IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 69269

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

JONELL THOMAS
Nevada State Bar #004771
Chief Deputy Special Public Defender
330 South 3rd Street
Las Vegas, Nevada 89155
(702) 455-6265

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

Other Authorities

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN COLLINS, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 69269

RESPONDENT'S ANSWERING BRIEF

Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County

ROUTING STATEMENT

This case is not presumptively assigned to the Nevada Court of Appeals because it is an appeal of a Judgment of Conviction for a category "A" felony. NRAP 17(b)(1).

STATEMENT OF THE ISSUES

1. Whether the District Court Erred in Permitting Detective Mogg's Testimony as to Why He Arrested Collins

2. Whether the District Court Erred in Rejecting Collins' Proposed Voluntary Manslaughter Instruction

3. Whether Collins' Claim Concerning Disqualification of the Clark County District Attorney's Office is Barred by the Doctrine of Law of the Case

4. Whether the State Presented Sufficient Evidence to Prove Collins' Commission of First-Degree Murder

5. Whether the District Court Did Erred in Prohibiting Collins from Attending the First Day of Trial, Considering His Refusal to Comply With the District Court's Directives

6. Whether There Was Cumulative Error

STATEMENT OF THE CASE

On March 25, 2009, Appellant Lesean Tarus Collins ("Collins") was charged by way of Information as follows: Count 1 – Murder (Category A Felony – NRS 200.010, 200.030); Count 2 – Robbery (Category B Felony – NRS 200.380). 1 AA 1-3.

On July 17, 2014, Collins filed a Motion to Disqualify the Clark County District Attorney's Office. 2 AA 422-39. On August 18, 2014, the District Court denied the Motion to Disqualify. 4 AA 703-04.

On August 25, 2014, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal. 3 AA 572-73.

Collins filed a Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition in the Nevada Supreme Court on August 26, 2014, seeking disqualification of the Clark County District Attorney's Office. 1 Respondent's Appendix ("RA") 1-50. On October 29, 2014, the Nevada Supreme Court denied extraordinary relief, determining that Collins had failed to show a conflict of interest which would warrant disqualification. 1 RA 51-57.

On July 27, 2015, Collins' jury trial began. 1 AA 769. On August 12, 2015, after 9 days of trial, the jury found Collins guilty of First Degree Murder and Robbery. 10 AA 1878, 1884.

Collins stipulated to waive his right to be sentenced by the jury pursuant to any First Degree Murder conviction on August 11, 2015. 8 AA 1567. On November 18, 2015, Collins was sentenced as follows: Count 1 – life without the possibility of parole, to run consecutive to C253455; Count 2 – 72 to 180 months, to run concurrent with Count 1, with zero days credit for time served. 10 AA 1922. The Judgment of Conviction was filed on November 24, 2015. 10 AA 1925-26.

On November 25, 2015, Collins filed a Notice of Appeal. 10 AA 1927-28. On May 25, 2016, he filed his Opening Brief. The State's Answering Brief follows.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

STATEMENT OF THE FACTS[1]

Sheri Payton ("Sheri") last heard from her sister, victim Brandi Payton ("Brandi") on September 2, 2008. 6 AA 1227. Brandi told her sister in the morning that she would meet Sheri at Sheri's daughters' cheerleading practice that evening. 6 AA 1227-28. At approximately 1:00 pm, Sheri called her sister regarding a fax, but Brandi said she was on the other line and would call back. 6 AA 1228-29. However, she never called back and did not show up to the cheerleading practice. 6 AA 1229. Sheri called Brandi's cell phones, but each went to voicemail. 6 AA 1230. The next day, Sheri attempted to make a missing person's report, but could not do so because Brandi was an adult and there was no indication that she was truly missing. 6 AA 1231-32.

The custodian of records of Avis Rent-a-Car indicated at trial that Brandi rented a car from Avis on August 15, 2008, and, after exchanging multiple cars due to mechanical issues, received a beige Hyundai Sonata on August 31. 9 AA 1606-

[1] To the extent that Collins makes legal arguments in his Statement of Facts that do not appear subsequently, the State contends that these arguments are not fully briefed, not supported by any authority, and are not expressly made. Arguments not cogently made need not be responded to or considered by this Court, see Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Further, claims unsupported by legal citations will not be considered by this Court. See NRAP 28(a)(9)(A), (j); Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; see also Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily rejected on appeal); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to relevant legal authority).

07. The car was due on September 5, 2008, but was not returned at that time. 9 AA 1608-09. After speaking to Avis, and searching Brandi's house and finding nothing missing, Sheri successfully made a missing person's report at the North Las Vegas Police Department. 6 AA 1233-35.

At trial, Shari noted that Brandi often wore colorful, long nails, and that in the days leading up to September 2, 2008, Brandi had no visible injuries and was in good health. 7 AA 1261-62.

Theresa Williams ("Theresa") knew both Brandi and Collins. 6 AA 1183-87. She last saw Brandi at a pool party on August 30, 2008. 6 AA 1170, 1184. Three or four days later, she saw Collins and Donita Beasley ("Donita"), in a car. 6 AA 1186. Later, Collins called Theresa and asked about Brandi's whereabouts. 6 AA 1188. He also told Theresa that he and Brandi had an argument before she went missing and that he had to delete text messages because people would think that the messages had something to do with her disappearance. 6 AA 1188-89.

Shalana Eddins ("Eddins") is the mother of Collins' five children. 7 AA 1345. In September of 2008, she resided at 1519 Laguna Palms Avenue, North Las Vegas, Nevada, with her children. Id. Collins frequently stayed there, and at the time would stay home with one of the children while Eddins worked. 7 AA 1346-47. On September 2, 2008, Eddins worked from 8:30 am to 5:30 pm. 7 AA 1348. Collins picked her up from work at 5:30 pm, and gave Eddins a gift of a Rolex bracelet,

necklace, and ceramic pig. 7 AA 1348-49. He told Eddins that he had purchased the items from a pawn shop for $2,000. 7 AA 1349-50. Eddins told Collins that she did not want the gifts. 7 AA 1350.

Shari identified the jewelry that Collins gave Eddins as belonging to Brandi. 7 AA 1258-61. Eddins identified the pieces of jewelry Collins gave her from a photograph of Brandi wearing the jewelry. 8 AA 1492-93.

When they returned home, Eddins noticed a gold Hyundai in the garage. 7 AA 1351. Eddins asked Collins about it, who in response told her that it was a car that Brandi had rented for him. 7 AA 1352. Before entering the house, Collins warned Eddins that there was a bleach stain in the carpet because he had spilled oil during an oil change. 7 AA 1352-53. In the 12 or 13 years Eddins had known Collins, she had never known him to perform an oil change on his own, and there was nothing in the garage that suggested that Collins had performed an oil change. 7 AA 1353.

Eddins saw the stain on the carpet in front of the laundry room. 7 AA 1355. She also saw spatter on a wall in the laundry room, as well as an acrylic nail that was pink, green and blue. 7 AA 1355-56. Eddins asked Collins about it; he told her that it was Brandi's and that she had been inside the home. 7 AA 1356.

Soon after, Collins told Eddins that he was going to go to a friend's house to recover a garage door opener. 7 AA 1357. He took the Hyundai that he said Brandi had given him. Id. Eddins later called Collins, who told her he was headed to

Stateline. 7 AA 1359. While he was gone, Eddins noticed that Collins' mother's blanket was missing. 7 AA 1362. Collins told Eddins that he had used it for the oil change. Id. Later that evening, Eddins awoke to find Collins washing the Hyundai. 7 AA 1363-64.

Eddins woke up at 2:30 am on September 3 to drive her mother to a bus stop when she saw Collins asleep in the Hyundai. 7 AA 1364. Responding to a neighbor's report about Collins, a North Las Vegas Police Department officer responded to Eddins' home. 9 AA 1582-83. The officer saw Collins sitting in the vehicle, apparently asleep, when he arrived at the location. 9 AA 1583, 1585. He told Collins to show his hands and exit the vehicle, but instead, Collins started the vehicle. 9 AA 1585. Collins sped off, and officers engaged him in a pursuit. 9 AA 1587-88. However, officers could not keep up with him and lost him. 9 AA 1588. At approximately 3:00 am, Collins called her and told her that the police were chasing him; thus he wanted Eddins to pick him up. 7 AA 1364-65. When she did, she saw the Hyundai parked in a driveway. 7 AA 1365.

Later that morning, Collins visited Eddins at work wearing a rope necklace with a cross on it. 7 AA 1367. Per Shari, Brandi often wore a necklace of this description. 7 AA 1261. Collins later asked Eddins to pawn this item for him. 7 AA 1369.

Eddins later searched for the blanket within the Hyundai. Id. She did not find the blanket, but did find paperwork belonging to Brandi. 7 AA 1362-63. She also went through Collins' wallet and found a rental car receipt in Brandi's name. 7 AA 1363.

On September 6, 2008, Benjamin Grande was riding ATVs with a friend on a dirt road off of Lee Canyon Road in the Mount Charleston area. 6 AA 1211-15. After finishing for the day, the two parked their ATVs and noticed a bad smell. 6 AA 1215-16. They saw something sticking out of a ravine and when they walked to it, they found a woman's decomposed body, wearing a watch. 6 AA 1216. Sandals lay nearby, and drag marks were apparent. 6 AA 1217. They then called 911. Id. Sheri identified the body as Brandi. 6 AA 1238.

Examining the scene, Detective Clifford Mogg of the Las Vegas Metropolitan Police Department (LVMPD) noticed apparent drag marks, small rocks with apparent blood on them, two flip-flops, and a white rag. 8 AA 1459. DNA testing of the apparent blood on the rocks revealed a profile consistent with belonging to Brandi rarer than 100 times the world population, meaning identity was presumed. 9 AA 1696. Mogg also found two fingernails, and noticed that Brandi was missing two fingernails on her left hand and one on her right. Id. Her right front pants pocket had been turned inside out. 8 AA 1460. She was not wearing a bra and her shirt had been pulled up along the top of her back covering the bottom part of her mouth. 8

AA 1460-61. He did not find a wallet, cell phone, or purse. 8 AA 1461. Further, Brandi was wearing only one ring on her hand. Id.

Collins later told Eddins that Brandi was dead. 7 AA 1370. Soon after, she found Brandi's papers in the trash can, torn. 7 AA 1370-71. Collins later told Eddins that he had to talk to her about Brandi, but never did. 7 AA 1371.

Cell phone records established that Brandi engaged in significant activity on her cell phone on September 2, 2008. 7 AA 1300. One call was a 52-minute call made at approximately 1:51 pm, during which Brandi received three incoming phone calls. 7 AA 1302-03. At the time she ended the call, her phone was transmitting off of Sprint cell phone tower 239, one of the towers servicing the area of 1519 Laguna Palms Avenue – Eddins' address. 7 AA 1303-04, 1346. By 3:52 pm, all of Brandi's calls were going to voicemail, indicating that the phone had been shut off. The last call made to Brandi's phone while it was on was at 3:38 pm. 7 AA 1306. Right before the phone was turned off and never turned back on, the phone was transmitting off of tower 239. Id.

Donita gave Collins a phone on her account under the number (702) 884-1539. 6 AA 1204-06; 8 AA 1475; 7 AA 1359. Cell phone records of this number revealed that on September 2, 2008, between 2:15 pm to 3:40 pm, Collins' phone signal was transmitted through Sprint towers 144 and 239, the same towers that Brandi's phone signal was transmitted through during the same time. 7 AA 1311. Between 2:35 pm

and 4:09 pm, there was no phone activity on Collins' phone. 7 AA 1312. Starting at approximately 7:42 pm, cell site records indicate that Collins traveled north along U.S. Route 95. 7 AA 1312-13. Then, the records indicate that Collins traveled south along U.S. Route 95. 7 AA 1313-15. The cell site records were consistent with Collins' phone being in the location of Nevada State Route 156 (Lee Canyon Road) between 8:05 pm to 8:28 pm. 7 AA 1316.

Dr. Larry Simms conducted the autopsy on September 7, 2008. 8 AA 1409-10. He noted that Brandi's body was in a severe state of decomposition. 8 AA 1410. He noted that there was a cloth loosely around her neck. 8 AA 1412. The state of decomposition was consistent with her being killed on September 2. 8 AA 1414. The level of decomposition rendered it difficult to determine cause of death where injuries were subtle, and Simms estimated he could not ascertain cause and manner of death in about 50 to 70 percent of cases where a body was found in the desert. 8 AA 1414-15. He noted that Brandi's organs did not show signs of natural disease. 8 AA 1415.

Simms found three antemortem lacerations to Brandi's head, in a quasi-stellate (star-like) shape. 8 AA 1417-20. This injury is typical upon blunt force trauma with an instrument and requires significant force. 8 AA 1419. Upon viewing this and other injuries, Simms opined that the injury was caused by a rod-shaped

object. 8 AA 1420. Brandi's skull was not fractured, and while it would be unusual for this injury to be fatal, it could render someone unconscious. 8 AA 1420-21.

Simms noted that Brandi had colorful fingernails, but some were missing; this was consistent with defensive behavior. 8 AA 1426.

Simms could not determine a cause or manner of death due to decomposition to a reasonable degree of certainty based on his findings. 8 AA 1423-24. He could rule out gunshot wounds, stab wounds, and skull fracture as the cause of death, but his findings were consistent with the cause of death being asphyxiation. 8 AA 1428. Also, he noted that a person could die by being rendered unconscious and being put in the trunk of a car when the weather is hot, as the body will be unable to keep itself cool. 8 AA 1430. Simms opined that the *circumstances* of Brandi's death were consistent with homicide, because it is unusual for an otherwise healthy person to end up decomposed in the desert. 8 AA 1426-27.

When offered a hypothetical about Brandi's blood being found on a wall and the trunk of the car, Simms stated that this would prove the head trauma was antemortem and that the manner of death was homicide. 8 AA 1431.

Mogg interviewed Rufus Hicks, Brandi's boyfriend. 8 AA 1479-80. Although he attempted to use a ruse on Hicks to assess his truthfulness and involvement, he found Hicks to be cooperative and Hicks did not give any abnormal psychological response. 8 AA 1480-81.

A crime scene analyst found six reddish stains in the laundry room area of Eddins' home. 6 AA 1625-28. Testing revealed that the laundry room stains were presumptive blood. 9 AA 1630. DNA testing produced profiles on some of the swabs, each which was consistent with belonging to Brandi with the frequency of the profile being 1 in 650 billion people. 9 AA 1691.

On October 1, 2008, Mogg responded to the scene where Brandi's Hyundai had been found. 8 AA 1488. He found that all four tires had been removed, and he saw a partially-burnt towel with a lighter next to it on the driver's seat. 8 AA 1488-89. A crime scene analyst processed the Hyundai. 9 AA 1656. DNA testing of a black trunk mat taken from the Hyundai revealed a profile consistent with Brandi, with a frequency of the profile being 1 in 650 billion people. 9 AA 1663, 1700-01.

SUMMARY OF THE ARGUMENT

This Court should affirm Collins' Judgment of Conviction. First, while he alleges that the District Court erred in allowing Detective Mogg to testify as to the reasons why he arrested Collins, this evidence was proper, as Collins had made it relevant by contesting the adequacy of the investigation and alleging that law enforcement jumped to conclusions in focusing its investigation on him. Further, the answer was not opinion evidence and did not constitute a statement of opinion or belief as to Collins' guilt. In any event, if error is shown, it was harmless as the jury heard all the evidence noted by Detective Mogg from other witnesses.

Second, Collins was not entitled to a voluntary manslaughter instruction, because there was no evidence of a killing made in the heat of passion. Instead, the circumstances showed malice. Further, if any error is shown, it was harmless given the evidence did not support a finding of voluntary manslaughter.

Third, while Collins contests the District Court's refusal to disqualify the Clark County District Attorney's Office, he fails to mention that the Nevada Supreme Court has already heard and rejected this claim in a writ proceeding. Accordingly, this claim is barred by the doctrine of law of the case.

Fourth, while Collins alleges that the evidence against him was insufficient to prove First Degree Murder and Robbery, it was sufficient. There was sufficient proof Brandi was killed due to criminal conduct, that Collins did it, and that Collins committed the murder willfully, with premeditation or deliberation, or alternatively, that he killed Brandi during the commission or attempted commission of Robbery. There was also sufficient evidence supporting Robbery.

Fifth, Collins' claim relating to the District Court's refusal to allow him to be present while wearing shackles and jail clothes during the first day of trial is without merit. The District Court acted to prevent prejudice to Collins, and his continued insolence warranted the District Court's removal of him.

Finally, Collins fails to show cumulative error. For these reasons, the State respectfully requests that this Court AFFIRM Collins' Judgment of Conviction.

ARGUMENT

I

The District Court Did Not Err in Permitting Detective Mogg's Testimony

Collins first contends that the admission of the following testimony warrants reversal:

> BY MS. BLUTH:
>
> . . .
>
> Q. After conducting your investigation did you make an arrest for the murder of Brandi Payton?
>
> A. I did.
>
> Q. Who is the individual that you arrested for that crime?
>
> A. The Defendant, Lesean Collins
>
> . . .
>
> Q. What factors did you assess when making that decision?
>
> A. The information that I had received during the course of the investigation through interviews. I also used the cell tower information I had trafficking [sic] him up to the location where the victim's body was found.
>
> I look at information provided by other police departments that reported seeing him in a vehicle at 2:27 in the morning –
>
> . . .
>
> A. The fact that he was seen by North Las Vegas police officers in the victim's vehicle, where they were able to

obtain the license nmber of that vehicle at 2:26 in the morning of September 3rd.

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

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

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

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

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

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

THE COURT: Counsel, you may respond. But we have an understanding that there is evidence forthcoming from a later witness. You have not inquired specifically as to results of any evidence prior to this with Detective Mogg. Let's not go outside the bounds of that now.

Q. Let me ask it a different way?

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

. . .

THE WITNESS: Yes.

BY MS. BLUTH:

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

A. Yes.

8 AA 1497-99. Collins subsequently requested a mistrial based on this testimony. 8 AA 1513-14.

This Court reviews a district court's evidentiary decisions for an abuse of discretion. See, e.g., Hernandez v. State, 124 Nev. 639, 646, 188 P.3d 1126, 1131 (2008). Further, because each of these claims of error are nonconstitutional, Pete must show that any erroneous evidentiary ruling had a substantial and injurious effect or influence in determining the jury's verdict. Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008). Errors in admitting evidence "will be deemed harmless" when the evidence of guilt is strong. Kelly v. State, 108 Nev. 545, 552, 837 P.2d 416 (1992).

Collins contends that (1) this was a narrative opinion as to why Detective Mogg believed Collins was guilty; (2) the opinion testimony about the reasons supporting his conclusion that there was probable cause for the arrest was admissible, irrelevant, and usurped the jury's role; (3) the testimony was not

admissible as a lay or expert opinion. These contentions of error are unavailing, as the testimony was relevant, non-opinion and non-hearsay testimony that did not usurp the jury's role.

While Collins claims that the testimony as to Mogg's basis for arresting Collins was irrelevant, he put the basis for Collins' arrest at issue as early as opening statements, when he said the following:

> MR. HYTE: Members of the jury, good afternoon. It is better for a crime or for an undetermined death to go unsolved then [sic] for a person to be wrongfully convicted.
>
> . . .
>
> The second reason we'll be asking you to return a verdict of not guilty is because **you will learn about alternate suspects who were not pursued. That Mr. Collins was the sole focus of the investigation, to the exclusion of all others who might have had a reason to cause Brandy Payton harm.**
>
> Another reason that we'll be asking you to return a verdict of not guilty is because **the forensic investigation in this case was inadequate. The evidence will show that there were critical pieces of evidence that with either never collected or never tested. And that those pieces of evidence might have illuminated how Brandy died and who might have been responsible for it.**

6 AA 1166-67 (emphasis added). This critique of the investigation continued throughout the trial and during closing argument. 10 AA 1811-16 ("They had abandoned all efforts to look at anybody in this case except for Lesean Collins. That

was the sole focus. That's all they wanted to look at. That's all they looked at. They ignored everything else."). Thus, it was incumbent upon the State to rebut Collins argument that he was accused in a rush to judgment, and it did so by presenting Mogg's basis for investigating and arresting Collins. Therefore, this testimony was made relevant based on Collins' attack on the investigation.

To the extent Collins alleges that Mogg's answers constituted a narrative, they did not because they were responsive to the questions asked by the State. Further, the statements were not hearsay, nor did they implicate the Confrontation Clause, because they were not offered for the truth of the matter asserted but rather to explain subsequent actions – that being the decision to arrest Collins. NRS 51.035 (hearsay defined as an out-of-court statement "offered in evidence to prove the truth of the matter asserted"); Crawford v. Washington, 541 U.S. 36, 59, 124 S. Ct. 1354, 1369 (2004) (citing Tennessee v. Street, 471 U.S. 409, 105 S. Ct. 2078 (1985)) ("The Clause also does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.").

Also, while Collins argues that neither the expert nor lay opinion statutes were satisfied by Mogg's testimony, Mogg was not giving an opinion – he was explaining his *reasoning* as to why he decided to arrest Collins. The testimony did not constitute Mogg telling the jury that *in his opinion*, Collins was guilty and had killed Brandi. Instead, he was telling the jury why he chose a particular course of action. Thus,

opinion testimony was not elicited and NRS 50.265 was inapplicable because the testimony was not "in the form of opinions or inferences." Nor was NRS 50.275 applicable because Mogg's reasons for arresting Collins did not require "scientific, technical or other specialized knowledge."

Collins' claim that the testimony was "nothing more" than or "tantamount" to opinion that he was guilty is not true. Nothing about the testimony constituted an opinion that Collins was guilty, nor did it *attempt* to imply such an opinion – instead, the testimony was introduced to explain Mogg's subsequent actions. The extrajurisdictional authority cited by Collins to allege that this testimony was an indirect on Collins' guilt is inapposite – applying such a rule would make any explanation of an officer's action an indirect statement of opinion on the defendant's guilt, and would render prosecutors powerless to rebut assertions that an officer's investigation was lacking or that the defendant was wrongly targeted by law enforcement. State v. Steadman, 253 Kan. 297, 300, 855 P.2d 919, 922 (1993), is especially inapposite, as it concerns a detective's direct opinion that the defendant killed the victim.

It is true in Nevada that "[a]n expert may not comment on a witness's veracity or render an opinion on a defendant's guilt or innocence." Cordova v. State, 116 Nev. 664, 669, 6 P.3d 481, 485 (2000). But the above testimony did not constitute such an opinion. Even in Cordova the following was considered admissible:

> During cross-examination of the detective who took Cordova's confession, defense counsel asked if the detective had "been involved in investigations where individuals in serious felony cases, even shooting cases, have taken responsibility for shooting to cover someone else?" The detective answered that he had. On redirect examination, the prosecutor asked the detective, "And in all of the murder investigations which you have ever conducted, have you ever had a person confess to a murder they did not commit?" The detective answered that he never had, other than persons who were mentally disturbed and claimed responsibility for a murder that never occurred. The prosecutor asked if Cordova had seemed mentally disturbed, and the detective said no. The detective felt that Cordova was "sincere" when he said he committed the crime by himself.

Id. at 669, 6 P.3d at 484-85. The testimony in this case does not even rise to the level of the opinion testimony in Cordova and was entirely admissible.

Therefore, Collins has failed to establish that the District Court's ruling on Detective Mogg's testimony was error.[2]

Although the State contends that there was no error, any error was clearly harmless. While Collins alleges that the error must be assessed under the "harmless-

[2] To the extent that Collins complains that the District Court mentioned that evidence would be coming from another witness, he fails to provide any cogent argument as to why this was error. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Accordingly, this Court should reject this unsupported argument.
In any event, nothing about the District Court's comment ("But we have an understanding that there is evidence forthcoming from a later witness.") implied that "the DNA evidence was accurate" or "told the jury that the court believed DNA evidence existed," contrary to Collins' contentions. 8 AA 1497-99.

beyond-a-reasonable-doubt" standard, this standard is inappropriate because there is no potential constitutional violation inherent in the District Court's decision. Instead, any error is nonconstitutional, as Cordova does not rely upon constitutional law, but rather "Nevada case law." Cordova, 116 Nev. at 669, 6 P.3d at 485. Collins' mere citation to constitutional amendments is insufficient to cogently allege a constitutional error. See Edwards, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; see NRAP 28(a)(9)(A).

Nonconstitutional trial error is reviewed for harmlessness based on whether it had substantial and injurious effect or influence in determining the jury's verdict. Knipes, 124 Nev. at 935, 192 P.3d at 1183. Under any standard, the error was harmless because each of the pieces of evidence on which Detective Mogg based his decision to arrest Collins was introduced into evidence at some point in the trial, whether before or after. 7 AA 1300-16, 8 AA 1492-93, 9 AA 1582-88, 1630, 1663, 1700-01.

That some items of evidence were introduced after Mogg's testimony was given is inconsequential. The jury had before it each item of evidence and could thus determine for itself whether that body of evidence warranted a guilty verdict. Accordingly, any error was harmless and reversal is unwarranted.

/ / /

/ / /

II
The District Court Did Not Err in Rejecting Collins' Voluntary Manslaughter Instruction

Collins alleges that his Judgment of Conviction is infirm because the District Court declined to give a proposed instruction on voluntary manslaughter. Opening Brief at 36-40.

This claim is without merit. This Court reviews a district court's decisions in settling jury instructions for an abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). An abuse of discretion occurs if a district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. Id. In Nevada, a defendant is entitled to a jury instruction on a lesser-included offense "if there is any evidence at all, however slight, on any reasonable theory of the case under which the defendant might be convicted" of that offense. Lisby v. State, 82 Nev. 183, 188, 414 P.2d 592, 595 (1966). Conversely, "if the prosecution has met its burden of proof on the greater offense and there is no evidence at the trial tending to reduce the greater offense, an instruction on a lesser included offense may properly be refused." Lisby, 82 Nev. at 188, 414 P.2d at 595 (emphasis omitted); see also Holbrook, 90 Nev. at 97, 518 P.2d at 1243; State v. Enkhouse, 40 Nev. 1, 6, 160 P. 23, 25 (1916).

A trial court is justified in refusing to give an instruction on the crime of manslaughter if there is no evidence to support such an instruction. Graves v. State,

84 Nev. 262, 266, 439 P.2d 476, 478 (1968). The presence of malice precludes an instruction on the crime of manslaughter. Id.

While Collins claims that an alleged lack of "meaningful evidence whatsoever concerning the time before Brandi's death" and the fact that there could have been an argument regarding "drug deals," no evidence was presented that established a killing done in the heat of passion following adequate provocation, and Collins' arguments rise to nothing but naked speculation.

"In cases of voluntary manslaughter, there must be a **serious and highly provoking injury** inflicted upon the person killing, **sufficient to excite an irresistible passion in a reasonable person**, or an attempt by the person killed to commit a serious personal injury on the person killing." NRS 200.050. While a serious and highly provoking injury need not be a direct physical assault on the accused, neither slight provocation nor an assault of a trivial nature will reduce a homicide from murder to manslaughter. Roberts v. State, 102 Nev. 170, 174, 717 P.2d 1115, 1117 (1986) (emphasis added); State v. Fisko, 58 Nev. 65, 75, 70 P.2d 1113, 1116 (1938), overruled on other grounds by Fox v. State, 73 Nev. 241, 247, 316 P.2d 924, 927 (1957). Here, even if there was evidence of an argument between Payton and Collins, this is inadequate to present a theory that there was a serious and highly provoking injury sufficient to excite an irresistible passion in a reasonable person. An argument over drugs would not be sufficient to excite irresistible passion

in a reasonable person. And there was no evidence otherwise that the killing was performed in the heat of passion; rather, the evidence suggests a well-planned murder-robbery done with premeditation and deliberation.

Dr. Simms' findings in regard to the quasi-stellate fracture indicate that Collins hit Brandi over the head with a pipe-like object. 8 AA 1417-20. Simms testified that this would not have killed Brandi – instead, some subsequent action would have had to been taken to kill her. 8 AA 1420-21. These facts thus indicate that the killing was not done in the heat of passion, because they show the killer took additional steps after the blunt force trauma (including possibly asphyxiation) to kill Brandi).

Brandi's blood in the Hyundai shows that Collins put her in the car. 9 AA 1663, 1700-01. And the cell phone records show that Brandi was last at Collins' residence before her phone was turned off, and Collins that Collins drove to the area where Brandi's body was found later that evening. 7 AA 1300-16. Brandi's pocket was turned inside out when her body was found, and she had no identification or purse and the majority of her jewelry was gone. 8 AA 1459-61. Collins gave that jewelry to Eddins *the same day* he drove to the area where Brandi was found. 8 AA 1492-93.

These facts do not indicate an impassioned killing; they indicate cold-blooded and premeditated actions committed to rob Brandi of her jewelry and car. Accordingly, no voluntary manslaughter instruction was warranted.

Collins makes multiple arguments within this section of his Opening Brief that do not show why a voluntary manslaughter instruction was allegedly warranted, but rather complain of insufficiency of the evidence. These arguments are irrelevant to whether a voluntary manslaughter instruction was warranted, and Collins' challenges to the sufficiency of the evidence will be addressed *infra*.

Although the State does not concede error, any error in not giving the instruction was harmless, based on the absence of any real evidence of a killing made in the heat of passion, and Collins' actions following the killing, which give rise to an inference that he committed the crime in a premeditated manner and during a robbery. This evidence includes the jewelry he gave to Eddins the day Brandi went missing, the statements Collins made to Eddins and Theresa, his washing the Hyundai in the early morning hours of September 3, and his giving chase to law enforcement when approached. 6 AA 1188-89, 7 AA 1352, 1363-64, 1371, 8 AA 1492-93, 9 AA 1585-88. Therefore, any error was harmless and reversal is unwarranted.

/ / /

/ / /

III
Collins' Claim Concerning Disqualification of the Clark County District Attorney's Office is Barred by the Doctrine of Law of the Case

Collins claims that the District Court erred in denying his Motion to Disqualify the Clark County District Attorney's Office ("CCDA") because the attorneys who represented him in a prior arson case, Tierra Jones and Abigail Frierson, were employed at CCDA at the time of this murder prosecution. Opening Brief at 41-54.

What Collins fails to mention is that he sought extraordinary relief from the Nevada Supreme Court as to the denial of the Motion to Disqualify. 1 RA 1-50. Notably, the Nevada Supreme Court found no conflict of interest warranted disqualification:

> As to Collins' challenge to the district court's denial of his motion for disqualification, this court has held that "mandamus is the appropriate vehicle for challenging attorney disqualification rulings." State v. Eighth Judicial Dist. Court (Zogheib), 130 Nev. __, __, 321 P.3d 882, 884 (2014). "The disqualification of a prosecutor's office rests with the sound discretion of the district court," Collier v. Legakes, 98 Nev. 307, 309, 646 P.2d 1219, 1220 (1982), overruled on other grounds by Zogheib, 130 Nev. at __, 321 P.3d at 886, but "where the district court has exercised its discretion, mandamus is available only to control an arbitrary or capricious exercise of discretion," Zogheib, 130 Nev. at __, 321 P.3d at 884. See State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. __,__, 267 P. 3d 777, 780 (2011) (defining arbitrary or capricious exercise of discretion). We conclude that extraordinary relief is not warranted.

Collins argues that his former attorneys' representation of him in his arson case creates a conflict of interest due to their employment with the CCDA's Office and that conflict of interest must be imputed to the CCDA's Office. The core of his argument is that his former attorneys will likely participate in post-conviction proceedings related to his arson conviction that are currently pending in district court—namely by testifying at an evidentiary hearing—and that their employment with the CCDA's Office calls into question their credibility and bias because their testimony might be influenced by pressure to protect their jobs and career advancement given the CCDA's desire to secure a conviction at Collins' murder trial and efforts to ensure that his arson conviction is upheld.

We must first consider whether Collins has established that his former attorneys' employment with the CCDA's Office created a conflict of interest due to their prior representation of him in his arson case. We conclude that he has not. RPC 1.9(a) provides: "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Collins has presented nothing establishing that the arson conviction is the "same or substantially related" to the murder prosecution. That the State intends to present evidence concerning his arson conviction is not a sufficient link to establish a conflict of interest under the rules. See Waid v. Eighth Judicial Dist. Court, 121 Nev. 605, 610, 119 P.3d 1219, 1223 (2005) ("A superficial similarity between the two matters is not sufficient to warrant disqualification."). **Because Collins has not satisfied his burden of establishing that his arson case is the "same or substantially related" to the murder prosecution, he cannot show that a conflict of interest and therefore disqualification of the CCDA's Office is unwarranted.** See Robbins v. Gillock, 109 Nev. 1015, 1017, 862 P.2d 1195, 1197 (1993) (observing that

> burden of proving two matters are "same or substantially related" rests on party seeking disqualification and "that party must have evidence to buttress the claim that a conflict exists").
>
> Even assuming that a conflict of interest exists, extraordinary relief is not warranted. As Zogheib instructs, "an individual prosecutor's conflict of interest may be imputed to the prosecutor's entire office in extreme cases," but "the appropriate inquiry is whether the conflict would render it unlikely that the defendant would receive a fair trial unless the entire prosecutor's office is disqualified from prosecuting the case." 130 Nev. at __, 321 P.3d at 886. Collins has not made this showing. **Again, the arson and murder prosecutions are unrelated and no argument he advances suggests that it is unlikely that he will receive a fair trial in his murder case simply because his former attorneys in his arson case are employed by the CCDA's Office and he has a pending post-conviction proceeding in which former counsel might participate as witnesses.**
>
> Moreover, **the impetus behind his disqualification motion—his former attorneys' credibility and bias relative to the post-conviction proceedings in his arson case—will exist even if the CCDA's Office is disqualified in this case. Disqualifying the CCDA's Office in this case will not remedy those concerns.** Issues of bias and credibility concerning his former attorneys are irrelevant to his murder prosecution and may be appropriately vetted in post-conviction proceedings related to his arson case.

1 RA 51-56. The Court also determined that because Collins could not show a conflict of interest, an evidentiary hearing was unwarranted:

> Collins argues that the district court erred by denying his disqualification motion without conducting an evidentiary hearing. We conclude that he failed to show that the

> district court manifestly abused its discretion in this regard, as he failed to make an adequate showing that disqualification was necessary such that an evidentiary hearing was warranted. He also argues that the CCDA's Office has not complied with the screening and notice requirements mandated by RPC 1.11. Because we conclude that Collins failed to show that his former attorneys had a conflict of interest, the screening and notice requirements under RPC 1.11, are irrelevant, assuming that provision applies here. We note that the record indicates that the CCDA's Office has undertaken screening measures and Collins' former attorneys have not communicated with the prosecutors involved in the murder prosecution about the murder case. We further reject Collins' contention that the district court manifestly abused its discretion by orally denying his disqualification motion before receiving affidavits confirming what it believed was true from the pleadings—that Collins' former attorneys had no contact with the prosecutors involved in the murder prosecution. Nothing in the district court's comments suggest that it would not have reconsidered its oral ruling had the affidavits revealed contact between former counsel and the prosecuting attorneys or some violation of the screening measures.

1 RA 55-56. This issue in the instant appeal is thus controlled by the doctrine of law of the case.

Where an issue has already been decided on the merits by the Nevada Supreme Court, the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see also Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev. 952, 860

P.2d 710 (1993). A defendant cannot avoid the doctrine of law of the case by a more detailed and precisely focused argument. Hall, 91 Nev. at 316, 535 P.2d at 798-99; see also Pertgen v. State, 110 Nev. 557, 557-58, 875 P.2d 316, 362 (1994).

Here, Collins' discussion of the "conflict" he alleges differs little from his argument within his Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition. Compare 1 RA 24 with Opening Brief at 41-42; 1 RA 25 with 44; 1 RA 26-44 with 45-54. To the extent the argument in the Opening Brief differs, it does not warrant overcoming the doctrine of law of the case because it offers no new facts that would change the Nevada Supreme Court's previous determination. Hall, 91 Nev. at 316, 535 P.2d at 798-99. If anything, the fact that the State elected not to present evidence of the prior arson case reduces the possibility of a conflict of interest. 5 AA 549.

Collins provides nothing new to suggest that his prior counsel and the prosecutors in the instant case did not comply with screening requirements, as they swore to in their affidavits. 3 AA 565-73. An evidentiary hearing was not warranted and this alleged conflict of interest does not warrant reversal.

IV
The State Presented Sufficient Evidence to Prove Collins' Commission of First-Degree Murder

"When reviewing a criminal conviction for sufficiency of the evidence, this Court determines whether any rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution." Brass v. State, 128 Nev. ____, ____, 291 P.3d 145, 149-50 (2012) (internal citations omitted). When there is substantial evidence in support, the jury's verdict will not be disturbed on appeal. Id. This Court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Further, circumstantial evidence alone may support a judgment of conviction. Collman v. State, 116 Nev. 687, 711, 7 P.3d 426, 441 (2000) (citing Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980)).

Collins makes a laundry list of complaints that the evidence was insufficient that (1) Brandi was killed by another person; (2) that Collins did it; (3) that Collins acted with premeditation and deliberation; (4) that Collins killed Brandi during the commission of a robbery, or that a robbery occurred. These complaints are unsupported – the State presented more than sufficient evidence that Collins committed First Degree Murder and Robbery.

In regard to the murder charge, the State alleged two theories of liability: (1) that Collins killed Brandi with willfulness, premeditation, and deliberation and (2) that Collins killed Brandi during the commission or attempted commission of robbery. 1 AA 1-2. NRS 200.010(1) defines murder as "the unlawful killing of a human being . . . [w]ith malice aforethought, either express or implied."

It is clear from the evidence that Brandi died as a result of homicide, even if Dr. Simms could not conclude with a reasonable degree of medical certainty based on the autopsy that Brandi was killed by homicide. "Although medical evidence as to the cause of death is often critical in establishing that a death occurred by criminal agency, there is no requirement that there be evidence of a specific cause of death. The state is required only to show a hypothesis that death occurred by criminal agency; it is not required to show a hypothesis of a specific cause of death." Sheriff, Washoe County v. Middleton, 112 Nev. 956, 962, 921 P.2d 282, 286 (1996). "The court must consider and weigh all the evidence offered which bears on the question of death by criminal agency." Id. at 964, 921 P.2d at 287. "[C]ause of death can be shown by circumstantial evidence." Higgs v. State, 126 Nev. 1, 10, 222 P.3d 648, 654 (2010).

Here, the circumstantial evidence here was strong – Brandi's body was found in the desert, far from the Laguna Palms residence where phone records indicated she had been. 6 AA 1216; 7 AA 1306. Her body was dragged to its resting place. 8 AA 1459. Brandi's blood was found in the Hyundai as well as in the laundry room at the Laguna Palms residence. 9 AA 1691, 1700-01. The head injury seen by Dr. Simms was not fatal but consistent with Brandi being hit by a pipe. 8 AA 1417-21. He could not rule out asphyxiation or a death resulting from being left to die in a hot trunk. 8 AA 1428, 1430. And Collins was in possession of her jewelry and car after

her death and made various strange statements to Eddins and Williams. 6 AA 1188-89; 7 AA 1352, 1371; 8 AA 1492-93. All this shows homicide – if a person died from non-homicide, there would be no explanation for a non-fatal head injury, bloodstains, and someone leaving the body of the decedent in a desolate location to decompose while taking her jewelry. A non-homicide death is simply unreasonable in light of these circumstances.

The cases that Collins tries to distinguish are directly on point. West v. State, 119 Nev. 410, 418, 75 P.3d 808, 813-14 (2003), involved very similar circumstances, but the Court concluded that there was sufficient evidence that the death was the result of a homicide:

> In considering the weight of the evidence in the present case, we conclude that there was sufficient evidence of corpus delicti, notwithstanding the fact that the actual cause of Smith's death could not be determined. Similar to Middleton, the circumstances of Smith's disappearance, the discovery of her body in a garbage can that was sealed with great effort to make it airtight and located in a storage unit that West rented, the admission that West put Smith in the garbage can, and the discovery of the plastic bag that covered Smith's nose and mouth, clearly created a reasonable inference of Smith's death by criminal agency. Although Smith and West informed Smith's friends and neighbors that West was taking Smith to California to live with Travis Jr., several witnesses testified that Smith left behind several personal items when she disappeared, and there was evidence that Travis Jr. was a recluse. Finally, even though West presented medical evidence that Smith may have died by natural causes, the jury was at liberty to weigh this evidence along with the evidence that Smith died by criminal agency.

Collins argues that this case is different because Brandi's nose and mouth were not covered with a plastic bag, nor was she placed in a sealed garbage can in a storage unit. This does not matter – Brandi's body was found many miles away from where her phone was last operating and left in a desolate place. It is a more than reasonable conclusion that she ended up in the desert because someone killed her. Further, the non-fatal injury to the head is strong evidence that Brandi suffered foul play, and is equivalent to the victim in West's face being covered with a bag.

Middleton noted that the fact that the victims were found in remote locations was probative as to the fact that cause of death was caused by criminal agency. Middleton, 112 Nev. at 964, 921 P.2d at 287. Here, similarly, Brandi was left in a desolate area of Clark County. Also like Middleton, Collins was found to be in possession of Brandi's jewelry on the day she disappeared.

Frutiger v. State, 111 Nev. 1385, 1390, 907 P.2d 158, 161 (1995) is inapposite, because in that case, the victim had a blood alcohol level of .341, hardening arteries, and a fatty liver, supporting a more than reasonable inference that the victim died from natural causes. There was no such evidence here, as Shari had testified that Brandi was in good health and Dr. Simms saw no signs of health problems. 7 AA 1261-62; 8 AA 1415. The State also notes that the Nevada Supreme Court has rejected the allegation that Frutiger stands for the proposition that it must only look at the condition of the body in determining criminal agency, and has distinguished

the case based on the evidence above. Middleton, 112 Nev. at 964, 921 P.2d at 287 ("Furthermore, unlike in Frutiger, where the weight of the available medical evidence indicated a likelihood of death by natural causes, in this case there is no evidence to rebut the inference of death by criminal agency.").

Hicks v. Sheriff, Clark County, 86 Nev. 67, 69, 464 P.2d 462, 464 (1970), is distinguishable because the *only* evidence was that the vicitm's body was found in the desert and that the defendant had confessed: "All that we find relating to his death is testimony that his body was found on December 6, 1967, in the desert; that it was identified by a military service identification tag and a thumb print, and that the body was partially clothed." Here, there is evidence of antemortem injury, missing items from Brandi's person, *and* the body being left in a desolate location.

Collins claims "the facts concerning what happened to Brandi's body after her death are equally consistent with actions taken by someone who panicked at either seeing her die or discovering her body, who would worry about possible accusations against him or her, and a poor choice of how to react in response." Opening Brief at 58-59. One would think that the last thing someone with such concerns would do is take the decedent's jewelry and give it to the mother of his children. This behavior and the evidence is inconsistent with non-homicide, but at the very least provided evidence that allowed the jury to reasonably conclude that Brandi died as a result of homicide.

Further, there is more than sufficient evidence that Collins committed the homicide, including: (1) Collins' phone records establishing Collins went to the area where Brandi's body was found, 7 AA 1316; (2) his statements to Eddins and Theresa after Brandi went missing, 6 AA 1188-89; 7 AA 1371; (3) his giving Brandi's jewelry to Eddins the day she went missing, 7 AA 1348-49; 8 AA 1492-93; (4) his washing the Hyundai the night Brandi went missing, 7 AA 1363-64; (5) his fleeing from the police that night, 9 AA 1583-88; (6) his abandoning the Hyundai and attempting to set it on fire, 8 AA 1488-89; (7) Brandi's blood and fingernail being found in the Laguna Palms residence, 7 AA 1355-56; 9 AA 1691; and (8) Brandi's blood in the trunk of the Hyundai, 9 AA 1663, 1700-01. This evidence is far more extensive than Collins describes it in his Opening Brief, and it is clear from the evidence that Collins was responsible for Brandi's death.

Additionally, there is sufficient evidence that Collins acted with willfulness, premeditation and deliberation. First Degree Murder is proven where the defendant commits a murder with (1) willfulness (specific intent to kill), deliberation (determining upon a course of action to kill as a result of thought), and premeditation (a design/determination to kill). Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000). "Premeditation and deliberation are questions of fact for the jury. . . . They may be ascertained or deduced from the facts and circumstances of the killing; direct evidence is not required." Curtis v. State, 93 Nev. 504, 507, 568 P.2d 583, 585

(1977). Here, circumstantial evidence supported the jury's finding of willfulness, premeditation, and deliberation: Collins had an argument with Brandi prior to her death, indicating a motive. 6 AA 1188-89. Further, the physical evidence showed that Brandi suffered an antemortem head injury that rendered her unconscious. 8 AA 1417-21. Further deliberate and premeditated action had to be taken to kill Brandi. "The time lapse between the premeditation and deliberation and the act of killing 'need only be an instant.'" Beets v. State, 107 Nev. 957, 962, 821 P.2d 1044, 1048 (1991). This evidence shows that such a lapse in time occurred.

Collins actions afterward also show the deliberate and premeditated nature of this crime, as discussed above extensively, including his leaving Brandi's body in the desert, his statements to Eddins and Williams, his giving Brandi's jewelry to Eddins, and his actions with the Hyundai. These facts allowed the jury to conclude that Collins murdered Brandi in a premeditated and deliberate fashion.

Finally, there was sufficient evidence that supported the robbery charge and allowed the jury to conclude, alternatively, that Collins killed Brandi during the commission or attempted commission of a robbery. First Degree Murder is proven where the murder is committed in the perpetration or attempted perpetration of certain enumerated crimes, including robbery. NRS 200.030(1)(b). "[T]he felony-murder rule holds felons strictly accountable for the consequences of perpetrating a felony, and it is immaterial whether a killing is intentional or accidental." Sanchez-

Dominguez v. State, 130 Nev. ___, ___, 318 P.3d 1068, 1075 (2014) (citing State v. Fouquette, 67 Nev. 505, 529-30, 221 P.2d 404, 417 (1950)). "Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person." NRS 200.380. Brandi's body was found with one pocket turned inside out and her cell phone, purse, and most of her jewelry missing. 8 AA 1460-61. It showed a non-fatal head injury likely caused by a pipe. Collins had possession of her car and jewelry after her death. 8 AA 1470-71. These facts serve as sufficient evidence that Collins killed Brandi as he was trying to take her car and personal effects.

His argument that the evidence "is equally consistent that he had possession of her jewelry as payment for debt or security for money owed to him, and that she loaned her rental care to him," is an unreasonable conclusion. Opening Brief at 60. It fails to explain why Brandi's pocket was inside out or why her purse, cell phone, and identification were not found, and is inconsistent with Collins' actions after Brandi's death.

To the extent Collins states that the evidence is consistent with an afterthought robbery, while it is true that "[r]obbery does not support felony murder where the evidence shows that the accused kills a person and only later forms the intent to rob that person. **However, in determining whether a defendant had the requisite**

intent to commit an enumerated predicate felony before or during a killing, the fact-finder may infer that intent from the defendant's actions during and immediately after the killing." Nay v. State, 123 Nev. 326, 333, 167 P.3d 430, 435 (2007). The State submits that Collins subsequent actions show that he intended to rob Brandi before or at the time she was killed. Additionally, while in Nay there was evidence (*i.e.,* the defendant's testimony) that an afterthought robbery had occurred; here, there was no such evidence. Nothing suggests that an afterthought robbery occurred.

Based on the above, the State presented more than sufficient evidence that Collins committed First Degree Murder and Robbery.

V
The District Court Did Not Err in Prohibiting Collins from Attending the First Day of Trial Considering His Refusal to Comply With the District Court's Directives

Collins contends that the District Court impermissibly prohibited from attending the first day of his trial. Opening Brief at 60-66.

Before trial, Collins had a history of disruptive behavior before the District Court. On November 13, 2013, Collins interrupted the District Court Judge and said, referring to one of the prosecutors, that he was going to "knock this bitch-ass out of the trial." 2 AA 410. On August 25, 2014, Collins told the District Court that he wanted to represent himself; in response, the State made the following representations:

> MS. BLUTH: I have had cases against Mr. Collins now for six years and every time I get close to a calendar call he requests a new attorney in both cases. This is just another tactic by Mr. Collins to delay a murder case that is now six years old. It happens every single time. This is his third set of public defenders.

3 AA 590-91.

Then, on August 27, 2014, Collins' attorney indicated that Collins desired to wear his prison clothing, despite being provided with civilian clothes. 3 AA 698. The Court indicated the following in response:

> THE COURT: That's fine.
>
> And just to address the clothing issue, I just want Mr. Collins to understand I am not going to do anything or allow anything in this court that is going to set this thing up for a reversal because somehow there's some recordation that the jury was prejudiced.
>
> You made the record so far today through your counsel, Mr. Collins, that it is your desire to wear your jumpsuit. Obviously, that is something that is not done in front of a jury, but we're going to make the record and if that's your choice we will proceed as you see fit as counsel for the State indicated. But understand I am not playing games and we are not going to do anything that is going to jeopardize this case.
>
> You are going to get a fair trial in her whenever that trial date is.

3 AA 699. Nearly a year later, on July 20, 2015, the final calendar call before trial occurred. Collins wanted to leave the courtroom midway through calendar call and

was accordingly removed. 4 AA 765. His attorney indicated that Collins did not want to appear on the day of trial. 4 AA 764-65.

Then, on August 27, 2015, the trial began. The District Court noted that Collins had refused to "dress out" for trial and concluded that this meant Collins did not desire to be present for trial. 4 AA 771. It noted the concern that Collins was attempting to create an appellate issue or cause a mistrial. 4 AA 771. Collins indicated that he intended to attend the trial and when asked why he wanted to be in his prisoner clothing and chains he said, "I have a right to be here," and that he had no specific reason for wearing civilian clothes. Id. Collins stated that he was "comfortable" in prisoner garb and shackles. 4 AA 772. His counsel acknowledged that "a defendant that appears in front of a jury in shackles is prejudiced by that appearance because it appears to the jury that he is of such a nature that he has to be shackled to sit at counsel's table." Id.

The District Court decided that, [b]ottom line the chains are coming off." Id. It gave Collins three options: (1) wear civilian clothes; (2) allow the chains and orange socks to be removed and turn his prisoner shirt inside out; or (3) "go back down and don't return because you have that right as well." 4 AA 773. Collins responded that there "is no such thing as appropriate clothes." Id. He then made his choice and said, "Your Honor, I decline all the options that you put forth. If you have to force me to do something then you have to force me to do it." Id. The District

Court told court officers to take Collins back, remove the chains, turn the shirt inside out, and take the orange socks off. Id.

A corrections officer informed the District Court that Collins refused to take the chains off, and that he did not want to forcibly take the chains off as that could escalate the situation. 4 AA 775. The District Court again noted that Collins desire was to prejudice the jury against him and invite error. Id. It then noted,

> And I will say this for the record, I perceive this to be an issue of if we don't nip this in the bud today with whatever the circumstances are then we are just going to have more efforts and attention-seeking behavior or manipulation of the Court and counsel from the defendant and I am not going to tolerate it in this trial so we will figure it out.

Id. It reiterated this concern that Collins was seeking attention and manipulating the court process later on. 4 AA 776.

After hearing from a sergeant about the issue, Collins' counsel indicated that he did not want the situation to escalate. 4 AA 777. The District Court again noted the potential prejudice to Collins that would ensue if he appeared before the jury in chains and jail garb. Id. It also noted that it believed that Collins was playing games. Id. The sergeant went back to speak with Collins one last time, and Collins again refused to turn his shirt inside out. 4 AA 778. The District Court brought Collins back into the courtroom and after asking him what his position was on the wearing of his prison clothes, he refused to respond twice. Id. The District Court then noted that he was shaking his head no. Id. When asked the reason why he refused to turn

his shirt inside out, Collins said, "I am very comfortable in my outfit." Id. The District Court then determined that because of the potential of prejudice, because it was "not going to allow the defendant to decide how this courtroom and how this trial proceeds," and because it did not find Collins' argument that his prison garb was comfortable unconvincing, it determined that Collins was playing games and that he was voluntarily choosing to not remain in the courtroom and ordered that he be removed. 4 AA 779. It noted that the proceedings of the day were unlikely to affect his ability to aid and assist counsel in jury selection because it was not going to hold substantive discussions with jurors, only determine those jurors who needed to be excused. 4 AA 780. It also informed him that it would instruct the jury about his right not to be compelled to attend trial, and would reassess the situation the next day. 4 AA 779.

The Confrontation Clause of the Sixth Amendment to the United States Constitution secures a defendant's right to be present in the courtroom at every stage of his trial. Illinois v. Allen, 397 U.S. 337, 338, 90 S. Ct. 1057, 1058 (1970). That said, although courts must indulge every reasonable presumption against the loss of constitutional rights,

> a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost,

> the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.

Id. at 343, 90 S. Ct. at 1060-61. In Allen, the United States Supreme Court noted that trial courts *must* be given discretion to control affronts to its decorum and dignity:

> It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations.

Id.; see also Tanksley v. State, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997) ("Trial judges have the obligation to control courtroom proceedings.").

Here, the District Court acted in Collins best interest by providing him options that would prevent prejudice stemming from the appearance of prison garb and chains. The prejudice arising by Collins wearing these items was noted by Collins' counsel. 4 AA 772. The Nevada Supreme Court has also noted this prejudice. "The presumption of innocence is incompatible with the garb of guilt. When such error has occurred, it is our duty to reverse a conviction *unless it is clear that the defendant was not prejudiced thereby.*" Grooms v. State, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980). Further, in Dickson v. State, 108 Nev. 1, 4, 822 P.2d 1122, 1124 (1992),

the Court noted that, after jurors saw the defendant in chains, "at least one juror indicated that it would be 'hard' to weigh the evidence fairly because of this incident. Other jurors indicated that they felt sympathy for appellant because of seeing him in chains." See also Estelle v. Williams, 425 U.S. 501, 504-505, 96 S. Ct. 1691, 1693 (1976) ("This is a recognition that the constant reminder of the accused's [custody] condition implicit in such distinctive, identifiable attire may affect a juror's judgment. The defendant's clothing is so likely to be a continuing influence throughout the trial that, not unlike placing a jury in the custody of deputy sheriffs who were also witnesses for the prosecution, an unacceptable risk is presented of impermissible factors coming into play."). Thus, the District Court acted in Collins' interest when it ordered him to remove his chains, turn his shirt inside out, and remove his socks, and it should not be faulted for its decision that attempted to *help* Collins, not hurt him.

Further, Collins' attempt to proceed to trial in his prisoner garb and chains was an affront to the decorum of the District Court. In Allen, the United States Supreme Court noted that shackling and gagging a defendant not only could have a significant effect on the jury's feelings about the defendant, but also that the "use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." Allen, 397 U.S. at 344, 90 S. Ct. at 1061. Collins' conduct reflected a lack of respect for the District Court's

orders and the solemnity of the proceedings, and his reasoning that chains and prison garb was "comfortable" was disingenuous. As the District Court found based on its perception and observations of the proceedings before it, Collins was acting with the motive of creating prejudicial error and was "playing games" with the District Court. This Court should defer to these findings.

Collins claims that the United States Constitution only guarantees that a defendant cannot be compelled to wear prison clothing, and that it did not hold that a defendant could be forced to wear civilian clothing. Opening Brief at 65. But Collins' argument ***presumes that there is a constitutional right for an accused to appear before the jury in shackles and prisoner garb.*** There surely cannot be such a right, as it would be tantamount to a constitutional right to prejudice a jury in favor of or against a defendant.

Therefore, the District Court gave Collins reasonable choices in an effort to prevent prejudice, he refused to choose one of them that would allow him to remain in the courtroom, and this led the District Court to conclude that Collins was waiving his right to be present at his trial. Accordingly, pursuant to Allen, it acted well within its wide discretion when it refused to allow Collins to manipulate the justice system.

This said, assuming *arguendo* that the District Court's decision was erroneous, the error was harmless beyond a reasonable doubt. Collins' contention that this error should be assessed as a structural error is belied by Rushen v. Spain,

464 U.S. 114, 117 n.2, 104 S. Ct. 453, 455 n.2 (1983), where the United States Supreme Court determined that such an error is assessed under the "harmless-beyond-a-reasonable-doubt" standard. See also Manning v. State, 131 Nev. ___, ___, 348 P.3d 1015, 1019 ("[W]hen a district court responds to a note from the jury without notifying the parties or counsel or seeking input on the response, the error will be reviewed to determine if it was harmless beyond a reasonable doubt.").

The error was harmless because all that occurred on the first day of the jury trial was brief voir dire and for-cause excusals of jurors for hardships and language barriers. 4 AA 780-98. Excusals on these grounds, unlike peremptory challenges, would not benefit from any input by Collins. Further, Collins returned to the trial the next day and was permitted to wear his prison garb after waiving his right not to do so on the record. 4 AA 811. And later on, he absented himself voluntarily from other, more substantive periods of trial, namely, the day Shalana Eddins testified. 7 AA 1247. Accordingly, any error in excusing Collins from the trial was harmless beyond a reasonable doubt and reversal is not warranted.

VI
There Was No Cumulative Error

This Court considers the following factors in addressing a claim of cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000). Importantly, a defendant "is not entitled to a perfect trial,

but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975) (citing Michigan v. Tucker, 417 U.S. 433, 94 S. Ct. 2357 (1974)).

Here, as discussed above, Collins' allegations have not established any error at trial. Further, while the crimes charged were grave, any errors (if shown) were harmless and could not have prejudiced him in any way. In any case, the issue of guilt was not close considering the evidence presented at trial, discussed extensively *supra*. Therefore, any error, if found by this Court to exist, did not deny Collins the right to a fair trial, and reversal is unwarranted.

CONCLUSION

For the foregoing reasons, the State respectfully requests that Collins' Judgment of Conviction be AFFIRMED.

Dated this 25th day of July, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 11,999 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of July, 2016.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 25th day of July, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

JONELL THOMAS
Chief Deputy Special Public Defender

STEVEN S. OWENS
Chief Deputy District Attorney

/s/ j. garcia
Employee, Clark County
District Attorney's Office

SSO/Matthew Bunnett/jg