

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JASON DUVAL MCCARTY,  
Appellant,  
v.  
THE STATE OF NEVADA,  
Respondent.

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Jan 17 2014 02:32 p.m.  
Tracie K. Lindeman  
CASE NO: ~~CL1010~~ Clerk of Supreme Court

**MOTION FOR LEAVE TO SUPPLEMENT ANSWERING BRIEF**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, RYAN J. MACDONALD, and moves this Court for leave to file an Amended Answering Brief. This motion is based on the following memorandum and all papers and pleadings on file herein.

Dated this 16<sup>th</sup> day of January, 2014.

Respectfully submitted,

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

BY /s/ Ryan J. MacDonald  
RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #012615

Attorney for Respondent

## MEMORANDUM

In Appellant's Reply, he noted that an argument had failed to be rebutted by the State in its Answer; specifically, argument XVII on improper conduct of the prosecutor. The undersigned recalls placing that rebuttal in its Answer with the other prosecutorial misconduct argument. Nevertheless, appellant is correct that it does not appear in the filed copy. Although the argument is meritless, the State recognizes that the Court has urged litigants to be more attentive and fix oversights or clerical errors when alerted to them in the Reply briefing. *See Polk v. State*, 233 P.3d 357, 360 (2010) ("In Polk's reply brief, he explicitly referenced the State's failure to directly address the constitutional issue. Even after being notified of its failure to respond to the *Crawford* and *Melendez-Diaz* issue, *the State failed to supplement its response* and elected to wait until oral argument to address the constitutional issue or harmless error. Such appellate practice causes prejudice to Polk's ability to adequately prepare for or respond during oral argument.") (emphasis supplied). In that vein, and likely well advance of oral argument in this death case, the State moves to supplement its Answering Brief with the attached supplementation to the end of issue XVIII on pages 41-42 of the filed brief.

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Dated this 16<sup>th</sup> day of January, 2014.

Respectfully submitted,

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

BY */s/ Ryan J. MacDonald*  
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RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #012615  
  
Attorney for Respondent

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 16, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO  
Nevada Attorney General

CHRISTOPHER R. ORAM, ESQ.  
Counsel for Appellant

RYAN J. MACDONALD  
Deputy District Attorney

*/s/ eileen davis*

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Employee, Clark County  
District Attorney's Office

RJM//ed