

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. Id. After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 ***Forensic evidence***

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 "bar improper prosecutorial arguement." The State's response follows.

22 **ARGUMENT**

23 The prosecution does not intend to commit "improper prosecutorial
24 argument" during the prosecution of the instant case. The State respectfully
25 assumes that all counsel in cases of this magnitude will comply with all commonly
26 understood ethical rules.

27 The instant motion presents no cognizable request for relief and is
28 apparently designed to provide an incorrect tome on prosecutorial misconduct and

1 to anticipatorily offend representatives of the State long before the commencement
2 of trial. It carries the identical weight that a motion by the State to bar ineffective
3 assistance of defense counsel at trial would carry with this Court.

4 Counsel for the State has no intention of providing the defense with a copy
5 of its opening statement or closing argument prior to trial. The defense cites no
6 authority for the request that the State should be required to "indicate which, if
7 any, of the arguments set forth..." in the Defendant's motion "the State believes it
8 would be permitted to make, whatever the possible context" (See p. 17 of
9 Defendant's motion).

10 The undersigned Deputy District Attorney is aware of the ethical
11 obligations inherent in prosecuting criminal cases. If and when defense counsel
12 hears arguments in this case he or she feels are objectionable, counsel is obligated
13 to object.

14 The instant motion is one made routinely by defense counsel in Murder
15 cases. However, as this Court is clearly aware, the rules of evidence and procedure
16 are no different in Murder cases than in other cases, save for the special procedural
17 requirements of Supreme Court Rule 250 in a capital case, of which this case is
18 not. Objections to evidence or argument are necessary to provide the Court with
19 the opportunity to make a ruling on the objection based upon the arguments of
20 counsel and relevant case law, instruct the jury on the ruling and, if necessary,
21 admonish the jury with an appropriate curative instruction. Generally, objections
22 must be made contemporaneous with the admission of evidence or argument
23 complained of and must reasonably indicate the appropriate rules of evidence as
24 reasons for the objection. McCormick on Evidence, 2nd Ed., section 52, p. 115
25 (1972); 1 Wigmore, Evidence, section 18(c)(1) and (2). Continuing objections are
26 generally reserved for objections to the same type of evidence presented in a
27 cumulative fashion, all such objections necessarily made on the same legal
28 grounds. 6 Am Jur Trial, section 620 (1967). The continuing objection is not

1 appropriate when the defense has, as they have here, outlined sixteen (16) different
2 types of purported objectionable conduct. What is appropriate is the prosecution's
3 assurance to the Court that it will abide by its ethical obligations and the rules of
4 evidence and procedure in this case, as the undersigned counsel does in all cases.

5 Based upon the foregoing, the instant motion should be denied. This Court
6 can not anticipatorily sustain objections never made to evidence or arguments not
7 yet presented. Likewise, a "continuing objection" to prosecutorial misconduct is
8 inappropriate and nowhere supported by case authority. It also prevents the court
9 from conducting a fair trial by usurping the Court's authority to rule on objections,
10 strike certain portions of evidence or argument and instruct the jury based upon the
11 Court's rulings.

12 **CONCLUSION**

13 Based on the foregoing, Defendant's Motion to Bar Improper Prosecutorial
14 Argument should be denied.

15 DATED this 1st day of February, 2010.

16 DAVID ROGER
17 Clark County District Attorney
Nevada Bar #002781

18 BY /s/JOSHUA TOMSHECK

19 JOSHUA TOMSHECK
20 Deputy District Attorney
Nevada Bar #009210

21
22 **CERTIFICATE OF FACSIMILE TRANSMISSION**

23 I hereby certify that service of the above and foregoing, was made this 1st day of
24 February, 2010, by facsimile transmission to:

25 Special Public Defender.
FAX #455-6273

26 /s/ANJA BETHANY FLETCHER
27 Secretary for the District Attorney's
Office

28 08FN2467X/GCU:abf


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **JOSHUA TOMSHECK**
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LESEAN TARUS COLLINS,
14 #0857181)

15 Defendant.)

CASE NO: C252804

DEPT NO: IX

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO**
17 **PRECLUDE REFERENCES TO THE DECEASED AS THE "VICTIM"**

18 DATE OF HEARING: February 8, 2010
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion in Limine to Preclude References to the
23 Deceased as the "Victim."

24 This OPPOSITION is made and based upon all the papers and pleadings on file
25 herein, the attached points and authorities in support hereof, and oral argument at the time of
26 hearing, if deemed necessary by this Honorable Court.

27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15
16
17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

23
24
25
26
27
28

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. *Id.* After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 ***Forensic evidence***

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 preclude references to Brandi Payton as a "victim." The State's response follows.

22 **LEGAL ARGUMENT**

23 The State of Nevada has made specific statutory provisions to define the term
24 "victim." NRS 217.070 defines "Victim" as follows:

25 "Victim" means:

- 26 1. A person who is physically injured or killed as the
27 direct result of a criminal act;
28 2. A minor who was involved in the production of
pornography in violation of NRS 200.710, 200.720,
200.725 or 200.730;

1 3. A minor who was sexually abused, as "sexual abuse"
is defined in NRS 432B.100;

2 4. A person who is physically injured or killed as the
3 direct result of a violation of NRS 484.379 or any act
or neglect of duty punishable pursuant to NRS
484.3795;

4 5. A pedestrian who is physically injured or killed as
the direct result of a driver of a motor vehicle who
5 failed to stop at the scene of an accident involving the
driver and the pedestrian in violation of NRS 484.219;
6 or

6 6. A resident who is physically injured or killed as the
7 direct result of an act of international terrorism as
defined in 18 U.S.C. § 2331(1).

8 The term includes a person who was harmed by any of
9 these acts whether the act was committed by an adult
or a minor.

10 The crimes that Defendant is accused of committing are listed in NRS Chapter 200,
11 specifically NRS 200.508, "Crimes Against the Person," a human being. As such, there
12 must be a victim, in order to even charge the crimes contained in the Information. Following
13 the Defendant's logic that the use of the term victims serves to "provide an appearance of
14 guilt" in the jury's mind, the State could argue that by granting Defendant's motion, this
15 Court would be prejudicing the people of the State of Nevada by not allowing identification
16 of the victim as the victim. According to Defendant's logic, the State and the court should
17 be precluded from even informing the jury of what Defendant is charged with as this
18 certainly would be prejudicial to the presumption of innocence.

19 Obviously, there has been no specific legislation or case law in Nevada which
20 indicates when the term "victim" is inappropriate in a courtroom, during a criminal case.
21 Throughout the years, defense attorneys have made this request with absolutely no authority
22 or logic behind it. Should the defense wish to argue that a reference to the victim does not
23 mean defendant is guilty; that is fair; however, for a Court to start limiting language and
24 precluding one word over another is a slippery slope that eventually avalanches the jury's
25 ultimate question.

26 The State assures this Court that the State has no intention of "overusing" the term
27 victim. To the extent that it is possible, the State agrees to abide by the Defendant's request
28 to term Brandi Payton by name. However, given the confines of NRS 200 (inclusive) and

1 NRS 217.070, the State should certainly not be prejudiced if a witness refers to Brandi
2 Payton as a victim or if the prosecution uses the word victim where appropriate. It becomes
3 an exercise in futility for the parties and this Court to spend inordinate amounts of time
4 carving out exceptions to which words can and cannot be used and which semantics are
5 prejudicial or "correct" or "incorrect." Motions and blanket rulings such as these should be
6 discouraged.

7
8 **CONCLUSION**

9 The State respectfully requests that Defendant's Motion in Limine to Preclude
10 References to the Deceased as the "Victim" be DENIED.

11 DATED this 1st day of February, 2010.

12 DAVID ROGER
13 Clark County District Attorney
14 Nevada Bar #002781

15 BY /s/JOSHUA TOMSHECK
16 JOSHUA TOMSHECK
17 Deputy District Attorney
18 Nevada Bar #009210

19 **CERTIFICATE OF FACSIMILE TRANSMISSION**

20 I hereby certify that service of the above and foregoing, was made this 1st day of
21 February, 2010, by facsimile transmission to:

22
23 Special Public Defender.
24 FAX #455-6273

25 /s/ANJA BETHANY FLETCHER
26 Secretary for the District Attorney's
27 Office

28 08FN2467X/GCU:abf


CLERK OF THE COURT

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JOSHUA TOMSHECK
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LESEAN TARUS COLLINS,
14 #0857181)

15 Defendant.)

CASE NO: C252804

DEPT NO: IX

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL**
17 **DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS,**
18 **OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL**
19 **TREATMENT FOR COOPERATION WITH PROSECUTION**

20 DATE OF HEARING: February 8, 2010
21 TIME OF HEARING: 9:00 A.M.

22 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
23 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
24 and Authorities in Opposition to Defendant's Motion to Compel Disclosure of Existence and
25 Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for
26 Cooperation with Prosecution.

27 This OPPOSITION is made and based upon all the papers and pleadings on file
28 herein, the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. Id. After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 *Forensic evidence*

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 "Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of
22 Benefits or Preferential Treatment for Cooperation with Prosecution." The State's response
23 follows.

24 ///

25 ///

26 ///

27 ///

28 ///

1

2

8

4

5

9

0

3

6

7

8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 1st day of February, 2010, by facsimile transmission to:

Special Public Defender.
FAX #455-6273

/s/ANJA BETHANY FLETCHER
Secretary for the District Attorney's
Office

08FN2467X/GCU:abf


CLERK OF THE COURT

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JOSHUA TOMSHECK
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

CASE NO: C252804

12 -vs-)

DEPT NO: IX

13 LESEAN TARUS COLLINS,
14 #0857181)

15 Defendant.

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ALLOW JURY**
17 **QUESTIONNAIRE**

18 DATE OF HEARING: February 8, 2010
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion to Allow Jury Questionnaire.

23 This OPPOSITION is made and based upon all the papers and pleadings on file
24 herein, the attached points and authorities in support hereof, and oral argument at the time of
25 hearing, if deemed necessary by this Honorable Court.

26 ///

27 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. *Id.* After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 *Forensic evidence*

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 allow a Jury questionnaire. The State's response follows.

22 **ARGUMENT**

23 The Defense has suggested that the jury in the present matter be selected with the
24 assistance of a "jury questionnaire." While the State concedes that this method is helpful in
25 some cases, such as cases with extremely sensitive issues such as capital cases, lengthy cases
26 that will require especially long juror participation, or cases which carry with them a great
27 deal of public or media attention, it is the State's position that utilizing the method suggested
28 by counsel for Defendant in selecting a jury in the case at bar is not necessary to ensure a fair

1 trial for the Defendant and is not in the interest of judicial economy.

2 NRS 175.031 governs the examination of trial jurors in the Nevada courts. It
3 provides:

4 "The court shall conduct the initial examination of prospective jurors and
5 defendant or his attorney and the district attorney are entitled to supplement
6 the examination by such further inquiry as the Court deems proper. Any
7 supplemental examination must not be unreasonably restricted."

8 The Eighth Judicial District Courts have set forth a procedure to implement the
9 aforementioned statute. EDCR Rule 7.70 provides:

10 "The judge shall conduct the voir dire examination of the jurors. Proposed
11 voir dire questions by the parties or their attorneys must be submitted to the
12 court in chambers not later than 4:00 p.m. on the judicial day before the day
13 the trial begins. Upon request of counsel, the trial judge may permit such
14 counsel to supplement the judge's examination by oral and direct questioning
15 of any of the prospective jurors. The scope of such additional questions or
16 supplemental examination shall be within reasonable limits prescribed by the
17 trial judge in his sound discretion."

18 The State submits that the method as set forth in the above statutes is an
19 adequate method of selecting a fair and impartial jury in the case at bar.

20 Is support of its request to use a jury questionnaire, defense Counsel states
21 that the jury questionnaire will "expedite the jury selection process..." (Motion at
22 pg. 3). This statement is troubling to the State for two (2) reasons. First, while in
23 theory a questionnaire may save time, in practice, this is simply not the case.
24 Traditionally, the jury spends several hours answering the questions and filling out
25 the questionnaire, and counsel reiterates much of what is asked in the questionnaire
26 through traditional voir dire questions. The procedure requested by counsel quite
27 likely makes the jury selection process longer and more tedious. Secondly, the
28 case at hand has received very little, if *any*, publicity, let alone the type of

1 extensive and highly prejudicial publicity a properly utilized jury questionnaire
2 would serve to alleviate.

3 Recently in the case of Summers v. State, 102 Nev. 195, 718 P.2d 676
4 (1986), the Nevada Supreme Court held that the scope and method of voir dire
5 examination is subject to the sound discretion of the trial court. A number of other
6 state courts have ruled on this issue. For the most part, in cases in which there
7 hasn't been a great deal of pre-trial publicity, the courts have ruled that it was not
8 error for the trial court to deny the Defendant's motion for alternative jury selection
9 methods, such as individual voir dire.

10 The case before this Court contains only two (2) counts, is not a capital
11 case, does not have any overly-sensitive issues, and is not as "high profile" a case
12 as many recent Murder cases within Clark County where jury questionnaires were
13 not utilized. Moreover, the case at hand is not anticipated to be a long Trial, and
14 will not require the State calling an extensive number of witnesses. Finally, the
15 District Court Rules give the Defendant the opportunity to submit questions to the
16 court to address any issues that the Defense may want to raise during the voir dire
17 process. As such, it is the State's position that by utilizing the statutory procedure
18 in selecting a jury in the case at bar a fair and impartial jury will be selected.

19 In the event that this Court is inclined to allow the Defendant's request for a
20 jury questionnaire, the State simply asks that the defense be required to submit a
21 sample questionnaire for the State's review in a timely manner so that any
22 objections to its content can be addressed with the Court prior to the questionnaires
23 being submitted to the pool of potential jurors.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Wherefore, the State respectfully asks that the defense Motion for Jury Questionnaire be denied.

DATED this 1st day of February, 2010.

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/JOSHUA TOMSHECK

JOSHUA TOMSHECK
Deputy District Attorney
Nevada Bar #009210

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 1st day of February, 2010, by facsimile transmission to:

Special Public Defender.
FAX #455-6273

/s/ANJA BETHANY FLETCHER
Secretary for the District Attorney's
Office

08FN2467X/GCU:abf


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **JOSHUA TOMSHECK**
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LESEAN TARUS COLLINS,
14 #0857181)

15 Defendant.)

CASE NO: C252804

DEPT NO: IX

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO**
17 **PRECLUDE ADMISSION OF PHOTOGRAPHS.**

18 DATE OF HEARING: February 8, 2009
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion in Limine to Preclude Admission of
23 Photographs.

24 This OPPOSITION is made and based upon all the papers and pleadings on file
25 herein, the attached points and authorities in support hereof, and oral argument at the time of
26 hearing, if deemed necessary by this Honorable Court.

27 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why the police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. Id. After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 ***Forensic evidence***

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 preclude admission of photographs. The State's response follows.

22 **ARGUMENT**

23 The Defendant has titled his Motion "Motion in Limine to Preclude Admission of
24 Photographs." Within this Motion the Defendant states that some autopsy photographs may
25 be properly admitted to describe the cause and manner of death. The State agrees. However,
26 the Defendant then argues that *some* photographs, without stating *which* photographs, are
27 inadmissible as "overly gruesome or highly prejudicial." (Motion pg. 2). Without knowing
28 which particular photographs the Defendant is referring to the State simply cannot address

1 whether the pictures are relevant to the cause and manner of Brandi Payton's death. The
2 State submits that given the nature and circumstances of this particular homicide, many of
3 the photographs taken at the time of autopsy will be relevant and admissible at Trial.

4 In support of his Motion to preclude certain unidentified photographs, the Defendant
5 cites to Clem v. State, 104 Nev. 351, 356, 760 P.2d 103 (1988) and Dearman v. State, 93
6 Nev. 364, 369, 566 P.2d 407 (1977). However, some more recent cases should be of note to
7 the Court as they squarely address this issue.

8 Specifically, the Nevada Supreme Court in Browne v. State, 113 Nev. 305, 314, 933
9 P.2d 187 (1997), explained that "gruesome" photographs are admissible. The Court said:

10 We have repeatedly held that "[d]espite gruesomeness, photographic
11 evidence has been held admissible when ... utilized to show the cause of
12 death and when it reflects the severity of wounds and the manner of their
13 infliction." Therault v. State, 92 Nev. 185, 193, 547 P.2d 668, 674 (1976)
(citations omitted). Thus, gruesome photos will be admitted if they aid in
ascertaining the truth. Id., at 314.

14 In a more recent case, West v. State, 75 P.3d 808 (Nev. 2003), the Supreme Court
15 quoted the above cited language in ruling that the District Court had properly admitted two
16 photographs of the murder victim's head which was wrapped in a plastic bag. Consequently,
17 even photographs termed "gruesome" are readily admissible when they are utilized to show
18 the cause of death, the severity of the wounds, and the manner of their infliction. The State
19 needs photographs of the victim's wounds as illustrated in the autopsy photos to show the
20 cause of death, the severity of the wounds, and the manner of their infliction. They will also
21 be necessary to show the process of elimination approach to determining a cause and manner
22 of death in a case where some level of decomposition has set in. This is, of course, an issue
23 here. As such, autopsy photographs will be more relevant in this case than in most, even
24 those carrying similar charges. This should come as no surprise considering the content of
25 the Defendant's previously filed Petition for Writ of Habeas Corpus filed April 29, 2009 and
26 previously litigated in this matter.

27 Obviously this Court will review the proposed photos from the State prior to their
28 admission. The State will provide the Defense and the Court with the photos we intend to

1 admit during trial prior to beginning the witness phase of Trial and if the Defense has an
2 objection at that time they should certainly raise it with the Court. Based on the above cited
3 precedent however, it will be the State's position that such photos are necessary, relevant and
4 admissible.

5 **CONCLUSION**

6 Since it is not known which specific photos the Defendant is objecting to and since
7 clear precedent supports the admission of gruesome photos which are relevant to the
8 determination of cause and manner of death, the Defendant's Motion in Limine to Preclude
9 Admission of Photographs should be denied.

10
11 DATED this 2nd day of February, 2010.

12 DAVID ROGER
13 Clark County District Attorney
14 Nevada Bar #002781

15 BY /s/JOSHUA TOMSHECK
16 JOSHUA TOMSHECK
17 Deputy District Attorney
18 Nevada Bar #009210

19 **CERTIFICATE OF FACSIMILE TRANSMISSION**

20 I hereby certify that service of the above and foregoing, was made this 2nd day of
21 February, 2010, by facsimile transmission to:

22
23 Special Public Defender.
24 FAX #455-6273

25 /s/ANJA BETHANY FLETCHER
26 Secretary for the District Attorney's
27 Office

28 08FN2467X/GCU:abf


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **JOSHUA TOMSHECK**
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 LESEAN TARUS COLLINS,
14 #0857181

15 Defendant.

CASE NO: C252804

DEPT NO: IX

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY**

17 DATE OF HEARING: February 8, 2010
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
21 and Authorities in Opposition to Defendant's Motion for Discovery.

22 This OPPOSITION is made and based upon all the papers and pleadings on file
23 herein, the attached points and authorities in support hereof, and oral argument at the time of
24 hearing, if deemed necessary by this Honorable Court.

25 ///

26 ///

27 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. Id. After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 ***Forensic evidence***

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 order the State to provide "discovery" to the Defense. The State's specific response is as
22 follows.

23 **ARGUMENT**

24 In his motion Defendant seeks discovery of numerous items. Specifically, the
25 Defense has boilerplated several requests of the State regarding discovery.

26 NRS 174.235(1) states:
27
28

1 Except as otherwise provided in NRS 174.087, 174.089 and 174.235 to 174.295,
2 inclusive, at the request of a defendant, the prosecuting attorney shall permit the
3 defendant to inspect and to copy or photograph any:

4 (a) Written or recorded statements or confessions made by the defendant, or any
5 written or recorded statements made by a witness the prosecuting attorney intends to
6 call during the case in chief of the state, or copies thereof, within the possession,
7 custody or control of the state, the existence of which is known, or by the exercise of
8 due diligence may become known, to the prosecuting attorney;

9 (b) Results or reports of physical or mental examinations, scientific tests or scientific
10 experiments made in connection with the particular case, or copies thereof, within the
11 possession, custody or control of the state, the existence of which is known, or by the
12 exercise of due diligence may become known, to the prosecuting attorney; and

13 (c) Books, papers, documents, tangible objects, or copies thereof, that the prosecuting
14 attorney intends to introduce during the case in chief of the state and which are within
15 the possession, custody or control of the state, the existence of which is known, or by
16 the exercise of due diligence may become known, to the prosecuting attorney.

17 Moreover, NRS 174.235(2) specifically excludes from discovery or inspection
18 attorney work-product or privileged information or documents. In addition, NRS 174.275
19 allows trial court discretion to order that discovery or inspection pursuant to 174.235 to
20 174.295, inclusive, be denied, restricted or deferred, or make such other order as is
21 appropriate.

22 The State will fully comply with Nevada's statutes governing discovery in criminal
23 cases, and it's obligations under Brady v. Maryland, 373 U.S. 83 (1963). In addition, the
24 State will maintain its open file policy and permit counsel for the defense to inspect all
25 portions of the State's file except privileged and trial preparation materials. In fact, an open
26 file review has *already* been completed by the Defense in this case.¹ However, the State
27 obviously objects to an overbroad order requiring more than the Nevada Legislature, the
28 Nevada Supreme Court or the United States Supreme Court has mandated. The State has
complied with this statute and will continue to comply as the trial draws near. To the extent
Defendant's motion requests, without any real authority, a broader definition of discovery, it
should be denied. The State has already complied with most of the requests articulated by

¹ On February 2, 2010, Deputy Special Public Defenders Ivette Maningo, Esq., and Scott Bindrup, Esq., met with the undersigned prosecutor and reviewed the entirety of the State's file.

1 the Defense in this case by providing such material to previous counsel. As a specific
2 response to the items requested in Defendant's Motion, the State makes the following
3 response to each enumerated provision within the Defendant's Motion:

4 1) The State has no objection and has already provided same to the Defense.

5 2) The State is unaware of any such material and/ or information. Should the
6 State become aware of any such an item, the State will provide them to the Defense as the
7 State has no objection to such discovery.

8 3) The State has no objection and has already provided same to the Defense.

9 4) The State has no objection and has already provided same to the Defense.

10 5) The State has no objection and has already provided same to the Defense.

11 6) The State has no objection to the extent the Defense is referring to statements
12 made by any witness relevant to the instant prosecution. In the event the Defense is
13 requesting all statements made by any witness relevant to some other prosecution and having
14 no applicability to the instant case, the State objects.

15 7) The State is aware, and will abide by, it's obligation concerning discovery in
16 criminal cases, pursuant to Brady v. Maryland and it's progeny. The only contention the
17 State has at this time is with regard to the Defendant's request for the criminal records all
18 witnesses. As this Court knows, Chapter 179A of the Nevada Revised Statutes limits the
19 individuals to which the District Attorney may disseminate information related to a person's
20 criminal record. As such, absent a court order pursuant to NRS 179A.100(5)(j), the state
21 cannot release the information related to the criminal records of witnesses. However, the
22 State has no objection to such an order and should the court so order, copies of the SCOPES
23 of the witnesses will be provided. Upon information and belief the State understands that the
24 Defense actually has possession of the SCOPES of all witnesses at this juncture as the office
25 of the Special Public Defender has the same ability to run witness SCOPES as the office of
26 the District Attorney does. To that extent this request is moot. The State has a standing
27 objection to the dissemination of any portion of any witnesses NCIC as providing such
28 information would be in violation of the federal law under 28 U.S.C. § 534 and 5 U.S.C. §

1 552. See U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749,
2 109 S.Ct. 1468 (1989).

3 8) The State's only objection to this request is that it is simply too broad as it does
4 not indentify the request as being limited to any report relevant to this instant case. To the
5 extent the request is only pertaining to this prosecution, the State has no objection and has
6 already provided all such reports to the Defense.

7 **CONCLUSION**

8 To the extent that Defendant's motion requests items for which they have a
9 legitimate right of discovery, the Motion should be granted. To the extent their
10 request exceeds the statutory or constitutional discovery requirements, it should be
11 denied.

12 DATED this 3rd day of February, 2010.

13 DAVID ROGER
14 Clark County District Attorney
Nevada Bar #002781

15
16 BY /s/JOSHUA TOMSHECK

17 JOSHUA TOMSHECK
18 Deputy District Attorney
Nevada Bar #009210

19
20 **CERTIFICATE OF FACSIMILE TRANSMISSION**

21 I hereby certify that service of the above and foregoing, was made this 3rd day of
22 February, 2010, by facsimile transmission to:

23
24 Special Public Defender.
FAX #455-6273

25
26 /s/ANJA BETHANY FLETCHER
27 Secretary for the District Attorney's
28 Office

Database Information System for Tracking Unknown Bodies in a Medical Examiner System (1996 Office of the Medical Examiner staff lecture series presentation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1996)

Case Report: Sudden Death in a 6 Day Old Male Infant with Thymic Hypoplasia and Congenital Heart Disease (1996 unpublished manuscript)

Case Report: Sudden Death and Right Ventricular Cardiomyopathy in an Adolescent Male (1996 unpublished manuscript)

Medical Examiner Information Management System: Experience of a Practicing Forensic Pathologist (1996 unpublished manuscript)

Case Report: Sudden Death in a Neonate with Congenital Aneurysm of the Right Ventricle (in preparation)

Case Report: Sudden Death Due to Group A Streptococcal Necrotizing Fascitis in an HIV-Positive Adult (in preparation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1997)

Modern Death Investigation (Midwestern University Faculty Guest Lecture Series presentation 1997)

Modern Death Investigation (Clinical Staff Cook County Department of Corrections and Cermack Hospital presentation 1997)

Suicide and Illinois Law (1997 Office of the Medical Examiner staff lecture series presentation)

Total Quality management in a Medical Examiner System (1997 Master of Public Health program)

Lymphoid Activation in Sudden Infant Death Syndrome: Histology of the Lymph Nodes and Spleen in SIDS Deaths in Chicago 1995-97 (grant application in preparation)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae
- 5 -

0085

ACADEMIC APPOINTMENTS, AWARDS AND ACTIVITIES

Office of the Medical Examiner Liaison for the University of Illinois at Chicago
Department of Criminal Justice (1996 to 1998)

Medical Consultant to the Industrial Commission of the Illinois State Attorney
General's Office (1996 to 1998)

Grand Rapids Area Medical Education Council Research Foundation Award
(1992) for Clinical Research of Bacterial Plasmids

Chief Resident, Grand Rapids Area Medical Education Center/Michigan State
University Pathology Program (1991-1992)

Clinical Instructor, Michigan State University, Colleges of Human and
Osteopathic Medicine (1990-1992)

Clinical Instructor to clinical clerks from the College of Osteopathic Medicine in
Des Moines, Iowa (1985 to 1989)

Clinical Instructor to Family Practice Residents at Botsford General Hospital and
Michigan Osteopathic Medical Center, Detroit, Michigan (1986-1989)

Advanced Trauma Life Support Certified, 1984

Advanced Cardiac Life Support Certified, 1983

Clinical Instructor to Emergency Medical Services, Rock County, Nebraska
(1981)

Chief of Staff, Perry Memorial Hospital in Perry, Oklahoma (1980-81)

Chief Physician, Noble County Planned Parenthood Clinic (1980-81)

Clinical Instructor, Emergency Medical Services, Noble County, Oklahoma
(1980)

Intern of the Year, Dallas Memorial Hospital, 1979
University of Tulsa President's Honor Roll (4.0 GPA) in 1973 and 1974

Published in the University of Tulsa Poetry Review for two consecutive years
(1973-74)

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Monte Spoor

P# 3856

Date: 10-01-03

CURRENT CLASSIFICATION			
	<i>Classification</i>	<i>Minimum Qualifications</i>	
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.	
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.	
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.	
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.	
FORMAL EDUCATION			
	<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
	U of Wyoming	General Studies	30 Cr. Hours
	UNLV	Criminal Justice	92 Cr. Hours
TESTIMONY			
Yes	No		
EMPLOYMENT HISTORY			
	<i>Employer</i>	<i>Title</i>	<i>Date</i>
	LVMPD	Sr. Crime Scene Analyst	12-4-89

SPOOR, MONTE
SENIOR CSA

P# 3856
SS#: 530-04-8532

CRIMINALISTICS BUREAU - FIELD
DOH: 12-04-89

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
12-90	Forensic Science	American Institute of Applied Science	160
12-22-90	LVMPD Drug Testing Film	LVMPD	25 Min.
09-08-90	Firearms Training	LVMPD	8
09-28-90	Stress Management	LVMPD	4
07-11-90	New Employee	LVMPD	24
01-02-91	Driver's Training - Level 02	LVMPD	8
01-15-91	Gangs in Clark County	LVMPD	4.5
02-28-91	NCIC Level III - Video	LVMPD	
07-03-91	Gun Shot Wounds - Video	LVMPD	1
09-30-91	Duty Weapon Qualification	LVMPD	1
12-21-91	Duty Weapon Qualification	LVMPD	1
01-16-92	Firearms, Toolmarks, and Documents	LVMPD	8
02-18-92	Footwear Evidence/Recovering Firearms	LVMPD	7
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates	LVMPD	10 Min.
06-30-92	Duty Weapon Qualification	LVMPD	1
06-30-92	Additional Duty Weapons Qualification	LVMPD	
07-92	In-Service Training Video - New Pursuit Policy	LVMPD	1
09-08-92	Asian Gangs	LVMPD	3
09-09-92	Bloodborne Pathogens - Video	LVMPD	25 Min.
09-30-92	Duty Weapon Qualification	LVMPD	1
12-31-92	Duty Weapon Qualification		
02-26-93	Polilight Laser Photography & Chemical Techniques	LVMPD	8
03-10-93	NCIC Phase I - Videotape	LVMPD	20 Min.
03-26-93	Off-Duty Weapon Qualification	LVMPD	

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
03-26-93	Back-up Weapon Qualification	LVMPD	
03-31-93	NCIC Phase I - Video	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-30-93	Duty Weapon Qualification	LVMPD	1
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
03-03-94	Driver's Training	LVMPD	8
03-10-94	Det. Tactics (PR24) - Recertification		4
03-11-94	Back-up Weapon Qualification	LVMPD	
03-15-94	Asian Gangs	LVMPD	3
03-31-94	Duty Weapon Qualification	LVMPD	1
08-01-94	Abuse/Neglect of Elderly	LVMPD	2.5
09-30-94	Optional Weapon	LVMPD	
09-30-94	Duty Weapon Qualification	LVMPD	1
09-94	Bloodborne Pathogens - Video	LVMPD	
10-17-94	Air Smuggling	LVMPD	7
12-02-94	Gangs in Clark County	LVMPD	7
03-31-95	Duty Weapon Qualification	LVMPD	1
06-30-95	Duty Weapon Qualification	LVMPD	1
09-30-95	Duty Weapon Qualification	LVMPD	1
03-26-96	(A) Back-up Weapon Qualification & (B) Off-Duty Weapon Qualification	LVMPD	
03-31-96	Duty Weapon Qualification	LVMPD	1
06-30-96	Duty Weapon Qualification	LVMPD	2
07-09-96	Critical Procedures Test	LVMPD	
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
09-23 to 09-27-96	Crime Scene Technology II	Northwestern University, Traffic Institute	40

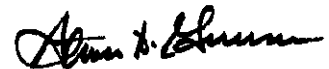
DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-96	Duty Weapon Qualification	LVMPD	2
02-04, 05, & 02-06-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-10, 11, & 03-12-97	Practical Homicide Investigation	Public Agency Training Council - Public Safety Continuing Education	24
03-13-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-30-97	Duty Weapon Qualification	LVMPD	2
04-16-97	Conflict Resolution and Confrontation Skills	ETC W/CareerTrack Seminar	7
04-23, 24, & 04-30-97	Civilian Use of Force & Firearm Training	LVMPD	21
06-13-97	NCIC Phase I - Video	LVMPD	20 Min.
07-02-97	Duty Weapon Qualification	LVMPD	2
07-21-97	Critical Procedures Test	LVMPD	
08-27, 28, & 08-29-97	Train the Trainers - F.T.E.P	LVMPD	21
09-15 to 09-19-97	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06 to 10-10-97	Investigative Photography 1	Northwestern University, Traffic Institute	40
11-26-97	International Assoc. For Identification (IAI), Member # 15832	IAI	
12-04-97	Stress Management	LVMPD	4
12-31-97	Duty Weapon Qualification	LVMPD	2
02-04-98	Certificate of Appreciation - United Way of Southern Nevada		

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
02-14-98	Trauma Shooting - Video	LVMPD	30 Min.
02-19-98	Combat Shooting Simulator (FATS)	LVMPD	1
02-23-98	Domestic Violence - Video	LVMPD	1
03-04-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-05-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
04-08-98	Critical Procedures Test	LVMPD	
04-30-98	Class II - Driver Training	LVMPD	8
06-16-98	Duty Weapon Qualification	LVMPD	2
10-30-98	Nevada State Division of the International Association for Identification (NSDIAI) - Active Charter Member, Certificate #00069	NSDIAI	
12-04-98	Duty Weapon Qualification	LVMPD	2
12-07 to 12-11-98	Advanced Practical Homicide Investigation	Public Agency Training Council, National Crime Justice, Public Safety Continuing Education	40
01-15-99	Training - Motor Home Driving	LVMPD	4
03-22-99	Award Presentation and PR Photography	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-22-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2
"	Polly Klass	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
"	DNA Evidence	NSDIAI	2
"	Child Abuse	NSDIAI	2
"	J. Edgar Hoover	NSDIAI	2
"	Disaster Preparedness	NSDIAI	2

H:\FRONTOFF\SHIRLEY\WORKAREA\EDUCATION\SPORR_EDUCAT.WPD

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09-27-99	Duty Weapon Qualification	LVMPD	2
09-27 to 10-01-99	1 st Annual Advanced Crime Scene Reconstruction Invitational Workshop - "Police-Involved Incidents" - hosted by LVMPD	Institute of Applied Forensic Technology	40
10-28-99	Combat Shooting Simulator - FATS	LVMPD	1
01-19-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
03-06 to 03-07-00	Hate Crimes and Extremist Groups	Public Agency Training Council, National Crime Justice	16
04-10 to 04-12-00	LVMPD Clandestine Laboratory/Safety Certification Course	LVMPD	24
12-11-00	How to Write User Manuals: A Technical-Writing Workshop	Padgett-Thompson	6 (0.6 CEUs)
01-17-01	Courtroom Testimony for Police Officers	State of Nevada Commission on Peace Officers' Standards and Training	4
02-27-01	The Grammar and Usage Seminar	Fred Pryor Seminars	6
04-11 to 04-17-01	Instructor Development	LVMPD	40
07-22 to 07-28-01	International Association for Identification - 86 th International Educational Conference (see below)	IAI	(see below)
"	Investigating Occult Crime	"	8
"	Killer on the Railcar	"	1.5
"	Unique Applications for Alternate Lights and Lasers	"	1
"	Specialized Photography: Techniques to Reveal Hidden Evidence	"	30 Min.
"	John Gacy, Serial Murderer	"	30 Min.
"	Photographic Identification of Clothing from Wear and Tear and Manufactured	"	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
	characteristics - The Band-Aid Bandit Case		
01-15-02	Bloodstain Pattern Analysis - Certificate # 037 - completed proficiency exercises - Given by Criminalistics Bureau	LVMPD Criminalistics Bureau	3
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-04-02	Criminal Law	LVMPD	2
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	The Luck Factor	"	.5
"	Animation in Your Crime Scene - Utilization of 3-D	"	1
"	Courtroom or Classroom? Demonstrative Evidence	"	2
"	Fingerprint Evidence in the Danielle Van Damme Trial	"	1
"	Blood Reagents: Is it Really Blood?	"	1
"	Physical Evidence - Definitions and Uses	"	1
"	Latest Development in Vacuum Metal Deposition	"	1
01-20 to 01-24-03	Ridgeology Science Workshop - Forensic Identification Training Seminars	LVMPD	40
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24



CLERK OF THE COURT

1 **NOTC**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JOSHUA TOMSHECK**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #009210**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **LESEAN TARUS COLLINS,**
13 **#0857181**

14 **Defendant.**

CASE NO: C252804

DEPT NO: IX

15 **AMENDED NOTICE OF EXPERT WITNESSES AND/OR**
16 **REBUTTAL EXPERT WITNESSES**
17 **[NRS 174.234(2)]**

18 **TO: LESEAN TARUS COLLINS, Defendant; and**

19 **TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:**

20 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**
21 **NEVADA intends to call the following witnesses in its case in chief:**

22 **TIFFANY ADAMS AND/OR DESIGNEE LVMPD P#10072 is an expert in the**
23 **field of identification of biological fluids, DNA extractions, comparisons, and analysis and is**
24 **expected to testify.**

25 **KELLIE GAUTHIER AND/OR DESIGNEE, LVMPD P#8691 is an expert in the**
26 **field of identification of biological fluids, DNA extractions, comparisons, and analysis and is**
27 **expected to testify.**

28 **The substance of each expert witness' testimony and a copy of all reports made by or**

1 at the direction of the expert witness has been provided in discovery.

2 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

3
4
5 BY


DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

6
7
8 CERTIFICATE OF FACSIMILE TRANSMISSION

9 I hereby certify that service of the *Amended Notice of Expert Witnesses and*
10 *Rebuttal Witnesses*, was made this 22nd day of January, 2010, by facsimile transmission to:

11 SPECIAL PUBLIC DEFENDER
12 FAX #455-6273

13
14 /s/ Anja Bethany Fletcher
15 Secretary for the District Attorney's Office
16
17
18
19
20
21
22
23
24
25
26
27

28 08FN2467X-GCU;jh

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 10/30/07

Name: Tiffany Adams P#: 10072 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Cedar Crest College	8/1998 - 5/2002	Genetic Engineering	B.S.
Harrisburg Area Community College	1/2004 - 5/2004	N/A	N/A

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Forensic Biology Screening (workshop)	Las Vegas, NV	2007
Applied Statistics (workshop)	Hollywood, CA	2007
18 th International Symposium on Human Identification	Hollywood, CA	2007
Courtroom Statistics (workshop)	San Diego, CA	2006
Bode Technology Advanced DNA Technology Meeting	San Diego, CA	2006
Real-Time PCR (workshop)	St. Louis, MO	2005
Expert Witness Testimony (workshop)	St. Louis, MO	2005
Midwestern Association of Forensic Scientists Annual Meeting	St. Louis, MO	2005

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Hair Examination for DNA Analysts (workshop)	Wilmington, DE	2004
Mid-Atlantic Association of Forensic Scientists Annual Meeting	Wilmington, DE	2004

COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
None		

EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist II (Biology/DNA)	Present
Bode Technology	Forensic DNA Analyst II	2003-2007
PSU College of Medicine/Milton S Hershey Medical Center	Research Technician II	2002-2003
RheoGene/Rohm & Haas	Lab Assistant/Intern	2000-2002

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
None	

PUBLICATIONS / PRESENTATIONS:
"Effects of Sodium Selenite and Organoselenium Compounds on Microtubule Polymerization" (Poster Presentation: 2002 Annual Meeting of the Pennsylvania Academy of Science)
"Phage Receptor Genes and their Impact on Bacterial Host Range" (Poster Presentation: 2000 Annual Meeting of the Pennsylvania Academy of Science)

OTHER QUALIFICATIONS:
None

Curriculum Vitae
Kellie M. (Wales) Gauthier
Las Vegas Metropolitan Police Department
Forensic Laboratory
P#: 8691 Criminalist - DNA / Biology

EMPLOYMENT

5/05 - Present **Las Vegas Metropolitan Police Department**
Criminalist I

8/03 - 5/05 **Florida Dept. of Law Enforcement Forensic**
Technologist

EDUCATION

8/98 - 5/02 **University of West Florida**
B.S., Biology

EXPERIENCE

- Controlled Substances Blood Alcohol
- Tool marks Breath Alcohol
- Trace Evidence Arson Analysis
- Toxicology Firearms
- Latent Prints Crime Scene Investigations
- Serology X Clandestine Laboratory Response Team
- Document Examination DNA Analysis X
- Quality Assurance Technical Support / DNA X

ADDITIONAL TRAINING / SEMINARS

06/06 Bode Advanced DNA Technical Workshop
Captiva Island, FL

06/06 Bode Meeting - "Presenting Statistics in the Courtroom"
Captiva Island, FL

06/06 Differential Extraction
Las Vegas, NV

5/06	Serological Techniques and DNA Screening - Colleen Proffitt, MFS, Las Vegas, NV
2/06	American Academy of Forensic Sciences 58th Annual Meeting, Seattle, WA
8/05	National Incident Management System (NIMS) an Introduction Las Vegas, NV
7/05	Drivers Training II Las Vegas, NV
9/04	Future Trends in Forensic DNA Technology – Applied Biosystems Orlando, FL
9/04	Southern Association of Forensic Scientists (SAFS) -Paternity Index DNA Statistics Orlando, FL
7/04	Forensic Epidemiology - Joint Training for Law Enforcement Hazardous Materials and Public Health Officials on Investigative Response to Bio-terrorism Orlando, FL
4/04	Forensic Technology Training - Florida Department of Law Enforcement Orlando, FL
3/04	Biology Discipline Meeting Tampa, FL
9/03	Future Trends in Forensic DNA Technology – Applied Biosystems Orlando, FL

COURTROOM EXPERIENCE

Court Discipline Number of
Times

22

John L. Johnson
CLERK OF COURT

M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and moves this Honorable Court to enter an Order providing COLLINS with all available items as set forth in this argument. This Motion is made and based upon the pleadings and papers on file, the Points and Authorities cited herein, as well as argument of counsel at time of hearing on this matter.

RECEIVED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing Motion for Discovery on for hearing on the 8 day of February 2010 at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

STATEMENT OF FACTS

On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to answer and bound over to District Court on charges of Murder and Robbery. Trial is currently set for March 1, 2010.

NRS 174.235 states:

"Defendant's statements or confessions; reports of examinations and tests.

Upon motion of a Defendant the Court may order the District Attorney to permit the Defendant to inspect and copy or photograph any relevant:

1. Written or recorded statements or confessions made by the Defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the District Attorney; and
2. Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the District Attorney."

1 Defendant submits knowledge of any oral statements is as critical as knowledge or
2 written statements in preparing an adequate defense. Fundamental fairness and the absence of
3 any compelling reason for non-disclosure require revelation of any oral statements made by the
4 defendant, or co-defendants which the prosecution intends to introduce in its case in chief.

5
6 State v. Johnson, 28 N.J. 133, 145 A.2d 313 (1958), cited in ABA Standards for Criminal
7 Justice - Discovery and Procedure Before Trial, p. 258.

8 NRS 174.245 states:

9 "Other books, papers, documents, tangible objects or places.

10
11 Upon motion of a Defendant the Court may order the District
12 Attorney to permit the Defendant to inspect or photograph books,
13 papers, documents, tangible objects, buildings or places, or copies or
14 portions thereof, which are within the possession, custody or control
15 of the State."

16
17 Witnesses known to the State but not called by the State could prove to have
18 exculpatory evidence which should be made available to the defense. No legitimate interest
19 could be served by precluding the defense from calling such witnesses for trial, and their
20 identity should accordingly be made known. United States v. Eley, 335 F.Supp. 353 (N.D. Ga.
21 1972); United States v. Houston, 339 F.Supp. 762 (N.D. GA 1972).

22 The prosecution has the duty to disclose to the Defendant all exculpatory evidence.
23 Brady v. Maryland, 373 U.S. 83 (1963); See, also, Giles v. Maryland, 386 U.S. 66 (1967);
24 Dennis v. U.S., 384 U.S. 855, 873 (1966); Giglio v. U.S., 925 S.Ct. 763 (1972). It is clear that
25 the trial court has wide discretion in permitting discovery. See, Marshall v. District Court, 79
26 Nev. 280, 382 P.2d 214 (1963).

27 Similarly, a record of criminal convictions of any witnesses the State intends to call at
28 trial should be furnished prior to trial to defense, so that it can be available to the defendant for
use as impeachment material. Due process requires that any evidence be disclosed which may

1 provide grounds to attack the reliability, thoroughness, and good faith of the police
2 investigation or to impeach the credibility of the State's witnesses. Lay v. State, 116 Nev. 1185,
3 1194 (2000). In the instant case some of the State's witnesses may have criminal records.
4 All the information requested relating to these witnesses is required for COLLINS to receive a
5 fair trial and due process under the 14th Amendment to the U.S. Constitution and the Nevada
6 Constitution.
7

8 Wherefore, Defendant moves this Court for an Order for discovery requiring the Clark
9 County District Attorney's Office to supply or make available the following:

10 1. All written or recorded statements, confessions, or admissions made by Defendant to
11 any person, or copies thereof including any Clark County Detention Center calls which may
12 have been recorded.
13

14 2. The substance of any statements made by Defendant which the prosecution intends to
15 use as evidence at the trial of this case, including but not limited to any conversations or
16 correspondence overheard or intercepted by any jail personnel or other inmates;
17

18 3. Copies of all tapes or recorded statements from all witnesses and Defendant, as well
19 as copies of the recorded phone calls in a format that can be played on cassette or CD player,
20 including but not limited to calls from the jail;

21 4. All reports and results of scientific tests including, but not limited to complete
22 reports of fingerprint comparisons and any scientific analysis of physical evidence, including
23 Metro Forensic Scientist Kellie Gauthier's raw data in the analysis of DNA collected in this
24 case.
25

26 5. Any photographs in the State's possession including, but not limited to all
27 photographs taken of the alleged victim, the scene of the crime, photo enlargements of latent
28 prints, and all photographs the State intends to introduce as evidence;

1 6. Copies of statements given by any State witness on any case, specifically including
2 any reports of said information provided prepared by any law enforcement agent.

3 7. Any evidence which would tend to exculpate Defendant including, but not limited to:

4 (a) The names and addresses of any and all witnesses known to the State who the
5 State does not intend to call at trial who could provide exculpatory evidence to the
6 defense;

7 (b) The criminal records, if any, of all witnesses the State intends to call at the trial
8 of this case, including all cases currently pending against any witnesses, to also
9 include information contained on the witnesses NCIC file;

10 (c) All written or taped statements, correspondence, or memorandum concerning
11 any promise of immunity, any promises of leniency, any suggestions of leniency
12 or immunity, any proposed attempts to influence the court or the District
13 Attorney's office with reference to leniency concerning any witness who is
14 expected to testify at trial, the reference to any case of which all of the persons
15 referred to in this paragraph are, or were, a suspect, if the promises or suggestions,
16 or attempts to influence or leniency related to or were in exchange for, such
17 persons' statements, present or past, against Defendant, the names and addresses of
18 all persons present during any such statements, promises, proposals or attempts to
19 exert influence on behalf of the persons mentioned in this paragraph.
20
21
22
23

24 ...

25 ...

26 ...

27 ...

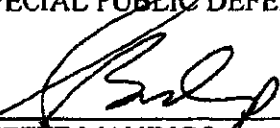
28 ...

1 8. Copies of all police reports, medical reports in the actual or constructive possession
2 of the District Attorney's Office, the Las Vegas Metropolitan Police Department, Nevada
3 Department of Corrections, the Clark County Sheriff's Office, and any other law enforcement
4 agency.
5

6 DATED this 24 day of January 2010.
7

8 RESPECTFULLY SUBMITTED:

9 DAVID M. SCHIECK
10 SPECIAL PUBLIC DEFENDER

11 
12 IVETTE MANINGO
13 SCOTT L. BINDRUP
14 330 South Third Street, Ste. 800
15 Las Vegas, NV 89155-2316
16 Attorneys for COLLINS
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

JS

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
IVETTE MANINGO
Deputy Special Public Defender
Nevada Bar No. 7076
SCOTT L. BINDRUP
Deputy Special Public Defender
Nevada Bar No. 2537
330 South Third Street, Ste. 800
Las Vegas, NV 89155-2316
(702) 455-6265
(702) 455-6273 fax
imaningo@co.clark.nv.us
sbindrup@co.clark.nv.us
Attorneys for COLLINS

FILED

JAN 28 2010

John J. Johnson
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	CASE NO. C 252804
)	DEPT. NO. IX
Plaintiff,)	
)	
vs.)	
)	
LESEAN COLLINS #0857181,)	
)	
Defendant.)	

**MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND
SUBSTANCE OF EXPECTATIONS, OR ACTUAL
RECEIPT OF BENEFITS OR PREFERENTIAL
TREATMENT FOR COOPERATION WITH PROSECUTION**

COMES NOW Defendant LESEAN COLLINS, by and through his attorneys, DAVID
M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public
Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and moves this Court to
compel the prosecution to disclose all evidence of any witnesses' expectations of, or actual

CLERK OF THE COURT

JAN 28 2010

RECEIVED

1 receipt of benefits for cooperation with the prosecution and/or any law enforcement agency of
2 the State of Nevada, and/or any state, county, or federal law enforcement agency.

3 Such order should include the requirements to disclose any promises, favors, deals,
4 bargains, special treatments, leniency, housing or consideration of any kind, or expectation of
5 the same paid, given, offered, or held out by the prosecution and/or law enforcement agency in
6 exchange for testimony, evidence, and/or information, whether or not it is intended to be used
7 by the prosecution. It is further requested that the prosecution reveal any and all cases in which
8 witnesses to be used against LESEAN COLLINS have provided information or testimony for
9 the prosecution in other cases.
10

11 This Motion is made and based upon the due process clause of the Fifth Amendment to
12 the United States Constitution and the Constitution of the State of Nevada, all papers and
13 pleadings on file herein, and the Points and Authorities attached hereto.
14

15 **NOTICE OF MOTION**

16 TO: THE STATE OF NEVADA, Plaintiff; and
17

18 TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

19 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing
20 Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of
21 Benefits or Preferential Treatment for Cooperation with Prosecution on for hearing on the
22 _____ day of February 2010 at the hour of _____ a.m., or as soon thereafter as counsel can be
23 heard.
24

25 ...

26 ...

27 ...
28

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to
4 answer and bound over to District Court on charges of Murder and Robbery. Trial is currently
5 set for March 1, 2010.
6

7 **ARGUMENT**

8 It is the position of COLLINS that witnesses may be motivated in providing information
9 and testimony by the expectation or receipt of benefits of some type from the State. In all
10 likelihood the State will report that there are no such benefits, however, in the abundance of
11 caution, COLLINS submits the following legal authorities in support of his request for the
12 disclosure by the State of the witnesses known to the State who may be called to testify by the
13 State at the trial of COLLINS.
14

15 Any evidence showing that the State has made promises of leniency, immunity, or other
16 preferential treatment in exchange for witness information or testimony is discoverable under
17 the Brady rule. Giglio v. U.S., 405 U.S. 1560, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).
18 Furthermore, the Court in Giglio stated that evidence of any understanding or agreement
19 attached to future or present prosecution would be relevant to the witnesses' credibility. The
20 Court reaffirmed this principle in U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 85 L.Ed.2d 481
21 (1985). In Bagley, the Court indicated that the failure to disclose such evidence might affect
22 trial strategy and result in ineffective assistance of counsel. Id. at 682, 683.
23

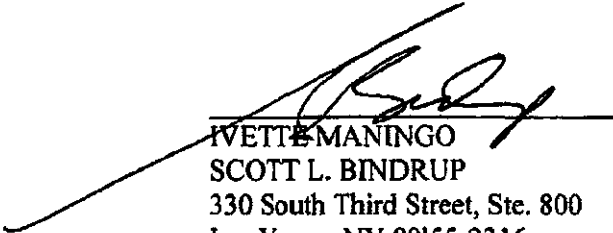
24
25 LESEAN COLLINS respectfully requests that this Court enter an Order requiring the
26 State to disclose in writing any promises or expectations of immunity, leniency, or other
27 preferential treatment or benefits in exchange for testimony or information concerning
28 COLLINS and further provide copies of any documentation that discusses, memorializes or

1 effectuates the same. It is further requested that the State provide any and all information
2 concerning any other case wherein a witnesses against COLLINS provided testimony or
3 information for the State or for any law enforcement agency.

4 DATED this 21 day of January 2010.

7 RESPECTFULLY SUBMITTED:

8 DAVID M. SCHIECK
9 SPECIAL PUBLIC DEFENDER

10
11 
12 IVETTE MANINGO
13 SCOTT L. BINDRUP
14 330 South Third Street, Ste. 800
15 Las Vegas, NV 89155-2316
16 (702) 455-6265
17 Attorneys for COLLINS
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

22

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
IVETTE MANINGO
Deputy Special Public Defender
Nevada Bar No. 7076
SCOTT L. BINDRUP
Deputy Special Public Defender
Nevada Bar No. 2537
330 S. Third Street, Ste. 800
Las Vegas, NV 89155-2316
(702) 455-6265
(702) 455-6273 fax
imaningo@co.clark.nv.us
sbindrup@co.clark.nv.us
Attorneys for COLLINS

FILED

JAN 28 2010

John L. Collins
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN COLLINS #057181,

Defendant.

CASE NO. C 252804

DEPT. NO. IX

MOTION TO ALLOW JURY QUESTIONNAIRE

COMES NOW Defendant LESEAN COLLINS, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and moves this Court to require prospective jurors to complete a juror questionnaire in advance of in-court questioning so that defense counsel will obtain information necessary to effectuate COLLINS rights to a fair and impartial jury while drastically reducing the court time needed to conduct voir dire.

This Motion is made and based on the Points and Authorities stated herein, the pleadings and papers on file in this matter, and any argument as may be had by counsel at the time of hearing of this Motion.

0110

RECEIVED

JAN 28 2010

CLERK OF THE COURT

CM

1 to guilt and penalty. A large portion of the inquiry necessary to effect this constitutional
2 mandate may be provided for expeditiously and effectively through the use of juror
3 questionnaire that the jurors can fill out privately in advance of in-court questioning. Most
4 importantly, the large number of routine questions that normally must be asked verbally of
5 each and every juror can be eliminated through the use of the questionnaire. The court and
6 counsel can then focus oral questions in the areas of the case that are material and
7 controversial and which may invoke bias, prejudice or other strong feelings on the part of
8 prospective jurors. The use of the questionnaire can therefore effectuate the goal of the
9 legislature, the people of the State of Nevada and the local judiciary to expedite the jury
10 selection process without compromising the need of defense counsel to obtain the information
11 necessary to challenge for cause those jurors who cannot fairly and impartially sit in judgment
12 of the Defendant.


13 A proposed juror questionnaire will follow, that will elicit background information that
14 may be relevant to challenges for cause as well as the intelligent and informed exercise of
15 peremptory challenges. The questionnaire will provide the parties and the Court with
16 responses that may alert them to possible relationships, associations or experiences that may
17 be a source of bias or prejudice and necessitate excusing a juror for cause under NRS
18 175.035. It will also provide information necessary to insure that no improper bias or prejudice
19 undermines COLLINS rights to a fair hearing.

20 LESEAN COLLINS respectfully requests that this Court allow the use of a jury
21 questionnaire that has been mutually agreed upon by the defense and the State.

22 Dated this 29 day of January 2010.

23 RESPECTFULLY SUBMITTED:

24 DAVID M. SCHIECK
25 SPECIAL PUBLIC DEFENDER

26 
27 IVETTE MANINGO
28 SCOTT L. BINDRUP
Attorneys for COLLINS

ORIGINAL

cc

1 0001
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar No. 0824
5 IVETTE MANINGO
6 Deputy Special Public Defender
7 Nevada Bar No. 7076
8 SCOTT L. BINDRUP
9 Deputy Special Public Defender
10 Nevada Bar No. 2537
11 330 South Third Street, Ste. 800
12 Las Vegas, NV 89155-2316
13 (702) 455-6265
14 (702) 455-6273 fax
15 imaningo@co.clark.nv.us
16 sbindrup@co.clark.nv.us
17 Attorneys for COLLINS

FILED

JAN 28 2010

Ann L. Blum
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,) CASE NO. C 252804
15) DEPT. NO. IX
16 Plaintiff,)
17 vs.)
18 LESEAN COLLINS #0857181,)
19 Defendant.)

MOTION IN LIMINE TO PRECLUDE ADMISSION OF PHOTOGRAPHS

21 COMES NOW, Defendant LESEAN COLLINS, by and through his attorneys, DAVID
22 M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public
23 Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and moves this Court
24 for an Order precluding the admission of unnecessary, gruesome and redundant photographs.
25
26
27
28

12
CN

RECEIVED
JAN 28 2010
CLERK OF THE COURT

1 This Motion is made and based on the pleadings and papers on file herein, the Points
2 and Authorities attached hereto and such argument as may be had at the hearing of the Motion.
3

4
5 **NOTICE OF MOTION**

6 TO: STATE OF NEVADA, Plaintiff; and

7 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

8 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
9 foregoing Motion in Limine to Preclude Admission of Photographs on for hearing on the 8
10 day of February 2010 at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.
11

12 **POINTS AND AUTHORITIES**

13 **STATEMENT OF FACTS**

14
15 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to
16 answer and bound over to District Court on charges of Murder and Robbery. Trial is currently
17 set for March 1, 2010.

18 **ARGUMENT**

19
20 COLLINS respectfully moves this Court pursuant to the Sixth, Eighth, and Fourteenth
21 Amendments to the United States Constitution, Article 1 of the Nevada Constitution, and
22 applicable state law to preclude the state from admitting into evidence any overly gruesome or
23 highly prejudicial photographs of the victim from the autopsy.

24 COLLINS agrees that some photographs may be properly admitted, however, such
25 should be limited to those necessary to describe the cause and manner of death. Photographs
26 that advance no evidentiary purpose and serve only to inflame the passions of the jury in
27
28

1 violation of COLLINS'S rights guaranteed by the state and federal constitutions should be
2 excluded by the Court.

3 A number of the photographs depict the victim in such a manner as to be gruesome,
4 gory and inflammatory and would serve no evidentiary purpose. Many are also cumulative.
5 Exacting standards must be met to assure that the trial is fair. Johnson v. Mississippi, 486 U.S.
6 578, 584 (1988); Gardner v. Florida, 430 U.S. 349, 363-64 (1977); Woodson v. North Carolina,
7 428 U.S. 280, 305 (1976) (White, J., concurring).

8 It is well established that where the prejudicial effect of photographs outweighs their
9 probative value, they should not be admitted. Caylor v. State, 353 So.2d 8 (Ala.Cr.App. 1977).
10 See also, Commonwealth v. Scaramuizzino, 317 A.2d 225, 226 (Pa. 1974) ("photograph of a
11 wound of the back of the ear with the hair pulled away" too prejudicial); State v. Clawson, 270
12 S.E.2d 659, 671 (W.Va. 1980) (citing cases); accord, McCullough v. State, 341 S.E.2d 706 (Ga.
13 1986); People v. Coleman, 451 N.E.2d 973, 977 (Ill.App.Ct. 1983); Browne v. State, 302
14 S.E.2d 347 (Ga. 1983); Commonwealth v. Richmond, 358 N.E.2d 999, 1001 (Mass. 1976);
15 State v. Childers, 536 P.2d 1349, 1354 (Kan. 1975); People v. Burns, 241 P.2d 308, 318
16 (Cal.App. 1952).

17 The Nevada Supreme Court has held, under NRS 48.035 (1), that the relevance of
18 victim photographs may be "substantially outweighed by the danger of unfair prejudice."
19 Where the proffered photographs are "gruesome or unduly prejudicial", they should be
20 excluded. Clem v. State, 104 Nev. 351, 356, 760 P.2d 103 (1988); Dearman v. State, 93 Nev.
21 364, 369, 566 P.2d 407 (1977).

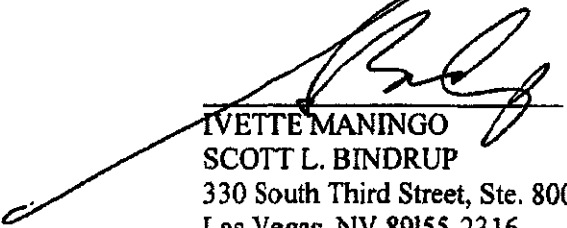
22 LESEAN COLLINS respectfully requests that this Court review the photographs that
23 the State intends to offer at trial and preclude the admission of any photographs whose
24
25
26
27
28

1 probative value is outweighed by prejudicial impact and any photographs not relevant or
2 duplicitous.
3

4 DATED this 29 day of January 2010.
5

6 RESPECTFULLY SUBMITTED:

7 DAVID M. SCHIECK
8 SPECIAL PUBLIC DEFENDER
9

10 
11 IVETTE MANINGO
12 SCOTT L. BINDRUP
13 330 South Third Street, Ste. 800
14 Las Vegas, NV 89155-2316
15 (702) 455-6265
16 Attorneys for COLLINS
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL

0001

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER

Nevada Bar No. 0824

IVETTE MANINGO

Deputy Special Public Defender

Nevada Bar No. 7076

SCOTT L. BINDRUP

Deputy Special Public Defender

Nevada Bar No. 2537

330 S. Third St. Ste. 800

Las Vegas, NV 89155-2316

(702) 455-6265

(702) 455-6273 fax

imaningo@co.clark.nv.us

sbindrup@co.clark.nv.us

Attorneys for COLLINS

FILED

JAN 28 2010

John L. Williams
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

LESEAN COLLINS #0857181,

Defendants.

CASE NO. C 252804

DEPT NO. IX

**MOTION IN LIMINE TO PRECLUDE REFERENCES TO
THE DECEASED AS THE "VICTIM"**

COMES NOW the above-named Defendant, LESEAN COLLINS, by and through his attorneys DAVID M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and respectfully moves this Honorable Court to enter an order disallowing the prosecutor and his witnesses from referring to the decedent, Brandi Payton as the "victim."

...

...

...

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 This Motion is based upon the following Memorandum of Points and Authorities, all
2 papers and pleadings on file herein and any argument this Court may hear concerning this
3 motion.

4 **NOTICE OF MOTION**

5 TO: STATE OF NEVADA, Plaintiff; and

6 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

7 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
8 foregoing Motion in Limine to Preclude References to the Deceased as the "Victim" on the
9 ____ day of February, 2010, at the hour of ____ a.m., in Department No. IX of the
10 above-entitled Court, or as soon thereafter as counsel may be heard.

11
12 **POINTS AND AUTHORITIES**

13 **STATEMENT OF FACTS**

14 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held
15 to answer and bound over to District Court on charges of Murder and Robbery. Trial is
16 currently set for March 1, 2010.

17
18 **LEGAL ARGUMENT**

19 **REFERRING TO THE DECEDENT AS THE "VICTIM" VIOLATES THE PRESUMPTION**
20 **THAT DEFENDANT IS INNOCENT**

21 The presumption of innocence is one of the foundations of criminal law. LESEAN
22 COLLINS is presumed innocent, which is undisputed by Nevada law and the State and
23 Federal constitutions. U.S. Const., amend. XIV; Nev. Const., art. I, § 8; see also Haywood v.
24 State, 107 Nev. 285, 288, 809 P.2d 1272,1273 (1991) ("The rule that one is innocent until
25 proven guilty means that a defendant is entitled to not only the presumption of innocence, but
26 also to indicia of innocence."); NRS 175.191.

27 Verbal references may provide an appearance of guilt that can be as damning as
28 bringing the accused into court in shackles. *Haywood*, 107 Nev. 288. Referring to the

1 deceased as the "victim" implies that COLLINS has legal culpability with the crime, and may
2 prejudice the jury against COLLINS. This taints the presumption of innocence which must be
3 afforded to COLLINS.


4 The term "victim" is actually a indicia of guilt, because to have a "victim" there must be
5 a perpetrator. The jury is likely to assume that COLLINS has legal culpability, instead of
6 presuming his innocence. Wherefore, COLLINS requests that the Court, prosecution, and
7 other defense counsel refer to Brandi Payton in neutral terms (such as "deceased"), which
8 would not carry the negative associations of the word "victim."

9 WHEREFORE, the Defendant, LESEAN COLLINS, by and through his attorney,
10 respectfully moves that this Court enter an order disallowing the prosecutor and his witnesses
11 from referring to the decedent, Brandi Payton, as the "victim."

12
13 DATED this 28th day of January 2010.

14
15 RESPECTFULLY SUBMITTED:

16 DAVID M. SCHIECK
17 SPECIAL PUBLIC DEFENDER

18
19 
20 VETTE MANINGO
21 SCOTT L. BINDRUP
22 Deputy Special Public Defender
23 330 S. Third Street, Ste. 800
24 Las Vegas, NV 89155-2316
25 Attorneys for COLLINS
26
27
28

22

0120

1 incidences, prior criminal convictions, recorded Clark County Detention Center conversations,
2 prior verbal threats to the victim, or any other illegal or bad act not directly related to the charge
3 at issue unless the State, before trial, files a Motion in Limine and the Court holds an
4 evidentiary hearing on the admissibility of the evidence.
5

6 This Motion is made and based upon the Points and Authorities attached hereto, all the
7 documents and pleadings on file herein and such argument as the Court may allow at the
8 hearing of the Motion.
9

10 **NOTICE OF MOTION**

11 TO: STATE OF NEVADA, Plaintiff; and

12 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

13 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
14 foregoing Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior
15 Criminal Activity on for hearing on the ____ day of February 2010 at the hour of ____ a.m.,
16 or as soon thereafter as counsel may be heard.
17

18 **POINTS AND AUTHORITIES**

19 **STATEMENT OF FACTS**

20
21 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to
22 answer and bound over to District Court on charges of Murder and Robbery. Trial is currently
23 set for March 1, 2010.
24

25 **ARGUMENT**

26 As a general proposition, evidence of prior crimes and other bad acts of a criminal
27 defendant is inadmissible character evidence unless it falls within certain specific exceptions.
28

See, NRS 48.045. Reference to a prior criminal history of a defendant is reversible error.

1 Witherow v. State, 104 Nev. 721, 765 P.2d 1153 (1988). The test for determining whether a
2 reference to criminal history occurred is whether "a juror could reasonably infer from the facts
3 presented that the accused had engaged in prior criminal activity." Manning v. Warden, 99 Nev.
4 82, 659 P.2d 847 (1983), citing Commonwealth v. Allen, 292 A.2d 373, 375 (Pa 1972).

5
6 The court in Manning, supra, detailed a number of different cases where in indirect
7 references to prior acts were found to be references to criminal history. See e.g. Gehrke v.
8 State, 96 Nev. 581, 613 P.2d 1028 (1980); Reese v. State, 95 Nev. 419, 596 P.2d 212 (1979);
9 Geary v. State, 91 Nev. 784, 544 P.2d 417 (1975); Founts v. State, 87 Nev. 165, 483 P.2d 654
10 (1971). Most interestingly, the State in Manning, supra, conceded that in a majority of
11 jurisdiction, an improper reference to criminal history is a violation of due process since it
12 affects the presumption of innocence. Id at 87.

13
14 Many years ago the Nevada Supreme Court well summarized the position of Defendant
15 COLLINS:

16
17 The danger of allowing prejudicious remarks and testimony during a
18 trial is not confined to their momentary effect upon the juror. Trial
19 tactics are influenced immeasurably. Counsel is forced to object and
20 argue repeatedly. Defendant may be compelled to testify when it is
his right not to do so. Ibsen v. State, 83 Nev. 42, 422 P.2d 543
(1967)

21
22 This reversal for a new trial is a hard burden to bear because Walker
23 is a confirmed criminal. But it is a proud tradition of our system that
24 every man, no matter who he may be, is guaranteed a fair trial. As
25 stated by Chief Justice Traynor in People v. Cahan, 282 P.2d 905 at
912 (Cal. 1955) 'Thus, no matter how guilty a defendant might be or
26 how outrageous his crime, he must not be deprived of a fair trial, and
27 any action, official or otherwise, that would have that effect would
28 not be tolerated.'

The requisites of a trial free of prejudicial atmosphere are too deeply
implanted to require repetition; for when the death penalty is
executed, its consequences are irretrievable. A fair trial therefore is a
very minimal standard to require before its imposition."


1 Walker v. Fogliani, 83 Nev. 154, 157, 425 P.2d 794 (1983)

2 If the State desires to introduce evidence of other bad acts, or suggests other criminal
3 activity it is necessary for the Court to hold a hearing wherein it is the burden of the State to
4 establish that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and
5 convincing evidence; and (3) the probative value of the evidence is not substantially
6 outweighed by the danger of unfair prejudice. Tinch v. State, 113 Nev. 1170, 946 P.2d 1061
7 (1997). Wherefore, if the State intends to introduce any such evidence it is requested that a
8 hearing be held outside the presence of the jury and far prior to trial to determine if the evidence
9 is properly admissible and to give Defendant an opportunity to adequately investigate and
10 defend against any last minute allegations.
11

12 DATED this 28 day of January 2010.

13
14
15 RESPECTFULLY SUBMITTED:

16 DAVID M. SCHIECK
17 SPECIAL PUBLIC DEFENDER

18
19 
20 IVETTE MANINGO
21 SCOTT L. BINDRUP
22 330 South Third Street, Ste. 800
23 Las Vegas, NV 89155-2316
24 Attorneys for COLLINS
25
26
27
28

ORIGINAL

0001
DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
Nevada Bar No. 0824
IVETTE MANINGO
Deputy Special Public Defender
Nevada Bar No. 7076
SCOTT L. BINDRUP
Deputy Special Public Defender
Nevada Bar No. 2537
330 South Third Street, Ste. 800
Las Vegas, NV 89155-2316
(702) 455-6265
(702) 455-6273 fax
imaningo@co.clark.nv.us
sbindrup@co.clark.nv.us
Attorneys for COLLINS

FILED

JAN 28 2010

Ann. J. Blum
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
LESEAN COLLINS #0857181,)
)
Defendant.)

CASE NO. C 252804
DEPT. NO. IX

MOTION TO BAR IMPROPER PROSECUTORIAL ARGUMENT

COMES NOW, Defendant, LESEAN COLLINS, by and through his attorneys, DAVID M. SCHIECK, Special Public Defender, IVETTE MANINGO, Deputy Special Public Defender, and SCOTT L. BINDRUP, Deputy Special Public Defender, and respectfully requests this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 1 of the Nevada Constitution and applicable state law, to enter an Order in limine prohibiting the State from engaging in improper argument before the

CLERK OF THE COURT

JAN 28 2010

RECEIVED

CM

1 jury and from violating Defendant's constitutional rights in the ways discussed below, as well
2 as in any other way that may prejudice the accused before the jury or this Court.

3 COLLINS further requests that his counsel not be placed in the precarious position of
4 either offending the jury by making numerous objections during the prosecutor's opening
5 statement and closing argument and thereby drawing undue attention to the misconduct, or
6 risking the loss of an issue for appeal by failing to object.¹

7 Accordingly, COLLINS requests that this Court permit counsel to make formal
8 objections to any prosecutorial misconduct outside the presence of the jury at the first available
9 opportunity.

10 **NOTICE OF MOTION**

11 TO: STATE OF NEVADA, Plaintiff; and

12 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

13 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
14 foregoing Motion to Bar Improper Prosecutorial Argument on for hearing on the ____ day of
15 February 2010 at the hour of ____ a.m., or as soon thereafter as counsel may be heard.

16 **POINTS AND AUTHORITIES**

17 **STATEMENT OF FACTS**

18 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to
19 answer and bound over to District Court on charges of Murder and Robbery. Trial is currently
20 set for March 1, 2010.

21
22
23
24
25
26
27 ¹ Defendant notes, however that "the trial court has a duty to ensure that a defendant
28 receives a fair trial." Williams v. State, 113 Nev. ____; 945 P.2d 438 (1997) [citing
Witter v. State, 112 Nev. 908; 921 P.2d 886 (1996)]. "To this end, the court must
exercise its discretionary power to control obvious prosecutorial misconduct sua
sponte." Id.

ARGUMENT

I. INTRODUCTION

A person on trial is entitled, under the Sixth, Eighth and Fourteenth Amendments, to fundamental fairness, Houston v. Estelle, 569 F.2d 372 (5th Cir. 1978); to a reliable determination of punishment, Gardner v. Florida, 430 U.S. 349 (1977); and to an individualized determination of an appropriate sentence guided by clear, objective and evenly-applied standards. Gregg v. Georgia, 428 U.S. 153 (1976). Improper argument by the District Attorney violates these constitutional rights in various ways. See, e.g., Caldwell v. Mississippi, 472 U.S. 320 (1985); Ex parte Wilson, 571 So.2d 1251 (Ala. 1990); Ex parte Tomlin, 540 So.2d 668 (Ala. 1988); Ex parte Rutledge, 482 So.2d 1262 (Ala. 1984); Ex parte Whisenant, 482 So.2d 1249 (Ala. 1984); Arthur v. State, 575 So.2d 1165 (Ala.Cr.App. 1990); Williams v. State, 445 So.2d 798, 810 - 12 (Miss. 1984); Wiley v. State, 449 So.2d 756 (Miss. 1984); Brooks v. Kemp, 762 F.2d 1383, 1394 - 1416 (11th Cir. 1985) (en banc), vacated, 478 U.S. 1016 (1986), on remand, 809 F.2d 700 (1987); Drake v. Kemp, 762 F.2d 1449, 1457 - 61 (11th Cir. 1985) (en banc), cert. denied, 478 U.S. 1020 (1986); Tucker (William Boyd) v. Kemp, 762 F.2d 1480, 1484 - 89 (11th Cir.) (en banc), vacated and remanded, 474 U.S. 1001 (1985), adhered to on remand, 802 F.2d 1293 (11th Cir. 1986) (en banc); Tucker (Richard) v. Kemp, 762 F.2d 1496, 1503 - 1509 (11th Cir. 1985) (en banc), subsequent history, 776 F.2d 1487 (1985), cert. denied, 478 U.S. 1022 (1986).

Stringent rules apply to the District Attorney and prosecutors from his office. The National District Attorneys Association has defined the role of a public prosecutor in our system of justice as follows:

Each decision [the prosecutor] makes has tremendous impact on the lives of individuals involved, if not on the entire community.

* * *

Prosecutors must strive diligently to raise the ethical, technical, and professional standards of all prosecutors throughout the nation. A single unprofessional, corrupt, or unscrupulous prosecutor can undo the fine work being done by the many thousands of dedicated prosecutors throughout the country. The modern prosecutor cannot simply be the defender of the status quo. He cannot be content to simply perpetuate himself in office by withdrawing from the frontline battle and practicing old routines. He must be a respected voice in the community with

1 unquestioned integrity. From that operating base he must become a respected
2 voice in the legislative body of his jurisdiction. The prosecutor must truly
3 represent "the people" and conduct himself in a way to make that obvious when
4 he rises to state his views in legislative halls.

5 National District Attorneys Association, The Prosecutor's Deskbook 3 - 4 (Healy & Manak,
6 eds.).

7 As a result, public prosecutors owe a higher duty to the justice system:

8 [The prosecutor] is the representative not of an ordinary party to a controversy,
9 but of a sovereignty whose obligation to govern impartially is as compelling as
10 its obligation to govern at all; and whose interest, therefore, in a criminal
11 prosecution is not that it shall win a case, but that justice shall be done. As such,
12 he is in a peculiar and very definite sense the servant of the law, the twofold aim
13 of which is that guilt shall not escape or innocence suffer. He may prosecute
14 with earnestness and vigor -- indeed, he should do so. But, while he may strike
15 hard blows, he is not at liberty to strike foul ones. It is as much his duty to
16 refrain from improper methods calculated to produce a wrongful conviction as it
17 is to use every legitimate means to bring about a just one.

18 Berger v. United States, 295 U.S. 78, 88 (1935).

19 The American Bar Association similarly states "the duty of the prosecutor is to seek
20 justice, not merely to convict." American Bar Association, "The Prosecution Function," 1
21 Standards For Criminal Justice 3.1-1(c) (1980) (hereinafter ABA Standards on the Prosecution
22 Function); see also, State v. Locklear, 241 S.E.2d 65, 69 (N.C. 1978) ("[p]rosecuting attorneys
23 owe honesty and fervor to the State and fairness to the defendant") (emphasis supplied).

24 The public prosecutor has a concomitant obligation as a public official to seek to
25 improve the justice system and foster the public's faith in the impartiality of justice. This has
26 been emphasized repeatedly.² As the National District Attorneys Association admonishes its
27 members:

28 ²See, e.g., American Bar Association, Code of Professional Responsibility EC 7 - 13 (1975)
(hereinafter ABA Code of Professional Responsibility); American Bar Association, Standards
Relating to the Prosecution Function §§ 1.1(c), 1.4 (1971); National District Attorneys
Association, National Prosecution Standards § 25.1 (1st ed. 1977); see also, Gershman, The
Burger Court and Prosecutorial Misconduct, 21 Crim.L.Bull. 217 (1985); Adlerson, Ethics,
Federal Prosecutors and Federal Courts: Some Recent Problems, 6 Hofstra L.Rev. 755 & 755
n.3 (1978); Auler, Actions Against Prosecutors Who Suppress or Falsify Evidence, 47
Tex.L.Rev. 642 (1969); Steele, Unethical Prosecutors and Inadequate Discipline, 38
S.W.L.Rev. 965, 988 (1984).

1 The prosecutor must place the rights of society in a paramount position . . . in the
2 approach to the larger issues of improving the law and making the law conform
to the needs of society.

3 National Prosecution Standards § 1.3 (D).

4 It goes without saying that an "improved" legal system is one in which the citizenry
5 feels that the prosecution is dealing with a case fairly and without favor:

6 Nothing will detract more from the proper administration of the law than for the
7 people to be impressed that the courts or prosecuting officers are unfair in their
treatment of those charged with the law's violation.

8 State v. Cox, 167 So.2d 352, 358 n.6 (La. 1964) [quoting State v. Nicholson, 7 S.W.2d 375
9 (Mo. App. 1928)].

10 The conduct of a prosecutor at a criminal trial is circumscribed by constitutional
11 commands, common law and canons of ethics. The purpose of the prosecutor's opening
12 statement is narrow: It is to be limited to a brief statement of the issues and an outline of
13 evidence intended to be introduced. The prosecutor must avoid any utterance that cannot later
14 be supported by evidence. As expressed in the ABA Standards on the Prosecution Function:

15 The prosecutor's opening statement should be confined to a brief statement of the
16 issues in the case and to remarks on evidence the prosecutor intends to offer
which the prosecutor believes in good faith will be available and admissible.

17 Id. § 5.5.

18 The role of a prosecutor in closing argument is also well defined: It is to assist
19 the jury in analyzing the evidence and to state his contentions as to the
20 conclusions the jury should draw from the evidence. United States v. Morris,
21 568 F.2d 396, 402 (5th Cir. 1978). It has long been established that the
prosecutor's closing argument may not vary from the law as given by the Court,
22 the evidence introduced at trial, or reasonable deductions from the evidence.
"The prosecutor, in addressing the jury, should limit his comments to the
evidence and reasonable inferences therefrom." Arthur v. State, 575 So.2d 1165,
1186 (Ala. Cr. App. 1990).

23 The Nevada Supreme Court, in promulgating Supreme Court Rule 172 and 173, has
24 recognized the importance that the jury not be misled by forensic misconduct of attorneys.
25 SCR 172(1)(a) prohibits the intentional making of "a false statement of material fact or law."
26 SCR 172(1)(d) states that an attorney shall not "offer evidence that the lawyer knows to be
27 false." More specifically, SCR 173(5) provides that an attorney shall not:

28 In trial, allude to any matter that the lawyer does not reasonably believe is
relevant or that will not be supported by admissible evidence, assert personal

1 knowledge of facts in issue except when testifying as a witness, or state a
2 personal opinion as to the justness of a cause, the credibility of a witness, the
culpability of a civil litigant or the guilt or innocence of an accused.

3 The prosecution must therefore remain within the strict confines of the law and the facts
4 in making any statement or argument in this case.

5 COLLINS specifically asserts his right to introduce evidence in rebuttal of any extra-
6 record argument made by the prosecutor.

7 A District Attorney is also precluded from relying on an imaginary "right to reply"
8 policy -- that is, allowing the defense to make an argument, without objection and then in
9 closing argument claiming that it is improper and "responding" to it with inflammatory
10 remarks. In United States v. Young, 470 U.S. 1 (1985), the Supreme Court rejected the notion
11 of "invited responses," holding that "[r]eviewing courts ought not be put in the position of
12 weighing which of two inappropriate arguments was the lesser." Id. at 13. The Court therefore
13 admonished trial courts to require prompt objections by the prosecutor and curative instructions
14 to the jurors.

15 As is well recognized, curative instructions, however, are often insufficient to remedy
16 improper argument. "The naive assumption that prejudicial effects can be overcome by
17 instructions to the jury . . . all practicing lawyers know to be unmitigated fiction." Bruton v.
18 United States, 391 U.S. 123, 129 (1968) [quoting Krulewitch v. United States, 336 U.S. 440,
19 453 (1949) (Jackson, J., concurring)].

20 Due to the essentially fictitious nature of the "curative" instruction, there are many cases
21 "where such a strong impression has been made on the minds of the jury by the illegal and
22 improper testimony, that its subsequent withdrawal will not remove the effect caused by its
23 admission." Government of the Virgin Islands v. Toto, 529 F.2d 278, 282 (3d Cir. 1976)
24 [quoting Throckmorton v. Holt, 180 U.S. 552, 567 (1901)].

25 The Nevada Supreme Court has repeatedly had occasion to address the types of
26 prosecutorial misconduct referred to herein. In Collier v. State, 101 Nev. 473; 705 P.2d 1126
27 (1985), the Court recognized that "[p]rosecutorial misconduct can violate the fair trial provision
28 of our State's constitution." Id. at 483 fn. 5. The Court has emphasized that the District Courts

1 must ensure that defendants receive a fair trial. "This duty requires that trial courts exercise
2 their discretionary power to control obvious prosecutorial misconduct sua sponte." Id., 101 Nev.
3 at 477. The Nevada Supreme Court has expressed its frustration with Clark County prosecutors
4 based upon improper statements to the jury:

5 [T]his court cannot condone the prosecutor's behavior during his opening
6 statement. He ignored the district judge's repeated admonitions to confine the
7 State's opening remarks to what the evidence would show and to refrain from
8 injecting personal beliefs into his statement. All attorneys making presentations
9 before the courts of law of this State have a solemn duty to respect admonitions
10 issued by members of the bench and may be disciplined for ignoring such
11 rulings. See, SCR 39; SCR 99. As representatives of the State, prosecutors have
12 a special, heightened duty of fairness and responsibility, particularly in capital
13 cases. See, Emerson v. State, 98 Nev. 158, 164; 643 P.2d 1212, 1215 - 16 (1982)
14 [citing Berger v. U.S., 295 U.S. 78, 88; 55 S.Ct. 629, 633, 79 L.Ed. 1314
15 (1935)]; SCR 173; SCR 250. We issue a stern warning to trial attorneys that
16 improper opening statements and failure to observe the admonitions of the trial
17 judge will not be tolerated and that this Court will act whenever appropriate to
18 deter such breaches of conduct.

19 Greene v. State, 113 Nev. 157; 931 P.2d 54 (1997).

20 The District Attorney's office in Clark County has engaged in improper arguments in
21 other cases. These practices may continue in this case absent strong measures by this Court to
22 prevent them. This practice is aggravated by the fact that even where prosecutorial misconduct
23 is found, the Nevada Supreme Court often finds the error to be harmless. Thus, prosecutors are
24 encouraged to engage in prosecutorial misconduct because seldom are sanctions imposed or
25 judgments reversed.

26 This Court should enter an Order in limine barring the prosecution from engaging, inter
27 alia, in the types of misconduct identified below and requiring it to abide by the requirements
28 imposed on prosecutors by the state and federal constitutions, laws and canons.

29 II. EXAMPLES OF UNFAIR ARGUMENTS

30 In order to preserve the fairness of Defendant's trial and potential sentencing
31 proceeding, COLLINS sets forth certain of the illegitimate arguments which a prosecutor may
32 not use. This list is merely representative of improper arguments and is by no means exhaustive.
33 An in limine ruling is necessary on these matters because a "curative" instruction at trial will
34 generally exacerbate, rather than cure, the prejudice caused by improper argument. See, e.g.,

1 United States v. Miranda, 593 F.2d 590, 596 n.7 (5th Cir. 1979). COLLINS presents these
2 arguments for the purpose of informing the Court of his unequivocal objection to them.

3 **A. Misleading the Jury as to the Law**

4 A prosecutor may not attempt to mislead jurors as to any aspect of the law at any stage
5 of the proceedings.

6 **(1) Misstating the Law on Intent**

7 These arguments are sheer misstatements of the law. When a jury has been confused or
8 misled about the state of the law on intent -- particularly with regard to what the state must
9 prove -- a conviction cannot stand. Brooks v. Kemp, 762 F.2d 1383, 1389 (11th Cir. 1985), cert.
10 denied, 478 U.S. 1022 (1986) (reversing conviction where improper instruction given on intent
11 even though proper instruction also given).

12 **(2) Reducing the State's Burden of Establishing Guilt Beyond a Reasonable**
13 **Doubt**

14 Remarks that encourage the jurors to believe that "reasonable doubt" has to be
15 "substantial" are unconstitutional. The United States Supreme Court has condemned any
16 equation of reasonable doubt with "substantial doubt" or "moral certainty" as well as any other
17 definition that would confuse jurors or lead them to believe that the State's burden is less
18 significant than it is. Cage v. Louisiana, 498 U.S. 39; 112 L.Ed.2d 339 (1990). See also, United
19 States v. Martin-Trigona, 684 F.2d 485, 493 (7th Cir. 1982) (holding that definitions of
20 reasonable doubt engender confusion among jurors).

21 In Nevada, reasonable doubt is defined by NRS 175.211:

22 "1. A reasonable doubt is one based on reason. It is not mere possible
23 doubt, but is such a doubt as would govern or control a person in the more
24 weighty affairs of life. If the minds of the jurors, after the entire comparison
25 and consideration of all the evidence, are in such a condition that they can say
26 they feel an abiding conviction of the truth of the charge, there is not a
reasonable doubt. Doubt to be reasonable must be actual, not mere possibility
or speculation.

27 2. No other definition of reasonable doubt shall be given by the court
28 to juries in criminal actions in this State."

1 Where the jury has been led to believe some other standard may apply, reversal is
2 required. See, State v. Rover, 11 Nev. 343 (1876); McCullough v. State, 99 Nev. 72; 657 P.2d
3 1157 (1983).

4 The State must be precluded from misstating the law on reasonable doubt at COLLINS
5 trial.

6 **B. Inflaming the Passions and Prejudices of the Jury**

7 Appeals to passion and prejudice and other inflammatory remarks to the jury are also
8 impermissible. See, Viereck v. United States, 318 U.S. 236, 247 - 48 (1943); United States v.
9 Garza, 608 F.2d 659 (5th Cir. 1979); United States v. Gasparo, 744 F.2d 438 (5th Cir. 1984);
10 Parks v. State, 330 S.E.2d 686 (Ga. 1985); Conner v. State, 303 S.E.2d 266 (Ga. 1983);
11 American Bar Association, Standards on the Prosecution Function § 3-5.8(c) (1982).

12 The Nevada Supreme Court has held that the prosecutor's attempt to inflame the jury is
13 reversible error.

14 Gregg in no way supports the view that a prosecutor may blatantly attempt to inflame a
15 jury by urging that, if they wish to be deemed "moral" and "caring," then they must approach
16 their duties in anger and give the community what it "needs": "[t]he chance to see that this killer
17 gets what he deserves." Collier, 101 Nev. at 479.

18 Courts have repeatedly used strong language to condemn the prosecution's use of
19 arguments appealing to jurors' prejudice. See, United States ex rel. Haynes v. McKendrick, 481
20 F.2d 152 (2d Cir. 1973); Kelly v. Stone, 514 F.2d 18 (9th Cir. 1975); Miller v. North Carolina,
21 583 F.2d 701 (4th Cir. 1978).

22 Another example of this is the use of horrible photographs, which cause a visceral
23 reaction against the accused. Jurors are lay people who rarely come into contact with the
24 criminal justice system. They see such pictures and are particularly susceptible to an improper
25 argument that they should attribute great weight in such evidence.

26 Arguments meant to inflame the jury produce an unreliable verdict based on "caprice"
27 and emotion. Gardner v. Florida, 430 U.S. 349 (1977). This Court must be on guard for any
28 subtle appeals to prejudice in the arguments of the prosecutor.

1 **C. Victim Impact Argument**

2 References to victim impact are entirely inappropriate and serve only to inflame the
3 minds of the jurors. The State must be precluded from making similar improper arguments at
4 Defendant's trial.

5 While victim impact testimony may now be permissible under the United States
6 Constitution, see, Payne v. Tennessee, 115 L.Ed.2d 720 (1991), COLLINS asserts that victim
7 impact evidence is still improper under Nevada law. Collier, 101 Nev. at 480.

8 Likewise, a "Golden Rule" argument asks the jury to place themselves in the shoes of
9 the victim(s), has repeatedly been declared to be prosecutorial misconduct. See, e.g., Howard v.
10 State, 106 Nev. 713, 719; 800 P.2d 175, 178 (1990); Jacobs v. State, 101 Nev. 356, 359; 705
11 P.2d 130, 132 (1985).

12 **D. Conscience of the Community**

13 "References to the jury acting as the conscience of the community and as having to be
14 angry unto death with a defendant to qualify as a moral community have been identified as
15 improper arguments amounting to prosecutorial misconduct." Williams v. State, 113 Nev. ____;
16 945 P.2d 438 (1997) [citing Collier v. State, 101 Nev. 473; 705 P.2d 1126 (1985), cert. denied,
17 486 U.S. 1036; 108 S.Ct. 2025; 100 L.Ed.2d 611 (1988)]. See also, Haberstroh v. State, 105
18 Nev. 739; 782 P.2d 1343 (1989) (prosecutor committed misconduct by referring to the jury as
19 "the conscience of the community"); Flanagan v. State, 104 Nev. 105; 754 P.2d 836 (1988),
20 vacated on other grounds sub nom., Flanagan v. Nevada, 503 U.S. 931; 112 S.Ct. 1464; 117
21 L.Ed.2d 610 (1992) (prosecutor's remark, "[i]f we don't punish, then society is going to laugh at
22 us" found to be improper).

23 **E. Other Inflammatory Argument**

24 These arguments have to do with the "individualized determination" of sentence
25 required by the Eighth Amendment. Woodson v. North Carolina, 428 U.S. 280 (1976). See,
26 Knorr v. State, 103 Nev. 604, 607; 748 P.2d 1 (1987).

1 Another area of prejudice is a prosecutor's inclination to "stomp his feet" and incite the
2 jury to return a guilty verdict. The courts have not minced words when condemning such
3 practices:

4 The interest of the State . . . is best served by the orderly rational lawful
5 presentation of the facts and the law. That is the way the criminal justice system
6 is designed to operate. Justice is not served by attorneys who use closing
7 argument to express inflammatory personal ideas or engage in personal
8 vilification. The purpose of . . . argument is to enlighten the jury, not to enrage it.
9 Where counsel lacks the self-discipline necessary to avoid arguments such as
these, that discipline should be imposed by the trial judge from the bench. An
otherwise orderly and fair trial can be instantly destroyed by such unprepared
intemperate argument. The price that all of us must pay for these untimely flights
of oratorical fancy is far too high.

10 Bridgeforth v. State, 498 So.2d 796, 801 (Miss. 1986).

11 The Nevada Supreme Court has also reversed for such inflammatory rhetoric.

12 The State may not suggest that the jurors themselves could ever be harmed by the
13 Defendant. Jones v. State, 113 Nev. 454; 937 P.2d 55 (1997) ("As to the State's warning that
14 Jones' weapons could have been meant for inflicting harm on the jurors themselves, we
15 conclude that this portion of the statement was clearly inflammatory.").

16 The prosecutors are also forbidden from referring to the Defendant as a "rabid animal"
17 or using other like terms. Id. [The Nevada Supreme Court "has previously warned that 'such
18 toying with the jurors' imagination is risky and the responsibility of the prosecutor is to avoid
19 the use of language that might deprive a defendant of a fair trial." Pacheco v. State, 82 Nev.
20 172, 180; 414 P.2d 100, 104 (1966) (discussing prosecutor's statement calling a defendant a
21 'mad dog.'). The prosecutor's reference to Jones as a rabid animal was indeed risky behavior and
22 was wholly unnecessary. The State argues that it was 'simply pointing out the heinous nature of
23 the defendant's past conduct and his utter disregard for the sanctity of life,' we conclude that
24 there was ample evidence from which the jury could have drawn that very same conclusion in
25 the absence of the prosecution's demeaning and unprofessional remarks."].

26 The State must be precluded from making such improper remarks during the trial of
27 COLLINS.
28

1 **F. Misleading the Jury as to its Responsibility**

2 Any kind of effort by the prosecutor to relieve juries of their critical responsibility to
3 decide upon the innocence or guilty of the defendant has repeatedly been condemned by the
4 state and federal courts.

5 Numerous courts have recognized this principle for decades. In holding that it was
6 improper for a prosecutor to tell a jury that any mistake it made would be corrected by a
7 reviewing tribunal, the Alabama appellate court wrote:

8 The only effect of this argument would be to lead the jury into the mistaken
9 belief that their findings on the facts would be reviewed by a higher tribunal and
thereby lessen the sense of responsibility resting on them.

10 Beard v. State, 95 So. 333 (Ala.App. 1923) (emphasis added).

11 Under Nevada law and the Eighth Amendment to the United States Constitution,
12 remarks which diminish the jurors' sense of responsibility are in violation of Caldwell v.
13 Mississippi, *supra*. The State must be precluded from making any such improper remarks at the
14 Defendant's trial.

15 **G. Arguing Facts not in Evidence**

16 It is totally improper for a prosecutor to argue facts not in evidence or to misstate the
17 facts. Donnelly v. DeChristoforo, 416 U.S. 637 (1974); United States v. Warren, 550 F.2d 219,
18 228 - 229 (5th Cir. 1977); Rippo v. State, 113 Nev. 1239; 946 P.2d 1017 (1997). "The
19 prosecutor has a duty to refrain from stating facts in his opening statement that he cannot prove
20 at trial." Lisle v. State, 113 Nev. 540; 937 P.2d 473 (1997) [citing Riley v. State, 107 Nev. 205,
21 212; 808 P.2d 551, 555 (1991), *cert. denied*, 514 U.S. 1052; 115 S.Ct. 1431; 131 L.Ed.2d 312
22 (1995)]. According to the American Bar Association's Standards on the Prosecution Function:

23 [It is unprofessional conduct for the prosecutor intentionally to refer to or argue
24 on the basis of facts outside the record . . . unless such facts are matters of
25 common public knowledge based on ordinary human experience or matters of
which the court may take judicial notice.

26 Id. § 3-5.9.

27 The prohibition against the State arguing facts not in evidence also rests on the principle
28 that a prosecutor cannot act as both an advocate and a witness:

1 Courts are especially reluctant and rightfully so, to allow lawyers, including
2 prosecuting attorneys, to be called as witnesses in trials in which they are
advocates.

3 Gajewski v. United States, 321 F.2d 261, 268 (8th Cir. 1963); see also, Walker v. Davis, 840
4 F.2d 834, 838 (11th Cir. 1988) ("[a]rguments delivered while wrapped in the cloak of state
5 authority have a heightened impact on the jury"). Such arguments also deny the Defendant the
6 right to confront the evidence against him. As the United States Supreme Court has held,
7 "[t]here are few subjects, perhaps, upon which this Court and other courts have been more
8 nearly unanimous than in their expressions of belief that the right of confrontation and cross-
9 examination is an essential and fundamental requirement for the kind of fair trial which is this
10 country's constitutional goal." Pointer v. Texas, 380 U.S. 400 (1965); see also, Douglas v.
11 Alabama, 380 U.S. 415 (1965); Cruz v. New York, 481 U.S. 186 (1987); Bruton v. United
12 States, 391 U.S. 123 (1968); Brookhart v. Janis, 384 U.S. 1 (1966); United States v. Avery, 760
13 F.2d 1219 (11th Cir. 1985); Holland v. Attorney General of New Jersey, 777 F.2d 150 (3d Cir.
14 1985); United States v. Pickett, 746 F.2d 1129, 1132 - 33 (6th Cir. 1984). This court should
15 preclude the prosecution from arguing facts not supported by the evidence.

16 **H. Commenting -- Expressly or By Implication -- on the Defendant's Failure to**
17 **Testify**

18 It is well established now that the State simply may not make reference -- either
19 explicitly or implicitly -- to the fact that the Defendant remained silent after arrest and/or did
20 not testify at trial. Morris v. State, 112 Nev. 260; 913 P.2d 1262 (1996); McCraney v. State, 110
21 Nev. 250; 871 P.2d 922 (1994) (judgment reversed because of prosecutor's comments about
22 post-Miranda silence); Neal v. State, 106 Nev. 23, 25; 787 P.2d 764 (1990); Barron v. State,
23 105 Nev. 767, 778; 783 P.2d 444 (1989); McGuire v. State, 100 Nev. 153, 154; 677 P.2d 1060
24 (1984).

25 The Ninth Circuit has been similarly clear in its rulings. Lincoln v. Sunn, 807 F.2d 805
26 (9th Cir. 1987); United States v. Soulard, 730 F.2d 1292, 1306 (9th Cir. 1984); United States v.
27 Branson, 756 F.2d 752, 754 (9th Cir. 1985).

1 Nevada law is unwavering in its decisions that it is unconscionable for a prosecutor to
2 comment on the failure of a defendant to take the stand. These comments also are in clear
3 violation of the federal constitutional protections guaranteed by the Fifth, Sixth, Eighth and
4 Fourteenth Amendments.

5 **I. Commenting on the Defendant's Failure to Call Witnesses**

6 It is improper for a prosecutor to comment on a Defendant's failure to call witnesses.
7 Rippo v. State, 113 Nev. 1239; 946 P.2d 1017 (1997) [citing Whitney v. State, 112 Nev. 499,
8 502; 915 P.2d 881, 882 (1996)]. Such comments impermissibly shift the burden of proof to the
9 defense. Id. "It is improper to suggest to the jury that it is the defendant's burden to produce
10 proof by explaining the absence of witnesses or evidence." Lisle v. State, 113 Nev. 540; 937
11 P.2d 473 (1997) [citing Barron v. State, 105 Nev. 767, 778; 783 P.2d 444, 451 (1989)]. It is also
12 improper for the prosecution to inform the jury of a potential witness' invocation of a privilege
13 and decision not to testify on the Defendant's behalf. Franco v. State, 109 Nev. 1229, 1243; 866
14 P.2d 247, 256 (1993).

15 **J. Asserting Prosecutorial Expertise**

16 Another type of argument that courts have expressly condemned concerns references by
17 prosecutors to their expertise. Brooks v. Kemp, 762 F.2d at 1410; Tucker v. Kemp, 762 F.2d at
18 1505; Newlon v. Armontrout, supra. The District Attorney, because he is a "public official
19 occupying an exalted station," possesses unique ability to "imping[e] on the jury's function."
20 United States v. Morris, 586 F.2d 396, 402 (5th Cir. 1977). Due to the prosecutor's position of
21 authority, "improper suggestions, insinuations, and especially, assertions of personal knowledge
22 are apt to carry much weight against the accused when they should properly carry none."
23 Berger v. United States, 295 U.S. 78, 88 (1935). As one court held:

24 The power and force of the government tend to impart an implicit stamp of
25 believability to what the prosecutor says. That same power and force allow him,
26 with a minimum of words, to impress on the jury that the government's vast
27 investigative network, apart from the ordinary machinery of trial, knows that the
28 accused is guilty or has non-judicially reached conclusions on relevant facts
which tend to show he is guilty.

Hall v. United States, 419 F.2d 582, 583 - 84 (5th Cir. 1969).

1 The Nevada Supreme Court has proscribed reference by the prosecutor to his office and
2 authority in an attempt to bolster the evidence presented to the jury.

3 Such an injection of personal beliefs into the argument detracts from the "unprejudiced,
4 impartial, and nonpartisan" role that a prosecuting attorney assumes in the courtroom. By
5 stepping out of the prosecutor's role, which is to seek justice, and by invoking the authority of
6 his or her own supposedly greater experience and knowledge, a prosecutor invites undue jury
7 reliance on the conclusions personally endorsed by the prosecuting attorney. Collier, 101 Nev.
8 at 480.

9 Asserting the credibility of State witnesses also has been condemned by courts around
10 the country. See, e.g., United States v. Garza, 608 F.2d 659, 664 (5th Cir. 1979) (integrity of
11 officers unquestioned given the fact that they were "associating daily with dirty, nasty people");
12 United States v. Brown, 451 F.2d 1231, 1235 - 36 (5th Cir. 1971); Hall v. United States, 419
13 F.2d 582, 585 - 87 (5th Cir. 1969); Gradsky v. United States, 373 F.2d 706, 710 (5th Cir. 1967);
14 Stewart v. State, 263 So.2d 754, 758 - 59 (Miss. 1972); Harris v. United States, 402 F.2d 656
15 (D.C. Cir. 1968); see also, Commonwealth v. Potter, 785 A.2d 492 (Pa. 1973); State v.
16 Williams, 210 N.W.2d 21 (Minn. 1973).

17 The Ninth Circuit has repeatedly held that such vouching is improper. United States v.
18 Simtoh, 901 F.2d 799, 805 (9th Cir. 1990); United States v. Roberts, 618 F.2d 530 (9th Cir.
19 1980). See also, Lisle v. State, 113 Nev. 540; 937 P.2d 473 (1997) ("It is improper for the
20 prosecution to vouch for the credibility of a government witness. Vouching may occur in two
21 ways: the prosecution may place the prestige of the government behind the witness or may
22 indicate that information not presented to the jury supports the witness's testimony.") (citing
23 Roberts).

24 K. Expressing Personal Opinions

25 A prosecuting attorney may not express any personal opinions during a criminal
26 proceeding, as such expressions may deny the accused a fair trial. See, e.g., United States v.
27 Young, 470 U.S. 1, 8 (1985); Berger v. United States, 295 U.S. 78, 85 - 88 (1935); Brooks v.
28 Kemp, 762 F.2d 1383, 1408 (11th Cir. 1985); United States v. Rodriquez, 585 F.2d 1234 (5th

1 Cir. 1978); United States v. Diharce-Estrada, 526 F.2d 637 (5th Cir. 1976); United States v.
2 Lamerson, 457 F.2d 371 (5th Cir. 1972). It is improper for a prosecutor to interject his personal
3 opinion in closing argument. Ross v. State, 106 Nev. 924; 803 P.2d 1104 (1990).

4 The result of any expression of personal belief is to convey "the unspoken message that
5 the prosecutor knows what the truth is and is assuring its revelation." Stringer v. State, 500
6 So.2d 928, 936 (Miss. 1986); Berger v. United States, 295 U.S. at 85 - 88 (statement of
7 prosecutor carries with it governmental imprimatur). As is stated elsewhere in this Motion,
8 prosecutorial "opinion" includes a District Attorney's views on the credibility of his or her
9 witnesses and certainly any opinions based on "facts" that are not in evidence.

10 The law is clear in Nevada that the injection of the prosecutors personal beliefs is highly
11 improper. Ross v. State, 106 Nev. 924, 927; 803 P.2d 1104 (1990) (although demonstrating bias
12 on the part of the witness is permissible, stating that the witness is lying is not); Witherow v.
13 State, 104 Nev. 721; 765 P.2d 1153, 1155 (1988) (an opinion as to the veracity of a witness in
14 circumstances where veracity might well have determined the ultimate issue of guilt or
15 innocence is improper). See also, Earl v. State, 111 Nev. 1304; 904 P.2d 1029 (1995) (the
16 prosecutor acted inappropriately by characterizing the defendant's testimony as "malarkey."
17 "This remark by the prosecutor violated his duty not to inject his personal beliefs into argument
18 and more appropriately, not to ridicule or belittle the defendant or the case.").

19 The Ninth Circuit has expressed its abhorrence of statements of personal belief by the
20 prosecutor. United States v. McKoy, 771 F.2d 1207, 1211 (9th Cir. 1985). These types of
21 remarks are clearly improper and must be enjoined at the Defendant's trial.

22 L. Claims of Witness Intimidation

23 "The prosecution's intimations of witness intimidation by a defendant are reversible
24 error unless the prosecutor also presents substantial credible evidence that the defendant was the
25 source of the intimidation." Rippo v. State, 113 Nev. 1239; 946 P.2d 1017 (1997) (citing Lay v.
26 State, 110 Nev. 1189, 1193; 886 P.2d 448, 450 - 51 (1994)).
27
28

1 **M. Referring to the Defendant's Custodial Status**

2 The prosecution may not in any way allude to the fact that COLLINS has been in prison,
3 either because of his prior conviction for this offense, or for any other reason. See, Cunningham
4 v. State, 113 Nev. 897; 944 P.2d 261, 26 (1997); NRS 48.045.

5 **N. Other Improper or Misleading Arguments**

6 There are numerous other arguments the State could make that would violate
7 COLLINS'S constitutional rights. Drake v. Kemp, 762 F.2d 1449, 1458 - 60 (11th Cir. 1985)
8 (en banc); Potts v. Zant, 734 F.2d 526, 535 - 536 (11th Cir. 1984), reh'g denied, 764 F.2d 1369
9 (1985).

10 Any improper references to prior crimes or bad acts either at the guilt or penalty phase
11 would be reversible error. Tomarchio v. State, 99 Nev. 572, 577; 665 P.2d 804 (1983); Ex Parte
12 Whisenant, 482 So.2d 1249 (Ala. 1984). The State must be precluded not only from
13 inflammatory or inadmissible argument and from conducting improper cross-examinations of
14 the Defendant's witnesses that are designed to prejudice the Defendant in the eyes of the jury.

15 It is also inappropriate for a prosecutor to make disparaging remarks pertaining to
16 defense counsel's ability to carry out the required functions of an attorney. Riley v. State, 107
17 Nev. 205; 808 P.2d 551 (1991).

18 **III. SECURING THE DEFENDANT'S RIGHT TO**
19 **A TRIAL FREE OF PROSECUTORIAL MISCONDUCT**

20 These are but a few of the arguments that a prosecutor can make that would violate the
21 right to a fair trial. Various other examples could be given. This Court will therefore have to
22 apply the principles developed in this Motion in a variety of contexts.

23 Through this Motion, COLLINS seeks to anticipate improper arguments. To that end, he
24 respectfully requests that this Court direct the State to indicate which, if any, of the arguments
25 set forth above, the State believes it would be permitted to make, whatever the possible context.

26 COLLINS hereby serves notice that he will make an evidentiary showing regarding
27 each of the arguments which the State believes to be proper, in order that he may perfect his
28 record.

WHEREFORE, COLLINS respectfully requests that this Court enter an Order granting the Motion in Limine and prohibiting the State from making improper opening or closing statements, from improperly examining witnesses, and from making any other improper remarks in this case.

DATED this 4th day of January 2010.

RESPECTFULLY SUBMITTED:

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER

IVETTE MANINGO
SCOTT L. BINDRUP
330 South Third Street, Ste. 800
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for COLLINS

120

Arthur H. Johnson
CLERK OF COURT

CASE NO. C 252804
DEPT. NO. IX

1

0142

MC

CLERK OF THE COURT

JAN 28 2010

2015

1 This Motion is based upon the pleadings and papers on file, the attached Points and
2 Authorities, and argument of counsel at that time of hearing.
3

4
5 **NOTICE OF MOTION**

6 TO: STATE OF NEVADA, Plaintiff, and

7 TO: DAVID ROGER, District Attorney, Attorney for Plaintiff

8 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and
9 foregoing Motion to Federalize All Motions, Objections, Requests and Other Applications on
10 for hearing on the ____ day of February, 2010 at the hour of ____ a.m., or as soon thereafter
11 as counsel may be heard.
12

13
14 **POINTS AND AUTHORITIES**

15 **STATEMENT OF FACTS**

16 On March 10, 2009, a Preliminary Hearing was held after which Defendant was held to
17 answer and bound over to District Court on charges of Murder and Robbery. Trial is currently
18 set for March 1, 2010.
19

20
21 **ARGUMENT**

22 With regard to his request to federalize all motions, objections, exceptions, requests and
23 other applications, Defendant relies upon the Fourth, Fifth, Sixth, Eighth and Fourteenth
24 Amendments of the United States Constitution. (See e.g., McKoy v. North Carolina, (1990)
25 494 U.S. 433; Maynard v. Cartwright, (1988) 486 U.S. 356; Johnson v. Mississippi, (1988) 486
26 U.S. 578; Mills v. Maryland, (1988) 486 U.S. 367; Hitchcock v. Dugger, (1987) 481 U.S. 393;
27 Gray v. Mississippi, (1987) 481 U.S. 648; Batson v. Kentucky, (1986) 476 U.S. 79; Turner v.
28

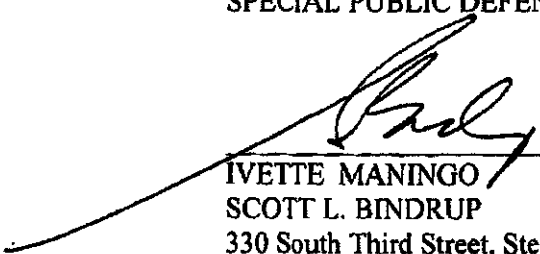
1 Murray, (1986) 476 U.S. 28; Caldwell v. Mississippi, (1985) 472 U.S. 320; Francis v. Franklin,
2 (1985) 471 U.S. 307; Eddings v. Oklahoma, (1982) 455 U.S. 104; Godfrey v. Georgia, (1980)
3 446 U.S. 420; Beck v. Alabama, (1980) 447 U.S. 625; Green v. Georgia, (1979) 442 U.S. 95;
4 Lockett v. Ohio, (1978) 438 U.S. 586; Bell v. Ohio, (1978) 438 U.S. 637; Gardner v. Florida,
5 (1977) 430 U.S. 349; Gregg v. Georgia, (1976) 428 U.S. 153; Furman v. Georgia, (1972) 408
6 U.S. 238; Witherspoon v. Illinois, (1968) 391 U.S. 510); Article 1, Sections 3, 6, 8 and 18 of
7 the Nevada Constitution and other applicable laws.
8

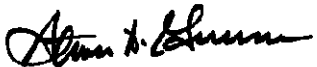
9 Wherefore, in order to preserve any appellate issues, respect trial time constraints, and
10 out of an abundance of caution, COLLINS requests this court acknowledge it's reliance upon
11 Federal and State constitutional provisions with regard to each and every motion, objection,
12 exception, request and other application made in the trial of this case.
13

14
15 DATED this 19th day of January 2010.
16

17 RESPECTFULLY SUBMITTED:
18

19 DAVID M. SCHIECK
20 SPECIAL PUBLIC DEFENDER

21
22 
23 IVETTE MANINGO
24 SCOTT L. BINDRUP
25 330 South Third Street, Ste. 800
26 Las Vegas, NV 89155-2316
27 (702) 455-6265
28 Attorneys for COLLINS



CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JOSHUA TOMSHECK
Deputy District Attorney
Nevada Bar #009210
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-

LESEAN TARUS COLLINS,
#0857181

Defendant.

CASE NO: C252804

DEPT NO: IX

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO FEDERALIZE
ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER
APPLICATIONS**

DATE OF HEARING: February 8, 2010
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Federalize all Motions, Objections, Requests and other Applications

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.

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 ***Shalana Eddins***

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

1 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
2 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
3 Eddins received a telephone call from her son who told her that the police were chasing his
4 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
5 was being chased by the police and to come get him. He then gave her directions and she
6 was able to locate him around the corner from her house. PHT p. 116. When she reached
7 the Defendant she could see the Hyundai Sonata parked down the street, however, the
8 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
9 Eddins asked the Defendant why they police were chasing him, he stated that he did not
10 know, he was just sitting outside in the car and he had the music playing and the police had
11 just come up. PHT p. 117.

12 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
13 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it
14 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

15 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
16 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
17 Eddins noticed that the victim was wearing the same bracelet and necklace that the
18 Defendant had tried to give her when he picked her up on September 2, 2008.

19 ***Metro Investigation***

20 On September 6, 2008, Detective Cliff Mogg was dispatched to a homicide scene off
21 State Road 156 approximately mile marker 12 on the south side of the State Road. This area
22 is approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
23 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
24 female. She was located approximately 40 feet from the south of the State Route 156 and
25 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
26 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
27 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
28 appeared to have blood on them. There were also two black Nike sandals that were lying in

1 the roadway along a path. It appeared as though the body of the victim had been dragged
2 through that path from the center of the roadway to where she was discovered. PHT p. 174.
3 Detective Mogg also found two partial fingernails, each one approximately an inch long,
4 which were multi colored but predominantly blue in color. PHT p. 174.

5 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
6 on the victim. At that point Detective Mogg had tentative identification of the victim due to
7 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
8 members who had given identifying characteristics such as tattoos. Also noticeable at the
9 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
10 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.
11 The fingernails recovered at the scene of the body discovery were identical to the description
12 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
13 100.

14 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
15 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
16 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
17 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
18 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
19 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
20 Metro pawn records came back negative. *Id.* After the interview of Eddins Detective Mogg
21 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
22 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
23 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
24 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
25 analyst test the area in question for the presence of blood and preserve samples for forensic
26 testing. PHT p. 189.

27 Through his investigation Detective Mogg was able to identify cellular telephone
28 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-

1 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
2 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
3 Detective Mogg requested the records pertaining to each of these phone numbers including
4 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
5 to determine which cell towers the calls were being routed through in order determine the
6 location from where the individual was calling. PHT p. 199. Between the early morning
7 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
8 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
9 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
10 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective
11 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
12 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
13 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
14 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
15 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
16 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
17 phone records show that the call routed from a cell tower located almost identical to the
18 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
19 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
20 was saying he was driving to "Stateline."

21 Detective Mogg testified that he and other Metro investigators had been attempting to
22 locate the car Shalana Eddins had described as being in the Defendant's possession between
23 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
24 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
25 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
26 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
27 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
28 calls the Defendant was making or receiving on September 4, 2008, at the time the

1 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
2 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
3 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
4 pp. 210-213.

5 ***Forensic evidence***

6 Detective Mogg submitted many of the items of evidence discovered during Metro's
7 investigation for forensic testing. Several items of evidence were analyzed by Kellie M.
8 Gauthier, a forensic scientist with the Las Vegas Metropolitan Police Department crime lab
9 specializing in the field of DNA analysis. PHT pp. 3-4. Ms. Gauthier authored two (2)
10 reports for testing conducted at different times, dated October 10, 2008, and February 6,
11 2009, respectively. The report dated October 10, 2008, indicated that the blood discovered
12 in the hallway of Shalana Eddins residence was the blood of victim Brandi Payton. The
13 estimated odds of that DNA profile existing elsewhere in the population was listed as rarer
14 than "1 in 650 billion."

15 Ms. Gauthier later tested forensic samples recovered from the Hyundai automobile
16 after it's recovery on October 1, 2008. Among the items tested was the carpeted trunk mat
17 of the Hyundai Sonata. DNA analysis provided that DNA recovered from the trunk
18 belonged to Brandi Payton. The estimated frequency of the DNA profile being present
19 elsewhere in the population was rarer than "1 in 650 billion."

20 Trial is set in this matter for March 1, 2010. The Defendant now moves this Court to
21 federalize all motions, objections, requests and other applications. The State's response
22 follows.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEGAL ARGUMENT

At the outset, this Court should note that the Defendant's Motion makes no factual assertions as to why the relief sought should be granted. Moreover, the Defendant's Motion makes no specific mention of *which* relief they seek, in that the instant Motion does not articulate any particular "motion, objection, exception, request and/or application" it seeks this Court to grant permission to utilize in this case. Rather, the Defendant makes a vague, broad request and "relies" on the Fourth, Fifth, Sixth, Eighth and Fourteenth amendments of the United State Constitution. As such, the State must make assumptions about which relief the Defendant actually seeks in the following response.

Presumably, the Defendant wishes to utilize the Federal rules as they relate to objections during Trial. The Nevada Supreme Court has observed that that a proper objection is a prerequisite to its consideration of an issue on appeal. Lord v. State, 107 Nev. 28, 38 (1991). Under the "contemporaneous-objection rule," a defendant's failure to object would preclude appellate review of the issue in question. Sullivan v. State, 115 Nev. 383, 387 n. 3 (1997) (en banc). One federal appellate court once noted:

We stress the importance of making proper objection and, if the objection is sustained and the jury instructed accordingly, expressing to the trial court any desire for further instruction or for mistrial. Though the reasons for this are obvious, some of them bear repeating. When we are asked to reverse in these circumstances we are, in effect, asked to go against the implicit judgment of both the trial court and the defendant's trial counsel

that the trial court's corrective action was adequate and appropriate. Moreover, we are reluctant, particularly where, as here, there has been a strong curative instruction and it is obvious that the prosecution is not seeking to "force" a mistrial, to allow the defense to avoid making the choice, prior to verdict, between another trial and a decision by the jury which has already commenced to hear the case.

United States v. Canales, 744 F.2d 413, 431 (5th Cir. 1984). If the Defendant were not required to follow this important procedural rule, he could purposefully fail to object during trial, knowing error to be created in the record, and then ambushing the State on appeal. A failure to object to a particular issue could also reflect a purposeful strategy decision made during the course of the trial. See, e.g., Leonard v. State, 117 Nev. 53, --, 17 P.3d 397, 406

1 (2001) ("Leonard's failure to object might reflect a tactical decision by counsel that is not
2 susceptible to review on direct appeal.")

3 The purpose behind the contemporaneous rule and the state exhaustion rule is one
4 which protects the integrity and finality of the proceedings. The best place for any potential
5 error to be cured is in the trial court during the proceedings so as to not have to retry the case
6 should some Court later decide that an error occurred that the trial court was never advised
7 about. Courts have repeatedly pointed out that blanket objections are patently improper.
8 Ritacca v. Abbott Laboratories, 203 F.R.D. 332, 335 n.4 (2001) (citing In re Shopping Carts
9 Antitrust Litig., 95 F.R.D. 299, 305-06 (S.D.N.Y. 1982); Eureka Fin. Corp. v. Hartford
10 Accident & Indem. Co., 136 F.R.D. 179, 182 (E.D.Cal 1991)).

11 CONCLUSION

12 Based upon all of the foregoing, Defendant's Motion to Federalize all Motions,
13 Objections, Requests and other Applications for the Proceedings in the above Entitled Case
14 should be DENIED.

15
16 DATED this 1st day of February, 2010.

17 DAVID ROGER
18 Clark County District Attorney
Nevada Bar #002781

19
20 BY /s/JOSHUA TOMSHECK

21 JOSHUA TOMSHECK
22 Deputy District Attorney
Nevada Bar #009210
23
24
25
26
27
28

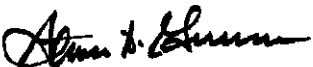
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 1st day of February, 2010, by facsimile transmission to:

Special Public Defender.
FAX #455-6273

/s/ANJA BETHANY FLETCHER
Secretary for the District Attorney's
Office



CLERK OF THE COURT

1 **OPPS**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781

5 JOSHUA TOMSHECK
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 LESEAN TARUS COLLINS,
14 #0857181)

15 Defendant.)

CASE NO: C252804

DEPT NO: IX

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO BAR**
17 **IMPROPER PROSECUTORIAL ARGUMENT**

18 DATE OF HEARING: February 8, 2010
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 JOSHUA TOMSHECK, Deputy District Attorney, and hereby submits the attached Points
22 and Authorities in Opposition to Defendant's Motion to Bar Improper Prosecutorial
23 Argument.

24 This OPPOSITION is made and based upon all the papers and pleadings on file
25 herein, the attached points and authorities in support hereof, and oral argument at the time of
26 hearing, if deemed necessary by this Honorable Court.

27 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 ***Discovery and identification of Brandi Payton***

4 On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas
5 Metropolitan Police Department and reported finding a deceased human body in the desert
6 area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was
7 dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who
8 appeared to be a female, in an advanced state of decomposition and beyond resuscitation.
9 The next day, the Clark County Coroners Office identified the victim as the missing body of
10 Brandi Latonya Payton. Gloria Payton is the sister of victim Brandi Payton. PHT p. 9.
11 Gloria Payton was close to her sister and spoke to her often. The last time Gloria spoke to
12 Brandi was the afternoon of September 2, 2008. PHT p. 10. The call was a brief one and
13 Brandi was supposed to call Gloria right back. PHT pp. 10-11. Gloria never spoke to her
14 sister again.

15 Worried about her sister's well being, Gloria began contacting police on September 4,
16 2008. PHT pp. 13-14. The next day, Gloria filled out a missing persons report with the
17 North Las Vegas Police Department. PHT p. 14. At the time she filled out the report, Gloria
18 listed the car her sister was driving as beige in color Hyundai Sonata, rented from a local
19 rental car office. PHT p. 14. The following day, on September 6, 2008, after the discovery
20 of her sister's body, Gloria identified the deceased body of her sister Brandi at the Clark
21 County Coroners office. PHT pp. 23-24.

22 ***Brandi Payton's autopsy***

23 On September 7, 2008, Dr. Lary Simms conducted the autopsy of Brandi Latonya
24 Payton. PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
25 decomposition of her body as severe with significant insect activity that caused noticeable
26 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
27 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
28 Simms report. PHT p. 48. This injury had discoloration at the edges and internally

1 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
2 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
3 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
4 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
5 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
6 also testified that this type of wound would have had significant blood loss because, "the
7 blood supply to the head, the face and head is very - it's a greater volume than the blood
8 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
9 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
10 possibility that a wound like this to the head could render an individual unconscious. PHT p.
11 64.

12 During the autopsy Dr. Simms also found a small wound above the left ear of the
13 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
14 many areas of the body was tissue loss caused from insect activity. Specific areas that
15 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
16 PHT p. 52.

17 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
18 a normal process for him to go through a process of elimination in order to determine if there
19 are items present that would cause the individual's death. PHT p. 55. While conducting the
20 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
21 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
22 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.
23 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
24 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
25 or nose. You would also look for petechiae, which are hemorrhages on the surface of the eye
26 or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
27 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
28 probably would have been obstructed by the decomposition of her body. PHT p. 63.

1 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
2 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
3 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
4 injury she had to the back of her skull there was a definite possibility that she was rendered
5 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
6 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
7 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
8 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
9 decomposition of the victim's body was a major reason prohibiting him from doing so. PHT
10 p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition prohibits
11 some forensic conclusions since subtle traumatic injury especially by asphyxiation could be
12 obscured by significant degrees of decomposition. Additional insect activity and associated
13 tissue loss could distort the appearance of external injury. This case is most likely a
14 homicide based on the circumstance of death available at the time of signature, but specific
15 pattern of injury supporting such a conclusion could not be identified; however, the absence
16 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
17 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
18 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
19 by reasoning through that way is how I came to the idea it's most likely a homicide but just
20 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
21 the autopsy he was somewhat limited to certain types of information when he rendered his
22 opinion. For instance, when asked hypothetically if he would have classified the manner of
23 death as a homicide if he would have had information stating that there was blood evidence
24 at the residence where the victim was found, coupled with the fact that the victim's DNA
25 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
26 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
27 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
28 you know, I came to in my comment." PHT p. 70.

1 *Shalana Eddins*

2 In September of 2008, Shalana Eddins was living at 1519 Laguna Palms in North Las
3 Vegas, Nevada. At that time she was living at that residence with her four children. PHT p.
4 84. The father of Ms. Eddins children is the Defendant, Lesean Collins. PHT 84. In
5 September of 2008, the Defendant would occasionally stay with at the Laguna Palms
6 residence with Ms. Eddins. Id.

7 On the morning of September 2, 2008, (the day it was later determined that Brandi
8 Payton went missing) the Defendant drove Ms. Eddins to work in her red Ford Expedition,
9 where he dropped her off. When she left the home there were no other vehicles parked at her
10 house. PHT p. 85. Ms. Eddins worked a full day and at the conclusion of her shift the
11 Defendant and their four children picked her up from her place of employment around 5:30
12 pm. PHT p. 86. When the Defendant picked her up he was driving Eddin's red For
13 Expedition. Id. The Defendant presented Ms. Eddins with some gifts including balloons, a
14 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
15 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
16 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
17 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
18 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
19 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
20 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

21 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
22 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
23 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
24 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
25 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

26 Prior to walking into the residence upon arriving home from work, the Defendant told
27 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
28 asked how it got there the Defendant stated that he had done an oil change and oil had gotten

1 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
2 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
3 oil change on any vehicle nor did she know that he even knew how to do an oil change. PHT
4 p. 97. Furthermore, she never saw any evidence of any type of oil change being conducted,
5 specifically; she never saw any tools, drain pan, or oil containers within or around the
6 garage. PHT p. 97-98.

7 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
8 fingernail inside the residence. She described it as a female fingernail that was multi
9 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
10 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition to
11 the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
12 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
13 from the oil. PHT p. 120-121.

14 Later on that same evening Ms. Eddins was present when the Defendant received a
15 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
16 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
17 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
18 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
19 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
20 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
21 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
22 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
23 he had previously said he was going to get. PHT p. 106.

24 After the Defendant arrived home he parked the car in the driveway, where he began
25 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
26 However, at some point Ms. Eddins realized that the music was turned off so she looked
27 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
28 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS

Electronically Filed
May 16 2016 09:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 69269

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Kathleen Delaney, District Judge
District Court No. 25

**APPELLANT'S APPENDIX
VOLUME 1 OF 11**

JoNell Thomas
State Bar #4771
Deputy Special Public Defender
David M. Schieck
State Bar #0824
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Collins

<u>VOLUME</u>	<u>PLEADING</u>	<u>PG. NO.</u>
3	Affidavit's [sic] (8/25/14)	567-71
3	Affidavit of Abigail Frierson (8/25/14)	565-66
7	Amended Jury List (8/4/15)	1396
8	Amended Jury List (8/11/15)	1566
1	Amended Notice of Expert Witnesses And/or Rebuttal Expert Witnesses (1/22/10)	94-99
4	Certificate for Attendance of out of State Witness Rufus Hicks (7/20/15)	745-47
11	Criminal Court Minutes (Not Filed)	1937-2004
8	Defendant's Proposed Trial Phase Instructions (8/10/15) ...	1527-65
4	Fifth Supplemental Notice of Witnesses And/or Expert Witnesses (7/2/15)	719-23
3	Fourth Supplemental Notice of Witnesses And/or Expert Witnesses (8/25/14)	560-64
1	Information (3/25/09)	1-3
10	Judgment of Conviction (11/24/15)	1925-26
5	Jury List (7/29/15)	1117
10	Jury Instructions (8/12/15)	1843-77
1	Motion for Discovery (1/28/10)	100-05
1	Motion in Limine to Preclude Admission of Photographs (1/28/10)	113-16

1	Motion in Limine to Preclude References To the Deceased as the “Victim” (1/28/10)	117-19
1	Motion to Allow Jury Questionnaire (1/28/10)	110-12
1	Motion to Bar Improper Prosecutorial Argument (1/28/10)	124-41
1	Motion to Compel Disclosure of Existence and Substance of Expectations, Of Actual Receipt of Benefits or Preferential Treatment for Cooperation With Prosecution (1/28/10)	106-09
2	Motion to Continue Jury Trial (10/30/13)	391-94
3	Motion to Dismiss Counsel (8/27/14)	686-88
2	Motion to Dismiss Counsel and Appointment of Alternate Counsel (10/21/13)	386-90
2	Motion to Disqualify the Clark County District Attorney’s Office (7/17/14)	422-39
1	Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity (1/28/10)	120-23
2	Motion to Exclude Other Evidence of Arson Charges and Any Allegations Related Thereto as Bad Act Evidence or Irrelevant Prior Criminal Activity (7/18/14)	440-49
1	Motion to Federalize All Motions, Objections, Requests and Other Applications (1/28/10)	142-44
3	Motion to Withdraw Counsel (8/27/14)	681-85
10	Notice of Appeal (11/25/15)	1927-28
2	Notice of Defendant’s Expert Witnesses (2/5/10)	248-67

4	Notice of Defendant's Supplemental Witnesses (7/16/15) . . .	729-31
3	Notice of Defendant's Witnesses (8/22/14)	557-59
1	Notice of Expert Witnesses And/or Rebuttal Expert Witnesses (1/21/10)	53-93
2	Notice of Hearing (12/15/10)	305-06
3	Notice of Intent to Seek Punishment as Habitual Criminal (8/25/14)	572-73
3	Notice of Motion (8/27/14)	680
4	Notice of Motion and Motion in Limine (7/17/15)	737-42
1	Notice of Witnesses (1/21/10)	50-52
2	Notice of Witnesses And/or Expert Witnesses (10/3/13)	358-85
4	Order Denying Defendant's Motion to Disqualify the Clark County District Attorney's Office (9/11/14)	703-04
4	Order Denying Defendant's Motion to Exclude Other Evidence of Arson Charges And Any Allegations Related Thereto as Bad Act Evidence or Irrelevant Prior Criminal Activity (8/27/14)	701-02
1	Order Denying Defendant's Writ of Habeas Corpus (6/25/09)	48-49
3	Order Denying Oral Motion to Stay Proceedings (8/25/14)	595
4	Order for Payment of Witness Fees (7/20/15)	743-44
1	Petition for Writ of Habeas Corpus (4/24/09)	13-17
4	Request for Attendance of out of State Witness Rufus Hicks (7/20/15)	748-54

1	Return to Writ of Habeas Corpus (5/14/09)	18-43
8	Second Amended Jury List (8/11/15)	1566
3	Second Supplemental List of Witnesses And/or Expert Witnesses (7/31/14)	485-89
2	Second Supplemental Notice of Defendant's Expert Witnesses (8/20/10)	293-300
2	Second Supplemental Notice of Expert Witnesses (10/5/12)	338-39
4	Seventh Notice of Witnesses And/or Expert Witnesses (7/17/15)	732-36
4	Sixth Supplemental Notice of Witnesses And/or Expert Witnesses (7/15/15)	724-28
1	State's Opposition to Defendants Motion For Discovery (2/3/10)	219-231
1	State's Opposition to Defendants Motion In Limine to Preclude Admission of Photographs (2/2/10)	207-18
1	State's Opposition to Defendant's Motion in Limine to Preclude References to the Deceased as the "Victim" (2/1/10)	170-81
1	State's Opposition to Defendant's Motion to Allow Jury Questionnaire (2/1/10)	194-206
1	State's Opposition to Defendant's Motion to Bar Improper Prosecutorial Argument (2/1/10)	158-169
1	State's Opposition to Defendant's Motion to Compel Disclosure of Existence and Substance Of Expectations, or Actual Receipt of Benefits Or Preferential Treatment for Cooperation With Prosecution (2/1/10)	182-193

3	State's Opposition to Defendant's Motion to Disqualify the Clark County District Attorney's Office (8/7/14)	490-507
2	State's Opposition to Defendant's Motion To Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal History (2/4/10)	232-47
3	State's Opposition to Defendant's Motion to Exclude Other Evidence of Arson Charges And Any Allegations Related Thereto as Bad Act Evidence or Irrelevant Prior Criminal Activity (7/25/14)	460-77
1	State's Opposition to Defendant's Motion to Federalize All Motions, Objections, Requests, And Other Applications (2/1/10)	145-57
8	Stipulation and Order to Waive Penalty Hearing (8/11/15) ..	1567-68
3	Supplemental Exhibits in Support of Defendant's Motion to Disqualify the Clark County District Attorney's Office and Defendant's Motion to Exclude Other Evidence of Arson Charges and Any Allegations Related thereto as Bad Act Evidence or Irrelevant Prior Criminal List (8/26/14)	596-679
2	Supplemental Notice of Expert Witness And/or Rebuttal Expert Witness (8/23/10)	301-02
2	Supplemental Notice of Witnesses (9/8/10)	303-04
2	Supplemental Notice of Witnesses And/or Expert Witnesses (7/24/14)	450-59
3	Third Supplemental Notice of Witnesses And/or Expert Witnesses (8/22/14)	552-56
1	Transcript of Hearing on March 26, 2009 (12/04/15)	4-7
1	Transcript of Hearing on April 13, 2009 (12/15/15)	8-12

1	Transcript of Hearing on June 08, 2009 (12/15/15)	44-47
2	Transcript of Hearing on February 8, 2010 (12/16/15)	260-75
2	Transcript of Hearing on February 12, 2010 (06/13/14)	276-87
2	Transcript of Hearing on February 17, 2010 (12/17/15)	288-92
2	Transcript of Hearing on September 08, 2010 (12/18/15)	307-11
2	Transcript of Hearing on September 15, 2010 (12/21/15)	312-17
2	Transcript of Hearing on January 3, 2011 (11/30/15)	318-25
2	Transcript of Hearing on September 21, 2011 (11/30/15) . . .	326-29
2	Transcript of Hearing on September 26, 2012 (1/21/16)	330-37
2	Transcript of Hearing on November 19, 2012 (1/21/16)	340-45
2	Transcript of Hearing on December 5, 2012 (1/20/16)	346-52
2	Transcript of Hearing on September 18, 2013 (1/20/16)	353-57
2	Transcript of Hearing on November 4, 2013 (1/20/16)	395-400
2	Transcript of Hearing on November 13, 2013 (1/20/16)	401-11
2	Transcript of Hearing on July 9, 2014 (11/30/15)	412-21
3	Transcript of Hearing on July 28, 2014 (1/20/16)	478-84
3	Transcript of Hearing on August 18, 2014 (09/04/14)	508-24
3	Transcript of Hearing on August 20, 2014 (09/03/14)	252-51
3	Transcript of Hearing on August 25, 2014 (09/01/14)	574-94
3	Transcript of Hearing on August 27, 2014 (1/19/16)	689-700

4	Transcript of Hearing on November 17, 2014 (1/20/16)	705-12
4	Transcript of Hearing on January 26, 2015 (1/15/16)	713-18
4	Transcript of Hearing on July 20, 2015 (1/15/16)	755-68
4	Transcript of Jury Trial on July 27, 2015 (01/10/16)	769-99
4	Transcript of Jury Trial on July 28, 2015 (01/10/16)	800-919
5	Transcript of Jury Trial on July 29, 2015 (02/01/16)	920-1116
6	Transcript of Jury Trial on August 3, 2015 (1/14/16)	1118-243
7	Transcript of Jury Trial on August 4, 2015 (1/14/16)	1244-395
8	Transcript of Jury Trial on August 5, 2015 (1/14/16)	1397-522
9	Transcript of Jury Trial on August 10, 2015 (1/19/16)	1569-728
10	Transcript of Jury Trial on August 11, 2015 (01/10/16)	1729-842
10	Transcript of Jury Trial on August 12, 2015 (01/10/16)	1879-90
10	Transcript of Hearing on September 30, 2015 (1/15/16)	1891-96
10	Transcript of Hearing on November 9, 2015 (1/15/16)	1897-901
10	Transcript of Hearing on November 18, 2015 (1/14/15)	1902-24
10	Trial Exhibits List (Unfiled)	1929-36
10	Verdict (8/12/15)	1878
8	Written Objections to State's Proposed Jury Instructions (8/10/15)	1523-26


CLERK OF THE COURT

1 **INFO**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JOSHUA TOMSHECK
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 I.A. 3/26/09
13 10:30 A.M.
14 SPD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,)

16 Plaintiff,)

17 -vs-)

18 LESEANN TARUS COLLINS,
19 #0857181)

20 Defendant.)

Case No: C252804
Dept No: IX

INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 DAVID ROGER, District Attorney within and for the County of Clark, State of
24 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That LESEANN TARUS COLLINS, the Defendant(s) above named, having
26 committed the crimes of MURDER (Felony - NRS 200.010, 200.030) and ROBBERY
27 (Felony - NRS 200.380), on or about the 2nd day of September, 2008, within the County of
28 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - MURDER

did then and there wilfully, unlawfully, feloniously, without authority of law, and
with malice aforethought, kill BRANDI PAYTON, a human being, by asphyxiation and/or
blunt force trauma and/or manner and means unknown; said killing having been: (1) willful,

1 deliberate and premeditated; and/or (2) committed during the commission or attempted
2 commission of a felony, to-wit: Robbery.

3 COUNT 2 - ROBBERY

4 did then and there wilfully, unlawfully, and feloniously take personal property, to-
5 wit: a 2008 Hyundai bearing Nevada License No. 428UZS, cellular phone, jewelry, and/or a
6 purse and contents, from the person of BRANDI PAYTON, or in her presence, by means of
7 force or violence, or fear of injury to, and without the consent and against the will of the said
8 BRANDI PAYTON.

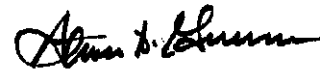
9 DAVID ROGER
10 DISTRICT ATTORNEY
Nevada Bar #002781

11
12 BY /s/JOSHUA TOMSHECK
13 JOSHUA TOMSHECK
14 Deputy District Attorney
Nevada Bar #009210

15 Names of witnesses known to the District Attorney's Office at the time of filing this
16 Information are as follows:

17	<u>NAME</u>	<u>ADDRESS</u>
18	ACUNA, RONALD	c/o CC DISTRICT ATTORNEY'S OFFICE
19	ALBY, ROCKY W.	LVMPD, P#1810
20	BEASLEY, DONITA	2901 FERRET FALL AVE., NLV, NV
21	BORLA, FELICIA	CC MEDICAL EXAMINER'S OFFICE
22	CABRALES, ALLEN L.	LVMPD, P#2045
23	CHAVEZ, GILBERT	NLVPD, P#1660
24	COR	AVIS CAR RENTAL
25	COR	CCDC
26	COR	DMV - RECORDS
27	COR	LVMPD - DISPATCH
28	COR	LVMPD - GUN REGISTRATION

1	COR	LVMPD – RECORDS
2	COR	NLVPD – RECORDS
3	COR	SPRING/NEXTEL WIRELESS
4	DAVISON, DONALD	5965 S. BRONCO ST., LV, NV
5	EDDINGS, SHALANA	176 JUDY CT., #B, HD, NV
6	GAUTHIER, KELLIE M.	LVMPD, P#8691
7	GRANDE, BEN	4073 ARROWWOOD DR., LV, NV
8	HARDY, KENNETH W.	LVMPD, P#3031
9	HICKS, RUFUS	5855 VALLEY DR., #2160, NLV, NV
10	HOLSTEIN, DANIEL S.	LVMPD, P#3861
11	HORN, DAVID R.	LVMPD, P#1928
12	JEFFREY, ERIKA	2701 N. BUCHANAN BL., #1016, LV, NV
13	JOHNS, MATTHEW	c/o CC DISTRICT ATTORNEY'S OFFICE
14	KELSO, MICHAEL	7300 RED CINDER ST., LV, NV
15	KRUEGER, LINDA, P#1471	LVMPD – CRIME LAB
16	AND/OR DESIGNEE	
17	LOPEZ, MARIA	HUTINGTON BEACH POLICE, CA
18	MADRIGAL, PEDRO	1913 ALWILL ST., #D, LV, NV
19	MALONE, PATRICK	c/o CC DISTRICT ATTORNEY'S OFFICE
20	MOGG, CLIFFORD H.	LVMPD, P#5096
21	PAYTON, GLORIA	3108 AVE., J-14, LANCASTER, CA
22	PENDLETON, JAMES A.	LVMPD, P#3289
23	PRATT, WANNETTE	515 N. LAMB BLVD., #5, LV, NV
24	PROIETTO, DANIEL M.	LVMPD, P#8180
25	SIMMS, LARY	CC MEDICAL EXAMINER'S OFFICE
26	WILLIAMS, THERESA	5330 E. CHARLESTON BL., #78, LV, NV
27	DA#08FN2467X/GCU:abh	
28	LVMPD EV#0809061227	
	MURD; ROBB – F (TK3)	



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN TARUS COLLINS,

Defendant.

CASE NO. C252804

DEPT. XXV

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE KEVIN V. WILLIAMS, HEARING MASTER
THURSDAY, MARCH 26, 2009

**RECORDER'S TRANSCRIPT OF HEARING RE:
ARRAIGNMENT CONTINUED**

APPEARANCES:

For the State:

JOSHUA L. TOMSHECK, ESQ.,
Deputy District Attorney

For the Defendant:

SCOTT L. BINDRUP, ESQ.,
IVETTE A. MANINGO, ESQ.,
Deputies Special Public Defender

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, MARCH 26, 2009

2 * * * * *

3 P R O C E E D I N G S

4
5 THE MARSHAL: Your Honor, 10:30 calendar, top of page eight,
6 Lesean Collins.

7 THE COURT: Collins. Yes, Mr. Bindrup, how are you doing today?

8 MR. BINDRUP: Good morning. Scott Bindrup and Ivette Maningo on
9 his behalf this morning.

10 THE COURT: Okay. And what are we doing here today, sir?

11 MR. BINDRUP: Not-guilty plea.

12 THE COURT: Okay. You have a copy of the Information, waive its
13 reading?

14 MR. BINDRUP: Yes, sir.

15 THE COURT: Okay. What's your true name, sir?

16 THE DEFENDANT: Lesean Collins.

17 THE COURT: How old are you?

18 THE DEFENDANT: Thirty-three.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: Twelfth grade.

21 THE COURT: Read, write, and understand the English language?

22 THE DEFENDANT: Yes.

23 THE COURT: Understand what you're charged with?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: What is your plea?

1 THE DEFENDANT: Not guilty.

2 THE COURT: You have a right to a speedy trial within 60 days. Do
3 you want a speedy trial?

4 MR. BINDRUP: Your Honor, we would ask this matter be set any time
5 during the week of April 13th to get a trial date --

6 THE COURT: Sure. We can do that.

7 MR. BINDRUP: -- with all parties.

8 THE COURT: I understand what you're saying.

9 THE CLERK: It'll be April 13th at 9:00 a.m.

10 MR. BINDRUP: And, additionally, the State has indicated they have no
11 objection to our having 30 days from today in which to file a writ if we deem that
12 appropriate.

13 THE COURT: Okay. That shall be the order. Thirty days within today's
14 date or from the filing of the transcripts. Okay? Whichever later.

15 MS. MANINGO: Is that in District Court 9?

16 MR. BINDRUP: Thank you.

17 THE DEFENDANT: Say, is that in District Court 9?

18 THE CLERK: Correct.

19 MS. MANINGO: Thank you.

20 THE CLERK: So, Judge, did he waive or invoke? He did not --

21 THE COURT: He didn't do anything. They're going to do that up in
22 District Court --

23 THE CLERK: Okay.

24 MR. BINDRUP: Thank you.

25 ///

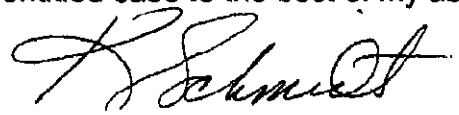
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: -- when they set the calendar call, trial date.

(Whereupon, the proceedings concluded.)

* * * * *

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



Kiara Schmidt, Court Recorder/Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN TARUS COLLINS,

Defendant.

CASE NO. C252804

DEPT. IX

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
MONDAY, APRIL 13, 2009

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: TRIAL SETTING**

APPEARANCES:

For the State:

JOSHUA L. TOMSHECK, ESQ.,
Chief Deputy District Attorney

For the Defendant:

SCOTT L. BINDRUP, ESQ.,
IVETTE A. MANINGO, ESQ.,
Deputy Special Public Defenders

RECORDED BY: YVETTE G. SISON, COURT RECORDER

1 MONDAY, APRIL 13, 2009

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: State versus Lesean Collins, C252804. The record shall
6 reflect he's present in custody.

7 THE DEFENDANT: Your Honor, can I say something before you go,
8 please?

9 MR. BINDRUP: Wait. Wait, please. We're just here to get a trial date.

10 (Discussion between Mr. Bindrup and the defendant.)

11 MR. BINDRUP: Okay. Your Honor, Mr. Collins has indicated he'd like
12 to make a motion. I told him that your Honor does not hear motions unless they're
13 in writing. If he gets that to me -- and I'll be in to the jail to see him tomorrow. If he
14 gets that to me I'll be sure and get it calendared today. We just need to get a trial
15 setting.

16 (Discussion between Mr. Bindrup and the defendant.)

17 MR. BINDRUP: This was on for setting of trial. Could we just have a
18 two-week continuance? He indicates that his family is going to be attempting to get
19 other counsel. So would you give him that opportunity before we actually set a trial
20 date?

21 THE COURT: So, I'm sorry, did he waive his speedy trial rights?

22 MR. BINDRUP: He's willing to do that --

23 THE COURT: He wouldn't waive or invoke at the last court date. So
24 without waiver I'm not doing anything.

25 MR. BINDRUP: Okay. For that purpose to attempt to procure other

1 counsel, I believe he's willing to do that. So if we could just get a two-week setting
2 and he --

3 THE DEFENDANT: No. No. We need to set it for 60 days.

4 MR. BINDRUP: Okay.

5 THE DEFENDANT: *[Unintelligible]*. We need to set it for 60 days from
6 right now. That's what she told me.

7 MR. BINDRUP: Could we -- could we just get a speedy setting
8 knowing -- and quite frankly we're not -- we're not going to be ready, but he wants to
9 invoke that at this time. Would you still put it back on calendar in two weeks for
10 them to attempt to hire other counsel?

11 THE COURT: Okay. So, I'm sorry, is he invoking or waiving his
12 speedy trial rights?

13 MR. BINDRUP: He's invoking at this time.

14 THE COURT: Is that true, Mr. Collins?

15 *(No audible response.)*

16 MS. MANINGO: Sounds like he is invoking, Judge.

17 THE COURT: No, I -- no, that's not how it works. I ask him a question
18 and he answers it.

19 MR. BINDRUP: He just needs the two weeks. So --

20 THE COURT: Mr. Collins.

21 THE MARSHAL: Stand, Mr. Collins.

22 THE COURT: Stand up. I appreciate your lawyer's request on your
23 behalf. You haven't waived or invoked your speedy trial rights; is that correct? You
24 just refuse to?

25 THE DEFENDANT: I'm not understanding what you're saying.

1 THE COURT: You have a -- it's very simple actually. You have a right
2 to a trial within 60 days or you can waive that right. How about this? How about you
3 not worry about everybody's allergies and you focus on what I'm saying, okay?
4 You have a right to a trial within 60 days. You can have that trial within 60 days and
5 we'll set it right now, or you can waive that trial within 60 days, or you can ask for a
6 two-week continuance date of this hearing. If you do that, though, in my view you're
7 waiving your speedy trial rights by two weeks. Meaning, you have a right to a trial
8 within 60 days of the date in two weeks, not 45 days from there. Pretty simple
9 calculating really. Do you have any questions? Or you can refuse, which is kind of
10 where we're at right now.

11 THE DEFENDANT: I don't have any questions. Is that your answer?

12 THE COURT: My question is, do you understand that you have a right
13 to a trial within 60 days?

14 *(No audible response.)*

15 THE COURT: Okay. I'm sorry, it's really hard for me to talk to him
16 when you're talking to him. So do you want to let me finish, Mr. Bindrup, please?
17 Okay.

18 I can set your trial now within 60 days or I can continue this date
19 two weeks. If you invoke your speedy trial rights now then I will set the trial within
20 60 days from today. If I continue it two weeks, because you haven't waived and you
21 haven't invoked in my analysis, then you would be entitled in two weeks, if you
22 invoke, to a trial within 60 days of that date.

23 *(Discussion between Mr. Bindrup and the defendant.)*

24 MR. BINDRUP: Okay. He's indicated he would like the two-week
25 status check, and he's willing to waive at this point knowing in two weeks if he

1 changes his mind he can invoke at that time and request a earlier setting.

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is that what you're saying?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And you understand what your lawyer just said?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Okay. That'll be the order. The matter is set in two
8 weeks for a status check, trial setting.

9 THE CLERK: April 27th at nine o'clock.

10 MR. BINDRUP: Thank you. Sorry that wasn't as quick as I'd intended.

11 (Whereupon, the proceedings concluded.)

12 * * * * *

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

15 

16 Kiara Schmidt, Court Recorder/Transcriber

ORIGINAL

FILED

7

0001
DAVID SCHIECK
Special Public Defender
Nevada Bar No. 0824
SCOTT L. BINDRUP
Deputy Special Public Defender
Nevada Bar No. 2537
IVETTE MANINGO
Deputy Special Public Defender
Nevada Bar No. 7076
330 S. Third Street,
Las Vegas, Nevada 89155-2316
(702) 455-6265
(702) 455-6273 fax
sbindrup@co.clark.nv.us
imaningo@co.clark.nv.us
Attorney for COLLINS

2009 APR 24 P 3:07

E. L. Bindrup
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

CASE NO. C252804
DEPT. NO. IX

vs.

LESEAN COLLINS #0857181,
Defendant.

PETITION FOR WRIT OF HABEAS CORPUS

DATE: 5/11/09
TIME: 9am

TO: The Honorable Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark:

The Petition of SCOTT L. BINDRUP, Deputy Special Public Defender, and IVETTE
MANINGO, Deputy Special Public Defender, for the above-captioned individual,
respectfully shows:

1. Petitioner is a duly qualified, practicing and licensed attorney and court-
appointed counsel for Defendant LESEAN COLLINS.

2. That Petitioner makes application herein on behalf of their client for a Writ of

24
MCM
RECEIVED
APR 24 2009
CLERK OF THE COURT

SPECIAL PUBLIC
DEFENDER
CLARK COUNTY
NEVADA

0013

1 Habeas Corpus; that the place where Applicant is restrained of his liberty is the Clark
2 County Detention Center; that the officer by whom he is restrained is DOUG GILLESPIE,
3 Sheriff.

4 3. That the imprisonment and restraint of said above-captioned client of
5 Petitioner is unlawful in that the evidence adduced at the time of the Preliminary Hearing
6 supports only binding over of the matter to the District Court for trial on the charges of
7 murder and robbery but not with the manner of death set forth as asphyxiation or blunt
8 force trauma.

9 4. That client of Petitioner waives the 60-day limitation for bringing said client to
10 trial.

11 5. That client of Petitioner consents that if the Petition is not decided within 15
12 days before the date set for trial, the Court may, without notice or hearing, continue the trial
13 indefinitely to a date designated by the Court.

14 6. That client of Petitioner consents that if any party appeals the Court's rulings
15 and the appeal is not determined before the date set for trial, the trial date is automatically
16 vacated and the trial postponed unless the Court otherwise orders.

17 7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
18 behalf of defendant on this particular issue.

19 WHEREFORE, Petitioner prays that the Honorable Court issue an order directing
20 the Clark County Clerk to issue a Writ of Habeas Corpus directed to the said Sheriff,
21 commanding him to bring the above-captioned defendant before your Honor, and return
22 the cause of imprisonment.

23 DATED this 24th day of April, 2009.

24 Respectfully submitted

25
26
27 SCOTT L. BINDRUP
IVETTE MANINGO
330 S. Third Street, Ste. 800
28 Las Vegas, NV 89155

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3

4
5
6
7
8
9

10

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26
27
28

1 then and there wilfully, unlawfully, feloniously, without authority of law, and with malice
2 aforethought, kill Brandi Payton, a human being, by asphyxiation and/or blunt force trauma
3 and/or manner and means unknown; said killing having been: (1) willful, deliberate and
4 premeditated; and/or (2) committed during the commission or attempted commission of a
5 felony, to wit: Robbery (emphasis added.)

6 Coroner Lary Simms testified concerning the victim's autopsy and possible causes of
7 death. He specifically admitted that the cause of her death was undetermined and listed many
8 different theories which may have been causation factors besides asphyxiation or blunt force
9 trauma:

10 "Q. Okay, I'm a little bit confused because your report say clearly that the cause
11 of death remains undetermined, but I'm hearing you say that perhaps if you
12 were to take a guess, that asphyxiation or strangulation might be a cause of
13 death.

14 A. Yeah. I would say that may be - - let me try to verbalize it more clearly. I did
15 not come to a conclusion to a reasonable degree of certainty, but I had been
16 asked by, you know, the police and the district attorney what possibilities would
17 I consider as most likely, and so that's where the discussion came from.

18 Q. Okay. So if somebody were to say her cause of death was by asphyxiation
19 or strangulation, you would basically say good guess but there's no evidence
20 that would actually support that conclusion?

21 A. That's correct. I cannot support that to a reasonable degree of forensic
22 certainty, which is my standard of proof. (Preliminary Hearing Transcript pg. 76,
23 ll 8-25, pg. 77 ll 1,2).

24 ...

25 Q. Can a person die of natural causes and still have no readily identifiable factor
26 causing it?

27 A. Yes, I agree. I alluded to that before. You know, the cause of death is
28 undetermined. It may very well have been that she died of natural disease that
I just could not detect. If you wanted some examples, that she might have for
reasons unknown went into an abnormal heart rhythm. I don't know if she had
a history of any kind of heart problems or anything like that. So in a short answer
to your question, yes.

Q. Okay. So to add to a list of potential guesses, speculation on how she died,
you could to that list put asphyxiation, strangulation and natural causes?

A. Yes.

Q. Any other items that could go onto that list that could be potential cause of
her death?

1 A. She could have had a seizure. That wouldn't show up at autopsy. She could
2 have had some kind of metabolic derangement - - that won't be something that
3 I could deal with - - you know, a biochemical derangement, so to speak, so I
4 wouldn't be able to detect that in a decomposed body. That's just off the top of
5 my head.

6 Q. And there are certain circumstances when even after the decomposition,
7 assuming somebody dies and a coroner has a chance to perform an autopsy in
8 a relatively short time period after someone's death, still looks and cannot really
9 find a readily identifiable cause of their death, that happens as well, correct?

10 A. You're definitely correct. The figures I could give you that national average for
11 undetermined death I think is around three percent. In my personal career, my
12 average has pretty well been around three percent.

13 Q. And there was no evidence that possibly there was a fight or a struggle?

14 A. Other than the trauma that she had.

15 Q. And again as far as bone, there was absolutely no indication of evidence of
16 injury to any of the bone areas of the body.

17 A. No. Radiographically or at autopsy I didn't detect any fractures.

18 Q. Okay. And blunt force trauma can be caused by a wide range of
19 circumstances, it could be from a person or from an accident or from a fall or
20 anything else?

21 A. Correct. (PHT pg. 79, 80, 81)..."

22 The State's attempt to create cause of death theories is nothing but pure speculation
23 and conjecture on their part. Asphyxiation or blunt trauma theory language should be struck
24 from the language of the Indictment based upon the lack of evidence submitted or
25 alternatively, ALL theories set forth as plausible by their own expert should be included in the
26 charging document.

27 DATED this 24th day of April, 2009.

28 Respectfully Submitted:


SCOTT L. BINDRUP
IVETTE MANINGO
330 S. Third Street, Ste. 800
Las Vegas, NV 89155


CLERK OF THE COURT

RWHC
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JOSHUA TOMSHECK
Deputy District Attorney
Nevada Bar #009210
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application,

of

LESEAN TARUS COLLINS,
#0857181

for a Writ of Habeas Corpus.

Case No. C252804

Dept No. IX

RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: 5/18/09

TIME OF HEARING: 9:00 A.M.

COMES NOW, BILL YOUNG, Sheriff of Clark County, Nevada, Respondent, through his counsel, DAVID ROGER, District Attorney, through JOSHUA TOMSHECK, Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 29th day of April, 2009, and made returnable on the 18th day of May, 2009, at the hour of 9:00 o'clock A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph 2 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Respondent denies the allegations of Paragraph 3 of the Petitioner's Petition for Writ of Habeas Corpus.

3. Paragraphs 1, 4, 5, 6 and 7 do not require admission or denial.

4. The Petitioner is in the actual and/or constructive custody of DOUG GILLESPIE, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 14th day of May, 2009.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ JOSHUA TOMSHECK
JOSHUA TOMSHECK
Deputy District Attorney
Nevada Bar #009210

POINTS AND AUTHORITIES

STATEMENT OF FACTS

INTRODUCTION

On September 6, 2008, at approximately 9:05 am, a witness called the Las Vegas Metropolitan Police Department and reported finding a deceased human body in the desert area south of State Road 156 near mile marker 12. LVMPD Officer Pendleton was dispatched to the scene. Upon arrival, Officer Pendleton discovered the victim, who appeared to be a female, in an advanced state of decomposition and beyond resuscitation. The next day, the Clark County Coroners Office identified the victim as the missing body of Brandi Latonya Payton.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3

4

5
6
7
8

9
0
1
2
3
4
5

6

7
8
9
20
21

22
23
24
25
26
27
28

1 card, and a "little pig" which contained jewelry. PHT p. 86. The jewelry was described by
2 Ms. Eddins as a used bracelet and necklace designed in the pattern that Rolex commonly
3 uses in their watch bands. PHT p. 88. Ms. Eddins asked the Defendant where he got the
4 jewelry and he said that he paid \$2,000 for it at a pawn shop. PHT p. 89. However, the
5 Defendant never showed Ms. Eddins any type of receipts from the pawn shop and the
6 jewelry wasn't in any type of bag or packaging from a pawn shop. PHT p. 90. Ultimately,
7 Ms. Eddins refused the jewelry and returned it to the Defendant. PHT p. 89.

8 Once Ms. Eddins and the Defendant arrived home, Ms. Eddins noticed that there was
9 another vehicle, a gold colored Hyundai Sonata, parked inside her garage. PHT p. 92.
10 When Ms. Eddins asked the Defendant about the car he told her that it was a rental. PHT p.
11 92. Ms. Eddins continued to ask the Defendant questions about the car he told her that
12 Brandi Payton - - a friend of the Defendant's - - had rented the vehicle for him. PHT p. 93.

13 Prior to walking into the residence upon arriving home from work, the Defendant told
14 Eddins that there was a bleach stain on the carpet in the laundry room. PHT p. 94. When
15 asked how it got there the Defendant stated that he had done an oil change and oil had gotten
16 on the carpet and he had tried to use the bleach to get it out. PHT p. 94. During the
17 Preliminary Hearing Ms. Eddins testified that she had never seen the Defendant perform an
18 oil change on any vehicle nor did she know that he even knew how to do an oil change.
19 PHT p. 97. Furthermore, she never saw any evidence of any type of oil change being
20 conducted, specifically; she never saw any tools, drain pan, or oil containers within or
21 around the garage. PHT p. 97-98.

22 Once inside the house Ms. Eddins also noticed a broken portion of a woman's
23 fingernail inside the residence. She described it as a female fingernail that was multi
24 colored, "like green, blue, and pink." PHT p. 100. When Ms. Eddins asked the Defendant
25 about the fingernail he told her that it belonged to Brandi Payton. PHT p. 101. In addition
26 to the bleach stain and the fingernail Ms. Eddins also noticed specks of a dark in color
27 substance splattered on the wall in the laundry room. Ms. Eddins assumed these spots to be
28 from the oil. PHT p. 120-121.

1 Later on that same evening Ms. Eddins was present when the Defendant received a
2 phone call. The Defendant told Eddins that he needed to go see his friend "Tidy" because he
3 left the garage opener to the residence at Tidy's house. PHT p. 102. The Defendant then
4 took the gold Hyundai Sonata and left. After the Defendant left the residence Ms. Eddins
5 called Tidy and based on what Tidy said Ms. Eddins decided to call the Defendant. PHT p.
6 103. Ms. Eddins then called the Defendant's cell number which is (702) 884-1539, to ask
7 him what he was doing. The Defendant responded that he was driving to "Stateline" to meet
8 his uncle. PHT p. 103-104. The Defendant then returned to the home around 10:30 pm.
9 PHT p. 106. When the Defendant returned to the home he did not have a garage opener like
10 he had previously said he was going to get. PHT p. 106.

11 After the Defendant arrived home he parked the car in the driveway, where he began
12 to wash it. PHT p. 110. While washing the car the Defendant had the radio playing.
13 However, at some point Ms. Eddins realized that the music was turned off so she looked
14 outside and sees the Defendant asleep, while sitting in the drivers seat of the car. PHT p.
15 111. Ms. Eddins had to take her mother to work in the early hours of September 3rd and
16 when she left the Defendant was still asleep in the front seat of the Hyundai Sonata which
17 was still parked in the driveway. PHT p. 111. On her way home, around 2:25 am, Ms.
18 Eddins received a telephone call from her son who told her that the police were chasing his
19 father. PHT p. 115. Shortly thereafter the Defendant called Ms. Eddins and told her that he
20 was being chased by the police and to come get him. He then gave her directions and she
21 was able to locate him around the corner from her house. PHT p. 116. When she reached
22 the Defendant she could see the Hyundai Sonata parked down the street, however, the
23 Defendant left the vehicle parked and got into Ms. Eddins car. PHT p. 117. When Ms.
24 Eddins asked the Defendant why they police were chasing him, he stated that he did not
25 know, he was just sitting outside in the car and he had the music playing and the police had
26 just come up. PHT p. 117.

27 Later on that morning while Ms. Eddins was at work she again saw the Hyundai
28 Sonata. The Defendant drove the vehicle to her work and told her that he needed to return it

1 to the rental company. After that, Ms. Eddins never saw the vehicle again. PHT p. 119.

2 Ms. Eddins spoke to Detectives in this case on October 1, 2008. While speaking to
3 them the Detectives showed her photos of the victim in this case. In those photos, Ms.
4 Eddins noticed that the victim was wearing the same bracelet and necklace that the
5 Defendant had tried to give her when he picked her up on September 2, 2008.

6 ***Testimony of Clifford Mogg***

7 Clifford Mogg is a Detective with the Las Vegas Metropolitan Police Department
8 where he has been employed for the last thirteen years. The last six of those thirteen years
9 he has worked solely as a homicide detective. PHT p. 170.

10 On September 6, 2008, Detective Mogg was dispatched to a homicide scene off State
11 Road 156 approximately mile marker 12 on the south side of the State Road. This area is
12 approximately 12.8 miles west of US 95. PHT p. 172. When Detective Mogg arrived the
13 victim's body was still at the scene. The victim appeared to Detective Mogg to be a black
14 female. She was located approximately 40 feet from the south of the State Route 156 and
15 she was clothed in a blue tank top and blue jeans. PHT p. 173. The right pocket of the blue
16 jeans was pulled inside out and all of the pockets were empty. PHT p. 173. After surveying
17 the scene Detective Mogg located a couple of rocks in the middle of the roadway that
18 appeared to have blood on them. There were also two black Nike sandals that were lying in
19 the roadway along a path. It appeared as though the body of the victim had been dragged
20 through that path from the center of the roadway to where she was discovered. PHT p. 174.
21 Detective Mogg also found two partial fingernails, each one approximately an inch long,
22 which were multi colored but predominantly blue in color. PHT p. 174.

23 On September 7, 2008, Detective Mogg was present when an autopsy was conducted
24 on the victim. At that point Detective Mogg had tentative identification of the victim due to
25 the fact that one of the Coroner's Investigator's had spoken to Brandi Payton's family
26 members who had given identifying characteristics such as tattoos. Also noticeable at the
27 autopsy was the fact that the victim was actually missing *three* (3) of her fingernails. Only
28 *two* (2) fingernails had been found at the scene where her body was discovered. PHT p. 178.

1 The fingernails recovered at the scene of the body discovery were identical to the description
2 provided by Shalana Eddins of the fingernail that had been present at her residence. PHT p.
3 100.

4 In furthering his investigation Detective Mogg spoke with Shalana Eddins. During
5 that interview with Ms. Eddins, Detective Mogg showed her photographs of the victim while
6 she was alive. Ms. Eddins recognized the jewelry that the victim was wearing as the items
7 that the Defendant had attempted to give her which he said he had purchased at a pawn shop.
8 PHT p. 187. Pursuant to their discussions Detective Mogg conducted a pawn check to see if
9 the Defendant had recently purchased any pawned items PHT p. 187. The search of all
10 Metro pawn records came back negative. Id. After the interview of Eddins Detective Mogg
11 applied for and obtained a search warrant for Eddin's Laguna Palms residence. PHT p. 187.
12 This search warrant was executed on October 2, 2008. When Detective Mogg entered the
13 home he saw what appeared to be small droplets of apparent blood spatter on the wall in the
14 doorway leading to the laundry room. Detective Mogg subsequently requested a crime scene
15 analyst test the area in question for the presence of blood and preserve samples for forensic
16 testing. PHT p. 189.

17 Through his investigation Detective Mogg was able to identify cellular telephone
18 numbers that the victim had used. One of those cellular telephone numbers was (323) 706-
19 5164. PHT p. 182. One number that was frequently called by the victim from her cellular
20 phone was (702) 884-1539, which is the cell phone number of the Defendant. PHT p. 194.
21 Detective Mogg requested the records pertaining to each of these phone numbers including
22 call detail and cell site information. PHT p. 194. In these records Detective Mogg was able
23 to determine which cell towers the calls were being routed through in order determine the
24 location from where the individual was calling. PHT p. 199. Between the early morning
25 hours of August 31st and about 3:34 pm on September 2nd 78 calls were placed between the
26 victim's cell phone and the Defendant's. After the afternoon of September 2, there were no
27 phone calls made from the victim's cell phone number. PHT p. 201. In looking specifically
28 at the Defendant's cell phone records on the evening hours of September 2, 2008, Detective

1 Mogg was able to see that at 9:42 pm the location of the Defendant was near his Laguna
2 Palms residence. This is consistent with the time Shalana Eddins said the Defendant was
3 leaving claiming to go to "Tidy's" to get a garage door opener. The next phone call that was
4 made was at 10:03 pm, this phone call was made from a location that routed of a cell phone
5 tower near State Road 157 and US 95, about 8 miles from where the victim's body was
6 found. Then at 10:04 pm the Defendant received a call from Shalana Eddins phone, cell
7 phone records show that the call routed from a cell tower located almost identical to the
8 location where the victim's body was ultimately discovered. PHT p. 207-209. These calls
9 are consistent with Shalana Eddins timeline of when she was calling the Defendant and he
10 was saying he was driving to "Stateline."

11 Detective Mogg testified that he and other Metro investigators had been attempting to
12 locate the car Shalana Eddins had described as being in the Defendant's possession between
13 September 2, 2008, and September 4, 2008. Detective Mogg determined that Brandi Payton
14 had in fact rented the Hyundai Sonata, but that it was supposed to be returned on September
15 5, 2008. PHT p. 191. The car was never returned. PHT p. 192. The car was later recovered
16 on October 1, 2008, ironically the same day Metro interviewed Shalana Eddins, near 1913
17 Alwill Street. Id. Detective Mogg reviewed the cellular telephone tower location related to
18 calls the Defendant was making or receiving on September 4, 2008, at the time the
19 Defendant left his residence and told Shalana Eddins he was returning the rental car. During
20 the afternoon of September 4, 2008, the Defendant made calls that routed off of three (3)
21 separate towers in the immediate vicinity of where the rental car was later recovered. PHT
22 pp. 210-213.

23 *Testimony of Lary Simms*

24 Lary Simms is the forensic pathologist who performed the autopsy on the body of the
25 deceased victim Brandi Latonya Payton. Dr. Simms is employed as a forensic pathologist
26 with the Clark County Coroner's Office. As part of his job duties he routinely conducts
27 autopsies. PHT p. 45.

28 ///

1 On September 7, 2008, Dr. Simms conducted the autopsy of Brandi Latonya Payton.
2 PHT p. 46. While performing the autopsy on the victim Dr. Simms classified the
3 decomposition of her body as severe with significant insect activity that caused noticeable
4 tissue loss. PHT p. 48. Dr. Simms also identified a laceration on the left side of the victim's
5 scalp toward the rear of the head. This injury is identified as injury number one in Dr.
6 Simms report. PHT p. 48. This injury had discoloration at the edges and internally
7 underneath the wound, including in the sub scalp soft tissue. Dr. Simms testified that those
8 type of findings would be consistent with an anti mortem hemorrhage, meaning prior to
9 death. PHT p. 50. Dr. Simms classified the shape of this laceration as stellate or quasi
10 stellate, which Dr. Simms explained means it has a star shaped or jaggedness to it which is
11 consistent with blunt force trauma, as opposed to an incised wound. PHT p. 51. Dr. Simms
12 also testified that this type of wound would have had significant blood loss because, "the
13 blood supply to the head, the face and head is very - it's a greater volume than the blood
14 supply, for instance, to the hands or the feet. So anybody that gets a laceration on their face
15 or head, it can bleed fairly briskly." PHT p. 52. Dr. Simms later testified that it was a
16 possibility that a wound like this to the head could render an individual unconscious. PHT p.
17 64.

18 During the autopsy Dr. Simms also found a small wound above the left ear of the
19 victim as well as another small laceration above the right ear. PHT p. 48. Also present in
20 many areas of the body was tissue loss caused from insect activity. Specific areas that
21 illustrated this tissue loss were the victim's right arm, right lateral abdomen, and left leg.
22 PHT p. 52.

23 Dr. Simms testified at the preliminary hearing that when conducting any autopsy it is
24 a normal process for him to go through a process of elimination in order to determine if there
25 are items present that would cause the individual's death. PHT p. 55. While conducting the
26 autopsy in this case Dr. Simms ruled out the following as the cause of death: 1) gun shot
27 wound, 2) stab wound, 3) strangulation, 4) disease, 5) drug overdose, and 6) natural causes.
28 PHT pp. 55-59. However, something that Dr. Simms could not rule out was asphyxiation.

1 PHT p. 65. Dr. Simms testified at the preliminary hearing that when you look for external
2 signs of asphyxiation you would look for abrasions or any kind of injuries around the mouth
3 or nose. You would also look for petechiae, which are hemorrhages on the surface of the
4 eye or the surface of the skin. PHT p. 61. However, in this case, Dr. Simms testified that if
5 there was any evidence of manual asphyxiation injury around the mouth of the victim, it
6 probably would have been obstructed by the decomposition of her body. PHT p. 63.
7 Furthermore, Dr. Simms testified that if the victim was already unconscious when she was
8 asphyxiated then signs illustrating the asphyxiation would be definitely less likely. PHT p.
9 63. In regards specifically to the victim in this case, Dr. Simms testified that because of the
10 injury she had to the back of her skull there was a definite possibility that she was rendered
11 unconscious by whatever caused that wound. PHT p. 64. Although, at the time of the
12 autopsy Dr. Simms could not determine the cause of death for the victim, he could not
13 exclude asphyxiation as a possible cause of death either. PHT p. 65. When asked why Dr.
14 Simms could not make a determination as to the cause of death, Dr. Simms stated that the
15 decomposition of the victim's body was a major rule in prohibiting him from doing that.
16 PHT p. 65-66. In Dr. Simms forensics conclusion he stated, "The state of decomposition
17 prohibits some forensic conclusions since subtle traumatic injury especially by asphyxiation
18 could be obscured by significant degrees of decomposition. Additional insect activity and
19 associated tissue loss could distort the appearance of external injury. This case is most likely
20 a homicide based on the circumstance of death available at the time of signature, but specific
21 pattern of injury supporting such a conclusion could not be identified; however, the absence
22 of such a pattern does not exclude a homicidal mechanism of death." PHT p. 66-67. In
23 furthering his conclusions, at the preliminary hearing Dr. Simms testified that, "...there's no
24 other apparent cause of death in a 29 year-old, and 29 year-olds just don't drop dead. And so
25 by reasoning through that way is how I came to the idea it's most likely a homicide but just
26 couldn't tell you how it happened." PHT p. 67. Dr. Simms also testified that on the day of
27 the autopsy he was somewhat limited to certain types of information when he rendered his
28 opinion. For instance, when asked hypothetically if he would have classified the manner of

1 death as a homicide if he would have had information stating that there was blood evidence
2 at the residence where the victim was found, coupled with the fact that the victim's DNA
3 was found in the trunk of a car, Dr. Simms answered, "...Those kind of things don't usually
4 occur in natural deaths or accidental deaths or suicidal deaths. That definitely would have
5 value to me indicating it's probably a homicide. Of course that was again a conclusion that,
6 you know, I came to in my comment." PHT p. 70.

7 ***DNA EVIDENCE INTRODUCED AT PRELIMINARY HEARING***

8 On the date of the Preliminary Hearing, March 10, 2009, the State had under
9 subpoena and was prepared to call to the witness stand Kellie M. Gauthier, a forensic
10 scientist with the Las Vegas Metropolitan Police Department crime lab specializing in the
11 field of DNA analysis. PHT pp. 3-4. By stipulation between the parties, in lieu of calling
12 Ms. Gauthier to the stand at the Preliminary Hearing, the State admitted Ms. Gauthier's
13 "Report of Examinations" related to testing she had done in this case. Id. These reports
14 were dated October 10, 2008, and February 6, 2009, respectively, and were marked and
15 admitted as State's Exhibits "1" and "2." (And Attached hereto as "Exhibit 2" and "Exhibit
16 3") The report dated October 10, 2008, indicated that the blood discovered in the hallway of
17 Shalana Eddins residence was the blood of victim Brandi Payton. Exhibit 2. The estimated
18 odds of that DNA profile existing elsewhere in the population was listed as rarer than "1 in
19 650 billion." Id.

20 Gauthier later tested forensic samples recovered from the Hyundai automobile after
21 it's recovery on October 1, 2008. Exhibit 3. Among the items tested were the truck mat of
22 the Hyundai Sonata. Id. DNA analysis provided that DNA recovered from the trunk may
23 belonged to Brandi Payton. Id. The estimated frequency of the DNA profile being present
24 elsewhere in the population was rarer than "1 in 650 billion." Id.

25 ///

26 ///

27 ///

28 ///

1 **DISCUSSION**

2 **I. PETITIONER DOES NOT CHALLENGE THE SUFFICIENCY OF**
3 **THE EVIDENCE PRODUCED AT THE GRAND JURY.**

4 At the outset, this Court should note that Petitioner does not challenge the sufficiency
5 of the evidence presented to the Grand Jury. Instead, the Petitioner is taking issue with the
6 language of the Count 1 contained within the Information. As this Court is well aware,
7 "[t]he finding of probable cause may be based on slight, even 'marginal,' evidence because it
8 does not involve a determination of the guilt or innocence of an accused." Sheriff v. Hodes,
9 96 Nev. 184, 186, 606 P.2d 178 (1980); *see also* Sheriff v. Shade, 109 Nev. 826, 828, 858
10 P.2d 840 (1993); Sheriff v. Simpson, 109 Nev. 430, 435, 851 P.2d 428 (1993); Sheriff v.
11 Crockett, 102 Nev. 359, 361, 724 P.2d 203 (1986). Thus, "the evidence need not be
12 sufficient to support a conviction." Sheriff v. Kinsey, 87 Nev. 361, 363, 487 P.2d 340
13 (1971). "To commit an accused for trial, the State is not required to negate all inferences
14 which might explain his conduct, but only to present enough evidence to support a
15 reasonable inference that the accused committed the offense" *Id.* at 363; *see also* Shade, 109
16 Nev. at 828; Crockett., 102 Nev. at 361.

17 **II. PETITIONER COLLINS WAS PROPERLY BOUND OVER ON**
18 **COUNT 1**

19 **The State Introduced Overwhelming Evidence to Prove Brandi Payton Died As**
20 **the Result of a Criminal Agency**

21 Petitioner Collins alleges that because Dr. Simms ruled the cause and manner of
22 Brandi Payton's death "undetermined" that the language "by asphyxiation and/or blunt force
23 trauma and/or manner and means unknown" should be stricken from the Information.
24 Petitioner's assertion is incorrect both in law and in fact. While not saying it expressly, the
25 Petitioners argument is that the State has not established *corpus delicti* related to the death of
26 Brandi Payton because the cause of death was ruled "undetermined."

27 The *corpus delicti* rule in Nevada is well established. To prove that a murder has
28 been committed, the State must demonstrate: "(1) the fact of death, and (2) that death
occurred by criminal agency of another." West v. State, 119 Nev. 410, 415-416, 75 P.3d 808

1 (2003). At trial, the State bears the burden of establishing the *corpus delicti* beyond a
2 reasonable doubt, based on direct *or circumstantial* evidence. West v. State, 119 Nev. at
3 416. When reviewing the sufficiency of the evidence, the inquiry is whether, after viewing
4 the evidence in the light most favorable to the prosecution, *any* rational trier of fact could
5 have found the essential elements of the crime beyond a reasonable doubt. *Id.* There is *no*
6 *requirement that there be evidence of a specific cause of death*, and the court must consider
7 and weigh all the evidence offered which bears on the question of death by criminal agency.
8 Middleton v. State, 114 Nev. 1089, 1103, 968 P.2d 296 (1998).

9 In West v. State, 119 Nev. at 415, the defense claimed there was insufficient evidence
10 adduced at trial to establish the victim, Christine Smith, died as a result of a criminal act
11 rather than natural causes. In that case, Smith's body was found in a garbage can in a
12 storage unit in advanced stages of decomposition. *Id.* at 411-412. The remains consisted
13 largely of fluid, with a white plastic bag knotted at the back of the head covering what was
14 left of the facial area. *Id.* at 412. The defense relied on the fact that the coroner opined that
15 the cause and manner of death, as in this case, were undetermined. *Id.* at 413. Based on the
16 body's decomposition, there were *no physical findings* to suggest why or how the victim
17 died. *Id.* Moreover, although it was possible Smith was suffocated, there were no findings
18 (e.g., petechial hemorrhages in the eyes) to support suffocation since the decomposition
19 destroyed the victim's eyes and tissue on the victim's body. Indeed, the pathologist opined
20 that it was possible Smith was placed in the garbage can alive. *Id.* at 414. The defense
21 introduced evidence that Smith died by natural causes. *Id.* at 418.

22 The Nevada Supreme Court disagreed with the defense and held there was sufficient
23 evidence to establish the victim died as the result of a criminal act. The Court relied on its
24 earlier decision in Middleton, 112 Nev. 956, noting that there is no requirement that there be
25 evidence of a specific cause of death. West, 119 Nev. at 418. The Court noted that in its
26 decision in Middleton, although the victims' actual causes of death could not be determined
27 from examination of the bodies due to decomposition, the circumstances of the
28 disappearances of the women, the discoveries of their bodies in remote locations, and the

1 conditions of the bodies clearly created a reasonable inference of their deaths by criminal
2 agency. West, 119 Nev. at 418 (citations omitted). Accordingly, the Court recognized that
3 the State may establish *corpus delicti* solely with circumstantial evidence, notwithstanding
4 the lack of a body or lack of evidence of the actual cause of death due to decomposition or
5 dismemberment of the body. *Id.* The Court concluded, therefore, that there was sufficient
6 evidence of *corpus delicti* despite the fact that the actual cause of the Smith's death could not
7 be determined. This was true even though there were *no physical findings* to suggest why or
8 how Smith died; there were *no findings to support suffocation* since the decomposition
9 destroyed the victim's eyes and tissue on the victim's body; the pathologist opined that it
10 was possible Smith was placed in the garbage can alive; and the defense introduced evidence
11 that Smith died by natural causes. The circumstances created a reasonable inference of
12 Smith's death by criminal agency. *Id.* at 418. Consequently, the *corpus delicti* rule was
13 satisfied.

14 Here, overwhelming evidence was presented to establish that Brandi Payton died as
15 the result of a criminal act. Here, as in West, the pathologist opined that the cause and
16 manner of death were undetermined. Despite Petitioner's seeming argument to the contrary,
17 however, the inquiry does not end there. See West v. State, 119 Nev. 410 (sufficient
18 evidence of *corpus delicti* even though actual cause of death could not be determined). Dr.
19 Lary Simms that he looked extensively for any sign of death related to disease or natural
20 causes. PHT p. 59. Dr. Simms said that he found none. *Id.* Dr. Simms did however find
21 evidence of injury on Brandi Payton's body. He located signs of blunt force trauma
22 occurring before death. PHT pp. 51-53. The largest of these injuries included a 1 ½ inch
23 gash on Brandi Payton's head. *Id.* Dr. Simm's said the injury was the type that would have
24 bled a large amount. *Id.* Equally as importantly, the pathologist could not rule out
25 asphyxiation as the cause of death. PHT p. 65.

26 The evidence also established that Brandi Payton's blood was located both splattered
27 in the hallway area of the home where the Defendant was the day Brandi Payton went
28 missing. Exhibit "2." The evidence further established that Brandi Payton's DNA was

1 located within the trunk of the car Defendant was driving at the time she disappeared. PHT
2 Exhibit "3."

3 Clearly, there was tremendous evidence presented at Preliminary Hearing reasonably
4 inferring that Ms. Payton's death was via criminal agency, thereby satisfying the *corpus*
5 *delicti* rule.

6 **Petitioner Collins Is Properly Charged Within the Information as it Relates to**
7 **the Cause of Death**

8 NRS 173.075, which addresses the requirements for the nature and content of an
9 information or indictment, provides:

10 Allegations made in one count may be incorporated by reference in another count. It
11 may be alleged in a single count that the means by which the defendant committed the
12 offense *are unknown* or that he committed it by *one or more specified means*.

13 NRS 173.075(2) (emphasis added).

14 Thus, the State is merely required to inform the defendant of the nature and cause of
15 the accusation against the defendant. West v. State, 119 Nev. 410, 419 (citations omitted).
16 The charging document must specify the means by which the charged offense was
17 committed *or allege that the means are unknown*. *Id.* (emphasis added). The purpose of
18 these requirements is to prevent prosecutors from changing theories mid-trial, which in
19 effect prejudices the defendant in her defense. *Id.* "We are not concerned with whether the
20 information could have been more artfully drafted, but only whether as a practical matter the
21 information provides adequate notice to the accused." *Id.* (citing Sheriff v. Levinson, 95
22 Nev. 436, 437, 596 P.2d 232, 234 (1979)).

23 Here, Petitioner Collins has been adequately placed on notice that he is charged with
24 the murder of Brandi Payton via "asphyxiation and/or blunt force trauma and/or manner and
25 means unknown."

26 ///

27 ///

1 Clearly, the State has complied with NRS 173.075 and the relevant caselaw. The
2 State has alleged in a single count the means by which the defendant committed the offense,
3 inclusive of the fact that either the manner and means are unknown or that he committed the
4 crime by one or more specified means.

5 **CONCLUSION**

6 Based on the aforementioned argument, the State respectfully requests that this court
7 DENY Defendant's Petition for Writ of Habeas Corpus.

8 DATED this 14th day of May, 2009.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
12 Nevada Bar # 002781

13 BY /s/ JOSHUA TOMSHECK

14 JOSHUA TOMSHECK
15 Deputy District Attorney
16 Nevada Bar #009210

17
18 **CERTIFICATE OF FACSIMILE TRANSMISSION**

19 I hereby certify that service of the above and foregoing *Return to Writ of Habeas*
20 *Corpus*, was made this 14th day of May, 2009, by facsimile transmission to:

21
22 SPECIAL PUBLIC DEFENDER
23 FAX #455-6273

24 /s/ANJA BETHANY HARDY
25 Secretary for the District Attorney's
26 Office

27
28 08FN246X/GCU:abh

EXHIBIT “1”


CLERK OF THE COURT

1 **INFO**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **JOSHUA TOMSHECK**
6 Deputy District Attorney
7 Nevada Bar #009210
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 I.A. 3/26/09
10:30 A.M.
8 SPD
DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 LESEANN TARUS COLLINS,
14 #0857181

15 Defendant.

Case No: C252804
Dept No: IX

INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 DAVID ROGER, District Attorney within and for the County of Clark, State of
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That LESEANN TARUS COLLINS, the Defendant(s) above named, having
21 committed the crimes of MURDER (Felony - NRS 200.010, 200.030) and ROBBERY
22 (Felony - NRS 200.380), on or about the 2nd day of September, 2008, within the County of
23 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
24 and provided, and against the peace and dignity of the State of Nevada,

25 COUNT 1 - MURDER

26 did then and there wilfully, unlawfully, feloniously, without authority of law, and
27 with malice aforethought, kill BRANDI PAYTON, a human being, by asphyxiation and/or
28 blunt force trauma and/or manner and means unknown; said killing having been: (1) wilful,

1 deliberate and premeditated; and/or (2) committed during the commission or attempted
2 commission of a felony, to-wit: Robbery.

3 COUNT 2 - ROBBERY

4 did then and there wilfully, unlawfully, and feloniously take personal property, to-
5 wit: a 2008 Hyundai bearing Nevada License No. 428UZS, cellular phone, jewelry, and/or a
6 purse and contents, from the person of BRANDI PAYTON, or in her presence, by means of
7 force or violence, or fear of injury to, and without the consent and against the will of the said
8 BRANDI PAYTON.

9 DAVID ROGER
DISTRICT ATTORNEY
10 Nevada Bar #002781

11
12 BY /s/JOSHUA TOMSHECK
13 JOSHUA TOMSHECK
Deputy District Attorney
14 Nevada Bar #009210

15 Names of witnesses known to the District Attorney's Office at the time of filing this
16 Information are as follows:

17	<u>NAME</u>	<u>ADDRESS</u>
18	ACUNA, RONALD	c/o CC DISTRICT ATTORNEY'S OFFICE
19	ALBY, ROCKY W.	LVMPD, P#1810
20	BEASLEY, DONITA	2901 FERRET FALL AVE., NLV, NV
21	BORLA, FELICIA	CC MEDICAL EXAMINER'S OFFICE
22	CABRALES, ALLEN L.	LVMPD, P#2045
23	CHAVEZ, GILBERT	NLVPD, P#1660
24	COR	AVIS CAR RENTAL
25	COR	CCDC
26	COR	DMV - RECORDS
27	COR	LVMPD - DISPATCH
28	COR	LVMPD - GUN REGISTRATION

1	COR	LVMPD - RECORDS
2	COR	NLVPD - RECORDS
3	COR	SPRING/NEXTEL WIRELESS
4	DAVISON, DONALD	5965 S. BRONCO ST., LV, NV
5	EDDINGS, SHALANA	176 JUDY CT., #B, HD, NV
6	GAUTHIER, KELLIE M.	LVMPD, P#8691
7	GRANDE, BEN	4073 ARROWWOOD DR., LV, NV
8	HARDY, KENNETH W.	LVMPD, P#3031
9	HICKS, RUFUS	5855 VALLEY DR., #2160, NLV, NV
10	HOLSTEIN, DANIEL S.	LVMPD, P#3861
11	HORN, DAVID R.	LVMPD, P#1928
12	JEFFREY, ERIKA	2701 N. BUCHANAN BL., #1016, LV, NV
13	JOHNS, MATTHEW	c/o CC DISTRICT ATTORNEY'S OFFICE
14	KELSO, MICHAEL	7300 RED CINDER ST., LV, NV
15	KRUEGER, LINDA, P#1471	LVMPD - CRIME LAB
16	AND/OR DESIGNEE	
17	LOPEZ, MARIA	HUTINGTON BEACH POLICE, CA
18	MADRIGAL, PEDRO	1913 ALWILL ST., #D, LV, NV
19	MALONE, PATRICK	c/o CC DISTRICT ATTORNEY'S OFFICE
20	MOGG, CLIFFORD H.	LVMPD, P#5096
21	PAYTON, GLORIA	3108 AVE., J-14, LANCASTER, CA
22	PENDLETON, JAMES A.	LVMPD, P#3289
23	PRATT, WANNETTE	515 N. LAMB BLVD., #5, LV, NV
24	PROIETTO, DANIEL M.	LVMPD, P#8180
25	SIMMS, LARY	CC MEDICAL EXAMINER'S OFFICE
26	WILLIAMS, THERESA	5330 E. CHARLESTON BL., #78, LV, NV
27	DA#08FN2467X/GCU:abh	
28	LVMPD EV#0809061227	
	MURD; ROBB - F (TK3)	

EXHIBIT “2”

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Detail		Distribution Date: OCT 10 2008	
Subject(s):	Collins, Lesean (suspect)	Case:	08 0906-1227
	Payton, Brandi (victim)	Agency:	LVMPD
		Incident:	Homicide
		Requester:	C. Mogg & K. Hardy

The Biology/DNA Detail of the Las Vegas Metropolitan Police Department Forensic Laboratory examined evidence in this case and reports the following results:

Pkg #	Item #	Lab #	Description	Results
4032-1	1	KG1A	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Positive presumptive test for blood No DNA profile obtained
	2	KG1B	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Blood positive Full female profile
	3	KG1C	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Blood positive Full female profile
	4	KG1D	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Positive presumptive test for blood No DNA profile obtained
	5	KG1E	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Blood positive Partial female profile
	6	KG1F	Swab from east wall in the hallway by the laundry room door	<ul style="list-style-type: none"> Blood positive Full female profile
3861-4	5	KG2A	Fake fingernail	<ul style="list-style-type: none"> Partial female profile
	6	KG2B	Fake fingernail	<ul style="list-style-type: none"> Partial female profile
8174-3	2A	KG3A	Right hand fake fingernails	<ul style="list-style-type: none"> Full female profile
	3A	KG3B	Left hand fake fingernails	<ul style="list-style-type: none"> Full female profile
	4A	KG3C	Right foot toenails	<ul style="list-style-type: none"> Not examined
	5A	KG3D	Left foot toenails	<ul style="list-style-type: none"> Not examined
8174-5	12	KG4	Reference rib and kidney tissue -- Brandi Payton	<ul style="list-style-type: none"> Partial female profile
3861-1	1	KG5	Three rocks	<ul style="list-style-type: none"> Blood positive Full female profile

CONCLUSIONS

Items KG1A, KG1B, KG1C, KG1D, KG1E, KG1F, KG2A, KG2B, KG3A, KG3B, KG4 and KG5 were subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

The DNA profiles obtained from the swabs from the east wall in the hallway by the laundry room door (KG1B, KG1C and KG1F) and rocks (KG5) are all consistent with Brandi Payton (KG4). The estimated frequency of the DNA profile in the population is rarer than 1 in 650 billion. Identity is assumed. Possible additional alleles below threshold were detected in KG5.

08 0906-1227
Page 1 of 2

LM

The partial DNA profile obtained from the east wall in the hallway by the laundry room door (KG1E) is consistent with Brandi Payton (KG4). The estimated frequency of the DNA profile in the population is rarer than 1 in 11 billion.

The DNA profiles obtained from the right and left hand fake fingernails (KG3A & KG3B) and the partial DNA profiles obtained from the fake fingernails (KG2A & KG2B) are consistent with Brandi Payton (KG4). Possible additional alleles below threshold were detected in KG3B.

I returned the evidence to the vault.

I declare under penalty of perjury that the foregoing is true and correct.



Kellie M. Gauthier P#8591
Forensic Scientist II

10-09-08

 #100072

Reviewer

EXHIBIT “3”

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Biology/DNA Detail		Distribution Date: FEB 08 2009	
Subject(s):	Collins, Lesean (suspect)	Case:	SUPPLEMENTAL 08 0906-1227
	Payton, Brandi (victim)	Agency:	LVMPD
		Incident:	Homicide
		Requester:	C. Mogg & K. Hardy

The Biology/DNA Detail of the Las Vegas Metropolitan Police Department Forensic Laboratory examined evidence in this case and reports the following results:

Pkg #	Item #	Lab #	Description	Results
1928-1	1	KG6	Black Trunk Mat	<ul style="list-style-type: none"> Blood positive Full female profile
4032-3	10	KG7	Blue Fitted Sheet	<ul style="list-style-type: none"> Blood positive Partial male profile
3861-3	4	KG8	White Hand Towel	
		KG8A	• Stain	<ul style="list-style-type: none"> Blood positive Full female profile
		KG8B	• Edges	<ul style="list-style-type: none"> Mixture profile
1928-6	12	KG9A	Swab from Interior LF Door Handle	<ul style="list-style-type: none"> Due to limited information no conclusions can be made
	13	KG9B	Swab from the Steering Wheel	<ul style="list-style-type: none"> Partial mixture profile
	14	KG9C	Swab from the Rearview Mirror/Gearshift	<ul style="list-style-type: none"> Due to limited information no conclusions can be made
	15	KG9D	Swab from the Striking Wheel of BIC Lighter	<ul style="list-style-type: none"> DNA profile not obtained
1928-7	16	KG10	Yellow BIC Lighter	<ul style="list-style-type: none"> Mixture profile
8174-1	1	KG11	Sexual Assault Kit - Brandi Payton	
		KG11A	Buccal Swabs	<ul style="list-style-type: none"> Not collected
		KG11B1	Vaginal Swabs	<ul style="list-style-type: none"> Semen negative
		KG11B2	Cervical Swabs	<ul style="list-style-type: none"> Semen negative
		KG11C	Underpants	<ul style="list-style-type: none"> Not collected
		KG11D1	Fingernail Swabs	<ul style="list-style-type: none"> Full female profile
		KG11D2	Rt. Hand Fingernail Scraper	<ul style="list-style-type: none"> Due to limited information no conclusions can be made
		KG11D3	Lt. Hand Fingernail Scraper	<ul style="list-style-type: none"> DNA profile not obtained
		KG11E	Pubic hair brushing	<ul style="list-style-type: none"> Not examined
		KG11F	Rectal Swabs	<ul style="list-style-type: none"> Semen negative
		KG11G	Oral Swabs	<ul style="list-style-type: none"> Semen negative
		KG11H1	Possible Hair Root from Upper Lt. Leg (on pants)	<ul style="list-style-type: none"> Due to limited information no conclusions can be made
		KG11H2	Possible Hair Root from Upper Lt. Leg (on pants)	<ul style="list-style-type: none"> Full female profile

Pkg #	Item #	Lab #	Description	Results
8174-1 (cont'd)	1	KG11H3	Possible Hair Root from Upper Lt. Leg (on pants)	• Full female profile
		KG11I	Paperwork	• Not filled out
5096-1	1	KG12	Buccal swabs - Lesean Collins	• Full male profile
* - Refer to original report by Kellie M. Gauthier dated 10-09-08				

CONCLUSIONS

Items KG6, KG7, KG8A, KG8B, KG9A, KG9B, KG9C, KG9D, KG10, KG11D1, KG11D2, KG11D3, KG11H1, KG11H2, KG11H3 and KG12 were subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, VWA, TPOX, D18S51, D5S818, and FGA. The sex-determining Amelogenin locus was also examined.

The DNA profile obtained from the black trunk mat (KG6) is consistent with Brandi Payton (KG4*). The estimated frequency of the DNA profile in the population is rarer than 1 in 650 billion (identity assumed).

The partial DNA profile obtained from the blue fitted sheet (KG7) is consistent with an unknown male. Lesean Collins (KG12) is excluded as the contributor to this DNA profile.

The DNA profile obtained from the stain on the white hand towel (KG8A) is consistent with Brandi Payton (KG4*).

The DNA profile obtained from the edges of the white hand towel (KG8B) is consistent with a mixture of two individuals with one being male. Brandi Payton (KG4*) cannot be excluded as the major contributor to this mixture. Due to limited information no conclusions can be made in regard to the minor contributor.

The partial DNA profile obtained from the swab from the steering wheel (KG9B) is consistent with a mixture of at least three individuals with at least one being male. It is inconclusive as to whether Brandi Payton (KG4*) can be included or excluded as a possible contributor to this mixture. Lesean Collins (KG12) cannot be excluded as a contributor to this mixture. Approximately 1 in 1 individuals in the population are included as possible contributors to the mixture.

The DNA profile obtained from the yellow BIC lighter (KG10) is consistent with a mixture of at least two individuals with at least one being male. Brandi Payton (KG4*) cannot be excluded as a contributor to this mixture. Lesean Collins (KG12) is excluded as a contributor to this mixture.

The DNA profiles obtained from the swabs from the fingernails (KG11D1) and possible hair roots from the upper left leg on the pants (KG11H2 & KG11H3) are all consistent with Brandi Payton (KG4*).

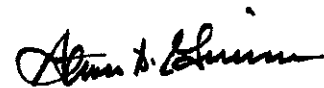
I returned the evidence to the Vault.

I declare under penalty of perjury that the foregoing is true and correct.

Kellie M. Gauthier
Kellie M. Gauthier, P#8691
Forensic Scientist II

01-27-09

Jennifer Bas # 9944
Reviewer



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN TARUS COLLINS,

Defendant.

CASE NO. C252804

DEPT. IX

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
TUESDAY, JUNE 08, 2009

**RECORDER'S TRANSCRIPT OF HEARING RE:
PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the State:

JOSHUA L. TOMSHECK, ESQ.,
Chief Deputy District Attorney

For the Defendant:

SCOTT L. BINDRUP, ESQ.,
IVETTE A. MANINGO, ESQ.,
Deputy Special Public Defenders

RECORDED BY: CHERYL CARPENTER, RELIEF COURT RECORDER

1 TUESDAY, JUNE 08, 2009

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: Bindrup. Yes. He signed in on page two.

6 MR. BINDRUP: I'm sorry. Mr. Tomsheck isn't here. Would you mind
7 trailing that, please?

8 THE COURT: No, not at all.

9 (Whereupon, the matter was trailed and then recalled.)

10 THE COURT: Lesean Collins, C252804.

11 THE DEFENDANT: Good morning, your Honor.

12 THE COURT: Hello. Mr. Collins is present in custody. For the
13 defendant we have Ms. Maningo and Mr. Bindrup. Hi, Mr. Tomsheck, for the State.

14 This is the time set for hearing on the writ on the limited issue as
15 presented by the defense. I've reviewed the petition for writ of habeas corpus, the
16 return, and if there was a reply I didn't get it.

17 MR. BINDRUP: One was not filed.

18 THE COURT: Okay. So you're going to orally reply.

19 MR. BINDRUP: Thank you. May I, your Honor?

20 THE COURT: Yes.

21 MR. BINDRUP: The language of the Information as far as cause of
22 death is by asphyxiation, and/or blunt force trauma, and/or manner and means
23 unknown. We have no contention with the language, manner and means unknown.
24 The coroner, however, at time of preliminary hearing, admitted that the cause of
25 death was undetermined, and he listed many different theories that could have

1 accounted for that, and he said, yes, asphyxiation or blunt force trauma could have
2 been one of those causes, but he did not come to that conclusion and could not pin
3 those two items down with a reasonable degree of certainty. It was a possibility. He
4 said there's a -- yes, that's a good guess, but by his standard of proof which he used
5 as a reasonable degree of forensic certainty, he admitted, that is simply a guess.
6 He said there's other items that could have caused this. There could be natural
7 causes. This could have been caused by a seizure or by metabolic derangement.
8 Even blunt force trauma, he said, that could have been caused, if that were a cause,
9 from an accident or from a fall or something else.

10 Our contention is simply the State should not be able to bolster
11 an argument they're picking out of the air and present it to the jury by way of
12 information if that particular evidence did not raise to the level of -- you know --
13 necessary at time of preliminary hearing to put that in the Information, and we
14 believe that the asphyxiation of blunt force trauma should be struck from the
15 Information. Thank you.

16 MR. TOMSHECK: I think it's been thoroughly briefed, your Honor,
17 unless there's something specifically in response to that you'd like me to address. I
18 would submit it on our written pleadings.

19 THE COURT: Okay. Anything you wish to add?

20 MR. BINDRUP: No, your Honor.

21 THE COURT: Well I think under NRS 173.075 the District Attorney is
22 within their rights to charge it as they have, particularly for the blunt force trauma, in
23 light of the testimony that there was a laceration which, at least, caused
24 unconsciousness which is blunt force trauma in the back of the head. When there's
25 reasonable inferences that could be drawn from that evidence, I think they're entitled

1 to plead it the way they pled it, and I appreciate the issue as far as it's the first time
2 I've actually entertained it, but I'm going to deny the petition.

3 So do you want to prepare an order and let them see it, please,
4 unless it's just going to say denied for the reasons contained in the State's
5 opposition. If you put it that way I would assume that would be acceptable if it only
6 said that.

7 MR. BINDRUP: That would be acceptable.

8 MR. TOMSHECK: That's what it will say, Judge.

9 THE COURT: Okay. Thank you.

10 MR. BINDRUP: Thank you.

11 (Whereupon, the proceedings concluded.)

12 * * * * *

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

15 

16 Kiara Schmidt, Court Recorder/Transcriber

ORIGINAL

37

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JOSHUA TOMSHECK**
6 **Deputy District Attorney**
7 **Nevada Bar #009210**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

FILED

JUN 25 10 23 AM '09

Earl D. Smith
CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12 **-vs-**

13 **LESEAN TARUS COLLINS,**
14 **#857181**

15 **Defendant.**

Case No. C252804
Dept No. IX

17 **ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

18 **DATE OF HEARING: 06/08/09**
19 **TIME OF HEARING: 9:00 A.M.**

20 **THIS MATTER** having come on for hearing before the above entitled Court on the
21 **8TH day of June, 2009,** the Defendant being present, represented by SCOTT BINDRUP, and
22 **IVETTE MANINGO,** Special Deputy Public Defenders, the Plaintiff being represented by
23 **DAVID ROGER,** District Attorney, through JOSHUA TOMSHECK, Deputy District
24 **Attorney,** and the Court having heard the arguments of counsel and good cause appearing
25 **therefor,**

///

///

///

RECEIVED
JUN 25 2009
CLERK OF THE COURT

1 IT IS HEREBY ORDERED that based on reasons stated by the Court at the time of
2 argument on the above referenced Petition, the Defendant's Petition for Writ of Habeas
3 Corpus, shall be, and it is DENIED.

4 DATED this 17th day of June, 2009.

5
6 
7 DISTRICT JUDGE

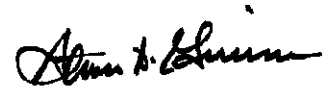
8 For JENNIFER P. TOGLIATTI 

9 DAVID ROGER
10 DISTRICT ATTORNEY
11 Nevada Bar #002781

12 

13 JOSHUA TOMSHECK
14 Deputy District Attorney
15 Nevada Bar #009210
16
17
18
19
20
21
22
23
24
25
26
27

28 djj



CLERK OF THE COURT

1 **NOTC**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JOSHUA TOMSHECK**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #009210**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **LESEAN TARUS COLLINS,**
13 **#0857181**

14 **Defendant.**

CASE NO: C252804

DEPT NO: IX

15 **NOTICE OF WITNESSES**
16 **[NRS 174.234(1)(a)]**

17 **TO: LESEAN TARUS COLLINS, Defendant; and**

18 **TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:**

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**
20 **NEVADA intends to call the following witnesses in its case in chief:**

<u>NAME</u>	<u>ADDRESS</u>
21 ALBY, ROCKY	LVMPD P#1810
22 BEASLEY, DONITA	2901 FERRET FALL AVE., NLV, NV
23 BORLA, DAVID	ME P#0013
24 CHAVEZ, GILBERT	NLVPD P#1660
25 COR	AVIS CAR RENTAL
26 COR	NLVPD RECORDS
27 COR	SPRINT-NEXTEL WIRELESS
28 COR	

1	DAVISON, DONALD	5965 S. BRONCO ST., LVN
2	EDDINS, SHALANA	176 JUDY CT., #B, HENDERSON, NV
3	GRANDE, BEN	4073 ARROWWOOD DR., LVN
4	HARDY, KENNETY	LVMPD P#3031
5	HENSON, JASON	LVMPD P#3918
6	HICKS, RUFUS	5855 VALLEY DR., #2160, NLV, NV
7	JEFFREY, ERIKA	2701 N. BUCHANAN BL., #1016, LVN
8	KELSO, MICHAEL	7300 RED CINDER ST., LVN
9	LOMPEY, JEFF	NLVPD P#
10	MADRIGAL, PEDRO	1913 ALWILL ST., #D, LVN
11	MOGG, CLIFFORD	LVMPD P#5096
12	MONTGOMERY, SEAN	NLVPD P#1800
13	NARVAEZ, SERGIO	NLVPD P#2001
14	PAYTON, GLORIA	3108 AVE., J-14, LANCASTER, CA
15	PENDLETON, JAMES	LVMPD P#3289
16	PERKINS, MICHAEL	LVMPD P#4242
17	PRATT, WANNETTE	515 N. LAMB BL., #5, LVN
18	STANCILL, MATTHEW	NLVPD P#2149
19	WHEELER, BRIAN	NLVPD P#2144
20	WILLIAMS, THERESA	5330 E. CHARLESTON BL., #78, LVN

21 These witnesses are in addition to those witnesses endorsed on the Information and

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

1 any other witness for which a separate Notice has been filed.
2
3

4
5 BY


DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

6
7
8 CERTIFICATE OF FACSIMILE TRANSMISSION

9 I hereby certify that service of the *Notice of Witnesses*, was made this 21st day of
10 January, 2010, by facsimile transmission:

11 SPECIAL PUBLIC DEFENDER
12 FAX #455-6273

13 /s/ Anja Bethany Fletcher
14 Secretary for the District Attorney's Office
15
16
17
18
19
20
21
22
23
24
25
26

27 08FN2467X-GCU:jh
28


CLERK OF THE COURT

1 **NOTC**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JOSHUA TOMSHECK**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #009210**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **LESEAN TARUS COLLINS,**
13 **#0857181**

14 **Defendant.**

CASE NO: C252804

DEPT NO: IX

15 **NOTICE OF EXPERT WITNESSES AND/OR**
16 **REBUTTAL EXPERT WITNESSES**
17 **[NRS 174.234(2)]**

18 **TO: LESEAN TARUS COLLINS, Defendant; and**

19 **TO: SPECIAL PUBLIC DEFENDER, Counsel of Record:**

20 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**
21 **NEVADA intends to call the following witnesses in its case in chief:**

22 **TIFFANY ADAMS AND/OR DESIGNEE LVMPD P#10072 is a Crime Scene**
23 **Analyst with the Las Vegas Metropolitan Police Department and is an expert in the**
24 **identification, documentation, collection, and preservation of evidence and is expected to**
25 **testify as an expert to the identification, documentation, collection, and preservation of the**
26 **evidence in this case.**

27 **ALLEN CABRALES, LVMPD P#2045 is a Crime Scene Analyst with the Las**
28 **Vegas Metropolitan Police Department, and expert in the identification, documentation,**
collection, and preservation of evidence and is expected to testify as an expert to the

1 identification, documentation, collection, and preservation of the evidence in this case.

2 **JONATHAN FRIED**, LVMPD P#8174 is a Crime Scene Analyst with the Las
3 Vegas Metropolitan Police Department, and is an expert in the identification, documentation,
4 collection, and preservation of evidence and is expected to testify as an expert to the
5 identification, documentation, collection, and preservation of the evidence in this case.

6 **KELLIE GAUTHIER AND/OR DESIGNEE**, LVMPD P#8691 is a Crime Scene
7 Analyst with the Las Vegas Metropolitan Police Department and is an expert in the
8 identification, documentation, collection, and preservation of evidence and is expected to
9 testify as an expert to the identification, documentation, collection, and preservation of the
10 evidence in this case.

11 **DANIEL HOLSTEIN**, LVMPD P#3861 is a Crime Scene Analyst with the Las
12 Vegas Metropolitan Police Department, and is an expert in the identification, documentation,
13 collection, and preservation of evidence and is expected to testify as an expert to the
14 identification, documentation, collection, and preservation of the evidence in this case.

15 **DAVID R. HORN**, LVMPD P#1928 is a Crime Scene Analyst with the Las Vegas
16 Metropolitan Police Department, and is an expert in the identification, documentation,
17 collection, and preservation of evidence and is expected to testify as an expert to the
18 identification, documentation, collection, and preservation of the evidence in this case.

19 **MARIA LOPEZ** is a Crime Scene Analyst with the Huntington Beach Police
20 Department, and is an expert in the identification, documentation, collection, and
21 preservation of evidence and is expected to testify as an expert to the identification,
22 documentation, collection, and preservation of the evidence in this case.

23 **DANIEL PROIETTO**, LVMPD P#8180 is a Crime Scene Analyst with the Las
24 Vegas Metropolitan Police Department, and is an expert in the identification, documentation,
25 collection, and preservation of evidence and is expected to testify as an expert to the
26 identification, documentation, collection, and preservation of the evidence in this case.

27 **DR. LARRY SIMMS**, employed with the Clark County Coroner, an expert in the
28 field of forensic pathology and is expected to testify to the cause and manner of death of the

1 victim, Brandi Payton, in this case.

2 **MONTE SPOOR**, LVMPD P#3856 is a Crime Scene Analyst with the Las Vegas
3 Metropolitan Police Department, and is an expert in the identification, documentation,
4 collection, and preservation of evidence and is expected to testify as an expert to the
5 identification, documentation, collection, and preservation of the evidence in this case.

6 The substance of each expert witness' testimony and a copy of all reports made by or
7 at the direction of the expert witness has been provided in discovery.

8 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

10
11 BY



12 DAVID ROGER
13 DISTRICT ATTORNEY
14 Nevada Bar #002781

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16 I hereby certify that service of the *Notice of Expert Witnesses and Rebuttal*
17 *Witnesses*, was made this 21st day of January, 2010, by facsimile transmission to:

18 SPECIAL PUBLIC DEFENDER
19 FAX #455-6273

20 /s/ Anja Bethany Fletcher
21 Secretary for the District Attorney's Office
22
23
24

25 08FN2467X-GCU:jh
26
27
28

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 10/30/07

Name: Tiffany Adams P#: 10072 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Cedar Crest College	8/1998 - 5/2002	Genetic Engineering	B.S.
Harrisburg Area Community College	1/2004 - 5/2004	N/A	N/A
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
Forensic Biology Screening (workshop)	Las Vegas, NV	2007	
Applied Statistics (workshop)	Hollywood, CA	2007	
18 th International Symposium on Human Identification	Hollywood, CA	2007	
Courtroom Statistics (workshop)	San Diego, CA	2006	
Bode Technology Advanced DNA Technology Meeting	San Diego, CA	2006	
Real-Time PCR (workshop)	St. Louis, MO	2005	
Expert Witness Testimony (workshop)	St. Louis, MO	2005	
Midwestern Association of Forensic Scientists Annual Meeting	St. Louis, MO	2005	

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Hair Examination for DNA Analysts (workshop)	Wilmington, DE	2004
Mid-Atlantic Association of Forensic Scientists Annual Meeting	Wilmington, DE	2004

COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
None		

EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist II (Biology/DNA)	Present
Bode Technology	Forensic DNA Analyst II	2003-2007
PSU College of Medicine/Milton S Hershey Medical Center	Research Technician II	2002-2003
RheoGene/Rohm & Haas	Lab Assistant/Intern	2000-2002

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
None	

PUBLICATIONS / PRESENTATIONS
"Effects of Sodium Selenite and Organoselenium Compounds on Microtubule Polymerization" (Poster Presentation: 2002 Annual Meeting of the Pennsylvania Academy of Science)
"Phage Receptor Genes and their Impact on Bacterial Host Range" (Poster Presentation: 2000 Annual Meeting of the Pennsylvania Academy of Science)

OTHER QUALIFICATIONS:
None

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Allen Cabrales

P# 2045

Date: 10-1-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
X	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
Los Angeles Baptist College	Biology	Bachelors Degree-1979

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Crime Scene Analyst Supervisor	1-7-80

CABRALES, ALLEN
CSA SUPERVISOR

P# 2045
SS#: 530-64-6527

CRIMINALISTICS BUREAU - FIELD
DOH: 01-07-80

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
05-79	Bachelor of Science Degree in Biology	Los Angeles Baptist College, Newhall, CA	
08-04-80	Use of Deadly Force	LVMPD	8
06-81	Crime Scene Search & Collection & Preservation of Evidence	LVMPD (FBI)	24
10-81	Fingerprint Classification	LVMPD (FBI)	40
05-82	Advanced Officer's Training	LVMPD	40
06-07 to 06-11-82	Law Enforcement Photography	Eastman Kodak Company	40
11-08 to 11-12-82	Advanced Crime Scene Investigation	LVMPD	40
06-83	Homicide Investigation	Southern Police Institute, Louisville, KY	80
03-84	Photography & Casting of Tire & Footwear Impressions, Techniques of Processing Bodies for Fingerprints, Measurement of Tire Tracks to Determine Wheel Base, Blood Evidence Collection	LVMPD	8
02-28-89	NCIC Level III Video	LVMPD	
12-20-90	Drug Testing Film	LVMPD	
08-15-90	Firearms Training	LVMPD	
09-28-90	Stress Management	LVMPD	4
02-14-91	Auto Theft	LVMPD	2
02-07-91	Child Abuse/Neglect	LVMPD	4
02-28-91	NCIC Level III Video	LVMPD	
04-15 and 04-16-	Polilight	LVMPD	14
07-03-91	Gunshot Wounds - Video	LVMPD	1
09-30-91	Duty Weapon Qualification	LVMPD	1
12-31-91	Duty Weapon Qualification	LVMPD	1
02-26 to 02-27-92	Seminar/Environmental Crimes	FBI	11
03-23 to 03-27-92	Advanced Latent Fingerprint Techniques (Chemical Processing)	FBI (LVMPD Sponsorship)	40
03-31-92	Duty Weapon Qualification	LVMPD	1
04-08-92	Doc. Footwear Evidence & Safety in Firearms Evidence	LVMPD	7
05-05-92	NCIC Phase I - Miscellaneous Updates	LVMPD	10 Minutes
06-04-92	Driver's Training - Level 02	LVMPD	8

06-30-92	Duty Weapon Qualification	LVMPD	1
07-92	New Pursuit Policy - Video	LVMPD	1
08-28-92	Advanced Latent Fingerprint Techniques & Procedures	LVMPD	32
08-31-92	Bloodborne Pathogens/Communicable Diseases	LVMPD	2
09-30-92	Duty Weapon Qualification	LVMPD	1
10-13-92	Victims and Law Enforcement	LVMPD	4
12-31-92	Duty Weapon Qualification	LVMPD	1
02-22-93	Polilight Laser Photography & Chemical Techniques	LVMPD	8
03-10-93	NCIC Phase I Video tape	LVMPD	20 Minutes
03-31-93	NCIC phase I - Video	LVMPD	20 Minutes
03-31-93	Duty Weapon Qualification	LVMPD	1
06-30-93	Duty Weapon Qualification	LVMPD	1
08-05-93	How to Handle Difficult People	LVMPD	6
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
03-31-94	Duty Weapon Qualification	LVMPD	1
05-20-94	Personal Financial Planning II	LVMPD	7
06-30-94	Duty Weapon Qualification	LVMPD	1
	Bloodborne Pathogens (Video)	LVMPD	
09-30-94	Duty Weapon Qualification	LVMPD	1
11-09-94	Cardiopulmonary Resuscitation (CPR)	LVMPD	4
12-08-94	Civilian Contracts	LVMPD	2
01-17 to 01-20-95	Development Seminar for New Supervisors (Civilian)	LVMPD	28
01-25-95	Management Effectiveness	LVMPD	6
02-21-95	Firearms Range	LVMPD	30 Minutes
03-31-95	Duty Weapon Qualification	LVMPD	1
05-09-95	Range Training	LVMPD	1
06-30-95	Duty Weapon Qualification	LVMPD	1
09-05-95	Range Training	LVMPD	1
09-13 to 09-15-95	Officer-Involved Fatals & Shooting Investigations	Internat'l. Law Enforcement Training & Consulting, Inc.	24
09-15-95	Investigative Training		24
09-22-95	Motivation	LVMPD	1
09-30-95	Duty Weapon Qualification	LVMPD	1

10-30-95	Management Problems of Technical Person in a Leadership Role	Fred Pryor Seminars	7
11-02-95	Driver's Training - Level 02	LVMPD	8
11-13-95	Range Training	LVMPD	1
01-12-96	Bombing of the Alfred P. Murrah Federal Building -(Co-sponsored by Nevada Highway Patrol & Nevada Peace Officers)	Northwestern University, Traffic Institute	8
01-23-96	Optional Weapon	LVMPD	
01-24-96	Thinking Outside the Box	LVMPD	7
01-25-96	ADA/FMLA - Workers' Comp.	LVMPD	3.5
03-11 to 03-15-96	Instructor Development	LVMPD	40
03-31-96	Duty Weapon Qualification	LVMPD	1
04-18-96	Performance Appraisal	LVMPD	2
05-05-96	Critical Procedures Test		
06-30-96	Critical Procedures Test		
06-30-96	Duty Weapon Qualification	LVMPD	2
07-17-96	How to Organize Your Life & Get Rid of Clutter	CareerTrack	3
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
08-16-96	CAPSTUN for Civilians	LVMPD	1.5
09-03-96	Performance Appraisal	LVMPD	2
09-16 to 09-20-96	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-23 to 09-27-96	Crime Scene Technology II	Northwestern University, Traffic Institute	40
09-30-96	Duty Weapon Qualification	LVMPD	2
11-02-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
11-08-96	How to Develop and Administer a Budget	Fred Pryor Seminars	8
11-13-96	Coaching Skills for Managers	LVMPD	7
12-05 to 12-07-96	Top Gun Training - Class Instructor	LVMPD	21
12-13 to 12-15-96	Top Gun Training - Class Instructor	LVMPD	21
12-19 to 12-21-96	Top Gun Training - Class Instructor	LVMPD	21
01-16 to 01-18-97	Top Gun Training - Class Instructor	LVMPD	21
02-06 to 02-08-97	Top Gun Training - Class Instructor	LVMPD	21

02-13 to 02-15-97	Top Gun Training - Class Instructor	LVMPD	21
02-27 to 03-01-97	Top Gun Training - Class Instructor	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-06 to 03-08-97	Top Gun Training - Class Instructor	LVMPD	21
03-19, 20, & 26, 1997	Civilian Use of Force & Firearm Training	LVMPD	21
03-30-97	Duty Weapon Qualification	LVMPD	2
04-03 to 04-05-97	Top Gun Training - Class Instructor	LVMPD	21
04-10 to 04-12-97	Top Gun Training - Class Instructor	LVMPD	21
05-08 to 05-10-97	Top Gun Training - Class Instructor	LVMPD	21
05-15 to 05-17-97	Top Gun Training - Class Instructor	LVMPD	21
06-13-97	NCIC Phase I Video	LVMPD	20 Minutes
07-02-97	Duty Weapon Qualification	LVMPD	2
08-27, 28, & 08-29-97	Train the Trainer - F.T.E.P. - LVMPD	LVMPD	21
09-30-97	Duty Weapon Qualification	LVMPD	2
10-97	Investigative Photography 1	Northwestern University, Traffic Institute	40
10-13 to 10-17-97	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
11-18-98	Advanced Supervisory Module/Critical Incidents	LVMPD	7
11-25-97	Advanced Supervisory Module/Ethics and Policing	LVMPD	9
11-26-97	Membership - Member # 15839	IAI	
12-31-97	Duty Weapon Qualification	LVMPD	2
01-27-98	Advanced Supervisory Module VI/Employee Performance When Tragedy Strikes - Supervisory Response	LVMPD	8
12-04-97	Post Blast Investigation School	Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms	8
02-01-98	Domestic Violence - Video	LVMPD	1
02-10-98	Trauma Shooting - Video	LVMPD	30 Minutes
02-24-98	Combat Shooting Simulator - FATS	LVMPD	1
02-25-98	Clandestine Lab Dangers - Video	LVMPD	30 Minutes

03-02-98	Advanced Supervisory Module VII - Leadership	LVMPD	8
03-05-98	Secondary Devices - Video	LVMPD	30 Minutes
03-31-98	Duty Weapon Qualification	LVMPD	2
05-29-98	Duty Weapon Qualification	LVMPD	2
08-10 to 08-12-98	Homicides & Violent Crimes - Public Safety Continuing Education	Public Agency Training Council, National Criminal Justice, "Academy Quality Module Training"	24
09-08-98	Optional Weapon	LVMPD	
11-10-98	Duty Weapon Qualification	LVMPD	2
11-12-98	Advanced Supervisory Module - Decision Making	LVMPD	7
12-07 to 12-11-98	Advanced Practical Homicide Investigation - Public Safety Continuing Education	Public Agency Training Council, National Criminal Justice	40
12-15-98	Advanced Supervisory Module - Planning, Budgeting & Budget Management	LVMPD	8
01-13-99	Training - Motor Home Driving	LVMPD	4
01-27-99	Advanced Supervisory Module VI - Emp. Perf. When	LVMPD	8
03-25-99	Class II - Driver Training	LVMPD	8
03-30-99	Duty Weapon Qualification	LVMPD	2
04-14-99	Advanced Supervisory Module V - Administrative Duties	LVMPD	7
04-22-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Footwear/Tire Tracks	NSDAI	2
"	Laboratory Photography	NSDAI	2
"	DNA Evidence	NSDAI	2
"	Latent Prints on Skin	NSDAI	2
06-08-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapon	LVMPD	
08-99	Performance Appraisals for Civilian Employees	LVMPD	2
09-15-99	Advanced Supervisory Module II - Training	LVMPD	7
09-16-99	Combat Shooting Simulator - FATS	LVMPD	1
09-20 to 09-24-99	Investigative Photography 2	Northwestern University, Traffic Institute	40
09-21-99	Duty Weapon Qualification	LVMPD	2
09-27 to 10-01-99	1 st Annual Advanced Crime Scene Reconstruction Invitational Workshop - "Police-Involved Incidents" - hosted by LVMPD	Institute of Applied Forensic Technology	40
11-15-99	Advanced Supervisory Module VIII - EEO Issues	LVMPD	7

12-08-99	Advanced Supervisory Module X - Supervision & Discipline Civil Liabilities, Legal Issues	LVMPD	8
12-13-99	Advanced Supervisory Training Modules - Certificate of Completion	LVMPD	
01-19-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
02-16 to 02-18-00	Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
04-10 to 04-12-00	LVMPD Clandestine Laboratory Safety Certification Course	LVMPD	24
09-11 to 09-13-00	Advanced Shooting Incident Reconstruction	Forensic Identification Training Seminars	24
03-15-01	Discipline Decision Guide Training	LVMPD	4
04-11 to 04-13-01	NSDIAI - 3 rd Annual Educational Conference Gadgets & Gizmos	NSDIAI	2
"	Bloodstain Report Writing	NADIAI	2
07-22 to 07-28-01	International Association for Identification - 86 th International Educational Conference (see below)	IAI	(see below)
"	Don't Jump to Conclusions	"	.5 hour
"	Unique Applications for Alternate Lights and Laseres	"	1
"	Specialized Photography - Techniques to Reveal Hidden Evidence	"	.5 hour
"	Investigating Occult Crime	"	7
"	Child Abuse in the New Millennium	"	1
"	Ultraviolet and Infrared Procedures with Digital Cameras	"	2
"	Photographic Identification of Clothing from Wear and Tear, and Manufactured Characteristics - The Band-Aid Bandit Case	"	1
"	Forensic Video Seminar	"	3
"	Swipes, Wipes, and Other Transfer Impressions	"	2
09-20-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 02	LVMPD Criminalistics Bureau	3
10-01-01	RC - Use of Force - Training Video	LVMPD	15 Min.
11-23-01	Handgun Qualification 4 - Recert.	LVMPD	1
02-28-02	Handgun Qualification 1 - Recert.	LVMPD	1
04-04-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD	2
04-04-02	Objective Approach to the Crime Scene	LVMPD	1
04-04-02	Forensic Anthropology	LVMPD	1.5
04-04-02	Criminal Law	LVMPD	2
05-07-02	Cultivating Winning Attitudes - Advanced Training - 6 Contact hours	Rockhurst University Con- tinuing Education Center, National Seminars Group	6 Contact hours

05-09-02	Employee Drug & Alcoh1 Abuse Rec/Crisis Inter.	LVMPD	4
05-11-02	Cultivating Winning Attitudes - Seminar	LVMPD	6
06-04-02	Handgun Qualification 2 - Recert.	LVMPD	1
08-14-02	Diversity - IAB, EEOC - Diversity Issues	LVMPD	5
09-02-02	Senior Crime Scene Analyst (Certified) - Certification Board Expires 11-23-07	IAI	
09-10-02	Firearms Qualification 3 - Recert.	LVMPD	1
10-16-02	Employee Performance Support System	LVMPD	7
12-17-02	Handgun Qualification 4	LVMPD	1
03-18-03	Handgun Qualification 1	LVMPD	1
06-10-03	Handgun Qualification 2	LVMPD	1
07-23-03	Firearms Training Simulator	LVMPD	1
09-05-03	Firearms Qualification 3	LVMPD	1

Curriculum Vitae
JONATHAN A. FRIED
Las Vegas Criminalistics Bureau
P#8174

EMPLOYMENT HISTORY

11/2003-Present LVMPD CSA1

CURRENT CLASSIFICATION

- | | |
|----------------------------------|--|
| -Crime Scene Analyst I- | AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation. |
| -Crime Scene Analyst II- | 18 months- 2 years continuous service with LMPD as a Crime Scene Analyst I. |
| -Senior Crime Scene Analyst- | Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst. |
| -Crime Scene Analyst Supervisor- | Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice. Forensic Science, Physical Science or related fields. |

FORMAL EDUCATION

UNIVERSITY OF NEW HAVEN
Major: Forensic Science
Degree/Date: MS/ 8/2001

SACRED HEART UNIVERSITY
Major: Computer Science/Info Svs
Minor: Criminal Justice
Degree/Date: BS/ 5/1998

JONATHAN A. FRIED
Curriculum Vitae
Page - 1 -

0066

Curriculum Vitae
Kellie M. (Wales) Gauthier
Las Vegas Metropolitan Police Department
Forensic Laboratory
P#: 8691 Criminalist - DNA / Biology

EMPLOYMENT

5/05 - Present **Las Vegas Metropolitan Police Department**
Criminalist I

8/03 - 5/05 **Florida Dept. of Law Enforcement Forensic**
Technologist

EDUCATION

8/98 - 5/02 **University of West Florida**
B.S., Biology

EXPERIENCE

- Controlled Substances Blood Alcohol
- Tool marks Breath Alcohol
- Trace Evidence Arson Analysis
- Toxicology Firearms
- Latent Prints Crime Scene Investigations
- Serology X Clandestine Laboratory Response Team
- Document Examination DNA Analysis X
- Quality Assurance Technical Support / DNA X

ADDITIONAL TRAINING / SEMINARS

06/06 Bode Advanced DNA Technical Workshop
Captiva Island, FL

06/06 Bode Meeting - "Presenting Statistics in the Courtroom"
Captiva Island, FL

06/06 Differential Extraction
Las Vegas, NV

- 5/06 Serological Techniques and DNA Screening -
Colleen Proffitt, MFS, Las Vegas, NV

- 2/06 American Academy of Forensic Sciences 58th Annual Meeting,
Seattle, WA

- 8/05 National Incident Management System (NIMS) an Introduction
Las Vegas, NV

- 7/05 Drivers Training II
Las Vegas, NV

- 9/04 Future Trends in Forensic DNA Technology – Applied Biosystems
Orlando, FL

- 9/04 Southern Association of Forensic Scientists (SAFS) -Paternity
Index DNA Statistics
Orlando, FL

- 7/04 Forensic Epidemiology - Joint Training for Law Enforcement
Hazardous Materials and Public Health Officials on Investigative
Response to Bio-terrorism
Orlando, FL

- 4/04 Forensic Technology Training - Florida Department of Law
Enforcement
Orlando, FL

- 3/04 Biology Discipline Meeting
Tampa, FL

- 9/03 Future Trends in Forensic DNA Technology – Applied Biosystems
Orlando, FL

COURTROOM EXPERIENCE

Court Discipline Number of
Times

LAS VEGAS CRIMINALISTICS BUREAU

STATEMENT OF QUALIFICATIONS

Name: DANIEL HOLSTEIN

P#: 3861

Date: October 24, 1997

CURRENT CLASSIFICATION		
	<i>CLASSIFICATION</i>	<i>MINIMUM QUALIFICATIONS</i>
	Crime Scene Analyst I	AA degree with major course work in criminal justice, forensic science, physical science or related field, including specialized training in crime scene investigation
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I
X	Senior Crime Scene Analyst	2 years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst
	Crime Scene Analyst Supervisor	4 years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a bachelor's degree from an accredited college or university with major course work in criminal justice, forensic science, physical science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
University Of Nevada Las Vegas	Criminal Justice	BS 5/87

ADDITIONAL TRAINING/SEMINARS		
<i>Course / Seminar</i>	<i>Hours</i>	<i>Date</i>
Administration of Justice 66, Fingerprint Classification – Long Beach City College	54	12/21/84
University of Nevada – Bachelor of Arts Degree		05/87
Suicide Prevention Center of Clark County – One Year of Service	Award	06/05/87
CA Homicide Investigators Association – Annual Seminar		03/09 – 03/11/88
PC 832 – Reserve Level III – San Bernardino Sheriff's Department	56	05/17/88
Budget & First Line Supervisor – San Bernardino Sheriff's Department	8	10/26/88
Basic Forensic Death Investigation – Department of the Chief Medical Examiner, County of Los Angeles	120	11/30/88
American Institute of Forensic Sciences – Category I, Continuing Medical Education	20	02/89

DANIEL HOLSTEIN
LVMPD P#3861
Curriculum Vitae

Under the Influence 11550 H & S – International Law Enforcement Training & Consult., Inc.	8	04/05/89
Handling & Investigation of Officer Involved Shootings – International Law Enforcement Training & Consult., Inc.	8	04/06/89
Arson – Motives – International Law Enforcement Training & Consult., Inc.	8	05/24/89
LVMPD Drug Testing, Film		01/04/91
Firearms Training		09/29/90
Forensic Science Course – A.I.A.S.	260+	02/91
Continuing Medical Education – American Academy of Forensic Science	29.5	02/91
Gangs in Clark County – LVMPD	4.5	01/15/91
Drug Recognition	8	01/11, 01/18/91
Driver's Training	8	12/05/91
Understanding Death, Dying & Grieving	4	12/06/91
Firearms, Toolmarks & Documents	8	01/16/92
Footwear Evidence/Recovering Firearms	8	02/18/92
How to Handle Difficult People	7	02/21/92
In-Service Training – New Pursuit Policy	1	07/92
Auto Theft	3	09/08/92
Child Abuse & Neglect	4	10/13/92
Forensic Seminar – Entomological Society of America	8	12/10/92
Advanced Latent Fingerprint Techniques	40	01/11 – 01/15/93
Pollight Laser Photography & Chemical Techniques	8	02/23/93
NCIC Videotape	20 min.	03/09/93
Forensic Pathology: The Investigation of Violent Death	40	09/17/93
Crime Scene Investigations II	40	06/10/94
Bloodborne Pathogens (Video)	2	09/03/92
Bloodborne Pathogens (Video)		09/94
Gunshot & Stab Wounds: A Medical Examiner's View	8	11/30/94
Instructor Development	40	03/10/95
Florida Association of Medical Examiners & Investigation for Identification	17	09/27 – 09/30/95
Bloodstain Pattern Analysis Workshop	40	12/04 – 12/08/95

DANIEL HOLSTEIN
LVMPD P#3861
Curriculum Vitae
- 2 -

0070

Gunshot & Stab Wounds: A Medical Examiner's View	8	07/22/96
Evidence Photographers International Council	24	11/16 – 11/18/96
Interest-Based Bargaining (Federal Mediation and Conciliation Service)		01/20/97
Top Gun Training	21	04/08 – 04/10/97
TESTIMONY		
Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township
X		Federal Court
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Crime Scene Analyst	2/90 – Present
Riverside County Coroner's Office	Coroner's I Investigator	2/88 – 2/90
Los Angeles County Coroner's Office	Reserve Coroner's Investigator	4/84-4
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>		
American Academy Of Forensic Science		
International Association Of Identification		
International Association Of Bloodstain Interpretation		
Evidence Photographers International Council		

DANIEL HOLSTEIN
LVMPD P#3861
Curriculum Vitae
- 3 -

0071

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: David R. Horn

P# 1928

Date: 10-5-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
National University	Business Administration	MBA 10-88
U of CA-Riverside	Political Science	BA 12-71
Antelope Valley College	Liberal Arts	AA 6-70
TESTIMONY		
Yes	No	
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	9-12-79

HORN, DAVID

P# 1928

CRIMINALISTICS BUREAU -

FIELD

SENIOR CSA

SS#: 562-84-5461

DOH: 09-12-79

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
6-70	Liberal Arts	Antelope Valley College	AA
12-71	Political Science	U of Ca-Riverside	BA
11-26 to 11-30-79	Fingerprint Classification	LVMPD/F.B.I.	40
03-31 to 04-04-80	Advanced Latent Fingerprint Techniques	LVMPD/F.B.I.	40
08-07-80	Use of Deadly Force Course	LVMPD	8
06-28 to 07-02-82	Advanced Officer Training	LVMPD	40
11-29 to 12-03-82	Advance Crime Scene Investigation	LVMPD	40
03-06-84	Photography & Casting of Tire and Footwear Impressions, Techniques of Processing Bodies for Fingerprints, Measurement of Tire Tracks to Determine Wheel Base, and Blood Evidence Collection	LVMPD	8
08-06-84	Advanced Crime Scene Investigation	LVMPD	3
10-22 to 10-26-84	Advanced Criminal Investigations - Homicide Seminar	LVMPD	20
01-6 to 01-17-86	Homicide Investigation	Southern Police Institute, Louisville, KY	80
01-28-86	Fingerprint Fuming Seminar	Dura Print	8
03-19 to 03-20-87	Homicide Investigation Seminar	N.L.E.I.	16
03-23 to 03-27-87	Latent Print Testimony	FBI	40
10-88	Business Administration	U of CA-Riverside	MBA
09-30-88	Driver Training	LVMPD	8
12-24-90	Drug Testing Film	LVMPD	30 Minutes
09-28-90	Stress Management	LVMPD	4
10-16-90	Child Abuse/Neglect	LVMPD	4
10-29-90	Communication Skills	LVMPD	7
02-28-91	NCIC Level III - Video	LVMPD	1
04-17 to 04-18-91	Polilight	Napa Valley, CA, Police Dept.	16
07-03-91	Gun Shot Wounds - Video	LVMPD	1

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-10-91	Asian Gangs	LVMPD	3
09-12-91	Auto Theft	LVMPD	2
09-30-91	Duty Weapon Qualification	LVMPD	1
10-10-91	Victims and Law Enforcement	LVMPD	2
11-20-91	Media Relations	LVMPD	3
12-31-91	Duty Weapon Qualification	LVMPD	1
01-03 to 01-10-92	Drug Recognition, Detection & Evaluation	LVMPD	8
01-16-92	Gangs in Clark County	LVMPD	3
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates - Video	LVMPD	10 Min.
05-11-92	DOC Footwear Evidence - F/A Evidence	LVMPD	7
06-30-92	Duty Weapon Qualification	LVMPD	1
07-23-92	Driver's Training Level 02	LVMPD	8
07-92	New Pursuit Policy (Video)	LVMPD	1
08-24-92	Bloodborne Pathogens/Communicable Diseases	LVMPD	2
09-30-92	Duty Weapon Qualification	LVMPD	1
10-26 to 10-30-92	International Homicide Investigation Seminar		40
11-17-92	Team Building		6
12-11-92	Powerful Business Writing Skills		6
12-21-92	Vicarious Liability	LVMPD	2
12-23-92	Combat Shooting Simulator/FATS	LVMPD	1
12-31-92	Duty Weapon Qualification	LVMPD	1
02-08-93	Polilight Laser Photography and Chemical Techniques	LVMPD	8
03-11-93	Cultural Awareness & Police Community Relations	LVMPD	8
03-09-93	NCIC Phase I Videotape	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-16 to 06-17-93	Advanced Firearms School	LVMPD	14
06-30-93	Duty Weapon Qualification	LVMPD	1
09-17-93	6th Annual Training Seminar (Clandestine Drug Labs)	Clandestine Laboratory Investigators Association	32
09-27-93	Death & Grief Issues	LVMPD	4

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
01-22-94	Comtemporary Issues - Use of Force	LVMPD	8
02-02-94	Combat Shooting Simulator/FATS	LVMPD	1
03-31-94	Duty Weapon Qualification	LVMPD	1
06-30-94	Duty Weapon Qualification	LVMPD	1
09-30-94	Duty Weapon Qualification	LVMPD	1
09-84	Bloodborne Pathogens (Video)	LVMPD	30 Minutes
12-03-94	Grievances & Contract Interpretation	LVMPD (PPACE)	6
12-07-94	Retirement Seminar	LVMPD	8
02-17-95	Cultural Awareness - LVMPD	LVMPD	6
06-30-95	Duty Weapon Qualification	LVMPD	1
09-11 to 09-13-95	The Detection and Examination of Footwear & Tire Impression Evidence	Maricopa County Sheriff's Office - Phoenix, AZ	24
09-30-95	Duty Weapon Qualification	LVMPD	1
03-31-96	Duty Weapon Qualification	LVMPD	1
05-16-96	Critical Procedures Test	LVMPD	
06-11-96	CAPSTUN Training	LVMPD	1.5
06-30-96	Duty Weapon Qualification	LVMPD	2
07-11-96	Driver Training - Level 2	LVMPD	8
07-12-96	Verbal Judo	LVMPD	7
09-16 to 09-20-96	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-30-96	Duty Weapon Qualification	LVMPD	2
11-02-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
01-16-97	Interest Based Bargaining	LVMPD	20
02-11-97 to 02-13-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03/30/97	Duty Weapon Qualification	LVMPD	2
06-12-97	Critical Procedures Test	LVMPD	
06-13-97	NCIC - Phase I Video	LVMPD	20 Minutes
07-02-97	Duty Weapon Qualification	LVMPD	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-27, 28, & 08-29-97	Train the Trainer - F.T.E.P.	LVMPD	21
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06-97	Combat Shooting Simulator/FATS	LVMPD	1
12-03, 04, & 12-10-97	Civilian Use of Force	LVMPD	21
12-31-97	WordPerfect 6.1 Beginning	ExecuTrain	8
02-11-98	Trauma Shooting - Video	LVMPD	30 Min.
02-23-98	Domestic Violence (Video)	LVMPD	1
03-01-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-05-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
04-02-98	Critical Procedures Test	LVMPD	2
04-21-98	Duty Weapon Qualification	LVMPD	2
07-13 to 07-17-98	Advanced On-Scene Accident Investigation	LVMPD	35
08-04-98	Optional Weapon	LVMPD	
09-14 to 09-18-98	Crime Scene Technology II	Northwestern University, Traffic Institute	40
10-02-98	Combat Shooting Simulator/FATS	LVMPD	1
10-10-98	Duty Weapon Qualification	LVMPD	2
01-12-99	Training - Motor Home Driving	LVMPD	4
03-30-99	Duty Weapon Qualification	LVMPD	2
04-13-99	Critical Procedures Test	LVMPD	2
04-20-99	Duty Weapon Qualification	LVMPD	2
04-26-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Opening ceremonies (2), Banquet (3)	NSDIAI	
"	DNA Evidence	NSDIAI	2
"	JFK-MLK Evidence	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Blood Enhancement	NSDIAI	4
"	Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	Child Abuse	NSDIAI	2
"	Latent Prints on Skin	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
06-30-99	Optional Weapon	LVMPD	
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09-15-99	Combat Shooting Simulator/FATS	LVMPD	1
09-21-99	Duty Weapon Qualification	LVMPD	2
11-16-99	Terrorism/Bomb Threats Class	Clark County District Attorney's Office	4
11-30-00	Driver Training	LVMPD	8
11-23-99	Certification - Senior Crime Scene Analyst	IAI	
01-20-00	Latent Fingerprint Development Workshop	Secret Service	8
05-03 to 05-05-00	Second Annual Educational Conference Polly Klass (Also see items below)	NSDIAI	3
"	Photo FP Tech	NSDIAI	2
"	Child Abuse II	NSDIAI	2
"	Drug Fire/IBIS	NSDIAI	2
"	Gadgets and Gizmos	NSDIAI	2
"	Handwriting	NSDIAI	2
"	Shoebox Labeling	NSDIAI	1
"	WIN-AFIS	NSDIAI	2
06-22-00	ASM 5 - Administrative Duties	LVMPD	7
08-15-00	Firearms Training Simulator	LVMPD	1
09-06 to 09-08-00	Shooting Incident Reconstruction	LVMPD	24
01-22 to 01-26-01	Advanced Ridgeology Comparison Techniques	Forensic Identification Training Seminars, LLC	40
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course - Occasional Site Worker	LVMPD	24
04-13-01	NSDIAI - 3 rd Annual Educational Conference Child Exploitation - CERTIFICATE	NSDIAI	2
"	Bloodstain Pattern Report Writing - TO BE ISSUED	NSDIAI	2
05-14-01	Proficiency Exercise Presumptive Semen (Acid	LVMPD - Criminalistics	1.5

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
	Phosphatase Test)	Bureau	
07-22 to 07-28-01	86 th International Educational Conference (International Association for Identification)	IAI	(See below)
"	An Update on Daubert Hearings for Fingerprints: Challenges from the Legal and Scientific Arenas	"	1.5
"	Fingerprints and Art	"	1
"	Spectrochemical Analysis of Children's Fingerprints	"	30 Min.
"	Killer on the Railcar	"	1.5
"	Human Identification at a Distance	"	1
"	Photographic Identification of Clothing from Wear-and-Tear, and Manufactured Characteristics	"	1
"	Conducting Research on Latent Prints	"	1
"	Fingerprint Research at the U.S. Secret Service	"	1
"	Courtroom Testimony	"	4
"	John Gacy: Serial Murderer	"	30 Min.
09-20-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 03	LVMPD - Criminalistics Bureau	3
12-07-01	Crime Zone 5.0 - Learning Center Tutorial	"	4
01-01-02	Collection of Samples from Biological Fluids/Stains	"	1
03-05-02	Crime Scene Diagraming	"	8
04-01-02	Objective Approach to the Crime Scene	LVMPD - Criminalistics Bureau	1
04-01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
04-10-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04-15-02	Major Case Prints	LVMPD - Criminalistics Bureau	3
02-06 to 02-08-03	Advanced Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: LOPEZ (THOMAS), Maria

P# 4032

Date: 06-14-06

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
X	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
UNLV, CSUN	Criminal Justice	Bachelor's - December 1995
TESTIMONY		
<i>Yes</i>	<i>No</i>	
X		District Court, Justice Court, Municipal Court
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	1997 to Present

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: **PROIETTO, Daniel** P# **8180** Date: **06-15-05**

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
X	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
UNLV	Sociology	BA 5/2000
New England School of Law	Law	JD 5/2003
TESTIMONY		
<i>Yes</i>	<i>No</i>	
X		District Court, Justice Court
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	CSA II	11-15-03 to Present

Curriculum Vitae
LARY A. SIMMS, D.O., M.P.H.

4548 SPECIAL COURT
LAS VEGAS, NEVADA 89130
Telephone: 702-658-3578
e-mail: MEDXMNR@aol.
Marital Status: Married (June Elizabeth Clee Simms)

PRESENT POSITION

Chief Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, Nevada 89106
702-455-3210
POSITION: Chief Medical Examiner

PREVIOUS WORK EXPERIENCE

Perry Memorial Hospital
Perry, Oklahoma
July 1979 to September 1981
POSITION: Private solo office and hospital practice in family medicine including obstetrics (approximately 75 deliveries); 2000 hours of Emergency Department coverage; total patient contacts for period: 6,000.

Rock County Hospital and Clinic
Bassett, Nebraska
September 1981 to July 1982
POSITION: Private solo office and hospital practice in family medicine and obstetrics (approximately 10 deliveries); 2500 hours of Emergency Department coverage; total patient contacts for period: 1,200.

Park Medical Centers
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505
August 1982 to June 1986
POSITION: Member of 20+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital, total patient contacts for period: 30,000.

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae
- 1 -

Taylor Physicians-Van Born Clinic, P.C.
21711 Van Born Road
Taylor, Michigan
313-562-6040

June 1986 to January 1987

POSITION: Member of four physician group that renders primary care in the suburban Detroit area and trains family practice residents at Botsford General Hospital; hospital privileges at a 250 bed acute care hospital and a 125 bed acute care hospital; total patient contacts for period: 4500.

Michigan Health Care Center – Park Medical Centers, Inc.
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505

January 1987 to June 1989

POSITION: Member of 60+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital; total patient contacts for period: 18,000.

Blodgett Memorial Medical Center
1840 Wealthy, S.E.
East Grand Rapids, Michigan 49506
616-774-7722

July 1, 1991 to January 30, 1993

POSITION: Independent contractor for autopsy services for in-house autopsies and Kent County Medical Examiner autopsies; completed approximately one hundred thirty autopsies on a fee-for-service basis.

Cook County Office of the Medical Examiner
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500

July 1, 1994 to August 15, 1998

POSITION: Deputy Medical Examiner performing approximately 500-600 medico-legal investigations per year and testify 10-15 times per year.

BOARD STATUS

Board Certified in Anatomic Pathology and Clinical Pathology in 1993 by the American Board of Pathology

Board Certified in Forensic Pathology in 1994 by the American Board of Pathology

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 2 -

LICENSES

Diplomate of the National Board of Osteopathic Medical Examiners (1979)

Active licenses in Illinois and Nevada

Inactive licenses in Nebraska, Michigan, Ohio and Oklahoma

EDUCATION

Oklahoma State University

Stillwater, Oklahoma

1970-71

Completed freshman year and transferred to University of Tulsa

University of Tulsa

Tulsa, Oklahoma

1971-74

MAJOR: Philosophy

G.P.A.: 3.34

DEGREE: Bachelor of Science (B.S.)

Oklahoma State University College of Osteopathic Medicine and Surgery

(formerly Oklahoma College of Osteopathic Medicine and Surgery)

1111 West 17th Street

Tulsa, Oklahoma

1974-78

DEGREE: Doctor of Osteopathy (D.O.)

Dallas Memorial Hospital (formerly Dallas Osteopathic Hospital)

5003 Ross Avenue

Dallas, Texas

One year rotating internship with elective time in anesthesiology

1978-79

Grand Rapids Medical Education Center/Michigan State University

200 Cherry Street

Grand Rapids, Michigan

Four year Anatomic and Clinical Pathology Residency

1989-1993

Office of the Medical Examiner of Cook County

Stein Institute of Forensic Medicine

2121 West Harrison Street

Chicago, Illinois 60612-3705

312-666-0500

Fellowship in Forensic Medicine

July 1, 1993 to June 30, 1994

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 3 -

University of Illinois at Chicago
Office of the Dean [MC 922]
School of Public Health
2121 West Taylor Street
Chicago, Illinois 60612-7260
312-966-3832

MAJOR: Health Policy Administration and Health Information Management
G.P.A.: 4.56 (5 point grading system)
DEGREE: Master of Public Health (M.P.H.)

ASSOCIATION MEMBERSHIPS

National Association of Medical Examiners

International Association of Coroners and Medical Examiners

PRESENTATIONS, LECTURES AND ACADEMIC CONTRIBUTIONS

Ectopic Thyroid Gland in Neck: Report of a Case (clinical staff presentation 1983)

Simultaneous Intrauterine and Extra-uterine Pregnancies: Report of a Case
(clinical staff presentation 1984)

Heterozygous 21-OH Deficiency in the Father of a Neonate with Congenital Adrenal Hyperplasia: Report of a Case (clinical staff presentation 1985)

Hyperprolactinemia in an Ambulatory Clinic: Incidence, Diagnosis and Management (1985 unpublished manuscript)

Use of Plasmid Fingerprinting in the Diagnosis of Coagulase Negative Staphylococcal Septicemia (Grand Rapids Research Day presentation 1992)

Forensic Aspects of DNA (1993 Office of the Medical Examiner staff lecture series presentation)

Case Report: Lethal Morphine Doses Administered by Family Member in an Elderly Patient Admitted to a Nursing Home (1994 unpublished manuscript)

Forensic Sciences and the Medical Examiner (1994 Office of the Medical Examiner staff lecture series presentation)

Case Report: Sudden Death in A 60 Day Old Male Infant with Hypoplastic Right Coronary Artery (1995 unpublished manuscript)

Modern Death Investigation (Illinois Histology Society Annual Meeting presentation 1995)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae
- 4 -