

1 right for offering, so lets - why don't we just take
2 potentially half an hour or sooner if you want or if you want
3 a little longer we can certainly do that this afternoon to
4 take a look at the instructions that the Court has. We can
5 come back on the record with respect to those particular
6 instructions. If you have any others that you want to offer
7 today that you believe should be considered by the Court we
8 can certainly discuss those on the record today as well. So
9 lets - lets go ahead and recess and then does that work for
10 counsel or is this -

11 MS. HILTON: That works for me Your Honor.

12 MR. SEARS: I would like to address an issue.

13 THE COURT: You - you may.

14 MR. SEARS: So in the course of my research I looked
15 at a jury instruction out of California . . . (jury
16 instructions not requested to be transcribed).

17 THE COURT: With that let me consider Mr. Sears
18 arguments, State's opposition. Clearly the burden of proof is
19 to prove that a person was in actual physical control and in
20 looking at Rogers those are some of the factors the Court
21 would - could consider, would rule out other factors. I mean
22 there could be some other factors that weren't in Rogers. I
23 don't think that's an exclusive list of potential factors
24 but those are the factors that have been identified in that

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1 one. I mean there are a number of other cases that came after
2 Rogers too that - that address those factors as - as
3 appropriate. But - but you know, clearly the standard is -
4 is whether or not the circumstances of the individual support
5 actual physical control and it is true that the jury is
6 supposed to weigh those factors, whatever evidence is before
7 the Court and to weigh it. I mean, clearly the Court has
8 that element been proved beyond a reasonable doubt based upon
9 the evidence before the jury. So that's - you know,
10 that's what it goes. I'll respect your argument Mr.
11 Sears but -

12 MR. SEARS: I'm just wondering, how do they weigh it?
13 That's that question.

14 THE COURT: Well they're going to - well you know as -
15 you're - you're asking that there needs to be a level of
16 proof that they must - okay - so that - that's what you're
17 saying, not how they weight it but what - what level has
18 there to be for the to be satisfied. I understand your
19 argument. Okay.

20 MR. SEARS: Thank you.

21 THE COURT: All right. Any - anything else here this
22 afternoon?

23 MS. HILTON: Ah no Your Honor. So did you want to come
24 back in about thirty minutes?

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1 THE COURT: I can if you want to take a look at the
2 instructions that I have now or - or if not we can certainly
3 do it tomorrow.

4 MR. SEARS: I'd rather do it tomorrow.

5 THE COURT: That - that's fine.

6 MS. HILTON: Okay.

7 MR. SEARS: I need to look at them overnight.

8 THE COURT: Then - then the - if there's nothing else
9 then at this time then the Court will stand in recess til
10 tomorrow morning at nine thirty. Should something come up
11 with counsel that they believe any type of hearing or matters
12 need to be heard before the Court before nine thirty, try to
13 contact us by five today or I - I of course will be in early
14 in the morning, so I'll be in way before nine thirty so you
15 can get me then.

16 MR. SEARS: Thank you Your Honor.

17 THE COURT: All right.

18 MS. HILTON: Thank you Your Honor.

19 THE COURT: All right. Court's in recess.

20 BAILIFF: All rise. The Seventh Judicial District
21 Court of the State of Nevada in and for the County of White
22 Pine is now in session, the Honorable Gary D. Fairman
23 presiding.

24 THE COURT: Court's in session, please be seated

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1 everyone. Good morning. Let the record reflect that we're in
2 the second day of our trial. We have the presence of the
3 Defendant, Mr. James, his counsel Mr. Richard Sears, State's
4 counsel Miss McKinzie Hilton, White Pine County Deputy
5 District Attorney. We have the presence of our jurors in the
6 jury box and we are in the State's case and Miss Hilton you
7 can go forward.

8 MS. HILTON: Thank you Your Honor.

9 THE COURT: Call your ext witness.

10 MS. HILTON: Your Honor the State is calling
11 Criminalist Felicia Mason.

12 THE COURT: Okay.

13 MS. HILTON: And Miss Adams if you could admit her?

14 THE COURT: Good morning Miss Mason. Are you able to
15 hear the Court? Miss Mason are you able to hear the Court?

16 MS. MASON: Yes. Can you hear me?

17 THE COURT: We can. Thank you. Where you are if
18 you'll please raise your right hand and our Court Clerk will
19 administer an oath to you.

20 CLERK: Do you solemnly swear the testimony you are
21 about to provide in this matter before the Court shall be the
22 truth, the whole truth and nothing but the truth so help you
23 God?

24 MS. MASON: Yes.

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1 THE COURT: Miss Mason, I - I just have one just
2 preparatory question for the jury before you start your
3 testimony. Are you able to see the screen okay? I know we
4 have some glare with the shades - would be - if any of those
5 shades were closed, does that assist? Is anybody having any
6 difficulty seeing the screen this morning? Okay. All right.
7 Very well. Then Miss Mason before you start your testimony,
8 if you would please state your full name for the Court and
9 spell your last name.

10 MS. MASON: Felicia Mason. M - A - S - O - N.

11 THE COURT: Thank you. You can go forward with
12 examination counsel.

13 MS. HILTON: Thank you Your Honor. Miss Mason without
14 giving your exact address, where about do you reside?

15 MS. MASON: Reno, Nevada.

16 MS. HILTON: And how long have you lived in Reno?

17 MS. MASON: For six up years.

18 MS. HILTON: What is your occupation?

19 MS. MASON: I am a criminalist.

20 MS. HILTON: And where are you employed?

21 MS. MASON: I am employed at the Washoe County
22 Sheriff's Office Forensic Science Division in their
23 Toxicology Section.

24 MS. HILTON: How long have you been so employed?

1 MS. MASON: Since February of two thousand and
2 fifteen.

3 MS. HILTON: Miss Mason a criminalist?

4 MS. MASON: A criminalist analyzes in this case in the
5 toxicology section analyzes blood and or urine for the
6 presence and or absence of drugs and alcohol and provides
7 courtroom testimony.

8 MS. HILTON: And in addition to the presence or
9 absence, does a criminalist also determine quantities?

10 MS. MASON: Yes.

11 MS. HILTON: Please describe for your - for the jury
12 your education, training, and experience that you underwent
13 to become a criminalist?

14 MS. MASON: In two thousand eleven I received my
15 Bachelor's of Science in Chemistry premedicine from Norfolk
16 State University and then I in two thousand and thirteen I
17 received my Master's of Science in Forensic Sciences from the
18 University of Alabama at Birmingham. While attending the
19 University of Alabama at Birmingham I interned with the
20 Alabama Department of Forensic Scientists in there
21 (unintelligible words - recording choppy) section for one
22 year. I then gained full time employment with that same
23 agency in their Drug (unintelligible words) Section for a
24 year and (unintelligible words). I then went through an

1 extensive training program with the Washoe County Sheriff's
2 Office, Forensic Science Division, Toxicology Sector which
3 included several online forensic toxicology related courses,
4 oral presentations to show my competency in each portion of
5 the training. I also had to perform or do a written test in
6 relation to the alcohol testing. I had to reanalyze over a
7 hundred alcohol cases that were previously run by an
8 experienced analyst and I had to be within a certain
9 percentage of those results in order to pass that portion of
10 my training. I also have successfully participated daily in
11 several alcohol proficiency tests and I attended the Robert
12 Bark Alcohol and Highway Safety Training Program at Indiana
13 (unintelligible word) University which was taught by several
14 forensic toxicologists and or toxicologists themselves and
15 they went over their research as it relates to impairment
16 when it comes to ingesting of alcohol as well as the effects
17 of alcohol, alcohol analysis and courtroom testimony.

18 MS. HILTON: And are these both your degrees and the
19 additional training you underwent, are these commonly
20 accepted trainings in the field of forensic science?

21 MS. MASON: Yes.

22 MS. HILTON: In your estimation, how many - and so as
23 part of your duties as a criminalist you said that you can
24 test blood samples?

1 MS. MASON: Yes.

2 MS. HILTON: And in your career, how many blood sample
3 analysis have you conducted?

4 MS. MASON: Specifically for alcohol testing?

5 MS. HILTON: Yes.

6 MS. MASON: Over four thousand.

7 MS. HILTON: Does the training and experience you
8 previously testified to give you the ability to examine a
9 blood sample for the presence and quantity of alcohol?

10 MS. MASON: Yes.

11 MS. HILTON: Have you testified about your
12 professional opinion and the basis for it in Nevada Courts?

13 MS. MASON: Yes.

14 MS. HILTON: Could you list some of the Courts please?

15 MS. MASON: Yes. District Courts for Reno, Humboldt
16 and Carson City and then several Justice and Municipal Courts
17 throughout the State of Nevada.

18 MS. HILTON: More specifically, have you testified in
19 Court regarding blood testing for the detection of and the
20 presence and quantity of alcohol?

21 MS. MASON: Yes.

22 MS. HILTON: Have you testified in Court before
23 regarding the effects alcohol has - generally has on human
24 beings?

MS. MASON: Yes.

MS. HILTON: Have you been trained to use a specific scientific test or method to determine whether there is a presence of alcohol in a blood sample taken from a person?

MS. MASON: Yes.

MS. HILTON: What is that method?

MS. MASON: Headspace Gas Chromatography.

MS. HILTON: And can you describe for the jury what Headspace Gas Chromatography is?

MS. MASON: Yes. So it is a method used to analyze volatile compounds so ethanol which is the intoxicating ingredient in alcohol beverages is a volatile compound. A volatile compound is a compound that usually (unintelligible words - recording choppy) with gas, so with Headspace Gas Chromatography a portion of blood is put into a container. This container is sealed and heated. The heating causes the volatile compounds to go from the blood space into a gas phase. A portion of this gas phase is then ejected onto two different columns to which the (unintelligible words) while all components are separated from each other and their identity is determined as well as the amount.

MS. HILTON: Is using Headspace Gas Chromatography to test for alcohol a widely recognized scientific approach to determine the presence and quantity of alcohol?

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MS. MASON: Yes.

MS. HILTON: And is that method generally accepted by the majority of experts in the field of forensic science?

MS. MASON: Yes.

MS. HILTON: You previously indicated that you have training, knowledge and experience to testify regarding the affects alcohol has on a human being, correct?

MS. MASON: Correct.

MS. HILTON: Can you describe that particular training?

MS. MASON: Yes. So the training was conducted when I participated in a training through the Robert Borkenstein Alcohol and Safety Training Program that I described before.

MS. HILTON: And what did that training involve?

MS. MASON: So the training (unintelligible words - recording choppy) over the affects of alcohol, the analysis of alcohol and courtroom testimony.

MS. HILTON: And in the field of forensic science, is that portion of the Robert Borkenstein Training Period widely accepted?

MS. MASON: Yes.

MS. HILTON: Your Honor, at this time the State moves to allow Miss Mason to testify as to her professional opinion regarding the presence or absence as well as the quantity of

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alcohol in the Defendant's blood and on the affects alcohol generally has on the human body.

THE COURT: Mr. Sears, any objection?

MR. SEARS: I have no objection to her testimony with respect to the measurements and using gas chromatography equipment. I would like to voir dire some more on her acceptance as an expert in the area of the affects of alcohol on the human body.

THE COURT: Response?

MS. HILTON: Your Honor, given the fact that she has testified about her extensive training as well as the fact that the training she underwent is accepted widely in the scientific community of forensic science, the State believes it has properly shown that she is able to provide her professional opinion to the jury.

THE COURT: Okay. Anything further on that then Mr. Sears?

MR. SEARS: I think I only have two questions.

THE COURT: I'm going to allow the questions and then the Court will rule. You may traverse.

MR. SEARS: Thank you. Miss Mason can you hear me?

MS. MASON: I can.

MR. SEARS: I'm - my name is Richard Sears. I'm the Defense attorney in this case. I only have a couple of

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questions and it is with regard to the effect that alcohol has on the human body okay?

MS. MASON: Okay.

MR. SEARS: During your training session were you doing lectures or were you doing observation work on people who were under the influence of alcohol?

MS. MASON: Both.

MR. SEARS: That's all I wanted to know.

THE COURT: Okay.

MR. SEARS: I'll accept her as an expert Your Honor.

THE COURT: She's allowed to testify.

MS. HILTON: Thank you Your Honor. Miss Mason what are the effects that alcohol in general, I know it's different for each person, but what are generally the effects that alcohol has on a person?

MS. MASON: So a person can have bloodshot eyes, slurred speech, have trouble with balance and coordination. When it came to driving, they can have trouble performing that, they not (unintelligible words - recording choppy) attention tasks, (unintelligible words).

MS. HILTON: Miss Mason can you hear us?

THE COURT: Your screen is frozen so we'll have you go ahead and repeat your testimony on the effects.

MS. MASON: Okay. Can you hear me still?

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THE COURT: We can.

MS. MASON: Okay. So a person could have blood shot eyes, slurred speech, trouble when it comes (unintelligible words) balance and coordination. When it comes to driving they can have increased reaction time which means take longer to react to a potential hazard compared to someone who is not under the influence of any drugs or alcohol as well as can have trouble with performing a divided attention task.

MS. HILTON: Going to the - the testing process that you undergo when you test a blood sample, can you describe how the blood sample gets to you? Can you describe that process?

MS. MASON: Yes, so the (unintelligible words - recording choppy) so this is where the blood samples are stored, (unintelligible words) by the Washoe County Sheriff's Office Forensic Science Division Evidence Section (unintelligible words) can come directly from the Officer handing it to the evidence technician. It can come through the mail or it can be delivered to their lock box. Once the evidence technician receives these case, they verify that the case are sealed appropriately. Once verified they then open the case and verify that the control number which is the T number that is placed on the blood samples matches to the (unintelligible word - recording choppy) that is on this -

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the middle form. This T number or control number is put on the blood (unintelligible word) by the officer who observed the blood draw. Once this process is done, the evidence technician then transfers the evidence to a member of the toxicology section and from there the member of the toxicology section performs a logging process. His logging process includes assigning any tests that was requested by the requesting agency verifying that the names and agency case number are correct and (unintelligible words) number is then given to the each individual blood (unintelligible word) and then a chain of custody is performed to transfer all of those (unintelligible word) into a locked secure (unintelligible word) storage located in the toxicology section which is only accessed by a toxicology section number and I did not say this before but during that initial evidence process when they're looking at the case, they do assign a laboratory number and this laboratory number is a L number that is given to each piece of evidence that is submitted into the Forensic Science Division and it's used to track the chain of custody throughout the Forensic Science Division and then that specimen number is specific to the toxicology and that tracks the chain of custody again for the - the specimen blood tube for what's kind of a (unintelligible word) thing done on it, who was doing the

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testing and the amount of blood that is used.

MS. HILTON: So going back a little bit to the control number, is that - what number is on the toxicology submittal form that you get from the submitting agency?

MS. MASON: The T number or the control number.

MS. HILTON: And is the T number the same as the control number?

MS. MASON: Yes.

MS. HILTON: And why is it called a T number?

MS. MASON: That's just the tracking (unintelligible word) that's used from the agency to the lab.

MS. HILTON: Does it begin with a T?

MS. MASON: Yes.

MS. HILTON: And you said that the T or control number on the form has to match the T or control number on the tubes, correct?

MS. MASON: Correct.

MS. HILTON: So when you get ready to do your test on a given blood sample, how do you obtain that?

MS. MASON: So I obtain the specific blood from the locked secure refrigerated storage located in the toxicology section. I then do a chain of custody to show that those blood tubes are going from that refrigerator to me. I then perform a check to ensure that each specimen that I'm type

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(unintelligible word) into its container has unique identifiers that match so the specimen number, the control number, the laboratory number and the person's name.

MS. HILTON: And if there - so in this process you've described, if something was not properly sealed, or a number didn't match, what would you do?

MS. MASON: I would not test that sample.

MS. HILTON: When you're doing - and so you talked about a refrigerated storage, does the refrigeration or nonrefrigeration affect the presence or quantity of alcohol in the blood?

MS. MASON: No it does not.

MS. HILTON: And why do you place it in refrigerated storage?

MS. MASON: We place it in refrigerated storage just for best practice as well as (unintelligible word) to have it be secured.

MS. HILTON: But that wouldn't affect the outcome of the test?

MS. MASON: Correct.

MS. HILTON: So once you have the samples Miss Mason, can you describe the process you go through?

MS. MASON: Yes. So once I verify the unique identifiers that I mentioned before, I (unintelligible words)

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1 each blood individually into a specific container. I then
2 verify once those bloods are (unintelligible words - choppy
3 recording) put them onto the instrument in a specific
4 sequence or specific order, excuse me. Once I do that
5 verification another analyst in the section does the
6 verification of those - of that sequence again. Once the
7 samples are run on that instrumentation, I then do a check to
8 verify that the acceptance criteria were met for the results
9 in order to report them.

10 MS. HILTON: And what is acceptance criteria?

11 MS. MASON: So acceptance criteria are criteria put in
12 place to ensure that the results are accurate so in this
13 case, the retention time would have to be within three
14 percent of the nonretention time for each volatile compound
15 so for example ethanol, the results for the cases since there
16 are four results, there - they have to be within five percent
17 of each other, and the any blanks that are negative that we
18 run has to have no report or value for any volatiles that
19 have been run.

20 MS. HILTON: And is that to ensure the accuracy of the
21 test?

22 MS. MASON: Yes.

23 MS. HILTON: Can you describe what happens in - in
24 general terms to the blood during the test - during the gas

1 chromat - gas - the Headspace Gas Chromatography?

2 MS. MASON: Yes. So once the blood is put into the
3 specific container, it's then heated - or I should say its
4 put into the container. The container is sealed, and the
5 container is heated. Then the volatile compounds go from
6 that liquid base, or from the blood, into the head space of
7 that glass container and a portion of that gas is then
8 ejected onto the two different columns and the volatile
9 compounds are separated from each other and the identity of
10 each volatile compound and amount is determined from there.

11 MS. HILTON: And what happens after you complete the
12 test?

13 MS. MASON: So after the test is completed, then I
14 insure that all of the results meet acceptance criteria. I
15 then sign off that I reviewed that information and then
16 another analyst inspection conducts a technical review. That
17 technical review is basically going over the same thing
18 making sure that the acceptance criteria were met and that I
19 signed off on everything appropriately. After this, a analyst
20 review is done again to insure that once I put all of the
21 information into a specific case file that all the
22 information matches the (unintelligible word) middle form and
23 the forensic reports, etcetera, and then another person after
24 this point (unintelligible words) section does an administra

1 - administrative review. From there the report is sent out.

2 MS. HILTON: If a particular test did not meet
3 acceptance criteria, what would happen?

4 MS. MASON: The results would not be accepted and the
5 tests will be run again.

6 MS. HILTON: Is there a margin of error for this test?

7 MS. MASON: I'm not quite sure what you mean.

8 MS. HILTON: Is - is there a percentage that the
9 results are within?

10 MS. MASON: Oh, the uncertainty of measurement? Yes.

11 MS. HILTON: Yes. Can you explain what is meant by
12 uncertainty of measurement?

13 MS. MASON: Yes. So basically, each measurement is not
14 perfect so we take into account the different things that can
15 affect the measurement, so we take into account how different
16 analysts (unintelligible words) in the section, how the
17 controls are reported based off of different days and we take
18 all of this, put them together and this is reported on the
19 forensic report at the plus or minus value so it gives a
20 range of values that we are ninety-five percent confident
21 that the result is within.

22 MS. HILTON: And what - what is the form that you
23 complete, the report, what is that called? It looks like we
24 may have frozen again.

1 THE COURT: Yeah. We're - we're frozen momentarily so
2 when you unfreeze, we'll continue on.

3 MS. HILTON: Can you hear us Miss Mason?

4 THE COURT: She may be able to but we can't hear her
5 so.

6 UNKNOWN PERSON: Looks like we're rebooting.

7
8 THE COURT: Yeah. When she returns on the screen I'll
9 have you repeat your question. Miss Mason we can see you
10 now. Are you able to hear the Court?

11 MS. MASON: Yes.

12 THE COURT: Okay. I'm going to continue on with having
13 counsel ask you the last question before the screen froze.

14 MS. MASON: Okay.

15 MS. HILTON: Miss Mason, what is the document in
16 complete the report called?

17 MS. MASON: A forensic report.

18 MS. HILTON: And is that what contains the results of
19 your analysis?

20 MS. MASON: Yes.

21 MS. HILTON: And on that forensic report for a alcohol
22 test, is it listed as alcohol or something else?

23 MS. MASON: Ah, I'm going to have to take a look at
24 the report to see what you mean.

1 MS. HILTON: Is there another term that's used on the
2 report other than the word alcohol?

3 MS. MASON: Oh, ethanol?

4 MS. HILTON: Yes. And what is ethanol?

5 MS. MASON: So ethanol is the intoxicating ingredient
6 found in alcoholic beverages.

7 MS. HILTON: On December twenty-first of twenty
8 eighteen, did the Washoe County Forensic Division receive a
9 specimen from White Pine County?

10 MS. MASON: I would have to look at the report to
11 verify that date.

12 MS. HILTON: Your Honor I'm showing Defense counsel
13 what has been marked as State's Exhibit Four. I have also
14 provided a copy. Miss Mason did I email you a copy of a
15 Forensic Report with an exhibit sticker on it?

16 MS. MASON: Yes.

17 MS. HILTON: And are you able to view that?

18 MS. MASON: Yes.

19 MS. HILTON: What I'm going to do now is I'm going to
20 ask to approach the Clerk and I'm going to have the Clerk
21 hand or hold in front of the camera the document that I
22 emailed you so that we can have you verify that it is the
23 same document with an exhibit sticker saying forty-five D. A.
24 Discovery as well as State's Exhibit Four with the case

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1 number for this case. May I approach Your Honor?

2 THE COURT: You may.

3 MS. HILTON: And Miss Adams if you will hold this in
4 front of the camera? Miss Mason can you see that?

5 MS. MASON: No.

6 MS. HILTON: Is there a way to get it closer?

7 MS. ADAMS: I'll try.

9 MS. HILTON: Your Honor may I approach that camera?

10 THE COURT: You may. I don't think that you're going
11 to probably get -

12 MS. HILTON: I don't think I am. I'm not going to
13 call.

14 THE COURT: - good vision even - even if you were I
15 don't know how that's going to work for you.

16 MS. HILTON: Um, we have Mr. Johnson available for
17 T. T. I think - I think I can have her - let me try it this
18 way. Miss Mason was the copy marked as State's Exhibit Four
19 that I sent you, was that the forensic report you completed -

20 MS. MASON: Yes.

21 MS. HILTON: - in this case?

22 MS. MASON: Yes.

23 MS. HILTON: And looking at that document could you
24 tell me what case number is listed on the bottom of State's

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1 Exhibit four?

2 MS. MASON: Its kind of not all the way in but it
3 looks like its C R One Nine Zero Three Zero Two Eight. It's
4 not all the way - like I don't know if you can see, it kind
5 of -

6 MS. HILTON: Okay. And is this copy that I have sent
7 you a true and accurate copy of the forensic report you
8 completed in this case?

9 MS. MASON: Yes.

10 MS. HILTON: Your Honor the State would move to admit
11 State's Exhibit Four.

12 THE COURT: Any objection counsel?

13 MR. SEARS: No Your Honor.

14 THE COURT: Okay. State's Exhibit Four is admitted
15 without objection.

16 MS. HILTON: Miss Mason I'd like you to refer to
17 State's Exhibit Four the Washoe County - did the Forensic
18 Science Division receive a blood sample on twelve twenty-one
19 of twenty eighteen from the White Pine County Sheriff's
20 Office? Looks like it may be frozen again.

21 THE COURT: Again we're frozen Miss Mason so if you'll
22 hold your testimony for a moment we'll go ahead and resume it
23 as soon as - as soon as our screen is - allows us to.

24 MS. HILTON: Your Honor if I may have the Court's

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1 permission to ask Mr. Cahoon to go down stairs and see if he
2 can locate Mr. Johnson?

3 THE COURT: Go ahead and go.

4 MS. HILTON: Thank you Mr. Cahoon. Miss Mason can you
5 hear us now?

6 MS. MASON: Yes.

7 MS. HILTON: So I'm going to have you look at State's
8 Exhibit Four. Did you complete this document?

9 MS. MASON: Yes.

10 MS. HILTON: And is your signature located on this
11 document?

12 MS. MASON: Yes.

13 MS. HILTON: On December twenty-first of twenty
14 eighteen did the Forensic Science Division receive a blood
15 sample from the White Pine County Sheriff's Office?

16 MS. MASON: Yes.

17 MS. HILTON: What is the subject matter of that
18 submittal?

19 MS. MASON: Are you asking about the subject's name?
20 I'm not quite sure what you mean.

21 MS. HILTON: Oh, yes. What is the subject's name?

22 MS. MASON: Myrtis James T.

23 MS. HILTON: And what is the control number?

24 MS. MASON: T Zero Seven Two Five Nine Five.

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1 MS. HILTON: And is that the same control number that
2 would have been on the evidence submittal form?
3 MS. MASON: Yes.
4 MS. HILTON: Who is listed as the Officer in this
5 case?
6 MS. MASON: Shady and it says number zero five.
7 MS. HILTON: Does your forensic report indicate the
8 date of collection of the blood?
9 MS. MASON: Yes.
10 MS. HILTON: And what is that?
11 MS. MASON: Twelve nineteen two thousand and eighteen.
12 MS. HILTON: Does it indicate the collection time?
13 MS. MASON: Yes.
14 MS. HILTON: When completing the test on this person's
15 blood did you follow the procedures that you previously
16 described to the jury?
17 MS. MASON: Yes.
18 MS. HILTON: In conducting the test, did you discover
19 the presence of alcohol in Myrtis James, also known as James
20 Myrtis' blood?
21 MS. MASON: Yes.
22 MS. HILTON: After you performed the tests on this
23 blood sample, did you reach a conclusion as to the quantity
24 of alcohol ethanol?

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1 MS. MASON: Yes.
2 MS. HILTON: And what was that finding?
3 MS. MASON: Ethanol in the amount of zero point two
4 seven seven grams per one hundred milliliters plus or minus
5 zero point zero one four grams per one hundred milliliters.
6 MS. HILTON: And what does point two seven seven, what
7 does that number mean in relation to the blood alcohol?
8 MS. MASON: I'm not quite sure what you're asking.
9 MS. HILTON: What does that number reflect?
10 MS. MASON: It reflects that the person had ethanol in
11 their blood.
12 MS. HILTON: In that amount?
13 MS. MASON: Correct.
14 MS. HILTON: Is point two seven above a zero point
15 zero eight?
16 MS. MASON: Yes.
17 MS. HILTON: You previously talked about a margin of
18 error of - in this case plus or minus point zero one point
19 zero one four. Given that what results would it still be in
20 range of, if that makes sense? So if you -
21 MS. MASON: I'm not quite sure what you're asking.
22 MS. HILTON: So what does comparatively to point two
23 seven seven, what number would be good if we plus or minus
24 point zero one four?

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1 MS. MASON: Oh okay. So it would be a range from point
2 two six three to a point two - let's see, two nine one.
3 MS. HILTON: And would both of those numbers still be
4 above zero point zero eight?
5 MS. MASON: Correct.
6 MS. HILTON: What does it mean on the Forensic Report
7 Miss Mason where it says G slash one hundred M L?
8 MS. MASON: That's the unit for which the - the -
9 excuse me, I'm sorry, the results is reported.
10 MS. HILTON: And what do the - what is G and M L refer
11 to?
12 MS. MASON: Those show grams is like a weight, and
13 then milliliters is a volume.
14 MS. HILTON: So is it saying grams per one hundred
15 milliliters?
16 MS. MASON: Yes.
17 MS. HILTON: So in common car lengths, we refer to
18 someone as being above a point zero eight. Is this the
19 measurement, this grams per one milliliters that tells that?
20 Is that how we measure this?
21 MS. MASON: Yes.
22 MS. HILTON: So looking at in general, and I know you
23 can't talk about specific people, but general what sort of
24 outward physical manifestations would someone with an ethanol

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1 level of point two seven seven be exhibiting?
2 MS. MASON: They could exhibit bloodshot eyes, slurred
3 speech, trouble with balance and or coordination.
4 MS. HILTON: Your Honor at this time I would move to
5 publish State's Exhibit Four to the jury.
6 THE COURT: Any objection counsel?
7 MR. SEARS: No Your Honor.
8 THE COURT: Okay. So ordered.
9 MS. HILTON: May I approach?
10 THE COURT: You may. Miss Hilton as you probably saw
11 Mr. Johnson did come into the courtroom. Do you need him for
12 any assistance like presently or just standby?
13 MS. HILTON: Maybe just on standby since we were kind
14 of having some freezing issues.
15 THE COURT: All right. All right. Thank you.
16 MS. HILTON: If that happens again I'm hoping he help
17 us rectify it.
18 THE COURT: Thank you.
19 MS. HILTON: In this (unintelligible word - mic noise)
20 the jury's just looking at the exhibit. May I approach Your
21 Honor?
22 THE COURT: You may.
23 MS. HILTON: Miss Mason is your forensic report also a
24 declaration?

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1 MS. MASON: Yes.
 2 MS. HILTON: And what is it meant by declaration?
 3 What does it mean when you sign this?
 4 MS. MASON: That I stand by my results.
 5 MS. HILTON: And what does the language above your
 6 signature state?
 7 MS. MASON: I declare under penalty of perjury that
 8 the foregoing is true and correct.
 9 MS. HILTON: I'll pass the witness Your Honor.
 10 THE COURT: Cross-examination Mr. Sears?
 11 MR. SEARS: The only questions I would have would be
 12 irrelevant Your Honor.
 13 THE COURT: Okay. No cross. Is the witness excused?
 14 MS. HILTON: She is Your Honor.
 15 THE COURT: Thank you Miss Mason. This concludes your
 16 testimony in this matter and you're excused from the case.
 17 MS. MASON: Okay thank you. Have a good day.
 18 MS. HILTON: Thank you Your Honor and at this time the
 19 State has no further witnesses and the State rests.
 20 THE COURT: Okay. Thank you. At this time ladies and
 21 gentlemen we're going to take a brief break so we'll allow
 22 you to take a - a short recess. I'm going to read you the
 23 admonition and then we'll go forward. During this recess,
 24 you must not discuss or communicate with anyone including

1 fellow jurors in anyway regarding this case or its merits
 2 either by voice, phone, email, text, internet or other means
 3 of communication or social media. Do not read, watch or
 4 listen to any news or media accounts or commentary about the
 5 case, do not do any research such as consulting dictionaries,
 6 using the internet, using reference materials with respect to
 7 this matter. Do not make any investigation, test any theory
 8 of the case, recreate any aspect of the case or in any other
 9 way investigate or learn about the case on your own, and
 10 finally do not form or express any opinion regarding this
 11 case until it is finally submitted to you. So we'll take a
 12 brief recess. We'll allow you to go ahead and exit has you
 13 have in the past and then we'll bring you back in shortly.
 14 THE COURT: ... our case outside the presence of the
 15 jury. We have Mr. James, Mr. James' counsel, and the State's
 16 counsel present. At this time since the State has rested in
 17 this case, then it goes forward to the Defense case and Mr.
 18 James I'm sure you've consulted with Sears on this but you
 19 have the right to testify or not. That is your sole - sole
 20 decision in this case. It's your decision alone. If you choose
 21 to testify in this case then you'll be subject to cross-
 22 examination by the State of Nevada with respect to any of
 23 your testimony in this case and so I just want to advise you
 24 of that and do you understand that right?

1 MR. JAMES: Yes.
 2 THE COURT: All right. Very well. Then at this time do
 3 you want to take a little further recess Mr. Sears?
 4 MR. SEARS: Yes Your Honor.
 5 THE COURT: Yeah. Lets continue on and take about a
 6 ten minute recess or fifteen minute recess -
 7 MR. SEARS: Thank you.
 8 THE COURT: And then we'll go forward with this case.
 9 All right. Court's in recess.
 10 BAILIFF: All rise.
 11 BAILIFF: All rise.
 12 THE COURT: Court's in session please be seated. We
 13 are in the continuation of the case. We have the Defendant
 14 Mr. James, his counsel Mr. Sears present, State's counsel Miss
 15 Hilton and the presence of all of our jurors in the jury box.
 16 Mr. Sears, the Defense case.
 17 MR. SEARS: Yes, thank you Your Honor. We'll call
 18 Myrtis T. James to the stand.
 19 THE COURT: Okay. Mr. James please come forward before
 20 the witness - or before the Clerk, excuse me, then we'll have
 21 you raise your right hand and the Clerk will administer an
 22 oath to you sir.
 23 CLERK: Do you solemnly swear the testimony you are
 24 about to provide in this matter before the Court shall be the

1 truth, the whole truth and nothing but the truth, so help you
 2 God?
 3 MR. JAMES: I do.
 4 THE COURT: Yes. Please have a seat to the witness
 5 stand on my right. And then Mr. James before you start just
 6 state your full name and then spell your last name for the
 7 record sir.
 8 MR. JAMES: Myrtis T. James. J - A - M - E - S.
 9 THE COURT: Thank you. Mr. Sears you can go forward.
 10 MR. SEARS: Thank you Your Honor. I'm going to get my
 11 report (unintelligible words - faint recording). Have you
 12 ever told someone that you're names was James T. Myrtis?
 13 MR. JAMES: No.
 14 MR. SEARS: Is that your name?
 15 MR. JAMES: No.
 16 MR. SEARS: Does it drive you a little crazy that
 17 everybody gets it backwards?
 18 MR. JAMES: Yup.
 19 MR. SEARS: How long has that been going on for?
 20 MR. JAMES: A long time.
 21 MR. SEARS: Where do you reside now?
 22 MR. JAMES: Now? Saint George, Utah.
 23 MR. SEARS: And how long have you lived in Saint
 24 George?

1 MR. JAMES: Approximately thirty years.
 2 MR. SEARS: And you're married?
 3 MR. JAMES: Yes.
 4 MR. SEARS: And your wife is here in the courtroom?
 5 MR. JAMES: Yes.
 6 MR. SEARS: And you have children?
 7 MR. JAMES: Yes.
 8 MR. SEARS: How many children?
 9 MR. JAMES: Six.
 10 MR. SEARS: How long have you two been together?
 11 MR. JAMES: Thirty plus years.
 12 MR. SEARS: Okay. And how long - and - and you've
 13 been in Saint George for that same amount of time?
 14 MR. JAMES: Pretty close.
 15 MR. SEARS: And what's your occupation?
 16 MR. JAMES: I'm an electrician by trade.
 17 MR. SEARS: And how long have you been an electrician?
 18 MR. JAMES: Twenty plus years.
 19 MR. SEARS: And what education have you had?
 20 MR. JAMES: Some college (unintelligible word- Mr.
 21 Sears speaking also) student.
 22 MR. SEARS: Where did you - where did you go to
 23 college?
 24 MR. JAMES: Saint George, Utah.

1 MR. SEARS: Okay. Did you get a degree?
 2 MR. JAMES: No. I bailed out about third year in and I
 3 just stopped going.
 4 MR. SEARS: How come?
 5 MR. JAMES: I just got tired of school.
 6 MR. SEARS: Okay.
 7 MR. JAMES: But I got huge credits to get my -
 8 MR. SEARS: A. A.?
 9 MR. JAMES: A. A. Yeah.
 10 MR. SEARS: And then so then what did you do after
 11 college?
 12 MR. JAMES: I worked for a bit then decided to be an
 13 electrician.
 14 MR. SEARS: And so what do you have to do in Utah in
 15 order to become an electrician?
 16 MR. JAMES: Do four years of school at the same time
 17 for two thousand hours of electrical on-hand out in the
 18 field.
 19 MR. SEARS: Did you do all of that?
 20 MR. JAMES: Yes.
 21 MR. SEARS: And did you receive a license as a - a
 22 electrician in Utah?
 23 MR. JAMES: Yes.
 24 MR. SEARS: Okay. Now I want to bring you up to about

1 twenty eighteen. Prior to twenty eighteen how many years had
 2 you worked as an electrician?
 3 MR. JAMES: Most of the year then.
 4 MR. SEARS: No. No. Prior to twenty eighteen, how
 5 many years had you been an electrician?
 6 MR. JAMES: Before that eighteen.
 7 MR. SEARS: Eighteen year?
 8 MR. JAMES: Seventeen years, yeah.
 9 MR. SEARS: Now in - and had most of that time had you
 10 been working in the Utah area?
 11 MR. JAMES: Yes.
 12 MR. SEARS: All right. So what happened that you
 13 started working elsewhere?
 14 MR. JAMES: I topped out. I couldn't make any more
 15 money where I was at home so I started traveling for work.
 16 MR. SEARS: Okay. And where did you initially travel
 17 for work?
 18 MR. JAMES: Salt Lake and Vegas, California.
 19 MR. SEARS: And where were you working immediately
 20 before you coming to Ely?
 21 MR. JAMES: I was working in Victorville, California.
 22 MR. SEARS: And what were you doing there?
 23 MR. JAMES: I was doing electrical field, the same
 24 thing for a cement plant.

1 MR. SEARS: Now, when you do electrical work what kind
 2 of electrical work do you do?
 3 MR. JAMES: Anything in all electrical, all phases,
 4 commercial, residential, industrial.
 5 MR. SEARS: Okay. In California were you doing high
 6 voltage work?
 7 MR. JAMES: Yes.
 8 MR. SEARS: And tell me what high voltage work is.
 9 MR. JAMES: Thirteen KVA, twenty-five KVA's kilovolts
 10 (unintelligible word) big power lines coming in and out -
 11 MR. SEARS: Okay.
 12 MR. JAMES: - yellow preserve.
 13 MR. SEARS: And I'm assuming it takes a certain amount
 14 of experience to do that?
 15 MR. JAMES: Yes.
 16 MR. SEARS: And is that the same kind of work that you
 17 were doing at the mine here?
 18 MR. JAMES: Yes.
 19 MR. SEARS: Okay. So why did you leave your
 20 Victorville job?
 21 MR. JAMES: Ah, I got transferred. There were too
 22 many people working there so they were taking volunteers.
 23 MR. SEARS: And did you have an option of where you
 24 wanted to go?

MR. JAMES: Yes.

MR. SEARS: And - and so you picked Ely?

MR. JAMES: Yeah because Ely has a little bit less spotted trav - less travel for me.

MR. SEARS: Okay. And it would have been closer to your residence?

MR. JAMES: Yes.

MR. SEARS: At that time your residence was still in -

MR. JAMES: Yes.

MR. SEARS: Okay. So approximately when did you come to Ely before the December the eighteenth of twenty eighteen when you got arrested?

MR. JAMES: I believe October or September.

MR. SEARS: Okay. So you had been here a couple of months?

MR. JAMES: Yes.

MR. SEARS: All right? During that period was your wife continuing to reside regularly in Saint George?

MR. JAMES: Yes.

MR. SEARS: Okay. And did something happen that caused that to change?

MR. JAMES: Yes.

MR. SEARS: What happened?

MR. JAMES: My mother-in-law was on her death bed.

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MR. SEARS: Okay. And where did she reside?

MR. JAMES: In Arizona.

MR. SEARS: So what happened to your wife's residence then when your mother-in-law was dying, when her mom was dying?

MR. JAMES: She constantly (unintelligible words) every weekend to care for her on the weekends.

MR. SEARS: And what was going on with the kids?

MR. JAMES: They were at home. She just took the little ones.

MR. SEARS: Okay.

MR. JAMES: The older ones stayed at the house in Saint George.

MR. SEARS: And the what would the commute have been for your wife from Saint George to wherever your mother-in-law lives?

MR. JAMES: About seven hours.

MR. SEARS: Okay. So you're here and she's commuting back and forth to -

MR. JAMES: Yes.

MR. SEARS: That sounds like - is that the Four Corners area?

MR. JAMES: Yes.

MR. SEARS: Okay. To deal with her mother. So when

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you were here, why were you living in your car?

MR. JAMES: What I was making I was sending it back to her so she could travel back and forth.

MR. SEARS: Okay. During most of your marriage were you married?

MR. JAMES: Yes.

MR. SEARS: I'm sorry. Was she working?

MR. JAMES: Most of it but she had quit because of the condition with her mom and that we had lost our son prior to that, one month prior to that the year before.

MR. SEARS: Okay. Sorry about that.

MR. JAMES: Thank you.

MR. SEARS: And so that changed her working situation?

MR. JAMES: Yes.

MR. SEARS: And it changed your financial situation?

MR. JAMES: Yes.

MR. SEARS: Did that financial change was that part of the reason you went and began working in California?

MR. JAMES: Yes.

MR. SEARS: All right. And you - you just make more dough?

MR. JAMES: Yeah I just make more on the road, yeah.

MR. SEARS: Okay. Approximately how long were you living in your car when you were in Ely working?

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MR. JAMES: About the same amount of time I arrived, about two months.

MR. SEARS: Okay. Did you ever go stay in a motel?

MR. JAMES: No.

MR. SEARS: Okay. Did your wife come and visit occasionally?

MR. JAMES: Yes.

MR. SEARS: And what would you do then?

MR. JAMES: We would stay at LaQuinta.

MR. SEARS: Okay.

MR. JAMES: On the weekends.

MR. SEARS: All right. And then well that brings a question about your shift. So what kind of a shift did you work at the mine?

MR. JAMES: Um, usually the day shift. About four to six.

MR. SEARS: Okay. And so how did you get to the mine?

MR. JAMES: We traveled in a van or a bus.

MR. SEARS: And where would you - where would you get the bus?

MR. JAMES: The mine provided it for us. It was parked over behind the Chevron on the main street.

MR. SEARS: Okay.

MR. JAMES: on the main street coming in.

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1 MR. SEARS: Okay. By McDonalds?

2 MR. JAMES: Yeah.

3 MR. SEARS: And so you'd go to McDonalds, get in the

4 bus, go to the mine correct?

5 MR. JAMES: Yes.

6 MR. SEARS: And then what did you do during the day?

7 What - what - well tell me about what time did you get to the

8 mine?

9 MR. JAMES: It was about an hour and a half travel. We

10 got there. We left about four thirty, five, got there about

11 six, seven.

12 MR. SEARS: Okay. And then working with high voltage

13 equipment?

14 MR. JAMES: Yes.

15 MR. SEARS: And then you had a crew cab or something

16 that goes around?

17 MR. JAMES: Yeah. Yeah, there was a crew of us.

18 MR. SEARS: Okay.

19 MR. JAMES: Four people per truck basically.

20 MR. SEARS: All right. And then did your high voltage

21 work?

22 MR. JAMES: Yes.

23 MR. SEARS: And was that in support of the shovels or

24 something?

1 MR. JAMES: Ah, we just did - move generators

2 temporarily just on a start-up. Moved a lot of generators so

3 the other guys could work and do their job.

4 MR. SEARS: And so you provided power for the workers?

5 MR. JAMES: Yeah. Provided power.

6 MR. SEARS: And where are you living now?

7 MR. JAMES: Back home in Saint George with some

8 family.

9 MR. SEARS: Okay. Had you lived in your car in

10 California as well?

11 MR. JAMES: Yes.

12 MR. SEARS: And so you developed sort of a routine of

13 living in your car?

14 MR. JAMES: Yes.

15 MR. SEARS: Where did you keep your clothes?

16 MR. JAMES: In the backseat of my car.

17 MR. SEARS: And then how did you arrange for food?

18 MR. JAMES: Well (unintelligible words) so we - I ate

19 out.

20 MR. SEARS: Okay. And when you came to Ely what did

21 you do here?

22 MR. JAMES: The same thing, McDonalds, bought food,

23 made sandwiches.

24 MR. SEARS: Okay. Your goal was to save money and sent

1 it home?

2 MR. JAMES: Yeah, during that time.

3 MR. SEARS: Okay. And the mine - the company that you

4 worked for, they paid you a per diem?

5 MR. JAMES: Yes.

6 MR. SEARS: Okay.

7 MR. JAMES: But mainly I sent it home.

8 MR. SEARS: Sure. Where would you sleep in your car

9 when you were here for that four to five days or so?

10 MR. JAMES: I started out at Love's and a couple of

11 gas stations, a couple behind the motel down town by the gym.

12 MR. SEARS: And had you ever had any trouble with the

13 police prior to the December the eighteenth when you got

14 arrested?

15 MR. JAMES: None whatsoever.

16 MR. SEARS: Okay. On the eighteenth, you get off work,

17 what happens next?

18 MR. JAMES: I get in the car. I go to the gym. I work

19 out. That lady used to keep (unintelligible words) for me

20 because sometimes they come back after six and she'll stay a

21 few minutes and then let me in.

22 MR. SEARS: Okay.

23 MR. JAMES: And work out for about an hour and shower.

24 MR. SEARS: And then what?

1 MR. JAMES: And then went to Ridley's, got dinner.

2 MR. SEARS: And then what did you do then?

3 MR. JAMES: I had a shot or two with my dinner.

4 MR. SEARS: Do you remember what you ate that night?

5 MR. JAMES: I believe it was hot wings and bread.

6 MR. SEARS: Okay. And then what did you do after that?

7 MR. JAMES: And then I just went over to Family

8 Dollar. I parked. I was going to get some -

9 MR. SEARS: Okay.

10 MR. JAMES: - (unintelligible word) something to eat

11 for my lunch the next day.

12 MR. SEARS: And why would you go get something like

13 that from Family Dollar?

14 MR. JAMES: Because it's cheap. It's all a dollar

15 six, you know.

16 MR. SEARS: Okay. And did you - so would you buy your

17 utensils and your bowls and that stuff all?

18 MR. JAMES: Yeah.

19 MR. SEARS: And then throw it away when you're done?

20 MR. JAMES: Yeah.

21 MR. SEARS: Okay. So you said you had a couple of

22 shots with dinner?

23 MR. JAMES: Yeah.

24 MR. SEARS: How do you know it was a shot?

1 MR. JAMES: I just measured it by eyeball I guess.
 2 MR. SEARS: Okay. And is that your routine regularly?
 3 MR. JAMES: Yeah, fairly but not all the time.
 4 MR. SEARS: Okay. So occasionally you'll have a shot?
 5 MR. JAMES: Um hmm.
 6 MR. SEARS: Do you have to have your wits about you at
 7 work?
 8 MR. JAMES: I'm not sure what you mean.
 9 MR. SEARS: Well can you be dealing with high voltage
 10 work when you're drunk?
 11 MR. JAMES: No.
 12 MR. SEARS: What happens if you do?
 13 MR. JAMES: You die. Bad things happen.
 14 MR. SEARS: Okay. So, on this occasion after you go
 15 the Dollar Store did you go in and buy something in the
 16 Dollar Store?
 17 MR. JAMES: Yes. I grabbed a couple of things, went
 18 back in the car.
 19 MR. SEARS: Okay.
 20 MR. JAMES: It'd been about nine, nine thirty.
 21 MR. SEARS: And then what?
 22 MR. JAMES: I just decided to stay there.
 23 MR. SEARS: So you reclined your seat?
 24 MR. JAMES: The seat was reclined to take a nap.

1 MR. SEARS: Okay.
 2 MR. JAMES: Tired.
 3 MR. SEARS: And then how close was the Dollar Store
 4 location to where you got picked up?
 5 MR. JAMES: Just a block or not even two blocks up the
 6 street.
 7 MR. SEARS: Okay. So you got out of the vehicle, it
 8 was a car you were driving, is that right?
 9 MR. JAMES: Yes.
 10 MR. SEARS: S. U. V. or something like that?
 11 MR. JAMES: A good size car.
 12 MR. SEARS: And then get on the bus to go to work?
 13 MR. JAMES: Yes.
 14 MR. SEARS: What did you think when Officer Shady woke
 15 you up?
 16 MR. JAMES: Ah, he caught me all surprised. I'm like
 17 usually I have like strangers or somebody knock on my door
 18 when I was like at Love's or something, wake me up to want
 19 something or asking for help and I just shook me like shaking
 20 somebody's waking up.
 21 MR. SEARS: Okay. Did you recognize that he was a
 22 police officer immediately?
 23 MR. JAMES: Yeah.
 24 MR. SEARS: Okay. Now when he left after he took your

1 license, what did you think?
 2 MR. JAMES: Ah, I'm going to jail.
 3 MR. SEARS: Okay. And so what did you do?
 4 MR. JAMES: I just - what bottle I had left I finished
 5 it.
 6 MR. SEARS: Okay. What did you have left?
 7 MR. JAMES: Just about have of that pint.
 8 MR. SEARS: Of what?
 9 MR. JAMES: I think that it was vodka.
 10 MR. SEARS: So you chugged it?
 11 MR. JAMES: I chugged the bottle.
 12 MR. SEARS: And was he standing by or was he gone?
 13 MR. JAMES: I believe he was back there checking my
 14 I. D.
 15 MR. SEARS: Okay. And so you chugged the bottle?
 16 MR. JAMES: Yeah.
 17 MR. SEARS: Or what was left of it?
 18 MR. JAMES: Yes.
 19 MR. SEARS: Okay. And then what happened?
 20 MR. JAMES: I just waited for him to come back?
 21 MR. SEARS: Okay. Was that a wise decision?
 22 MR. JAMES: I believe so.
 23 MR. SEARS: Okay. You weren't going to go anywhere?
 24 MR. JAMES: No. I'm like I didn't want to cause

1 anymore trouble than I was already in.
 2 MR. SEARS: Okay. I understand. When you got to the
 3 mine in the morning during that period, what was it like?
 4 MR. JAMES: Cold. Muddy (unintelligible words) to the
 5 snow. It was possible conditions we work in.
 6 MR. SEARS: So at the end of the day were you tired?
 7 MR. JAMES: Yeah.
 8 MR. SEARS: Did you attempt to have your car as well
 9 set up as you could have in terms of living in it?
 10 MR. JAMES: I thought so.
 11 MR. SEARS: Okay. So it was - it was survival?
 12 MR. JAMES: Yes.
 13 MR. SEARS: And how did you communicate with your
 14 wife?
 15 MR. JAMES: Ah, we text.
 16 MR. SEARS: Okay. And was that everyday?
 17 MR. JAMES: Everyday before work, after work, sure.
 18 MR. SEARS: And did you text with her that night?
 19 MR. JAMES: I believe so. Of course we did.
 20 MR. SEARS: Did anybody tell you you couldn't park at
 21 the Dollar Store?
 22 MR. JAMES: No.
 23 MR. SEARS: Had anybody kicked you out of any of the
 24 other locations where you parked and slept?

1 MR. JAMES: Umm, I don't think so.
2 MR. SEARS: Okay. When the officer asked you had you
3 drunk that night, what was your response?
4 MR. JAMES: I'm drunk. (Unintelligible words).
5 MR. SEARS: Okay. And was that in part because of what
6 you just slugged?
7 MR. JAMES: Yes.
8 MR. SEARS: So when you said quit a bit, was that what
9 what you were referring to?
10 MR. JAMES: Yes.
11 MR. SEARS: Are you still employed at the mine?
12 MR. JAMES: No. I got laid off like -
13 MR. SEARS: All right.
14 MR. JAMES: - last summer.
15 MR. SEARS: So then where are you working now?
16 MR. JAMES: Back in Saint George.
17 MR. SEARS: Same work that you've always done?
18 MR. JAMES: Electrical field, yes.
19 MR. SEARS: Okay. Court's indulgence?
20 THE COURT: You may.
21 MR. SEARS: Did anybody ever tell you that if you
22 slept in the driver's seat in your car and you drank you'd
23 get arrested?
24 MR. JAMES: No.

1 MR. SEARS: Did you know that?
2 MR. JAMES: I did not.
3 MR. SEARS: Would you have slept someplace else in
4 your car if you'd of known?
5 MR. JAMES: Um, I usually sleep in the passenger seat.
6 MR. SEARS: Okay.
7 MR. JAMES: When I park.
8 MR. SEARS: And how come you didn't that night?
9 MR. JAMES: I was just tired.
10 MR. SEARS: Been a hard day?
11 MR. JAMES: Yes.
12 MR. SEARS: Pass the witness.
13 THE COURT: Cross-examination counsel?
14 MS. HILTON: Mr. Myrtis you said that you usually
15 sleep in the passenger seat, correct?
16 MR. JAMES: Yes.
17 MS. HILTON: Did you not in this case because you were
18 drunk?
19 MR. JAMES: No. (Unintelligible words).
20 MS. HILTON: And so you're saying that you made that
21 decision just because you were tired?
22 MR. JAMES: Yes (unintelligible words - speaking very
23 low).
24 MS. HILTON: Isn't it true Mr. James that even before

1 your claim that you chugged the alcohol while the police
2 officer was parked behind you running your license, is that
3 your claim?
4 MR. JAMES: Yes.
5 MS. HILTON: Isn't it true that even before that you
6 had already struggled to find a driver's license that you
7 just put in your wallet?
8 MR. JAMES: Yes.
9 MS. HILTON: Is it car - did I hear you correctly when
10 you said you drank your shots with dinner prior to going to
11 Family Dollar?
12 MR. JAMES: Yes.
13 MS. HILTON: You told Sergeant Shady that you were
14 operating the motor vehicle, correct?
15 MR. JAMES: Follow the question.
16 MS. HILTON: It's a yes or no question. Did you tell
17 Officer Shady that you were operating the motor vehicle, yes
18 or no?
19 MR. JAMES: No, not at the time.
20 MS. HILTON: Did you - did you see the body cam that
21 played here?
22 MR. JAMES: Yes.
23 MS. HILTON: And so you're saying that you did not
24 tell Officer Shady that you were operating the vehicle, is

1 that what you're saying?
2 MR. SEARS: I'm going to object just on the basis that
3 it was vague. He talked to Shady on the video on two
4 different occasions. There was the initial contact and the
5 second contact. If she could clarify which contact she's
6 talking about.
7 THE COURT: Want to lighten that up counsel?
8 MS. HILTON: Sure. So Mr. James you watched the video.
9 There were two sections. During the second section isn't it
10 true that you when asked whether you were operating the
11 vehicle, you said yes I was?
12 MR. JAMES: Yes.
13 MS. HILTON: Isn't it true that the vehicle was
14 running while you were parked at Family Dollar?
15 MR. JAMES: Yes.
16 MS. HILTON: Isn't it true that the door was open?
17 MR. JAMES: Yes.
18 MS. HILTON: Why was the door open?
19 MR. JAMES: I might have got hot from the heater.
20 MS. HILTON: Why didn't you just turn the heater off?
21 MR. JAMES: I don't know.
22 MS. HILTON: You told Sergeant Shady that you were
23 staying at the truck stop correct?
24 MR. JAMES: Yes.

1 MS. HILTON: You did not tell Sergeant Shady that you
2 were staying at Family Dollar, correct?
3 MR. JAMES: Yeah, usually I park at Family Dollar - Loves.
4 MS. HILTON: Did - but you did not tell Sergeant Shady
5 that you were staying at Family Dollar -
6 MR. JAMES: No.
7 MS. HILTON: - correct? When Sergeant Shady as you
8 remember and as you observed on the vehicle asked you to do
9 the second S. F. S. T. you said oh shit just take me correct?
10 MR. JAMES: Yeah, right.
11 MS. HILTON: And then you also said I'm drunk, you
12 know I'm drunk, we're all drunk, correct?
13 MR. JAMES: Correct.
14 MS. HILTON: If you were really staying at Family
15 Dollar, why wouldn't you tell Sergeant Shady that?
16 MR. JAMES: I - I hadn't - I was already too tired to
17 move the car and -
18 MS. HILTON: And so you just didn't tell him that?
19 MR. JAMES: Yeah.
20 MS. HILTON: But you're claiming that's what you were
21 doing? When Sergeant Shady asked you how much you had had to
22 drink your response was probably quite a bit, correct?
23 MR. JAMES: Yes, after chugging.
24 MS. HILTON: But even prior your claim that you were

1 pounding - chugging I should say alcohol while the cop was
2 seated in his vehicle right next to you even before that you
3 already couldn't find your wallet correct, and you already
4 had an odor of alcohol, correct? And yet you're still
5 claiming -
6 THE COURT: Go ahead and let him answer, and then
7 you'll need to answer loud in addition to your head nod sir.
8 MR. JAMES: Repeat the question.
9 MS. HILTON: You're claiming I was saying that you
10 even after you claim that you were chugging alcohol with the
11 cop right there, you still had trouble finding your license
12 that you had just put in your wallet, correct?
13 MR. JAMES: Yes.
14 MS. HILTON: And so are you claiming that you were
15 chugging alcohol with the cop right there?
16 MR. JAMES: After he took my license.
17 MS. HILTON: That's what you're claiming?
18 MR. JAMES: Yes.
19 MS. HILTON: During the time that Sergeant Shady had
20 your license was the vehicle - the vehicle was still running
21 correct?
22 MR. JAMES: Correct.
23 MS. HILTON: Did you have the shots with your dinner
24 at Ridley's?

1 MR. JAMES: Yes.
2 MS. HILTON: Did you buy the alcohol at Ridley's?
3 MR. JAMES: I believe it was from the day before.
4 MS. HILTON: But you did not buy it at Family Dollar,
5 correct?
6 MR. JAMES: I don't think so.
7 MS. HILTON: Would it be dangerous to work with high
8 voltage equipment and be under the influence of alcohol?
9 MR. JAMES: Yes.
10 MS. HILTON: And why is that?
11 MR. JAMES: Just a motivational skills I guess that's
12 involved. Cutting (unintelligible word).
13 MS. HILTON: And Mr. James you have a felony
14 conviction correct?
15 MR. JAMES: Yes.
16 MS. HILTON: I'll pass the witness Your Honor.
17 THE COURT: Thank you. Redirect counsel?
18 MR. SEARS: Mr. James are you testifying today?
19 MR. JAMES: Yes.
20 MR. SEARS: You're not claiming anything are you?
21 MR. JAMES: No.
22 MR. SEARS: You're testifying under oath?
23 MR. JAMES: Yes.
24 MR. SEARS: I'll pass the witness.

1 THE COURT: Anything on that counsel?
2 MS. HILTON: Yes Your Honor. So just to be clear based
3 on that question, you are testifying that on December
4 eighteenth of twenty eighteen after Sergeant Shady had taken
5 your license, you made the decision to chug alcohol in your
6 vehicle with the police cruiser parked very close to you?
7 That's your testimony?
8 MR. JAMES: Nothing further Your Honor.
9 THE COURT: You may step down.
10 MR. SEARS: Thank you Your Honor. Defense rests.
11 THE COURT: Rebuttal counsel?
12 MS. HILTON: Ah, the State has no rebuttal Your Honor.
13 THE COURT: Okay. Ladies and gentlemen that concludes
14 the evidentiary portion of our case this morning and at this
15 time we're going to take a recess. We'll take our noon
16 recess a little bit early and it'll - it'll probably be about
17 an hour and a half to two hours approximately for the recess
18 and the reason for that is that during this time the Court
19 and counsel will be settling on the balance of the jury
20 instructions that are going to be submitted to you for your
21 consideration in addition to the first seven that that I read
22 to you, so it takes a little bit of time to create those
23 instructions. We're going make copies for everyone as well
24 and so we - we want to go ahead and allow you to have a

1 sufficient amount of time actually for us to get our job done
2 so that you're not just sitting here waiting for us and so at
3 this time its eleven o'clock, counsel you think we can
4 reconvene at one o'clock?

5 MS. HILTON: I think so Your Honor.

6 THE COURT: Mr. Sears at one thirty?

7 MR. SEARS: I - I would rather do one thirty if its
8 okay.

9 THE COURT: Then we'll go to one thirty. Its going to
10 be about two and a half hours, so if you have other personal
11 business matters you can certainly go ahead and do them
12 during this - during this break and then we'll come back,
13 we'll have closing arguments and then the matter will be
14 submitted to you for your deliberation. So during this
15 recess ladies and gentlemen, you must not discuss or
16 communicate with anyone including fellow jurors in anyway
17 regarding the case or its merits either by voice, phone,
18 email, text, internate - internet or other means of
19 communication or social media. Do not read, watch or listen
20 to any news or media accounts or commentary about the case,
21 do not do any research such as consulting dictionaries, using
22 the internet, using reference materials. Do not make any
23 investigation, test any theories of the case, recreate any
24 aspect of the case or in any other way investigate or learn

1 about the case on your own, and finally do not form or
2 express any opinion regarding this case until the matter is
3 finally submitted to you. So we'll allow you to go about your
4 affairs for about two and a half hours and if you'll come
5 back about one fifteen, we'll try to be timely and go forward
6 with the balance of the case so the Court will be in recess.
7 We'll allow you to leave. I'm going to remain on the bench
8 for just a few moments and discuss some matters with counsel.
9 Please be seated everyone. At this time of course we'll go
10 ahead and settle on the balance of the instructions. If
11 you'd like to take - if you need some additional time to look
12 at the instructions or the proposed instructions, you can -
13 we can certainly do that. What do you think about half an
14 hour?

15 MR. SEARS: That works for me Your Honor.

16 THE COURT: Then we'll go forward and I'll consider -
17 the Court has already crafted some instructions. If there are
18 additional instructions and I know the State has - has
19 submitted proposed jury instructions, some of which as the
20 Court indicated yesterday were similar to the Court's. Some
21 the Court did not include in the Court's package and so any
22 of those that the State wants to offer in addition to what
23 the Court has already, you certainly may do so. The Defense
24 counsel has submitted a proposed jury instruction that he

1 aluded to yesterday afternoon, we discussed briefly in Court.
2 The Court's had an opportunity to look at that instruction
3 this morning and I believe State's counsel has a copy of that
4 as well so we can - if there are any other instruction, get
5 them to me.

6 MR. SEARS: Okay.

7 THE COURT: Okay? If you have them, if you can just
8 bring them over to the Court in Chambers and provide one
9 another copies of those instructions so that we can fully
10 discuss them when we come back. So why don't we take a break
11 until about eleven forty-five you know about thirty-five
12 minutes or so and then we'll go forward and discuss the
13 instructions.

14 MR. SEARS: Thank you Your Honor.

15 THE COURT: Court's in recess.

16 BAILIFF: All rise.

17 BAILIFF: All rise.

18 THE COURT: Court's in session please be seated. Let
19 the record reflect that we're present in Court a continuation
20 of our jury trial. Only the attorneys Mr. Sears and Miss
21 Hilton are present in Court to settle jury instructions at
22 this time. (Jury instructions not requested to be
23 transcribed). Is there a request that the instructions the
24 jury be instructed prior to argument, that the instructions

1 be - the instructions be read to the jury prior to closing
2 argument?

3 MS. HILTON: Yes Your Honor.

4 MR. SEARS: Yes Your Honor.

5 THE COURT: Okay. Both counsel have indicated. So are
6 there any other matters that need to be addressed at this
7 time before we take our recess to have them copied?

8 MS. HILTON: No Your Honor.

9 THE COURT: Okay. Then the Court will have thirteen
10 copies made. I will not make additional copies for yourselves
11 or the Court but we'll take a recess. As soon as we have the
12 thirteen copies, we'll let Mr. Ringeborg know and we'll
13 bring the jury back and we'll go forward, probably take about
14 ten or fifteen minutes. All right. Court's in recess.

15 BAILIFF: All rise.

16 BAILIFF: All rise.

17 THE COURT: Court's in session please be seated. Let
18 the record reflect that we're in the continuation of our jury
19 trial. We have the presence of the Defendant, Defendant's
20 counsel, the State and the State's counsel, presence of all
21 of the jurors in the jury box. Ladies and gentlemen, you have
22 been provided with copies of the jury instructions in this
23 case and at this time the Court is going to read the jury
24 instructions that I did not previously read to you. You can

1 follow along if you'd like and read them or you don't have
2 to. They'll - of course, you can take them with you during
3 deliberations. (Jury instructions not requested to be
4 transcribed). With respect to closing argument then, Miss
5 Hilton?

6 MS. HILTON: Thank you Your Honor. Ladies and
7 gentlemen, through the evidence presented in this case, the
8 State has proven beyond a reasonable doubt that the Defendant
9 was in actual physical control of a vehicle while being under
10 the influence of intoxicating liquor or that he was found by
11 measurement within two hours of being in actual physical
12 control of the vehicle to have a concentration of alcohol of
13 point zero eight or more in his blood. The State has also
14 shown that this occurred on a premises to which the public
15 has access, the Family Dollar parking lot. Through the
16 testimony of Sergeant Luke Shady, the State has shown that
17 this offense occurred on December eighteenth of twenty
18 eighteen at approximately eleven twelve p.m. The State has
19 shown that the person involved in this case, the Defendant,
20 Myrtis James, AKA James Myrtis. Sergeant Shady testified that
21 the Defendant's vehicle was in the Family Dollar parking lot
22 which is a premises to which the public can access, and he
23 testified that the public can access that parking lot either
24 through the entrance on Great Basin or the entrance on Avenue

1 O. Sergeant Shady testified that the Defendant was seated
2 behind the wheel in the driver's seat and that the vehicle
3 was running. You also observed this on his body camera.
4 Sergeant Shady testified about his first interaction with the
5 Defendant in which he observed an odor of alcohol coming from
6 the Defendant, the Defendant's slurred speech and the
7 Defendant's bloodshot watery eye. He testified at that time
8 during that first interaction based on his training and
9 experience the Defendant appeared to be intoxicated. During
10 this first interaction that Sergeant Shady testified about
11 and you observed on the body cam video, he testified that
12 although he observed the Defendant to put his wallet away,
13 the Defendant got out of his vehicle to look in the trunk for
14 his identification. He testified that the Defendant stated
15 that he resides at the Truck Stop, that he was staying at the
16 Truck Stop. You saw that in the body cam when Sergeant Shady
17 asked the Defendant where he was coming from, he said Ely.
18 Sergeant Shady testified and you observed on his body camera
19 that he asked the Defendant whether he was operating the
20 motor vehicle and the Defendant's response was yes I was.
21 Sergeant Shady asked the Defendant how much he had to drink
22 and the Defendant stated probably quite a bit and that he was
23 drinking liquor. Sergeant Shady testified that he attempted
24 to conduct F. S. F. T.s on the Defendant. He testified about

1 how the Defendant was unable to follow his finger. You saw
2 on the body cam that when Sergeant Shady attempted to move
3 onto the next F. S. F. T., the Defendant stated oh shit, just
4 take me. Sergeant Shady asked if he wanted to continue and
5 he stated just take me in, I'm drunk, that's all it is. I'm
6 drunk, you know I'm drunk, we're all drunk. Sergeant Shady's
7 body cam has been admitted as an Exhibit in this case and you
8 can review it once again during your deliberations.

9 Registered Nurse Brandi Sumrall testified that she was called
10 to conduct a blood draw on the Defendant. She described the
11 procedure she followed and told us about the paperwork she
12 completed. She testified that the toxicology submittal form
13 which is State's Exhibit Two and which you will have access
14 to was placed in the box with the blood tubes. She testified
15 that the blood draw occurred at twelve ten a.m. on December
16 nineteenth of twenty eighteen which is approximately fifty-
17 eight minutes after Sergeant Shady observed the Defendant in
18 actual physical control of the vehicle in the Family Dollar
19 parking lot. Criminalist Felicia Mason testified about the
20 tests she completed on the Defendant's blood. She testified
21 about the importance of the control number and that the
22 control numbers in this case matched. When you look at
23 State's Exhibits Two and Four this afternoon, you will be
24 able to see for yourself the control numbers are the same.

1 Miss Mason testified that the result of the test showed that
2 the Defendant's blood alcohol content was point two seven
3 seven at the time of the blood draw. That is over three times
4 zero point zero eight. I'd like to draw your attention to
5 jury instruction eighteen which states the factors that you
6 are to consider in determining whether the Defendant was in
7 actual physical control of the vehicle. It states that in
8 deciding whether someone has existing or present bodily
9 restraint directing influence domination or regulation of a
10 vehicle, you must weigh a number of considerations including
11 but not limited to and then it lists the following. The first
12 is what position the person is found in the vehicle and where
13 in the vehicle. In this case, the Defendant was seated behind
14 the wheel of the vehicle with the seat reclined. In this
15 position, he could have easily recommenced driving
16 particularly given the fact that the vehicle was running. The
17 next factor is whether the vehicle's engine is running or
18 not. It was in this case. The next factor is whether the
19 occupant is awake or asleep. He was asleep. Whether the
20 person is apprehended at night, the vehicle's lights are on,
21 there was no - you can see in the video that they were not
22 on, the location of the vehicle's keys. Sergeant Shady
23 testified that the engine was running, presumably the keys
24 were in the vehicle, and when Sergeant Shady asked him to

1 turn the vehicle off, he heard the ding sound that is
2 typically associated with someone turns their key. Whether
3 the person was trying to move the vehicle or move the
4 vehicle. He did not. Whether the property on which the
5 vehicle is located is public or private. Ladies and gentlemen
6 in this case it was a premises to which the public has
7 access. It was not a private driveway. He wasn't parked in
8 front of his house in a private driveway or on some kind of
9 private property. This was the Family Dollar parking lot. And
10 whether the person must of necessity have driven to the
11 location where apprehended. He must have given the location
12 of Family Dollar. Furthermore, he admitted to driving to
13 that location. You are the jury. You as the jury are to weigh
14 these factors. The jury instruction also indicates that the
15 presence or absence of any single factor is not conclusive
16 and that the factors are to be weighed by you. In this case
17 ladies and gentlemen, the factors show that the Defendant was
18 in actual physical control of the vehicle. He was behind the
19 wheel, the car was running which means the keys were in the
20 ignition. He was located in a place the public has access
21 to, not on a private driveway and he must by necessity have
22 driven there. He must have driven on a public roadway to get
23 to the parking lot. Furthermore, he testified that he did.
24 Finally, jury instruction number twelve defined a reasonable

1 doubt. Doubt to be reasonable must be actual, not mere
2 possibility or speculation. The State has shown beyond any
3 reasonable doubt that the Defendant is guilty of this
4 offense. Thank you.
5 THE COURT: Thank you. Mr. Sears closing?
6 MR. SEARS: Thank you Your Honor. Court's indulgence?
7 THE COURT: You may.
8 MR. SEARS: Counsel, Your Honor, ladies and gentlemen
9 of the jury, first thanks for coming. It's an important duty
10 and you have now endured us for a day and a half, there's
11 more probably still to go. We appreciate your service. It
12 pays lousy. But if you don't do it then an important part of
13 our constitutional rights as well as our system of criminal
14 justice gets lost. The jury system is important to us all,
15 and it's important to you and I'm glad. I'm glad you're
16 willing to come and - and to listen. And so I'm going to try
17 and stop talking at the same point when you stop listening. I
18 don't - I'm not always successful with that but that's going
19 to be my attempt so I'm not going to talk a long time. I'm
20 going to try and point out a few things that I think are
21 interesting and that you should pay attention to and think
22 about when you're deliberating. Obviously I can't control
23 that. Only you can. The State's almost completed with their
24 job, I'm almost done with my job, the Judge is almost done

1 with his job, it's time for your work to begin and your work
2 is deliberation, looking at the facts, think about it, talk
3 about it, consider it, weigh them, see how important they are
4 in your deliberations. The first thing I want to talk to you
5 about is what I'm going to call a lousy investigation. When
6 Myrtis James got arrested and taken to the jail on December
7 eighteenth, that's what happened. Everybody walked away.
8 It's over. December eighteenth twenty eighteen, two and a
9 half years ago? So, from December eighteenth twenty eighteen
10 until lets say a month ago, there was every opportunity to
11 complete this investigation. Did anybody bother to do it? No.
12 Why am I saying it's a lousy investigation? A couple of
13 things would probably have stitched this case up tighter than
14 a kit and it didn't take any magic, no C. S. I., no
15 consequential work, not hours, not days, how about twenty
16 minutes? Do you know what it would have taken? A little shoe
17 leather. On the day after his arrest, all somebody needed to
18 do was go like this, knock on the door and walk into the
19 Dollar Store and say you have video of yesterday? Yeah,
20 we've got video. Well let me look at it. Okay. And they would
21 have watched Myrtis James come in walk around, buy something
22 or not. They could have gone up and talked to the clerk who
23 was there. This guy, he came in last night, Native American,
24 long ponytail, dark skin, was he drunk? That would have been

1 the end of the case folks and we wouldn't be here, and you
2 wouldn't be deliberating, none of this would be going on, but
3 there was no investigation, nothing, no follow-up, nothing.
4 It was just dropped. The case was dropped. Been dropped
5 for two - two years, two and a half years. We're going to
6 talk about Rogers factors. You heard little bit about Rogers
7 factors (unintelligible word - speaking very low) and there's
8 a bunch of it, it's not an exclusive list. It's anything you
9 come up with that you think is important as well as the list
10 in the jury instructions. Police officers, particularly one
11 in this case who has twenty-two years of experience, didn't
12 take any steps to establish any Rogers factor other than what
13 he saw when he was there, when he arrested him. Nobody else
14 did any investigation of any of the Rogers factors to give you
15 something to go on. We've got nothing. It was just dropped.
16 They can't even spell his name right. When you look at the
17 documents that you see in this case, his name is wrong every
18 time. I asked Myrtis on the stand, have you ever gone by
19 James T. Myrtis and what was the answer? No. But we changed
20 his name to James T. Myrtis on every document we turned in to
21 somebody to do something with. They just didn't care about
22 the case to get it right. That matters. And I'm not saying
23 anything bad about Deputy Shady. He's the Sergeant on duty.
24 There is Detectives. He's not the only police officer in that

1 force who could have looked at this case and done something.
2 But they didn't. I don't know why they didn't. We got that
3 fishy Affidavit that I was complaining about. Nobody cared
4 to do it right. When you look at the Rogers factors which you
5 - which you've already heard and so I'm not going to belabor
6 that too much, there's a series of notes that I want you to
7 think about in the Rogers factors. The first note is he was
8 not on a public highway. He was not parked in the middle of
9 the street perpendicular to the lanes of traffic. He was not
10 stopped and asleep in a Wendy's store drunk. I'm sorry,
11 drive-thru. He was not bar hopping from one place to the
12 other driving as he went from bar to bar. He was not driving
13 at all on the highway when he was apprehended by the police
14 officer. He was not seen and arrested for driving drunk by
15 anybody at any time while he was in White Pine County. There
16 was no Dispatch call about a drunk driver and I don't want to
17 belabor the point and I'm going to but he was not driving,
18 apprehended, weaving, speeding, doing any of those things, at
19 least weaving, yeah, doing any of the things we expect to see
20 a drunk driver doing. He was sleeping. He was asleep. I
21 asked Sergeant Shady to tell me did he tried to move the car,
22 could he have moved the car, he said yeah, he could have
23 backed up, he could have gone forward. Did he try to do any
24 of those things? No. Did he ever reach for the gear shift

1 knob? No. What did he do? He got out of the car went to the
2 back and opened the trunk looking for his driver's license.
3 He'd just been awakened. He had a couple of shots and he
4 admitted to doing that, but he wasn't driving, he was
5 sleeping. Was it against the law to park at that place?
6 No. Was he doing that legally? Yeah. Was it against the law
7 to sleep in your car? Not that I know of. But we testified
8 to that. Shady said he didn't arrest him for that. He was
9 arrested because he smelled and saw alcohol and he believed
10 he was in actual physical control of the car, and you're
11 going to decide whether or not he was. So what are the Rogers
12 factors? Counsel gave them to you. I will briefly go over
13 it. Where and in what position the person is found in the
14 vehicle, so, the first testimony out of Shady he was
15 reclined, he was asleep, he had his hat on, he was as you can
16 see in the video sort of bent over to the side. You can see
17 where he was. He was asleep. How important is the keys in
18 the ignition? Engine's running. I mean if the engine's
19 running the keys have to be in the ignition so that's one,
20 that certainly counts against him. On the other hand, he was
21 trying to keep warm. That's a sensible thing to do. We know
22 how cold it is in Ely in December. Okay. He told you there
23 was eight inches of snow on the ground when he went up to the
24 mine. Of course, Ruth is always a little colder than Ely

1 but - so we know that he had a good reason to do that. It
2 wasn't necessarily because he wanted to drive away. Did he
3 need to drive away in order to get to work in the morning?
4 No. He was less than a block from the bus pickup. He could
5 get out of the car, walk past Subway and go get in his bus.
6 Did he need to drive when he was on the job? No. No he
7 didn't. He was in a crew car. Was the vehicle located in
8 public or private? Well I would argue the distinction there
9 private property, not private driveway. The law doesn't say
10 anything about a driveway in this case. It says was he on
11 public or private property. The concern would be what I said
12 before. I mean if he's parked perpendicular to the lane of
13 traffic, okay, the concern there is he going to immediately
14 start driving down the highway or somebody's going to hit him
15 when he's in the middle of the roadway. That was not the case
16 here. He was legally parked. Did he drive to the location? He
17 told you he did. He told you he did. He told you something
18 else that was important too. And what was that? Between the
19 encounters with the police officer when Luke Shady left him
20 alone, he finished off a bottle. You want to know why his
21 alcohol level was two seven seven? He just finished off a
22 bottle. He told you he had two shots with his dinner while
23 he's in the Ridley's parking lot. You decide if he's
24 telling the truth or he's lying. That's your call. I'm not

1 going to tell you. You're going to have to make a decision
2 based on what he told you about himself, what he told you
3 about his family and you decide if he's a liar. Myrtis James
4 is a hard working guy who is an electrician who does the best
5 he can. Right? He's trying to save money. His wife's having
6 to go back and forth to the Four Corners and back to Saint
7 George. He's sending her all the money he can get. He's
8 working hard. He uses his hotel money for something else, and
9 it was all reasonable. None of that was an unreasonable
10 explanation for what occurred. You heard about the two
11 encounters. He admitted at the second encounter that he'd
12 been drinking quite a bit. He never was asked that question
13 at the first encounter with Shady, and whether he was parked
14 in a private driveway or on private property. There's no
15 material distinction in this case because it was private
16 property, parked, asleep. So what was the risk? Each of you
17 must decide for yourself if this was a real risky situation
18 where somebody in White Pine County was at risk for getting
19 driven over by a drunk driver. And you'll have to assess that
20 risk. He was asleep behind the wheel. He was going to spend
21 the night sleeping there just like he'd been doing for forty-
22 five days in White Pine County, never been arrested, never
23 had a problem, nothing going on, just a working stiff going
24 back and forth to the office, his office at the mine. Each of

1 you must decide the case for yourself but should do so only
2 after discussions of the evidence. You get to decide. I can't
3 decide for you. I would ask that you find him not guilty. I
4 would ask that you consider those Rogers factors. In the
5 verdict form you'll find that you have two opportunities to
6 find my client guilty. One opportunity comes if he was
7 driving, if he was driving found driving. He wasn't found
8 driving. He was found sleeping. And the other opportunity is
9 he has to be over point zero eight at the time that he was
10 driving and you don't know what his alcohol level was when he
11 was driving because you never saw him driving. You saw him
12 sleeping.

13 MS. HILTON: Your Honor I'm going to object, that's
14 not one of the options for the jury.

15 THE COURT: Sustained.

16 MR. SEARS: But you saw him sleeping, okay, and you
17 know that his blood alcohol level had to be at point zero
18 eight percent. I'm sorry, not percent but point zero eight,
19 and yet you'll see in the instructions that if he drank - if
20 he drank after driving and you believe that he drank after
21 driving, you must find him not guilty. I would urge you to
22 take a look carefully at eighteen, that instruction, and
23 decide if you believe what he said about finishing the bottle
24 because if he did finish that bottle, you have to find him

1 not guilty. It doesn't matter if you like him or you don't
2 like him, but the blood results would have been unreliable
3 because they weren't done within two ours of being in actual
4 physical control because of the drinking after he was stopped
5 or at least found by Luke Shady. Please take your time. I can
6 see that you're tired. I can see that you're tired of
7 listening to me. Go through those instructions, pay
8 attention, and find him not guilty. Thank you.

9 THE COURT: Thank you Mr. Sears. Final closing Miss
10 Hilton?

11 MS. HILTON: Thank you Your Honor. The reason it is
12 unlawful to be in actual physical control of a vehicle, even
13 if that vehicle isn't moving at the time, is to prevent
14 people from being in situations where they are under the
15 influence of alcohol and unsafe to drive and where they can
16 easily recommence driving. In this case, the Defendant made
17 the choice to consume alcohol and then be in actual physical
18 control of a vehicle. This is not a case where someone drove
19 down to Racks, sober, had a few drinks, felt they were
20 impaired and decided to lay down in their back seat and sleep
21 it off until they were sober enough to drive home. What we
22 have in this case is the Defendant seated behind the wheel of
23 a running vehicle at a business that was closed. The
24 Defendant must have driven there on a public roadway and he

1 said he drove there on a public roadway after having some
2 shots. This may be different if this had happened at the
3 Love's Truck Stop where the Defendant claimed to be staying
4 and he had had a few drinks there and not moved the vehicle.
5 Again though, he did not tell Sergeant Shady that he was
6 staying at Family Dollar. He said he was staying at the Truck
7 Stop. Now the Defendant is claiming in testifying that during
8 the less than three minutes that Sergeant Shady was in the
9 vehicle, he was chugging alcohol. Is that reasonable given
10 the facts and circumstances in this case that you heard
11 testimony about? Is that reasonable given the fact that
12 Sergeant Shady on his initial approach before the Defendant
13 claims to have chugged this bottle of alcohol he already
14 observed an odor of alcohol, already observed the Defendant's
15 bloodshot watery eyes and already observed the Defendant's
16 slurred speech? Is it reasonable given that when asked for
17 his identification the Defendant instead of looking in his
18 wallet that he had just put away went to the trunk of the
19 vehicle and told Sergeant Shady when asked if he was
20 drinking, yeah, last night, and you saw that on the video. Is
21 it reasonable that he opened the car - the door to the
22 vehicle because he was hot instead of turning off the heater?
23 Is that reasonable? Is it reasonable given the Defendant's
24 testimony that he had shots with dinner before going to the

1 Family Dollar parking lot? It's not reasonable ladies and
2 gentlemen. On the video you observed the Defendant's behavior
3 and you observed the behavior at that initial point before
4 the Defendant claims to have chugged the bottle of alcohol.
5 Even if - even if you find it reasonable that the Defendant
6 while a cop was sitting in a patrol vehicle right next to
7 him, even if you think it's reasonable that he decided it
8 would be a good idea to chug the rest of his alcohol, even
9 given that, he was still in actual physical control of the
10 vehicle before that when Sergeant Shady first observed him.
11 Furthermore, he was in actual physical control of the vehicle
12 while Sergeant Shady was in his own vehicle. The vehicle was
13 still on, it was still running. Why did the Defendant think
14 he was going to jail? Why did he not tell Sergeant Shady
15 that he had been chugging alcohol in his vehicle? He thought
16 he was going to jail because he was in actual physical
17 control of a vehicle while being under the influence of
18 alcohol. That's why he thought he was going to jail. Mr.
19 Sears discussed the investigation in this case. I will leave
20 it to you to determine the investigation that was done by the
21 Sheriff's Office. The investigation that was done by the
22 Sheriff's Office was Sergeant Shady observed a running
23 vehicle in a public parking lot, observed the Defendant
24 seated behind the wheel of that running vehicle and observed

1 the Defendant to have an odor of alcohol, admissions to
2 drinking and that he appeared intoxicated. That is what the
3 investigation showed. And the investigation is shown beyond
4 a reasonable doubt that the Defendant was in actual physical
5 control of the motor vehicle while being under the influence
6 of alcohol. It is also shown that he was found by measurement
7 within two hours, in our case approximately fifty-eight
8 minutes, to have a concentration of alcohol of point two
9 seven seven which is three times zero point zero eight. Even
10 though the Defendant was asleep at the time Sergeant Shady
11 approached him, the Defendant had placed himself in a
12 situation where he was seated behind the wheel of a vehicle
13 in actual physical control while being under the influence of
14 alcohol. Ladies and gentlemen, you have to decide in this
15 case what's reasonable and what is not reasonable and you
16 have to decide whether the Defendant's statement that he was
17 chugging alcohol while the cop was sitting nearby is
18 reasonable. But even if you do find that that was
19 reasonable, that that was a reasonable statement and a
20 reasonable action and that that's what you think happened
21 here, the State has still shown that the Defendant was in
22 actual physical control of the vehicle or that he was under
23 the influence of intoxicating liquor and I ask you to find
24 him guilty. Thank you.

1 THE COURT: Thank you Miss Hilton. Ladies and
2 gentlemen, you have attached to your jury instructions a
3 verdict form. I'm going to go over it with you briefly at
4 this time. It indicates we the jury in the above-entitled
5 case unanimously find the Defendant, Myrtis Tyrone James, AKA
6 James Tyrone Myrtis as follows, Count One, Driving or Being
7 in Actual or Physical Control of a Vehicle While Under the
8 Influence of Intoxicating Liquor. You may select one or both
9 of the theories of guilt in Count One by checking the
10 appropriate box or boxes or you may find the Defendant not
11 guilty by checking that box. The first box is guilty of
12 being in actual or physical control while under the influence
13 of intoxicating liquor and or the next box in order, guilty
14 of being found by measure within two hours or being in actual
15 physical control of a vehicle to have a concentration of
16 alcohol of zero point zero eight or more in his blood, and
17 the third box is not guilty, and dated this blank day of May,
18 twenty twenty-one to be signed by your foreperson. The
19 original of this verdict form will go with you to the jury in
20 addition to the Exhibits that have been introduced into -
21 into evidence. At this time then, we will have the Bailiff
22 sworn in by the Clerk.

23 CLERK: Do you solemnly swear that you will take
24 charge of this jury to con - conduct them to some private

1 place for deliberation, allow no one to speak to them or to
2 speak to them yourself, on the subject of the case now on
3 trial except to bring the into Court when required to do so,
4 so help you God?

5 BAILIFF: I do.

6 THE COURT: Okay. Ladies and gentlemen, in just a
7 moment you will retire to the verdict. At the beginning of
8 the trial I indicated that prior to deliberations that I
9 would advise the jurors of which one of the jurors was
10 selected as the alternate juror and Miss Weir you were
11 selected as the alternated juror. You were the last person
12 alphabetically to be seated and it just worked out that way.
13 It was nothing magic in that. It just worked out that way
14 today. So you are the alternate juror and then you - you'll
15 be sequestered separately from the remainder of the jurors
16 and our - our Bailiff will see to that. All of the jurors in
17 the jury room, if you have cell phones, you're going to have
18 to give them up, okay? You have to give them up to our
19 Bailiff here. You'll get them back. We won't go through
20 them. We don't even look at them but you're not allowed to
21 take your cell phones into the jury room with you, okay, so
22 we'll just hold on to them and the completion of your
23 deliberations, of course you'll get them all back. So at this
24 - this time we'll allow you to retire to the jury room. The

1 evidence will be brought back to you. I ask that everyone in
2 the courtroom please stand as the jury retires. Ah, you can
3 go out and just remain in the lobby area Miss Weir okay.
4 Please be seated everyone. Let the record reflect that we are
5 in the continuation of the jury trial. We have the presence
6 of in this case our Defendant, Defendant's counsel, State's
7 counsel. Counsel I - just be within cell phone range of the
8 courthouse and you know stay within the area. I appreciate
9 the professionalism of both counsel and the preparation the
10 Defense in this case was well done.

11 MR. SEARS: Thank you.

12 MS. HILTON: Thank you Your Honor.

13 THE COURT: Okay. Court's in recess.

14 UNKNOWN PERSON: All rise.

15 BAILIFF: All rise.

16 THE COURT: Court's in session please be seated. Let
17 the record reflect that we're in the continuation of our jury
18 trial. We have the presence of our Defendant, Mr. James, his
19 counsel Mr. Richard Sears, State's counsel, Miss McKinzie
20 Hilton. Mr. or Miss Foreperson have the jury reached a
21 verdict?

22 FOREPERSON: Yes we have.

23 THE COURT: Very well. We'll have the Bailiff obtain
24 the verdict form. Thank you. The Defendant please stand?

1 Miss Clerk?

2 CLERK: Case Number C R One Nine Oh Three Oh Two
3 Eight, Department Number Two. The Seventh Judicial District
4 Court of the State of Nevada in and for the County of White
5 Pine, the State of Nevada, Plaintiff, versus Myrtis Tyrone
6 James, AKA James Tyrone Myrtis, Defendant. Verdict. We the
7 jury in the above-entitled case unanimously found the
8 Defendant Myrtis Tyrone James, AKA James Tyrone Myrtis as
9 follows, Count One, Driving or Being in Actual Physical
10 Control of a Vehicle While Under the Influence of
11 Intoxicating Liquor guilty of being in actual and or physical
12 control of a motor vehicle while under the influence of
13 intoxicating liquor. Dated this nineteenth day of May, twenty
14 twenty-one, Foreperson.

15 THE COURT: If you'll hand that to me for just a
16 moment. There was a second box that was checked as well. If
17 you'll read that second box on the top okay. Yeah.

18 THE CLERK: Guilty of being found by measurement
19 within two hours after driving or being in actual physical
20 control of a vehicle to have a concentration of alcohol of
21 zero point zero eight or more in his blood.

22 THE COURT: Thank you. The Defendant may sit. Mr.
23 Sears do you wish to have the jury polled?

24 MR. SEARS: No Your Honor.

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1 THE COURT: Ladies and gentlemen on behalf of the
2 Seventh Judicial District Court we appreciate the work that
3 you have done as jurors in this case. We know as I said at
4 the outcome of this case it would take a lot of your time
5 even if it's for a couple of days and it's - it's - it's a
6 vital service that all of us participate in as citizens of
7 this country and we know that you worked very diligently and
8 we appreciate the service with respect to this case. I'm
9 going to ask that you remain seated and I'm going to complete
10 the balance of this case. With respect to the findings of
11 the jury in this case, the Court hereby enters judgment
12 against the Defendant for driving or being in actual physical
13 control of a vehicle while being under the influence of
14 intoxicating liquor, a felony offense in violation of
15 N. R. S. Four Eighty-four C Point One One Zero, N. R. S. Four
16 Eighty-four C Point Zero Two Zero, N. R. S. Four Eighty-four
17 C Point Four Zero Zero and N. R. S. Four Eighty-four C Point
18 Four One Zero. With reference to the matter of - of the
19 Defendant's status, would you like to be heard on that
20 matter?

21 MS. HILTON: Yes. Thank you Your Honor. Your Honor at
22 this time given that the Defendant has been found guilty of
23 this offense, and given that this is no longer a pretrial
24 detention issue, the State is asking that Mr. James be placed

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1 into custody pending sentencing. Thank you Your Honor.

2 THE COURT: Mr. Sears.

3 MR. SEARS: Yes.

4 THE COURT: Can be heard.

5 MR. SEARS: Thank you Your Honor. Your Honor my
6 client's been out since December twentieth of twenty
7 eighteen. He's worked, he's got no further arrests, there
8 have been no issues with him driving under the influence,
9 there have been no subsequent offenses, he's appeared. My
10 client calls me every week regular as clock work and reports
11 in. There's never been a week when he failed to stay in
12 contact. He has a home in Saint George. He has no reason to
13 run or to commit any crimes or to do anything else. It will
14 give him an opportunity to say goodbye to his wife and his
15 children. He understands the potential sentences and the
16 seriousness of this in this case. But I do not believe that
17 there's any risk whatsoever of him failing to appear. He's
18 never failed to appear in any other case, and he's an honest
19 man Judge.

20 THE COURT: This Court hasn't but did the Justice
21 Court ever exonerate the bond?

22 MR. SEARS: He's - he's still out on his bond.

23 THE COURT: All right. Thank you. Anything further

24 Miss Hilton?

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1 MS. HILTON: No Your Honor, other than that the
2 situation with the Defendant's wish to appear has changed
3 given the fact of the conviction. Thank you.

4 THE COURT: Thank you. Taking into consideration the
5 arguments of counsel, the - the Court denies the State's
6 request to revoke the bond. The Court will allow the
7 Defendant to remain out on bond pending sentencing in this
8 case. He has posted a ten thousand dollar bond in this
9 matter. He has appeared at all proceedings in this Court
10 and to this knowledge in the - in the Justice Court. The
11 Court sets a sentencing in this case for Monday, August
12 sixteenth, twenty twenty-one at ten o'clock on the Court's
13 staff calendar. That will be the Defendant's next
14 appearance. Mr. James, and you can talk with Mr. Sears,
15 you're going to be required to interview with the Department
16 of Parole and Probation. Since you live in Utah, I suggest
17 that you even contact them this afternoon. Mr. Sears can
18 give you their number and make arrangements to meet with
19 them. They may conduct their interview by telephone. That's
20 how they've been doing that - this recently during the
21 pandemic. I don't know that they've changed but they can let
22 you know. Mr. Sears will give you their telephone number and
23 you can reach the by that otherwise that's your next Court
24 appearance.

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1 MR. JAMES: Thank you.

2 THE COURT: Is there anything further then from the
3 State or the Defense.

4 MS. HILTON: No Your Honor.

5 THE COURT: Okay.

6 MR. SEARS: No thank You're your Honor.

7 THE COURT: Then at this time the - this trial has
8 been concluded. The Court is going to be in recess and
9 excuse everyone in the courtroom from this proceeding except
10 for the jury for a few minutes and that will include my Court
11 Clerk when she has wrapped up her duties as far as what she
12 needs to do with respect to our JAVS, okay. Thank you.

13 MR. SEARS: Thank you Your Honor.

14 MS. HILTON: Thank you Your Honor.

15 THE COURT: Thank you, I'll excuse everyone.
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1 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of
2 Appellant Procedure, I acknowledge that this is a rough draft
3 transcript, expeditiously prepared, not proofread, corrected,
4 or certified to be an accurate transcript.
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Linda Davies
LINDA DAVIES
Court Transcriber

FILED

Case No. CR-1903028

2021 MAY 19 PM 4:02

SCOTT LE BALDWIN
WHITE PINE COUNTY CLERK
BY TA
DEPUTY

THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

THE STATE OF NEVADA,

Plaintiff,

vs.

MYRTIS TYRONE JAMES, A.K.A.,
JAMES TYRONE MYRTIS,

Defendant.

INSTRUCTIONS

LADIES AND GENTLEMEN OF THE JURY:

INSTRUCTION NO. 1

What I say now is intended to help serve as an introduction to the trial of this case. It is intended to explain the general procedure we use, the order in which the case will be presented, and provide some assistance in explanation of your responsibility while hearing the case.

The trial will proceed in the following order.

First, the District Attorney will make an opening statement outlining the State's case. Counsel for the Defendant may make an opening statement then or reserve his opening statement until the conclusion of the State's case. The opening statement is not

1 evidence. The statements serve as an introduction to the evidence which the party making
2 the statement intends to prove.

3 Second, the State will introduce evidence in support of the charge contained
4 in the Amended Criminal Information.

5 Third, after the State has presented its evidence, the Defendant may present
6 evidence, but is not required to do so. There may be rebuttal evidence. The burden is
7 always on the State to prove every element of the offense charged beyond a reasonable
8 doubt. The law never imposes the burden of calling any witnesses or introducing any
9 evidence in a criminal case on the Defendant.
10

11 During the trial, it may be necessary for me to consult with the attorneys from
12 time to time out of your hearing concerning questions of law or procedure. On occasion you
13 will be excused from the courtroom while I consult with the attorneys. We will try to limit
14 such interruptions as much as possible. We ask you to remember the importance of the
15 case and to maintain your patience during interruptions.
16

17 Fourth, at the conclusion of the evidence, I will instruct you in the law and the
18 parties will have the opportunity to present closing arguments. The closing arguments are
19 not evidence, but are intended to help you understand the evidence and apply the law.

20 Fifth, you will then retire to the jury room. You will select a foreperson,
21 deliberate and arrive at a verdict which must be unanimous.
22

23 The law as given by the Court in this and other instructions constitutes the only
24 law you may rely upon for your guidance and it is your duty to accept and follow it.
25
26

1 Your purpose as jurors is to find and determine the facts and to determine
2 them from the evidence and the reasonable inferences arising from such evidence, and in
3 so doing, you must not indulge in guesswork or in speculation.

4 The evidence which you are to consider consists of the testimony of witnesses
5 and the exhibits admitted in evidence. The term "witness" means anyone who testifies,
6 including the parties. This admission of evidence in Court is governed by rules of law.
7 From time to time it may be the duty of the attorneys to make objections and my duty as
8 Judge to rule on those objections and whether you can consider certain evidence. You
9 must not concern yourself with the objections or the Court's reasons for these rulings. You
10 must not consider testimony or exhibits to which an objection was sustained or which has
11 been ordered stricken.
12

13 No statement or ruling or remark which I may make during the course of the
14 trial is intended to indicate my opinion as to what the facts are. You are to determine the
15 facts. In this determination, you alone must decide upon the believability of the evidence
16 and its weight and value. In considering the weight and value of the testimony of any
17 witness you may take into consideration the appearance, attitude and behavior of the
18 witness, the interest of the witness in the outcome of the trial, the relation of the witness to
19 any parties to the trial, the inclination of the witness to speak truthfully or not, the probability
20 or improbability of the witness' statements, and all other facts and circumstances in
21 evidence. Thus, you may give the testimony of any witness just such weight and value as
22 you may believe the testimony of such witness is entitled to receive.
23
24

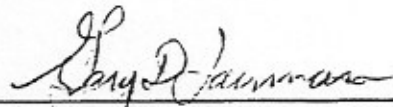
25 While serving as a juror you must not make any independent investigation of
26 the facts or the law, you must not visit the scene, conduct experiments or consult books or

1 persons for additional information.

2 Until this case is submitted to you for your deliberation, you must not discuss
3 this case with anyone or remain within hearing of anyone discussing it. After this case has
4 been submitted to you, you must discuss this case only in the jury room when all members
5 of the jury are present. You are to keep an open mind and you shall not decide any issue
6 in this case until the case is submitted to you for your deliberation under the instructions of
7 the Court.

8
9 GIVEN BY THE COURT.

MAY 18, 2021

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12 _____
13 DISTRICT JUDGE
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INSTRUCTION NO. 2

Every person who testifies under oath or affirmation is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.

In determining the believability of a witness you may consider anything that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness including, but not limited to any of the following:

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness has testified;

The ability of the witness to remember or to communicate any matter about which the witness has testified;

The character and quality of that testimony;

The demeanor and manner of the witness while testifying;

The existence or non-existence of a bias, interest, or other motive;

Evidence of the existence or non-existence of any fact testified to by the witness;

The attitude of the witness toward the action in which testimony has been given by the witness or toward the giving of testimony;

A statement previously made by the witness that is consistent or inconsistent with the testimony of the witness;

The character of the witness for honesty or truthfulness or their opposites;

An admission by the witness of untruthfulness;

The witness' prior conviction of a felony.

INSTRUCTION NO. 3

A witness who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you shall believe the probability of truth favors his or her testimony in other particulars.

However, discrepancies in a witness' testimony or between his or her testimony and that of others, if there are any, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience; and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 4

In determining questions of fact presented in this case, you should be governed solely by the evidence introduced and admitted before you. You are to bring to the consideration of the evidence before you, your everyday common sense and judgment as reasonable men and women and those just and reasonable inferences and deductions which you as men and women could ordinarily draw from facts and circumstances proven in the case. You are not to fancy situations or circumstances which you would not draw from the evidence, but you are to make those just and reasonable inferences from the circumstances proven which the guarded judgment of reasonable men and women would ordinarily make under like circumstances.

INSTRUCTION NO. 5

Two classes of evidence are recognized and admitted in Courts of Justice upon either or both of which, if adequately convincing, juries may lawfully use to determine whether the defendant is guilty or not guilty. One is direct evidence and the other is circumstantial evidence.

Direct evidence is where a witness who, with any of his or her own physical senses, testifies to what he or she saw, heard, felt, observed, or otherwise perceived, and which testimony relates what was perceived.

All other evidence admitted in the trial is circumstantial, and insofar as it shows any acts, declarations, conditions, or other circumstances tending to prove or disprove the crime charged, it may be considered by you in arriving at a verdict.

The law makes no distinction between circumstantial evidence and direct evidence as to the degree of proof required for conviction, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof. Either will support a verdict of guilty or not guilty if it carries the convincing quality required by law as stated in the instructions.

INSTRUCTION NO. 6

You will be given the opportunity to ask written questions of any of the witnesses called to testify in this case. You are not encouraged to ask excessive numbers of questions because that is the primary responsibility of counsel.

Jurors will not be allowed to become "the third attorney" or advocate a position in the case through juror questions. Questions may be asked only in the following manner: after all lawyers have finished questioning the witness, you may then seek permission from me to ask the witness a written question. Should you desire to ask a question, write your question down with your juror number on a full sheet of clean paper and raise your hand. All questions from jurors must be factual in nature and designed to clarify information already presented. Jurors must not place undue weight on the responses to their questions. All questions must be directed to the witness and not to the attorneys or to me.

The bailiff will pick up your question and give it to the prosecutor and then the defense attorney, who will each write a comment on the question. I will then review the question. If either of the attorneys or I have a concern with the question, I will give you the admonition and excuse you from the courtroom. I will privately confer with the attorneys and then I will determine if the question is legally proper under the Nevada laws of evidence. If I determine that the question may properly be asked, I will ask it. No adverse inference should be drawn if the court does not allow a particular question.

INSTRUCTION NO. 7

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.

Instructions 1 through 7 given by the court on the 18th day of May, 2021.


DISTRICT JUDGE

INSTRUCTION NO. 8

It now becomes my duty as Judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

INSTRUCTION NO. 9

You are instructed that if in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point of instruction. You are to consider the instructions as a whole and to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 10

You are instructed that the Defendant in this case is presumed innocent and this is a presumption of law with which the Defendant is clothed and it abides with him throughout the entire trial of the case until it is overcome by competent evidence sufficient in your minds to establish the guilt of the offense charged beyond a reasonable doubt; and in case of a reasonable doubt, he is entitled to be acquitted.

INSTRUCTION NO. 11

In every criminal action the burden of proof is upon the State to prove guilt of the Defendant beyond a reasonable doubt. The State must prove each and every necessary element of the crime with which the Defendant is charged, and the proof of each such element must be to your satisfaction beyond a reasonable doubt. The failure to prove any element of a crime beyond a reasonable doubt must result in a verdict of not guilty of that crime.

INSTRUCTION NO. 12

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.

INSTRUCTION NO. 13

The Amended Criminal Information is a mere accusation or charge against the Defendant and is not of itself any evidence of guilt, and no juror in this case should permit himself/herself to be to any extent influenced against the Defendant because of or on account of the Amended Criminal Information.

1 INSTRUCTION NO. 14

2 This is a prosecution by the State of Nevada against the Defendant, MYRTIS
3 TYRONE JAMES, A.K.A., JAMES TYRONE MYRTIS, charging the Defendant with the crime
4 of:

5 COUNT I

6 DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF A VEHICLE
7 WHILE BEING UNDER THE INFLUENCE OF INTOXICATING LIQUOR; in the following
8 matter to-wit:

9 In that said Defendant, on or about December 18, 2018,
10 committed the criminal offense of driving or being in actual
11 physical control of a vehicle while being under the influence of
12 intoxicating liquor, by the defendant being in actual and/or
13 physical control of a motor vehicle in the parking lot of Family
14 Dollar, a premises to which the public has access, located at
15 1550 Great Basin Boulevard in Ely, County of White Pine, State
16 of Nevada, while being under the influence of an intoxicating
17 liquor; and/or being found by measurement within 2 hours after
18 driving or being in actual physical control of a motor vehicle to
19 have a concentration of alcohol of 0.08 or more in his blood.

20 All of which is contrary to the form, force and effect of the statutes in such
21 cases, made and provided and against the peace and dignity of the State of Nevada.

22 To this Amended Criminal Information the Defendant has entered a plea of
23 NOT GUILTY. Upon the issues thus joined, the burden is on the State of Nevada to prove
24 the Defendant guilty of the crime charged beyond a reasonable doubt.
25
26

INSTRUCTION NO. 15

You are instructed that the Defendant is charged in Count I of the Amended Criminal Information with the alternative charge of Driving Or Being In Actual Physical Control Of A Vehicle While Being Under The Influence Of Intoxicating Liquor. In order to convict the Defendant of this alternative charge, the State must prove each of the following elements beyond a reasonable doubt:

1. That at the time and place indicated in the Amended Criminal Information, the Defendant;
2. drove or was in actual physical control of a motor vehicle;
3. in the parking lot of Family Dollar, a premises to which the public has access;
4. while he was under the influence of intoxicating liquor; or
5. is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his blood.

To find the Defendant guilty of driving under the influence, you must find the Defendant guilty of one of these alternatives. If either of the two alternatives is proven beyond a reasonable doubt, it is unnecessary for the State to prove the other.

INSTRUCTION NO. 16

The Court instructs the jury that in every crime or public offense there must be a union or joint operation of act and intention. Intention is manifested by the circumstances connected with the perpetration of the offense and the sound mind and discretion of the person accused.

INSTRUCTION NO. 17

You are instructed that a person is in actual physical control when the person has existing or present bodily restraint, directing influence, domination, or regulation of the vehicle.

INSTRUCTION NO. 18

You are instructed that in deciding whether someone has existing or present bodily restraint, directing influence, domination, or regulation of a vehicle, you must weigh a number of considerations, including, but not limited to, where, and in what position, the person is found in the vehicle; whether the vehicle's engine is running or not; whether the occupant is awake or asleep; whether, if the person is apprehended at night, the vehicle's lights are on; the location of the vehicle's keys; whether the person was trying to move the vehicle or moved the vehicle; whether the property on which the vehicle is located is public or private; and whether the person must, of necessity, have driven to the location where apprehended. The presence or absence of a single factor is not necessarily conclusive. The factors are to be weighed by you as the jury.

INSTRUCTION NO. 19

"Premises to which the public has access" means property in private or public ownership onto which members of the public regularly enter, are reasonable likely to enter, or are invited or permitted to enter as invitees or licensees, whether or not access to the property by some members of the public is restricted or controlled by a person or a device. The term includes a paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or are likely to be parked.

INSTRUCTION NO. 20

It is a defense to the crime of driving a motor vehicle while having 0.08 or more in his blood, if the Defendant can show by a preponderance of the evidence, that he consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood was tested, to cause the alcohol in his blood to equal or exceed 0.08.

The Defendant has the burden of proving by a preponderance of the evidence all of the facts necessary to establish:

1. That the Defendant consumed a quantity of alcohol after driving or being in actual physical control of a vehicle, and
2. that the Defendant consumed the alcohol before his blood was tested, and
3. that the quantity of alcohol that the Defendant consumed was sufficient to cause the alcohol level in his blood to equal or exceed 0.08.

"Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein. The affirmative defense of post driving intoxication can only be considered if you find by the preponderance of the evidence that the Defendant consumed alcohol after driving or being in actual physical control of a motor vehicle.

If you find the Defendant has met his burden on these issues, you should not convict him of operating a motor vehicle of being found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more by weight of alcohol in his blood.

INSTRUCTION NO. 21

You are instructed that mistake or ignorance of the law is not a defense to a criminal action.

INSTRUCTION NO. 22

A statement made by a defendant other than at this trial may be an admission.

An admission is a statement by a defendant, which by itself is not sufficient to warrant an inference of guilt, but which tends to prove guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether an admission was made by a defendant, and if so, whether such statement is true in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true. Evidence of an oral admission of the defendant ought to be viewed with caution.

INSTRUCTION NO. 23

A person is qualified to testify as to his/her professional opinion if he/she has special knowledge, skill, experience, training or education sufficient to qualify him/her to do so on the subject to which his/her testimony relates.

Duly qualified witnesses rendering a professional opinion may give their opinion on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the witness who gives the opinion. You may also consider the qualifications and credibility of the witness.

You are not bound to accept a professional opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

INSTRUCTION NO. 24

Both the State and the Defendant are entitled to the individual opinion of each juror.

It is the duty of each of you to consider the evidence for the purpose of arriving at a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after discussion of the evidence and instructions with the other jurors.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way because a majority of the jurors, or any of them, favor such a decision.

INSTRUCTION NO. 25

I have not intended by anything I have said or done, or by any questions that I may have asked, or by any ruling I may have made, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own conclusion.

INSTRUCTION NO. 26

1
2 Upon retiring for deliberation, the jury may take with them all papers and all
3 other items and materials which have been received as evidence in the case. They also
4 may take with them the written instructions given, and notes of testimony or other
5 proceedings on the trial taken by themselves or any of them, but none taken by any other
6 person.

7 You will select one of your number to act as Foreperson, who will preside over
8 your deliberations and who will sign the verdict. Your verdict must be unanimous.
9

10 After the jury has retired for deliberation, if there is any disagreement between
11 them as to any part of the testimony, or if they desire to be informed on any point of law
12 arising in the case, they will advise the bailiff, who will notify the Judge and counsel for both
13 sides.
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INSTRUCTION NO. 27

Once you commence your deliberations, the admonition given to you at each break in the trial still applies to communications with non-jurors. In addition, during deliberations do not send or receive any communication about any subject by any method, including without limitation cell phone, text messaging, internet, Blackberry, iPhone, Twitter, Facebook, MySpace, LinkedIn, Instagram or YouTube.

INSTRUCTION NO. 28

In arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, as that matter is one that lies solely with the Court and must not in any way affect your decision as to the innocence or guilt of the Defendant.

INSTRUCTION NO. 29

You entered upon your duties as jurors in this case by taking a solemn oath that you would render a true verdict according to the evidence. That duty and obligation are performed only when a verdict is rendered, which is in accordance with the evidence. While you have a right to use your knowledge and experience as men and women in arriving at a conclusion as to the weight and credibility of the witnesses, your finding and decision must rest upon and find support in the evidence alone.

You cannot act upon the opinion or statement of counsel as to the truth of the evidence during the trial or in the argument, as to the guilt or innocence of the Defendant. The argument of counsel often is of the most valuable assistance in enabling jurors to sift, consider and collect the testimony, and to that end they may determine its reliability or weight, and for this purpose you should give the arguments of respective counsel fair and candid consideration.

You have seen the witnesses, heard their testimony, the charge of the Court, and you will listen to the arguments of counsel. You must consider all of the evidence in connection with the law as given to you, and therefrom reach a decision. In so doing, you must patiently and conscientiously, without fear, favor or affection, bias, prejudice or sympathy, compare, weigh and consider all the facts and circumstances shown by the evidence, with the sole, fixed and steadfast purpose of doing equal and exact justice between the State of Nevada and the Defendant at bar, and if, after such consideration and reflection, you are satisfied that the Defendant is guilty of a public offense charged in the Amended Criminal Information, you should so find. And if, on the whole case you have a reasonable doubt thereof, you should acquit the Defendant.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Myrtis Tyrone James aka James
Tyrone Myrtis,
Appellant,

No. 83439

vs.

The State of Nevada
Respondent.

APPELLANT'S APPENDIX VOLUME II PAGE 251-263

RICHARD W. SEARS
White Pine County Public Defender
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Attorney for Appellant

Counsel for Respondent

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1 INSTRUCTION NO. 8 THROUGH INSTRUCTION NO. 29 GIVEN BY THE
2 COURT.

3 DATED this 19th day of MAY, 2021.

4
5 
6 DISTRICT JUDGE

FILED

2021 OCT -7 PM 2:38

NICHOLE BALDWIN
WHITE PINE COUNTY CLERKBY TA
DEPUTY

1 CASE NO. CR-1903028

2 Dept. 2

4 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF WHITE PINE

6 BEFORE THE HONORABLE GARY D. FAIRMAN

7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 MYRTIS TYRONE JAMES,

11 Defendant.

12 _____/
13 TRANSCRIPT
14 of
15 SENTENCING
16 AUGUST 16, 2021

15 COUNSEL APPEARING:

16 For the Plaintiff:

17 **McKINZIE HILTON, ESQ.**
18 Deputy District Attorney
19 District Attorney's Office
20 801 Clark Street, Suite 3
21 Ely, NV 89301

19 For the Defendant:

20 **RICHARD SEARS, ESQ.**
21 457 Fifth Street
22 Ely, NV 8930123
24 Transcribed by: Linda Davies, Sworn Court Transcriber

1 THE COURT: The matter before the Court is in Case
2 Number C R Number One Nine Zero Three Zero Two Eight. State
3 of Nevada versus Myrtis Tyzone James. This is the time and
4 place that is fixed for the Defendant's sentencing. Let the
5 record reflect that the Defendant Mr. James is present in
6 Court with his counsel Mr. Richard Sears. The State's counsel
7 Miss McKinsie Hilton, White Pine County Deputy District
8 Attorney is present. Mr. Ernie Rivera, Mr. Adam Zehr from the
9 Department of Parole and Probation are present. Is the State
10 ready to proceed?

11 MS. HILTON: Yes Your Honor.

12 THE COURT: And for the Defense, Mr. Sears?

13 MR. SEARS: We're prepared Your Honor.

14 THE COURT: Thank you. With respect to - to the
15 conviction in this case, is there any cause to show then
16 further why judgment should not be entered? I believe the
17 Court entered judgment at the time of the trial but formally
18 for this hearing?

19 MR. SEARS: We have none Your Honor.

20 THE COURT: Okay. Thank you.

21 MR. SEARS: And along that line, I've also received
22 the submission of Defendant's prior convictions in relation
23 to this case and I have examined those and they are all -
24 there's no constitutional deficiencies in those.

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1 THE COURT: Very well. Well then those convictions
2 will be admitted for the purpose of this hearing today and
3 the Court does again enter judgment against the Defendant for
4 a violation of N. R. S. Four Eighty-four C Point One One
5 Zero, Four Eighty-four C Point Zero Two Zero, Four Eighty-
6 four C Point Four Zero Zero and Four Eighty-four C Point Four
7 One Zero, a Category B Felony. The Pre-sentence Investigation
8 Report was filed on August sixth of twenty twenty-one. Has
9 the State received a copy of that report Miss Hilton?

10 MS. HILTON: Yes Your Honor.

11 THE COURT: And for the Defense Mr. Sears?

12 MR. SEARS: We have received a copy and we have both
13 reviewed it together.

14 THE COURT: Okay. Any factual errors that should be
15 noted for the record this morning Mr. Sears?

16 MR. SEARS: We found no factual errors Your Honor.

17 THE COURT: Okay. Thank you. For the State Miss
18 Hilton?

19 MS. HILTON: Thank you Your Honor, and Your Honor on
20 page one and page six the offense is listed as a D. U. I.
21 Four. I would just ask that we change that to Felony D. U. I.
22 as it was alleged.

23 THE COURT: Okay. Just say D. U. I. Felony, is that -

24 MS. HILTON: Ah, Felony D. U. I.

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3

1 THE COURT: All right.

2 MS. HILTON: Rather than D. U. I. Four.

3 THE COURT: Okay. Any objection?

4 MR. SEARS: No Your Honor.

5 THE COURT: Okay. Then the Court by inner lineation
6 places Felony before D. U. I. on the first page and then on
7 page six?

8 MS. HILTON: Yes Your Honor.

9 THE COURT: Okay. And that's under instant offense?

10 In that box the Court has also changed that. Anything further
11 then?

12 MS. HILTON: Yes. On page two Your Honor under aliases
13 Mr. James' middle name is misspelled. The State would ask
14 that we change the M as in Mary to an N as in Nancy.

15 MR. SEARS: That's accurate Your Honor.

16 THE COURT: Okay. The Court's made that change.
17 Anything else then Miss Hilton?

18 MS. HILTON: No Your Honor.

19 THE COURT: Then at this time Mr. Sears the Court will
20 allow you to be heard on behalf of Mr. James to present any
21 argument as well as evidence by - by way of mitigation and
22 then Mr. James, after Mr. Sears speaks on your behalf if
23 there's anything that you'd like to tell the Court this
24 morning that you think's important that the Court know for

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1 sentencing considerations. I'm certainly going to provide you
2 whatever time that you'd like to address the Court. You don't
3 have to say anything to the Court but if you'd like to say
4 something, I'll certainly accord you that time. Mr. Sears?

5 MR. SEARS: Thank you Your Honor. We're not going to
6 argue the facts of the case. The Court heard the jury's
7 determination and understands that my client is guilty of
8 drunk driving. Anything that I say with respect to his case
9 only goes to mitigation not to the fact that he was in fact
10 drunk driving. As the Court saw, he was - he was certainly
11 under the influence of alcohol when he was being interviewed
12 by Shady. One of his statements were go ahead, I'm drunk, I
13 don't need to do these tests, I'm drunk, you're drunk, we're
14 all drunk, and that was certainly the case. But, he was not
15 driving around town falling asleep in the drive-thru at
16 McDonalds which we have seen. I remember I had one client who
17 was on his fifth or sixth D. U. I. who had backed out of a
18 LaPiesta parking lot and fallen asleep right in the middle of
19 G Street. And it wasn't that situation. He was legally
20 parked. He was certainly not in immediate risk to injure
21 anyone. When I look at his priors, the two felonies that he
22 got arrested on before, again, there was no injuries to
23 anybody. There appears to have been an accident with some
24 minor damage. I don't know if that was to his car or

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1 somebody else's car. He was given probation on both of those
 2 cases out of Utah and he performed well on his probation, did
 3 everything he was supposed to do. He didn't spend any time in
 4 prison, I think maybe a short period for classification and
 5 he was right out again. Both those sentences were zero to
 6 five and those sentences got suspended, he paid his fines. He
 7 did everything he was supposed to do. We understand that's
 8 not an option here, okay, and so we know you're going to
 9 sentence my client to some term of years in prison. He's
 10 going to go do that time. He's obviously a productive member
 11 of society. He's high functioning. He admits that he has a
 12 problem with alcohol. He likes to drink, but he gets up and
 13 goes to work every day. I mean, he's a successful
 14 electrician. My advice to everyone who is in his situation
 15 is pretty universal and that is the Nevada State Constitution
 16 provides that there is no slavery in the State of Nevada
 17 unless you've been convicted of a crime, and we can enslave
 18 people who have been convicted of crime in Nevada. It's
 19 legal under the State Constitution and so I advise them that
 20 what's going to happen is for the next couple of years, maybe
 21 a lot of years, you're going to be a slave to the State of
 22 Nevada, and this guy, I told him, you're definitely going to
 23 be a slave because you're a licensed electrician. They're
 24 going to put you to work and pay you nominal wages almost

1 anyplace they put you because you have substantial job
 2 skills. I'd had it with one of my other clients. He was a
 3 heavy equipment operator. They sentenced him to prison. He
 4 went to prison and he ran bulldozers for the State of Nevada
 5 for free. And that's what's going to happen here, I hope.
 6 And Mr. - Mr. James hopes too because he wants to continue to
 7 be productive, and so what we're hoping the Court does is
 8 give him a sentence that is short enough that he can go to
 9 camp, do electrical work in the camp which is I'm sure what's
 10 going to happen and be productive for the State of Nevada,
 11 and there's nothing wrong with that. That's the way it's
 12 supposed to work Your Honor quite frankly, because as you can
 13 see, he's got a good family behind him. They all love him.
 14 Of course they love him. He's a good man, he's a good father,
 15 he's a good provider and so I would argue to the Court even
 16 though he exercised his constitutional rights and took this
 17 matter to trial, he did so largely because of my
 18 recommendation because there were issues in this case out of
 19 the multiple factors that exist both in the statute and in
 20 Rodgers and Isom there was a chance and so we took the chance
 21 and we took it to trial. Obviously the Court's not going to
 22 hold his attendance at trial against him or use evidence that
 23 may have come in at the trial against him and just give him a
 24 straight sentence Your Honor. We would ask the Court to give

1 him two to five. It's on the low end of the possibilities for
 2 the Court and I know he has two prior felonies but he - he
 3 didn't do any prison on those two prior felonies Your Honor.
 4 I mean Utah law is clearly very different from what we do.
 5 Here in Nevada on the first felony here they go at a minimum
 6 two to five and so we would ask the Court to impose that he's
 7 going to be separated from he's got a large family with
 8 (unintelligible word) ages in his children, a loving wife and
 9 that's going to be a terrible blow because he loves his
 10 family. That's probably going to hurt more than anything. As
 11 a side note, one additional penalty that I think is - is
 12 severe, I attempted to call the prison to speak with an
 13 inmate I think three days ago to set up a call in advance and
 14 the prison said oh no, no phone calls, not without a judicial
 15 order. I said why is that? Oh, the prison's closed because
 16 of Covid the Delta var. So you know, I warned him you're not
 17 going to have any contact with your family for a while, you
 18 can't even get a phone call right now much less an in person
 19 visit. So we would ask the Court to take that into account,
 20 to take his family into account, the fact that - that he's
 21 clearly a good dad and maybe the example that he has set by
 22 using alcohol is not the best but he's clearly addicted to
 23 the use of alcohol now. Obviously he's going to attempt to
 24 get some treatment when he's in the prison system and we wish

1 him the best and ask the Court would consider the minimum
 2 sentence. Thank you.
 3 THE COURT: Thank you Mr. Sears. Mr. James if there's
 4 anything that you'd like to tell the Court at this time in
 5 addition to that which Mr. Sears has indicated you certainly
 6 can have the time to do so.
 7 MR. JAMES: Ah, if I could apologize to the County for
 8 what happened and I'm sorry to my family. That's about it.
 9 THE COURT: Thank you. For the State Miss Hilton?
 10 MS. HILTON: Thank you Your Honor. And Your Honor
 11 looking at the P. S. I. as well as the prior conviction from
 12 twenty fifteen that the State submitted, Mr. James clearly
 13 has a serious problem with alcohol and unfortunately Your
 14 Honor not only is this problem with alcohol a problem for
 15 him. He has made it a problem for any community in which he
 16 lives. The Court and we're all well aware that driving while
 17 being under the influence of alcohol or being in actual
 18 physical control of a vehicle while being under the influence
 19 of alcohol presents a danger to the public. Looking at the
 20 P. S. I. and the prior convictions Your Honor, there were two
 21 prior felony convictions twice before this instance. Mr.
 22 James was convicted of felony offenses and from the P. S. I.
 23 it looks like he did not do prison time - prison time for
 24 those offenses, and Your Honor clearly just the conviction of

1 the felony as well as the fines was not enough to deter Mr.
2 James from continuing this behavior. And because of that
3 Your Honor and because this is not Mr. James' first felony
4 D. U. I. offense, and that's not even taking into
5 consideration the multiple misdemeanor D. U. I.s that he has
6 had, the State is asking that you impose a medium term
7 sentence of four to ten years. The State is asking that the
8 two thousand dollar minimum fine be imposed and that once Mr.
9 James is released from prison he be required to install an
10 admission interlock device in any vehicle he drives for two
11 years or twenty-four months. The minimum on that Your Honor
12 is twelve months, the maximum term is thirty-six months so
13 the State is asking for the middle range there. Furthermore
14 Your Honor given the fact that Mr. James has been
15 successfully employed and has been working, the State is
16 asking that he reimburse the County for three hundred dollars
17 for the cost of the Public Defender, and Your Honor, the
18 State sincerely hopes that this prison sentence will deter
19 Mr. James from committing these future acts, but at this
20 point Your Honor the main reason that this midrange prison
21 sentence is required is to protect the public because Mr.
22 James cannot manage his behavior to ensure the safety of the
23 public. Thank you Your Honor.

24 THE COURT: Anything further?

1 MR. SEARS: No. Thank you Your Honor.

2 THE COURT: Mr. James would you please stand? It's
3 important for the Court this morning to review with you as I
4 do with everyone those factors, facts about your case that
5 are of - of an aggravating nature, make it more serious
6 potentially as well as those that mitigate in your favor, and
7 I'm going to take some time today as I indicated to do that.
8 With - with reference to mitigation in this case, a couple -
9 couple of matters come to mind. One is - one is forty-six.
10 I guess using what the State said and there's some merit to
11 that reading between the lines, you're forty-six and you
12 should know better, okay, than to do what you do as far as
13 taking your alcohol to the public to getting inside that
14 vehicle and driving. But - but looking on the - the - the
15 glass half full side of it, the mitigation side of it, you
16 have a long time still to change in your life. You - you
17 have a number of years in your life. I don't know how long
18 your family heritage is as far as your genes in your family
19 and your family live, but hopefully you'll be able to live
20 that long or longer in - in a healthy healthy fashion.
21 You'll have to make that determination, you know that. I'm
22 not going to beat you up on that and - and you'll make those
23 decisions that concern your personal health and welfare that
24 will help you get to that late stage in your life. I hope

1 you do that for you and for your family, and there's
2 something to be said to that. In many many cases that we
3 have come before this courtroom, there isn't family support.
4 You have family support. They have your back. They support
5 you. You obviously have a very close relationship with your
6 family. They have an interest in you and that's huge, and -
7 and that's something that - that many many persons that are
8 in the criminal justice system have long lost. They've been
9 abandoned by everybody that they know. You haven't. That's
10 huge. You have skills. You're - you're a very skilled as an
11 electrician. You have a history replete with employment,
12 satisfactory employment and - and so you have every advantage
13 in the future once you and your incarceration to continue to
14 be employed again, and I - I certainly hope that you'll be
15 able to do that for the sake of your family. Obviously this
16 Court does not hold it against you or anyone that they
17 exercise their right to go to a trial. You have every
18 constitutional right to do so to hold the State to its burden
19 in this case, and you did do so. And in your own way, in the
20 statements that you made you acknowledged to the law
21 enforcement officer that you were under the influence. I
22 mean, you didn't testify, you didn't have to testify, but you
23 told the officer. That evidence came in that you were under
24 the influence so you didn't deny it. You didn't deny your

1 involvement, your use of alcohol, and - and that's important,
2 you know, that you admitted to what happened. So many persons
3 deny everything about every aspect of their case and if
4 they're in that type of denial then they'll - they'll never
5 have a hope of changing. Admitting it even to the law
6 enforcement officer gives the individual - it should give you
7 some hope for change. And the last thing that's mitigation
8 wise that's - that's - that's clearly under your control is
9 that of change. You have the power to change. Whether you
10 do so is up to your power, and I hope you'll use that power
11 that you have to change to manage your behavior, to - to
12 address those issues that cause you to consume alcohol, to
13 change your lifestyle to be healthier, that you'll be able to
14 use that power of change that you have for the rest of your
15 life. That would be huge for you physically, huge for your
16 family and - and everything about your life. That - that's
17 the good side of this case for you. Now on - on the
18 aggravation side of this case, it's undoubtedly you know,
19 your use of alcohol and the exposure of your use of alcohol
20 to the public to the D. U. I.s that you've had, you know,
21 both the misdemeanors and the felonies. Now it's - and its
22 one thing to A, if it was a casual drink and come out in your
23 vehicle and expose the public or if you have a substance use
24 disorder with alcohol. Don't know if that's the case or not

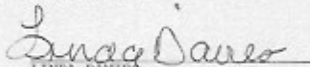
1 but when you bring that disorder to the public by getting in
2 your car, either one of those, the public's at risk. They're
3 exposed. Exposed to you, exposed to that vehicle, exposed to
4 harm, and what's happened in this case is knowing that risk,
5 having been before other Judges, you know, that hasn't caused
6 you to change. You know, you continue to put the public at
7 risk by doing what you're doing, and I - I don't know if you
8 drank all of the - all of what you drank that night in the
9 parking lot of the - of the Dollar Store or if you drove
10 there and drank before hand. There's some evidence going
11 that way that you would have - could have driven that vehicle
12 there. Either way the public was exposed to possible harm.
13 Yes, you were in a parking lot. There was no one else there,
14 it was at night, but your engine was on. I mean, you - you
15 could have moved that away. I don't know. Would you have or
16 not? But that engine was running, and you were behind the
17 wheel of a vehicle and you knew yourself that you had driven
18 before while under the influence. So there was exposure to
19 the public. Fortunately there wasn't an accident.
20 Fortunately no one was hurt in this case. That's huge, but
21 nevertheless the exposure was there and - and nothing that's
22 happened to date in your life, in your experience before the
23 Courts, has really made an affect on you. It really hasn't
24 caused you to change what you're doing, with respect to, you

1 know, how the public faces that danger when you're drinking.
2 Hopefully this will be the end of it for you, and hopefully
3 the time that - that you spend incarcerated you - you'll take
4 advantage of whatever programs are available. Whatever you
5 can do self-help wise that - that N. A. that's available, any
6 other counseling, anything like that, any further reading.
7 There's a Smart Program that's out there. It's
8 nondenominational that might help you. whatever you - and -
9 and I'm sure that you'd have access to that, you know,
10 whatever type of reading on your own. You'll have to do that
11 probably, that you do do that and you engage in it and you
12 subscribe to it and make - start making those changes while
13 you're in because life will be so much better the day that
14 you get out and you will get out. There's no doubt about
15 that. Well based on everything that the Court has indicated
16 today, the Court imposes the following sentence Mr. James.
17 The Court imposes a twenty-five dollar Administrative
18 Assessment Fee. The Court imposes a sixty-dollar Chemical
19 Analysis Fee. The Court imposes a three-dollar D. N. A.
20 Administrative Assessment Fee. The Court imposes a one-
21 hundred and fifty dollar D. N. A. Fee. The Court in this
22 case orders that you reimburse White Pine County for the cost
23 of the Pre-sentence Investigation Report the sum of three
24 hundred fifty dollars. The Court orders that you reimburse

1 White Pine County the sum of three hundred and that helps
2 defray the costs of Mr. Sears in this case. He did an
3 excellent job for you representation-wise throughout this
4 case. With respect to a sentence in this case, the - the
5 Court believes that an appropriate sentence in this case is -
6 is this. The Court sentences you to a maximum term of
7 incarceration with the Nevada Department of Corrections for
8 eighty-four months with minimum parole eligibility at thirty-
9 two months. I believe that you had served five days, I'm not
10 certain, but whatever time that you've served to date, the
11 Court gives you credit for time served. Anything further?
12 MS. HILTON: Um, yes Your Honor. Pursuant to Four
13 Right Four C -
14 THE COURT: Oh, the fines.
15 MS. HILTON: - the fine - or the ignition inner lock -
16 THE COURT: Yes.
17 MS. HILTON: And then the minimum time.
18 THE COURT: And the Court had overlooked that, excuse
19 me. And that's - that's accurate. The Court imposes the
20 mandatory fine of two thousand dollars and the Court orders
21 that for a period of twenty-four months from the time that
22 you're eligible to drive again that you impose a - or that
23 you install an inner lock device and again that's going to be
24 for a period of twenty-four months. Anything further Mr.

1 Sears?
2 MR. SEARS: No thank you Your Honor.
3 THE COURT: Okay. Then if there's nothing further
4 then if you would place your hands behind your back sir,
5 you're going to go into custody. If you'd like we can just
6 take a brief recess for a moment, we can allow the family to
7 go ahead and - and to leave the courtroom.
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1 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of
2 Appellant Procedure, I acknowledge that this is a rough draft
3 transcript, expeditiously prepared, not proofread, corrected,
4 or certified to be an accurate transcript.

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6 
7 LINDA DAVIES
8 Court Transcriber
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SCANNED

FILED

Case No. CR-1903028

2021 AUG 18 AM 9:08

CLERK
[Signature]
CLERK

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES TYRONE MYRTIS,

Defendant.

NOTICE OF ENTRY OF JUDGMENT

PLEASE TAKE NOTICE that on the 17 day of August, 2021, the Court entered an order or judgment in this matter, a true and correct copy of which is attached. If you wish to appeal, you must file a Notice of Appeal with the Clerk of the Court within thirty (30) days after the entry of judgment or order being appealed.

DATED this 17 day of August, 2021.

[Signature]
McKinzie M. Hilton Esq.,
Nevada Bar No. 14447
Chief Deputy District Attorney
for White Pine County

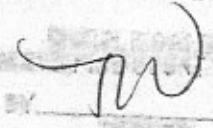
WHITE PINE COUNTY DISTRICT ATTORNEY
801 Clark Street, Suite 3 • Ely, Nevada 89301
TEL: 775-293-6565 • FAX: 775-289-1559
DAOoffice@WhitePineCountyNV.gov

Case No.: CR-1903028

Dept. No.: 2

FILED

AUG 18 AM 9:05

CLERK
BY 
DEPUTY

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF WHITE PINE, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES TYRONE MYRTIS,
Defendant.

JUDGMENT AND SENTENCE

WHEREAS, On the 19th day of May, 2021, the above-named Defendant, JAMES TYRONE MYRTIS, further described as: Date of Birth: February 28, 1975; Place of Birth: Keams Canyon, Arizona; was found guilty at jury trial of the crimes described below and as more fully set forth in the Amended Criminal Information filed herein, and the Court entered judgment. Legal counsel present at the Defendant's jury trial were RICHARD W. SEARS ESQ., White Pine County Public Defender, representing Defendant, and MCKINZIE M. HILTON ESQ., White Pine County Chief Deputy District Attorney, representing the State, and the Nevada Division of Parole and Probation was also present.

DESCRIPTION OF CONVICTION

COUNT I: DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF
A VEHICLE WHILE BEING UNDER THE INFLUENCE OF INTOXICATING LIQUOR,
FELONY OFFENSE

On the 16th day of August, 2021, the above-named defendant appeared before this Court for

1 the purpose of sentencing and entry of a final judgment of conviction in this matter. This
2 Court, the State and the Defense Counsel previously received a Pre-Sentence Report
3 prepared by the Division of Parole and Probation. The State previously filed a certified copy
4 of the Defendant's prior felony DUI conviction, judgment filed the 7th day of May, 2015.
5 The above-named Defendant was personally present at the sentencing. Legal counsel
6 present at the Defendant's sentencing were RICHARD W. SEARS ESQ., White Pine
7 County Public Defender, representing Defendant, and MCKINZIE M. HILTON ESQ.,
8 White Pine County Chief Deputy District Attorney, representing the State, and the Nevada
9 Division of Parole and Probation was also present.

10 The Court found that the appropriate judgment in this case is as follows:

11 **IT IS HEREBY ADJUDGED** that for COUNT I, Defendant is sentenced to serve a
12 maximum term of 84 months in the Nevada Department of Corrections, with parole
13 eligibility after a minimum term of 32 months. Defendant is given credit for 5 days
14 previously served.

15 **IT IS HEREBY ORDERED** that the Clerk of this court enter this Judgment of
16 Conviction as part of the record in the above-entitled matter.

17 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a \$25.00
18 Administrative Assessment fee.

19 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a \$3.00
20 Genetic Marker Analysis Administrative Assessment fee.

21 **IT IS HEREBY FURTHER ORDERED** that the Defendant submit to DNA
22 Analysis Testing to determine genetic markers and pay a \$150.00 fee for such testing.

23 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a \$60.00
24 Chemical Analysis fee.

25 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a \$300.00
26 toward the cost of public defender services.

1 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall reimburse White
2 Pine County the sum of \$350.00 towards the cost of the Pre-Sentence Investigation Report
3 fee.

4 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall pay a fine in the
5 amount of \$2,000.

6 **IT IS HEREBY FURTHER ORDERED** that the fees assessed shall be paid to the
7 White Pine County Clerk's Office, 801 Clark Street, Suite 4, Ely, Nevada 89301.

8 **IT IS HEREBY FURTHER ORDERED** that the Defendant shall install an ignition
9 interlock device for 24 months in any vehicle he drives, once he is eligible to drive again.

10 **IT IS HEREBY FURTHER ORDERED** that any Bond in this matter shall be
11 exonerated.

12 **IT IS HEREBY FURTHER ORDERED AND THE COURT ADVISES**
13 **DEFENDANT** that pursuant to NRS 176.063, all administrative assessment fees, all other
14 fees, and all fines constitute a lien pursuant to NRS 176.275; and should the Defendant fail to
15 satisfy said lien(s), collection efforts may be undertaken against the Defendant pursuant to
16 the laws of this State.

17 DATED this 17th day of August, 2021.

18
19
20 
DISTRICT COURT JUDGE

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the attached document:

☒ Does not contain the personal information of any person pursuant to NRS 603A.040;

-OR-

☐ Contains the personal information of a person as required by:

☐ A specific state or federal law, to wit: _____

-or-

☐ For the administration of a public program

-or-

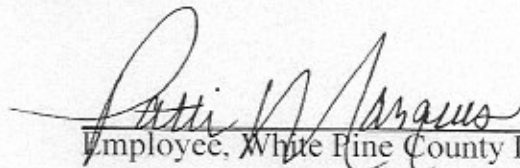
☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet

(NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED this 17th day of August, 2021.


Employee, White Pine County District Attorney

CERTIFICATE OF SERVICE

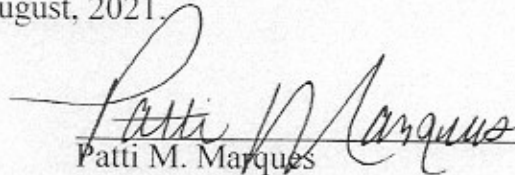
I, the undersigned, hereby certify that I am an employee of the White Pine County District Attorney and that on the 17th day of August, 2021, I served a true and correct copy of this document on:

Richard W. Sears Esq.
White Pine County Public Defender
457 Fifth Street
Ely, NV 89301

by:

- ☐ mailing a copy thereof, first class mail, postage prepaid.
☐ delivering by hand to the person of, office of, or dwelling.
☐ leaving a copy in their box in the White Pine County Clerk's office.
☒ leaving a copy in their box in the White Pine County District Attorney's office.
☐ electronic-mail address or facsimile number.

DATED this 17th day of August, 2021.


Patti M. Marques