

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS

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May 16 2016 09:02 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

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VOLUME 6 OF 11**

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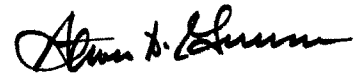
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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

Plaintiff,

vs.

LESEAN COLLINS,

Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: MONDAY, AUGUST 3, 2015

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State:

ELISSA LUZAICH, ESQ.

3 JACQUELINE BLUTH, ESQ.

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7 For the Defendant:

DAVID SCHIECK, ESQ.

8 MICHAEL HYTE, ESQ.

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1 LAS VEGAS, NEVADA; MONDAY, AUGUST 3, 2015

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

3 * * * * *

4
5 THE COURT: Good afternoon everybody. Please
6 have a seat.

7 I'll ask counsel to come to the bench, please.

8 (Discussion held at the bench.)

9 THE COURT: On the record in State of Nevada
10 vs. Lesean Collins. I was going to note the presence of
11 counsel, but one of our counsel is not present.

12 MR. HYTE: I'll request we wait for Mr.
13 Schieck.

14 THE COURT: Okay. We'll wait for Mr. Schieck.

15 While we're waiting for Mr. Schieck, I do want
16 to make an announcement to all of those who are present to
17 observe in the courtroom that this court will not tolerate
18 any talking by anybody present in the courtroom during the
19 course of proceedings. So therefore, I just ask that
20 everybody be respectful of the court's requirements.
21 Especially once the jury is present, and even if there is
22 no talking, the court will also not tolerate any
23 interruption with court proceedings or any efforts or
24 attempts to interact with or influence the jurors in any
25 way.

1 So while I don't anticipate that happening, I want it
2 to be very clear the court will not tolerate that, and
3 anybody who is observed to be engaging in anything like
4 that will be asked to leave the courtroom and will be
5 asked to not return to the courtroom.

6 Mr. Schieck, I will note for the record, has rejoined
7 the proceedings. At this time the court had a number of
8 matters that it was addressing with counsel first at the
9 bench conference and then continued the discussion in
10 chambers. The court wishes to make a record.

11 First and foremost, one of the issues that the court
12 asked counsel to resolve was there was a request on the
13 part of defense for certain photographs that were offered
14 by the State to be removed from consideration. I think
15 the State -- correct me if I'm wrong Ms. Luzaich -- did
16 discuss that with the defense and did voluntarily agree to
17 withdraw two photos that were being offered into
18 evidence.

19 Is that correct.

20 THE COURT: That is correct, Judge. State's
21 Proposed Exhibits 15 and 32, the defense believed that
22 they were duplicative of other photographs. We just
23 withdrew those -- 15 and 32.

24 THE COURT: We will not consider for admission
25 State's 15 and 32. We will address evidence as we come

1 along in the course of the trial. I know that counsel has
2 already discussed it. If we have any stipulations, that
3 will make things -- expedite things as we go along. We
4 appreciate your efforts to do that.

5 The other issue that was raised was there is argument
6 that the defense intends to make in its opening statements
7 that could be considered to be evidence of prior bad acts
8 with regards to Ms. Payton -- the alleged victim in this
9 case.

10 And the discussion that was had at the bench, then
11 continued into chambers, indicated that obviously before
12 the court could admit evidence of prior bad acts, whether
13 they be with regard to the alleged victim in this case,
14 with regard to the Defendant, or any witness, the court
15 would need to make certain findings. And pursuant to
16 Petrocelli, there were findings specifically that required
17 the court find the prior act was relevant to the claim;
18 that the prior act is proven by clear and convincing
19 evidence, and that probative value is not substantially
20 outweighed by the danger of unfair prejudice.

21 This evidence that has been discussed potentially
22 could cut both ways -- as to being a prior bad act as to
23 Ms. Payton, also as a prior bad act as to Mr. Collins.

24 So the State's discussion that we had that we did not
25 make a final determination in chambers, we decided to come

1 back to the courtroom, make a record, and for the court's
2 final determination to be made.

3 There was a proffer of evidence, however, from the
4 State and from the defense that there would be testimony
5 from at least one police officer and possibly one lay
6 witness that would corroborate the evidence as to both Ms.
7 Payton and Mr. Collins.

8 Can I ask the State if they would concur with that
9 statement.

10 MS. LUZAICH: Some of it.

11 The State's position obviously is that any evidence
12 that Brandy Payton was selling drugs is not only
13 irrelevant, but that the danger of -- or that the
14 prejudice is so, so outweighing any probative value in
15 this particular situation. The State is aware of
16 witnesses that would say that both Brandy Payton and
17 Defendant sold drugs, and that they sold them together.

18 The court had indicated that representations were
19 made in chambers that a police officer would be able to
20 say that Brandy was selling drugs. That is not true.
21 Detective Mogg had a interview with somebody who said a
22 lot of things -- Rufus Hicks. Rufus Hicks is not
23 testifying in the trial. We did try and subpoena him.
24 He's in another jurisdiction. And he is doing every he
25 can not to come here. So he is not going to be here to

1 testify. And Detective Mogg would not be able to say
2 Rufus Hicks told him X, Y, and Z, because that is
3 hearsay.

4 So while there are lay witnesses that could say that
5 Brandy Payton sold drugs and that Lesean Collins sold
6 drugs with Brand Payton, not a police officer.

7 THE COURT: Let me get clarification to make
8 sure I understand what your proffer was, Mr. Schieck, at
9 the time we were in chambers. I understood the proffer
10 was different.

11 MR. SCHIECK: The proffer was, from the lead
12 homicide detective on the case, Detective Mogg, who
13 interviewed a number of witnesses in this case, because
14 this was initially a missing person's case. Then it was a
15 body found and we're looking for suspect's case.

16 So they were interviewing everybody that had contact
17 with the deceased on September 2nd, which is the last day
18 she was seen alive. That included an interview with Rufus
19 Hicks who was the man that Brandy lived with on September
20 2nd.

21 And that when Brandy left the house -- this is Rufus
22 Hicks' words on the interview with Detective Mogg -- was
23 she left to go pay the rent and to do some runs. Then
24 they had further discussion as to the meaning of runs.
25 And runs was actually delivery of sherm sticks to

1 customers, because that's what Brandy did at that period
2 of time.

3 That is consistent and is referenced in Detective
4 Mogg's 19-page report in this case, that that's consistent
5 with all the witnesses had indicated to him what Brandy's
6 livelihood was in that period of time.

7 THE COURT: We understand that Mr. Hicks is not
8 going to be present in the trial and testifying, and
9 absent some exception for the hearsay preclusions
10 Detective Mogg would not be able to testify as to what
11 Rufus Hicks told him.

12 You indicated there was at least one other witness
13 that we do anticipate being called in the trial who might
14 be able to testify -- what I'm trying to get at is, if the
15 parties are in agreement that there is evidence that would
16 be elicited from any one or more witnesses during the
17 course of this trial that would place these prior bad acts
18 on both Ms. Payton and Mr. Collins, then I don't know that
19 we need to proceed with the Petrocelli hearing for the
20 court to further make those determinations. That would be
21 sufficient evidence, from this court's perspective, to
22 assess that the evidence exists. Then it would be up to
23 the court to determine (a) whether it's relevant and (b)
24 whether or not it is albeit relevant, substantially
25 outweighed by the danger of unfair prejudice.

1 I'm trying to nail down what we believe the evidence
2 will show.

3 MR. SCHIECK: There's one other witness, Theresa
4 Williams, your Honor, who is a listed witness and did give
5 an interview to Detective Mogg and to Detective Hardy
6 while she was in custody, and spoke to them before she was
7 in custody. She'd indicate the same thing with regard to
8 her contacts with Brandy Payton, that she, in fact, was
9 selling sherm sticks.

10 You know, we're characterizing this as bad character
11 evidence and prior bad acts, really it's just a complete
12 picture of the case and of the individual that went
13 missing and where she was planning to go that day when she
14 left the residence where she was living.

15 THE COURT: We're trying to address two
16 different things here I appreciate there may be some
17 argument from counsel that they are not necessarily
18 different standards to apply, but at the end of the day
19 for a determination to be made whether or not bad act
20 evidence can come in, obviously we have our three factor
21 test. But certainly when we have somebody who is accused
22 of the crime in this case and the potential is there for
23 the jurors to be concerned that the person acted in
24 conformity with their likelihood of submitting crimes, we
25 cannot allow the evidence for that purpose.

1 So to the extent the evidence would be allowed in as
2 to Mr. Collins, we would have to determine that it
3 provided some, again, exception, if you will, to what
4 otherwise would be exclusion of this type of evidence.
5 Which again would be there for motive, opportunity,
6 intent, preparation, plan, knowledge, identity, or the
7 absence of mistake or accident. That is where I feel that
8 the analysis is distinguishable between whether or not the
9 evidence would be allowed to be referenced as part of a
10 res ipsa type argument. But I think at the end of the day
11 -- res gestae -- sorry -- going through my Latin in my
12 head. As you're making your argument today that's a
13 little different then what we discussed in chambers. What
14 you were ultimately arguing was relevancy to your theory
15 of your case on behalf of Mr. Collins.

16 But let me ask the State if they want to address the
17 res gestae now -- what appears to be the argument
18 addressed -- in terms of the circumstances.

19 Again -- and also ultimately whether you would agree
20 that the witnesses who will be testifying would have
21 evidence with regard to both Mr. Collins' role as well as
22 Ms. Payton's role.

23 MS. BLUTH: In regards to the res gestae, one
24 thing I would like to say -- Jacqueline Bluth, on behalf
25 of the State.

1 One thing I'd like to address in regard to that is a
2 completely different analysis that needs to be applied.
3 That the main component of res gestae is you can't speak
4 about the facts of one element of the case without getting
5 into the other. And the State disagrees with that.
6 Plenty can be said about this case without getting into
7 that. So I think it's a completely different analysis
8 that needs to be applied.

9 In regards to the bad act evidence, the State's
10 biggest issue is we don't find it to be relevant.

11 THE COURT: Understood.

12 I'm going to make a relevance determination and a
13 prejudice determination in a moment.

14 I'm still trying to nail down whether there is a
15 disagreement about what evidence is actually going to come
16 in.

17 MS. BLUTH: Well, as I said in chambers, the
18 State is not -- I'm not -- we're not disagreeing that the
19 victim in this case sold sherm sticks.

20 THE COURT: Can the witnesses who are going to
21 come in and testify also place Mr. Collins in that role.

22 MS. BLUTH: Yes.

23 THE COURT: Which ones and who, so we can have
24 specifics. We had a discussion about Ms. Williams. We
25 had a discussion about Mr. Hicks not being present.

1 MS. BLUTH: Right.

2 So Ms. Eddins, the Defendant's girlfriend of 11
3 years, was very well aware of his drug dealing by himself
4 and with Ms. Payton. And she was well aware that he sold
5 PCP and sherm sticks. So, yes, Ms. Eddins knew about that
6 activity and knew that the Defendant did that.

7 THE COURT: Mr. Schieck, do you dispute that
8 Ms. Eddins would have that testimony to provide.

9 MR. SCHIECK Ms. Eddins has been less than
10 cooperative with our attempts to interview her the last
11 couple 3 years, your Honor. I would indicate that we do
12 have a statement that she gave to the police on October
13 1st of 2008, which was the day after the fire.

14 And as I stand here I do not recall her talking about
15 Lesean Collins being engaged in the drug trade with Brandy
16 Payton. I could be incorrect on that. I would have to go
17 back and review it with that thought in mind. But I don't
18 recall that she ever said that.

19 THE COURT: So what the court is faced with here
20 today -- thank you, Mr. Schieck. What the court is faced
21 with here today is proffer from very experienced counsel
22 who are very knowledgeable in the record, that there is
23 evidence that can and will be elicited from various
24 witnesses that will speak to both the activities of
25 Ms. Payton, not only including the day in question, but

1 also surrounding her activities prior to and through and
2 including the day in question. And that would also speak
3 to Mr. Collins.

4 The issue here that the court has to ultimately
5 determine, again, is whether this evidence of prior bad
6 acts on the part of both the alleged victim, as well as
7 the accused defendant, whether or not the court can find
8 there would be clear and convincing evidence, first and
9 foremost of those bad acts. Taking these three factor
10 tests slightly out of order, because the majority of
11 discussion we just had has been that the evidence is
12 there.

13 I'm going to find there is clear and convincing
14 evidence that this evidence exists as to both Ms. Payton
15 and as to Mr. Collins.

16 The issue then becomes, as to Ms. Payton, whether or
17 not this evidence is relevant. And if it is relevant,
18 whether or not the probative value is substantially
19 outweighed by the danger of unfair prejudice. I'm going
20 to find that this evidence is relevant. I'm going to find
21 its probative value is not substantially outweighed by the
22 danger of unfair prejudice. I believe there is ample
23 discussion that can be had with the witnesses who would
24 proffer this evidence to explain what their understanding
25 was of the activities prior to and on that day. But that

1 it does address any circumstance of what Ms. Payton may
2 have been doing that day. It does tie into defense theory
3 of the case.

4 So it is appropriate, in this court's determination,
5 that the jurors would hear and weigh all evidence on this
6 point. And that there is not a substantial outweighing by
7 the danger of unfair prejudice for the information to be
8 provided.

9 However, I do not find this is a res gestae issue. So
10 I want to be clear on the record that I do not find
11 persuasive, nor do I think that this information is
12 necessary for the situation and circumstance of the crimes
13 being charged for that to be told.

14 I am simply finding it is relevant to the defense's
15 theory of the case and its probative is not substantially
16 outweighed. And that the court is taking the
17 representations of counsel that this evidence will be
18 provided during the course of the trial, through one or
19 more witnesses.

20 As to Mr. Collins and whether or not these prior bad
21 acts would be relevant and their probative value not
22 substantially outweighed by the danger of unfair
23 prejudice, I believe it is ultimately the court's need to
24 determine that there would need to be a Tavares
25 instruction to the jurors that they are not to receive

1 this evidence in any way that he acted in conformity with
2 any prior, potential negative character, but that instead
3 it's admissible for other purposes.

4 And the court is determining that this information is
5 relevant and would be probative value not substantially
6 outweighed by the danger of unfair prejudice. And that
7 ultimately it can and will go to motive and opportunity
8 basis, in terms of the circumstances of the crimes alleged
9 against him. The court will allow it on that only basis.

10 So the court will allow for the opening statements to
11 contain these arguments, to the extent counsel wishes to
12 make them. And if there are no other matters that need to
13 be addressed, the court is ready to proceed.

14 Any further issues from the State.

15 MS. BLUTH: No, your Honor.

16 THE COURT: Any further issues from the defense.

17 MR. SCHIECK No, your Honor.

18 I would note the photographs that have been marked so
19 far don't include the autopsy photographs. When those are
20 marked, we'll probably have to address the issue of
21 admissibility of those again.

22 THE COURT: Is that something that is going to
23 be relevant for opening statements, or can we go ahead and
24 bring the jurors in.

25 MR. SCHIECK I haven't seen the power point of

1 the States. I don't know if they included autopsy
2 photographs in their power point of not.

3 MS. BLUTH: I'm giving the opening, your Honor.
4 I can tell your Honor that there is just one picture of
5 autopsy. I can show Mr. Schieck, if he would like. But
6 it's just of the head injury and that's it.

7 THE COURT: Mr. Schieck, any objection at this
8 point in time -- until we resolve the remainder issues --
9 you want a few more minutes to figure out the evidence.

10 MR. SCHIECK Yes, I would like to see the power
11 point before it's shown.

12 THE COURT: She'll just show you the picture she
13 is going to utilize of the autopsy photo.

14 THE COURT: Did you see the photo.

15 MR. SCHIECK It's been represented to me that
16 Dr. Simms has indicated he needs that photograph in order
17 to describe that particular injury. I'll accept those
18 representations from the State.

19 THE COURT: All right.

20 I will allow the State to proceed. We'll address any
21 additional issues with regard to the photographs and the
22 evidence and what will be admitted or not be admitted at
23 the break outside the presence of the jury or at some
24 point before those are intended to be introduced.

25 Are there any other matters before we proceed.

1 MR. SCHIECK Court's indulgence.

2 Can we approach, your Honor.

3 THE COURT: Yes, please.

4 (Discussion held at the bench.)

5 THE COURT: You need a moment to speak with your
6 client, Mr. Schieck.

7 MR. SCHIECK Yes, your Honor.

8 (Brief break.)

9 MR. SCHIECK: Thank you, your Honor.

10 THE COURT: We are ready to bring in the jurors.
11 Remain standing. I'll ask you to turn your
12 attention to the clerk who will swear you in as jurors for
13 this trial.

14 THE CLERK: You and each of you do solemnly
15 swear you will well and truly try the case at issue and a
16 true verdict render according to the evidence, so help you
17 God.

18 IMPANELED JURORS: (Choir of I do.)

19 THE COURT: Take your seats.

20 Make sure if you had your cell phones on during the
21 time period before we started this trial and brought you
22 present that you have those off or silenced. Of course
23 I'll remind you of your admonishment not to speak about
24 this case among yourselves or anyone else until it is your
25 turn to deliberate. And make sure, through your not

1 speaking about this to anyone else, you understand that
2 that applies to any social media, any -- no tweeting, no
3 Facebook posting, no blogging, no communications of any
4 kind.

5 Thank you for your patience while we resolved some
6 matters that needed to be addressed before we could bring
7 the jury present to begin the trial. You should have all
8 found on your seats note pads and pens that will enable
9 you to take notes. I know it was been not quite a week,
10 but a little time since you heard instructions from me as
11 to how we would be proceeding. Those note pads and pens
12 are yours to take notes as you see fit, because obviously
13 there will not be able to be a transcript of the trial to
14 consult.

15 Those note pads are also to be utilized for you to
16 ask questions of witnesses, if you are so inclined. I'll
17 remind you of that opportunity when it presents itself.

18 Those note pads are also to be utilized if you have
19 any questions for the court through the marshal only. At
20 this point, of course, we'll give you breaks and give you
21 opportunities to take care of whatever personal needs you
22 may have throughout the course of this trial.

23 One thing you should keep in mind is that the note
24 pads and pens will remain here. You will not take those
25 home with you at the end of the day. They will remain in

1 the courtroom. But you will take your juror badges, which
2 I see all of you are wearing.

3 Please also keep in mind that you are seated in the
4 seats in which you are now going to be identified as
5 jurors. So 1 through 8 will be in the back row. Nine
6 through 15 the front row. If you have any questions about
7 that, please confirm with the marshal what your number is.
8 That is important, because if you do provide a note to the
9 court, or if you do need to ask a question of a witness,
10 you'll need to indicate your name and your juror number.
11 Okay.

12 As we proceed today, you'll be reminded that the
13 Defendant, Mr. Collins, has been accused by way of an
14 information in this case. Again, you are to be reminded
15 that that document is simply that, an accusation. It is
16 not any evidence of the allegations which it contains.
17 But it is for purposes of us beginning the trial important
18 for you to hear the information as it has been filed with
19 this court. And I'm going to ask my clerk at this time to
20 please read the information to you.

21 THE CLERK: District Court, Clark County Nevada,
22 State of Nevada, plaintiff, versus Lesean Tarus Collins,
23 Defendant, case C-252804, Information.

24 State of Nevada, County of Clark, David Roger,
25 district attorney within and for the County of Clark,

1 State of Nevada in the name and by the authority of the
2 State of Nevada, informs the court that Lesean Tarus
3 Collins, the Defendant above-named, having committed the
4 crimes of murder and robbery, on or about the 2nd day of
5 September 2008, within the County of Clark, State of
6 Nevada, contrary to the form, force, and effect of
7 statutes in such cases made and provided, and against the
8 peace and dignity of the State of Nevada.

9 Count (1), murder, did then and there willfully,
10 unlawfully, feloniously, without authority of law and with
11 malice aforethought, kill Brandy Payton, a human being, by
12 asphyxiation and/or blunt force trauma, and/or manner and
13 means unknown.

14 Said killing having been, one, willful, deliberate,
15 and premeditated, and/or, two, committed during the
16 commission or attempted commission of a felony, to wit,
17 robbery.

18 Count (2), robbery, did then and there willfully,
19 unlawfully, and feloniously take personal property, to
20 wit, a 2008 Hyundai, bearing license number 428UZS,
21 cellular phone, jewelry and/or purse and contents, from
22 the person of Brandy Payton, or in her presence by means
23 of force or violence or fear of injury to and without
24 consent and against the will of the said Brandy Payton.

25 David Roger, district attorney, by Joshua Tomsheck,

1 deputy district attorney.

2 To which the Defendant has pled not guilty.

3 THE COURT: Thank you.

4 I'll invite the State to make its opening argument at
5 this time. I will again remind the jurors that this is
6 argument and not evidence. But please pay attention to
7 both counsel, as they provide opening remarks to you.

8 Ms. Bluth.

9 MS. BLUTH: Thank you, your Honor.

10 OPENING STATEMENT

11 BY MS. BLUTH:

12 September 2nd of 2008 started like any other day
13 for the woman you see here in this photograph, Brandy
14 Payton.

15 By the end of that day, what she couldn't have
16 known and what she didn't know when she woke up that
17 morning, is that she would be left dead on the side of the
18 road off of the 95 freeway off of State Road 156.

19 The person responsible for killing her and dumping
20 her body there is the man that sits before you today. The
21 Defendant in this case, Lesean Collins.

22 Now before we get there, let's go back to a few facts
23 revolving around September 2nd of 2008.

24 You are going to hear evidence that on that day, the
25 day that Brandy goes missing, she makes contact with many

1 family and friends throughout the day. Whether it be in
2 person or through telephone. She had plans throughout the
3 day and she also made and received several phone calls.

4 She also had plans that evening with her sister,
5 Sheri Payton. They had plans to meet at Sheri's daughter
6 at cheerleading practice at a local park sometime between
7 5:00 and 6:00 o'clock.

8 However, by 3:30 p.m., Brandy Payton's cell phone --
9 she had two -- are completely off. They go radio silent.
10 She basically goes off of the grid. No one ever hears or
11 sees her alive again.

12 I talked to you a little bit about Sheri Payton,
13 Brandy Payton's sister. And you will hear from her. And
14 some of the things that Sheri will tell you is that,
15 again, she had plans with Brandy later on in that
16 evening.

17 When her sister no shows, doesn't show up to
18 cheerleading practice she becomes very concerned. She
19 starts calling her throughout the evening. She gets
20 absolutely no returns. In fact, when she call the cell
21 phone goes straight to voice ail every single time.

22 When she becomes very concerned, she starts
23 contacting friends and family, and no one else knows where
24 Brandy is either.

25 So on September 4th she goes to North Las Vegas

1 Police Department, the Washburn Bureau. And she goes
2 there with Brandy's boyfriend. An individual by the name
3 of Rufus Hicks, and attempts to make what is called a
4 missing person's report. But because Brandy has only been
5 missing, at that point, probably 24 hours and she's a
6 grown adult, the police tell Sheri, your sister is a grown
7 adult. Maybe she left town and didn't let you know. So
8 they do not allow Sheri to make a missing person's report
9 that day.

10 So the following day Sheri goes to Avis rental car.
11 The reason why Sheri goes to Avis rental car is Brandy had
12 rented an Hyundai Sonata from Avis rental car in the
13 previous week. And she went there to see if the Hyundai
14 had been returned. It was due back on September 5th, the
15 day Sheri went there. And the car was missing. So now
16 Brandy is missing. Her cell phones are turned off. And
17 her car is missing.

18 After she leaves Avis rental car she then goes to
19 Brandy's home to see if maybe there are suitcases there
20 that are gone or if she can see that her sister has packed
21 her bags, et cetera. She goes to the house and she sees
22 no evidence that Brandy is gone for any reason.

23 So the following day -- excuse me -- later that
24 afternoon on September 5th of 2008, she goes back to the
25 North Las Vegas Police Department. The same station.

1 She's not going to take no for an answer this time. She
2 explains to the police she's been to her sister's home.
3 There is no suitcases missing. All of her sister's
4 belongings are there. Her clothes are still there. She
5 also tells them about going to Avis rental car and how
6 Brandy -- it was common for her to have a rental car. She
7 had been renting a car for a year. And she should have
8 returned it that day, but the car did not get returned.
9 And that was very unlikely for her sister to do.

10 So she makes that missing person's report. She gives
11 the police all of this information. And she also gives
12 the police the information on the car, which was, as I
13 said, a Hyundai Sonata, license plate 428UZS.

14 She continues to look for her sister, along with
15 family and friends. Everybody is looking. Everybody is
16 staying in contact with one another, calling each other.
17 No success. And there will not be any success. Because
18 on September 6th of 2008, an individual by the name of Ben
19 Grande goes out to this area. This is the area I was
20 talking about earlier. This is what's called State Route
21 156, which is a road right off of 95 freeway.

22 Ben Grande and Donald Davidson had left Las Vegas
23 early in the morning, about 6:30 or 7:00, and had gone out
24 to this area to ride their ATVs. They road their ATVs
25 about 2-and-a-half, 3 hours and when they came back down

1 into this area to get into their vehicles. Which you'll
2 see a dirt lot right here, right off the road. That's
3 where their cars were parked where they were loading and
4 unloading their ATVs.

5 When they get back down to that area they start to
6 smell something. It's a pretty strong smell so they tried
7 to look around to see what is emanating this odor they
8 keep smelling. At that point in time, when Donald
9 Davidson and Ben Grande go out and they see Brandy
10 Payton's body. They see it off the road.

11 At the time, Ben Grande will tell you, at first, due
12 to the positioning of the body, he thought it was a dead
13 horse. As he got closer and he was able to make out -- as
14 he got closer he was able to make out that it was a human
15 body.

16 So immediately Ben Grande and Donald Davidson alert
17 the police. The actual individual who calls 911 is Donald
18 Davidson. After the police are called, homicide
19 detectives -- and you'll hear from the main homicide
20 detective in this case. His name is Detective Cliff Mogg.
21 He and other individuals from the homicide section and
22 crime scene analyst's section respond to this area. One
23 of the things they'll tell you one of the first things
24 they recognize is off of the dirt road they begin to see
25 what they believe to be a dragging pattern from the middle

1 of the dirt road which leads to Brandy Payton's body.
2 Which is a little bit further off down the road.

3 They will also tell you that on the way to Brandy's
4 body from the desert area they found both of her sandals,
5 which were off of her feet at the time. And also a white
6 wash cloth that was pretty dirty.

7 They will also talk to you about the level of
8 decomposition. The body was severely decomposed at that
9 point in time. It was very hot out there. The victim's
10 shirt had been pulled over her head, and the top of her
11 neck area had the shirt over her mouth and over her neck
12 area.

13 There was also, as you can see some of the
14 decomposition, you can see blistering. Some kind of open
15 wounds. There was also both dead and live insects inside
16 of those portions of the body.

17 Other pieces of evidence that detectives noted and
18 crime scene analysts noted is that the victim was wearing
19 white pants on September 2nd, 2008 when she left her
20 residence. And on the day she was found her -- both
21 pockets were empty. And her right pocket was inside
22 out.

23 Also in that drag pattern that I previously showed
24 you, they found 3 rocks with kind of a red/brown like
25 substance that they believed to be blood. Which they

1 collected into evidence. They also noted that on Brandy's
2 right hand she was missing her middle fingernail. And on
3 her left hand she was missing two fingernails.

4 In that same path that I've been speaking about, that
5 same drag path, they found one of the fingernails, which
6 is labeled as evidence marker 5. And in that same pathway
7 near number 5, they found a second fingernail labeled as
8 evidence marker 6.

9 All of those items were collected and sent to the Las
10 Vegas Metro Police Department forensic analysis lab for
11 DNA. We'll discuss that in a moment.

12 The detectives went out to the scene, conducted their
13 investigation out there. The crime scene analysts went
14 out, took pictures and collected that evidence. The body
15 was then bagged and taken by the coroner's office to an
16 individual by the name of Dr. Larry Simms. Dr. Larry
17 Simms is a medical examiner. He works here at the Clark
18 County Coroner's office.

19 Dr. Simms did his autopsy on Brandy Payton on
20 September 7th of 2008. In his report -- and Dr. Simms
21 will also tell you that when he conducted the autopsy,
22 there was severe body and internal organ decomposition.
23 The pictures I showed you are there.

24 He also will talk to you about tissue loss on the
25 body due to insect activity.

1 One of the injuries that Dr. Simms will talk to you
2 about is this injury. What you are looking at right here
3 is Brandy Payton's head. You are looking at the left
4 parietal region on the back of her head, which is this
5 area. Kind of up into the left of my left ear. He'll
6 talk to you about this wound and the fact that it's called
7 a quasi stellate laceration. He'll explain to you what
8 that is. But he'll discuss with you the fact that it's --
9 first off, quasi, which means sort of or half. Stellate,
10 which is star like. He'll talk to you about the
11 significance of those injuries and when a medical examiner
12 sees that type of injury that tells them that it is most
13 likely that this individual suffered what is called blunt
14 force trauma.

15 Blunt force trauma is different from sharp force
16 trauma. Sharp force trauma is like a knife or something
17 sharp. Just like it sounds. Blunt force trauma is
18 something not sharp. A pipe. Something of that nature.
19 This is the type of injury you see commonly in blunt force
20 trauma.

21 He'll also talk to you about two other wounds, that
22 are called puncture wounds, on the head as well.

23 After Dr. Simms complete examination of the body, he
24 will tell you that due to the severe level of
25 decomposition of Brandy Payton's body he was unable to

1 determine a cause and manner of death, because the body
2 was so decomposed. But as part of his opinion, he stated
3 and will state, this case is most likely a homicide, based
4 on the circumstances of the death available at the time of
5 signature. But a specific pattern of injury supporting
6 such a conclusion could not be identified.

7 However, the absence of such a pattern does not
8 exclude a homicidal mechanism of death.

9 After the autopsy was completed, members of the
10 Payton family were contacted. Detective Cliff Mogg met
11 with the Payton family -- her mother, her sister, her
12 cousins -- in an attempt to gather information for their
13 investigation. One of the things that they did was get
14 the phone numbers for the victim. I explained she had two
15 cell phone numbers. They got those cell phone numbers so
16 they would have the ability to obtain the cell records
17 that went with those phones.

18 They also got the names and numbers to the victim's
19 family and friends. People that she had normal contact
20 with, so they could contact those individuals during their
21 investigation.

22 One of those individuals that the family talked to
23 Detective Mogg about was the Defendant, Lesean Collins.
24 They discussed how often she was with him and their
25 relationship. And they gave Detective Mogg Lesean

1 Collin's number, which is the number you see on the bottom
2 of the screen -- (702) 884-1539.

3 One of the names that the family also gave to
4 Detective Mogg was an individual by the name of Theresa
5 Williams, who is the female you see in this photo.
6 Detective Mogg then went and met with Ms. Williams and
7 when Detective Mogg met with Ms. Williams she told
8 Detective Mogg that she knew the victim very well. She
9 also told Detective Mogg that the victim did engage in
10 some drug dealing. She would sell PCP or what is called
11 sherm sticks. And that any time Theresa would call the
12 victim, the victim would always call her back within 10 to
13 15 minutes. She was a very careful person. And that she
14 knew her to always take care of herself and make sure she
15 was protected.

16 Theresa Williams learned of the victim's death from
17 the Defendant, Lesean Collins. It was he that told
18 Theresa that the victim had died. He also told her that
19 he would need to erase some messages on his cell phone,
20 and he may have to change his number because the police
21 would be looking into the death of Brandy Payton.

22 After speaking to Theresa Williams, as well as
23 members of Brandy Payton's family and friends, this name
24 kept coming up of Lesean Collins. That name led Detective
25 Mogg to the individual you see on the screen here. This

1 is Shalana Eddins. Shalana Eddins is -- or was at the
2 time -- in a relationship with the Defendant. At that
3 time they had 5 boys together. They had been together for
4 about 11 to 12 years.

5 On October 1st of 2008, Detective Mogg met with
6 Shalana Eddins and asked her about her recollection of the
7 time period around September 2nd of 2008. What Shalana
8 told Detective Mogg was that on September 2nd of 2008, the
9 Defendant picked up Shalana at her place of employment,
10 which was about 5:30 p.m. When he got to her work, he
11 gave her a present. Her birthday was on August 27th. It
12 was a little bit of a belated birthday present. But when
13 she opened the present, there was a necklace and a
14 bracelet. And Shalana will explain that to you. She
15 explained it kind of like a Rolex band. If you have ever
16 seen a Rolex watch, it was similar to that type of brand.
17 And that was the style of the necklace and of the
18 bracelet.

19 Shalana did not like the gift. She gave it back to
20 him. The Defendant told her that he had gotten it from a
21 pawnshop and paid \$2,000 for it. But Shalana never saw
22 any receipts or never knew any way to return it.

23 After they had this exchange and Shalana gave the
24 present back, they then drove out to Henderson where
25 Shalana's mother lives. They picked her up. They got

1 something to eat. And they returned back to the residence
2 that Shalana has, which is located at 1519 Laguna Palms, n
3 North Las Vegas, here in Las Vegas, Nevada.

4 Now, the home is Shalana's home, but the Defendant
5 stayed there with Shalana. They got home to their
6 residence after picking up Shalana's mom. They got home
7 somewhere around 7:00 or 8:00 that evening.

8 What Shalana will tell you is that when they drove up
9 into the residence they were driving Shalana's Ford
10 Expedition. It was common where she parked it and where
11 he parked it every day when they got home was on the left
12 side of the home inside the garage. So the left side of
13 the garage if you're looking at the home. But when they
14 pulled up to the home that day, and the garage door
15 opened, the Shalana recognized they wouldn't be parking in
16 their normal spot because at that time there was a beige
17 sedan parked on the left side of the driveway inside the
18 garage. And that is the car that you see here.

19 Shalana asked the Defendant whose car is in our
20 garage. Why is it parked in our garage. The Defendant's
21 response was, oh, that's Brandy's car. Brandy rented me
22 that rental car. So I'm going to have it.

23 So Shalana says, okay. Well, whatever. The
24 Defendant tells her, just so you know, I'm going to kind
25 of warn you. You are going to be a little angry at me.

1 When you walk in the house, you're going to see a big
2 stain over by the laundry room. Because I did an oil
3 change today on the rental car, and I spilled some oil.
4 So I had to clean it, so I poured a bunch of bleach all
5 over the stain by the laundry room. So I ruined the
6 carpet. You are going to be pretty upset.

7 Shalana will tell you that they parked the car. She
8 went in the house. She walks through the laundry room.
9 She sees the bleach. And as soon as she walked in, kind
10 of to the living room area right outside the laundry room,
11 she sees a huge stain on the carpet. She sees the bottle
12 of bleach that the Defendant used.

13 She'll also tell you that you right in line with that
14 stain, up on the wall, she saw little kind of spots of a
15 brown/red substance that she believed to be oil at the
16 time.

17 When she gets inside she goes into the kitchen and
18 she find a hot blue, green, and pink fingernail -- a
19 broken fingernail laying on the counter. She confronts
20 the Defendant. She says, what is a female's nail doing on
21 my counter. The defendant tells her, oh, that's Brandy's.
22 It's Brandy's. Don't worry about it. So she, again, kind
23 of just thinks, okay. All right.

24 Shortly after that exchange, the Defendant receives a
25 phone call. He tells Shalana, hey. I misplaced the

1 garage opener. I've got to go to my friend Tye's house to
2 pick it up. So that's where I'll be. I'll be home.

3 So Shalana checking up on whether or not the
4 Defendant is telling her the truth calls Tye. Has a
5 conversation with Tye. The Defendant is not there. She
6 calls the Defendant back again, confronts him. Hey, just
7 got off the phone with Tye. Where are you. Defendant
8 tells her now, I'm going to Stateline. I'm driving to
9 Stateline. Shalana will tell you he's gone for several
10 hours.

11 When the Defendant gets home, Shalana is awakened.
12 She hears something going on in the front of her house.
13 She gets out of bed. It's now early morning hours.
14 Probably about midnight, after midnight, to the best of
15 her recollection. And she sees the Defendant washing the
16 Hyundai Sonata, Brandy's rental car, in the driveway. So
17 she kind of shakes her head. Doesn't know what to think
18 about it. She goes back to bed.

19 You'll also hear from Shalana that she has to get up
20 very early some days, about 2:30 in the morning, to take
21 her mother to the bus stop. Because her mother takes the
22 bus at 3:00 a.m. every morning to work. So that
23 evening -- that early morning when she gets up at 2:30 in
24 the morning, she gets up, gets her mother. They leave and
25 as she's leaving she sees the Defendant asleep in the

1 front seat of the car parked in the driveway.

2 So Shalana goes. She takes her mother to work. And
3 as she's returning home, she receives a call from the
4 Defendant. At that time the Defendant tells her that the
5 police are chasing him. He's in Brandy's car. He's being
6 chased by the police. And he needs her to come pick him
7 up immediately.

8 You'll hear from one of those officers involved in
9 that police chase. That's Officer Montgomery with the
10 North Las Vegas Police Department. Officer Montgomery
11 will tell you that in those early morning hours, they got
12 a suspicious person, like loud noise complaint, in the
13 driveway of 1519 Laguna Palms. So they responded to the
14 residence. They saw a black male adult in the driver's
15 seat of the car. They approached the vehicle. Asked the
16 individual to put his hands up and step outside the car.
17 And instead of putting his hands up and stepping outside
18 of the car, the Defendant punched the gas and took off.

19 The police officers are on foot. They ran to their
20 vehicle in an attempt to get into their cars to get to the
21 Defendant. They couldn't get there fast enough. So the
22 Defendant was able to evade the police officers. He
23 called Shalana. Shalana went and picked him up. She
24 could see the beige Sonata parked in somebody else's
25 driveway. She picked him up and brought him back to the

1 house.

2 After Shalana's interview with Detective Mogg on
3 October 1st of 2008, the police officers conducted what's
4 called a search warrant on 1519 Laguna Palms on Shalana
5 Eddins' evidence. When they walked into the residence, as
6 they walked through the home, in through the garage,
7 through the laundry room, they saw a stain in the carpeted
8 area right outside the laundry room, which Shalana
9 explained would be there.

10 They also saw a huge kind of bottle of bleach located
11 in the laundry room. They also went to the wall where
12 Shalana told them she saw the little brown and red specs,
13 which she believed to be oil.

14 A crime scene analyst then came and documented those
15 red marks with these numbers. You see numbers 1, 2, 3.
16 They also found 3 more located at 4, 5, and 6 on the
17 inside of the doorway. Here's a close picture of what
18 those spots look like.

19 They then took samples of those areas. And also sent
20 those to the DNA lab that I discussed previously.

21 That same day that Shalana Eddins was interviewed,
22 Brandy Payton's car was found. The location that the car
23 was found is 1913 Alwill Street, which is about 6 miles
24 south of the 1519 Laguna Palms residence. The car, when
25 it was found at 1913 was missing all four wheels. The

1 crime scene analyst will tell you that it appeared as
2 though the car had been there for a pretty long time.
3 There was dust and all sorts of thing that were laying on
4 the car that was indicative to him that the car had not
5 been moved.

6 Once they opened the car doors they found portions of
7 the car to be burnt. They found a white wash cloth that
8 had been set on fire. They also found a Bic lighter.

9 Crime Scene Analyst Horn is going to talk to you
10 about going into the truck of that vehicle and removing
11 the mat. That also was sent to the DNA lab for
12 processing.

13 After speaking to Shalana and after going to the
14 residence, Detective Mogg then went back to the Payton
15 family and asked for a recent picture of Brandy and of any
16 jewelry that she had. He then took the pictures and went
17 back to Shalana and asked Shalana if she recognized
18 anything being worn in the photo of Brandy I'm showing you
19 now. And in that photo, Shalana pointed out not only the
20 necklace that was Rolex like that Brandy was wearing, but
21 also the bracelet. She identified those two items as the
22 necklace and bracelet that the Defendant gave to her at
23 5:30 p.m. on the day that Brandy Payton went missing.

24 You'll also hear from DNA analyst Kellie Gauthier,
25 who is an analyst with the Las Vegas Metropolitan Police

1 Department. She will tell you that the rocks found in the
2 desert -- the three rocks I showed you a picture of in the
3 pathway leading to Brandy's body -- that the substance on
4 those rocks were blood positive. And they belonged to
5 Brandy Payton.

6 She will also tell you that the fingernails found in
7 the desert had Brandy Payton's DNA on them. She'll tell
8 you that the white towel found in the desert on the way to
9 Brandy Payton's body was blood positive. And that that
10 belonged to Brandy Payton.

11 She'll tell you that the brown/red stains on the wall
12 at the 6 locations found on the wall at 1519 Laguna Palms,
13 blood positive, belonged to Brandy Payton.

14 She'll also tell you that the trunk mat taken from
15 the vehicle that the Defendant was last seen driving,
16 blood positive, DNA belonged to Brandy Payton.

17 Detective Mogg also ordered -- he issued what's
18 called an administrative subpoena for 2 phones -- Lesean
19 Collins cell phone. The number I previously spoke to you
20 about -- 884-1539 -- and the victim's cell phone -- well,
21 two, she had two. So 3 phones total.

22 When a detective sends an administrative subpoena
23 what they normally get back is what's called -- it's a
24 full set of records. So you'll get incoming phone calls
25 to that number, outgoing phone calls from that number,

1 text messages as well. You'll also get what's called
2 self-site location information. For those of us who don't
3 know a lot about records, what the cell phone expert from
4 Sprint/Nextel will be here to talk to you about is cell
5 site information. He'll talk to you but the fact when you
6 make a phone call or when you receive a phone call, that
7 phone call pings off the tower closest to you. So cell
8 phone companies and detectives, they can get a pretty good
9 idea of where you or I are when we're making a phone call
10 because it will be pinking off the closest tower to where
11 we are located.

12 The records received from Brandy's cell phone on
13 September 2nd, 2008 shows significant cell phone activity
14 all day. Making and receiving phone calls all day.
15 However, like discussed earlier, the records show that the
16 cell phone goes completely inactive, shuts off. There are
17 no outgoing calls from Brandy's phone after 3:34 p.m. The
18 last incoming phone call received by Brandy is at 3:38
19 p.m. And that is from Amber Poole. Someone you will hear
20 from. Other than that, her phone goes completely silent
21 at that point.

22 What the cell phone expert will also tell you is that
23 when Brandy's phone receives that last incoming and
24 outgoing phone call, cell satellite show that her -- when
25 her cell phone goes completely silent and completely

1 inactive, she's located at the 1519 Laguna Palms
2 residence.

3 The Defendant's cell phone records were also
4 received. The cell phone expert from Sprint/Nextel will
5 tell you that at the same time Brandy's phone drops all
6 activity, the Defendant's cell phone is also pinging off
7 of the same tower, putting them at the same location, same
8 residence, at 1519 Laguna Palms.

9 Cell records show that around 7:45 p.m. in the
10 evening, the Defendant's cell phone starts moving from the
11 1519 Laguna Palms residence. As he leaves his home the
12 cell phone expert will show you -- this is in the lower
13 right corner of the screen -- 1519 Laguna Palms. The
14 residence we've been speaking about. And up in the left
15 corner is what you see as State Route 156, which is where
16 Brandy's body was found.

17 What you'll see in the cell phone records and what
18 the cell expert will tell you is that in that time period
19 from about 7:45, 8:00 to 9:00 o'clock, the Defendant will
20 make 17 phone calls. Either he receives phone calls or
21 makes phone calls. And all of those phones calls ping
22 along towers all the way up the 95, ultimately to the
23 tower closest to Brandy's body, where it was left. And
24 that is the same day that Brandy Payton goes missing on
25 September 2nd, 2008.

1 Ladies and gentlemen, at the conclusion of this
2 trial, after you've heard the testimony of the witnesses
3 and after you've seen the evidence in this case, the State
4 is going to ask you to return a verdict of guilty on
5 Lesean Collins for first degree murder and robbery.

6 Thank you.

7 THE COURT: Thank you, Ms. Bluth.

8 We'll take a brief recess before we reassume with the
9 defense opening statement.

10 I do want to remind the jurors and I'll ask the
11 marshal to come forward and have you utilize the restrooms
12 in the back.

13 JURY ADMONITION

14 During the recess, ladies and gentlemen, you are
15 admonished not to converse among yourselves or with anyone
16 else, including, without limitation, the lawyers, parties
17 and witnesses, on any subject connected with this trial,
18 or any other case referred to during it, or read, watch,
19 or listen to any report of or commentary on the trial, or
20 any person connected with this trial, or any such other
21 case by any medium of information including, without
22 limitation, newspapers, television, internet or radio.

23 You are further admonished not to form or express any
24 opinion on any subject connected with this trial until the
25 case is finally submitted to you.

1 See you back in 10 minutes.

2 I'm going to let the jurors get in place before I
3 exit to chambers. We'll address any matter we may have to
4 address. I don't anticipate any, but we'll reassume with
5 the opening when we return.

6 I'm awaiting information with regard to the
7 medication requests Mr. Collins made. A return phone call
8 has not been received yet. As soon as we have
9 information, I'll let you know.

10 I have asked to confirm whether or not someone can
11 come down and also to find out how we can address this to
12 ensure it doesn't happen tomorrow.

13 As soon as we bring them back -- Mr. Collins, I want
14 to address the medication issue, then bring the jurors
15 back.

16 Let's make a record of the medication issue first.
17 Mr. Schieck, so you're not going back in there blind with
18 information.

19 So back on the record in State of Nevada vs. Lesean
20 Collins. My JEA spoke with the head of the transport unit
21 there, but also that individual apparently looked into it
22 and called her back with information.

23 Apparently when Mr. Collins came from NDOC there was
24 no indication of any medical sheet or medications that he
25 was receiving at NDOC that was received by CCDC. So I

1 can't speak to anything he might have gotten there.
2 According to the CCDC representative they do an
3 independent medical assessment at CCDC, and that that was
4 done and it was determined that he should receive 2
5 Ibuprofen per day. And that he received Ibuprofen this
6 morning at 7:00 a.m. It was not indicated he was due
7 another dose prior to coming here.

8 I don't know what medications he think he's supposed
9 to be receiving. I don't know what medications he assumed
10 he would be receiving at 11:00 o'clock. But according to
11 the Clark County Detention Center, at this time he will
12 not be receiving anything at the 11:00 o'clock pill call.
13 That he received the Ibuprofen at 7:00 a.m., which is the
14 only medication he's scheduled currently by CCDC to
15 receive based on their independent assessment.

16 If there is something else that he is prescribed and
17 receiving at NDOC, that information was not received by
18 CCDC, and it did not come up and was not provided or
19 determined to be necessary in any independent assessment
20 they did. Okay.

21 Can you please speak with your client and indicate
22 that it's his prerogative not to return. I will instruct
23 the jury appropriately if he does not return. However,
24 there is no medication coming. Nor is there any known to
25 be necessary.

1 MR. SCHIECK Thank you, your Honor.

2 (Brief recess taken.)

3 THE COURT: I understand Mr. Collins is not
4 returning.

5 MR. SCHIECK He has indicated that to me, your
6 Honor. It's his desire to go back to the jail.

7 THE COURT: I will allow the COs to return him
8 to the jail, of course, as we have spoken with him before
9 about his rights.

10 So I have been informed that Mr. Collins has opted
11 not to return. And since we have previously discussed at
12 length with Mr. Collins his right to be present or not
13 present at any time during the course of trial and I have
14 an instruction I will give the jurors with regard to his
15 absence, I don't have any problems at this time with the
16 COs returning him to CCDC. I do want to inquire if there
17 was any discussion that can be provided, without breaching
18 any attorney/client privilege, of anything that may need
19 to be done to obtain information from NDOC by CCDC if
20 there are some missing pieces of the puzzle in terms of
21 medication.

22 Again, what has been represented to me at this point
23 was that he was entitled to medications that he was not
24 receiving because he was brought over here prior to the
25 11:00 o'clock pill call. That has not been supported by

1 the information my JEA obtained.

2 MR. SCHIECK Your Honor, I relayed to Mr.
3 Collins the information you put on the record concerning
4 the information you had gotten from CCDC regarding his
5 medication. I relayed that to Mr. Collins. He indicated
6 that he was having pain in his eye and his leg, and he
7 was, in fact, desirous of returning to CCDC. When he got
8 there he was going to initially file a kite and a
9 grievance with CCDC over this information, because he
10 relayed to me he does not believe that is correct.

11 He has been receiving that medication. He doesn't
12 understand why CCDC would have told you that. But he is
13 filing the necessary paperwork at his end to address
14 that.

15 THE COURT: Was he specific as to what
16 medication is missing.

17 MR. SCHIECK It is Ibuprofen, your Honor -- or
18 Motrin. And he indicated that he gets pills 3 times a
19 day -- two, 3 times a day. Not two once a day, your
20 Honor.

21 THE COURT: We do have a conflict of
22 information, so I appreciate that he's going to address
23 that. If he wishes to absent himself for the remainder of
24 what have left today, about an hour-and-a-half, if not
25 less depending.

1 I'm assuming we're going to complete today after the
2 openings. Do we intend to call a witness.

3 MS. LUZAICH: Oh, we have quite a few witnesses
4 here.

5 THE COURT: All right. I didn't know how long
6 openings would be taking.

7 MR. HYTE: I'm trying to set a record for the
8 shortest.

9 THE COURT: Okay. We'll absolutely proceed with
10 witnesses as soon as those are complete. That makes
11 sense.

12 So we'll allow him to return. The COs can go ahead.
13 I'll read the instruction I previously indicated to Mr.
14 Collins I would read.

15 THE OFFICER: What time would you like him back
16 tomorrow.

17 THE COURT: Our original time tomorrow is
18 1:30.

19 THE OFFICER: thank you.

20 THE COURT: Let me say 1:15.

21 To the extent you have heard this discussion with
22 regard to medications, somebody has got to figure this
23 out. We've been told he gets it twice a day. Got one
24 dose. Gets another dose this evening. He's indicated he
25 gets it 3 times a day. If there is anything that can be

1 done to address that, that would be appreciated by the
2 court.

3 THE OFFICER: Absolutely, your Honor.

4 THE COURT: Thank you.

5 Welcome back. I'll remind you if you used your cell
6 phone on the break, that you have it now off or silenced.
7 I'm going to reconvene trial in the matter of State of
8 Nevada vs. Lesean Collins.

9 I do want to note, for the record, that Mr. Collins
10 is not present in court with us at this time. I want to
11 advise the jurors and read an instruction to you, which
12 you will receive at the end of trial. But because Mr.
13 Collins is not present now, I don't want there to be any
14 speculation or concern over that, that this instruction is
15 applicable now and will be throughout the trial, as well
16 as when you deliberate.

17 It is the right of a defendant in a criminal trial
18 that he may not be compelled to be present at time of
19 trial. You must not draw any inference from the fact the
20 defendant has elected to exercised his right not to be
21 present. Nor should this fact be discussed by you or
22 enter into your deliberations in any way.

23 I'll invite Mr. Hyte to present openings on behalf of
24 Mr. Collins.

25 OPENING STATEMENT

1 BY MR. HYTE:

2 Members of the jury, good afternoon. It is
3 better for a crime or for an undetermined death to go
4 unsolved then for a person to be wrongfully convicted.

5 What the evidence will show in this case is that
6 the body of Brandy Payton was found at 9:00 a.m. on
7 September 6th, 2008. Just south of State Route 156. You
8 probably recognize that's exactly what the State just told
9 you. And they're right. And so what we're not going to
10 do during this trial is waste your time, or the court's
11 time arguing about things that we believe they got right.
12 They got that right.

13 However, we do intend to show you that the evidence
14 in this case does not compel a conviction for Mr. Collins.
15 Why is that. Well, the first reason we're going to be
16 asking you for a not guilty verdict is because you are
17 going to hear testimony from the medical examiner that
18 conducted the autopsy, Dr. Larry Simms. He will tell you
19 that after conducting the autopsy he was unable to
20 determine a cause or manner of death.

21 The State's opening they showed you a photograph of a
22 laceration, a quasi stellate laceration on Ms. Payton's
23 head. Dr. Simms will tell you that that in and of itself
24 was not a fatal injury.

25 The second reason we'll be asking you to return a

1 verdict of not guilty is because you will learn about
2 alternate suspects who were not pursued. That Mr. Collins
3 was the sole focus of the investigation, to the exclusion
4 of all others who might have had a reason to cause Brandy
5 Payton harm.

6 Another reason that we'll be asking you to return a
7 verdict of not guilty is because the forensic
8 investigation in this case was inadequate. The evidence
9 will show that there were critical pieces of evidence that
10 with either never collected or never tested. And that
11 those pieces of evidence might have illuminated how Brandy
12 died and who might have been responsible for it.

13 Additionally, you'll hear that Mr. Collins and Brandy
14 Payton were friends. He therefore lacked any motive to
15 see her demise. We also expect witnesses to take the
16 stand in this case who will change their stories. It will
17 be your job to evaluate them, to judge their biases, to
18 judge their credibility, their motives and reasons for why
19 those stories changed over time.

20 During this trial you'll also learn some things about
21 Brandy Payton, her lifestyle, some of her habits in her
22 teens, about the company that she kept.

23 So what we ask is that you listen to all of the
24 evidence. That you keep an open mind until you receive
25 all of it. That you don't prejudge this case. And that

1 you scrutinize the evidence that's presented to you, and
2 as you're required, we ask that you hold the State to its
3 burden of proving its case by beyond a reasonable doubt.

4 Because at the end of this case, we intend to show
5 you that you're going to have more questions than answers.
6 We will argue to you that that amounts to reasonable
7 doubt.

8 We intend to show you that in this case the evidence
9 does not compel a conviction. And so that's why, when
10 this trial is finished and we're required to stand before
11 you, just like this, and the evidence will require us to
12 come before you and ask that you return a verdict of not
13 guilty.

14 Thank you.

15 THE COURT: Thank you, Mr. Hyte. I'm going to
16 invite the State to call their first witness.

17 THE COURT: State calls Amber Pool.

18 THE CLERK: You do solemnly swear the testimony
19 you are about to give in this action, shall be the truth,
20 the whole truth, and nothing but the truth, so help you
21 God.

22 THE WITNESS: I do.

23 THE CLERK: Be seated. State and spell your
24 name for the record.

25 THE WITNESS: Amber Poole -- P-O-O-L-E.

1 THE COURT: Thank you. Before we get stated
2 with questioning I have a couple of things I need to work
3 out.

4 First, I want to note to counsel there were no
5 persons who exited the courtroom that I'm aware of, that
6 invoked the exclusionary rule on behalf of defense,
7 indicating if there is anybody present who is going to
8 give testimony at a future date they would need to excuse
9 themselves from the courtroom.

10 I'll also ask counsel to view the folks in the
11 courtroom to see if there is anyone they recognize as a
12 witness they intend to all.

13 Seeing no persons exiting and seeing counsel
14 indicate no one is present who would be giving testimony,
15 we can otherwise proceed.

16 Ms. Luzaich.

17 MS. LUZAICH: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q. Good afternoon, Amber.

21 A. Good afternoon.

22 Q. May I call you Amber?

23 A. Yes.

24 Q. Thank you.

25 I'm going to take you right back to 2008. In 2008,

1 Amber, did you live here in Las Vegas?

2 A. Yes.

3 Q. Did you know a lady named Brandy Payton?

4 A. Yes.

5 Q. How did you know Brandy?

6 A. I met her through a mutual friend.

7 Q. Do you know for how long a period of time you
8 knew her? Days, weeks, months, years?

9 A. Years, I would say.

10 Q. Did you also know some of her family
11 members?

12 A. Yes.

13 Q. Specifically did you know her sister, Sheri?

14 A. Yes.

15 Q. And I'm going to direct you back to the --
16 kind of the end of summer of 2008.

17 Did there come a time that you saw Brandy for what
18 you now know is the last time?

19 A. Yes.

20 Q. When was -- where was that?

21 A. We attended a party. I remember the day
22 because it was my daughter's birthday.

23 Q. What day is that?

24 A. August 30th.

25 Q. When you say we attended a party, who is we?

1 A. Me and her sister, Sheri.

2 Q. You and Sheri, were you with Brandy at the
3 party?

4 A. Yes.

5 THE COURT: Can I interrupt for one second, Ms.
6 Luzaich. I know this is starting to happen. This is not
7 criticism, Ms. Poole. It's a very human thing to answer
8 the question before the person is finished asking the
9 question. We tend to overlap our dialogue. But it makes
10 it impossible for the court reporter to write it down.

11 So if you could be sure that the question is complete
12 before you answer. The other reason is regardless of who
13 is asking the question, you want to be sure you heard the
14 full question before you answer it. It's also human
15 nature to formulate answers when we think we know the
16 question, but we might miss a later part of the question.
17 So if you could pause, I'd appreciate it.

18 Ms. Luzaich.

19 MS. LUZAICH: Thank you.

20 BY MS. LUZAICH:

21 Q. You'd gone to the party with Brandy and Sheri.
22 Is this a party that occurs every year?

23 A. No.

24 Q. Was it a big party?

25 A. Yes.

1 Q. Do you remember what time of day it was that
2 you guys went?

3 A. Night.

4 Q. And after that party did you see Brandy
5 again?

6 A. No.

7 Q. Did you speak with Brandy after that party?

8 A. Yes.

9 Q. Do you know when in relation to the party it
10 was that you spoke with her?

11 A. A few days later.

12 Q. When you spoke with her a few days later, was
13 that over the phone?

14 A. Yes.

15 Q. Would you talk to Brandy a lot over the
16 phone?

17 A. Yes.

18 Q. Prior to that date, did you also see Brandy a
19 lot?

20 A. Yes.

21 Q. When you spoke to Brandy that last day, a
22 couple of days later over the telephone, what time of day
23 was it?

24 A. It was afternoon. Maybe 2:00 or 3:00.

25 Q. Could it be as late as 3:30, give or take?

1 A. Yes.

2 Q. When you talked to her was it a long involved
3 conversation, or was it a short conversation?

4 A. It was brief.

5 Q. I'm sorry?

6 A. Brief.

7 Q. Brief. Did she indicate that she was doing
8 something?

9 A. Yes, at the time.

10 Q. Was she going to call you back?

11 A. Yes.

12 Q. Previously, had there been times that you and
13 Brandy had spoken, but she had to do something and then
14 call you back?

15 A. Yes.

16 Q. Was she good about calling back when she said
17 she would?

18 A. Yes.

19 Q. Did you ever hear from her again after that
20 particular time?

21 A. No.

22 Q. This is going to be a slightly difficult
23 question. Do you remember what your phone number was in
24 2008?

25 A. It was (661) 581-7578 -- 75.

1 Q. Is your phone number now area code (661)?

2 A. Yes.

3 Q. Back then could it have been (702)?

4 A. It could have been.

5 Q. Could it have been 581-7597?

6 A. Yes.

7 Q. Did you learn that something had happened to
8 Brandy?

9 A. Yes.

10 Q. After you learned -- how did you learn? Do
11 you remember?

12 A. I shared a few calls with her sister.

13 Q. You learned through family?

14 A. Yes.

15 Q. Did you speak with police at some point in
16 time regarding Brandy?

17 A. Yes.

18 Q. When you spoke with police, did you give a
19 detective your phone number?

20 A. Yes.

21 Q. So he would have reference to it?

22 A. Yes.

23 Q. All the time you knew Brandy, did you know
24 that she was pretty careful about her personal safety?

25 A. Yes.

1 MS. LUZAICH: Thank you, Amber. No further
2 questions.

3 THE COURT: Thank you.

4 Mr. Schieck or Mr. Hyte.

5 MR. SCHIECK That's me, your Honor.

6 THE COURT: Mr. Schieck.

7 CROSS-EXAMINATION

8 BY MR. SCHIECK:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Just a few questions for you. The party you
12 went to, was that a pool party or what type of party?

13 A. Pool party.

14 Q. It was a large party. A lot of people
15 attended that party?

16 A. Yes.

17 Q. You were there and Sheri was there?

18 A. Yes.

19 Q. And Brandy was there?

20 A. Yes.

21 Q. Did you know Rufus Hicks?

22 A. Yes.

23 Q. Who did you know Rufus Hicks to be at that
24 period of time?

25 A. Brandy's boyfriend.

1 Q. Was he at that party?

2 A. Yes.

3 Q. Did you see the -- at all the interaction
4 between Brandy and Rufus at that party?

5 A. Yes. They were boyfriend and girlfriend.

6 Q. You didn't see anything out of the ordinary at
7 that party?

8 A. No.

9 Q. Did you ever call Rufus Hicks about what
10 happened to Brandy?

11 A. No.

12 Q. Your conversation with just with Brandy's
13 family or with the police?

14 A. I did speak to him. He did call.

15 Q. So let's narrow that down. So you recall when
16 Mr. Hicks called you?

17 A. Maybe the next day or the 1st.

18 Q. Let's try to set a stage here.

19 Was it before you learned Brandy was deceased or
20 was it after?

21 A. Before.

22 Q. So while she was missing, but before --

23 A. Yes.

24 Q. And did he call you on your cell phone?

25 A. Yes.

1 Q. And was that a long conversation or a short
2 conversation?

3 A. Brief.

4 Q. And as you sit here today, do you remember
5 what your phone number was back in 2008?

6 A. Yes.

7 Q. And was it (702) 581-7597?

8 A. Yes.

9 Q. Is that number that you would have called
10 Brandy on after the party?

11 A. Yes.

12 Q. Do you recall what number of hers you
13 called?

14 A. I remember it out of state. 303 area code --
15 303.

16 Q. Okay. Did you have more than one number for
17 Brandy or just one number?

18 A. Just one.

19 Q. You indicated that you believe you'd known
20 Brandy for years. Can you quantify that. Was it more
21 than 5, less than 5?

22 A. Less than 5, sir.

23 Q. How long had you known Mr. Hicks?

24 A. Excuse me.

25 Q. Rufus Hicks?

1 A. I met him through her. So less than 5.

2 Q. You met him here in Las Vegas or somewhere
3 else?

4 A. Here.

5 MR. SCHIECK Court's indulgence, please.

6 THE COURT: Yes.

7 BY MR. SCHIECK

8 Q. The last time you talked with her on the
9 phone, you called her and she picked up, but it was a very
10 short conversation because she was involved doing
11 something else?

12 A. Yes.

13 Q. Had you called her earlier that day?

14 A. I don't believe so.

15 Q. You think it was that one call, and then she
16 never called you back?

17 A. Maybe it could have been text messages,
18 instead of an actual phone call.

19 Q. Were there text messages leading up to that
20 last phone call?

21 A. No. It was before.

22 Q. But the last contact you had with her phone
23 from your phone was a phone call, not a text message?

24 A. Uh-huh.

25 Q. Is that yes?

1 A. Yes.

2 Q. The court reporter has to take it down.

3 You think that maybe earlier in the day there had
4 been text messages back and forth between you and
5 Brandy?

6 A. Yes.

7 Q. But no text messages after that last phone
8 call?

9 A. No.

10 Q. Have you gone back and done anything to
11 refresh your recollection before you testified today? Did
12 you look at anything?

13 A. No.

14 Q. You didn't review any records of anything of
15 that nature?

16 A. No.

17 Q. Okay. When you would text messaged with
18 Brandy, would she then text message you back? She was
19 good about answering when you text to her?

20 A. Yes.

21 Q. But there is only the one phone call you
22 remember actually talking to her on that day?

23 A. Yes.

24 Q. That last day?

25 A. Yes.

1 Q. So everything else would have been a text
2 message?

3 A. Yes.

4 Q. Could there have been as many as 7 text
5 messages between you and her that day?

6 A. Could have been.

7 Q. You recall what the subject of any of those
8 text messages were?

9 A. Regarding getting a place. Normal stuff.

10 Q. Everything seemed normal in those text
11 messages?

12 A. Yes.

13 MR. SCHIECK Thank you. Nothing further.

14 THE COURT: Ms. Luzaich.

15 REDIRECT EXAMINATION

16 BY MS. LUZAICH:

17 Q. Amber, when you called and actually spoke with
18 Brandy that day could you tell where she was?

19 A. It was kind of noisy in the background. I
20 think maybe she was paying her phone bill.

21 Q. Just so we're clear. You had a conversation
22 with her where as you spoke and she spoke and she was
23 going to call you back?

24 A. Yes.

25 Q. But she never did?

1 A. No.

2 MS. LUZAICH: Thank you. Nothing further.

3 MR. SCHIECK If I can just clarify.

4 RECROSS-EXAMINATION

5 BY MR. SCHIECK

6 Q. You indicated there was noise in the
7 background?

8 A. Yes.

9 Q. Did it sound like she was paying her phone
10 bill?

11 A. Yes.

12 MR. SCHIECK Thank you. That's all I have,
13 your Honor.

14 THE COURT: Thank you.

15 Ms. Luzaich.

16 MS. LUZAICH: Nothing.

17 THE COURT: May I see by a show of hands if any
18 of the jurors have questions for this witness. Seeing
19 none at this time, Ms. Poole, you are excused. Thank you.

20 Mind your step as you exit.

21 State may call their next witness.

22 MS. LUZAICH: Theresa Williams.

23 THE COURT: Come and stand next to the chair.

24 THE CLERK: You do solemnly swear the testimony
25 you are about to give in this action, shall be the truth,

1 the whole truth, and nothing but the truth, so help you
2 God.

3 THE WITNESS: I do.

4 THE CLERK: Be seated. State and spell your
5 name for the record.

6 THE WITNESS: Theresa Williams,
7 W-I-L-L-I-A-M-S.

8 THE COURT: You are welcome to have water. You
9 just have to make sure those are convenient to you but out
10 of the way. You are welcome to do that.

11 THE WITNESS: Thank you.

12 DIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q. May I call you Theresa?

15 A. Yes.

16 Q. Do you live here in Las Vegas?

17 A. Yes.

18 Q. I'm going to direct your attention way back to
19 2008. In 2008 did you also live here in Las Vegas?

20 A. Yes, I did.

21 Q. Did you know a lady named Brandy Payton?

22 A. Yes.

23 Q. How did you know Brandy?

24 A. I knew her through friends and dealing.

25 Q. And what?

1 A. Dealing.

2 Q. So when you say you knew her through friends,
3 how long did you know her?

4 A. About a little over a year.

5 Q. And would you have fairly regular
6 communications with Brandy?

7 A. Yes.

8 Q. How often is fairly regular?

9 A. About 2 or 3 times a week maybe.

10 Q. And when you said dealing, were there
11 occasions when you obtained drugs from her?

12 A. Yes.

13 Q. How would you do that?

14 A. I would call her. She'll come to where I was.
15 We'll meet and it was just like exchange. She would be
16 driving. I'll come to her car and drop off.

17 Q. So you would call her?

18 A. Yes.

19 Q. You had her phone number?

20 A. Yes.

21 Q. Did she also have your phone number?

22 A. She never called me. I called her.

23 Q. Every time you called her she'd call you back
24 or text you back?

25 A. Yeah. If she had missed my call or something,

1 she'll call me back.

2 Q. Brandy was good about returning phone calls
3 quickly?

4 A. Yes.

5 Q. And if you had called her, and she didn't
6 answer her phone, would she be good about responding
7 quickly?

8 A. Yes.

9 Q. You said that you would call her and she would
10 meet you. Was she pretty careful where she went?

11 A. Yes.

12 Q. Was that her experience all the time?

13 A. Yes.

14 Q. She was careful about who she was with?

15 A. Yes.

16 Q. Directing your attention specifically to the
17 end of -- well kind of the end of summer of 2008. Do you
18 remember the last time you saw Brandy?

19 A. Yes. It was a pool party. A lot of people
20 was invited, you know. And I remember seeing her there.
21 We didn't say anything to each other. It was a bit of
22 people, so I did recognize her at the party.

23 Q. And what time of day was it?

24 A. Daytime. The pool party was going on for 4
25 days. I only made it to the first day of it. It was

1 still daytime when I seen her.

2 Q. Did you see her with anybody?

3 A. She was walking with a guy but I don't know
4 who he was. I think his face -- his nickname was Face.

5 Q. Could that have been her boyfriend?

6 A. I have no idea.

7 Q. Did there come a time that you learned that
8 something happened to Brandy?

9 A. Yes.

10 Q. How did you find that out?

11 A. Through hearsay. A lot of people was
12 basically just saying that it's unusual for Brandy not to
13 be answering her phone, you know. Not nobody being able
14 to get hold of her. So many days went by people were
15 wondering.

16 Q. Was there one person in particular that you
17 had spoken to that knew her?

18 A. Like friend wise.

19 Q. Do you know an individual by the name of
20 Lesean Collins?

21 A. Yes.

22 Q. Did you know him through Brandy or someone
23 else?

24 A. Someone else.

25 Q. Was it close in time to that pool party when

1 you saw him?

2 A. No.

3 Q. After the pool party, did you see him?

4 A. Yes.

5 Q. How long after the pool party did you see
6 him?

7 A. It was at least 3 to 4 days after.

8 Q. Can you describe the circumstances under which
9 you had seen him?

10 A. Yes. He was in the car with another
11 individual.

12 Q. Who was the individual he was in the car
13 with?

14 A. Donita.

15 Q. And do you know Donita's last name?

16 A. Beasley.

17 Q. How do you know Donita Beasley?

18 A. I know her through a friend of mine, Amber.

19 Q. So you know Donita through somebody separate
20 from Mr. Collins?

21 A. Yes. I didn't have no idea they even knew
22 each other.

23 Q. So when you saw Lesean Collins a couple of
24 days after that party, he was with Donita. Were you
25 surprised they were together?

1 A. Yes.

2 Q. Now, can you describe something about Mr.
3 Collins that's kind of specific.

4 A. Umm --

5 MR. HYTE: Objection vague.

6 MS. LUZAICH: I'll withdraw the question.

7 THE COURT: I'll allow counsel to withdraw the
8 question and reask it.

9 MS. LUZAICH: Approach the witness.

10 THE COURT: You may.

11 MS. LUZAICH: Showing you what's marked as
12 State's Proposed Exhibit -- without my glasses, I think
13 it's 102. Do you recognize that person.

14 THE WITNESS: Yes.

15 MS. LUZAICH: Who is that.

16 THE WITNESS: Lesean.

17 MS. LUZAICH: I'd move that into evidence.

18 THE COURT: Any objection.

19 MR. HYTE: No, your Honor.

20 THE COURT: State's 102 is admitted. You may
21 publish, if you needed to.

22 MS. LUZAICH: That's okay. I'll do it later.

23 BY MS. LUZAICH:

24 Q. When you saw the Defendant and Donita did the
25 Defendant say anything to you about Brandy at that

1 point?

2 A. No.

3 Q. Did there come a time -- well, had you seen
4 him before that close in time?

5 A. No.

6 Q. Had it been awhile since you had seen him?

7 A. Yes.

8 Q. After you saw him on that particular occasion,
9 did you have communication with him after that?

10 A. Yes.

11 Q. Describe for me how that happened.

12 A. I don't really remember how we exchanged
13 numbers or anything, because it was so long ago, but I do
14 recall him calling me. He called me and he was asking me
15 about Brandy's whereabouts, like as far as has anyone seen
16 her or what was she last at, you know. What is the street
17 saying. Anybody found her.

18 He had been looking for her, and he was
19 concerned.

20 Q. Do you remember him saying something to you
21 about messages on his phone?

22 A. Yes.

23 Q. What did he tell you about messages on his
24 phone?

25 A. He told me that him and Brandy had an argument

1 before she came up missing and by his history of being in
2 trouble and everything he would be known as a suspect
3 because --

4 Q. I'm going to cut you off for one second.

5 When he said that they had had an argument, did he
6 say anything about specifically the argument and the
7 messages?

8 A. No. He said he'd probably have to delete them
9 because they are going to be thinking he had something to
10 do with it.

11 Q. So he told you he would have to delete
12 messages on his phone from Brandy?

13 A. Because of the argument they had, the text
14 messages they had back and forth.

15 Q. Did you have contact with police officers
16 after that regarding Brandy's death?

17 A. Yes. They came to the facility. I was
18 sentenced to some jail time, and they came and asked me
19 questions.

20 Q. Was your jail time for parking tickets?

21 A. Traffic tickets, yes.

22 Q. When the police came and talked to you --
23 detectives?

24 A. Yes.

25 Q. Was that yes?

1 A. Yes.

2 Q. You talked about what we just talked about?

3 A. Yes, I did.

4 Q. Did you give them a name -- the name Donita
5 Beasley?

6 A. Yes.

7 Q. Did you also give them Donita's phone
8 number?

9 A. Yes.

10 MS. LUZAICH: Thank you. I have no further
11 questions.

12 THE COURT: Thank you.

13 Mr. HYTE.

14 MR. HYTE: Thank you.

15 CROSS-EXAMINATION

16 BY MR. HYTE:

17 Q. Good afternoon, Ms. Williams.

18 A. Hi. How you doing.

19 Q. Fine. Thank you.

20 I would like to follow up on a few things. You
21 indicated that you knew Brandy through friends and also
22 because she was a dealer right?

23 A. Yes.

24 Q. You, in fact, purchased from her; is that
25 correct?

1 A. Yes.

2 Q. How frequently would you say you purchased
3 from her?

4 A. Like I said 2, 3 times a week maybe.

5 Q. Two to three times a week?

6 A. Yes.

7 Q. I think you said she actually delivered drugs;
8 is that right?

9 A. Yes.

10 Q. You would get in contact with her and then you
11 would agree to meet in a location. Then you would show
12 up. Is that how it went down?

13 A. Yes.

14 Q. Did Brandy typically leave her vehicle during
15 that transaction or did she stay inside?

16 A. She stayed inside.

17 Q. You stated you thought she was cautious and
18 careful about the way she was dealing drugs; is that
19 right?

20 A. Yes, very.

21 Q. Did you know other customers of Brandy?

22 A. Yes.

23 Q. Is it fair to say that Brandy had some
24 customers that you didn't know, right?

25 A. Yes.

1 Q. When Brandy would show up, was she always
2 alone or was she with other people?

3 A. She was always alone.

4 Q. Did Brandy -- let's talk about the vehicle
5 that she used to conduct these sales. Did she always have
6 the same car?

7 A. No. Mostly rental.

8 Q. Mostly rentals?

9 A. Yes.

10 Q. How frequently, in your perception, would she
11 change her rental vehicles?

12 A. I can't remember.

13 Q. Could you characterize it as a long-term
14 rental or a short-term rental?

15 THE COURT: Objection, vague. Long to one is --

16 THE COURT: She indicated she couldn't recall.

17 I'll allow you to further inquire to see if there are some
18 things you might be able to narrow down.

19 But that was vague.

20 BY MR. HYTE:

21 Q. Did it seem like, ma'am, that Brandy was
22 getting a new vehicle every month or was it more
23 frequently then that?

24 A. More frequently.

25 Q. Typically when you sold -- correction -- when

1 you purchased and agreed to arrive at a location, did you
2 usually arrive first or was Brandy arriving first?

3 A. Usually I would try to be outside or be at the
4 location. Because she wasn't the type of person, you
5 know, to hang around long or wait on you or nothing. So I
6 would be ready for her to pull up.

7 Q. The kinds of drugs you purchased from Brandy
8 were sherm sticks?

9 A. Yes.

10 Q. That's essentially cannabis cigarettes dipped
11 in liquid PCP; is that accurate?

12 A. Yes.

13 Q. Do you know if Brandy sold any other kind of
14 drugs?

15 A. No.

16 THE COURT: You don't know or she did not.

17 THE WITNESS: I don't know.

18 BY MR. HYTE:

19 Q. You mentioned that the pool party that
20 occurred was a 3-day-long party?

21 A. Yes.

22 Q. Did you observe illicit drugs use at that
23 party?

24 A. No.

25 Q. At the time you met with the detectives in

1 this case, ma'am, you were, in fact, in custody, were you
2 not?

3 A. Yes.

4 Q. The detective made a point to tell you that
5 they had seen a lot of activity between your and Brandy's
6 phone, right?

7 A. Yes.

8 Q. That made you a little afraid; isn't that
9 right?

10 A. Yes. But when they told me I had -- they seen
11 my number in her phone numerous times and that's the
12 reason why they came to speak with me, I didn't have -- I
13 couldn't say anything about that, because I knew I had
14 been calling her.

15 Q. And you don't recall -- do you recall whether
16 your conversations with the detectives were recorded?

17 A. I don't.

18 Q. In addition you signed a consent-to-search
19 card for the police to allow them to search your phone; is
20 that right?

21 A. Yes.

22 Q. Do you know if Brandy had a boyfriend?

23 A. No, I don't.

24 Q. At one point in time Mr. Collins and you
25 discussed Brandy's death. Is that what you are saying?

1 A. No.

2 Q. You and Mr. Collins never discussed Brandy's
3 death?

4 A. No. He was just basically asking about her
5 whereabouts and saying that he had been looking for her.

6 Q. I'm sorry. I thought you said he had
7 mentioned there was some text messages that he needed to
8 --

9 A. No. He said they got into a confrontation --
10 like an argument in text messages right before she came up
11 missing apparently. He said he would probably have to
12 erase them because they would probably think he was a
13 suspect.

14 Q. Let me clarify then. He also told you that it
15 was because of his record and his background that he
16 thought he would be a suspect in this case; is that
17 right?

18 A. Yes.

19 Q. Did Mr. Collins -- would he call you
20 frequently on the phone?

21 A. Yes.

22 Q. And it's your belief the reason he's calling
23 you so much is because he had a crush on you?

24 MS. LUZAICH: Well, objection. She can't say
25 why he called her.

1 THE WITNESS: No. I --

2 MR. HYTE: If you know.

3 THE COURT: There's an objection. I need to
4 rule before you can answer.

5 Speculation. That's sustained.

6 BY MR. HYTE:

7 Q. Did Mr. Collins ever indicate to you that he
8 had romantic interest in you?

9 A. No.

10 Q. What was your phone number?

11 A. I can't remember.

12 Q. Would it refresh your recollection if I showed
13 you the consent-to-search form you signed?

14 A. Yes.

15 MR. HYTE: May I approach the witness, your
16 Honor.

17 THE COURT: You may.

18 MR. HYTE: The record reflect I'm showing the
19 witness consent-to-search card dated 9/18/08.

20 Ma'am, if you could review that silently to yourself
21 and let me know when you're done.

22 THE COURT: I appreciate that anything can be
23 used to refresh your recollection, but is this a document
24 that's going to be in evidence just to -- for the
25 record.

1 MR. HYTE: I don't know, yet. I'll have it
2 marked for identification if so, your Honor.

3 THE WITNESS: This is my signature.

4 MR. HYTE: Do you recognize your signature in
5 this document.

6 THE WITNESS: Yes.

7 MR. HYTE: Can you tell me what your phone
8 number was at the time.

9 You can refer to the document if you like.

10 THE WITNESS: Yes -- 503-6677.

11 MR. HYTE: Thank you.

12 THE COURT: Do you have an area code.

13 THE WITNESS: (702). It doesn't have an area
14 code on it.

15 THE COURT: Do you recall what the area code
16 was.

17 THE WITNESS: No.

18 MR. HYTE: May I just have this marked as
19 defense next in order -- proposed exhibit.

20 THE COURT: For the record, next in order is.

21 THE CLERK: A.

22 MR. HYTE: Move to admit, your Honor.

23 THE COURT: Any objection.

24 MS. LUZAICH: No objection.

25 THE COURT: Defense Exhibit A is admitted.

1 MR. HYTE: Nothing further.

2 THE COURT: The witness indicated that she may
3 have something further to add.

4 Is it in response to the question you were asked.

5 THE WITNESS: The two calls that he made while I
6 was on the phone with the mother and sister, because he
7 did call the mother 3 way -- Brandy's mother. Apparently
8 said that he had been looking for her.

9 THE COURT: Do you have any questions of this
10 witness with regard to any specifics about the phone
11 calls, Mr. HYTE.

12 MR. HYTE: I don't.

13 THE COURT: Okay.

14 I'll ask Ms. Luzaich if she has anything further.

15 MS. LUZAICH: I don't. Thank you.

16 THE COURT: All right.

17 Thank you, Ms. Williams. I don't believe counsel has
18 any further questions for you. Let me see by a show of
19 hands if any jurors have questions for this witness. I
20 see no questions for you from the jurors. You are
21 excused. Thank you, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Mind your step as you exit the
24 courtroom.

25 THE WITNESS: Thank you.

1 THE COURT: You may call your next witness
2 whenever you are ready.

3 MS. LUZAICH: Donita Beasley.

4 THE CLERK: You do solemnly swear the testimony
5 you are about to give in this action, shall be the truth,
6 the whole truth, and nothing but the truth, so help you
7 God.

8 THE WITNESS: I do.

9 THE CLERK: Be seated. State and spell your
10 name for the record.

11 THE WITNESS: Donita Beasley, D-O-N-I-T-A,
12 B-E-A-S-L-E-Y.

13 DIRECT EXAMINATION

14 BY MS. LUZAICH:

15 Q. May I call you Donita?

16 A. Yes.

17 Q. Do you know Lesean Collins?

18 A. Yes, I do.

19 Q. I'm going show you what's been admitted as
20 State's Exhibit 2. There will be a picture, I hope.

21 While we're waiting -- because it says wait -- you
22 said you know Lesean Collins. How -- State's Exhibit is
23 in front of you.

24 Is that Lesean Collins?

25 A. Yes.

1 Q. How long have you known --

2 THE COURT: Just to clarify. You said 2. It is
3 Exhibit 102.

4 MS. LUZAICH: Oh. Did I say 2. Really. I'm
5 sorry. Thank you.

6 THE COURT: That's all right. Just for the
7 record.

8 BY MS. LUZAICH:

9 Q. How long have you known Lesean Collins?

10 A. About 20 years.

11 Q. Are you and he friends?

12 A. Yes.

13 Q. Would you say you're good friends?

14 A. Yes.

15 Q. I'm so sorry. Could you speak up a little
16 bit.

17 A. Yes. We are friends.

18 Q. Everybody needs to hear you. You don't want
19 to be here, do you?

20 A. No.

21 Q. You're here because I issued a subpoena. And
22 a subpoena is an order from the court to attend, not an
23 invitation, correct?

24 A. Right.

25 Q. So you and Lesean Collins have been friends

1 for 20-some years.

2 Was there a point in time that you had a somewhat
3 romantic relationship?

4 A. Yes, I guess you could say.

5 Q. Was that a long time ago?

6 A. Yes.

7 Q. Are you aware that he has a significant other
8 who is the mother to several of his children?

9 A. Yes.

10 Q. Do you know that person's name?

11 A. Yes.

12 Q. What's her name?

13 A. Shalana.

14 Q. Do you know Shalana?

15 A. Yes.

16 Q. Did you know a lady named Brandy Payton?

17 A. I knew of her. And then I was formally
18 introduced to her by Lesean Collins.

19 Q. When you saw you knew of her, how did you know
20 of her?

21 A. Quite a few people in the streets that knew
22 her.

23 Q. Was Lesean Collins one of those people who
24 talked about Brandy to you?

25 A. Yes. As his sister.

1 Q. You said you were formally introduced to her
2 once. Do you know when that was?

3 A. I don't remember the exact date, but it was
4 before he was incarcerated, yes.

5 Q. Did you become aware that Brandy is
6 deceased?

7 A. Yes.

8 Q. How did you become aware Brandy was
9 deceased?

10 A. The first time I received a phone call from a
11 personal friend that informed me.

12 Q. A friend of yours?

13 A. Yes.

14 Q. Is that person also a friend of Lesean's?

15 A. Not to my knowledge. I don't know.

16 Q. How close in time to that phone call had you
17 personally been introduced to Brandy? Days? Weeks?
18 Months? Years?

19 A. A few days. I would say maybe 2, 3 days.

20 Q. Shortly before her death?

21 A. Yes.

22 Q. Can you describe for me the circumstances how
23 you were personally introduced to Brandy?

24 A. I don't remember everything, but Lesean
25 Collins told me that he needed to go meet his sister and

1 asked me if I would go take him. And I took him to a park
2 over on Gowen and Simmons.

3 Q. When you say you took him, you drove him?

4 A. I drove him.

5 Q. When you got to the park, then what?

6 A. He got out the car. She was walking up
7 towards my car, and he introduced us -- introduced me as
8 his friend and her as his sister.

9 Q. Did he kind of clarify what he meant by
10 sister?

11 A. No.

12 Q. Did you think that it was a biological
13 sister?

14 A. No. Because I knew that his mother didn't
15 have any daughters.

16 Q. So when Brandy came walking up to your car had
17 she -- could you tell if she came from another car?

18 A. Yes. She was parked behind me.

19 Q. When she came up to your car then what? Did
20 the 3 of you hang out and talk, or did something else
21 happen?

22 A. No. He just introduced us. Then him and her
23 walked off.

24 Q. When they walked off, where did they go?

25 A. Into the park.

1 Q. Did he and/or she come back?

2 A. Yes.

3 Q. Did they come back together or him by
4 himself?

5 A. They both came back together. He came back
6 towards my car. She went to her car.

7 Q. How long were they away from the car for?
8 About.

9 A. Maybe 10, 15 minutes.

10 Q. Did there come a time that you gave Lesean
11 Collins a cell phone?

12 A. Yes.

13 Q. When you gave him the phone was it a phone you
14 already had?

15 A. I believe so. It's been so long, but I
16 believe so.

17 Q. Do you have a bunch of kids?

18 A. I have 3 daughters.

19 Q. Do you and your kids all have numbers on one
20 bill?

21 A. Yeah, it was.

22 Q. Was it 2008 that you gave him the phone?

23 A. I don't know. I don't remember. Somewhere
24 around there.

25 Q. Was it one of those phones that your daughters

1 had had and didn't use anymore, so you gave it to him?

2 A. I believe it was.

3 Q. Do you recall what the phone number was?

4 A. No.

5 Q. Does (702) 884-1539 sound familiar?

6 A. No.

7 Q. Not at all?

8 A. No.

9 MS. LUZAICH: Court's indulgence.

10 THE COURT: Yes.

11 BY MS. LUZAICH:

12 Q. Was there only one phone given to him?

13 A. To my knowledge.

14 Q. The phone you gave him, did the bill remain in
15 your name?

16 A. I believe so.

17 Q. Would the subscriber information reflect the
18 name Donita Beasley?

19 A. Yes.

20 Q. Did you have -- after you learned about
21 Brandy's death did you also learn that police were
22 investigating?

23 A. Yes.

24 Q. Did some detectives talk to you, both on the
25 phone and in person?

1 A. Yes.

2 Q. Does Detective Mogg's name sound familiar?

3 A. No.

4 Q. Did the detective ask you about a cell
5 phone?

6 A. Yes.

7 Q. And did you tell him that you had given Lesean
8 the phone?

9 A. Yes, I did.

10 Q. And that the phone was still in your name?

11 A. Yes.

12 Q. Did he indicate that that's how he came to
13 you?

14 A. Yes.

15 Q. Did he show you a phone number?

16 MS. LUZAICH: May I approach.

17 THE COURT: You may.

18 THE WITNESS: I don't remember him showing me a
19 phone number.

20 MS. LUZAICH: Can I have this marked next in
21 order.

22 I apologize. I didn't hear you.

23 THE WITNESS: I don't remember him showing me a
24 phone number.

25 BY MS. LUZAICH:

1 Q. Did he ask you about a particular number?

2 A. I don't remember that. I just remember that
3 he did ask me about a phone and told me that the phone was
4 in my name and asked me did I give it to him. And I told
5 him, yes, I did.

6 MS. LUZAICH: May I approach the witness.

7 THE COURT: You may. What was it marked.

8 MS. LUZAICH: Showing it's marked as States's
9 Proposed Exhibit 104.

10 Does -- it may not look familiar, but do you see your
11 name on it? Or your information.

12 THE WITNESS: It's spelled incorrectly. Yes.

13 BY MS. LUZAICH:

14 Q. Does it still say Donita Beasley on there --
15 spelled incorrectly?

16 A. Yes.

17 Q. What is the phone number?

18 A. (702) 884-1539.

19 Q. Now does it sound more familiar?

20 A. No.

21 Q. Was this yours?

22 A. I gave him a phone. I don't know if that was
23 the phone, but I gave him a phone.

24 THE COURT: For the record, can you say what
25 you've had marked as State's 104.

1 MS. LUZAICH: Subscriber history for phone number
2 (702) 884-1539.

3 THE COURT: Thank you.

4 BY MS. LUZAICH:

5 Q. Do you remember what your e-mail was back
6 then?

7 A. I've had several. I've had marcusandre33, I
8 think at gmail.com. I've had gametypel@gmail.com, or
9 cox.net. Needaboottou@gmail.com.

10 Q. Did you have Donitabeasley@mybo?

11 A. No.

12 Q. That was never yours?

13 A. No. I would not have misspelled my name.

14 Q. Good point. Was your address 2001 East Lake
15 Lane, North Las Vegas?

16 A. 2001 -- no.

17 Q. Did the police contact the Defendant at your
18 house?

19 A. I was told they called him outside my house,
20 yes. Picked him up around -- almost around the corner
21 from my house.

22 MS. LUZAICH: Thank you. I have no more
23 questions.

24 THE COURT: Did you wish to admit State's
25 Exhibit 104.

1 MS. LUZAICH: Not at this point.

2 THE COURT: Mr. Schieck.

3 MR. SCHIECK Thank you.

4 CROSS-EXAMINATION

5 BY MR. SCHIECK:

6 Q. Just a few questions, Ms. Beasley.

7 You indicated that you met Brandy one time to your
8 recollection?

9 A. Physically met her, yes.

10 Q. That was at the park?

11 A. Yes.

12 Q. Were you able to observe Mr. Collins and
13 Ms. Payton as they conversed with each other at the
14 park?

15 A. Ye.

16 Q. Everything seemed fine?

17 A. It seemed fine, yeah.

18 Q. You didn't see an argument or anything of that
19 nature?

20 A. No.

21 Q. Mr. Collins would refer to Brandy as his
22 sister?

23 A. Right.

24 Q. Was it -- did that appear to be a term of
25 endearment, like a friendly, she's my sister type of

1 thing?

2 A. Like it was his sister.

3 Q. He never said anything negative about her to
4 you?

5 A. No.

6 Q. You knew she wasn't his biological sister?

7 A. Right.

8 Q. During the time you knew Mr. Collins, did he
9 have other people that he referred to as his sister?
10 Friends of his like?

11 A. I knew of another sister, yes.

12 Q. And from your knowledge of Mr. Collins when he
13 would refer to somebody as his sister, what type of -- how
14 would that come about?

15 A. I figured it was one of his brother's sisters
16 actually, on their dad's side. I never questioned it.

17 Q. Did you ever talk to Brandy over the phone?

18 A. I don't recall.

19 MR. SCHIECK Thank you. That's all I have,
20 your Honor.

21 THE COURT: Thank you.

22 Ms. Luzaich.

23 MS. LUZAICH: No further questions.

24 THE COURT: I want to ask if you if you can
25 return State's 102. Thank you.

1 By a show of hands from the jurors, do you have any
2 questions for this witness. Seeing none at this time, Ms.
3 Beasley, you are excused. Mind your step as you exit the
4 witness stand.

5 State's next witness.

6 MS. BLUTH: State calls Ben Grande.

7 THE CLERK: You do solemnly swear the testimony
8 you are about to give in this action, shall be the truth,
9 the whole truth, and nothing but the truth, so help you
10 God.

11 THE WITNESS: I do.

12 THE CLERK: Be seated. State and spell your
13 name for the record.

14 THE WITNESS: Benjamin Grande, G-R-A-N-D-E.

15 DIRECT EXAMINATION

16 BY MS. BLUTH:

17 Q. Good afternoon. I would like to turn your
18 attention to September 6th, 2008. On that day did you do
19 some 4-wheeling outside of Las Vegas?

20 A. Yes.

21 Q. Can you explain to the ladies and gentlemen of
22 the jury where exactly it was, the general area, you were
23 doing that?

24 A. We were at Lee Canyon, Mount Charleston at the
25 5,000 foot elevation marker. There's a dirt road that

1 goes off to the left. That's where we parked our trailer,
2 unloaded them, and took the ATVs up into the mountains.

3 MS. BLUTH: May I approach, your Honor.

4 THE COURT: You may.

5 BY MS. BLUTH:

6 Q. If I showed you an aerial map and pictures of
7 that area, would you recognize those?

8 A. Yes.

9 Q. Showing you what's marked, for purposes of
10 identification, State's Proposed 103 -- number 3 and
11 number 4. If you could look through those and let me know
12 when you're done, I'll have some questions for you.

13 A. Okay.

14 Q. Looking at those photos, do you recognize them
15 to be the area we were just discussing?

16 A. Yes.

17 Q. Is that a fair and accurate depiction of what
18 they looked liked on the day you were out there on
19 September 6th?

20 A. Yes.

21 MS. BLUTH: Your Honor, at this time I'd move to
22 admit into evidence State's Proposed 103 and 3 and 4.

23 THE COURT: Just to be clear. We're not talking
24 103 and 104, because we just had them before marked.
25 You're talking about sub-numbers.

1 A. MS. BLUTH: Sorry, no. So there's Exhibit 3
2 and Exhibit 4. Then there is 103.

3 THE COURT: That's why I wanted to clarify what
4 you were suggesting.

5 So we have three different State' Exhibit numbers --
6 3, 4, and 103.

7 Any objection.

8 MR. HYTE: None.

9 THE COURT: State's Exhibits 3, 4, and 103 are
10 admitted. You may publish.

11 MS. BLUTH: Thank you, your Honor.

12 BY MS. BLUTH:

13 Q. Mr. Grande, seated before you is a computer
14 screen. Can you see this picture on that?

15 A. Yes.

16 Q. If you could explain to the ladies and
17 gentlemen of the jury where Las Vegas is and where you
18 were, please.

19 If you want to mark on the screen, you can actually
20 use your finger.

21 A. This is Las Vegas -- coming out of Las Vegas
22 right here. We went up to Lee Canyon turn off right here.
23 At the 5,000 foot elevation marker there is a dirt road
24 that comes off of it. From that dirt road -- I don't know
25 if it's marked or not. It's just a dirt road that's off

1 of Lee Canyon Road.

2 Q. So in order to get to that area, do you have
3 to take a freeway for the majority of the way?

4 A. Yes.

5 Q. What area would that be? What freeway would
6 that be?

7 A. It's 95.

8 Q. When you pointed to the area, is that a State
9 Route that you pointed to where you turned on?

10 A. 156, that's the Lee Canyon highway.

11 Q. Showing you what's marked as State's Exhibit
12 3. Is that a better depiction of the area you're
13 describing?

14 A. Yes.

15 Q. The marked road that we see, would that be
16 State -- Route 156?

17 A. Yes.

18 Q. Then the dirt road coming, kind of cutting
19 through the middle of the picture, would that be the dirt
20 road you turned on?

21 A. Yes.

22 Q. Do you see the area where you parked your
23 vehicles?

24 A. Yes. The half moon area right here.

25 Q. Thank you.

1 On that day were you traveling with anybody or by
2 yourself?

3 A. I was traveling with a friend of mine.

4 Q. What's that person's name?

5 A. Don Davidson.

6 Q. What time did you and Mr. Davidson arrive to
7 the area that we've been discussing?

8 A. Probably about 6:30 in the morning.

9 Q. When you arrived there and parked in that
10 area, did you then take your ATVs for a ride?

11 A. Yeah. We unload them off the trailer. We
12 started them up and let them run for a few minutes. It's
13 kind of cool in the morning. Then we took up off the dirt
14 road -- the main dirt road right there.

15 Q. How long would you say you and Mr. Davidson
16 road your ATVs for that morning?

17 A. Probably 2-and-a-half, 3 hours.

18 Q. After you got done riding your ATVs, did you
19 return to the area that you previously marked on this
20 screen before you -- the white dot to that dirt area?

21 A. Yes.

22 Q. Once you and Mr. Davidson parked your ATVs,
23 did you smell something that was out of the ordinary to
24 you?

25 A. Yeah. We smelled something that was really

1 bad.

2 Q. Because of that, did you and Mr. Davidson
3 begin to look around?

4 A. I kind of looked up from my ATV and I seen a
5 ravine, and I seen something sticking out of it. So I go,
6 maybe somebody hit a horse or something and it went over
7 into the ravine and died. So he kind of just walked over
8 to check it out. That's when he discovered the body.

9 Q. After he discovered the body, did you also
10 look -- go over there?

11 A. I did walk over there. He said, oh, my God.
12 It's a body. I was, no. I walked over there and I seen
13 it. I told him to call 911. So he picked up a phone and
14 called 911.

15 Q. As you were approaching the body could you
16 explain to the ladies and gentlemen of the jury exactly
17 what it was you saw.

18 A. I saw a woman laying in a ditch with her arm
19 up, kind of like this. What I thought might have been a
20 hoof of a horse, it was her hand. She had a watch on.
21 She was kind of swelled up.

22 Q. Did you see any articles of clothing or
23 anything else on the way towards her body?

24 A. When I was standing looking at her I kind of
25 looked down and seen a sandal laying off to my left and a

1 sandal laying off to my right. I told my friend, I think
2 we are standing in the middle of a crime scene cause I can
3 see drag marks. It kind of scared us so we kind of backed
4 off.

5 We talked to the police and they said just wait
6 there until they got there.

7 Q. So after you and Mr. Davidson discovered the
8 body, did you then or did Mr. Davidson immediately call
9 911?

10 A. As soon as he discovered it and I went over
11 there we called right then and there.

12 Q. You previously discussed off the dirt road
13 there was a drop off or a ravine. Showing you what's been
14 marked as State's Exhibit 4, can you explain the area --
15 you can clear your screen.

16 May I approach the witness.

17 Explain to the ladies and gentlemen of the jury
18 where it was that you found that body in relation to where
19 the ravine is?

20 A. The ravine is right along here, if I
21 remember.

22 THE COURT: I'm not sure why the color
23 changed.

24 THE WITNESS: It's kind of like an angle. You
25 can't see it going in, but on the way out you can see the

1 ravine because of the angle of the lane.

2 BY MS. BLUTH:

3 Q. That's where the body was located?

4 A. Yes.

5 Q. Just to be clear. When you are on the road --
6 when I say the road, I mean State Route 156 -- can you see
7 that drop off area?

8 A. I don't believe so.

9 Q. When you're coming back from ATV'ing and
10 approaching that area, can you see it better?

11 A. Yeah.

12 MS. BLUTH: May I approach one more time.

13 THE COURT: You may.

14 BY MS. BLUTH:

15 Q. Showing you now what's marked for purposes of
16 identification, States Proposed 9 and State's Proposed 18.

17 Can you take a look at those photos and tell me if
18 you recognize them.

19 A. Yeah.

20 Q. Are these the photos of the body in the area
21 you found it on September 6th of 2008?

22 A. Yes, they are.

23 Q. Do they fairly and accurately depict what you
24 saw on that day in that area?

25 A. Yes.

1 MS. BLUTH: Your Honor, at this time I move into
2 evidence State's Proposed 9 and State's Proposed 18.

3 THE COURT: Any objection.

4 MR. HYTE: No.

5 THE COURT: State's 9 and State's 18 are
6 admitted.

7 MS. BLUTH: Thank you. Permission to publish,
8 your Honor.

9 THE COURT: You may.

10 BY MS. BLUTH:

11 Q. State's Proposed 9 -- excuse me. Now what's
12 in evidence as State's 9, if you could explain to the
13 ladies and gentlemen of the jury what we're looking at
14 here?

15 A. This is across from where our ATVs were. On
16 the sunlight you can only see part of her arm sticking up.
17 The angle of the picture it looks different. You can see
18 the slight ravine there.

19 Q. In this photo can you see what you had
20 described previously as a drag mark?

21 A. Just right where this angle is just part of
22 the shirt that's laying there. You can tell something was
23 drug (sic) along there.

24 Q. Now showing you State's 18. Is this what
25 was -- how you found the body on September 6th?

1 A. Yes, it is.

2 Q. After calling 911 -- after Mr. Davidson called
3 911, did the police respond?

4 A. Yes.

5 Q. Did you stay in the area and speak to
6 detectives?

7 A. Yes, we did.

8 Q. Did you give what is called a voluntary
9 statement?

10 A. Yes.

11 Q. Was there anyone out in that area during that
12 same time period as you were out there?

13 A. There was a couple in a jeep that went up the
14 dirt road before us. I seen them going up there. And
15 there was like two canyons. They went up the first
16 canyon, and we went up there behind them and talked to
17 them for a minute. Said hello.

18 Then we went to the next canyon. And I believe
19 they came out. And they were -- after we called 911, I
20 looked up and I seen their jeep on the highway.
21 Apparently they had seen her on the way up as well, and
22 they called 911 also.

23 Q. To your knowledge did they also stick around
24 and speak with --

25 A. They did.

1 MS. BLUTH: Thank you, your Honor. I'll pass
2 the witness.

3 THE COURT: Thank you.

4 Mr. Hyte.

5 MR. HYTE: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. HYTE:

8 Q. Good afternoon. You are familiar with this
9 area from deer hunting, right?

10 A. Yes.

11 Q. You guys had gone out there to scout the
12 area?

13 A. Yes. My nephew had a deer tag and I just got
14 my ATV, so we were also just kind of testing them out.

15 Q. And you describe the area where you were and
16 where the body was found as open desert, right?

17 A. Somewhat.

18 Q. What do you mean somewhat?

19 A. There is little ravines and ripples along the
20 land. It's not like open flat land.

21 Q. So in relation to where Highway 156 is to
22 where the body was found, how far off that highway would
23 you say the body was?

24 A. 10 yards.

25 Q. You guys kind of parked and begun your stuff

1 at the 5,000 feet elevation marker; is that right?

2 A. Just past it on the left side of the dirt road
3 there.

4 Q. How far back does Highway 159 go?

5 A. It goes all the way to Lee Canyon.

6 Q. The road continues up quite a ways?

7 A. Yes.

8 Q. You mentioned that that morning was cool so
9 you let your ATVs run a little bit; is that right?

10 A. Uh-huh.

11 Q. Do your ATV s have a heater function on them?
12 Is that why you do that?

13 A. No. Just to warm the engine up on them.

14 Q. Now, when you called -- or when your friend
15 Mr. Davidson called the police, about how long did it take
16 before they got there?

17 A. Maybe 20 minutes a park ranger showed up.

18 Q. When you were -- when you first saw the body,
19 you've indicated that you initially thought it was perhaps
20 a horse; is that right?

21 A. Yeah, because we were 30, 40, 50 feet away.
22 The sun was coming up at that angle, so we couldn't see
23 nothing directly with the sun shining down on us.

24 Q. Did you see -- you didn't see a blanket out
25 there, did you?

1 A. No.

2 Q. Did you see -- when you approached the body,
3 got closer, did you observe a metal pipe?

4 A. No.

5 MR. HYTE: Nothing further.

6 THE COURT: Ms. Bluth.

7 MS. BLUTH: Nothing, your Honor. Thank you.

8 THE COURT: May I see by a show of hands if any
9 jurors have questions for this witness. Seeing no hands,
10 Mr. Grande, you are excused. Thank you for your time.
11 Mind your step as you exit the witness stand.

12 May I see counsel at the bench.

13 (Discussion held at the bench.)

14 THE COURT: The State is going to call one
15 additional witness. We are anticipating breaking at 5:00.
16 However, we'll complete today and continue with that
17 witness tomorrow.

18 Ms. Bluth, your witness.

19 MS. BLUTH: The State calls Gloria Payton.

20 THE CLERK: You do solemnly swear the testimony
21 you are about to give in this action, shall be the truth,
22 the whole truth, and nothing but the truth, so help you
23 God.

24 THE WITNESS: I do.

25 THE CLERK: Be seated. State and spell your

1 name for the record.

2 THE WITNESS: Gloria Payton, P-A-Y-T-O-N.

3 THE COURT: You may proceed, Ms. Bluth.

4 DIRECT EXAMINATION

5 BY MS. BLUTH:

6 Q. Ms. Payton, we just called you Gloria, but you
7 go by a different name?

8 A. Yes, Sheri.

9 Q. May I call you Sheri throughout the
10 testimony?

11 A. Yes.

12 Q. Thank you.

13 Did you know an individual by the name of Brandy
14 Payton.

15 A. Yes.

16 Q. How did you know her?

17 A. My older sister.

18 Q. What was the age difference between the two of
19 you?

20 A. Four years.

21 Q. If I showed you a picture of your sister,
22 would you recognize her?

23 A. Of course.

24 MS. BLUTH: Probably a stupid question. May I
25 approach, your Honor.

1 THE COURT: You may.

2 BY MS. BLUTH:

3 Q. Showing you what's been marked for purposes of
4 identification, State's Proposed 1. Do you recognize that
5 individual?

6 A. Yes.

7 Q. Who is that?

8 A. My sister.

9 Q. Is that a fair and accurate depiction of your
10 sister and what she looked like when she was alive?

11 A. Yes.

12 MS. BLUTH: Your Honor, at this time the State
13 would move into evidence State's Proposed Exhibit 1.

14 THE COURT: Any objection.

15 MR. SCHIECK: Is there a time --

16 BY MS. BLUTH:

17 Q. Just a follow up. Do you know about what time
18 frame this picture was taken in?

19 A. The afternoon going into the evening.

20 Q. I apologize You don't have to be specific. I
21 meant the year of 2008 or around that.

22 A. It was within the last year.

23 MS. BLUTH: At this time, your Honor, I move
24 into evidence State's Proposed 1.

25 THE COURT: Any objection.

1 MR. SCHIECK: No objection, your Honor.

2 THE COURT: State's 1 will be admitted. You may
3 publish.

4 MS. BLUTH: Thank you.

5 BY MS. BLUTH:

6 Q. Sheri, just so you know, I may have questions
7 in the future down the line, but there's a computer in
8 front of you so whenever I'm referring to a picture up
9 here it should be shown on the computer screen there.
10 Okay.

11 A. Okay.

12 Q. I would like to turn your attention to
13 September 2008. During that time period, were you and
14 your sister living near one another?

15 A. Yes, we were.

16 Q. When I say near one another, how close were
17 you guys living?

18 A. We lived next door to each other.

19 Q. How often would you have contact with one
20 another?

21 A. Every day.

22 Q. When I say contact, I mean would you actually
23 physically see one another every day?

24 A. Yes.

25 Q. Would you also speak to each other on the

1 phone?

2 A. Yes.

3 Q. Or text?

4 A. Yes.

5 Q. Now I would like to turn your attention
6 specifically to September 2nd of 2008. On that day what
7 kind of contact did you have with your sister?

8 A. I spoke with her earlier about the kid's
9 cheerleading practice. She said she was going --

10 MR. SCHIECK Objection. Could we have
11 foundation of when this conversation took place, your
12 Honor.

13 THE COURT: I thought we had the foundation, but
14 you may clarify, Ms. Bluth.

15 BY MS. BLUTH:

16 Q. When you say earlier, you're talking about
17 earlier on September 2nd, 2008?

18 A. Yes.

19 Q. Do you know what time it was? Was it morning
20 hours? Afternoon hours that you spoke to your sister?

21 A. It was the morning.

22 Q. When you spoke to your sister was this via
23 telephone?

24 A. Yes.

25 Q. So I apologize. So you had spoken to her

1 about cheerleading practice?

2 A. Yes.

3 Q. What was specifically said about cheerleading
4 practice?

5 A. She was going to meet me there. Cause she
6 would meet me there on a regular to see the girls
7 practice.

8 Q. Was cheerleading practice that evening?

9 A. Yes, it what.

10 .

11 Q. What time was cheerleading practice supposed
12 to be at?

13 A. I usually started a 6:00.

14 Q. Was it your understanding your sister would be
15 there that evening?

16 A. Yes.

17 Q. Did you speak to her at any other time
18 throughout the day?

19 A. Yes.

20 Q. When was that?

21 A. When I got off work. I believe it was after
22 1:00. I needed something Faxed to her fax machine, so I
23 had spoke with her to ask her what was her fax number so I
24 could send the fax to her house.

25 Q. You stated you got off work about 1:00

1 o'clock?

2 A. Yes.

3 Q. So this telephone conversation would have
4 happened some time after 1:00 o'clock?

5 A. Yes.

6 Q. How many times did you speak with her about
7 this fax issue?

8 A. I believe it was once or maybe twice.

9 Q. When you were speaking to her about this, was
10 she able to speak to you about it or was she in a hurry?

11 A. She rushed me off the phone. She said she was
12 busy on the other line. To call her back.

13 Q. Did she tell you to call her back or did she
14 say she would call you back?

15 A. I believe she was like, I'm on the other line.
16 I'll call you back.

17 Q. You think that that conversation happened
18 between 1:00 and 2:00 in the afternoon?

19 A. Yes.

20 Q. Did your sister ever call you back after that
21 last time you spoke with her?

22 A. No.

23 Q. Did she show you to the cheerleading practice
24 that evening?

25 A. No.

1 Q. Did you attempt to contact her many times on
2 September 2nd?

3 A. Yes.

4 Q. How many cell phones -- first of all, did your
5 sister have a cell phone during that time period?

6 A. Yes, she did.

7 Q. Did she have one or more than one?

8 A. She had 2 or 3.

9 Q. When you attempted to contact her, what would
10 happen?

11 A. She always answered, but when I tried to call
12 her, because we switched parks, she didn't answer.

13 Q. When you say she didn't answer, did the phone
14 ring, and ring, and ring, or did it go straight to
15 voicemail?

16 A. It went straight to voicemail.

17 Q. Did you ever hear or see your sister again
18 alive?

19 A. No.

20 Q. When your sister did not show up for the
21 cheerleading practice, did you start to become
22 concerned?

23 A. Yes.

24 Q. When her phones were shut off and went
25 straight to voicemail, did you start to become pretty

1 concerned?

2 A. Yes.

3 Q. What attempts did you make to contact her,
4 either in person -- you already talked about on the phone.
5 What attempts did you make to kind of see her in person?

6 A. We lived next door to each other so when she
7 didn't come home on the 2nd, on the 3rd I went to the
8 police station to try and make a missing person's
9 report.

10 Q. Before we get into you making a missing
11 person's report, when you would call your sister, how --
12 let's say she didn't answer. How long would it take her
13 to normally call you back?

14 A. She would call me back right away.

15 Q. Did you ever go through a 24-hour period
16 without seeing or hearing from your sister?

17 A. No.

18 Q. So on September 3rd, 2008, when you still
19 haven't had any contact with your sister, how concerned
20 are you at that point?

21 A. Super.

22 Q. And you stated that you went to make a missing
23 person's report. Do you remember what day that was on?

24 A. I believe it was the 3rd.

25 Q. And when you went to make the missing person's

1 report, where was it you tried to do that?

2 A. The police station on Washburn.

3 Q. That's in North Las Vegas?

4 A. Yes.

5 Q. When you went to make that report, did you go
6 alone or did someone go with you?

7 A. I believe Rufus and my mom went.

8 Q. When you say Rufus, who is Rufus?

9 A. Brandy's boyfriend at the time.

10 Q. Was he helping you and your mom trying to find
11 Brandy?

12 A. Yes.

13 Q. When you went to the North Las Vegas Police
14 Department to file that missing person's report, what kind
15 of response did you get from them?

16 A. They basically said because she was an adult
17 she wasn't really missing, or they would need some sort of
18 evidence to say, like, that she was truly missing.

19 Because an adult can -- if she wanted, she could
20 just leave and not have to have any reason.

21 Q. So were you -- did they allow you to make a
22 missing person's report that day?

23 A. No.

24 Q. Now, after you left the police department and
25 you were unable to make that missing person's report, on

1 the following day did you go to Avis rental car?

2 A. Yes.

3 Q. Why did you go to Avis rental car?

4 A. Because I thought if I could show that she
5 didn't turn in her rental car, and it was due, that they
6 would let me file a missing person's report.

7 Q. Was it common for Brandy to have a rental
8 car?

9 A. Yes.

10 Q. How long had she been using rental cars as a
11 mode of transportation?

12 A. Probably about a year.

13 Q. To your knowledge was she always on time with
14 dropping her rental cars off?

15 A. Yeah, always on time.

16 Q. Do you have any recollection of that specific
17 vehicle she was renting during that time period?

18 A. She had a beige Sonata.

19 Q. When you went to Avis, did they notify you
20 whether or not the car had been turned in?

21 MR. SCHIECK Objection, calls for hearsay, your
22 Honor.

23 THE COURT: Overruled.

24 THE WITNESS: No. They told me that they
25 couldn't -- basically they had to wait like up to 30 days

1 or 45 days to even look for the car. But they told me it
2 hadn't been turned in.

3 BY MS. BLUTH:

4 Q. To your knowledge, was it due on that day that
5 you had gone to see them?

6 A. Yes. They told me it was due.

7 MR. SCHIECK Objection, hearsay, your Honor,
8 what they told her.

9 THE COURT: Under that circumstance, it does
10 appear to be offered for the truth. So I would sustain
11 that.

12 BY MS. BLUTH:

13 Q. Were you with Brandy when she rented that
14 vehicle?

15 A. No, I don't think so. Not for sure. I don't
16 think so. She's rented so many though.

17 Q. Now, after leaving Avis rental car or even
18 before leaving Avis rental car, did you ever go to
19 Brandy's home to see if maybe she packed bags or if
20 anything was missing?

21 A. Yes. I went the same night on the 2nd.

22 Q. Did you notice if any of her suitcases were
23 missing or any of her clothes?

24 A. Nothing was missing.

25 Q. After going to Avis rental car and to Brandy's

1 house, did you go back to North Las Vegas Police
2 Department and tell them about your conversation at Avis
3 and what you found or didn't find at Brandy's home?

4 A. Yes.

5 Q. On that day, did you actually -- did they
6 allow you to make a missing person's report?

7 A. They did let me.

8 Q. During the time you made that report, did you
9 give the police -- during the missing person's report, did
10 you give the make, model, and license plate number of the
11 Hyundai Sonata.

12 A. Yes.

13 Q. Do you remember that license plate off the top
14 of your head?

15 MR. SCHIECK Objection, your Honor. That's
16 based on hearsay from Avis, I believe.

17 THE COURT: At this point she didn't answer
18 whether she recalls the number.

19 THE WITNESS: At the time I knew the license
20 plate, but I couldn't remember it now.

21 BY MS. BLUTH:

22 Q. In regard to when you filled out the missing
23 person's reported, did you list the make, model, and
24 license plate number on the vehicle?

25 A. Yes, I did.

1 Q. Would looking at a copy of your missing
2 person's report help refresh your recollection as to the
3 license plate number?

4 A. Yes, it would.

5 THE COURT: First ask how she would know the
6 plate number.

7 BY MS. BLUTH:

8 Q. How was it that you knew the plate number
9 during that time period?

10 A. Because we lived next door to each other. Her
11 car parked next to mine. I would pull in behind her, so I
12 would see it.

13 Q. So you personally saw it and remembered it?

14 A. Yes.

15 MS. BLUTH: At this time, may I approach, your
16 Honor.

17 THE COURT: You may.

18 BY MS. BLUTH:

19 Q. Go ahead and read this to yourself. Not out
20 loud. And just let me know when you're done reading, I'll
21 have a question for you.

22 MR. SCHIECK Are we refreshing recollection on
23 the license plate number or on the entire report.

24 MS. BLUTH: I pointed to the license plate and
25 asked her to read it to herself.

1 THE WITNESS: Yes.

2 BY MS. BLUTH:

3 Q. After looking at that, does that help refresh
4 your recollection as to the license plate number that you
5 gave the police in the missing person's report?

6 A. Yes.

7 Q. What was the license plate number?

8 A. 428425.

9 Q. When you say 425, is it possible that those
10 are letters?

11 A. It could be an S -- could be UVS. In this
12 report I was all over the place.

13 Q. So it could be 428U --

14 A. Z --

15 Q. UZ5?

16 A. Or UZS.

17 Q. Okay. Thank you.

18 When you went to North Las Vegas Police Department
19 on the 5th for the second time, was your mom and Rufus
20 also with you at that time?

21 A. Yes.

22 Q. Turning your attention to the following day,
23 September 6th, 2008, had you had contact with the
24 coroner's officer -- and when I say contact, meaning you
25 calling them to see if anybody had found your sister?

1 A. Yes.

2 Q. How many times do you think you called them?

3 A. I called them maybe about 4 to 5 times a
4 day.

5 Q. On September 6th of 2008 when you called, were
6 you notified that someone matching that description, their
7 body had come in?

8 A. The first time they said it wasn't a match.
9 When I called -- because they went off of tattoos. They
10 had misread one of her tattoos.

11 The second time I called when I was at work, and I
12 asked if I can give a description of her clothing. Then
13 they said based on the clothing it was her.

14 Q. After speaking with them did you and members
15 of your family go down to the coroner's office?

16 A. Yes.

17 Q. Did you identify the body of your sister,
18 Brandy Payton?

19 A. Yes.

20 Q. After you identified the body of your sister,
21 did you also meet with detectives from the Las Vegas
22 Metropolitan Police Department?

23 A. Yes.

24 Q. When you met with detectives, did you give
25 them names and numbers of people that Brandy knew, like

1 friends and family members?

2 A. Yes.

3 Q. Did you also provide them with Brandy's cell
4 phone numbers?

5 A. Yes.

6 Q. Do remember those numbers off the top of your
7 head?

8 A. Not off the top of my head. I know one was a
9 323 number and one was a 702 number.

10 Q. Did you also provide detectives with the name
11 and number of an individual by the name of Lesean
12 Collins?

13 A. Yes.

14 Q. If I showed you a picture of Mr. Collins,
15 would you recognize him?

16 A. Yes.

17 Q. I'm showing you what's already admitted as
18 State's 102.

19 Do you recognize that individual in the photo?

20 A. Yes.

21 Q. Who is that?

22 A. Lesean Collins.

23 Q. This is the Lesean Collins you provided the
24 detectives with his name and cell number?

25 A. Yes.

1 Q. How was it you had his cell number?

2 A. My mom had gave him my cell phone number. He
3 went to my mom's job.

4 Q. So you -- had you received calls from him so
5 you knew his number?

6 A. Yes.

7 Q. Do you remember that number off the top of
8 your head at this point in time?

9 A. I don't remember the number, no.

10 MS. BLUTH: Your Honor, before get into the
11 next stage of questioning, this would probably be a good
12 place --

13 THE COURT: So at this time we are going to
14 recess for the day. We'll return tomorrow here and begin
15 promptly at 1:30. Please be available to us as jurors at
16 that time.

17 Of course, as you know, I believe I explained last
18 week there occasionally are times when there are things we
19 have to address outside the jurors' presence. There were
20 a few matters today that needed addressing longer than we
21 anticipated. I'm not anticipating that occurring
22 tomorrow, but we still need you present when we are ready
23 to proceed. And we always meet prior to the time we've
24 asked you to meet in hopes that anything we need to
25 address, we can do so, so that we can start promptly at

1 1:30.

2 JURY ADMONITION

3 During the recess, ladies and gentlemen, you are
4 admonished not to converse among yourselves or with anyone
5 else, including, without limitation, the lawyers, parties
6 and witnesses, on any subject connected with this trial,
7 or any other case referred to during it, or read, watch,
8 or listen to any report of or commentary on the trial, or
9 any person connected with this trial, or any such other
10 case by any medium of information including, without
11 limitation, newspapers, television, internet or radio.

12 You are further admonished not to form or express any
13 opinion on any subject connected with this trial until the
14 case is finally submitted to you.

15 Enjoy your overnight recess. Leave your note pads
16 and pens behind. We'll see you tomorrow.

17 (Jury is excused for the evening.)

18 THE COURT: I ask folks to please wait before
19 they exit the courtroom, to allow the jurors an
20 opportunity to get to the elevator and leave.

21 Again, the last thing we want to have concern
22 with in this trial is that anybody has any contact with
23 the jurors. So to avoid that, if you can please wait a
24 few moments, we'd appreciate it.

25 Ms. Payton, you may step down.

1 See you back here tomorrow at 1:30. Thank you.

2 Anything outside the jury's presence we need to
3 address before we adjourn for the night.

4 MS. BLUTH: Not from the State, your Honor.

5 THE COURT: I'm not sure what will occur with
6 regard to the communications, regarding medication for Mr.
7 Collins, but I trust you will reach out to him and/or we
8 will see him back here tomorrow.

9 I did ask the COs to return him at 1:15. We'll
10 return at 1:15. I don't anticipate any problems with my
11 being here at 1:15. As we experienced today, we'll
12 address any matters we need to outside the jurors'
13 presence at that time. If there are any other issues or
14 things you need to workout or can workout with the
15 exhibits, we'd appreciate it. Otherwise, perhaps tomorrow
16 if there's pictures that we need to address, we can do so.

17 MS. BLUTH: Yes, your Honor.

18 THE COURT: Thank you all.

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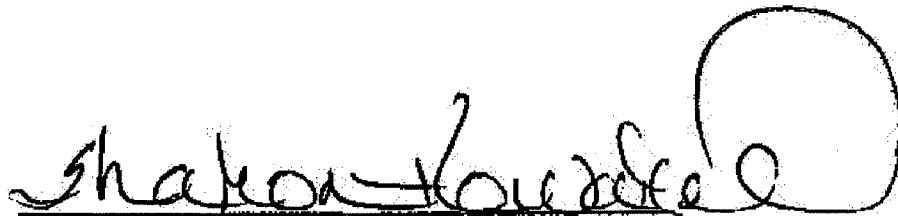
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745