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## Collins v. State, 133 Nev. Adv. Op. 88 (Nov. 22, 2017)

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CRIMINAL PROCEDURE: CONFRONTATION CLAUSE

**Summary**

The court determined that (1) the district court may constitutionally remove a criminal defendant from the courtroom for disrupting courtroom procedure, (2) a defendant does not have the right to appear at trial in shackles, (3) testimony about a detective's investigation leading to the defendant's arrest is not opinion about the defendant's guilt, (4) the district court may decide not to instruct a jury on a lesser-included offense if no evidence on the record establishes an element of that offense, and (5) a specific cause of death is not required to find that a person's death was caused by criminal agency.

**Background**

Police officers and detectives tied Collins to the robbery and death of Brandi Payton because the two were acquainted, Collins was found with several of Payton's belongings, and Payton's blood was found at Collins's girlfriend's house and in a rental car in Collins's possession. Autopsy evidence could not reveal Payton's cause of death. The only evidence of Collins's potential provocation or passion was a statement introduced by Collins to a third party that Collins believed he should delete text messages between him and Payton because investigators might believe he "had something to do with" Payton's death.

At Collins's trial, Collins refused to allow his shackles to be removed or change into civilian clothes despite repeated advice from counsel and the court that it was in his best interest to do so. The district court informed Collins that he had the choice to comply and remove his shackles or voluntarily waive his right to be present at trial. Collins refused both options and was removed from the courtroom after officers attempted to forcibly remove his shackles. After Collins had been removed from the courtroom, the court and counsel excused jurors for hardship, statutory ineligibility, and language barrier reasons. Collins was present for substantive voir dire and later parts of the trial.

At trial, Detective Mogg testified that his investigation of Payton's murder lead him to arrest Collins in response to assertions by Collins that the investigation was deficient and excluded other potential suspects. Mogg referenced interviews with individuals who participated in the trial as witnesses. All facts referenced in Mogg's testimony were in evidence at the time of his testimony or were later introduced as evidence.

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<sup>1</sup> By Casey Lee.

## Discussion

II.

A.

A criminal defendant has a constitutional right to be present at every stage of a trial<sup>2</sup>, but may lose such right and be removed from the courtroom if, after being properly warned of the consequences, he or she disrupts the courtroom proceedings.<sup>3</sup> In order to remove a criminal defendant for disruption, the district court must 1) advise the defendant of proper courtroom decorum, 2) warn the defendant that disruption will result in a waiver of the right to be present, 3) determine whether a lesser measure will properly remedy the defendant's behavior, and 4) allow the defendant an opportunity to return if he or she promises to refrain from further disruption.<sup>4</sup> Further, Collins was only removed for administrative voir dire, which does not involve the defendant confronting witnesses against him or her and is not substantive enough to present a due process concern.<sup>5</sup>

B.

Removal decisions are reviewed under an abuse-of-discretion standard.<sup>6</sup> Here, the district court decided that Collins's refusal to allow officers to remove his shackles undermined the decorum of the courtroom because it created an unacceptable risk of juror prejudice.<sup>7</sup> While a defendant may waive his or her right to not be tried in prison clothes<sup>8</sup>, this does not give the defendant the right to demand to be tried in prison clothes<sup>9</sup> or to disrespect the court and the jury by defying court orders.<sup>10</sup>

III.

A.

A witness may not give a direct opinion as to whether the defendant is guilty or innocent.<sup>11</sup> However, this does not mean that witnesses may not give any testimony implying that they believe the defendant is guilty, or from which a juror could infer that belief.<sup>12</sup> The detective's statements

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<sup>2</sup> *Illinois v. Allen*, 397 U.S. 337, 338 (1970); *United States v. Gagnon*, 470 U.S. 522, 526 (1985); *see* NEV. CONST. art. I, § 8.

<sup>3</sup> *Allen*, 397 U.S. at 343; *see* NEV. REV. STAT. § 175.387(1)(c) (2017).

<sup>4</sup> FED. JUDICIAL CTR., BENCHBOOK FOR U.S. DISTRICT COURT JUDGES § 5.01 (6th ed. 2013) (interpreting FED. R. CRIM. P. 43(c)); *see* NEV. REV. STAT. § 175.387.

<sup>5</sup> *See Gagnon*, 470 U.S. at 526; *United States v. Greer*, 285 F.3d 158, 167–68 (2d Cir. 2002).

<sup>6</sup> *United States v. Hellems*, 866 F.3d 856, 863–64 (8th Cir. 2017); *cf.* *Tanksley v. State*, 113 Nev. 997, 1001–02, 946 P.2d 148, 150 (1997).

<sup>7</sup> *See Deck v. Missouri*, 544 U.S. 622, 630–31 (2005); *State v. McKay*, 63 Nev. 118, 163, 165 P.2d 389, 409 (1946).

<sup>8</sup> *Estelle v. Williams*, 425 U.S. 501, 521 (1976).

<sup>9</sup> *Deck*, 544 U.S. at 631.

<sup>10</sup> *See United States v. Perkins*, 787 F.3d 1329, 1339 (11th Cir. 2015); *LaGon v. State*, 778 S.E.2d 32, 41 (Ga. Ct. App. 2015).

<sup>11</sup> *See Cordova v. State*, 116 Nev. 664, 669, 6 P.3d 481, 485 (2000).

<sup>12</sup> *See Ogden v. State*, 34 P.3d 271, 277 (Wyo. 2001).

about his investigation and the reasons he arrested Collins did not even imply that he believed Collins had committed the crime, merely that there was enough evidence to arrest Collins which requires a different standard of proof.<sup>13</sup> Mogg's testimony also did not improperly circumvent hearsay or relevance requirements for evidence because he did not testify about the contents of the other witnesses' statements and his testimony was submitted to rebut Collins's assertion that the investigation was inadequate.

B.

Criminal defendants are entitled to jury instructions on lesser-included offenses only if there is any evidence to reasonably support it.<sup>14</sup> This restriction prevents juries from returning unsupported "compromise verdicts" for sympathetic defendants.<sup>15</sup> Voluntary manslaughter is a lesser-included offense of murder<sup>16</sup> requiring that the person killing be provoked by the person killed or excited into an irresistible passion.<sup>17</sup> The district court did not abuse its discretion in finding that Collins's comments about his conversation with Payton was insufficient to show passion or provocation.

C.

A conviction is only overturned for lack of substantial evidence if any rational factfinder could not find the essential elements of the crime at hand beyond a reasonable doubt on the evidence viewed in the light most favorable to the prosecutor.<sup>18</sup> One essential element of murder is that a person's death was caused by the criminal agency of another person.<sup>19</sup> However, the prosecution need not prove the specific cause of death to prove that death was the result of criminal agency.<sup>20</sup> The court determined that the evidence taken together could lead a rational factfinder to find Payton's death was caused by criminal intent beyond a reasonable doubt.

## **Conclusion**

The district court's removal of Collins for procedural voir dire did not infringe on his constitutional rights because Collins did not have a right to demand to appear in court in his shackles and prison clothes. Detective Mogg's testimony about his investigation and arrest of Collins was properly included because it was relevant, did not violate rules against hearsay, and was not opinion about Collins's guilt. The district court did not abuse its discretion by refusing to instruct the jury on voluntary manslaughter. Collins's conviction of first degree murder was supported by sufficient evidence. The court affirmed Collins's conviction in district court.

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<sup>13</sup> See *Commonwealth v. Luciano*, 944 N.E.2d 196, 202 (Mass. App. Ct. 2011).

<sup>14</sup> *Rosas v. State*, 122 Nev. 1258, 1265, 147 P.3d 1101, 1106 (2006).

<sup>15</sup> *Id.* at 1106, 147 P.3d at 1265.

<sup>16</sup> *Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983).

<sup>17</sup> NEV. REV. STAT. §§ 200.040 to 200.060 (2017).

<sup>18</sup> *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

<sup>19</sup> *West v. State*, 119 Nev. 410, 415–16, 75 P.3d 808, 812 (2003).

<sup>20</sup> *Id.* at 418, 75 P.3d at 813; *accord Middleton v. State*, 114 Nev. 1089, 1103, 968 P.2d 296, 306 (1998).