

1 CASE NO. CR-6581

2 FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

3 IN AND FOR THE COUNTY OF MINERAL

4 BEFORE THE HONORABLE DISTRICT COURT JUDGE KIMBERLY A. WANKER

5 -oOo-

6 THE STATE OF NEVADA,

7 Plaintiff,

8 -VS-

CLOSING ARGUMENT

9 ,

10 Defendant.

Original

11 \_\_\_\_\_ /  
12 TRANSCRIPT OF PROCEEDINGS

13 FEBRUARY 1, 2013

14 TONOPHA, NEVADA

15 APPEARANCES:

16 The Plaintiff:

ROSS ARMSTRONG

DISTRICT ATTORNEY

PAHRUMP, NEVADA

19 For the Defense:

CHRISTOPHER ARABIA

ATTORNEY AT LAW

LAS VEGAS, NEVADA

22 REPORTED BY:

SUZANNE KUES ROWE

RPR, CCR #127

1 FRIDAY, FEBRUARY 1, 2013, TONOPAH, NEVADA, 2:20 P.M.

2 -oOo-

3 THE COURT: Mr. Arabia, is the defense ready to argue?

4 MR. ARABIA: Thank you, Your Honor.

5 Your Honor, may I get the easel?

6 THE COURT: Yes.

7 MR. ARABIA: Drunk, plus crazy, plus lethal equals  
8 garbage in, garbage out. That's as simple as I can make it.

9 And bear in mind that it was Deputy Perry who testified  
10 that the redness, or the mark under [REDACTED]'s eye was consistent  
11 with a drunk person falling down.

12 Now, at the beginning of the case, at the opening, I  
13 mentioned three things about that night. One was that [REDACTED] was  
14 stinking drunk.

15 Now, you heard testimony that during that time period  
16 she was drinking more than this (indicating) of hard alcohol,  
17 generally, on a daily basis.

18 And her daughter confirmed she's been drinking heavily  
19 basically as far back as the daughter can remember, and the  
20 daughter is 33 years old.

21 It was a big drinking night, in [REDACTED]'s words. Which  
22 I remind you, she didn't testify to until I had to, like the  
23 state, yank that out of her by citing the preliminary hearing  
24 transcript.

25 And in the testimony of Deputy Perry, she was

1 intoxicated, based on his training and experience, and was  
2 slurring her words.

3 And then I said that [REDACTED] was delusional.

4 And [REDACTED] testified that she has cirrhosis, it was  
5 diagnosed in 2004, and that is well before she met [REDACTED]

6 And her heavy drinking started well before she met  
7 [REDACTED] It wasn't a product of anything that happened after she  
8 met [REDACTED]

9 And she and her daughter both confirmed that she has  
10 issues distinguishing dreams, movies, stories, et cetera, from  
11 reality. And that she'll remember things that didn't happen as  
12 if they did. And has delusions. Can remember false things as  
13 being real.

14 [REDACTED], her daughter, confirmed the cirrhosis as  
15 well, and as you heard, would go with her on doctor appointments  
16 for a period of time.

17 And she also told the story about the false perceptions  
18 when [REDACTED] imagined that she was a little girl. And she  
19 imagined that [REDACTED] was some sort of a doctor, and she was  
20 speaking some sort of, "my precious," gibberish, like she was a  
21 character in a, I don't know, a 19th Century novel.

22 She takes a nap, she wakes up, she's normal. She has  
23 no memory of that, and she starts crying when she's informed of  
24 the whole delusional episode.

25 So, that moves us to number three of the things that I

1 said when I opened yesterday, which is it didn't happen the way  
2 the state says.

3 The only witness or eye witness to the incident was  
4 [REDACTED]. And as I mentioned, she's got the delusional  
5 issues, she's got the alcohol issues, and some hostility, in her  
6 own words, she's lethal.

7 And she admitted that she ran [REDACTED] over with a car.  
8 That's a Trifecta of awful.

9 And the whole case is built on her word. And why is it  
10 built on her word? Well, because, as I mentioned, Deputy Perry  
11 testified that the physical mark was consistent with a drunk  
12 person falling down. And he also confirmed that she was  
13 intoxicated and slurring her words.

14 This is not a situation where somebody makes an  
15 implausible claim that they fell down. That is a police officer,  
16 based on his training and experience, saying that the mark was  
17 consistent with her falling down.

18 So, so how can we rely on her word and her word alone?  
19 Now, it could be that it's false because she's hostile,  
20 you know, she said on many occasions in the past that she would  
21 like to put [REDACTED] in jail.

22 And it could be because of her mental condition, that  
23 she has the symptoms and the illness, she testified to that, her  
24 daughter testified to it. [REDACTED] testified to it.

25 And then the state is suggesting that her lack of

1 recall is out of some love, or fear of [REDACTED].

2 And it's interesting that they brought in [REDACTED]  
3 to testify about that. She has no background in psychology or  
4 psychiatry.

5 She's not a social worker. And in her own words, she's  
6 an advocate. And I don't think that she consciously has an  
7 agenda, but at the same time that he repeatedly said in a general  
8 sense, discovering or discussing domestic battery he, he, he and  
9 the perpetrator, and then she corrected her mid stream, and said,  
10 I should be saying he or she. And then she went back to he, he,  
11 he.

12 And she never met with [REDACTED]. Never spoke to [REDACTED]  
13 [REDACTED]. Could it be that she's afraid of a the possible answers  
14 or wouldn't know how to deal with someone like [REDACTED]?

15 As you saw, both sides yesterday had some trouble  
16 dealing with [REDACTED]. And Miss [REDACTED] testified about taking away  
17 of rights, and taking away of control.

18 And I would submit that based on what you saw of her  
19 testifying, nobody was telling her what to do. State or defense.

20 And I'll give you some examples of the defense side of  
21 that, because I know that the state discussed that.

22 What we had was basically an expert, based on  
23 generalities, giving a cookie cutter diagnosis. There was really  
24 no search for truth.

25 So, you when start talking about the Wheel of Power and

1 Control, without actually speaking to the person in question, it  
2 doesn't have much value.

3 And the same thing goes for the cycle of violence. She  
4 never spoke to [REDACTED].

5 And when [REDACTED] testified there were  
6 percentages mentioned, but keep in mind that she also stressed  
7 the importance of actually speaking to the person.

8 So, the cycle of violence is kind of a same thing. And  
9 one of the examples that [REDACTED] gave was economic power.  
10 That there would be an economic issue for a victim.

11 But, she had no knowledge of [REDACTED]'s economic  
12 situation, where [REDACTED] gets her money, anything like  
13 that. It was all just conjecture. All just part of a cookie  
14 cutter diagnosis.

15 And she did mention some allegations from the past, but  
16 I would remind you that those would be allegations of [REDACTED]

17 [REDACTED] And two times zero is still zero.

18 And we have a woman who, unfortunately, has got alcohol  
19 issues, got mental illness issues, and does seem to have some  
20 hostility.

21 Now, on the other hand, the defense expert, [REDACTED]  
22 [REDACTED] obviously knew her stuff. She's got the academic  
23 background, she's got the background working in all sorts of  
24 medical contexts.

25 She actually took the time to speak to [REDACTED].

1 and primarily about the cirrhosis issue. If I had known her  
2 expertise would be needed on the other issue, given the  
3 deficiencies of the state expert, I might have her discuss that  
4 as well.

5 But, she did testify about cirrhosis causing memory  
6 loss and delusions and mental episodes, and remembering things  
7 that didn't happen as if they did, and what not.

8 She also testified that false allegations can be  
9 motivated by a mental illness, or maybe by spite.

10 And it's important to remember too that [REDACTED]  
11 is a straight shooter. The state asked her a bunch of questions.  
12 She never looked to me to see how to answer. She just answered  
13 them. Straight out.

14 She spoke very clearly about all of that. And she  
15 never made any effort to fit her testimony into an agenda. You  
16 asked her a question, she gives you an answer.

17 And the state discussed her thesis and some studies  
18 that she's done, and there were percentages in there about  
19 various issues pertaining to domestic battery.

20 But, I think it's important to keep in mind that she  
21 did testify that there are false allegations made, and she  
22 testified that it's important to actually speak to the person in  
23 question, which the state's expert declined to do.

24 Now, with regards to [REDACTED], the state is pretty much  
25 saying that she's claiming a loss of memory, or what have you,

1 out of fear, out after a desire to help [REDACTED].

2 But, I think, if you look closely at her testimony,  
3 it's not clear that she had that agenda, or that she was trying  
4 to help anyone. Because, for example, when I asked her about her  
5 repeated statements that she would get [REDACTED] sent to jail, just  
6 for the heck of it, her answer was, well, that's just something  
7 you say when you're upset.

8 Well, that answer doesn't really particularly help the  
9 defense here. A helpful would have been, yeah, I said it and I  
10 meant it, and I did it in this case. Okay. That would help the  
11 defense.

12 She admitted that the signature on the statement was  
13 hers. That doesn't particularly help the defense either.

14 I asked her about Sybil, a nickname, and she said it  
15 was just a nickname. It didn't have any particular meaning.

16 Well, that didn't really help the defense either. A  
17 helpful answer would have been something along the lines of,  
18 yeah, that comes from Sybil, the character in literature who had  
19 like 23 personalities. That might have been helpful.

20 And she has never said that she made up the allegation.  
21 If her agenda were to help [REDACTED], that's probably what she would  
22 have said.

23 Helpful would have been, I lied. I lied about  
24 everything from day one. And that's probably [REDACTED] never  
25 talked to her, because the cookie cutter diagnosis doesn't work



1 on a person like [REDACTED].

2 Whatever you want to say about her, is not a cookie  
3 cutter person. I mean you can judge that for yourself. You saw  
4 her testify.

5 The other thing about the mental issue is that she's  
6 saying that she drank more than this of hard alcohol on a typical  
7 day back then.

8 She never testified that she remembered how much she  
9 drank on that day, but this was typical. And I would submit that  
10 any of us, if we have 30 ounces of alcohol chased with a mental  
11 illness, you know, let's see how well we remember and perceive  
12 things.

13 Why would [REDACTED] have made the false allegations? It's  
14 hard to say. It could be that she made it up and she's  
15 embarrassed. And, now, it could be that she imagined it, or  
16 remembered it as real, when it wasn't. She does that.

17 It could be that she was having delusions. As I  
18 mentioned earlier, you heard her daughter testify about the  
19 incident where she thought she was a little girl, that she  
20 thought [REDACTED] was a doctor. And then she woke up and had no idea  
21 that happened.

22 And it is important that she knew who [REDACTED] was during  
23 the delusion, because if she has other delusions with other  
24 things going on, [REDACTED] could appear in those as well.

25 But, the truth is, nobody really knows exactly. And I

1 would say nobody knows but [REDACTED]. But, chances are [REDACTED]  
2 doesn't really know either.

3 I think that's important to keep in mind. What we do  
4 know is that the redness or mark was consistent with a drunk  
5 falling down, and that [REDACTED] was massively drunk. And that her  
6 word is not reliable.

7 And that's why [REDACTED] never met with her. And  
8 that's the State's case.

9 Now, I do want to talk briefly about the state's  
10 witnesses, particularly [REDACTED] and her tailor made  
11 statement, which didn't materialize until a month after May 15th.

12 And it was a statement initiated by the police officers  
13 going to her after the preliminary hearing.

14 And I want to be clear there was no evidence introduced  
15 that it was Deputy Perry that had that contact with her. By that  
16 point it was obvious that an issue in the case was [REDACTED]'s  
17 drunkenness and her bizarre behavior.

18 [REDACTED] testified that there was no slurring of the  
19 words, which would be very helpful to the state, but it does  
20 contradict what Deputy Perry said, which was that she was  
21 slurring her words.

22 And she put in a couple of odd-sounding but helpful  
23 drop-ins about she was more normal than usual. Less intoxicated  
24 than usual. And she would have you believe that she just  
25 spontaneously threw those things in there, and she didn't really

1 seem to have clear answers as to how abnormal [REDACTED] usually was,  
2 or how intoxicated she usually was.

3 And this testimony is perfect for the state.

4 Now, when it comes to Deputy Perry, there's only really  
5 four very short points that need to be made about Deputy Perry,  
6 his testimony.

7 One is that he didn't investigate [REDACTED]'s body or ask  
8 for any kind of description of what happened to [REDACTED].

9 More importantly, he was not an eye witness to the  
10 events that are at issue here.

11 He did confirm that [REDACTED] was intoxicated and slurring  
12 her words, and perhaps most importantly of all, he did testify  
13 that the redness or mark on her face was consistent with an  
14 intoxicated person falling down.

15 Now, excuse me for one moment. I do want to just  
16 briefly touch on two of the instructions. The first is  
17 instruction number 16, and it's the top of the second page, where  
18 it says, "A witness may be discredited or impeached by  
19 contradictory evidence. If you believe, a witness has been  
20 impeached or discredited, it your exclusive province, to give the  
21 witness of that witness such credibility, if any, as you think it  
22 deserves."

23 And I think this applies to both [REDACTED] and [REDACTED].  
24 Now, with [REDACTED] it's the slur, lack of slur, that she testified  
25 to that is contradicted by Deputy Perry.

1           And with [REDACTED], both the state and the defense had to  
2 do that, because her testimony was a bit of a wild card to both  
3 sides. And I think that that's revealing.

4           Now, on the first page of the credibility instruction,  
5 which would be the previous page, the second paragraph from the  
6 top, lines five through eight-and-a-half, I guess.

7           "In determining believability of a witness, you may  
8 consider anything that has a tendency and reason to prove or  
9 disprove the truthfulness or accuracy of his or her testimony."

10           And then it lists a bunch of things. And I want to  
11 just briefly go back to the State's expert, [REDACTED]. I  
12 discussed her lack of degrees and lack of credentials as a social  
13 worker. But, the real issue for me with her credibility is that,  
14 you know, she's an advocate, she said so.

15           Advocate means you take a side. And her experience in  
16 domestic battery, generally, based on what she said seemed to be  
17 based on meeting with and interviewing people and talking to them  
18 and getting to know them. She didn't do that here.

19           She never with met with or spoke to [REDACTED]. And so she  
20 is simply trying to tell you that the only explanation has to be  
21 that it happened the way she said.

22           Well, she might have more credibility in telling you  
23 that if she had actually taken the time to speak with [REDACTED].  
24 And she didn't. So, she doesn't really know, she didn't really  
25 search for the truth, and so I would say that she's not

1 particularly credible.

2 And as for [REDACTED], she is super drunk, she's super  
3 delusional, she has a medical condition, with all kinds of mental  
4 issues, memory loss, mixing movies, stories, fantasies with  
5 reality, remembering things that happened when they didn't, and  
6 so on and so forth.

7 Neither side could control her when she was on the  
8 witness stand. And she testified about her problems. Her  
9 daughter testified about her problems, which probably wasn't an  
10 easy thing for [REDACTED] to do, and [REDACTED] also  
11 testified about that.

12 And there are two schools of thought on why there might  
13 have been a false allegation. The hostility, which would be  
14 evidenced by her running [REDACTED] over with a car, and the illness  
15 which [REDACTED] and nurse [REDACTED] talked about.

16 And then I want to just briefly talk about instruction  
17 number eleven, which is kind of the big one. It's reasonable  
18 doubt.

19 As you might expect, the first line of that is, "A  
20 reasonable doubt is one based on reason."

21 And it later says in the middle that, "for there not to  
22 be a reasonable doubt, you have to feel an abiding conviction of  
23 the truth of the charge."

24 Now, I think there's a very firm grounding in the  
25 evidence in this case that the false allegation could have been

1 out of hostility, it could have been out of illness.

2 We have the issue with the delusions, false memories  
3 and it wasn't just [REDACTED], it was also her daughter, and the  
4 expert who testified.

5 And then the issue of the drunkenness, which is part of  
6 the whole problem that she has mentally.

7 The cirrhosis kind of stemmed from a long time of  
8 excess drinking. And, of course, we have the more than a liter  
9 of hard alcohol a day back in that time frame.

10 So, then you add to that the redness or the mark, which  
11 as I mentioned, Deputy Perry testified is consistent with someone  
12 who is drunk and fell down.

13 And then you have [REDACTED], who gave very helpful  
14 testimony after the preliminary hearing with the odd wording  
15 about, "more normal and less intoxicated."

16 And I would say that's a Mount Everest of reasonable  
17 doubt right there.

18 But, more importantly, based on all of this pile of  
19 bizarre circumstances, the state wants you to convict on this  
20 serious charge. And that's not right.

21 And it's not just. And the truth here is simple. And  
22 it's exactly as I said in my first words to you yesterday.

23 [REDACTED] is innocent.

24 [REDACTED] was stinking drunk. [REDACTED] is  
25 delusional, and it didn't happen the way the state says.

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[REDACTED] is innocent.

Thank you.

(Whereupon Mr. Arabia concluded his closing argument.)

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STATE OF NEVADA }  
COUNTY OF DOUGLAS } Ss.

I, SUZANNE KUES ROWE, Certified Court Reporter,  
Licensed in the State of Nevada, License #127, and a Notary  
Public in and for the State of Nevada, County of Douglas, do  
hereby certify that the foregoing proceeding was reported by me  
and was thereafter transcribed under my direction into  
typewriting; that the foregoing is a full, complete and true  
record of said proceedings.

I further certify that I am not of counsel or attorney  
for either or any of the parties in the foregoing proceeding and  
caption named, or in any way interested in the outcome of the  
cause named in said caption.

Date: ~~{Currentdate}~~ *March 13, 2013*

*Suzanne Kues Rowe*  
SUZANNE KUES ROWE, CCR #127