

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB DISMONT #2889638,

Petitioner

vs.

THE HONORABLE VALERIE ADAIR,  
District Judge; and THE EIGHTH JUDICIAL  
DISTRICT COURT of the State of Nevada in  
and for the County of Clark,

Respondent,

THE STATE OF NEVADA;

Real Party in Interest.

Supreme Court Case No. 68106

Electronically Filed  
District Court Case No. C-13-290260-2  
Jul 09 2015 02:48 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF PROHIBITION

From the Eighth Judicial District Court, Clark County, Nevada,  
The Honorable Valerie Adair, Department 21

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*Jacob Dismont*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on July 9, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney

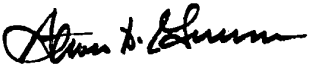
RANDALL H. PIKE  
ROBERT ARROYO  
Special Public Defenders for Michael Solid

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

JUDGE VALERIE ADAIR  
Eighth Judicial District Court, Dept. XXI  
Regional Justice Center, 11<sup>th</sup> Fl.  
200 Lewis Avenue  
Las Vegas, Nevada 89101

JACQUELINE BLUTH  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

  
\_\_\_\_\_  
An employee of Christiansen Law Offices

  
CLERK OF THE COURT

1 **ORDER**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACQUELINE BLUTH  
6 Chief Deputy District Attorney  
7 Nevada Bar #010625  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 JACOB DISMONT,  
16 #2889638

17 Defendant.

CASE NO: C-13-290260-2

DEPT NO: XXI

ORDER DENYING DEFENDANT JACOB DISMONT'S MOTION TO DISMISS

DATE OF HEARING: MAY 28, 2015  
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 28th day of May, 2015, the Defendant being present, represented by PETE CHRISTIANSEN, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JACQUELINE BLUTH, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

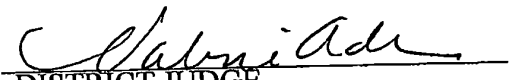
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1 IT IS HEREBY ORDERED that the Defendant Jacob Dismont's Motion to Dismiss,  
2 parties submitted, shall be, and it is DENIED. Defendant's Motion to Dismiss as to the  
3 robbery charge is denied. Court finds sufficient evidence that robbery was still ongoing. This  
4 is an issue for jury to decide. As to Defendant's Motion to Argue for lesser included charges,  
5 denied, due to the fact that State's Motion to Strike "premeditated and deliberate" language  
6 is granted.

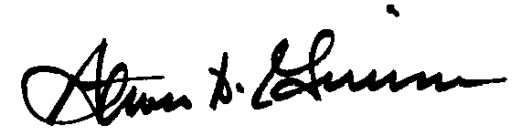
7 DATED this 18<sup>th</sup> day of June, 2015.

8   
9 DISTRICT JUDGE *BW*

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

12 BY   
13 JACQUELINE BLUTH  
14 Chief Deputy District Attorney  
Nevada Bar #010625

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CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL SOLID aka  
MICHAEL SMAUEL SOLID,  
JACOB DISMONT,

Defendants.

CASE NO. C290260-1

CASE NO. C290260-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

THURSDAY, MAY 28, 2015

RECORDER'S TRANSCRIPT RE:

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-1**

DEFENDANT'S MOTION TO TRANSPORT AND ALLOW  
THE JURY TO VIEW THE CRIME SCENE – **SOLID-1**

DEFENDANT JACOB DISMONT'S MOTION TO DISMISS

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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**

APPEARANCES:

For the State:	JACQUELINE M. BLUTH, ESQ. Chief Deputy District Attorney
	AGNES M. LEXIS, ESQ. Deputy District Attorney
For the Defendant:	RANDALL H. PIKE, ESQ. Ass’t Special Public Defender
	MICHAEL V. CASTILLO, ESQ.
	PETER S. CHRISTIANSEN, ESQ. KENDELEE L. WORKS, ESQ.

RECORDED BY: JANIE OLSEN, Court Recorder

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THURSDAY, MAY 28, 2015; 10:09 A.M.

THE COURT: Other matters? Anybody want their matter pulled out of order?  
No. Don't be shy.

MR. CASTILLO: Is the Court willing to briefly call the Solid matter for a limited purpose?

THE COURT: You know what, the other – I don't know. If –

MS. BLUTH: I think it's okay to, we'll just deal with this specific, if it's okay with Your Honor.

THE COURT: Okay. I don't know what it's – I don't know what he wants to deal with, so I guess we can call it and see –

MS. BLUTH: And then we'll figure it out.

THE COURT: -- and see what it is.

MR. CASTILLO: Thank you, Your Honor.

THE COURT: Because I know the attorneys for Mr. Dismont were going to come in later and standby counsel is not here for Mr. Solid.

MR. CASTILLO: Okay.

THE COURT: So your name for the record?

MR. CASTILLO: For the record, Michael Castillo, bar number 11531 from Mr. Becker's office.

THE COURT: Okay.

And Mr. Pike, standby counsel for Mr. Solid is now here. And I was asked to call this for a limited specific –

MR. CASTILLO: Yeah.

THE COURT: -- purpose. I'm not sure what that is. And, where is Mr. Solid?



1 [Defendant stands]. All right. Yes.

2 MR. CASTILLO: Thank you very much, Your Honor. I do have Family Court  
3 to get to so I apologize. But our office is here on behalf of Brianna Licari. And we  
4 did reach out to Brianna after we received the message, I think it was either from  
5 Ms. Bluth or from her investigator when we receive notice of this motion.

6 And Mr. Becker asked me to represent that we have not had contact  
7 with Ms. Licari since late last year. We did contact her using the telephone numbers  
8 that were provided to us, which I would note appear to be the same telephones  
9 numbers on the subpoena. And Mr. Becker did ask me to make it clear that while  
10 we do represent Brianna, we do not represent her mother, Karen. And that's the  
11 limited representations I have to make this morning.

12 THE COURT: Okay. Well, I will convey those; that those representations  
13 were made, to Mr. Christiansen when he gets here. So basically you have no  
14 assistance that you can provide to locating these people, is that –

15 MR. CASTILLO: That's a correct statement, Your Honor.

16 THE COURT: -- a fair synopsis of everything?

17 MR. CASTILLO: Yes, Your Honor.

18 THE COURT: And you made some efforts but they were to no avail?

19 MR. CASTILLO: We did make efforts to reach out to Brianna that is correct,  
20 Your Honor.

21 THE COURT: All right.

22 MS. BLUTH: And Your Honor, one issue I think that – I mean we're going to  
23 run into is, I mean whether Ms. Licari comes here voluntarily or we have to go  
24 around other means, we –

25 THE COURT: Right, right. Yeah, I don't want to get into too much

1 substantively regarding her testimony –

2 MS. BLUTH: Okay.

3 MR. CASTILLO: Right.

4 THE COURT: -- without Mr. Christiansen being here. I mean it's fine for  
5 counsel to make those representations that he's tried to provide – he and Mr.  
6 Becker have tried to provide some assistance and that wasn't productive.

7 MR. CASTILLO: Right. And Mr. Becker did ask me to add that if Brianna is  
8 going to testify that our offices be notified.

9 THE COURT: Okay. Certainly.

10 MR. CASTILLO: Thank you very much.

11 THE COURT: All right. We'll call this then when everybody else gets here.

12 MS. BLUTH: Thank you, Your Honor.

13 MR. CASTILLO: Thank you, Your Honor.

14 [Matter trailed and recalled, 10:35 a.m.]

15 THE COURT: All right. Mr. Christiansen and Mr. Pike are here and can we  
16 call the Michael Solid and Jacob Dismont case.

17 All right. Mr. Solid is present in custody and he has standby counsel,  
18 Mr. Pike, who is present.

19 MR. PIKE: That is correct, Your Honor.

20 THE COURT: All right. And Mr. Dismont is in custody and he has Mr.  
21 Christiansen and is it Ms. Wade?

22 MS. WORKS: Ms. Works.

23 THE COURT: Work, was close.

24 All right. And Mr. Solid you're still representing yourself, is that correct?

25 DEFENDANT SOLID: I talked to Robert yesterday on the phone and he kinda

1 – he's back on the case, but he had –

2 THE COURT: Okay. When you say Robert are you talking about Mr. Arroyo?

3 DEFENDANT SOLID: Yes.

4 THE COURT: Okay. So you spoke with Mr. Arroyo on the phone yesterday  
5 and kind of worked out your problems, is that fair to say?

6 DEFENDANT SOLID: Yes, yeah.

7 THE COURT: Okay. And so now you want the Special Public Defender's  
8 office back on your case?

9 DEFENDANT SOLID: There's kind of more to it. He's going to – yes, yes.

10 THE COURT: Okay. I mean you can represent yourself but like I told you last  
11 time there's no penalty for changing your mind.

12 DEFENDANT SOLID: Yes.

13 THE COURT: So if you're changing your mind, you need to let me know.

14 Mr. Pike do you know anything about this?

15 MR. PIKE: Yes, Your Honor.

16 I had heard that from Mr. Arroyo who was called away on an  
17 emergency basis. I went over and took a substitution of attorneys over for Mr. Solid  
18 to sign, so that there would be some definitive statement that that was his wish. He  
19 declined my visit.

20 THE COURT: Okay. Is that correct, Mr. Solid?

21 DEFENDANT SOLID: Again, to an extent. What it was was Robert and –

22 THE COURT: Mr. Pike or Randall, Mr. Randall Pike.

23 MR. CHRISTIANSEN: No, me.

24 DEFENDANT SOLID: Christiansen, they came and –

25 THE COURT: Oh, Mr. Christiansen.

1           DEFENDANT SOLID: Yes.

2           THE COURT: Okay. And we talked about that for the record so it's clear, last  
3 time and I explained to you that Mr. Christiansen represents the co-offender.

4           DEFENDANT SOLID: Yes. With that being said, they came and visited me  
5 and there were supposed to come back, when I was representing myself and they  
6 was going to come back the following day to come see me again. So when me and  
7 Robert was talking after they had departed, I asked – Robert said would you like me  
8 to be present when you're visiting – yes – him? And I said yes. So the following  
9 day I was expecting for him to come see me and Robert –

10          MR. CHRISTIANSEN: So here's what happened, Judge, I think –

11          THE COURT: Okay.

12          MR. CHRISTIANSEN: -- is on – after court Tuesday, I went with Ms. Works to  
13 meet with Mr. Solid. He was already meeting –

14          THE COURT: When he was representing yourself – himself.

15          MR. CHRISTIANSEN: He was representing himself at the time. It happened  
16 to be that Mr. Arroyo was in visiting him as well.

17          THE COURT: Okay.

18          MR. CHRISTIANSEN: We spoke at great lengths after which we sort of get  
19 the message back through the Special Public Defender.

20          THE COURT: We who?

21          MR. CHRISTIANSEN: We, Mr. Solid, myself and Mr. Arroyo –

22          THE COURT: Okay.

23          MR. CHRISTIANSEN: -- who's standby counsel.

24          THE COURT: So Mr. Arroyo was still present as standby counsel?

25          MR. CHRISTIANSEN: That's right. He was.

1 THE COURT: Okay.

2 MR. CHRISTIANSEN: After that meeting we get the message, I get a  
3 message back through the Special Public Defender's office two fold, one that Mr.  
4 Arroyo has had a family emergency and is going to need to travel to the East Coast.  
5 And, second, that Mr. Solid has decided that he would like the Special Public  
6 Defender to represent him.

7 At the first meeting I told Mr. Solid I was going to come back and meet  
8 him. Once I got that message, I couldn't meet him by myself. And so it sounds to  
9 me like he thought I was coming to see him --

10 DEFENDANT SOLID: Perfect.

11 MR. CHRISTIANSEN: -- and at the time he had a lawyer, he knew he  
12 shouldn't meet with me without his lawyer. And so he refused, not knowing it was  
13 Mr. Pike. He refused a visit he thought was me. Fair?

14 DEFENDANT SOLID: Definitely.

15 THE COURT: Oh, okay. Thank you.

16 All right. So that's what happened. Right?

17 DEFENDANT SOLID: Yes.

18 THE COURT: Just -- I mean as you probably already know, Mr. Christiansen  
19 can't ethically meet with you when you're represented by counsel.

20 DEFENDANT SOLID: True.

21 THE COURT: Now, he has to talk directly to your attorney.

22 MR. CHRISTIANSEN: Right.

23 THE COURT: When you were representing yourself, he can meet with you,  
24 okay. So that's what happened?

25 DEFENDANT SOLID: Yes.

1 THE COURT: Okay. So what is your desire today, do you want the Special  
2 Public Defender's office, Mr. Pike back on the case?

3 DEFENDANT SOLID: Yes.

4 THE COURT: Okay. All right. So –

5 MR. PIKE: Thank you.

6 THE COURT: -- he's I think adequately manifested his desire here in Open  
7 Court so Mr. Pike you're back on the case, you and your office.

8 All right. Turning the matter at hand then, which is the calendar call, we  
9 announcing ready?

10 MS. BLUTH: The State is ready.

11 MR. CHRISTIANSEN: Dismont is ready.

12 MR. PIKE: Solid is ready.

13 THE COURT: All right. You are then number one on the stack, so we will  
14 begin Monday morning at 9 a.m.

15 MR. CHRISTIANSEN: Judge, I think I know but your trial days are full days or  
16 half days Tuesdays and Thursdays –

17 THE COURT: They're never half days, Mr. Christiansen.

18 MR. CHRISTIANSEN: I can't remember. We just –

19 THE COURT: Where do these urban legends get started?

20 MR. CHRISTIANSEN: How about I just ask, what's your trial day?

21 THE COURT: Okay. Mondays and Fridays are 9 a.m. starts.

22 MR. CHRISTIANSEN: Okay.

23 THE COURT: Tuesdays and Thursdays, depending, could be a 10:30 start or  
24 an 11, or you know, depending on how long the calendars take. Wednesday  
25 calendars tend to be shorter, those are the civil calendars, so typically that'll be a 10

1 o'clock start.

2 MR. CHRISTIANSEN: Okay.

3 THE COURT: You know, Tuesdays and Thursdays, again it depends on how  
4 long the calendar is. I normally still start in the morning, even if it's like 11:30 and  
5 then take a later lunch, but it kind of depends on how long it takes to switch out the  
6 inmates and, you know, like I said. So that's essentially our times.

7 MR. CHRISTIANSEN: Thank you.

8 THE COURT: You know, we try to end at 5. On the day we do jury selection,  
9 we may go a little later because I don't like to make people take off, meaning the  
10 potential jurors. I don't like to make the potential jurors take additional days off from  
11 work if they're not going to be selected. So I try to do as much as we can on that  
12 first day.

13 MS. BLUTH: And then, Your Honor, I'm sorry, in regards to the Monday,  
14 would it be okay if we start at 10 a.m.? I have a victim sentencing that went through  
15 trial and the victim is five, I believe she's going to be speaking and it wouldn't be  
16 okay for me not to be there with her in Judge Smith's department. So would it be  
17 okay if we started at 10 in the morning?

18 THE COURT: Judge Smith is going to still be on a criminal calendar as late  
19 as 9:30?

20 MS. BLUTH: Well –

21 THE COURT: I mean –

22 MS. BLUTH: It does happen. I mean I can call and ask how short their  
23 calendar is but I don't think we would be done by 9.

24 THE COURT: Okay. Why don't we do this, let's tentatively have it set for 9 –

25 MS. BLUTH: Okay.

1 THE COURT: -- and then as soon as you get here, we'll start.  
2 MS. BLUTH: Thank you.  
3 THE COURT: I'll talk to who -- as you know is next door --  
4 MS. BLUTH: Yes.  
5 THE COURT: -- I'll talk to Judge Smith and see what he thinks --  
6 MS. BLUTH: Thank you.  
7 THE COURT: -- you know, how long he thinks his calendar is going to take.  
8 So does that work?  
9 MS. BLUTH: I appreciate it. Sure.  
10 THE COURT CLERK: I need exhibits by tomorrow.  
11 MS. BLUTH: Okay.  
12 THE COURT CLERK: That way I can get the list done and [inaudible].  
13 THE COURT: All right. Then there were some motions pending today, shall  
14 we just go through all those motions?  
15 MR. CHRISTIANSEN: Sure.  
16 THE COURT: All right. The first motion was the Defendant's motion to  
17 compel disclosure of *Brady* material and receipt of benefits.  
18 MR. PIKE: That was our motion. There is a witness that is in federal custody.  
19 THE COURT: Right. And that is one Nicholas -- I'm sorry, Matthew Nicholas,  
20 correct?  
21 MR. PIKE: That is correct.  
22 THE COURT: All right.  
23 MR. PIKE: If there was an agreement that the State charges would be  
24 dismissed and/or not filed and they allowed to be proceed -- to be sentenced solely  
25 in the federal system, that is -- that's the information that was received.



1 THE COURT: Right. And they're representing that there was no benefit  
2 conferred on Mr. Nicholas, correct?

3 MS. BLUTH: That's correct.

4 THE COURT: All right. And, obviously, there's an ongoing obligation to  
5 disclose any *Brady* material that you're not aware of?

6 MS. BLUTH: Yes, Your Honor.

7 THE COURT: I'm sorry, that you are aware of, I misspoke. All right.

8 The next motion is the motion to transport and allow the jury to view the  
9 crime scene, anything to add on that?

10 MR. PIKE: There is Your Honor. The – although we have gone to that  
11 location, have taken numerous photographs, have walked the scene, because of the  
12 area, because of the nature of the traffic at that intersection and in particular and  
13 unusual, what would have initially been an entry into a parking lot, which is on the  
14 left side of the road but does not allow for a left-hand turn, this is one of those  
15 circumstances where we think it would be absolutely necessary for the jury to be  
16 able to walk, look and see what is available from one spot. It's not far from here.  
17 It's at Charleston and Torrey Pines. And it would take a minimum of the – one of the  
18 buses available for prisoner transport and no more than an hour. We wouldn't have  
19 to discuss anything with the jury, just show them so that they could look and see the  
20 scene.

21 THE COURT: Yeah, I guess my issue – well, first of all as you know, that's  
22 unusual to take a jury, I mean. But I'm not appreciating why you couldn't convey  
23 that same information by way of video evidence or photographic evidence.

24 I mean in terms of the traffic at a particular time of day, I don't know  
25 why an investigator couldn't videotape that location to show that there's a lot of

1 traffic. Or even stand at the particular, you know, drive-in entrance or whatever to  
2 show, look at all this traffic that's – because any variables that – in terms of what the  
3 traffic actually was on the day in question, you're going to have those same  
4 variables, regardless of whether or not you take the jury out or you have an expert,  
5 I'm sorry, an investigator standing there.

6           So those problems won't be cured by an actual visit to the scene. So I  
7 guess that's my issue with this. I don't – I'm not really appreciating why you can't  
8 film it or you can't just take still photographs?

9           MR. PIKE: Well, along with that it has to do with the distance from the gas  
10 station at that corner –

11          THE COURT: Right.

12          MR. PIKE: -- to the next corner, which is where the event is alleged to have  
13 occurred. We've gone out and taken photographs of that and I do have a notice of  
14 Defendant's witness, which I was unable to file due to the intervention of pro per  
15 motions with an investigator. I can bring those in.

16           But there are – there is growth, there's trees; there's poles. There is a  
17 number of things that aren't variables but are endemic to and construction is within  
18 that location. And that's the reason I think that that is necessary beyond the photo-  
19 graphs. If the Court restricts me then I'd ask leave to file, but it would not be a late  
20 notice of witness.

21          THE COURT: Right. I mean I'm not going to hold any untimeliness against  
22 you, even if the State objects, which they're indicating they're not going to object –

23          MS. BLUTH: I wouldn't.

24          THE COURT: -- correct, Ms. Bluth?

25          MS. BLUTH: That's correct.

1 THE COURT: So I mean in terms of even if he now goes out and does a  
2 video, I'm just still not appreciating why you need it.

3 The one thing I might be willing – I mean I'd like to see what your  
4 evidence is and then, you know –

5 MR. PIKE: If I could –

6 THE COURT: -- but we even all need to look at it or the Court needs to look  
7 at it and say, wow, this is really different when you're standing here from the photo-  
8 graphic evidence or the video evidence, I might be willing to do that, but at this point  
9 in time I don't see the justification for bringing the jury out to view that location. I  
10 don't see it as that unique or something that can't be captured by way of video or  
11 photographic evidence frankly. I mean even in terms of traffic and noise and stuff  
12 like that, you can capture that in the video.

13 MR. PIKE: Thank you. If I could impose on the Court then, maybe if Your  
14 Honor could just drive that by corner and –

15 THE COURT: Right. And I'd like to see what you're – you know, if you got  
16 that produced already. Or I don't know if your investigator is now going to go out  
17 and do additional video evidence or whatever, but you know certainly that would be  
18 the extent to which I, at this point, am willing to consider it. Because I just don't see  
19 the need for it, frankly, in this case.

20 MR. PIKE: Thank you very much, Your Honor.

21 THE COURT: All right.

22 Turning to the – Mr. Dismont's motion to dismiss. Mr. Christiansen  
23 anything you'd like to add to what's already been provided to the Court?

24 MR. CHRISTIANSEN: Nothing to add, Your Honor, we briefed it.

25 THE COURT: All right.

1 State are you submitting on your opposition?

2 MS. BLUTH: I am, Judge.

3 THE COURT: All right.

4 You know, I think A, this would have been better submitted as a writ,  
5 but either way, the Court's considering it as a motion to dismiss. I think that there is  
6 enough here to indicate that the robbery was still ongoing to retain possession of the  
7 property. So I think there's enough to create a question of fact for the jury on a  
8 felony murder and the motion to dismiss is denied.

9 All right, the motion to address Brianna Licari's potential invocation of  
10 the Fifth Amendment right against self-incrimination. Mr. Pike was here and we had  
11 from Mr. Becker's office, Mr. —

12 MS. BLUTH: Castillo.

13 THE COURT: -- Castillo was here. You were not here. But he just had a  
14 very specific factual representation to make, which really didn't impact I guess  
15 anything one way or the other, so we let him put it on the record without —

16 MR. CHRISTIANSEN: Mr. Pike told me, Judge.

17 THE COURT: -- without you being here. So just to make it clear again, he  
18 indicated that they tried the last known phone numbers for Brianna, I believe, and  
19 they were not able to reach anybody. So while they tried to aid in locating the  
20 witness, they weren't able to do anything essentially.

21 So I think if the witness is located we need to talk to her out of the  
22 presence of the jury ahead of time, see what her intention is and the Court will give  
23 her instructions; and, then, it needs to be on a question by question basis. Because  
24 certainly if there are questions that she can answer that don't involve an appropriate  
25 invocation of her Fifth Amendment rights, then she can be ordered to answer those

1 but, again, ahead of time we'll bring her in.

2 Mr. Castillo indicated that if she is located and brought in to testify, his  
3 office would like to be notified of that, so certainly we would do that. Give her an  
4 opportunity to confer privately with her counsel and that's how we'll handle it. All  
5 right.

6 So the next thing is the State's motion to admit evidence of other bad  
7 acts. State do you have anything you'd like to add?

8 MS. BLUTH: Just very quickly, Judge. I wanted to make clear and I think it  
9 was clear in my motion in regards to Mr. Dismont, I don't think that any of that would  
10 be admissible nor do I find it relevant if he sticks with the defense that we just spoke  
11 about about the robbery being culminated. I don't think any of that is relevant.

12 In regards to Mr. Solid, I think that potentially in motions and when  
13 we've been speaking in court, it seems to me like there are maybe two defenses,  
14 one either it wasn't me and, two, I didn't know what was going on. I think that then  
15 these previous –

16 THE COURT: Here's –

17 MS. BLUTH: I'm sorry.

18 THE COURT: I'm sorry to cut you off.

19 MS. BLUTH: That's okay.

20 THE COURT: Let me let you finish.

21 MS. BLUTH: Okay. Just in regards to, you know, if he's saying it wasn't me  
22 then I think it becomes incredibly relevant into identity, motive, intent. If the defense  
23 becomes I didn't know what was going on, then I think it knowledge and absence of  
24 – or lack of mistake or accident, it becomes incredibly relevant.

25 THE COURT: Okay. Here's what I'm inclined to say –

1 MS. BLUTH: Yes, Your Honor.

2 THE COURT: -- the fact that both involved an Apple product I really don't see  
3 as a sufficient link to make them similar enough.

4 If -- and I just want to make something really clear, you know, the  
5 defense has the right to, you know, argue you haven't proved the elements, you  
6 haven't proved the identity beyond a reasonable doubt without opening the door to  
7 anything. So if that's just going to be their defense without putting on any evidence,  
8 I don't see this coming in. Because, again, they have the right as part of their  
9 defense to argue they didn't prove identity; they didn't prove an ongoing robbery;  
10 they didn't prove that, you know. They didn't prove that Mr. Solid knew anything and  
11 that's really, you know, making you meet your burden of proof.

12 MS. BLUTH: Sure.

13 THE COURT: Now if they put on an affirmative defense meaning, you know,  
14 he testifies or does something to open the door, then you may be able to bring this  
15 in in rebuttal evidence --

16 MS. BLUTH: Okay.

17 THE COURT: -- and can have a hearing on that. But I just want to make it  
18 really clear that just questioning whether the State has met the elements or the  
19 State has proven identity beyond a reasonable doubt isn't necessarily going to open  
20 the door. Because they're allowed to -- and that's not inconsistent defenses, I mean  
21 they're allowed to say, look, they didn't prove identity. They didn't prove knowledge.  
22 They didn't prove this. They didn't prove that. And I don't think would clearly open  
23 the door. But if they put on evidence then, you know, I didn't know Mr. Dismont. It  
24 wasn't me or something like that and let's just say hypothetically --

25 MS. BLUTH: Sure.

1 THE COURT: -- they put on evidence that Mr. Solid and Mr. Dismont never  
2 did know each other or they just met that particular day, then I think you've opened  
3 the door to this kind of evidence and then we'll have a hearing about it. Okay.  
4 Just --

5 MS. BLUTH: So we can renew our motion during trial should it come up?

6 THE COURT: Right. Exactly. If the door is open but it has to be in some way  
7 open to make it relevant, because I just don't think, you know, a robbery involving --  
8 and, again, it wasn't a robbery to get -- as I understood the State's recitation of the  
9 facts. It's not a robbery to get an iPhone in the other case.

10 MS. BLUTH: In -- well, the two -- one it wasn't and one it was --

11 THE COURT: Right.

12 MS. BLUTH: -- with Mr. Solid's it was, with Mr. Dismont's it wasn't --

13 MR. CHRISTIANSEN: Other way.

14 MS. BLUTH: -- is that the way it was?

15 THE COURT: Okay. So I think we need to address that when we're into the  
16 trial.

17 MS. BLUTH: Understood.

18 MR. PIKE: Thank you, Your Honor. And just for the record Defendant Solid  
19 would join in the objection that was filed by Mr. Dismont's counsel in relation to  
20 those counts, because we weren't counsel at the time I could not prepare a written  
21 opposition.

22 THE COURT: Right.

23 Well, I think, again, your rights are pretty preserved on this because I'm  
24 not granting the motion. I'm going to wait and see if -- you know what happens at  
25 trial and if the door is opened in some way. At this point in time I just don't think it's

1 related enough without that defense actually being made.

2 MS. BLUTH: Understood.

3 THE COURT: Okay.

4 MS. BLUTH: And, Your Honor, I just had one more question about the State's  
5 motion or, I'm sorry, the defense motion to dismiss. I think the second part of their  
6 motion dealt with them being allowed to proffer jury instructions for the lesser  
7 included and I –

8 THE COURT: Okay. First of all and I apologize I didn't touch on that. In  
9 terms of what the jury instructions are going to be, I'm not going to bind the Court  
10 one way or the other on that, you know, we can deal with those arguments at the  
11 conclusion of the evidence while – when we settle the jury instructions.

12 MS. BLUTH: Okay.

13 THE COURT: Okay.

14 MR. CHRISTIANSEN: Judge, my only question – I'm perfectly fine with that –  
15 is that the State indicted Mr. Dismont, let me speak for my client.

16 THE COURT: Right. And they indicated they're going to file an amended  
17 charging document correct at the time of trial.

18 MS. BLUTH: That's correct.

19 MR. CHRISTIANSEN: Right, but they indicted him based on theories of  
20 liability including, you know, the traditional first degree murder, premeditation and  
21 malice aforethought. They instructed the Grand Jury on those theories of liability.  
22 His defense is based upon the choices they made to charge him. And now to allow  
23 them to abandon in an effort to cleave me away from being able to argue lesser  
24 included, when Your Honor just – in denying my motion to dismiss said, hey, that's a  
25 question of fact for the jury, whether it's complete, not complete, which all involves



1 the lesser includeds, I just don't want to be forbidden from talking about it.

2 THE COURT: Well, let me ask you this, though –

3 MR. CHRISTIANSEN: Sure.

4 THE COURT: -- I mean to me it was pretty clear that an alternative theory  
5 would be felony murder, correct?

6 MR. CHRISTIANSEN: No doubt and that's their theory. I don't think –

7 THE COURT: And so I guess my question to you is how does that prejudice  
8 you in your ability to defend your client, when you knew that one of the theories that  
9 they had evidence on and would be arguing and presenting was felony murder?

10 MR. CHRISTIANSEN: Because one of the other –

11 THE COURT: So even if you could defend one theory, they still had that  
12 other theory out there. So I guess my question to you is where's the prejudice to  
13 you when you still knew that your defense wouldn't necessarily address felony  
14 murder and they were going to be going forward with that theory. Do you  
15 understand my question?

16 MR. CHRISTIANSEN: I do. And the –

17 THE COURT: And that's what I'm missing.

18 MR. CHRISTIANSEN: The simple is that in a straight felony murder trial I  
19 think the Court likely would say to me you're not entitled to a second. You're not  
20 entitled to a voluntary. You're not entitled to an involuntary or the bootstrap  
21 provision that makes involuntary second. Because it's felony murder, premeditation,  
22 malice aforethought presumed.

23 THE COURT: It's either, it's one or the other; it's either or.

24 MR. CHRISTIANSEN: When they choose alternatively and instruct the Grand  
25 Jury that, in that for premeditation and malice aforethought, I'm entitled to all the

1 lesser includeds and a theory of defense to fall into all of those lesser includeds.

2           They, on the eve of trial now, have figured out that may be what the  
3 defense intends to do and are trying to stave off a factual defense from a theory of  
4 liability they proffered. And it wasn't these two prosecutors, it was prior counsel,  
5 proffered to the Grand Jury with an Indictment and instruction. And so that's the  
6 prejudice, they chose premeditation and malice aforethought as a theory of liability  
7 that necessarily includes all lesser types of murder, include – you know, from  
8 second –

9           THE COURT: Right. But can't you envision a verdict form where they would,  
10 you know, say do you find, you know, felony murder? And then there wouldn't be  
11 any lesser includeds on that. Or do you find first degree murder by premeditation  
12 and deliberation?

13           MR. CHRISTIANSEN: That's right.

14           THE COURT: If you don't, then this and that. So I could see where you  
15 wouldn't necessarily – you might on the premeditation have the lesser included, but  
16 they would still have the option of the felony murder.

17           MR. CHRISTIANSEN: No fight.

18           THE COURT: And so we would have to design a verdict form, so I guess that  
19 still gets me to where's the prejudice?

20           MR. CHRISTIANSEN: There's only prejudice if you're telling me you're not  
21 going to give me the lesser includeds for the alternative theory of liability.

22           THE COURT: Well, what I'm saying is if they prevailed on the felony murder  
23 you wouldn't get the – the jury wouldn't necessarily be able to find the alternative  
24 theories. It's only if they abandon felony murder or didn't find on felony murder and  
25 they found on premeditation – and they didn't find on premeditation and deliberation.

1 Do you see what I'm saying?

2 MR. CHRISTIANSEN: I see what you're saying.

3 THE COURT: Because then the problem is, well, if you don't have a lesser  
4 included and they find it's a felony murder, then you still don't have a lesser  
5 included.

6 MR. CHRISTIANSEN: I guess what I'm saying is –

7 THE COURT: Because that evidence still would have been the same.

8 MR. CHRISTIANSEN: That's right, Judge. And if you're telling me that –

9 THE COURT: So I guess what I'm missing is where is your prejudice?

10 MR. CHRISTIANSEN: The prejudice is you're now going to – if they are  
11 allowed to amend and take away the theory of premeditation and malice  
12 aforethought, I'm precluded arguably, from putting forward any lesser includeds in  
13 both an opening statement. You know, in saying to the jury, hey, this wasn't murder,  
14 this wasn't first degree murder; this is something else, you know. I can't do that now  
15 'cause you're never going to give me an instruction that allows me to do that under  
16 the felony murder statute. You're going to say, hey, if it's a robbery then they're  
17 done, it's first degree murder, presumption is malice aforethought and premeditation  
18 is presumed.

19 So I'm trying to not allow them –

20 THE COURT: I get what you're trying to do, but what I'm saying is because  
21 they clearly had the felony murder theory –

22 MR. CHRISTIANSEN: They're trying to abandon it is what I'm telling you,  
23 Judge. And if they abandon it and you allow them –

24 THE COURT: No, no.

25 MR. CHRISTIANSEN: -- to abandon –

1 THE COURT: Right.

2 MR. CHRISTIANSEN: -- the premeditation, then you're cleaving off a defense  
3 that has been -- for two years the defense intended to be forward on behalf of Mr.  
4 Dismont.

5 THE COURT: All right.

6 MS. BLUTH: May I say something Your Honor?

7 THE COURT: Ms. Bluth would you respond?

8 MS. BLUTH: Sure.

9 I mean the real issue is he cannot show any prejudice because really I  
10 would have had two bites of the apple and now I'm saying, hey, it's all or nothing.

11 THE COURT: That's what I'm saying

12 MS. BLUTH: They either find it or they don't.

13 THE COURT: You've kind of articulated better than the Court did --

14 MS. BLUTH: Yeah.

15 THE COURT: -- but that's what I'm saying. She had two bites at the apple.  
16 She had felony murder and she had premeditation and deliberation and all of the  
17 lesser included there. But now all she has is felony murder. So she had that same  
18 bite at the apple, the same instructions, the same rules, the same lack of a lesser  
19 included on that before. So that's what I'm saying. Ms. Bluth.

20 MS. BLUTH: And that's exactly right. So I mean I have every right to come in  
21 and strike the premeditated language and, in doing so, the law is pretty clear that he  
22 does not get any lesser included. But I mean I don't think that that means he's  
23 prejudiced. He's not prejudiced by that. And the defense, what they've been  
24 proffering, which I recognize they can abandon at any point, but the defense the  
25 whole that they've been saying is, hey, the robbery was culminated, so you can't

1 find me guilty of felony murder; well, great, then it's a not guilty.

2 You wouldn't then go and argue –

3 THE COURT: And you still – I mean you still have that argument, Mr.  
4 Christiansen. So if the robbery was culminated and it's not a felony murder, that's  
5 your defense on that. But if the –

6 MR. CHRISTIANSEN: No, that's not, Judge. It's not. Hold on. That's trying  
7 to pigeonhole me into a defense. Whereas this is a defense too to the case; it's not  
8 a robbery, it's a larceny from the person. 'Cause a larceny from the person and  
9 somebody dies as a result it doesn't create first degree liability, it creates a lesser  
10 degree of liability.

11 THE COURT: But you still have that argument.

12 MR. CHRISTIANSEN: Not – no, I don't. Not if you let her amend and  
13 abandon premeditation and malice aforethought, 'cause then her only theory is all or  
14 nothing, as she just got done telling you and I don't have a way to tell a jury make  
15 'em responsible but it's not first degree murder responsible.

16 THE COURT: But she still – my point to you is she still had all of those  
17 arguments for felony murder before.

18 MR. CHRISTIANSEN: They chose to indict it the way they chose. I don't go  
19 to the Grand Jury, Your Honor. I don't –

20 MS. BLUTH: And I have the choice to strike it.

21 THE COURT: All right. I mean we can go round and round Mr. Christiansen  
22 all day. Frankly, I'm not seeing the prejudice to your client by allowing them to  
23 abandon one theory. I understand that you –

24 MR. CHRISTIANSEN: There's only prejudice if you don't allow me to put on a  
25 defense.

1 THE COURT: Okay. Well, here's – no. Because here's what you really  
2 want, you really want the jury to say, well, maybe it's felony murder but kind of have  
3 this compromised verdict of second degree or something like that and give the jury  
4 the option of doing that for the jury to say, well, you know, kind of reach a  
5 compromise. But if the jury were really, you know, if everybody was really to follow  
6 the instructions and the State were to proceed on two theories, which is what you  
7 thought they would be doing, then it's – you know, it's either first – it's either the  
8 felony murder and a not guilty there and then maybe, you know, a – I won't call a  
9 regular murder, the first degree and the lesser included. So the fact that you're  
10 eliminating your ability to kind of, I guess, what really in my view what you're trying  
11 to do, and I'm not saying it's inappropriate I think it's a good tactic and it's, you  
12 know, appropriate for you to try to do this. But that doesn't mean there's prejudice  
13 to your client that you can't do it.

14 And I think what you really wanted to do was to have some option for  
15 the jury to hold your client accountable, but for them to be able to go in the back and  
16 kind of have that ability to compromise. And what you're eliminating or what the  
17 State is now eliminating is that ability. But I don't find that that's really the kind of  
18 prejudice that the Court has to look at here.

19 And, you know, like I said if the jury really was following the instructions  
20 and, you know, the State would have been free to argue that it was a felony murder  
21 and that that's what the jury has to look at. And, so, I'm not seeing – again, I'm not  
22 seeing prejudice to you at this point in time.

23 I see where it kind of limits your ability to do that and I think that that  
24 was a good tactic and it might have worked. But that doesn't necessarily mean that  
25 there's prejudice against your client, unfair prejudice. So I'm going to let them file

1 the amended. I think we've argued back and forth. I think you've made an  
2 adequate record. I think the Court's tried to articulate the basis for its ruling, so I  
3 think we can move on.

4 MR. PIKE: Your Honor, in light –

5 MR. CHRISTIANSEN: So I don't run afoul of your ruling, Your Honor, are you  
6 limiting my ability to argue this isn't an enumerated felony that reaches the felony  
7 murder role, one of the listed felonies?

8 THE COURT: No, you can do whatever defense you would have to a felony  
9 murder, but that's what –

10 MR. CHRISTIANSEN: No, I want to do a defense to premeditation and  
11 malice aforethought, which is what they chose to indict him under.

12 THE COURT: Well, Mr. Christiansen, I've ruled that they're able to remove  
13 that theory.

14 MR. CHRISTIANSEN: No, I just am trying not to run afoul. I'm asking you am  
15 I allowed to still do that?

16 THE COURT: No. You can address the charges that are pending before  
17 your client. You can't address dismissed theories. You can't, you know, tell the jury  
18 well, they filed this in the Grand Jury and blah, blah, blah; I mean maybe I'm not  
19 grasping what you want to do.

20 I mean you have the charging document that is in this case and you can  
21 make whatever defense is appropriate to that particular charge and when I say  
22 charge I mean theory of liability.

23 So if you have a specific question, you want to say something, bring it  
24 up at trial and I'll say say it; don't say it, whatever. But, you know, I think you've  
25 made your record. I've made my record.

1 MR. PIKE: Can I make a record too?

2 THE COURT: Sure.

3 MR. PIKE: Thanks.

4 THE COURT: If you have something different than what Mr. Christiansen has  
5 said or if you have something that's unique to Mr. Solid.

6 MR. PIKE: Thank you.

7 THE COURT: Okay.

8 MR. PIKE: I – brevity is the very sole of wit.

9 That impacts my client directly because if the codefendant's theory is  
10 that the robbery was done and the death is not related to the robbery, then the  
11 Indictment that the State sought and obtained is under two theories, one that Mr.  
12 Dismont was involved in a robbery in which a death occurred. Or that during the  
13 time that Mr. Solid drove the vehicle away he had intentions to commit a homicide  
14 and if they take away that theory, it takes away Mr. Solid's ability to say, no, it was  
15 reckless driving, it was a vehicular homicide; I wasn't involved in any robbery so it  
16 then changes the nature of his possible defenses. And that's a prejudice [inaudible]  
17 of my client.

18 THE COURT: Well, I guess what I'm saying is he would still have to defend  
19 on the robbery either way. And, now, they don't have the ability to say, look, you  
20 know, he was mad – the robbery was over and he just didn't like that this guy came  
21 up to the car and he's intentionally running him over. So in fact they have less to  
22 argue. But you would have had to defend in my opinion on the robbery anyway.  
23 And you would have had to say the robbery was completed and it wasn't these other  
24 things.

25 Now, all you have to defend on is either he didn't know about the



1 robbery, he had no idea what was going to happen and, you know, if it was a  
2 robbery, the robbery was over.

3 MR. PIKE: Thank you.

4 THE COURT: So I mean, Ms. Bluth.

5 MS. BLUTH: I mean it's the same thing, I'm putting all of my apples in the  
6 same basket, so – or eggs, whatever you want to put in the basket, they're all in the  
7 same one. So I either get it or I don't. And especially for Mr. Solid, who wasn't, you  
8 know, hand-to-hand with the victim involved in the robbery. So if Mr. Solid wants to  
9 say that he didn't know what was going on then it's a not guilty. Do you know what  
10 I mean? I mean –

11 THE COURT: No, I mean – like I said, you still would have had to defend on  
12 the robbery. And so I don't see that there's an additional burden here that's being  
13 imposed by the State. Because you still would have had to defend on that robbery  
14 and then it could have been other things with respect to Mr. Solid, maybe he was  
15 just angry. Maybe, you know, it had nothing to do. Maybe, you know, how dare this  
16 person approach my vehicle or whatever theory of first degree. Now, you don't have  
17 to deal with that. But, again, I don't see that there's something new you have to  
18 defend against and this is really to both Defendants. You still had that that you had  
19 to explain away or, you know, again, he didn't know that it was going to – that still  
20 would have had to be part of the defense in my opinion.

21 So that's where we are, I think as I said, I think we've already gone over  
22 this. I don't have anything to add if no one else has anything else to add for the  
23 record.

24 MR. CHRISTIANSEN: Judge just from a procedural matter in terms of relief  
25 from this order I need to ask the Court to stay the proceedings in order to file a writ

1 in the Supreme Court. So I'm orally asking the Court to stay proceedings.

2 THE COURT: Okay. And your oral motion is denied.

3 MR. CHRISTIANSEN: Thank you, Your Honor.

4 THE COURT: So you know what you have to do?

5 MR. CHRISTIANSEN: Yes, Your Honor. Thank you very much.

6 THE COURT: All right. Thank you.

7 MR. CHRISTIANSEN: See you on Monday.

8 MS. BLUTH: Thank you, Your Honor.

9 THE COURT CLERK: How long is it going to last?

10 THE COURT: How long do we expect for trial?

11 MR. PIKE: A week, week and a half.

12 MR. CHRISTIANSEN: Less than two would be my –


13 MS. BLUTH: That was my guess, less than two.

14 THE COURT: Okay. All right. Very good.

15 [Whereupon the proceedings concluded, 11:08 a.m.]

16 \* \* \* \* \*

17  
18 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video  
19 proceedings in the above-entitled case to the best of my ability.

20   
21 DEBRA WINN, Court Transcriber

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