

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

DARION MUHAMMAD-COLEMAN  
aka Darion Muhammadcoleman

Appellant,

vs

THE STATE OF NEVADA,

Respondent

Electronically Filed  
Oct 09 2017 02:18 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
**CASE NO.: 72867**

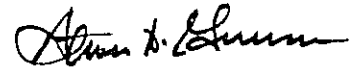
**APPELLANT'S APPENDIX**

**VOLUME 3**

**255-418**

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CLERK OF THE COURT

1 MICHAEL H. SCHWARZ, ESQ.  
2 Nevada Bar 5126  
3 626 South 7<sup>th</sup> Street, Ste. 1  
4 Las Vegas, Nevada 89101  
5 (702) 598-3909  
6 michaelhschwarz@gmail.com  
7 Attorney for Defendant  
8 Darion Muhammad-Coleman

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 DARION MUHAMMAD-COLEMAN,  
12 #2880725

Defendant.

CASE NO.: C-13-293296-1  
DEPT. NO.: XI

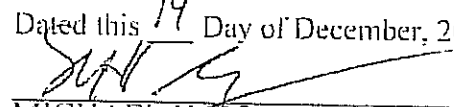
MOTION TO CONTINUE TRIAL DATE

Date of Hearing:

Time of Hearing:


COMES NOW, DARION MUHAMMAD-COLEMAN by and through his attorney, MICHAEL H. SCHWARZ, Esq., and does hereby request from this Honorable Court an Order continuing the trial date currently set for January 3, 2017. This Motion is made and based upon the papers and pleadings on file, the Exhibits attached hereto, as well as oral argument, should same be requested by this Honorable Court.

Dated this 19 Day of December, 2016

  
MICHAEL H. SCHWARZ, ESQ.  
Nevada Bar 5126  
626 South 7<sup>th</sup> Street, Ste. 1  
Las Vegas, Nevada 89101

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TO: MICHAEL J. SCHWARTZER, CHIEF DEPUTY DISTRICT ATTORNEY

as counsel by be heard  
  
 Clerk or Attorney for Defendant

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Pursuant to the terms of the agreement, Defendant was to enter a plea in that case, and also to Plead guilty to Second Degree Murder with the use of a Deadly Weapon in the instant case. Although Defendant did enter his plea in the first case, he refused to enter a plea in the instant case, thereby violating the terms of the Plea Agreement.

The Motion was denied, and Defendant was sentenced in case C-14-299066-1. Despite repeated requests, Defendant's attorney in that case refused to file either an Appeal, or a Post Conviction

1 Petition.

2 Ultimately, Defendant filed a Post Conviction Writ in Proper Person with the District Court. An  
3 attorney was appointed to submit a supplemental brief, and a hearing is scheduled for January 9, 2017  
4 on Defendant's request for an evidentiary hearing in District Court 8.

5 Because the issues in Defendant's petition directly relate to the validity of the plea agreement in  
6 that case, which relied on a contingency to plead guilty in the instant case, Defendant is requesting that  
7 the trial in this matter be continued until a decision is reached with respect to his Post Conviction Writ  
8 in Department 8.

9 Additionally, because the Defendant is charged in this case with Open Murder, should he be  
10 convicted of first degree murder, the prior conviction which is currently under challenge, can be used  
11 as an aggravating factor.

12  
13 NRS 200.033(2) States: Circumstances aggravating first degree murder. The only  
14 circumstances by which murder of the first degree may be aggravated are:

15 2. The murder was committed by a person who, at any time before a penalty hearing  
16 is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:

17 (a) Another murder and the provisions of subsection 12 do not otherwise apply to that  
18 other murder; or

19 (b) A felony involving the use or threat of violence to the person of another and the  
20 provisions of subsection 4 do not otherwise apply to that felony.

21 For the purposes of this subsection, a person shall be deemed to have been convicted at the time  
22 the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without  
a jury.

23 Additionally the Defendant has only just recently informed the undersigned that he believes that  
24 he has been suffering from Post Traumatic Stress Disorder, as a result of being the victim of a shooting  
25 when he was 16 years of age. As this court knows, Defendant and his family have a significant history  
26 of mental illness. Defendant relates that, at the age of 12, he was diagnosed with bi-polar disorder, and  
27 has essentially been taking medication ever since. Defendant related to the undersigned that he was shot  
28

1 multiple times when he was 16, and was taken to UMC emergency.

2 Defendant has requested that the undersigned have him evaluated for Post Traumatic Stress  
3 Disorder in preparation for trial. Because this request has only recently been made, and as Defendant  
4 is currently incarcerated at High Desert State Prison, the undersigned is additionally requesting that the  
5 trial be continued order to fully investigate Defendant's claims.

6 Post Traumatic Stress Disorder is recognized in Nevada as an element of a self-defense claim.  
7 In *Mitchell v. State*, \_\_\_ Nev. \_\_\_, 192 P.3d 721(2008), The Court elected to treat Post Traumatic Stress  
8 Disorder in a similar manner to cases involving Spousal Abuse as a defense to a charge of Murder, when  
9 the issue of self defense is raised. Although Nevada does not recognize the defense of diminished  
10 capacity, the issue of Mens Rea, or of criminal intent is an essential element of murder, unless predicated  
11 upon the murder being committed during the commission of a felony. The Court of Appeals in  
12 Washington State considered this issue in *State v. Bottrell*, 103 Wash.App 706, 14 P.3d 164(2000), and  
13 concluded that Post Traumatic Stress Disorder can effect the element of intent to commit a crime. This  
14 is not a diminished capacity defense per se, but an attack on the specific Mens Rea of the crime charged.  
15 As stated, it is especially important when, as here, the defense is self defense.

16  
17 In order to present this defense, it will be necessary to have the Defendant evaluated by a  
18 professional. There is simply no time to do this without a continuance of the current trial date.

#### 19 LEGAL AUTHORITY

20 EDCR Rule 7.30 States.

21 (a) Any party may, for good cause, move the court for an order continuing the day set for trial  
22 of any cause. A motion for continuance of a trial must be supported by affidavit except where  
23 it appears to the court that the moving party did not have the time to prepare an affidavit, in  
24 which case counsel for the moving party need only be sworn and orally testify to the same factual  
25 matters as required for an affidavit. Counter-affidavits may be used in opposition to the motion.

26 (b) If a motion for continuance is made on the ground that a witness is or will be absent at the  
27 time of trial, the affidavit must state:

28 (1) The name of the witness, the witness' usual home address, present location, if known, and  
the length of time that the witness has been absent.

(2) What diligence has been used to procure attendance of the witness or secure the witness'  
deposition, and the causes of the failure to procure the same.

1 (3) What the affiant has been informed and believes will be the testimony of the absent witness,  
2 and whether the same facts can be proven by witnesses, other than parties to the suit, whose  
attendance or depositions might have been obtained.

3 (4) The date the affiant first learned that the attendance or deposition of the absent witness could  
not be obtained.

4 (5) That the application is made in good faith and not merely for delay.

5 (c) Except in criminal matters, if a motion for continuance is filed within 30 days before the date  
of the trial, the motion must contain a certificate of counsel for the movant that counsel has  
6 provided counsel's client with a copy of the motion and supporting documents. The court will  
not consider any motion filed in violation of this paragraph and any false certification will result  
7 in appropriate sanctions imposed pursuant to Rule 7.60.

8 (d) No continuance may be granted unless the contents of the affidavit conform to this rule,  
except where the continuance is applied for in a mining case upon the special ground provided  
by NRS 16.020.

9 (e) No amendments or additions to affidavits for continuance will be allowed at the hearing on  
the motion and the court may grant or deny the motion without further argument.

10 (f) Trial settings may not be vacated by stipulation, but only by order of the court. The party  
11 moving for the continuance of a trial may obtain an order shortening the time for the hearing of  
the motion for continuance. Except in an emergency, the party requesting a continuance shall  
12 give all opposing parties at least 3 days' notice of the time set for hearing the motion. The  
hearing of the motion shall be set not less than 1 day before the trial.

13 (g) When application is made to a judge, master or commissioner to postpone a motion, trial or  
other proceeding, the payment of costs (including but not limited to the expenses incurred by the  
14 party) and attorney fees may be imposed as a condition of granting the postponement.

15 (h) Motions or stipulations to continue a civil trial that also seek extension of discovery dates  
must comply with Rule 2.35.

### 16 CONCLUSION

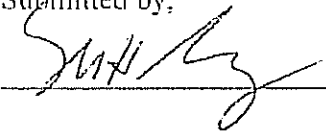
17  
18 Defendant is requesting that this Honorable Court grant a continuance of the Trial date currently  
19 set for January 3, 2017. As stated above, the reasons for the request are twofold. First, Defendant is  
20 currently awaiting a decision by the District Court, Department 8, on his Post-Conviction Writ. His  
21 petition involves his breach of the Guilty Plea entered in another case, which was tied to his agreement  
22 to enter a plea in the instant case. Should Defendant prevail, it will have implications for the instant  
23 case, including, but not limited to, removing an aggravating factor should he be convicted here or first  
24 degree murder. Second, and perhaps most importantly, Defendant has only recently advised the  
25 undersigned that he is suffering from Post Traumatic Stress Disorder. In order to fully investigate the  
26 validity of this claim, the undersigned will have to have the Defendant evaluated by a competent  
27 professional. This is especially important, as Post Traumatic Stress Disorder is an element of a self  
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1 defense case, as it can negate the necessary intent for the most serious charge the Defendant currently  
2 faces.

3 As Defendant is currently serving an eight to twenty year sentence, the State will not be  
4 prejudiced in any way by this continuance.

5 Dated this 19 day of December, 2016.

6  
7 Submitted by,

8   
9

10 MICHAEL H. SCHWARZ, ESQ.

11 Nevada Bar 5126

12 626 South 7<sup>th</sup> Street, Ste. 1

13 Las Vegas, Nevada 89101

14 (702) 598-3909

15 michaelhschwarz@gmail.com

16 *Attorney for Defendant*

17 *Darion Muhammad-Coleman*  
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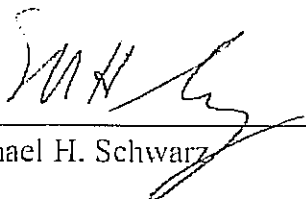




1                                    CERTIFICATE OF ELECTRONIC SERVICE

2                    I, the undersigned hereby certify that on the 19<sup>th</sup> day of December, 2016 I caused the  
3                    foregoing Motion to Continue Trial to be served electronically to the following:

4                    MICHAEL J. SCHWARTZER  
5                    CHIEF DEPUTY DISTRICT ATTORNEY  
6                    motions@clarkcountyda.com

7                      
8                    \_\_\_\_\_  
9                    Michael H. Schwarz

# EXHIBIT A

1 GPA  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SONIA V. JIMENEZ  
6 Chief Deputy District Attorney  
7 Nevada Bar #008818  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

OCT - 3 2014

By: Billie Jo Craig  
BILLIE JO CRAIG, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff;

-vs-

DARION MUHAMMAND-COLEMAN,  
#2880725

Defendant.

CASE NO: C-14-299066-1

DEPT NO: VIII

**GUILTY PLEA AGREEMENT**

I hereby agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and COUNT 4 - COERCION WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 207.190, 193.165 - NOC 53160), as more fully alleged in the charging document attached hereto as Exhibit "1".

I agree to the forfeiture as set forth in the Stipulation for Compromise of Seized Property which is attached hereto and incorporated herein by reference as Exhibit "2".

I also agree to plead guilty to SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON in case number C293296.

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

Both Parties agree to stipulate to a total sentence of eight (8) to twenty (20) years in case number C299066 with all counts running concurrently, as follows: twenty-eight (28) to seventy-two (72) months on Conspiracy to Commit Robbery, seventy-two (72) to one hundred eight (180) months on Burglary While in Possession of a Firearm; forty-eight (48) to one hundred twenty (120) months plus a consecutive forty-eight (48) to one hundred twenty (120) on the Robbery With Use of a Deadly Weapon; twenty-eight (28) to seventy-two (72) plus a consecutive twenty-eight (28) to seventy-two (72) month on Coercion With Use of a Deadly Weapon. Both Parties further agree to stipulate to a sentence of ten (10) to twenty-five (25) years on the Second Degree Murder with a consecutive sentence of twenty-four (24) to one hundred twenty (120) months on the deadly weapon enhancement in case C293296. Both Parties agree the sentence on both cases will run consecutively for a total sentence in both cases of twenty (20) to fifty-five (55) years in the Nevada Department of Corrections.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

Otherwise I am entitled to receive the benefits of these negotiations as stated in this plea agreement.

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CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

As to Count 1 - I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than six (6) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$10,000.00.

As to Count 2 - I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than two (2) years and a maximum term of not more than fifteen (15) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$10,000.00.

As to Count 3 - I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than two (2) years and a maximum term of not more than fifteen (15) years, plus a consecutive one (1) year to fifteen (15) years for the use of a deadly weapon. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.

As to Count 4 - I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than six (6) years, plus a consecutive one (1) year to six (6) years for the use of a deadly weapon. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.

I understand that the law requires me to pay an Administrative Assessment Fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to

1 reimburse the State of Nevada for any expenses related to my extradition, if any.

2 As to Counts 1, 2 & 4 - I understand that I am eligible for probation for the offense to  
3 which I am pleading guilty. I understand that, except as otherwise provided by statute, the  
4 question of whether I receive probation is in the discretion of the sentencing judge.

5 As to Count 3 - I understand that I am not eligible for probation for the offense to which  
6 I am pleading guilty.

7 I understand that I must submit to blood and/or saliva tests under the Direction of the  
8 Division of Parole and Probation to determine genetic markers and/or secretor status.

9 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,  
10 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or  
11 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation  
12 and may receive a higher sentencing range.

13 I understand that if more than one sentence of imprisonment is imposed and I am  
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order  
15 the sentences served concurrently or consecutively.

16 I understand that information regarding charges not filed, dismissed charges, or charges  
17 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

18 I have not been promised or guaranteed any particular sentence by anyone. I know that  
19 my sentence is to be determined by the Court within the limits prescribed by statute.

20 I understand that if my attorney or the State of Nevada or both recommend any specific  
21 punishment to the Court, the Court is not obligated to accept the recommendation.

22 I understand that if the offense(s) to which I am pleading guilty was committed while I  
23 was incarcerated on another charge or while I was on probation or parole that I am not eligible  
24 for credit for time served toward the instant offense(s).

25 I understand that if I am not a United States citizen, any criminal conviction will likely  
26 result in serious negative immigration consequences including but not limited to:

- 27 1. The removal from the United States through deportation;
- 28 2. An inability to reenter the United States;

3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

#### WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction.



including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 3 day of ~~September~~ October, 2014.

*[Signature]*  
*[Signature]*

*[Signature]*  
DARION MUHAMMAD-COLEMAN  
Defendant

AGREED TO BY:

*[Signature]*  
SONIA V. JIMENEZ  
Chief Deputy District Attorney  
Nevada Bar #008818

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court  
3 hereby certify that:


- 4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge(s) to which guilty pleas are being entered.  
6 2. I have advised the Defendant of the penalties for each charge and the restitution  
7 that the Defendant may be ordered to pay.  
8 3. I have inquired of Defendant facts concerning Defendant's immigration status  
9 and explained to Defendant that if Defendant is not a United States citizen any  
10 criminal conviction will most likely result in serious negative immigration  
11 consequences including but not limited to:  
12 a. The removal from the United States through deportation;  
13 b. An inability to reenter the United States;  
14 c. The inability to gain United States citizenship or legal residency;  
15 d. An inability to renew and/or retain any legal residency status; and/or  
16 e. An indeterminate term of confinement, by with United States Federal  
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been  
19 told by any attorney, no one can promise Defendant that this conviction will not  
20 result in negative immigration consequences and/or impact Defendant's ability  
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are  
23 consistent with the facts known to me and are made with my advice to the  
24 Defendant.  
25 5. To the best of my knowledge and belief, the Defendant:  
26 a. Is competent and understands the charges and the consequences of  
27 pleading guilty as provided in this agreement,  
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto  
voluntarily, and  
c. Was not under the influence of intoxicating liquor, a controlled  
substance or other drug at the time I consulted with the Defendant as  
certified in paragraphs 1 and 2 above.

29 Dated: This 27 day of September, 2014.

30 *Cheryl Lee*

31   
32 ATTORNEY FOR DEFENDANT

33 mmw/GCU

# STIPULATION FOR COMPROMISE OF SEIZED PROPERTY

Defendant DARION MUHAMMAD-COLEMAN ID# 2880725 CRIMINAL CASE# C-14-299066-1

Seizing Law Enforcement Agency LVMPS 171200

Seizure Event Number 1303144076 & 1303144402

IT IS HEREBY STIPULATED and AGREED by and between STEVEN B. WOLFSON, Clark County District Attorney through his undersigned Deputy, and the Defendant that a stipulation for compromise be entered into and resolved as part of the negotiations in the aforementioned criminal case(s) pertaining to property impounded or seized by the aforementioned law enforcement agency under the aforementioned event number(s), as follows:

## I. PROSECUTOR CHECKS THE APPROPRIATE PARAGRAPHS:

- ☒ a. TOTAL FORFEITURE: That Defendant agrees to release and waive any and all right, title and interest in said property as being forfeited to the seizing law enforcement agency and subject to disposition pursuant to Nevada Revised Statutes 179.1175, 179.118 and 179.1185.
- ☐ b. PARTIAL FORFEITURE: Within the guidelines and policies of the seizing law enforcement agency, the prosecution agrees to release to the Defendant or his designee the above-described property. That in exchange for release of the aforementioned property, Defendant agrees to release and waive any and all right, title and interest in the remainder of the seized property as being forfeited to the seizing law enforcement agency and subject to disposition pursuant to Nevada Revised Statutes 179.1175, 179.118 and 179.1185.
- ☐ c. VEHICLE FORFEITURE: Said property includes, but is not limited to, a motor vehicle whereby the Defendant agrees to release and waive any and all right, title and interest in said motor vehicle as being forfeited to the seizing law enforcement agency and subject to disposition pursuant to Nevada Revised Statutes 179.1175, 179.118 and 179.1185.
2. That the Defendant hereby authorizes the District Attorney's Office and the seizing law enforcement agency to take such action as is necessary, including, but not limited to, using this agreement to secure a judgement or an ex-parte order in any contemplated or pending companion forfeiture proceeding in order to give full force and effect to this agreement.
3. That the parties agree that this forfeiture, or any subsequent action taken to secure full force and effect of this agreement, does not and will not be considered as putting the Defendant in jeopardy of life, limb or property for the same offense under the Fifth Amendment of the United States Constitution and under Section Eight of Article One of the Nevada Constitution; and, that this forfeiture, or any subsequent action taken to secure full force and effect of this agreement, does not or will not constitute an excessive fine under the Eighth Amendment of the United States Constitution and under Section Six of Article One of the Nevada Constitution.
4. That the parties agree that any breach, withdrawal, repeal, rejection or any other abrogation of the negotiations in the aforementioned criminal case(s) shall not have any effect upon the finality of this stipulation; and, that any breach, withdrawal, repeal, rejection or any other abrogation of this stipulation shall not have any effect upon the finality of the negotiations in the aforementioned criminal case(s).
5. That this Stipulation for Compromise shall incorporate all of the protections attendant to such stipulations as contemplated under the provisions of NRS 48.105 as to all parties named herein; and, this Stipulation for Compromise shall not be construed in any fashion as an admission pertaining to any criminal charges, and shall not and does not constitute an admission of civil liability or fault on the part of any of the undersigned parties, or their present or former agents, servants, employees or others.
6. That the parties agree to accept these terms in full settlement and satisfaction of any and all civil claims and demands which each party or assignees may have against each other, agents and employees on account of the seizure or impoundment of said property.
7. That this Stipulation for Compromise shall forever, and completely bar any action or claim in any tribunal in any matter whatsoever, whether State, Federal or otherwise by the Defendant herein concerning the forfeiture of said property.
8. That the respective parties bear their own civil costs and attorney's fees which may have been occasioned and occurred as a result of the seizure and forfeiture of said property.

IT IS SO STIPULATED and AGREED

Defendant:

Attorney for Defendant, Nevada Bar #

SONIA V. JIMENEZ

Clark County Deputy District Attorney, Nevada Bar #008813

Date

Date

Date

1 AIND

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SONIA JIMENEZ  
6 Chief Deputy District Attorney  
7 Nevada Bar #08818  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12  
13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA  
15

16 THE STATE OF NEVADA,

17 Plaintiff,

18 -vs-

19 DARION MUHAMMAD-COLEMAN,  
20 #2880725  
21 DAVID MAJIED, #2887363  
22 ANTWON WALKER, #2827424

23 Defendants.

CASE NO: C-14-299066-1

DEPT NO: VIII

24 AMENDED  
25 INDICTMENT  
26

27 STATE OF NEVADA )  
28 COUNTY OF CLARK ) ss.

29 The Defendants above named, DARION MUHAMMAD-COLEMAN, DAVID  
30 MAJIED, and ANTWON WALKER, accused by the Clark County Grand Jury of the crimes  
31 of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480  
32 - NOC 50147); BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B  
33 Felony - NRS 205.060 - NOC 50426); ROBBERY WITH USE OF A DEADLY WEAPON  
34 (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and COERCION WITH USE  
35 OF A DEADLY WEAPON (Category B Felony - NRS 207.190, 193.165 - NOC 53160),  
36 committed at and within the County of Clark, State of Nevada, on or about the 14th day of  
37 March, 2013 as follows:  
38

39

1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants did wilfully, unlawfully, and feloniously conspire with each other and with  
3 TRISTON NEAL to commit a robbery.

4 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

5 Defendants and TRISTON NEAL did then and there wilfully, unlawfully, and  
6 feloniously enter, with intent to commit larceny and/or robbery, that certain structure occupied  
7 by ANH VIET RHODES, located at 4825 Sevier Desert Street, North Las Vegas, Clark  
8 County, Nevada and/or by CESAR LOZA and/or DIANA SALDIVAR-DIAZ, located at 6237  
9 West Levi Ave., Las Vegas, Clark County, Nevada. said Defendants did possess a firearm  
10 during the commission of the crime, the Defendants being responsible under one or more of  
11 the following principles of criminal liability, to-wit: (1) by directly committing the crime;  
12 and/or (2) by Defendants and TRISTON NEAL aiding or abetting one another in the  
13 commission of the crime, with the intent that the crime be committed, by entering into a course  
14 of conduct whereby Defendants and TRISTON NEAL were driving together in a vehicle  
15 looking for individuals to rob, Defendants and TRISTON NEAL then selecting ANH VIET  
16 RHODES as she drove in her vehicle and then following ANH VIET RHODES as she drove  
17 to her home, Defendant DARION MUHAMMAD-COLEMAN and/or Defendant DAVID  
18 MAJIED then leaving the vehicle occupied by Defendants and TRISTON NEAL while the  
19 others remained in the vehicle and acted as lookouts, DARION MUHAMMAD-COLEMAN  
20 and/or DAVID MAJIED then approaching ANH RHODES in the garage of her home with a  
21 firearm as she exited her vehicle and demanding her personal property, DARION  
22 MUHAMMAD COLEMAN and/or DAVID MAJIED then returning to the vehicle occupied  
23 by the others with the property of ANH VIET RHODES, the Defendants and TRISTON NEAL  
24 then fleeing the scene together in their vehicle, selling the property of ANH VIET RHODES  
25 and dividing the money amongst themselves, Defendants and TRISTON NEAL providing  
26 counsel and/or encouragement to one another through words and/or actions and acting in  
27 concert throughout and/or Defendants and TRISTON NEAL entered the home of CESAR  
28 LOZA and DIANA SALDIVAR-DIAZ with one or more firearms, demanding and taking

1 personal property from CESAR LOZA and DIANA SALDIVAR-DIAZ and from the home,  
2 and/or one or more of their number acting as lookout, Defendants and TRISTON NEAL  
3 providing counsel and/or encouragement to one another through words and/or actions and  
4 acting in concert throughout; and/or (3) pursuant to a conspiracy.

5 COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON

6 Defendants and TRISTON NEAL did then and there wilfully, unlawfully, and  
7 feloniously take personal property, to-wit: two (2) gold necklaces, and/or Apple iPhone and/or  
8 car keys, from the person of ANH VIET RHODES and/or a cellular telephone, and/or lawful  
9 money of the United States, and/or car keys and/or television, from the person of CESAR  
10 LOZA and/or a cellular telephone, and/or a purse and its contents, and/or a television, from  
11 the person of DIANA SALDIVAR-DIAZ, or in their presence, by means of force or violence  
12 or fear of injury to, and without the consent and against the will of the said ANH VIET  
13 RHODES and/or CESAR LOZA and/or DIANA SALDIVAR-DIAZ, said Defendants and  
14 TRISTON NEAL using a deadly weapon, to-wit: a firearm, during the commission of said  
15 crime; the Defendants being criminally liable under one or more of the following principles  
16 of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendants  
17 and TRISTON NEAL aiding or abetting one another in the commission of the crime, with the  
18 intent that the crime be committed, by entering into a course of conduct whereby Defendants  
19 and TRISTON NEAL were driving together in a vehicle looking for individuals to rob,  
20 Defendants and TRISTON NEAL then selecting ANH VIET RHODES and/or CESAR LOZA  
21 and/or DIANA SALDIVAR-DIAZ, Defendants and TRISTON NEAL providing counsel  
22 and/or encouragement to one another through words and/or actions and acting in concert  
23 throughout; and/or (3) pursuant to a conspiracy.

24 COUNT 4 – COERCION WITH USE OF A DEADLY WEAPON

25 Defendants and TRISTON NEAL did then and there willfully, unlawfully, and  
26 feloniously use physical force, or the immediate threat of such force, against CESAR LOZA  
27 and/or DIANA SALDIVAR-DIAZ, with the intent to compel them to do, or abstain from  
28 doing, an act which they had a right to do, or abstain from doing by forcing CESAR LOZA

1 into his residence, and/or moving him around in his residence, and/or forcing him to lie down  
2 on the ground, all with use of a deadly weapon, to wit: one or more firearms; Defendants being  
3 criminally liable under one or more of the following principles of criminal liability, to-wit: (1)  
4 by directly committing the crime; and/or (2) by Defendants and TRISTON NEAL aiding or  
5 abetting one another in the commission of the crime, with the intent that the crime be  
6 committed, by entering into a course of conduct whereby one or more of their number used  
7 one or more firearms to force CESAR LOZA into his home and/or by forcing him to lie on the  
8 ground inside of his home, while others of their number acted as lookout and/or by prohibiting  
9 DIANA SALDIVAR-DIAZ from getting her baby, and/or by forcing her to move around in  
10 her residence, all with use of a deadly weapon, to wit: one or more firearms, Defendants and  
11 TRISTON NEAL providing counsel and/or encouragement to one another through words  
12 and/or actions, Defendants and TRISTON NEAL acting in concert throughout; and/or (3)  
13 pursuant to a conspiracy.

14 DATED this 30th day of September, 2014.

15  
16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
18 Nevada Bar #001565

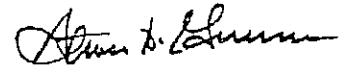
19 BY /s//SONIA V. JIMENEZ

20 SONIA JIMENEZ  
21 Chief Deputy District Attorney  
22 Nevada Bar #08818  
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27 13BGJ112ABC/13F04218X/13FN0594X/14F03170X/dd-GJ  
28 LVMPD EV# 1303144076; NLVPD EV# 1304402  
(TK11)

# EXHIBIT B





CLERK OF THE COURT

1 SPENCER M. JUDD, ESQ.  
2 Nevada Bar No. 010095  
3 325 So. Third St., #5  
4 Las Vegas, NV 89101  
5 (702) 606-4357  
6 (702) 360-4769 facsimile  
7 Spencer@SJuddLaw.com  
8 *Attorneys for Defendant*

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA


8 THE STATE OF NEVADA,	Case No. C-14-299066-1
9 Plaintiff,	Dept. No. VIII
10 vs.	Date of Hearing:
11 DARION MUHAMMAD-COLEMAN,	Time of Hearing:
12 Defendant.	

14 MOTION TO WITHDRAW GUILTY PLEA

15 COMES NOW, the Defendant by and through his attorney of record SPENCER M. JUDD,  
16 ESQ., and moves this Honorable Court to withdraw guilty plea entered in this case on October 3,  
17 2014 and allow the parties to move forward to trial.

18 This motion is made based upon all the papers and pleadings on file herein, the attached  
19 Points and Authorities, and oral arguments at the time set for hearing on this motion.

20 DATED this 31<sup>st</sup> day of October, 2014.

21  
22   
23 vs. Spencer M. Judd  
24 SPENCER M. JUDD, ESQ.  
25 Nevada Bar No. 10095  
26 325 So. Third St., #5  
27 Las Vegas, NV 89101  
28 (702) 606-4357  
*Attorneys for Defendant*

Spencer M. Judd, Esq.

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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff, and

TO: STEVEN WOLFSON, District Attorney

YOU AND EACH OF YOU will please take notice that a **DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA** will come on for hearing before the above-entitled Court on the 10 day of November, 2014, at the hour of 8 : 00a.m. in Department 8.

DATED this 31<sup>st</sup> day of October, 2014.

Spencer M. Judd  
SPENCER M. JUDD, ESQ.  
Nevada Bar No. 10095  
325 So. Third St., #5  
Las Vegas, NV 89101  
(702) 606-4357  
*Attorneys for Defendant*

POINTS AND AUTHORITIES  
STATEMENT OF FACTS

On October 3, 2014, Defendant Darion Muhammad-Coleman entered a Guilty Plea Agreement. The matter was set for sentencing on January 12, 2015. Defendant's attorney Spencer M. Judd, Esq. and deputy district attorney Sonia Jimenez had negotiated the plea.

Defendant has another matter pending also, case number C293296. The Defendant is represented in that matter by Deputy Special Public Defender, Jeremy Storms. Both attorneys, Judd and Storms, discussed the guilty plea in this case with the Defendant, for the plea anticipates a guilty plea in the other matter also. Both counsel were present on October 3, 2014 and both discussed the plea with the Defendant – both individually and together.

The Defendant comes from a line of relatives with mental disorders. He is currently under the care of doctors while he is incarcerated. During the guilty plea canvas by the Court, Defendant

1 acknowledged that he was under the influence of prescribed medications, Remeron (prescribed for  
2 major depressive disorder) and tramadol (a narcotic-like pain reliever).

3 Remeron, prescribed for treatment of severe depression, may have side affects that include  
4 unusual risk-taking behavior, extreme feelings of happiness or sadness, agitation, hallucinations,  
5 confusion, and others. Tramadol may have side affects that include agitation, hallucinations,  
6 dizziness, nervousness or anxiety, and others.

7  
8 Defendant has reflected on the conversations he had with Storms and Judd. He believes that  
9 he was pressured by Storms to take a deal in this case believing he would somehow get a better deal  
10 in the other matter – other than that which was listed in the plea agreement. He maintains that he is  
11 not guilty of the crimes alleged in this case and would like to withdraw the plea, on the basis that it  
12 was coerced by counsel, and go forward to a trial on the merits.

### 13 14 ARGUMENT

15 NRS 176.165 provides that a Defendant may, by motion, move to withdraw a plea of guilty,  
16 “only before sentence is imposed.” A motion to withdraw a guilty plead may be granted in the  
17 District Court’s discretion for any “substantial reason” if it is “fair and just.” See Molina v. State,  
18 120 Nev. 185, 191; 87 P.3d 533, 537 (2004) (citing Woods v. State, 114 Nev. 468, 475; 958 P.2d 91,  
19 95 (1998)). A District Court must examine the totality of the circumstances in order to determine  
20 whether a Defendant entered his plea voluntarily, knowingly, and intelligently. Molina, at 191  
21 (citing Crawford v. State, 117 Nev. 718, 722; 30 P.3d 1123, 1125-26 (2001); NRS 176.165).

22  
23 No sentence has yet been imposed. Defendant believes that counsel given to him regarding  
24 the affect this plea would have on a different case pending was flawed and that his agreement to  
25 plead in this case was based on false or misleading information. The Defendant was and is currently  
26 under the care of a physician and the effects of the prescription drugs may have affected his  
27 reasoning on the day that the plea was entered.  
28

1 Defendant asks this Court for leave to withdraw his plea so that he may face the pending  
2 charges at trial.

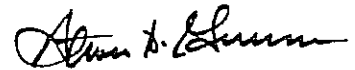
3 **CONCLUSION**

4 Based upon the foregoing, Defendant prays for leave of this Court to withdraw his plea of  
5 guilty.

6 DATED this 31<sup>st</sup> day of October, 2014.

7  
8     /s/ Spencer Judd      
9 SPENCER M. JUDD, ESQ.  
10 Nevada Bar No. 10095  
11 325 So. Third St., #5  
12 Las Vegas, NV 89101  
13 (702) 606-4357  
14 *Attorneys for Defendant*  
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Spencer M. Judd, Esq.



CLERK OF THE COURT

1 EXMT  
2 MICHAEL H. SCHWARZ, ESQ.  
3 Nevada Bar 5126  
4 626 South 7<sup>th</sup> Street, Ste. 1  
5 Las Vegas, Nevada 89101  
6 (702) 598-3909  
7 michaelhschwarz@gmail.com  
8 Attorney for Defendant  
9 Darion Muhammad-Coleman

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DARION MUHAMMAD-COLEMAN,  
14 #2880725

15 Defendant.

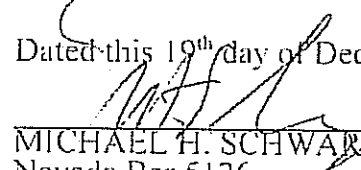
CASE NO.: C-13-293296-2  
DEPT. NO.: XI

EX PARTE MOTION FOR AN ORDER SHORTENING TIME

16 COMES NOW, DEFENDANT DARION MUHAMMAD-COLEMAN represented  
17 by counsel, Michael H. Schwarz and hereby files this Ex Parte Motion for an Order  
18 Shortening Time and requests that this Court shorten the time in which to hear the Movant's  
19 Motion to Continue Trial Date.

20 This application is based upon the pleadings and papers on file and the declaration of  
21 Movant attached to this motion.

22 Dated this 19<sup>th</sup> day of December, 2016.

23   
24 MICHAEL H. SCHWARZ, ESQ.  
25 Nevada Bar 5126  
26 626 South 7<sup>th</sup> Street, Ste. 1  
27 Las Vegas, Nevada 89101  
28

1 **DECLARATION IN SUPPORT OF EX PARTE MOTION FOR AN ORDER**  
2 **SHORTENING TIME**

3 I Michael H. Schwarz declare, under penalty of perjury:

4 1. I am the Movant in the above-entitled action. I have personal knowledge of the  
5 facts contained herein and am competent to testify to these facts.

6 2. I filed my Motion to Continue Trial on December 19, 2016 and I was given a  
7 hearing date of January 4, 2016 at the hour of 9:00 a.m.

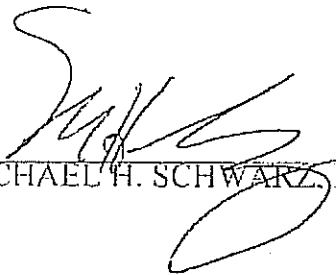
8 3. That Defendant's trial begins on January 3, 2016.

9 4. That Defendant requests that the Motion to Continue Trial Date be heard at the time  
10 and date currently set for Calendar Call on December 28, 2016 at 9:00 a.m.

11 5. This Ex Parte Motion for an Order Shortening Time is made in good faith.

12 I declare under penalty of perjury under the law of the State of Nevada that the  
13 foregoing is true and correct.

14 Dated this 19<sup>th</sup> day of December, 2016

15   
16 MICHAEL H. SCHWARZ, ESQ.  
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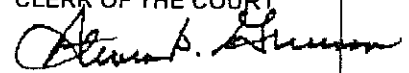
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**Abstract**

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1 RTRAN

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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,  
9  
10 Plaintiff,  
11 vs.  
12 DARION MUHAMMAD-COLEMAN,  
13 Defendant.

CASE NO.: C-13-293296-2  
DEPT. NO. XI

14 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

15 **WEDNESDAY, DECEMBER 28, 2016**  
16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
17 **CALENDAR CALL**  
18 **DEFENDANT'S MOTION TO CONTINUE TRIAL DATE**

19 APPEARANCES:

20 For the State: MICHAEL J. SCHWARTZER  
21 CHRISTOPHER S. HAMNER  
Chief Deputies District Attorney  
22 For the Defendant: MICHAEL H. SCHWARZ, ESQ.  
23  
24

25 RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER



1 WEDNESDAY, DECEMBER 28, 2016, AT 9:19 A.M.

2  
3 MR. SCHWARZ: Good morning, Your Honor, I'm ready, page 2.

4 THE COURT: How are you doing, Mr. Schwarz?

5 MR. SCHWARZ: Judge, I'm just fine. How are you?

6 THE COURT: I am well. Morning, Mr. Coleman. How are you doing today?

7 THE DEFENDANT: Well; how you doing ma'am?

8 THE COURT: I'm well; thank you.

9 MR. SCHWARTZER: Good morning, Your Honor.

10 THE COURT: Let's do the motion to continue.

11 MR. SCHWARZ: That's correct, Judge.

12 MR. SCHWARTZER: Your Honor, based on the fact there's an order  
13 shortening time, may I respond orally?

14 THE COURT: Absolutely.

15 MR. SCHWARTZER: Thank you, Your Honor.

16 MR. SCHWARZ: And I have no objection to that, Judge.

17 MR. SCHWARTZER: Thank you, Mr. Schwarz.

18 Your Honor, I see three issues that --

19 THE COURT: Well, don't you want him to argue his motion first?

20 MR. SCHWARTZER: Sure. I jumped the gun. I apologize, Your Honor.

21 THE COURT: I read it.

22 MR. SCHWARZ: You're right; and I'll submit it.

23 THE COURT: Okay. Now, he can go.

24 MR. SCHWARTZER: All right. I see three issues, Your Honor. Number one  
25 being that Mr. Colman's worry about some appellate issues regarding the guilty plea

1 agreement. I don't -- that's nothing that's been changed over the course of the  
2 years in this case. There's always going to be -- he's always going to be fighting  
3 that issue. I just point -- I would just point out that the evidentiary hearing that  
4 they're asking to delay for is an evidentiary hearing in the same judge that found him  
5 competent to enter into that guilty plea agreement and to reject his motion to  
6 withdraw, so I don't think there's really going to be any issues regarding that  
7 conviction in this trial, Your Honor.

8 THE COURT: Well, can you deal with the issue that seems to be a little more  
9 important to me --

10 MR. SCHWARTZER: Sure.

11 THE COURT: -- which is the additional evaluation that needs to be done?

12 MR. SCHWARTZER: Absolutely, Your Honor. Mr. Coleman has been  
13 evaluated by five different psychologists, Your Honor, between 2013 and 2015, and  
14 the one thing that they seem to agree upon, and that would be Dr. Chambers, Dr.  
15 Kabel [sic], Dr. Harper [sic], Dr. Sussman, and Dr. Bradley, and the one thing that  
16 they all seem to agree upon is that he malingers. I don't see in any of those five  
17 reports -- you don't see a single mention of PTSD. You do see that he pretends to  
18 have schizophrenia here and there, which some say is drug induced, some say he's  
19 just totally malingering on; that he does it in order to gain an advantage in the legal  
20 system, and I think that's what he's doing here is now he's bringing up yet another  
21 reason why he needs to be evaluated in order to once again continue a trial that's  
22 been continued now four times, Your Honor. It's a murder --

23 THE COURT: Six.

24 MR. SCHWARTZER: Six times.

25 THE COURT: Six times.

1 MR. SCHWARTZER: It's been that's, you know, a murder that incurred in  
2 April of 2013, so we're almost at four years now. He's been evaluated by five  
3 psychologists, not one of them has found that he's had PTSD, so at this point, Your  
4 Honor, I think -- and, you know, I understand that Mr. Schwarz was told to do this by  
5 his client, but I would just -- he's been seen by five doctors, and no one he's seen  
6 said he has PTSD, so I think that issue is pretty much moot.

7 Regarding the other thing, regarding the -- for -- if we get a first-degree  
8 conviction, having some type of mitigation evidence regarding that you have -- the  
9 fact that he was shot at 16, that's stuff that's in the report that he was actually shot;  
10 that's stuff that we would -- if Mr. Schwarz needs help, we can help get those UMC  
11 records. That shouldn't be something that should delay this trial.

12 THE COURT: Okay. Anything else.

13 MR. SCHWARTZER: Nothing by -- unless you have something.

14 MR. HAMNER: No, Your Honor.

15 MR. SCHWARZ: Well, look, Judge, you know, I didn't start on this case, and  
16 by the time I got it, I would say the lion's share of the work had been done. The  
17 habeas petition had been filed. Motions had been filed, and Mr. Schwartzer is  
18 exactly right, my client had been, you know, evaluated for competency. As far as I  
19 could tell going through the file, the issue of PTSD has not come up. It was raised  
20 to me, and I don't think that I have the right ethically to just discard it without bringing  
21 it to the attention of the Court, especially since it's really an essential issue when a  
22 defense is self-defense, because it has a lot of implications for why this particular  
23 crime occurred. I was unaware, and I don't have any medical records in the huge  
24 file that the public -- special public defender put together of this gunshot incident.  
25 Mr. Coleman tells me he was shot multiply times. I am in the process of attempting

1 to get those records from UMC where he tells me he was treated. I think it's  
2 important that we determine whether or not he had this condition, because it's going  
3 to be very relevant as this is a self-defense case.

4 With respect to the plea agreement, I will submit it on that issue, except for  
5 the fact that -- I mean that conviction is going to -- if that conviction is reversed,  
6 what's going to happen is not only can it be used for enhancement in the event of a  
7 first-degree murder conviction, but it's also going to be brought up as impeachment  
8 if my client testifies, which he must in a self-defense case; so that's my concern with  
9 that, and that hearing is January 9<sup>th</sup> in front of -- in front of Judge Smith, and I'll  
10 submit it on that.

11 THE COURT: So, Mr. Schwartzer, --

12 MR. SCHWARTZER: Yes, Your Honor.

13 THE COURT: -- the other psychiatric evaluations that have been done, do  
14 you have copies of those records?

15 MR. SCHWARTZER: I have copies of all five, Your Honor.

16 THE COURT: May I see them?

17 MR. SCHWARTZER: Yes, Your Honor.

18 THE COURT: Thank you. I'd like to trail you guys to the end of the calendar,  
19 so we don't make everybody sit here while we look through these real quick?

20 MR. SCHWARZ: Sure.

21 THE COURT: Okay.

22 MR. SCHWARTZER: Thank you.

23 THE COURT: Would you like a copy of these?

24 MR. SCHWARZ: Yes; that would be great, Judge.

25 THE COURT: Would you go make two copies, so I can give Mr. Schwartzer

1 back his original. Don't copy the first page which is his notes.

2 MR. SCHWARTZER: Thank you, Your Honor.

3 MR. SCHWARZ: No, I don't want to see his notes, Your Honor.

4 THE COURT: I don't want to see them either. I don't think I could read them  
5 even if I looked at them closely.

6 MR. SCHWARZ: There might -- there might be something nasty about me in  
7 there. I don't want to see them.

8 THE COURT: Or me. And we'll come back to your case in a few minutes,  
9 guys.

10 MR. SCHWARTZER: Thank you, Your Honor.

11 MR. SCHWARZ: All right.

12 THE COURT: All right.

13 [Trailed at 9:24 a.m.]

14 [Recalled at 10:01 a.m.]

15 THE COURT: Mr. Schwarz, did you get a chance to review the reports?

16 MR. SCHWARZ: I did, Your Honor.

17 THE COURT: There is one indication of a prior diagnosis of PTSD in Dr.  
18 Harder's report.

19 MR. SCHWARZ: I did see that, Judge.

20 THE COURT: It appears that the issue has already been addressed at least  
21 in 2013 by one of the psychologists.

22 MR. SCHWARZ: Well, I don't know if I'd agree with that, Judge. I mean  
23 basically what Dr. Harder's report says is that Mr. Coleman told him that he had  
24 been diagnosed with PTSD. I don't think there was really any investigation into  
25 whether or not he was diagnosed with PTSD or suffers from PTSD, and this is all in

1 the context of whether he's competent to assist at his trial.

2 I would also note that two of these reports have found him incompetent and  
3 suggested that he be sent to Lake's Crossing, so we're in sort of a situation where  
4 even one of the reports, one of the doctors says he was the tiebreaker. He's here to  
5 break the tie; one competent, one's not, and I'm the tiebreaker; so, you know, I  
6 mean out of these five reports, two of them found him not competent; but, although  
7 Dr. Harder did ask my client a question, and my client answered him regarding Post  
8 Traumatic Stress Disorder, I didn't see any investigation in the report into whether or  
9 not he has it, and, you know, these reports are not ament to address whether or not  
10 he's suffering from a diagnosis of PTSD for purposes of assisting in his defense, so.

11 THE COURT: And these reports were all done in the context of competency  
12 evaluations.

13 MR. SCHWARZ: Well, that's exactly right, Judge.

14 THE COURT: So, anything else?

15 MR. SCHWARTZER: No, Your Honor.

16 THE COURT: The motion to continue the trial is denied. It appears that there  
17 has been adequate evaluation of the defendant's mental health history; and while I  
18 understand there may not have been a direct investigation of the PTSD element,  
19 there have clearly been lengthy examinations of the defendant's mental health  
20 history and the conclusion by most of the examiners that malingering at best.

21 I'm going to mark these as Court's Exhibit 1 for today. I'm going to seal them  
22 because they include confidential mental health information. If you seek to use  
23 those as part of your mitigation issues or something else, you can, of course, seek  
24 to have them unsealed.

25 MR. SCHWARTZER: I will, Your Honor.

1 THE COURT: So, how many standard jurors do you need, three panels?

2 MR. SCHWARTZER: I would see -- yeah.

3 MR. SCHWARZ: I agree.

4 THE COURT: You're with Judge Cory Mon -- or Tuesday at 1:30.

5 MR. SCHWARZ: All right.

6 MR. SCHWARTZER: Thank you, Your Honor.

7 MR. SCHWARZ: Thank you.

8 THE CLERK: January 3<sup>rd</sup> at 1:30.

9 THE COURT: Mr. Schwartzer, I'm putting you in charge of calling Joan  
10 Lawson, who is Judge Cory's JEA, to confirm what the process is for jury  
11 instructions and things from the State, because I think Judge Cory wants to have  
12 those ahead of time instead of waiting to mid. Now, Mr. Schwartzer, of course, has  
13 other issues, or Mr. Schwarz has other issues.

14 MR. SCHWARZ: Well, yeah. I do have an issue, Judge. With respect to my  
15 client, obviously I'm going to have to ask to have him remanded here to the county.

16 THE COURT: I'm going to remand him to the Clark County Detention Center  
17 to assist you in preparation for Tuesday's trial.

18 MR. SCHWARZ: All right. Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. SCHWARTZER: No, Your Honor.

21 MR. SCHWARZ: No.

22 THE COURT: All right.

23 MR. HAMNER: Thank you, Your Honor.

24 THE COURT: So, Mr. Schwartzer, you've got to communicate to everybody if  
25 there's anything Joan tells you that applies to everybody about the case.

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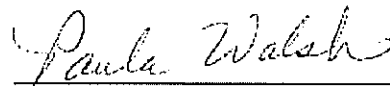
MR. SCHWARTZER: I will, Your Honor.

THE COURT: All right? Thank you.

[Proceedings concluded at 10:05 a.m.]

\* \* \* \* \*

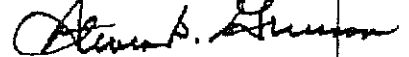
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



---

Paula Walsh  
Court Recorder/Transcriber





1 RTRAN

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 vs. )

10 DARION MUHAMMAD-COLEMAN, )

11 Defendant. )  
12

CASE NO. C293296-2  
DEPT. NO. 1

13 BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE  
14 TUESDAY, JANUARY 3, 2017 AT 1:52 P.M.  
15

16 RECORDER'S TRANSCRIPT RE:  
17 JURY TRIAL (DAY 1)

18 APPEARANCES:

19 FOR THE STATE:

MICHAEL J. SCHWARTZER  
CHRISTOPHER S. HAMNER  
Deputy District Attorneys

20  
21  
22 FOR THE DEFENDANT:

MICHAEL H. SCHWARZ, ESQ.

23  
24  
25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

1 (TUESDAY, JANUARY 3, 2017 AT 1:52 P.M.)

2 THE COURT: All right. The record will reflect the presence of  
3 counsel as well as of the Defendant. Mr. – do you go by Muhammad?

4 THE DEFENDANT: Coleman. Coleman, Your Honor.

5 THE COURT: Coleman?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Coleman, as you know we are set to  
8 begin your trial today this afternoon at this time. I've just spoken with the  
9 attorneys and told them that unfortunately, first of all, I just got this case on a new  
10 assignment but also it happens to hit when I've been ill. It's nothing serious and I  
11 think that I can quickly get over it, but without going into too many details it could  
12 be very unpleasant for me to begin this trial this afternoon, so we're going to  
13 continue it over one afternoon to give me a chance to knock this thing out.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So we will begin tomorrow at 1:30. We plan at this  
16 point to pick a jury tomorrow afternoon, which would be Wednesday, as well as  
17 Thursday morning. Assuming we have a jury at that point, then we'll begin with  
18 opening statements and testimony Thursday afternoon and go forward from  
19 there. I have allotted plenty of time so that we will still very comfortably get this  
20 trial finished in the time that's allotted here. Any matters to be put on the record,  
21 counsel, before we –

22 MR. SCHWARTZER: Only one, Your Honor, the rest we can wait for  
23 tomorrow, but we – we did file an amended indictment in this case, and the only  
24 thing we did with the amended indictment is this was originally a Co-Defendant  
25

1 case. We took out the Co-Defendant, he's already pled out, and basically  
2 cleaned up the indictment and I have provided it to the Defendant.

3 MR. SCHWARZ: Your Honor, I have received a copy of the  
4 amended indictment. I've provide a copy to my client. We both waive its  
5 reading.

6 THE COURT: All right. Very good. Can I see your copy of the  
7 amended?

8 MR. SCHWARTZER: Yes, Your Honor.

9 THE COURT: I don't know if I was earlier today looking at an  
10 amended or —

11 MR. SCHWARTZER: Probably not, Your Honor, since I just filed it.

12 THE COURT: Oh.

13 Yes, that changes it. Your Count 6 used to refer to acts as set  
14 forth in Count 9 and now I see that's what you did. All right. Very good.

15 MR. SCHWARTZER: Just Count 6. That's it.

16 THE COURT: You can have this back if you want. We're going to  
17 copy them. All right. Anything else for the record before we adjourn until  
18 tomorrow?

19 MR. SCHWARTZER: No, Your Honor, not by the State.

20 MR. SCHWARZ: No, Your Honor.

21 THE COURT: Very good. We'll see you at 1:30 tomorrow, then.

22 MR. SCHWARZ: Thank you, Your Honor.

23 MR. HAMNER: Thank you, Your Honor.

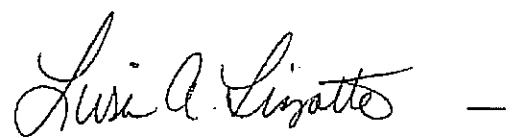
24 THE COURT: Court will be in recess.

25 (Whereupon, the proceedings concluded.)

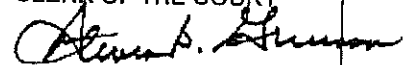
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\* \* \* \* \*

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

Handwritten signature of Lisa A. Lizotte in cursive script, followed by a horizontal line.

LISA A. LIZOTTE  
Court Recorder



1 RTRAN

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4 DISTRICT COURT  
CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA, )

) CASE NO. C-13-293296-2

6 )  
7 Plaintiff, )

8 vs. )

) DEPT. NO. III

9 DARION MUHAMMAD-COLEMAN, )

10 Defendant. )

11 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

12 WEDNESDAY, JANUARY 4, 2017

13  
14 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2**

15  
16  
17  
18 APPEARANCES:

19 For the State:

20 MICHAEL J. SCHWARTZER  
Chief Deputy District Attorney  
21 CHRISTOPHER S. HAMNER  
Deputy District Attorney

22 For the Defendant:

23 MICHAEL H. SCHWARZ, ESQ.

24  
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 4, 2017, 1:32 P.M.

2 \* \* \* \* \*

3 [Outside the presence of the prospective jury panel]

4 THE COURT: We will be on the record in 293296, you guys can sit  
5 down, thank you.

6 MR. SCHWARZ: Thank you, Your Honor.

7 THE COURT: State of Nevada versus Darion Muhammad-Coleman, who  
8 is present with his attorney, Mr. Schwarz; Mr. Schwartz and Mr. Hamner for  
9 the State. Anything you need to put on the record before we get our jurors in?

10 MR. SCHWARTZER: Yes, Your Honor. I believe there's three things.

11 THE COURT: Okay.

12 MR. SCHWARTZER: The first thing, Your Honor, is there was a motion  
13 filed back in 2014, the defendant's motion to introduce violent propensities of  
14 the victim. The State opposed it some time in early 2015. It was then moved  
15 to calendar call to be determined.

16 THE COURT: Okay.

17 MR. SCHWARTZER: It was not determined at calendar call. Mr. Schwarz  
18 and I have talked about it, our respective motions, we've talked about the case  
19 law, and we've come to agreement that if, if the defendant testifies and if it's a  
20 self-defense case -- if he argues self-defense, and if he argues that he was  
21 aware that the victim was known to carry firearms, the State agrees that the  
22 judgment of convictions of the victim for prohibited person with a firearm  
23 should be allowed to be introduced at -- in trial.

24 THE COURT: Okay.

25 MR. SCHWARTZER: But obviously he would -- per Daniels and Petty, he

1 would have to testify that he was aware of this individual carrying firearms.

2 THE COURT: Okay. Mr. Schwarz, is that correct?

3 MR. SCHWARZ: It is correct, Judge. My recollection, and I hope I'm  
4 entirely correct, is that there are three separate felony convictions involving  
5 firearms. There are two ex-felon in possession of firearms and then there's one  
6 possession of a stolen firearm.

7 THE COURT: Okay.

8 MR. SCHWARZ: And I would, you know, be -- I would want those three  
9 to come in.

10 THE COURT: Okay. So the judgments of conviction as opposed to just  
11 some kind of stipulation saying the guy has three convictions on such-and-such  
12 and such-and-such date for possession of firearms?

13 MR. SCHWARZ: No.

14 THE COURT: You're ask -- you guys are talking about introducing the  
15 actual J.O.C.s?

16 MR. SCHWARZ: Yes.

17 THE COURT: Okay.

18 MR. SCHWARTZER: That's fine, Your Honor.

19 THE COURT: And is that correct, Mr. Schwartzer, that there's three of  
20 'em?

21 MR. SCHWARTZER: Your Honor, I -- I wasn't -- I knew there was three  
22 firearm-related judgment of convictions. I'm not aware of the exact title of  
23 them. I thought they were all prohibited person. But if there's a stolen firearm,  
24 that should be allowed as well.

25 THE COURT: Okay. But you're not -- I mean, you agree that they can all

1 come in?

2 MR. SCHWARTZER: Yes, Your Honor.

3 THE COURT: The convictions that involve possession in some fashion of  
4 a firearm?

5 MR. SCHWARTZER: Correct.

6 THE COURT: Okay.

7 MR. SCHWARTZER: Because the victim also had prior convictions for  
8 drug related felonies, those would not be coming in.

9 MR. SCHWARZ: And I agree with that.

10 THE COURT: All right. Which -- which is one of the reasons I brought up  
11 what I brought up is much like when it's a defendant that this issue is coming  
12 up on behalf of, I always tell the State you gotta clean up some fashion so the  
13 jury doesn't hear what the prior -- that there were other felony convictions that  
14 you guys have agreed aren't coming in. So it's one thing to say we can bring  
15 up an issue of the possession of the firearm, but possession of a firearm by a  
16 prohibited person or ex-felon in possession of a firearm then tells them further  
17 that there is something even beyond that that they don't know about. So I  
18 don't know how you want to do that in terms of the -- the J.O.C. because  
19 it's -- if you're going to introduce it, it's going to list in there what the  
20 prohibition was.

21 MR. SCHWARTZER: Right. We could probably, again, it would be -- I  
22 haven't talked to the defense about this, but maybe we go with the Court's  
23 earlier suggestion or what the Court mentioned, which would be a stipulation  
24 that he has a conviction for these three things and then we don't have the  
25 judgment of conviction that they can look and see the extra crimes.

1 THE COURT: Well, just talk about it. We're obviously not going to get to  
2 that until much later on down the road.

3 MR. SCHWARTZER: Right.

4 THE COURT: I mean, if you want to agree that -- that there's a  
5 stipulation that he was convicted of illegal possession of a firearm, a felony, in  
6 January of 2014; an illegal possession of a firearm, a felony, in February of  
7 2010; whatever; or if you want to use the J.O.C.s and they get redacted in  
8 some fashion, I don't want to get in between what you-all are agreeing to.

9 MR. SCHWARTZER: Sure.

10 THE COURT: I just want to make sure that it's cleaned up in some  
11 fashion that -- that you guys are aware of how it's coming in and what it's  
12 going to portray.

13 MR. SCHWARZ: We'll work it out, Judge.

14 MR. SCHWARTZER: We'll work it out.

15 THE COURT: All right. So what's the other issue?

16 MR. SCHWARTZER: The other issue is, my understanding from  
17 Mr. Schwarz is that he will be waiving a penalty hearing in this case, if  
18 Mr. Muhammad-Coleman is convicted of first degree murder.

19 THE COURT: Okay. Is that correct, Mike?

20 MR. SCHWARZ: That is correct, Your Honor.

21 THE COURT: All right. So there is a actual waiver form that applies to  
22 that that we have people sign off on.

23 MR. SCHWARZ: Yes.

24 THE COURT: So I know it comes out of your office originally. We may  
25 have a copy. I'll ask Molly real quick. I think we have it.

1 MR. SCHWARTZER: I can -- I can grab one for our next court date,  
2 Your Honor.

3 THE COURT: Okay. I'll check on that in just a second.

4 But is that correct, Mr. Muhammad-Coleman, did you have a chance  
5 to discuss that with your attorney and it's your desire to waive the right to a  
6 penalty phase if you're convicted -- it's only if you're convicted of first degree  
7 murder, in which case you would just allow the Court to sentence you instead  
8 of having the jury sentence you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you're comfortable that you've had a full enough  
11 opportunity to discuss that with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right. We'll get the form available for you-all to  
14 sign off on as well.

15 MR. SCHWARTZER: And the last thing, Your Honor, is just for the record  
16 due to case law, there was an offer made earlier in this case of a second degree  
17 murder with use with a right to argue. That has been rejected. It was offered  
18 over a year ago, if not even earlier than that.

19 THE COURT: Okay.

20 MR. SCHWARTZER: I believe that's been rejected.

21 MR. SCHWARZ: And also for the record, Judge, that offer was  
22 communicated to my client.

23 THE COURT: Okay.

24 MR. SCHWARZ: By me, Judge.

25 THE COURT: So that -- so that's not even pending at this time, it was

1 just in the past it was rejected and nothing further had been offered --

2 MR. SCHWARTZER: Correct.

3 THE COURT: -- since then? Okay. All right, guys, anything from your  
4 side, Mike?

5 MR. SCHWARZ: No, Your Honor.

6 THE COURT: All right. We will get our jurors in in just a second. Hold  
7 on. Let me grab a form real quick.

8 MR. SCHWARZ: If I can approach, Judge?

9 THE COURT: Yes, please. Thank you.

10 Okay. So the waiver of penalty hearing form has been executed by  
11 Mr. Muhammad-Coleman after discussing it with his attorney, Mr. Schwarz,  
12 who has also signed off on it as well has the State. So we'll go ahead and file  
13 that in open court.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 THE COURT: All right. You guys can go ahead and get the jurors in.  
16 Thank you.

17 [Jury voir dire -- not transcribed]

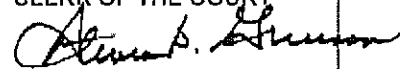
18 PROCEEDING CONCLUDED AT 4:52 P.M.

19 \* \* \* \* \*

20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON  
25 Court Recorder/Transcriber



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 DARION MUHAMMAD-COLEMAN,

9 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

10  
11 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

12 THURSDAY, JANUARY 5, 2017

13  
14 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 3**

15  
16  
17  
18 APPEARANCES:

19 For the State:

MICHAEL J. SCHWARTZER  
Chief Deputy District Attorney  
CHRISTOPHER S. HAMNER  
Deputy District Attorney

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23  
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25 RECORDED BY: SARA RICHARDSON, COURT RECORDER



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Cross-Examination by Mr. Schwarz  
Redirect Examination by Mr. Schwartzer

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Direct Examination by Mr. Hamner  
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Direct Examination by Mr. Hamner  
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Direct Examination by Mr. Schwartzer  
Cross-Examination by Mr. Schwarz

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DEFENDANT'S EXHIBITS

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Exhibit A	3	124
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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 5, 2017, 12:16 P.M.

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3 [Jury voir dire -- not transcribed]

4 [Outside the presence of the prospective jury panel]

5 THE COURT: So what's the issue you need to bring up, Michael?

6 MR. SCHWARTZER: The -- we had met about some evidence and the  
7 video, we've come to an agreement for a stipulation of --

8 THE COURT: Okay.

9 MR. SCHWARTZER: -- items 4 through 112 most of the -- 111 of those  
10 exhibits are photos. One of them, which will be Exhibit Number 7, is a video.

11 THE COURT: Okay. So there is an agreement and a stipulation to admit  
12 4 through 12?

13 MR. SCHWARZ: That's correct, Your Honor.

14 MR. SCHWARTZER: 112, Your Honor.

15 THE COURT: Okay. So those will all be admitted.

16 THE CLERK: It was 112.

17 THE COURT: Pardon?

18 THE CLERK: Through 112.

19 THE COURT: Oh, 112. Okay. Those will all be admitted.

20 **[STATE'S EXHIBITS 4 THROUGH 112 ADMITTED]**

21 THE COURT: You can publish them without needing to authenticate them  
22 in front of the jury with the witnesses then and you can utilize, either side can  
23 utilize any of the things that are admitted in your openings obviously. Okay?

24 MR. SCHWARZ: I guess I should just say, Judge, I have reviewed each  
25 and every one of those exhibits and been provided copies of them, so.

1 THE COURT: Okay.

2 [Jury voir dire -- not transcribed]

3 [In the presence of the jury panel]

4 THE COURT: Okay. I'm going to let Joel hand out clipboards and pens  
5 and whatnot to get you all situated there and then we'll pick back up. Okay.  
6 So just kind of be at ease for a minute. Now is usually the time where I ask  
7 you, hey, who's excited to be here now, kind of a captive audience, right?

8 Okay. Everybody has clip-pad or a clipboard, notepad, pen? Yes?

9 UNIDENTIFIED JUROR: Yes.

10 THE COURT: Okay. You can remain seated but if you go ahead and raise  
11 your right hand for me, there's a different oath we give to you now that you've  
12 been selected as an actual juror.

13 [The Clerk swears in the Jury Panel]

14 THE COURT: Okay. So before we get started with opening statements  
15 there is a little bit of information that I like to give to folks. Unlike the jury  
16 instructions at the end of the case, you may remember I told you you get a  
17 packet to read along when I read those to you, this there isn't something to  
18 read along with, so I apologize for that. This is just me kind of talking and  
19 reading to you a little bit, takes about 15 minutes.

20 But I think it's good because it gives you a little of an understanding  
21 of what to expect during in a trial, how each part takes place, the chronology of  
22 things. There's some real basic legal instructions in here on things you can do  
23 and can't do and stuff like that. It's kind of a road map, if you will. It doesn't  
24 replace the instructions you'll get at the end of the case, but hopefully it's kind  
25 of a starter set of information that -- that takes the mystery of what to expect

1 moving forward.

2           The first thing we're going to do is have Debbie read to you the  
3 charging document. Remember as I said yesterday, this isn't evidence. This is  
4 the notice somebody gets that tells them they've been charged with a crime or  
5 crimes. And she'll tell you what those charges are, the language of those  
6 charges are as well as what the plea was that Mr. Muhammad-Coleman entered  
7 in response to those charges.

8                           [The Clerk read the information aloud]

9           THE COURT: Okay, folks, as we discussed yesterday,  
10 Mr. Muhammad-Coleman, the defendant, is presumed innocent. The State's  
11 filed the notice of charges which were just read to you.  
12 Mr. Muhammad-Coleman's entered pleas of not guilty to those charges. The  
13 State therefore has the burden of proving each of the essential elements of the  
14 charges beyond a reasonable doubt. The purpose of the trial will be to  
15 determine whether the State will meet that burden.

16           It is your primary responsibility as jurors to find and determine the  
17 facts. You do that from the evidence that's presented to you which includes  
18 the testimony of the witnesses and any exhibits that are introduced during the  
19 course of the trial. It'll be up to you to determine any inferences that you feel  
20 may be properly drawn from the evidence as well.

21           A trial begins with, after jury selection obviously, a trial begins with  
22 opening statements. Each side has the opportunity to make an opening  
23 statement. The defense, having no burden in the case, they do not have to  
24 make an opening statement. They could also defer making an opening  
25 statement until after the State presents their case-in-chief, and I'll tell you what

1 a case-in-chief is in just a moment.

2 But the import of this information is that each side has the  
3 opportunity to make an opening statement and opening statements are the  
4 words of the attorneys. To begin with it's a statement, it's not the argument.  
5 Argument occurs at the end of the case. It's an opportunity for the attorneys  
6 to discuss with you what they believe the evidence is going to be that gets  
7 presented to you once we start calling witnesses and introducing exhibits into  
8 court. And as I said, it's the words of the attorneys discussing what they  
9 believe the evidence to be, it's not evidence in and of itself.

10 After opening statements we'll first turn to the State's  
11 case-in-chief. A case-in-chief is simply a party's opportunity to present their  
12 evidence. It consists of calling witnesses to the stand, asking questions,  
13 examining the witnesses, producing physical items of evidence as exhibits,  
14 documents, photos, whatever it may be. Any witnesses who are called during  
15 the State's case-in-chief, the defense attorney will have the opportunity to  
16 cross-examine those witnesses after the prosecutor's examine the witnesses.

17 After the State rests their case-in-chief, that means they have  
18 finished with the presentation of evidence in their case-in-chief, the defense will  
19 have an opportunity, but they have no obligation to call witnesses on their own.  
20 If they call witnesses, the State would have the same opportunity to  
21 cross-examine the defense witnesses, just like the defense has the opportunity  
22 to cross-examine the State's witnesses. If the defense presents a case-in-chief,  
23 then the State would have the opportunity to present a rebuttal case and if  
24 necessary the defense could present a surrebuttal case.

25 In regard to evidence that gets produced during a case-in-chief, we



1 generally refer to evidence in one of two ways and you've probably heard these  
2 terms either by, you know, watching TV shows, I know that came up during  
3 jury selection, reading things about the law, whatever it may be. We call  
4 evidence direct evidence or circumstantial evidence. Direct evidence is the  
5 testimony of a witness about what that person personally saw or heard or did,  
6 such as an eyewitness.

7           Circumstantial evidence, on the other hand, is testimony from  
8 witnesses about various facts in a chain, so to speak, and you could take that  
9 chain of information and then conclude some other fact even though that other  
10 fact wasn't given to you directly by an eyewitness.

11           So let me give you an example that kind of makes it easier to  
12 understand. Let's say you're driving home after court today and it starts raining  
13 and you're driving down the freeway on 95 and it starts to rain and you can see  
14 the rain falling on your car, maybe you can hear it, if you don't have your radio  
15 on, maybe you roll your window down, you stick your hand out, you can feel  
16 the rain on your hand, you can see the road getting wet, you have to turn your  
17 windshield wipers on. All of those are things that you're observing and  
18 engaging in, so you would be an eyewitness to the fact that it was raining.  
19 And if somebody asks to you come into court and testify about that on a later  
20 date, you would be able to provide direct evidence: I saw the rain, I heard the  
21 rain, I felt the rain, I had to drive in the rain, you know, everybody else was  
22 driving crazy like they do in Vegas when it rains because people can't drive here  
23 when it rains, all that would be direct evidence, eyewitness testimony.

24           On the other hand, let's say you drive home and it's rain clouds  
25 which you would associate with rain clouds are in the air but there is not -- it's

1 not raining. You park your car in your driveway, you go in your house, you're  
2 in there, maybe you go in and take a nap, so a couple hours, you're not really  
3 paying attention to anything that's going on. You come outside, now the  
4 ground is wet, your car is wet, water's running down by the curb in the street  
5 or off the gutters in your house, the rain clouds have kind of parted, the sun's  
6 poking through, it's humid in the air, there's a bunch of little things that you  
7 could point to to say I think it rained while I was in my house because of the  
8 wetness of the ground, on my car, the water in the street, the rain clouds have  
9 now cleared, there is humidity in the air. That would be proof of the fact that it  
10 rained by use of circumstantial evidence, i.e., a chain of facts that allow you to  
11 conclude another fact.

12           The law permits you to use direct and circumstantial evidence to  
13 decide any issue in the case. You can decide whether a fact has been proved  
14 circumstantially and you decide how much weight to give any piece of evidence  
15 whether it's direct or circumstantial.

16           In regard to the presentation of evidence, please also understand  
17 that it's the obligation of the attorneys to raise objections to things that they  
18 feel should not properly be brought before the jury. So don't hold it against  
19 them if they raise objections. Objections are most commonly raised to  
20 questions that are asked of a witness before the witness is allowed to answer  
21 the question. So an attorney asks a question, the opposing side feels like  
22 maybe the question isn't formed right, it's a topic that's not relevant to the  
23 trial, whatever it may be, so they raise an objection. If I sustain an objection  
24 that means the attorney needs to ask another question, move on to another  
25 topic, whatever it may be. If I overrule an objection, then the witness gets to

1 go ahead and answer the question.

2 Sometimes objections are raised after somebody has already started  
3 to answer a question. You've all probably had experiences with people that you  
4 ask a very simple yes-or-no-type question to and five minutes later you're still  
5 standing there while they're talking, right? Court's a little different. We don't,  
6 you know, ask questions and get answers in the same way that we have coffee  
7 table talk.

8 There are certain rules of evidence that apply to how people should  
9 do things. So sometimes somebody may go off on a tangent that doesn't have  
10 anything to do with a question and an attorney raises an objection and not only  
11 might I be sustaining that objection, but I might also order certain things to be  
12 stricken that have already been spoken. If I order something to be stricken or  
13 disregarded, even though you've already heard it, that means you have to give  
14 it no weight or consideration in your deliberations as you decide the issues in  
15 this case.

16 In regard to the witnesses themselves, regarding the testimony of  
17 the witnesses in considering the weight and value of the testimony of any  
18 witness, you can take into consideration the appearance, attitude, and behavior  
19 of the witness; the interest of the witness in the outcome of the case, if any;  
20 the relationship of the witness to the defendant or the State; the inclination of  
21 the witness to speak truthfully or not; and the probability or improbability of the  
22 witness's statements given all the facts and circumstances in evidence. Thus,  
23 you can give whatever weight you deem appropriate to any particular witness  
24 and any portion of the witness's testimony throughout the case.

25 I've talked about the cases-in-chief and rebuttal cases. After we

1 concluded all the presentation of evidence, regardless of who called a witness  
2 or presented a piece of evidence, that's when we'd have our closing arguments.  
3 Before we give the closing arguments, I'll read the jury instructions to you. As I  
4 said, you get a packet to read along. And then the attorneys get to make their  
5 closing arguments to you. Again, closing arguments are the words of the  
6 attorneys, they're not evidence. But it's the opportunity now for the attorneys  
7 to argue you about what conclusions you should draw from the evidence  
8 you've received and how to take the facts as you should find them and kind of  
9 put it together with the law that I give you so that you can come up with a just  
10 and proper verdict.

11           Because the State has the burden of proof, they get to both start  
12 and end the closing arguments. So a prosecutor can give a closing argument,  
13 the defense attorney will have an opportunity to give an closing argument, and  
14 then a prosecutor can give a rebuttal closing argument. After the arguments,  
15 that's when you-all would retire to deliberate on your verdict.

16           Couple of other things, I'll take notes during the course of the trial,  
17 just like you have notepads to do. Please don't take any inference from when  
18 I'm taking notes or not, that shouldn't mean that you should take notes at that  
19 time. I may be taking notes about witnesses. I may be writing notes to myself  
20 about jury instructions. I may be writing notes about tomorrow's law and  
21 motion calendar, you know, whatever. So don't -- don't make any kind of -- or  
22 take any inference from me when I'm taking notes.

23           The other thing I'll tell you about note taking is that it's important to  
24 take notes to help you remember things during the course of the trial, but don't  
25 let really ambitious note taking interfere with your ability to watch and listen to

1 people as they testify because that can be very important as well.

2           If at any time during the course of the trial any of you discover that  
3 you think you did know somebody or do somebody involved in the case or you  
4 do know something about the case you have to let me know that right away by  
5 letting the marshal know. And please don't talk to any other jurors about what  
6 is you think you've now come upon believing that you know about the case.  
7 And this usually happens in this fashion, attorneys at the beginning of the case  
8 read off to you a list of witnesses and they do a pretty good job of trying to tell  
9 you, you know, whether they're employed in law enforcement or a paramedic  
10 or work in a bank, whatever it may be, but you don't get a yearbook kind of  
11 photos of people. And sometimes a witness may come into court that a juror  
12 realizes, I didn't recognize their name, but I recognize their face, they used to  
13 work in my office or they go to my grocery store or their kids go to school with  
14 my kids, something like that. So if something like that happens, as I said,  
15 please don't talk to any other jurors about what it is you think you know about  
16 this person or the subject and just let Joel know right away so that we can  
17 have a talk about it if we need to.

18           You will also be given the opportunity as jurors to ask written  
19 questions of any of the witnesses who are called to testify. You're not  
20 encouraged to ask a large number of questions as jurors because that's  
21 obviously the primary responsibility of the attorneys to ask questions and solicit  
22 evidence on your behalf throughout the course of the trial. But you are allowed  
23 to ask questions after the attorneys have finished questioning a witness if  
24 appropriate. Your questions have to be factual in nature and designed to clarify  
25 information already provided by the witness. So it cannot be a question for me

1 or the attorney. It cannot be a question for some other witness that you think  
2 should testify or already did testify, anything like that. It's got to be Mr. Jones  
3 is called up to the stand, the attorneys ask a bunch of questions, and then  
4 when they're done you've still got a question and you need some clarification  
5 on something that the witness has been trying to talk about to you.

6 I always suggest to jurors that as you're listening to a witness, if  
7 you have that question, write it down in your notepad, usually as the  
8 questioning goes forward with the attorneys they'll probably end up hitting on  
9 whatever it was you were thinking about. But if at the end they haven't and  
10 you still have that question or need some clarification, then raise your hand, I'll  
11 usually -- what'll happen, let me back up.

12 What'll happen is State, for instance, calls a witness to the stand,  
13 like I said, Mr. Jones, witness comes up here, we swear him in, they sit down,  
14 the State gets to ask questions, we call that direct examination, the defense  
15 gets to ask questions, we call that cross-examination, that may go back and  
16 forth a couple of times, redirect examination, recross-examination. Once  
17 they're done I'll look over to you-all and say do we have any questions from our  
18 jurors, if you do, just raise your hand, like I said, it has to be in writing so you  
19 can't just fire it off when -- I when I ask you if you have a question. If you  
20 have a question and you raise your hand, Joel will come over, he'll collect the  
21 questions from you. I'll take a look at them. I discuss them with the attorneys  
22 and make sure they're legally appropriate questions. And if so I'll then ask it of  
23 the witness myself and the attorneys will get a chance to follow up.

24 Use a whole sheet of paper. I appreciate being conservative, but  
25 I've got to write notes on there as well and so sometimes people are tearing off

1 tiny little pieces or at least maybe, like, a half a sheet of paper. And just write  
2 your juror number on there. For purposes of that we'll just, we'll say  
3 Ms. Hammond is Number 1 all the way down to Mr. Wright, Number 14. So  
4 just write your juror number and your question on there.

5 We talked during our recesses about the fact that you cannot talk  
6 to any other people about the case. You can't talk to witnesses. You can't  
7 talk to parties. You cannot talk to the attorneys, obviously. If you have any  
8 questions, just raise them to the marshals, if you need help with anything.  
9 Again, it's not that they don't like you or they're not antisocial, they just need  
10 to abide by their legal and ethical obligations.

11 You cannot visit the scene of any of the acts and occurrences that  
12 are made mention of during the trial. That means you don't leave court at the  
13 end of the day and drive over to an address that somebody talked about or  
14 anything like that. Okay? Only if I direct you to do that, can you do that. And  
15 I don't anticipate directing you to do that. So please do not do it during the  
16 course of the trial.

17 Do not undertake any legal or factual research on your own or  
18 attempt to investigate anything on your own. And as I said yesterday, also you  
19 cannot attempt on your own to recreate anything that's being discussed in  
20 court. When you're deliberating together with your fellow jurors and you're  
21 working through evidence, you're entitled to work through the evidence. But  
22 you cannot go out on your own and try to recreate something or come up with  
23 your own conclusions based on some experiment outside of court.

24 You must not be influenced in any degrees by any personal feelings  
25 of sympathy, prejudice, or bias towards or against either side. Both sides are

1 entitled to the same fair and impartial considerations from our jurors.

2           We take a break about every hour and a half to two hours. I think I  
3 told you that yesterday and you can feel free to bring a drink into the courtroom  
4 if you just kind of make sure you have a lid on it and that includes snacking on  
5 stuff, if you need to. If you just kind of make sure that things don't have loud  
6 wrappers on them. But I understand. We have a lot of people that will  
7 oftentimes bring things in little things in.

8           I eat a extraordinary, offensive amount of jelly beans when I sit in  
9 court, so if people are bringing candy into court I get that as well. But like I  
10 said, just try and make sure it's not loud.

11           If you need a break short of the hour and a half to two hours that  
12 we take our breaks because you're not feeling well and need to use the  
13 restroom, anything like that, just kind of get my attention or get Joel's attention  
14 as well. Okay. And that's about it. So I appreciate your time and your  
15 patience. I'm going to turn it over to the State for their opening statement.

16           Mr. Schwartzer.

17           MR. SCHWARTZER: Thank you, Your Honor.

18           Madam Clerk, if you please? Thank you.

19           All right. Everyone can see this? All right. Good afternoon, ladies  
20 and gentlemen.

21           I was told as a young attorney crimes committed in hell don't have  
22 angels as witnesses. In this case a crime committed in not such a good place in  
23 Las Vegas doesn't have an angel as a victim. But that doesn't excuse what  
24 you're going to see with the evidence that Darion Muhammad-Coleman, this  
25 individual right here, murdered Dale Borerero.



1           The evidence is going to show to you and prove beyond a  
2 reasonable doubt that this man along with Dustin Bleak and Travis Costa, his  
3 co-conspirators, went to Dale Borero because Dale Borero has drugs, Dale  
4 Borero has money, attempted to rob Dale Borero and when they were unable to  
5 get those drugs because Dale Borero, after being attacked, decided to defend  
6 himself, this man shot a bullet into his stomach lodged in his spine and killing  
7 him. Now in places like Fremont and Boulder Highway, Five Points area, you  
8 don't usually get a lot of eyewitnesses and that's fine. But in this case, we  
9 have something better than an eyewitness, we have a surveillance tape. And  
10 you're going to see what happened, you don't have to guess what happened,  
11 on this tape. And before I start playing it I would like to focus attention to the  
12 blue Cadillac, it's right now can't really see, but there's an individual sitting,  
13 there's actually standing right here, that's going to be -- that's going to be  
14 proven beyond a reasonable doubt that that man over there is going to be  
15 Darion Muhammad-Coleman.

16           That person walking down right now is Dale Borero. So you have  
17 Darion Muhammad-Coleman and Dustin Bleak. These two individuals coming  
18 down, you will actually see one of these individuals, his name is Lecory Grace.  
19 The other individual is Jermaine Grace his brother. They have nothing to do  
20 with this but one of them will come into court and testify.

21           As the Grace brothers drive away, again I want to point to you that  
22 will be shown by the evidence to be the defendant right here leaning against the  
23 car with Mr. Borero, the victim, right there in the white tank top talking to what  
24 will be shown to you by the evidence as Dustin Bleak. And that's how Dale  
25 Borero dies, April 19th, 2013.

1 Now, when the police arrive and they arrive within three minutes of  
2 after that video ends right there and we will get the complete video in evidence  
3 and you will be able to see the whole thing, as the police arrive, they arrive within  
4 three minutes of the shooting, police are able to find what this individual was  
5 trying to rob and it's going to be shown that that would be eight grams of  
6 methamphetamine that was in Dale Borero's hands and that's what the  
7 evidence is going to show the defendant was trying to grab from him. It will  
8 also show that he had about \$3,000 in his pocket as well.

9 This is where it happened, Travelers Inn at it 2855 Fremont Street.  
10 As you can tell there's only one way in, one way out and it dead-ends right  
11 there. There's a wall right here, there's a wall right here, and there's no way  
12 out for individuals that are in the back where this occurs. So police arrive at  
13 the scene on April 19th, 2013, and they gather witnesses. No one actually  
14 says that they saw the shooting and so they get a group of people saying there  
15 was a group of men in the parking lot, there was an old blue Cadillac, that the  
16 individual, Dale Borero, the victim someone who lives in this motel, went  
17 downstairs to talk to these individuals, that a short time later there was a series  
18 of shots pop, pop, pop, pop, pop, pop, over ten shots you will hear from one  
19 witness. Then an old blue Cadillac that sped away towards Fremont and the  
20 victim fired at the Cadillac as it sped away and was left to die in the parking lot.  
21 All the stuff that you saw in the video surveillance.

22 When they gathered the evidence, the police, they were able to find  
23 that there were two sets of casings which when you watch that video isn't  
24 surprising, there's a .40 caliber and there's a 9 millimeter. .40 caliber is found  
25 at the crime scene. That's the gun that was in Dale Borero's hand. The

1 9 millimeter, we don't find out what happens to that until a little later.

2 Also what's found a little bit further down is what's appears to be a  
3 fake wood panel, a car molding, something you would see in a car.

4 Additionally -- additional evidence was gathered at the autopsy because Dale  
5 Borero was found with two bullets, one in his spine, the one that ultimately  
6 killed him, this hole right here; and one in his leg which still has parts of his  
7 pants attached to it. This will also become critical physical evidence.

8 So at this point on April 19th, 2013, up to April 21st, 2013, the  
9 police don't know who the shooter. They know it's an African-American male,  
10 they can tell that from the video. You can't tell what his face is from that  
11 video. They don't know. But they do know, as was pretty clear from that  
12 video, they -- a pretty unique car was involved, this blue Cadillac. So the police  
13 get a major break on April 21st of 2013, when the driver of that blue Cadillac,  
14 Richard McCampbell, goes to C.C.D.C., Clark County Detention Center, and  
15 turns himself in saying he -- he was there and he wants to tell the police what  
16 happened.

17 And Richard McCampbell, today, will come on the stand and he will  
18 tell you what happened that day, that an individual that he knows by the name  
19 of Money, doesn't know his full name or his true name, just knows him as  
20 Money, paid him ten bucks to drive him to Boulder Highway, that  
21 Mr. McCampbell is this handyman, he's a mechanic, he drives people around in  
22 an area called -- he hangs around this area called Naked City. It's a place  
23 behind the Stratosphere. That he's known to be a guy that will, if you pay him  
24 some gas money, he'll drive you to the store, he'll drive you to get some  
25 groceries, stuff like that. And he said he's known Money for over a year.

1           And Money knocks on his door when he's in Naked City and says,  
2 hey, can you drive me to Boulder Highway. He says sure for ten dollars gas  
3 money. Money drop -- jumps in the front seat. Two individuals that he didn't  
4 see during this initial conversation jump in the back. That will turn out to be  
5 Dustin Bleak and Travis Costas. He was then directed by Money, who is going  
6 to turn out to be the defendant, directed to the Travelers Inn. He was told how  
7 to park. And you're going to see him in the video try, you know, when he first  
8 pulls in, that he first tries to pull into one parking spot, that then he -- that he  
9 moves from that parking spot, and then he backs in the way that you watched  
10 in the video surveillance, that he's told to do all this stuff from Money. And  
11 then Money, the defendant, gets out of the car as you saw in the video along  
12 with Dustin Bleak, that he heard a bit of an argument, loud voices, someone yell  
13 something to the effect of show me the money and then shots, and he gases it.

14           He doesn't care whether those individuals, whether Money gets in  
15 the car or not, as you can see from the video surveillance. And then he's going  
16 to tell you once defendant gets in the car how he acts. And I want you guys to  
17 pay special attention to the testimony of Mr. McCampbell has about how  
18 Money, the defendant, acts when he gets in the car.

19           Additionally, when they look at the Cadillac, the Cadillac Brougham  
20 that he's driving, there is a missing wood panel on the passenger seat pulled off  
21 by money as he was trying to get into the car and ultimately left at the scene.  
22 So the question is who is Money. And during the conversations with  
23 Mr. McCampbell, the police are eventually able to locate a phone number that  
24 they can associate with the defendant and eventually they develop the  
25 defendant as a suspect. And about on April 25th, 2013, they prevent -- they

1 present what's called a photo lineup to Richard McCampbell, bingo, that's him,  
2 the defendant, and he picked out the defendant from the photo lineup. Now  
3 he's the prime suspect.

4 A few days later on April 29th of 2013, police are flagged down at  
5 this apartment in Naked City, at 1612 Fairfield Avenue. It's an apartment on  
6 Fairfield and Chicago, kind of by Philadelphia Avenue, which is where  
7 Mr. McCampbell picked up, you will hear Mr. McCampbell picked up Money.  
8 And at this apartment they were flagged down by three people that actually  
9 owned the property. They didn't get paid rent. They're cleaning out this  
10 apartment. The apartment's a mess. And in the toaster over they find a  
11 firearm which is weird. So they flag down the police. They call the police and  
12 they get the gun, a 9 millimeter Ruger. You know what else is in that  
13 apartment? A bunch of personal documents that go to a Darion Coleman or a  
14 Darion Muhammad-Coleman, the defendant. And then when you'll hear Anya  
15 Lester, the firearm expert from Las Vegas Metropolitan Police Department,  
16 when she did her ballistic comparison for the bullets found in the dead man,  
17 Dale Borero, with the firearm, that was in the apartment with all of, well, with  
18 some of Mr. Coleman's personal belongings and documents, it's a match. That  
19 is the weapon that was used to kill Dale Borero on April 19th, 2013.

20 And although you are going to hear that Mr. Muhammad-Coleman  
21 was arrested on July 3rd of 2013, that doesn't stop the police investigation.  
22 They keep doing their testing and eventually they do a fingerprint analysis and  
23 you're going to hear from Eric Sahota, a fingerprint analysis for Las Vegas  
24 Metropolitan Police Department, that they actually do, they take the fingerprint  
25 on this car molding and here's a close-up of the fingerprint. And you're going

1 to hear from Eric Sahota that he compared it to a known template of  
2 Mr. Muhammad-Coleman. And what comes back? A direct match that that is  
3 the fingerprint of Darion Muhammad-Coleman.

4 So at the end of the day, ladies and gentlemen, you're going to  
5 have physical evidence that links Darion Muhammad-Coleman to the scene;  
6 you're going to have the firearm and you're going to have his fingerprint that's  
7 actually left at the crime scene; you're going of to an eyewitness that's going  
8 to get on the stand and say that's the individual that did the shooting.

9 But what more you're going to have is you're going to have that  
10 video. So between the forensic evidence, the eyewitness testimony, and that  
11 video surveillance, the State is confident that you will find beyond a reasonable  
12 doubt that Darion Muhammad-Coleman is guilty of all counts. And I am going  
13 to ask you to find him as such. Thank you.

14 THE COURT: Thank you.

15 Mr. Schwarz.

16 MR. SCHWARZ: Your Honor, the defense will defer until the presentation  
17 of its case.

18 THE COURT: Okay. Thank you.

19 State may call their first witness.

20 MR. SCHWARTZER: Mr. McCampbell, Your Honor.

21 THE COURT: Thank you.

22 Good afternoon, sir.

23 MR. McCAMPBELL: Yes, sir. Good afternoon.

24 THE COURT: How are you?

25 MR. McCAMPBELL: Good.

1 THE COURT: Can I have you remain standing and just raise your right  
2 hand thank you.

3 **RICHARD McCAMPBELL,**

4 [having been called as a witness and being first duly sworn testified as follows:]

5 THE CLERK: You may be seated. Will you please state and spell your  
6 name for the record.

7 THE WITNESS: My name is Richard McCampbell.

8 THE COURT: Could I have you, if you would please, sir, just grab that  
9 microphone.

10 THE WITNESS: Okay.

11 THE COURT: And kind of pull it towards you.

12 THE WITNESS: Okay.

13 THE COURT: There you go, great. Could you spell your last name for us  
14 please.

15 THE WITNESS: M-C-C-A-M-P-B-E-L-L.

16 THE COURT: Okay. Thank you.

17 Mr. Schwartzer.

18 MR. SCHWARTZER: Okay. Thank you.

19 **DIRECT EXAMINATION OF RICHARD McCAMPBELL**

20 BY MR. SCHWARTZER:

21 Q Mr. McCampbell, I want to direct your attention to April of 2013.  
22 Where were you living at the time?

23 A On Rainbow, I can't remember the address, but on Rainbow.

24 Q Was that here in Las Vegas?

25 A Yes. Yes, sir, here in Las Vegas.

1 Q Okay. And around that time what did do you for work?

2 A I was a little mobile mechanic.

3 Q What does that mean?

4 A Well, I go around town to where -- personally to your house or  
5 wherever you at and fix your car.

6 Q Okay.

7 A Like, brakes or water pump, tune up, whatever.

8 Q And you -- you have, like, a mechanical background?

9 A Yes, sir, I do.

10 Q And people have like a nickname for you?

11 A Yeah, the mechanic.

12 Q Okay. So I want to direct your attention specifically to April 19,  
13 2013, early part of that day. What were you doing?

14 A I just finished a putting a serpentine belt on a car.

15 Q And where was this car?

16 A This car was over by -- behind the Stratosphere, on the streets over  
17 there. Yeah.

18 Q So the streets behind the Stratosphere, what -- what is that area --  
19 do you call that area a special thing?

20 A Well, they call it Naked City.

21 Q Okay. And the place that you would call Naked City, what area  
22 would that entail?

23 A Well, basically behind the Stratosphere.

24 Q Okay.

25 A Yeah.



1 Q Certain streets or anything?

2 A Yeah. Philadelphia, I think St. Louis.

3 Q City streets?

4 A Yeah, city streets.

5 Q Okay. And would you, although you said you lived on Rainbow,

6 that seems to be a little bit aways from that area.

7 A Right.

8 Q Would you go to that area often?

9 A Well, yeah, whenever I had some work. I had work in various parts

10 of the city, yeah, you know. Sometimes I had work over there.

11 Q And that day specifically you had work around there?

12 A Yes, sir.

13 Q And then once you put -- took care of that serpentine belt?

14 A Yeah.

15 Q Am I saying that right?

16 A Yeah. Exactly.

17 Q What did you decide to do?

18 A Well, I went to the 7-Eleven there on the corner.

19 Q 7-Eleven where -- what corner? Where?

20 A It's right directly behind the Stratosphere. It's the 7-Eleven right

21 there.

22 Q And about what time are we talking about?

23 A About 5:00, 4:00 or 5:00, something like that.

24 Q 4:00 or 5:00 p.m.?

25 A Yes, sir.

1 Q Okay. And what did you do at that 7-Eleven?  
2 A Well, I usually get me a Loco and an MD 20/20.  
3 Q All right. What's a -- what's a Loco?  
4 A It's a little kind of alcoholic drink.  
5 Q Okay.  
6 A You know.  
7 Q Like a beer or something?  
8 A Yeah, kind of fruit flavor.  
9 Q Okay.  
10 A Kind of fruit flavor.  
11 Q And then Mad Dog 20/20; what is that?  
12 A That is wine. That is wine, flavored wine.  
13 Q So you bought some alcohol?  
14 A Yeah.  
15 Q After working?  
16 A Yeah. Right.  
17 Q What were you going to do with that?  
18 A Well, I usually mix the two 50-50, you know.  
19 Q Does that taste any good?  
20 A Yeah, real good. Yeah, real good, real good, real good.  
21 Q It sounds sweet?  
22 A It is pretty tasty, pretty tasty, pretty strong.  
23 Q All right. So pretty strong?  
24 A Yeah, real strong. Yeah.  
25 Q So what did you do with this -- with this, after you got --

1 A Well --

2 Q -- your alcoholic beverages, where did you go next?

3 A Well, I usually go one street over, the streets are close to each  
4 other.

5 Q Well, I have a map. Would that help you?

6 A Yeah. For the names, I can't remember the names. So, yeah.

7 Q Sure. I'm going to -- this has been admitted as Exhibit 5. It should  
8 pop up on the screen for you?

9 A Okay.

10 THE COURT: Is your screen on, sir?

11 THE WITNESS: Yes, sir. I see it.

12 THE COURT: If anybody asks you to try and -- you watch football?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. So if anybody asks you to try and identify anything,  
15 it's kind of like John Madden, you can just draw on the screen with your  
16 fingers.

17 THE WITNESS: Oh, I gotcha. Okay.

18 THE COURT: Okay? Thank you.

19 BY MR. SCHWARTZER:

20 Q Okay. So, well, I guess I will go over to your screen. This is -- this  
21 is the Stratosphere over here; is that correct?

22 A Right.

23 Q Okay. So tell me, could you point to, first off, where, like, the  
24 7-Eleven area is; if you recall?

25 A 7-Eleven should be, I think, right here. It should be right there.

1 Q Okay.

2 A Right there. That's where it should be.

3 THE COURT: You got a new job.

4 THE WITNESS: Right.

5 MR. SCHWARTZER: And let the record reflect there's a circle around -- is  
6 that -- it's -- it looks like Boston Avenue, between Boston and St. Louis Avenue.  
7 On -- what's that Fair --

8 THE COURT: It's upside down.

9 MR. SCHWARTZER: -- Fairfield Avenue.

10 THE COURT: Yes. The record will reflect that where Fairfield starts to  
11 bow out right above north of St. Louis Avenue he circled an area on the screen.

12 MR. SCHWARZ: Okay. Thank you, Your Honor.

13 THE COURT: Uh-huh.

14 BY MR. SCHWARTZER:

15 Q Could we -- can you show the ladies and gentlemen of the jury then  
16 where did you go?

17 A Oh, I went after I bought it, I just came down this street here.

18 Q Is that St. Louis?

19 A Well, no, I think this street here for sure. It's always a dead-end  
20 right here. So probably right down here and parked right in there.

21 Q Okay.

22 A So the street right there.

23 Q So that looks like -- looks like a little housing area between Boston  
24 and St. Louis Avenue?

25 A Yeah.

1 Q Okay. And so you park your car?  
2 A Right.  
3 Q And you turn your car off?  
4 A Yeah. Exactly.  
5 Q What kind of car were you driving at the time?  
6 A My '97 Cadillac.  
7 Q What type of -- what type of Cadillac?  
8 A Coupe DeVille.  
9 Q Okay. And what color was that?  
10 A Sky blue.  
11 Q All right.  
12 A Trimmed in chrome.  
13 Q I'm going to show you a photo real fast. Showing you what's been  
14 admitted as stipulated Exhibit 65; is that your vehicle?  
15 A That's mine.  
16 Q All right. So you -- you turn off the car, you're in this dead-end  
17 street; what do you do?  
18 A Well, just sit there and kind of start kind of mixing my drink up and  
19 just kind of chilling, just chilling, sitting there.  
20 Q Okay. Drinking?  
21 A Yeah.  
22 Q After-work drink?  
23 A Yeah. Yes.  
24 Q Okay. So while you're doing that does anyone knock on your  
25 window?

1 A Yes.

2 Q And who knocks on your window?

3 A This guy knocked on my window.

4 Q What's that guy's name?

5 A His name is Money.

6 Q Okay. You know him as Money?

7 A Yeah.

8 Q How long have you known Money?

9 A About six, seven, eight years, close to a year.

10 Q Six, seven, eight years?

11 A Eight years, right.

12 Q Okay.

13 A Not eight years, but close to a year, eight months. Six, seven,

14 eight months, close to a year, something like that.

15 Q I get it now, eight months to a year?

16 A Right. Yeah.

17 Q Okay. And have you, during that time and you're talking about

18 eight months to a year and we're talking about 2013 you knew him for an

19 about a year?

20 A Yeah.

21 Q During that time had you drove him places before?

22 A Oh, yes. Yeah.

23 Q Had you had helped him out before?

24 A Yes, I have.

25 Q And when I talk about driving him places, do you sometimes drive

1 people?

2 A Yes. I give people rides to the grocery store.

3 Q Okay. And what do -- do you get anything in return?

4 A Yeah, I always get money, gas money.

5 Q Okay. Richard, do you see Money in the courtroom today?

6 A Yes, I do.

7 Q Can you point to him and identify a piece of his clothing?

8 A Dreadlocks and red shirt.

9 THE COURT: Record will reflect the identification of the defendant.

10 BY MR. SCHWARTZER:

11 Q Thank you, Richard. Do you mind if I call you Richard?

12 A Yes, go ahead.

13 Q After the defendant knocks on your window, do you roll your  
14 window down?

15 A Yes, I do.

16 Q And do you guys have a conversation?

17 A Yes, we do.

18 Q Can you tell the ladies and gentlemen of the jury what that  
19 conversation was about?

20 A He asked me for a ride.

21 Q A ride -- did you ask him where?

22 A Yes. I asked him where and how long, how far was it, and how  
23 long is it going to take.

24 Q Why did you ask those questions?

25 A Well, I always get it clear, you know, how long it's going to be,

1 how far is it. You know, it's not going to be no -- nothing dangerous for me or  
2 you going to run in, run out or what. I always get a clear understanding on --

3 Q Okay.

4 A -- what I'm doing. As long as it's not illegal, I'm good. Yeah.

5 Q Okay. And was he able to, when you asked him these questions,  
6 what was his response?

7 A He said okay.

8 Q And by "him" I mean the defendant.

9 A Yeah, he said, okay, it's none of that, he said. And then I said, give  
10 me --

11 Q Well, let me stop you, Richard.

12 A Okay.

13 Q When you asked him, like, where and how far and all that, what  
14 was his response, the defendant's response?

15 A Well, he said how much was I going to charge him then. And then I  
16 said ten bucks.

17 Q Did you know where you were taking him when you --

18 A Yeah. When he told -- when he described to tell me where it was.

19 Q Where did he describe to you?

20 A He said towards Boulder Highway.

21 Q Okay. And Boulder Highway from the area you were at, how long  
22 of a drive was it?

23 A 10, 15 minutes at the most.

24 Q Okay. And so you guys came to this agreement of \$10.00?

25 A Right, exactly.



1 Q And you've done this with him before in the past?

2 A Yes, I have.

3 Q When you've driven him to places in the past, what are some of

4 those places you've driven him to?

5 A Well, I took him and his wife to the grocery store, helped him move

6 some furniture, you know, stuff like that.

7 Q How about an appliance store?

8 A Yeah, took him to an appliance store and furniture.

9 Q Nothing -- nothing weird about any of those interactions?

10 A No, no, simple.

11 Q Okay. So when you guys agreed to that price of \$10.00, then

12 what happens?

13 A He said, okay, just a minute, I'll be right back.

14 Q And did he come right back?

15 A He came right back.

16 Q Was it a minute?

17 A About two, two or three minutes he came back.

18 Q Okay. And when he came back what did he do?

19 A Well, he got in the car and --

20 Q Where did he get in the car?

21 A He got in the front seat.

22 Q Okay. And where -- and was it just him and yourself?

23 A No. He had two more guys with him.

24 Q Did you see those two guys when you first had this conversation?

25 A No. No.

1 Q Have you ever seen those two guys before April 19th of 2013?

2 A No, no, I haven't.

3 Q Can you describe those two guys to the ladies and gentlemen of the  
4 jury?

5 A Well, one of them was kind of short and stocky, had a baseball hat.  
6 Then the other guy kind of had a ponytail.

7 Q Okay. White? Black? Hispanic?

8 A Kind of white, kind of, yeah, like, Spanish, light-skinned.

9 Q Light-skinned white?

10 A Yeah.

11 Q Okay. So they get in the back. Were you surprised to see two  
12 other people with you?

13 A Exactly, because my words were who were those guys, you know,  
14 you asked me for a ride, you didn't say it was nobody else.

15 Q What was Money's response to that?

16 A And he said, It's going to be all right.

17 And I said, Well, I should charge you \$10.00 a person for that, you  
18 know. You know.

19 Q Okay. So you were taken by surprise?

20 A I was taken by surprise, definitely.

21 Q And during that time that you knew Money did he ever have other  
22 people get in the car with you?

23 A No.

24 Q Did he ever pull that same, that similar stunt?

25 A No. No.

1 Q Okay. So do you, despite the fact that this happens, you still  
2 decide to drive them where they want to go?

3 A Yeah.

4 Q This group of men?

5 A Right.

6 Q And where do you drive them to?

7 A Well, we proceed to head towards Boulder Highway.

8 Q Okay. And when you get to Boulder Highway what do you guys  
9 do?

10 A Well, we, before we get there, one of the guys in the back said I  
11 want to buy my friend a beer.

12 Q Do you know which one?

13 A I think the short one was talk -- the stocky one was talking to other  
14 one.

15 Q Okay.

16 A Ponytail.

17 Q Okay. And so they say they want to go buy a beer?

18 A Right.

19 Q Then what happens?

20 A So we kind of go through the parking lot of Lowe's to a 7-Eleven.

21 Q Okay. And now that Lowe's, that's on Boulder Highway-ish?

22 A Right.

23 Q Okay. Boulder Highway and where?

24 A I don't remember exactly, but I know it was -- it was on the -- it's  
25 on the side of the highway right there.

1 Q Okay.

2 A Lowe's and then 7-Eleven.

3 Q Let me ask you this, eventually did you end up at a motel?

4 A Yes, sir. We did.

5 Q Okay. Was this Lowe's, 7-Eleven by that motel?

6 A Yes, sir.

7 Q Did you know you were going to eventually go to that motel?

8 A No, I didn't.

9 Q Okay. Before you go to that 7-Eleven are you told to go to a motel?

10 A No.

11 Q Okay. So you go to that 7-Eleven, right, by the Lowe's?

12 A Right.

13 Q How close is that 7-Eleven to the motel you eventually end up at?

14 A I think we just came back through the Lowe's and kind of right

15 down the street a little bit, we pulled into the hotel.

16 Q So it's right next to each other?

17 A We were kind of close.

18 Q So you end up at the 7-Eleven, do you park in the front of the

19 7-Eleven?

20 A Initially I drove up right in the front and then they said, Don't park

21 right here.

22 Q Who is "they"?

23 A Money said, Don't park right here.

24 I said, Well, where we going to park at?

25 Q Okay. And what did he say?

1 A Park right -- park on the side.

2 Q So Money told you not to park on the front of the store?

3 A Right.

4 Q But park on the side?

5 A Park on the side.

6 Q Did that concern you?

7 A Very much. I said, Why? What difference does it make? And I  
8 didn't -- I didn't feel comfortable. I said, What's -- why we got to park on the  
9 side?

10 Q Why didn't you feel comfortable?

11 A Well, you know, you know, in my mind, it's if you was going to go  
12 into the store to go get something, go get it. Why we got to be on the side of  
13 the store to go get something. So it's, in my mind I'm thinking what's up,  
14 what's really going on.

15 Q Okay. And then when you -- so do you do what Money tells you to  
16 do? Do you park on the side?

17 A I do with a whole lot of back talk, you know, yeah.

18 Q Now I'm going to --

19 A But I do back on up the side.

20 Q Okay. When you park, do the people in your vehicle get out of  
21 the -- out of your vehicle?

22 A All three, yes.

23 Q Okay. And where do you -- where does Money go?

24 A Well, they all get in -- stand in front of the car.

25 Q Okay. Does it appear to you from the driver seat that they're

1 talking with each other?

2 A They were talking to each other, oh, yeah.

3 Q Could you hear anything that they were saying?

4 A Not really.

5 Q Okay.

6 A Not really.

7 Q Anything --

8 A No.

9 Q -- that you can tell us?

10 A Not really, no, not really. At this point in my mind I'm just -- in my  
11 mind I'm like really what's going on, what's up, you know. And I'm kind of  
12 really saying I really want you-all to come on, talking to myself, you know, this  
13 gotta hurry up and stop, you know, I don't feel good about it.

14 MR. SCHWARZ: Judge, I'm going to object. This is all nonresponsive to  
15 the question.

16 THE COURT: Well, I'll sustain it. You can go ahead and follow up with  
17 another question.

18 MR. SCHWARTZER: That's fine.

19 BY MR. SCHWARTZER:

20 Q Fair to say you didn't feel well about the situation?

21 A No, not at all.

22 Q Okay. And the individuals got out of the car that they were in with  
23 you and started talking?

24 A Right.

25 Q Did any of them go in the 7-Eleven?

1 A Yeah, the ponytail guy went in -- went in the store.

2 Q Did he get anything from the 7-Eleven?

3 A He got two beers.

4 Q And once he got those two beers from 7-Eleven did you guys get  
5 back in the car?

6 A Well, they sit out and they drunk 'em.

7 Q Oh, they sat out and drank it?

8 A Right, they started drinking, yeah.

9 Q Okay. Were you -- did they drink them in the car or outside the  
10 car?

11 A Well, they didn't drink them all, so he got back, drank it, one.

12 Q Okay. When the guy with the ponytail goes in the 7-Eleven was the  
13 guy with the hat and Money still speaking to each other?

14 A Well, they were, yeah, still standing there right, uh-huh.

15 Q So once they -- do they eventually get back in the car?

16 A Right. They all got back in the car.

17 Q Okay. What happens when, and let me ask you this, when they get  
18 in the car where does everyone sit?

19 A Back where they were sitting.

20 Q So Money in the front passenger seat, guy with the hat and the guy  
21 with the ponytail in the backseat?

22 A Right.

23 Q And then when they get back in the car do they tell you to do  
24 anything?

25 A They said go back through Lowe's parking lot.

1 Q Okay. Did they tell you where to go?  
2 A Well, they directed me as we go.  
3 Q Okay. Where to go?  
4 A Get in the right lane, you know, turn left then get on the highway.  
5 Q Okay. So from that Lowe's did you drive out and go on to a  
6 highway or did you --  
7 A Yeah. Go down on the highway right in front, I guess that was  
8 Boulder.  
9 Q Talking about Boulder Highway?  
10 A Yeah. Yeah.  
11 Q Okay. So once you get on Boulder Highway what do you do?  
12 A We -- I was in the right lane, so he told me to get over in the left  
13 lane.  
14 Q Who was telling you to get in the left lane?  
15 A Money.  
16 Q The defendant?  
17 A Yeah.  
18 Q And once you get in the left lane does he give you any further  
19 directions, the defendant?  
20 A Well, he told me to turn up in here.  
21 Q And when you turn up in here what are you talking about?  
22 A At the hotel.  
23 Q Okay.  
24 A Motel.  
25 Q And can you describe that motel for me?



1           A     It's -- when you pull inside the hotel, the hotel is long ways, and it's  
2 a empty lot to the right.

3           Q     Is there only one way in and one way out?

4           A     One way in and one way out. Yes, sir.

5           Q     Have you ever been to that motel before?

6           A     No, never seen it.

7           Q     Okay. Who tells you to go inside -- go into the parking lot of the  
8 motel?

9           A     Money tells me.

10          Q     The defendant? Okay. Does he tell you to park?

11          A     Yeah.

12          Q     Do you try to -- do you try to park?

13          A     I just find the first available spot and pull in.

14          Q     Okay. Do you stay in that parking spot?

15          A     No. He tells, Me don't park here.

16          Q     Hold on a second. Why don't you stop in that parking spot?

17          A     He said, Don't park, don't park here.

18          Q     Who tells you not to park there?

19          A     Money said, Don't park there.

20          Q     Did that seem odd to you?

21          A     Yeah, and I said, again, what different does it make, you know, just  
22 get out of the car and take care of your business.

23          Q     How were you feeling at this point?

24          A     Well, it's uneasy, uneasy, you know.

25          Q     Where does Money direct you to park?

1 A He told me to back in, back my car in to a little spot.

2 Q Parking in what spot?

3 A Well, it was a dead -- the driveway deads end and he told me to  
4 back in towards the back, the dead-end part.

5 Q All right. Showing you Exhibit 10 that's been stipulated to, is this  
6 the motel?

7 A Yes, sir.

8 Q Okay. And are we talking, when you're still talking about the  
9 dead-end, is this where he told you to back in?

10 A Yes. All the way to the back.

11 Q So way back here?

12 A Yes, sir.

13 Q Okay. Now that Cadillac from the photo, that seems like a --  
14 showing Exhibit 65 -- that seems like a big car?

15 A A boat, yes, sir.

16 Q Okay. Is it easy to back this car into that spot?

17 A No, sir.

18 Q Okay.

19 A It was huge.

20 Q Did you make that clear to the other people inside your car?

21 A Very much so, yeah.

22 Q Okay. What were you saying?

23 A Well, I, first of all, I said this is a big car and that's a very small  
24 space and why do I need to back over there when I'm already parked. You  
25 know, this kind of mumbling uneasy that I have to move my car around.

1 Q Right.

2 A You know, it's a tight spot and I got a big old Cadillac.

3 Q Who were you directing these complaints to?

4 A Money.

5 Q And does Money, the defendant, tell you anything in return?

6 A No. He don't say anything, just back -- just back the car.

7 Q Are you expressing anything, any of your displeasure about how  
8 uneasy you're feeling?

9 A Yes, definitely, definitely.

10 Q What are you saying to Money and the other two people in your  
11 car?

12 A Well, really I'm expressing that -- about me moving my car different  
13 places and me having to back in when all you do is just park, handle your  
14 business, and come out, you know, simple thing.

15 Q You thought this was going to be a quicker \$10.00?

16 A Yeah. Exactly.

17 Q Okay. Do they -- did anyone in the car try and make you feel easy,  
18 you know, better about the situation?

19 A Well, one of the gentleman was telling me, Old School, it's going to  
20 be all right, calm down.

21 Q Do you -- first off, who's Old School?

22 A Well, it's kind of a nickname. When you have gray on your face,  
23 they just kind of call you kind of Old School.

24 Q Okay. So you're Old School?

25 A Yeah, I'm Old School.

1 Q All right. And then who's -- do you remember which person in the  
2 back was telling you to calm down?

3 A The guy with the baseball hat.

4 Q Okay. Were you eventually able to park -- back into that parking  
5 spot?

6 A Not without complications.

7 Q Okay. Tell us about that complications.

8 A Well, my Cadillac was so long I kept pulling in and pulling back out.  
9 Eventually I scraped my chrome bumper up against the wall and had to pull  
10 back out and go back in again. I was very, very, very upset at that point.

11 Q And do you express that?

12 A Very much so.

13 Q And did anyone try and calm you down?

14 A He was still saying, Old School, it's going to be all right, it's going  
15 to be all right.

16 And I'm just, no, it's not, you know.

17 Q And this is the guy in the backseat?

18 A Right.

19 Q Were you eventually able to get to that spot?

20 A Eventually, yes, sir.

21 Q Okay. And once you get in the spot what happens?

22 A I park.

23 Q Does anyone get out of the car, let me ask you that?

24 A Yeah. Two -- two people got out.

25 Q Tell me who got out of the car?

1 A Money and I think it was the guy with the ponytail --

2 Q Okay.

3 A -- got out.

4 Q And when they got out of the car, you're talking about -- where  
5 was Money at?

6 A He was in the front seat.

7 Q Okay. And he gets out of the car?

8 A Yeah. And the guy behind him in the seat got out.

9 Q Okay. And then you remember giving a statement in this case back  
10 in April 25th -- 21st of 2013, did you talk to police eventually in this case?

11 A Yes, I did.

12 Q On April 21st?

13 A Uh-huh.

14 Q And you said it was the -- in your statement if you said it was the  
15 heavysset guy would that -- would you think that was wrong?

16 A Well, it was -- on the seating -- on seating, I know it was one of  
17 them.

18 Q Okay.

19 A Well, and that's how I described them was baseball hat and one had  
20 a ponytail.

21 Q Right.

22 A So.

23 Q And then so Money, the defendant, gets out of car, correct?

24 A Definitely. Right.

25 Q And then you said in your statement that a guy, the heavysset guy

1 with the hat gets out of car?

2 A Okay.

3 Q Does that ring a bell at all?

4 A Yeah, pretty -- yes.

5 Q Okay. Do you think you would remember more two days after this  
6 incident occurred than now almost four years later?

7 A Oh, absolutely then.

8 Q Okay.

9 A Yes, sir.

10 Q Again, you didn't know either of these white guys before?

11 A No, never.

12 Q You still don't know them? You saw them on April 19th, 2013,  
13 and haven't seen them since?

14 A No, sir.

15 Q So they get out of the vehicle, the defendant and the heavysset guy  
16 with the baseball cap, what happens after that?

17 A Well, they go and kind of stand behind my car.

18 Q Okay. Do you see anyone coming -- do you see -- let me ask you  
19 this, do you know why they were there in the first place?

20 A I guess they were waiting on somebody.

21 Q Okay.

22 A You know.

23 Q Did you know who what -- what -- who they were waiting for? The  
24 reason why they were waiting? Any of that?

25 A No, I didn't.

1 Q Okay. You didn't bother -- you didn't ask?  
2 A No, I didn't.  
3 Q I guess I've got to ask you this, why?  
4 A Well, because, you know, he asked me to give him a ride and I  
5 charged him ten bucks. So I wanted him to -- whatever he was doing, go do it,  
6 get his -- get whatever, do whatever, and get back in my car because he said it  
7 was just five minutes.  
8 Q And this was longer than five minutes?  
9 A Oh, this was way longer.  
10 Q Okay. Now you've also dented your car?  
11 A Yeah, yeah, right.  
12 Q Okay. So they're sitting outside, it looks like they're waiting for  
13 somebody, does someone eventually come meet them?  
14 A Yes, it does.  
15 Q So where does that person -- where does that person does that  
16 person come from?  
17 A He come from upstairs.  
18 Q Do you remember -- I know, again, it was about four years ago, but  
19 do you remember anything about that person?  
20 A He had a white T-shirt on.  
21 Q Okay. Anything else?  
22 A That's pretty much it.  
23 Q Okay.  
24 A White T-shirt.  
25 Q And he -- he came down the stairs?

1 A Yeah, right.

2 Q Was he white? Black? Hispanic?

3 A He was black.

4 Q Okay. Was there any other people that came down from the car?

5 A Well, the car that was -- that I parked beside --

6 Q Yeah.

7 A -- two guys came down and they got in their car.

8 Q And were they white? Black? Or Hispanic?

9 A They were black.

10 Q Okay. Were they darker or lighter than the other individual?

11 A They were -- well, they was brothers, they were dark, you know.

12 Q Okay.

13 A Yeah.

14 Q So they were darker than the -- darker skinned than the individual in

15 the white T-shirt?

16 A Well, no, he was a brother too, I mean, they were about the same

17 color.

18 Q Okay. What -- so they were all about the --

19 A Same color, right, exactly.

20 Q Okay. So those two brother -- not brothers, now you got me saying

21 that because I know they're brothers -- so these two African-American males

22 come downstairs, do they seem to be with the person in the white T-shirt?

23 A Well, it didn't seem like it.

24 Q Okay.

25 A Didn't seem like it.



1 Q Those two individuals that came down about the same time, did  
2 they get into their car?

3 A Right, exactly.

4 Q Okay. And did they eventually drive away?

5 A Yes, sir, they did.

6 Q Okay. Before they drive away did you see the people that came out  
7 of your car, Money and the heavysset guy talk to the guy in the white T-shirt?

8 A I think they all spoke.

9 Q Okay. Did you hear any of their conversation?

10 A Just kind of like what's up, brother, something like that.

11 Q Okay. Where were they speaking at?

12 A Well, they were behind the car and they were getting in -- the other  
13 two were getting in their car.

14 Q Okay. The other two you're talking about, the other two African  
15 American males?

16 A They was back -- leaving, yeah.

17 Q Okay. Now, were your windows up or down?

18 A Up, my window's up.

19 Q And was your car on or off?

20 A Off.

21 Q With your windows up in this area, were you able to hear much or  
22 any of that conversation that's happening behind your car?

23 A No, not really, not really.

24 Q Just what's up?

25 A Yeah. That's it. They was right beside my car kind of.

1 Q Okay.

2 A The guys were getting in their car and they were speaking.

3 Q All right.

4 A So I could hear that.

5 Q I'm actually confusing myself now.

6 So the person who said what's up, it's actually those two  
7 African-Americans that got into the car?

8 A Right. Right.

9 Q Okay. And I'll show you a video and maybe you can clarify  
10 something for me.

11 A Okay.

12 Q So after do you that, after they drive away, does the defendant, the  
13 guy in the white -- the white shirt, and the guy with the black hat, do they keep  
14 having a conversation?

15 A Yeah. They're standing kind of off to the my left of my car, looked  
16 like back on the sidewalk, I think.

17 Q Okay. Does it -- do you hear any yelling or shouting or anything like  
18 that early on in that conversation?

19 A Well, pretty not early, but eventually I did.

20 Q Okay. And we'll get there. When the person in the white T-shirt  
21 comes down the stairs is he yelling or screaming?

22 A No.

23 Q Does he appear to you to be angry at all?

24 A No.

25 Q Okay. Is he, like, shaking his fist or anything like that?

1 A No. No.

2 Q Okay. So he comes down stairs, the two other African-Americans  
3 get into their car that's next to your car, they drive away?

4 A Right. Exactly.

5 Q They're having a conversation, you're saying at first it didn't sound  
6 like a loud conversation?

7 A Right.

8 Q It becomes -- it's something -- it does become a loud conversation?

9 A Right.

10 Q Okay. Tell the ladies and gentlemen of the jury about that.

11 A Well, I heard gentleman holler, speak out and say, Show me the  
12 money.

13 Q Do you know who said, Show me the money?

14 A Well, it sounded like the guy in the white t-shirt.

15 Q Okay. He said something about show me the money?

16 A Right.

17 Q And then what happens?

18 A After that I heard some pow, pow, pow.

19 Q How many pow, pow, pows?

20 A Well, quite a -- it sounded like a lot to me.

21 Q Let me ask you this, did you ever hear that white -- the guy in the  
22 white T-shirt speak before?

23 A Not really.

24 Q Okay. So you don't -- do you know what his voice is?

25 A No, I don't.

1 Q So how do you know he was the one that said it?

2 A Well, because it was -- it was real loud. It was a brother, it was.

3 Q Okay.

4 A You could tell.

5 Q Okay. So you think it was because of the way it sounded, you  
6 think it was an African-American?

7 A Yes.

8 Q And so it was either him or Money, Money being the defendant,  
9 saying that?

10 A Right.

11 MR. SCHWARZ: Well, Judge, I'm going to object. This is leading now.

12 MR. SCHWARTZER: Well, I think I'm just clarifying what -- how --

13 THE COURT: Well, I'll sustain it. You can rephrase it.

14 BY MR. SCHWARTZER:

15 Q Okay. Based on the -- based on your hearing of it, you believed it  
16 was an African-American that said that?

17 A Exactly.

18 Q You didn't see who exactly --

19 MR. SCHWARTZER: I'm moving on.

20 BY MR. SCHWARTZER:

21 Q You didn't actually see the person actually saying it?

22 A Right. Exactly. It sounded like him.

23 Q Okay. Do you know what Money's voice sounds like?

24 A Yes.

25 Q Okay. Did that appear to you to be Money's voice?

1 A It didn't sound like it.

2 Q Okay. So it's going to be one of those two people?

3 A Right.

4 Q And you don't know -- and because of the way the voice sounded,  
5 you think it's the guy in the white T-shirt just because he's, in your view,  
6 African-American?

7 A Right.

8 Q Okay. Thank you.

9 How many p o w s did you here?

10 A Quite a bit to me, sounded like.

11 Q Okay. Can you guess?

12 A More than three or four.

13 Q Okay.

14 A Yeah.

15 Q What did you do?

16 A I put -- ducked my head and started up my car and mashed the gas.

17 Q Okay. Did you care if anyone got in the car with you?

18 A Didn't care at all.

19 Q Okay. Why is that?

20 A Because I felt like I was scared for my life and didn't know what  
21 happened, so I was just trying to get away from there.

22 Q Okay. Now, the guy with the black hat and Money were they able  
23 to get back in the car?

24 A Yeah, barely.

25 Q Barely? Okay.

1 A Yeah.

2 Q You're on the gas, did they have to run after the car?

3 A Yes.

4 Q When they were running up to the car did they get into -- what  
5 seats did they get into?

6 A Money got back in the -- Money got back in the front seat, the  
7 other guy got behind him in that seat.

8 Q So the front passenger seat?

9 A Yeah, right.

10 Q Is where Money went to?

11 A Right.

12 Q Did it take a while for him to get into that seat?

13 A Absolutely, I was kind of dragging him a little bit.

14 Q Okay. Once he got in that seat where -- where did you guys drive  
15 off to?

16 A We go out on the highway.

17 Q Okay.

18 A But -- yeah.

19 Q Boulder Highway?

20 A Yes.

21 Q Okay. And so when you're out on Boulder Highway, you just heard  
22 all these shots, how are you feeling at the time?

23 A Well, I'm scared and don't know what to do and --

24 Q Okay. Are you expressing your fear?

25 A Exactly.

1 Q What are you saying?

2 A I said, I don't like this, what happened. I'm going to run this red

3 light. I'm going to pull over, all you-all gonna get out of my car.

4 Q Does anyone respond to you?

5 A Just drive, just drive.

6 Q Who says just drive?

7 A Money just saying just drive.

8 Q Does Money explain what happened?

9 A No, he don't.

10 Q No?

11 A No.

12 Q He doesn't say anything about what happened?

13 A No. He doesn't mention a word.

14 Q Okay. So you say you're going -- you guys are going to get out of

15 my car, we're going to run this red light, all that?

16 A Yeah.

17 Q Okay. Do they get out of the car?

18 A No, they don't.

19 Q Do you run that red light?

20 A No, I didn't.

21 Q Okay. Why?

22 A Because he told me, I'm going to drive right, drive the car right.

23 Q Who tells you to drive right?

24 A Money.

25 Q That would be the defendant?

1 A Right.

2 Q And when you drive right, where do you end up?

3 A Well, I end up listening to how he want me -- where he want me to

4 go.

5 Q Okay. So you -- do you follow his directions?

6 A Right.

7 Q Okay. Do you say anything else during this period of time about

8 what happened?

9 A Well, you know, I'm expressing my fear, you know, I mentioned I'm

10 going to tell it.

11 Q Is that what you say?

12 A That's what I said.

13 Q How loud do you say that?

14 A Real loud, more than once.

15 Q Okay. Does anyone respond to that?

16 A Yes, Money did.

17 Q Money did?

18 A Yeah.

19 Q And what -- how did the defendant respond to that?

20 A Kind of swole up a little bit, kind of leaned at me and said, You

21 going to do what?

22 Q Okay. You got to explain to me what "swole up" means.

23 A Well, when you kind of puff up, raise up in the seat, and kind of

24 look at you and said, You going to do what?

25 Q And how -- can you kind of voice or tone is he taking with it?



1 A Real loud, aggressive.

2 Q Aggressive. And that puffing up, is that an aggressive measure to

3 you?

4 A Yes. Yes.

5 Q When he's doing that do you see anything on his person?

6 A Well, his hand's still in his lap.

7 Q Okay.

8 A And then when he does that, he kind of leans to me, he said, You

9 going to do what? You going to do what?

10 Q And what's -- and so his hands are in the lap. Is there anything else

11 in his lap?

12 A Yeah. No, it's just dark, something dark.

13 Q Something dark?

14 A Right.

15 Q An object?

16 A An object.

17 Q That's on his lap?

18 A Yeah.

19 Q And you just heard gunshots?

20 A Yeah, exactly.

21 Q What -- when you say "dark," was it black? Gray? Whatever?

22 A It looks black.

23 Q Okay. Did it look metallic? Plastic?

24 A I didn't really examine it looking at it. At this point I'm scared and

25 kind of scared for my life really.

1 Q Okay. So you're in the driver's seat?

2 A Uh-huh.

3 Q Money's in the passenger seat, you express, I'm going to tell it, and  
4 then I want you to -- I'm going to be you right here.

5 A Right.

6 Q Tell me what -- how -- so I'm driving and what did Money do?

7 A Just kind of leaned to me and raised up, said, You going to do  
8 what? You going to do what?

9 Q And you have your hands on your lap?

10 A Right. Right. And just turned and You going to do what? What  
11 you going to do?

12 Q Okay.

13 A You know.

14 Q And so was his hands on your lap -- on his lap?

15 A He was still, yeah, still on his lap.

16 Q On that object?

17 A Right.

18 Q That's on his lap?

19 A Exactly.

20 Q And that object in his lap is that dark object?

21 A Right.

22 MR. SCHWARZ: Judge, objection. Asked and answered.

23 THE COURT: I'll sustain the objection. It's been asked and answered.

24 MR. SCHWARTZER: Okay.

25 BY MR. SCHWARTZER:

1 Q How did that make you feel?

2 A Very scared, very, very, very scared.

3 Q What did you think that dark object was?

4 MR. SCHWARZ: Objection.

5 THE COURT: Well, I'll sustain --

6 MR. SCHWARZ: Speculation.

7 THE COURT: I'll sustain the objection.

8 BY MR. SCHWARTZER:

9 Q Because of that dark object, did you feel more afraid?

10 A Exactly.

11 Q And were you in fear of your life because of that dark object?

12 A Exactly.

13 Q So after that you become more compliant with the defendant?

14 A Very, yes, sir.

15 Q Very, you said "very"?

16 A Very, very, yeah, very.

17 Q And what did -- so did the defendant tell you where to drive next?

18 A He told me to turn at the next corner.

19 Q So he took you away from that dead-end street?

20 A Right.

21 MR. SCHWARZ: Objection, Judge. I don't recall any testimony about a  
22 dead-end street.

23 THE COURT: Yeah, I'm not --

24 MR. SCHWARTZER: He said in the very beginning.

25 THE COURT: It was confusing. So back up. He told you to turn at the

1 next corner?

2 THE WITNESS: Right.

3 THE COURT: Okay. Do you know about what area you were in at that  
4 point?

5 THE WITNESS: Well, we had left the hotel. We was out on the street.

6 THE COURT: Out on Boulder Highway?

7 THE WITNESS: Right.

8 THE COURT: Okay.

9 All right, Mr. Schwartzer.

10 MR. SCHWARTZER: Thank you.

11 BY MR. SCHWARTZER:

12 Q So just to clarify when you made that right that the defendant told  
13 you to make before you said I was going to tell --

14 A Right.

15 Q -- what street was that?

16 A Nah, I can't tell you that. I know it was a red light.

17 Q Okay.

18 A Because I was finna go through it.

19 Q Okay.

20 A And he told me to stop and we took off and started going down the  
21 street again.

22 Q Okay. Where did they -- where did you eventually get directed to  
23 go?

24 A Well, we turned and I really didn't know where we was going at  
25 this point. I was scared and just kind of listening to what he's telling me to do.

1 Q Okay. And listening to what he wants me to do, are you talking  
2 about Money?

3 A Right.

4 Q The defendant?

5 A Right.

6 Q Okay. What does he want you to do?

7 A Well, he, you know, he told me to turn.

8 Q Okay.

9 A And I turned.

10 Q Do you know what street you turned on to?

11 A No. It turned into, like, a dead-end.

12 Q Okay.

13 A You could only turn right.

14 Q Okay.

15 A And it was kind of real dark.

16 Q And then after that area where did you go?

17 A We proceeded back to where I picked him up at.

18 Q Okay. And that would be in Naked City?

19 A Right.

20 Q Do you know what street or anything?

21 A It's that same street right where we left from, yeah.

22 Q Okay. And did everyone get out of car at the same time?

23 A Everyone got out at the same time.

24 Q Did anyone say anything in the car besides directions from the --  
25 after you're going to do what, you're going to do what?

1           A     No. Well, no, other than me kind of explaining how I'm scared and  
2 want to take you-all back to where you-all come from and, you know, be done  
3 with this.

4           Q     But the defendant doesn't say anything else besides directions?

5           A     Right. Exactly.

6           Q     And the two white guys or light-skinned guys in the back don't say  
7 anything?

8           A     Didn't say anything.

9           Q     Okay. After you dropped them off, what do you do? Do you call  
10 the police?

11          A     No. I'm just -- just scared really, started praying, little tears.

12          Q     Why were you getting teary?

13          A     Because I had never been in a situation like that before and I was  
14 scared for my life. So I really didn't know what to do. So I sit there and before  
15 I drove off I put my Loco and my MD in the trunk, so when I parked I got it out.

16          Q     You needed a drink?

17          A     I needed -- I still drink. Yes, I did.

18          Q     So after you pulled this alcohol from your trunk and you made  
19 yourself a drink, did you call the police then?

20          A     No, sir.

21          Q     What do you do?

22          A     I didn't know what to do. I just went to sleep.

23          Q     Okay. In the car?

24          A     In the car right there, just sit there. I didn't want to drive my car.

25          Q     So this was April is 19th. On April 20th about what time do you

1 think you woke up?

2 A I got up when the sun came up.

3 Q And did you go to the police then?

4 A No, didn't do it then. I didn't really know what to do.

5 Q Okay.

6 A I didn't know what just happened.

7 Q Did you know someone died at that time?

8 A I didn't know nothing, didn't know anything. I just know I heard  
9 gunshots, yeah.

10 Q And so when the sun went up what did you -- did you go about  
11 your day?

12 A Yes, I did.

13 Q And what did you do?

14 A Well, I had already scheduled a person to meet me at the auto parts  
15 store to do their brake job, so.

16 Q Okay. Do you do the brake job?

17 A I do the brake job.

18 Q Do you eventually go home?

19 A Yes, I do, later on.

20 Q About what time is that?

21 A Oh, probably about 5:00 or 6:00.

22 Q P.M.?

23 A Yeah.

24 Q So when you go home let me ask you this, are you a married man?

25 A Yes, I am.

1 Q Was your wife home?

2 A Yes, she was.

3 Q Was she happy to see you when you came home?

4 A She was hysterical.

5 Q Okay. And I don't want to necessarily get into the conversation  
6 that you had with your wife because that would be hearsay, but based on that  
7 conversation did you know police were looking for your car?

8 A Yes. She did. She explained she saw it on TV.

9 Q Okay. And based on that conversation were you informed that  
10 someone died?

11 A Exactly. Yes, sir.

12 Q What did you do once you found out that stuff?

13 A Started screaming and hollering and crying.

14 Q Did you call the police?

15 A I called 9-1-1.

16 Q What did you do when you called the police?

17 A Tell them to come to my house. I was driving my car, it was an  
18 incident, I need to talk to somebody of authority, and I'm just losing it.

19 Q Did the police come to your house?

20 A No, they never came.

21 Q Okay. Did you stay up that night?

22 A Yeah. Sitting there waiting at the kitchen table.

23 Q And the police never came?

24 A They never came.

25 Q So the next day, on April 21st, did you call the police again?



1 A No. My wife told me do the right thing and turn yourself in.

2 Q So what did you do?

3 A I drove the car up to the station.

4 Q Where is -- where's the -- where did you drive it off to?

5 A To the police station, I guess right there.

6 Q Is it here downtown?

7 A Yeah, downtown, right.

8 Q And when you get to this police location do you try to turn yourself  
9 in?

10 A Yes, sir.

11 Q And how do you go about doing that?

12 A Well, the gentleman was driving a van and he came in at the roller  
13 gate there and I knocked on his door and I said, Excuse me, sir, this car, my car  
14 was involved in a homicide.

15 And he said, What are you talking about, man? What are you  
16 talking about? And he said, I don't know nothing about no homicide. So he  
17 said, Wait just --

18 THE COURT: Can I interrupt you for a minute? I assume you're talking  
19 about an officer.

20 THE WITNESS: Yes, sir.

21 THE COURT: And a policeman.

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay.

24 THE WITNESS: Right.

25

1 BY MR. SCHWARTZER:

2 Q Wearing a uniform and a badge?

3 A Right. Exactly.

4 Q Okay.

5 A And he said he didn't know anything about it.

6 Q Okay.

7 A He said wait just a minute.

8 Q So no one -- no one's taken you into custody?

9 A Not yet.

10 Q Even though you called and stuff?

11 A So we're still standing there when -- when --

12 Q Go ahead.

13 A And then he gets the call back to say --

14 Q I don't want you to go into what the call back was.

15 A Okay.

16 Q But eventually after some type of communication you were taken  
17 into custody?

18 A Yes, I was.

19 Q Okay. And you talked to some detectives?

20 A Right.

21 Q And that was on April 21st of 2013?

22 A Right. Right.

23 Q And you talked to some homicide detectives?

24 A Yes, sir.

25 Q You gave a -- and you tell them what happened that night?

1 A Exactly.

2 Q Did they have you look at some photographs eventually?

3 A Yes, sir.

4 Q Let me show you State's 114 and proposed 114 and 115.

5 MR. SCHWARTZER: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. SCHWARTZER:

8 Q Do you recognize these forms?

9 A Yes, sir.

10 Q Do you recognize the writing?

11 A Yes, sir.

12 Q Do you recognize the signature?

13 A Yes, sir.

14 Q Let's go into this -- the signature here, is that -- who's signature is

15 that?

16 A That's my name.

17 Q And you time and date that?

18 A Yes, sir.

19 Q And is this the time you signed -- signed this document?

20 A Yes, sir.

21 Q To the best of your ability?

22 A Right.

23 Q And these -- this statement, is that your handwriting?

24 A Yes, sir.

25 Q And these are statements that you wrote?

1 A You wrote, yes, sir.  
2 Q And again you signed it?  
3 A Yes, sir.  
4 Q And that's your signature?  
5 A Yes, sir.  
6 Q And is that the time and date that you believe was when you signed  
7 it?  
8 A Yes, sir.  
9 Q Okay.  
10 MR. SCHWARTZER: I'll move for admission of 114 and 115.  
11 MR. SCHWARZ: No objection, Your Honor.  
12 THE COURT: Those will be admitted. Thank you.  
13 **[STATE'S EXHIBITS 114, 114A, 115, AND 115A ADMITTED]**  
14 BY MR. SCHWARTZER:  
15 Q So you talked to police on the 21st and they come actually come  
16 back to talk to you on the 22nd to show you these photographs, correct?  
17 A Right. Right. Exactly.  
18 MR. SCHWARTZER: And now I'm going to move to publish, Your Honor?  
19 THE COURT: You may.  
20 BY MR. SCHWARTZER:  
21 Q So did the police read you this instruction right here?  
22 A Yes, sir.  
23 Q And I won't take the time to read it, but they actually read this to  
24 you?  
25 A Yes, sir.

1 Q And you then you signed it after they read it to you?

2 A Yes, sir.

3 Q And then you wrote this statement?

4 A Yes, sir.

5 Q Okay. And you say, Number 5 looks like him?

6 A Yes, sir.

7 Q Because his ears stick out?

8 A Yes, sir.

9 Q And fat face. Also out of the six people number 5 looks like the

10 guy that was in my car. That would be this individual right here?

11 A Yes, sir.

12 Q And that would be one of the light-skinned, white people?

13 A Right. Yes, sir.

14 Q Is that the one with the hat or --

15 A Yes. That's the one with the hat.

16 Q Okay. I didn't feel like he would have a ponytail.

17 And then number 115, again same thing, and similar to the last

18 document, it's April 22nd, 2013, and then you put this here?

19 A Yes, sir.

20 Q That's your handwriting?

21 A That's right.

22 Q Number 4 with the ponytail, that's the one that was in my car. And

23 you picked out this individual.

24 A Yes, sir.

25 Q And in both these cases there's a -- there's a circle, showing 114

1 and 115A on both of those, there's a circle, correct?

2 A Yes, sir.

3 Q And you -- is that your signature?

4 A Yes, sir.

5 Q On both of them, correct?

6 A Right. Exactly.

7 Q So you believe those were the two individuals that were in the car  
8 with you?

9 A Yes, sir.

10 Q Were you shown some photographs of black males too?

11 A Yes, sir.

12 Q During this period of time? On April 22nd?

13 A Yes.

14 Q And did they show you any pictures with Darion  
15 Muhammad-Coleman in them, the defendant?

16 A Yes, they did.

17 Q Okay. They eventually did, right?

18 A Right, eventually.

19 Q Okay. Did the first photographs they showed you, did they include  
20 the defendant?

21 A No, sir.

22 Q Okay. Did you pick anyone in those photographs?

23 A No, sir.

24 Q Okay. Eventually, a few days later on April 25th, 2013, do  
25 detectives come back to your house?

1 A Yes, sir.

2 Q And again you do a photographic lineup?

3 A Yes, sir.

4 MR. SCHWARTZER: Okay. May I approach again, Your Honor?

5 THE COURT: You may.

6 BY MR. SCHWARTZER:

7 Q Showing you --

8 MR. SCHWARZ: I've seen it. Thank you.

9 BY MR. SCHWARTZER:

10 Q Showing you State's Proposed 113 and 113A, similar?

11 A Yes, sir.

12 Q Do you recognize the signature?

13 A Yes, sir.

14 Q And the handwriting?

15 A Yes, sir.

16 Q Is that your signature and your handwriting?

17 A Yes, sir.

18 Q And this is -- and the dates and time are what you believe is  
19 accurate?

20 A Yes, sir.

21 MR. SCHWARTZER: Move for admission of 113 and 113A, Your Honor.

22 MR. SCHWARZ: No objection.

23 THE COURT: Those will be admitted. You may publish.

24 MR. SCHWARTZER: And to be clear, I was also moving for 114 and  
25 115A as well.

1 THE COURT: Yeah.

2 MR. SCHWARZ: It's all good, Judge, no objection.

3 THE COURT: Thank you. All of that was admitted.

4 **[STATE'S EXHIBITS 113 AND 113A ADMITTED]**

5 BY MR. SCHWARTZER:

6 Q And then showing you 113, you say number 5 is Money?

7 A Yeah.

8 Q And that's him right there?

9 A Yes, sir.

10 Q Okay. That's your signature?

11 A Yes.

12 THE COURT: For the record that's in the fifth position of that lineup.

13 MR. SCHWARTZER: That's correct, Your Honor.

14 THE COURT: Okay. Thank you.

15 BY MR. SCHWARTZER:

16 Q Now when they actually show you this -- this lineup, it's on April  
17 25th, 2013?

18 A Uh-huh.

19 Q Correct?

20 A Yes, sir.

21 Q So a few days after -- after they showed you the initial  
22 photographs? That statement was recorded as well, correct?

23 A Yes, sir.

24 Q And when they actually show you this photograph do you have a  
25 reaction?



1 A I think I said something like bingo, something like that.

2 Q Okay. You're confident that's Money?

3 A Yeah. Right.

4 Q Let me ask you this, during the period of time before they were  
5 actually able to show you a photo of Money, the defendant, did you tell  
6 detectives about how you would drop Money off at certain places?

7 A Right. Yes, sir.

8 Q You told them about the appliance store?

9 A Yes, sir.

10 Q Okay. And grocery stores?

11 A Right. Yes, sir.

12 Q Okay. Did you ever know until you were subpoenaed for this  
13 process, did you ever know his true name?

14 A No, sir.

15 Q It wasn't until you were subpoenaed for this process that --

16 A Right.

17 Q Okay. Now, Mr. McCampbell, we're almost done here. I'm just  
18 going to show you a few more photos and then I'm going to show you a video  
19 and then we're done.

20 A Okay.

21 Q Okay? We're done with me.

22 A Okay.

23 Q And then Mr. Schwarz over here will ask you some questions.

24 When you turned your car turned yourself in on April 21st, 2013,  
25 and just to be clear, you've never been arrested in this case?

1           A     No, sir.

2           Q     You just believed you were involved in something and you needed  
3 to go to the police?

4           A     Right. Exactly.

5           Q     And no point has charges ever been filed against you?

6           A     No, sir.

7           Q     Okay. You -- you took your Cadillac with you?

8           A     Yes, sir.

9           Q     The one that the police were looking for according to your wife?

10          A     Right. Yes, sir.

11          Q     And showing you Exhibit 64, that's it, right?

12          A     Yes, sir.

13          Q     Was this, like, kind of that area where that van was?

14          A     Yes, sir. It was going, pulling in.

15          Q     Okay. Can you point to where it was pulling in?

16          A     Right here. Right there.

17          Q     Okay. Thank you. And then?

18          MR. SCHWARTZER: Thank you Your Honor.

19 BY MR. SCHWARTZER:

20          Q     And then showing you, so this is Exhibit 66, which is another  
21 photo, showing you Exhibit 67, there is something right there?

22          A     Yes.

23          Q     What is that? Is that a defect in your car?

24          A     Yes, it is.

25          Q     Okay. Was that mark there before April 19th, 2013?

1 A No, sir. No, sir.

2 Q This is a close-up of that in 68.

3 A Uh-huh.

4 Q And then showing you Exhibit 69?

5 THE COURT: Hold on. Hold on. Just for the record, the defect as it's  
6 being described is in the backside of the left, rear C-post, I guess, of your car?

7 THE WITNESS: Right.

8 THE COURT: Okay. Thank you.

9 MR. SCHWARTZER: Thank you, Your Honor.

10 BY MR. SCHWARTZER:

11 Q Showing you Exhibit 69 is this the passenger side of your vehicle?

12 A Yes, sir.

13 Q I want to direct your attention now to the middle of the photograph,  
14 it's the door handle area.

15 A Right.

16 Q Is there something missing in this area right here?

17 A Yes, it is.

18 Q What's missing?

19 A It's a little -- it's the same color, but it's missing from right here.

20 Q Okay. Now, I'm going to show you kind of a close-up of that, of  
21 72. Is that what you're talking about?

22 A Right. Yes, sir.

23 Q Okay. And just so the jury can see what it's supposed to look like,  
24 on -- showing you Exhibit 74, is that what it's supposed to look like?

25 A Yes. Yes, sir.

1 Q It's like --

2 A Like a wood -- it's imitation wood grain.

3 Q Okay. Like a fake wood panel?

4 A Yes, sir.

5 THE COURT: 74 is the interior door handle area of the driver side door.

6 THE WITNESS: Right, yes, sir.

7 THE COURT: That's what you're saying it should have looked like --

8 THE WITNESS: Right. Yes, sir.

9 THE COURT: -- on the -- thank you.

10 BY MR. SCHWARTZER:

11 Q Showing you Exhibit 53, does it look something like that?

12 A Yes, sir.

13 Q Okay. Finally, I want to publish Exhibit 7 which is a video. Okay.  
14 I'm not going to go through the full video with you or anything like that. I do  
15 want to show you certain things?

16 MR. SCHWARTZER: And I'm going to right now, Your Honor, for the  
17 record, I'm showing a video surveillance that shows two video screens, but  
18 there is nine video screens all together. I'm -- the time is April 19th, 2013,  
19 21:15:19. I'm going to fast forward.

20 BY MR. SCHWARTZER:

21 Q Okay. Now, there's eight video surveillance, you can see in this  
22 exhibit now, again, Exhibit 7, we're at 21:17:08. I am going to pull up camera  
23 4. Do you recognize anything in camera 4?

24 A Yes, sir.

25 Q Can you circle it?

1 A That's my Cadillac.

2 Q Okay. And I'm now going to play -- actually just going to go back a  
3 little bit, just real quick. Try again. Okay. So you're pulling into a spot right  
4 here.

5 A Right.

6 Q Is that correct?

7 A Yes, sir.

8 Q And so this is the spot you originally try to park into?

9 A Right. Yes, sir.

10 Q Now, I'm showing you at 21:16:51 on camera 4, showing the blue  
11 Cadillac on the screen moving into a white -- a parking spot by a white vehicle.  
12 So you tried parking there and it was --

13 A Right.

14 Q And, again, who told you to change your parking spot?

15 A Money.

16 Q And that would be the defendant?

17 A Right.

18 Q And this you trying to now back in. I'm just going to fast forward a  
19 little bit. So that's the spot.

20 Now, when people get out of the car, I want you to tell me who's  
21 getting out of the car, okay?

22 A Got it.

23 Q Still got this car?

24 A Huh?

25 Q You still have this car?

1 A No, sir. No.

2 Q Okay. Who just got out of the --

3 A I think Money and the guy with the baseball hat.

4 Q All right. Circle -- circle Money for me.

5 A That's Money right here, right there, first one.

6 THE COURT: He circled the gentleman exiting the right, front passenger  
7 side.

8 THE WITNESS: Right.

9 THE COURT: That would be at 21:19:19.

10 MR. SCHWARTZER: Thank you, Your Honor, on camera 4 again

11 BY MR. SCHWARTZER:

12 Q And then the person in the baseball hat would be the person coming  
13 out of the passenger rear?

14 A Right.

15 Q Okay. Mr. McCampbell, did you know they were going to -- that  
16 the defendant was going to shoot somebody?

17 A No, sir.

18 Q Did you know he was going to rob somebody?

19 A No, sir.

20 Q Would you have driven him there if you knew that?

21 A Absolutely not.

22 Q Is that why on April 21st you went to talk to the police?

23 A Absolutely.

24 MR. SCHWARTZER: Court's indulgence.

25 Pass the witness.

1 THE COURT: Okay. We'll take a short recess before cross-examination,  
2 folks, just about five, ten minutes to stretch and use the restroom if you need  
3 to.

4 During the recess you are admonished not to talk or converse  
5 among yourselves or with anyone else on any subject connected with the trial  
6 or read, watch, or listen to any report of or commentary on the trial by any  
7 medium of information including, without limitation, to newspapers, television,  
8 the Internet, and radio or form or express any opinion on any subject connected  
9 with the case until it's finally submitted to you and you cannot do any  
10 investigation, research, or recreations on your own. Thank you.

11 You can just leave your clipboards and everything in your chairs.

12 [Outside the presence of the jury panel]

13 THE COURT: You can step down as well, Mr. McCampbell.

14 THE COURT: Okay. We're in recess, guys.

15 [Recess at 4:07 p.m.; proceedings resumed at 4:23 p.m.]

16 [Outside the presence of the jury panel]

17 THE COURT: And you can go ahead and get the jurors, Joel.

18 THE MARSHAL: Is everyone ready?

19 THE COURT: Yeah.

20 THE MARSHAL: Come on in.

21 [In the presence of the jury panel]

22 THE MARSHAL: Jury's present, Your Honor.

23 THE COURT: Thank you.

24 You may be seated.

25 All right. We will be back on the record.

1 Mr. Muhammad-Coleman's present with his attorney. State's attorneys, jurors  
2 are all present. We're going to continue on with the testimony of  
3 Mr. McCampbell.

4 I will remind you that you're still under oath, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Schwarz.

7 MR. SCHWARZ: Thank you, Your Honor.

8 **CROSS-EXAMINATION OF RICHARD McCAMPBELL**

9 BY MR. SCHWARZ:

10 Q Mr. McCampbell, before I start asking you some more specific  
11 questions, would you agree with me that you never heard either one of these  
12 three people, Money, ponytail, or heavysset guy, you never heard any one of  
13 them talk about a robbery?

14 A No, sir.

15 Q You agree with me?

16 A Yes, sir.

17 Q Okay. Would you agree with me that when they were outside the  
18 7-Eleven you never heard any of that conversation?

19 A No, sir.

20 Q And you would additionally agree with me that the only voice that  
21 you heard clearly was the voice that said show me the money?

22 A Right.

23 Q Yes?

24 A Yes.

25 Q And that was not my client's voice?



1 A No, sir.

2 Q Because you were familiar with my client's voice?

3 A Yes, sir. Exactly.

4 Q Would you agree with me that did you not see this shooting?

5 A Yes, sir.

6 Q You would agree with that?

7 A Yes, sir.

8 Q Now you may have seen the video, but on the night of the incident  
9 you never saw anything?

10 A Yes, sir.

11 Q And you don't know who shot who or what happened?

12 A Right. Exactly.

13 Q Now, at the beginning of your testimony you said that did you some  
14 vehicle work and then you were over on Philadelphia Avenue in Naked City just  
15 sort of hanging around?

16 A Right.

17 Q Okay. And you said you sat there because, you know, sometimes  
18 you had work there?

19 A Yes, sir.

20 Q Okay. Do you remember giving your voluntary statement two days  
21 after this incident?

22 A Yes, sir.

23 Q Okay. Do you remember the detective asking you why you used to  
24 hang --

25 MR. SCHWARTZER: Objection, Your Honor. May I approach?

1 THE COURT: Yes.

2 [Bench conference -- not transcribed]

3 THE COURT: All right. I'll sustain the objection.

4 BY MR. SCHWARZ:

5 Q Mr. McCampbell, you said you went and got some alcohol, right?

6 A Yes, sir.

7 Q How many bottles of wine did you get?

8 A Excuse me?

9 Q How many bottles of wine did you get?

10 A One.

11 Q Do you recall testifying at the grand jury?

12 A Yes, I do.

13 Q Okay. And I can show you your testimony if it will refresh your  
14 recollection, do you recall testifying at the grand jury that you bought two  
15 bottle of Mogen David?

16 A Okay. One or two.

17 Q Okay. So one or two, maybe two?

18 A Yeah, maybe two.

19 Q And then this other drink, Loco, what is it -- what is it, in a can?

20 A Yes.

21 Q And you said it's strong?

22 A Yeah.

23 Q So how much had you had to drink before you came in contact with  
24 my client?

25 A Really, I just opened it.

1 Q All right. So you hadn't had anything to drink?

2 A Really, no. Really.

3 Q Okay. So that video we saw with your, pardon me for saying, your  
4 horrible driving, couldn't have been caused by you being intoxicated?

5 A No, sir, not in the least.

6 Q Did you smoke any crack cocaine that night?

7 A No, sir, sure didn't.

8 Q At the time of this incident in 2003, did you smoke crack cocaine?

9 A No.

10 Q Never?

11 A Not then, no.

12 Q Now, you testified that you sometimes gave my clients rides?

13 A Yeah.

14 Q And you did it three or four times?

15 A Right.

16 Q And you did it -- did he ever give you a problem before?

17 A No.

18 Q Did he always pay you?

19 A Yeah.

20 Q You weren't worried about giving him a ride?

21 A No.

22 Q And when the two people got in the car you weren't worried about  
23 that either, were you?

24 A Well, I was just kind of upset about it because he didn't -- he didn't  
25 ask me.

1 Q You didn't ask anybody to leave, did you?

2 A Well, no, I didn't but I voiced my opinion about it.

3 Q Okay. Even so, you gave him a ride, right?

4 A Yes, I did.

5 Q All right. Now explain to me what you were upset about when one  
6 of them wanted to stop at 7-Eleven for a beer.

7 A Because initially he asked for a ride to a certain place, point. You  
8 know, all this riding around, going different places, I wasn't really for that.

9 Q Okay. Correct me if I'm wrong, that would have been on the way  
10 to the hotel you were going to?

11 A Well, okay. But my point was I take you where you need to go and  
12 come back. It's not stop at every store and go.

13 Q Okay.

14 A It's to take you where you want to go and come back.

15 Q I'm sorry. I thought they never told you where you were going?

16 A I said my -- my point is to take you where you asked to go and  
17 bring you back. Not to stop anywhere and go any place, it's to take you to  
18 point A and bring you back.

19 Q Were they having any conversation in the car while you were  
20 driving them?

21 A No.

22 Q And when you got to the 7-Eleven, there's a Dotty's there, isn't  
23 there?

24 A I guess, I can't --

25 Q You don't remember?

1 A I can't remember.

2 Q You just remember that somebody told you not to park in front of  
3 the 7-Eleven?

4 A Yeah, after I parked in front of the 7-Eleven.

5 Q Okay. So you had to move your car?

6 A Exactly.

7 Q Okay. Why did you do that?

8 A I didn't want to do it. I was asking why -- why do I need to move if  
9 you going into the store, going in the store.

10 Q Right.

11 A Right.

12 Q So why did you?

13 A Well, eventually he told me to go and move it, it's going to be all  
14 right. So I voiced my opinion about why do I need to move in the first place,  
15 what's really going on.

16 Q Okay. So the car was actually in front of the 7-Eleven at one point?

17 A Exactly. Exactly.

18 Q Okay. You would agree with me if the object was to avoid the  
19 7-Eleven surveillance that was already impossible?

20 A True.

21 Q Okay. Now, who -- you said the ponytail guy went into the  
22 7-Eleven?

23 A Exactly.

24 Q Came out with two beers?

25 A Yeah.

1 Q And him and the heavysset guy had the beers?

2 A Right.

3 Q And the three of them are out there talking?

4 A Right.

5 Q But you did not hear one word they were saying?

6 A I didn't.

7 Q What was their demeanor when they were talking?

8 A Really, I really wasn't paying attention because really now I'm kind  
9 of upset because, you know, he had me move from in front of the store to the  
10 side of the store, what's really going on in my mind.

11 Q Would you agree with me that they were just having general  
12 conversation?

13 A Probably so.

14 Q Okay. Nothing -- nobody's waving their arms or anything?

15 MR. SCHWARTZER: Objection. Objection, speculation, Your Honor. I  
16 would object.

17 THE COURT: Overruled. I will allow the answer to stand.

18 THE WITNESS: Exactly, it's just general conversation I presume. I  
19 presume.

20 BY MR. SCHWARZ:

21 Q It's kind of chatty?

22 A Right.

23 Q Okay. Now, you know, Mr. Schwartz asked you if they had told  
24 to you take us to a robbery, you would have said no.

25 A Right, exactly.

1 Q If they had asked you to take them anywhere to do anything illegal,  
2 you would have said no?

3 A Exactly.

4 Q If they had suggested to you that they were going to pick up some  
5 drugs, you would have said no?

6 A Exactly.

7 Q And that's why you gave them a ride because they just told you we  
8 need to go here?

9 A Yeah, Money did, not they.

10 Q Okay. But they all went along?

11 A They all went along.

12 Q Now, after the 7-Eleven incident, which by the way, they didn't rob  
13 the store, correct?

14 A Exactly.

15 Q Then they directed you to the mo -- to the hotel?

16 A Right.

17 Q Okay. Now, you say that my client told to you pull into that spot?

18 A He said park.

19 Q Okay. Who told you to pull into that spot?

20 A He told -- he said park. So I pulled in the first spot I could find  
21 available to park.

22 Q Uh-huh.

23 A And then he said, Don't park here, back in over here.

24 Q Okay. And did do you that?

25 A Yeah. I voiced my opinion about that too.

1 Q But you did it anyway?

2 A Yeah, I did it anyway.

3 Q And that's when you screwed your car up?

4 A Exactly, I scraped the wall.

5 Q But you weren't intoxicated?

6 A No, I wasn't intoxicated.

7 Q Now, in your voluntary statement --

8 MR. SCHWARZ: If I can have the Court's indulgence?

9 THE COURT: Sure. Perhaps it may be in your grand jury testimony. Give  
10 me one second.

11 Okay. I'll go on.

12 BY MR. SCHWARZ:

13 Q So you back -- you actually, you hit something twice, didn't you?

14 A Exactly.

15 Q And you were upset about that?

16 A Very.

17 Q All right. Now, do you recall in your voluntary statement which  
18 was two days after this incident, right?

19 A Right.

20 Q Saying out -- saying that when the guy came down stairs he's  
21 hollering?

22 A I can't --

23 Q If I showed you that would that refresh your recollection?

24 A Yes.

25 MR. SCHWARZ: All right. I'm -- his voluntary statement, page 22.



1 If I can approach, Judge?

2 THE COURT: Yes.

3 BY MR. SCHWARZ:

4 Q Mr. McCampbell, I'm going to show you page 22 of your voluntary  
5 statement.

6 A All right.

7 Q Let me ask to you read that whole -- go from the second A down.

8 A Out loud or just read?

9 Q No, just read it to yourself. This is a game we lawyers play.

10 A Okay.

11 Q Did you get to the bottom of the page?

12 A No, I'm right here. I'm a slow reader.

13 Q Okay. Me too.

14 Okay. And so do you recall making that statement?

15 A Yeah.

16 Q Which guy are you referring?

17 A It's the guy coming down the stairs.

18 Q So that would be the guy coming down the stairs, Mr. Borero?

19 A Yes.

20 Q The guy in the white tank top?

21 A Yeah.

22 Q So he came down and he was hollering? He was mad?

23 A Okay.

24 MR. SCHWARTZER: Objection. That misstates testimony.

25 MR. SCHWARZ: According to your voluntary -- I'll withdraw.

1 THE COURT: Hold on. Hold on. All right.

2 I'll sustain the objection as to any speculation about why somebody  
3 may have been hollering.

4 MR. SCHWARZ: Thank you, Your Honor.

5 THE COURT: Okay.

6 BY MR. SCHWARZ:

7 Q So according to what you told the detectives, two days after this  
8 incident when Mr. Borero come down the stairs he was hollering?

9 A Okay.

10 Q The guy in the tank top?

11 A Right.

12 Q Okay. Now, while all this is going on you're sitting in the car?

13 A Exactly.

14 Q Mr. Coleman, Mr. Muhammad-Coleman is leaning against the car?

15 A Right.

16 Q And do you know where the guy in the tank top and the other  
17 person is?

18 A They in the back of my car. They all --

19 Q And how do you know that?

20 A Because where they proceeded to go and the guy in the tank top  
21 walked around in front of my car.

22 Q Okay.

23 A And they-all was in the back.

24 Q All right. And those two talking?

25 A Oh, no, they were all talking. I don't know, they were talking.

1 Q Did you hear?

2 A No, I didn't hear the conversation. But I could hear people talking.

3 Q Did you hear Mr. Coleman's voice?

4 A No, I couldn't hear. I couldn't hear specifically whose voices  
5 because it really wasn't that loud of talking.

6 Q But you heard people talking?

7 A Yeah. They was talking.

8 Q Was it loud talking?

9 A No.

10 Q You heard somebody say, Show me the money?

11 A Yeah. I heard that was real loud, that was shouted.

12 Q That was real loud?

13 A Yeah, that was shouted.

14 Q And that wasn't my client?

15 A That wasn't your client.

16 Q How soon after that did shots get fired?

17 A Probably right after.

18 Q And then you took off?

19 A Floored it.

20 Q Okay. Now, there is a question of whether or not -- let me ask you  
21 this, were you afraid?

22 A Exactly.

23 Q Did you know if any of them had a weapon?

24 A No, I didn't.

25 Q Did you ever see Muhammad-Coleman, Darion, my client over there,

1 with a gun?

2 A No, sir.

3 Q You knew there was some shooting?

4 A Yeah, I heard it.

5 Q But you didn't know if anybody had a gun?

6 A I didn't know, right.

7 Q Now, you say you told the three of them who have been involved

8 the shooting presumably that you were going to tell, I guess, the police, right?

9 A I didn't talk to the three of them, I was talking to one person.

10 Q And that would be my client?

11 A Exactly.

12 Q Okay. Now, he never brandished a pistol, right?

13 A No.

14 Q He never, in fact, showed you a gun?

15 A Right.

16 Q He made a movement towards you?

17 A Right.

18 Q He -- and he said, these are your words, You're going to tell what?

19 A Right.

20 Q And he puffed up?

21 A Exactly.

22 Q And made a movement to you?

23 A Right.

24 Q And kept his hands in his lap?

25 A Exactly.

1 Q But never produce a gun?

2 A Never produced it.

3 Q And never threatened you?

4 A Well, the sound of your voice, yeah, that's --

5 Q Well, let me let me ask a better question.

6 A Okay.

7 Q Never said, If you tell I'm going to hurt you?

8 A Right.

9 Q Or words to that effect?

10 A But if you tell me, You going to tell -- you going to say what?

11 Q You took it as a threat?

12 A Exactly. Exactly.

13 Q But he did not say, If you talk, I will hurt you?

14 A When he said, You going to say what, exactly what he was saying.

15 Q That's what you took it to mean?

16 A Exactly.

17 Q Okay. Now, you say he directed you to a street with a dead-end?

18 A Well, immediately he said turn left.

19 Q And where might that be?

20 A Well, it was -- I don't know the neighborhood or where, but when

21 we turned left, it kind of it just immediately got real dark and you made other

22 quick left and there was a dead-end, no streetlights. So I'm really kind of

23 freaking out in my mind, like where are we going these back streets after I just

24 said what I said, so you know.

25 Q Did anyone say anything to you while you were in this dead-end

1 street?

2 A No, well --

3 Q Other than turn right?

4 A -- you know, you could only turn right though, I'm just freaking out  
5 on the route we going now because we didn't come that way.

6 So now all of a sudden, why are we going back in this darkness  
7 after what I just said. So that's what's in my mind. Why am I going down this  
8 way?

9 Q Now, eventually you end up at Philadelphia Street?

10 A We end up back where we started.

11 Q Okay. Now, are you afraid of anybody at this point?

12 A Well, excuse my French, yeah, yeah, most definitely.

13 Q Well, we speak French in here, not very often, but once a while.

14 A You don't want me to. Yeah, it's a double yeah, yeah, yeah, I was  
15 very scared.

16 Q All right. And you met up with these people on Philadelphia Street,  
17 didn't you?

18 A That's where I picked them up at.

19 Q And you were scared of them?

20 A I didn't know them. I wasn't scared of them then. I didn't even  
21 know them. I had never seen them. So I didn't know nothing about them.

22 Q Okay. So scared then --

23 A Not then, I wasn't scared of them, I wasn't scared of nobody then  
24 because then nothing happened. So I wasn't scared?

25 Q All right. And when you got back you opened up your trunk, didn't

1 you?

2 A I had to have something.

3 Q And so you had your other bottle of Mogen David in there?

4 A I had -- I finished what I started.

5 Q Which was two bottle?

6 A I had no -- I hadn't even drunk the first one, if I had two.

7 Q And then you slept there all night?

8 A I very did. I sure did, didn't move.

9 Q Now, you didn't go to the police for two days?

10 A Yeah. That's right.

11 Q And you would agree with me that gives you two days to come up  
12 with a story, right?

13 A Right.

14 Q Why didn't you go to them the next day?

15 A I didn't really know what happened. I really didn't know what  
16 happened.

17 Q I thought, and you can correct me if I'm wrong, that you told the  
18 police that your wife had called you the next day and told you that your car  
19 was on TV?

20 A No, I didn't told you that and I haven't said that to nobody because  
21 that ain't what happened.

22 Q Okay. How did you find out?

23 A I went home and my wife greeted me at the door with that.

24 Q Oh, what day was that?

25 A That was Saturday.

1 Q And this happened on what day?  
2 A Friday.  
3 Q You didn't call the police then when you found out?  
4 A I did. I called 9-1-1.  
5 Q I see and no one was interested?  
6 A Didn't nobody answer or come to my house.  
7 Q Nobody responded?  
8 A Nobody came.  
9 Q You made an honest effort?  
10 A I sure did.  
11 Q And then the second day --  
12 A Sunday.  
13 Q -- is when you actually decided to go down?  
14 A Sunday morning I drove my car down.  
15 Q Okay.

16 MR. SCHWARZ: Can I have the Court's indulgence?

17 THE COURT: You may.

18 MR. SCHWARZ: I have nothing further. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Schwartz.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 **REDIRECT EXAMINATION OF RICHARD McCAMPBELL**

23 BY MR. SCHWARTZER:

24 Q Almost done, I promise.

25 A Cool.



1 Q Mr. Schwarz asked you did you hear anyone talk about a robbery in  
2 the car before any of this had occurred, right?

3 A Right.

4 Q You remember that line of questioning?

5 A Yes, sir.

6 Q And you said no?

7 A I said no.

8 Q When we were talking you said people -- you -- that's one of the  
9 things you talk about is nothing illegal, right?

10 A Right. Exactly.

11 Q If you heard people talking about a robbery, would you have taken  
12 them to the Travelers Inn?

13 A Exactly. I wouldn't have took them nowhere.

14 Q Okay. If you saw guns would you have taken them to the Travelers  
15 Inn?

16 A I wouldn't have took them nowhere. They wouldn't have gotten in  
17 my car.

18 Q Okay. So you go to the 7-Eleven, and just to be clear, Money's  
19 rode with you before, correct?

20 A Right.

21 Q So he knows your rules?

22 A Exactly.

23 Q So you go to the 7-Eleven and you're in the front, right?

24 A Right.

25 Q Let me ask you this, does Money get out of the car?

1 A No.

2 Q When you're in the front?

3 A All -- nobody, nobody gets out.

4 Q No one gets out of the car? So if there's surveillance in the front it

5 wouldn't catch him getting out of the car?

6 A Right.

7 Q But then you're told by this man right here, the defendant, to drive

8 to the side?

9 A Yeah. Park on the side.

10 Q And then does he get out of the car?

11 A Yes, he does.

12 Q The defendant does get out of the car?

13 A He does, yeah.

14 Q And so does the guy with the --

15 A All three of them.

16 Q All of them, yeah.

17 A All of them get out.

18 Q Okay. And then they have a conversation where you're not -- you

19 can't hear?

20 A I can't hear, right.

21 Q Okay. And it's not a loud conversation?

22 A No, it's not.

23 Q But it's a conversation?

24 A It's a conversation, they're talking.

25 Q Okay. And then I want to direct your attention now to once you

1 get to the hotel, you back in, let me ask you this, even if you were a little tipsy,  
2 when you get a, you know, had a drink of wine, do you hear gunshots that  
3 aren't really happening?

4 A No.

5 Q Okay.

6 A I don't hear nothing, no.

7 Q Okay. So you get -- you get there and then there was this line of  
8 questioning by Mr. Schwarz about, you know, hollering?

9 A Right.

10 Q Was he hollering -- and he had you show on page 22 of the  
11 statement.

12 A Right.

13 Q Let me ask you this, did the individual with the white shirt, did he --  
14 did you hear him make any death threats?

15 A No, not at all.

16 Q Did you hear him make any physical threats?

17 A No, not at all.

18 Q Did you see him waving a gun around?

19 A No, I didn't.

20 Q Did you see a gun on him at all?

21 A I didn't see a gun at all.

22 Q Okay. He went right by your --

23 A Right.

24 Q -- your driver's side right?

25 A Right.

1 Q And you didn't see a gun?

2 A I didn't see a gun.

3 Q Okay. And the white -- the guy with the white T-shirt?

4 A White T-shirt, right.

5 Q Did you see -- did he have a knife?

6 A No.

7 Q No? Okay. Was he running down the stairs?

8 A Nope, just walking.

9 Q Did he immediately point his finger to someone?

10 A Nope.

11 Q Didn't do any of those things? Okay. How did he -- how did he  
12 know you guys were there, if you know?

13 A I think one of guys --

14 MR. SCHWARZ: Objection. Speculation. Unless he knows.

15 MR. SCHWARTZER: Unless you know.

16 THE COURT: Well, you didn't talk to gentleman in the white T-shirt?

17 THE WITNESS: Right. I didn't. I didn't.

18 MR. SCHWARTZER: Let me ask --

19 THE COURT: So I'll sustain that objection. But you can follow up with  
20 other questions.

21 MR. SCHWARTZER: Thank you, Judge. I appreciate that.

22 BY MR. SCHWARTZER:

23 Q Let me ask you this, did anyone inside the car do something before  
24 he came down the stairs?

25 A They may have made a phone call.

1 Q They may have made a phone call?

2 A Right.

3 Q And actually, the same statement on page 22, the same page --

4 A Right. Exactly.

5 Q -- is there a mention of a phone call?

6 A Yes, there is.

7 Q And who makes that phone call?

8 A The heavysset guy.

9 Q With the black hat?

10 A Yeah.

11 Q And after he makes that phone call that's when this individual  
12 comes down the stairs?

13 A Exactly.

14 Q So he's actually called down the stairs by the guy in the -- the black  
15 hat?

16 A Right.

17 Q Okay.

18 MR. SCHWARZ: Well, Judge, I mean, I'm going to object.

19 MR. SCHWARTZER: I mean, that's --

20 MR. SCHWARZ: Again, as to speculation.

21 THE COURT: Are you objecting? I'll sustain the objection.

22 MR. SCHWARTZER: That's fair.

23 MR. SCHWARZ: Unless he knows that.

24 MR. SCHWARTZER: That's fair.

25

1 BY MR. SCHWARTZER:

2 Q And finally, Richard, I want to take you back to that dark street and  
3 that eventually leads to that dead-end street.

4 A Right.

5 Q Who directed you to go on this new route?

6 A Money.

7 Q The defendant?

8 A Yep.

9 Q And is this before or after the You're-going-to-say-what?

10 A Right after.

11 Q Right after, okay. So you say I'm going to tell; defendant does  
12 what you perceive as a threat?

13 A Right.

14 Q And then after that, right after he directs you to a dark street?

15 A Right.

16 Q A dark street that you're not familiar with?

17 A Exactly.

18 Q What -- how did you feel when he did that?

19 A Real afraid, very, very afraid.

20 Q What did you think was going to happen?

21 A Well, you know, maybe I'm finna get shot, pushed out the car, just  
22 done some harm.

23 Q So you got real compliant after that?

24 A Yeah, I was very -- yeah.

25 Q Did you see, after you dropped him off in Naked City that day, did

1 you ever see Money again?

2 A No, I didn't.

3 Q Until today?

4 A Yeah.

5 Q Thank you, Richard.

6 THE COURT: Mr. Schwarz.

7 **RECROSS-EXAMINATION OF RICHARD McCAMPBELL**

8 BY MR. SCHWARZ:

9 Q Sir, you don't know where this street is with this dead-end, right?

10 A Right.

11 Q Nobody said anything to you when you got there, right?

12 A When I got where?

13 Q When you got to the street with the dead-end. I asked you that  
14 seven minutes ago approximately, no one said anything to you?

15 A No.

16 THE COURT: Other than directions?

17 BY MR. SCHWARZ:

18 Q Yes. Other than directions.

19 A Other than -- turn right, he mentioned, right after we -- I said that to  
20 him, he said turn right here.

21 Q And isn't the most direct route from where you were to Naked City  
22 just going straight down Oakey?

23 A Go out -- I guess.

24 Q Didn't you go straight down Oakey?

25 A I guess, I can't remember the direction.

1 Q You don't remember, that's true.

2 MR. SCHWARZ: I don't have anything further.

3 THE COURT: Nothing further?

4 MR. SCHWARTZER: One question.

5 **FURTHER REDIRECT EXAMINATION OF RICHARD McCAMPBELL**

6 BY MR. SCHWARTZER:

7 Q Were you familiar with that area?

8 A No, never been there before.

9 MR. SCHWARTZER: That's it.

10 THE COURT: Anything from our jurors?

11 Mr. McCampbell, thank you very much for your time, sir.

12 THE WITNESS: Thank you, sir.

13 THE COURT: I appreciate it. You are excused.

14 THE WITNESS: Yes, sir. Thank you very much.

15 MR. SCHWARTZER: I might have someone out there if you want to keep  
16 going or --

17 THE COURT: Well, I mean, is it a quick witness? It's about eight 'til  
18 5:00.

19 MR. SCHWARTZER: You want a lawyer to tell you how long it's going to  
20 be?

21 THE COURT: We will recess for the evening, ladies and gentlemen.

22 We're going to try and start tomorrow at 10:00 o'clock, we've kind of got rid  
23 of a lot of things for tomorrow. So we should be able to start on time. If you  
24 guys will get her a little before 10:00, we'll get started on time.

25 MR. SCHWARZ: 10:00 o'clock?



1 THE COURT: During the recess you are admonished not to talk or  
2 converse among yourselves or with anyone else on any subject connected with  
3 the trial or read, watch, or listen to any report of or commentary on the trial by  
4 any medium of information including, without limitation, to newspapers,  
5 television, the Internet, and radio and you cannot form or express any opinion  
6 on any subject connected with the case 'til it's finally submitted to you.

7 Mr. Smith are you having trouble hearing from that spot?

8 JUROR NO. 2: No, just wanted to make sure.

9 THE COURT: Or is it just me? Just me.

10 JUROR NO. 2: I can hear you well.

11 THE COURT: Okay. Because I know my voice doesn't pick up as well as  
12 other folks so.

13 UNIDENTIFIED JUROR: Where do we leave these?

14 THE COURT: You leave your clipboards and your notepads in your chair  
15 every time we take a recess. Okay?

16 You'll also, I don't know if Joel talked to you about it already, but  
17 you get better parking now that you're jurors, so you park right across the  
18 street from the building. You have any questions about that, he can explain  
19 that to you as well. Okay? All right, guys, we'll see you tomorrow. Thank  
20 you.

21 [Outside the presence of the jury panel]

22 THE COURT: Okay. You want to make a record?

23 MR. SCHWARZ: Yes.

24 THE COURT: Go ahead.

25 MR. SCHWARZ: Well, Judge, in my cross-examination of

1 Mr. McCampbell who essentially testified that, you know, he's just a, you  
2 know, street mechanic, happy-go-lucky kind of guy, I wanted to impeach him  
3 with his statement from the voluntary statement he gave on the 21st of April.

4 THE COURT: Okay.

5 MR. SCHWARZ: Wherein the detective interviewing him said and why --  
6 and so you just go to the end of Philadelphia and you're sitting there, why do  
7 you pick that spot?

8 Uh, like I said, you know, bad habits.

9 What's a bad habit?

10 Well, just sitting there drinking.

11 And is that, like, where you used to score your crack?

12 Well, you know --

13 THE COURT: Was that -- that was the detective that said that part, is  
14 that --

15 MR. SCHWARZ: Yeah.

16 MR. SCHWARTZER: Correct.

17 THE COURT: -- where you used to score your crack?

18 MR. SCHWARZ: Well, you know, and -- and a lady comes through and  
19 the ladies come through. Yeah, that's it.

20 So that's where you get your girls and your dope connect?

21 And he's says, yeah, basically, yeah.

22 THE COURT: Okay.

23 MR. SCHWARZ: Okay? So, you know, one of the things, of course,  
24 Judge, I'm not preaching, I'm just making a record, that we use impeachment  
25 for is to attack not only the credibility but, you know, the -- the -- the honesty

1 of statements he's making.

2 THE COURT: Sure.

3 MR. SCHWARZ: I mean, if he's sitting there and essentially lying saying I  
4 go over there because I'm looking for work when that is farthest from the truth,  
5 I think that's very relevant to his credibility as a witness especially when I asked  
6 him directly if he was a crack cocaine addict and he said, no, I never did it,  
7 when clearly he did. So that's why I thought it should have been admissible for  
8 impeachment purposes.

9 THE COURT: So working from -- and we had discussed this at the bench  
10 and I had indicated -- so the -- just so the record's clear, the objection was  
11 contemporaneous, so that was preserved. I wanted that to be reflected. But I  
12 had said at the bench I'm going to deny it then we can make a record later.

13 Working backwards from what you just said, the question you  
14 asked him about have you ever used cocaine was inappropriate, it should have  
15 been objected to, but it's not my job to do the State's job, so I didn't say  
16 anything. But that -- that was irrelevant to anything. So whether he had ever  
17 done it before shouldn't have been asked.

18 But more importantly, in regard to what you were proposing to  
19 impeach him with, he was never asked on direct examination or never ever  
20 offered any testimony about why he chose a particular spot to stop. He just  
21 said I stopped there and I started drinking my alcohol. I read pages 1 through  
22 12 of that transcript so that I could have all the context in and around page 8  
23 which is what you wanted to bring up about impeaching him, and what had  
24 occurred was he's -- the detectives ask him why did you choose that spot, not  
25 what did do you while you were there. Had he said, well, I stopped there so

1 that I could score dope and try and pick up women, I would agree with you.  
2 But he said I -- they asked him why did you stop there, different from the  
3 conduct you engaged in when you were there. And he said, Bad habits. And  
4 then the detective's kind of filling it in, Is that where you used to pick up dope  
5 and girls? Yeah.

6 And as you go on and read through all that, he says, I didn't use -- I  
7 didn't -- there's nothing in there that says I scored dope that night or I tried to  
8 score dope that night or I tried to pick up women that night. In fact, he  
9 explicitly says I didn't use any -- any drugs that day. So that was irrelevant to  
10 try and impeach him with something that he hadn't even said inconsistent on  
11 the stand during direct. And had it been a we want to use the fact that in the  
12 past maybe he populated that area to pick up women and use drugs, there  
13 would have needed to been a motion in limine about that as to why some past  
14 drug use would have been relevant.

15 The question that you asked about did you use drugs that night,  
16 that was okay. You can ask that about any witness if they were under the  
17 influence of anything at the time they're offering observations. But that's  
18 essentially why I said I was going to didn't deny the request to try and impeach  
19 him with that because that wasn't relevant to what he had offered on direct  
20 examination.

21 MR. SCHWARZ: Well, I mean, if -- if the detective had been a little mover  
22 skillful and suggested to -- and said so him --

23 THE COURT: That's why I -- that's why --

24 MR. SCHWARZ: -- were you -- were you there to score dope and then it  
25 comes in?

1 THE COURT: If the detective said were you --

2 MR. SCHWARZ: I'm at the victim of a bad detective?

3 THE COURT: Yeah.

4 -- had you parked there that night to try and score dope on  
5 something, then I would agree, yeah, that would have been -- that would have  
6 been admissible.

7 MR. SCHWARTZER: I think that's bad act evidence still, Your Honor. I  
8 mean -- I mean, that was obviously we're now talking hypotheticals --

9 THE COURT: Yeah, look.

10 MR. SCHWARTZER: -- but, I mean, he specifically said he didn't use  
11 crack that night or any drugs. And I got to admit, I missed the question where  
12 he asked, Were you a crack addict, and -- I must have been talking with my  
13 co-counsel because --

14 THE COURT: Well, he asked him if he used drugs that night and then had  
15 you ever used drugs used crack cocaine.

16 MR. SCHWARTZER: I missed that second question, Your Honor.

17 THE COURT: He said no.

18 MR. SCHWARTZER: I would have objected to that.

19 THE COURT: So that's why I was saying I think that part was  
20 objectionable. But more importantly, as the procedure or as the original request  
21 to impeach was formed, it didn't impeach anything that he had said on direct;  
22 nor did the statement in my mind say what you were proposing it said for  
23 purposes of being usable as impeachment.

24 MR. SCHWARZ: Got it.

25 THE COURT: Got it? Okay. All right. You guys have anything else?

1 MR. SCHWARTZER: No, I just want to be really clear on that record  
2 though that that question was asked after you already sustained the objection  
3 to asking that line of questioning.

4 THE COURT: Yeah. But I didn't -- I didn't say anything to Mike at the  
5 bench about you can't ask him if he used crack that night.

6 MR. SCHWARTZER: Right.

7 THE COURT: Because I would -- that's very much relevant just like were  
8 you drunk that night.

9 MR. SCHWARTZER: I agree, absolutely.

10 MR. SCHWARZ: I'm shocked, I asked an improper question.

11 THE COURT: All right, guys.

12 MR. SCHWARTZER: Thank you, Your Honor.

13 MR. SCHWARZ: It will never happen again.

14 THE COURT: We'll see you in the morning.

15 PROCEEDING CONCLUDED AT 4:59 P.M.

16 \* \* \* \* \*

17  
18  
19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON  
25 Court Recorder/Transcriber