

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS

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May 16 2016 09:03 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 69269

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

**APPELLANT'S APPENDIX
VOLUME 8 OF 11**

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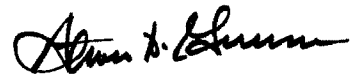
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DEPT. NO. 25

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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: WEDNESDAY, AUGUST 5, 2015

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

1 APPEARANCES:

2 For the State:

ELISSA LUZAICH, ESQ.

3 JACQUELINE BLUTH, ESQ.

4
5
6 For the Defendant:

DAVID SCHIECK, ESQ.

7 MICHAEL HYTE, ESQ.

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1 LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 5, 2015

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

3 * * * * *

4
5 THE COURT: Good afternoon.

6 We're reconvening in the trial of State of
7 Nevada vs. Lesean Collins. I'll note the presence of
8 counsel for the State, counsel for the defense, and
9 Mr. Collins present in dress clothes.

10 I understand there are some -- the next witness to be
11 called is the medical examiner. I understand that there is
12 a discussion we need to have and a determination that
13 needs to be made regarding certain autopsy photos. Is
14 that correct.

15 MR. SCHIECK: Correct.

16 MS. LUZAICH: Correct, your Honor.

17 MR. SCHIECK: You have them.

18 MS. LUZAICH: Your Honor, this morning I brought
19 with me for this afternoon and showed Mr. Schieck and Mr.
20 Hyte State's Proposed Exhibits 111 through 119. These are
21 photographs that I intend to use with Dr. Simms, the
22 medical examiner, to illuminate his testimony. They are
23 necessary.

24 If I could show the court on the Elmo through them.
25 State's Proposed Exhibit 111 is a photograph of the

1 decedent, Brandy Payton's face. It is decomposed, but
2 there is a blue clothing item. We know it as a shirt that
3 is covering her neck and a little below her nose down to
4 her chin. That is how the body was found.

5 There is no photograph from the scene out in the
6 desert that depicts this. There is a photograph that
7 shows from a different angle far away, but you can't see
8 in any of those photographs that it's covering part of her
9 face.

10 State's Proposed Exhibits 112, which is the front of
11 Ms. Payton's body. And State's Proposed Exhibit 113,
12 which is the back of her body. They are somewhat
13 gruesome, but in this situation, the cause and manner of
14 death are both undetermined due to the severe nature of
15 the decomposition and Dr. Simms needs to be able to
16 show -- we need to be able to show how severe the
17 decomposition is to explain why he was not able to
18 determine a cause or manner of death.

19 State's Proposed Exhibit 114 is the right inguinal
20 area, which is right around where the thigh meets the hip.
21 It shows the activity of the animals and/or insects eating
22 away at the body, further making it impossible to show
23 cause and manner of death.

24 I don't think State's Proposed Exhibits 115, -16, and
25 -17 are issues. Those are the fingernails. Is that

1 correct.

2 MR. SCHIECK: Correct.

3 MS. LUZAICH: Then State's Proposed Exhibit 118
4 is the head. There are two injuries on it. I put both of
5 those injuries in one photo rather than showing two.

6 The one to the right is a quasi stellate injury. To
7 the left of the photo is a separate but punctate wound.

8 Then State's proposed Exhibit 119 there is one wound,
9 but it's the other side of the head. There isn't one
10 photograph that shows all 3, so I literally used the
11 minimum number of photographs possible to show what I
12 needed to show.

13 THE COURT: Thank you, Ms. Luzaich.

14 Mr. Schieck.

15 MR. SCHIECK: Your Honor, our objection, after
16 speaking with the district attorney's office on the
17 photographs they intend to introduce, is as to photograph
18 No. 111, which is the up close photograph of the face at
19 the coroner's office which they offer to show the
20 condition in which the body was found.

21 Unfortunately that's the condition of the body when
22 it reached the coroner's office. That's not the condition
23 of it at the scene.

24 There are photographs, specifically No. 33 or Exhibit
25 33 which does show she has the blue material around her --

1 THE COURT: Can I see 33 for comparison sake.

2 MR. SCHIECK: It shows that around her face
3 area, your Honor, but it's not -- I suppose not at the
4 angle -- you want me to display it or give it to you.

5 MS. LUZAICH: I'll give you both of them so you
6 can look at them together.

7 MR. SCHIECK: If the State wanted to offer a
8 photograph of her face as it appears at the scene, the
9 crime scene analyst should have taken a photograph of the
10 face from the front at the scene. The fact that the crime
11 scene analyst didn't do that does not then give us leave to
12 put in the way she looked when she arrived at the
13 coroner's office as they opened up the bag she was
14 transported in, your Honor.

15 The coroner can describe it very adequately I feel,
16 but a close up, facial photograph like that the
17 prejudicial impact is going to be much greater than
18 whatever limited evidentiary value there is to where that
19 blue material was on her face.

20 So we'd object to 111 on those grounds.

21 MS. LUZAICH: Can I just respond.

22 THE COURT: You may.

23 MS. LUZAICH: I should have continue on.

24 The second witness is going to be Detective Mogg, who
25 was out at the scene. And he will also look at that photo

1 and say that that is how she looked when she was at the
2 scene as well. He just was not aware that there had not
3 been a photograph taken that depicted that.

4 THE COURT: The court is always mindful in these
5 circumstances of the gruesomeness of these types of photos
6 and how the potential for the prejudice outweighs the
7 relevance. I do find, however, that each of these,
8 inclusive of 111 are the minimal photos necessary for the
9 description to be complete as to the scene and the
10 circumstances of the autopsy determination that needed to
11 be made by the doctor, and the inability to make those
12 determinations. And the testimony will coincide as to
13 picture 111 specifically. I do not find that the
14 relevancy is substantially outweighed by the potential for
15 prejudice. Therefore, I will allow Exhibit 111 with 3
16 others that have been offered.

17 MS. LUZAICH: Can I approach and come get
18 that.

19 THE COURT: Please.

20 You have 111 here. This is I believe 33. So the
21 court will allow the photo to be displayed.

22 Of course the court will just remind counsel that
23 when we are complete utilizing any exhibit, we'd ask that
24 the exhibit be removed. I did notice a couple of the
25 exhibits were left yesterday as we were finishing

1 testimony when we no longer needed them. It happens. But
2 in these circumstances let's be mindful of removing them
3 as soon as we are complete.

4 Any other matters we need to address before the
5 jurors are present.

6 I do appreciate the circumstances as well of the
7 folks present and the difficulty for all in viewing
8 difficult photos. But I do ask, as has already occurred
9 in this discussion, that any verbal responses be not made
10 in terms of anything with regard to the pictures.

11 I would note during the opening statements there were
12 some understandable but again issues that we want to
13 preclude here are any outbursts, any vocalizations or
14 response to the photos while the jurors are present,
15 please.

16 Just again our of an abundance of caution to ensure
17 there is nothing that keeps this trial from being able to
18 reach its appropriate conclusion.

19 Anything further before we bring the jurors
20 forward.

21 MR. SCHIECK: No, your Honor.

22 THE COURT: When you are ready.

23 MS. LUZAICH: I would move for admission now, if
24 defense wanted to.

25 THE COURT: We'll make a record at the time they

1 are present.

2 MR. SCHIECK: That would be better to have.

3 THE COURT: Take your seats, ladies and
4 gentlemen. Make sure your cell phones are silenced.

5 I'd ask the State to call their first witness for
6 today.

7 MS. LUZAICH: Thank you.

8 The State calls Dr. Larry Simms.

9 THE COURT: Please, come to the stand.

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

14 THE WITNESS: I do.

15 THE CLERK: Be seated. State and spell your
16 name for the record.

17 THE WITNESS: Larry Simms, S-I-M-M-S.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. LUZAICH:

21 Q. Good afternoon, sir. Can you describe for the
22 jury how are you employed?

23 A. I'm a forensic pathologist for Clark County
24 Coroner's office.

25 Q. How long have you been so employed?

1 A. I started doing forensics in '91.

2 Q. How long have you been with the Clark County
3 Medical Examiner's office?

4 A. I'm finishing my 17th year in just about 3
5 weeks.

6 Q. Can you describe for the jury what training
7 and educational experience you have that qualifies you to
8 do what you do?

9 A. Well, I'm a licensed physician. I have been
10 in medicine since '79. I was a general petitioner before
11 I went into pathology. I did a pathology residency at
12 Michigan State University. I did a fellowship in forensic
13 pathology at Cook County Medical Examiner's in Chicago.

14 I'm board certified in anatomic pathology, clinical
15 pathology, and forensic pathology by the American Board of
16 Pathology. I've done about 10,000 cases.

17 Q. Can you describe for us what does a forensic
18 pathologist do?

19 A. Any case that comes under the jurisdiction of
20 the coroner's office can be assigned -- they can be
21 assigned to a forensic pathologist to ascertain the cause
22 and manner of death.

23 Q. How do you go about ascertaining the cause and
24 manner of death.

25 A. You get a report on the investigation or

1 circumstances of the death. How the body was found, et
2 cetera.

3 Then I do an autopsy. And we can do various
4 testing after the autopsy and hopefully come to a
5 conclusion of what caused the death.

6 Q. When you say you get a report of
7 investigation, who generates that report to give to you?

8 A. A coroner investigator.

9 Q. So when there is a deceased person, does a
10 coroner's investigator always go out to the scene?

11 A. 99 percent of the time.

12 Q. They work in your office?

13 A. Yes.

14 Q. They generate a written report?

15 A. Yes.

16 Q. Do they do that by interviewing people or do
17 they take like a police officer's word for it?

18 A. They can do either/or, or just one or both.

19 Q. But they go out to the scene and see where the
20 body is located and the circumstances under which they are
21 located?

22 A. Correct.

23 Q. When you say that you review the report from
24 the coroner's investigator, do you do that at or near the
25 time you are going to do an autopsy?

1 A. That's the report I look at just before I'm
2 going to do the autopsy, and then if there are other
3 investigative reports that are going to be generated by
4 other agencies I try to get those too.

5 Q. Before you do the autopsy?

6 A. No. I didn't make that clear. Before I
7 conclude the cause and manner of death.

8 Q. Why don't you look at those other reports
9 before you conduct the autopsy?

10 A. Most of the time they are not even
11 available.

12 Q. Do you talk to any police officers about the
13 situation before you conduct your autopsy?

14 A. No. I talk with them after I've conducted the
15 autopsy.

16 Q. Why do you do it that way?

17 A. I think that it minimizing any kind of -- to
18 be perfectly frank -- any pressure, bias they may have
19 about the case. It allows me to come to a conclusion as
20 objectively as I can.

21 Q. Based on what you are seeing in front of
22 you?

23 A. Correct.

24 Q. I'll direct your attention specifically to
25 September 7th of 2008. Did you perform an autopsy on an

1 individual known to you as Brandy Payton under autopsy No.
2 08-07158?

3 A. Yes.

4 Q. Can you describe the condition of Ms. Payton
5 when you first observed her?

6 A. She was unfortunately severely decomposed.
7 There was insect activity on the body, which caused some
8 areas of tissue loss.

9 Q. When you say severely decomposed, can you
10 describe for us what you mean by that?

11 A. Decomposition I grade it as mild, moderate,
12 severe, or skeletonized. She was severe.

13 Q. So that's pretty far along?

14 A. Yes.

15 Q. And what did you observe about her body that
16 caused you to realize that she was severely decomposed?

17 A. Well, she had large areas of skin slippage
18 where the skin was slipping off. Her body was completely
19 discolored. There was no normal skin coloration that a
20 person would have. Hers was very discolored. There was a
21 lot of insect activity also.

22 MS. LUZAICH: Approach the witness.

23 THE COURT: You may.

24 MS. LUZAICH: Showing you what's marked as
25 State's Proposed Exhibits 111, 112, 113, and 114 -- which

1 for the record have been shown to counsel.

2 Do you recognize them.

3 THE WITNESS: They are pictures of the
4 decedent.

5 BY MS. LUZAICH:

6 Q. These are pictures of the decedent that were
7 taken at or near the time of the autopsy?

8 A. Yes.

9 Q. Do they fairly and accurately depict how Ms.
10 Payton looked at the time you saw her?

11 A. Yes.

12 Q. Would they aid in helping your testimony for
13 the jury?

14 A. I believe so, yes.

15 MS. LUZAICH: Move into evidence.

16 MR. SCHIECK: Subject to your previous
17 objection, your Honor.

18 THE COURT: The court has overruled the previous
19 objection. State's 111, 112, 113, 114 may be published.

20 MS. LUZAICH: Admitted and published.

21 THE COURT: Whatever order you wish to.

22 BY MS. LUZAICH:

23 Q. Dr. Simms, are these fairly gruesome so
24 everybody is aware?

25 A. I'm sure they're not things that people

1 normally come in contact with, so they wouldn't be
2 pleasant to watch.

3 Q. Thank you?

4 Showing you what's admitted as State's Exhibit 111.
5 Tell me what we are looking at?

6 A. This is the decedent's face. This is the top
7 of her head here. There is a cloth that's loosely around
8 the neck area. You can see the eye areas there.

9 Q. When you mentioned earlier that she was
10 severely decomposed what in this photograph do we see that
11 demonstrates that?

12 A. Well, you can see the face is distorted due to
13 the puffiness of the face. There is no normal coloration.
14 There's lots of different colorations.

15 I don't know if you can see the eyes clearly, but
16 there is insect activity on the eyes.

17 Q. Showing you what's been admitted as State's
18 Exhibit 112. What do we see here?

19 A. This is the head here. This is the torso
20 here. You can see a belt here. You can see that her body
21 is completely distorted. Her abdomen is bloated. Many
22 different colors. There's areas of skin slipping in
23 multiple areas. There is also kind of a paste formation
24 on the skin which is called adipocere.

25 Q. State's Exhibit 113 -- sorry. 112, is that

1 the top of her body?

2 A. Yes.

3 Q. Exhibit 113, what do we see here?

4 A. This is from the back showing all the way from
5 her hands down past her buttock.

6 Q. Can you point out for us the things you
7 observed that caused you to realize the body was
8 decomposed?

9 A. There is a green hue. There is bloating of
10 the body. There is a lot of sloughing of the skin
11 surfaces that have been off to the side, off of the body.
12 Then there was insect activity.

13 Q. Specifically State's Exhibit 114. Can you let
14 us know what part of the body we're looking at here?

15 A. I believe that this is the leg here.

16 Q. What do we see above the leg?

17 A. This is the area of skin slippage where the
18 skin is sloughed off.

19 Q. You mentioned that this was severe
20 decomposition. Had you learned that Ms. Payton's body had
21 been in the desert for a period of time?

22 A. Yes.

23 Q. Could you tell by looking at her body how long
24 she had been decomposing or out in the desert?

25 A. All I can do is take that body and put it in

1 my own personal experience. I have seen bodies that are
2 that decomposed when they are exposed to high heat of 100
3 degrees. Takes 24 hours. So that's the minimum
4 probably.

5 Then as far as maximum, could be days.

6 Q. If you were to learn that she was last in
7 contact with somebody the mid-afternoon of September 2nd,
8 believed to be killed the afternoon of September 2nd. Was
9 found September 6th in the desert. Is that consistent
10 with what you observed?

11 A. Definitely.

12 Q. You mentioned that what you do is determine a
13 cause and manner of death. How does the decomposition of
14 Ms. Payton's body effect your ability to do that?

15 A. Well, you know, obviously it hinders it. If
16 there are significant gun shot wounds, stab wounds, chop
17 wounds, significant trauma, then it doesn't hinder it that
18 much. But when you have subtle forms of injuries or
19 natural disease process where you depend on the organs of
20 the body to be intact so you can look at them, then it
21 all of a sudden goes to a significant hindrance.

22 Q. In your many years and thousands of autopsies
23 that you have done, can you guesstimate how many autopsies
24 you've had to perform on bodies that were found in the
25 desert?

1 A. In the years I have been here in Las Vegas
2 probably 800 and 1,000 total. Especially during the
3 summer we get a large number of people that are decomposed
4 either in the home or outside.

5 Q. In some of those 800 to 1,000 bodies found in
6 the desert, were you able to determine cause and/or manner
7 of death?

8 A. I can in some of them, yes.

9 Q. Were there also a significant number where you
10 were unable to determine cause and manner of death?

11 A. I would say probably in that number I probably
12 can ascertain the cause and manner of death in about 30 to
13 50 percent. So that leaves 50 to 70 percent that I
14 can't.

15 Q. Now, above and beyond the decomposition that
16 you observed, was Ms. Payton otherwise a healthy
17 individual?

18 A. Yes. In the organs, the state they were in, I
19 couldn't find any natural disease at all.

20 Q. Also as part of the autopsy is she weighed and
21 measured?

22 A. Yes.

23 Q. How tall was she at the time?

24 A. She was 6'5" inches.

25 Q. Five foot five?

1 A. Correct.

2 Q. What did she weigh?

3 A. 148 pounds.

4 Q. Does that 148 pounds have anything to do with
5 decomposition or is that what she would have weighed eve
6 if she was not decomposed?

7 A. No. It would be -- it's going to be difficult
8 to say what she weighed prior to decomposition.

9 Q. That or less?

10 A. Probably not so much less, probably might be
11 more.

12 Q. So you said she was an otherwise healthy
13 individual. Bo disease processes. Did you also conduct
14 toxicology?

15 A. Yes.

16 Q. When you conduct toxicology, what are you
17 testing for?

18 A. At that point in time, this was almost 7 years
19 ago next month, I think having to go back. I think at
20 that point in time they were testing for 48 to 50 drugs.

21 Q. Did you find any in her system?

22 A. No.

23 Q. When you conduct an autopsy how do you go
24 about doing that?

25 A. Start out inspecting the skin from the top of

1 the head to the bottom of the feet. Make incisions in the
2 body. Remove the internal organs and examine those. Then
3 examine the internal body surfaces.

4 Q. Do you do radiographs?

5 A. Yes.

6 Q. What are you looking for radiographs?

7 A. Projectiles or bone injury.

8 Q. Did you find any projectiles within Ms.
9 Payton?

10 A. No.

11 Q. Did you find any bone injury within Ms.
12 Payton?

13 A. No.

14 Q. Did you then conduct your standard autopsy?

15 A. Correct.

16 Q. Did you conduct an external examination of
17 her?

18 A. Ye.

19 Q. What did you find of note externally?

20 A. She had in addition to some of the things we
21 already talked about, she had 3 injuries to the head that
22 were antemortem. They did not occur after she died, but
23 before she died.

24 Q. Describe those for us?

25 A. On the left side of the head, kind of toward

1 the back, there was a 1.5 inch laceration. There was a
2 smaller laceration above the left ear.

3 On the opposite side of the head there was a linear
4 laceration.

5 MS. LUZAICH: May I approach.

6 THE COURT: You may.

7 BY MS. LUZAICH:

8 Q. Showing you what's marked as State's Exhibits
9 118 and 119, tell me if you recognize those?

10 A. Yes. Those are the injuries.

11 Q. Do these photographs fairly and accurately
12 reflect the injuries you described?

13 A. Yes.

14 Q. Will they help you explain to the jury the
15 injuries?

16 A. Yes.

17 MS. LUZAICH: Move them into evidence.

18 THE COURT: Any objection.

19 MR. SCHIECK: No objection.

20 THE COURT: State's Exhibits will be admitted --
21 118 and 119.

22 BY MS. LUZAICH:

23 Q. Showing you State's Exhibit 118. Can you tell
24 me what we are looking at here?

25 A. So this is her ear. And this is the back of

1 head. This is her left are here. This is the right side
2 over here.

3 You can see this small injury here. And this is
4 the much larger 1.5 laceration.

5 Q. Let's talk about the 1.5 inch laceration
6 first. How would you describe that?

7 A. Well, you can see it's -- I call it a quasi
8 stellate -- star shaped. It didn't fully fit that, but
9 you can see it has points.

10 Q. What is the significants, if anything, of the
11 shape of that injury?

12 A. Well, that's a typical kind of injury when
13 some object, a blunt instrument, comes in contact with the
14 skull and it squeezes the skin between the skull and the
15 object and the skin splits.

16 Q. Does it take a significant amount of force to
17 cause that injury?

18 A. Yes.

19 Q. So we're clear, this is an injury to the
20 scalp. It did not fracture the skull?

21 A. Correct.

22 Q. When you say it takes significant force to
23 cause that injury, could something like a fist do it?

24 A. If it had some kind of metallic object it
25 might. With that, if that's not present, it would be

1 unusual for that to cause that at all.

2 Q. Would it be more likely some type of
3 instrument that is smooth in nature?

4 A. Could be smooth. Could be -- also you notice
5 how there is a long length, if you look at it this way.
6 It could have been more of a road shaped object.

7 Q. Do you have an opinion as to what is the most
8 likely shape of instrument that would do that?

9 A. That in and of itself not so much. But if you
10 put that in context of some of the other injuries, I
11 would.

12 Q. Which other injuries would we put it into
13 context with?

14 A. If you notice this injury here, it actually is
15 kind of U shaped. And in the injury on the other side is
16 specifically linear. If you put that all these injuries
17 together, you would think it would be more of a rod shaped
18 object, pipe, or some similar heavy rod shaped
19 instrument.

20 The reason why I say that is the linear one that's
21 easy for you to understand. This one has a great
22 linearity to it. This one over here is shaped like a U
23 shape. Like it was the tip of the instrument that is all
24 that struck the skull.

25 Q. As an aside. Showing you State's 119. Can

1 you describe what we see here?

2 A. This is the right ear. And this is this
3 linear injury. Just over a half inch -- half an inch in
4 length there.

5 Q. So above the right ear.

6 A. Correct. This is the right ear. Then the
7 injury is right there.

8 Q. To go back to 118, and the quasi stellate
9 laceration you were talking about. You said it was
10 antemortem. So prior to death. How could you tell
11 that?

12 A. Well, if you look at the edges and into the
13 tissue underneath, especially when I dissected it, there
14 was a larges amount of discoloration consistent with
15 blood.

16 Q. That injury in your opinion based on your
17 experience could that have been a fatal injury?

18 A. It would be unusual since it didn't fracture
19 the skull and it wasn't bleeding I could find. It would
20 be unusual. I real couldn't call it a fatal injury.

21 Q. Is that the kind of injury that could render
22 somebody unconscious?

23 A. Definitely.

24 Q. If for example somebody were rendered
25 unconscious by that, would it be easy to then do something

1 else thereafter?

2 A. Yes.

3 Q. Now, the fact that -- I'm going to come back.

4 In addition to these 3 injuries, what did you find
5 externally?

6 A. She had tissue loss due to animal activity.
7 There was also some defects in the right side of her
8 abdomen and in the right inguinal area. So I couldn't
9 exactly tell what those were without dissecting in there.
10 And there was no discoloration similar to what I just
11 described to indicate that they were antemortem.

12 They were very, very shallow detects, so they
13 really -- they were something postmortem, where they could
14 be solely due to insect activity or transportation of the
15 body. I don't know.

16 Q. When you talk about insect or animal activity,
17 what are you referring to?

18 A. In some of the picture you can see insect
19 larva. They digest tissue in different place.

20 Q. In addition to the external examination, do
21 you do an internal examination?

22 A. Yes.

23 Q. What did you note during the internal
24 examination?

25 A. There was -- there was a lot of decomposition.

1 She didn't have any natural disease.

2 Q. When you look at the decomposition of the body
3 in an otherwise healthy individual, you are looking at
4 environment, correct?

5 A. Yes.

6 Q. To see what has been done to the body?

7 A. As far as the decomposition, yes.

8 Q. Heat is a factor?

9 A. Definitely.

10 Q. Animal and insect activity and how long
11 they're out there?

12 A. Correct.

13 Q. What about like terrain?

14 A. If they are buried, that all of a sudden
15 becomes an issue. On the surface it's really not that
16 much of an issue.

17 Q. If they are on the surface as opposed to
18 buried, will it hurry up the decomposition in the heat?

19 A. Definitely.

20 Q. Now, you mentioned that due to -- were you
21 able to find a cause and/or manner of death?

22 A. I couldn't ascertain a cause of death to a
23 level of certainty required for me to testify about it. I
24 couldn't find a cause to that level.

25 Q. What is the level of certainty you need

1 scientifically?

2 A. More likely than not the findings support a
3 specific cause of death. So it has to be at least greater
4 than 50 percent probability. I couldn't get to that
5 minimal level of proof.

6 Q. Is that because of the decomposition?

7 A. I would have to say so. That was probably the
8 main obstructing factor.

9 Q. So in order to try to come up with a cause and
10 manner of death, do you kind of rule out other things?

11 A. Well, it helps. You know, what you are trying
12 to do is you are trying to create a rational conclusion
13 for the body. And so if somebody has another explanation
14 then that's the other explanation. But in a completely
15 healthy person and there is no other reason for them to be
16 dead, that would lead you to an idea that it wasn't due to
17 any natural disease or toxicologic disease, but there was
18 some other untoward event that happened.

19 Q. Do you look at other factors external to the
20 body. Things that are happening that might help you in
21 that decision?

22 A. As far as a cause of death?

23 Q. Yes.

24 A. Well, no. I don't do an investigation of the
25 case. I'm limited to the body and the basic circumstances

1 of death. So if I can't really arrive at a conclusion
2 there that's as far as I can go.

3 MS. LUZAICH: Can I approach.

4 THE COURT: You may.

5 BY MS. LUZAICH:

6 Q. Showing you what's marked as State's Proposed
7 Exhibits 115, 116, and 117. Do you recognize these?

8 A. Yes.

9 Q. Are these photographs taken of Ms. Payton at
10 the time of the autopsy?

11 A. Yes.

12 Q. Do they fairly and accurate reflect her
13 body?

14 MS. LUZAICH: Move them into evidence.

15 THE COURT: Any objection.

16 MR. SCHIECK: No objection.

17 THE COURT: State's 115, 116, and 117 are
18 admitted.

19 BY MS. LUZAICH:

20 Q. 117, is that her foot?

21 A. Yes.

22 Q. Does it have a tag with the autopsy number on
23 it?

24 A. Yes.

25 Q. And colorful toe nails?

1 A. Yes. You can see a lot of skin slip.

2 Q. It went all the way from the top of her head
3 to the toes of her feet?

4 A. Yes.

5 Q. Specifically State's 116, what does that
6 depict?

7 A. This is her -- looks like her left hand.

8 Q. What specifically about her left hand?

9 A. Well, she has some decorative nails and polish
10 on two of the fingers. Then two other fingers it's not
11 there.

12 Q. If you look in between the colored fingers,
13 see her third fingernail?

14 A. There is a thumb. You can see between two
15 fingernails.

16 Q. In your experience if somebody is missing two
17 fingernails like that could that be defensive behavior?

18 A. It could be.

19 Q. Also State's 115, are there -- the other hand
20 with 4 colored nails and one fingernail missing?

21 A. I agree.

22 Q. Again could that potentially be consistent
23 with some sort of defensive behavior?

24 A. It could.

25 Q. Since you don't have an opinion as to the

1 cause and/or manner of death, do you have an opinion as to
2 what the most likely cause could be?

3 A. Well, just to make sure that the words mean
4 correctly. If I did have a most likely cause, I would
5 have called it the manner of death. But if you are
6 talking about in a below 50 percent probability that I'm
7 struggling to give an educated guess, I think the
8 circumstances struck me as being very consistent with a
9 homicide.

10 Q. Why is that?

11 A. I've done probably 2000 homicides like this.
12 For a normal healthy person to wind up in the desert
13 decomposed is very unusual.

14 Q. Is there a difference between cause of death
15 and manner of death?

16 A. Yes.

17 Q. What is the difference?

18 A. A cause of death you ascertain from the
19 evidence of the body. The manner of death is a legal
20 determination. You can die as a homicide, accident,
21 suicide, or natural death.

22 Q. I'm going to go to cause of death. You said
23 that you were able to rule out gun shot wound, stab wound,
24 things of that nature.

25 You were able to rule out natural disease or

1 something along those lines.

2 What about something like asphyxiation or manual
3 strangulation?

4 A. I want to be clear. I can't rule out every
5 natural disease. She could have had an abnormal heart
6 rhythm for whatever reason. She could have had some
7 metabolic derangement. I couldn't rule out every natural
8 disease. Those are uncommon that I talked about.

9 Then as far as if you start going down the road
10 that it is a homicide, about the only mechanism of death
11 left, given the fact that there wasn't any gun shot wounds
12 or stab wounds or wasn't skull fractures -- on and on --
13 would be asphyxiation.

14 Q. What does that mean?

15 A. It could be manual strangulation. It could be
16 a choke hold, smothering. Those are the 3 big ones.

17 Q. With manual strangulation or a choke hold,
18 might there be evident left behind?

19 A. There might be.

20 Q. For example?

21 A. Sometimes you can get fractures of several of
22 the hard structures in the neck -- the hyoid bone, thyroid
23 cartilage. Those are structures -- your voice box. You
24 can get fractures in those.

25 For a choke hold you're not going to get too much.

1 For smothering not too much.

2 Q. To go to the manual strangulation, when you
3 talk about the fractured hyoid or cartilage that's not
4 necessary for there to be a manual strangulation,
5 correct?

6 A. If you look at the forensic literature it's
7 present in about 1/3rd of manual strangulation. So 2/3rds
8 don't have that kind of hard evidence.

9 Q. So we're clear. Ms. Payton didn't have a
10 fractured hyoid or cartilage?

11 A. She didn't have any of that. I also took
12 x-rays of the hyoid bone and there was no fractures
13 there.

14 Q. In your experience in the thousands of
15 autopsies you have conducted, have you seen a situation
16 where somebody was rendered unconscious with some kind of
17 bump on the head, then asphyxiated by smothering, manual
18 strangulation, or choke hold?

19 A. It is a common method of homicide, yes.

20 Q. Is that a common method when a victim and
21 suspect are similar in stature?

22 MR. SCHIECK: That calls for speculation.

23 MS. LUZAICH: In his experience.

24 THE COURT: Overruled.

25 BY MS. LUZAICH:

1 Q. Is that somewhat common in a situation where a
2 victim and a suspect are similar in stature -- height,
3 weight?

4 A. That's where it's more common. If there is a
5 significant difference, then the assailant doesn't have to
6 render the victim unconscious first. They can just
7 strangle them or choke them. If they are similar in size,
8 they're easier to deal with after they're rendered
9 unconscious.

10 Q. If somebody were rendered unconscious then put
11 into a trunk in Las Vegas in early September when it is
12 pretty hot, could that cause their death?

13 A. Definitely. You can get a death from
14 hypothermia.

15 Q. Describe for us what hypothermia is?

16 A. That's just where the environment gets so hot
17 your body's ability to keep itself cool is extinguished,
18 so your body temperature goes up and that's not compatible
19 with you living.

20 Q. You indicated you can't tell us with any
21 degree of medical certainty what the manner of death is
22 but potentially homicide because of the nature of the
23 circumstances?

24 A. Correct. I don't know what the cause of death
25 is, but in relation to manner of death, I didn't really

1 see any indication it's a natural death. We have a
2 healthy woman in the desert, I would think homicide would
3 be on the on table as a probability.

4 Q. If you learned after you rendered that kind of
5 opinion that Ms. Payton's blood was found splattered on a
6 wall and in the trunk --

7 MR. SCHIECK: This calls for speculation with
8 this witness. Beyond the scope of his expertise.

9 THE COURT: It does seem to be going a little
10 far. Do you have a basis for that. If you were to be
11 told -- where are you going with that.

12 MS. LUZAICH: Can we approach.

13 THE COURT: Yes.

14 (Discussion held at the bench.)

15 THE COURT: Okay. Overruled.

16 BY MS. LUZAICH:

17 Q. If you learned that Ms. Payton's blood was
18 splattered on a wall and the trunk of a vehicle at or near
19 the time of her death, would that be consistent with your
20 opinion that it was most likely a homicide?

21 A. I would say that that would basically prove or
22 almost prove the idea of the head trauma that did occur
23 antemortem. If it was in the trunk of a car, I would say
24 that that is highly indicative of being a homicide.

25 MS. LUZAICH: Thank you. No further questions.

1 THE COURT: Thank you.

2 Mr. Hyte.

3 CROSS-EXAMINATION

4 BY MR. HYTE:

5 Q. Thank you, your Honor.

6 I want to talk about the process when you do an
7 autopsy.

8 So you do a thorough internal and external
9 examination, right?

10 A. Yes.

11 Q. There is some radiology done as well?

12 A. Correct.

13 Q. Toxicology screen?

14 A. Correct.

15 Q. What you are looking for is what could have
16 contributed to this person's death?

17 A. Correct.

18 Q. Homicidal, suicidal, natural, accidental, et
19 cetera those types of causes?

20 A. Correct.

21 Q. So you sort of work your process of
22 elimination as you go down, is that how it works?

23 A. I don't do that routinely, because a lot of
24 times by going through the process you describe a
25 conclusion arises and I don't have to eliminate a lot of

1 other things. If I'm going through that process and I
2 keep not seeing a cause, then you start thinking about
3 using a process of elimination to understand the case.

4 Q. Suffice to say you have a process you followed
5 in this case?

6 A. Yes.

7 Q. Very well, doctor.

8 Now in conducting this autopsy you observed there
9 were some areas of severe decomposition?

10 A. She was generally severely decomposed.

11 Q. Specific areas of tissue loss?

12 A. Due to insect activity, yes.

13 Q. You noted that there was a right arm, right
14 lateral abdomen, right anginal -- groin area -- and the
15 left leg, those are areas you observed the tissue loss,
16 right?

17 A. The arm and leg. The inguinal areas and the
18 abdomen, they had -- I described them as irregular skin
19 defect. I couldn't say those were due to insect activity.
20 They could have been due to insect activity.

21 Q. Are you referring to your report?

22 A. Yes.

23 MR. HYTE: Let the report reflect he wants to
24 refer to that during testimony.

25 THE COURT: From my angle I can't see because of

1 the monitor. It's not problem if you do that, but let us
2 know that you are going to do that to answer any
3 questions.

4 BY MR. HYTE:

5 Q. You determined that those areas of tissue loss
6 were superficial and didn't show penetration; is that
7 right?

8 A. Correct.

9 Q. And in your opinion those areas of tissue loss
10 were most likely caused by the insect activity?

11 A. I think as I stated before they could have
12 been. That definitely is a possibility. There could be
13 other possibilities. They weren't definitely lethal or
14 significant injuries.

15 Q. As to the abdominal area, you weren't able to
16 say with any certainty that there was any type of
17 pre-death or antemortem injury there?

18 A. Correct.

19 Q. I want to talk about the laceration. You
20 noted there were 3 on the head?

21 A. Correct.

22 Q. The large one is the quasi stellate injury of
23 about an inch-and-a-half long, right?

24 A. Yes.

25 Q. In your opinion that injury would not have

1 been a fatal wound; is that right?

2 A. Correct.

3 Q. As to the other lacerations on the head area,
4 those also would not have been fatal, correct?

5 A. Correct.

6 Q. She didn't have any skull fractures associated
7 with those wounds?

8 A. None.

9 Q. You didn't see any intracranial hemorrhage or
10 brain bleed with those?

11 A. No.

12 Q. You speculated possibly there could have been
13 a loss of consciousness associated with that large quasi
14 stellate wound?

15 A. I don't know if I'd classify it as
16 speculation. I think it's more likely than not there
17 would be some type of loss of consciousness.

18 Q. Can you say with any degree of medical
19 certainty -- forensic certainty that that individual was
20 unconscious at the time she died?

21 A. You are talking about the wound?

22 Q. Correct.

23 A. Based on the size of the wound, I think it's
24 more likely than not she was unconscious. But I cannot
25 eliminate the idea that it didn't effect her.

1 Q. Court's indulgence.

2 Do most injuries result in a loss of
3 consciousness?

4 A. Head injuries?

5 Q. Correct.

6 A. No. It has to do -- it's proportional to
7 force. So I don't know if I can say most, but it's
8 proportional to force.

9 Q. In this case you looked for evidence of
10 strangulation?

11 A. Correct.

12 Q. In the case of manual strangulation, you might
13 expect to see fingernail marks, bruising on the surface?

14 A. Correct.

15 Q. Ligature strangulation you might see a pattern
16 of the ligature that was used?

17 A. Correct.

18 Q. Moving down to the next layer in strangulation
19 you may see hemorrhage in the muscles?

20 A. Yes.

21 Q. Then finally going deeper than that, you may
22 see fractures of the cartilage structures?

23 A. Correct.

24 Q. Did you look at those layers in this case?

25 A. Correct.

1 Q. You did not see any evidence of
2 strangulation?

3 A. I didn't see any evidence I could call
4 strangulation.

5 Q. You indicated you looked for evidence of
6 asphyxiation, right?

7 A. Mainly the two other aspects of asphyxiation
8 was the choke hold and smothering. Those are subtle
9 findings, even in fresh bodies. So I'm not sure I could
10 say too much about those two. As far as strangulation,
11 you eluded to the things I look for and I couldn't find
12 those.

13 Q. I want to talk about asphyxiation for a
14 moment.

15 You could see in that type of case an abrasion or
16 injury in the mouth or nose area?

17 A. Possible, depending on what they used to
18 asphyxiate the person. If they used their hands, it's
19 more likely. If they use a pillow, much less likely.

20 Q. Correct me if I'm wrong. Because an adult who
21 is being asphyxiated there would be some struggle and
22 there might be bruising around the mouth or nose?

23 A. Yes. If they are conscious and they are not
24 under the influence of drugs or some other things, they
25 are going to struggle and it would cause those injuries.

1 Q. You might also see hemorrhage of the tongue,
2 some petechia. Explain what that is.

3 A. They are pinpoint hemorrhage in the eye and
4 also in the mouth and in the airways due to smothering,
5 which causes blood vessels to rupture.

6 Q. As you went through and looked for those
7 things you weren't able to find any of that, were you?

8 A. No.

9 Q. You indicated you couldn't rule it out; is
10 that right?

11 A. No, I couldn't rule out either manual
12 strangulation, choke hold, or smothering. I couldn't rule
13 those out.

14 Q. Because they couldn't be excluded?

15 A. Because the body is so decomposed I can't say
16 for sure whether they are there or not. That means I
17 can't rule them out.

18 Q. If someone were to say, for example, cause of
19 death was asphyxiation or strangulation, the most accurate
20 response would be that's a good guess, but I didn't see
21 evidence of that?

22 A. I don't have any problem with that statement
23 at all.

24 Q. I want to talk about the natural causes of
25 death. As you went through you also looked for natural

1 causes of death?

2 A. Correct.

3 Q. You indicated you didn't find any evidence of
4 disease or anything like that?

5 A. Correct.

6 Q. Would you agree with me that a person can die
7 of natural causes and there is nothing you can readily
8 identify at time of autopsy?

9 A. Correct. That's what I eluded to about some
10 metabolic derangement. I can't test the blood or some
11 type of abnormal heart rhythm.

12 Q. Metabolic derangement, is a symptom of that
13 obesity in the abdominal area?

14 A. Diabetes is a metabolic disease that can be
15 associated with that.

16 Q. Obesity in the area?

17 A. Correct.

18 Q. You indicated at time of autopsy she likely
19 weighed less then she would have before her death?

20 A. More likely, yes.

21 Q. You also look for evidence of accidental
22 injury; is that right?

23 A. Yes.

24 Q. There were no bone injures, correct?

25 A. Correct.

1 Q. Blunt force trauma, you indicated that that
2 could be caused by a wide range of circumstances. You
3 were speculating about what type of object caused that.

4 Can blunt force injury be caused by a fall?

5 A. Yes.

6 Q. You had a toxicology screen done?

7 A. Yes.

8 Q. You are looking for substances in her system
9 at time of death, right?

10 A. Common substances.

11 Q. In this case there was not blood available for
12 testing, right?

13 A. Correct.

14 Q. So you tested the brain and liver tissue?

15 A. Correct.

16 Q. As you testified there were no common
17 recreational street drugs in her system?

18 A. Correct.

19 Q. With a body that's decomposing, does that
20 interfere with your ability to make that toxicologic
21 conclusion?

22 A. I does somewhat, yes.

23 Q. Would it depend on the substance ingested at
24 the time?

25 A. Yes. Some of them or more stable and they'll

1 stay around in a decomposed body. Others are not.

2 Q. So for example, heroin and morphine, they are
3 more stable over time?

4 A. Pretty stable, yes.

5 Q. Something like cocaine is less stable?

6 A. Yes or alcohol. Ethanol is not very stable.
7 Especially in a decomposed body.

8 Q. You spoke about the decomposition of the body
9 and how that, in your mind, prohibited your ability to
10 make some forensic determinations and that that may have
11 interfered with your ability to find evidence of a
12 homicide, right?

13 A. Definitely interfered with my ability.

14 Q. Did the decomposition likewise also interfere
15 with your ability to find natural or accidental causes of
16 death as well?

17 A. Yes. I actually talked about that before. It
18 could hinder that also.

19 Q. She was -- talking about the time of death.
20 She was pronounced dead on September 6, 2008, right?

21 A. Correct.

22 Q. You got her the next day and did the autopsy
23 on September 7th?

24 A. Correct.

25 Q. The date of your report is November 6th, 2008,

1 2 months after the time of autopsy?

2 A. Correct.

3 Q. Because during that interim you are waiting
4 for things like the toxicology results, any investigation
5 report that might come from law enforcement, right?

6 A. Definitely.

7 Q. So in this case the toxicology report, I
8 believe you received -- that would have been around
9 September 16th. Does that sound right?

10 A. Is that the stamp you are seeing on there?

11 Q. That is the stamp.

12 A. Time stamp -- that's correct.

13 Q. So you receive those reports, then you
14 completed your report?

15 A. Yes.

16 Q. After doing the complete autopsy and
17 radiological analysis and toxicology screening, your
18 conclusion was that the cause and manner of death were
19 undetermined, right?

20 A. Correct.

21 Q. So in other words you could not conclude to a
22 reasonable degree of forensic certainty as to cause and
23 manner of death?

24 A. Correct.

25 Q. You indicated that your standard of proof is

1 greater than 50 percent?

2 A. At the minimum.

3 Q. That is a lower strength of belief then beyond
4 a reasonable doubt?

5 A. Definitely lower.

6 MS. LUZAICH: He can't quantify reasonable
7 doubt.

8 THE COURT: Sustained. There will be an
9 instruction with regard to reasonable doubt. Not relevant
10 at this time.

11 MR. HYTE: He indicated in his autopsy report
12 what his burden of proof was. Specifically noted that his
13 burden of proof was less than a reasonable doubt
14 standard.

15 THE COURT: It will still be the jurors
16 determination on this case, and they will be instructed on
17 that subject.

18 BY MR. HYTE:

19 Q. Now your conclusion then is based on the
20 information known to you at the time of your signature?

21 A. Correct.

22 Q. You indicated in your report that if you
23 received additional information that your report may be
24 modified based on that information?

25 A. If it's germane to the findings of cause or

1 manner of death, yes.

2 Q. You testified in the preliminary hearing in
3 this case, right?

4 A. Yes.

5 Q. Early 2009?

6 A. I defer to your knowledge.

7 Q. At that hearing you were asked similar
8 questions. The State put hypothetical questions to you
9 like today?

10 A. I don't have an independent recollection of
11 that. I'd defer to your knowledge.

12 Q. Would it refresh your recollection if I showed
13 you a copy of your preliminary hearing testimony?

14 A. Yes.

15 MR. HYTE: Court's indulgence.

16 THE COURT: Let us know the page number.

17 MR. HYTE: Approach.

18 THE COURT: You can approach the other side.

19 MR. HYTE: Refer counsel to pages 68 and 69.

20 Read that to yourself.

21 BY MR. HYTE:

22 Q. Again that testimony was in early 2009?

23 A. Yes.

24 Q. Based on that information you were given at
25 that time of preliminary hearing, would you go back and

1 amend or modify your report?

2 A. No.

3 Q. Because as you said you didn't find it germane
4 to your conclusions?

5 A. Well, it was germane as to the manner of
6 death, but it wasn't germane to the cause of death. I
7 have to get a cause of death first before I go to the
8 manner of death.

9 Q. Let me try and understand this.

10 As you sit here today with the information you are
11 given, you still have a less than 50 percent belief that
12 homicide was the cause of Brandy Payton's -- cause and
13 manner of her death?

14 A. Correct. Because the body hasn't changed.
15 The findings of the body have not changed. That's what I
16 would base my cause of death on. And that hasn't
17 changed.

18 What's changed is some investigative information
19 that could relate to manner of death, but I can't go just
20 to the manner of death. I have to have a cause, then I
21 can talk about the manner.

22 MR. HYTE: I'll take that back now.

23 THE COURT: You may.

24 BY MR. HYTE:

25 Q. You mentioned hypothermia?

1 A. Hypothermia.

2 Q. Yes, sorry. At time of autopsy someone who
3 has died of Hypothermia what is evidence of that you'd
4 see?

5 A. A fresh person, you would be able to assess
6 for dehydration and you may see some petecial hemorrhage
7 in the brain. Those would be just soft signs that you
8 would use because you'd have to put that in the context of
9 how they found the body, what the person's core
10 temperature was when they found the body in the context of
11 the circumstances of death.

12 Q. You didn't find evidence of that here?

13 A. No. I had none of those things I just
14 mentioned.

15 MR. HYTE: Nothing further.

16 THE COURT: Thank you.

17 Ms. Luzaich.

18 REDIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q. When you talk about Hypothermia and core
21 temperature and things of that nature, you don't know when
22 she was in the trunk if she was in the trunk as opposed to
23 when she was in the desert, correct?

24 A. Correct.

25 Q. So you can't say one way or another about

1 hypothermia?

2 A. No. It was given to me as a hypothetical. I
3 answered as a hypothetical. I don't know the facts of the
4 situation, no.

5 Q. My question was it is possible that if she had
6 been in the trunk she could die of something and you said
7 possibly Hypothermia?

8 A. Definitely yes.

9 Q. When Mr. Hyte was just asking you about the
10 signs and symptoms of strangulation and asphyxiation you
11 talked about potential fingernail marks, bruising,
12 patterns. All of those things if existed were lost due to
13 decomposition, correct?

14 A. Pretty well obscured in decomposition.

15 Q. Petelial hemorrhages on the tongue that too
16 would have been lost by decomposition?

17 A. Correct.

18 Q. Abrasion or injury in the nose area he asked
19 about, that too would be lost due to decomposition?

20 A. Correct.

21 Q. When he ask you can blunt force trauma be
22 caused by a fall, you said yes?

23 A. Yes.

24 Q. The 3 particular injuries we saw one fall
25 wouldn't cause those three injuries?

1 A. It would be hard to interpret those areas to
2 have occurred from one fall.

3 Q. They are on different sides of the head?

4 A. They are on different sides of the head,
5 different shapes. Doesn't quite fit in all the cases of
6 falls I've been involved with.

7 Q. When you indicate that have to have a cause of
8 death before you can opine about a manner of death, and
9 you don't have a cause of death here due to decomposition,
10 if somebody walked up to you today and said I killed
11 Brandy Payton, you still couldn't opine it was a homicide
12 because you don't have a cause of death?

13 A. Even if I asked them how you do it and they
14 told me I strangled her, I'd say you know more than I do.
15 I cannot move past the evidence that's in front of me.

16 Q. Because your opinion is based on the body as
17 you see it, not the other stuff?

18 A. As far as cause of death, correct.

19 Q. That's our job?

20 A. Right.

21 Q. Mr. Hyte asked you about your autopsy report
22 and your opinions as to cause and manner of death. You
23 also included a comment in your report, did you not?

24 A. Yes.

25 Q. Could you read into the record your comment

1 for us.

2 A. I'll read from my report, since this happened
3 almost 7 years ago. I don't have an independent
4 recollection.

5 THE COURT: You may.

6 THE WITNESS: Comment -- this was before I gave
7 my opinion.

8 Comment: the state of decomposition prohibits some
9 forensic conclusions, since subtle traumatic injury,
10 especially asphyxiation can be obscured by a significant
11 degrees of decomposition.

12 Additionally insect activity and associated tissue
13 loss can distort the appearance of external injuries.
14 This case is most likely a homicide based on the
15 circumstances of the death available at time of signature,
16 but a specific pattern of injuries supporting such a
17 conclusion cannot be identified.

18 The absence of such a pattern does not exclude a
19 homicidal mechanism of death.

20 Q. If someone is unconscious, they're not going
21 to struggle?

22 A. Correct.

23 Q. If they are being asphyxiated or strangled or
24 something along those lines, there won't be any of the
25 things the defense described for you, because they

1 can't?

2 A. I relation to the smothering and choke hold
3 that would by very, very relevant. In relation to manual
4 strangulation we went through that with the idea that
5 major injuries to the hyoid bone occur in about 1/3rd of
6 cases. And there are other injuries you can see, but that
7 would still be obscured by the decomposition.

8 MS. LUZAICH: Thank you. I'll pass the
9 witness.

10 RE CROSS-EXAMINATION

11 BY MR. HYTE:

12 Q. Doctor, you talked a lot about decomposition, I
13 want to ask you, is it possible that a cause and manner of
14 death such as a natural death for example can be
15 undetermined even when there is no decomposition?

16 A. Yes.

17 MR. HYTE: Thank you.

18 THE COURT: Anything further.

19 MS. LUZAICH: No.

20 THE COURT: Can I see by a show of hands if any
21 jurors have questions for this witness.

22 THE COURT: Seeing none, you are excused. Thank
23 you for your time. Mind your step as you leave.

24 THE COURT: We'll take a brief recess and allow
25 the jurors to use the restroom, stretch their legs a bit.

1 We'll return with the State's next witness.

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 Follow the marshal.

16 (Brief recess taken.)

17 THE COURT: I want to make a record of the
18 conference at the bench. This is how we typically do it,
19 and I'll ask counsel if they wish to add.

20 There was questions being asked by Ms. Luzaich of
21 Dr. Simms with regard to if he became aware that there was
22 blood spatter belonging to Ms. Payton in the home and in
23 the car would that indicate or be consistent with the fact
24 there might have been a homicide.

25 The objection was posed that that blood evidence is

1 not yet in the record. And the objection was posed that
2 he would be speculating as to that information at this
3 time, and more appropriately would be to have that
4 evidence come in as it comes in next week and then bring
5 the doctor back to ask the question.

6 I went ahead and allowed the question to be asked
7 because the evidence, as we know, is part of the -- will
8 be part of the record and does not appear to be in
9 disputed. And it's not uncommon to have witnesses testify
10 to things we know are going to be coming in the record.

11 Whether or not it was speculation is a separate
12 issue, but the court felt that this was something that was
13 within the purview of the expertise and knowledge of Dr.
14 Simms and allow the question to be asked and answered.

15 Anything further you want to add for the record
16 before I go to Mr. Schieck.

17 MS. LUZAICH: No. Thank you.

18 MR. SCHIECK: Your Honor, I also indicated that
19 it was our opinion in the bass of our objection that the
20 question invades the province of the jury. It's up to the
21 jury to decide whether those facts are indicative of being
22 a homicide, not the person who performed the autopsy who
23 is only basing his answer on the hypothetical posed to
24 him.

25 That's the ultimate jury issue in this case, is

1 whether or not the State has proven this is a homicide.
2 And to allow this witness to invade the province of the
3 jury in that regard based on a hypothetical is improper.

4 THE COURT: The court does acknowledge that that
5 was one of the additional grounds. The court, at the
6 bench, indicated that it felt this again -- the witness
7 was asked to and was able to through his expertise give
8 testimony as to potential causes and manner of death.
9 Although it was quite clear in this case and was pointed
10 out that he was not testify to any knowledge on cause or
11 manner of death. That he was asked questions with regard
12 to below the 50 percent line of demarcation necessary to
13 establish a cause and manner of death to a medical
14 certainty, he was unable to do so. But that he had the
15 expertise to be able to address with information what
16 facts were consistent with what outcomes. That was not
17 something that would move into the province of the jury.

18 MR. SCHIECK: I believe we had an additional
19 objection, your Honor, but I believe we did that entirely
20 on the record and did not approach on that objection. I'm
21 drawing a blank what it was, but I think we made the
22 record.

23 THE COURT: I only recall one at the bench. We
24 addressed the photos in the record.
25 Anything else.

1 MR. SCHIECK: No, your Honor.

2 THE COURT: Turn off your cell phones if they
3 were used at the recess.

4 State can call their next witness.

5 MS. BLUTH: Thank you. State calls Cliff
6 Mogg.

7 THE COURT: Detective Mogg, please take the
8 stand.

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

13 THE WITNESS: I do.

14 THE CLERK: Be seated. State and spell your
15 name for the record.

16 THE WITNESS: Clifford Mogg, M-O-G-G.

17 DIRECT EXAMINATION

18 BY MS. BLUTH:

19 Q. Good afternoon. How are you employed?

20 A. I'm a detective with Las Police Department,
21 homicide section. I've been employed with Metro for 19
22 years. As a homicide detective for 12. I have about 30
23 years of experience in law enforcement.

24 Q. In your 30 years of experience in law
25 enforcement how many homicide investigations have you been

1 involved in?

2 A. Somewhere in the area of 300.

3 Q. I would like to go right to the time frame of
4 September of 2008 and turn your attention to September 6,
5 2008. During that day were you working?

6 A. I was.

7 Q. Did you have a partner you specifically
8 routinely worked with during that time period of
9 employment?

10 A. My partner was Ken Hardy.

11 Q. Did the two of you get called out or respond
12 to an area located off Highway 95, specifically State
13 Route 156?

14 A. Correct.

15 Q. What was the reason for the call out to that
16 section of the area?

17 A. Resident officers who work the area of Mount
18 Charleston had received a call of a body that was found in
19 the desert off 156 near mile marker 12.8. When they
20 responded they determined that in deed it appeared to be
21 human and they requested the homicide section respond to
22 conduct the investigation.

23 Q. So after receiving that phone call you
24 responded?

25 A. I did.

1 Q. What time of day or night did you respond?

2 A. I believe the call came out after 9:00 in the
3 morning. We would have gotten the call 20 minutes, half
4 an hour later. It took us about an hour to get there.
5 Somewhere about 10:15, 10:30 when we arrived.

6 Q. When you did arrive tell the ladies and
7 gentlemen the status of things when you arrived?

8 A. When we arrived on scene the area had been
9 secured by the resident officer who responded up there
10 initially. I think there might have been an additional
11 resident officer at the scene.

12 There was a couple of witnesses that were being
13 held for us, Mr. Grande and Mr. Davidson and the
14 Kelsoe's.

15 Once we arrived at the scene the sergeant at the
16 time was Sergeant Rokeal and he assigned different duties
17 to detectives who respond. We also had crime scene
18 investigators up there with us.

19 My duty at the time was to investigate the crime
20 scene and to write the investigative report. My partner
21 Detective Hardy was responsible for interviewing the
22 witnesses.

23 Q. You previously named those witnesses as Ben
24 Grande, Donald Davidson, and the Kelsoe's. When you say
25 Kelso is that plural?

1 A. Correct.

2 Q. Is that like a husband and wife?

3 A. Yes.

4 Q. Were all of those individuals cooperative with
5 you and Detective Hardy?

6 A. Yes.

7 Q. Did all 4 of them agree to speak with you --
8 Detective Hardy and do interviews?

9 A. Yes.

10 Q. Now, upon your arrival after being assigned by
11 the sergeant on scene, you stated it was your job duty to
12 kind of cover the scene while Detective Hardy did
13 witnesses, correct?

14 A. Yes.

15 Q. Upon your arrival can you give a description
16 of where the body was located in relation to State Route
17 156?

18 A. State Route 156 goes up into the mountain area
19 near Lee Canyon. About 12.8 miles from US 95 to the west.
20 It's high desert. There is a lot of scrub brush, sand,
21 rocks.

22 The area in particular where the body was found is
23 an area that is frequented by ATV riders. They park
24 vehicles on the west side of this dirt road that runs
25 north and south from the 156 out into the desert.

1 The body was approximately 39 feet to the south of
2 the 156, and maybe 12 to 15 feet to the north of that
3 little dirt road that ATV riders use.

4 Q. Showing you what's marked as State's Exhibit
5 4.

6 State Route 156, the dirt road, et cetera, point to
7 those so we're clear, please.

8 A. Right here is the 156. This is the dirt road.
9 This is the dirt road I was referring to.

10 Over here is where the ATV riders park their
11 vehicles. This area here, this is where the victim was
12 lying. Then there is an apparent drag mark that extends
13 off the top of where the victim is lying. You can see a
14 light colored drag mark that extends out into that
15 roadway.

16 Q. So you mentioned the paved road is State 156.
17 And then I believe your testimony was 39 feet from that
18 road was located -- the body was located; is that
19 correct?

20 A. Correct.

21 Q. Then you stated in the middle and to the
22 bottom of the page is a dirt area common for people to
23 park trucks who are ATVing?

24 A. Yes.

25 Q. Was it your understanding that the 4

1 individuals you previously talked about found the body?

2 A. Correct.

3 Q. As you approached the body, did you recognize
4 any items that you considered should be taken into
5 evidence that may have certain evidentiary value?

6 A. Yes.

7 Q. What were those?

8 A. In the roadway in the apparent drag mark
9 leading up to the victim there were a couple of small
10 rocks that had what happened to be blood on them. There
11 were also two black flip-flops, a white rag. As you got
12 closer to the victim there was a couple of small bushes
13 that had been damaged apparently by the body being dragged
14 over them. And near those bushes I found two fingernails
15 which were similar looking to the fingernails on the
16 decedent's hands. The left hand was missing two
17 fingernails the right hand was missing one.

18 Q. You stated that sandals were in that drag
19 pathway that you previously discussed?

20 A. Correct.

21 Q. Both right and left foot sandals?

22 A. Yes.

23 Q. Did you inspect the sandals to see if there
24 was any dirt or rocks to see if the individual walked
25 there?

1 A. I did. And there were not.

2 Q. The actual physical location where the body
3 was located was that in a flat type surface or how would
4 you describe the terrain where the body was found?

5 A. It's a small ravine where water had washed
6 down at one point on a slightly downward angle. You
7 wasn't have been able to see the body had you been driving
8 down the 156.

9 Q. So only after turning off the 156 onto the
10 dirt road would you have been able to have a view of the
11 body?

12 A. Correct.

13 Q. Describe for the ladies and gentlemen of the
14 jury when you saw the body what was it you were looking
15 at?

16 A. The first thing we were looking for is to see
17 if there were obvious injuries -- gun shot wounds, knife
18 injuries. The victim was in such an advanced state of
19 decomposition it was difficult to tell what was an injury,
20 what wasn't an injury at that point.

21 Her clothing though, it appeared she had been
22 dragged to the location she was found in. Her pants there
23 was nothing in the pockets. And I believe it was the
24 right front pants pocket had been turned inside out.

25 Then her bra was off and her shirt had been pulled

1 up along the top of her back covering the bottom part of
2 her mouth. There was also a tear on the right sleeve
3 area.

4 Q. Was there any pieces of identification such as
5 a wallet, purse, driver's license, anything?

6 A. Nothing.

7 Q. Was there any type of abandoned vehicle in the
8 area that you found that perhaps she could have walked
9 from?

10 A. No.

11 Q. Did you recover any cell phones from the
12 victim's body or near her body?

13 A. We did not.

14 Q. Did the victim have any jewelry on her
15 person -- neck, wrist, fingers, anything?

16 A. I believe she had one small ring. I think it
17 was on her right or left hand.

18 Q. When you were at the scene is a crime scene
19 analyst called to document the scene and take photos of
20 the area and the body, et cetera?

21 A. That's correct. We had a crime scene analyst
22 Dan Holstein and Al Cabrales.

23 Q. Now, is it that crime scene analyst's job to
24 also impound any evidence that either you direct them to
25 or that they find?

1 A. Yes.

2 MS. BLUTH: Approach the witness.

3 THE COURT: You may.

4 BY MS. BLUTH:

5 Q. Showing you for purposes of identification
6 State's Proposed Exhibits 5 through 31 and 33 through 38.
7 Thumb through those and let me know when you are done and
8 I'll have questions for you.

9 Do you recognize what's depicted in those.

10 A. That's the scene as it appeared the day I
11 responded to the desert area.

12 Q. Is that a fair and accurate depiction of the
13 scene and the items you've discussed on September 6, 2008
14 when you went to the scene?

15 A. It is.

16 MS. BLUTH: I move to admit State's Proposed 5
17 through 31 and 33 through 38.

18 THE COURT: Any objection.

19 MR. SCHIECK: No.

20 THE COURT: 5 through 31 and 33 through 38 are
21 admitted. You may publish.

22 MS. BLUTH: Thank you.

23 BY MS. BLUTH:

24 Q. Detective Mogg, showing you what's now in
25 evidence as State's Exhibit 6. What view are we looking

1 at here?

2 A. This would be looking north along that dirt
3 road towards the 156 where the vehicles are parked.

4 Q. Showing State's 7, a different view of that
5 same road?

6 A. That's looking south on that same dirt road.
7 This is just a few feet south of 156.

8 Q. Showing you State's 8, can you explain what
9 we're looking at in this photograph?

10 A. This photograph here depicts the drag marks
11 from the roadway into the desert area. Here, the black
12 area there in the center of the photo is one sandal. Then
13 the white towel. Then there is also two small rocks had
14 what appeared to be blood on them.

15 Q. Showing you State's 12, is that just a close
16 up of that drag mark you've referenced a couple of
17 times?

18 A. Correct.

19 Q. Showing you State's 14, can you explain what
20 we're looking at here?

21 A. This is a view looking toward the northwest
22 from southeast of the body. You can see the body lying on
23 the ground on its back, just to the east of that
24 roadway.

25 Q. Showing you State's 16. Is that a different

1 angle toward the body?

2 A. It is. This would show the left arm, the
3 head. Then another sandal that was found closer to the
4 victim.

5 Q. Showing you State's 18. You previously -- one
6 second. I'm out of focus. Sorry about that.

7 You previously referenced the victim's shirt being
8 pulled over her arm area up around her neck and mouth?

9 A. Correct.

10 Q. Is that what we see in this photograph?

11 A. Yes.

12 Q. You also referenced the right pocket turned
13 out. You see that depicted?

14 A. You can't see it very well. If you look at
15 the right pocket that's where it's at.

16 Q. Showing you State's 20. Is that a better view
17 of that pocket?

18 A. It is.

19 Q. Showing you State's 21. You referenced that
20 the left finger -- that the right hand had the middle
21 fingernail missing, correct?

22 A. Correct.

23 Q. Showing you State's 22. What is shown in this
24 photograph?

25 A. This is a thermometer being used by

1 Investigator Holstein, which shows the body temperature at
2 147 degrees.

3 Q. Showing you State's 23?

4 A. This is the same thermometer used by Mr.
5 Holstein indicating ground temperature at 130.

6 Q. When you were out there on September 6th, what
7 was the weather like?

8 A. It was clear and hot. I believe the air
9 temperature was approximately 100.

10 Q. Was it so hot out there that crime scene
11 analyst had difficulty health wise and had issues out
12 there because of the heat?

13 A. Yes.

14 Q. Now showing you State's 25. In this picture
15 we see some of the items we've previously seen, now we see
16 yellow markers with numbers on them. Explain to the
17 ladies and gentlemen of the jury what we are looking at?

18 A. This is the way the crime scene investigators
19 mark the evidence located at the scene. The first set of
20 photographs are what we call overalls. Those just depict
21 the general condition of the area and the items of
22 evidence that may be at the scene.

23 This photograph here depicts the overall condition
24 at the scene and the location of the evidence and items
25 that we're going to recover.

1 Q. Start with item 1, if you could, and explain
2 to the ladies and gentlemen what is being marked as item
3 No. 1.

4 A. Two small rocker rocks I spoke about earlier
5 that had what appeared to be blood on them.

6 Q. Item 2?

7 A. This is the left flip-flop.

8 Q. State's 30, see the close up of the tag. What
9 is marked as No. 3?

10 A. No. 3 is the right flip-flop.

11 Q. State's 31, what are we looking at marked as
12 No. 4?

13 A. That is the white rag we found in that drag
14 pattern on the roadway.

15 Q. I shouldn't doubt myself -- 34, I did have a
16 close up of. That is consistent with your testimony the
17 black flip-flop?

18 A. Correct.

19 Q. State's 35?

20 A. This is one of the fingernails found near one
21 of scrub brushes.

22 Q. State's 36, that would be marker No. 6. What
23 are we looking at there?

24 A. The second fingernail we found at the scene.

25 Q. And State's 37, what are we looking at here?

1 A. Down at the bottom of the photograph is a
2 piece of white fence post crimped on one end, the other
3 end was open. It was across the roadway in the desert
4 area near where the people that ride ATVs parked.
5 Probably 35 feet or so from where the victim was
6 located.

7 Q. State's 38, is that just a close up of the
8 fence post you were discussing?

9 A. It is.

10 Q. Now, in regard to that fence post that we were
11 just looking at, did it appear to you to have been at the
12 scene for quite some time?

13 A. Yes.

14 Q. Why is that?

15 A. It had some dust on top of it. In addition on
16 either side up near where the crimp was there was some
17 weeds that were laying over the top of it.

18 Q. So vegetation growth over it?

19 A. I don't know if it grew over it or if the wind
20 blew it on top of it.

21 Q. After the crime scene analyst and you
22 detectives conducted your investigation at the scene, were
23 the items we have seen marked as 1, 2, 3, 4, 5, and 6,
24 were those collected and impound into evidence?

25 A. They were.

1 Q. On the following day of September 7, 2008 were
2 you present when the autopsy was conducted at the
3 coroner's office by Dr. Larry Simms?

4 A. I was.

5 Q. During autopsy did you have the opportunity to
6 view both of the victim's hands again?

7 A. Yes.

8 Q. Did you see whether or not both of the
9 victim's hands had that same type of fingernail -- acrylic
10 or fake nails?

11 A. I don't know the difference. Both hands had
12 long nails. Approximately an inch long.

13 Q. You stated that there were two missing on the
14 left hand and one missing on the right, correct?

15 A. Correct.

16 Q. You only recovered two at the desert crime
17 scene?

18 A. Yes.

19 Q. When you were present out at the crime scene
20 at the desert you discussed previously the fact that the
21 victim's shirt was pulled over her neck and mouth area.

22 Showing you what's been marked for purposes of --
23 not for purposes of identification. It's State's 11, is
24 that consistent with how the shirt was at the time you saw
25 the body in the desert?

1 A. Yes.

2 THE COURT: State's 111.

3 MS. BLUTH: I apologize, yes, State's 111.

4 BY MS. BLUTH:

5 Q. After the autopsy did you have an opportunity
6 to speak with certain family members of Brandy Payton who
7 had come down to the coroner's office?

8 A. I did.

9 Q. Which family members?

10 A. I believe her mother, Tammy, and then her
11 sister Gloria.

12 Q. Is it common in a homicide investigation to
13 meet with victim's family members to kind of get an idea
14 of who they hung out with, who their contacts were, et
15 cetera?

16 A. Yes.

17 Q. Why is that important to get that
18 information?

19 A. Because we're going to try to put together the
20 last hours of the victim's life in order to try to
21 determine who she was with, where she may have been, who
22 she was in phone contact with.

23 Q. In doing that is it important to get not only
24 the names of individuals but phone numbers that they had
25 during that time period so you can contact them or check

1 cell records, et cetera?

2 A. Yes. And also get the phone numbers for the
3 victim.

4 Q. During that meeting with the sister and mother
5 of Brandy Payton to get the telephone number the victim
6 herself used?

7 A. Yes.

8 Q. Do you remember the numbers you were given?

9 A. One was a (323) area code. The second was a
10 (702) area code. The way it was explained to me --

11 MR. SCHIECK: Objection, hearsay, your Honor, as
12 to what was explained to him.

13 THE COURT: Sustained.

14 You may canvass the witness on information related to
15 that, but not what he was told by others.

16 MS. BLUTH: My response would be that the
17 witness Sheri Payton could not remember both phone numbers
18 that were given to the detective, so it would be a prior
19 inconsistent statement just for the two numbers not
20 anything else.

21 THE COURT: I'll sustain the objection.
22 Continue to inquire of this witness on other matters.

23 BY MS. BLUTH:

24 Q. So you were given multiple numbers of the
25 victim; is that correct?

1 A. Correct.

2 Q. When I say multiple how many specifically were
3 you given?

4 A. On the 8th, I was given 2 numbers.

5 Q. Now during the conversation with family
6 members were you given the name and number of Lesean
7 Collins?

8 MR. SCHIECK: Objection, this is calling for
9 hearsay. She's asking in a leading fashion to elicit the
10 hearsay.

11 THE COURT: The answer can be yes or no. That's
12 not eliciting hearsay. Proceed, but not the actual
13 discussion.

14 BY MS. BLUTH:

15 Q. Now, were you given information in regard to
16 the type of vehicle that Brandy was driving?

17 A. I was.

18 MR. SCHIECK: Same objection.

19 THE COURT: The objection is noted.
20 Overruled.

21 BY MS. BLUTH:

22 Q. So after leaving your meeting with
23 Ms. Payton's -- Sheri and Tammy Payton, did you have at
24 that time names and numbers of individuals you felt like
25 you could contact and start conducting your

1 investigation?

2 A. Yes.

3 Q. Now in regards to the numbers you were given
4 by the family for the victim herself, did you put in
5 what's called an administrative subpoena in order to get
6 her phone records?

7 A. I contacted another investigative unit and
8 asked them to do inquiry into the victim's phone numbers.
9 I was provided a call detail record for the (323) number,
10 by that investigative unit who I also asked to see if they
11 could locate that phone.

12 Q. Is it common in your homicide investigations
13 to get cell phone records and call detail records?

14 A. Yes.

15 Q. Explain why that's done in your
16 investigation?

17 A. Call detail records are nothing more then your
18 phone bill you receive from your cell phone provider. The
19 only thing we ask in addition to that is to provide the
20 cell tower location, and also when we get the cell tower
21 location we get the sector number that goes with that cell
22 tower. We use that information to, one, try to determine
23 who the victim was talking to and what time they were
24 talking to them. We use the cell tower locations to try
25 to put the victim into a geographical area when the calls

1 were made.

2 Q. After also speaking with Brandy Payton's
3 family members, after then giving you names and numbers,
4 did you go speak to an individual by the name of Teresa
5 Williams?

6 A. I did.

7 Q. If I showed you a picture of Teresa Williams
8 would you recognize her?

9 A. I could try.

10 Q. Showing you what's marked for identification
11 as State's Proposed Exhibit 100. Do you recognize this
12 individual depicted in this photograph?

13 A. I believe that's Ms. Williams.

14 Q. Is this a fair and accurate picture of what
15 Ms. Williams looked like during that time period?

16 A. To the best of my recollection.

17 MS. BLUTH: Move to admit into evidence State's
18 Proposed 100.

19 MR. SCHIECK: No objection.

20 THE COURT: State's 100 is admitted.

21 MS. BLUTH: Permission to publish.

22 THE COURT: You may.

23 BY MS. BLUTH:

24 Q. That would be the Ms. Williams you just
25 identified?

1 A. That's correct.

2 Q. After speaking with Ms. Williams did you also
3 interview an individual by the name of Donita Beasley?

4 A. Yes.

5 Q. In speaking with Ms. Beasley, did you she
6 discuss with you whether or not she provided the
7 Defendant, Sean Collins, with a cell phone?

8 MR. SCHIECK: Objection hearsay.

9 MS. BLUTH: This is a prior inconsistent
10 statement by a witness who could not remember the exact
11 phone number. Ms. Beasley discussed that on direct with
12 Ms. Luzaich.

13 MR. SCHIECK: Your Honor, you confront the
14 witness with the prior inconsistent statement, not a third
15 party. It's hearsay. It denies right to confrontation to
16 ask about statements made by witnesses when they weren't
17 asked those questions when they testified.

18 THE COURT: Go ahead.

19 MS. BLUTH: Pursuant to the hearsay rules, we
20 have to first give the individual an opportunity. We have
21 to show them the inconsistent statement. If they still
22 remain inconsistent, I then have the ability to ask the
23 witness. It's also pursuant to Crawley, which we
24 discussed that.

25 THE COURT: More persuaded with regard to the

1 discussion on Crawley. Are you offering it to establish
2 numbers or the trust of what is being elicited.

3 MS. BLUTH: Offering it to establish the number
4 that Ms. Beasley cannot remember at the time.

5 THE COURT: Pursuant to Crawley, I'll allow you
6 to proceed.

7 BY MS. BLUTH:

8 Q. Did Ms. Beasley give you the number she had
9 given the Defendant -- the cell phone number related to
10 that cell phone?

11 A. Yes.

12 Q. What was that number?

13 A. (702) 884-1539.

14 Q. Pursuant in your investigation, did you
15 contact North Las Vegas Police Department to see if there
16 was any missing person's reports available?

17 A. North Las Vegas?

18 Q. Yes.

19 A. Not initially. When I was at the scene I
20 contacted our dispatch. At autopsy I learned that the
21 victim had been reported missing to the North Las Vegas
22 Police Department on the 5th of September.

23 During the autopsy I made a call to North Las Vegas
24 Police Department and had them fax me a copy of their
25 report to the coroner's office.

1 Q. If an individual goes missing and that
2 individual has a vehicle that is normally associated with
3 them, is it important for you to input that vehicle
4 information into a certain data base?

5 A. Yes.

6 Q. What data base is that?

7 A. I had the vehicle put into NCIC as a wanted
8 vehicle in reference to a missing person. The field in
9 that notification was to contact me, to hold the vehicle,
10 hold the occupants, and to seal the vehicle prior to
11 contacting me.

12 Q. In your investigation in speaking about that
13 specific vehicle, which was a Hyundai Sonata did you learn
14 that was a rental car?

15 MR. SCHIECK: Objection, hearsay. Where he got
16 that information.

17 MS. BLUTH: It's already in evidence, your
18 Honor, from multiple witnesses.

19 THE COURT: Overruled.

20 BY MS. BLUTH:

21 Q. Did you learn that it was a rental car?

22 A. On the vehicle registration or the license
23 plate number.

24 Q. In regards to your message did you follow up
25 with Avis rental car to make sure it was rented from

1 them?

2 A. I did.

3 Q. Within a week of meeting with the family after
4 autopsy, did you conduct an interview with Rufus Hicks?

5 A. Yes.

6 Q. Where was that done at?

7 A. His and the victim's apartment on Valley
8 Drive.

9 Q. When you met with Mr. Hicks did he allow you
10 into the apartment?

11 A. Yes.

12 Q. Did he allow you to look inside or roam around
13 the apartment?

14 A. Yes.

15 Q. Did he agree to speak with you while you were
16 at the apartment on that date?

17 A. He did.

18 Q. Did he answer all your questions?

19 A. Yes.

20 Q. Was he cooperative in your investigation?

21 A. He was.

22 Q. You talked a little earlier about when I asked
23 you questions regarding getting an admin subpoena for the
24 cell phones. Did you ever make an attempt to physically
25 locate the cell phones?

1 A. I did.

2 Q. How is that done?

3 A. Used another investigative unit I have access
4 to and requested them to contact the cell company and
5 attempt to ping the phone to see if it was still on and if
6 it was on if they could locate it. They let me know that
7 the phone appeared to be off.

8 Q. Shortly after your request to get the records
9 for the two cell phones did you receive those cell
10 records, call detail records for Brandy's 2 cell phones?

11 A. I did.

12 Q. In regards to the (323) number you previously
13 mentioned, was there significant activity on that phone?

14 A. Yes.

15 Q. What about the (702) number?

16 A. I only had one page of calls that I received.
17 Those stopped on September 2nd at approximately 3:20 in
18 the afternoon.

19 Q. Did you ever physically drive around where the
20 victim lived and those surrounding areas to see if you
21 could physically locate the vehicle she was last known to
22 be driving?

23 A. I did.

24 Q. Did that come up with anything?

25 A. I did not locate it.

1 Q. Turning your attention to September 22nd of
2 2008, did you interview an individual by the name of Amber
3 Pool?

4 A. Yes.

5 Q. Why was it you chose to interview Ms. Pool?

6 A. Her phone number was associated with the last
7 couple of calls the victim received, including the last
8 incoming call which relayed through the cell tower on
9 September 2nd at about 3:38 in the afternoon.

10 Q. A couple of days after that September 24,
11 2008, did you do a follow up interview with Rufus Hicks?

12 A. Yes. That was conducted at our office.

13 Q. What was the purpose for the follow-up
14 interview?

15 A. In between the time we first talked to him and
16 this point doing the second interview, we learned
17 additional information concerning the victim, some of her
18 habits. We wanted to confront Mr. Hicks with those.

19 And in addition we wanted to confront Mr. Hicks
20 with some ruses saying people told us you are responsible
21 for this, what would you say to that. Is there any reason
22 why someone would say that you're involved. Any reason
23 why someone would see you driving the victim's vehicle
24 after her disappearance.

25 Q. When you use the term ruse, what does that

1 mean?

2 A. Something that's not true. We want to try to
3 find out if we get some type of physiological response to
4 questions that we ask. We also look for timeliness of
5 response, what the response is when we asked the
6 questions.

7 Q. You stated you use those ruses with Mr.
8 Hicks?

9 A. Yes.

10 Q. Did he have any abnormal physiological
11 responses when you used those ruses against him?

12 A. No.

13 Q. As a homicide investigator or detective in
14 general, is it common for you to look at a victim's
15 boyfriend or victim's girlfriend first in an
16 investigation?

17 A. Yes. We look at the person closest to the
18 victim and then start working our way out from there.
19 Sometimes it takes a long time. Sometimes it's a rather
20 quick process.

21 Q. September 24, 2008 when you met with Mr.
22 Hicks, did he again answer all your questions?

23 A. He did.

24 Q. Was he cooperative?

25 A. He was.

1 Q. You stated that during your interview with
2 Ms. Beasley she gave you this cell phone number to
3 Mr. Collins. The 884-153 (sic) number. After she'd given
4 you that information, did you apply for permission to get
5 cell records for that number as well?

6 A. Yes.

7 Q. Turning your attention to October 1st of 2008,
8 did you conduct an interview with a person by the name of
9 Shalana Eddins?

10 A. I did.

11 Q. Why do you want to sit down and meet with ms.
12 Eddins?

13 A. We had been looking at Mr. Collins. As the
14 normal part of our investigation into someone, we look at
15 who their associates are. If we have any connections
16 between the two of them. That's how we were able to
17 connect Ms. Eddins and Mr. Collins.

18 Q. During that interview with Ms. Eddins -- don't
19 talk about the specifics -- did she discuss with you
20 events that occurred September 2nd, 2008?

21 A. She did.

22 Q. Did you attempt to verify some of the things
23 she talk to you about that occurred?

24 A. Yes.

25 Q. How did you attempt to verify those things?

1 A. We had cell phone records. We looked at
2 those. Compared that to the information she gave us. She
3 provided us information about potential evidence that may
4 be located in her house. Specifically a fingernail, which
5 appeared similar to the fingernail that victim had in a
6 photograph that we presented to her.

7 She also told us about spots she saw on a wall that
8 appeared to her to be oil. Then she also told us about a
9 stain that was on the floor that supposedly had bleach
10 poured over the top of it.

11 So in order to follow up my partner Detective Hardy
12 obtained a search warrant for Ms. Eddins' residence. That
13 search was signed on the 1st and executed on the 2nd.

14 Q. Were you present when the warrant was
15 executed?

16 A. I was.

17 Q. When you were planning to enter the home were
18 there specific areas of the residence that you felt might
19 have evidentiary value to you in your investigation?

20 A. Yes.

21 Q. What were those?

22 A. The floor near the doorway which led from the
23 main residence into a laundry room, which led to the
24 garage area.

25 Q. When you physically walked into the laundry

1 room area could you see the stain?

2 A. Yes.

3 Q. Could you also see bleach in that area?

4 A. There was a bottle of bleach sitting on top of
5 the -- either the washer or dryer in the laundry room.
6 The stain was -- if you are standing at the doorway
7 looking into the laundry room it was down where your right
8 foot would be.

9 Q. I'd like to ask you questions in regards to
10 bleach.

11 Does bleach have an impact or effect on your
12 ability to recover certain evidence?

13 A. Yes.

14 Q. How so?

15 A. Bleach, depending how long it's been sitting
16 on blood can destroy the DNA.

17 Q. In regard to what Ms. Eddins referred to as
18 oil on the wall, when you went into the home did you see
19 what she previously referenced?

20 A. Yes.

21 Q. Explain to the ladies and gentlemen of the
22 jury what it is you observed?

23 A. The doorway leading into the laundry room from
24 the main residence, if you are standing in the doorway, on
25 the left hand side there were dark stains on the wall.

1 They were small oval stains like a tail on them. Those to
2 me, based on my training and experience, looked similar to
3 blood. So I directed that the crime scene analyst to test
4 the stains and those tested positive for human blood.

5 MS. BLUTH: Approach, your Honor.

6 THE COURT: You may.

7 BY MS. BLUTH:

8 Q. If I showed you a picture of Ms. Eddins would
9 you recognize her?

10 A. Yes.

11 Q. Showing you State's Propose Exhibit 101, do
12 you recognize this individual?

13 A. This is Ms. Eddins.

14 Q. Is that a true and accurate depiction of Ms.
15 Eddins during the time of your investigation?

16 A. Similar, yes.

17 MS. BLUTH: I'd move to admit State's Proposed
18 101.

19 MR. SCHIECK: No objection.

20 THE COURT: State's 101 is admitted. You may
21 publish.

22 MS. BLUTH: Look through those photographs and
23 let me know when you're done.

24 THE COURT: What is the --

25 MS. BLUTH: I apologize. They are not in

1 order -- State's Proposed 53, 57, 59, 61, 62, 63, and
2 64.

3 BY MS. BLUTH:

4 Q. Recognize those images?

5 A. These are photos of the stains as they were at
6 the scene on the wall in Ms. Eddins' residence on October
7 2nd, 2008.

8 Q. Are they a true and accurate depiction of what
9 you previously referenced?

10 A. Yes.

11 MS. BLUTH: I'd move to admit State's Proposed
12 Exhibits 53, 57, 59, and 61 through 64.

13 MR. SCHIECK: No objection.

14 THE COURT: 53, 57, 59, and 61 through 64.

15 MR. SCHIECK: No objection.

16 THE COURT: State's 53, 57, 59, and 61 through
17 64 are admitted.

18 BY MS. BLUTH:

19 Q. Before we get into the house, showing you
20 State's 101. Is that a picture of Shalana Eddins?

21 A. Correct.

22 THE COURT: You may publish the remainder. I
23 don't think I indicated that.

24 BY MS. BLUTH:

25 Q. Showing you what's marked as State's 53. What

1 are we looking at here?

2 A. These are the apparent blood stains on the
3 wall in Ms. Eddins' residence. The doorway there leads
4 into the laundry room. The rulers that are taped to the
5 wall and the small markers that are also affixed to the
6 wall are used by crime scene analysts to locate the
7 droplets on the wall.

8 Q. And again, each of -- like you said, the
9 markers there is 1, 2, 3, 4 on the front face of the wall.
10 I'm not sure if you can see it in the doorway, on the side
11 of the door we then see a marker of 5 here. Can you see
12 that from where you are?

13 A. Correct.

14 Q. And 6 more towards the bottom?

15 A. Yes.

16 Q. So 6 droplets in all?

17 A. Yes.

18 Q. Showing you a close up of 1. Is that what Ms.
19 Eddins previously thought or described as an oil sustain?

20 A. She described the stains on the wall. This is
21 what I found when I looked at the wall. This is what was
22 tested.

23 Q. Showing you State's 57. That is blood marked
24 under No. 1?

25 A. Yes.

1 Q. Showing you State's 59, blood under No. 2?

2 A. Correct.

3 Q. Showing you State's 61, that would be the
4 blood mark No. 3?

5 A. Correct.

6 Q. Showing you State's 64, that would be the
7 blood underneath marker No. 4?

8 A. Correct.

9 Q. Now, in looking at these marks that I've had
10 you identify in all of State's 64, State's 61, State's 59,
11 State's 51, there seems to be a similar pattern to the
12 droplets or shape. Explain to us what we're looking at?

13 A. What you are looking at is a droplet that
14 impacts a surface at an angle. That's what gives that
15 tail to the droplet.

16 Q. Is there a technical term for that?

17 A. Blood spatter is what I call it. There are
18 other technical terms a blood pattern analyst would use,
19 but that's the term I refer to it as.

20 Q. When you executed the search warrant on
21 October 2nd, did you have knowledge that there had been a
22 fire in the home on September 30th?

23 A. Yes.

24 Q. How much damage was there to the home because
25 of that fire?

1 A. There was a lot of smoke damage throughout the
2 house. The bedrooms on the west side of the residence
3 appeared to be a total loss. The ceilings had collapsed.
4 There was water -- standing water in the bedrooms and in
5 the hallway area. Pretty much all the contents in the
6 bedroom had been buried by the insulation in the
7 ceiling.

8 Q. Now, I apologize if you said this before. The
9 carpets in the home, were those also ruined as well?

10 A. Yes. There was extensive smoke damage and
11 water damage.

12 Q. Moving back a day to October 1st, 2008, which
13 is the same day you interviewed Shalana Eddins. On that
14 day were you notified Brandy Payton's rental car was
15 found?

16 A. Yes.

17 Q. How were you notified of that?

18 A. Based on the want I placed into NCIC
19 requesting that vehicle be held for me and that I be
20 noticed I was called by an officer through dispatch to
21 tell me that the vehicle had been recovered in the 1900
22 block of Alwell Street. Which is just a little to the
23 east of Rancho and south of Texas Station Casino. About 6
24 miles from Ms. Eddins' and Mr. Collins' residence on
25 Laguna Palms.

1 Q. Did you respond to that area?

2 A. I did.

3 Q. What was the condition of the vehicle upon
4 your arrival?

5 A. The windows were rolled up. The doors were
6 closed. However, the vehicle was sitting on pieces of
7 wood because all 4 wheels and tires had been removed.
8 There was dust over the top of the car that indicated that
9 it had been sitting there awhile.

10 When I looked inside the vehicle, I could see on
11 the driver's seat there was what happened to be a towel
12 that appeared to have been partially burned. There was
13 also a lighter lying on the seat next to it.

14 Q. Was an crime scene analyst call to this area
15 to process the vehicle and take photos, et cetera?

16 A. Yes. Crime scene investigator Horn responded
17 out there with us.

18 Q. Were you able to locate any witnesses in the
19 area who had scene the vehicle in the area?

20 A. I did.

21 Q. In regard to the evidence that we previously
22 discussed you impounded at the desert, along with that
23 evidence, was the items -- the blood on the wall at 519
24 Laguna Palms, was evidence and swabbed taken from those
25 areas as well?

1 A. Yes.

2 Q. What is the point of taking swabs from blood
3 found on the wall?

4 A. In order to conduct a DNA analysis.

5 Q. So the items of evidentiary value that we've
6 discussed in the desert as well as the swabs from the
7 residence at 1519 Laguna Palms, did you ask the lab to do
8 an analysis on those items?

9 A. I did.

10 Q. Now, in regard to the sustain we talked about
11 with the bleach, did you request that DNA analysis be done
12 in that area?

13 A. I did not.

14 Q. Can you explain to the ladies and gentlemen
15 why not?

16 A. Crime scene analyst we had with us -- analyst
17 Lopez -- they carry chemicals with them that are used to
18 detect the presence of blood. One of them is leuco
19 crystal violet. When it's sprayed on an area where there
20 is blood it lights up with this purple color. That was
21 used on the carpet on the top. It didn't test positive.
22 The carpet was peeled back. The bottom of the carpet was
23 sprayed. It did not test positive.

24 We also sprayed the padding underneath that area
25 and it did not test positive. At that point I didn't see

1 any reason to cut that carpet out, since it didn't test
2 positive for blood and I had already located blood on the
3 wall, I just didn't have that cut out.

4 MS. BLUTH: Approach the witness.

5 THE COURT: You may.

6 MS. BLUTH: Showing you what's marked for
7 purposes of identification State's Proposed 42 and 46.

8 BY MS. BLUTH:

9 Q. Do you recognize what's depicted in these
10 photographs?

11 A. I do.

12 Q. Are these -- what are we looking at?

13 A. This is the hallway that led from the bedrooms
14 past the laundry area and front door area into the living
15 room.

16 Q. Is this a fair and accurate depiction of what
17 the home looked like at 1519 Laguna Palms when you
18 conducted the search warrant on October 2nd, 2008?

19 A. 46 is. 42 is after we had pulled the carpet
20 back from the hallway.

21 MS. BLUTH: Move to admit into evidence State's
22 Proposed Exhibits 42 and 46.

23 THE COURT: Any objection.

24 MR. SCHIECK: No objection.

25 THE COURT: State's 42 and 46 will be admitted.

1 You may publish.

2 BY MS. BLUTH:

3 Q. State's 46, explain what we are looking at?

4 A. This is the hallway leading from the bedroom
5 on the west side of the house to access the area located
6 right here.

7 THE COURT: I'm not seeing the mark. Try
8 again.

9 THE WITNESS: Good as I can get it. In the
10 lower left corner of the photo.

11 BY MS. BLUTH:

12 Q. Showing you State's 42, would this be that
13 same area with the carpet pulled back?

14 A. Yes. This is the entrance to the laundry
15 room. Through the laundry room you get into the garage.

16 Q. In the interview with Shalana Eddins did she
17 talk about jewelry that the Defendant had given to her on
18 September 2nd, 2008?

19 A. Yes.

20 Q. And was she able to describe that jewelry to
21 you?

22 A. She was.

23 Q. After she was able to describe that jewelry
24 did you then provide her a photo of the victim -- one or
25 two photos of the victim wearing that jewelry?

1 A. Two photos.

2 Q. Was she able to identify the jewelry in those
3 photos as being the same jewelry?

4 A. Yes.

5 Q. Showings you what's in evidence as State's 1,
6 is this one of the photos you showed Ms. Eddins?

7 A. It is.

8 Q. Showing you State's 2, also a photo?

9 A. Yes.

10 Q. At any point in time in your investigation did
11 you conduct what is called a pawn check to see if the
12 Defendant pawned items or bought items?

13 A. Nothing was conducted. I'm aware of any point
14 where in September of 2008 Mr. Collins bought any jewelry
15 from a pawn store.

16 Q. October 10, 2008 did you get the DNA results
17 from the evidence collected both in the desert as well as
18 1519 Laguna Palms?

19 A. Yes.

20 Q. We talked previously about cell records that
21 you had requested, both for the victim's (323) number as
22 well as the Defendant's number.

23 When you stated that you often deal with this type
24 of cell record information as a detective on the homicide
25 unit, did you go through training to look at these records

1 to figure out what they all mean.

2 A. Yes.

3 Q. What training did you go through?

4 A. In-service training. Also worked with our
5 technical and surveillance section. Then when I have
6 questions I consult the phone carrier.

7 Q. In the last 5 years, how many homicides have
8 you been apart of?

9 A. Maybe 100, 120 where I've either been the lead
10 detective or it's my partner or one of the other
11 detectives on my squad.

12 Q. Out of 120, how many are you looking into cell
13 phone information and call detail logs?

14 A. It varies. Depends on what the circumstances
15 are, when the murder occurred.

16 Q. Now, after receiving both the victim's (323)
17 cell records and the Defendant's cell records, did you
18 find anything contained in those records that you felt
19 were important for your investigation?

20 A. Yes.

21 Q. What was that?

22 A. The contact between Mr. Collins and the
23 victim.

24 Q. What are you referring to?

25 A. Phone calls, text messages.

1 Q. What contact was important in your
2 investigation?

3 A. Prior to -- around 3:38 in afternoon on
4 September 2nd, there had been roughly 48 calls exchanged,
5 calls or text messages exchanged between Mr. Collins and
6 the victim.

7 After September 2nd at about 3:30 in the afternoon
8 there were only 6 for 3 or 4 days I believe.

9 Q. Now in regard to the records that you
10 received, did those records also include cell site
11 information?

12 A. Yes.

13 Q. Did you look at the cell site information for
14 where Brandy was located when her phone, like you said,
15 dropped off no activity at 3:38?

16 A. I did.

17 Q. In regard to that same time period did you
18 also look at where the Defendant was located in regard to
19 the cell site information during that time period?

20 A. Yes.

21 Q. What information did you get from that?

22 A. They were both hitting off of cell towers in
23 the area of 1519 Laguna Palms.

24 Q. I believe the time period is about 7:42 to
25 8:00 p.m., did you look at the Defendant's activity during

1 that time frame?

2 A. Yes.

3 Q. What of significance came out of that?

4 A. When I looked at the progression of cell
5 towers it went from the area from 1519 Laguna Palms up to
6 the area of Kyle Canyon. Specifically hitting off the
7 cell tower 117 and 389, located on US 95 just north of 157
8 which leads to Kyle Canyon.

9 Tower 117 is located 8 miles to the west on the 156
10 from the 95. And cell tower 389 is located at Angel's
11 Peak.

12 Q. Where is Angel's Peak located?

13 A. Off the 158 near the Spring Mountain Youth
14 Camp.

15 Q. After conducting your investigation did you
16 make an arrest for the murder of Brandy Payton?

17 A. I did.

18 Q. Who is the individual you arrested for that
19 crime?

20 A. The Defendant, Lesean Collins.

21 Q. Do you see him in the court room today?

22 A. I do.

23 Q. Can you point to him and describe an article
24 of clothing he's wearing?

25 A. Seated between defense counsel wearing a gray

1 long-sleeved shirt.

2 MS. BLUTH: Record reflect identification of the
3 Defendant.

4 THE COURT: The record will so reflect.

5 BY MS. BLUTH:

6 Q. What factors did you assess when making that
7 decision?

8 A. The information that I had received during the
9 course of the investigation through interviews. I also
10 used the cell tower information I had trafficking him up
11 to the location where the victim's body was found.

12 I look at information provided by other police
13 departments that reported seeing him in a vehicle at 2:27
14 in the morning --

15 MR. SCHIECK: He's getting into hearsay now.
16 Basing his decision on --

17 THE COURT: The question I think was formed
18 correctly. He's allowed to testify as to the items he
19 based his decision on. Proceed.

20 BY MS. BLUTH:

21 Q. Continue, Detective Mogg.

22 A. The fact that he was seen by North Las Vegas
23 police officers in the victim's vehicle, where they were
24 able to obtain the license number of that vehicle at 2:26
25 in the morning of September 3rd.

1 The fact I found blood from the victim inside
2 Mr. Collins' residence?

3 MR. SCHIECK: Objection. This is all facts not
4 in evidence. He's giving a narrative on -- it's improper
5 and invades the province of the jury.

6 THE COURT: The jurors will have the opportunity
7 to weigh the evidence.

8 My understanding for the objection is -- the hearsay
9 objection made is that this is in response to a question
10 of why did you take certain action, which the state of
11 mind of the detective is and can be determined to be an
12 exception to hearsay.

13 This latest objection as to evidence not put in
14 evidence, we can have a discussion about that if you want
15 to be specific.

16 MR. SCHIECK: Our objection is based on the
17 confrontation clause. He's talking about DNA results.
18 That's clearly evidentiary matters he should not be
19 allowed to testify to.

20 THE COURT: Counsel, you may respond. But we
21 have an understanding that there is evidence forthcoming
22 from a later witness. You have not inquired specifically
23 as to results of any evidence prior to this with Detective
24 Mogg.

25 Let's not go outside the bounds of that now.

1 BY MS. BLUTH:

2 Q. Let me ask it a different way?

3 After you received results from 1519 Laguna Palms
4 and the vehicle, did that also lead you to conclude with
5 the decision to arrest Mr. Collins?

6 MR. SCHIECK: Same objection.

7 MS. BLUTH: It's not get into the --

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 BY MS. BLUTH:

11 Q. The fact Ms. Eddins identified the victim's
12 jewelry in the Defendant's possession September 2nd, did
13 that have any weight to your ultimate decision?

14 A. Yes.

15 MS. BLUTH: Nothing further. I'll pass the
16 witness.

17 THE COURT: Thank you.

18 MR. SCHIECK: Court's indulgence.

19 CROSS-EXAMINATION

20 BY MR. SCHIECK:

21 Q. Let's talk about the last subject brought up
22 by the prosecutor, that being Shalana's identification of
23 the jewelry?

24 A. Correct.

25 Q. In your report you reference that

1 identification, correct?

2 A. Yes.

3 Q. In your report you indicate she identified
4 silver jewelry; is that correct?

5 A. I believe that's what she said.

6 Q. So it's your testimony she said the jewelry
7 was silver jewelry?

8 A. I believe so.

9 Q. Is it your testimony the photos you showed
10 here was of silver jewelry not gold?

11 A. The photographs I showed her I think depict
12 white gold.

13 Q. Did she tell you it was silver jewelry?

14 A. I'd have to look back at her statement.

15 Q. When you were discussing that with her, she
16 said it looked like; isn't that correct?

17 A. That's correct.

18 Q. During this interview with her did you discuss
19 with her the extremely limited amount of time she looked
20 at that jewelry?

21 A. She had it in her hands for a short period of
22 time before giving it back to him.

23 Q. Is that your understanding of what her
24 description was. She had it in her hands for a short
25 period of time?

1 A. He gave it to her.

2 Q. Did she say she had it in her hands for a
3 short period of time?

4 A. I don't recall what the period of time she
5 said was that she had it.

6 Q. Correct me if I'm wrong. The reason you have
7 crime scene analysts that go to the scene is their job and
8 responsibilities is to impound the evidence?

9 A. Correct.

10 Q. They are the ones that actually collect the
11 evidence, tag it, and impound it into the evidence vault
12 for the police department?

13 A. In most cases. There are times when we
14 impound our own evidence.

15 Q. In this case did you impound any evidence
16 yourself personally?

17 A. I would have to go back and look at my report.
18 I don't recall if I impounded anything. I think I
19 impounded a couple of books.

20 Q. Out at the scene out at the desert, do you
21 recall if you impounded anything or was it the crime scene
22 analysts that did that?

23 A. The crime scene analyst handled the evidence
24 out there.

25 Q. If I understand the process, homicide

1 detectives work with the crime scene analysts and they
2 discussion what they are going to collect and what not to
3 collect?

4 A. Correct.

5 Q. But ultimately it's the homicide detective's
6 final decision on the evidence collected?

7 A. It is. But I work with the crime scene
8 analyst so we put our heads together and get what's the
9 best evidence to recover.

10 Q. In this case was the metal pipe impounded?

11 A. It was not.

12 Q. So if it was not impounded you were never able
13 to send in a request to have it forensically tested?

14 A. I didn't feel a reason to impound it.

15 Q. Do you recall what evidence was impounded from
16 the desert?

17 A. The two fingernails, two rocks, a white towel,
18 the shoes, and a fly.

19 Q. Evidence of insect activity?

20 A. Correct.

21 Q. Because that evidence can occasionally be used
22 to determine approximate time the body was placed at the
23 location?

24 A. At times yes.

25 Q. Now was a blanket found at the scene?

1 A. No.

2 Q. Did you see any indication that a blanket was
3 used in order to drag the body?

4 A. I wouldn't have been able to see that. All I
5 could see was the drag marks.

6 Q. Were any fibers recovered like from a
7 blanket?

8 A. No.

9 Q. Was any vegetation collected to see if there
10 was any trace evidence contained on that vegetation?

11 A. We looked at it but we didn't collect or see
12 any trace evidence on it.

13 Q. Was the vegetation photographed?

14 A. It was photographed.

15 Q. You indicated you talked with Rufus Hicks on
16 two different occasions?

17 A. Correct.

18 Q. What was the date of the first occasion you
19 talked with him?

20 A. I know it was the first week to 10 days.

21 Q. You conducted a formal interview on September
22 24th, at the homicide office; is that correct?

23 A. Correct.

24 Q. But the first time you talked with him was at
25 the residence?

1 A. Yes.

2 Q. Was that yourself and Detective Hardy?

3 A. Correct.

4 Q. Did you reference that in your report you
5 prepared in this case?

6 A. I don't believe I did.

7 Q. You indicated when you have an unsolved
8 homicide oftentimes the first person you look at is the
9 person closest to the deceased?

10 A. Correct.

11 Q. Brandy was living with Rufus Hicks.

12 A. Yes.

13 Q. So as a normal case he's one you would focus
14 your investigation on?

15 A. Correct.

16 Q. You went to interview him on -- the first
17 week?

18 A. Yes.

19 Q. You don't recall the date?

20 A. I don't recall the date.

21 Q. You didn't document that in the report?

22 A. I did not.

23 Q. Nothing in the report reflected what he said
24 when you talked with him?

25 A. No.

1 Q. You're going from recollection of what he
2 said?

3 A. Correct.

4 Q. No recorded interview?

5 A. No.

6 Q. Were you asked to record interview at that
7 time?

8 A. I don't believe if we were asked record it or
9 not.

10 Q. Did you take photographs of the apartment?

11 A. I didn't see anything out of the ordinary
12 inside the apartment. Had we had seen anything out of the
13 ordinary we'd tell the crime scene analyst.

14 Q. This was sort of a get acquainted interview
15 with Mr. Hicks?

16 A. Not really. We wanted to see what the first
17 contact with him is like. I already talked to him once at
18 the coroner's office.

19 Q. That was an important interview with him, the
20 first one, before the follow-up interview?

21 A. It was important.

22 Q. Not important enough to put in your report?

23 A. I didn't document it in the report.

24 Q. You determined he had a vehicle?

25 A. He said him and the victim shared a green car.

1 I forget what it was.

2 Q. Did you search the inside of that car?

3 A. No.

4 Q. Did you ask for crime scene analysts to come
5 down and do that?

6 A. I did not.

7 Q. When you talked about the pawn checks, you did
8 you personally do a pawn check?

9 A. I did not. My partner told me --

10 Q. I don't want to know what you were told. You
11 are relying on information given to you by someone else?

12 A. Correct.

13 Q. You indicated the pipe at the scene appeared
14 to have vegetation blown onto it, correct?

15 A. Yes.

16 Q. You were shown a photograph of the fingernails
17 that were on Brandy's hands that were shown to Shalana,
18 correct?

19 A. Correct.

20 Q. Do you recall when that was?

21 A. I would have to look at the report to give you
22 the exact date.

23 Q. If I represented it was the 10th of October,
24 would that sound right?

25 A. That's probably accurate.

1 Q. Before I say that, let me confirm. She
2 indicated that was not the fingernail?

3 A. Could I look --

4 Q. Sure.

5 A. Thank you.

6 THE COURT: We are referring to a book you
7 brought with you.

8 THE WITNESS: My case file.

9 THE COURT: Thank you.

10 THE WITNESS: Thank you, your Honor.

11 BY MR. SCHIECK:

12 Q. Page 19 of 19 --

13 A. That's correct, October 10th.

14 Q. You talked about when you went in with the
15 search warrant into 1519 Laguna Palms you saw marks on the
16 wall and that you requested crime scene analysts to do a
17 presumptive test on?

18 A. Correct.

19 Q. You are not a blood spatter expert?

20 A. I have attended several blood pattern, stain
21 interpretation classes including a 40 hour class from the
22 California Department of Justice.

23 Q. Are you saying you are an expert on blood
24 spatter?

25 A. Not an expert but I have more than a lay

1 person.

2 Q. There are such things as blood spatter
3 expert?

4 A. There are.

5 Q. It was your decision not to impound any of the
6 carpeting or padding from 1519 Laguna Palms?

7 A. Correct. After it was negative for blood.

8 Q. There was a presumptive test to test if it was
9 negative?

10 A. It was.

11 Q. You are not forensically trained in DNA
12 analysis, correct?

13 A. I'm not.

14 Q. You did not impound the carpet, correct?

15 A. I didn't see anything that looked like blood
16 on it. I saw the bleach stain. We did a pre-test for
17 blood. It was negative so I chose not to impound it.

18 Q. Okay.

19 MR. SCHIECK: Court's indulgence.

20 THE COURT: Yes.

21 BY MR. SCHIECK:

22 Q. During the service of the search warrant at
23 1519 Laguna Palms, other than the evidence on the wall
24 were there other items impounded from the residence?

25 A. Yes, a blanket was.

1 Q. Where was that located?

2 A. In the living room behind the couch.

3 Q. Did you see anything on that blanket that
4 caused you to impound it?

5 A. There was what appeared to be blood on the
6 blanket.

7 Q. Was a test done on that?

8 A. That one looked like blood so you believe I
9 had them impound it. It was a small sustain so we
10 collected that and impounded it.

11 Q. That would have been analyst Lopez?

12 A. I believe that's who impounded it.

13 MR. SCHIECK: Thank you very much, Detective.
14 Pass the witness.

15 THE WITNESS: Thank you.

16 THE COURT: Any redirect.

17 REDIRECT EXAMINATION

18 BY MS. BLUTH:

19 Q. That blanket, that was not the blanket that
20 was missing from in the home, correct?

21 A. It was not.

22 Q. If Mr. Hicks said anything noteworthy or acted
23 inappropriate in that first interview would you have noted
24 that in your report?

25 A. Yes.

1 Q. Would you have done a follow-up
2 investigation?

3 A. Yes.

4 Q. Mr. Schieck asked you questions about the fact
5 that Ms. Eddins identified the jewelry as silver. Do you
6 remember in her statement what color she identified the
7 jewelry as being?

8 A. No. That's why I said I would have to look at
9 her statement.

10 MS. BLUTH: May I approach.

11 THE COURT: You may.

12 BY MS. BLUTH:

13 Q. Page 9 -- the interview you conducted with Ms.
14 Eddins on October 1st, 2008 -- page 9. Read that to
15 yourself and let me know when you're done, please.

16 A. Okay.

17 Q. Does that help refresh your recollection?

18 A. Yes.

19 Q. What is the description she gave?

20 A. She said it was gold in color.

21 MS. BLUTH: Thank you. Nothing further.

22 THE COURT: Mr. Schieck, anything further.

23 MR. SCHIECK: Just a couple.

24 THE COURT: You may.

25 MR. SCHIECK: Can we mark this Defense next in

1 order.

2 THE COURT: C, it will be marked.

3 MR. SCHIECK: May I approach.

4 THE COURT: You may.

5 RECROSS-EXAMINATION

6 BY MR. SCHIECK:

7 Q. Handing you Defendant's C. Do you recognize
8 what's depicted in C?

9 A. I do.

10 Q. What is that?

11 A. The blue blanket we found behind the couch
12 with the -- looks like 20 millimeter by 20 millimeter
13 blood sustain.

14 Q. That was impounded?

15 MR. SCHIECK: Move to admit C.

16 MS. BLUTH: No objection.

17 THE COURT: Defendant's C will be admitted.

18 MR. SCHIECK: That's all I have, your Honor.

19 THE COURT: Any questions from the jurors for
20 the detective. Nothing.

21 You are excused. Take all of your items and mind
22 your step while you exit.

23 THE WITNESS: Thank you, your Honor.

24 MS. LUZAICH: Can we take a brief recess.

25 THE COURT: We'll take a brief recess.

1 MS. LUZAICH: May we approach.

2 THE COURT: Yes.

3 (Discussion held at the bench.)

4 THE COURT: All right.

5 Ladies and gentlemen, I was informed and I was not
6 aware of this, we started earlier today because we wanted
7 to ensure we'd complete the witnesses. We don't have any
8 additional witnesses so it's an early out for you all
9 today. We are still on track to complete State's evidence
10 on Monday and begin with -- if and when the defense wishes
11 to put on evidence, we'll hear from them.

12 See you Monday at 1:30. You can wait on Monday
13 outside the court room.

14 JURY ADMONITION

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

24 You are further admonished not to form or express any
25 opinion on any subject connected with this trial until the

1 case is finally submitted to you.

2 Leave your note pads and pens.

3 THE COURT: Mr. Schieck, you said you wanted to
4 have further discussion with regard to the objections that
5 were made.

6 MR. SCHIECK: Your Honor, specifically the
7 detective when asked, we'd assert improperly, to state his
8 reasons why he thought there was cause to arrest
9 Mr. Collins, initially started talking about things the
10 jury has heard or that he had personal knowledge of. Then
11 he started to go off into things the jury not heard
12 testimony on, specifically DNA evidence and the results of
13 the DNA testing before we have the opportunity to be
14 confronted with that evidence and cross-examine that
15 evidence.

16 And when I voiced my objection that he was doing so,
17 the court then indicated, well, we're going to hear that
18 evidence eventually anywhere. In my opinion told this
19 jury that the court believes the DNA evidence exists and
20 in fact is as stated by the detective. Therefore, the
21 jury is left with no conclusion before we've confronted a
22 witness that the court has already decided that that DNA
23 evidence is accurate.

24 There are many things that can be done to challenge
25 DNA evidence. And we have not conceded the DNA evidence

1 is linked to Brandy Payton in this case. But by this
2 discussion and our objections and the court's rulings
3 saying we're going to hear that evidence eventually
4 anyway, I think the jury has been told any confrontation
5 of the DNA evidence is a moot point and we'd move for
6 mistrial on that basis.

7 THE COURT: You want to respond.

8 MS. BLUTH: First of all, several piece of
9 evidence that the detective spoke and the other witnesses
10 spoke in regards to that further evidence may be coming
11 in. For instance, all of the times that blood was
12 detected and tested positive. I mean, I don't hear the
13 defense making any arguments regarding that, it's just
14 DNA. I don't think the court overruling that objection by
15 any way tells the jury that our DNA evidence is any better
16 then anything they would be presenting.

17 They still have the opportunity for full
18 cross-examination of our DNA expert or to present an
19 expert on their own I don't think that the ruling was
20 inappropriate in any way.

21 My question to the detective was what are the factors
22 that led you in your investigation to ultimately arrest
23 the Defendant is important. We have to prove this case
24 beyond a reasonable doubt, and he can go ahead and assess
25 the factors that led him to that conclusion.

1 MR. SCHIECK: If I can add one thing.

2 This ties into the fact that over our objection the
3 coroner was allowed to answer hypothetical that if you
4 were told that the blood on the wall was Brandy Payton's
5 and the blood in the trunk was Brandy Payton's, what would
6 your opinion be at that point in time. Again, tying
7 directly into what the detective was allowed to do, over
8 our objection, allowed to answer a hypothetical on DNA
9 evidence we haven't had the ability to confront yet.

10 THE COURT: For clarification, because I'm going
11 to respond and I didn't want to interrupt you, Mr.
12 Schieck.

13 I don't believe your statements in terms of what my
14 statements were to the jury or the characterization of the
15 question there with regard to the hypothetical is accurate
16 in terms of the statements that were made. I'm not
17 quibbling that those discussions occurred. What I'm
18 quibbling with is specifically with regard to the
19 hypothetical, it was would these things be consistent with
20 a finding of homicide. Not the way you portrayed them
21 just there. That may be a distinction without a
22 difference, but the court does perceive there to be a
23 difference.

24 The issue with regard to the discussion on the DNA
25 and what's anticipated to be a witness that would testify

1 and I'll give you the opportunity to address that then,
2 obviously at this point the defense has requested a
3 mistrial. The court obviously must make a determination
4 as to whether or not there is prejudice that has occurred
5 that would prevent the Defendant from receiving a fair
6 trial.

7 With all due respect I don't perceive any difference
8 in the discussions had here today with regard to the
9 objection. I would note the court did ultimately sustain
10 further objection to have further discussion with regard
11 to that information not provided by the detective that
12 would be addressed future. I don't believe the court in
13 any way indicated that it was a certainty that that
14 evidence was going to be presented, but the court does not
15 perceived any distinction between the discussion had here
16 in court and the discussion that was offered by the State
17 in its openings that indicated that this is the evidence
18 that was perceived to be forthcoming to the jury, had a
19 good faith belief it was going to be forthcoming and to
20 present that evidence.

21 The court's discussion was similar to that. The
22 jurors have been admonished that statements of counsel and
23 any questions asked in openings or closing and remarks not
24 coming from witnesses are not evidence to be considered in
25 the case.

1 At the end of the day, whatever the evidence is that
2 we received that's what they will weigh. I don't believe
3 the court has in any way precluded the defense from
4 confronting the evidence. I don't believe the court has
5 in any way predetermined the admission of evidence. The
6 court simply indicated as had been the circumstances with
7 other matters that there was evidence anticipated that
8 would be presented and that the court did not feel that
9 the answer at that time had gone further than that witness
10 should be able to testify when further inquiry of her
11 statements were made and objections were made when the
12 court concluded those statements.

13 However, again, I would have to determine that these
14 circumstances would necessitate a mistrial because there
15 is again such prejudice that has occurred that would
16 prevent the Defendant from having a fair trial. I did not
17 perceive that that circumstance has occurred in any way.

18 In light of this discussion the objections, the first
19 overruling of the objections, the later sustaining of
20 further objections in those contexts and what the
21 discussion was that was had that there has been any
22 depravation of the Defendant's constitutional due process
23 rights to a fair trial.

24 So the mistrial is denied on that basis. We'll have
25 a record complete on that.

1 Anything further.

2 MR. SCHIECK: Thank you.

3 Additionally, according to my notes as you were going
4 through the testimony from Detective Mogg as the State was
5 displaying a number of photographs that have been
6 displayed previously, have been in power points, as they
7 were showing my notes say as they were showing photograph
8 25 -- or Exhibit 25, there was a commotion in the
9 courtroom with crying and sobbing where one individual was
10 escorted from the courtroom in a noisy fashion.

11 We feel the commotion causes us to move for a
12 mistrial on that basis. We feel it was done intentionally
13 to prejudice Mr. Collins. At the very least the person
14 making the commotion be excluded from the remainder of the
15 court proceedings.

16 THE COURT: Does the State wish to respond.

17 MS. BLUTH: The State does.

18 It is very hard with anybody looking at the
19 transcript afterwards to really get an idea of what
20 happened in the courtroom.

21 So I think that Mr. Schieck and I will probably
22 disagree on the use of the word commotion. I think
23 someone did get emotional and they left the courtroom,
24 which is the appropriate things to do.

25 This is an credibly difficult thing for this family

1 to go through and watch everyday. Every person should
2 recognize or does recognize how difficult it is for this
3 family. This is the first time they have seen all of the
4 photos at the desert and the condition of the body and how
5 she was found and how she was dumped on the side of the
6 road. We can all agree that that would be difficult for a
7 family member to see.

8 I don't think there was a loud outburst. I don't
9 think the door was flung open and I heard someone
10 screaming and crying. I think your Honor has admonished
11 the family members, and I think they've acted
12 appropriately.

13 I don't believe that the Defendant has been
14 prejudiced in any way. I think that a mistrial is
15 inappropriate.

16 THE COURT: Anything further.

17 MR. SCHIECK: I guess we disagree over how we
18 describe the situation, but I would assert that the word
19 sobbing out loud is an accurate description. I heard the
20 doors close and could still hear wailing going on outside
21 and the jury could hear that.

22 THE COURT: The court, for the record, the
23 timing of the photos, the questioning of the detective,
24 the photos that were considered to be most concerning and
25 likely to prompt a response are those that took place with

1 Dr. Simms and the autopsy. There were no reactions from
2 anyone at that time.

3 The time when a reaction occurred was several photos
4 into the depiction of the crime scene, if you want to call
5 it, the situation where the body was found in the desert
6 and not a particular photo. What appears to be the
7 circumstances is a build up of emotions.

8 What I observed was the family member becoming
9 emotional, recognizing it and immediately standing to
10 leave the courtroom. Being assisted by another person
11 leaving the courtroom and then appearing to hold in check
12 the emotions, because there was a louder sound of emotion
13 once exiting the courtroom outside the doors, which lasted
14 for a brief period of time and ended.

15 I want to be clear for the record that there was no
16 break in the testimony, such that all of the attention
17 would have been drawn to the family member in that display
18 of emotion. The detective continued to testify and I
19 observed the jurors paying attention. But it centered to
20 the questioning and testimony continued throughout the
21 time frame.

22 I'm not going to find that there was any reason to
23 believe the jurors would be so prejudiced by that
24 information or that response to that display that again it
25 would prevent the Defendant from receiving a fair trial or

1 that necessitates a mistrial.

2 Anything further.

3 MR. SCHIECK: No.

4 THE COURT: State.

5 MS. BLUTH: No, your Honor.

6 THE COURT: Thank you all.

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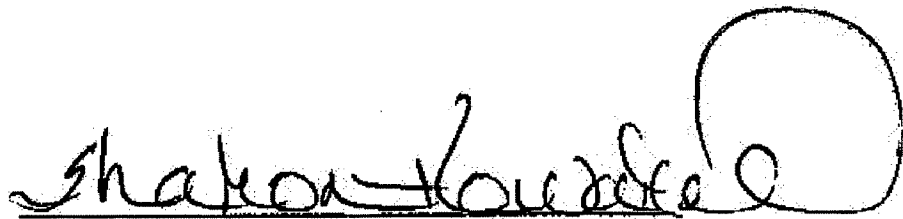
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

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, appearing to read "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


CLERK OF THE COURT

1 OBJ
2 DAVID M. SCHIECK
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7 State Bar No. 10088
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8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 LESEANN TARUS COLLINS,
15 Defendant.

CASE NO: 09C252804-1
DEPT NO: 25

16
17
18 **WRITTEN OBJECTIONS TO**
19 **STATE'S PROPOSED JURY INSTRUCTIONS**

20 Comes now the Defendant Leseann Collins, by and through his counsel, and
21 files these objections to the State's proposed jury instructions. These objections
22 are based upon the Fifth, Sixth, Eighth and Fourteenth Amendments to the United
23 States Constitution and Article I, Section 8 of the Nevada Constitution.

24 **1. Instruction beginning "In this case the defendant is accused in an**
25 **Information alleging an open charge of murder."**

26 Collins objects to the omission of instructions on voluntary manslaughter
and involuntary manslaughter. The cause and manner of death have not been
established by the State. Without this critical information, there are a number of

1 theories by which the jury could find that the lesser included offenses are
2 appropriate. This same objection applies to the omission of instructions on
3 voluntary manslaughter and involuntary manslaughter throughout the packet of
4 instructions.

5 The second paragraph of the proposed instruction is “The jury must decide
6 if the defendant is guilty of any offense and, if so, of which offense.” This
7 instruction misstates the jury’s role and the decision it is to make. The jury should
8 be instructed as follows in the second paragraph:

9 The jury must decide if the State has proven beyond a
10 reasonable doubt whether the defendant is guilty of any offense and,
11 if so, of which offense.

12 **2. Instruction beginning with “The defendant is presumed innocent . . .”**

13 Collins objects to the State’s proposed instruction on the presumption of
14 innocence. The State proposes to instruct the jury as follows:

15 The Defendant is presumed innocent until the contrary is
16 proved. This presumption places upon the State the burden of
17 proving beyond a reasonable doubt *every material element* of the
18 crime charged and that the Defendant is the person who committed
19 the offense.

18 In a recent opinion, the Nevada Supreme Court disapproved of the use of the term
19 “material element” in describing the presumption of innocence. In Burnside v.
20 State, 131 Nev. Adv. Opn. 40, __ P.3d __ (6/25/2015) (all elements are material,
21 so the word “material” should be omitted from future instructions on the
22 presumption of innocence). Moreover, both of Nevada’s statutory definitions on
23 the presumption of innocence provide proper instructions for the jury. NRS
24 175.191 provides the following:

25 A defendant in a criminal action is presumed to be innocent
26 until the contrary is proved; and in case of a reasonable doubt

1 whether the defendant's guilt is satisfactorily shown, the defendant is
2 entitled to be acquitted.

3 NRS 175.201 provides the following:

4 Every person charged with the commission of a crime shall be
5 presumed innocent until the contrary is proved by competent
6 evidence beyond a reasonable doubt; and when an offense has been
7 proved against the person, and there exists a reasonable doubt as to
8 which of two or more degrees the person is guilty, the person shall be
9 convicted only of the lowest.

10 Collins requests that these two statutory instructions be given in place of the
11 State's proposed instruction.

12 **3. Instruction beginning "You are here to determine the guilt or innocence
13 of the Defendant. . ."**

14 This proposed instruction misstates the jury's role and the State's burden of
15 proof. The proposed instruction provides the following:

16 You are here to determine the guilt or innocence of the
17 Defendant from the evidence in the case. You are not called upon to
18 return a verdict as to the guilt or innocence of any other person. So, if
19 the evidence in this case convinces you beyond a reasonable doubt of
20 the guilt of the Defendant, you should so find, even though you may
21 believe one or more persons are also guilty.

22 First, this instruction is irrelevant as there has not been any testimony that
23 someone else was involved in the killing at issue. Second, this instruction
24 misstates the role of the jury as the jurors are not called upon to determine the
25 innocence of anyone. Rather, the function of the jury is to determine whether the
26 State has met its burden of proving beyond a reasonable doubt that the defendant
is guilty of the offense charged. This instruction, by using the passive voice,
minimizes the State's burden.

...

1 **4. Instruction on Flight**

2 The State requests an instruction on flight. This instruction should not be
3 given, both because the evidence presented does not support a finding of flight
4 and because this instruction would highlight one aspect of the case, in a manner
5 favorable to the state, while ignoring many other aspects of the case. While the
6 State may be free to argue flight based upon testimony and evidence presented at
7 trial, there is no need for a special instruction on this issue.

8
9 Dated this 10th day of August, 2015

10 /s/ DAVID SCHIECK

11 _____
12 David Schieck
13 Michael W. Hyte
14 Attorneys for Collins

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that service of the Written Objections to State's Proposed Jury
17 Instructions, was made pursuant to EDCR 7.26 on the attorney for the named parties by
18 means of electronic mail to the email address provided to the court's electronic filing system
19 for this case. Proof of Service is the date service is made by the court's electronic filing
20 system by email to the parties and contains a link to the file stamped document.

21 PARTY

EMAIL

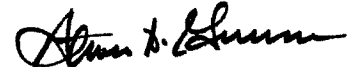
22 STATE OF NEVADA

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

23 Dated: 8-10-15

24 /s/ Kathleen Fitzgerald

25 _____
26 Legal Executive Assistant for
 Special Public Defender



CLERK OF THE COURT

1 INST
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3 SPECIAL PUBLIC DEFENDER
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14 Attorneys for Collins

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 STATE OF NEVADA,)	CASE NO. 09C252804-1
)	DEPT. NO. 25
18 Plaintiff,)	
)	
19 vs.)	
)	
20 LESEAN COLLINS, #0857181,)	
)	
21 Defendant.)	
)	

22 DEFENDANT'S PROPOSED TRIALPHASE INSTRUCTIONS

23 DATE: N/A
24 TIME: N/A

25 SEE ATTACHED.

26 DATED: 8-10-2015

27 SPECIAL PUBLIC DEFENDER
28 DAVID M. SCHIECK

/s/ DAVID M. SCHIECK

DAVID M. SCHIECK
MICHAEL W. HYTE
Attorneys for Defendant

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made on 8-10-15, by

Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

/s/ Kathleen Fitzgerald

Legal Executive Assistant for
Special Public Defender

INSTRUCTION NO. 1

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

PROPOSED INSTRUCTION NO. A

An Information is a formal method of accusing a person of a crime, but is not any evidence of guilt.

In this case it is charged in an Information that on or about the date in question, at and within the County of Clark, State of Nevada, LeSean Collins committed the following offenses:

COUNT 1 – MURDER

did then and there willfully, unlawfully, feloniously, without authority of law, and with malice aforethought, kill BRANDI PAYTON, a human being, by asphyxiation and/or blunt force trauma and/or manner and means unknown; said killing having been: (1) willful, deliberate and premeditated; and/or (2) committed during the commission or attempted commission of a felony, to-wit: Robbery.

COUNT 2 – ROBBERY

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

LeSean Collins is charged with what is known as an “open murder,” which includes all levels of homicide: First Degree Murder, Second Degree Murder, Voluntary Manslaughter and Involuntary Manslaughter.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and to determine whether or not the State has met its burden of proving beyond a reasonable doubt that LeSean Collins is guilty of the offenses charged.

PROPOSED INSTRUCTION NO. B

If the State proves a defendant guilty of the charged offense beyond a reasonable doubt the jury shall convict the defendant of that offense. However, if the jury is not convinced of the defendant's guilt of the charged offense, they may return a verdict of guilty on an offense, which was not charged, the commission of which is necessarily included in the offense charged, if the evidence is sufficient to establish the defendant's guilt of such offense beyond a reasonable doubt.

The jury must decide if the State has established that LeSean Collins is guilty of any offense and, if so, of which offense.

PROPOSED INSTRUCTION NO. C

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements - willfulness, deliberation, and premeditation - must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

PROPOSED INSTRUCTION NO. E

If you find the State has established that the defendant has committed murder you shall select the appropriate degree of murder as your verdict. The crime of murder may include the crime of voluntary or involuntary manslaughter. You may find the defendant guilty of voluntary or involuntary manslaughter if:

1. Some of you are not convinced beyond a reasonable doubt that the defendant is guilty of murder of either the first or second degree, and
2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of voluntary or involuntary manslaughter.

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or voluntary or involuntary manslaughter, you must give the defendant the benefit of that doubt and return a verdict voluntary or involuntary manslaughter, whichever is appropriate based on the facts of this case.

PROPOSED INSTRUCTION NO. F

A murder which is not murder of the first degree is murder of the second degree.

You are instructed that if you unanimously find that the State has established beyond a reasonable doubt that a defendant has committed first degree murder, you shall select first degree murder as your verdict. The crime of first degree murder includes the crime of second degree murder. You may find a defendant guilty of second degree murder if:

(1) one or more of you are not convinced beyond a reasonable doubt that a defendant is guilty of murder of the first degree, and

(2) all twelve of you are convinced beyond a reasonable doubt that a defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder was committed by a defendant, but you have a reasonable doubt as to whether such murder was of the first or second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

PROPOSED INSTRUCTION NO. G

If you find that the evidence is insufficient to establish a defendant's guilt of the offense charged in the Information, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the offense charged, if the evidence is sufficient to establish his guilt of such lesser offense beyond a reasonable doubt.

The offense of murder, with which the defendant's are charged in the Information, necessarily includes the lesser offenses of (1) second degree murder, (2) voluntary manslaughter and (3) involuntary manslaughter.

If the evidence is sufficient to support a finding of guilt of both the offense charged and a lesser included offense, but you entertain a reasonable doubt as to which of the offenses the defendant is guilty, it is your duty to find him guilty only of the lesser offense.

PROPOSED INSTRUCTION NO. H

Murder of the Second Degree is murder with malice aforethought, but without the admixture of premeditation and deliberation.

All murder that is not murder of the First Degree, is murder of the Second Degree.

PROPOSED INSTRUCTION NO. I

You are instructed that if you find that the State has established that the Defendant has committed second degree murder you shall select second degree murder as your verdict. The crime of second degree murder includes the crime of voluntary manslaughter. You may find the Defendant guilty of voluntary manslaughter if:

(1) some of you are not convinced beyond a reasonable doubt that the Defendant is guilty of murder of the second degree, and

(2) all twelve of you are convinced beyond a reasonable doubt that the Defendant is guilty of the crime of voluntary manslaughter.

PROPOSED INSTRUCTION NO. J

Manslaughter is the unlawful killing of a human being without malice express or implied and without any mixture of deliberation. It is not divided into degrees but is of two kinds, namely, voluntary manslaughter and involuntary manslaughter.

PROPOSED INSTRUCTION NO. K

The distinction between murder and voluntary manslaughter is that murder requires malice while voluntary manslaughter does not.

The killing must be voluntary, upon a sudden heat of passion, and caused by a provocation apparently sufficient to make the passion irresistible. "Heat of passion" as the term is used in these instructions means such passion as naturally would be aroused in the mind of a reasonable person in the same or similar circumstances. The circumstances and facts must be such as would cause a reasonable person to act rashly, without reflection and deliberation, from passion rather than from judgment. If you determine that a reasonable person who was placed in the same position in which the defendant was found, and knew what the defendant then knew, would have been thrown into a heat of passion, then such a killing is voluntary manslaughter.

A sudden heat of passion can occur without a direct physical assault.

To establish that a killing is murder and not voluntary manslaughter, the burden is on the state to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in a heat of passion as defined in these instructions.

PROPOSED INSTRUCTION NO. L

Involuntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act, or in the commission of a lawful act which probably might produce such a consequence in an unlawful manner, but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is murder.

PROPOSED INSTRUCTION NO. M

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act. The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the state is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the state the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

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

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

PROPOSED INSTRUCTION NO. P

A defendant in a criminal action is presumed to be innocent until the contrary is proved;
and in case of a reasonable doubt whether the defendant's guilty is satisfactorily shown, the
defendant is entitled to be acquitted.

PROPOSED INSTRUCTION NO. P (WITH CITE)

A defendant in a criminal action is presumed to be innocent until the contrary is proved;
and in case of a reasonable doubt whether the defendant's guilty is satisfactorily shown, the
defendant is entitled to be acquitted.

NRS 175.191

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

A finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance on which the inference necessarily rests must be proved beyond a reasonable doubt. Also, if the circumstantial evidence as to any particular count permits two reasonable interpretations, one of which points to the defendant's and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation that points to his guilt.

PROPOSED INSTRUCTION NO. S

If the evidence relating to any or all the circumstances in this case, is susceptible of two reasonable interpretations, one of which would point to LeSean Collins' guilt and the other would suggest his innocence, then it is your duty in considering such evidence to adopt that interpretation which will suggest LeSean Collins' innocence and reject that which would point to his guilt.

You will notice the rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, even if the reasonable deduction points to defendant's guilty, the entire proof must be beyond a reasonable doubt to support a verdict of guilty.

PROPOSED INSTRUCTION NO. T

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence.

PROPOSED INSTRUCTION NO. U

Evidence has been presented that a witness made a statement outside of court that is inconsistent with his or her testimony. You may consider this evidence as it relates to the credibility of the witness's testimony; you may also consider it as substantive evidence. In other words, consider such evidence as you would any other evidence of inconsistent conduct in determining the weight to be given to the testimony of the witness in court.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

PROPOSED INSTRUCTION NO. W

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

PROPOSED INSTRUCTION NO. X

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

PROPOSED INSTRUCTION NO. Y

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which the court sustained an objection and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded. If you have been exposed to anything concerning this case outside of the courtroom, please notify the marshall immediately and do not discuss this matter with other jurors.

PROPOSED INSTRUCTION NO. Z

You may infer that lost or destroyed evidence is unfavorable to the party who could have produced it and did not, if the evidence was (a) under the party's control and reasonably available to it and not reasonably available to the adverse party, and (b) lost or destroyed without satisfactory explanation after the party knew or should have known of the significance of the claim.

PROPOSED INSTRUCTION NO. Z (WITH CITE)

You may infer that lost or destroyed evidence is unfavorable to the party who could have produced it and did not, if the evidence was (a) under the party's control and reasonably available to it and not reasonably available to the adverse party, and (b) lost or destroyed without satisfactory explanation after the party knew or should have known of the significance of the claim.

Bass-Davis v. Davis, 122 Nev. 422 (2005)

Reingold v. Wet 'n Wild Nevada, Inc., 113 Nev. 967, 970, 944 P.2d 800, 802 (1997)

PROPOSED INSTRUCTION NO. AA

You are instructed that the State must prove the existence of the specific intent and existence to commit a robbery prior to the death of the deceased.

If the State does not prove beyond a reasonable doubt that LeSean Collins had the intent to commit a robbery at the time of the killing, the basis for the felony-murder rule does not apply.

PROPOSED INSTRUCTION NO. AA (WITH CITE)

You are instructed that the State must prove the existence of the specific intent and existence to commit a robbery prior to the shooting of the deceased.

If the State does not prove beyond a reasonable doubt that DEFENDANT had the intent to commit a robbery at the time of the killing, the basis for the felony-murder rule does not apply.

Nay v. State, 123 Nev. 326, 332 (2007); Ouanbengbourne v. State, 125 Nev. Adv. Rep 56 (2009)

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PROPOSED INSTRUCTION NO. BB

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against the person, and there exists a reasonable doubt as to which of two or more degrees the person is guilty, the person shall be convicted only of the lowest.

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PROPOSED INSTRUCTION NO. BB (WITH CITE)

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against the person, and there exists a reasonable doubt as to which of two or more degrees the person is guilty, the person shall be convicted only of the lowest.

NRS 175.201

PROPOSED INSTRUCTION NO. CC

A Defendant is not required to present any evidence or prove his innocence. The law never imposes upon a Defendant in a criminal case the burden of calling any witnesses or introducing any evidence.

There is a kind of murder which carries with it conclusive evidence of premeditation and malice aforethought. This class of murder is murder committed in the perpetration, or attempted perpetration, of a robbery. Therefore, a killing which is committed in the perpetration or attempted perpetration of robbery is deemed to be murder of the first degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony Murder Rule.

The intent to commit robbery and the commission or attempted commission of robbery or kidnapping must be proved beyond a reasonable doubt.

For the purposes of the Felony Murder Rule, the intent to commit the robbery must have arisen before or during the conduct resulting in death. However, in determining whether the defendant had the requisite intent to commit robbery before or during the killing, you may infer that intent from the defendant's actions during and immediately after the killing. There is no Felony Murder where robbery occurs as an afterthought of the killing.

PROPOSED INSTRUCTION NO. EE

The non-flight of a person from the location immediately after the commission of a crime is not sufficient in itself to establish his innocence, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is innocent or not guilty. The weight to which this circumstance is entitled is a matter for you to decide.

PROPOSED INSTRUCTION NO. FF

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the defendant and the State of Nevada.

GIVEN:

DISTRICT COURT JUDGE

ORIGINAL

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

JURL

AUG 11 2015

BY, 
DANA BATISTE, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

The State of Nevada

CASE NO. : 09C252804

vs

DEPT. NO.: Department 25

Lesean T Collins

09C252804
AJUR
Amended Jury List
4480208



SECOND AMENDED JURY LIST

1 Ms. Alexandra Foss	7. Ms. Heidi Cwik
2. Ms. Jennifer Allee	8. Ms. Hope Juarez
3. Ms. Amnesty Woodhall	9. Mr. Hal Leppala
4. Ms. Ronda Fulkerson	10. Ms. Sally Marotta
5. Mr. Earl Wedgeworth	11. Mr. C. Tom
6. Ms. Sandra Gibbons	12. Mr. Francisco Isakoff

ALTERNATES

1. Ms. Mariana Lopez	
2. Mr. Robert Reynolds	

ORIGINAL

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

AUG 11 2015

BY.

DANIA BATISTE, DEPUTY

09C252804
SAO
Stipulation and Order
4480207



1 SAO
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 State Bar No. 0824
5 MICHAEL W. HYTE
6 Deputy Special Public Defender
7 State Bar No. 10088
8 330 South Third Street, 8th Floor
9 Las Vegas, NV 89155
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Attorneys for Collins

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

LESEAN COLLINS, #0857181,

Defendant.

CASE NO. 09C252804-1
DEPT. NO. 25

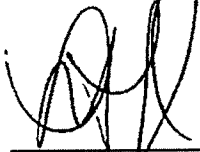
STIPULATION AND ORDER TO WAIVE PENALTY HEARING

IT IS STIPULATED AND AGREED by and between the Plaintiff, by and through its attorney,
Clark County District Attorney and the Defendant, by and through his attorneys, Special Public
Defender, that pursuant to NRS 175.552(2) the penalty hearing in this matter is waived, and

IT IS FURTHER STIPULATED AND AGREED that Defendant's sentence is to be imposed by

1 the trial judge.

2 DISTRICT ATTORNEYS OFFICE

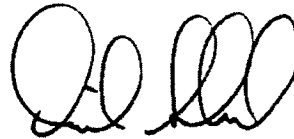
3 

4 JACQUELINE BLUTH
5 ELISSA LUZAICH

6 Attorneys for Plaintiff

7 DATED: _____

SPECIAL PUBLIC DEFENDER

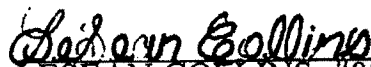


DAVID M. SCHIECK
MICHAEL W. HYTE

Attorneys for Defendant

DATED: 8/11/15

DEFENDANT



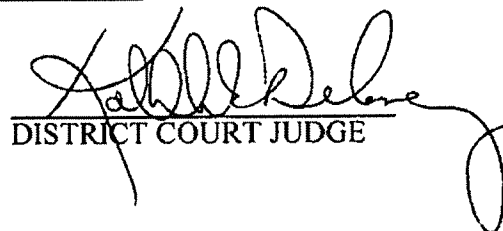
LESEAN COLLINS, #0857181

DATED: _____

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that based upon the Stipulation of counsel and Defendant, the Court being fully advised in the premises, and good cause appearing that the jury penalty hearing in this matter shall be waived and the Court shall impose sentencing.

DATED and DONE: AUGUST 11, 2015.


DISTRICT COURT JUDGE