

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LAWRENCE DIXON,  
  
Appellant,

vs.

THE STATE OF NEVADA,  
  
Respondent.

Electronically Filed  
Dec 04 2023 02:04 PM  
Docket No. 87091  
Elizabeth A. Brown  
Clerk of Supreme Court  
D. Ct. CV0023111

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APPEAL FROM JUDGMENT OF  
THE HONORABLE MICHAEL MONTERO  
  
SIXTH JUDICIAL DISTRICT COURT

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APPELLANT'S APPENDIX

VOLUME 2

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ANTHONY GORDON

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*Petition* was mistakenly filed in the United States District Court, District of Nevada. *Petition* for Writ of Habeas Corpus (Postconviction) at Exhibit 1, *Dixon v. Reubart*, Case No. CV0023141 (July 11, 2022); NRS 34.726(1)(a). Moreover, the Court finds that dismissal of the *Petition* as untimely will unduly prejudice the Petitioner. NRS 34.726(1)(b). Thus, Petitioner has shown good cause for delay pursuant to NRS 34.726(1) and the *Petition* is timely.

HAVING REVIEWED the *Petition*, the Court has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of Petitioner's liberty.

Pursuant to NRS 34.745(1)(a), the Humboldt County District Attorney shall, within forty-five (45) days after the date of this Order, answer or otherwise respond to the *Petition* and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS SO ORDERED.**

DATED this 12<sup>th</sup> day of July, 2022.

  
HONORABLE MICHAEL R. MONTERO  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on this 12<sup>th</sup> day of July, 2022 I caused to be served a true and correct copy of the enclosed ORDER TO RESPOND upon the following parties:

Michael Macdonald  
Humboldt County District Attorney  
P.O. Box 909  
Winnemucca, Nevada 89446  
*Hand-delivered to Humboldt County Courthouse, DCT Box*

William Reubart, Warden  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NV 89301  
*Via US Mail*

Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701  
*Via US Mail*

Steven Lawrence Dixon #1024360  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NV 89301  
*Via US Mail*

Taylor  
TAYLOR M. STOKES, ESQ.  
STAFF ATTORNEY  
SIXTH JUDICIAL DISTRICT COURT

CASE NO. CV0023141

DEPT. NO. II

FILED

2022 JUL 20 PM 3:47

TAMI RAC SPERO  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

-o0o-

STEVEN LAWRENCE DIXON,

Petitioner,

vs.

WILLIAM REUBART,  
Warden, Ely State Prison,

Respondent.

**ORDER APPOINTING COUNSEL  
PURSUANT TO NRS 34.750(1)**

Before this Court is Petitioner, Steven Lawrence Dixon, in his *proper* person, and his *Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing* filed on July 11, 2022. Petitioner also filed a *Financial Certificate* on July 12, 2022, which is authorized by an Officer of the Nevada Department of Corrections indicating that Petitioner has a current balance of \$55.76 on his account at Ely State Prison, as well as \$550.00 in savings. Financial Certificate, *Dixon v. Reubart*, Case No. CV0023141 (July 12, 2022).

HAVING REVIEWED the filings, documents, and arguments herein, the Court is satisfied that Petitioner's allegation of indigency is true and that the *Petition* has not been

1 summarily dismissed. NRS 34.750(1). The Court **HEREBY GRANTS** Petitioner's request  
2 for appointment of counsel.

3 Accordingly, the Court appoints Karla K. Butko, Esq. to represent Petitioner in this  
4 matter. Pursuant to **NRS 34.750(3)(b)**, Ms. Butko may file and serve supplemental  
5 pleadings, exhibits, transcripts, and documents within thirty (30) days after the date of this  
6 Order.

7 Notably, the Court entered its *Order to Respond* on July 12, 2022, allowing the State  
8 forty-five (45) days to file its answer and return. Pursuant to **NRS 34.750(3)**, the State of  
9 Nevada must now file its answer within fifteen (15) days after receipt of the supplemental  
10 pleadings and include any response to the supplemental pleadings.

11 Lastly, the Court reserves ruling on Petitioner's request for an evidentiary hearing  
12 pursuant to **NRS 34.770**.

13 **IT IS SO ORDERED.**

14 DATED this 20<sup>th</sup> day of July, 2022.

15  
16 

17 HONORABLE MICHAEL R. MONTERO  
18 DISTRICT JUDGE  
19  
20  
21  
22  
23  
24



**CERTIFICATE OF SERVICE**

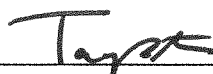
I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on this 20<sup>th</sup> day of July, 2022 I caused to be served a true and correct copy of the enclosed **ORDER APPOINTING COUNSEL PURSUANT TO NRS 34.750(1)** upon the following parties:

Humboldt County District Attorney's Office  
501 S. Bridge Street  
Winnemucca, NV 89446  
*Hand-delivered to Humboldt County Courthouse, DCT Box*

Karla K. Butko, Esq.  
P.O. Box 1249  
Verdi, NV 89439  
*Via US Mail*

Steven Lawrence Dixon #1024360  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NV 89301  
*Via US Mail*

William Reubart, Warden  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NV 89301  
*Via US Mail*

  
\_\_\_\_\_  
TAYLOR M. STOKES, ESQ.  
STAFF ATTORNEY  
SIXTH JUDICIAL DISTRICT COURT

FILED

2022 AUG 31 AM 10:39

TAMI RAE SPERO  
DIST. COURT CLERK

1 Case No. CV 0023141

2 Dept. No. 2

3  
4 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5  
6 IN AND FOR THE COUNTY OF HUMBOLDT

7 STEVEN LAWRENCE DIXON,

8 vs.

9 THE STATE OF NEVADA,  
10 ET AL

**STIPULATION AND ORDER FOR  
EXTENSION OF TIME RE:  
PETITIONER'S SUPPLEMENTAL  
PETITION FOR WRIT OF HABEAS  
CORPUS (POSTCONVICTION)**

11 Respondents.  
12 \_\_\_\_\_/

13 IT IS HEREBY STIPULATED, by and between the Humboldt County  
14 District Attorney's Office, ANTHONY GORDON, Esq., Deputy District  
15 Attorney, and KARLA K. BUTKO, Esq., counsel for Petitioner, that the  
16 Petitioner shall have an extension of time up to and including sixty  
17 days from today's date, to October 28, 2022, in this matter to  
18 supplement the Petition for Writ of Habeas Corpus (Post-Conviction).  
19 The State shall have forty-five days after the filing of the  
20 Supplemental Petition to answer or otherwise file a responsive  
21 pleading in this matter.

22 Counsel for Petitioner warrants to this Court that she has  
23 received the court files from the Clerk of Court; she has requested  
24 but not received the trial file from Matt Stermitz, Public Defender  
25 for Humboldt County; she has spoken with Mr. Dixon and his father  
26  
27

1 and advised her client of the need for additional time for filing a  
2 Supplemental Petition herein.

3 The court file is extensive as this case went to jury trial.  
4 Counsel is in the investigation stage of the case. Mr. Dixon is in  
5 custody at the Ely State Prison and meeting with him will require a  
6 trip to Ely.

7 This Stipulation is made for good cause and not for the  
8 purposes of delay.

9 DATED this 31<sup>st</sup> day of August, 2022.

10  
11 By:

Anthony Gordon  
ANTHONY GORDON, ESQ.  
Humboldt County DA's Office  
P. O. Box 909  
Winnemucca, NV 89446

12  
13 By:

Karla K. Butko  
KARLA K. BUTKO, ESQ.  
Attorney for Petitioner  
P. O. Box 1249  
Verdi, NV 89439

Case No. CV 0023141

Dept. No. 2

FILED

2022 SEP 12 PM 12:22

TAMI RAE SPERO  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

STEVEN LAWRENCE DIXON,

vs.

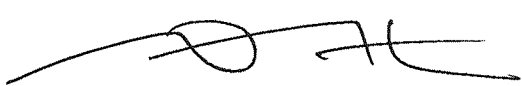
THE STATE OF NEVADA,  
ET AL

ORDER GRANTING  
EXTENSION OF TIME RE:  
PETITIONER'S SUPPLEMENTAL  
PETITION FOR WRIT OF HABEAS  
CORPUS (POSTCONVICTION)

Respondents.

Upon the request of the parties and good cause appearing,  
IT IS HEREBY ORDERED that Petitioner shall have to and  
including ninety days from today's date, to October 28, 2022, to  
supplement the Petition for Writ of Habeas Corpus (Post-  
Conviction). The State shall have forty-five days after the filing  
of the Supplemental Petition to answer or otherwise file a  
responsive pleading on this matter.

Dated this 9<sup>th</sup> day of Sept., 2022.

  
DISTRICT JUDGE

FILED

2022 DEC 22 PM 1:57

CLERK OF DISTRICT COURT

KARLA K. BUTKO  
P. O. BOX 1249  
Verdi, NV 89439  
(775) 786-7118  
Attorney for Petitioner

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

STEVEN DIXON,

Petitioner,

vs.

Case No. CV 0023141

WILLIAM REUBART, WARDEN &  
THE STATE OF NEVADA,

Dept. No. II

Respondents.

**SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**  
**(POST-CONVICTION)**

This Supplemental Petition is filed pursuant to Nevada Revised Statutes 34.735, et. seq.

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Petitioner is incarcerated at the Wells Conservation Camp, Nevada: Inmate 1024360.

2. Name and location of court which entered the judgment of conviction under attack: Sixth Judicial District Court of the State of Nevada, Humboldt County, Nevada.

3. Date of judgment of conviction:  
November 13, 2018.

4. Case Number: CR18-6963.

5. (a) Length of sentence:

The Court sentenced Petitioner as follows:

Count I: A maximum term of 34 months years in prison with parole eligibility after service of 12 months. This was ordered to be served consecutively to a felony DUI case and a misdemeanor DUI case.

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes \_\_\_\_\_  
No X

If "yes," list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged:

One count of Arson, Fourth Degree, a Category D felony violation of NRS 205.025

8. What was your plea (check one)

- (a) Not Guilty XX
- (b) Guilty
- (c) Guilty but mentally ill
- (d) Nolo contendere

9. If you entered a plea of guilty:

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

- (a) Jury XX
- (b) Judge without a Jury

11. Did you testify at the trial? Yes XX No   

12. Did you appeal from the judgment of conviction?

Yes XX No   

13. If you did appeal, answer the following:

- (a) Name of Court: Nevada Supreme Court
  - (b) Case number or citation: 77535
  - (c) Result: Order of Affirmance
  - (d) Date of result: May 16, 2021
- Remittitur date:

(Attach copy of order or decision, if available.)

The appeal was limited to the issue of a *Batson* violation during jury voir dire.

14. If you did not appeal, explain briefly why you did not:

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes    No X

16. If you answer to No. 15 was "yes," give the following information:

(a)(1) Name of court:

(2) Nature of proceeding:

(3) Grounds raised  
(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes \_\_\_\_ No \_\_\_\_

(5) Result:  
(6) Date of result:  
(7) If known, citations of any written opinion or date of orders entered pursuant to  
such result:

(b) As to any second petition, application or motion, give the same information  
(1) Name of court:  
(2) Nature of proceeding:  
(3) Grounds raised:  
(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes \_\_\_\_ No \_\_\_\_

(5) Result:  
(6) Date of result:  
(7) If known, citations of any written opinion or date of orders entered pursuant to  
such result:

(c) As to any third or subsequent additional applications or motions, give the same  
information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result  
or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes \_\_\_\_ No \_\_\_\_

Citation or date of decision:

(2) Second petition, application or motion? Yes \_\_\_\_ No \_\_\_\_

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes \_\_\_\_ No \_\_\_\_

Citation or date of decision:

(e) If you did not appeal from the adverse action of any petition, application or motion,  
explain briefly why you did not. (You must relate specific facts in response to this question. Your  
response may be included on paper which is 8½ by 11 inches attached to the petition. Your response  
may not exceed five handwritten or typewritten pages in length.)

17. Has any ground being raised in this petition been  
previously presented to this or any other court by way of petition for habeas corpus, motion,  
application or any other post-conviction proceeding? If so, identify: N/A

(a) Which of the grounds is the same:

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds. (You must relate  
specific facts in response to this question. Your response may be included on page which is 8½ by  
11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
pages in length.)

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional  
pages you have attached, were not previously presented in any other court, state or federal, list briefly  
what grounds were not so presented, and give your reasons for not presenting them. (You must  
relate specific facts in response to this question. Your response may be included on page which is  
8½ by 11 inches attached to the petition. Your response may not exceed five handwritten or

1 typewritten pages in length.)

2 19. Are you filing this petition more than 1 year following the filing of the judgment of  
3 conviction or the filing of a decision on direct appeal? If so, state briefly your reasons for delay.  
4 (You must relate specific facts in response to this question. Your response may be included on page  
5 which is 8½ by 11 inches attached to the petition. Your response may not exceed give handwritten  
6 or typewritten pages in length.)

7 Petitioner states said Petition is timely and filed within one year of the Remittitur. The Remittitur  
8 issued on June 1, 2021. The Petition was filed by the law library of the prison in the U.S. District  
9 Court on 4/26/22. Good cause exists for the filing date of July 11, 2022.

10 20. Do you have any petition or appeal now pending in any court, either state or federal, as  
11 to the judgment under attack? Yes \_\_\_\_ No X

12 21. Give the name of each attorney who represented you in the proceeding resulting in your  
13 conviction and on direct appeal:

14 Matt Stermitz, Public Defender for Humboldt County, court-appointed counsel represented  
15 Petitioner at all critical stages of the trial case and on direct appeal.

16 22. Do you have any future sentences to serve after you complete the sentence imposed by  
17 the judgment under attack?  
18 Yes \_\_\_\_ No X

19 If yes, specify where and when it is to be served, if you know:

20 23. State concisely every ground on which you claim that you are being held unlawfully.  
21 Summarize briefly the facts supporting each ground. If necessary you may attach pages stating  
22 additional grounds and fact supporting same.

23 **Every claim herein raised is also raised under the legal theory that the Petitioner was**  
24 **deprived of effective assistance of counsel, within the meaning of the 6th and 14th**  
25 **Amendments to the United States Constitution.**

26 Ground One: Trial and appellate counsel were ineffective at the jury instruction stage of the  
27 criminal defense case for failing to insure that the jury was adequately instructed with the law. Jury  
28 Instruction should have included the lesser included misdemeanor offenses of NRS 206.310 coupled  
29 with NRS 193.155. The jury should have been instructed on voluntary intoxication as a defense to  
30 the specific intent to act "maliciously" as required to support an arson conviction. Petitioner was  
31 deprived of his rights under the 5<sup>th</sup>, 6<sup>th</sup> & 14<sup>th</sup> Amendments.

32 Ground Two: Trial counsel was ineffective when trial counsel failed to object to and indeed  
33 brought forth bad act evidence into this jury trial, without advising the jury at the time of the  
34 admission of the evidence of its proper use and by failing to advise the jury on the proper application  
35 of NRS 48.045 evidence. Defense counsel failed to have the jury instructed on the proper use of bad  
36 act evidence under *Tavares*.

37 Ground Three: Appellate counsel was ineffective under the 6<sup>th</sup> & 14<sup>th</sup> Amendments when  
38 appellate counsel failed to raise meritorious issues on appeal, i.e. improper admission of bad act  
39 evidence, failure to instruct on lesser included offenses, destruction of evidence and admission of  
40 inadmissible evidence regarding the mirror, and insufficient evidence to sustain the conviction.



1 Ground Four: Defense counsel failed to preclude admission of the mirror from evidence  
2 under *Crockett v. State*, *Sorce v. State* and their progeny. The police failed to collect evidence and  
3 provide a chain of custody for the mirror.

#### 4 POINTS AND AUTHORITIES

##### 5 **Statement of Facts:**

6 Petitioner, STEVEN DIXON, was charged by the State with one count of Fourth Degree  
7 Arson for lighting fire to his Wife's plastic mirror which was hanging on a wall in their home.

8 Factually, Steven Dixon and his Wife, Melissa Mayden were in a rocky marital relationship  
9 that was coming to an end. On the day of the offense, the couple argued. Steven told Melissa that  
10 he wanted to end the marriage and gave her a date for the ending. Melissa stopped talking to Steven.  
11 Unfortunately, Steven ended up drinking alcoholic beverages.

12 Melissa testified to an exceptional amount of bad act evidence. Defense counsel did not  
13 attempt to preclude the bad act evidence. Here are the statements that should have been kept out of  
14 evidence:

15 Why did you run from Steven: From previous experiences. Pages 23-24.

16 She thought Steven had attacked their son. P:Age 24-25.

17 Steven threatened her on the phone after the incident. Page 33-34.

18 Steven was texting another woman. In fact all of the evidence of other woman allegations should  
19 have been kept out of the trial. Pages 34-35

20 Did he buy you out of the house, "No". Testimony on Page 38 is irrelevant and prejudicial.

21 Evidence came before the jury that Steven had criminal charges for physically abusing his son.

22 The jury was not instructed under *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132  
23 (2001), on how to properly utilize bad act evidence. Instead, Steven was painted as an abusive  
24 alcoholic who cheated on his wife and then threw his family out of the house.

25 A plastic mirror was admitted without objection by defense counsel. Petitioner will testify  
26 that the mirror admitted into evidence was not the same mirror that was on the wall in their home  
27 and that the mirror admitted into evidence had nothing to do with this case. Admission of prejudicial

1 evidence which did not have a proper chain of custody constituted ineffective assistance of counsel.

2 Melissa testified that when she got home the mirror was gone. She testified the mirror was  
3 in the garbage and melted.

4 Steven will testify that the garbage she was talking about was in the back of the large truck that Steve  
5 used for work and the mirror she gave police was garbage Steve removed from a work site.

6 It was over a week before a mirror was turned over to the police and it was not the correct mirror.

7 Counsel did not file a motion to exclude the mirror under *Crockett v. State*, 95 Nev. 859,  
8 603 P.2d 1078 (1979). There was an inadequate chain of custody of the evidence. The police failed  
9 to collect the actual evidence, which would have been exculpatory to Mr. Dixon as the damage was  
10 minor. Counsel did not impeach the witnesses about the actual mirror and where it might have been.

11 Counsel did not seek jury instruction on voluntary intoxication. There was ample evidence  
12 presented by Melissa Mayden, Jordan Mayden and Jessica Dixon that Steven was intoxicated. One  
13 of the key ways to defend against a specific intent crime is to demonstrate that the person lacked the  
14 capacity to form specific intent. In this case, the prosecution had the burden to prove that Steven  
15 acted knowingly, intentionally and maliciously in order to support an arson conviction. The jury  
16 should have been instructed on voluntary intoxication. See NRS 193.220 ("No act committed by a  
17 person while in a state of voluntary intoxication shall be deemed less criminal by reason of his  
18 condition, but whenever the actual existence of any particular purpose, motive or intent is a  
19 necessary element to constitute a particular species or degree of crime, the fact of his intoxication  
20 may be taken into consideration in determining the purpose, motive or intent.").

21 The case went to jury on the one count of Fourth Degree Arson. The jury was not instructed  
22 on the misdemeanor of destruction of or injury to property of another, a violation of NRS 206.310.  
23 The value of the mirror had to be above \$25.00 to cause destruction of property to be a misdemeanor  
24 rather than a civil issue.  
25  
26  
27

**ARGUMENT**

**POSTCONVICTION LAW:**

**Appellate state:**

The constitutional right to effective assistance of counsel extends to a direct appeal. Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (Nev. 1996).

A claim of ineffective assistance of appellate counsel is reviewed under the *Strickland* test. In order to establish prejudice based on deficient assistance of appellate counsel, the petitioner must show that the omitted issue would have had a reasonable probability of success on appeal. Lara v. State, 120 Nev. 177, 183-84, 87 P.3d 528, 532 (2004) (citing Kirksey, 112 Nev. at 998, 923 P.2d at 1114).

The Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right. *Evitts v. Lucey*, 469 U.S. 387, 391-405 (1985).

**Trial stage:**

In State v. Love, 109 Nev. 1136, 865 P.2d 322 (1993), the Nevada Supreme Court reviewed the issue of whether or not a defendant had received ineffective assistance of counsel at trial in violation of the Sixth Amendment. The Nevada Supreme Court held that this question is a mixed question of law in fact and is subject to independent review. The Supreme Court reiterated the ruling of Strickland v. Washington, 466 U.S. 668 (1984). The Nevada Supreme Court indicated that the test on a claim of ineffective assistance of counsel is that of "reasonably effective assistance" as enunciated by the United States Supreme Court in Strickland. The Nevada Supreme Court revisited this issue in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984) and Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). The Nevada Supreme Court has provided a two-prong test in that the

1 Defendant must show first that counsel's performance was deficient and second, that the Defendant  
2 was prejudiced by this deficiency.

3 Prejudice is demonstrated where counsel's errors were so severe that there was a reasonable  
4 probability that, but for counsel's unprofessional errors, the result of the proceeding would have been  
5 different. A reasonable probability that, but for counsel's unprofessional errors the result of the  
6 proceeding would have been different, is a probability sufficient to undermine confidence in the  
7 outcome of the trial. Riley v. State, 110 Nev. 638, 878 P.2d 272 (1994).

8 **Ground One: : Trial and appellate counsel were ineffective at the jury instruction stage of**  
9 **the criminal defense case for failing to insure that the jury was adequately instructed with the**  
10 **law. The jury should have been instructed on voluntary intoxication to negate the specific**  
**intent of maliciousness. The jury should have been instructed on lesser included offense of**  
**destruction of property NRS 206.310.**

11 Under the elements test, for an uncharged offense to be a lesser-included offense of the  
12 charged offense so that the defendant is entitled to a jury instruction on the lesser offense, all of the  
13 elements of the lesser offense must be included in the greater, charged offense. In applying the  
14 elements test in this case, we must resolve two issues related to the elements that make up the  
15 charged and uncharged offenses. The elements of only one of the alternative means need be included  
16 in the greater, charged offense to warrant an instruction on the lesser offense. *Alotaibi v. State*, 133  
17 Nev. Adv. Op. 81 (2017).

18 When we look at the statutory schemes in place, NRS 206.310 should have been provided  
19 to the jury as a lesser included offense. Steven did not act with malice as he was to drunk to form  
20 the specific intent of malicious conduct. Steven admitted that he lit a plastic mirror on the wall on  
21 fire. His intention was to harm Melissa's property, not destroy his own home.

22 "The district court has broad discretion to settle jury instructions." *Crawford v. State*, 121  
23 Nev. 744, 748, 121 P.3d 582, 585 (2005). A district court's denial of proposed jury instructions may  
24 constitute an abuse of discretion or judicial error. *Id.* "An abuse of discretion occurs if the district  
25 court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v.*  
26 *State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). However, an instruction must be reviewed to  
27

1 see if it was an accurate statement of law and is reviewed de novo. *Funderburk v. State*, 125 Nev.  
2 260, 263, 212 P.3d 337, 339 (2009).

3 *Estes v. State*, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006) provides: To determine the  
4 existence of a lesser-included offense, this court looks to whether the offense in question cannot be  
5 committed without committing the lesser offense.”

6 Mr. Dixon suffered prejudice as the jury might have convicted him of a misdemeanor  
7 destruction of property rather than an arson felony. A new trial is warranted.

8 The jury should have been instructed on voluntary intoxication. NRS 193.220 provides:  
9 “No act committed by a person while in a state of voluntary intoxication shall be deemed less  
10 criminal by reason of his condition, but whenever the actual existence of any particular purpose,  
11 motive or intent is a necessary element to constitute a particular species or degree of crime, the fact  
12 of his intoxication may be taken into consideration in determining the purpose, motive or intent.”

13 Every witness testified that Mr. Dixon had been drinking alcoholic beverages. His conduct  
14 after starting the mirror on fire was to assume it would go out and he sat on the couch. He was  
15 drunk. This negates the specific intent of malicious behavior. The jury should have been instructed  
16 on voluntary intoxication. A new trial is warranted.

17 **Ground Two: Trial counsel was ineffective when trial counsel failed to object to and indeed**  
18 **brought forth bad act evidence into this jury trial, without advising the jury at the time of the**  
19 **admission of the evidence of its proper use and by failing to advise the jury on the proper**  
20 **application of NRS 48.045 evidence. Defense counsel failed to have the jury instructed on the**  
21 **proper use of bad act evidence under *Tavares*.**

22 Defense counsel knew that there was bad act evidence in the wings on this case. Due to its  
23 highly prejudicial nature, if the district court's admission of the uncharged conduct was manifestly  
24 wrong, prejudice occurred and reversal is warranted. *Bellon v. State*, 121 Nev. 436, 117 P.3d 176  
25 (2005) and *Sutton v. State*, 114 Nev. 1327, 972 P.2d 334 (1998).

26 The use of prior act evidence pursuant to NRS 48.045(2) should always be approached with  
27 circumspection. ” *Ledbetter v. State*, 122 Nev. 264, 129 P.3d 671, 679-80 (2006). The district court  
failed to issue a limiting instruction as required under *Rhymes v. State*, 121 Nev. 17, 22, 24, 107 P.3d

1 1278, 1281-82 (2005).

2 The district court “should give the jury a specific instruction explaining the purposes for  
3 which the evidence is admitted immediately prior to its admission and should give a general  
4 instruction at the end of the trial reminding the jurors that certain evidence may be used only for  
5 limited purposes.” *Tavares v. State*, 117 Nev. 725 at 733, 30 P.3d at 1133 (2001). The District  
6 Court did not give a jury instruction as required by *Tavares* or *Big Pond*, either at the time of the  
7 admission of bad act evidence or in the final jury instructions.

8 NRS 48.045(2) prohibits the use of “other crimes, wrongs or acts . . . to prove the character  
9 of a person in order to show that he acted in conformity therewith.” Such evidence “may, however,  
10 be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,  
11 knowledge, identity, or absence of mistake or accident.” NRS 48.045(2). “To be deemed an  
12 admissible bad act, the trial court must determine, outside the presence of the jury, that: (1) the  
13 incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and  
14 (3) the probative value of the evidence is not substantially outweighed by the danger of unfair  
15 prejudice.” *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). In assessing “unfair  
16 prejudice,” this court reviews the use to which the evidence was actually put—whether, having been  
17 admitted for a permissible limited purpose, the evidence was presented or argued at trial for its  
18 forbidden tendency to prove propensity. See *Rosky v. State*, 121 Nev. 184, 197-98, 111 P.3d 690, 699  
19 (2005). Also key is “the nature and quantity of the evidence supporting the defendant's conviction  
20 beyond the prior act evidence itself.” *Ledbetter*, 122 Nev. at 262 n.16, 129 P.3d at 678-79 n.16.

21 The admission of prior bad acts evidence requires a limiting instruction, unless waived by  
22 the defendant prior to admission. Both the State and the district court share blame for this error. The  
23 district court failed to heed the Nevada Supreme Court's direction and “raise the issue sua sponte”  
24 after the State neglected its duty to do so. In the face of imminent unfair prejudice, the district court  
25 should have taken appropriate steps to properly instruct the jury. Though this procedural safeguard  
26  
27

1 would not have been adequate to ameliorate the unfair prejudice arising from admission of  
2 allegations of prior physical domestic abuse upon wife and child into a jury trial for this arson case,  
3 at least the jury would have understood that it could not use that testimony to deem Steven had the  
4 propensity to commit a crime. See *McLellan v. State*, 124 Nev. 263, 269, 182 P.3d 106, 110-11  
5 (2008).  
6

7 The jury did not need to hear that Steven was facing a trial for allegedly physically harming  
8 his son. Melissa's comment about running from Steven because of past experiences should not have  
9 been admitted. The fact that Steven did not buy Melissa out of the family home at some date after  
10 the fire was irrelevant but used to put a black eye upon Steven. Evidence of another woman and an  
11 extramarital affair should have been excluded. Alleged threats after the fire should not have been  
12 admitted. The bottom line is that Steven lost the popularity contest and was convicted for his  
13 lifestyle, not for actually intending to burn down his own home.  
14  
15

16 Failure to object to admission of bad act evidence and failure to raise this critical issue on  
17 direct appeal deprived Mr. Dixon of his right to effective assistance of counsel under the 6<sup>th</sup> & 14<sup>th</sup>  
18 Amendments.  
19

20 **Ground Three: Appellate counsel was ineffective under the 6<sup>th</sup> & 14<sup>th</sup> Amendments**  
21 **when appellate counsel failed to raise meritorious issues on appeal, i.e. improper admission of**  
22 **bad act evidence, failure to instruct on lesser included offenses, destruction of evidence and**  
23 **admission of inadmissible evidence regarding the mirror, and insufficient evidence to sustain**  
24 **the conviction.**

25 Although deference is given to appellate counsel's decisions of which issues to raise on  
26 appeal, nonetheless, appellate counsel can be held ineffective if it fails to select proper claims for  
27 appeal. *Jones v. Barnes*, 463 U.S. 745 (1983).

The direct appeal was limited to the question of the *Batson* error. While appellate counsel

1 succeeded, in the sense that the Nevada Supreme Court found error, that error was held to be  
2 harmless. No relief was granted to Steven.

3 In this case, other issues should have been raised. Insufficiency of the evidence should  
4 have been litigated. When reviewing a challenge to the sufficiency of the evidence, we must  
5 determine “whether, after viewing the evidence in the light most favorable to the prosecution,  
6 any rational trier of fact could have found the essential elements of the crime beyond a  
7 reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson*  
8 *v. Virginia*, 443 U.S. 307, 319 (1979)).  
9  
10

11 This record has scant evidence to support the allegation that Steven acted maliciously.  
12 The record may suffice for a destruction of property conviction but no value was ever proven on  
13 the mirror. Appellate counsel should have attacked the insufficiency of the evidence.  
14

15 As stated previously herein, appellate counsel should have raised the question as to  
16 whether there was bad act evidence that prejudiced Mr. Dixon’s right to a fair trial. There was so  
17 much bad act evidence as to Steven that the trial court abused its discretion by permitting  
18 evidence of uncharged bad acts without a limiting instruction. *Tavares v. State*, 117 Nev. 725,  
19 732, 30 P.3d 1128, 1132 (2001), modified by *McLellan v. State*, 124 Nev. 263, 182 P.3d 106  
20 (2008). This critical issue should have been raised on direct appeal.  
21

22 A mirror was admitted into evidence. Steven will testify that the mirror admitted into  
23 evidence was not the mirror that was on the wall of his house on the date of the fire. The mirror  
24 that was admitted was irrelevant. There was no chain of custody. The actual mirror was not  
25 taken into evidence by police with a proper chain of custody. This issue should have been  
26  
27



1 objected to at trial and raised on appeal.

2 **Ground Four: Defense counsel failed to preclude admission of the mirror from evidence**  
3 **under *Crockett v. State*, *Sorce v. State* and their progeny. The police failed to collect**  
4 **evidence and provide a chain of custody for the mirror.**

5 The foundation laid by the State as to the chain of custody of the physical evidence  
6 regarding the mirror and its acquisition by the police did not satisfy *Burns v. Sheriff*, 92 Nev.  
7 533, 534-35, 554 P.2d 257, 258 (1976). In *Sparks v. State*, 104 Nev. 316, 759 P.2d 180 (1988),  
8 the Nevada Supreme Court held that a conviction may be reversed when the state loses evidence  
9 if the defendant is prejudiced by the loss. In this matter, Steven told his attorney, Mr. Stermitz,  
10 that the mirror that they were putting into evidence was not the correct mirror. Defense counsel  
11 did not object and allowed the mirror to be admitted into evidence. The loss of the actual mirror  
12 prejudiced Steve's defense as the mirror had slight damage and helped substantiate his defense  
13 that there was no damage and no arson. Defense counsel should have forced the State to provide  
14 a chain of custody for where this mirror came from. The State could not have done so as the  
15 mirror was in garbage that Steve was removing from a different location. The mirror was not the  
16 property of Melissa. Steve will testify to that at the hearing on this matter. See *Sorce v. State*, 88  
17 Nev. 350, 352-53, 497 P.2d 902, 903 (1972).

18 The police department's failure to collect the true and actual mirror was grossly negligent.  
19 The State's investigation was so lacking and inept that it denied him due process because it  
20 hampered his defense. *Crockett v. State*, 95 Nev. 859, 603 P.2d 1078 (1979). The State's failure  
21 to gather the real mirror from the crime scene was prejudicial. The mirror was material evidence.  
22 There is a real probability that the jury would have acquitted Steve if the real mirror and its  
23 nominal damage was provided to the jury. *Randolph v. State*, 117 Nev. 970 at 987, 36 P.3d at  
24 435 (citing *Daniels*, 114 Nev. at 267, 956 P.2d at 115).

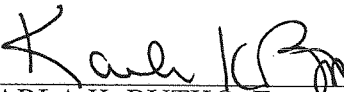
25 The bottom line is that counsel did not investigate adequately into the chain of custody  
26 issue and did not object when his client told him the evidence was wrong.

1 CONCLUSION

2 WHEREFORE, Petitioner prays that the Court grant Petitioner an evidentiary hearing on  
3 the issues raised herein and grant him the relief to which he may be entitled in this proceeding.  
4

5 Dated this 19<sup>th</sup> day of December, 2022.

6  
7 By:

  
KARLA K. BUTKO, Esq.  
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**CERTIFICATE OF SERVICE**

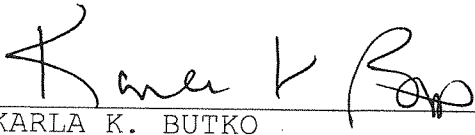
Pursuant to NRCP 5, I certify that I am an employee of Karla K. Butko, 1885 S. Arlington Ave., #105, Reno, NV 89509, and that on this date I caused the foregoing document to be delivered to all parties to this action by

✓ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

2 addressed as follows:

MICHAEL MACDONALD, ESQ.  
ANTHONY GORDON, ESQ.  
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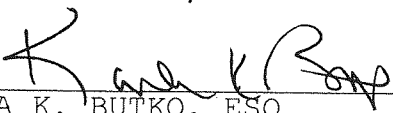
DATED this 19<sup>th</sup> day of December, 2022.

  
KARLA K. BUTKO

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

DATED this 19<sup>th</sup> day of December, 2022.

  
KARLA K. BUTKO, ESQ.

IN THE SUPREME COURT OF THE STATE OF NEVADA

|                       |   |                            |
|-----------------------|---|----------------------------|
| STEVEN LAWRENCE DIXON | ) | Supreme Ct No. 77535       |
|                       | ) | District Ct No. CR 18-6963 |
| Appellant             | ) |                            |
|                       | ) |                            |
| vs.                   | ) |                            |
|                       | ) |                            |
| STATE OF NEVADA       | ) |                            |
|                       | ) |                            |
| Respondent            | ) |                            |

**APPELLANT'S OPENING BRIEF**

---

Appeal from Judgment of Conviction  
Sixth Judicial District Court, County of Humboldt  
The Honorable Michael Montero

---

|                        |                         |
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23 Cooper v. State of Nevada, 134 Nev. Adv. Op 104 (12/27/18)..... 3,4, 5

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Williams v. State, 14 Nev. Adv. Op. 83 (2018)

1 *State Statutes/Rules*

|                        |    |
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| 2 NRAP 4 .....         | ii |
| 3 NRAP 17(B)(1) .....  | ii |
| 4 NRS 177.015(3) ..... | ii |

5  
6 JURISDICTIONAL STATEMENT

7 A judgment of conviction was filed on the 19<sup>th</sup> day of November,  
8 2018. Appellant Fastrack Appendix, hereinafter "AFA", pg 6. The notice of  
9 appeal was filed on the 26<sup>th</sup> day of November, 2018, within the time  
10 allowed by NRAP 4.  
11

12 NRS 177.015(3) grants this court jurisdiction to review the judgment  
13 of conviction appealed from.  
14

15 ROUTING STATEMENT

16  
17 This matter is presumptively assigned to the Court of Appeals,  
18 pursuant to NRAP 17(b)(1).  
19

20 STATEMENT OF ISSUES

21 (1) Is gender a permissible race-neutral explanation to strike a  
22 minority juror; (2) Did the district court conduct an adequate inquiry into the  
23 relevant circumstances before deciding whether Steven Dixon  
24 demonstrated purposeful discrimination and did the district court make an  
25 adequate record; (3) Should the Supreme Court adopt a dual motivation or  
26 different analysis for Batson error related to the challenge of an alternate  
27  
28

1 juror when no alternate juror participates in deliberations; (4) What is the  
2 remedy when a district court fails to hold a Batson hearing

3  
4 STATEMENT OF THE CASE

5 The State of Nevada charged Steven Dixon with child neglect  
6 a gross misdemeanor, and fourth degree arson. AFA, p. 1. Steven Dixon  
7 plead not guilty. A jury found Steven Dixon guilty of fourth degree Arson.  
8 AFA, p. 6.

9  
10 Steven Dixon appealed the conviction.

11  
12 The Supreme Court entered an order directing full briefing.

13  
14 STATEMENT OF THE FACTS

15 Each party was afforded one peremptory challenge to three  
16 potential alternate jurors. AFA, p. 17. Namely, Raul Lara, Shelly Graham,  
17 and Danielle Delong. AFA, p. 17.

18  
19 The State of Nevada exercised its peremptory challenge to  
20 remove Raul Lara. AFA, p. 17. Steven Dixon made a Batson challenge.  
21 AFA, p. 17. Steven Dixon pointed out that Mr. Lara is Hispanic and nothing  
22 he said during voir dire indicated he would be anything other than fair to  
23 both sides. AFA, p. 17

24  
25  
26 After a protracted silence, Steven Dixon suggested "the State's  
27 silence, may be an acquiescence" to the Batson challenge. AFA, p. 17.  
28

1 As the silence continued, the district court asked the State of Nevada  
2 whether they wished to respond. AFA., p. 17.

3  
4 Eventually, the State of Nevada responded that because the  
5 jury was heavily weighted in favor of men, the State of Nevada would like to  
6 have at least a female alternate on it. AFA, p. 18.

7  
8 The State of Nevada continued, "I don't know much about Mr.  
9 Lara; however, I do know enough about Ms. Graham and Ms. Delong. And  
10 I'd like to increase their chance of being on the jury". AFA, p. 18.

11  
12 Thereafter the district court expressed confusion, asking counsel  
13 whether the race of Steven Dixon, rather than the juror, was the basis for  
14 the challenge. AFA., p. 19.

15  
16 The district court found "there was a mutual explanation that was  
17 clear and reasonably specific, and I find that there's no – there's no – the  
18 State is not striking Mr. Lara based on race". AFA.19.

#### 20 21 SUMMARY OF ARGUMENT

22 Gender was not a sufficient race neutral justification for removing a  
23 minority juror. The district court did not conduct an adequate inquiry into  
24 the relevant circumstances before deciding whether the opponent of the  
25 peremptory challenge demonstrated purposeful discrimination nor make an  
26 adequate record. The act of removing a juror due to race, is no less  
27  
28



1 distasteful because the juror doesn't deliberate. Failure to conduct an  
2 adequate Batson inquiry necessitates reversal.

### 3 4 ARGUMENT

5 The use of a peremptory challenge to remove a potential juror of a  
6 cognizable group is a violation of the Equal Protection Clause of the United  
7 States Constitution. Batson v. Kentucky, 476 U.S. 79, 87, 106 S.Ct. 1712,  
8 90 L.Ed.2d 69 (1986); J.E.B. v. Alabama ex rel, T.B., 511 U.S. 127, 140-  
9 143, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994).

12 The party asserting the Batson challenge does not need to share the  
13 same protected group as the excluded juror. Richards v. Relentless, Inc.,  
14 341 F.3d 35, 45 (1<sup>st</sup> Cir. 2003).

16 When an objection has been made to a peremptory challenge, the  
17 district court must resolve the objection utilizing a three-part test. Watson  
18 v. State, 130 Nev. 764, 774. (2014). First, the opponent of the peremptory  
19 strike must make a prima facie showing that a peremptory challenge has  
20 been exercised on the basis of a jurors' membership in a cognizable group.  
21 Cooper v. State of Nevada, 134 Nev. Adv. Op 104 (12/27/18), citing  
22 Williams v. State, 14 Nev. Adv. Op. 83 (2018). Second, if that showing has  
23 been made the proponent of the peremptory strike must present a race-  
24 neutral explanation for the strike. Cooper, 134 Nev. Adv. Op 104  
25  
26  
27  
28

1 (12/27/18), citing Williams v. State, 14 Nev. Adv. Op. 83 (2018). Third, the  
2 district court, after argument, determines whether the opponent of the  
3 peremptory strike has proven purposeful discrimination. Cooper, 134 Nev.  
4 Adv. Op. 104, (12/27/18) citing Williams v. State, 134 Nev. Adv. Op. 83,  
5 429 P.3d 301, 305 (2018).  
6

7  
8 To establish a prima facie case under step one, the opponent of the  
9 peremptory strike must show that the totality of the relevant facts give rise  
10 to an inference of discriminatory purpose<sup>1</sup>. Cooper, citing Watson v. State,  
11 130 Nev. 764, 775, 335 P.3d 157, 166 (2014). The standard for  
12 establishing a prima facie case is not onerous and does not require the  
13 opponent of the strike to meet his or her ultimate burden of proof under  
14  
15

16  
17 <sup>1</sup> The district court is obligated to conduct a sensitive inquiry into all  
18 the relevant circumstances before deciding whether the opponent of a  
19 peremptory challenge has demonstrated purposeful discrimination by a  
20 preponderance of the evidence. Conner v. State of Nevada, 130 Nev.  
21 Adv. Op. 49, 327 P.3d 503 (2014). An adequate discussion of the district  
22 court's reasoning may be critical to the ability to assess the district court's  
23 resolution of any conflict in the evidence regarding pretexts. Kaczmarek v.  
24 State, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004).  
25  
26  
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28

1 Batson. Cooper, citing Watson v. State, 130 Nev. 764, 775 (2014).

2 Rather, the opponent of the strike must provide sufficient evidence to  
3 permit the trier of fact to draw an inference that discrimination has  
4 occurred. Cooper, citing Watson v. State, 130 Nev. Adv. Op. 764 (2014).

5 And, “an inference” is “a conclusion reached by considering other facts and  
6 deducing a logical consequence from them” Cooper, citing Watson v. State,  
7 130 Nev. Adv. Op. 764 (2014).

8  
9 Here, the totality of the relevant facts gives rise to an inference of  
10 discriminatory purpose on the part of the State of Nevada in challenging  
11 juror Lara. Mr. Lara was a racial minority. AFA, p. 17. The remaining two  
12 prospective alternate jurors were not. AFA, p. 17.

13  
14 When confronted with the Batson challenge, a protracted silence  
15 ensued. AFA, p. 17. After prompting by the district court the State of  
16 Nevada admitted knowing nothing of juror Lara, and suggested “gender” as  
17 its nonracial motive in seeking to strike juror Lara. AFA, p. 17.

18  
19 The district court did not conduct an adequate inquiry into the  
20 relevant circumstances before deciding purposeful discrimination did not  
21 exist nor did the district court adequately spell out their reasoning and  
22 determinations. Libby v. State, 115 Nev. 45, 54, 975 P.2d 833, 839 (1999).

23  
24 The district court pointed out that Mr. Dixon was not a racial minority  
25  
26  
27  
28

1 and held “there was a mutual explanation that was clear and reasonably  
2 specific, and I find that there’s no – there’s no – the State is not striking Mr.  
3 Lara based on race”. AFA, p. 19.  
4

5 A different analysis for Batson error should not be adopted for  
6 alternate jurors who do not deliberate. As pointed out by this court, the  
7 harm from discriminatory jury selection extends beyond that inflicted on the  
8 defendant and the excluded juror to touch the entire community. Conner v.  
9 Nevada, 130 Nev. Adv. Op, 49, 327 P.3d 503 (2014), citing Batson. The  
10 very integrity of the courts is jeopardized when a prosecutor discrimination  
11 invites cynicism respecting the jury’s neutrality, and undermines public  
12 confidence in adjudication. Id. citing Miller-El v. Dretke, 545 U.S. 231, 238,  
13 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005). The act of removing a juror due  
14 to race, is no less distasteful because the juror doesn’t  
15 deliberate.  
16  
17  
18  
19

20 Failure to hold a Batson hearing is structural error requiring reversal  
21 and remand for a new trial. Williams, 134 Nev. Adv. Op. 83, 429 P.3d 301,  
22 305 (2018).  
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ATTORNEY CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

7  
283

1 event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.

3 Dated this 3<sup>rd</sup> day of June, 2019.  
4

5 Matt Stermitz  
6

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IN THE SUPREME COURT OF THE STATE OF NEVADA

|                       |   |                            |
|-----------------------|---|----------------------------|
| STEVEN LAWRENCE DIXON | ) | Supreme Ct No. 77535       |
|                       | ) | District Ct No. CR 18-6963 |
| Appellant             | ) |                            |
|                       | ) |                            |
| vs.                   | ) |                            |
|                       | ) |                            |
| STATE OF NEVADA       | ) |                            |
|                       | ) |                            |
| Respondent            | ) |                            |

**APPELLANT'S APPENDIX**

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Appeal from Judgment of Conviction  
Sixth Judicial District Court, County of Humboldt  
The Honorable Michael Montero

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|                        |                         |
|------------------------|-------------------------|
| ATTORNEY FOR APPELLANT | ATTORNEY FOR RESPONDENT |
|------------------------|-------------------------|

Humboldt County Public Defender  
Matt Stermitz, NSB # 3610  
Drawer 309  
Winnemucca, Nevada 89445  
775-623-6550

Humboldt County Dist. Atty  
Michael Macdonald  
Drawer 909  
Winnemucca, Nevada 89445  
775-623-6363

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NO. CR 18-6963

FILED

2018 JAN 12 AM 10:36

JAMI RAE SPERO  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

STEVEN LAWRENCE DIXON  
DOB: 01/29/1977,

Defendant(s) ./

MICHAEL MACDONALD, District Attorney of Humboldt County,  
Nevada, in the name and by the authority of the State of Nevada,  
informs the Court:

COUNT I

ARSON-FOURTH DEGREE,  
A CATEGORY D FELONY  
AS DEFINED BY NRS 205.025

That the Defendant did willfully and maliciously  
attempt to set fire to or attempt to burn or to aid,  
counsel or procure the burning of an of the buildings  
or property, or who commits any act preliminary  
thereto or in furtherance thereof, in the following  
manner, to-wit: That on or about the 13th day of

1 December, 2017, at or near the location of 3465 Ivan  
2 Drive, County of Humboldt, State of Nevada, the  
3 Defendant did willfully and maliciously attempt to set  
4 fire to and/or attempt to burn and/or attempt to cause  
5 to be burned the mirror and/or wall of 3465 Ivan  
6 Drive, a dwelling house and/or structure and/or mobile  
7 home.

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COUNT II

CHILD ABUSE, NEGLECT, OR ENDANGERMENT,  
A GROSS MISDEMEANOR  
AS DEFINED BY NRS 200.508.

That the Defendant did knowingly, willfully and unlawfully cause a child, who is less than eighteen (18) years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as a result of the abuse or neglect in the following manner, to-wit: That on or about the 13th day of December, 2017, at or near the location of 3465 Ivan Drive, County of Humboldt, State of Nevada, the Defendant a person who is responsible for the safety and welfare of a child pursuant to NRS 432B.130 permitted or allowed that child to wit; a known but unnamed 9 year old juvenile to be placed in a situation where the child may suffer physical pain or mental suffering as a result of abuse or neglect in the following manner to-wit; by throwing a beer bottle at a vehicle that the child was in and/or setting fire to the dwelling that the child was in.

All of which is contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Nevada.

That the names of all witnesses who will testify for the State of Nevada in said action that are known to the District Attorney at the time of the filing of this Information are

1 listed with addresses on the annexed Exhibit "A" and the names  
2 of all other witnesses who will testify for the State of Nevada  
3 that become known to the District Attorney before time of trial  
4 will be endorsed hereon by subsequent Exhibit.

5  
6 Furthermore, pursuant to NRS 239B.030., the undersigned hereby  
7 affirms this document does not contain the social security  
8 number of any person.



9  
10 RICHARD HAAS  
11 Deputy District Attorney  
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EXHIBIT "A"  
INFORMATION

Names and Addresses Known to the  
District Attorney at the time of  
Filing of the Information

DEPUTY MARIO MURILLO  
Humboldt County Sheriff's Office  
Winnemucca, NV 89445

SHEILA MARIE SWEARINGEN  
3465 Ivan Drive  
Winnemucca, NV 89445

JASON MAYDEN  
3465 Ivan Drive  
Winnemucca, NV 89445

MELISSA MAYDEN  
3465 Ivan Drive  
Winnemucca, NV 89445

JORDAN ISIAHA MAYDEN  
3465 Ivan Drive  
Winnemucca, NV 89445

HUMBOLDT COUNTY DISTRICT ATTORNEY  
P.O. Box 909  
Winnemucca, Nevada 89446

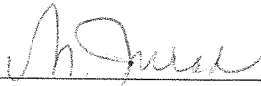
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of  
the Humboldt County District Attorney's Office, and that on the  
12<sup>TH</sup> day of January, 2018, I delivered a true copy of the

**INFORMATION to:**

MATT STERMITZ  
Humboldt County Public Defender  
Humboldt County Courthouse  
Winnemucca, NV 89445

- ( ) U.S. Mail
- ( ) Certified Mail
- ( ) Hand-delivered
- (☒) Placed in Dct/Jct Box
- ( ) Via Facsimile

  
\_\_\_\_\_

Case No. CR 18-6963

Dept. No. 2

FILED

2018 NOV 19 PM 4:01

CLERK OF DISTRICT COURT

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

JUDGMENT OF CONVICTION

STEVEN LAWRENCE DIXON,

Defendant. /

WHEREAS, on the 16<sup>th</sup> day of January, 2018, the Defendant entered his plea of not guilty to the charge of Count I - ARSON- FOURTH DEGREE, a Category D Felony, and Count II - CHILD ABUSE, NEGLECT OR ENDANGERMENT, a Gross Misdemeanor, the matter having been submitted before the Honorable Michael R. Montero.

At the time Defendant entered the plea of not guilty, this Court informed the Defendant of the privilege against compulsory self-incrimination, the right to a speedy trial, the right to a trial by jury, the right to compulsory process to compel witnesses to testify on behalf of the Defendant and the right to confront the accusers. That after being so advised, the Defendant stated that these rights were understood and still desired this Court to accept the plea of not guilty.

1 The Court having accepted Defendant's plea of not guilty, set the date of the 2<sup>nd</sup> day of  
2 May, 2018, at the hour of 9:00 a.m. as the date and time for jury trial. The jury trial was  
3 rescheduled to the 19<sup>th</sup> day of September, 2018, at the hour of 9:00 a.m. On the 20<sup>th</sup> day of  
4 September, 2018, Defendant was found guilty of Count I - ARSON- FOURTH DEGREE,  
5 charged within the Information, filed on the 12<sup>th</sup> day of January, 2018. The Court set the 13<sup>th</sup>  
6 day of November, 2018, at the hour of 9:30 a.m. as the date and time for Sentencing.

7 The Defendant having appeared on the 13<sup>th</sup> day of November, 2018, represented by  
8 counsel and Defendant having been given the opportunity to exercise the right of allocution and  
9 having shown no legal cause why judgment should not be pronounced at this time.

10 The above-entitled Court having pronounced STEVEN LAWRENCE DIXON guilty of  
11 Count I - ARSON- FOURTH DEGREE, a Category D Felony, in violation of NRS 205.025 on  
12 the 13<sup>th</sup> day of November, 2018. The Defendant was thereby ordered by the Court to pay a  
13 \$25.00 administrative fee, and a \$3.00 DNA collection fee, and a \$1,500.00 public defender fee,  
14 payable to the Humboldt County Clerk of the Court. The Defendant was further ordered to serve  
15 a minimum term of twelve (12) months, with a maximum term of thirty-four (34) months in the  
16 Nevada Department of Corrections, with credit for time served of twenty-two (22) days.

17 Furthermore, bail, if any, is hereby exonerated.

18 MATTHEW STERMITZ, Humboldt County Public Defender, represented the Defendant  
19 during all stages of the proceedings;

20 MICHAEL MACDONALD, Humboldt County District Attorney or his designated agent,  
21 represented the State of Nevada at all stages of these proceedings.

22 Therefore, the clerk of the above-entitled Court is hereby directed to enter this Judgment  
23 of Conviction as a part of the record in the above-entitled matter.

24 //  
//  
//

293 7

1 Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not  
2 contain the social security number of any person.

3 DATED this 19<sup>th</sup> day of November, 2018, in the City of Winnemucca, County  
4 of Humboldt, State of Nevada.



MICHAEL R. MONTERO  
DISTRICT COURT JUDGE



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Sixth Judicial  
3 District Court, and that on the 19<sup>th</sup> day of November, 2018, I delivered at Winnemucca,  
4 Nevada, by the following means, a copy of the **JUDGMENT OF CONVICTION** to:

5 Humboldt County District Attorney's Office  
6 501 S. Bridge Street  
7 Winnemucca, Nevada 89445  
8 (DCT Box)

9 Matthew Stermitz  
10 Humboldt County Public Defender  
11 Humboldt County Courthouse  
12 Winnemucca, Nevada 89445  
13 (DCT Box)

14   
15 BETSY GUERRERO  
16 Administrative Assistant  
17  
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FILED

2018 DEC 28 AM 9:29

TAMI RAE SPERO  
DIST. COURT CLERK

4185

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

**COPY**

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (Partial Proceedings)  
WEDNESDAY, SEPTEMBER 19, 2018

## APPEARANCES:

For the Plaintiff: Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant: Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By: Leslie R. Rosenthal, CCR #819

1 -oOo-

2 RENO, NEVADA, WEDNESDAY, SEPTEMBER 19, 2018, 10:55 A.M.

3 -oOo-

4 THE COURT: All right. Very good.

5 For the record, the prosecution and the  
6 defense have both passed for cause.

7 So ladies and gentlemen, what that means is  
8 now the attorneys get to exercise their peremptory  
9 challenges; they get to exercise their five challenges to  
10 this panel.

11 So -- and when we do this, I'm going to  
12 excuse you, I'm going to let you go back out into the  
13 hallway, so everybody has to leave the courtroom for a  
14 few moments. We're going to do that outside of your  
15 presence.

16 When you come back in -- when you come back  
17 in the courtroom, just take a seat in the back, okay?  
18 And we will call up here only those 13 jurors who will be  
19 seated for this trial. Okay?

20 So I don't expect this will last more than  
21 about 15 minutes, so you're welcome to, you know, roam to  
22 the -- maybe to the ramp outside, but don't go further  
23 than that. Okay? And I'll have Deputy Sjoblom kind of  
24 start rounding people up as soon as we're done here in

1 the courtroom.

2 Again, during this break, please do not  
3 discuss this case amongst yourselves or with anyone else.  
4 Should anyone approach you and attempt to discuss this  
5 case with you, immediately remove yourself from that  
6 situation, and at the first possible opportunity notify  
7 Deputy Sjoblom.

8 Do not do any independent investigation of  
9 the law or the facts of this case. Do not read, watch,  
10 listen to any news accounts of this case, should there be  
11 any, and do not form or express any opinion regarding the  
12 guilt or innocence of the defendant.

13 With that, I think let's go ahead and go into  
14 recess. Oh, that's what I was going to say, that's why I  
15 hesitated for a moment. Do I just have two of you? Two  
16 of you? Yes, stay for the next 15 minutes, thank you,  
17 and then I will excuse you. Okay. You're all excused  
18 for a moment. Thank you.

19 (Jury excused.)

20 THE COURT: Let's go back on the record in  
21 Case CR18-6963, State of Nevada, plaintiff, versus Steven  
22 Lawrence Dixon, defendant.

23 Let the record reflect the presence of the  
24 defendant and counsel in a meeting outside the presence

1 of the jury veneer so that counsel may exercise their  
2 preemptory challenges.

3 And just so that to make sure we're clear on  
4 the numbering, when I seat a new juror, they go to the  
5 end of the list. So juror number 20 -- let me renumber  
6 them really quickly.

7 One will be Asher. Two will be Herrera.  
8 Three is Hawkins. Four is Kenney. Five is Jackson. Six  
9 is Gilboy. Seven is Schaff. Reynosa is eight. Nine is  
10 Andrade. 10 is Brissenden. 11 is Burris. 12 is  
11 McClellan. 13 is Delong. 14 is Young. 15 is Ogburn.  
12 16 is Teede. 17 is McMillan. 18 Ellifritz. Dennis is  
13 19. Joe Nalivka is 20. Raul Lara is 21. Shelly Graham  
14 will be 22. And Danielle Delong is 23.

15 With that, so Mr. Stovall, are you prepared  
16 to exercise your first peremptory challenge?

17 MR. STOVALL: Yes, Your Honor, I just need to  
18 ask for the Court's indulgence. If you could go a little  
19 slow --

20 THE COURT: Pardon me?

21 MR. STOVALL: Through this process.

22 THE COURT: Okay. You need a moment.

23 MR. STOVALL: Slow down the process.

24 THE COURT: Yeah. Go ahead.

1 MR. STOVALL: Thank you.

2 THE COURT: Take your time. What we'll do  
3 is --

4 MR. STOVALL: Your Honor, we can go forward  
5 right now, just the whole process.

6 THE COURT: Okay.

7 MR. STOVALL: Sure.

8 THE COURT: I'll go as slow as we need to.  
9 Are you ready to exercise your first?

10 MR. STOVALL: Yes, Your Honor.

11 THE COURT: You may.

12 MR. STOVALL: Number five, Tyler Jackson.

13 THE COURT: Okay. The State exercises its  
14 first preemptory challenge as to juror number five, Tyler  
15 Jackson. Okay.

16 Mr. Stermitz, you may exercise your first  
17 preemptory.

18 MR. STERMITZ: Susan Hawkins.

19 THE COURT: Okay. The defense exercises its  
20 first preemptory challenge as against jury number three,  
21 Susan Hawkins.

22 MR. STOVALL: Thank you, Your Honor. Number  
23 14, Alex Young.

24 THE COURT: Okay. The State exercises its

1 second preemptory challenge as against juror number 14,  
2 Alex Young.

3 Mr. Stermitz?

4 MR. STERMITZ: Shauna Gilboy.

5 THE COURT: And the defense exercises its  
6 second preemptory challenge against juror number six,  
7 Shauna Gilboy.

8 Mr. Stovall, take your time, if you need some  
9 more time.

10 MR. STOVALL: Quick question, Your Honor.  
11 Can I get an out of order? We did 14. Can I bounce  
12 back?

13 THE COURT: Oh, yeah. You can go anywhere  
14 you want.

15 MR. STOVALL: Okay.

16 THE COURT: You've got the whole group.

17 MR. STOVALL: Thank you, Your Honor.

18 Your Honor, I'll -- number 16, Daniel Teede.

19 THE COURT: Okay. The State exercises its  
20 third preemptory challenge as to juror number 16, Daniel  
21 Teede.

22 Mr. Stermitz?

23 MR. STERMITZ: Ricky McClellan.

24 THE COURT: The defense exercises its third

1 preemptory challenge against number 12, Rick -- or Ricky  
2 McClellan.

3 So the State may exercise its fourth.

4 MR. STOVALL: Your Honor, number four, Evelyn  
5 Kenney.

6 THE COURT: The State exercises its fourth  
7 preemptory challenge as to juror number four, Evelyn  
8 Kenney.

9 Defense may exercise its fourth preemptory.

10 MR. STERMITZ: Patricia Ellifritz.

11 THE COURT: Defense exercise its fourth  
12 preemptory challenge as to juror number 18, Patricia  
13 Ellifritz.

14 So, counsel, your jury will consist of the  
15 following:

16 Juror number one will be Louis Asher.

17 Two will be Edward Herrera.

18 Three will be Samuel Schaaf.

19 Four will be Esperanza Reynoso.

20 Number five will be Eva Andrade.

21 Number six will be Thomas Brissenden.

22 Seven will be Sherry Burris.

23 Eight will be Todd Delong.

24 Nine will be Rena Ogburn.



1 Number ten will be Wendy McMillan.

2 11 will be Tyler Dennis.

3 And 12 will be Joe Nalivka.

4 MR. STERMITZ: Three to spare.

5 THE COURT: Yes, with three potential  
6 alternates, number 21, Raul Lara, 22, Shelly Graham, 23  
7 Danielle Delong.

8 State, you may exercise your preemptory as to  
9 alternates.

10 MR. STOVALL: 21, Raul Lara.

11 THE COURT: The State exercises its one  
12 alternate preemptory as to juror number 21, Raul Lara.

13 Mr. Stermitz?

14 MR. STERMITZ: We would make a Batson  
15 challenge. Mr. Lara is obviously Hispanic and I  
16 certainly didn't hear him say anything that would  
17 indicate he would be anything other than fair to both  
18 sides. By the State's silence, maybe an acquiescence.

19 THE COURT: Mr. Stovall, do you wish to  
20 respond to Mr. Stermitz?

21 MR. STOVALL: Yes, Your Honor. Your Honor,  
22 at the moment the jury is heavily weighted in favor of  
23 men. I'd like to have at least a female alternate on it.  
24 The other two, Ms. Graham and Ms. Delong, I think would

1 be favorable.

2 I don't know much about Mr. Lara; however, I  
3 do know enough about Ms. Graham and Ms. Delong. And I'd  
4 like to increase their chances of being on the jury,  
5 obviously, it has nothing to do with race.

6 MR. STERMITZ: Apparently it has something to  
7 do with gender. It's a slippery slope to the top.

8 THE COURT: Well, Mr. Stermitz, you've made a  
9 Batson challenge for race. Mr. Stovall has presented his  
10 explanation for that challenge. Do you wish to further  
11 respond?

12 MR. STERMITZ: Well, my response is that he's  
13 used gender, which is an impermissible basis in itself.  
14 So, you know, that's not permissible either.

15 THE COURT: Mr. Stermitz, I'm confused by  
16 this. I guess I have to ask, are you claiming because of  
17 your client's race that a --

18 MR. STERMITZ: No.

19 THE COURT: -- juror should not be stricken  
20 based on their race?

21 MR. STERMITZ: Just has to do with the juror  
22 himself.

23 THE COURT: The juror himself.

24 MR. STERMITZ: It doesn't attach to my

1 client's race or gender. Our allegation was that it was  
2 based on the fact that he was Hispanic, and could be  
3 because there didn't seem to be any disqualifiers in the  
4 voir dire.

5 And his response was, well, it's not race  
6 based, it's gender based. And gender based is not a --  
7 that's also a Batson violation. So I think Mr. Lara can  
8 stand, or you've got error.

9 THE COURT: You can take that up, if you  
10 want. But I'm going to find there was a mutual  
11 explanation that was clear and reasonably specific, and I  
12 find that there's no -- there's no -- the State is not  
13 striking Mr. Lara based on his race.

14 MR. STERMITZ: Just his gender. We would --

15 THE COURT: Those are your words, not mine.

16 Mr. Stermitz, do you wish to exercise another  
17 preemptory challenge?

18 MR. STERMITZ: Yes. Danielle Delong, if  
19 she's still a juror.

20 THE COURT: Okay. So defense exercises its  
21 preemptory challenge as to the alternates against juror  
22 number 23, Danielle Delong.

23 MR. STERMITZ: It's not gender based. She's  
24 self-employed, and has a business she has to run, and

1 probably is not going to be focused on this case.

2 THE COURT: So your alternate will be Shelly  
3 Graham, number -- juror number 13. Okay.

4 Let's go off the record for a moment.

5

6 (Partial proceedings concluded.)

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1 STATE OF NEVADA )  
2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 19th day of December, 2018.

22 *Leslie R. Rosenthal* /s/  
23 /s/ Leslie R. Rosenthal  
24 Leslie R. Rosenthal, CCR #819

Case No. CV0023141

Dept. No. 2

FILED

2023 JUL 21 PM 12:52

TAMI RAE SPERO  
DISTRICT COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF  
STATE OF NEVADA IN AND FOR THE COUNTY OF HUMBOLDT

STEVEN DIXON,

Petitioner,

vs.

WILLIAM REUBART, Warden; and  
THE STATE OF NEVADA

Respondent./

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on July 21, 2023, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this notice is mailed to you. This notice was mailed on July 21, 2023.

DATED July 21, 2023

TAMI RAE SPERO, CLERK OF THE COURT

(SEAL)

By Marian Diaz  
Deputy Clerk

CASE NO. CV0023141

DEPT. NO. II

FILED

2023 JUL 21 AM 11:32

TAMARA SPERO  
DIST. COURT CLERK

MD(a2)

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

-o0o-

STEVEN DIXON,

Petitioner,

vs.

WILLIAM REUBART, Warden; and  
THE STATE OF NEVADA,

Respondents.

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS  
(POSTCONVICTION)**

BEFORE THIS COURT is Petitioner, Steven Dixon, by and through his counsel of record, Karla K. Butko, Esq., and his *Petition for Writ of Habeas Corpus (Post-Conviction)* filed on July 11, 2022. Petitioner also filed an *Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing* on July 11, 2022.

On July 12, 2022, the Court entered an *Order to Respond* directing the Humboldt County District Attorney to answer or otherwise respond to the Petition within forty-five (45) days.

On July 20, 2022, the Court entered an *Order Appointing Counsel Pursuant to NRS 34.750(1)* appointing Karla K. Butko, Esq. as counsel for Petitioner in these proceedings.

On August 31, 2022, a *Stipulation and Order for Extension of Time re: Petitioner's*

1 *Supplemental Petition for Writ of Habeas Corpus (Postconviction)* was filed by the parties.  
2 On September 12, 2022, the Court entered an *Order Granting Extension of Time re:*  
3 *Petitioner's Supplemental Petition for Writ of Habeas Corpus (Postconviction)* allowing  
4 Petitioner ninety (90) days from October 28, 2022 to file a supplemental petition. The State  
5 was to file a responsive pleading within forty-five (45) days after the filing of the  
6 supplemental petition.

7 On December 22, 2022, Petitioner timely filed his *Supplemental Petition for Writ of*  
8 *Habeas Corpus (Postconviction)*. The State failed to file a responsive pleading.

9 On April 27, 2023, this matter was submitted to the Court for decision. Petitioner  
10 requests an evidentiary hearing.

#### 11 APPLICABLE LAW

12 The Sixth Amendment guarantees a criminal defendant the right to effective  
13 assistance of counsel at trial. U.S. Const. Amend. VI. The U.S. Supreme Court has held that,  
14 to show ineffective assistance of counsel, first, a petitioner must show that counsel's  
15 performance was so deficient that it "fell below an objective standard of reasonableness" and  
16 second, that but for such deficient performance, a different result would have been had at  
17 trial. *Strickland v. Washington*, 466 U.S. 668, 669, 104 S.Ct. 2052, 2055 (1984). The  
18 petitioner must demonstrate the underlying facts by a preponderance of the evidence. *Means*  
19 *v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

20 "The proper measure of attorney performance remains simply reasonableness under  
21 prevailing professional norms." *Id.* at 688, 2065. Significantly, "Effective counsel does not  
22 mean errorless counsel, but rather counsel whose assistance is '(w)ithin the range of  
23



1 competence demanded of attorneys in criminal cases.” *Jackson v. Warden, Nevada State*  
2 *Prison*, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (citing *McMann v. Richardson*, 397 U.S.  
3 759, 771, 90 S.Ct. 1441, 1449 (1970)). Trial counsel must “make a sufficient inquiry into the  
4 information that is pertinent to his client’s case” and “make a reasonable strategy decision  
5 on how to proceed with his client’s defense.” *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d  
6 278, 280-81 (1996). Strategic decisions are “virtually unchallengeable absent extraordinary  
7 circumstances.” *Id.* (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (citing  
8 *Strickland, supra*, at 691, 2066-67)).

9 If a petitioner shows deficient performance, (s)he must then establish prejudice, which  
10 requires a showing “that there is a reasonable probability that, but for counsel’s  
11 unprofessional errors, the result of the proceeding would have been different. A reasonable  
12 probability is a probability sufficient to undermine confidence in the outcome” *Strickland,*  
13 *supra*, at 694, 2068.

## 14 ANALYSIS

15 I. Whether trial counsel was ineffective at the jury instruction stage by failing  
16 to ensure that the jury was adequately instructed on voluntary intoxication to negate  
17 specific intent element of malice, and the lesser included offense of destruction of  
18 property under NRS 206.310.

### 19 A. Voluntary Intoxication Instruction

20 Petitioner first contends that trial counsel was ineffective at the jury instruction stage  
21 by failing to include a voluntary intoxication instruction that would negate the specific intent  
22 element of malice for COUNT I – FOURTH DEGREE ARSON, a Category D felony, as  
23

1 defined by NRS 205.025.<sup>1</sup>

2 Petitioner argues that

3 Every witness testified that Mr. Dixon had been drinking alcohol ...  
4 [and] [h]is conduct after starting the mirror on fire was to assume it  
5 would go out and he sat on the couch. He was drunk. This negates the  
6 specific intent of malicious behavior. The jury should have been  
7 instructed on voluntary intoxication. A new trial is warranted.  
8 Supplemental Petition, *Dixon v. Reubart*, Case No. CV0023141  
9 (December 22, 2022).

10 First, trial counsel's failure to include a voluntary intoxication instruction fell below  
11 an objective standard of reasonableness. It is unreasonable under prevailing professional  
12 norms in a criminal case to ignore the fact that Petitioner was intoxicated at the time of the  
13 crime, and to not include an instruction that would negate malicious intent. Multiple  
14 witnesses testified that Petitioner was intoxicated at the time of the crime. Thus, trial  
15 counsel's performance was so deficient that it fell below an objective standard of  
16 reasonableness, and the first prong of *Strickland* is met.

17 Nevertheless, Petitioner fails to show that but for trial counsel's deficient  
18 performance, a different result would have occurred at trial. Petitioner contends that a  
19 voluntary intoxication instruction would have negated the malicious intent element of fourth  
20 degree arson, which would have prevented the State from meeting its burden, and produced  
21 a different result at trial. Supplemental Petition, *supra*, at 9 (December 22, 2022).

22 <sup>1</sup> NRS 205.025 Fourth degree.

23 1. A person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure  
24 the burning of any of the buildings or property mentioned in NRS 205.010, 205.015 and 205.020, or who commits any  
act preliminary thereto or in furtherance thereof, is guilty of arson in the fourth degree which is a category D felony and  
shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than \$5,000.

1 However, the Court is unconvinced that a voluntary intoxication instruction would  
2 have produced a different result. Significantly, Petitioner's rendition of facts in his  
3 *Supplemental Petition* are limited. Supplemental Petition, *supra*, at 5-6 (December 22,  
4 2022). It appears that Petitioner had been arguing with his wife, drank several alcoholic  
5 beverages, set fire to a plastic mirror on the wall in his home, and then sat on the couch  
6 expecting the fire to extinguish. *Id.* at 9. Petitioner contends that the damage to the mirror  
7 was minor, but the mirror was not collected as evidence. *Id.* at 6. Petitioner admits that he  
8 intended to harm his wife's property, but not to burn down the house. *Id.* at 8.

9 To prove fourth degree arson, the State must show beyond a reasonable doubt that  
10 Petitioner willfully and maliciously attempted to set fire to, or attempted to burn or to aid,  
11 counsel, or procure the burning of any of the buildings or property mentioned in NRS  
12 205.010, 205.015 and 205.020, or who commits any act preliminary thereto or in furtherance  
13 of. NRS 205.025.

14 Malicious intent "import[s] an evil intent, wish or design to vex, annoy o injure  
15 another person. Malice may be inferred from an act done in willful disregard of the rights of  
16 another, or an act done without just cause or excuse, or an act or omission of duty betraying  
17 a willful disregard of social duty." NRS 193.0175.

18 Although it was deficient performance for counsel to not include a voluntary  
19 intoxication instruction, the Court is unconvinced that the presence of such an instruction  
20 would have produced a different result at trial. It is clear that Petitioner set fire to a mirror  
21 hanging on the wall in Petitioner's home, and that Petitioner was intoxicated at the time. Had  
22 trial counsel introduced an involuntary intoxication instruction, the jury would have been  
23

1 able to consider Petitioner's intoxication in its deliberation of malicious intent.

2 NRS 193.220 states that

3 **No act committed by a person while in a state of voluntary**  
4 **intoxication shall be deemed less criminal by reason of his**  
5 **condition, but whenever the actual existence of any particular purpose,**  
6 **motive or intent is a necessary element to constitute a particular species**  
7 **or degree of crime, the fact of his intoxication may be taken into**  
8 **consideration in determining the purpose, motive or intent.**  
9 (emphasis added).

10 A plain reading of NRS 193.220 shows that voluntary intoxication does not *negate*  
11 the malicious intent element as Petitioner suggests. Supplemental Petition, *supra*, at 9  
12 (December 22, 2022). Instead, the jury *may* have considered Petitioner's intoxication in  
13 determining malicious intent. The jury was not required to consider it. There was evidence  
14 presented showing that Petitioner was intoxicated at the time of the crime. The jury was  
15 therefore fully aware of Petitioner's condition when he set fire to the mirror, and still found  
16 malicious intent. Petitioner thus fails to show that the inclusion of a voluntary intoxication  
17 instruction would have changed the result at trial.

18 Based on the foregoing, Petitioner fails to meet the second prong of *Strickland*, and  
19 Petitioner's claim regarding voluntary intoxication must fail.

20 *B. Lesser-Included Offense of Destruction of Property*

21 Petitioner next contends that trial counsel was ineffective by failing to include a  
22 lesser-included offense instruction on destruction of property under NRS 206.310, and that  
23 Petitioner suffered prejudice because he could have been convicted of a misdemeanor rather  
24 than a felony. Supplemental Petition, *supra*, at 9 (December 22, 2022).

First, the Court finds trial counsel's failure to include a lesser-included offense

1 instruction to fall below an objective standard of reasonableness. It is within prevailing  
2 professional norms for the defense in a criminal case to include lesser-included offense  
3 instructions for the jury to consider. Although effective counsel is not errorless counsel, the  
4 inclusion of a lesser-included offense instruction is especially reasonable when Petitioner  
5 claims that he did not possess the necessary malicious intent to burn down the house, and  
6 only intended to destroy his wife's property.<sup>2</sup> Thus, trial counsel's performance fell below  
7 an objective standard of reasonableness, and Petitioner meets the first prong of *Strickland*.

8 Nevertheless, Petitioner fails to show that but for trial counsel's deficient  
9 performance, a different result would have occurred at trial. The Court previously found that  
10 Petitioner's intoxication was known to the jury and may have been considered in its  
11 deliberation regarding malicious intent. The jury rendered a verdict of guilty on fourth degree  
12 arson, which requires a willful and malicious attempt to set fire to any dwelling house. Injury  
13 to other property under NRS 206.310 only requires that a person willfully or malicious  
14 destroy or injure any personal property of another.

15 Here, Petitioner fails to present any evidence on the damage that occurred to the house  
16 or what efforts Petitioner made to extinguish the fire. *See* Supplemental Petition, *supra*, at  
17 8-9 (December 22, 2022). Nor does Petitioner mention what evidence the State presented to  
18 establish that Petitioner's intent to set fire to the house. *Id.* Petitioner thus fails to show the  
19 underlying facts of his claim by a preponderance of the evidence, and the Court is without  
20

21 <sup>2</sup> NRS 206.310 Injury to other property.

22 1. Every person who shall willfully or maliciously destroy or injure any real or personal property of another, for  
23 the destruction or injury of which no special punishment is otherwise specially prescribed, shall be guilty of a public  
24 offense proportionate to the value of the property affected or the loss resulting from such offense.

1 sufficient evidence to determine whether the inclusion of a lesser-included offense  
2 instruction would have produced a different result at trial. Petitioner thus fails to meet the  
3 second prong of *Strickland*, and his ineffective assistance claim must be denied in this regard.

4 **II. Whether trial counsel was ineffective by failing to object to prior bad act**  
5 **evidence and by failing to ask for a limiting instruction on the proper use of prior bad**  
6 **act evidence under NRS 48.045, and whether appellate counsel was ineffective by**  
7 **failing to raise the prior bad act evidence issue on appeal.**

8 *a. Failing to Object to Prior Bad Act Evidence at Trial*

9 First, Petitioner contends that trial counsel was ineffective by failing to object to the  
10 following evidence: (1) that Petitioner was facing charges for physically harming his son,  
11 (2) Petitioner's wife's testimony that she ran from Petitioner because of past experiences, (3)  
12 that Petitioner did not buy his wife's interest in the house post-incident, (4) Petitioner's  
13 extramarital affair with another woman, and (5) alleged threats made by Petitioner after the  
14 incident. Supplemental Petition, *supra*, at 11 (December 22, 2022). Petitioner argues that he  
15 simply lost a "popularity contest" with the jury and was convicted for his lifestyle and  
16 propensity to commit the crime rather than for actually committing the crime itself. *See id.*

17 Considerably, effective counsel does not mean errorless counsel. *Jackson, supra*. In  
18 order to be ineffective, trial counsel's failure to object to the prior bad act evidence listed  
19 herein must fall outside the range of competence demanded of attorneys in criminal cases.  
20 *Id.*

21 Here, Petitioner fails to show that trial counsel not objecting to the prior bad act  
22 evidence was not a strategic decision that is virtually unchallengeable under *Doleman, supra*.  
23  
24

1 NRS 48.045(2) states that "Evidence of other crimes, wrongs or acts is not admissible to  
2 prove the character of a person in order to show that the person acted in conformity therewith.  
3 It may, however, be admissible for other purposes, such as proof of motive,  
4 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or  
5 accident." (emphasis added). It is highly plausible that the State elicited the prior bad act  
6 evidence to show Petitioner's motive, opportunity, or intent, and trial counsel's failure to  
7 object was based on knowledge of its admissibility under NRS 48.045(2).

8 Nevertheless, even if this Court found that trial counsel's failure to object fell below  
9 an objective standard of reasonableness, Petitioner cannot meet the second prong of  
10 *Strickland*, because Petitioner cannot show that a different result would have occurred but  
11 for the admission of the prior bad act evidence.

12 In *Ledbetter v. State*, the Nevada Supreme Court held that "the nature and quantity of  
13 the evidence supporting the defendant's conviction beyond the prior act evidence itself" is  
14 paramount to a decision whether admittance of prior bad act evidence is prejudicial. 122  
15 Nev. 252, 262 n. 16, 129 P.3d 671, 678 (2006). "Given the overall strength of the State's  
16 case against Ledbetter, we conclude that the danger that the admission of this evidence was  
17 unfairly prejudicial was minimal." *Id.* at 263, 679.

18 In this case, any prejudice resulting from admission of Petitioner's other criminal  
19 proceeding, any domestic violence, infidelity, or threats after the incident is minimal in light  
20 of the nature and quantity of the evidence supporting Petitioner's conviction. Petitioner and  
21 his wife had been arguing, Petitioner became intoxicated, set a mirror aflame in the home,  
22 and sat on the couch without intending to extinguish it. The evidence presented was enough  
23  
24

1 for the jury to find Petitioner guilty of fourth degree arson under the elements in NRS  
2 205.025.

3 Based on the foregoing, the Court finds that the prior bad act evidence was minimal  
4 in light of the evidence supporting the conviction. Thus, Petitioner fails to show that the prior  
5 bad act evidence was prejudicial, and that a different result would have occurred at trial.  
6 Petitioner therefore fails to meet the second prong of *Strickland*, and his ineffective  
7 assistance claim must fail in this regard.

8 *b. Failing to Ask for a Limiting Instruction*

9 Similar to the analysis above, Petitioner fails to show that trial counsel's failure to ask  
10 for a limiting instruction was not a strategic decision that is virtually unchallengeable.  
11 *Doleman, supra*. It is plausible that trial counsel believed that the prior bad act evidence was  
12 admissible under NRS 48.045 as evidence of motive, opportunity, or intent, and any  
13 objection or request for a limiting instruction would be futile or unnecessary. Even if this  
14 Court found that trial counsel's failure to request a limiting instruction fell below an objective  
15 standard of reasonableness, Petitioner cannot show that prejudice resulted because the prior  
16 bad act evidence was minimal in light of the evidence supporting the conviction. *Ledbetter,*  
17 *supra*. Therefore, Petitioner fails to meet the *Strickland* standard, and his ineffective  
18 assistance claim must be denied in this regard.

19 *c. Appellate Counsel's Failure to Raise the Prior Bad Act Evidence Issue on Appeal*

20 Next, Petitioner claims that appellate counsel was ineffective by failing to raise the  
21 improper admission of prior bad act evidence on appeal. Supplemental Petition, *supra*, at 9-  
22 10 (December 22, 2022).



1 In *Kirksey v. State*, the Nevada Supreme Court held that

2  
3 The constitutional right to effective assistance of counsel extends to  
4 direct appeal. A claim of ineffective assistance of appellate counsel is  
5 reviewed under the 'reasonably effective assistance' test set forth in  
6 *Strickland v. Washington* ... Effective assistance of appellate counsel  
7 does not mean that appellate counsel must raise every non-frivolous  
8 issue. An attorney's decision not to raise meritless issues on appeal is  
9 not ineffective assistance of counsel. **To establish prejudice based  
10 on the deficient assistance of appellate counsel, the defendant  
11 must show that the omitted issue would have a reasonable  
12 probability of success on appeal.** 112 Nev. 980, 998, 923 P.2d 1102,  
13 1113-14 (1996) (emphasis added).

14 Here, the Court is uncertain what issues were raised on appeal. Petitioner does not  
15 assert which issues were raised, nor does he provide a copy of the appeal. *See* Supplemental  
16 Petition, *supra* (December 22, 2022). Considerably, appellate counsel may have chosen not  
17 to appeal the prior bad act issue because it was meritless under the provisions of NRS  
18 48.045—prior bad acts may be introduced as evidence of motive, opportunity, or intent.  
19 Appellate counsel's decision not to raise a meritless issue on appeal does not amount to  
20 ineffective assistance. *Kirksey, supra*.

21 Furthermore, Petitioner fails to show that the omitted issue would have a reasonable  
22 probability of success on appeal. Pursuant to NRS 178.598, "Any error, defect, irregularity  
23 or variance which does not affect substantial rights shall be disregarded."

24 In deciding whether error is harmless or prejudicial, appellate court  
must consider such factors as whether the issue of innocence or guilty  
is close, the quantity and character of the error, and the gravity of the  
crime charged. *Schoels v. State*, 115 Nev. 33, 35, 975 P.2d 1275, 1276  
(1999). This court must determine that any errors are harmless beyond  
a reasonable doubt. **Evidence against the defendant must be  
substantial enough to convict him in an otherwise fair trial, and it  
must be said without reservation that the verdict would have been  
the same in the absence of error.** *Id.* (emphasis added).

1  
2 Even if a court's error is a constitutional violation, the guilty conviction  
3 may still stand if the error was harmless beyond a reasonable doubt; to  
4 be harmless beyond a reasonable doubt, an error of constitutional  
dimension cannot have contributed to the verdict. *Guitron v. State*, 131  
Nev. 215, 350 P.3d 93 (2015).

5 Trial error is not presumed to have prejudiced a defendant. NRS  
6 178.598; *Phenix v. State*, 114 Nev. 116, 954 P.2d 739 (1998). Instead,  
a [d]efendant claiming trial error has burden to show **substantial**  
prejudice. *Id.* (emphasis added).

7 First, the issue of guilt or innocence was likely not close—Defendant had been  
8 arguing with his wife, became intoxicated, and set fire to a mirror in the home without the  
9 intent to extinguish it. This does not suggest that Defendant was innocent of willfully and  
10 malicious attempting to set fire to the home.

11 Next, the quantity and character of the alleged error was likely insubstantial.  
12 Petitioner's wife stating that she ran from Petitioner based on previous experiences, that she  
13 thought Petitioner had attacked her son, and that Petitioner had criminal charges for child  
14 abuse do not affect whether Petitioner willfully and maliciously attempted to set fire to the  
15 house. Notably, Petitioner was also on trial for child abuse, neglect or endangerment, for  
16 which he was acquitted. All of these statements are likely admissible character evidence  
17 under NRS 48.045(2). Petitioner's threats to his wife after-the-fact are also likely admissible  
18 under NRS 51.035(3) as opposing party statements and under NRS 48.045(2).

19 Moreover, Wife's statements that Petitioner was having an extramarital affair and that  
20 Petitioner did not buy her out of the home were likely admissible under NRS 48.045(2) as  
21 evidence of motive or intent. Thus, it appears that little error occurred, and the quantity and  
22 character of the error was likely insubstantial and had no effect on the verdict.

1 Lastly, the gravity of the crime charged was a category D felony, which carries a  
2 minimum penalty of one (1) year and a maximum penalty of four (4) years in the Nevada  
3 state prison. NRS 193.130(2)(d). The gravity of this crime is not low, but is considerably  
4 less than that of a category A or B felony, which respectively carry a penalty of death or  
5 imprisonment for life with or without the possibility of parole, or one (1) to twenty (20) years  
6 in the Nevada state prison. NRS 193.130(2)(a)-(b).

7 Based on the foregoing, the evidence against Petitioner was likely substantial enough  
8 to convict him in an otherwise fair trial, and it can likely be said without reservation that the  
9 verdict would have been the same in the absence of error. Thus, the admission of the prior  
10 bad act evidence at issue<sup>3</sup> is likely harmless error. Defendant provides no evidence that the  
11 prior bad acts contributed to the verdict of fourth degree arson. Defendant thus fails to show  
12 substantial prejudice and any error was likely harmless.

13 Ultimately, Petitioner fails to show that the omitted prior bad acts issue would have a  
14 reasonable probability of success on appeal. Appellate counsel was therefore not ineffective,  
15 and Defendant's claim must fail in this regard.

16 **III. Whether appellate counsel was ineffective by failing to raise issues on**  
17 **appeal, including the improper admission of bad act evidence, failure to instruct on**  
18 **lesser-included offenses, destruction of evidence, admission of the inadmissible**  
19 **evidence (the mirror), and insufficient evidence to convict.**

21 \_\_\_\_\_  
22 <sup>3</sup> Wife's testimony that (1) she ran from Petitioner based on previous experiences, (2) that she thought Petitioner had  
23 attacked her son, (3) that Petitioner threatened her on the phone post-incident, (4) that Petitioner was having an  
24 extramarital affair, (5) that Petitioner did not buy her out of the home, and (6) that Petitioner had criminal charges for  
physically abusing his son. Supplemental Petition, *supra*, at 5 (December 22, 2022).

1 First, the Court has already addressed whether appellate counsel was ineffective for  
2 failing to raise the admissibility of prior bad acts issue on appeal, and declines to consider it  
3 here. The Court addresses the remaining claims in kind.

4 *a. Failure to Raise Lesser-Included Offense Instruction Issue on Appeal*

5 Petitioner now contends that appellate counsel was ineffective by failing to appeal the  
6 lack of a lesser-included offense instruction at trial. Supplemental Petition, *supra*, at 11-12  
7 (December 22, 2022). It is well-established that "Contentions unsupported by specific  
8 argument or authority should be summarily rejected on appeal." *Rhyne v. State*, 118 Nev. 1,  
9 13, 38 P.3d 163, 171 (2002).

10 Here, Petitioner provides little to no argument and cites to no authority on this issue.  
11 Supplemental Petition, *supra*, at 11-12 (December 22, 2022). Petitioner only states that "This  
12 record has scant evidence to support the allegation that Steven acted maliciously. The record  
13 may suffice for a destruction of property conviction but no value was ever proven on the  
14 mirror. Appellate counsel should have attacked the insufficiency of the evidence." *Id.* at 12.

15 Petitioner thus fails to show that the omitted lesser-included instruction issue would  
16 have a reasonable probability of success on appeal, and this ineffective assistance claim must  
17 be denied.

18 *b. Failure to Raise Destruction of Evidence (Mirror) Issue on Appeal*

19 Next, Petitioner contends that appellate counsel was ineffective by failing to appeal  
20 the admission of a substituted mirror that was not the mirror on the wall of the house on the  
21 date of the fire. Supplemental Petition, *supra*, at 12 (December 22, 2022). Petitioner claims  
22 that there was no chain of custody and the admission of the mirror should have been objected  
23

1 to at trial. *Id.* at 12-13.

2 Here, the Court is without sufficient evidence to conclude whether appellate counsel  
3 was ineffective by failing to appeal the admission of the substituted mirror. There is no  
4 attached transcript of the proceedings that would allow the Court to examine the foundation  
5 laid for the mirror at trial, or whether Petitioner's purported facts are true. *See* Supplemental  
6 Petition, *supra* (December 22, 2022). Thus, Petitioner fails to demonstrate the underlying  
7 facts by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25,  
8 33 (2004).

9 Even if this Court found that Petitioner established the underlying facts by a  
10 preponderance of the evidence, Petitioner cannot show that appellate counsel was ineffective  
11 by failing to raise the mirror issue on appeal. The Nevada Supreme Court has held that  
12 "Appellate counsel must not raise every non-frivolous issue on appeal ... To establish  
13 prejudice based on the deficient assistance of appellate counsel, the defendant must show  
14 that the omitted issue would have a reasonable probability of success on appeal." *Kirksey*,  
15 *supra*.

16 In this case, the introduction of the substituted mirror would likely constitute harmless  
17 error because it did not substantially prejudice Petitioner. *Phenix, supra*. Petitioner contends  
18 that the substituted mirror was prejudicial because the real mirror had only slight damage,  
19 which would have substantiated his defense that there was no damage and no arson.  
20 Supplemental Petition, *supra*, at 13 (December 22, 2022).

21 However, there is no element in NRS 205.025 for fourth degree arson that requires  
22 damage to property. The State must have only shown that Petitioner willfully and maliciously  
23

1 attempted to set fire to or attempted to burn a dwelling. NRS 205.025. The Court is  
2 unconvinced that the introduction of a mirror with more or less damage would have affected  
3 the verdict, or that the introduction of the real mirror would have produced a different result.

4 Based on the foregoing, Petitioner fails to show that the mirror issue has a reasonable  
5 probability of success on appeal. Thus, Petitioner's claim for ineffective assistance of  
6 counsel must be denied in this regard.

7 *c. Failure to Raise Insufficient Evidence to Convict Issue on Appeal*

8 Lastly, Petitioner contends that appellate counsel was ineffective by failing to appeal  
9 the lack of evidence to convict. Supplemental Petition, *supra*, at 12 (December 22, 2022).  
10 Petitioner argues that the record is devoid of evidence to support the allegation that Petitioner  
11 acted maliciously pursuant to NRS 205.025. *Id.* Petitioner offers that the record only suffices  
12 for a destruction of property conviction, and not fourth degree arson. *Id.*

13 Again, the Court is without sufficient evidence to conclude whether appellate counsel  
14 was ineffective by failing to appeal the insufficiency of evidence. There is no attached  
15 transcript of the proceedings that would allow the Court to examine the evidence presented  
16 at trial. *See* Supplemental Petition, *supra* (December 22, 2022). Thus, Petitioner fails to  
17 demonstrate the underlying facts by a preponderance of the evidence. *Means v. State*, 120  
18 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

19 Even if this Court found that Petitioner established the underlying facts by a  
20 preponderance of the evidence, Petitioner cannot show that appellate counsel was ineffective  
21 by failing to raise the insufficiency of evidence issue on appeal. The Nevada Supreme Court  
22 has held that "Appellate counsel must not raise every non-frivolous issue on appeal ... To  
23

1 establish prejudice based on the deficient assistance of appellate counsel, the defendant must  
2 show that the omitted issue would have a reasonable probability of success on appeal.”

3 *Kirksey, supra.*

4 Here, Petitioner fails to show a reasonable probability of success on appeal. NRS  
5 205.025 provides, in relevant part, that any “person who willfully and maliciously attempts  
6 to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the  
7 buildings or property mentioned in NRS 205.010, 205.015 and 205.020, or who commits any  
8 act preliminary thereto or in furtherance thereof, is guilty of arson in the fourth degree.”  
9 Without a transcript of the trial, the Court is unable to determine whether there was sufficient  
10 evidence presented at trial to convict. Supplemental Petition, *supra* (December 22, 2022).

11 Nevertheless, the known facts of this case likely constitute circumstantial evidence  
12 sufficient to convict Petitioner of fourth degree arson. Petitioner had been arguing with his  
13 wife, drank several alcoholic beverages, set fire to a plastic mirror on the wall in his home,  
14 and sat on the couch doing nothing to extinguish the fire. Supplemental Petition, *supra*, at 5-  
15 6 (December 22, 2022). Petitioner admits that he intended to harm his wife’s property. *Id.* at  
16 8. The fact that Petitioner had been arguing with his wife, was intoxicated, intended to harm  
17 his wife’s property, and lit a mirror on fire in the home without planning to extinguish it  
18 likely constitutes sufficient evidence that Petitioner willfully and maliciously attempted to  
19 set fire to or attempted to burn the home. Such evidence is sufficient to convict Petitioner of  
20 fourth degree arson.

21 Based on the foregoing, Petitioner fails to show that the insufficient evidence claim  
22 has reasonable probability of success on appeal. Thus, Petitioner’s claim for ineffective  
23

1 assistance of counsel must fail in this regard.

2  
3 IV. Whether trial counsel was ineffective by failing to preclude the  
4 admission of the mirror under *Crockett, Sorce*, and their progeny, and whether trial  
5 counsel was ineffective by failing to object to the introduction of the mirror based on  
6 no chain of custody.

7 Lastly, trial counsel was not ineffective by failing to preclude the admission of the  
8 mirror, nor was trial counsel ineffective by failing to object to the introduction of the mirror  
9 based on a chain of custody issue.

10 To show ineffective assistance of counsel, a petitioner must show that counsel's  
11 performance was so deficient that it "fell below an objective standard of reasonableness" and  
12 that but for such deficient performance, a different result would have been had at trial.  
13 *Strickland, supra*. The petitioner must demonstrate the underlying facts by a preponderance  
14 of the evidence. *Means, supra*.

15 Here, Petitioner contends that the State lost the real mirror that Petitioner set on fire.  
16 Supplemental Petition, *supra*, at 13 (December 22, 2022). Petitioner states that he told trial  
17 counsel of the loss, and trial counsel failed to object, resulting in the substituted mirror being  
18 admitted into evidence. *Id.* Petitioner argues that the real mirror would have bolstered his  
19 defense because it only had slight damage. *Id.* Thus, Petitioner argues that the introduction  
20 of the substituted mirror resulted in prejudice. *Id.*

21 Ultimately, the Court is unconvinced by Petitioner's argument. First, Petitioner fails  
22 to show the underlying facts by a preponderance of the evidence—that it is more likely than  
23 not that the State lost the real mirror and introduced a substituted the mirror at trial. Petitioner  
24



1 has access to the chain of custody records, but failed to submit said records to the Court for  
2 review. *See* Supplemental Petition, *supra*, at 13 (December 22, 2022). Nor does Petitioner  
3 cite to any records showing a defect in the mirror's chain of custody. *Id.* Petitioner thus fails  
4 to show that the State lost the real mirror or that the mirror introduced at trial was not the  
5 real mirror. *Id.* Petitioner also fails to provide a transcript of the trial to the Court showing  
6 the foundation laid for the mirror. *Id.* The Court is thus left without sufficient evidence to  
7 make a determination on whether the mirror introduced at trial was substituted.

8 Second, Petitioner fails to show deficient performance by trial counsel. Trial  
9 counsel's failure to preclude the mirror under *Crockett*<sup>4</sup> or *Sorce*<sup>5</sup>, or to object to its  
10 introduction at trial did not fall below an objective standard of reasonableness. *Strickland*,  
11 *supra*. Trial counsel's assistance did not fall outside the range of competence demanded of  
12 attorneys in criminal cases. *Jackson, supra*. Instead, trial counsel's decision not to the  
13 challenge the integrity of the mirror likely constitutes a strategic decision that is virtually  
14 unchallengeable since it was unlikely he could meet the requirements of *Crockett*—(1) bad  
15 faith or connivance on behalf of the government or (2) prejudice from the loss of the real  
16 mirror. *Doleman, supra*.

17 In addition, trial counsel's decision not to challenge the mirror under *Sorce* also likely  
18 constituted a strategic decision that is virtually unchallengeable because trial counsel could  
19

20  
21 <sup>4</sup> "[W]hen evidence is lost as a result of inadequate government handling, a conviction may be reversed ... [T]he test for  
22 reversal on the basis of lost evidence requires appellant to show either 1) bad faith or connivance on the part of the  
23 government, or 2) prejudice from its loss." *Crockett v. State*, 95 Nev. 859, 865, 603 P.2d 1078 (1979).

24 <sup>5</sup> "It is not necessary to negate all possibilities of substitution or tampering with an exhibit, nor to trace its custody by  
placing each custodian upon the stand; it is sufficient to establish only that it is reasonably certain that no tampering or  
substitution took place, and the doubt, if any, goes to the weight of the evidence." *Sorce v. State*, 88 Nev. 350, 352-53,  
497 P.2d 902, 903 (1972).

1 not establish that any tampering or substitution of the mirror took place. *Id.* Based on the  
2 foregoing, Petitioner fails to show that trial counsel's performance was deficient.

3  
4 Third, Petitioner fails to show prejudice because fourth degree arson does not require  
5 a showing of damage, it only requires the State to show that Petitioner willfully and  
6 maliciously attempted to set fire to or attempted to burn or to aid, counsel, or procure the  
7 burning of any building or property. NRS 205.025. Even a mirror with slight damage could  
8 meet these elements. Thus, Petitioner fails to show that but for any unprofessional error, the  
9 result of the proceeding would have been different. *Strickland, supra.*

10 Based on the foregoing, Petitioner fails to show that trial counsel was ineffective by  
11 failing to object to the substituted mirror. Therefore, Petitioner's ineffective assistance claim  
12 must fail in this regard.

### 13 CONCLUSION

14 In conclusion, Petitioner fails to show that defense counsel's performance was so  
15 deficient that a different result would have occurred either at trial, or that any of the omitted  
16 issues on appeal have a reasonable probability of success on appeal. Thus, Petitioner fails to  
17 meet the *Strickland* standard, and his postconviction petition for writ of habeas corpus must  
18 be **DENIED** in its entirety.

19 **IT IS SO ORDERED.**

20 DATED this 21<sup>st</sup> day of July, 2023.

21 

22 HONORABLE MICHAEL R. MONTERO  
23 DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on this 21<sup>st</sup> day of July, 2023, I caused to be served a true and correct copy of the enclosed ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION) upon the following parties:

Anthony R. Gordon, Esq.  
Humboldt County Deputy District Attorney  
P.O. Box 909  
Winnemucca, NV 89445  
*Hand-delivered to Humboldt County Courthouse, DCT Box*

Karla K. Butko, Esq.  
P.O. Box 1249  
Verdi, NV 89439  
*Via US Mail*

Taylor M. Stokes  
TAYLOR M. STOKES, ESQ.  
STAFF ATTORNEY  
SIXTH JUDICIAL DISTRICT COURT

1 Steven Dixon, Petitioner, vs. William Reubart, Warden & State of Nevada, Respondent.

2 Sixth Judicial District Court of Nevada, Case No. CV0023141

3  
4 **DECLARATION OF SERVICE**

5  
6 I am a citizen of the United States, over the age of 18 years, and not a party to or interested  
7 in this action. I am an employee of the Humboldt County Clerk's Office, and my business address  
8 is 50 W 5<sup>th</sup> Street, Winnemucca, NV 89445. On this day I caused to be served the following  
9 document(s):

10 **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

11  X  By placing in a sealed envelope, with postage fully prepaid, in the United States Post  
12 Office, Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's  
13 practice whereby the mail, after being placed in a designated area, is given the appropriate postage  
14 and is deposited in the designated area for pick up by the United States Postal Service.

15  
16  X  By personal delivery of a true copy to the person(s) set forth below by placement in the  
17 designated area in the Humboldt County Clerk's Office for pick up by the person(s) or representative  
18 of said person(s) set forth below.

19 Karla K. Butko, Esq.  
20 PO Box 1249  
Verdi, Nevada 89439

21 Anthony R. Gordon, Esq.  
22 Humboldt County Deputy District Attorney  
23 PO Box 909  
Winnemucca, NV 89446

24  
25 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
26 is true and correct.

27 Executed on July 21, 2023 at Winnemucca, Nevada.

28  
  
Humboldt County Deputy Clerk

1 KARLA K. BUTKO, ESQ.  
State Bar No. 3307  
2 P. O. Box 1249  
Verdi, NV 89439  
3 (775) 786-7118  
Attorney for Petitioner/  
4 Appellant

FILED  
2023 AUG -4 PM 12:15  
CLERK

Electronically Filed  
Aug 07 2023 08:49 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

5  
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF HUMBOLDT

8 STEVEN DIXON,

9 Petitioner/Appellant,

10 vs.

Case No. CV0023141

11 WILLIAM REUBART, Warden, &  
12 THE STATE OF NEVADA,

Dept. No. 1

13 Respondents.  
14 \_\_\_\_\_/

15 NOTICE OF APPEAL

16 NOTICE IS HEREBY GIVEN that STEVEN DIXON, the  
17 Petitioner/Appellant above-named, by and through his counsel,  
18 KARLA K. BUTKO, ESQ., hereby appeals to the Supreme Court of  
19 Nevada, from the Order Denying Petition for Writ of Habeas Corpus  
20 (post-conviction) dated July 21, 2023, with Notice of Entry of  
21 Order dated July 21, 2023.

22 DATED this 3rd day of August, 2023.

23 

24 KARLA K. BUTKO  
25 P. O. Box 1249  
Verdi, NV 89439  
26 (775) 786-7118  
Attorney for Appellant  
27 State Bar No. 3307

331

CERTIFICATE OF SERVICE

I, KARLA K. BUTKO, hereby certify that I am an employee of  
KARLA K. BUTKO, LTD., and that on this date I deposited for  
mailing, the foregoing document, addressed to the following:

STEVEN DIXON  
3465 Ivan Drive  
Winnemucca, NV 89445

Anthony Gordon, ESQ.  
Humboldt County District Attorney's Office  
P. O. Box 909  
Winnemucca, NV 89446

Nevada Attorney General  
100 N. Carson Street  
Carson City, NV 89701

DATED this 3 day of August, 2023.

  
KARLA K. BUTKO

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding  
document DOES NOT CONTAIN the Social Security Number of any  
person.

DATED this 3 day of August, 2023.

  
KARLA K. BUTKO

FILED

2023 OCT 20 AM 11:22

TAMI RAE SPERO  
DIST. COURT CLERK

4185

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

ORIGINAL

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (partial proceedings)  
THURSDAY, SEPTEMBER 20, 2018

## APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F

1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4  
5 THE COURT: Okay. Let's go on the record.

6 This is in case CR17-6936. Case caption:  
7 State of Nevada, plaintiff, versus Steven Lawrence Dixon,  
8 defendant.

9 The record this morning will reflect the  
10 presence of counsel.

11 We're on the record at this time to settle  
12 jury instructions.

13 The Court has provided counsel with a copy of  
14 the instructions that the Court intends to give in this  
15 matter, having taken into consideration those  
16 instructions provided by the State and defense counsel.

17 So, counsel, I'd like to run through these  
18 just again, on the record, and please, as we walk through  
19 each one individually, let me know if there is any  
20 objection. If there is, I'll set that aside, and we can  
21 argue it.

22 And so first -- I still -- mine are still  
23 paginated.

24 Number 1, is just my duty to instruct you on



1 the law.

2 Number 2, if in these instructions any rule,  
3 direction or idea -- stock instruction.

4 Number 3, another stock instruction. If  
5 during this trial.

6 Number 4, is the Information, two counts, and  
7 that's two pages.

8 And then on Page 6, the Information is a mere  
9 charge or accusation.

10 Number 7, that the defendant is presumed to  
11 be innocent.

12 Number 8, this is a union or joint operation.

13 Number 9, transition to Count I of the  
14 Information.

15 And then Number 10 -- Page 10, is the  
16 elements of arson fourth degree.

17 Number 11, this is attempt.

18 Number 12, malice.

19 13, definition of setting a fire.

20 14, is the transition to Count II.

21 15, the elements of Count II, abuse, neglect,  
22 or endangerment of a child.

23 16, the definition of allow.

24 17, the definition of permit.

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1 18, abuse or neglect.

2 19, mental injury.

3 20, unjustifiable.

4 MR. STOVALL: Sorry, Your Honor. Number 20?

5 THE COURT: 20?

6 THE REPORTER: What was 19, Your Honor, I'm

7 sorry. 19?

8 THE COURT: 19 was mental injury. And then

9 Page 20 -- now, these may be slightly different than the

10 ones I gave you, because I took out some duplicates.

11 Remember?

12 MR. STOVALL: Yes, Your Honor. So -- okay.

13 If we can back up -- okay. Abuse or neglect.

14 MR. STERMITZ: What's abuse or neglect? What

15 number is that?

16 MR. STOVALL: I have it as 18.

17 MR. STERMITZ: What does the Court have it

18 as?

19 THE COURT: I have it as 18.

20 MR. STOVALL: Okay.

21 MR. STERMITZ: Okay.

22 MR. STOVALL: Next I have it as 19, physical

23 injury.

24 THE COURT: Hm. Hold on. I lost my physical

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1 injury. There it is. It's out of order. Thank you.

2 MR. STOVALL: Okay.

3 THE COURT: So physical injury, I'll put  
4 in -- I don't know how they got out of order. So  
5 physical injury will be 19 -- it should be -- I'll say  
6 before Page 19. Okay?

7 MR. STOVALL: Yes, Your Honor.

8 THE COURT: Then we'll go to mental injury.

9 MR. STOVALL: Mental injury. Yes,  
10 Your Honor.

11 MR. STERMITZ: It's 20?

12 THE COURT: Yes.

13 MR. STERMITZ: Okay.

14 THE COURT: Yes. And then we'll go to  
15 unjustifiable.

16 MR. STOVALL: Thank you, Your Honor.

17 THE COURT: Okay. Now, counsel, when we're  
18 talking about these numbers, we're talking about page  
19 numbers right now. When I number them, if you'll  
20 remember the one that had information on it, that's one  
21 instruction.

22 MR. STOVALL: Of course.

23 THE COURT: So the instruction numbers may be  
24 a little bit different from these page numbers when I

1 number them.

2 MR. STOVALL: Yes, Your Honor. That's what  
3 I'm saying.

4 MR. STERMITZ: So we'll get a copy of those?

5 THE COURT: Yes.

6 MR. STERMITZ: Okay.

7 THE COURT: We'll make that in just a few  
8 moments.

9 Okay. So then I'm now on -- what has at the  
10 bottom Page Number 22, on my set. And this is a stock  
11 instruction, which begins with the language: The evidence  
12 which you are to consider.

13 MR. STOVALL: Thank you, Your Honor. That's  
14 my forefront.

15 THE COURT: Okay. And then number --  
16 Page Number 23 is neither side is required to call as  
17 witnesses.

18 Number 24, every person who testifies.

19 Number 25, a witness who is willfully false.

20 Page 26, in deciding the facts of this case.

21 27, this is the instruction I refer to as the  
22 common sense instruction.

23 MR. STOVALL: Your Honor --

24 THE COURT: Yes.

1 MR. STOVALL: -- as far as this one was  
2 concerned, I object -- I have an objection only to the  
3 form of it. The first paragraph's -- in that -- it's  
4 centered --

5 THE COURT: We'll take care of that.

6 MR. STOVALL: Thank you.

7 THE COURT: Let me just ask --

8 MR. STERMITZ: You should have been, you  
9 know, like a secretary.

10 THE COURT: This is a copy editor.

11 MR. STOVALL: Copy?

12 MR. STERMITZ: Copy editor -- Okay.

13 MR. STOVALL: Copy -- and I let Shane know  
14 about that beforehand.

15 THE COURT: We've already taken care of it.

16 MR. STOVALL: Thank you.

17 THE COURT: It will be fixed.

18 Thank you.

19 28, in arriving at a verdict in this case,  
20 don't consider penalty or punishment.

21 29, unanimous -- unanimous -- well, I refer  
22 to it as the unanimous verdict one.

23 MR. STOVALL: Is this the Court instructs you  
24 as follows?

1 THE COURT: Yes.

2 MR. STOVALL: With the number up to five?

3 THE COURT: Yes.

4 MR. STOVALL: Thank you.

5 THE COURT: 30, you must select a foreperson.

6 31, readbacks of testimony.

7 32, are the possible verdicts. And I've  
8 changed the formatting slightly, but there's been no  
9 change in the language. I've just taken all the bold and  
10 underlines out.

11 MR. STERMITZ: Yeah. That's a good idea.  
12 It's hard to read it.

13 THE COURT: And then 33, is the final  
14 instruction.

15 Mr. Stovall, any objections? You noted the  
16 one objection with regards to just the style, we fixed  
17 that. Any other objections to this set of instructions?

18 MR. STOVALL: No, Your Honor. Thank you very  
19 much.

20 THE COURT: Okay. And, Mr. Stermitz, any  
21 objections to this set of instructions?

22 MR. STERMITZ: No.

23 THE COURT: Okay. Hearing no objections, the  
24 Court has settled --

1 MR. STERMITZ: We do have a jury instruction  
2 we'd like to ask the Court to give, and that is the  
3 directed advisory verdict.

4 THE COURT: Okay. So this -- let's just make  
5 sure the record's clear. This is the set of instructions  
6 the Court intends to give in this matter. I will number  
7 those and provide you with a numbered -- a final numbered  
8 set.

9 Mr. Stovall, do you have any other  
10 instructions that the State wishes to offer?

11 MR. STOVALL: No, Your Honor.

12 THE COURT: And, Mr. Stermitz, do you have  
13 any further instructions that the defense wishes to  
14 offer?

15 MR. STERMITZ: You didn't seek exactly what  
16 we don't need. Give me just a second. It's this one  
17 here. You have a copy of it?

18 MR. STOVALL: I -- want to peek a look  
19 here -- but, of course, Your Honor --

20 MR. STERMITZ: We do --

21 THE COURT: Let's have it marked for --

22 MR. STERMITZ: -- have this marked as  
23 exhibit -- well, I don't know what you're going to mark  
24 it as. It's not an exhibit --

1 THE COURT: -- exhibit -- this will just  
2 be -- the record will reflect that this is an instruction  
3 proposed by the defense. And I'll just -- I'll just mark  
4 it as defendant's proposed jury instruction Number 1.

5 (Defendant's proposed jury instruction  
6 Number 1).

7 THE COURT: Okay. Let me first hear from  
8 Mr. Stermitz.

9 MR. STERMITZ: Your Honor, we don't believe  
10 that Mr. Dixon, looking at the elements of fourth degree  
11 arson, legally can be found guilty of that, based on the  
12 facts. And we would ask the Court to give an advisory  
13 verdict to the jury that they find him not guilty in the  
14 fourth degree arson charge.

15 THE COURT: Thank you.

16 Mr. Stovall, do you wish to comment?

17 MR. STOVALL: Your Honor, without belaboring  
18 the point, of course we presented plenty of evidence. We  
19 have the mirror that was melted, on fire. We have  
20 pictures that show a house was burned. We have testimony  
21 to the same effect as all that, including testimony from  
22 Jess Dixon that said the house was specifically charred.  
23 So, Your Honor, we object to that, and oppose the motion.

24 THE COURT: Thank you.



1           The Court will not be giving this proposed  
2 instruction. So this -- this instruction will be  
3 rejected, and it will become part of the official record,  
4 though.

5           Thank you.

6           Anything further, Mr. --

7           MR. STERMITZ: And I didn't listen very good.  
8 Did we assign that an exhibit number?

9           THE COURT: It's just defendant's proposed  
10 jury instruction Number 1.

11          MR. STERMITZ: Okay. Thank you.

12          THE COURT: Any further instructions from the  
13 defense?

14          MR. STERMITZ: Nope.

15          THE COURT: Thank you.

16          Okay. Very good.

17          The jury instructions have been settled.

18          I will number those, and I'll provide you  
19 copies.

20          If, counsel, you need some time, you're  
21 welcome to leave, and maybe just return about maybe 9:50,  
22 or something, so that we can review the final  
23 instructions, and be prepared when the jury arrives.

24          MR. STERMITZ: And if I'm not here at 9:50,

1 I'm right across the hall.

2 THE COURT: Okay. Thank you.

3 MR. STERMITZ: That'll be --

4 MR. STOVALL: Your Honor, will those jury  
5 instructions come straight out, so I have a chance to  
6 update my closing arguments?

7 THE COURT: As soon as we can -- as soon as  
8 we can finalize the printing of them, I'll put them on  
9 your table.

10 MR. STOVALL: All right. Thank you,  
11 Your Honor.

12  
13  
14  
15 (Partial proceedings concluded.)  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 5th day of October, 2023.

22 /s/ Leslie R. Rosenthal  
23 Leslie R. Rosenthal, CCR #819  
24

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SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (Partial Proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F

1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4  
5 THE COURT: Let's go on the record.

6 This is in case CRR18-6963. Case caption:  
7 State of Nevada, plaintiff, versus Steven Lawrence Dixon,  
8 defendant.

9 The record this morning reflect the presence  
10 of the defendant, Mr. Dixon.

11 Good morning.

12 THE DEFENDANT: Good morning.

13 THE COURT: With counsel, Mr. Matthew  
14 Stermitz. Good morning.

15 MR. STERMITZ: Good morning.

16 THE COURT: And counsel, Mr. Matthew Stovall  
17 on behalf of the State. Good morning.

18 MR. STOVALL: Good morning.

19 THE COURT: And so, ladies and gentlemen of  
20 the jury, welcome back.

21 THE JURY: Good morning.

22 THE COURT: I must tell you as a Judge one of  
23 my fears is that on day two of any trial, or day three,  
24 or day 15 is that a juror won't show up. So thank you

1 for all being here. It eliminates that concern that I  
2 have. At this time I'm going to read to you the law that  
3 applies in this case.

4 We refer to these as the jury instructions.  
5 It's the law of the case. I would ask that you listen  
6 carefully as I read the instructions, I think these  
7 instructions -- I don't think, I know, these instructions  
8 give you not only guidance in what the law is for this  
9 case, but also gives you some instructions on how to  
10 fulfill the rest of your requirements as a juror as you  
11 leave the courtroom here this morning and begin your  
12 deliberations. So there's some instructions that will  
13 help you in that regard, as well.

14 Of course since I like the talk I'd probably  
15 rather just sit here and talk to you about the law. But  
16 the law does not allow me to do that. I'd have to read  
17 these carefully prepared instructions to you. Seems a  
18 little juvenile, but that's the way the law is.

19 Now, I want to assure you, though, that when  
20 you retire to the jury room for your deliberations you  
21 will actually have these written instructions with you.

22 In fact we'll give you the original, and  
23 we'll give you a copy, so that you have them for your  
24 review, if necessary, during your deliberations.

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1 With that, counsel, will you stipulate as the  
2 Court reads these instructions that the Court Reporter  
3 can refrain from reporting?

4 MR. STERMITZ: So stipulated.

5 MR. STOVALL: Yes, Your Honor.

6 THE COURT: Thank you.

7 (Jury instructions read).

8 (Back on the record).

9 THE COURT: We'll go back on the record.

10 And with that, Mr. Stovall, you may proceed  
11 with your closing argument.

12  
13 CLOSING ARGUMENT

14  
15 MR. STOVALL: Thank you, Your Honor. May I,  
16 please, the Court -- may I use the well?

17 THE COURT: You may.

18 MR. STOVALL: Thank you.

19 Thank you all for your service. We all  
20 appreciate you being here. And I wanted to open with  
21 that.

22 In this case where there's smoke there's  
23 fire.

24 Let's walk through the facts. Let's walk

1 through the evidence. Now, the evidence, when will it  
2 begin? It became -- it began when Melissa Mayden took  
3 the stand and started answering my questions, and it  
4 ended when the defendant, Steve Dixon, took the stand,  
5 admitted to the arson, and -- and left. So this isn't  
6 evidence, and my shaky performance on the opening  
7 statement is also not evidence.

8 So as jurors your focus is on questions and  
9 answers with the witnesses.

10 What else is evidence? Well, a few of these  
11 pictures that you've all seen, and, of course, the  
12 mirror, which I don't want to pick up right now. It's  
13 broken. I don't want to cut myself.

14 Let's walk through those facts. It started  
15 with the argument in the car, you remember? The truck.  
16 What was that all about? Well, it was about breaking up.  
17 It was about the break up date that -- the defendant  
18 wanted Melissa to move out of where? The house. He  
19 wanted her to move out of the house. And we got back to  
20 the -- the house, and what did they do, well, they went  
21 into Jason Dixon's -- the little nine-year old, and they  
22 got into another argument. And according to the  
23 defendant's testimony they fought about, and it got even  
24 more heated, and he wanted her out of the house right

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1 then. Do you remember what she said? She said no. She  
2 said no, I don't want to leave, it's my house, it's my  
3 children's house, I don't want to leave the house. Well,  
4 what did he do? He went up, said something along the  
5 lines of this is my house, and to punctuate his -- his  
6 point, took the propane torch, and lit his house -- and  
7 Melissa's house, and the mirror, all on fire. Well, why  
8 did he -- why did he light the mirror on fire? If you  
9 recall he said, according to Jessica Dixon's testimony,  
10 that it was plastic, it's going to be hard to put out  
11 with any sort of water.

12 What happened after that? Well, the  
13 defendant took a step back, let his daughter, his mother  
14 put out the fire. He didn't lift a finger. He sat  
15 there, according to Jessica Dixon, probably still had the  
16 beer in his hand.

17 Well, he didn't stay there for long, he left,  
18 remember? He went outside. Melissa was evacuating all  
19 the kids. Jason, the nine-year old, was screaming. He  
20 was frightened, in fact was so frightened he immediately  
21 just left, went right into that car. All right. He had  
22 just seen his dad light the house on fire, flames are  
23 shooting up, he was -- he was scared, and he was in a  
24 position where he could have been hurt by not just the

1 flames, but smoke inhalation. But the defendant went  
2 outside, tried to chase down Melissa, and out of  
3 frustration when he realized he couldn't, he threw his  
4 beer bottle. Sure he might have hit the driver's side.  
5 But what is the nine-year old thinking, after just  
6 watching his dad set the house on fire? What was he  
7 thinking? Well, he sees his dad throw the beer bottle at  
8 the car. All right. What could go through a nine-year  
9 old -- a nine-year old's mind? And the physical injury  
10 aspect of it. He could have been hurt. He was placed in  
11 the position where, you know, the windshield could have  
12 shattered, we don't know. Didn't happen, luckily, but it  
13 could have happened. He was in that position. All  
14 right?

15 We've heard a little bit of testimony about  
16 the TV, but -- I'm not -- it's -- the evidence doesn't  
17 show it's burned, the evidence shows that it's  
18 irrelevant. Who knocked over the TV? We don't know.  
19 And the reason we don't know is probably because everyone  
20 was panicked now, everyone had no idea what was going on,  
21 and confusion, you know, flames shooting out of the side  
22 of the wall. No one knows who knocked that over. It's  
23 irrelevant, it's a red herring.

24 So let's talk about arson in the fourth

1 degree.

2 Well, the Judge just gave you some  
3 instructions. I'd like to go over it a little bit with  
4 you.

5 In order to find the defendant guilty of  
6 arson in the fourth degree, the State must prove beyond a  
7 reasonable doubt each of the following elements: One,  
8 that the defendant -- remember, I identified him a few  
9 times, probably too many, that's him. All right?

10 Two, that on December 13, 2017, I have to  
11 prove that -- I'm going to prove that beyond a reasonable  
12 doubt, in Humboldt County, stipulated -- did willfully  
13 and maliciously -- well, willfully and maliciously -- he  
14 testified that he meant to burn the mirror. He meant to.  
15 In fact, he did. You can see it right here, he meant to  
16 burn the mirror. Did he burn the whole mirror? No. But  
17 he meant to burn the whole thing. He probably meant to  
18 burn the house, because what was that argument about?  
19 The house. The argument's about the house, he wants to  
20 burn the house, he burns the mirror so the plastic's --  
21 it's hard to put out. So that's what he started there.

22 Arson requires it be -- willfully,  
23 maliciously -- willfully -- absolutely. Remember, he  
24 told Jessica that shit was about to go down, or something

1 along those lines. It sounds premeditated.

2 Now, let's talk about maliciously for a  
3 minute -- just a moment.

4 Malice -- this is in your jury instructions,  
5 Instruction Number 11, malice and maliciously, import an  
6 evil intent, a wish or design to vex, annoy or injure  
7 another person. Vex, annoy or injure another person --  
8 why else would he be setting a fire? At least annoy --  
9 at least annoy Melissa. So it was willful, and it was  
10 malicious.

11 Let's go back. Set fire to. I know it  
12 sounds a little silly. We know that there were flames.  
13 We have pictures of those flames. Here's just one of  
14 them. State's Exhibit 7. Not the flames -- excuse me,  
15 but the aftermath, right? Set fire to. Well, it means  
16 any part thereof. Anything scorched, charred. We  
17 know -- that -- from multiple person's testimonies,  
18 including Officer Murillo, it was charred. So set fire  
19 to. And intent. Let's talk about the intent part of it.  
20 Well, he attempted and he succeeded -- partially. He  
21 succeeded partially on the -- on the wall, but he didn't  
22 entirely get the mirror as he wanted, because luckily his  
23 daughter was there to put out the fire. His mother was  
24 there, luckily, to put out the fire.

1           Let's talk about ownership. Now, ownership,  
2   it's -- it's not that material here.

3           The jury instructions talk about a dwelling  
4   house or other structure or mobile home, whether occupied  
5   or vacant, whether -- either or, here it's occupied, or  
6   personal property. So here it's a dwelling house,  
7   right -- or a mobile home? Either or. You set fire to  
8   that. You can also set fire to unoccupied personal  
9   property of another. Other personal property, the  
10   mirror, is owned by Melissa. Half the house was owned by  
11   Melissa -- set fire to it.

12           So ownership -- it's not material, it shall  
13   not be necessary that another person and the defendant  
14   should have -- have had ownership in the building or  
15   structure set on fire.

16           So let's talk about what's not an element.  
17   What's -- what's not here as part of these elements in  
18   your instructions. Well, it's varied; right?

19           Now, I saw some jury questions, and I'm glad  
20   to see people are awake, and asking questions, and we  
21   appreciate that. But we can't measure how big the flames  
22   got. We can't measure how frightening the event was. A  
23   lot of that's subjective. So we -- we don't really care  
24   about that.

1 I understand the question about escape  
2 routes. Who -- had Jordan run outside. Well, I  
3 understand that, and that's important. But the focus, at  
4 least for the child abuse aspect of it -- well, it's not  
5 Jordan, but the little one -- Jason. Jordan washing the  
6 dishes, the older brother, who was testifying rather  
7 quietly, if you can recall -- well, he might've had  
8 escape route. I think he testified that he did, but  
9 that's -- that's not the focus here. I'm sure he could  
10 have left, but -- and he testified why he did not.

11 So what do we do? Well, we examined whether  
12 any part -- any part is scorched, charred, or burned.  
13 Okay. And we have that -- burned, charred.

14 Let's talk a little bit about the abuse.  
15 Okay? The focus here is on Jason Dixon, the nine-year  
16 old son again. He's actually 10 years old today.

17 I wanted to talk about Instruction Number 22.  
18 Neither side is required to call as witnesses all persons  
19 who may have been present at any of the events disclosed  
20 by the evidence or who may appear to have some knowledge  
21 of the events -- he's 10 years old. I don't want him to  
22 relive it. I recognize -- I'm sure a number of you might  
23 have questions or would like him to explain. I don't  
24 want to put him through that.

1                   So what do we have for abuse? Well, the  
2 defendant made several admissions. The beer bottle, he  
3 admitted to throwing that. He admits to lighting this on  
4 fire. All the evidence shows, of course -- okay.  
5 State's 7 -- that he got the house too. Not only -- not  
6 only do we know that it as willful as part as the child  
7 abuse -- or the child endangerment instructions, and  
8 actually let me go through that.

9                   This is Instruction 14. That the defendant  
10 on or about December 13, 2017 in Humboldt County, being a  
11 person responsible for the safety and welfare of the  
12 child. What's Jason's last name Dixon? What's the  
13 defendant's last name? Dixon. It's his child. He's  
14 responsible for the safety or welfare of the child. Did  
15 permit or allow that child; to suffer unjustifiable  
16 physical pain or mental suffering; or -- or to be placed  
17 in a situation where the child may suffer physical pain  
18 or mental suffering -- may be placed -- or may suffer  
19 physical pain. Whether it happened, or not, we know that  
20 Jason, he didn't go to the hospital -- but he -- we do  
21 know he was placed in that situation. As a result of  
22 abuse or neglect. Well, let's talk about abuse or  
23 neglect. That's the seventh element I need to prove  
24 beyond a reasonable doubt.

1 Abuse or neglect means physical or mental  
2 injury of a non-accidental nature. Non-accidental -- I  
3 think we can all agree, he meant to light something on  
4 fire.

5 Sexual abuse, sexual exploitation, none of  
6 that's here.

7 Negligent treatment or maltreatment of a  
8 child under the age of 18 years. Well, negligent  
9 treatment or maltreatment. That's also both here. So I  
10 opened with abuse or neglect means physical and mental  
11 injury of a non-accident -- non-accidental nature. Let's  
12 talk about physical injury. I know that seems a little  
13 silly, but I'd like to go through this anyway. It means  
14 permanent or temporary disfigurement. Well, he's placed  
15 in a position where he may be physically injured. Or he  
16 could have been burned, could have had smoke inhalation,  
17 impairment of any bodily function or organ in the body.  
18 That's pretty broad. Impairment of any bodily function  
19 or organ of the body. Skin counts, it's part of the  
20 body. Lungs, they count, part of the body. But let's  
21 discuss the mental injury aspect of this.

22 Mental injury means an injury to the  
23 intellectual or psychological capacity or the  
24 emotional -- or the emotional condition of a child as



1 evidenced by an observable and substantial impairment of  
2 the ability of the child to function within a normal  
3 range of performance or behavior.

4           You remember the testimony from most all the  
5 family, Melissa and Jessica, at least -- he was  
6 screaming, he was scared. He ran out that door. Melissa  
7 was scared for them. We know that it was a big deal. He  
8 left immediately to that car to get out of the situation.  
9 That's mental injury.

10           So let's look at the four part matrix, if we  
11 will. All right. We have two events with two  
12 conditions, all right. So if you think of a box and we  
13 split that up, all right. So we have the arson part of  
14 it, and then we have the beer bottle part of it; right?  
15 Because there's two events, the physical injury and then  
16 the mental injury.

17           Physically he could have been harmed with the  
18 arson, smoke inhalation, be burned, mentally seeing his  
19 father set the house on fire, emotionally damaging.  
20 You're a father, seeing he could have been hurt in some  
21 way, your bottle could have gone through, the windshield  
22 could have shattered, he could have been cut on glass  
23 mentally, emotionally, what could have happened to him?  
24 Probably be rather damaging.

1           So there's four places you can paint a guilty  
2 verdict on -- on this chart here. Any one of them would  
3 suffice. If you think maybe not three of those, but --  
4 yeah, he could have had smoke inhalation. That's enough  
5 to meet that element.

6           All right. Let's talk a little bit about  
7 credibility. Defense, of course, add two witnesses.

8           Instruction 24, a witness who is willfully  
9 false in one material part of his or her testimony, is to  
10 be distrusted in others. You may reject the whole  
11 testimony of a witness who willfully has testified  
12 falsely as to a material point. Well, let's talk about a  
13 material point. The flames, if you recall, I was  
14 watching, I'm not sure all of you saw it, but at first  
15 she was saying the flames were about this big  
16 [indicating], then with me she said it's about an inch  
17 tall. It's -- you know, a three inch difference, that's  
18 a big one. And when we look at the large scope of  
19 Ms. Swearingen's testimony, cumulatively, there's a lot  
20 of discrepancies in there that go to the material facts.  
21 Remember she claimed that this was just dirt on the  
22 wall -- excuse me, that's just dirt. But then we look at  
23 all the other pictures, there's no dirt on the wall. In  
24 fact, even the defendant disagreed with that, said it was

1 smoke. That goes to the material aspect of her  
2 testimony. Said half a cup of water, and then she  
3 clarified it was a coffee cup. All right. I don't know  
4 which one, she didn't say. So if it was the small one,  
5 or the big one, and it was half full, if you recall --  
6 half a cup of water to put out whatever burned this, and  
7 then the wall of the house. It's up to you to decide  
8 whether that's true.

9 She claims to have seen the whole event, but  
10 then she also says, oh, I was in the kitchen. She says  
11 that she saw, you know, the defendant with the torch in  
12 hand burning, but then she didn't see other material  
13 aspects of what was happening. She might've been  
14 shifting between the kitchen and then just poking her  
15 head around. That doesn't make any sense.

16 I understand why she testifies like that.  
17 It's her son. She wants to protect her son. But the  
18 defendant, those traits were not inherited.

19 So let's talk about the defendant. He wanted  
20 the truck at the beginning. All right. Then he wanted  
21 the kids. And continuing that fight with Melissa, he  
22 wanted the house. And then when he couldn't get that  
23 house, I don't understand the mentality. He didn't want  
24 anyone to have it, so he started to burn it.

1           The statement that all I wanted to do was  
2 burn the mirror. He didn't burn the house -- he didn't  
3 want to burn the house. Well, if that was true, and  
4 this -- this thing -- this mirror, you can take that off  
5 the wall, take it outside, and if all he wanted to burn  
6 was the mirror, he'd burn the mirror outside. But no.  
7 Leaves it on the wall of his house. And remember he was  
8 testifying you can't put that out, it's fire -- it's  
9 plastic. You can't put out the fire, it's plastic on  
10 there. And so he burns that to burn the house. But his  
11 testimony says no, I just wanted to burn the mirror, even  
12 though it's on the wall.

13           This one's the big one. Reasonable doubt. I  
14 have to prove all these elements, see, beyond a  
15 reasonable doubt -- the State has to.

16           Let's talk about reasonable doubt.

17           Reasonable doubt is one based on reason.  
18 It is not the mere possible -- not the mere possible  
19 doubt, but is such a doubt would govern or control a  
20 person in the more weighty affairs of life. What that  
21 comes down to -- skip to the last sentence, doubt to be  
22 reasonable -- what it has to be -- to be reasonable must  
23 be actual, not mere possibility or speculation.

24           Remember, when you're basing your decision on

1 the evidence, don't lose the evidence from Melissa to the  
2 defendant. Just there. You have to base it on the  
3 evidence. What does the evidence show?

4 We can't -- the jury can't make up a fact and  
5 say, well, I think Jessica might have started the fire.  
6 When we know she didn't. Defendant graciously admitted  
7 that. But you can't say Justin must have started the  
8 fire, and so he must be not guilty. Well, that's not the  
9 case. You can't make up the facts. You have to stick  
10 with the facts here. The reasonable inference is there.  
11 And the facts here are clear. The defendant burned  
12 Melissa's house, and his house, and that mirror, to make  
13 a point, that it his house and he can do whatever he  
14 wanted with it.

15 Again, where there's smoke, there's fire.  
16 Everything happened in front of his kids, all three of  
17 them, especially with little Jason. And he presented a  
18 danger to his son, throwing that beer bottle, and  
19 lighting the house on fire.

20 Evidence shows that the defendant committed  
21 both these crimes. I've proven that to you beyond a  
22 reasonable doubt. Accordingly, I ask for a guilty  
23 verdict on both counts.

24 Thank you.

1 THE COURT: Thank you, counsel.

2 Mr. Stermitz, you may make your closing  
3 argument.

4 MR. STERMITZ: Thank you.

5

6 CLOSING ARGUMENT

7

8 MR. STERMITZ: Counsel, Your Honor, jurors,  
9 thank you for your time and patience.

10 I've been in this business for a while.  
11 There's no new plot here. There's no new plot in the  
12 motive of Melissa. This is one of those many cases where  
13 in a custody dispute one of the parties resorts to the  
14 criminal justice system and law enforcement in order to  
15 disendow or skewer their spouse. They resort to criminal  
16 justice system and the courts not as a shield, but as a  
17 sword.

18 In this case, back in December of 2017, this  
19 family, I think there's actually four -- four children  
20 and a grandchild. This family had this unfortunate  
21 episode wherein the parents behaved in an ignominious  
22 manner. Melissa pulls over the TV, Steve lights the  
23 mirror on fire. Steve throws a beer bottle at Melissa as  
24 she's driving away. It's ignominious, it's embarrassing,

1 it's just not felony arson or child abuse.

2 It's unfortunate, in some ways, that we're  
3 here a year later. Because what this family really  
4 simply needed, and their children, was counseling.

5 Now, I'm not suggesting that the  
6 District Attorney was searching for, you know, the first  
7 notch in his belt. But here we are a year later, the  
8 family is still separated, and the children -- the  
9 children, this -- this gentleman puts these young  
10 children -- and families are forever -- on the stand to  
11 testify against their father, to place him in jeopardy.  
12 Not -- not the wisest decision. And when the small  
13 amount of smoke clears, it is evident that what Mr. Dixon  
14 did is not criminal when you look at the jury  
15 instructions.

16 Now, let me speak to a couple issues first.  
17 And, one, is there was no use of force. Whatever  
18 happened on this particular December date, there was no  
19 use of force. There was a discussion about domestic  
20 violence. Steve Dixon, for all the problems and all the  
21 emotions, and all the liquor, did not lay a hand on his  
22 wife. There is no evidence of that. None. I don't know  
23 what the domestic violence component, and why that even  
24 came up, but apparently that was something that they were

1 looking in for. But what did the officer say on the  
2 stand? No, there was no finding of use of force, one  
3 person against another.

4 With regard to the arson and the facts. Law  
5 enforcement would have you believe that the ceilings of  
6 that mobile home were 10 feet tall. Mobile homes aren't  
7 10 feet tall. This place here probably isn't even 10  
8 feet tall. Pretty close. Steve Dixon took the stand and  
9 said, actually, it's eight feet -- and it's a little bit  
10 under eight feet because I dry walled it.

11 Law enforcement would have you believe -- and  
12 the young lady, and interestingly enough, she never -- we  
13 never saw a report from her -- we never saw Jessica -- we  
14 never saw her at the preliminary hearing -- she said  
15 that. A year later she comes in and testifies to these  
16 four foot flames -- a year later. But it turns out the  
17 mirror is up at six and a half to eight -- excuse me, up  
18 at six and a half feet. The walls are eight feet.  
19 There's no four foot flames. And it's a good thing that  
20 Mr. Dixon took the stand and explained to it, because if  
21 you took what law enforcement had to say, and you took  
22 what Melissa had to say, and you took the photographs,  
23 which don't really have any kind of ability to determine  
24 depth and scale, that could be a possibility. But once



1 Mr. Dixon took the stand, and once you became -- we all  
2 became aware that this was only an eight foot ceiling,  
3 and the mirror was a foot and a half off the ceiling.  
4 There were no foot and a half -- four and a half foot  
5 flames.

6 What Mr. Dixon did is he melted the mirror in  
7 retaliation for Melissa pulling the TV over.  
8 Ignominious, not criminal.

9 I think it's clear that the marks on the  
10 walls are smoke from the mirror. The walls didn't catch  
11 on fire. Mr. Dixon wasn't attempting to burn his house  
12 down. He didn't light it and run out. He lit it and  
13 stood by the fire, or sat down.

14 The State has the burden of proving beyond a  
15 reasonable doubt all of the elements of the offense.  
16 Each and every one of them. Doubt to be reasonable, must  
17 be actual, not this mere possibility, or speculation. If  
18 you have a reasonable doubt, Mr. Dixon is entitled to a  
19 verdict of not guilty.

20 The elements of the offenses are set forth in  
21 Instruction Number 14, and Instruction -- excuse me --

22 MR. STOVALL: 9 --

23 MR. STERMITZ: 9. Thank you -- Instruction  
24 Number 9.

1                   Instruction Number 9 is the definition of  
2     felony fourth degree arson. And if you look at that,  
3     what is in contention is number five. And it has a list  
4     of things that if somebody attempted to set fire to or  
5     attempt to burn, it would be a felony fourth degree  
6     arson. And those are either -- and then options: A  
7     dwelling, house, or other structure, or mobile home,  
8     whether occupied, or vacant. He wasn't attempting to  
9     burn his house down. They did not prove beyond a  
10    reasonable doubt that he was attempting to burn his house  
11    down.

12                  Another option is personal property occupied  
13    by one or more persons, whether the property of the  
14    person or of another. Again, this personal property  
15    wasn't -- I don't know what they're necessarily referring  
16    to, whether the trailer or the mirror, but it wasn't  
17    occupied -- it's not even occupiable.

18                  The next one is an abandoned building or  
19    structure. This was not an abandoned building or  
20    structure. And the last one is unoccupied personal  
21    property of another, which has the value of \$25 or more;  
22    or any unoccupied personal property owned by him or her  
23    or in which another person has a legal interest; or  
24    timber, forest, shrubbery, crops, grass, vegetation.

1 Well, there was absolutely no evidence introduced as to  
2 the cost of the mirror. None. So there's no finding it  
3 was over \$25, and -- and more, it's -- it's silly. It  
4 says any unoccupied personal property. You can't occupy  
5 a mirror. If you can't occupy a mirror, it can't be  
6 unoccupied.

7 Burning a mirror is not fourth degree arson.  
8 Ignominious, but not criminal. Sometimes the law makes  
9 sense. In this instance it makes sense.

10 With regard to the child abuse and neglect.  
11 This family -- I mean it's a good day, the sooner this is  
12 done, God willing, how you do it, this family can get  
13 back together. And families are forever. And I've got a  
14 suspicion they're probably going to be back together, but  
15 I don't know. But families are forever. And with kids  
16 and grandkids, they're always going to have a connection.  
17 And at some point there has to be counseling. And at  
18 some point those children have to have some counseling  
19 too, and be taught that adults -- even adults make  
20 mistakes. What no one wants to see here is something  
21 that becomes permanent and dispositive in these people's  
22 minds.

23 In other words, families are forever.  
24 Grudges have to be surrendered. These people have 50

1 more years of their life ahead of them, their children  
2 have lives ahead of them.

3 What the children witnessed is uncomfortable,  
4 it's not child abuse or neglect.

5 I'll leave you with a parable -- a fable.  
6 Mr. Dixon is going to be in your hands. You have all the  
7 power. And the fable is an Aesop's Fable, it's called  
8 the Sun and the Wind. And Sun and the Wind were having  
9 an argument over who was more powerful, who was more  
10 mighty, who could effect the people of the earth more  
11 than the other. And the -- the Sun saw a traveler coming  
12 down the road, and he had a coat on. So the Sun said to  
13 the Wind, I'll tell you what, we'll have a contest, and  
14 we'll see who can effect -- who can -- that gentleman  
15 down there, who can get the gentleman to take off his  
16 coat. So the Sun went behind the cloud, and the Wind  
17 began to blow, and it blew and it blew and it blew, and  
18 harder and harder and harder, and the harder it blew, the  
19 result was the man just simply wrapped his coat tight.  
20 It had no effect on it. So then the sun came out from  
21 behind the cloud, and in all of its glory it began to  
22 warm the earth. And eventually the traveler took off his  
23 coat, and put it over his shoulder.

24 You have power to affect Mr. Dixon's life.

1 The moral of the story is kindness has a greater affect  
2 than force and might. I would ask you to be kind to  
3 Mr. Dixon and his family, and find him not guilty.

4 Thank you.

5 THE COURT: Thank you, Counsel.

6 Mr. Stovall, you may now conclude the  
7 arguments.

8 MR. STOVALL: Thank you, Your Honor.

9  
10 CLOSING ARGUMENT (continued)

11  
12 MR. STOVALL: I didn't get the defendant into  
13 trouble. The kids didn't get him into trouble. Melissa  
14 did not get Mr. Dixon into trouble. The police did not  
15 get Mr. Dixon into trouble. Mr. Dixon got himself into  
16 trouble.

17 Think all of you have kids, and you all  
18 understand kids get themselves into trouble. What comes  
19 with trouble? Responsibility -- and it starts with a C?  
20 Consequences.

21 You do have the power to affect Mr. Dixon's  
22 life. You have the power to affect the family's life.  
23 In the aftermath of the defendant lighting that wall on  
24 fire, and throwing a beer bottle out at his son.

1 Now, whether counsel thinks the law is silly,  
2 or not, well, you must not be concerned with the wisdom  
3 of any rule or law stated in these instructions.

4 All the material things that counsel just  
5 argued about we call those red herrings -- snipe hunts.  
6 I think we all know what those are. There's no -- you're  
7 out hunting for something, nothing of substance is there.

8 The custody dispute. Remember Melissa, she  
9 was up on the stand, and defense counsel asked about any  
10 ongoing custody matters, or some sort of court case. She  
11 had no idea. There wasn't anything going on.

12 Resorting to the criminal justice system.  
13 Well, Melissa didn't start the fire. The kids didn't  
14 start the fire. The defendant started the fire. The  
15 defendant threw the beer bottle. She has to resort to  
16 the criminal justice system. We all do if someone  
17 commits a crime against us.

18 Melissa didn't demand to press charges, and  
19 she cannot press charges. The District Attorney's Office  
20 presses charges, once we receive a report.

21 Now, no one's argued, especially not me, and  
22 no one's given any evidence about laying a hand on  
23 anyone. Well, we just went through the instructions;  
24 right?

1 Arson never required anything requiring  
2 laying hands on someone. It requires a fire. It  
3 requires an intent to burn personal property or real  
4 property, which is the dwelling home, the doublewide,  
5 3465 Ivan Drive. That's what's required.

6 Child abuse. Now, it's abuse, neglect, or  
7 endangerment, doesn't require placing hands on anyone.  
8 It doesn't. In fact, it's very specific. To be placed  
9 in a situation where the child may suffer physical pain  
10 or suffering.

11 Defense counsel argued about six feet, eight  
12 feet. It doesn't matter. It could be -- the roof could  
13 be a hundred feet tall, or it could be two feet short.  
14 It doesn't matter. It does not matter. Severity does  
15 not matter. What matters is was this is burned,  
16 scorched, charred. Was the wall burned, scorched,  
17 charred? Did this man attempt to burn the whole house?  
18 Did he attempt to burn the whole mirror? That's what's  
19 at stake here. A lot of red herrings here the defense  
20 counsel's putting on. But review the evidence. When  
21 you're in deliberation review the evidence. There's only  
22 one outcome. It's the same outcome that Melissa  
23 testified to, and Jordan testified to, Jessica testified  
24 to, my three deputies -- their investigation, what they

1 all testified to, that the defendant set the mirror and  
2 wall on fire, and placed Jason into a place -- a  
3 situation where he might suffer physical pain or mental  
4 injury.

5 Now, I started with thanking you for your  
6 service. I'll end with that. Thank you all for your  
7 service here.

8 Thank you, Your Honor.

9 THE COURT: Thank you, counsel.

10 That concludes the closing arguments.

11

12 (Partial proceedings concluded.)

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1 STATE OF NEVADA )

2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 4th day of October, 2023.

22 /s/ Leslie R. Rosenthal  
23 Leslie R. Rosenthal, CCR #819  
24

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SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

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TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (Partial Proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

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Reported By:

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NV Firm Lic. #087F

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RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018, 11:10 A.M.

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THE COURT: That concludes the closing arguments.

6

At this time I'm going to ask Deputy Sjoblom to come forward. He'll be placed under oath to take charge of the jury and the alternate.

9

THE CLERK: Do you solemnly swear or affirm that you will conduct this jury to some private and convenient place for their deliberations, and there keep them together? That you will suffer no person in any manner to speak -- to speak or communicate with them, or do so yourself, except to ask them if they have agreed upon a verdict? And when they have a verdict, that you will conduct them into the Court, unless otherwise ordered by the Court, so help you God?

18

DEPUTY SJOBLUM: I do.

19

THE CLERK: You do solemnly swear that you will conduct the alternate juror to some private and convenient place, other than where the jury is in deliberation? That you will suffer no person in any manner to speak or communicate with the alternate juror, or do so yourself? That you will keep the alternate

24

1 juror in your charge until the further order of this  
2 Court, so help you God?

3 DEPUTY SJOBLUM: I do.

4 THE COURT: Ladies and gentlemen, Deputy  
5 Sjoblom's just been placed under oath to take charge of  
6 you at this time. So the jury is going to retire to the  
7 jury room for your deliberations.

8 You will have as the instructions indicate  
9 the evidence. What I'm going to ask, though, is we're  
10 going to bring the mirror in there. There -- there is  
11 broken glass here. So I just ask to please be careful  
12 with that, I don't want anybody to be injured.

13 You will also have the photographs. I  
14 believe there's one other document, the jury  
15 instructions, and the verdict forms, those will be  
16 brought to you in just a moment.

17 As you may have learned from the oath that  
18 Deputy Sjoblom just took, we always have to have an  
19 alternate, in the event that someone cannot not fulfill  
20 or complete their responsibilities as a juror in a  
21 criminal case.

22 Ms. Graham, you are the alternate in this  
23 case. So what I'm going to do, is I'm just going to ask  
24 you to wait here just for a moment. I'm going to have

1 Deputy Sjoblom take the rest of the jury back to the jury  
2 room. And then we're going to talk about where you will  
3 be until the verdict is reached, okay?

4 Okay. With all of that, thank you. We will  
5 be in recess until further call of the jury.

6 And at this time, all rise for the jury.

7 JUROR: Do you still --

8 THE COURT: Yes. Take your notes with you,  
9 I'm sorry, I forgot to tell you that, take your notes  
10 with you.

11 (Jury excused.)

12 THE COURT: Please be seated.

13 We're going to talk for a moment about  
14 Ms. Graham.

15 Ms. Graham, as the alternate we need to  
16 determine how -- or where you should be until this jury's  
17 reached a verdict.

18 You would still be under the same admonitions  
19 as I've been giving during the course of this trial. You  
20 can't talk about the case, nor communicate with others.  
21 You may not conduct any independent research. Do not  
22 read, watch, or listen to any news accounts of this case  
23 until the verdict has been reached, because there is  
24 always some possibility that you may need to still join

1 the jury for deliberations.

2 Let me ask you this: If I were to let you  
3 leave the courthouse at this time, where would you likely  
4 be going, if you don't mind me asking?

5 MS. GRAHAM: I would likely be going home.

6 THE COURT: Going home? Okay. I didn't know  
7 if you had to go to work today, or --

8 MS. GRAHAM: No. Not until like 5:00. But  
9 they know that I could be tied up for the rest -- they've  
10 got somebody ready to stay.

11 THE COURT: Okay. And again, this is a  
12 little personal, but how far away from the courthouse  
13 would you be if you went home?

14 MS. GRAHAM: Probably a five-minute drive,  
15 we're just down the street.

16 THE COURT: Okay. Five minute drive. Okay.

17 I'm inclined, counsel, to let Ms. Graham go  
18 ahead and go home, under the -- under the conditions that  
19 she not talk to anybody about this case, and all the  
20 other admonitions I've been giving. So long as  
21 Deputy Sjoblom has your contact information, and can  
22 contact you on short notice, and have you back here in --  
23 in a short amount of time. Would that be -- would that  
24 be agreeable to you?

1 MS. GRAHAM: Yes. That would be agreeable.

2 THE COURT: Okay.

3 Mr. Stermitz, Mr. Stovall, any strong  
4 feelings about this? I'd still -- she would still be in  
5 Deputy Sjoblom's charge, just not here at the courthouse.

6 MR. STOVALL: Strong feeling I have is that  
7 she should enjoy her day off.

8 THE COURT: Okay.

9 Mr. Stermitz?

10 MR. STERMITZ: Yeah. I have no objection to  
11 that. I find it reasonable.

12 THE COURT: Okay. So I'm going to have  
13 Ms. Graham join Deputy Sjoblom here, we'll get all the  
14 contact information you may need. And then we're going  
15 to release you.

16 What we will do is once this jury, assuming  
17 you don't need to replace anyone, once the jury has  
18 indicated they've reached a verdict, I'm going to have  
19 you come back to the courthouse for the reading of the  
20 verdicts. Okay?

21 MS. GRAHAM: Okay.

22 THE COURT: Okay. Thank you.

23 Counsel, thank you. We'll be in recess.

24 (Partial proceedings concluded.)

1 STATE OF NEVADA )

2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 27th day of June, 2019.

22 /s/ Leslie R. Rosenthal  
23 Leslie R. Rosenthal, CCR #819  
24



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SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (Partial Proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F

1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4  
5 (Jury present).

6 THE COURT: You may be seated.

7 Let's go on the record.

8 This is in case CR18-6963, case caption:  
9 State of Nevada, plaintiff, versus Steven Lawrence Dixon,  
10 defendant.

11 The record will reflect the presence of the  
12 defendant and of counsel.

13 And, counsel, will you stipulate to the  
14 presence of the jury?

15 MR. STOVALL: Yes, Your Honor.

16 MR. STERMITZ: Yes.

17 THE COURT: Thank you.

18 Ladies and gentlemen of the jury, and for the  
19 record, we've received a question from the jury.

20 The record will reflect that I've made a copy  
21 of the question. I've provided the question to counsel.

22 There has been some discussion here with  
23 counsel this afternoon about a possible response to the  
24 question. And let me -- let me talk to you for a moment.

1           There are a couple of instructions here that  
2 I think I'm going to bring to your attention in  
3 explaining why we're not giving you any further  
4 instructions. And the first -- and I think this is the  
5 instruction that you have based, in part, your question  
6 on, and that is Instruction Number 30, which reads, in  
7 part: If during your deliberation you should desire to be  
8 further informed on any point of law or hearing in  
9 portions of the testimony, you must reduce your request  
10 to writing, and signed by the foreperson, which is what  
11 you've done.

12           That instruction, though, further advises you  
13 that the Court is not at liberty to supplement the  
14 evidence.

15           Now, I respect that your question may not be  
16 intended to seek additional evidence, but it's hard  
17 sometimes for us as the Court, and as counsel, to know  
18 what the intention behind the question might be. And so  
19 that's why, I think, there's some hesitancy in trying  
20 to -- well, I'll say, read between the lines as to what  
21 you're asking us for.

22           The question, which reads: Need understanding  
23 on how to interpret the word "may" -- and may is in  
24 quotes, in the determination of reasonable doubt. And

1 I'm going to stop there. Because then there's another  
2 part of it. But in relation to that, I would ask that  
3 you direct your attention back to Instruction Number 6,  
4 which is the reasonable doubt instruction. And also in  
5 my review of this with counsel moments ago, "may" -- the  
6 word "may" does not appear in the reasonable doubt  
7 instruction. And so you've then made reference to  
8 Instruction Number 14, and the word "may" does appear in  
9 the context of Instruction Number 14, but it would be  
10 inappropriate for me to attempt to explain how to connect  
11 those. That's something you guys are going to have to  
12 do. Okay? And -- then the next part of it is, and how  
13 common sense applies. The common sense instruction --  
14 what I refer to is the common sense instruction, is  
15 Instruction Number 26, which reads: Although you are to  
16 consider only the evidence in this case in reaching a  
17 verdict, you must bring to the consideration of the  
18 evidence your everyday common sense and judgment as  
19 reasonable men and women.

20 I don't in any way intend to make this sound  
21 flippant or disrespectful, but I'm going to say use your  
22 common sense. Okay? That's probably the best advice I  
23 can give you on how to define common sense. I mean,  
24 that's why we have a jury of one's peers, where we bring

1 together people from our community, is we're going to  
2 count on you to be -- to bring to this process -- this  
3 deliberative process your experiences as reasonable men  
4 and women, and understanding and, in essence, defining  
5 these terms.

6 So thank you. I'm going to send you back to  
7 continue your deliberations. I know that was a good  
8 legal way of not answering your question.

9 Refer to your jury instructions.

10 Just so counsel is aware, we've ordered jury  
11 lunch, that should be coming soon, and we don't let you  
12 go for lunch when you're in deliberations. We'll bring  
13 that to you, okay?

14 Okay. If you need anything else, of course,  
15 if it's a question, reduce it to writing, like this. If  
16 it's a need, fresher air, or more soft drinks, let  
17 Deputy Sjoblom know. Okay?

18 We'll be in further recess until further call  
19 of the jury.

20 DEPUTY: All rise for the jury.

21

22 (Partial proceedings concluded.)

23

24

1 STATE OF NEVADA )

2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 5th day of October, 2023.

22 /s/ Leslie R. Rosenthal  
23 Leslie R. Rosenthal, CCR #819  
24

4185

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (partial proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F

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1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4  
5 THE COURT: Let's go back on the record in  
6 case CR18-6963. Case caption: State of Nevada,  
7 plaintiff, versus Steven Lawrence Dixon, defendant.

8 The record at this time will reflect the  
9 presence of counsel, Mr. Max Stovall on behalf of the  
10 State of Nevada, Mr. Matthew Stermitz on behalf of the  
11 defendant. Also present is the defendant, Steven Dixon.

12 And at this time, ladies and gentlemen, the  
13 Court has been informed that the jury has reached a  
14 verdict. And rather than asking the attorneys if they  
15 stipulate to the presence of the jury, this point of the  
16 trial requires that we actually take roll. So when you  
17 hear your name called, just indicate here or present.  
18 Okay.

19 THE CLERK: Louis Asher.

20 MR. ASHER: Here.

21 THE CLERK: Edward Herrera.

22 MR. HERRERA: Here.

23 THE CLERK: Samuel Schaaff.

24 MR. SCHAAFF: Here.



1 THE CLERK: Esperanza Reynoso.  
2 MS. REYNOSO: Here.  
3 THE CLERK: Eva Andrade.  
4 MS. ANDRADE: Here.  
5 THE CLERK: Thomas Brissenden.  
6 MR. BRISSENDEN: Here.  
7 THE CLERK: Sherry Burns.  
8 MS. BURRIS: Here -- Burris.  
9 THE CLERK: Todd -- I'm sorry?  
10 MS. BURRIS: Burris.  
11 THE CLERK: Burris?  
12 MS. BURRIS: Yeah.  
13 THE CLERK: Todd DeLong.  
14 MR. DELONG: Here.  
15 THE CLERK: Rena Ogburn.  
16 MS. OGBURN: Here.  
17 THE CLERK: Wendy McMillan.  
18 MS. MCMILLAN: Here.  
19 THE CLERK: Tyler Dennis.  
20 MR. DENNIS: Here.  
21 THE CLERK: William Nalivka --  
22 MR. NALIVKA: Nalivka -- present.  
23 THE CLERK: Nalivka. Thank you.  
24 And, Shelly Graham.

1 MS. GRAHAM: Present.

2 THE COURT: Thank you. And it appears  
3 Mr. Schaaf, you have been selected as the foreperson of  
4 this jury?

5 MR. SCHAAF: Yes.

6 THE COURT: And has this jury reached a  
7 verdict?

8 MR. SCHAAF: Yes.

9 THE COURT: And can you please provide the  
10 verdict forms to Deputy Sjoblom, who will present them to  
11 the Court for review?

12

13

14 (Partial proceedings concluded.)

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22

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24

1 STATE OF NEVADA )

2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
9 partial proceedings were recorded stenographically by me  
10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 5th day of October, 2023.

22 /s/ Leslie R. Rosenthal

23 Leslie R. Rosenthal, CCR #819  
24

4185

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (amended partial proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F

1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4 THE COURT: At this time if I can have --  
5 Mr. Dixon, if you'll please rise. And I will have the  
6 clerk read the verdicts.

7 THE CLERK: This is Case No. CR17-6936 (sic)  
8 (CR18-6963 is correct case) -- in the Sixth Judicial  
9 District Court of the State of Nevada in and for the  
10 County of Humboldt, the State of Nevada, plaintiff,  
11 versus Steven Lawrence Dixon, defendant.

12 Verdict: We, the jury in the above entitled  
13 action, do find the defendant, Steven Lawrence Dixon,  
14 guilty in Count I of arson, fourth degree. Dated this  
15 20th day of September, 2018. Signed, Samuel Schaaf,  
16 foreperson.

17 THE COURT: And the second one?

18 THE CLERK: Okay. This is also Case No.  
19 CR17-6936 (sic) (CR18-6963 is correct case) in the Sixth  
20 District Court in the State of Nevada, in and for the  
21 County of Humboldt, State of Nevada, plaintiff, versus  
22 Steven Lawrence Dixon, defendant.

23 Verdict: We, the jury in the above entitled  
24 action, do find the defendant, Steven Lawrence Dixon, not

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1 guilty in Count I of child abuse, neglect, or  
2 endangerment, dated this 20th day of September, 2018.  
3 Signed foreperson, Samuel Schaaf.

4 THE COURT: And if you'll, at this time, ask  
5 the jury if this is, in fact, their verdict.

6 THE CLERK: Ladies and gentlemen of the jury,  
7 is that your true and correct verdict as read, so say you  
8 one, so say you all?

9 THE JURY: Yes.

10 THE COURT: Mr. Stovall, do you wish to have  
11 the jury polled?

12 MR. STOVALL: No, Your Honor.

13 THE COURT: Thank you.

14 Mr. Stermitz?

15 MR. STERMITZ: No.

16 THE COURT: Thank you. You may be seated.

17  
18 (Partial proceedings concluded.)  
19  
20  
21  
22  
23  
24

1 STATE OF NEVADA )

2 ) ss.

3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
6 certify:

7 That the foregoing proceedings were taken by  
8 me at the time and place therein set forth; that the  
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10 and thereafter transcribed via computer under my  
11 supervision; that the foregoing is a full, true and  
12 correct transcription of the partial proceedings to the  
13 best of my knowledge, skill and ability.

14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 5th day of October, 2023.

22 /s/ Leslie R. Rosenthal  
23 Leslie R. Rosenthal, CCR #819  
24

4185

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

THE HONORABLE MICHAEL R. MONTERO, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Case No. CR18-6963

Plaintiff,

Dept. No. 11

vs.

STEVEN LAWRENCE DIXON,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL (partial proceedings)  
THURSDAY, SEPTEMBER 20, 2018

APPEARANCES:

For the Plaintiff:

Max A. Stovall, Esq.  
Deputy District Attorney  
501 Bridge Street #1  
Winnemucca, Nevada 89445

For the Defendant:

Matthew J. Stermitz, Esq.  
Humboldt County Public Defender  
Drawer 309  
Winnemucca, Nevada 89445

Reported By:

Leslie R. Rosenthal, CCR #819  
NV Firm Lic. #087F



1 -oOo-

2 RENO, NEVADA, THURSDAY, SEPTEMBER 20, 2018

3 -oOo-

4  
5 THE COURT: Ladies and gentlemen, the verdict  
6 forms will be recorded in the minutes of this trial. I  
7 want to thank you for your service in this case.

8 You are now released of your duties as a  
9 juror. That means a couple of things, you're free to go,  
10 leave the courthouse. You're also free to talk about the  
11 case, if you wish. Now, that is entirely a personal  
12 decision on your part, if you do not want to talk about  
13 it with others, you are not required to. If someone  
14 approaches you and wishes to discuss the case with you,  
15 and you prefer not to, just please inform them of that,  
16 and they must respect your wishes. If you run into any  
17 difficulty with that, please contact my office.

18 Otherwise if you wish to talk about it, you're free to.

19 I'd like to at this time excuse you, and I'm  
20 going to have you retire just briefly to the jury room,  
21 because I will the Bench here in a moment, and I would  
22 like to come back and thank you again, personally, shake  
23 your hands. So with that, all rise for the jury.

24 (Jury leaves room).

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1 THE COURT: You all may be seated.

2 We're back on the record, outside the  
3 presence of the jury.

4 The verdict forms, it was just brought to my  
5 attention by a clerk, it has a typographical error in the  
6 case number. It's CR18-6963.

7 So I'm going to order that the clerk correct  
8 that by interlineation. And I also noted that the  
9 verdict forms make reference to two Count I's, one is  
10 Count I, and one is Count II. So Count I is the arson,  
11 and Count II is the child abuse, neglect, or  
12 endangerment. And I'll have the clerk make that  
13 correction by interlineation. And then, finally, the  
14 jury has found Mr. Dixon guilty on Count I, and that  
15 matter will be set for sentencing on November 13, 2018 at  
16 9:30 a.m. And I'll have the clerk's office notify the  
17 Division of Parole and Probation.

18 The Court will order a Presentence  
19 Investigation Report, and have that report submitted for  
20 purposes of sentencing.

21 Anything further today, counsel?

22 MR. STERMITZ: No.

23 Mr. Dixon, as you required, to meet with the  
24 Department of Parole and Probation --

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1 THE COURT: Yes.

2 MR. STERMITZ: -- and complete with the  
3 Court.

4 THE COURT: Mr. Stovall, anything further?

5 MR. STOVALL: Nothing further, Your Honor.  
6 Thank you.

7 THE COURT: Okay. Thank you.

8 We'll be in recess.

9 THE DEPUTY: All rise.

10

11

12

(Partial proceedings concluded.)

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23

24

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, LESLIE R. ROSENTHAL, Certified Court  
5 Reporter in and for the State of Nevada, do hereby  
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14 I further certify that I am not a relative  
15 nor an employee of any attorney or any of the parties,  
16 nor am I financially or otherwise interested in this  
17 action.

18 I declare under penalty of perjury under the  
19 laws of the State of Nevada that the foregoing statements  
20 are true and correct.

21 Dated this 5th day of October, 2023.

22 /s/ Leslie R. Rosenthal

23 Leslie R. Rosenthal, CCR #819  
24

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X E-Flex delivery service of the Nevada Supreme Court  
(Anthony Gordon/ Kevin Pasquale of  
Humboldt County D.A.'s Office)

X mailing, First Class Mail, a true copy thereof  
through the United States Postal Service at  
Reno, Nevada. (Client)

addressed as follows:

Steven Dixon  
3465 Ivan Drive  
Winnemucca, NV 89445

DATED this 4th day of December, 2023.

Karla K. Butko  
KARLA K. BUTKO, ESQ.