

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN
aka Darion Muhammadcoleman

Appellant,

vs

THE STATE OF NEVADA,

Respondent

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CASE NO.: 72867

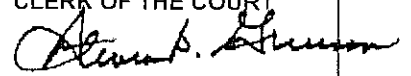
APPELLANT'S APPENDIX

VOLUME 6

820-958

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-13-293296-2

DEPT. III

10 vs.

11 DARION MUHAMMAD-COLEMAN,
12 Defendant.

13
14 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT
15 JUDGE

16 TUESDAY, JANUARY 10, 2017

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **JURY TRIAL - DAY 6**

19 APPEARANCES:

20 For the State:

MICHAEL J. SCHWARTZER, ESQ.
Chief Deputy District Attorney
CHRISTOPHER HAMNER, ESQ.
Deputy District Attorney

23 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, January 10, 2017

2
3 [Trial resumed at 11:08 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: You guys have anything outside the presence?

6 MR. SCHWARZ: I do not, Your Honor.

7 MR. SCHWARTZER: Not by the State, Your Honor.

8 MR. HAMNER: No, Your Honor.

9 THE COURT: Okay, Joel, you can go ahead and get everybody in. Thank
10 you.

11 [In the presence of the jury]

12 THE MARSHAL: Jury is present, Your Honor.

13 THE COURT: Thank you. You all can be seated. Alright, good morning,
14 folks.

15 THE JUROR: Good morning.

16 THE COURT: So if you'll recall yesterday we rested defense's case in chief
17 and the State's rebuttal case in chief. So now is the time that we're going to instruct
18 you, as well as moving on to closing arguments. Did every one of you have a copy
19 of the jury instructions in your chair? Yes? Okay.

20 And the record will reflect that Mr. Muhammad-Coleman is present with
21 his attorneys, State's attorney is present, and all of our jurors are present.

22 Back when we started the trial you'll recall that we talked about the jury
23 instructions and that's the law that I've decided applies to this particular case. And
24 it's the law that you'll use in your deliberations to decide the case. By law I have to
25 read these to you, which is why I've always thought it was appropriate to give you

1 your own copy so that you can kind of read along while I'm reading them to you.
2 Because I think it's a lot easier to kind of start to think about and understand things if
3 you're able to look at it while I'm reading them to you. Additionally, you'll be able to
4 take your copy with you when you go back to deliberate. So feel free to write any
5 notes you want to on your copy while I'm reading them to you or while the attorneys
6 are making their argument.

7 I'll try and read through them as quick as I can so we can get you on to
8 the arguments. Because you'll all be back there together in the deliberation room
9 you might want to write your name or your initials or something just on the top of
10 your packet so you don't get it mixed up with anybody else's.

11 [The Court read the instruction to the jury -- not transcribed]

12 THE COURT: Each of you should also have attached to your packet of jury
13 instructions a copy of the verdict form. You'll get an original copy that goes back
14 with you. But I will just comment on the verdict form by saying simply that under
15 each of the 7 counts listed you only check off one box. The attorneys may talk to
16 you about that a little more during our closing arguments, okay. So thank you very
17 much with your patience with me. And I will turn it over to the State for their closing
18 argument.

19 MR. HAMNER: Thank you, Your Honor.

20 If you could just queue it over.

21 THE COURT: And you can swing that out front there, Joel. Thank you.

22 **CLOSING ARGUMENT BY THE STATE**

23 BY MR. HAMNER:

24 Ladies and gentlemen, the death of Dale Borero was unprovoked,
25 senseless, and completely avoidable. The evidence has shown beyond a

1 reasonable doubt that it was the Defendant's choices on April 19th, 2013 and the
2 way in which he and his compatriots meticulously carried out this armed robbery of
3 Dale Borero that ultimately led to Mr. Borero's grizzly death. The motive in this case
4 is pretty clear. Dale Borero had money. Dale Borero had drugs. The Defendant
5 and Dustin Bleak knew it and they were going to take it.

6 And as we've listened to the evidence in this case it all comes back to
7 the Defendant's choices on that night, his weapon of choice to carry out this
8 robbery. The people he chose to come along like Dustin Bleak and Travis Costa,
9 his choice of an unwitting getaway driver. Defendant even planned this down to the
10 T to the exception of -- to the point of making sure that the car is parked a certain
11 way. That if there are any other place publically that might have video cameras that
12 they're not parked in front of the store so they can't be seen.

13 Presumably the Defendant with these choices had simply thought of it,
14 all making sure that everyone like the Grace brothers are gone from the premises
15 before they carry out this robbery. But the evidence shows that despite all of the
16 planning and the specific way he carries it out, waiting for the right moment for Dale
17 to be taking out his drugs as we're seeing right there before he makes his move.
18 Even though he planned all those things out we learned that there were two things
19 that he overlooked. The Defendant forgot there was an eye in the sky. He was
20 being watched in this parking lot. He forgot about that. He didn't account for that.
21 And additionally, Ladies and Gentlemen, the Defendant didn't account for the fact
22 that his elderly getaway driver had a conscience and wasn't going to sit by idly and
23 stay silent, because without that man Money would have never been located.

24 But, Ladies and Gentlemen, what this comes down to at the end of the
25 day is that this was an armed robbery. And when Dale Borero made the decision to

1 not hand over those drugs Defendant repeated attempts like he's doing right there
2 trying to snatch those drugs out of his hands over and over when pistols whips
3 wouldn't work, the Defendant went to his last resort. He was willing to kill to get
4 what he wanted. And ultimately when Dale fired back the robbery is kind of
5 thwarted and he has to leave. But what's abundantly clear is that this man chose to
6 kill Dale Borero during the course of a robbery. And as a result he is absolutely
7 guilty of first degree murder.

8 And this murder has left an indelible impression on one victim, Richard
9 McCampbell, who is an assault victim in this case. But also his choices on that night
10 extinguished the life of this man, Dale Borero for dope and the possibility of getting
11 some money.

12 So let's talk about a couple instructions. These instructions are I think
13 two of the most important instructions. It kind of gives us the lens in which we
14 examine the evidence. The first is the instruction regarding direct and circumstantial
15 evidence. If you remember at the beginning of the trial Judge Herndon kind of gives
16 you the story of the rain. I don't know if you all remember that from the beginning.
17 I'm going to do it again because it's just kind of important.

18 So you're at your job. You look out your window, you're about to go
19 home. You see the clouds starting to form. You're thinking man that looks like it's
20 going to rain. You get in your car, you start driving. You start seeing thunder in the
21 distance. You're thinking it's going to rain. Then you actually, when you get to your
22 house, you see the rain dropping on your car. You see the drops falling from the
23 sky, hitting your windshield. You get out of your car. You're getting wet. You run
24 inside. Okay, if you were called to the stand and asked: Hey what did you see that
25 day? And you said: I saw the rain. That's direct evidence. That's testimony from a

1 person who actually saw it, saw something happen.

2 What's circumstantial evidence? Let's do the same analogy. At your
3 office, see the clouds. You don't see the rain. You step outside. You feel it's
4 humid. You don't see the rain. You hear on the radio: Storms coming. You don't
5 see any rain. You get out of your car. You hear the thunder coming, but you're not
6 being rained on on your way inside. You go inside. You're not looking out any
7 windows. You come out an hour later and when you come back your car is beaded
8 up with water. You see water running down the gutter. The concrete has kind of
9 changed color. It's become darker. The skies have parted. Now if you were kind of
10 -- as a juror you could connect all of these little dots. You didn't see the rain, but
11 you can come to the logical conclusion if someone's testified to all of these little
12 pieces, I bet you it rained. That's what circumstantial evidence is.

13 It's proof of a chain of facts and circumstances which, you know, in this
14 context tends to show whether a defendant is guilty or not. And here's the kicker.
15 The law doesn't make any distinction about the weight to be given to either direct or
16 circumstantial. One is not necessarily better than the other. Circumstantial
17 evidence can be even better than direct evidence if you so choose. You're entitled
18 to weigh it however you want. And I would encourage you consider all of it. Put it
19 all together.

20 Common sense, so I tell you you've got to bring your everyday common
21 sense. And that's really key here. It's super key here when we think about
22 evaluating people's credibility. Because, I mean, when we think about this case with
23 the Defendant taking the stand saying I did it all in self-defense. Credibility is going
24 to be huge. And we'll touch on that. But remember bring your common sense. And
25 remember your verdict can't be influenced by sympathy, prejudice, or public opinion,

1 can't be.

2 Okay, and so at the end of the day it should really be based on what
3 this evidence is and the reasonableness of what people are saying and if the things
4 actually make sense. And the State would submit that based on the evidence that
5 we've presented it's abundantly clear he tried robbing that guy and he killed him in
6 the course of that robbery. That's it. And he's guilty of first degree murder.

7 But here are all the crimes and there's a lot of them. Conspiracy to
8 commit robbery, attempt robbery with use of a deadly weapon, murder with use,
9 battery with use, assault with use, conspiracy to violate the Uniform Controlled
10 Substances Act, attempt PCS, or possession of a controlled substance. We're
11 going to go through all of these and we're going to try to jump around a little bit. But
12 all of it is really going to be under the lens of the murder with use. Because
13 remember one of the theories of murder, and we're going to get to it, is felony
14 murder. And that's if you're committing -- if you kill someone when you're trying to
15 commit another felony, you're on the hook for first degree murder which is exactly
16 what he did here.

17 Okay, so let's kind of talk about what this case isn't about. It's not a
18 who done it. It's not a who done it. And well how do we know that? Well we got a
19 video. He's on the video. And yes let's be clear, his face is not clearly depicted on
20 the video. We get that, right? But you've got direct evidence that someone is
21 murdering someone else with a gun. Someone is pistol whipping Dale Herero. We
22 got that, right?

23 But you also have other direct evidence. We know that on that video
24 that you saw, that the person getting out of the front driver's seat, an African
25 American male in dark clothing. We know Richard Campbell tells us who that is with

1 his direct evidence-- I saw who sat in my car. He's the guy who hired me to do the
2 job in the first place. It's the Defendant, direct evidence. LeCory Grace almost IDs
3 him. He's like I got it narrowed down to two pictures. One of them was, surprise,
4 surprise, the Defendant. That's more direct evidence that it's him.

5 His fingerprints are on the car molding. That would be circumstantial
6 evidence. How did his fingerprint get there? You saw the video of the guy shooting,
7 kind of reaching for that door, ripping off -- you heard McCampbell talk about he
8 ripped off the door, so you can connect the dots and go well if the fingerprints are
9 there probably he's the shooter. He ripped that off getting into that car. The murder
10 weapon is found in his former house. The Defendant even admits it's his weapon.
11 But you even have the Defendant saying yep that was me. So ID's not a question.
12 You don't have to worry about it.

13 It's not a what happened case. It's crystal clear what happened on the
14 video. That's an armed robbery and it ends in murder. He pulls out a gun, which he
15 admits: I pulled out my gun first. He pistol whips him. I did that too. And then he
16 shoots him. And what it is is it's the common language is it is a drug rip. That's
17 what this is. It's a street robbery of a drug dealer. And your common sense tells
18 you that, because you watch that video and you know that's exactly what it is. And
19 remember, and I just covered this. He says I shot and killed Dale Borero. So it's not
20 really a what happened.

21 So what is it about? It comes down to this moment in time in some
22 ways. When he pulls out this gun and he pistol whips the victim. Was he doing that
23 for the purpose of robbing him for drugs or money or was it because, as the
24 Defendant told us on the stand yesterday, to deescalate the situation? It's
25 absolutely, unequivocally because he is try -- he and Dustin Bleak are trying to rob

1 this man. And you can see it when you watch on this video. He is reaching for
2 drugs, reaching for drugs, when the pistol whipping wouldn't work. And then he
3 shoots first and fires and kills this man.

4 But let's just watch it one more time. As you can see in the video he is
5 looking, and if you zoom back out when you get your video back, he is looking at the
6 Grace brothers leaving. He is waiting for them to leave. And then the minute Dale
7 Borero, right there, takes his drugs, watch he is unwrapping the drug. That is when
8 the Defendant says now is my time to strike. He's unwrap -- watch, even Dale will
9 offer him the drugs. You want those drugs? No. Gun in your face. That's the
10 robbery. What's the purpose? It's clear as day, as clear as this video; he is trying to
11 rob him.

12 The problem is Dale unfortunately I don't know whether it's pride, ego,
13 what, refuses to just hand over that property. And it makes him angrier. He's
14 grabbing. He's grabbing at gunpoint. He still won't give it up. He pistol whips him in
15 the face and he still won't give it up, you watch. There's two more grabs and then
16 ultimately Dale, with nowhere to run, because there's nowhere behind, says I've got
17 to pull my gun out at this point. And he shoots and kills him. And he was ready to
18 do that, because his gun was ready, loaded to kill someone.

19 So how can a Defendant be liable? Well by directly doing it, and he is,
20 because he's the shooter. By aiding and abetting, we know he worked in tandem
21 primarily with Dustin Bleak. Dustin Bleak sets up the call. Dustin Bleak is on the
22 phone: Are you sure you're alone? Remember LeCory: I am by myself. So he's
23 working in tandem with someone. They're working on each side of him. Dustin
24 Bleak is kind of keeping his attention focused so the Defendant can kind of sneak up
25 and whip out his gun. And it's all pursuant to a conspiracy. We know he had the

1 agreement set up. He's grabbing the driver. He's grabbing Bleak. They're talking
2 about it over at the 7-Eleven, all part of the plan.

3 So under each -- if you think he conspired with these guys and he died
4 he's on the hook, check the box murder. If you think that Bleak is working with him
5 check the box murder. And if you think he's the guy who actually shot Dale Borero,
6 which he was and he even admitted he did, check the box he's liable.

7 How does one aid and abet? It's just -- listen, it's somebody who helps,
8 or promotes, or encourages someone or helps someone out to commit a crime. It
9 applies to Dustin and it applies to him. It kind of works both ways. The two of them
10 are all working together. And we'll show you in a minute how the conspiracy and
11 they're aiding one another.

12 So how do we prove it? We know how he was murdered. He was shot
13 in the midst of this robbery, dies of multiple gunshot wounds. One gets lodged in his
14 spine and he dies. That's it. There's not a lot of questions regarding manner and
15 cause of death.

16 So he's guilty of this crime, but how? Well first of all there's two types
17 degrees of murder. There's first degree murder and there's second degree murder.
18 And remember we're charging with a deadly weapon. And that's just any instrument
19 that can basically cause substantial bodily harm or death. And surprise, surprise a
20 gun is a deadly weapon, because it can kill people. But the law says the State's not
21 required to recover the weapon if -- that we established that was used. But the
22 funny thing is in this case we actually did. And he even tells it, yep that's the gun I
23 used to kill him. And I ditched it on the night that I killed him. So we even have that.

24 So what's murder? It's unlawful killing with malice of forethought. And
25 that means it can be either express or implied. So what that means is someone

1 may blatantly say it or you can connect the dots and say I think from this situation he
2 had malice. What is an unlawful killing? Well it's not something in self-defense,
3 which in this case it's not and we'll get to that. And the primary reason just let's just
4 get it out there, the law you'll see in your instructions says you don't get self-defense
5 when you're the original aggressor. You don't. It's over. You don't bother looking
6 at any other instructions, because if you're the original instruction -- aggressor the
7 analysis on self-defense is over. And the video tells us and out of his own words: I
8 pulled the gun first. I pistol whipped him and then I shot him. He cannot claim self-
9 defense.

10 It wasn't an accident. He's not stumbling around. He's not falling back.
11 He wanted to do this robbery. And it's not justified. As you saw in this video and
12 please watch the whole time, Dale walking down and moving around. He's not
13 attacking anybody. He's not waving a weapon around. He's not fighting anyone.
14 And all of the witnesses, McCampbell doesn't see anything, LeCory never saw
15 anything, Rachel Bishop never saw anything. There's no justification for it.

16 So what's malice of forethought? It's basically intentionally doing
17 something that's wrong. In this case it's the killing without any legal cause or
18 excuse. And that's what he did. He intentionally shot this guy because he wasn't
19 handing over the drugs fast enough. Does it -- you don't need to kind of -- you don't
20 need to deliberate to have malice. There doesn't have to be some long period of
21 time to have malice. The only thing is what's the motivation behind pulling that
22 trigger? And he is doing it because he is angry because this victim is not giving up
23 what he wants. It's malicious. These are all things that can qualify as malice. And I
24 would submit to you greed and jealousy and wanting something and someone not
25 handing it over when you want it, it all fits. It's very clear. So that's what murder is.

1 It's when you unlawfully kill someone with malice inside.

2 So what's the difference between first degree murder? Well typically
3 first degree murder, basically all the murder that's not first degree is second degree.
4 And what the distinction is this is that when you have a second degree murder it's
5 unlawful killing with malice. But the killer didn't have any time to deliberate before
6 he killed with malice. He didn't have any time to premeditate before he killed with
7 malice. Okay. But here's the thing. There's the two types of murder. There's the
8 one you kind of maybe heard in the movies, willful, premeditated, deliberate. But
9 there's also felony murder. That in this case is a murder that's committed during the
10 commission of a robbery and attempted robbery, which is exactly what this case is
11 without a question.

12 So we're going to start there. It's a little different. We're going to flip
13 the script. We're going to start with felony murder, because that's clearly what it is.
14 A murder committed in preparation of an attempted robbery or a robbery itself is
15 felony murder. And it's deemed first degree regardless of whether it was intentional
16 or unintentional. So maybe some of you might think well I definitely think he was
17 trying to rob, but maybe he didn't really mean to kill him. Guess what, the law in
18 Nevada says that is still first degree murder. If you wanted to do the robbery,
19 whether you're successful or not in the robbery, if you want to do that part, if
20 someone dies in the process and it was an accident it is first degree murder. You
21 don't get to say I'm sorry I just wanted to rob you not kill you. It does not work that
22 way.

23 So that can resolve anyone's questions. Even if you see him stumbling
24 back a little bit as he's shooting. I'd submit to you he wanted -- he was ready and
25 willing to use it and he did. Because the law says that if you're trying to commit

1 another felony that's an conclusive element -- evidence of malice of forethought,
2 because you were ready to do that other crime and someone died in the process.

3 Now the intent to commit the robbery for a felony -- first degree needs
4 to arise before or during the killing. And oh man in this case that's abundantly clear,
5 because he's getting himself a driver who doesn't know what's going on. He's
6 keeping him in the dark. He's got Bleak. He's got Costa. He's telling the driver:
7 Hey, make sure you drive this way and not that way so we can get out. There's
8 Bleak saying: Hey, make sure you're alone. Are you alone? They wait for the
9 Grace brothers to leave. LeCorey's get in the weird -- LeCorey's brother is getting a
10 weird feeling from those guys like they didn't want us around. I mean they all knew
11 what the score was. They wanted this robbery. This is not a spur of the moment
12 thing for him. It certainly was for Richard McCampbell, but not for him or Bleak.

13 And lastly the law says that self-defense is not a defense to first degree
14 murder based on the felony murder rule. So even when he gets up here and says I
15 was just pistol whipping him to calm the situation down, doesn't work because he
16 wanted to rob him. As a matter of law he's not even entitled to that because they
17 were trying pull that lick on Dale Borero.

18 So do the surrounding circumstances indicate to you that it's done
19 during the commission of a robbery? Absolutely, they conspired to do so. He
20 attempted to rob him at gunpoint and then he kills him during the commission of
21 that. So let's talk -- and now we're going to switch to this crime of conspiracy to
22 commit robbery. Here's our new crime. I mean, I would submit to you after you
23 hear all this you can check first degree murder we're done. But I'm going to show
24 you now why under this guise why he's guilty of conspiracy to commit robbery and
25 all of the evidence that shows this.

1 All a conspiracy to commit a robbery is it's an agreement to commit a
2 particular crime. In this case is two or more people must have agreed to commit a
3 robbery. And the Defendant -- that they had to kind of take a step towards
4 potentially committing this crime, okay. And that's exactly kind of what happened.
5 And the law basically says that you can do it if you're in this conspiracy if one of your
6 cohorts directly commits it or you do it, or if you're aiding someone who does it. Or
7 you're encouraging him to do it. And it's real easy for the Defendant because he's
8 the one who pulls the gun, right? He's the one who pulls the trigger' can't get more
9 violent than that.

10 So and it basically says the law says look if you find one guy guilty for
11 what he did you got find other members of his conspiracy guilty. If you're really
12 bothered by Bleak, Bleaks really the one who did all of this then you have to find him
13 guilty too. So you don't have to have a formal agreement. You can look at all the
14 circumstances and you -- and the law says consider the direct and the circumstantial
15 evidence that a conspiracy existed.

16 And now we're going to tick off all the different reasons. But what's the
17 agreement? Bleak sets up the drug deal with Dale. And while he's busy kind of
18 talking and unwrapping his drugs that's when he makes his move to pull out the gun
19 and rob him. And I would submit -- the State would submit Dustin Bleak is the
20 primary co-conspirator and I think to a lesser extent Travis Costa.

21 So let's talk about all the evidence that there was a conspiracy there.
22 Number one, the clear motive, they want his dope and they want his cash. He had
23 over \$3,000 on him. He had over 7 net grams of meth on him. It's right there.
24 That's what he's unwrapping in that video. Number 2, circumstantial evidence, he
25 brings a gun, loaded to this. If he's just some guy who just wants to buy some

1 drugs, just wants a score, what do you need a loaded gun for? Why? Well if you're
2 planning on robbing the dealer you better bring something that's going to put this
3 guy at bay, right? And that's what he chooses to do. You've seen. He admitted he
4 brought it.

5 So, I mean, is he really doing it to make a good impression? Because I
6 mean, that was what he told us on the stand, right? He's like gosh, I mean, Dale --
7 everybody knows about Dale. He's such a great drug dealer. And he's so good
8 with all that money and cash and drugs. And I just wanted to meet him so I could
9 maybe get a sense. I mean, he gave almost the impression like he's almost doing
10 like -- kind of a first meeting interview situation. I really want to make a good
11 impression with Dale. That's what he says here. But I don't think -- that's not
12 reasonable with all of the evidence. That's not it. And you don't do this just to buy --
13 just to get a little score. You don't need the gun. You need it if you want to rob the
14 guy.

15 Bleak brings a BB gun as well. Well how do we know that? We know
16 that the loaded BB gun magazine was found at the scene. And when he was caught
17 days later he's got a BB gun, but it's got no magazine. Why is that? Watch the
18 video. Bleak is freaking out and running back to the car as fast as he can. He even
19 falls down trying to get away from all of this. And I would submit to you that Bleak
20 was even armed but he lost his clip in the scramble. That's all circumstantial
21 evidence.

22 So now you've got two guys with weapons. Two guys going to the
23 same place armed, why? The agreement to rob the victim all of them go to the
24 Traveler's Inn together. Remember McCampbell ID's all of them getting into his
25 vehicle. LeCory ID's Dustin Bleak. Defendant admits it. They're going as a

1 collective together. It's not a random happenstance that they all showed up in the
2 same place. They had discussions outside McCampbell's car. Even the Defendant
3 admits he's saying: Oh yeah we did the discussions. But he kind of changes his
4 story. He says: But it's certainly not about a robbery.

5 Why not have that discussion in the car? Why isn't McCampbell saying
6 no one is saying anything in the car, but they're talking outside. Why is that? Well
7 Mr. McCampbell gave you the answer. He said if I had known that we were going to
8 do any funny business they never would have got in my car. If I had known that he
9 had a gun on him I never would have let him in. So they make the decision as a
10 group, particularly Bleak and the Defendant while Costa's inside, right? Who are the
11 two main players on that video? It's Bleak and the Defendant. They make the
12 decision well we've got to talk about this while McCampbell doesn't listen. We can't
13 let him hear, further circumstantial evidence of this conspiracy to rob.

14 Then they order him not to park in front of the convenient store. Why is
15 that? McCampbell is like: If you just want beer what do you care? Well the State
16 would submit he didn't want to be on surveillance video. He knows that there are
17 cameras outside stores like that, park on the side. They don't get -- and
18 McCampbell says they don't get out of the car until he moves and parks to the side.
19 So he's not on video, more consciousness of what he's about to do. He doesn't
20 want to leave a trace.

21 Last minute explanation about going to the Traveler's Inn, remember
22 that? He said they didn't really tell me specifically where I was going. Doesn't that
23 seem weird? Well the State would submit once again, keep McCampbell in the dark
24 for as long as you can. Then they reassure him, because he says I'm getting
25 nervous. It's cool, old-school. It's cool, relax. All to keep him calm so he just

1 doesn't bounce and kick them out of the car, because they need what? A getaway
2 vehicle.

3 Then there's park job at the motel, remember this? I mean, use your
4 common sense would you rather park your big old boat there or reverse it into this
5 tiny spot here up along all this metal? Think about that. If anyone's ever driven a
6 big car before you go for spots with the most space. So why in the world -- did
7 McCampbell appear to be upset when he dinged up his car? Yeah. He didn't want
8 to park there. He wanted him to park there. Bleak did, and it makes sense.
9 Imagine if you fired a bunch of shots at an armed drug dealer and you're parked
10 here. What getaway is that going to look like? You got to back out this way so he
11 can fire more shots at you then turn and reverse. That's a terrible getaway mode.
12 But the Defendant knew. Bleak presumably knew. But remember who was barking
13 out the orders to McCampbell? Not Bleak, Mr. Muhammad-Coleman.

14 Bleak gets Dale on the phone, LeCorey, Rachel, the Defendant all say
15 it why? They set up the drug deal for him. We've kind of covered this. He's the go
16 to, right? Then Bleak makes sure that Dale's alone. LeCory tells us I am -- he said I
17 am by myself. LeCory's brother gets a bad vibe. Rachel's like: They were just
18 waiting. They were just standing there waiting. Whatcha waiting for? Whatcha
19 waiting for? What they were waiting for was they wanted to make sure no one is in
20 that parking lot, because you can't go pull an armed robbery in the middle of a
21 parking lot. You can't have witnesses. Wait for the Grace brothers to leave then do
22 your thing, which is exactly what they did.

23 They wanted him outnumbered too. Remember the brothers had a bad
24 feeling. LeCory's brother Germane had a bad feeling about it, why? Because what
25 happens if the Grace brothers are with Dale Borerio? What's the numbers like then?

1 Now it's three on three with one of their guys in the car, right? That ain't going to
2 work. That is not going to work. So they made sure the all clear then they pulled it
3 when they outnumbered him 2 to 1. And remember Bleak and the Defendant were
4 armed.

5 Now to give you an idea about Dale -- that we know that this is a fake
6 drug set up, I want you to watch Dale. He is unwrapping drugs right there. And it's
7 the very thing that causes him to move. Dale, watch, he pulls it out of his back
8 pocket. That's not a gun or a knife. That's something out of plastic, something that
9 needs to be unwrapped. What do we see at the scene that's like that? Those
10 drugs. Watch him offer, watch him offer to him; here do you want those drugs?
11 Nope, I want to rob you for those drugs. That's what happens there. Timing is
12 everything. His timing is impeccable. He has absolutely no interest in this
13 conversation until what pops out, the thing that he wants, the drugs. It's right there
14 and you get to piece this all together. This is all part of it. It's all part of the felony
15 murder too.

16 Show me the money. Remember McCampbell said that. Why would
17 Dale say that? Think about it. He's a drug dealer. He gets a phone call. Come on
18 out. Okay. Why is he saying it? Because Bleak's not handing him over any money,
19 no one's giving him any money. Can I please get my money? I'm not just going to
20 give product for free. He wanted money in exchange for drugs because that's the
21 ruse that they had set up with him. And then he had to deal with a gun in his face.
22 And the bottom line is they never offered to pay because they were going to pay.
23 They were going to take it by force.

24 Look at Bleak working with him. We're talking about this conspiracy.
25 That's Bleak. Let's watch as the Defendant comes over. Watch Bleak, does he do

1 anything to stop this? Does he reach over go whoa, whoa, whoa slow down? By
2 the way, if you believe the Defendant's story which was the whole self-defense
3 thing, does Bleak make a run for the car? Because he's so afraid, because the --
4 Dale said he was going to verbally kill him? Nope. Why? Because that's not what
5 happened. They want 2 on 1 on each side so he has nowhere to go. He lets him
6 sneak behind him and do this.

7 And they have no reaction to it, not even Costa. Remember we asked
8 Mr. McCampbell does Costa say anything inside the car when all of this is going on?
9 Nope, he has no reaction. Bleak has no reaction to pulling out a gun, pistol
10 whipping, repeatedly trying to rip drugs out of his hands. No one's reacting? Why?
11 Because they knew; they knew. Then they all flee together, all of them. They all go
12 together inside the car as they're driving away. Mr. McCampbell tells you that no
13 one reacts to him. If this was really -- no one's -- did you hear anyone -- we asked
14 Mr. McCampbell: Does anyone say anything? Does Defendant say anything like:
15 Gosh he just he was threatening to kill us or I had to do it out of just self-defense,
16 something. And they're like: No, it was dead silence in the car. The only person
17 who was saying anything was me. Why? Because that's what they wanted to do.

18 If this really was a self-defense situation they'd all be chattering about it.
19 I can't believe that crazy guy threatened to kill us. But no one is saying anything like
20 that, because the plan was to rob him. The only problem was is that he got a couple
21 shots off and they failed to get what they came for. But they all knew. No one is
22 freaking out or upset except for Mr. McCampbell.

23 Then you have Defendant admitting he ditched the gun on the night of
24 the murder, other circumstantial evidence of consciousness of guilt. I gotta get rid of
25 the gun that's linked to me. And none of the other guys other than Richard

1 McCampbell go to the police. Why? Because they all knew they were in on it.
2 There was no justifiable reason for that. No one was defending their life. It was a
3 failed drug rip that ended up getting someone killed. And there's an instruction on
4 flight that the flight of a person after you commit -- it is circumstantial evidence of
5 determining guilt or innocence, because it goes to the idea of deliberately going
6 away with a consciousness of guilt for the purpose of avoiding apprehension or
7 prosecution.

8 And when you think about that, if you really think about his mindset,
9 think a little bit about the conversation that the Defendant has with Mr. McCampbell.
10 Mr. McCampbell was freaked out. Mr. McCampbell is saying I have to say
11 something. This is crazy. I'm going to say something. Does he say no, no, no,
12 Richard, it was justified. No, no, no, Richard, he was going to threaten to kill us.
13 Remember that's what he said here, four years later. Does he say anything like
14 that? No. Swolls up and says: What you gonna say? Drive over here. Drive to
15 that dead end road in the dark in Naked City. And tell me again what are you going
16 to say? That tells you about what he was thinking. He was fleeing. He had never
17 any intention of telling anybody what he did that night. Because he knew he was
18 guilty of that crime. He's guilty of conspiracy to commit robbery.

19 And he's guilty of an attempt robbery. Well what's that? He directly
20 commits it. The conspiracy is just talk, aiding and abetting, we've kind of covered
21 this concept. It's going to move pretty quick now. All robbery is unlawful taking of
22 personal property by force. And an attempt is trying to do that but you fail in some
23 way. That's it. It's real easy. So we have to prove that he tried but failed to take
24 personal property by using force and he used a deadly weapon.

25 You've seen the gun. He admits the gun. He admitted he uses force.

1 You saw it on the video. He tried to grab those drugs. You saw that a ton of times.
2 There's four separate times, two before the pistol whip and two after, which tells us
3 he tried to take personal property by force but he failed. And there it is. Let's count
4 them, one, two, that didn't work. Now he's pistol whipping him. And notice Dale's
5 not fighting back. He's saying let's slow down for a second. Bam, hit in the face.
6 Three, four, and then he shoots first and kills him. There's your attempt robbery with
7 use. So he's guilty of attempt use of robbery with a deadly and thus he's guilty of
8 first degree murder. So you can go to your verdict form and check all those boxes
9 off. We're good on conspiracy robbery, attempt robbery with use, first degree
10 murder. You're good.

11 So what's conspiracy to violate? It's just when two people agree to try
12 to possess drugs basically. And we know Dale had the drugs. We know clearly that
13 was what was in his hands because it's found at the scene, and that's what they
14 were grabbing for. So he's guilty of conspiracy to violate the Uniform Controlled
15 Substances Act. And he's guilty of attempt PCS because what is he doing?
16 Attempting to possess the meth, and we learned it was 7.15 grams of meth. We're
17 done. You can check that crime off. He's guilty there too.

18 So we've now proven that the murder was committed during the course
19 of the robbery, that's first degree felony murder, we're done. But I'm going to show
20 also why under the other theory of willful, deliberate, and premeditated it also falls
21 under that category. So what the law says is you don't have to agree on the theory.
22 Some of you may feel well this was definitely committing a robbery and some of you
23 are like: I'm not buying the robbery but I think it may have been willful, and
24 premeditated, and deliberate. And so if you're all unanimous that at least one of
25 these two theories apply it's first degree murder and you're done. Okay. You all got

1 to pick at least one of the two, but you can mix and match between those two
2 options.

3 So what's willfulness? It's just an intent to kill. And the law says there's
4 no space in time between for you to formulate I want to kill him and the act of killing.
5 So what sort of evidence do we have? Remember you can look at direct and
6 circumstantial evidence. He takes him by surprise. He pulls a gun. When Dale
7 refuses to give up the drugs and money he makes the choice to shoot and kill him.
8 He didn't have to shoot. Think about that for a second. If you pulled the gun the
9 first time and Dale doesn't hand over the drugs, do you have to go for it and pistol
10 whip him and follow it up with shooting him? No. You could have backed up. Okay
11 we're good. Get back in the car, right? Isn't that a possibility? Absolutely, he could
12 have left.

13 He tells you he did it to kind of deescalate the situation. When he held
14 up the gun at that point they could have walked away from the situation; they didn't.
15 Even after pistol whipping him, if you watch the video it's not -- Defendant gets up
16 there and says it was something immediate that happened. But that's not what
17 happens. He takes two more tries to grab that property.

18 And all of this -- the fact that he's never walking away, the fact that he
19 comes with a loaded gun, shoves it in his face, still trying to grab it. All of these
20 choices is circumstantial evidence, because we're never going to be able to like
21 crawl right into his head. You're not going to be able to do that. Tell us it's willful,
22 he didn't have to shoot. He could have backed away with a loaded gun and gone to
23 his car. He could have done that and left things alone but he chose not to. He got
24 greedy. And then was prepared to shoot and that was his choice. He wanted to
25 shoot.

1 What's deliberation? It's the process of determining upon a course of
2 action. It's weighing the reasons for and against. It's basically thinking about it. It
3 can happen in a short period of time. It doesn't have to be. It can't be formed in
4 passion. And it can't be like a rash impulse. But that's not what we have here. He
5 conspired to do this robbery from the get go. He brought the weapon. He sneaks
6 up on him. He shoves it in his face. He follows it up with pistol whipping him.

7 And the answer is does he contemplate this? Think about this night.
8 You're going into, right, according to him like the belly of the beast, right, the big bad
9 armed robber who is strapped with lots of guns and money. You're going into the
10 belly of the beast. You're trying to tell us that he -- when he picks up that loaded
11 gun and he rounds everyone up and grabs his driver and they're making -- that he's
12 thinking at some point it doesn't cross his mind well gosh what if the robbery doesn't
13 go well. You don't think that crossed his mind about whether he'd be willing to
14 shoot? Think about that. What's your common sense tell you? Of course it did.
15 And he was ready to do it and he did it.

16 It doesn't have to be for a day or an hour. It can be as instantaneous
17 as successive thoughts of the mind. And one example that people give in this idea
18 about deliberation or premeditation is kind of like thinking about, you know, driving
19 toward an intersection, okay. The lights green. It turns to yellow. And think about
20 all of the things that go through your head before you get to the red to see if you can
21 go through the intersection. How fast am I going? What's the weather like? What's
22 my stopping distance? Are there pedestrians in the road? Think about how many
23 seconds or milliseconds that actually takes to make. It's nothing. But a lot of things
24 go through the human brain. And that's essentially what it is. It's what's going on in
25 his head. That's the extent of the reflection. That's the key.

1 So think about it. Think about on April 19th, 2013 if really this Defendant
2 contemplated the possibility of having to shoot and potentially kill someone that
3 night. The answer is yes, absolutely for all the same reasons. I'm not going to keep
4 going over them. But let -- we got all that preplanning stuff, but just look at this.
5 Think about this moment in time. This runs for about 30-40 seconds. Think about it.
6 Just watching this car evaluating, is it possible he's contemplating the possibility of
7 shooting him right now? I'm about to pull my gun. I'm about to see if this works.
8 You don't think that for one second at least he's thinking there's a possibility things
9 could go wrong and I gotta pull the trigger. The answer is absolutely he thought
10 about it. He was ready. That's why that gun was loaded. He's brave enough to
11 pistol whip this guy, a guy he even admits is strapped. That's how brazen the
12 Defendant is. He was ready to do this if need be and he did and someone died. So
13 he's guilty under both theories. This was willful, it was premeditated and it was
14 deliberate. It certainly was felony murder.

15 So battery with use, again we covered this. All a battery is is un-useful
16 -- unlawful use of force upon violence with a deadly weapon. And in this charge the
17 way it's charged it's the pistol whip. You'll read it in the Indictment. That's what
18 we're talking about. When you hit Dale Barero in the face with a gun you battered
19 him with a deadly weapon. And here it is from two different angles, go ahead just
20 watch it bam, bam. I mean, that -- it's as clear as day and oh by the way the
21 Defendant even admitted I did that one. He flat out says he did it to de-escalate the
22 situation to make things less stressful, which I don't even understand how that even
23 works.

24 Assault with use and this is our last victim, our second victim. Assault
25 with use is intentionally placing another person in a reasonable apprehension of

1 immediate bodily harm for using a deadly weapon and no injury is required. And
2 what we're talking about here is the threaten to potentially harm, shoot, or kill
3 Richard McCampbell. So we gotta go back. After the murder he's upset,
4 remember? He's just witnessed a bunch of shots being fired. He kind of got roped
5 into something he absolutely didn't want to be a part of. And so he's kind of running
6 his mouth: I'm going to say something. Because he's so shook up and then the
7 Defendant swolled up and he placed his hand on a black metal object, which we
8 know from circumstantial evidence and common sense it's the gun. You're going to
9 do what? And he orders him to drive to a dead end road.

10 McCampbell says his voice changes. The sound of his -- it became
11 more menacing, angry, it was a change in his voice. Why? Because he's telling
12 him you better not snitch. That's the message he's trying to send across. I didn't
13 know where I was going. I was just listening to him. He threatened him at this dark
14 dead end road. And what was his impressions? I thought I might get shot and
15 pushed out of my own car and I got real compliant after that. Is ordering someone
16 to drive down a dead end street just after you've essentially shot someone, with a
17 gun in your lap, when in response to you're going to go tell, you're going to go do
18 what? Is it reasonable to assume that that would place someone in a reasonable
19 apprehension of imminent potential bodily harm? Absolutely, and he tells you so. I
20 thought I might get shot. It's done. He assaulted him with that gun. So he's guilty
21 of this.

22 So Ladies and Gentlemen, that's all of the crimes. But we're left with
23 one last thing. So at this point you can check the box guilty, but I would be -- the
24 State would be remiss if we didn't talk about the Defendant, which brings us to the
25 credibility of a witness. Credibility should be determined about their manner on the

1 stand, their fears, their motives, what the interests are when they're up there, the
2 reasonableness of their statements, and the strength and the weaknesses of their
3 recollections. And what's interesting about here in Nevada is that if you believe a
4 witness has lied, and this applies to the Defendant because he testified. If you
5 believe he lied about any material fact you can disregard that portion or you can
6 throw the entire testimony that they gave out, as long as it's not corroborated by
7 other evidence.

8 And the Defendant has major, major credibility issues. This isn't his
9 first rodeo. Remember from a credibility perspective the Defendant has been
10 convicted of robbery with use of a deadly weapon. He has been convicted of
11 conspiracy to commit robbery before. He has been convicted of burglary with use of
12 a deadly weapon. He has been convicted of coercion with use of a deadly weapon.
13 Think about that when you're evaluating his credibility here and he gets up and
14 says: I pulled a gun out and pistol whipped somebody so I could calm the situation
15 down. When you evaluate if that is credible or reasonable, the State would submit
16 that it is incredible.

17 Dirtying up Richard McCampbell, the Defendant went way out of his
18 way to call him a crack head. Oh, he was totally drunk. Remember that? Just
19 every chance he could kind of just throw some shade on Richard McCampbell he
20 did. But why? Ladies and Gentlemen, this is not an ID case, right? If this is an ID
21 case that makes sense. Oh, you're drinking, you're on drugs because remember if
22 he's so -- high and so drunk why in the world does he see everything the Defendant
23 admitted? Yep that was me in the car. Richard McCampbell was like: He was in
24 the car, I was in the car. Yep, they rounded me up to go do this. Yep, they rounded
25 me up to go and do this. I mean, Richard McCampbell gets it all right and the

1 Defendant corroborates it. So why? Why are you doing this? Because the
2 Defendant is desperate at this point; he's desperate. So he attacks something and
3 just criticizes this witness just so -- I guess to try to -- I mean, because -- I guess
4 when it's on video there's not a lot left to do.

5 But think about his manner on the stand. Think about if the things he
6 said matched up with what other people said in the video that you saw. Think about
7 that. State would submit that what Richard McCampbell testified to was
8 corroborated by the video evidence, other observers of the situation, as well as
9 physical evidence that's recovered at different points in time whether it's the gun or
10 the car molding, you name it.

11 The four year plan, what's that? Well the Defendant has four years to
12 figure out what he was going to say on the stand. Think about that when you're
13 evaluating his credibility. And remember he had a conversation four years ago and
14 it's not the same story. Think about that. Think about the motives and the reasons
15 as to why. And I think my co-counsel will probably be touching on that. And again
16 his story now and his story then. Ladies and Gentlemen, the truth is the truth. The
17 truth doesn't change. It doesn't change year by year or month to month. The truth
18 is the truth. So ask yourself why two completely different stories? Why?

19 Going to bat for a total stranger, what's that about? Well if the
20 Defendant were to be believed he's says: I never met Dustin Bleak before until the
21 night of April 19, 2013. Really, never met him before, ever? So what does he tell
22 you the reason is to pull the gun and pistol whip an armed known drug dealer who is
23 super violent in the community as according to him? Why it's to go bat for a total
24 stranger, Dustin Bleak. He threatened to kill me and Bleak.

25 I mean, I'll give you a perfect example. Do we have another witness in

1 this case when something went down they made a decision whether to stay or run?
2 Yes, Richard McCampbell. What happens when shots got fired? McCampbell was
3 out of there. What did he say? I hit the gas and I went. Did you wait for anybody?
4 Oh, no I did not. He was not waiting. He went. So why in the world if he doesn't
5 know this guy, why if he hears a threat why doesn't he -- he's right next to the car
6 why doesn't he leave? He doesn't leave because that's not the truth. Because Dale
7 Borero never threatened to kill anybody, because there was still something that they
8 needed to do, which was rob him of his drugs.

9 And also first impressions are the most important. I kind of touched on
10 this a second before. He also got on the stand and told you I just really wanted to
11 meet Dale Borero. He's just got this great track record of being so violent and being
12 such a great drug dealer. I wanted the things that he had, money and drugs. And I
13 just wanted to meet him, get an idea about kind of how he works. Right, that was
14 the shtick that he kind of put up here on the stand. So what a way to make a first
15 impression than to go to your idle and shove a loaded gun in his face and then pistol
16 whip him. He didn't talk to try to calm the situation down. He didn't say hey, hey,
17 hey calm down, calm down. I'm not involved with this. Hey let's -- maybe we can
18 figure this out. He doesn't say anything like that. His automatic go to is I know how
19 I'll impress him. I'll shove a loaded gun in his face and then pistol whip him. Does
20 that make any sense? Absolutely not. Again the statement is incredible. It's not
21 true because it didn't happen. It was all about one thing. The plan was to rob Dale
22 Borero.

23 And I just want to -- a couple last little quotes. He said my intent in
24 pulling the gun was to not have any problems. And you can watch it for yourself.
25 Does this look like someone who's trying to calm the situation down or try repeatedly

1 to grab drugs? The answer is the latter. I never saw what was in Dale's hands.
2 Well that's simply not true. Why is he reaching repeatedly? Watch it again as he
3 walks over. He's looking at the Grace brothers to see if they go. Dale's unwrapping
4 the drugs. He offers it and he looks right down at him. Here you want those drugs?
5 He sees it right there. And watch his hand grabbing for the drugs, grabbing for the
6 drugs. When he got on the stand and said I never saw what was in his hands. That
7 is refuted by the eye in the sky.

8 I immediately shot him after I pistol whipped him. We're going to go
9 back and watch that for a second. His words were immediately, immediately he
10 shoots. So let's watch what Dale's reaction is gun in his face, does Dale shoot?
11 Nope. Trying to rob him, does Dale shoot? Nope. The Defendant is frustrated he's
12 holding his hand back. He hits him in the face. Doesn't shoot, doesn't shoot, grabs,
13 grabs. Then he shoots and then he fires. Dale Borero did not immediately pull a
14 gun and shoot after being pistol whipped. That is belied by what you see before
15 your very eyes.

16 I am not grabbing him when the gun is to his head. Dale is grabbing
17 me. Who's grabbing who? It's him all day long. He's the one who is grabbing him.
18 And we're going to look at it one last time just to see who is initiating the contact.
19 He grabs, he grabs the Defendant. It was not Dale Borero, again belied by the eye
20 in the sky. I'm going to remind this jury the law says that the right to self-defense is
21 not available to the original aggressor.

22 And I'm going to leave with you two of the things that the Defendant
23 said on the stand on cross-examination. Initially after denying he ultimately said:
24 Yes, sir, putting a gun in their face is an aggressive act. And striking -- and he
25 agreed that striking someone in the face with a loaded gun is an aggressive act.

1 Those are his words. He could not deny that fact. And because he cannot deny
2 that fact and because we can see it plain as day on that video, as a matter of law he
3 is not entitled to self-defense because he was the eye of the storm. He is the center
4 of all of this.

5 Dale Borerero's death was unprovoked, senseless, and it could have
6 been completely avoided. And we are asking you at the conclusion of this trial to
7 find him guilty on every single count. Thank you.

8 THE COURT: Thank you, Mr. Hamner.

9 Alright, folks we're going to take about a 10 minute break before we do
10 defense closing argument. During the recess you're admonished not to talk or
11 converse among yourselves or with anyone else on any subject connected with the
12 trial or read, watch, or listen to any report of or commentary on the trial, by any
13 medium of information including without limitation to newspapers, television, the
14 internet and radio, or form express any opinion on any subject connected to the
15 case until it's finally submitted to you, and no investigation, research, or re-creations
16 on your own.

17 We're going to go out this door right now since we've started arguments
18 and I'll just let you kind of hang out in the deliberation room for a minute. There's a
19 bathroom right by there as well and then we'll get you back in here and finish up.

20 [Outside the presence of the jury]

21 THE COURT: Do you guys have anything outside the presence?

22 MR. SCHWARTZER: Not from the State, Your Honor.

23 MR. HAMNER: No, Your Honor.

24 THE COURT: No. Okay, we will be in recess for about 10 minutes and then
25 we'll finish up guys. Thank you.

1 [Court in recess at 12:41 p.m.]

2 [Trial resumed at 12:51 p.m.]

3 THE COURT: Hey guys, and just real quick while we're on the record, about
4 that jury instruction. So the jury instruction that I provided is 50(a). I can't
5 remember the case that it came out of recently, but it's verbatim what the Supreme
6 Court said we're supposed to give. I know it's not in the front of people's minds yet
7 that we need to give it, so no worries. But I would take it nobody had any objection
8 to it?

9 MR. SCHWARTZER: No objection from the State.

10 MR. SCHWARZ: No objection, Your Honor.

11 THE COURT: Very good.

12 MR. SCHWARTZER: Your Honor, while we're on the record too we're
13 returning Exhibit -- what was proposed Exhibit 2 to Las Vegas Metropolitan Police
14 Department through Terri Miller. There's a chain of custody that's been exchanged
15 between your department and her. We didn't use it nor did we admit it into evidence
16 and that's why we're --

17 THE COURT: Okay.

18 MR. SCHWARTZER: -- handing it back to her.

19 MR. SCHWARZ: That's fine.

20 THE COURT: Mr. Schwarz, agreed?

21 MR. SCHWARZ: Yes.

22 THE COURT: Okay.

23 Alright, Joel, you can go ahead.

24 Officers if one of you could step out. You can let people know in the
25 hallway they can come back in as well. Thank you.

1 THE MARSHAL: All ready?

2 THE COURT: Ready guys?

3 MR. SCHWARTZER: Yeah.

4 [In the presence of the jury]

5 THE MARSHAL: The jury is present, Your Honor.

6 THE COURT: Thank you. You guys can all be seated. Alright, we will be
7 back on the record. Mr. Muhammad--Coleman is present with his attorney, State's
8 attorneys are present. All the jurors are present. We're going to continue on,
9 Ladies and Gentlemen, with closing arguments.

10 So on behalf of the defense, Mr. Schwarz.

11 MR. SCHWARZ: Thank you, Your Honor.

12 **CLOSING ARGUMENT OF THE DEFENSE**

13 BY MR. SCHWARZ

14 And thank you, Ladies and Gentlemen of the jury. It's been a while
15 since I've been able to talk to you. I guess it was only yesterday, but it seems like
16 forever. Most of the time we gotta spend our time avoiding you, pretending we don't
17 see you, we don't know who you are. And it gets uncomfortable. So after this all of
18 that is done.

19 I want to say that there was one thing in the State's presentation that I
20 absolutely do agree with and that is the truth is the truth. But also something else
21 about the truth, the truth takes few words. And therefore I'm going to take a few
22 words to go through our theory of the case.

23 Now here is what my client is charged with, conspiracy to commit
24 robbery, attempt robbery with use of a deadly weapon, murder with use of a deadly
25 weapon, battery with use of a deadly weapon, assault with a deadly weapon, and

1 conspiracy to violate the Uniform Controlled Substances Act, and count 7, attempt to
2 possess controlled substance.

3 Now Jury Instruction 5 tells you that the Defendant is presumed
4 innocent until the contrary is proved. Now I hope you haven't gone back there and
5 checked all those boxes my colleague told you to go back and do because, you
6 know, we're not quite done yet. So hold off on the checking those boxes, because
7 as he sits there right now he's presumed to be innocent. The State has the burden
8 to prove him guilty beyond a reasonable doubt. And if you have a reasonable doubt
9 as to the guilt of the Defendant you must find him not guilty. And we're going to talk
10 about that in a minute.

11 Jury Instruction Number 10, the fact that a witness has been convicted
12 of a felony may be considered by you only for the purposes of determining the
13 credibility of that witness. The fact of such a conviction does not necessarily destroy
14 or impair the witness' credibility. It is one of the circumstances that you may take
15 into consideration in weighing the testimony of the witness. One of the other
16 considerations you can take into the consideration is how he testifies, how he acts
17 on the stand, how he answers the question. How evasive is he or is he not? And I'd
18 like you to reflect back on my client's testimony. But we'll talk about that in a minute
19 too.

20 Now I want to talk first about conspiracy. Conspiracy is an agreement
21 between two or more persons for an unlawful purpose. The crime is the agreement
22 to do something unlawful, okay. Now the State is alleging there's a conspiracy
23 between my client and Dustin Bleak and/or Travis Costa, essentially everybody
24 except Richard McCampbell okay. Where's the evidence of that? There is
25 absolutely no evidence of a conspiracy between my client and anybody else.

1 Now the other jury instructions sort of say well, you know, you can infer
2 conspiracy because, you know, you see how they act together and they don't really
3 have to have an agreement. And it's not like they gotta draft a formal paper or
4 anything. Yeah, okay alright, that's true. But I'm sorry before you go back there and
5 mark that box I'd like you to think about who testified that there was any kind of
6 conspiracy between anybody. Did Dustin Bleak testify to that? Travis Costa come
7 in here and tell you? Nobody did.

8 Jury Instruction 13, it is not necessary in proving a conspiracy to show
9 meaning of the alleged conspirators -- think about that for a minute-- or the making
10 of an express or formal agreement. The formation and existence of a conspiracy
11 may be inferred from all the circumstances tending to show the common intent and
12 may be proved in the same way as any other fact may be proved, either by direct
13 testimony of the fact or by circumstantial evidence or by both. Again where is the
14 agreement? Where is the conspiracy?

15 Look here's what happened. Here's what happened. My client met up
16 with Dustin Bleak and Travis Costa. Okay, where's the evidence that they planned
17 a robbery at that point? They got in the car with Richard McCampbell, never said a
18 word in the car. They stepped out of the car for a few minutes. Mr. McCampbell
19 never heard what they were saying. Where's the evidence that they were planning
20 a robbery?

21 Talk about attempt for a minute, the intent to commit the crime,
22 performance of some act towards its commission and failure to consummate its
23 commission.

24 Robbery, the unlawful taking of personal property from a person of
25 another or in his presence, against his will by means of force or violence of fear of

1 injury, immediate or future, to his person or property, or the person or property of a
2 member of his family or of anyone in his company at the time.

3 Open Murder, a charge of open murder includes and encompasses
4 murder of the first degree and murder of the second degree.

5 Jury instruction 21, murder of the first degree is murder which is
6 perpetrated by means of any kind of willful, deliberate, and premeditated killing. All
7 three elements, all three, must be present and must be proven beyond a reasonable
8 doubt before an accuser can be convicted of first degree murder. Unless you do
9 believe there was a robbery. And Mr. Borero was killed in the commission of that
10 robbery. Because the felony murder rule says murder committed in the perpetration
11 or attempted perpetration of a robbery is murder in the first degree. It does not
12 matter if the killing was unintentional or even accidental. All other murder is murder
13 in the second degree.

14 Battery, any willful and unlawful use of force or violence upon the
15 person of another.

16 Assault with a deadly weapon, intentionally placing a person in
17 reasonable apprehension of immediate, immediate, bodily harm, by or through the
18 use of a deadly weapon. You don't need to actually injure that person, key word
19 immediate.

20 And conspiracy to violate the Uniform Controlled Substance Act, two or
21 more persons conspire to commit an offense which would be a felony under the
22 Uniform Controlled Substances Act and possession of methamphetamine is such a
23 felon -- or such a violation.

24 And an attempt to possess a controlled substance, Defendant
25 knowingly attempted to possess a controlled substance.

1 Right so, you know, the State and I agree on what the elements of the
2 offenses are and what needs to be proven in order for you to convict my client
3 beyond a reasonable doubt. And so in order to do that they bring in witnesses and
4 testimony. Now who are the witnesses? Well they're mostly the police. They bring
5 in Detective Miller. They bring in Detective Mogg. And they bring in all of the
6 assistants, the Crime Scene Analyst and the Firearms Technician. And they all tell
7 us what we suspected in the first place since the opening statement -- well I guess
8 that's not fair to say. But what we suspect in the first place yes, the evidence in
9 terms of who owned the firearm, my client did. You know who fired the shots the
10 killed Mr. Borero? My client did. The question is not what he did but why he did it.

11 And so when you bring in the police and their assistants one would
12 expect their view of the evidence is going to be somewhat different than our view of
13 the evidence, okay. And what I'm talking about specifically is the video. Now the
14 video is not as clear, I am submitting to you, as the State would like it to be. It does
15 not show what they say it shows. It shows movement that appears to support their
16 contention that, for example, Mr. Borero was unwrapping a bag. You can't really tell
17 what he's doing. It appears to show that Mr. Borero's handing my client the bag. It
18 appears to show my client knocking the bag to the ground, which seems unusual for
19 someone who's committing an armed robbery to not take drugs that are offered to
20 him. But that video was just simply not clear enough to establish proof beyond a
21 reasonable doubt of anything.

22 What would be nice is people who were actually present on the scene,
23 who were actually there who could have testified to what happened. But as we
24 know there are no eyewitnesses to the actual shooting, none. And so what we're
25 left is the video, which naturally the State is going to view in the light most favorable

1 to them. And naturally I'm going to view in the light most favorable to me and my
2 client. That's what we got. The rest of the witnesses that showed up here literally
3 add nothing to the case, nothing.

4 Now Mr. McCampbell, he is the world's worst getaway driver. My
5 colleague said this was a robbery that was meticulously planned by him, an 18-year
6 old, knuckle head at the time. Now does a meticulously planned robbery include the
7 world's worst getaway driver Richard McCampbell? Is this who you're going to pick
8 to drive the getaway car? In my mind, Ladies and Gentlemen, and I believe the
9 evidence submitted to you supports it, the fact that this individual was the one that
10 they employed to give them a ride in and of itself establishes there was no plot to
11 commit a robbery.

12 My client says that he was drinking and smoking crack cocaine. I think
13 if you watch his driving on the video it -- that supports his intoxication level. He
14 backs that big car, not once but twice into the wall before he finally navigates it in
15 the spot. And here's another thing about that, watch the three point turn. Watch
16 McCampbell when he pulls into that spot. He doesn't pull in and park. He doesn't
17 pull in and park and then somebody says hey, hey, hey no back up to that -- this is
18 one fluid moment. He did that. He pulled in and he backed out. Now they may
19 have directed him to park near the end of the parking lot, because that's where they
20 knew Borero was going to come down. But nobody told him to back into that spot.
21 He did it.

22 Now he can't even testify that Darion showed him a gun. Now you
23 understand that the assault with a deadly weapon charge he's the victim, okay. So
24 remember that word immediate -- got to be placed in immediate fear of receiving
25 battery. He can't even say that there was an actual gun. All he says is he has his

1 hand in his lap. And I asked him did you see a gun? He said: No. That charge
2 must fall. If you put an X in that box unmark it, because that charge must fall.

3 He did not, to his credit, identify the voice who says something about
4 money. And we don't have an exact quote. It's not like we do. We don't. We don't
5 have an exact quote. We got Richard McCampbell saying I heard something about
6 money, show me the money. And to his credit at least he acknowledges it wasn't
7 my client that said it. And he doesn't call the police for two days. He testifies on the
8 stand that he called them the very next day but they weren't interested, never got
9 back to him. Of course neither detective ever heard that story.

10 Rachel Bishop, she didn't see the shooting. Interestingly enough she's
11 out on the balcony. She says after the shots were fired she looked out and saw Mr.
12 Borero standing in the street. I asked her that. You saw him -- I saw him standing.
13 Mr. Borero was not standing. Mr. Borero was down on the ground after the first two
14 shots were fired. We know the first two shots were fired before Mr. Borero got on
15 the ground. Because if you play the video when Mr. Borero was on the ground firing
16 at the car as it's going away you will see 8 shots. And they found 10 casings. Two
17 shots were fired before he went down. And she clearly didn't see any of this until it
18 was all over.

19 LeCory Grace, he didn't see the shooting but he was up on the balcony.
20 And, you know, let's sort of say that the State has the notion that my client and
21 Dustin Bleak, and you know, his brother are all waiting for the Graces to leave, okay.
22 Well let's sort of flip that around. Let's say that my client doesn't know who the
23 Graces are. You watched the video. They're just up there hanging around. They're
24 looking over the balcony. They come down the stairs, and you know, right about the
25 same time that Dale does. And my client tells you that that's making him nervous.

1 That's making him concerned.

2 The State tells you no, no, no they're patiently waiting for the Graces to
3 go so they can commit this robbery. Well it seems to me if you're committing a
4 robbery there's a lot -- there's just way too many people around for that. The fact of
5 the matter is LeCory and his brother didn't see the shooting. They were up there on
6 the balcony. They took a long, long time to leave the parking lot. They went down
7 and sat in their car for quite a while. You know, I'm not going to do the old lawyers
8 trick. I'm not going to say okay it was only two minutes. But let's see how long two
9 minutes is. I'm not going to stand here and say nothing. I'm not going to do that.
10 But they were in their car for a while and then they took off.

11 And my client had no idea who they were, whether they were with Dale,
12 whether they weren't. They were all up on the balcony together. And all of this is
13 contributing to his growing sense of anxiety. And don't forget he's 18 years old.
14 He's a gunshot victim and he's getting nervous, because he doesn't know any of
15 these people. He's the youngest one there. He's the youngest one there. Dustin
16 Bleak and his brother are significantly older than him.

17 Now my colleague brought up this statement. And, you know, I had it
18 here because I want to get the jury instruction on this. If I can have the Court's
19 indulgence.

20 THE COURT: Okay.

21 MR. SCHWARZ: Oh, I brought it up there. Never mind.

22 **CLOSING ARGUMENT OF THE DEFENSE CONTINUES**

23 BY MR. SCHWARZ

24 Alright so here is what my colleague said. My colleague said if you are
25 the original aggressor forget it's self-defense it's not available to you. Well it's --

1 that's complete wrong. I would have objected, but I knew I was going to have my
2 opportunity to explain it to you. Clearly the law says it is generally not available to a
3 first aggressor, not never, sometimes. Generally not, but not never; untrue.

4 But even so why is it generally not -- why is it generally not available to
5 an original aggressor? The answer is in Instruction 35. The right of self- defense is
6 not generally available to an original aggressor. And then here's how original
7 aggressor is defined. That is a person who has sought a quarrel with the design to
8 force a deadly issue and thus through his fraud, contrivance, or fault to create a real
9 or apparent necessity for making a felonious assault.

10 Okay, so that situation is sort of this. You know, I see the Rock
11 Johnson walking down the street. And hate his movies and so I walk up and give
12 the Rock a big smack in the head. And then when he comes after me I pull out my
13 pistol and shoot him. That's what this is referring to. That's not what happened
14 here.

15 Again by the way, who is the original aggressor? My client testified that
16 he leaned against the car and stayed against the car, because he was told to stay
17 there until he was called over. And then he was watching Mr. Borero and Mr. Bleak
18 engage in this argument. And Mr. Borero made a threat to shoot him and my client.
19 Does that not make Mr. Borero the original aggressor? I submit to you that it does.
20 You can be an aggressor while you're standing there with your arms folded making
21 threats with a fully functional 40 caliber automatic on your hip that's clearly seen
22 under your white tank top. It is not -- it is not established in this case, unless and
23 until you do, that my client was the original aggressor.

24 Now who's Dale Borero? Alright, he's deceased okay. You know what
25 I love everybody. I want everybody to have a happy life. I'm sorry Mr. Borero is

1 dead. But the fact of the matter is at the time he was a drug dealer and a convicted
2 felon. He had a reputation in the community for being violent. He was known to
3 always carry a gun. He was high on methamphetamine at the time. The Coroner
4 told you that his level of intoxication on methamphetamine aggressive behavior
5 would be normal. Additionally, an inability to make proper decisions would be
6 normal. That's the condition that Mr. Borero was in on that night.

7 You know that Dustin Bleak owed him money. We also know he wasn't
8 very happy about it. And you can piece that together from several people. Several -
9 - Rachel Bishop noticed that at least. Richard McCampbell heard: Show me the
10 money. You can -- and my client who was observing the whole thing he threatened
11 Darion and Bleak and was carrying a gun at that time, says I can shoot -- I -- if I
12 don't get my money I'm going to kill both of you. And he has the gun to do it.

13 Now in order to assert self-defense, which is generally unavailable if
14 you're the initial aggressor, the person who does the killing must actually and
15 reasonably believe that there is imminent danger that the assailant will either kill him
16 or cause him great bodily harm and that this it is absolutely necessary for him to use
17 deadly force to prevent death or injury to himself. However, actual danger is not
18 required.

19 And this, Ladies and Gentlemen, is Jury Instruction 37. Actual danger
20 is not necessary to justify a killing in self-defense. A person has a right to defend
21 from apparent danger to the same extent as he would from actual danger. The
22 person killing is justified if he is confronted by the appearance of imminent danger
23 which arouses in his mind an honest belief and fear that he is about to be killed or
24 suffer great bodily harm. And he acts solely upon these appearances and his fear
25 and actual beliefs, and a reasonable person in a similar situation would believe

1 himself to be in like danger. The killing is justified even if it developed afterward that
2 person killing was mistaken about the extent of the danger. That is the most
3 important sentence in 51 or I guess 52 jury instructions. And I would ask you to go
4 back there and read that when you're deliberating on your verdict. The killing is
5 justified even if it develops afterwards that the person killing was mistaken about the
6 extent of the danger.

7 Now once self-defense is raised the burden of proof is on the State to
8 prove that there was no self-defense. And they must prove this beyond a
9 reasonable doubt. They must prove that the Defendant did not act in self-defense
10 beyond a reasonable doubt.

11 A conspiracy to commit robbery, as I suggested there's no evidence of
12 a conspiracy. The only witness we have, Mr. McCampbell, never heard anybody
13 say anything. But more importantly they never acted in concert. Now my colleague
14 is suggesting that they are. There -- he's trying to tie together Dustin Bleak and
15 Borerero who are having this disagreement. Bleak's taking his hat off, and you know,
16 Borerero is sort of standing there with his arms out. And at some point he's doing
17 something. I don't know that he's unwrapping drugs. Whatever it is he's doing he's
18 doing and then he's suggesting well that was the signal to come over. And there's
19 no evidence of that. That's conjecture. That's argument by counsel. And argument
20 by counsel is not a fact.

21 The fact is you watch the video and make the determination for
22 yourself. And you know what if it's inconclusive, if you don't see that, if you don't
23 see what my colleague told you you saw, if you see what I tell you is happening on
24 that tape, if you see my client pushing this man's arm away. If those are drugs my
25 client pushes it away. He knocks it on the ground. What kind of a robbery is this?

1 Who pulls a gun on somebody to rob them and they hand you a 7 ounce bag -- a 7
2 gram bag of methamphetamine and you knock it on the ground? What kind of a
3 robbery is this? My client is pushing his hands away. He's trying to get control of
4 the situation and when he can't he puts him down.

5 And there was no evidence of a conspiracy. They did not act in
6 concert. Darion was over by the car. Bleak was doing his thing. There's not even
7 circumstantial evidence of a conspiracy between these two.

8 And there's no evidence that this was a robbery. Darion is clearly
9 slapping his hand away. He doesn't take anything. He doesn't even appear to try.
10 Where's the -- you know, give me the money, you know. And by the way the State
11 makes a big thing about this well you know we had \$3,300 on him. Well how do
12 they know? They didn't know. They didn't know how much money he had. He's
13 covered in jewelry. Nobody took his jewelry. Nobody's grabbing chains, nobody is
14 taking rings. And nobody picks up the meth bag. Okay, the State's going to say:
15 Well, you know, the shooting happened before that. No, no, no, no, no the meth -- if
16 you believe them the meth is knocked out of his hand way before anybody gets shot.
17 You know, if they came here to rob somebody they forgot to take something or even
18 try to.

19 Now if it's not an attempted robbery, which it isn't, the felony murder
20 rule doesn't apply. And that means in order to convict my client of first degree
21 murder you've got to find evidence of all three, willfulness, deliberation, or
22 premeditation -- and premeditation, all three. They're defined in the jury instruction
23 -- jury instructions -- that was a Freudian slip. They're defined in the jury
24 instructions. I will leave it to you. But I will suggest to you that there is not in this
25 case willfulness, deliberation, and premeditation, all three.

1 Now it's not second degree murder either. There's no malice of
2 forethought either express or implied because Darion does not fire his weapon until
3 Dale Borero pulls his gun. Jury Instruction 20 defines express malice. Express
4 malice is that deliberate intention unlawfully to take away the life of a human being,
5 which is manifested by external circumstances capable of proof. Malice may be
6 implied when no considerable provocation appears, or when all the circumstance of
7 the killing show an abandoned and malignant heart.

8 Battery with use requires an unlawful use of force. Now my client's
9 story is that after all these things we talked about, people milling around, becoming
10 very concerned, argument between Bleak and Mr. Borero getting heated that he
11 pulled the gun on him because he thought the situation was going to escalate and
12 Mr. Borero made a threat. Well if what he did, as he testified, he saw him look down
13 at this gun. If what he did was attempt to prevent him from going for his gun it's not
14 an unlawful use of force.

15 I just want to talk briefly about this. Mr. McCampbell never testified that
16 any weapon was brandished. He never saw a gun. Yeah, he took it as a threat but
17 I mean, you know, that doesn't get you there. And he went right back to Naked City
18 and slept in his car all night long. So he certainly wasn't afraid of anybody in this
19 car. But the main thing is in order for there to be a victim of assault with a deadly
20 weapon they've got to be placed in immediate fear of being assaulted with a deadly
21 weapon, which he wasn't.

22 Now there's no evidence of conspiracy between my client, Travis
23 Costa, Dustin Bleak, or anybody. And again, you know, okay maybe Dustin Bleak,
24 you know, we couldn't count on him to come in and testify. He's got a right to --you
25 know a Fifth Amendment Right to not testify. Travis Costa was never arrested, you

1 know. He never got charged in any of this. You want to prove a conspiracy put
2 Travis Costa on the stand. He's not here. There's no evidence that anybody
3 attempted to possess controlled substance. This whole thing is an argument over
4 money.

5 Now I'm getting to the end here. I want to talk about my client and his
6 testimony. My client does not have to get on the stand, alright. I mean, this is
7 fundamental. He doesn't have to testify. Of course it's difficult to establish your self-
8 defense claim unless you get on the stand. My client got on the stand at great harm
9 -- potential harm to himself. He is going to be cross-examined by one of these two
10 who are both not only gentlemen, and I appreciate that, but who are both skilled
11 prosecutors and terrific cross-examination artists. He subjected himself to that.

12 And I watched him. Yeah, he's got four felonies. He told the truth. He
13 told what happened. And you gotta look at it in the context it's 2013. He's 18 years
14 old. He's a goofy kid. He's living with his mother. He's selling dope sometimes. He
15 meets up with these two older guys. Yeah, maybe he gets a little starry eyed. He
16 can get them a ride. He gets them a ride with McCampbell, again the world's worst
17 getaway driver. They go to meet this guy Borero. Why is he carrying a gun? He
18 told you, he's been the victim of a shooting. He got in the habit of carrying a gun.
19 He got shot once. He learned his lesson and not old enough for a CCW. He's only
20 18 years at the time, victim of a previous shooting. That's why he's carrying a gun.

21 Now the State must prove each and every element of each and every
22 offense beyond a reasonable doubt. They must prove beyond a reasonable doubt
23 that Darion did not act in self-defense and that's again in Jury Instruction 37. Now
24 before I get to the end, which clearly this would normally be my last slide and it is. I
25 have to address a couple of things that my colleagues said in their opening

1 statement. So this is going to be very brief. Because this is the only chance I get to
2 talk to you. They get another shot at it; I don't.

3 My colleague called Mr. McCampbell and unwitting getaway driver. I
4 would suggest that that is not the case. My colleague suggested that but for Mr.
5 McCampbell having a conscience my client wouldn't have been caught, when in fact
6 he didn't turn himself in for 2 days, only after his wife advised him that his vehicle
7 was being seen on the news. My clients -- or Mr. McCampbell as I mentioned said I
8 tried to call 3-1-1, but he didn't tell either detective about that. They didn't know
9 anything about it.

10 My colleagues say it is crystal clear what is happening on this video.
11 And I suggest to you that simply is not true. My client suggests -- or I'm sorry my
12 colleague suggests that Mr. Borero was shot because he simply wasn't handing out
13 drugs fast enough. As we say in Chicago that doesn't even make nonsense. We
14 explained to you why he brought the gun. I want you to think about the three point
15 parking issue I raised and watch him on that video, which is not as clear as the
16 District Attorney suggests. And if this was a robbery why is Bleak standing there
17 doing absolutely nothing instead of reaching down and picking up the dope or going
18 through Borero's pockets while my client has got the gun in his face?

19 The fact of the matter is, Ladies and Gentlemen, you know, nothing is
20 as clear cut as it seems. You got a sketchy video where something may or may not
21 be happening. You got my client telling you a story that is consistent with what you
22 see on the video. It's not nonsense. It's not a story that doesn't make logical sense.
23 It's a story that could be true. It's a story that is true. And he put himself at great
24 risk putting himself on the stand, so at least I hope you'll give him the courtesy of
25 reviewing his statement, of reviewing his testimony. Because I believe if you do you

1 will find him not guilty of all counts. And I do thank you.

2 THE COURT: Thank you, Mr. Schwarz.

3 Mr. Schwartz.

4 **REBUTTAL ARGUMENT OF THE STATE**

5 BY MR. SCHWARTZER:

6 It's interesting that Mr. Schwarz starts or ends with how Mr.
7 McCampbell took less than 48 hours to turn himself and give his statement, which
8 by the way was consistent 4 years later. Yet how long did it take that individual right
9 there, the person who admitted to shooting and killing Dale Borero, how long did
10 that take him? Well he got arrest on July 3rd, 2013. He didn't turn himself in.

11 What did he do after this, after he had to defend his life? He stashed
12 the gun at some girl's house in a toaster oven and then avoided police for months,
13 and months, and months, even when they went knocking on that door, even when
14 they found that gun a block away from his mom's house. Even when they talk to the
15 person that we know talked to his mom in jail Kiara Terrel [phonetic], and even when
16 Tatiana Lee [phonetic], the person who he's such good friends that he'd stash a gun
17 there. I mean, never mind there's male's clothing and his personal effects there, so
18 it's probably his place too. She apparently doesn't tell him either. Does any of that
19 story make sense to you? No. You know why it doesn't make sense to you?
20 Because it's not true as the evidence will show as you go through this.

21 Now I don't want to get stuck in the mud here. It's very clear -- the
22 video and we'll go through it a little bit more. And I'm not going to show you more
23 clips of the video. You have it. You can review it a million times. Mr. Hamner did a
24 great job of enlarging it and you can see what's actually happening there. And you'll
25 see it. What's happening is a robbery, plain and simple. Drugs are produced, gun

1 comes out, drugs are being handed over, pistol whip occurs. That doesn't happen.
2 Dale Borero, who by the way, Dale Borero has an excellent case for self-defense if
3 he was able to survive. Dale Borero has no choice. He's cornered. There's two
4 people. He has nowhere to go. He pulls out his gun and he shoots, and kills him
5 because he doesn't release the drugs.

6 And look, Ladies and Gentlemen of the jury, is it clear in the video it is
7 drugs? No. It's not clear in the video. I agree. But he takes something out. He's
8 unwrapping it. It's right on that elevated curb. So let's say I'm on the elevated curb
9 and I'm unwrapping something with this pen if something occurs -- shooting occurs,
10 police come back and what do they find right where the attack was but a pen,
11 circumstantial evidence. It was the drugs that was out. I mean, it's clear as day
12 when you look at the physical evidence.

13 So if this man is robbing Dale Borero guess what he does not get to
14 claim? Instruction, self-defense is not a defense to first degree murder based on the
15 felony murder rule, done. You don't even consider self-defense. If you believe he's
16 attempting to rob Dale Borero that's the analysis. Even if he's tripping while
17 shooting, and I disagree that that's what happened, but even if he's tripping when
18 shooting accidental killing is not a defense to felony murder, done. This is felony
19 murder.

20 You don't even go to the box of self-defense. But let's say you want to
21 go there to the self-defense. And your analysis should stop at felony murder, but I
22 just -- just a couple things mentioned about self-defense which I think misconstrued,
23 not, I mean, there -- it's the best reflection you try and -- Mr. Schwarz tried and show
24 the best reflection of what his case is using the self-defense charge. And so he's
25 not purposely giving me anything. He's just choosing the instruction parts that are

1 best for him, which I understand.

2 But here's what he left out on that Instruction 36 which talks about
3 immediate -- imminent danger, excuse me. And again I would say that there's no
4 imminent danger. Dale Borero doesn't have a gun out or anything like that. Mere
5 words isn't enough to create imminent danger. But let's even go past that. You go
6 Instruction 36, a bare fear of death or great bodily injury is not sufficient to justify a
7 killing, a bare fear. And that's at best. At best that's what he can get with his
8 testimony, at best, a bare fear. And that as you've been instructed by Judge
9 Herndon there is not enough.

10 Can we switch over?

11 Now Mr. Schwarz talks about how his client's in great distress, has to
12 go on the stand and testify. And he was subjecting himself to cross-examination.
13 He had to do that. He had to do that because the video shows he killed Dale
14 Borero. What's interesting and what we have and what's -- what you learned after
15 Detective Miller took the stand the second time is he had a prior opportunity to talk
16 about what happened. And you got to physically see his reaction to that on July 3rd,
17 2013. You got to physically -- and that will go back to you in the jury room and you
18 can watch it again.

19 Defense police interview on July 3rd of 2013, and that's a lot smaller
20 writing than I expected it to be, but you see Detective Miller try to get him just to talk.
21 It's on video. It doesn't matter -- you know, sometimes we get in a hole and we can't
22 get out and things happen that you don't mean for it to happen, trying to get him to
23 talk. What's his reaction? I don't know them; I really don't. I didn't do anything.
24 Whoever says I committed a murder they're the ones that committed the murder.

25 In his old version of events, the July 3rd 2013 version of events, he's

1 shown a picture of Bleak; never seen him before. Shown a picture of Travis Costa;
2 never seen him before. Shown a picture of McCampbell; I don't know these people.
3 Constantly denying, I don't have -- he says I don't have an apartment. You don't -- I
4 don't know anything. If you know anything, everything. I haven't been running. At
5 one point they're like we understand why you're upset, you know, there's a warrant
6 for murder. He's like I'm not upset for that. What is he upset about on that July 3rd,
7 2013 interview? What is he upset about? It's July 4th the next day and he plans
8 with a girl that he wants to make his girlfriend, not that someone is dead and not that
9 there's a murder warrant out for his arrest. That's what he's concerned about.

10 At one point where he's denying, denying, denying, denying Terri Miller,
11 the detective, even says: Darion, do you have a twin? And by the way he thinks
12 about that for a second. Watch that video. He thinks about that for a second or two
13 before he's finally like well there's a lot of black males. And then at the end of that I
14 don't have a conscience. I don't have anything on my conscience. He then vomits
15 and then at the very end you hear: Haul me in and book me for murder, fuck this
16 bitch.

17 That's his story on July 3rd, 2013. And you know why that's his story on
18 July 3rd, 2013 is because, you know, he didn't know the evidence that the State had.
19 He didn't know there was a video. He didn't know that Mr. McCampbell came and
20 talked to the police and told him about Money. He didn't know that the firearm was
21 found and that matched the bullets that was inside Dale Borero. He didn't know that
22 he left his fingerprints, his fingerprints at the scene. He didn't know any of that stuff
23 on July 3rd, 2013. You heard that from Detective Miller. They never released that
24 video. He didn't know any of that stuff.

25 So now four years later, again sorry it's small. Four years later he now

1 knows those stuff. He now knows that there's a video. He now knows his
2 fingerprints at the scene. He now knows the firearm is recovered. He now knows
3 that Mr. McCampbell was there. He now knows that Rachel Bishop and LeCory
4 Grace will come in and testify and say that there was no -- they didn't hear any
5 argument. That yeah the people downstairs, you know, Dustin Bleak and the
6 Defendant they were acting kind of shady, but there was -- you know, I didn't hear
7 any argument. LeCory Grace even heard that they were asked -- they were clearly
8 asking him who he's with, because he's saying I'm by myself.

9 Now he knows all those things. So you know what's not going to work?
10 His old version won't work anymore. His I don't know what you're talking about. I
11 wasn't there. I never heard of Traveler's Inn. I never heard of these people. That
12 doesn't work anymore, because of the significant amount of evidence that puts him
13 at the scene and the significant amount of eye witnesses that put him as the person
14 in the passenger's seat. So he has to change that story up.

15 And now he changed it into something different. I gave no directions to
16 Mr. McCampbell. It was Bleak and Costa. Why do this? Because he's trying
17 minimize the fact that this was a robbery. McCampbell wants to park that way.
18 Why? Because he wants to minimize the fact that it's getaway. That McCampbell is
19 drunk and high. Mr. Hamner talked about a little bit, why even do that? Why even --
20 I mean, to questions that weren't even asked he wanted to say oh he was high on
21 crack. The Defendant just wants to go out and tell you that. He wants to just throw
22 shade on Mr. McCampbell. And the reason he wants to do that, despite the fact that
23 this isn't an ID case anymore, because it's not July 3rd, 2013, is because he wants to
24 dirty up Mr. McCampbell.

25 And I somewhat disagree with my colleague that there's a reason for

1 that, because if Mr. McCampbell kills any version of his self-defense story, any
2 version of that, because if you were acting that way after the shooting it was no self-
3 defense. It was no fear for your life. If you were acting toward Mr. McCampbell
4 saying I'm going to tell, I'm going to tell. And you -- as I've learned swoll up with a
5 gun on your lap, you're doing that because you don't want anybody to snitch on you.
6 And that's what he was counting on when he was threatening Mr. McCampbell.

7 And to talk about assault with a deadly weapon real quickly in going
8 back to event when you have -- you saw a shooting you don't see the gun but you
9 see a black metal object, and you're this close to the -- you're within feet of the
10 person who just did the shooting. And you're saying you're going to what? You're
11 going to do what, with your hands on that black object. That is, as described by Mr.
12 Hamner, circumstantial evidence. That by Mr. Hamner is assault with a deadly
13 weapon. Because he knew he had a deadly weapon. Hell, he admits to it. He
14 admits he shot Dale Borero. And Mr. McCampbell knows he had a deadly weapon,
15 because he heard the shooting. And there's a black foreign object now on his lap.
16 And when he's threatening him he's telling him to drive onto this dead end street.
17 And oh by the way he also said he thought he was going to get shot, Mr.
18 McCampbell. And he had good reason to think that.

19 Also what's interesting about this new version of events of Mr. Coleman
20 is the -- I didn't hear any of the conversation between Bleak and Mr. Borero except
21 for the money part where he says I'm going to shoot somebody. He doesn't, you
22 know, brandish a gun or anything like that. He can't say that. He can't say that Mr.
23 Borero brandished the gun, because he's seen the video and Mr. Borero is like this.
24 You can see both his hands. He can't say that part. He can't say he was being
25 threatened with a gun, right? Because in the video -- that video would belie that. So

1 what does he say instead? He says: Oh, well he made a verbal threat. He just
2 happened to heard -- hear that one specific thing that creates this bare fear.

3 Then I pulled my gun first. He admits to that part, which again original
4 aggressor, read that instruction. I put it to his face. If you remember when he was
5 on the stand right here he wouldn't admit to me that was an aggressive act at first
6 until he heard some laughter and then he finally admitted that the gun to the head
7 was an aggressive act. And I think common sense dictates that striking someone in
8 the face with a loaded gun is an aggressive act.

9 I'm not grabbing at him. And I strongly disagree with my colleague Mr.
10 Schwarz about that video shows he's slapping it away. Mr. Hamner's video I think
11 it's pretty clear and you can watch it again as many times as you want. He's
12 grabbing at something. And what is he grabbing? Well we know the drugs are in
13 that hand. We know Dale Borero's drugs are in that hand. So he's grabbing at the
14 drugs. I would submit to you, Ladies and Gentlemen, the drugs don't fall down until
15 the shootout occurs or maybe after he's struck with the gun. But at the point where
16 he's grabbing at that hand Mr. Coleman is grabbing for those drugs.

17 And he really doesn't remember shooting four times, Mr. Coleman,
18 because again that would go against his story. Because that means he would have
19 to pull the trigger one time, two times, three times, four times.

20 The most honest thing Mr. Coleman said is I wanted what Dale Borero
21 had. I wanted methamphetamine and I wanted money. I believe him on that. Mr.
22 Coleman wanted that stuff and he was taking that by force. Use your common
23 sense with Instruction Number 47.

24 That's supposed to say he does not know anyone but supposedly goes
25 to meet a known violent drug dealer. And to be clear the only person who says Dale

1 Borero is violent is that man, because they want to dirty up this victim. They want to
2 make the victim look bad. Look, Dale Borero obviously selling methamphetamine at
3 the Traveler's Inn is not a Good Samaritan, but we have heard nothing about that
4 he's violent except for from that guy right there. He's a drug dealer. And the reason
5 why he's a drug dealer it makes him the target, because drug dealers have drugs
6 that you want and money that he wants.

7 He claims he doesn't know Dustin Bleak but then puts himself in danger
8 for him. He does not see drugs but goes toward them. He goes -- he doesn't see
9 the drugs, but he goes toward the victim as soon as the drugs come out. And then
10 Defendant says he goes toward the danger to deescalate it. Ladies and Gentlemen,
11 he wasn't going toward the danger. Mr. Coleman is the danger.

12 What does the video show? The video shows Mr. Coleman, the
13 Defendant, looking at -- and this is the Grace's car right here -- as they drive away.
14 And maybe he does think the Grace brothers might be with Dale. That would be a
15 good reason to wait for them to drive away before you rob Dale, right, because you
16 don't want people that might be associated with them helping him out? He's
17 physically watching them drive away. You'll see that in the video, 21:23:31.

18 Look at how Dale's acting. Exactly what Rachel Bishop said, not
19 listening to Dustin Bleak, whatever Dustin Bleak is yelling at him. No gun in his
20 hand. He's not acting in any threatening manner. As soon as that car drives away
21 he looks back at Dale Borero. Dale Borero starts pulling out the drugs. He slowly
22 and calmly walks up to him. Hiding in his sweatshirt this gun, slowly walks up to
23 him. And right within two feet of his head, if not closer, puts the gun directly to his
24 head and then starts grabbing. And then he -- when that's not enough he hits. And
25 that's when he grabs some more, and when that doesn't work he starts shooting.

1 Ladies and Gentlemen, it doesn't -- I want to make this very clear, it
2 does not matter who shot first. It does not matter. Felony murder if you were
3 robbing someone and someone dies even if they shot first, that's not again there's
4 no self-defense. If you're the original aggressor in self -- if you don't treat it as
5 felony murder, which this is, if you want to treat this as a self-defense case it still
6 doesn't matter because clearly the aggressive acts -- the aggressive acts that turn
7 this into a lethal incident was by this man right there, Mr. Coleman. So it does not
8 matter, but he shot first.

9 This is at 21:24:02. This is the blown up. You have Coleman there.
10 You have Dale Borerro there. If Dale Borerro shot, and you see -- can see the
11 muzzle flare right there. If Dale Borerro shot you would find that be right to the back.
12 Remember that from the Detective Miller and from Anya Lester? It would have been
13 behind that storage unit. Instead all those casings are found right here in the middle
14 of the storage unit where he was positioned after he was shot a couple times trying
15 to defend himself. As Detective Miller testified the physical evidence clearly shows
16 he shot first. But it doesn't matter.

17 You admit what you can't deny. You deny what you can't admit. When
18 he didn't see the video Mr. Coleman denied everything. After having a few years to
19 contemplate it Mr. Coleman seeing the video then has to admit certain things. He
20 has to admit he was there with Dustin Bleak. He has to admit that he was there with
21 Mr. McCampbell. He has to admit that he pulled a gun first. He has to admit that he
22 pistol whipped him. He has to admit those stuff. And he has to deny it was a
23 robbery despite all the evidence that it was a rob -- all the 21 things that Mr. Hamner
24 pointed out saying that there -- this was a robbery. He has to deny that, because if
25 it's a robbery it's felony murder. And because this is a robbery it's a felony murder.

1 This man right here should be found guilty of first degree murder. And.
2 Ladies and Gentlemen, I ask you to find him guilty as such. Thank you.

3 THE COURT: Thank you. Alright we're going to swear our officers to take
4 charge of our jurors.

5 [The Clerk swears in the officers to take charge of the jurors and the
6 alternates]

7 THE COURT: Alright, folks you're going to gather up all your belongings.
8 Lunch is here, correct? Yes. Okay, Mr. Barrientos and Mr. Wright, you all were our
9 alternates. So when you guys go back out here you're going to kind of peel off with
10 Molly. She's going to get some information from you. You're going to be free to go
11 ahead and leave, although you're still under the same admonition not to discuss the
12 case in any fashion until such time as we let you know that the jury's finished their
13 deliberations and you've been discharge.

14 The rest of you will kind of go with Joel. So you can go ahead take all
15 your belongings with you right now, coats, jackets, any of that type stuff. And we'll
16 get lunch back there for you. You two guys can grab some of the lunch if you wish
17 before you leave. But you all can't start your deliberations until the alternates grab
18 their lunch and get out there, okay? Alright, guys thank you very much.

19 [Outside the presence of the jury]

20 THE COURT: Do you guys have anything outside the presence?

21 MR. SCHWARTZER: Not by the State, Your Honor.

22 THE COURT: Okay.

23 MR. SCHWARZ: I do not, Your Honor.

24 ...

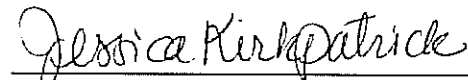
25 ...

1 THE COURT: Just a reminder I need everybody to get us copies of your
2 PowerPoints, so we can have them marked as court exhibits.

3 [Off the record for jury deliberation at 1:49 p.m.]

4 * * * * *

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

7 

8 Jessica Kirkpatrick
9 Court Recorder/Transcriber

JAN 10 2017

BY Deborah Miller
DEBORAH MILLER, DEPUTY

1 INST

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

CASE NO: C-13-293296-2

10 DARION MUHAMMAD-COLEMAN,
11 aka Darion Muhammadcoleman,

DEPT NO: 3

12 Defendant.

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.



INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Indictment that on or about the 19th day of April, 2013, the Defendant committed the offenses of CONSPIRACY TO COMMIT ROBBERY; ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (; MURDER WITH USE OF A DEADLY WEAPON; BATTERY WITH USE OF A DEADLY WEAPON; ASSAULT WITH A DEADLY WEAPON; CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT and ATTEMPT TO POSSESS CONTROLLED SUBSTANCE to wit:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

did then and there meet with Dustin Bleak and/or Travis Costa and between themselves, and each of them with the other, willfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 2 and 3, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

did then and there willfully, unlawfully and feloniously attempt to take personal property, to-wit: lawful money of the United States and/or narcotics, from the person of DALE BORERO, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said DALE BORERO, Defendant using a deadly weapon, to-wit: a handgun, during the commission of said crime, by pointing said handgun at the said DALE BORERO and/or striking the said DALE BORERO with a handgun and attempting to take said lawful money of the United States and/or narcotics from the said DALE BORERO, the Defendant being responsible under one or more of the following principles of criminal liability, to-wit: (1) by directly committing the crime; and/or (2) pursuant to a conspiracy; and/or (3) by aiding or abetting in the commission of the crime by co-conspirator Dustin Bleak arranging for a meeting with DALE BORERO under the

1 pretext of purchasing a controlled substance and/or paying an outstanding debt to DALE
2 BORERO and distracted DALE BORERO while Defendant DARION MUHAMMAD-
3 COLEMAN, aka Darion Muhammadcoleman attempted to rob DALE BORERO at gunpoint.

4 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

5 did then and there wilfully, feloniously, without authority of law, and with
6 premeditation and deliberation, and with malice aforethought, kill DALE BORERO, a
7 human being, by shooting at and into the body of the said DALE BORERO, with a deadly
8 weapon, to-wit: a handgun, the Defendant being responsible under one or more of the
9 following principles of criminal liability, to-wit: (1) by having premeditation and
10 deliberation in its commission; and/or (2) the killing occurring during the perpetration or
11 attempted perpetration of a robbery.

12 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON

13 did then and there willfully, unlawfully, and feloniously use force or violence upon
14 the person of another, to-wit: DALE BORERO, with use of a deadly weapon, to-wit: a
15 handgun, by striking the said DALE BORERO in the body and/or head and/or face with said
16 handgun.

17 COUNT 5 - ASSAULT WITH A DEADLY WEAPON

18 did then and there willfully, unlawfully, feloniously and intentionally place another
19 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
20 to use physical force against another person, to-wit: RICHARD MCCAMPBELL, with use
21 of a deadly weapon, to-wit: firearm, by pointing and/or brandishing and/or displaying the
22 said firearm at the said RICHARD MCCAMPBELL and threatening to shoot the said
23 RICHARD MCCAMPBELL.

24 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES
25 ACT

26 did willfully, unlawfully, and feloniously conspire with Dustin Bleak and/or Travis
27 Costa and each of them with the other to violate Uniform Controlled Substances Act, and in
28 furtherance of said conspiracy, the Defendants did commit the acts as set forth in Count 7,

1 said acts being incorporated by this reference as though fully set forth herein.

2 COUNT 7 - ATTEMPT TO POSSESS CONTROLLED SUBSTANCE

3 did then and there willfully, unlawfully, knowingly, intentionally and feloniously
4 attempt to possess a controlled substance, to-wit: by traveling to 2855 East Fremont Street,
5 Las Vegas, meeting with DALE BORERO and attempting to obtain Methamphetamine
6 and/or Cocaine from the said DALE BORERO and/or by pointing a firearm at the said
7 DALE BORERO and demanding he turn over any Methamphetamine and/or Cocaine on his
8 person, the Defendant being responsible under one or more of the following principles of
9 criminal liability, to-wit: (1) by directly committing the crime; and/or (2) pursuant to a
10 conspiracy; and/or (3) by aiding or abetting in the commission of the crime by co-conspirator
11 Dustin Bleak arranging for a meeting with DALE BORERO under the pretext of purchasing
12 a controlled substance and/or paying an outstanding debt to DALE BORERO and distracted
13 DALE BORERO while Defendant DARION MUHAMMAD-COLEMAN, aka Darion
14 Muhammadcoleman attempted to rob DALE BORERO at gunpoint.

15 It is the duty of the jury to apply the rules of law contained in these instructions to the
16 facts of the case and determine whether or not the Defendant is guilty of one or more of the
17 offenses charged.

18 Each charge and the evidence pertaining to it should be considered separately. The
19 fact that you may find a defendant guilty or not guilty as to one of the offenses charged
20 should not control your verdict as to any other offense charged.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 10

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

INSTRUCTION NO. 11

Certain recorded statements of the Defendants have been admitted. Portions of those statements were ordered to be redacted by the court. The jury is not to consider or speculate on any of the portions that have been taken out of the statements.

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

1
2 It is not necessary in proving a conspiracy to show a meeting of the alleged
3 conspirators or the making of an express or formal agreement. The formation and existence
4 of a conspiracy may be inferred from all circumstances tending to show the common intent
5 and may be proved in the same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
7 evidence.
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Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.

In determining whether or not such an act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt; but acts of a person who intends to commit a crime will constitute an attempt where they themselves clearly indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some circumstance not intended in the original design.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. obtain or retain possession of the property,
2. to prevent or overcome resistance to the taking of the property, or
3. to facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 17

In this case the defendant is accused in an Amended Indictment alleging an open charge of Murder. This charge includes and encompasses Murder of the First Degree and Murder of the Second Degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief, or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 21

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements – willfulness, deliberation, and premeditation – must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

INSTRUCTION NO. 22

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

INSTRUCTION NO. 24

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

INSTRUCTION NO. 26

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

INSTRUCTION NO. 28

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 29

The prosecution is not required to present direct evidence of a defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

INSTRUCTION NO. 30

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

There are certain kinds of murder which carry with them conclusive evidence of malice aforethought. One of these classes of murder is murder committed in the perpetration or attempted perpetration of a robbery. Therefore, a killing which is committed in the perpetration or attempted perpetration of robbery is deemed to be murder of the first degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

INSTRUCTION NO. 32

While a guilty verdict must be unanimous, you need not be unanimous on the means or the theory of first degree murder in arriving at your verdict.

INSTRUCTION NO. 33

All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is murder with malice aforethought, but without the admixture
of premeditation and deliberation.

If you find that the State has established that the defendant has committed Murder of the First Degree, you shall select Murder of the First Degree as your verdict.

The crime of Murder of the First Degree includes the crime of Murder of the Second Degree. You may find the Defendant guilty of the lesser-included offense of Murder of the Second Degree if:

(1) after first fully and carefully considering the charge of Murder of the First Degree, you either

(a) find the defendant not guilty of that charge, or

(b) are unable to agree whether to acquit or convict on that charge; and

(2) all twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of Murder of the Second Degree.

If you are convinced beyond a reasonable doubt that the killing was unlawful, but you have reasonable doubt whether the crime is Murder of the First Degree or Murder of the Second Degree, you must give the defendant the benefit of that doubt and return a verdict of Murder of the Second Degree.

1
2 The right of self-defense is not generally available to an original aggressor, that is a
3 person who has sought a quarrel with the design to force a deadly issue and thus through his
4 fraud, contrivance or fault, to create a real or apparent necessity for making a felonious
5 assault.

6 Where a person without voluntarily seeking, provoking, inviting, or willingly
7 engaging in a difficulty of his own free will is attacked by an assailant, he has the right to
8 stand his ground and need not retreat when faced with the threat of deadly force.
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The killing of another person in self-defense is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and

2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
2. A reasonable person in a similar situation would believe himself to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

INSTRUCTION NO. 38

If a person kills another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and the person killed was the assailant. or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

INSTRUCTION NO. 39

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

INSTRUCTION NO. 40

Self-defense is not a defense to first-degree murder based on the felony murder rule.

INSTRUCTION NO. 41

Battery means any willful and unlawful use of force or violence upon the person of another.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

INSTRUCTION NO. 42

An Assault With a Deadly Weapon is an intentional placing of another person in reasonable apprehension of immediate bodily harm, by or through the use of a deadly weapon.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. 43

If you find the Defendant guilty of Murder, Attempt Robbery, Battery or Assault, you must also determine whether or not a deadly weapon was used in the commission of that crime.

A deadly weapon is any instrumentality which is inherently dangerous. Inherently dangerous means that the instrumentality itself, if used in the ordinary manner contemplated by its design and construction, will, or is likely to, cause a life-threatening injury or death.

A firearm is a deadly weapon.

INSTRUCTION NO. 44

When two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act and one of the conspirators does an act in furtherance of the conspiracy each conspirator is guilty of Conspiracy to Violate the Uniform Controlled Substances Act.

You are instructed that the possession of methamphetamine is a violation of the Uniform Controlled Substances Act.

1
2 Except as authorized by law, anyone who knowingly or intentionally has a controlled
3 substance in his possession is guilty of the crime of Possession of a Controlled Substance.

4 In order to prove the commission of this crime, each of the following elements must
5 be proved:

- 6 1. That a person unlawfully had dominion and control of a certain controlled substance;
- 7 2. That such person had knowledge of its presence; and
- 8 3. That such person had knowledge of its nature as a controlled substance.

9
10 A defendant's knowledge that the substance he possessed was a controlled substance
11 may be shown by direct evidence or by circumstantial evidence and reasonably drawn
12 inferences.

13 Methamphetamine is a controlled substance.
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INSTRUCTION NO. 46

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 48

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

1
2 When you retire to consider your verdict, you must select one of your member to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for your
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.

1
2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his/her counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is
10 not at liberty to supplement the evidence.

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

INSTRUCTION NO. 57

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: 

DISTRICT JUDGE



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 WEDNESDAY, JANUARY 11, 2017

13
14 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7**

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.

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24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 11, 2017, 2:07 P.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: We're on the record, Mr. Muhammad-Coleman's present,
5 his attorney, State's attorneys are present. We're outside the presence of our
6 jury.

7 So this morning while we were in our morning calendar, the jury
8 originally sent out a request through Joel saying, We want to rehear
9 defendant's testimony. So I told Joel you need to go back and communicate
10 with them and they need to be specific about what it is they need to hear so
11 we can get the court recorder to get everything arranged, and then we're going
12 to have to figure out whether we can do it in another courtroom while I'm still
13 in calendar because we were in calendar until after 1:00 o'clock. They then
14 sent out a note and it's going to be marked as a Court Exhibit, that said, We
15 want to rehear --

16 Hold on one second. Go ahead and close the door.

17 -- we want to rehear the testimony, the defendant's testimony,
18 direct and cross, it wasn't really any more specific than that. And then a
19 question was on there, it said, Where was the defendant arrested? So I had
20 typed up a response that said, We'll arrange to get the testimony read back to
21 you, we'll get everybody over here, we need to give them the opportunity to be
22 present. Regarding your second question, I can't supplement the evidence. I
23 just left it at that.

24 Gave that to Joel who went back in there and then a little later they
25 had a verdict. So there was no indication that they still needed to hear

1 testimony. I mean, sometimes we get it, we get notes out and while I'm
2 answering them they come back and say, We've got a verdict.

3 Was that pretty much how I characterized the request to you
4 originally, correct, Joel, in that they said they wanted to rehear the testimony?

5 THE MARSHAL: Yes, that's correct.

6 THE COURT: Okay. Anybody have anything, any record you want to
7 make in regard to that?

8 MR. SCHWARTZER: No, Your Honor.

9 MR. SCHWARZ: No, Your Honor.

10 THE COURT: Mike? Okay. All right, and just make sure, Joel, that we
11 get that because we've got to mark it as a Court Exhibit, so they don't throw it
12 away or anything.

13 THE MARSHAL: Yes, they have it. Do you want me to bring it in?

14 THE COURT: No, no, no, that's okay. I'll get it from them when they're
15 done. All right, you can go ahead and bring 'em in.

16 [In the presence of the jury panel]

17 THE MARSHAL: All rise for the jury.

18 Jury's present, Your Honor.

19 THE COURT: Thank you. All right, you-all can be seated, thank you.
20 We're going to be on the record, Mr. Muhammad-Coleman's present with his
21 attorney. State's attorneys are present. Our jurors are all present.

22 Ms. Ford, it's my understanding you're the foreperson of the jury,
23 correct?

24 And the jury's reached a verdict?

25 JUROR NO. 8: Yes, they have.

1 THE COURT: And do you also have a copy of the question that you-all
2 sent out that I sent the response back on?

3 JUROR NO. 8: I have it in the --

4 THE COURT: Is it in the jury deliberation room? Okay, we'll get that in a
5 minute. Could you go ahead and hand the verdict form to my marshal if you
6 would, please.

7 Thank you.

8 All right, and you-all can remain seated.

9 State of Nevada versus Darion Muhammad-Coleman, case
10 C293296, Department Number 3, verdict: We the jury in the above entitled
11 case find the defendant, Darion Muhammad-Coleman, a.k.a.,
12 Darion Muhammadcoleman, as follows: Count 1, conspiracy to commit
13 robbery, not guilty; Count 2, attempt robbery with use of a deadly weapon, not
14 guilty; Count 3, murder with use of a deadly weapon, guilty of first degree
15 murder with use of a deadly weapon; Count 4, battery with use of a deadly
16 weapon, guilty of battery with use of a deadly weapon; Count 5, assault with a
17 deadly weapon, not guilty; Count 6, conspiracy to violate uniform controlled
18 substances act, guilty of conspiracy to violate uniform controlled substances
19 act; Count 7, attempt to possess controlled substance, guilty of attempt to
20 possess controlled substance. Signed by our foreperson, dated this 11th day of
21 January, 2017.

22 Ladies and gentlemen of the jury, are those your verdicts as read,
23 so say you one so say you all?

24 THE JURY IN UNISON: Yes.

25 THE COURT: Yes? Does either side wish to have the jury polled?

1 MR. SCHWARZ: Yes, Your Honor, I do.

2 THE COURT: All right. We just do that by number starting up at the top
3 right, so Juror Number 1, are those your verdicts as read? That's
4 Ms. Hammond.

5 JUROR NO. 1: Yes.

6 THE COURT: Okay. Juror Number 2, are those your verdicts as read?

7 JUROR NO. 2: Yes, Your Honor.

8 THE COURT: Juror Number 3, are those your verdicts as reads?

9 JUROR NO. 3: Yes.

10 THE COURT: Juror Number 4, are those your verdicts as reads?

11 JUROR NO. 4: Yes.

12 THE COURT: Juror Number 5?

13 JUROR NO. 5: Yes, Your Honor.

14 THE COURT: Juror Number 6?

15 JUROR NO. 6: Yes.

16 THE COURT: Juror Number 7?

17 JUROR NO. 7: Yes, Your Honor.

18 THE COURT: Juror Number 8?

19 JUROR NO. 8: Yes.

20 THE COURT: Juror Number 9?

21 JUROR NO. 9: Yes.

22 THE COURT: Juror Number 10?

23 JUROR NO. 10: Yes, Your Honor.

24 THE COURT: Juror Number 11?

25 JUROR NO. 11: Yes. sir.

1 THE COURT: Juror Number 12?

2 JUROR NO. 12: Yes, Your Honor.

3 THE COURT: Okay. Thank you very much, ladies and gentlemen, with
4 that we're going to go ahead and record our verdict into the minutes of the
5 court. And that concludes your service. So I'm sure you'll be happy not to
6 hear me spout off that admonition to you now as you get up to leave about
7 who you can talk to and what you can or cannot do or who you don't have to
8 talk to any of that kind of stuff. Which simply means that you're free now to
9 talk to anybody that you want to, but you do not have to talk to anybody if you
10 don't want to. And if anybody persists, whether it's today or any day
11 hereafter, in trying to talk to you about your jury service after you've told them
12 you don't wish to talk about it, then by all means, call my chambers and we'll
13 do what we need to do to assist you with that.

14 I will tell you that once a trial comes to completion, sometimes the
15 attorneys like to have an opportunity to talk to jurors to learn a little bit about
16 what you thought about your experience. They cannot talk to you about your
17 deliberative process because that is private to you. That's why we don't let
18 anybody come in the room while you-all are deliberating on your verdict. But
19 attorneys do sometimes like to chat with jurors afterwards to find out, you
20 know, what did you think about the whole process of being summonsed into
21 court, what did you think about how the jury selection process occurs, what did
22 you think about their performance and how they do things during a trial because
23 that's all a really good learning tool because you're the ones that sit in judgment
24 of those issues within the community.

25 So if you have a few minutes of time and you can talk to them, that

1 would great. If you don't want to you certainly don't have to. You've been
2 here for a long time, I get that. And you're probably eager to get on your way,
3 so don't feel like you have any obligation to do that.

4 Joel's going to take you back to the deliberation room right now
5 and I'll be back there in a minute to chat with you. You don't have to chat with
6 me if you don't want to either. If you want to just take off as soon as we're
7 done and you walk out of the courtroom, you're absolutely free to do that.
8 Okay? But I will be back to the room in just a moment to talk to you. And
9 other than that, I will just tell you that I very much appreciate, on behalf of all
10 the people in your panel that did not have to do jury duty, as well as your
11 community and our court system, you have my great thanks for your patience
12 and your presence here and your professionalism over the last several days. I
13 really do appreciate it and I thank you for your time. Okay?

14 So why don't you go ahead and step outside with Joel and I'll be
15 out there in just a minute. And as I said, if any of you want to leave, you can
16 just go left and be on your way, I get it. Thank you.

17 [Outside the presence of the jury panel]

18 THE COURT: Okay. Anybody have anything outside the presence of our
19 jury?

20 MR. SCHWARZ: Yes, Judge, I do, just sort of a housekeeping matter.

21 THE COURT: Okay.

22 MR. SCHWARZ: My client was remanded to the County. I don't know if
23 he needs to -- he's serving an 8-to-20 sentence in prison.

24 THE COURT: Yeah, no, we'll let him go back up to the prison.

25 I'm assuming you prefer to go back up to the prison, correct? All

1 right. Mr. Muhammad-Coleman indicated "yes." You can go back up to the
2 prison. We'll go ahead and set this matter down for sentencing in 50 days,
3 which is going to be?

4 THE CLERK: March 2nd at 9:00 a.m.

5 THE COURT: And we'll refer it to P and P to get a P.S.I. related to this
6 case and then the State can just do an order to produce to get him back down
7 here in order to transport to get him back down here for the March 2nd date.
8 Does that date work with both sides?

9 MR. SCHWARZ: Yes.

10 MR. SCHWARTZER: It does for me, Your Honor.

11 THE COURT: Okay. And on this case based upon the jury's verdict, I am
12 going to remand him to custody on this case without bail.

13 All right. Do you guys have anything further?

14 MR. SCHWARTZER: No, Your Honor.

15 THE COURT: All right. We will be in recess. Thank you all very much.

16 MR. SCHWARZ: Thank you, Judge.

17 [Recess at 2:15 p.m.; proceedings recalled at 2:17 p.m.]

18 THE COURT: What I left on the table, I think you-all already had this --

19 MR. SCHWARZ: Yes.

20 THE COURT: -- the items from, I guess it's his grandmother.

21 MR. SCHWARZ: That's correct.

22 THE COURT: Brought it over to court this morning, so we just made
23 copies and gave it to you-all. And for the record, it's just a lot of -- there's
24 court documents from some almost 20-year-old civil case, a bunch of
25 statements about former County Manager, Don Burnett, whom she believes is

1 also an attorney and is also is apparently George Zimmerman who killed
2 Trayvon Martin.

3 MR. SCHWARZ: That's -- are we off the record, Judge?

4 THE COURT: No, we're on the record.

5 MR. SCHWARZ: Okay.

6 THE COURT: Because I'm just making a record that she dropped this off
7 for me and it doesn't really have anything to do with the case.

8 MR. SCHWARZ: Yes, on the record, I had previously received a copy of
9 it and I --

10 THE COURT: And your legal assistant called us and said, We told her this
11 doesn't have anything to do with this case, do not go trying to give this to the
12 Court. But because she brought it over here, I thought we would just make a
13 record of it and give you copies.

14 MR. SCHWARZ: Thank you.

15 THE COURT: So I appreciate it. Okay.

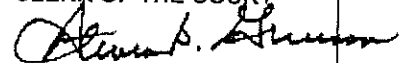
16 PROCEEDING CONCLUDED AT 2:18 P.M.

17 * * * * *

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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,

CASE NO. C-13-293296-2

7 Plaintiff,

DEPT. NO. III

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

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

13 TUESDAY, MARCH 28, 2017

14 **RECORDER'S TRANSCRIPT OF SENTENCING: JURY TRIAL**

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19 APPEARANCES:

20 For the State:

MICHAEL J. SCHWARTZER
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER
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23 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

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25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 28, 2017, 9:55 A.M.

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3 THE COURT: On Mr. Muhammad-Coleman, it's 293296, matter is on for
4 sentencing; any legal cause or reason why sentencing should not go forward?

5 MR. SCHWARZ: No, Your Honor.

6 THE COURT: All right.

7 MR. SCHWARTZER: Your Honor, I guess there's one thing I was noticing
8 was the P.S.I. from Mr. Muhammad-Coleman's robbery case includes a
9 considerable amount of more offenses from his juvenile than the murder one.
10 Some of those cases I would like to mention in my argument, if at all possible.

11 THE COURT: Wait, I'm --

12 MR. SCHWARTZER: So I don't know if the defense will have an issue
13 with that.

14 THE COURT: I'm confused. Go ahead again.

15 MR. SCHWARTZER: The P.S.I. from case C299066, which is his robbery
16 with use case which he's currently serving 8 to 20 years on.

17 THE COURT: Okay.

18 MR. SCHWARTZER: At that page 4, has a considerable amount more
19 juvenile offenses than if you look at the murder case.

20 THE COURT: Oh, okay.

21 MR. SCHWARZ: Well, I object to that, Judge.

22 THE COURT: Well, have you seen a copy of it?

23 MR. SCHWARZ: I have not.

24 THE COURT: All right. Why don't you give Mr. Schwarz a copy of it so
25 he knows what we're talking about here.

1 MR. SCHWARTZER: Okay.

2 THE COURT: I'm less concerned with me having it, I mean, it's
3 something that's available to you if it's in the other P.S.I., so you can certainly
4 make argument about it.

5 MR. SCHWARTZER: It is.

6 THE COURT: But I think they're --

7 MR. SCHWARTZER: And I know it wasn't objected to during sentencing
8 in front of Judge Smith.

9 THE COURT: Well, but I don't --

10 Mike, you didn't represent him in that case, did you?

11 MR. SCHWARZ: I did not.

12 THE COURT: Okay.

13 MR. SCHWARZ: All right, Judge, I've seen it. I'm still objecting for the
14 record.

15 THE COURT: Okay. All right. Well, I'll allow you to go ahead.

16 Mr. Schwartzer.

17 MR. SCHWARTZER: Judge, we're going to ask for 25 years to life to run
18 consecutive to case C299066. The recommendation by Parole and Probation is
19 23 to life with a consecutive amounts, we're only a couple years apart from
20 each other.

21 Your Honor, you -- Your Honor, you've heard the murder case in
22 detail. You were here for the jury trial. You watched the video. This is one of
23 the clearest cases of first degree murder I think I've seen while working in the
24 District Attorney's Office. Mr. Coleman's actions in that video speaks volumes,
25 the way he waits until witnesses disappear, take the firearm, put it directly to

1 Dale Borero's head, ask for -- for the drugs, pistol whips him a bunch of times
2 and only until Dale defends himself, then he starts shooting and kills him,
3 clearly, first degree murder and the jury found that way.

4 What Your Honor does not know, except for the judgment of
5 convictions that came in during the trial is that Mr. Muhammad-Coleman, this
6 isn't the first time he's dealing with guns, it's not the first time he's trying to
7 rob somebody. His conviction for robbery back in 2013 occurred on March 14th
8 of 2013, one month before the murder. Those -- those are two individual
9 robberies. The first case is a woman by the name of Ms. Rhodes who's driving
10 her Porsche. Mr. Muhammad-Coleman and his friends see her driving that
11 Porsche. They follow her to her house. They wait 'til she goes to the garage.
12 They go into her garage. They rob her at gunpoint of the vehicle and other
13 property that she has. Just a normal -- just an ordinary woman driving home in
14 the middle of the day.

15 That's not enough for Mr. Muhammad-Coleman. About six hours
16 later they follow another individual, this is a male now driving a Dodge Charger.
17 His name is Cesar Loza. He drives a pretty nice Dodge Charger. They follow
18 him to his house. They rob him at gunpoint. That's not enough. They go
19 inside Mr. Loza's house where he has a infant daughter and a wife and they rob
20 those individuals with his wife and child there at gunpoint. That's what he did
21 a month before he did this murder, a month before he did this robbery.

22 Clearly Mr. Muhammad-Coleman has shown through his course of
23 actions that he's an extremely violent human being who will go to all lengths in
24 order to commit robberies, even as he's shown in this case, murder somebody.
25 This is not Mr. Muhammad-Coleman's first -- these aren't his first incidents with

1 the criminal justice system. He's been doing it since 2005 since he's been a
2 little kid. He's been committing crimes. Several of his juvenile crimes, the ones
3 that are in the murder P.S.I., include assault with a deadly weapon, include
4 using a firearm, include battery with a deadly weapon or other sharp object with
5 a violation of probation. If you look at the ones from the robbery case, that
6 also involves use of a -- possession of a firearm, possession of an unregistered
7 firearm, battery with a deadly weapon --

8 THE COURT: What are the dates that you're referring to from the robbery
9 case that aren't in the murder case?

10 MR. SCHWARTZER: Okay. In -- first off, I mentioned the January 25,
11 2005, larceny. That's just his first -- that's just to show that his start of the
12 criminal justice system.

13 THE COURT: Okay.

14 MR. SCHWARTZER: Then in 2008 he's arrested for having a stolen
15 vehicle, that's August 22nd. He's committed to formal probation with
16 conspiracy to commit burglary in that case on May 5th of 2009. He then has a
17 violation of probation in 2009. The next case after that is the case that is on
18 the murder P.S.I., which is the June 17th, 2009 --

19 THE COURT: Got it.

20 MR. SCHWARTZER: -- you know, false information, assault with a deadly
21 weapon.

22 THE COURT: Okay.

23 MR. SCHWARTZER: But then December 2nd, 2009, he has a violation of
24 probation, battery by prisoner, which he was referred to suspended
25 commitment on February 18th of 2010. And additionally, he has an

1 October 18th, 2011, arrest for possession of a firearm and a possession of
2 unregistered firearm, which again in December 27th, 2011, he's referred to
3 formal probation on possession of a firearm.

4 THE COURT: Okay.

5 MR. SCHWARTZER: So we have multiple cases in which he has the
6 firearm. So based on this pretty -- I mean, despite the fact he's so young when
7 he commits this murder, he has a pretty lengthy criminal history including
8 extremely violent cases that include robbery with use in an individual's
9 household, twice in the same day.

10 Now the murder case itself, Your Honor, again, you've seen the
11 video. I'm not going to go into great detail about this, but there were many
12 ways for this case to not be a homicide. The only reason why it became a
13 homicide is because of what Muhammad-Coleman was there to do and that
14 was to rob Dale Borerio. He's the one who made the choice to commit the
15 murder. Now it's his -- it should be this Court's decision, this Court's choice to
16 put him away for 25 years to life.

17 MR. SCHWARZ: Judge, I don't want to interrupt co-counsel, but my
18 client wasn't convicted of robbery. I think it's -- and I know you are aware of
19 that, but I think it's, you know, procedurally misleading, he keeps saying that.

20 MR. SCHWARTZER: He's convicted -- he's convicted of robbery. He's
21 doing to 8 to 20 years.

22 THE COURT: Well, I mean, they're -- they're entitled to make the
23 argument that he was there to commit a robbery, whether the jury ultimately
24 found him guilty of a robbery or didn't find him guilty of a robbery doesn't mean
25 they can't make the argument that was the purpose in going there. So I'll note

1 the objection, but you can continue.

2 MR. SCHWARTZER: Okay. And I want to point out, he's a convicted
3 robber with a deadly weapon, so we have the judgment of conviction, which
4 you saw in trial.

5 THE COURT: Well, that's in the other case. Understood.

6 MR. SCHWARTZER: True.

7 So, Your Honor, based on his extensive criminal history, based on
8 the violence of this case, based on the -- just the fact that this is something
9 that could have been avoided in so many different ways, I think the 25 years to
10 life should run consecutive. He shouldn't get a freebie on the robberies just
11 because he commits a murder a month later. So the 25 years to life should run
12 consecutive to the robbery with use case and we'd submit it on that.

13 We do have two speakers, both the daughter, two daughters of the
14 victim.

15 THE COURT: Okay.

16 MR. SCHWARTZER: One was -- one was noticed, one was not noticed.
17 We have talked to Mr. Schwarz about it. We have had two other people who
18 were noticed who won't speak. They have agreed to let her speak in order to
19 go forward with sentencing today.

20 THE COURT: All right.

21 MR. SCHWARZ: And, Judge, I just want make a complete record on this
22 just for my client's edification. Our alternative to not going forward with the
23 unnoticed witness would be to have the State reset the sentencing, notice me.
24 I don't believe my client would want to do that. In fact, he's shaking his head
25 no for the record. So that is why we are agreeing with the unnoticed witness

1 or not complaining about that.

2 THE COURT: All right.

3 All right, Mr. Muhammad-Coleman, is there anything you want to
4 say, sir?

5 THE DEFENDANT: Yes. I want to say, unfortunately a person has died.
6 However, I didn't plan to kill anyone. It wasn't my intention to kill anyone.
7 And as Mr. Schwartz said, he said I went there to rob someone and that was
8 my whole reason for killing him, right? But I beat the robberies, right? So now
9 you're saying that I got in a car with a gun and got out of the car and put a gun
10 to his face and my intention was to kill him. But the way it presented at trial,
11 Your Honor, was I went there to rob him, he wouldn't give me his property, so I
12 killed him in the process of that. Right? So, that's all I want to say,
13 Your Honor.

14 THE COURT: All right. Mr. Schwarz.

15 MR. SCHWARZ: Judge, you know, look, we can talk about this video all
16 we want to. This video was not dispositive of anything. Even Detective Mogg,
17 who clearly, you know, is a very strong witness for the State and has very
18 strong ideas about what happened in this case, couldn't say definitively who
19 fired the first shot. I believe the video shows, you know, my client producing a
20 weapon first. I believe the video shows my client not shooting Mr. Borero, but
21 hitting him in the head with the gun to put him down on the ground. And when
22 that did not work, Mr. Borero pulls his weapon. And what happens is a
23 gunfight. This is just like the Wild West.

24 And I would submit to you, Your Honor, that the only reason I'm
25 standing here representing Mr. Coleman is because of happenstance because

1 just as easily he could have been the murder victim and don't think for a minute
2 the State would not have prosecuted Mr. Borero for a number of different
3 crimes not including being in possession with an intent to sell and having a
4 firearm as a prohibited person, and at the very least second degree murder or
5 first degree murder. When you have a situation where either one of these
6 parties could have been killed in this incident, okay, it sort of doesn't matter
7 how it got started. Both of them are armed. Both of them are there for an illicit
8 purpose. And everybody is taking their chance carrying a pistol. And
9 Mr. Borero was armed and my client knew he was armed.

10 Now, obviously, the jury did not buy our self-defense argument, but
11 the fact of the matter is the State could produce no witnesses to explain what
12 was going on at the time of the shooting. They could have had Dustin Bleak
13 here who was with them. They could have had the other guy, Bleak's brother, I
14 can't remember his name at the time, to say here's what was going on. They
15 had nothing. All they had is poor Mr. McCampbell who in the end couldn't even
16 testify to his own Grand Jury testimony and in the end couldn't say or wouldn't
17 say that my client ever threatened him with a gun and therefore my client was
18 acquitted of assault with a deadly weapon on Mr. McCampbell.

19 Similarly, Judge, the jury acquitted my client of not only robbery
20 with a deadly weapon, but of conspiracy to commit robbery with a deadly
21 weapon. And so having done that, somehow found him guilty of first degree
22 murder with, you know, premeditation and deliberation and intent, somehow
23 when that was really only secondarily argued by the State. Yes, they gave it a
24 little lip service in their closing argument, but the focus here was on felony
25 murder, felony murder, felony murder and in the end they didn't get it. Now

1 we'll deal with that with the appeal.

2 What I want to tell you, Judge, is I don't know what happened in
3 his robbery case 'cause I wasn't involved in that. But whatever happened, the
4 State was comfortable with an 8-to-20 and he's doing his 8-to-20. Now if the
5 State wants to complain about his lengthy criminal record, why is he only
6 getting an 8-to-20 for two robberies with use? Okay. I mean, you cannot
7 make negotiations with people and then stand here and say, I'm using this
8 crime that I negotiated for an 8-to-20 -- and I'm not accusing either of these
9 gentlemen of doing that -- as a basis for you to give him 25 years to life and run
10 it consecutive with that very same case.

11 I think the recommendation, Judge, is appropriate. I think the
12 20-to-life is appropriate. And I think that P and P's recommendation for an
13 additional 3 to 20 years is appropriate. What is not appropriate is to run this
14 case consecutive to the case he's already doing. I mean, first and foremost, I
15 don't know how much time he's got left on that case, but the -- the situation is
16 one case has nothing to do with the other.

17 In the specific facts of this case, and believe, me, Judge, believe
18 me when I tell you, you know, I have worn many hats in my criminal jobs and I
19 know how tragic it is when someone is murdered and being a victim of a
20 murder and having done murder investigations and done murder prosecutions
21 and done murder defense, I understand how -- how horrible it is for the victims
22 to lose a beloved family member. But if you look at the facts of this case,
23 Judge, this is not the worst of the worst. This is a situation that got out of
24 hand. It's a gunfight. Either one of them could have been killed. I'm asking
25 you to follow the recommendation of Parole and Probation except for the

1 consecutive sentence to the time he's doing.

2 Twenty-three years is enough. What is the purpose of my client
3 going to prison? It is to protect a community and it is to see if there isn't
4 anything that can be done about rehabilitating him so that when he comes out
5 he is not a violent person anymore. And I'm suggesting to you, Judge, that
6 23 years for a young man is enough to do that.

7 THE COURT: All right. Mr. Schwartzer.

8 MR. SCHWARTZER: The State's going to call Deserae.

9 THE COURT: All right. You'll raise your right hand for me, please.

10 Thank you.

11 **DESERAE LIANA MAHIAI-BORERO,**

12 [having been called as a speaker and first duly sworn, testified as follows:]

13 THE CLERK: Will you please state and spell your name for the record.

14 THE SPEAKER: Deserae Liana Mahiai-Borero, D-E-S-E-R-A-E, L-I-A-N-A,
15 M-A-H-I-A-I, hyphen, B-O-R-E-R-O.

16 MR. SCHWARTZER: Where do you want her to stand, Your Honor?

17 THE COURT: She can stand right with you. That's okay.

18 All right. What would you like to tell me today?

19 THE SPEAKER: I wrote something.

20 THE COURT: Did you write it down? Okay.

21 THE SPEAKER: I'm not going to sit here today and say that my dad was
22 perfect because he wasn't but nor was he a troublemaker. He would give you
23 the shirt off his back or money for you to buy one for yourself. He may have --
24 he may have carried guns and been to prison for that and drugs, but not once
25 does it say attempted murder or even battery for that matter. He was a hustler

1 and he was great at what he knew. Obviously, great enough for some random
2 nobody to senselessly take my father's life over jealousy, envy, and hate.

3 He has a family who missed him daily and grandkids who he'll never
4 even know about their grandpa. All we can do -- sorry.

5 THE COURT: That's okay.

6 THE SPEAKER: All we can do from today on is at least celebrate that
7 finally after four long and painful years my dad is finally going to be resting in
8 peace. Why should this murderer ever be freed when we, as the victim's family
9 have to live with such pain and agony for the rest of our lives.

10 A life for a life sentence. The death penalty would be too quick and
11 painless. He deserves to sit in jail and rot for the rest of his life with nothing
12 but the thought and the reason of why he is there to begin with. Today,
13 March 28th, 2017, we celebrate justice for my father. And I know that he is in
14 this courtroom with us today. My dad's not the one suffering anymore. This
15 murderer will be.

16 THE COURT: Thank you. Thank you for coming to court.

17 All right. Who else wished to speak?

18 MR. SCHWARTZER: Bonita.

19 THE COURT: Good morning. Can you go ahead and raise your right hand
20 for me as well? Thank you.

21 **BONITA BORERO,**

22 [having been called as a speaker and first duly sworn, testified as follows:]

23 THE CLERK: Will you please state and spell your name for the record.

24 THE SPEAKER: Bonita Borero, B-O-N-I-T-A; Borero, B-O-R-E-R-O.

25 THE COURT: Okay. What would you like to tell me, ma'am?

1 THE SPEAKER: I'm just going to make it short and simple. He took my
2 father away, so I'm going to bring him back. I just want to say thank you to
3 everybody who's finally bringing my dad's case to justice and he can finally rest
4 in peace.

5 THE COURT: All right.

6 THE SPEAKER: Thank you.

7 THE COURT: Thank you.

8 All right, well, look, there's -- there's not a lot to say,
9 Mr. Muhammad-Coleman. I mean, you have two lives that are essentially for --
10 or two groups of people whose lives are forever changed by the murder and the
11 Borero family as well as yourself, obviously, you're going to prison for a very,
12 very long time as a -- as a young man. But I -- I understand and I don't think
13 the State was making the argument that 8-to-20 was too light in that case, it's
14 how do you view the murder knowing that with a month prior to this case
15 occurring those other things were occurring. . And I agree that those are --
16 those are two separate events and they both deserve recognition from a -- from
17 a punishment standpoint because we're dealing with horribly violent crimes.

18 But I will also tell you that I sat through the same trial that you all
19 did obviously and -- and it was -- and I agree with you, Mike, that you can't just
20 watch a video and tell what it is that -- that happened in a vacuum. But I think
21 watching the video, listening to the testimony, looking at what the forensic
22 evidence was about where shell casings were found, I am convinced that your
23 client not only pulled the weapon first but he shot first as well before
24 Mr. Borero had produced a handgun.

25 And that's based in part on the conduct of the people in the video,

1 the reaction to certain things occurring. I think Mr. Borero was shot and going
2 down before he started firing his gun. And I think that's why the jury convicted
3 your client of first degree murder regardless of whether they think a robbery
4 actually occurred, I think there was evidence for them to say you produced a
5 gun and shot the man and they -- they found him guilty on the premeditated
6 and deliberate theory. So, in any event, I won't belabor it.

7 You're adjudicated guilty, Mr. Muhammad-Coleman, of first degree
8 murder with use of a deadly weapon, that was Count 3; battery with use of a
9 deadly weapon, Count 4; conspiracy to violate uniform controlled substances
10 act, Count 6; and I'm going to adjudicate you as a felon on attempt to possess
11 a controlled substance in Count 7. For the first degree murder charge, I have,
12 under 193.165, considered the use of the weapon and the circumstances
13 surrounding it, your criminal history, use of a weapon in the past, any mitigating
14 factors for purposes of adjudging an appropriate enhancement. So for the
15 murder charge, I'm going to sentence you to 20 to life, that's 240 months,
16 that's --

17 No, no, no, hey, hey, hey. Hey, hey, hey.

18 UNIDENTIFIED SPEAKER: Yes. Sorry.

19 THE COURT: Okay. This isn't a sporting event. We don't clap and cheer
20 and things like that, please, maintain some dignity.

21 This is life in prison with the minimum 240 months before parole
22 eligibility. For the weapon enhancement, 240 months maximum, 60 months
23 minimum. That runs consecutive to the murder portion. So it's a total of life --
24 aggregate of life in prison with a minimum 300 months before parole eligibility.

25 For Count 4, 48 to 120 months concurrent; Count 6, 24 to 60

1 months concurrent; Count 7, 19 to 48 months concurrent; and this case will
2 run consecutive to the sentence you're serving in 299066. I believe I had gone
3 through and calculated the credit up and through June 22nd of 2015, which is
4 when he was sentenced in the other case and that is 720 days.

5 THE DEFENDANT: Your Honor, can I say one thing?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: I would like the record to reflect that it was
8 self-defense, heat of passion, that's all I want to say.

9 THE COURT: Okay. All right.

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

11 THE COURT: Thank you, guys.

12 MR. HAMNER: Thank you, Your Honor.

13 PROCEEDING CONCLUDED AT 10:15 A.M.

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

24 

25 SARA RICHARDSON
Court Recorder/Transcriber