before the above entitled Court on the
20 17th day of February, 2012, the Defendant being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
22 CHRISTOPHER LALLI, Chief Deputy District Attorney, and LIZ MERCER, Deputy
23 District Attorney, and the Court having heard the arguments of counsel and good cause
24 appearing therefor,

25 **THE COURT FINDS,** that the State established by clear and convincing evidence the
26 facts and circumstances of the offense occurring on or about April 2, 2004, for which
27 Defendant received a felony conviction under Eighth Judicial District Court, Clark County,
28 **Nevada Case No. C207835.**

RECEIVED BY
DEPT. 17 ON

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MAR 13 2012

CLERK OF THE COURT

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003405

1 THE COURT FURTHER FINDS, that the facts and circumstances of the April 2,
2 2004 offense are relevant to the issues of motive (ill-will), intent, absence of accident or
3 mistake, to rebut a potential claim of self-defense, and to provide the jury with the context of
4 the relationship between Defendant Brian O'Keefe and Victoria Whitmarsh.

5 THE COURT FURTHER FINDS, that the probative value of the evidence concerning
6 the April 2, 2004 offense is not substantially outweighed by danger of unfair prejudice
7 because: (1) the events are not remote in time to the charged offense in this case; (2) the facts
8 and circumstances are not more offensive than the allegations in this case; and, (3)
9 Defendant was convicted pursuant to a Jury Verdict so he will not now be placed in a
10 position of having to defend against those allegations for the first time many years later.

11 THE COURT FURTHER FINDS, that the admission of facts and circumstances of
12 the other cases, 03M00410X, 03M25901X, 03M26791X, and C581783A, and C202793,
13 would have a prejudicial effect which would outweigh the probative value.

14 IT IS, THEREFORE, HEREBY ORDERED that the State's Motion to Admit
15 Evidence of Other Bad Acts, shall be, and it is hereby GRANTED as to the April 2, 2004
16 offense, and it is DENIED as to all others.

17 DATED this 12 day of March, 2012.

18 
19
20 DISTRICT JUDGE *u*

21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #001565

24 
25 CHRISTOPHER J. LALLI
26 Chief Deputy District Attorney
27 Nevada Bar #005398

28 08F23348X: LM/sam-MVU


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2830
11 christopher.lalli@ccdanv.com
12 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,
14 Plaintiff,

15 -vs-

16 BRIAN KERRY O'KEEFE,
17 #1447732

18 Defendant.

Case No: 08C250630

Dept. No: XVII

Date: March 29, 2012

Time: 8:15 a.m.

STATE'S OPPOSITION TO MOTION TO DISMISS

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
20 through CHRISTOPHER J. LALLI, Chief Deputy District Attorney, and hereby opposes the
21 Defendant's Motion to Dismiss. This Opposition is made and based upon all the papers and
22 pleadings on file herein, the attached points and authorities in support hereof, and oral
23 argument at the time of hearing, if deemed necessary by this Honorable Court.

24 DATED this ___21st___ day of March, 2012.

25 STEVEN B. WOLFSON
26 Clark County District Attorney
27 Nevada Bar #001565

28 BY /s/ Christopher J. Lalli
CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On November 5, 2008, Brian Kerry O'Keefe (hereinafter "the Defendant") murdered
3 Victoria Whitmarsh by stabbing the right side of her chest. The knife he used to kill Victoria
4 sliced through various vital organs. It was also apparent that the much-larger Defendant had
5 badly beaten Victoria. Weighing seventy pounds less than him, her body was badly bruised
6 at autopsy.

7 The Defendant was charged with one count of murder with use of a deadly weapon.
8 After being tried on that charge, a jury found the Defendant guilty of murder of the second
9 degree with use of a deadly weapon. The conviction was reversed on appeal and the
10 Defendant was retried. At the conclusion of that case, the jury was unable to reach a verdict
11 and a mistrial was declared. The retrial is presently set to begin on June 11, 2012.

12 Now, acting in proper person, the Defendant files a pleading entitled Motion to
13 Dismiss Based Upon Violation(s) of the Fifth Amendment Component of the Double
14 Jeopardy Clause, Constitutional Collateral Estoppel and, Alternatively, Claiming *Res*
15 *Judicata*, Enforceable by the Fourteenth Amendment Upon the States Precluding State's
16 Theory of Prosecution by Unlawful Intentional Stabbing with Knife, the Alleged Battery Act
17 Described in the Amended Information. The State opposes.

18 **ARGUMENT**

19 **A. Introduction**

20 It is next to impossible to comprehend the contentions put forth by the Defendant in
21 the instant Motion. The arguments are unintelligible and there is little citation to any
22 relevant legal authority. To warrant consideration by a court, issues advanced by a
23 defendant must contain cogent argument supported by relevant legal authority. *See Maresca*
24 *v. State*, 103 Nev. 669, 673 (1987). The Defendant's pleading falls far short of this. What
25 follows is the State's best effort to respond to the claims he makes.

26 **B. This Case is Not Double-Jeopardy Barred**

27 The Defendant appears to argue that the case now pending against him must be
28 dismissed as it is barred by notions of double jeopardy. *See* Def.'s Mot. at 8-11. However,

1 the Nevada Supreme Court has consistently held that retrial after a hung jury does not
2 constitute double jeopardy. *Glover v. District Court*, 125 Nev. 691, 692 (2009); *Peck v.*
3 *State*, 116 Nev. 840, 847-48 (2000), *overruled on other grounds by Rosas v. State*, 122 Nev.
4 1258 (2006); *Sheriff v. Robertson*, 90 Nev. 365, 366 (1974); *Adams v. State*, 86 Nev. 358,
5 359 (1970); *Wheeler v. District Court*, 82 Nev. 225, 229 (1996); *State v. Eisentrager*, 76
6 Nev. 437, 441 (1960).

7 **C. Supreme Court Reversal Does Not Preclude Re-Trial**

8 It is quite clear that the Defendant misapprehends the implication of the Nevada
9 Supreme Court's reversal of his earlier conviction. When the Defendant was first tried for
10 this offense, a jury convicted him of murder of the second degree. The jury in that trial was
11 instructed on a theory of felony second-degree murder based upon NRS 200.070 which was
12 not alleged in the Information. In reversing the conviction, the Supreme Court stated:

13 Here, the district court abused its discretion when it instructed
14 the jury that second-degree murder includes involuntary killings
15 that occur in the commission of an unlawful act because the
16 State's charging document did not allege that O'Keefe killed the
victim while he was committing an unlawful act and the
evidence presented at trial did not support this theory of second-
degree murder.

17 Order of Reversal and Remand, April 7, 2010, at 1-2. The Defendant seems to think that the
18 foregoing language precludes the State from proceeding on *any* theory of murder of the
19 second degree. See Def.'s Mot. at 12-14, 17-22. The Defendant is correct that the State may
20 not proceed on a theory of murder of the second degree predicated upon NRS 200.070;
21 however, it is free to proceed on a theory of "malice murder."

22 The original Information in this case, filed with the Court on December 19, 2008,
23 alleges "open murder." An information charging murder without specifying the degree is
24 sufficient to charge murder in the first and second degree. *Howard v. Sheriff*, 83 Nev. 150,
25 153 (1967). "It is permissible to simply charge murder and leave the degree to be stated by
26 the jury." *Id.* (citations omitted). The resulting murder of the second degree is an unlawful
27 killing with malice aforethought without premeditation and deliberation (i.e. "malice
28 murder").

1 This type of "malice murder" was alleged in the Second Amended Information filed
2 with the Court on August 19, 2010. The Nevada Supreme Court reversed the Defendant's
3 conviction based upon this Court instructing the jury on a theory of murder of the second
4 degree based upon NRS 200.070. That theory was not contained in the Second Amended
5 Information, not provided to the jury in the second trial and not argued to the jury in the
6 second trial. The State is now proceeding on a theory of "malice murder" and there is
7 nothing contained in the Order of Reversal and Remand that prevents it from doing so.

8 **D. Credibility is an Issue for the Jury**

9 The Defendant suggests that certain witnesses should not be allowed to testify
10 because, he believes, they are untruthful. *See* Def.'s Mot. at 15. Weighing the credibility of
11 witnesses is the province of the jury. "[I]t is the jury's function, not that of the court, to
12 assess the weight of the evidence and determine the credibility of witnesses." *Rose v. State*,
13 123 Nev. 194, 202-03 (2007) (quoting *Origel-Candido*, 114 Nev. 378, 381 (1998) (quoting
14 *McNair v. State*, 108 Nev. 53, 56 (1992))). If the Defendant believes that a witness is being
15 untruthful, his remedy is to cross examine them or to introduce evidence to impeach them.

16 **E. The Use of Bad-Act Evidence Does Not Constitute Double Jeopardy**

17 The Defendant appears to be arguing that the use of bad-act evidence, evidence upon
18 which he has already been tried, is double-jeopardy barred. *See* Def.'s Mot. at 16-17. The
19 flaw in this argument, of course, is that the Defendant is not again being placed in
20 "jeopardy" for those prior crimes. Rather, the evidence is being admitted as it is relevant in
21 the instant prosecution.

22 A similar issue was addressed by the Nevada Supreme Court in *McKenna v. State*,
23 114 Nev. 1044 (1998). In that case, the defendant argued that the introduction of his prior
24 bad acts during a penalty hearing violated the prohibition against double jeopardy and his
25 due process rights under the state and federal constitutions. *Id.* at 1058. The Court
26 disagreed:

27 ... NRS 175.552(3) provides that in the penalty hearing evidence
28 may be presented on aggravating and mitigating circumstances
concerning the offense, defendant, or victim, and on any other

1 matter which the court determines is relevant to the sentence.
2 Pursuant to NRS 175.552(3), evidence of appellant's prior bad
3 acts was admissible. We conclude that admission of this
evidence did not violate the prohibition against double jeopardy
or appellant's due process rights

4 *Id.* at 1058-59. The foregoing is analogous to the issue raised by the Defendant in this case.
5 NRS 48.045 allows the introduction of bad-act evidence for a specific purpose. The
6 Defendant is not being retried for those matters. As in *McKenna*, there is no violation of the
7 prohibition against double jeopardy by allowing the jury to consider this evidence in
8 assessing his guilt.

9 CONCLUSION

10 Based upon all of the foregoing, the Defendant's Motion to Dismiss Based Upon
11 Violation(s) of the Fifth Amendment Component of the Double Jeopardy Clause,
12 Constitutional Collateral Estoppel and, Alternatively, Claiming *Res Judicata*, Enforceable by
13 the Fourteenth Amendment Upon the States Precluding State's Theory of Prosecution by
14 Unlawful Intentional Stabbing with Knife, the Alleged Battery Act Described in the
15 Amended Information must be denied.

16 DATED this ___21st___ day of March, 2012.

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

19 BY /s/ Christopher J. Lalli
20 CHRISTOPHER J. LALLI
21 Chief Deputy District Attorney
Nevada Bar #005398

22 CERTIFICATE OF FACSIMILE TRANSMISSION

23 I hereby certify that service of State's Opposition to Defendant's Motion to Dismiss,
24 was made this ___21st___ day of March, 2012, by facsimile transmission to:

25 BRIAN O'KEEFE - #1447732
26 C/O CCDC COURT SERVICES
FAX #671-3763

27 /s/S. Munoz
28 Secretary for the District Attorney's Office

08F23348X: CJL/sam-MVU

24

FILED

MAR 29 2012

CLERK OF COURT

IN THE
ELEVENTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

BRIAN KERRY O'KEEFE

Defendant

#1447732

Case No.: C250630

Dept. No.: XVII

Docket No.: _____

○ HEARING ○

DATE: 4-12-2012

TIME: 8:15 AM

NOTICE OF MOTION AND
MOTION TO ADMIT EVIDENCE OF
POLYGRAPH EXAMINATION
RESULTS.

COMES NOW, BRIAN KERRY O'KEEFE in proper person, to
hereby Motion this Honorable Court in granting defendant's
request to admit the results of his polygraph
as evidence.

This Motion is based upon all the
papers and pleadings on file herein, the attached
points and authorities in support hereof, and oral
argument at the time of hearing, when deemed
appropriate by this Honorable Court.

Dated this 23rd day of MARCH, 2012.

By: Brian K. O'Keefe
Brian K. O'Keefe
C.C.D.C.
No. 66 - #1447732



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MAR 29 2012

CLERK OF THE COURT

003442

POINTS AND AUTHORITIES

On November 5, 2008, O'Keefe was wrongfully charged with Battery Constituting domestic violence and murder, in the death of Victoria Whitmarsh, by stabbing with a knife.

O'Keefe is now facing his third trial on this wrongful charge.

Prior to the first trial, O'Keefe not only volunteered but demanded to take a polygraph test. O'Keefe feels this willingness to initiate and follow through is crucial to his defense.

Even though O'Keefe was informed the result was determined as inconclusive, defendant submitted and took the test. This was not a bluff.

It took the test for the sole reason to reveal the truth. Let's stipulate and allow the jury to hear this as relevant evidence under N.R.S. 48.025. Let's let the jury decide.

Per N.R.S. 50.275, if the Polygraph operator is a renowned expert the results may be considered.

① In Santillanes v. Nevada, 102 NEV. 48, 714 P.2d 184 (1986)

Santillanes contended that the prosecutor was wrong for entering into evidence that if he was "INNOCENT" he would have taken a polygraph test as quickly as possible.

That is O'Keefe's argument. I did not just say
it would. FOR THE RECORD:

a.) I INQUIRED FIRST, INITIATED.

b.) I DEMANDED.

c.) I FOLLOWED THROUGH.

d.) I willingly subjected myself, immediately.

In Santillanes also, the STATE contended that Santillanes
unwillingness to undergo the polygraph test was RELEVANT
because it tends to establish Santillanes' consciousness of
GUILT.

CONVERSELY, then in the INSTANT CASE, let's
let the jury hear the results. IN FACT, let's
get the RECORDED TEST and let the jury VIEW.

The test administered was by a well known and
used certified expert who RECORDED IT.

What
is good for the GOOSE is good, also, for the CANDOR!

Upon stipulation of the parties, the results of
a polygraph examination are admissible with proper
safeguards.

- CORRETT V. STATE, 94 Nev. 643, 584 P.2d 704 (1978)
- DOMINGUES V. STATE, 112 Nev. 683, 21695, 917 P.2d 1364 (1996)
- JACKSON V. STATE, 116 Nev. 324 at 326, 997 P.2d 121 (2000)

CONCLUSION

The defendant realized that taking a POLYGRAPH was risky, so they say.

However, I have nothing to hide. It is what it is.

Since the result was supposed to be INCONCLUSIVE, the jury can take it anyway, being for or against.

It is not that the purpose of a Jury trial.

Let the jury hear the evidence and decide. I humbly request the jury hear and view the test.

THAT'S WHY I TOOK IT!!

DATED THIS 23rd day of MARCH, 2012.

I, BRIAN KERRY O'KEEFE, do

solemnly swear, under the penalty of perjury, that

the above MOTION TO ADMIT EVIDENCE
OF POLYGRAPH EXAMINATION is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Brian K. O'Keefe
BRIAN K. O'KEEFE

Defendant PRO SE

144-7732

IN THE
EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
MAR 22 2012
Clerk of Court

STATE OF NEVADA

Plaintiff,

vs.

BRIAN KERRY O'KEEFE

Defendant

1447732

Case No.: C250630

Dept. No.: XVII

Docket No.:

JUDGE M. Villani

DATE: 04-10-12

TIME:

NOTICE OF MOTION AND
MOTION TO SEAL RECORDS

COMES NOW, BRIAN KERRY O'KEEFE IN PROPER PERSON, to hereby
moves this HONORABLE COURT for an ORDER sealing his
eligible dismissed and acquitted cases, directed to the State.

This Motion is
legally and correctly requested based upon all the papers and
pleadings on file herein, the attached points and authorities
in support hereof, and oral argument at the time of hearing,
when deemed necessary by this HONORABLE COURT.

Dated this 22nd day of MARCH, 2012. Brian K. O'Keefe
BRIAN K. O'KEEFE

BY: C.C.D.C.
330 S. Casino Cr. Blvd.
Las Vegas, NV 89101
PRO SE - # 1447732

MOTION TOTAL (6) pages WITH
EXHIBITS A and B ATTACHED

DEC260830
MOT
McDon
1805190



003416

CLERK OF THE COURT

RECEIVED
MAR 22 2012

MEMORANDUM OF POINTS AND AUTHORITIES

On November 5, 2008, Defendant was wrongfully charged with Battery Constituting Domestic Violence and Murder of Victoria Whitmarsh by stabbing with a knife.

Since, defendant has suffered through 2 trials, on Second-Degree Murder after an acquittal on Direct Appeal. With a 3rd trial scheduled on June 11, 2012, on the SAME statutory charge again, defendant petitions this MOTION.

Defendant feels his due process to a "Fair trial" would be compromised if this MOTION was denied.

● Furthermore, per N.R.S. 179.253 - Sealing records after dismissal or acquittal is perfectly a correct defensive action. We realize that rules and laws were written and passed years ago without any foresight to the days and age of Computers and the INFORMATION HIGHWAY, the internet.

Surely, even though jurors are instructed not to search, its done.

Attached is what defendant will refer to as (EXHIBIT-A) being what Police Records, D.S.D., issued defendant upon a written request for a certified or equivalent thereof, of his criminal score. KEEPING IN MIND, THIS IS

what they issued to the defendant.

Now, recently
having my entire record, twice, reviewed by State's Attorneys
on BAD ACTS OR OTHER CRIMES being litigated,
C. this would easily be now within their knowledge. 55

2.) Defendant requests SEALING:

Justice Court Case Number - (03M26791X)

CHARGE - BATTERY CONSTITUTING DOMESTIC VIOLENCE

DATE - NOVEMBER 26, 2003

DISPOSITION: CASE DISMISSED FOR STATE

EVENT NUMBER: (031126-0903)

b.) Justice Court Case Number - (03M00410X)

CHARGE - BATTERY CONSTITUTING DOMESTIC VIOLENCE

DATE - JANUARY 7, 2003

DISPOSITION: CASE DISMISSED PLED TO RESISTING ARREST

EVENT NUMBER: (030107-0129)

c.) District Case Number (C202793)

CHARGES SEXUAL ASSAULT 4 CTS

CHARGES ATTEMPT SEXUAL ASSAULT 2 CTS

DATE - MAY 29, 2004

DISPOSITION: ACQUITTAL BY JURY TRIAL

EVENT NUMBER: (040529-2232)

J.O.C. FILED - CLARK COUNTY CLERK OF COURT 1-3-2005

TRIAL DATE was OCTOBER 25-28, 2004.

JUDGE SALLY LOEHNER, CLARK CNTY, NEV.
EIGHTH JUDICIAL DISTRICT COURT.

JUDGMENT OF CONVICTION ATTACHED (EXHIBIT B)

1 To the best of my belief, according to my current
2 PRESENTENCE INVESTIGATION REPORT (P.S.I.), there are the
3 agencies that would have knowledge of the ARRESTS.
4

5 2.) LOS ANGELES METROPOLITAN POLICE DEPARTMENT
6

7 b.) NEVADA DIVISION OF PAROLE AND PROBATION
8

9 c.) FEDERAL BUREAU OF INVESTIGATION
10

11 d.) NEVADA CRIMINAL JUSTICE INFORMATION SYSTEM
12

13 e.) CALIFORNIA and OHIO DEPARTMENTS OF JUSTICE
14

15 f.) NATIONAL CRIME INFORMATION CENTER
16

17 g.) SHERIFF'S DEPT. FAIRFIELD COUNTY, OHIO
18 CITY, LANCASTER
19

20 h.) any other known, common standard agency
21 contacted by Nevada, normally.
22

23 AGAIN, ATTACHED. SEE EXHIBIT A & B.
24

- 25
- CRIMINAL SCOPE - EXHIBIT-A
 - J.O.C. - EXHIBIT-B

CONCLUSION

Without a doubt the Court and the State themselves would appropriately Motion for the same.

Statute

179.255 was adopted for this reason of sealing.

It is my legal right under my due process to a fair trial.

I humbly pray Judge M. Villani would understand and appreciate my attempt of capitalizing on an available law, that's available to all.

• Court was hand Delivered by P.I. SKYE CAMPBELL TO THE DISTRICT ATTORNEY'S OFFICE, Clerk of the Court, Judge Villani.

DATED THIS 22nd day of MARCH, 2012.

I, BRIAN KERRY O'KEEFE, do

solemnly swear, under the penalty of perjury, that

the above MOTION TO SEAL is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 209.165.

Sincerely and

Respectfully submitted,

NOTICE OF MOTION
HEARING ON
FRONT AND LISTED
ON R.O.C.

Brian Kerry O'Keefe
Brian: Kerry O'Keefe
Defendant

1447732

1 R.O.C.

2 BRIAN O'KEEFE
3 PRO SE
4 C.O.D.C.

5 IN THE
6 EIGHTH JUDICIAL
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,
10 plaintiff,

11 vs.

12 BRIAN KELLY O'KEEFE,
13 defendant.

14 #1447732

CASE NO: C250630

DEPT NO: XVII

HEARING

DATE: _____

TIME: _____

15 NOTICE OF MOTION
16 AND
17 RECEIPT OF COPY

18
19 RECEIPT OF COPY OF Defendant's MOTION to SEAL
20 RECORDS is hereby acknowledged by:

21
22 X _____

23 DATED MARCH _____ 2012.

24 Representative of
25 District Attorney's Office
Regional Justice Center
200 LEWIS AVENUE
3RD FLOOR
LAS VEGAS, NEVADA 89155

INMATE REQUEST
For
(M2M9)

CRIMINAL
SCOPE

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT

DATED: MARCH 14, 2012

Exhibit-A (4 pgs.)

003422

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
INMATE REQUEST/GRIEVANCE**

NT5

Name: (last) O'Keefe (first) Brian (middle initial)	Floor 5	Date 12 MAR 13 PM 12:05
ID Number 1447732	Housing Unit A	Bed 29
<input checked="" type="checkbox"/> REQUEST <input type="checkbox"/> GRIEVANCE (All grievances must be submitted within 72 hours of incident.)		Prop Number

*Request for transfer to general population
in my criminal dept.*

BRIAN KERRY O'KEEFE

1447732

Inmate's Signature

Date

Staff Person Receiving

Date/Time

Issue has been resolved as follows:

Signature of employee who resolved the Request/Grievance Problem

Date/Time

ORIGINAL—INMATE FILE

YELLOW—RETURNED TO INMATE WITH RESPONSE

PINK—INMATE KEEPS

LAS VEGAS METROPOLITAN POLICE DEPARTMENT *** THE USE AND DISSEMINATION OF THIS RECORD IS REGULATED BY LAW. SECONDARY DISSEMINATION OF ANY KIND IS PROHIBITED AND COULD SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.

THIS INFORMATION RELEASED TO: O'Keefe, BlainBY: A14428B

NM-OKEEFE	BRIAN	KERRY	SID-03013457	000
CS-1447732	BD-03141963	RC-W SX-M HT-510 WT-200	HR-BLN EY-BLU	
AK-MCGILL	BRIAN	CAREY	SID-03013457	001
AK-OKEEFE	BRYAN		SID-03013457	002

** ADDITIONAL DATA OFFLINE **

ARRESTS

ARRESTED 08/04/03 CHARGE: FTA D&P CHEX BW-02F18493X

CHARGE AMENDED TO: D&P CHEX

DISPOSITION: 08/04/03 CONTINUED

SENTENCE: 0000

ARRESTED 01/07/03 CHARGE: BATT DV NO PRIOR CONVICT

DISPOSITION: 08/07/03 FINAL

SENTENCE: PCN 20154385 / DISM

ARRESTED 01/07/03 CHARGE: RESIST-POL OFCR

DISPOSITION: 08/07/03 FINAL

SENTENCE: PCN 20154385 / 20DYS CCDC/4DYS CTS/CONC

ARRESTED 11/14/03 CHARGE: BATT DV NO PRIOR CONVICT

CHARGE AMENDED TO: BATT DOMESTIC VIOL

DISPOSITION: 02/12/04 FINAL

SENTENCE: PCN 20972788/AMD/\$340 FINE/2D CCDC W/CTS/40H COMM SVC

ARRESTED 11/26/03 CHARGE: BATT DV NO PRIOR CONVICT

DISPOSITION: 03/02/04 FINAL

SENTENCE: PCN 21005627 / DISM

ARRESTED 04/03/04 CHARGE: BATT DOMESTIC VIOL

DISPOSITION: 04/03/04 CONTINUED

SENTENCE: 0000

ARRESTED 04/03/04 CHARGE: BATT DOMESTIC VIOL

DISPOSITION: 04/06/04 FINAL

SENTENCE: DENIED BY CA

ARRESTED 05/29/04 CHARGE: SEXUAL ASSLT 4 CTS

CHARGE AMENDED TO: SEXUAL ASSLT

DISPOSITION: 05/29/04 CONTINUED

SENTENCE: PCN 21500368

ARRESTED 05/29/04 CHARGE: BATT W/I SEXUAL ASSLT

DISPOSITION: 05/29/04 CONTINUED

SENTENCE: PCN 21500368

ARRESTED 05/29/04 CHARGE: ATTEMPT SEXUAL ASSLT 2 CTS

CHARGE AMENDED TO: ATTEMPT SEXUAL ASSLT

DISPOSITION: 05/29/04 CONTINUED

SENTENCE: PCN 21500368

ARRESTED 05/29/04 CHARGE: BATT DV NO PRIOR CONVICT

DISPOSITION: 07/28/04 FINAL

SENTENCE: DENIED BY CA

ARRESTED 05/31/04 CHARGE: RMD SEXUAL ASSLT

CHARGE AMENDED TO: SEXUAL ASSLT

DISPOSITION: 05/31/04 CONTINUED

SENTENCE: PCN 21500368

PAGE 001 SID-03013457

M2M9 - SCOPE

DATE: 03/14/12 TIME: 11:54-11:54

LAS VEGAS METROPOLITAN POLICE DEPARTMENT *** THE USE AND DISSEMINATION OF THIS RECORD IS REGULATED BY LAW. SECONDARY DISSEMINATION OF ANY KIND IS PROHIBITED AND COULD SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.

THIS INFORMATION RELEASED TO: _____

BY: _____

ARRESTED 05/31/04 CHARGE: RMD SEXUAL ASSLT

CHARGE AMENDED TO: SEXUAL ASSLT

DISPOSITION: 05/31/04 CONTINUED

SENTENCE: PCN 21500368

ARRESTED 10/29/04 CHARGE: FUG-PROB VIOL

ARRESTED 12/01/04 CHARGE: RMD BATT

ARRESTED 05/03/05 CHARGE: FTA BATT DV 3RD BW-C207835X

ARRESTED 11/05/08 CHARGE: MURDER W/DEAD WEAP

DISPOSITION: 11/05/08 CONTINUED

SENTENCE: PCN 25087611

ARRESTED 03/12/09 CHARGE: FUG PROB VIOL

*** END OF INFORMATION ***

003425

PAGE 002 SID-03013457

THIS RECORD IS BASED ON NAME AND PERSONAL IDENTIFIERS IN YOUR REQUEST. IT HAS NOT BEEN VERIFIED BY FINGERPRINTS. ADDITIONAL MATCHING RECORDS MAY EXIST IN OTHER LOCAL, STATE, OR FEDERAL FILES. A MANUAL SEARCH MAY BE REQUESTED FOR AN ADDITIONAL FEE. USER SHOULD CONTACT THE NEVADA CRIMINAL HISTORY RECORDS REPOSITORY (1-775-687-5713) TO DETERMINE CHRI THAT COULD BE IN FILES OTHER THAN THIS JURISDICTION'S.

003426

JUDGMENT OF
CONVICTION

CASE NO : C202793

FILED JAN. 3, 2005

CLARK COUNTY, NEVADA

EXHIBIT - B (2 pgs.)

1 JOC
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 South Third Street
6 Las Vegas, Nevada 89155-2212
7 (702) 455-4711
8 Attorney for Plaintiff

SA case
acquitted
SA

DISTRICT CO.
CLARK COUNTY,

9 THE STATE OF NEVADA,
10 Plaintiff,

11 ~~vs-~~
12 BRIAN KERRY OKEEFE,
13 #1447732

14 Defendant.

Case No: C202793

Dept No: XV

15 JUDGMENT OF CONVICTION (JURY TRIAL)

16 The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNT 1 -
17 BATTERY WITH INTENT TO COMMIT A CRIME (Felony); COUNT 2 - SEXUAL
18 ASSAULT (Felony); COUNT 3 - SEXUAL ASSAULT (Felony); COUNT 4 - SEXUAL
19 ASSAULT (Felony); COUNT 5 - ATTEMPT SEXUAL ASSAULT (Felony); and COUNT
20 6 - BURGLARY (Felony), in violation of NRS 200.400; 200.364, 200.366; 193.330,
21 200.364, 200.366; 205.060, and the matter having been tried before a jury, and the
22 Defendant being represented by counsel and having been found guilty of the crime(s) of
23 COUNT I - BATTERY (Misdemeanor); and COUNT VI - BURGLARY (Category B
24 Felony), in violation of NRS 200.481; 205.060; and thereafter on the 27th day of December,
25 2004, the Defendant was present in Court for sentencing with his counsel, [REDACTED]
26 [REDACTED], and good cause appearing therefor,

27 THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the
28 jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, a \$150.00 DNA

1 Analysis Fee and submit to testing to determine genetic markers, the Defendant is sentenced
2 as follows: on COUNT 6 - to a minimum of twenty-four (24) months and a maximum of one
3 hundred twenty (120) months in the Nevada Department of Corrections; SUSPENDED;
4 placed on probation for an indeterminate period not to exceed five (5) years, and on COUNT
5 1 - Defendant sentenced to CREDIT FOR TIME SERVED. CONDITIONS: 1) No contact
6 with the victim initiated by Defendant. Court advised Defendant any contact that the victim
7 initiates will not be a problem for him; 2) Search clause/burglary tools; 3) Complete
8 Domestic Violence counseling; 4) Secure and maintain full time employment; 5) Mental
9 Health counseling as deemed necessary by Parole and Probation; 6) Resolve the warrant
10 from the State of Ohio within the next one hundred twenty (120) days; 7) Four (4) hours of
11 community service work each week. Case closed.

12 DATED this 30 day of December, 2004.

13
14 STEWART L. BELM *for* SALLY LOEHNER
15 DISTRICT JUDGE
16
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21

22
23
24 CERTIFIED COPY
25 DOCUMENT ATTACHED IS A
26 TRUE AND CORRECT COPY OF
27 THE ORIGINAL OR ELECTRONICALLY
28 FILED DOCUMENT ON FILE

26 005 JAN -3 P 4: 03

27 *Shirley B. Rungius*
28 da CLERK

District Court
Clark County, Nevada

FILED

APR 3 12 42 PM '12

State of Nevada

Plaintiff

Case No. C250630 *L. Johnson*
CLERK OF THE COURT

Dept. No. XXII

Docket No. _____

VS.

BRIAN KELLY O'KEEFE

1447732 Defendant

C 250630

HD: 4-17-12
8:15 AM

Motion for Complete Rough Draft Transcript

Comes now the defendant BRIAN O'KEEFE, and moves

this Honorable Court to grant an order requiring complete transcript

of the MOTION TO DISMISS hearing held on MARCH 29, 2012 (8:15 AM)

This motion for complete copy of the transcript is based upon all paper,

pleading and documents on file, factual statement set forth in the Points,

and Authorities, contained therein.

Brian O'Keefe do

Solemnly Swear, under the penalty of perjury, that

the above afforementioned motion for Complete Transcript

is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.155

Respectfully Submitted

Defendant

DATED MARCH 29, 2012

Brian O'Keefe

000250630
MOT
NRS
1516045



3430

CLERK OF THE COURT

APR 3 2012

RECEIVED


CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2830
christopher.lalli@ccdanv.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,
#0144732

Defendant.

Case No: 08C250630

Dept. No: XVII

Date: April 10, 2012

Time: 8:15 a.m.

STATE'S OPPOSITION TO MOTION TO SEAL RECORDS

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER J. LALLI, Chief Deputy District Attorney, and hereby opposes the Defendant's Motion to Seal Records. This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

DATED this 5th day of April, 2012.

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

BY /s/ Christopher J. Lalli
CHRISTOPHER J. LALLI
Chief Deputy District Attorney
Nevada Bar #005398

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1 also been arrested for more serious crimes including drug crimes
2 and crimes involving violence. He has convictions dated 1984,
3 1987, 1988, 1989 and 1990. As revealed by his record of arrests
4 and convictions, *respondent is simply not the type of person upon
whom the judiciary will confer such a substantial benefit as the
sealing of his criminal records.*

5 *Id.* at 412-13 (emphasis added).

6 *Cavaricci* is strikingly similar to the case now before His Honor. The only time the
7 Defendant is not getting arrested is when he is in jail or prison. As in *Cavaricci*, the
8 Defendant is now facing a far more serious charge. Moreover, the charge is pending. In
9 short, this Defendant is "simply not the type of person upon whom the judiciary will confer
10 such a substantial benefit as the sealing of his criminal records."

11 DATED this 5th day of April, 2012.

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #001565

15 BY /s/ Christopher J. Lalli
16 CHRISTOPHER J. LALLI
17 Chief Deputy District Attorney
18 Nevada Bar #005398

19 CERTIFICATE OF MAILING

20 I hereby certify that service of the above and foregoing, was made this ____ 5th ____
21 day of April, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

22 BRIAN KERRY OKEEFE BAC #90244
23 C/O HIGH DESERT STATE PRISON
24 P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070-0650

25 /s/S. Munoz
26 Secretary for the District Attorney's Office

27
28 08F23348X: CJL/sam-MVU

ORIGINAL

FILED 30

APR 11 2012

Ch. Lalli
CLERK OF COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -VS-

CASE NO: 08C250630

DEPT NO: XVII

13 BRIAN O'KEEFE, aka
14 Brian Kerry Okeefe, #1447732

15 Defendant.

16 **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

17 DATE OF HEARING: 03/29/2012

18 TIME OF HEARING: 8:15 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 29th day of March, 2012, the Defendant being present, IN PROPER PERSON, the Plaintiff
21 being represented by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER
22 J. LALLI, Chief Deputy District Attorney, and the Court having heard the arguments of
23 counsel and good cause appearing therefor,

24 ///

25 ///

26 ///

27 ///

28 ///

08C250630
ODM
Order Denying Motion
1822386



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003434

RECEIVED

APR 11 2012

CLERK OF THE COURT

RECEIVED BY
DEPT. 17 ON

APR 05 2012

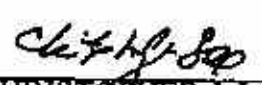
7 - 2

1 COURT FINDS, there is no issue of double jeopardy in this particular matter and the
2 State is not precluded from introducing bad act evidence under NRS 48.045. The Nevada
3 Supreme Court reversal does not preclude a retrial; IT IS HEREBY ORDERED that the
4 Defendant's Motion to Dismiss, shall be, and it is DENIED.

5 DATED this 10 day of April, 2012.

6
7 
8 DISTRICT JUDGE *cr*

9
10 STEVEN B. WOLFSON
11 Clark County District Attorney
12 Nevada Bar #001565

13 
14 CHRISTOPHER J. LALLI
15 Chief Deputy District Attorney
16 Nevada Bar #005398
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28 08F23348X/sam-MVU


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2830
11 christopher.lalli@ccdanv.com
12 Attorney for Plaintiff
13

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BRIAN KERRY O'KEEFE, #1447732

14 Defendant.

Case No: 08-C-250630

Dept. No: XVII

Date: April 26, 2012

Time: 8:15 a.m.

15 **STATE'S SUPPLEMENTAL OPPOSITION TO MOTION**
16 **TO SEAL RECORDS**

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
18 through CHRISTOPHER J. LALLI, Chief Deputy District Attorney, and hereby opposes the
19 Defendant's Motion to Seal Records. This Opposition is made and based upon all the papers
20 and pleadings on file herein, the attached points and authorities in support hereof, and oral
21 argument at the time of hearing, if deemed necessary by this Honorable Court.

22 DATED this 17th day of April, 2012.

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar #001565

26 BY /s/ Christopher J. Lalli
27 CHRISTOPHER J. LALLI
28 Chief Deputy District Attorney
Nevada Bar #005398

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On March 22, 2012, Brian Kerry O'Keefe (hereinafter "the Defendant") filed a
3 Motion to Seal Records. The State filed an Opposition on April 5, 2012. The Motion was
4 scheduled to be heard on April 10, 2012. However, on that day, the Court asked that the
5 parties address the applicability of NRS 179.245(4) to the instant matter.

6 As do subsections (6) and (7) which are referenced in the State's Opposition, NRS
7 179.245(4) employs discretionary language when empowering the court to seal a criminal
8 record. "... [T]he court *may* order sealed all records" The analysis, therefore, in the
9 State's Opposition does not change. It would be an abuse of discretion to seal the
10 Defendant's records because he is "simply not the type of person upon whom the judiciary
11 will confer such a substantial benefit as the sealing of his criminal records." *See State v.*
12 *Cavaricci*, 108 Nev. 411, 412-13 (1992).

13 DATED this 17 day of April, 2012.

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

17 BY /s/ Christopher J. Lalli
18 CHRISTOPHER J. LALLI
19 Chief Deputy District Attorney
20 Nevada Bar #005398

21 **CERTIFICATE OF FACSIMILE TRANSMISSION**

22 I hereby certify that service of State's Supplemental Opposition To Motion To Seal
23 Records, was made this 17th day of April, 2012, by facsimile transmission to:

24 BRIAN KERRY O'KEEFE, #1447732
25 CCDC / 671-3763

26 BY: /s/ R. Johnson
27 R. JOHNSON
28 Secretary for the District Attorney's Office

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
APR 19 2012
John L. Hill
CLERK OF COURT

STATE OF NEVADA

Plaintiff,

vs.

BRIAN KERRY O'KEEFE

Defendant

#1447732

Case No.: CZ50630

Dept. No.: XVII

Docket No.: Judge M. Villani

HEARING • APRIL 26, 2012

DATE - TIME • 08:15 AM

NRS 179.255

NRS 179.245

FILING IN SUPPORT OF MOTION
TO SEAL RECORDS AS ORDERED BY JUDGE

COMES NOW, Brian Kerry O'Keefe in proper person, to
hereby return additional argument to his prior MOTION TO
SEAL RECORDS heard by Judge Villani on April 10, 2012.

This is in compliance with the oral ORDER in the
minutes.

This response is made and based upon all the
papers and pleadings on file herein, the attached points and
authorities in support hereof, and oral argument at the time
of hearing above, deemed necessary by this HONORABLE COURT.

Dated this 14th day of April, 2012. By: Brian O'Keefe
Brian O'Keefe
C.C.D.C.
370 S. Casino Ct. Blvd.
Las Vegas, NV. 89101
720 CE 5 1447732

09CZ50630
FILE
Filing
1629302



RECEIVED

APR 19 2012

CLERK OF THE COURT

3498

MEMORANDUM OF POINTS AND AUTHORITIES

On November 5, 2008, defendant was wrongfully charged with Battery Constituting Domestic Violence and Murder of Victim Whitmarsh by an alleged stabbing with a knife.

Since, defendant has suffered a second trial and has a third trial date stated in violation of the laws and treaties of the U.S. Constitution after a finding of NO CRIMINAL INTENT and INSUFFICIENT EVIDENCE on DIRECT APPEAL.

IN preparation for his wrongful THIRD trial, on the SAME OFFENSE, defendant O'Hare filed a MOTION TO SEAL RECORDS per N.R.S. 179.255, pertaining to Sealing of Records exclusively for DISPOSITIONS of dismissal or acquittal.

The Judge requested defendant O'Hare to file this response per N.R.S. 179.245 (4), pertaining to Sealing Records after conviction(s).

Defendant submits he is not petitioning for any ACTION pertaining to this STATUTORY LAW. Defendant is only concerned with statute NRS 179.255 which has no time restraints. Provisions of 179.255 clearly STATE if a defendant

1 who has been arrested for alleged criminal conduct and
2 the charges are dismissed or such person is acquitted
3 of the charges, the person MAY PETITION.

4 Everything required per N.R.S. 179.255
5 was attached in the initial Motion to Seal
6 heard on April 11, 2012.

7 Petitioner would like
8 to point out the State has extensively groomed his
9 record throughout 2 Petrelli hearings specifically
10 on such acts.

11 In the last hearing, no acts
12 being dismissed or by way of an acquittal are being
13 entered.

14 Petitioner also patiently waited 13
15 months for the last decision.

16 I only ask
17 the Honorable Court consider defendant's motion
18 in hopes of a fair trial.

19 Due process allows for
20 such especially when created by statutory law.
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CONCLUSION

Defendant humbly requests Judge Villani grant his Motion. Judge Villani made mention that a Motion requesting such was never Filed before. That's EXACTLY why I'm petitioning the Court now.

CERTIFICATE OF MAILING

Motion was hand delivered to the clerk of the Court.

DATED THIS 14 day of April, 2012.

I, BRIAN O'KEEFE, do

solemnly swear, under the penalty of perjury, that

the above FILED IN SUPPORT OF MOTION
TO SETL RECORD AS ORDERED
BY JUDGE is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Brian O'Keefe
BRIAN O'KEEFE
Defendant

-4- #1447732

44

ORD
BRIAN KERRY O'KEEFE
C.C.D.C.
330 S. CASINO CTR.
LAS VEGAS, NEVADA 89101
PRO SE

FILED
APR 30 2012
CLERK OF COURT

EIGHTH JUDICIAL
DISTRICT COURT
CLARK COUNTY, NEVADA

DOC#00030
ORDA
Order
1837688



THE STATE OF NEVADA,
Plaintiff,

vs.

BRIAN KERRY O'KEEFE,
Defendant.

CASE NO.: C250630

DEPT NO.: XVII

ORDER FOR TRANSCRIPTS

IT IS HEREBY ORDERED and granted that the transcripts for Defendant's MOTION TO DISMISS, heard by this HONORABLE COURT ON MARCH 29, 2012, will be transcribed.

DATED this 26th day of APRIL, 2012

Respectfully Submitted by:
Brian O'Keefe
BRIAN O'KEEFE
C.C.D.C.
PRO-SE

[Signature]

DISTRICT COURT JUDGE
MICHAEL P. VILLANI

RECEIVED

APR 30 2012

CLERK OF THE COURT

3442


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Deputy District Attorney
Nevada Bar #10681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRYAN O'KEEFE, aka,
Brian Kerry O'Keefe, #1447732
Defendant.

CASE NO: C-08-250630-1

DEPT NO: XVII

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: BRYAN O'KEEFE, aka, Brian Kerry O'Keefe, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

1.) WERNIKOVE-GREENE, ELYNEE, Who will testify regarding the cycle of
abuse, power and control dynamics, victim behavior in domestic violence relationships, and
other related topics.

The substance of each expert witness' testimony and a copy of all reports made by or
at the direction of the expert witness has been provided in discovery.

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1 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
2

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY /s/ LIZ MERCER
7 LIZ MERCER
8 Deputy District Attorney
9 Nevada Bar #10681
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1 CERTIFICATE OF FACSIMILIE TRANSMISSION

2 I hereby certify that service of Notice of Expert Witnesses, was made this 17th
3 day of Type month, 2011, by facsimilie transmission to:

4 LANCE MANINGO, ESQ.
5 FAX# 452-6298

6
7 BY: /s/ T. SCHESSLER
8 Employee of the District Attorney's Office

9
10 CERTIFICATE OF MAILING

11 I hereby certify that service of the above and foregoing, was made this 17th day of
12 May, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

13
14 BRIAN O'KEEFE
15 #1447732
16 5A29S
17 CLARK COUNTY DETENTION CENTER
18 330 S. CASINO CENTER BLVD
19 LAS VEGAS NEVADA 89101

20 /s/ T. SCHESSLER
21 Secretary for the District Attorney's
22 Office
23
24
25
26
27
28

ELYNNE GREENE

EMPLOYMENT HISTORY

1981 – 1988 Creative Arts Therapist, Fairmount Institute, Philadelphia, Pennsylvania
1983 – 1988 Family Therapist & Addictions Counselor, Private Practice, Mt. Laurel, New Jersey
1988- 1991 Director of Crisis Intervention Services and Domestic Violence Shelter EYE Counseling and Crisis Services, Escondido California
1991 – 1992 Director of Training & Education Altercrest Juvenile Sex Offender Treatment, Cincinnati, Ohio
1992 – Present LVMPD Victim Services Detail Las Vegas Metropolitan Police Department, Las Vegas, Nevada
2008- Present Acting Program Coordinator of the Southern Nevada Human Trafficking Task Force

EDUCATION

1975- Hahnemann University College Accelerated Program, **High School Diploma**
1979 - Temple University, **B.S. Psychology**
1981 - Lesley University, **MA Counseling and Creative Arts Therapies**
1986 – **Certificate** in Structural Family Therapy, Philadelphia Child Guidance Center

PROFESSIONAL QUALIFICATIONS

National Credentialed Advocate, Advanced, National Organization for Victim Assistance
NACP #N87-268-5746, Since 2005
POST Certified Trainer, Instructor Development, 1994
National Victim Assistance Academy, Washington DC, 1995
National Victim Assistance Academy, Faculty Development, Washington, DC, 1996
AB348 Task Force, 1998
Advanced Instructor Development, 2000
NDOJ Domestic Violence Train the Trainer, 2004
Domestic Violence Expert Witness Training, 2004
Rick Culley 360 Leadership Program, 2009- 2010
Clark County, Child Protective Services/Domestic Violence Work Group, 2009
Child Advocacy Center Stakeholders' Workgroup, 2009

PROFESSIONAL MEMBERSHIPS /AFFILIATIONS

San Diego Domestic Violence Task Force, Executive Committee 1989 - 1990
Nevada Network Against Domestic Violence , Board Member, 1995 - 2000
National Organization for Victim Assistance, Membership

National Center for Victims of Crime, Membership
Nevada State Domestic Violence Prevention Council
The Shade Tree Board of Trustees, 1993 - Present
Southern Nevada Domestic Violence Task Force, President
Community Coalition for Victims' Rights, Treasurer

PRESENTATIONS/COURSES TAUGHT

Sexual Assault Team/SART Trainer, 1989 – 1991
Police and Corrections Academies for LVMPD since 1993
In-service Training on Victim Issues for LVMPD, since 1993
National Organization for Victims of Crime 20th Annual Conference, 1994
Nevada Network Against Domestic Violence Statewide Conference, 1994
Latino Peace Officers' Association, 1994
Nevada Sheriff's and Police Chief's Association, 1996
UNLV Sexual Assault Peer Education Training, 1999
Nevada POST I and II Basic Training, Community College of Southern Nevada, 2001
LVMPD No Hitter Conference, 2001
Nevada Network Against Domestic Violence Statewide Conference, 2002
Las Vegas Municipal Court Annual Domestic Violence Conference, 2002
Child Advocacy Center Stakeholders' Workgroup, 2009
Teen Dating Violence Course, Bishop Gorman High School, 2010 – Present

AWARDS/RECOGNITION

Families of Murder Victims Victim Rights Week Award, 1996
Families of Murder Victims Victim Rights Week Award, 2000
Shade Tree Volunteer Service Award, 2009
Southern Nevada Domestic Violence Task Force STAR Award, 2010

ORIGINAL

FILED

MAY 24 2012

CLERK OF COURT

1 **ORDER**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Chief Deputy District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

08C250630
ODM
Order Denying Motion
1863814



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 BRIAN O'KEEFE, aka
14 Brian Kerry Okeefe, #1447732
15 Defendant.

CASE NO: 08C250630

DEPT NO: XVII

16 **ORDER DENYING DEFENDANT'S MOTION TO SEAL RECORDS &**
17 **DEFENDANT'S MOTION TO ADMIT EVIDENCE OF POLYGRAPH**
18 **EXAMINATION**

19 DATE OF HEARING: 04/26/2012
20 TIME OF HEARING: 8:15 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 26th day of April, 2012, the Defendant being present, IN PROPER PERSON, the Plaintiff
23 being represented by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER
J. LALLI, Chief Deputy District Attorney, and the Court having heard the arguments of the
defendant and counsel, the Court finds as follows:

AS TO the Defendant's Motion to Seal Records, the Defendant represented that Case
No. C202793 was dismissed when, in fact, he was found guilty in that case. The Defendant
represented that Case No. 03M00410X was dismissed when, in fact, he plead guilty to one of
the counts in that case. In addition, Case No. 03M26791X was not dismissed on the merits

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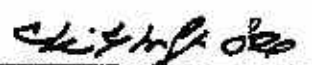
1 but was dismissed pursuant to negotiations. Moreover, the Court finds that the Defendant
2 has an active pending case wherein he is charged with murder. Based upon *State v.*
3 *Cavaricci*, 108 Nev. 411, 412-13 (1992), the Court finds it would be an abuse of discretion
4 to grant the instant motion; NOW THEREFORE, good cause appearing, IT IS HEREBY
5 ORDERED that the Defendant's Motion to Seal Records, shall be, and it is DENIED.

6 AS TO the Defendant's Motion to Admit Evidence of Polygraph Examination, the
7 Court believes that polygraph examinations are typically not admitted into evidence because
8 there is a dispute as to the reliability of such examinations. The Court further believes that
9 admitting evidence of the Defendant's prior polygraph examination would adversely affect
10 the Defendant's constitutional right to a fair trial; NOW THEREFORE, good cause
11 appearing, IT IS HEREBY ORDERED that the Defendant's Motion to Admit Evidence of
12 Polygraph Examination, shall be, and it is DENIED.

13 DATED this 23 day of May, 2012.

14
15 
16 DISTRICT JUDGE *ca*

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

20
21 
22 CHRISTOPHER J. LALLI
23 Chief Deputy District Attorney
Nevada Bar #005398

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