

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB DISMONT and MICHAEL SOLID  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK,  
AND THE HONORABLE VALERIE  
ADAIR, DISTRICT JUDGE

Respondents,

And

THE STATE OF NEVADA,  
Real Party in Interest.

Electronically Filed  
Jun 18 2015 08:49 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO: 68106

**RESPONDENT'S APPENDIX**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on June 18, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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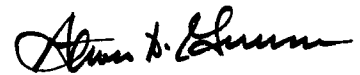
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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*/s/ j. garcia*

---

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CLERK OF THE COURT

**OPPS**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JACOB DISMONT,  
#2889638

Defendant.

CASE NO: C-13-290260-2

DEPT NO: XXI

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

DATE OF HEARING: MAY 7, 2015

TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JACQUELINE BLUTH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Dismiss.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 On May 16, 2013, at approximately 4:00 p.m., Marcos Arenas, a fifteen year old student  
4 had just gotten out of school and met up with his friend, Gacory Exum. Marcos was carrying  
5 an iPad in his hand. The two briefly went into the Terrible Herbst convenience store located  
6 at Torrey Pines and West Charleston Blvd. They left the store and began walking westbound  
7 on West Charleston Blvd. towards their homes. At the intersection of Scholl Drive and West  
8 Charleston Blvd., a few hundred feet from the Terrible Herbst parking lot, Marcos was  
9 approached from behind by an individual described by multiple witnesses as a tall, white male  
10 adult in a white tank top and blue jeans. The white male adult grabbed the iPad and Marcos  
11 fought back. The white male adult proceeded to drag Marcos and the iPad out into the middle  
12 of West Charleston Blvd to a waiting white Ford SUV. The white Ford SUV had no license  
13 plate and was stopped at the intersection of Scholl Drive and West Charleston. Gacory Exum  
14 also noticed the SUV was being driven by a black male adult wearing a black shirt. The white  
15 male adult got into the passenger side of the white SUV and wrestled the iPad from Marcos.  
16 The black male then accelerated off, ultimately running over Marcos, leaving him dying in the  
17 middle of the street, blocking oncoming traffic. Marcos was subsequently transported to UMC  
18 Trauma, but ultimately died as the result of severe blunt force trauma to his chest and head.

19 During the investigation of the murder, robbery detectives recovered video surveillance  
20 from the Terrible Herbst. On the video, a black male adult wearing a black shirt is seen driving  
21 a white Ford SUV without a license plate. He is seen walking from the white SUV and past  
22 Marcos and Gacory as they leave the store. A tall white male adult, wearing blue jeans and a  
23 tank top, subsequently identified by Homicide Detective Tate Sanborn, as Jacob Dismont, is  
24 also seen walking to and from the SUV. Dismont then follows Marcos and Gacory on foot as  
25 they leave the convenience store. The black male adult follows shortly thereafter in the white  
26 SUV, heading westbound on West Charleston Blvd. Shortly after the white SUV leaves the  
27 parking lot, the video shows a large traffic jam backing up the westbound traffic lanes.

28 //

1 Video stills of the black male adult were released to the public in an effort to identify  
2 the suspect. Several witnesses including Solid's neighbors, Robert Taylor and Desirie Jones,  
3 identified co-defendant Solid as being the black male adult seen in the video. On May 17,  
4 2013, while conducting surveillance, Robbery Detective Jeff Abell, observed a white Ford  
5 SUV without a license plate in front of the residence of Defendant, Jacob Dismont. When  
6 Detectives checked the registration of the vehicle, they found it to be registered to Jacob  
7 Dismont. Detective Abell also observed Defendant Dismont riding his bicycle from his  
8 residence to the defendant's residence a few blocks away.

9 On May 18, 2013, the Co-Defendant Solid was taken into custody. At the time of his  
10 arrest, he was in a vehicle with his girlfriend, Brianna Licari. Brianna Licari told Homicide  
11 Detective Dolphis Boucher that she lived with her mother and the Co-Defendant at her  
12 mother's residence. Brianna stated that Co-Defendant Solid had been with Defendant Jacob  
13 Dismont on the day of the murder and that Dismont drove a white Ford SUV. She also  
14 identified Co-Defendant Solid as being on the Terrible Herbst video. Brianna stated that Co-  
15 Defendant Solid would not tell her about the crime, but that at the time they were stopped by  
16 police, it was her intention to take him downtown so that he could confess and tell them what  
17 happened.

18 Co-Defendant Solid was also interviewed by Detective Sanborn. He admitted he was  
19 the person depicted in the Terrible Herbst video. However, he denied driving up in the white  
20 SUV or being with a white male. Solid claimed that he had happened to meet up with a guy  
21 that looked just like him that happened to be driving a white SUV.

22 Homicide Detective Joel Kisner briefly interviewed Solid's mother, Lapasha. Lapasha  
23 told Detective Kisner that Solid, when describing what had happened, had said that he was  
24 just trying to get away and did not know that he had run anyone over.

25 On May 18, 2013, Defendant Jacob Dismont was taken into custody and the white SUV  
26 was seized. By the time the vehicle was seized, it had been altered with numerous decals and  
27 it had been "cold-plated" with a license plate which had once belonged to Brianna Licari's  
28 mother. Dismont's phone was seized out of the SUV and its contents searched pursuant to a

1 search warrant. Detective Kisner recovered numerous texts with Dismont discussing with a  
2 relative how he needed to alter the appearance of the SUV to avoid detection as well as change  
3 the tires.

4 On May 20, 2013, Homicide Detective Tate Sanborn met with Matt Nicholas regarding  
5 Marcos's stolen iPad. Nicholas's apartment had just been raided by the police and numerous  
6 narcotics and firearms were recovered. However, Nicholas had initially believed that the  
7 police were there because of Marcos's stolen iPad. He told Detective Sanborn that Solid had  
8 given him the iPad and that he had then given it to David Doyle. Detective Sanborn  
9 subsequently contacted Doyle and recovered the stolen iPad.

## 10 ARGUMENT

### 11 **I. THE ROBBERY HAD NOT BEEN "CONCLUDED" AND THUS THE** 12 **CHARGE OF FELONY MURDER SHOULD STAND**

13 Defense cites to the case of Payne v. State, 81 Nev. 503, 406 P.2d 922 (1965). The  
14 Nevada Supreme Court went into great discussion regarding the felony murder rule, the  
15 beginning and culmination of a robbery, and how that impacts the felony murder rule in their  
16 opinion on that particular case.

17 In Payne, the Court pointed out that the original purpose of the felony-murder rule was  
18 to deter felons from killing negligently or accidentally by holding them strictly responsible for  
19 the killings that are the result of a felony or an attempted one. People v. Washington, 44  
20 Cal.Rptr. 442, 402 P.2d 130 (1965). In the majority of jurisdictions, such a homicide acquires  
21 first degree murder status without the necessity of proving premeditation and deliberation. The  
22 heinous character of the felony is thought to justify the omission of the requirements of  
23 premeditation and deliberation. Faced with the problem of determining when the underlying  
24 felony terminated for the purpose of applying the felony-murder doctrine, the courts have  
25 generally spoken in terms of the res gestae of the crime. Id. At 506.

26 There has been much discussion regarding when a crime had been "perpetrated" or  
27 "attempted" and when that criminal action has ceased. In fact the Court pointed out in the  
28 Payne case that:

1           The great weight of authority appears to apply the principle  
2           of causation; that is to say, "Was there a break in the chain of  
3           events between the initial crime and the homicide?" Commonwealth v. Kelly, 337 Pa. 171, 10 A.2d 431 (1940). Such  
4           causation requires that the killing be linked to or part of the  
5           series of incidents so as to be one continuous transaction,  
6           thereby bringing it within the statutory felony-murder theory.  
7           Bizup v. People, 150 Colo. 214, 371 P.2d 786 (1962). The res  
8           gestae of the crime begins at the point where an indictable  
9           attempt is reached and ends where the chain of events between  
10          the attempted crime or completed felony is broken, with that  
11          question usually being a fact determination for the jury. (See  
12          discussion in 51 Dick.L.Rev. 12 (1946)).

13          In State v. Fouquette, 67 Nev. 505, 528, 221 P.2d 404 (1950), our own court has  
14          subscribed to the following rule: "When the homicide is within the res gestae of the initial  
15          crime, and is an emanation thereof, it is committed in the perpetration of that crime in the  
16          statutory sense."

17          "The res gestae embraces not only the actual facts of the transaction and the  
18          circumstances surrounding it, but the matters immediately antecedent to and having a direct  
19          causal connection with it, as well as acts immediately following it and so closely connected  
20          with it as to form in reality a part of the occurrence." *Id.*, at 529.

21          In Fouquette, *supra*, the court pointed out that "Robbery, unlike burglary is not confined  
22          to a fixed locus, but is frequently spread over considerable distance and varying periods of  
23          time." *Id.*, at 527.

24          "The 'perpetration' of the crime of robbery is not completed the moment the stolen  
25          property is in the possession of the robber. \* \* \* The escape of the robber with his ill-gotten  
26          gains by means of arms is as important to the execution of the robbery as gaining possession  
27          of the property." *Id.*, at 527 and 528.

28          The Nevada Supreme Court also discussed this issue in two different cases holding,  
29          "our court has held that where the defendant robbed a service station attendant in California,  
30          kidnapped him, and drove him to Sparks where he killed his victim by shooting him in the  
31          back of the head, the homicide took place during the perpetration of the robbery." Archibald  
32          v. State, 77 Nev. 301, 362 P.2d 721 (1961). In State v. Williams, 28 Nev. 395, 82 P. 353



1 (1905), it was held that a homicide was committed in the perpetration of the robbery when it  
2 occurred after the robbery at another place approximately two miles distant.

3 Ultimately, across the Country courts have agreed that the question of where the  
4 felonious action is attempted and culminated is a decision of fact to be determined by the jury.  
5 In this case, the State presented sufficient evidence at the grand jury that illustrated the robbery  
6 was in fact still occurring when the Victim was murdered. Thus, the State respectfully requests  
7 Defendant's motion be denied and the issue be presented to the jury.

8 **II. DEFENSE IS NOT ENTITLED TO ANY LESSER INCLUDED CHARGES OF**  
9 **FIRST DEGREE MURDER**

10 On the day of calendar call the State will be filing an amended indictment striking the  
11 "premeditation and deliberation" language from COUNT 3 – First Degree Murder. Thus,  
12 there will no longer be any legal authority standing for the premise that Defense would be  
13 entitled to jury instructions on any lesser included charges.

14 In Graham v. State, 116 Nev 23, 992 P.2d 255, (2000), the Nevada Supreme Court  
15 dealt specifically with the application of lesser included charges of first degree murder when  
16 the only charge that a Defendant is charged with is First Degree Murder by way of the felony  
17 murder rule.

18 In Graham, Defendant was convicted by a jury of the murder of a young child. On  
19 appeal, Defendant claimed that the trial court erred in refusing to instruct on or provide verdict  
20 forms on second degree murder. The court affirmed the conviction, finding that an enumerated  
21 murder, such as murder by child abuse, did not fall within the category of murder that could  
22 be reduced in degree by failure to prove intent or deliberation and premeditation. Because the  
23 sole agency of death proved in this case was "child abuse," the offense was, by definition,  
24 first-degree murder. The court also concluded that the proofs before the jury were only  
25 consistent with a finding of either guilty of child-abuse murder or not guilty, thus the use of  
26 the involuntary manslaughter instruction without a conforming second-degree murder  
27 instruction was harmless error; in fact, the involuntary manslaughter instruction should not  
28 have been given. The Court went on to say:

**We therefore hold that it is unnecessary to instruct juries on deliberation, premeditation, and second-degree murder when proofs in the case can only support a theory of guilt described within one of the specifically enumerated categories set forth in NRS 200.030(1).” Id. At 28, 29.**

## CONCLUSION

DATED this 22nd day of May, 2015.

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

JACQUELINE BLUTH  
Chief Deputy District Attorney  
Nevada Bar #010625

1 CERTIFICATE OF SERVICE

2 I certify that on the 22nd day of May, 2015, I e-mailed a copy of the foregoing State's  
3 Opposition To Defendant's Motion To Dismiss to:

4  
5 PETE S. CHRISTIANSEN, Esq.  
E-Mail: [pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)

6  
7 BY



8 R. JOHNSON

Secretary for the District Attorney's Office

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 28, 2015**

C-13-290260-2      State of Nevada  
vs  
Jacob Dismont

**May 28, 2015**

**9:30 AM**

**All Pending Motions**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Denise Husted

**RECORDER:** Janie Olsen

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Agnes Lexis and Jacqueline Bluth appearing for the State. Randall Pike appearing as stand-by counsel for Michael Solid. P. Christiansen appearing for defendant Jacob Dismont. Michael Castillo appearing for witness Brianna Licari.

CALENDAR CALL...DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF BRADY MATERIAL INCLUDING BUT NOT LIMITED TO THE EXISTENCE AND SUBSTANCE OF EXPECTATIONS OR ACTUAL RECEIPT OF BENEFITS OF PREFERENTIAL TREATMENT FOR COOPERATION FROM MATTHEW NICHOLAS (SOLID)...DEFENDANT'S MOTION TO TRANSPORT AND ALLOW THE JURY TO VIEW THE CRIME SCENE (SOLID)...DEFENDANT JACOB DISMONT'S MOTION TO DISMISS...STATE'S MOTION TO ADDRESS BRIANNA LICARI'S POTENTIAL INVOCATION OF FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION (BOTH)...STATE'S MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS (BOTH)

Mr. Castillo informed the Court that he hasn't made contact with Ms. Licari for a year; his continued efforts have been to no avail. Defendant Michael Solid stated that he worked out his problems with counsel and he wants them to represent him rather than representing himself. Colloquy regarding Mr. Arroyo's family emergency. The State announced ready for trial. COURT ORDERED, trial date STANDS; time changed to 9:00 AM.

PRINT DATE: 06/05/2015

Page 1 of 2

Minutes Date: May 28, 2015

**RA 000009**

As to the motions on calendar, COURT ORDERED as follows:

DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF BRADY MATERIAL INCLUDING BUT NOT LIMITED TO THE EXISTENCE AND SUBSTANCE OF EXPECTATIONS OR ACTUAL RECEIPT OF BENEFITS OF PREFERENTIAL TREATMENT FOR COOPERATION FROM MATTHEW NICHOLAS (SOLID) is GRANTED;

DEFENDANT'S MOTION TO TRANSPORT AND ALLOW THE JURY TO VIEW THE CRIME SCENE (SOLID) - COURT FINDS, photos and videos of the scene are sufficient, therefore MOTION DENIED;

DEFENDANT JACOB DISMONT'S MOTION TO DISMISS; parties submitted - DENIED;

STATE'S MOTION TO ADDRESS BRIANNA LICARI'S POTENTIAL INVOCATION OF FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION (BOTH) - if she is found, she will be talked with outside the presence of the jury;

STATE'S MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS (BOTH) - COURT FINDS request is not significant enough and doesn't see the information coming in; it can be reviewed at the time of trial and if the door is opened that would be different. COURT FURTHER ORDERED, ruling is reserved until time of the trial.

Following discussion regarding the State filing an amended indictment, COURT ORDERED, the State will be allowed to file the amended indictment. Mr. Christiansen argued his opposition and reasons why this will be detrimental to his client. Mr. Christiansen requested relief in the form of a writ. COURT ORDERED, DENIED.

CUSTODY (BOTH)

6/1/15 9:00 AM JURY TRIAL (BOTH)