

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

2 * * *

3 MUHAMMAD-COLEMAN, DARION,

4 Appellant,

5 vs.

6 STATE OF NEVADA,

7 Respondent.

Case No: 82915 Electronically Filed
Dec 06 2021 04:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **APPELLANTS APPENDIX**

9 (Volume 1)

10 (Appeal from Judgment of Conviction (Found Guilty at Trial)- Eighth Judicial
11 District Court)

12
13
14 Waleed Zaman, Esq.

Nevada Bar No. 13993

15 6620 S. Tenaya Way

Suite 100

16 Las Vegas, Nevada 89113

(702) 842-4242 TEL

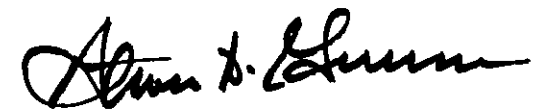
17 (702) 920-8837 FAX

Wally@ZTlawgroup.com

18 Attorney for Appellant, Darion Muhammad-Coleman

INDEX

<u>Document:</u>	<u>BATES. No.</u>
Indictment.....	Vol. 1 - 001
Petition for Writ of Habeas Corpus and Exhibits.....	Vol. 1 - 010
Supplemental Appendix of Exhibits with NDOC Phone Calls.....	Vol. 3 - 716
State’s Opposition to Petition for Writ of Habeas Corpus.....	Vol. 3 - 724
Reply to State’s Opposition.....	Vol. 4 - 751
Notice of Entry of Findings of Fact, Conclusions of Law and Order.....	Vol. 4 - 761
Notice of Appeal.....	Vol. 4 - 788
RTRANS Petition for Writ of Habeas Corpus – October 12, 2020.....	Vol. 4 - 790
RTRANS Evidentiary Hearing – December 18, 2020.....	Vol. 4 - 811
RTRANS Supplement to Petition – February 22, 2021.....	Vol. 4 - 837
Certificate of Judgment – Supreme Court of the State of Nevada.....	Vol. 4 - 848
Defense Council’s Motion to Continue Trial.....	Vol. 4 - 858
Eighth Judicial District Court Minutes – November 28, 2016.....	Vol. 4 - 884
Competency Evaluations of Petitioner.....	Vol. 4 - 885



CLERK OF THE COURT

1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 PATRICK BURNS
6 Deputy District Attorney
7 Nevada Bar #11779
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

CASE NO: C-13-293296-2

DEPT NO: XI

15 -vs-

16 DUSTIN BLEAK, aka
17 Dustin Charles Bleak, #1967098
18 **DARION MUHAMMAD-COLEMAN,**
19 **aka Darion Muhammadcoleman,**
20 **#2880725**

INDICTMENT

Defendant(s).

21 STATE OF NEVADA)
22 COUNTY OF CLARK) ss.

23 The Defendant(s) above named, DUSTIN BLEAK, aka Dustin Charles Bleak and
24 DARION MUHAMMAD-COLEMAN, aka Darion Muhammadcoleman, accused by the
25 Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY
26 (Category B Felony - NRS 199.480, 200.380); ATTEMPT ROBBERY WITH USE OF A
27 DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165); MURDER
28 WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030,
193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS
200.481); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471);
CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT
(Category C Felony - NRS 453.401); and ATTEMPT TO POSSESS CONTROLLED

1 SUBSTANCE (Category E Felony/Gross Misdemeanor - NRS 453.336, 193.330),
2 committed at and within the County of Clark, State of Nevada, on or about April 19, 2013,
3 as follows:

4 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

5 The Defendants and/or unknown co-conspirators did then and there meet with each
6 other and between themselves, and each of them with the other, wilfully, unlawfully, and
7 feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said
8 conspiracy, Defendants did commit the acts as set forth in Counts 2 and 3, said acts being
9 incorporated by this reference as though fully set forth herein.

10 COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

11 did then and there wilfully, unlawfully and feloniously attempt to take personal
12 property, to-wit: lawful money of the United States and/or narcotics, from the person of
13 DALE BORERO, or in his presence, by means of force or violence, or fear of injury to, and
14 without the consent and against the will of the said DALE BORERO, Defendants using a
15 deadly weapon, to-wit: a handgun, during the commission of said crime, by pointing said
16 handgun at the said DALE BORERO and/or striking the said DALE BORERO with a
17 handgun and attempting to take said lawful money of the United States and/or narcotics from
18 the said DALE BORERO, the Defendants being responsible under one or more of the
19 following principles of criminal liability, to-wit: (1) by directly committing the crime; and/or
20 (2) pursuant to a conspiracy; and/or (3) by aiding or abetting in the commission of the crime
21 by DEFENDANT BLEAK committing the following acts: arranging for a meeting with
22 DALE BORERO under the pretext of purchasing a controlled substance and/or paying an
23 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
24 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
25 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
26 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning
27 himself to remove lawful money of the United States and/or narcotics from the person of the
28 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said

1 DALE BORERO at gunpoint.

2 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

3 did on or about April 19, 2013, then and there wilfully, feloniously, without authority
4 of law, and with premeditation and deliberation, and with malice aforethought, kill DALE
5 BORERO, a human being, by shooting at and into the body of the said DALE BORERO,
6 with a deadly weapon, to-wit: a handgun, the Defendants being responsible under one or
7 more of the following principles of criminal liability, to-wit: (1) by having premeditation and
8 deliberation in its commission; and/or (2) the killing occurring during the perpetration or
9 attempted perpetration of burglary and/or robbery and/or kidnapping, and/or (3) by aiding or
10 abetting in the commission of the crime by the Defendants accompanying each other to the
11 scene of the crime where a pretextual meeting was arranged with DALE BORERO by
12 DEFENDANT BLEAK, DEFENDANT MUHAMMAD-COLEMAN then moved from the
13 rear of a vehicle, pulled out said handgun and pointed it at the said DALE BORERO,
14 attempting to rob the said DALE BORERO of his narcotics and lawful money of the United
15 States, then DEFENDANT MUHAMMAD-COLEMAN struck the upper left side of the
16 body of the said DALE BORERO with the butt of the handgun, thereafter there was an
17 exchange of gunfire between DEFENDANT MUHAMMAD-COLEMAN and the said
18 DALE BORERO, the said DALE BORERO was struck by gunfire and later died as a result
19 of those injuries, DEFENDANT BLEAK aiding or abetting in the commission of the crime
20 by committing the following acts: arranging for a meeting with DALE BORERO under the
21 pretext of purchasing a controlled substance and/or paying an outstanding debt so DALE
22 BORERO could be robbed of any money or narcotics on his person; and/or by distracting
23 DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN attempted to rob DALE
24 BORERO at gunpoint; and/or by contributing to a show of force and/or brandishing a BB
25 gun; and/or by acting as a lookout; and/or by positioning himself to remove lawful money of
26 the United States and/or narcotics from the person of the said DALE BORERO while
27 DEFENDANT MUHAMMAD-COLEMAN held the said DALE BORERO at gunpoint, the
28 Defendants encouraging one another throughout by actions and words and acting in concert

1 throughout; and/or (4) by the Defendants conspiring with each other to commit murder
2 whereby each is vicariously liable for the acts of the other in furtherance of the conspiracy in
3 its commission.

4 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON

5 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
6 person of another, to-wit: DALE BORERO, with use of a deadly weapon, to-wit: a
7 handgun, by striking the said DALE BORERO in the body and/or head and/or face with said
8 handgun, the Defendants 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
11 DEFENDANT BLEAK committing the following acts: arranging for a meeting with DALE
12 BORERO under the pretext of purchasing a controlled substance and/or paying an
13 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
14 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
15 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
16 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning
17 himself to remove lawful money of the United States and/or narcotics from the person of the
18 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said
19 DALE BORERO at gunpoint

20 COUNT 5 - ASSAULT WITH A DEADLY WEAPON

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

27 ///

28 ///

1 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES
2 ACT

3 did on or about April 19, 2013, then and there meet with co-conspirator an
4 unidentified male individual and with each other and between themselves, and each of them
5 with the other, wilfully, unlawfully, and feloniously conspire and agree to violate Uniform
6 Controlled Substances Act, and in furtherance of said conspiracy, Defendants did commit the
7 acts as set forth in Count 9, said acts being incorporated by this reference as though fully set
8 forth herein.

9 COUNT 7 - ATTEMPT TO POSSESS CONTROLLED SUBSTANCE

10 did on or about April 19, 2013, then and there wilfully, unlawfully, knowingly,
11 intentionally and feloniously attempt to possess a controlled substance, to-wit: by traveling
12 to 2855 East Fremont Street, Las Vegas, meeting with DALE BORERO and attempting to
13 obtain Methamphetamine and/or Cocaine from the said DALE BORERO and/or by pointing
14 a firearm at the said DALE BORERO and demanding he turn over any Methamphetamine
15 and/or Cocaine on his person, the Defendants being responsible under one or more of the
16 following principles of criminal liability, to-wit: (1) by directly committing the crime; and/or
17 (2) pursuant to a conspiracy; and/or (3) by aiding or abetting in the commission of the crime
18 by DEFENDANT BLEAK committing the following acts: arranging for a meeting with
19 DALE BORERO under the pretext of purchasing a controlled substance and/or paying an
20 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
21 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
22 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
23 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning

24 ///

25 ///

26 ///

27 ///

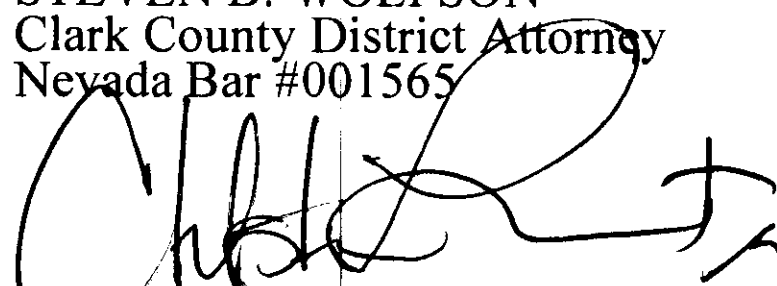
28 ///

1 himself to remove lawful money of the United States and/or narcotics from the person of the
2 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said
3 DALE BORERO at gunpoint.


4 DATED this 11 day of October, 2013.

5
6 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

7
8
9 BY


PATRICK BURNS
Deputy District Attorney
Nevada Bar #11779

10
11 ENDORSEMENT: A True Bill

12
13 
14 Foreperson, Clark County Grand Jury

1 Names of witnesses testifying before the Grand Jury:

2 GAVIN, DR. LISA, CCME, 1704 PINTO LN., LVN

3 MCCAMPBELL, RICHARD, 7600 S. RAINBOW, LVN

4 HERROD, MICHAEL, 7116 RAIN CLOUD DR., LVN

5 COLLINS, ERIC, LVMPD

6 MOGG, CLIFFORD, LVMPD P#5096

7 MILLER, TERRI, LVMPD P#5113

8 CROMWELL, MICHAEL, LVMPD

9
10 Additional witnesses known to the District Attorney at time of filing the Indictment:

11 ALBERT, JOEL, LVMPD P#13204

12 ATKINS, KEESHA, 4823 BOULDER HWY., LVN

13 BISHOP, RACHEL, 2900 E. CHARLESTON, LVN

14 BORERO, DANIEL, 4337 PARKDALE, LVN

15 BORERO, DESERAE, 4337 PARKDALE, LVN

16 BROWN, JAQUON, 4311 BOULDER HWY., LVN

17 CASTRO, ROBERTO, 6126 QUINTILLION AVE., LVN

18 COLON, MARC, LVMPD P#7585

19 COSTA, TRAVIS, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

20 CROMWELL, MICHAEL, LVMPD P#13203

21 CUSTODIAN OF RECORDS, CCDC

22 CUSTODIAN OF RECORDS, LVMPD DISPATCH

23 CUSTODIAN OF RECORDS, LVMPD RECORDS

24 DOWNIE, KYLE, LVMPD P#9487

25 EMBREY, BUDDY, LVMPD P#8644

26 FALLER, THOMAS, LVMPD P#6749

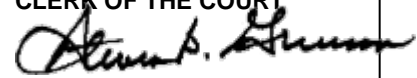
27 FAZIL, JOHN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

28 FELABOM, ADAM, LVMPD P#8427

1 GRACE, JERMAINE, 2855 E. FREMONT, LVN
2 GRACE, LECOREY, 2855 E. FREMONT, LVN
3 GRAHAM, DONALD, LVMPD P#5425
4 HANNAH, LISA, 2811 E. FREMONT, LVN
5 HAYNES, VINCENT, LVMPD P#13004
6 HUNTLEY, LASANDRA, 221 BRUCE ST., LVN
7 KIBBLE, JESSE, LVMPD P#13824
8 KLASSEN, MICHELLE, 3550 PAM LANE, LVN
9 LEE, TATIANA, 1712 FAIRFIELD, LVN
10 LINDQUEST, CARRIE, 4836 HOTSPRINGS AVE., LVN
11 LYNCH, SHANDRA, LVMPD P#13206
12 MALDONADO, JOCELYN, LVMPD P#6920
13 MANOR-DAVIES, SHANTE, 30996 GREENDALE, LVN
14 MORTON, LARRY, LVMPD P#4935
15 PAIKAI, SHANNON, 4714 SAN DREEK AVE., LVN
16 PATEL, KISHOR, TRAVELERS, INN, 2855 E. FREMONT, LVN
17 PAZOS, EDUARDO, LVMPD P#6817
18 POLLOCK, CHRISTOPHER, LVMPD P#13508
19 PONDER, KERRY, 303 JUDSON AVE., LVN
20 QUADRATULLAH, NOORI, c/o CCDA/VWAC, 200 LEWIS AVE., LVN
21 REED, GARY, LVMPD P#3731
22 REINER, JENNIFER, LVMPD P#8167
23 RENHARD, LOUISE, LVMPD P#5223
24 ROSE, DAVID, LVMPD P#13527
25 SAMS, JESSIE, LVMPD P#4793
26 SCHELLBERG, PETER, LVMPD P#5413
27 SHAHOB, TAHIR, c/o CCDA/VWAC, 200 LEWIS AVE., LVN
28 SIMMS, DR. LARY, CCME, 1704 PINTO LN., LVN

1 SMITH, SAMUEL, LVMPD P#6424
2 SOUSA, PAUL, LOWES/LP, 2875 E. CHARLESTON, LVN
3 SUTTON, MICHAEL, LVMPD P#5637
4 TAMAYO-SOTO, ANGELICA, 131 BEESLEY, LVN
5 TATE, RHONDA, 1720 W. BONANZA, LVN
6 TERRELL, KEARA, 217 W. NEW YORK, LVN
7 TOEPPEN, CAITLIN, LVMPD P#14372
8 TRIPP, BLANE, LVMPD P#6731
9 VAN, MICHAEL, 2855 E. FREMONT, LVN
10 WILSON, ROBERT, LVMPD P#3836
11 WILSON, SHANDIN, 1849 INDIAN BEND DR., HENDERSON, NV

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 12BGJ159A-B/13F06471X/13F06746X/dd-gj
28 LVMPD # 130419-4147
(TK5)



PWHC

Waleed Zaman, Esq.
Nevada State Bar No. 13993
Zaman Legal
2880 S. Jones Blvd., Suite 3
Las Vegas, NV 89146
Ph: 702-359-0157
F: (702) 920-8837
Wally@ZamanLegal.com
Attorney for Petitioner, Darion Muhammad-Coleman

CASE NO: A-19-806521-W
Department 26

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

DARION MUHAMMAD-COLEMAN,

Petitioner,

vs.

RENEE BAKER, WARDEN,

Respondent.

Case No:

Dept. No: III

**PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)**

(Hearing Requested)

COMES NOW, Defendant, Darion Muhammad-Coleman, by and through counsel, Waleed Zaman, Esq., of Zaman Legal LLC, and submits the following Petition for Writ of Habeas Corpus (post-conviction). This Petition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this honorable Court.

DATED this 6th day of December 2019.

submitted by: /s/ Waleed Zaman

Waleed Zaman, Esq.
Nevada Bar Number: 13993
2880 S. Jones Blvd. Suite #3
Las Vegas, Nevada 89146
Tel: (702) 359-0157
Attorney for Petitioner

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

AL

1 a maximum of forty-eight (48) months, concurrent to count three (3), and consecutive to case
2 C299066, with seven hundred twenty (720) days credit for time served. *Id.* at 650-51. The Supreme
3 Court of Nevada affirmed the Judgment of Conviction, and the instant Petition follows.

4 **STATEMENT OF RELEVANT FACTS**

5 **1. The investigation.**

6 Initially, the matter began as a call to emergency dispatch at approximately 9:35 pm,
7 referencing a shooting at the Travelers Inn. *Id.* at 594. Trial testimony indicated that Detectives
8 Mogg and Miller arrived on the scene, following Sergeant Rose. *Id.* at 282;172-73; 384. It appears
9 this occurred approximately one hour after the initial call, given Detective Mogg's testimony that
10 he arrived at approximately 10:30 pm. *Id.* 282.

11 Upon her arrival, Detective Miller was tasked as the lead investigator for this matter. *Id.* at
12 283;384. Detective Miller ultimately reviewed surveillance, which appeared to show Darion and
13 Travis Costa arrive at the Travelers Inn by car, at which time Darion and Mr. Costa exited the
14 vehicle. *Id.* at 395; 398; 399; 405. Initially, Darion remained by the vehicle as Mr. Costa was
15 approached by Mr. Borero. *Id.* at 395. After some time, Darion and Mr. Borero appeared to face
16 each other and exchange words, before Darion pulled out his gun and slapped towards Mr. Borero
17 twice. *Id.* at 395; *See* 452. An altercation between Darion and Mr. Borero ensued, and they drew
18 their guns on each other and there was a shooting. *Id.* at 395; *See* 452.

19 After she identified Mr. McCambell as the driver of the vehicle from which Darion and Mr.
20 Costa emerged, Detective Miller used this information to seek out Darion. *Id.* at 405. Thereafter,
21 Detective Miller issued a Declaration of Warrant/Summons in support of a request for arrest warrant,
22 in which she offered the following under penalty of perjury:

23 At one point the black male suspect (Muhammad-Coleman) moved from
24 the left rear of the Cadillac to stand on the opposite side of the white male
25 (Bleak). The black male (Muhammad-Coleman) pulled a handgun from his
26 right side and pointed it at Borero. Borero appeared to try to push the gun
27 away and the black male (Muhammad-Coleman) struck the upper left side
28 of Borero's body with the butt of the gun. At that point, Borero pulled a

1 handgun from his right pocket and fired at the black male suspect
2 (Muhammad-Coleman). The white male suspect (Bleak) was not in view of
3 the camera. There was an exchange of gunfire between Borero and the black
4 male suspect (Muhammad-Coleman), who began to back up as he fired his
5 gun.” *Id.* at 594-95.

6 In the same request, she further stated that:

7 Witnesses overheard some type of argument over money and Muhammad-
8 Coleman pulled a concealed firearm and pointed it at victim Borero in an
9 attempt to rob Borero of his narcotics and money. Victim Borero pulled a
10 handgun from his right front pocket and fired at Muhammad-Coleman.
11 Video surveillance depicted an exchange of gunfire between Borero and
12 Muhammad-Coleman, but Bleak was out of camera view. *Id.* at 602.

13 In her separate request for search warrant on behalf of Mr. Bleak, Detective Miller said that
14 Darion and Mr. Borero exchanged gunfire, and importantly claimed Darion “fell to the ground as
15 he attempted to escape the gunshots being fired” in a paragraph concerning the video that is
16 otherwise written chronologically. *Id.* at 605-06.

17 Thereafter, during her interview with Darion, Detective Miller testified that Darion indicated
18 he had no knowledge of the shooting or its participants. *Id.* at 497-98. She also claimed that Darion
19 did not indicate self-defense at his interview with her. *Id.* at 489. Darion was, however, sick during
20 this interview, causing him to throw up, and he stated later that he recognized a need for an attorney
21 before speaking with authorities. *Id.* at 503; 503.

22 **2. Summary of trial testimony; witness, Richard McCambell.**

23 Mr. McCambell testified that he drove the vehicle in which Darion Muhammad-Coleman,
24 Travis Costa, and Dustin Bleak rode in on the night of April 19, 2013. *Suppl.* at 42; 299; 313. Mr.
25 McCambell offered people rides in his vehicle (1993 Cadillac Coup Deville) for money. *Id.* at 43;45.
26 On April 19, 2013, Mr. McCambell was in his vehicle, at which time he was approached by Darion
27 for a ride. *Id.* at 42-43. Mr. McCambell agreed to give Darion a ride for ten dollars and had given
28 such rides to him in the past. *Id.* at 44-45. Mr. McCambell ultimately gave a ride to Darion, Mr.

1 Costa, and Mr. Bleak, and Darion entered the front passenger seat. *Id.*

2 Mr. McCambell testified that they initially travelled on Boulder Highway, at which time he
3 was informed by one of the males in the backseat (with a ponytail) to turn towards the “7-11” nearby
4 a Lowe’s to purchase beer. *Id.* at 47. Mr. McCambell testified that Darion indicated that he should
5 park his car towards the side. *Id.* at 48. Darion, Mr. Costa, and Mr. Bleak then exited, and one entered
6 to purchase two (2) beers, which they drank in the parking lot. *Id.* at 51-52. There are no allegations
7 that any criminal activity occurred in relation to this, despite that Mr. McCambell indicates that the
8 parking directions given to him by Darion made him uncomfortable. *Id.* at 49.

9 Afterwards, Mr. McCambell testified that they drove towards the “Travelers Inn” at Darion’s
10 direction. *Id.* at 52-53. Mr. McCambell testified to another dispute with Darion about where to park.
11 *Id.* at 53-54. Darion and the male with the ponytail exited the vehicle. *Id.* at 57-58. Mr. McCambell
12 also speculated that “It looks like they’re waiting on somebody,” but there was no objection. *Id.* at
13 58. Afterwards, a black male adult (Mr. Borero) with a white t-shirt approached from upstairs. *Id.*
14 59-60. Two other black male adults (later discerned to be Lecorey Grace and his brother) entered
15 their vehicle parked adjacently to Mr. McCambell’s at that time as well. *Id.* at 59-60.

16 Mr. McCambell testified that there was a conversation between Darion, Mr. Costa, and Mr.
17 Borero, who came down from the stairs. *Id.* at 61. Importantly, he testified to not hearing what was
18 said, and only heard “kind of like what’s up brother, something like that.” *Id.* at 61. He did, however,
19 testify to hearing yelling or shouting between Darion, Mr. Costa, and Mr. Borero. *Id.* at 62. The only
20 thing Mr. McCambell specified he heard was “show me the money” and believed it “sounded like
21 the guy in the white t-shirt.” *Id.* at 63. He further clarified that “didn’t sound like it” regarding
22 whether Darion stated it. *Id.* at 65. Mr. McCambell then heard the sounds of “pow, pow, pow.” *Id.*
23 at 62. Mr. McCambell then drove away along with Darion, who entered the vehicle as it exited. *Id.*
24 at 65-66. Mr. McCambell continued to drive at Darion’s direction, and claimed that there was only
25 “something dark” in Darion’s lap. *Id.* at 68-69. Mr. McCambell claimed that Darion directed him
26 towards a dead-end street, but also confirmed that Darion didn’t say anything to him “besides
27 directions.” *Id.* at 74. Mr. McCambell then dropped everyone off without incident. *Id.* at 74-5. Mr.
28 McCambell also indicated that Darion “swole up a little bit” when Mr. McCambell stated, “I’m

1 going to tell it.” *Id.* at 68.

2 Mr. McCambell also testified to significant alcohol in his vehicle, stating that he put his
3 “Loco and my MD in the trunk,” suggesting intoxication during the aforementioned events. *Id.* at
4 74.

5 Despite his previous protest, Mr. McCambell did not call the police at that time, and went to
6 sleep. *Id.* at 74. In fact, Mr. McCambell did not go to the police the day after the incident either. *Id.*
7 at 74-75.

8 On April 20, 2013, Mr. McCambell’s wife indicated to him that police were searching for
9 his car, after which time he called 9-1-1. *Id.* at 76. Mr. McCambell did not receive a return call that
10 day. *Id.* The next day, on April 21, 2013, Mr. McCambell arrived at a police station for questioning,
11 but he was not arrested. *Id.* at 79-80; 85. While being questioned, Mr. McCambell identified a small
12 imitation wood grain panel missing from his Cadillac, from the passenger side. *Id.* at 87-88.

13 On cross-examination, Mr. McCambell confirmed that at no time did any party in his vehicle
14 make any comment regarding a robbery. *Id.* at 92. He also confirmed that despite his discomfort
15 with Darion’s parking instructions at the 711, that such a parking movement did not remove his
16 vehicle from the area’s surveillance. *Id.* at 97. Mr. McCambell also acknowledged a contradiction
17 between his Grand Jury testimony, and his trial testimony, given that he did not indicate at trial (as
18 he did at Grand Jury) that as Mr. Borero came down the stairs “he was hollering.” *Id.* at 102. He also
19 confirmed that it was not Darion who said “show me the money” right before the shooting that
20 occurred “probably right after. *Id.* at 103.

21 **3. Tahir Shahab Testimony.**

22 Mr. Shahab testified that he was part owner of the eight-unit residential complex located at
23 1712 Fairfield in Las Vegas Nevada. *Id.* at 130. He testified that about a week before April 29, 2013,
24 he was removing items that belonged to an unfamiliar person in a vacant unit. *Id.* at 130-33. Mr.
25 Shahab was carrying a “toaster or oven” out of the unit, and out of which fell what appeared to be a
26 small gun. *Id.* at 134. Mr. Shahab testified that he then called the police. *Id.*

27 **4. Rachel Bishop Testimony.**

28 Ms. Bishop testified to living at the subject Travelers Inn with her two children, her

1 boyfriend, Jermaine Grace, and his brother, LaCory Grace during 2013. *Id.* at 142. On April 19,
2 2013, Ms. Bishop testified that (in addition to her regular room next to Mr. Borero) she had rented
3 the room adjacent on the other side next to Mr. Borero, to have a movie night with her kids. *Id.* at
4 144. That night, Ms. Bishop claimed to observe three (3) adult males by a vehicle parked next to
5 hers, looking up towards the balcony on the second floor. *Id.* at 144-45. Ms. Bishop confirmed seeing
6 two “black guys and a white guy” including one in the driver’s seat, and two outside the driver’s
7 side. *Id.* at 147.

8 At some point while watching from the rail on the second-floor balcony, Ms. Bishop testified
9 that she saw Mr. Borero on the second level with her, who made non-verbal contact such as
10 “gestures, like head movement” with the males she saw on the first floor. *Id.* at 150. She then sought
11 to speak with the Grace’s regarding what she observed, before the Graces exited by way of the stairs,
12 and exited the Travelers Inn parking lot in their vehicle. *Id.* at 151-52.

13 Thereafter, Ms. Bishop returned to her apartment and within “maybe minutes” she heard
14 gunshots. *Id.* at 153. Ms. Bishop approximated hearing about five (5) to six (6) “continuous” shots.
15 *Id.* Ms. Bishop also testified that she “peeked out the window to see what was going on” and viewed
16 Mr. Borero fire “shots back toward the car that was parked next to mine” as it pulled away. *Id.* at
17 154. Ms. Bishop then walked towards Mr. Borero and called 9-1-1. *Id.* at 156. Mr. Borero was not
18 verbal. *Id.*

19 During cross-examination, Ms. Bishop confirmed more than one inconsistency in her
20 testimony. *Id.* at 160;163-64. First, she confirmed that she previously told a detective that she saw
21 Mr. Borero walking down to the first floor, despite her testimony at trial that she did not see the
22 same. *Id.* at 162-63. Secondly, Ms. Bishop testified that her previous statement to the detective stated
23 that she saw the victim shooting back while standing. *Id.* at 164. While she confirmed, “yes,” when
24 asked if that was “her recollection today,” her previous testimony on direct suggested she did not go
25 to her window to peek until Mr. Borero was already on the floor firing towards the Cadillac as it
26 drove away. *Id.* at 154; 164.

27 **5. Sergeant David Rose.**

28 David Rose is a sergeant with LVMPD, who worked downtown area command on April 19,

1 2013. *Id.* at 173-74. Mr. Rose testified that he received a call concerning an assault or battery with a
2 gun that night. *Id.* At 175. He located shell casings, a firearm, and “what appeared to be narcotics”
3 on the ground upon his arrival. *Id.* at 180.

4 **6. LeCory Grace.**

5 Mr. Grace testified to residing at the subject Travelers Inn on April 2013. *Id.* at 188. While
6 exiting to his car, Mr. Grace viewed two unfamiliar males near a vehicle in the parking lot. *Id.* at
7 191. Mr. Grace testified that he entered his car, and after a few minutes, he and his brother left. *Id.*
8 at 194-5. He testified that he received a call a few minutes later from Ms. Bishop regarding a shooting
9 that had just occurred. *Id.* at 195. While traveling past Charleston Boulevard just prior to Eastern, he
10 saw the same Cadillac viewed in the parking lot driving towards Fremont Street. *Id.* at 195-96.

11 **7. Kyle Downie.**

12 Kyle Downie is a police officer with LVMPD, assigned as a patrol officer to Downtown Area
13 Command on April 29, 2013. *Id.* at 213-14. A few days prior to this, Detective Downie was briefed
14 regarding a recent homicide in the Fremont Street area in Las Vegas. *Id.* at 214. Officer Downie
15 found information related to Darion’s purported moniker, “Money,” whom he believed to be living
16 near the Stratosphere Casino in “Naked City”. *Id.* at 215.

17 While in the area, Mr. Shahab contacted him around the Chicago and Fairfield roads
18 intersection, where he was “flagged down by him, a female named Noori, and John Fazi. *Id.* at 217-
19 19. He was informed that Mr. Shahab found what appeared to be a gun at 1717 Fairfield Avenue,
20 while picking up a toaster oven. *Id.* at 220.

21 **8. Medical Examiner, Alane Olson.**

22 Doctor Olson testified to her experience conducting autopsy reports to determine cause of
23 deaths, as well as her involvement in the autopsy in the instant case. *Id.* at 230-32. A different doctor,
24 Dr. Simms, conducted the autopsy on Mr. Borero. *Id.* at 232. Dr. Olson testified that she reviewed
25 Dr. Simm’s Autopsy Report, the coroner’s investigation, photographs of the autopsy, and toxicology
26 reports. *Id.* at 233. She testified to the autopsy indicating what appeared to be a bullet entrance
27 wound, for which she could not determine with certainty, the range from which the shot was fired.
28 *Id.* at 238-39. Dr. Olson also testified to viewing a second gunshot wound that entered the back of

1 Mr. Borero's right knee, from which a bullet fragment was recovered. *Id.* at 239-40. A bullet was
2 also recovered from Mr. Borero's stomach that lodged in his spinal column. *Id.* at 241-42. He passed
3 away from the wound to his abdomen. *Id.* at 245.

4 Dr. Olson additionally reviewed toxicology reports that indicted Mr. Borero had 1.8 NG/ML
5 of methamphetamine in his blood. *Id.* at 244. This was considered a "fairly high" level. *Id.* at 247.
6 Importantly, she testified that this level could cause exhibition of aggressive behavior and irrational
7 reactions. *Id.* at 247.

8 **9. Crime Scene Analyst, Jennifer Reiner.**

9 Ms. Reiner was employed as a Crime Scene Analyst with LVMPD on April 2013. *Id.* at 248.
10 Ms. Reiner testified to responding to the scene of an autopsy of Mr. Borero on April 20, 2013, where
11 she documented two gunshot wounds. *Id.* at 251-53.

12 **10. CSA Adam Felabom.**

13 CSA Felabom responded to the subject Travelers Inn on April 19, 2013, along with CSA Joel
14 Albert and Supervisor Gary Reed. *Id.* at 259-60. Felabom testified to locating a Ruger P94 gun. *Id.*
15 at 263. Additionally, ten (10) .40 caliber cartridge casings were found, as well as four (4) nine (9)
16 mm casings. *Id.* at 269-70. Afterwards, Mr. Felabom utilized a chemical fingerprint processing
17 method to identify fingerprints on the Ruger P94, the magazine within it, a BB gun magazine he also
18 located at Travelers Inn, and a car molding located at the same. *Id.* at 265-66. Mr. Felabom utilized
19 a chemical fingerprint processing method, whereby he used superglue fumes and dye to identify any
20 remaining prints. *Id.* at 265-67. Despite the large number of casings found, only four (4) bullet
21 fragments were found on scene *Id.* at 270.

22 **11. Detective Clifford Mogg.**

23 Detective Mogg was employed with homicide at LVMPD on the night of April 19, 2013. *Id.*
24 at 280-81. He was called out to the subject Travelers Inn at about 10:30 PM and approximately one
25 hour after the shooting incident. *Id.* at 282. He testified that Detective Miller, and not he, was lead
26 detective for this matter per a standard detective rotation. *Id.* at 283.

27 Detective Mogg also viewed Mr. Borero's body at the hospital, where he noted that the
28 "victim still had his clothing on, which could be potential evidence." *Id.* at 283-84. Detective Mogg

1 also returned to the subject Travelers Inn to review surveillance video of the shooting, and then
2 conducted follow-up the next day. *Id.* at 285.

3 Detective Mogg thereafter questioned Mr. McCambell, and testified that he observed on Mr.
4 McCambell's Cadillac, an "apparent bullet impact" "slightly above the trunk area" in the rear. *Id.* at
5 289. It also appeared that a plastic trim board on the interior passenger side door was missing. *Id.*
6 Detective Mogg also testified that he located bullet impacts in the subject Travelers Inn building
7 itself, that Mr. Borero appeared to have fired. *Id.* at 290.

8 Detective Mogg confirmed that Mr. McCambell identified Darion in a photographic lineup.
9 *Id.* at 291;294.

10 Detective Mogg also conducted photographic lineups with LeCorey and Jermaine Grace. *Id.*
11 at 297. LeCorey Grace identified two people who could be Darion in the photographic line-up, one
12 of whom was Darion and one of whom was not. *Id.* at 298. LeCorey Grace additionally identified
13 Mr. Bleak in a photographic line-up. *Id.* at 299.

14 At trial, Detective Mogg identified surveillance for the Travelers Inn, first showing Mr.
15 McCambell parking his vehicle. *Id.* at 303. The video showed what appeared to be Mr. Costa and
16 Darion exiting the vehicle in that order from the rear and front passenger seats respectively. *Id.* at
17 304. Both Mr. Costa and Darion seemed to be on their cellphones, while Mr. Borero looked down
18 at them from the second floor. *Id.* at 305. Mr. Borero then came the stairs, towards Darion and Mr.
19 Costa. *Id.* at 306. The video then appeared to show Mr. Borero take something out of his pocket *Id.*
20 Although the video does not provide any audio, it shows Mr. Costa along with Mr. Borero and
21 Darion, before Darion moves closer to Mr. Borero and appears to pull out a pistol from his waist
22 band. *Id.* at 307. At that point, the surveillance appeared to show Darion slap at Mr. Borero with the
23 gun twice (2), and Mr. Borero retrieved his own gun from his waistband. *Id.* at 307-08.

24 Thereafter, the video depicted a muzzle flash, for which Detective Mogg confirmed that he could
25 not determine the origin. *Id.* At the point of viewing the muzzle flash, Detective Mogg testified that
26 he viewed the first shot, which could be from either Mr. Borero or Darion. *Id.* at 309. He also
27 confirmed that the nature of who shot the first shot is "hard to tell." *Id.* However, after the first shot,
28 both Darion and Mr. Borero fall to the ground. *Id.* at 310.

1 **12. Forensic Scientist Khushboo Narechania.**

2 Ms. Narechania is a forensic analyst with LVMPD, for the purposes of testing for controlled
3 substances, and was employed as such during April 2013. *Id.* at 325. She testified that in this case,
4 she confirmed with the use of a gas chromatograph mass spectrometer, that the item known as
5 package number 6 and impound item #20, was a net weight 7.15 grams consistent with
6 methamphetamines. *Id.* at 327; 329.

7 **13. Forensic Scientist Anya Lester.**

8 Anya Lester was employed as a LVMPD forensic scientist during the instant events, with
9 firearms and ammunition training. *Id.* at 332. Ms. Lester testified that she was asked to examine both
10 the Ruger P94, and a Smith and Wesson .40 semi-automatic firearm. *Id.* at 334. Her testing indicated
11 that the located Ruger was used in the instant matter. *Id.* at 337. Said testing also identified that the
12 ten (10) .40 caliber casings originated from the tested Ruger P94 *Id.* at 341. Despite that the Ruger
13 was tested against the bullets found at scene that were consistent with a .40 caliber, the originating
14 gun was and remains inconclusive as to one (1) bullet that was damaged. *Id.* at 343.

15 Ms. Lester additionally reviewed the nine (9) mm gun recovered. *Id.* at 347. She indicated
16 the gun could fire eight (8) shots total, with seven in the magazine and one in the chamber. *Id.* at
17 346. She additionally testified that the four (4) luger nine (9) mm cartridge cases shared
18 characteristics with the recovered nine (9) mm Luger gun. *Id.* at 350. However, she could not
19 conclusively identify their origin notwithstanding the above. *Id.*

20 On cross-examination, she testified that the Ruger .40 could hold ten (10) cartridges in the
21 magazine. *Id.* at 355. She clarified that it could fire eleven (11) bullets total as a result, including one
22 (1) in the chamber, despite that ten (10) casings were located *Id.* at 356.

23 **14. Forensic Scientist Eric Sahota.**

24 Mr. Sahota testified that he was a forensic scientist, tasked with identifying latent prints with
25 LVMPD. *Id.* at 358. Mr. Sahota was tasked with identifying latent finger-prints for Darion and Mr.
26 Borero, and also possibly Mr. McCambell. *Id.* at 367. He testified that the latent print recovered from
27 the car molding was matched to Darion, but he could not match the print that he recovered from the
28 exterior rear driver window of the Cadillac.” *Id.* at 378-79.

1 **15. Detective Terri Miller.**

2 Detective Miller testified that she was (and is) a homicide detective, assigned by LVMPD as
3 lead detective, to investigate the instant matter at Travelers Inn on April 19, 2013. *Id.* at 384. Upon
4 arriving at the scene, she was briefed by Detective Pazos, and began acting as lead investigator for
5 this matter. *Id.* at 387-88.

6 Detective Miller indicated she found two (2) types of casings (both .40 cal and 9mm) at the
7 subject Travelers Inn; *Id.* at 389. Two nine (9) mm casings were located near parking stall #3 and
8 two others nearby. *Id.* at 390. There were additionally ten (10) recovered .40 caliber casings, which
9 were grouped closely together towards the back of the storage container. *Id.* at 392-93.

10 Detective Miller's investigation further uncovered that nobody witnessed the shooting or saw
11 what exactly happened (other than Darion or Mr. Borero). *Id.* at 394. There was, however,
12 surveillance of the subject Travelers Inn that Detective Miller reviewed as part of her investigation.
13 *Id.* at 394-95. She testified that she viewed the video, where she saw Darion involved in the shooting
14 with Mr. Borero. *Id.* at 395-96. While the video shows the shooting, there was no mention of who
15 shot first at that time, nor is there any mention of Detective Miller's belief about the shooting
16 sequence (indicated below) based on the location of the bullet casings. *See Id.* at 510.

17 Detective Miller thereafter interviewed Mr. McCambell, with whom she conducted two (2)
18 photographic line-ups, the second of which contained a picture where he identified Darion as the
19 shooter. *Id.* at 403-404;407. Detective Miller conducted a similar photographic lineup with LaCory
20 Grace, who indicated two (2) photographs that may have resembled Darion but could make no
21 specific finding to identify. *Id.* at 408.

22 Ten days later, on April 29, 2013, Detective Miller responded to a call at 1712 Fairfield
23 Avenue, regarding an individual who located what appeared to be a gun in a supposedly empty
24 apartment. *Id.* at 409-11. Despite testing, no conclusive DNA or fingerprint results could be
25 recovered from the weapon. *Id.* at 411-12.

26 Detective Miller then executed a consent-based search on the Fairfield address, and found no
27 evidence of crime, but found "a couple of items with the name of Darion and Kash on them." *Id.* at
28 413. She also testified to a letter purportedly signed by Darion and some items with "D. Coleman"

1 on them. *Id.* at 413-14.

2 She thereafter obtained an arrest warrant, and arrested Darion on July 3, 2013. *Id.* at 419.

3 **16. Darion Muhammad-Coleman, Defendant.**

4 Darion testified that on April 19, 2013, he was leaving his mom's house, at which time he
5 came into contact with an acquaintance of his, Travis Costa, and a previously unknown person to
6 him, Dustin Bleak. *Id.* at 438-39. Darion testified that Mr. Costa approached him needing a ride, at
7 which time Darion quickly pointed out Mr. McCambell as a person who could provide such a ride.
8 *Id.* It appeared that Mr. Costa was seeking to purchase methamphetamines from Mr. Borero near
9 Boulder Highway. *Id.* at 440.

10 Darion similarly testified to having heard of Mr. Borero as a high-volume local drug dealer,
11 with women, drugs, and guns, from whom he sought a meeting to create a connection to also sell
12 drugs. *Id.* at 440-41.

13 As a result, Darion approached Mr. McCambell's vehicle, tapped on the window, and
14 inquired about a ride. *Id.* at 441-443. This ride was confirmed after Mr. Costa and Mr. Bleak paid
15 the requested ten (10) dollars. *Id.* at 443. Darion testified that there was no discussion, desire, or
16 plan to rob Mr. Borero at any time. *Id.* at 445. He did, however, testify to carrying a gun, solely due
17 to him being the victim of a previous shooting when Darion was 16. *Id.* at 444-45.

18 Darion testified that Mr. McCambell first drove them to a 7-11, based upon Mr. Costa's
19 request to stop there to purchase beer. *Id.* at 446-47. Upon Mr. McCambell parking, Mr. Costa exited,
20 purchased beer, and then returned to the vehicle, and requested a word with Darion outside. *Id.* at
21 446-7. Mr. Costa then indicated to Darion that Mr. Borero might "be trippin sometimes, especially
22 with people he doesn't know." *Id.* at 447.

23 Additionally, Darion testified that there was no dispute regarding where to park the car at 7-
24 1-1. *Id.* at 446. In fact, Darion testified that Mr. McCambell backed his vehicle into the parking space
25 voluntarily, and that he was drunk. *Id.* at 449. Darion further stated that he did not know Mr. Borero,
26 nor did he know where they were planning on meeting him, and that Mr. Bleak supplied directions
27 while driving. *Id.* at 448.

28 At the Travelers Inn, Darion testified to exiting the vehicle after parking, while Mr. Costa

1 walked away to speak with Mr. Borero out of earshot. *Id.* at 450. While Darion was on his phone,
2 he testified that he saw at least four (4) people (the Graces, Mr. Borero, and Ms. Bishop) on the
3 balcony, whom he believed to be staring at him. *Id.* at 450. Darion continued to wait by the car as
4 instructed to do by Mr. Costa but became uncomfortable upon witnessing Mr. Borero come down
5 the stairs, with a visible outline of a gun on his waistband. *Id.* at 451. Simultaneous to this, Darion
6 observed the Graces begin to enter their vehicle, who continued to stare at him for up to a minute.
7 *Id.* at 452.

8 Thereafter, Darion heard Mr. Borero approach Mr. Bleak from the second floor and state to
9 Mr. Bleak that “so you came again without my fucking money.” *Id.* Darion’s life then felt threatened
10 as Mr. Bolero subsequently stated that he would kill both him and Mr. Costa if “somebody don’t
11 come [up] with some money.” *Id.* at 452. Darion testified that he then reached for his pocket to
12 retrieve his firearm, doing so based on his belief that Mr. Borero was both armed and preparing to
13 bring him and/or Mr. Costa harm. *Id.* at 452-53.

14 While seeing Mr. Borero’s hand move towards him, Darion sought to slap at him. *Id.* at 455.
15 Darion testified that he then saw Mr. Borero look at his gun (making an action to pull it) and Darion
16 tried to neutralize the threat posed by Mr. Borero with a second slap but was again unsuccessful. *Id.*
17 at 456. Importantly, Darion testified that Mr. Borero fired first, and then subsequent to that, Darion
18 fired as he began to fall away. *Id.* Darion then ran to Mr. McCambell’s vehicle, towards which Mr.
19 Borero was shooting. *Id.*

20 Darion also testified that he did not initially come to the police, because he could not yet
21 afford an attorney, whom he wanted to hire before doing so, but could not yet due to financial
22 limitations. *Id.* at 457. He was further unaware that a warrant for his arrest had already been issued.
23 *Id.*

24 Darion also testified that Mr. McCambell drove away, ran a red light, and that Darion
25 instructed Mr. McCambell to turn right on Oakey Street. *Id.* at 458. He testified that he did not
26 threaten Mr. McCambell, either implicitly or explicitly. *Id.* He denied directing Mr. McCambell
27 towards a dead-end street. *Id.*

28 On cross examination, Darion confirmed that he swiped at Mr. Borero’s hand, and then struck

1 him with the gun when he saw Mr. Borero reach for his own. *Id.* at 468. He further testified that fear
2 influenced his decision to leave the gun in the toaster. *Id.* at 475. Darion testified that it was not
3 abnormal for him to carry a gun during the instant events, given that he always carried a gun with
4 him for protection, as a result of being shot only one-year prior in 2012. *Id.* at 475. Darion also
5 clarified that he only produced the gun after Mr. Borero threatened to shoot him. *Id.* at 477.

6 **17. Rebuttal Witness: Detective Miller**

7 Detective Miller was called back as part of the State’s rebuttal case and discussed a statement
8 Darion gave while arrested. *Id.* at 488. She testified that Darion did not claim self-defense during his
9 interview with her on July 3, 2013 *Id.* at 489. Detective Miller further testified that Darion claimed
10 at that time to have no involvement with or knowledge of Mr. McCambell , Mr. Bleak, Mr. Costa.
11 *Id.* at 497-98.

12 On cross examination, Detective Miller confirmed that Darion was uncomfortable and threw
13 up during his interview, after which time the interview continued. *Id.* at 503. Detective Miller
14 contested Previous Counsel’s statement that Darion appeared “half-asleep.” *Id.* at 503.

15 Importantly, subsequent to Detective Miller’s testimony, a juror asked her if she could
16 determine who shot first. *Id.* at 507. Detective Miller confirmed that she could not be certain, but
17 stated that, “based on the physical evidence I would say Mr. Coleman shot first.” *Id.* Detective Miller
18 also denied that she ever previously claimed Mr. Borero shot first. *Id.* at 510. And then emphasized,
19 before explicitly claiming not to be such an expert, that the physical evidence at the scene allowed
20 her to determine who shot first, solely based on the location of the recovered cartridge casings. *Id.*

21 Previous Counsel then appeared to concede the point, and instead emphasized and confirmed
22 that the video did not show who shot first, or at least that it could not be determined (as it was
23 unclearly depicted). *Id.*

24 **LEGAL ARGUMENT**

25 **I. Darion received ineffective assistance of counsel, due to which he suffered prejudice**
26 **directed at the core of his self-defense claim.**

27 The U.S. Constitution guarantees every defendant a right to effective assistance of counsel
28 through the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). Article I,

1 Section 8, Clause 1 of the Nevada Constitution also guarantees this right. *Buffalo v. State*, 111 Nev.
2 1139, 1140 (1995). In Nevada, the appropriate vehicle for reviewing whether counsel was effective
3 is a post-conviction relief proceeding. *McKague v. Warden*, 112 Nev. 159, 164 n.4, 912 P.2d 255,
4 258 n.4 (1996). Furthermore, IAC claims at this juncture must only be proven by a preponderance
5 of the evidence standard. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

6 The test for effective assistance of counsel has two prongs. The first is error. An attorney
7 has committed error if their actions fall below the objective standard of reasonableness that prevails
8 in the legal profession. *Strickland*, 466 U.S. at 688. If an action can be considered as “sound trial
9 strategy,” then it is presumptively not error. *Id.* at 689. However, the attorney’s actions must be
10 considered “in light of all the circumstances” of the case. *Id.* at 690. Actions which deviate to some
11 extent from sound strategy lose that presumption to the same extent. *Id.* at 690-91.

12 The second prong of *Strickland* is prejudice. To be reversible, attorney error must create a
13 reasonable probability of a different result. *Strickland*, 466 U.S. at 687. *Strickland* does not require
14 prejudice to be shown by a preponderance of the evidence. *Id.* Rather, this probability must simply
15 be enough to undermine confidence in the outcome of the proceeding. *Id.* at 694. Moreover, one
16 purpose of defense counsel is to subject important components of the State’s case to “meaningful
17 adversarial testing.” *US. v. Cronin*, 466 U.S. 648, 659 (1984).

18 **Standard of Review:**

19 Finally, a claim of ineffective assistance of counsel presents a mixed question of law and fact
20 that is subject to independent review. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166
21 (2005) (citing *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996)). The Nevada
22 Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations
23 underlying his ineffective-assistance claim by a preponderance of the evidence.” *Means v. State*, 120
24 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel
25 asserted in a petition for post-conviction relief must be supported with specific factual allegations,
26 which if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d
27 222, 225 (1984). Petitioner additionally makes constitutional claims under the United States
28 Constitution. See also *Gonzalez-Soberal v. United States*, 244 F.3d 273 (1st Cir 2001) (remanding for

1 determination of whether it was prejudicial for counsel to fail to impeach with documentary
2 evidence).

3 **a. Previous counsel was ineffective for failing to properly impeach Detective**
4 **Miller with her own unambiguously contradictory statements.**

5 Failure to impeach lead Detective Miller regarding her contradictory statements concerning
6 who shot first was below an objective standard of reasonableness. In addition to violating Nevada
7 law, federal law has established that “A lawyer who fails to adequately investigate, and to introduce
8 into evidence, records that demonstrate his client's factual innocence, or that raise sufficient doubt
9 as to that question to undermine confidence in the verdict, renders deficient performance.” See *Hart*
10 *v. Gomez*, 174F.3d 1067,1071 (9th Cir. 1999).

11 Here, despite its crucial connection to Darion’s self-defense claim, (indeed it was the precise
12 question asked by a juror at the end of all testimony), Previous Counsel failed to identify numerous
13 times during the investigation where Detective Miller indicated Mr. Borero and not Darion, shot
14 first. *Id.* at 510. Importantly, Detective Miller denied such contradiction during the brief time during
15 which the arrest report was brought to her attention well after her original testimony. Previous
16 Counsel did not utilize the three (3) separate times in which Detective Miller expressed her belief
17 that Mr. Borero fired first. *Id.* at 594-9; 602; 605-06. That she previously impeached herself is not
18 subject to reasonable dispute, despite her argument that she did not precisely say that Mr. Borero
19 shot first. *Id.* Her statement that she did not explicitly claim Mr. Borero fired first ignores two (2)
20 crucial aspects; that she made the statement on several occasions, and not just during the one instance
21 which Previous Counsel mentioned; and also that her explanation required one to believe that
22 Detective Miller issued a written report detailing the surveillance in otherwise chronological order
23 more than once, but for some reason did not chronologically identify who shot first.

24 In fact, at trial, it became clear that no person witnessed the shooting or heard the exact words
25 exchanged to either corroborate or disprove Darion’s story. Thus, the State’s case rested, in large
26 part, on the testimony of Mr. McCambell regarding Darion’s actions, and Detective Miller’s
27 investigation. The jury did not hear, however, the three (3) separate times the investigation asserted
28 that Mr. Borero shot first, claims that were undeniably based on the evidence initially recovered at

1 the scene. *Id.* at 594-595; 602; 605-06. This shows that no additional investigation occurred to
2 challenge that original finding between the time Detective Miller made the statements, to when she
3 changed course at trial. *Id.*; 510. Detective Miller's testimony at trial contradicted her previous
4 investigatory findings, making it error to fail to properly bring it to the jury's attention. Furthermore,
5 that the jury was allowed to believe that Detective Miller's investigation always and consistently
6 stated that Darion shot first, when it did quite the opposite, created error that violated both state and
7 federal law. As a result, the jury likely gave more credibility to this unchallenged statement, than it
8 would have had previous counsel impeached Detective Miller or argued to the same effect at closing.

9 In fact, Previous Counsel's implicit admission of Detective Miller's conclusion further
10 evidenced error. This is particularly harmful to not mention at closing, given a juror's specific
11 emphasis regarding who fired first. *Id.* at 507. This is also vitally important because it allowed
12 Detective Miller to directly contradict Darion's own self-defense claim that Mr. Borero shot first
13 without challenge, effectively casting prejudicial doubt. The weight of this cannot be overstated,
14 given that no eyewitness viewed the shooting itself, the surveillance did not show the shooting
15 sequence with certainty, and it was a juror's point of emphasis after viewing all the evidence by both
16 sides. *Id.* at 510. Otherwise, Previous Counsel appeared to tacitly admit to Detective Miller's finding
17 by pointing out that the video did not show who shot first, rather than point out Detective Miller's
18 earlier and contradictory findings. Thus, to not mention the matter at closing allowed the jury to
19 continue with the assumption that the evidence unequivocally and consistently pointed to the fact
20 that Darion shot first. Without giving the jury the opportunity to view the facts, Detective Miller's
21 testimony casted significant and persuasive doubt upon Darion's testimony. Additionally, it cannot
22 be a strategic decision to avoid such line of impeachment or not mention the same at closing. There
23 existed no possible potential benefit in failing to identify the aforementioned three (3) times that
24 Detective Miller contradicted her trial testimony, nor from tacitly acknowledging the issue, while
25 there were significant consequences otherwise.

26 Alternatively, the failure to impeach the above statements at the time of trial amounted to
27 error due to failure to investigate. To the extent the previous and impeachment worthy statements
28 were not identified at the time of trial, this amounted to IAC as a result of an insufficient

1 investigation. The contradictory statements were available in Detective Miller's application for
2 search warrant, and the arrest report, both of which may have been in Previous Counsel's possession.
3 If they were not so available, this was due to insufficient investigation and amounts to IAC, pursuant
4 to *Hart*.

5 Altogether, the conduct above, especially as it relates to not challenging Detective Miller's
6 investigation fell below an objective standard of reasonableness.

7 **b. Prejudice resulted.**

8 Here, prejudice is evidenced both by the Court's and the Jury's specific reliance on Detective
9 Miller's testimony concerning the shooting's sequence. Here, the jury's own question regarding the
10 issue points to the fact that it was central to at least one juror's deliberations. In fact, that the jury
11 returned a not-guilty on the felony murder theory greatly strengthens the prejudice Darion faced in
12 this above lack of impeachment/investigation. The jury found that Darion was not guilty of an
13 attempt robbery, meaning that as a matter of necessity, they found that Darion murdered Mr. Borero
14 without adequately establishing self-defense, as opposed to through a felony murder theory. This
15 alone points to the jury weight given to the nature of who shot first. As stated above, it is without
16 question that at least one juror, at the end of all testimony, could not determine who shot first through
17 any other evidence provided, and needed additional direction. *Id.* at 507. At precisely this time, the
18 entirety of Darion's testimony was cast into serious doubt, while Previous Counsel tacitly admitted
19 to the same. The moment the question of who shot first was asked and answered in contradiction to
20 Darion's testimony, his self-defense theory was naturally and substantially harmed. In fact, if Mr.
21 Borero was found to have shot first, it would be difficult to understand how any reasonable jury
22 could conclude that Darion did not act in self-defense. Again, this is significant, as no other
23 testimony was available to question Darion's self-defense theory. This gave particular prejudicial
24 weight to Previous Counsel not impeaching Detective Miller, as it likely gave particular and
25 undeserved credibility to her answer regarding the shooting's sequence. This left the jury, during
26 deliberations, with no meaningful reason (despite that such existed outside the trial record) to
27 disagree with Detective Miller's conclusion. Should Detective Miller have been properly impeached,
28 or the matter been mentioned during closing, it appears that at least one important matter under the

1 jury's deliberation would have been resolved in a manner much more favorable to Darion, and less
2 favorable to the State.

3 Additionally, Previous Counsel was unable to make references to Mr. McCambell's previous
4 crack cocaine usage at trial because of not filing a timely Motion in Limine, which the District Court
5 noted. *Id.* at 120.

6 More importantly, prejudice can also be seen in the effect rendered in the Court's sentencing
7 decision, which relied specifically on Detective Miller's unchallenged evidence. Trial testimony
8 indicated that Detective Miller analyzed the physical evidence (via the location of the casings) to
9 suggest that Darion shot first. *Id.* at 510. During sentencing, the Court specifically noted the
10 testimony of Detective Miller in issuing its sentence, armed without the crucial evidence that
11 Detective Miller's previous conclusion while investigating was opposite to her conclusion at trial.
12 *Id.* at 594-95; 602; 605-06. This indicates prejudice in the sentence Darion received as a result of
13 IAC. Thus, Darion is independently harmed as a result of the sentencing structure he received, in
14 addition to the prejudice suffered at trial. Specifically, the District Court stated that,

15 "But I think watching the video, listening to the testimony, looking at what
16 the forensic evidence was about where shell casings were found, I am
17 convinced that your client not only pulled the weapon first, but he shot first
18 as well before."

19 This implies that the Court would have provided a more lenient sentence if any of Detective Miller's
20 previous contradictions had been brought to its attention.

21 Therefore, the error presented above both in trial and in sentencing, posed significant prejudice
22 to Darion, casting doubt on his self-defense claim.

23 **c. Previous Counsel was ineffective for failing to timely investigate or promote
24 evidence of PTSD in support of Darion's self-defense theory.**

25 In *Mitchell v. State*, 124 Nev. 807, 192 P.3d 721 (2008), the Court indicated that evidence of
26 Post-Traumatic Stress Disorder could be introduced to support a self-defense claim. As a result,
27 whether or not a defendant has PTSD is relevant to such a claim.

28 In the instant case, Previous Counsel made a Motion to explore Darion's PTSD claims shortly
before trial, and without sufficient previous investigation. Not exploring Darion's PTSD concerns

1 while utilizing self-defense as a strategy was error, as significant evidence prior to that time showed
2 PTSD indications, and also showed that Darion had been shot only a few years prior. *Id.* at 661-78.
3 For instance, at least two (2) of the competency evaluations indicate the previous shooting, and such
4 evaluations were completed far earlier than the time of the oral Motion on this matter. *See Id.* That
5 Dr. Kapel specifically indicated that “malingerer doesn’t also mean that he isn’t also sick, and it
6 doesn’t mean that he is competent” suggested the need for further evaluation *Id.* at 673. Without this
7 additional evaluation, Darion was forced to rely on the District Court’s leave to continue trial, which
8 was not granted.

9 As a result, the District Court unsurprisingly found the request for continuance based on the
10 PTSD claim unconvincing, causing Darion prejudice. The competency evaluations were not tasked
11 with identifying whether PTSD or mental illness existed but were rather done to determine whether
12 Darion met the *Dusky* standard for competency. *Id.* at 673; 676. It is thus unsurprising that an
13 evaluation specifically indicated that its findings “are not contingent on whether the defendant has a
14 legitimate history of mental health problems as he reports.” *Id.* at 666-67. Even in the light most
15 favorable to the State, a malingering diagnosis is not inconsistent with Darion having PTSD; even if
16 he were malingering, in an effort to avoid being found competent, this is not mutually exclusive with
17 whether or not as a matter of mental health he has a particular mental illness. *See Id.* at 677. Given
18 the evaluations’ tangential relation to a PTSD diagnosis at best, the District Court was left with
19 limited and incomplete evidence to decide the issue on its merits. This occurred because there was
20 no such relevant evaluation to provide to the Court, thereby prejudicing Darion.

21 This prejudice is particularly harmful, given the limited evidence adduced against Darion, and
22 that he claimed self-defense. This error cannot be harmless, as trial testimony indicated that no other
23 person witnessed the events, meaning that the jury was left with only Darion’s testimony to consider
24 his self-defense claim, when a more thorough investigation likely could have produced expert
25 testimony in favor of why Darion felt the fear necessary to pull his firearm and shoot Mr. Borero.
26 The inconsistency concerning the shooting’s sequence only exacerbates this, as such testimony would
27 be necessary to explain to the jury Darion’s fear of being shot, particularly given that Previous
28 Counsel essentially conceded the shooting sequence issue. *Id.* at 510. Thus, not timely investigating

this matter amounted to IAC.

1
2 **II. Previous Counsel was ineffective for failing to object to Detective Miller's personal**
3 **opinion, shrouded as an expert conclusion.**

4 Nevada clearly distinguishes between lay witness and expert witness testimony. *See NRS*
5 50.265; 50.275. Lay witness testimony is limited to that is:

6 "1. Rationally based on the perception of the witness; and

7 2. Helpful to a clear understanding of the testimony of the witness or the determination of a fact in
8 issue."

9 Alternatively, Nevada provides for testimony from experts as follows:

10 "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the
11 evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill,
12 experience, training or education may testify to matters within the scope of such knowledge." *NRS*
13 50.275. In *Garcia-Arias*, a nurse included both observations of a victim's injury, and also
14 observations about the nature of an injury that were not properly noticed for expert testimony
15 (specifically whether or not injuries included punctures and/or lacerations). *Garcia-Arias v. State*,
16 No. 71562, 2017 WL 6049183, at *1 (Nev. App. Nov. 17, 2017). The Court held that while such
17 observations were appropriate lay testimony, that testimony about the age of the bruises or blood
18 pooling were not. *Garcia-Arias v. State*, No. 71562, 2017 WL 6049183, at *1 (Nev. App. Nov. 17,
19 2017). Federal law also provides for both expert and lay witness opinion in a similar manner to
20 Nevada law. *FED R. EVID.* 701; 702.

21 Moreover, a lay opinion differs from expert testimony which offers specialized knowledge
22 obtained through experience. *See Johnson v. Eggedar*, 112 Nev. 428, 436, 915 P.2d 271, 276 (1996).
23 Additionally, "The scope of a witness' testimony and whether a witness will be permitted to testify as
24 an expert witness are within the discretion of the trial court, and the trial court's ruling will not be
25 disturbed unless there is an abuse of discretion."). *DeChant v. State*, 116 Nev. 918, 924, 10 P.3d 108,
26 112 (2000). Altogether, "The admissibility and competency of opinion testimony, either expert or
27 non-expert, is largely discretionary with the trial court. *Watson v. State*, 94 Nev. 261, 264, 578 P.2d
28 753, 756 (1978). Ultimately, "[T]he distinction between lay and expert witness testimony is that lay
testimony results from a process of reasoning familiar in everyday life, while expert testimony

1 results from a process of reasoning which can be mastered only by specialists in the field.” (internal
2 quotation marks omitted)); *State v. Tierney*, 150 N.H. 339, 839 A.2d 38, 46 (2003) As a result, “Lay
3 testimony must be confined to personal observations that any layperson would be capable of making.”
4 *Burnside v. State*, 131 Nev. 371, 383, 352 P.3d 627, 636 (2015). For example, in *Lord v. State*, the
5 Court held that a detective did not provide a proper lay opinion, and in fact testified as an unnoticed
6 expert, when he gave testimony that “certain minor injuries on Lord indicated that Lord had recently
7 been in a fight.” 107 Nev. 28, 33, 806 P.2d 548, 551 (1991). The Court held this this was error and
8 that such testimony should only “be given by one qualified as a medical expert.” *Id.* Finally, lay
9 testimony shrouded as expert testimony poses due process concerns. *See U.S. Const. amend. V.*

10 Here, Detective Miller’s testimony regarding the shooting sequence amounted to an
11 expert opinion. During trial, Detective Miller’s claims about her evaluation of evidence to determine
12 who shot first, amounted to an expert shooting reconstruction, in contravention of *Johnson*. There is
13 arguably specialized knowledge upon which an individual must rely to identify the numerous factors
14 that should logically be considered to reconstruct a shooting, including things such as remaining gun
15 powder residue, and the recovery of clothing to test for the same. Rather, this is precisely the type of
16 case for which *Burnside* demands an expert witness, as Detective Miller’s mere perception of not
17 seeing a shell casing where she expected to see one, is insufficient to allow her to provide such an
18 expert opinion. *See Id.* at 510. This additionally amounted to a due process violation. Additionally,
19 as stated in *Tierney*, expert testimony can only be “mastered by specialists in the field,” and to the
20 extent Detective Miller sought to be an expert, it was deficient performance to not challenge such
21 assertions. The resulting prejudice is more than mere assertion, as the jury’s focus on the shooting
22 sequence lent significant and particular weight to Detective Miller’s claims. Alongside the fact that
23 there existed no other eyewitness testimony, it was prejudicial to allow Detective Miller to testify to
24 what amounted to expert testimony without proper notice. *See Id.*

25 This prejudice was also evidenced in the effect on the District Court. As stated above,
26 the Court relied precisely on Detective Miller’s testimony, pointing, in part, to such testimony as
27 justification for the sentence of twenty years to life that was imposed. This creates a separate and
28 additional manner in which Darion suffered prejudice as a result of Detective Miller testifying outside

1 her capacity as a lay witness, in violation of both Nevada statutory law, and the Federal Rules of
2 Evidence.

3 **III. Detective Miller’s testimony led to the District Court relying on improper or highly**
4 **suspect evidence in violation of *Allred*.**

5 Furthermore, although District Courts hold “wide discretion” in sentencing decisions, such
6 decisions may be overturned if the record demonstrates “prejudice resulting from consideration of
7 information or accusations founded on facts supported only by impalpable or highly suspect
8 evidence.” *Allred v. State*, 120 Nev. at 410, 92 P.2d 1246, 1253 (quoting *Silks v. State*, 92 Nev. 91,
9 94, 545 P.2d 1159, 1161 (1976) (2004).

10 Here, Detective Miller’s testimony provided improper evidence upon which the Court relied
11 at sentencing. Specifically, the Court noted that it found Darion fired first, in part, due to Detective
12 Miller’s testimony. *Id.* at 649-50. Given the findings of three (3) separate occasions on which
13 Detective Miller’s trial testimony could have been impeached but were not, the Court’s reliance on
14 her improper testimony amounted to prejudice to Darion. It also amounted to error for Previous
15 Counsel to not bring such to the Court’s attention during sentencing. Therefore, Detective Miller’s
16 testimony prejudiced Darion and deprived him a fair sentencing hearing.

17 **IV. The State elicited testimony concerning Darion’s post-arrest silence in violation of**
18 **federal and Nevada law.**

19 Under Nevada law, the State may never comment on a defendant’s post-arrest silence at trial.
20 *Murray v. State*, 113 Nev. 11, 17, 930 P.2d 121, 124 (1997). Federal law similarly prohibits such
21 comments. *Doyle v. Ohio*, 426 U.S. 610 (1976). Such comments include testimony elicited from
22 witnesses. *See Id.* In *Murray*, the State elicited comment about the defendant’s silence post-arrest
23 which occurred during cross-examination of the defendant, closing argument, and examination of a
24 state’s witness. *Id.* In *Murray*, it was improper for a state witness to effectively utilize a defendant’s
25 silence post-arrest to impeach him. *Id.*

26 Here, Detective Miller specifically acknowledged Darion’s post-arrest silence regarding any
27 self-defense theory. *Id.* at 489. Detective Miller’s comment that Darion never mentioned self-defense
28 is arguably worse than generally commenting on a defendant’s silence, because here it directly

1 contradicted Darion's self-defense claim. *Id.* at 510. Testimony from Detective Miller about Darion's
2 self-defense claims post-arrest that, "No, he never mentioned that" is no different than saying that
3 Darion is lying and is an explicit comment on his silence. *See Id.* This opinion on Darion's guilt is
4 precisely the conduct *Murray* forbids from the jury. Like *Murray*, the State's witness testified
5 specifically to Darion's post arrest silence, but it is more prejudicial here as it occurred immediately
6 after he presented his self-defense theory. *See Murray*, 113 Nev. at 17. This is shown by the fact that
7 Detective Miller's comment was not about what Darion said during the interview, but rather pointed
8 to what he did not say, tantamount to pointing out his post-arrest silence. Therefore, the State elicited
9 comment from Detective Miller that caused significant prejudice to Darion in violation of both
10 Nevada and federal law.

11 **V. Darion is entitled to an evidentiary hearing on his claims.**

12 Moreover, a defendant is entitled to an evidentiary hearing on any claims that "if true would
13 warrant relief as long as the claims are supported by specific factual allegations which the record does
14 not belie or repel. *Byford v. State*, 123 Nev. 67, 68–69, 156 P.3d 691, 692 (2007); *See also Nika v.*
15 *State*, 124 Nev. 1272, 1278, 198 P. 3d 839, 844 (2008).

16 Here, should the Court not find sufficient evidence on the pleadings, Darion has shown
17 sufficient evidence for evidentiary hearing. The record supports his contentions, as it shows that
18 Detective Miller at least arguably contradicted herself on no less than three (3) previous occasions.
19 *Id.* at 594-95; 602; 605-06. This supports the need, at minimum, for an evidentiary hearing in this
20 matter. The PTSD claims are similarly not belied by the record, as the competency evaluations both
21 mention PTSD, and also do not eliminate the possibility they exist. *Id.* at 661-78. Furthermore, Darion
22 has shown sufficient evidence that Detective Miller stepped beyond the limits of lay testimony, and
23 that she further commented on his post-arrest silence in violation of law. Darion's specific factual
24 allegations indicate that he is entitled to an evidentiary hearing on his claims, should the Court not
25 find sufficient evidence at this time to grant them.

26 **VI. Cumulative error requires striking of the Indictment.**

27 Even if no one error is sufficient to constitute a violation justifying reversal, cumulative error can
28 take on constitutional dimensions. *Parle v. Runnels*, 505. F F.3d 922, 927 (9th Cir. 2007); *Chambers*

1 v. *Mississippi*, 410 U.S. 284, 290 n.3 (1973); U.S. Const. amend. V, XIV; Nev. Const. art. I, sec. 8,
2 cl. 5. If no one error is convincing to this Court, then the cumulative effect of numerous errors argued
3 herein creates a due process violation.

4 **CONCLUSION**

5 Pursuant to the arguments above, Mr. Muhammad-Coleman requests that this Court; 1) strike
6 the Judgment of Conviction in this matter, or alternatively, set this matter for an evidentiary hearing,
7 and 2) grant any other relief to which petitioner may be entitled or the Court deems proper.

8
9 */s/ Waleed Zaman*
10 *Waleed Zaman, Esq.*
11 *Attorney for Petitioner*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing document with the Eighth Judicial
3 District Court by using the Wiznet E-Filing system. I certify that the following parties or their counsel
4 of record are registered as e-filers and that they will be served electronically by the system:
5 PDMotions@clarkcountyda.com; Michael.Schwartzter@clarkcountyda.com.

6 I further certify that on December 6th, 2019, I served a true and correct copy of the foregoing
7 **PETITION FOR WRIT OF HABEAS CORPUS** through personal mail, addressed in a sealed and
8 prepaid envelope to:

9
10 Darion Muhammad-Coleman, #1144228
11 **Lovelock Correctional Center**
12 1200 Prison Road
13 Lovelock, NV 89419
14

15 DATED this 6th day of December 2019.

16
17 By: /s/Waleed Zaman
18 Waleed Zaman, Esq.
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A- SUPPLEMENT



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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

12 WEDNESDAY, JANUARY 4, 2017

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

15
16
17
18 APPEARANCES:

19 For the State:

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

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

INDEX OF WITNESSES

STATE'S WITNESSES:

DAY PAGE

RICHARD McCAMPBELL

Direct Examination by Mr. Schwartz	2	24
Cross-Examination by Mr. Schwarz	2	81
Redirect Examination by Mr. Schwartz	2	97
		105
Recross-Examination by Mr. Schwarz	2	104

TAHIR SHAHAB

Direct Examination by Mr. Hamner	3	8
Cross-Examination by Mr. Schwarz	3	15
Redirect Examination by Mr. Hamner	3	18

RACHEL BISHOP

Direct Examination by Mr. Hamner	3	20
Cross-Examination by Mr. Schwarz	3	37
Redirect Examination by Mr. Hamner	3	46
Recross-Examination by Mr. Schwarz	3	49

DAVID ROSE

Direct Examination by Mr. Hamner	3	51
Cross-Examination by Mr. Schwarz	3	61
Redirect Examination by Mr. Hamner	3	63

LECORY GRACE

Direct Examination by Mr. Hamner	3	65
Cross-Examination by Mr. Schwarz	3	82
Redirect Examination by Mr. Hamner	3	85
Recross-Examination by Mr. Schwarz	3	88

KYLE DOWNIE

Direct Examination by Mr. Schwartz	3	91
Cross-Examination by Mr. Schwarz	3	103

INDEX OF WITNESSES (continued)

STATE'S WITNESSES:

DAY PAGE

ALANE OLSON

Direct Examination by Mr. Schwartz	3	107
Cross-Examination by Mr. Schwarz	3	124
Redirect Examination by Mr. Schwartz	3	125
Recross-Examination by Mr. Schwarz	3	126

JENNIFER REINER

Direct Examination by Mr. Schwartz	3	127
------------------------------------	---	-----

ADAM FELABOM

Direct Examination by Mr. Hamner	3	137
Cross-Examination by Mr. Schwarz	3	150

CLIFFORD MOGG

Direct Examination by Mr. Schwartz	3	158
Cross-Examination by Mr. Schwarz	3	188

KHUSHBOO NARECHANIA

Direct Examination by Mr. Hamner	4	7
Cross-Examination by Mr. Schwarz	4	13

ANYA LESTER

Direct Examination by Mr. Schwartz	4	14
Cross-Examination by Mr. Schwarz	4	35

ERIC SAHOTA

Direct Examination by Mr. Schwartz	4	40
Cross-Examination by Mr. Schwarz	4	64

TERRI MILLER

Direct Examination by Mr. Schwartz	4	66
Cross-Examination by Mr. Schwarz	4	105
Redirect Examination by Mr. Schwartz	4	112
Direct Examination on Rebuttal by Mr. Schwartz	4	168
Cross-Examination on Rebuttal by Mr. Schwarz	4	181
Redirect Examination on Rebuttal by Mr. Schwartz	4	186

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwarz	4	119
Cross-Examination by Mr. Schwartz	4	141
Redirect Examination by Mr. Schwarz	4	160
Recross-Examination by Mr. Schwartz	4	163

Cross-Examination by Mr. Schwartzer	4	141
-------------------------------------	---	-----

Redirect Examination by Mr. Schwarz	4	160
-------------------------------------	---	-----

Recross-Examination by Mr. Schwartzer	4	163
---------------------------------------	---	-----

LIST OF EXHIBITS

STATE'S EXHIBITS

DAY PAGE

Exhibit 1	4	27
Exhibit 3	4	99
Exhibits 4 through 112	2	6
Exhibits 113 and 113a	2	73
Exhibit 114 and 114a	2	69
Exhibit 115 and 115a	2	69
Exhibit 118	3	179
Exhibit 119	3	178
Exhibit 120	4	56
Exhibit 122	3	35
Exhibit 123	4	114
Exhibit 124	4	172

DEFENDANT'S EXHIBITS

DAY PAGE

Exhibit A	3	124
-----------	---	-----

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

2 * * * * *

3 [Outside the presence of the prospective jury panel]

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

6 MR. SCHWARZ: Thank you, Your Honor.

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

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

11 THE COURT: Okay.

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

16 THE COURT: Okay.

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

24 THE COURT: Okay.

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

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

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

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

7 THE COURT: Okay.

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

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

13 MR. SCHWARZ: No.

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

16 MR. SCHWARZ: Yes.

17 THE COURT: Okay.

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

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

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

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

1 come in?

2 MR. SCHWARTZER: Yes, Your Honor.

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

5 MR. SCHWARTZER: Correct.

6 THE COURT: Okay.

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

9 MR. SCHWARZ: And I agree with that.

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

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

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

3 MR. SCHWARTZER: Right.

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

9 MR. SCHWARTZER: Sure.

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

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

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

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

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

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

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

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

23 MR. SCHWARZ: Yes.

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

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

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

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

9 THE DEFENDANT: Yes, sir.

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

12 THE DEFENDANT: Yes, sir.

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

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

19 THE COURT: Okay.

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

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

23 THE COURT: Okay.

24 MR. SCHWARZ: By me, Judge.

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

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

2 MR. SCHWARTZER: Correct.

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

5 MR. SCHWARZ: No, Your Honor.

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

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

9 THE COURT: Yes, please. Thank you.

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

14 MR. SCHWARTZER: Thank you, Your Honor.

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

17 [Jury voir dire -- not transcribed]

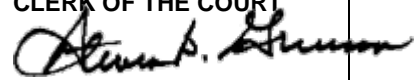
18 PROCEEDING CONCLUDED AT 4:52 P.M.

19 * * * * *

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

23 

24 SARA RICHARDSON
25 Court Recorder/Transcriber



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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

12 THURSDAY, JANUARY 5, 2017

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

15
16
17
18 APPEARANCES:

19 For the State:

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

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DAY	PAGE
-----	------

Direct Examination by Mr. Schwartz	2	24
Cross-Examination by Mr. Schwarz	2	81
Redirect Examination by Mr. Schwartz	2	97
		105
Recross-Examination by Mr. Schwarz	2	104

Direct Examination by Mr. Hamner	3	8
Cross-Examination by Mr. Schwarz	3	15
Redirect Examination by Mr. Hamner	3	18

Direct Examination by Mr. Hamner	3	20
Cross-Examination by Mr. Schwarz	3	37
Redirect Examination by Mr. Hamner	3	46
Recross-Examination by Mr. Schwarz	3	49

Direct Examination by Mr. Hamner	3	51
Cross-Examination by Mr. Schwarz	3	61
Redirect Examination by Mr. Hamner	3	63

Direct Examination by Mr. Hamner	3	65
Cross-Examination by Mr. Schwarz	3	82
Redirect Examination by Mr. Hamner	3	85
Recross-Examination by Mr. Schwarz	3	88

Direct Examination by Mr. Schwartzer	3	91
Cross-Examination by Mr. Schwarz	3	103

INDEX OF WITNESSES (continued)

STATE'S WITNESSES:

DAY PAGE

ALANE OLSON

Direct Examination by Mr. Schwartz	3	107
Cross-Examination by Mr. Schwarz	3	124
Redirect Examination by Mr. Schwartz	3	125
Recross-Examination by Mr. Schwarz	3	126

JENNIFER REINER

Direct Examination by Mr. Schwartz	3	127
------------------------------------	---	-----

ADAM FELABOM

Direct Examination by Mr. Hamner	3	137
Cross-Examination by Mr. Schwarz	3	150

CLIFFORD MOGG

Direct Examination by Mr. Schwartz	3	158
Cross-Examination by Mr. Schwarz	3	188

KHUSHBOO NARECHANIA

Direct Examination by Mr. Hamner	4	7
Cross-Examination by Mr. Schwarz	4	13

ANYA LESTER

Direct Examination by Mr. Schwartz	4	14
Cross-Examination by Mr. Schwarz	4	35

ERIC SAHOTA

Direct Examination by Mr. Schwartz	4	40
Cross-Examination by Mr. Schwarz	4	64

TERRI MILLER

Direct Examination by Mr. Schwartz	4	66
Cross-Examination by Mr. Schwarz	4	105
Redirect Examination by Mr. Schwartz	4	112
Direct Examination on Rebuttal by Mr. Schwartz	4	168
Cross-Examination on Rebuttal by Mr. Schwarz	4	181
Redirect Examination on Rebuttal by Mr. Schwartz	4	186

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwarz	4	119
Cross-Examination by Mr. Schwartz	4	141
Redirect Examination by Mr. Schwarz	4	160
Recross-Examination by Mr. Schwartz	4	163

Cross-Examination by Mr. Schwartzer	4	141
-------------------------------------	---	-----

Recross-Examination by Mr. Schwartzer	4	163
---------------------------------------	---	-----

LIST OF EXHIBITS

STATE'S EXHIBITS

DAY PAGE

Exhibit 1	4	27
Exhibit 3	4	99
Exhibits 4 through 112	2	6
Exhibits 113 and 113a	2	73
Exhibit 114 and 114a	2	69
Exhibit 115 and 115a	2	69
Exhibit 118	3	179
Exhibit 119	3	178
Exhibit 120	4	56
Exhibit 122	3	35
Exhibit 123	4	114
Exhibit 124	4	172

DEFENDANT'S EXHIBITS

DAY PAGE

Exhibit A	3	124
-----------	---	-----

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 5, 2017, 12:16 P.M.

2 * * * * *

3 [Jury voir dire -- not transcribed]

4 [Outside the presence of the prospective jury panel]

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

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

8 THE COURT: Okay.

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

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

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

14 MR. SCHWARTZER: 112, Your Honor.

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

16 THE CLERK: It was 112.

17 THE COURT: Pardon?

18 THE CLERK: Through 112.

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

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

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

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

1 THE COURT: Okay.

2 [Jury voir dire -- not transcribed]

3 [In the presence of the jury panel]

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

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

9 UNIDENTIFIED JUROR: Yes.

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

13 [The Clerk swears in the Jury Panel]

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

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

1 moving forward.

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

8 [The Clerk read the information aloud]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 go ahead and answer the question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Mr. Schwartzer.

17 MR. SCHWARTZER: Thank you, Your Honor.

18 Madam Clerk, if you please? Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 THE COURT: Thank you.

15 Mr. Schwarz.

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

18 THE COURT: Okay. Thank you.

19 State may call their first witness.

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

21 THE COURT: Thank you.

22 Good afternoon, sir.

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

24 THE COURT: How are you?

25 MR. McCAMPBELL: Good.

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

3 **RICHARD McCAMPBELL,**

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

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

7 THE WITNESS: My name is Richard McCampbell.

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

10 THE WITNESS: Okay.

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

12 THE WITNESS: Okay.

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

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

16 THE COURT: Okay. Thank you.

17 Mr. Schwartzer.

18 MR. SCHWARTZER: Okay. Thank you.

19 **DIRECT EXAMINATION OF RICHARD McCAMPBELL**

20 BY MR. SCHWARTZER:

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

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

24 Q Was that here in Las Vegas?

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

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

2 A I was a little mobile mechanic.

3 Q What does that mean?

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

6 Q Okay.

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

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

9 A Yes, sir, I do.

10 Q And people have like a nickname for you?

11 A Yeah, the mechanic.

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

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

15 Q And where was this car?

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

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

20 A Well, they call it Naked City.

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

23 A Well, basically behind the Stratosphere.

24 Q Okay.

25 A Yeah.

1 Q Certain streets or anything?

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

3 Q City streets?

4 A Yeah, city streets.

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

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

7 A Right.

8 Q Would you go to that area often?

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

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

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

12 A Yes, sir.

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

14 A Yeah.

15 Q Am I saying that right?

16 A Yeah. Exactly.

17 Q What did you decide to do?

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

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

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

21 there.

22 Q And about what time are we talking about?

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

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

25 A Yes, sir.

1 Q Okay. And what did you do at that 7-Eleven?

2 A Well, I usually get me a Loco and an MD 20/20.

3 Q All right. What's a -- what's a Loco?

4 A It's a little kind of alcoholic drink.

5 Q Okay.

6 A You know.

7 Q Like a beer or something?

8 A Yeah, kind of fruit flavor.

9 Q Okay.

10 A Kind of fruit flavor.

11 Q And then Mad Dog 20/20; what is that?

12 A That is wine. That is wine, flavored wine.

13 Q So you bought some alcohol?

14 A Yeah.

15 Q After working?

16 A Yeah. Right.

17 Q What were you going to do with that?

18 A Well, I usually mix the two 50-50, you know.

19 Q Does that taste any good?

20 A Yeah, real good. Yeah, real good, real good, real good.

21 Q It sounds sweet?

22 A It is pretty tasty, pretty tasty, pretty strong.

23 Q All right. So pretty strong?

24 A Yeah, real strong. Yeah.

25 Q So what did you do with this -- with this, after you got --

1 A Well --

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

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

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

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

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

9 A Okay.

10 THE COURT: Is your screen on, sir?

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

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

13 THE WITNESS: Yes, sir.

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

17 THE WITNESS: Oh, I gotcha. Okay.

18 THE COURT: Okay? Thank you.

19 BY MR. SCHWARTZER:

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

22 A Right.

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

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

1 Q Okay.

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

3 THE COURT: You got a new job.

4 THE WITNESS: Right.

5 MR. SCHWARTZER: And let the record reflect there's a circle around -- is

6 that -- it's -- it looks like Boston Avenue, between Boston and St. Louis Avenue.

7 On -- what's that Fair --

8 THE COURT: It's upside down.

9 MR. SCHWARTZER: -- Fairfield Avenue.

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

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

13 THE COURT: Uh-huh.

14 BY MR. SCHWARTZER:

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

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

18 Q Is that St. Louis?

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

21 Q Okay.

22 A So the street right there.

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

25 A Yeah.

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

1 A Yes.

2 Q And who knocks on your window?

3 A This guy knocked on my window.

4 Q What's that guy's name?

5 A His name is Money.

6 Q Okay. You know him as Money?

7 A Yeah.

8 Q How long have you known Money?

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

10 Q Six, seven, eight years?

11 A Eight years, right.

12 Q Okay.

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

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

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

16 A Right. Yeah.

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

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

19 about a year?

20 A Yeah.

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

22 A Oh, yes. Yeah.

23 Q Had you had helped him out before?

24 A Yes, I have.

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

1 people?

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

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

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

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

6 A Yes, I do.

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

8 A Dreadlocks and red shirt.

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

10 BY MR. SCHWARTZER:

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

12 A Yes, go ahead.

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

15 A Yes, I do.

16 Q And do you guys have a conversation?

17 A Yes, we do.

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

20 A He asked me for a ride.

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

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

24 Q Why did you ask those questions?

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

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

3 Q Okay.

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

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

7 A He said okay.

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

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

11 Q Well, let me stop you, Richard.

12 A Okay.

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

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

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

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

19 Q Where did he describe to you?

20 A He said towards Boulder Highway.

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

23 A 10, 15 minutes at the most.

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

25 A Right, exactly.

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

2 A Yes, I have.

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

4 those places you've driven him to?

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

6 some furniture, you know, stuff like that.

7 Q How about an appliance store?

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

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

10 A No, no, simple.

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

12 what happens?

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

14 Q And did he come right back?

15 A He came right back.

16 Q Was it a minute?

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

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

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

20 Q Where did he get in the car?

21 A He got in the front seat.

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

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

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

25 A No. No.

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

2 A No, no, I haven't.

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

4 jury?

5 A Well, one of them was kind of short and stocky, had a baseball hat.

6 Then the other guy kind of had a ponytail.

7 Q Okay. White? Black? Hispanic?

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

9 Q Light-skinned white?

10 A Yeah.

11 Q Okay. So they get in the back. Were you surprised to see two

12 other people with you?

13 A Exactly, because my words were who were those guys, you know,

14 you asked me for a ride, you didn't say it was nobody else.

15 Q What was Money's response to that?

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

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

18 know. You know.

19 Q Okay. So you were taken by surprise?

20 A I was taken by surprise, definitely.

21 Q And during that time that you knew Money did he ever have other

22 people get in the car with you?

23 A No.

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

25 A No. No.

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

3 A Yeah.

4 Q This group of men?

5 A Right.

6 Q And where do you drive them to?

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

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

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

12 Q Do you know which one?

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

15 Q Okay.

16 A Ponytail.

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

18 A Right.

19 Q Then what happens?

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

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

22 A Right.

23 Q Okay. Boulder Highway and where?

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

1 Q Okay.

2 A Lowe's and then 7-Eleven.

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

4 A Yes, sir. We did.

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

6 A Yes, sir.

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

8 A No, I didn't.

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

10 A No.

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

12 A Right.

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

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

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

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

17 A We were kind of close.

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

19 7-Eleven?

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

21 right here.

22 Q Who is "they"?

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

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

25 Q Okay. And what did he say?

1 A Park right -- park on the side.

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

3 A Right.

4 Q But park on the side?

5 A Park on the side.

6 Q Did that concern you?

7 A Very much. I said, Why? What difference does it make? And I

8 didn't -- I didn't feel comfortable. I said, What's -- why we got to park on the

9 side?

10 Q Why didn't you feel comfortable?

11 A Well, you know, you know, in my mind, it's if you was going to go

12 into the store to go get something, go get it. Why we got to be on the side of

13 the store to go get something. So it's, in my mind I'm thinking what's up,

14 what's really going on.

15 Q Okay. And then when you -- so do you do what Money tells you to

16 do? Do you park on the side?

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

18 Q Now I'm going to --

19 A But I do back on up the side.

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

21 the -- out of your vehicle?

22 A All three, yes.

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

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

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

1 talking with each other?

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

3 Q Could you hear anything that they were saying?

4 A Not really.

5 Q Okay.

6 A Not really.

7 Q Anything --

8 A No.

9 Q -- that you can tell us?

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

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

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

18 MR. SCHWARTZER: That's fine.

19 BY MR. SCHWARTZER:

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

21 A No, not at all.

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

24 A Right.

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

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

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

3 A He got two beers.

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

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

7 Q Oh, they sat out and drank it?

8 A Right, they started drinking, yeah.

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

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

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

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

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

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

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

19 A Back where they were sitting.

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

22 A Right.

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

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

1 Q Okay. Did they tell you where to go?

2 A Well, they directed me as we go.

3 Q Okay. Where to go?

4 A Get in the right lane, you know, turn left then get on the highway.

5 Q Okay. So from that Lowe's did you drive out and go on to a

6 highway or did you --

7 A Yeah. Go down on the highway right in front, I guess that was

8 Boulder.

9 Q Talking about Boulder Highway?

10 A Yeah. Yeah.

11 Q Okay. So once you get on Boulder Highway what do you do?

12 A We -- I was in the right lane, so he told me to get over in the left

13 lane.

14 Q Who was telling you to get in the left lane?

15 A Money.

16 Q The defendant?

17 A Yeah.

18 Q And once you get in the left lane does he give you any further

19 directions, the defendant?

20 A Well, he told me to turn up in here.

21 Q And when you turn up in here what are you talking about?

22 A At the hotel.

23 Q Okay.

24 A Motel.

25 Q And can you describe that motel for me?

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

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

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

5 Q Have you ever been to that motel before?

6 A No, never seen it.

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

9 A Money tells me.

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

11 A Yeah.

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

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

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

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

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

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

18 Q Who tells you not to park there?

19 A Money said, Don't park there.

20 Q Did that seem odd to you?

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

23 Q How were you feeling at this point?

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

25 Q Where does Money direct you to park?

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

2 Q Parking in what spot?

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

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

7 A Yes, sir.

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

10 A Yes. All the way to the back.

11 Q So way back here?

12 A Yes, sir.

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

15 A A boat, yes, sir.

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

17 A No, sir.

18 Q Okay.

19 A It was huge.

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

21 A Very much so, yeah.

22 Q Okay. What were you saying?

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

1 Q Right.

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

3 Q Who were you directing these complaints to?

4 A Money.

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

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

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

9 A Yes, definitely, definitely.

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

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

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

16 A Yeah. Exactly.

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

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

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

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

24 Q Okay. So you're Old School?

25 A Yeah, I'm Old School.

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

3 A The guy with the baseball hat.

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

6 A Not without complications.

7 Q Okay. Tell us about that complications.

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

11 Q And do you express that?

12 A Very much so.

13 Q And did anyone try and calm you down?

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

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

17 Q And this is the guy in the backseat?

18 A Right.

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

20 A Eventually, yes, sir.

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

22 A I park.

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

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

25 Q Tell me who got out of the car?

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

2 Q Okay.

3 A -- got out.

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

6 A He was in the front seat.

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

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

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

11 A Yes, I did.

12 Q On April 21st?

13 A Uh-huh.

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

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

18 Q Okay.

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

21 Q Right.

22 A So.

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

24 A Definitely. Right.

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

1 with the hat gets out of car?

2 A Okay.

3 Q Does that ring a bell at all?

4 A Yeah, pretty -- yes.

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

7 A Oh, absolutely then.

8 Q Okay.

9 A Yes, sir.

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

11 A No, never.

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

14 A No, sir.

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

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

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

20 A I guess they were waiting on somebody.

21 Q Okay.

22 A You know.

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

25 A No, I didn't.

1 Q Okay. You didn't bother -- you didn't ask?

2 A No, I didn't.

3 Q I guess I've got to ask you this, why?

4 A Well, because, you know, he asked me to give him a ride and I
5 charged him ten bucks. So I wanted him to -- whatever he was doing, go do it,
6 get his -- get whatever, do whatever, and get back in my car because he said it
7 was just five minutes.

8 Q And this was longer than five minutes?

9 A Oh, this was way longer.

10 Q Okay. Now you've also dented your car?

11 A Yeah, yeah, right.

12 Q Okay. So they're sitting outside, it looks like they're waiting for
13 somebody, does someone eventually come meet them?

14 A Yes, it does.

15 Q So where does that person -- where does that person does that
16 person come from?

17 A He come from upstairs.

18 Q Do you remember -- I know, again, it was about four years ago, but
19 do you remember anything about that person?

20 A He had a white T-shirt on.

21 Q Okay. Anything else?

22 A That's pretty much it.

23 Q Okay.

24 A White T-shirt.

25 Q And he -- he came down the stairs?

1 A Yeah, right.

2 Q Was he white? Black? Hispanic?

3 A He was black.

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

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

6 Q Yeah.

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

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

9 A They were black.

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

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

12 Q Okay.

13 A Yeah.

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

15 the white T-shirt?

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

17 color.

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

19 A Same color, right, exactly.

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

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

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

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

24 Q Okay.

25 A Didn't seem like it.

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

3 A Right, exactly.

4 Q Okay. And did they eventually drive away?

5 A Yes, sir, they did.

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

8 A I think they all spoke.

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

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

11 Q Okay. Where were they speaking at?

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

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

16 A They was back -- leaving, yeah.

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

18 A Up, my window's up.

19 Q And was your car on or off?

20 A Off.

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

23 A No, not really, not really.

24 Q Just what's up?

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

1 Q Okay.

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

3 Q All right.

4 A So I could hear that.

5 Q I'm actually confusing myself now.

6 So the person who said what's up, it's actually those two

7 African-Americans that got into the car?

8 A Right. Right.

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

11 A Okay.

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

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

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

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

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

22 A No.

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

24 A No.

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

1 A No. No.

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

4 A Right. Exactly.

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

7 A Right.

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

9 A Right.

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

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

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

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

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

16 A Right.

17 Q And then what happens?

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

19 Q How many pow, pow, pows?

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

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

23 A Not really.

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

25 A No, I don't.

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

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

3 Q Okay.

4 A You could tell.

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

7 A Yes.

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

10 A Right.

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

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

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

14 BY MR. SCHWARTZER:

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

17 A Exactly.

18 Q You didn't see who exactly --

19 MR. SCHWARTZER: I'm moving on.

20 BY MR. SCHWARTZER:

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

22 A Right. Exactly. It sounded like him.

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

24 A Yes.

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

1 A It didn't sound like it.

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

3 A Right.

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

7 A Right.

8 Q Okay. Thank you.

9 How many p o w s did you here?

10 A Quite a bit to me, sounded like.

11 Q Okay. Can you guess?

12 A More than three or four.

13 Q Okay.

14 A Yeah.

15 Q What did you do?

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

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

18 A Didn't care at all.

19 Q Okay. Why is that?

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

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

24 A Yeah, barely.

25 Q Barely? Okay.

1 A Yeah.

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

3 A Yes.

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

5 seats did they get into?

6 A Money got back in the -- Money got back in the front seat, the

7 other guy got behind him in that seat.

8 Q So the front passenger seat?

9 A Yeah, right.

10 Q Is where Money went to?

11 A Right.

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

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

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

15 off to?

16 A We go out on the highway.

17 Q Okay.

18 A But -- yeah.

19 Q Boulder Highway?

20 A Yes.

21 Q Okay. And so when you're out on Boulder Highway, you just heard

22 all these shots, how are you feeling at the time?

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

24 Q Okay. Are you expressing your fear?

25 A Exactly.

1 Q What are you saying?

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

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

4 Q Does anyone respond to you?

5 A Just drive, just drive.

6 Q Who says just drive?

7 A Money just saying just drive.

8 Q Does Money explain what happened?

9 A No, he don't.

10 Q No?

11 A No.

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

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

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

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

16 A Yeah.

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

18 A No, they don't.

19 Q Do you run that red light?

20 A No, I didn't.

21 Q Okay. Why?

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

23 Q Who tells you to drive right?

24 A Money.

25 Q That would be the defendant?

1 A Right.

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

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

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

6 A Right.

7 Q Okay. Do you say anything else during this period of time about
8 what happened?

9 A Well, you know, I'm expressing my fear, you know, I mentioned I'm
10 going to tell it.

11 Q Is that what you say?

12 A That's what I said.

13 Q How loud do you say that?

14 A Real loud, more than once.

15 Q Okay. Does anyone respond to that?

16 A Yes, Money did.

17 Q Money did?

18 A Yeah.

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

20 A Kind of swole up a little bit, kind of leaned at me and said, You
21 going to do what?

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

23 A Well, when you kind of puff up, raise up in the seat, and kind of
24 look at you and said, You going to do what?

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

1 A Real loud, aggressive.

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

3 you?

4 A Yes. Yes.

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

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

7 Q Okay.

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

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

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

11 in his lap?

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

13 Q Something dark?

14 A Right.

15 Q An object?

16 A An object.

17 Q That's on his lap?

18 A Yeah.

19 Q And you just heard gunshots?

20 A Yeah, exactly.

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

22 A It looks black.

23 Q Okay. Did it look metallic? Plastic?

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

25 kind of scared for my life really.

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

2 A Uh-huh.

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

5 A Right.

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

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

9 Q And you have your hands on your lap?

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

12 Q Okay.

13 A You know.

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

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

16 Q On that object?

17 A Right.

18 Q That's on his lap?

19 A Exactly.

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

21 A Right.

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

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

24 MR. SCHWARTZER: Okay.

25 BY MR. SCHWARTZER:

1 Q How did that make you feel?

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

3 Q What did you think that dark object was?

4 MR. SCHWARZ: Objection.

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

6 MR. SCHWARZ: Speculation.

7 THE COURT: I'll sustain the objection.

8 BY MR. SCHWARTZER:

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

10 A Exactly.

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

12 A Exactly.

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

14 A Very, yes, sir.

15 Q Very, you said "very"?

16 A Very, very, yeah, very.

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

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

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

20 A Right.

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

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

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

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

1 next corner?

2 THE WITNESS: Right.

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

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

6 THE COURT: Out on Boulder Highway?

7 THE WITNESS: Right.

8 THE COURT: Okay.

9 All right, Mr. Schwartzer.

10 MR. SCHWARTZER: Thank you.

11 BY MR. SCHWARTZER:

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

14 A Right.

15 Q -- what street was that?

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

17 Q Okay.

18 A Because I was finna go through it.

19 Q Okay.

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

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

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

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

3 A Right.

4 Q The defendant?

5 A Right.

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

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

8 Q Okay.

9 A And I turned.

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

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

12 Q Okay.

13 A You could only turn right.

14 Q Okay.

15 A And it was kind of real dark.

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

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

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

19 A Right.

20 Q Do you know what street or anything?

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

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

23 A Everyone got out at the same time.

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

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

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

5 A Right. Exactly.

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

8 A Didn't say anything.

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

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

12 Q Why were you getting teary?

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

16 Q You needed a drink?

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

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

20 A No, sir.

21 Q What do you do?

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

23 Q Okay. In the car?

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

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

1 think you woke up?

2 A I got up when the sun came up.

3 Q And did you go to the police then?

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

5 Q Okay.

6 A I didn't know what just happened.

7 Q Did you know someone died at that time?

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

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

12 A Yes, I did.

13 Q And what did you do?

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

16 Q Okay. Do you do the brake job?

17 A I do the brake job.

18 Q Do you eventually go home?

19 A Yes, I do, later on.

20 Q About what time is that?

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

22 Q P.M.?

23 A Yeah.

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

25 A Yes, I am.

1 Q Was your wife home?

2 A Yes, she was.

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

4 A She was hysterical.

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

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

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

11 A Exactly. Yes, sir.

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

13 A Started screaming and hollering and crying.

14 Q Did you call the police?

15 A I called 9-1-1.

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

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

19 Q Did the police come to your house?

20 A No, they never came.

21 Q Okay. Did you stay up that night?

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

23 Q And the police never came?

24 A They never came.

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

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

2 Q So what did you do?

3 A I drove the car up to the station.

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

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

6 Q Is it here downtown?

7 A Yeah, downtown, right.

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

10 A Yes, sir.

11 Q And how do you go about doing that?

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

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

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

20 THE WITNESS: Yes, sir.

21 THE COURT: And a policeman.

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay.

24 THE WITNESS: Right.

25

1 BY MR. SCHWARTZER:

2 Q Wearing a uniform and a badge?

3 A Right. Exactly.

4 Q Okay.

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

6 Q Okay.

7 A He said wait just a minute.

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

9 A Not yet.

10 Q Even though you called and stuff?

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

12 Q Go ahead.

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

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

15 A Okay.

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

18 A Yes, I was.

19 Q Okay. And you talked to some detectives?

20 A Right.

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

22 A Right. Right.

23 Q And you talked to some homicide detectives?

24 A Yes, sir.

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

1 A Exactly.

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

3 A Yes, sir.

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

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

6 THE COURT: You may.

7 BY MR. SCHWARTZER:

8 Q Do you recognize these forms?

9 A Yes, sir.

10 Q Do you recognize the writing?

11 A Yes, sir.

12 Q Do you recognize the signature?

13 A Yes, sir.

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

16 A That's my name.

17 Q And you time and date that?

18 A Yes, sir.

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

20 A Yes, sir.

21 Q To the best of your ability?

22 A Right.

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

24 A Yes, sir.

25 Q And these are statements that you wrote?

1 A You wrote, yes, sir.

2 Q And again you signed it?

3 A Yes, sir.

4 Q And that's your signature?

5 A Yes, sir.

6 Q And is that the time and date that you believe was when you signed

7 it?

8 A Yes, sir.

9 Q Okay.

10 MR. SCHWARTZER: I'll move for admission of 114 and 115.

11 MR. SCHWARZ: No objection, Your Honor.

12 THE COURT: Those will be admitted. Thank you.

13 **[STATE'S EXHIBITS 114, 114A, 115, AND 115A ADMITTED]**

14 BY MR. SCHWARTZER:

15 Q So you talked to police on the 21st and they come actually come
16 back to talk to you on the 22nd to show you these photographs, correct?

17 A Right. Right. Exactly.

18 MR. SCHWARTZER: And now I'm going to move to publish, Your Honor?

19 THE COURT: You may.

20 BY MR. SCHWARTZER:

21 Q So did the police read you this instruction right here?

22 A Yes, sir.

23 Q And I won't take the time to read it, but they actually read this to
24 you?

25 A Yes, sir.

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

2 A Yes, sir.

3 Q And then you wrote this statement?

4 A Yes, sir.

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

6 A Yes, sir.

7 Q Because his ears stick out?

8 A Yes, sir.

9 Q And fat face. Also out of the six people number 5 looks like the
10 guy that was in my car. That would be this individual right here?

11 A Yes, sir.

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

13 A Right. Yes, sir.

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

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

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

17 And then number 115, again same thing, and similar to the last
18 document, it's April 22nd, 2013, and then you put this here?

19 A Yes, sir.

20 Q That's your handwriting?

21 A That's right.

22 Q Number 4 with the ponytail, that's the one that was in my car. And
23 you picked out this individual.

24 A Yes, sir.

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

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

2 A Yes, sir.

3 Q And you -- is that your signature?

4 A Yes, sir.

5 Q On both of them, correct?

6 A Right. Exactly.

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

9 A Yes, sir.

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

11 A Yes, sir.

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

13 A Yes.

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

16 A Yes, they did.

17 Q Okay. They eventually did, right?

18 A Right, eventually.

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

21 A No, sir.

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

23 A No, sir.

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

1 A Yes, sir.

2 Q And again you do a photographic lineup?

3 A Yes, sir.

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

5 THE COURT: You may.

6 BY MR. SCHWARTZER:

7 Q Showing you --

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

9 BY MR. SCHWARTZER:

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

11 A Yes, sir.

12 Q Do you recognize the signature?

13 A Yes, sir.

14 Q And the handwriting?

15 A Yes, sir.

16 Q Is that your signature and your handwriting?

17 A Yes, sir.

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

20 A Yes, sir.

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

22 MR. SCHWARZ: No objection.

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

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

1 THE COURT: Yeah.

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

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

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

5 BY MR. SCHWARTZER:

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

7 A Yeah.

8 Q And that's him right there?

9 A Yes, sir.

10 Q Okay. That's your signature?

11 A Yes.

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

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

14 THE COURT: Okay. Thank you.

15 BY MR. SCHWARTZER:

16 Q Now when they actually show you this -- this lineup, it's on April
17 25th, 2013?

18 A Uh-huh.

19 Q Correct?

20 A Yes, sir.

21 Q So a few days after -- after they showed you the initial
22 photographs? That statement was recorded as well, correct?

23 A Yes, sir.

24 Q And when they actually show you this photograph do you have a
25 reaction?

1 A I think I said something like bingo, something like that.

2 Q Okay. You're confident that's Money?

3 A Yeah. Right.

4 Q Let me ask you this, during the period of time before they were
5 actually able to show you a photo of Money, the defendant, did you tell
6 detectives about how you would drop Money off at certain places?

7 A Right. Yes, sir.

8 Q You told them about the appliance store?

9 A Yes, sir.

10 Q Okay. And grocery stores?

11 A Right. Yes, sir.

12 Q Okay. Did you ever know until you were subpoenaed for this
13 process, did you ever know his true name?

14 A No, sir.

15 Q It wasn't until you were subpoenaed for this process that --

16 A Right.

17 Q Okay. Now, Mr. McCampbell, we're almost done here. I'm just
18 going to show you a few more photos and then I'm going to show you a video
19 and then we're done.

20 A Okay.

21 Q Okay? We're done with me.

22 A Okay.

23 Q And then Mr. Schwarz over here will ask you some questions.

24 When you turned your car turned yourself in on April 21st, 2013,
25 and just to be clear, you've never been arrested in this case?

1 A No, sir.

2 Q You just believed you were involved in something and you needed
3 to go to the police?

4 A Right. Exactly.

5 Q And no point has charges ever been filed against you?

6 A No, sir.

7 Q Okay. You -- you took your Cadillac with you?

8 A Yes, sir.

9 Q The one that the police were looking for according to your wife?

10 A Right. Yes, sir.

11 Q And showing you Exhibit 64, that's it, right?

12 A Yes, sir.

13 Q Was this, like, kind of that area where that van was?

14 A Yes, sir. It was going, pulling in.

15 Q Okay. Can you point to where it was pulling in?

16 A Right here. Right there.

17 Q Okay. Thank you. And then?

18 MR. SCHWARTZER: Thank you Your Honor.

19 BY MR. SCHWARTZER:

20 Q And then showing you, so this is Exhibit 66, which is another
21 photo, showing you Exhibit 67, there is something right there?

22 A Yes.

23 Q What is that? Is that a defect in your car?

24 A Yes, it is.

25 Q Okay. Was that mark there before April 19th, 2013?

1 A No, sir. No, sir.

2 Q This is a close-up of that in 68.

3 A Uh-huh.

4 Q And then showing you Exhibit 69?

5 THE COURT: Hold on. Hold on. Just for the record, the defect as it's
6 being described is in the backside of the left, rear C-post, I guess, of your car?

7 THE WITNESS: Right.

8 THE COURT: Okay. Thank you.

9 MR. SCHWARTZER: Thank you, Your Honor.

10 BY MR. SCHWARTZER:

11 Q Showing you Exhibit 69 is this the passenger side of your vehicle?

12 A Yes, sir.

13 Q I want to direct your attention now to the middle of the photograph,
14 it's the door handle area.

15 A Right.

16 Q Is there something missing in this area right here?

17 A Yes, it is.

18 Q What's missing?

19 A It's a little -- it's the same color, but it's missing from right here.

20 Q Okay. Now, I'm going to show you kind of a close-up of that, of
21 72. Is that what you're talking about?

22 A Right. Yes, sir.

23 Q Okay. And just so the jury can see what it's supposed to look like,
24 on -- showing you Exhibit 74, is that what it's supposed to look like?

25 A Yes. Yes, sir.

1 Q It's like --

2 A Like a wood -- it's imitation wood grain.

3 Q Okay. Like a fake wood panel?

4 A Yes, sir.

5 THE COURT: 74 is the interior door handle area of the driver side door.

6 THE WITNESS: Right, yes, sir.

7 THE COURT: That's what you're saying it should have looked like --

8 THE WITNESS: Right. Yes, sir.

9 THE COURT: -- on the -- thank you.

10 BY MR. SCHWARTZER:

11 Q Showing you Exhibit 53, does it look something like that?

12 A Yes, sir.

13 Q Okay. Finally, I want to publish Exhibit 7 which is a video. Okay.
14 I'm not going to go through the full video with you or anything like that. I do
15 want to show you certain things?

16 MR. SCHWARTZER: And I'm going to right now, Your Honor, for the
17 record, I'm showing a video surveillance that shows two video screens, but
18 there is nine video screens all together. I'm -- the time is April 19th, 2013,
19 21:15:19. I'm going to fast forward.

20 BY MR. SCHWARTZER:

21 Q Okay. Now, there's eight video surveillance, you can see in this
22 exhibit now, again, Exhibit 7, we're at 21:17:08. I am going to pull up camera
23 4. Do you recognize anything in camera 4?

24 A Yes, sir.

25 Q Can you circle it?

1 A That's my Cadillac.

2 Q Okay. And I'm now going to play -- actually just going to go back a
3 little bit, just real quick. Try again. Okay. So you're pulling into a spot right
4 here.

5 A Right.

6 Q Is that correct?

7 A Yes, sir.

8 Q And so this is the spot you originally try to park into?

9 A Right. Yes, sir.

10 Q Now, I'm showing you at 21:16:51 on camera 4, showing the blue
11 Cadillac on the screen moving into a white -- a parking spot by a white vehicle.
12 So you tried parking there and it was --

13 A Right.

14 Q And, again, who told you to change your parking spot?

15 A Money.

16 Q And that would be the defendant?

17 A Right.

18 Q And this you trying to now back in. I'm just going to fast forward a
19 little bit. So that's the spot.

20 Now, when people get out of the car, I want you to tell me who's
21 getting out of the car, okay?

22 A Got it.

23 Q Still got this car?

24 A Huh?

25 Q You still have this car?

1 A No, sir. No.

2 Q Okay. Who just got out of the --

3 A I think Money and the guy with the baseball hat.

4 Q All right. Circle -- circle Money for me.

5 A That's Money right here, right there, first one.

6 THE COURT: He circled the gentleman exiting the right, front passenger
7 side.

8 THE WITNESS: Right.

9 THE COURT: That would be at 21:19:19.

10 MR. SCHWARTZER: Thank you, Your Honor, on camera 4 again
11 BY MR. SCHWARTZER:

12 Q And then the person in the baseball hat would be the person coming
13 out of the passenger rear?

14 A Right.

15 Q Okay. Mr. McCampbell, did you know they were going to -- that
16 the defendant was going to shoot somebody?

17 A No, sir.

18 Q Did you know he was going to rob somebody?

19 A No, sir.

20 Q Would you have driven him there if you knew that?

21 A Absolutely not.

22 Q Is that why on April 21st you went to talk to the police?

23 A Absolutely.

24 MR. SCHWARTZER: Court's indulgence.

25 Pass the witness.

1 THE COURT: Okay. We'll take a short recess before cross-examination,
2 folks, just about five, ten minutes to stretch and use the restroom if you need
3 to.

4 During the recess you are admonished not to talk or converse
5 among yourselves or with anyone else on any subject connected with the trial
6 or read, watch, or listen to any report of or commentary on the trial by any
7 medium of information including, without limitation, to newspapers, television,
8 the Internet, and radio or form or express any opinion on any subject connected
9 with the case until it's finally submitted to you and you cannot do any
10 investigation, research, or recreations on your own. Thank you.

11 You can just leave your clipboards and everything in your chairs.

12 [Outside the presence of the jury panel]

13 THE COURT: You can step down as well, Mr. McCampbell.

14 THE COURT: Okay. We're in recess, guys.

15 [Recess at 4:07 p.m.; proceedings resumed at 4:23 p.m.]

16 [Outside the presence of the jury panel]

17 THE COURT: And you can go ahead and get the jurors, Joel.

18 THE MARSHAL: Is everyone ready?

19 THE COURT: Yeah.

20 THE MARSHAL: Come on in.

21 [In the presence of the jury panel]

22 THE MARSHAL: Jury's present, Your Honor.

23 THE COURT: Thank you.

24 You may be seated.

25 All right. We will be back on the record.

1 Mr. Muhammad-Coleman's present with his attorney. State's attorneys, jurors
2 are all present. We're going to continue on with the testimony of
3 Mr. McCampbell.

4 I will remind you that you're still under oath, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Schwarz.

7 MR. SCHWARZ: Thank you, Your Honor.

8 **CROSS-EXAMINATION OF RICHARD McCAMPBELL**

9 BY MR. SCHWARZ:

10 Q Mr. McCampbell, before I start asking you some more specific
11 questions, would you agree with me that you never heard either one of these
12 three people, Money, ponytail, or heavysset guy, you never heard any one of
13 them talk about a robbery?

14 A No, sir.

15 Q You agree with me?

16 A Yes, sir.

17 Q Okay. Would you agree with me that when they were outside the
18 7-Eleven you never heard any of that conversation?

19 A No, sir.

20 Q And you would additionally agree with me that the only voice that
21 you heard clearly was the voice that said show me the money?

22 A Right.

23 Q Yes?

24 A Yes.

25 Q And that was not my client's voice?

1 A No, sir.

2 Q Because you were familiar with my client's voice?

3 A Yes, sir. Exactly.

4 Q Would you agree with me that did you not see this shooting?

5 A Yes, sir.

6 Q You would agree with that?

7 A Yes, sir.

8 Q Now you may have seen the video, but on the night of the incident
9 you never saw anything?

10 A Yes, sir.

11 Q And you don't know who shot who or what happened?

12 A Right. Exactly.

13 Q Now, at the beginning of your testimony you said that did you some
14 vehicle work and then you were over on Philadelphia Avenue in Naked City just
15 sort of hanging around?

16 A Right.

17 Q Okay. And you said you sat there because, you know, sometimes
18 you had work there?

19 A Yes, sir.

20 Q Okay. Do you remember giving your voluntary statement two days
21 after this incident?

22 A Yes, sir.

23 Q Okay. Do you remember the detective asking you why you used to
24 hang --

25 MR. SCHWARTZER: Objection, Your Honor. May I approach?

1 THE COURT: Yes.

2 [Bench conference -- not transcribed]

3 THE COURT: All right. I'll sustain the objection.

4 BY MR. SCHWARZ:

5 Q Mr. McCampbell, you said you went and got some alcohol, right?

6 A Yes, sir.

7 Q How many bottles of wine did you get?

8 A Excuse me?

9 Q How many bottles of wine did you get?

10 A One.

11 Q Do you recall testifying at the grand jury?

12 A Yes, I do.

13 Q Okay. And I can show you your testimony if it will refresh your
14 recollection, do you recall testifying at the grand jury that you bought two
15 bottle of Mogen David?

16 A Okay. One or two.

17 Q Okay. So one or two, maybe two?

18 A Yeah, maybe two.

19 Q And then this other drink, Loco, what is it -- what is it, in a can?

20 A Yes.

21 Q And you said it's strong?

22 A Yeah.

23 Q So how much had you had to drink before you came in contact with
24 my client?

25 A Really, I just opened it.

1 Q All right. So you hadn't had anything to drink?

2 A Really, no. Really.

3 Q Okay. So that video we saw with your, pardon me for saying, your
4 horrible driving, couldn't have been caused by you being intoxicated?

5 A No, sir, not in the least.

6 Q Did you smoke any crack cocaine that night?

7 A No, sir, sure didn't.

8 Q At the time of this incident in 2003, did you smoke crack cocaine?

9 A No.

10 Q Never?

11 A Not then, no.

12 Q Now, you testified that you sometimes gave my clients rides?

13 A Yeah.

14 Q And you did it three or four times?

15 A Right.

16 Q And you did it -- did he ever give you a problem before?

17 A No.

18 Q Did he always pay you?

19 A Yeah.

20 Q You weren't worried about giving him a ride?

21 A No.

22 Q And when the two people got in the car you weren't worried about
23 that either, were you?

24 A Well, I was just kind of upset about it because he didn't -- he didn't
25 ask me.

1 Q You didn't ask anybody to leave, did you?

2 A Well, no, I didn't but I voiced my opinion about it.

3 Q Okay. Even so, you gave him a ride, right?

4 A Yes, I did.

5 Q All right. Now explain to me what you were upset about when one
6 of them wanted to stop at 7-Eleven for a beer.

7 A Because initially he asked for a ride to a certain place, point. You
8 know, all this riding around, going different places, I wasn't really for that.

9 Q Okay. Correct me if I'm wrong, that would have been on the way
10 to the hotel you were going to?

11 A Well, okay. But my point was I take you where you need to go and
12 come back. It's not stop at every store and go.

13 Q Okay.

14 A It's to take you where you want to go and come back.

15 Q I'm sorry. I thought they never told you where you were going?

16 A I said my -- my point is to take you where you asked to go and
17 bring you back. Not to stop anywhere and go any place, it's to take you to
18 point A and bring you back.

19 Q Were they having any conversation in the car while you were
20 driving them?

21 A No.

22 Q And when you got to the 7-Eleven, there's a Dotty's there, isn't
23 there?

24 A I guess, I can't --

25 Q You don't remember?

1 A I can't remember.

2 Q You just remember that somebody told you not to park in front of
3 the 7-Eleven?

4 A Yeah, after I parked in front of the 7-Eleven.

5 Q Okay. So you had to move your car?

6 A Exactly.

7 Q Okay. Why did you do that?

8 A I didn't want to do it. I was asking why -- why do I need to move if
9 you going into the store, going in the store.

10 Q Right.

11 A Right.

12 Q So why did you?

13 A Well, eventually he told me to go and move it, it's going to be all
14 right. So I voiced my opinion about why do I need to move in the first place,
15 what's really going on.

16 Q Okay. So the car was actually in front of the 7-Eleven at one point?

17 A Exactly. Exactly.

18 Q Okay. You would agree with me if the object was to avoid the
19 7-Eleven surveillance that was already impossible?

20 A True.

21 Q Okay. Now, who -- you said the ponytail guy went into the
22 7-Eleven?

23 A Exactly.

24 Q Came out with two beers?

25 A Yeah.

1 Q And him and the heavyset guy had the beers?

2 A Right.

3 Q And the three of them are out there talking?

4 A Right.

5 Q But you did not hear one word they were saying?

6 A I didn't.

7 Q What was their demeanor when they were talking?

8 A Really, I really wasn't paying attention because really now I'm kind
9 of upset because, you know, he had me move from in front of the store to the
10 side of the store, what's really going on in my mind.

11 Q Would you agree with me that they were just having general
12 conversation?

13 A Probably so.

14 Q Okay. Nothing -- nobody's waving their arms or anything?

15 MR. SCHWARTZER: Objection. Objection, speculation, Your Honor. I
16 would object.

17 THE COURT: Overruled. I will allow the answer to stand.

18 THE WITNESS: Exactly, it's just general conversation I presume. I
19 presume.

20 BY MR. SCHWARZ:

21 Q It's kind of chatty?

22 A Right.

23 Q Okay. Now, you know, Mr. Schwartzer asked you if they had told
24 to you take us to a robbery, you would have said no.

25 A Right, exactly.

1 Q If they had asked you to take them anywhere to do anything illegal,
2 you would have said no?

3 A Exactly.

4 Q If they had suggested to you that they were going to pick up some
5 drugs, you would have said no?

6 A Exactly.

7 Q And that's why you gave them a ride because they just told you we
8 need to go here?

9 A Yeah, Money did, not they.

10 Q Okay. But they all went along?

11 A They all went along.

12 Q Now, after the 7-Eleven incident, which by the way, they didn't rob
13 the store, correct?

14 A Exactly.

15 Q Then they directed you to the mo -- to the hotel?

16 A Right.

17 Q Okay. Now, you say that my client told to you pull into that spot?

18 A He said park.

19 Q Okay. Who told you to pull into that spot?

20 A He told -- he said park. So I pulled in the first spot I could find
21 available to park.

22 Q Uh-huh.

23 A And then he said, Don't park here, back in over here.

24 Q Okay. And did do you that?

25 A Yeah. I voiced my opinion about that too.

1 Q But you did it anyway?

2 A Yeah, I did it anyway.

3 Q And that's when you screwed your car up?

4 A Exactly, I scraped the wall.

5 Q But you weren't intoxicated?

6 A No, I wasn't intoxicated.

7 Q Now, in your voluntary statement --

8 MR. SCHWARZ: If I can have the Court's indulgence?

9 THE COURT: Sure. Perhaps it may be in your grand jury testimony. Give
10 me one second.

11 Okay. I'll go on.

12 BY MR. SCHWARZ:

13 Q So you back -- you actually, you hit something twice, didn't you?

14 A Exactly.

15 Q And you were upset about that?

16 A Very.

17 Q All right. Now, do you recall in your voluntary statement which
18 was two days after this incident, right?

19 A Right.

20 Q Saying out -- saying that when the guy came down stairs he's
21 hollering?

22 A I can't --

23 Q If I showed you that would that refresh your recollection?

24 A Yes.

25 MR. SCHWARZ: All right. I'm -- his voluntary statement, page 22.

1 If I can approach, Judge?

2 THE COURT: Yes.

3 BY MR. SCHWARZ:

4 Q Mr. McCampbell, I'm going to show you page 22 of your voluntary
5 statement.

6 A All right.

7 Q Let me ask to you read that whole -- go from the second A down.

8 A Out loud or just read?

9 Q No, just read it to yourself. This is a game we lawyers play.

10 A Okay.

11 Q Did you get to the bottom of the page?

12 A No, I'm right here. I'm a slow reader.

13 Q Okay. Me too.

14 Okay. And so do you recall making that statement?

15 A Yeah.

16 Q Which guy are you referring?

17 A It's the guy coming down the stairs.

18 Q So that would be the guy coming down the stairs, Mr. Borero?

19 A Yes.

20 Q The guy in the white tank top?

21 A Yeah.

22 Q So he came down and he was hollering? He was mad?

23 A Okay.

24 MR. SCHWARTZER: Objection. That misstates testimony.

25 MR. SCHWARZ: According to your voluntary -- I'll withdraw.

1 THE COURT: Hold on. Hold on. All right.

2 I'll sustain the objection as to any speculation about why somebody
3 may have been hollering.

4 MR. SCHWARZ: Thank you, Your Honor.

5 THE COURT: Okay.

6 BY MR. SCHWARZ:

7 Q So according to what you told the detectives, two days after this
8 incident when Mr. Borero come down the stairs he was hollering?

9 A Okay.

10 Q The guy in the tank top?

11 A Right.

12 Q Okay. Now, while all this is going on you're sitting in the car?

13 A Exactly.

14 Q Mr. Coleman, Mr. Muhammad-Coleman is leaning against the car?

15 A Right.

16 Q And do you know where the guy in the tank top and the other
17 person is?

18 A They in the back of my car. They all --

19 Q And how do you know that?

20 A Because where they proceeded to go and the guy in the tank top
21 walked around in front of my car.

22 Q Okay.

23 A And they-all was in the back.

24 Q All right. And those two talking?

25 A Oh, no, they were all talking. I don't know, they were talking.

1 Q Did you hear?

2 A No, I didn't hear the conversation. But I could hear people talking.

3 Q Did you hear Mr. Coleman's voice?

4 A No, I couldn't hear. I couldn't hear specifically whose voices

5 because it really wasn't that loud of talking.

6 Q But you heard people talking?

7 A Yeah. They was talking.

8 Q Was it loud talking?

9 A No.

10 Q You heard somebody say, Show me the money?

11 A Yeah. I heard that was real loud, that was shouted.

12 Q That was real loud?

13 A Yeah, that was shouted.

14 Q And that wasn't my client?

15 A That wasn't your client.

16 Q How soon after that did shots get fired?

17 A Probably right after.

18 Q And then you took off?

19 A Floored it.

20 Q Okay. Now, there is a question of whether or not -- let me ask you

21 this, were you afraid?

22 A Exactly.

23 Q Did you know if any of them had a weapon?

24 A No, I didn't.

25 Q Did you ever see Muhammad-Coleman, Darion, my client over there,

1 with a gun?

2 A No, sir.

3 Q You knew there was some shooting?

4 A Yeah, I heard it.

5 Q But you didn't know if anybody had a gun?

6 A I didn't know, right.

7 Q Now, you say you told the three of them who have been involved
8 the shooting presumably that you were going to tell, I guess, the police, right?

9 A I didn't talk to the three of them, I was talking to one person.

10 Q And that would be my client?

11 A Exactly.

12 Q Okay. Now, he never brandished a pistol, right?

13 A No.

14 Q He never, in fact, showed you a gun?

15 A Right.

16 Q He made a movement towards you?

17 A Right.

18 Q He -- and he said, these are your words, You're going to tell what?

19 A Right.

20 Q And he puffed up?

21 A Exactly.

22 Q And made a movement to you?

23 A Right.

24 Q And kept his hands in his lap?

25 A Exactly.

1 Q But never produce a gun?

2 A Never produced it.

3 Q And never threatened you?

4 A Well, the sound of your voice, yeah, that's --

5 Q Well, let me let me ask a better question.

6 A Okay.

7 Q Never said, If you tell I'm going to hurt you?

8 A Right.

9 Q Or words to that effect?

10 A But if you tell me, You going to tell -- you going to say what?

11 Q You took it as a threat?

12 A Exactly. Exactly.

13 Q But he did not say, If you talk, I will hurt you?

14 A When he said, You going to say what, exactly what he was saying.

15 Q That's what you took it to mean?

16 A Exactly.

17 Q Okay. Now, you say he directed you to a street with a dead-end?

18 A Well, immediately he said turn left.

19 Q And where might that be?

20 A Well, it was -- I don't know the neighborhood or where, but when

21 we turned left, it kind of it just immediately got real dark and you made other

22 quick left and there was a dead-end, no streetlights. So I'm really kind of

23 freaking out in my mind, like where are we going these back streets after I just

24 said what I said, so you know.

25 Q Did anyone say anything to you while you were in this dead-end

1 street?

2 A No, well --

3 Q Other than turn right?

4 A -- you know, you could only turn right though, I'm just freaking out
5 on the route we going now because we didn't come that way.

6 So now all of a sudden, why are we going back in this darkness
7 after what I just said. So that's what's in my mind. Why am I going down this
8 way?

9 Q Now, eventually you end up at Philadelphia Street?

10 A We end up back where we started.

11 Q Okay. Now, are you afraid of anybody at this point?

12 A Well, excuse my French, yeah, yeah, most definitely.

13 Q Well, we speak French in here, not very often, but once a while.

14 A You don't want me to. Yeah, it's a double yeah, yeah, yeah, I was
15 very scared.

16 Q All right. And you met up with these people on Philadelphia Street,
17 didn't you?

18 A That's where I picked them up at.

19 Q And you were scared of them?

20 A I didn't know them. I wasn't scared of them then. I didn't even
21 know them. I had never seen them. So I didn't know nothing about them.

22 Q Okay. So scared then --

23 A Not then, I wasn't scared of them, I wasn't scared of nobody then
24 because then nothing happened. So I wasn't scared?

25 Q All right. And when you got back you opened up your trunk, didn't

1 you?

2 A I had to have something.

3 Q And so you had your other bottle of Mogen David in there?

4 A I had -- I finished what I started.

5 Q Which was two bottle?

6 A I had no -- I hadn't even drunk the first one, if I had two.

7 Q And then you slept there all night?

8 A I very did. I sure did, didn't move.

9 Q Now, you didn't go to the police for two days?

10 A Yeah. That's right.

11 Q And you would agree with me that gives you two days to come up
12 with a story, right?

13 A Right.

14 Q Why didn't you go to them the next day?

15 A I didn't really know what happened. I really didn't know what
16 happened.

17 Q I thought, and you can correct me if I'm wrong, that you told the
18 police that your wife had called you the next day and told you that your car
19 was on TV?

20 A No, I didn't told you that and I haven't said that to nobody because
21 that ain't what happened.

22 Q Okay. How did you find out?

23 A I went home and my wife greeted me at the door with that.

24 Q Oh, what day was that?

25 A That was Saturday.

1 Q And this happened on what day?
2 A Friday.
3 Q You didn't call the police then when you found out?
4 A I did. I called 9-1-1.
5 Q I see and no one was interested?
6 A Didn't nobody answer or come to my house.
7 Q Nobody responded?
8 A Nobody came.
9 Q You made an honest effort?
10 A I sure did.
11 Q And then the second day --
12 A Sunday.
13 Q -- is when you actually decided to go down?
14 A Sunday morning I drove my car down.
15 Q Okay.

16 MR. SCHWARZ: Can I have the Court's indulgence?

17 THE COURT: You may.

18 MR. SCHWARZ: I have nothing further. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Schwartz.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 **REDIRECT EXAMINATION OF RICHARD McCAMPBELL**

23 BY MR. SCHWARTZER:

24 Q Almost done, I promise.

25 A Cool.

1 Q Mr. Schwarz asked you did you hear anyone talk about a robbery in
2 the car before any of this had occurred, right?

3 A Right.

4 Q You remember that line of questioning?

5 A Yes, sir.

6 Q And you said no?

7 A I said no.

8 Q When we were talking you said people -- you -- that's one of the
9 things you talk about is nothing illegal, right?

10 A Right. Exactly.

11 Q If you heard people talking about a robbery, would you have taken
12 them to the Travelers Inn?

13 A Exactly. I wouldn't have took them nowhere.

14 Q Okay. If you saw guns would you have taken them to the Travelers
15 Inn?

16 A I wouldn't have took them nowhere. They wouldn't have gotten in
17 my car.

18 Q Okay. So you go to the 7-Eleven, and just to be clear, Money's
19 rode with you before, correct?

20 A Right.

21 Q So he knows your rules?

22 A Exactly.

23 Q So you go to the 7-Eleven and you're in the front, right?

24 A Right.

25 Q Let me ask you this, does Money get out of the car?

1 A No.

2 Q When you're in the front?

3 A All -- nobody, nobody gets out.

4 Q No one gets out of the car? So if there's surveillance in the front it
5 wouldn't catch him getting out of the car?

6 A Right.

7 Q But then you're told by this man right here, the defendant, to drive
8 to the side?

9 A Yeah. Park on the side.

10 Q And then does he get out of the car?

11 A Yes, he does.

12 Q The defendant does get out of the car?

13 A He does, yeah.

14 Q And so does the guy with the --

15 A All three of them.

16 Q All of them, yeah.

17 A All of them get out.

18 Q Okay. And then they have a conversation where you're not -- you
19 can't hear?

20 A I can't hear, right.

21 Q Okay. And it's not a loud conversation?

22 A No, it's not.

23 Q But it's a conversation?

24 A It's a conversation, they're talking.

25 Q Okay. And then I want to direct your attention now to once you

1 get to the hotel, you back in, let me ask you this, even if you were a little tipsy,
2 when you get a, you know, had a drink of wine, do you hear gunshots that
3 aren't really happening?

4 A No.

5 Q Okay.

6 A I don't hear nothing, no.

7 Q Okay. So you get -- you get there and then there was this line of
8 questioning by Mr. Schwarz about, you know, hollering?

9 A Right.

10 Q Was he hollering -- and he had you show on page 22 of the
11 statement.

12 A Right.

13 Q Let me ask you this, did the individual with the white shirt, did he --
14 did you hear him make any death threats?

15 A No, not at all.

16 Q Did you hear him make any physical threats?

17 A No, not at all.

18 Q Did you see him waving a gun around?

19 A No, I didn't.

20 Q Did you see a gun on him at all?

21 A I didn't see a gun at all.

22 Q Okay. He went right by your --

23 A Right.

24 Q -- your driver's side right?

25 A Right.

1 Q And you didn't see a gun?

2 A I didn't see a gun.

3 Q Okay. And the white -- the guy with the white T-shirt?

4 A White T-shirt, right.

5 Q Did you see -- did he have a knife?

6 A No.

7 Q No? Okay. Was he running down the stairs?

8 A Nope, just walking.

9 Q Did he immediately point his finger to someone?

10 A Nope.

11 Q Didn't do any of those things? Okay. How did he -- how did he
12 know you guys were there, if you know?

13 A I think one of guys --

14 MR. SCHWARZ: Objection. Speculation. Unless he knows.

15 MR. SCHWARTZER: Unless you know.

16 THE COURT: Well, you didn't talk to gentleman in the white T-shirt?

17 THE WITNESS: Right. I didn't. I didn't.

18 MR. SCHWARTZER: Let me ask --

19 THE COURT: So I'll sustain that objection. But you can follow up with
20 other questions.

21 MR. SCHWARTZER: Thank you, Judge. I appreciate that.

22 BY MR. SCHWARTZER:

23 Q Let me ask you this, did anyone inside the car do something before
24 he came down the stairs?

25 A They may have made a phone call.

1 Q They may have made a phone call?

2 A Right.

3 Q And actually, the same statement on page 22, the same page --

4 A Right. Exactly.

5 Q -- is there a mention of a phone call?

6 A Yes, there is.

7 Q And who makes that phone call?

8 A The heavyset guy.

9 Q With the black hat?

10 A Yeah.

11 Q And after he makes that phone call that's when this individual

12 comes down the stairs?

13 A Exactly.

14 Q So he's actually called down the stairs by the guy in the -- the black

15 hat?

16 A Right.

17 Q Okay.

18 MR. SCHWARZ: Well, Judge, I mean, I'm going to object.

19 MR. SCHWARTZER: I mean, that's --

20 MR. SCHWARZ: Again, as to speculation.

21 THE COURT: Are you objecting? I'll sustain the objection.

22 MR. SCHWARTZER: That's fair.

23 MR. SCHWARZ: Unless he knows that.

24 MR. SCHWARTZER: That's fair.

25

1 BY MR. SCHWARTZER:

2 Q And finally, Richard, I want to take you back to that dark street and
3 that eventually leads to that dead-end street.

4 A Right.

5 Q Who directed you to go on this new route?

6 A Money.

7 Q The defendant?

8 A Yep.

9 Q And is this before or after the You're-going-to-say-what?

10 A Right after.

11 Q Right after, okay. So you say I'm going to tell; defendant does
12 what you perceive as a threat?

13 A Right.

14 Q And then after that, right after he directs you to a dark street?

15 A Right.

16 Q A dark street that you're not familiar with?

17 A Exactly.

18 Q What -- how did you feel when he did that?

19 A Real afraid, very, very afraid.

20 Q What did you think was going to happen?

21 A Well, you know, maybe I'm finna get shot, pushed out the car, just
22 done some harm.

23 Q So you got real compliant after that?

24 A Yeah, I was very -- yeah.

25 Q Did you see, after you dropped him off in Naked City that day, did

1 you ever see Money again?

2 A No, I didn't.

3 Q Until today?

4 A Yeah.

5 Q Thank you, Richard.

6 THE COURT: Mr. Schwarz.

7 **RECROSS-EXAMINATION OF RICHARD McCAMPBELL**

8 BY MR. SCHWARZ:

9 Q Sir, you don't know where this street is with this dead-end, right?

10 A Right.

11 Q Nobody said anything to you when you got there, right?

12 A When I got where?

13 Q When you got to the street with the dead-end. I asked you that
14 seven minutes ago approximately, no one said anything to you?

15 A No.

16 THE COURT: Other than directions?

17 BY MR. SCHWARZ:

18 Q Yes. Other than directions.

19 A Other than -- turn right, he mentioned, right after we -- I said that to
20 him, he said turn right here.

21 Q And isn't the most direct route from where you were to Naked City
22 just going straight down Oakey?

23 A Go out -- I guess.

24 Q Didn't you go straight down Oakey?

25 A I guess, I can't remember the direction.

1 Q You don't remember, that's true.

2 MR. SCHWARZ: I don't have anything further.

3 THE COURT: Nothing further?

4 MR. SCHWARTZER: One question.

5 **FURTHER REDIRECT EXAMINATION OF RICHARD McCAMPBELL**

6 BY MR. SCHWARTZER:

7 Q Were you familiar with that area?

8 A No, never been there before.

9 MR. SCHWARTZER: That's it.

10 THE COURT: Anything from our jurors?

11 Mr. McCampbell, thank you very much for your time, sir.

12 THE WITNESS: Thank you, sir.

13 THE COURT: I appreciate it. You are excused.

14 THE WITNESS: Yes, sir. Thank you very much.

15 MR. SCHWARTZER: I might have someone out there if you want to keep
16 going or --

17 THE COURT: Well, I mean, is it a quick witness? It's about eight 'til
18 5:00.

19 MR. SCHWARTZER: You want a lawyer to tell you how long it's going to
20 be?

21 THE COURT: We will recess for the evening, ladies and gentlemen.
22 We're going to try and start tomorrow at 10:00 o'clock, we've kind of got rid
23 of a lot of things for tomorrow. So we should be able to start on time. If you
24 guys will get her a little before 10:00, we'll get started on time.

25 MR. SCHWARZ: 10:00 o'clock?

1 THE COURT: During the recess you are admonished not to talk or
2 converse among yourselves or with anyone else on any subject connected with
3 the trial or read, watch, or listen to any report of or commentary on the trial by
4 any medium of information including, without limitation, to newspapers,
5 television, the Internet, and radio and you cannot form or express any opinion
6 on any subject connected with the case 'til it's finally submitted to you.

7 Mr. Smith are you having trouble hearing from that spot?

8 JUROR NO. 2: No, just wanted to make sure.

9 THE COURT: Or is it just me? Just me.

10 JUROR NO. 2: I can hear you well.

11 THE COURT: Okay. Because I know my voice doesn't pick up as well as
12 other folks so.

13 UNIDENTIFIED JUROR: Where do we leave these?

14 THE COURT: You leave your clipboards and your notepads in your chair
15 every time we take a recess. Okay?

16 You'll also, I don't know if Joel talked to you about it already, but
17 you get better parking now that you're jurors, so you park right across the
18 street from the building. You have any questions about that, he can explain
19 that to you as well. Okay? All right, guys, we'll see you tomorrow. Thank
20 you.

21 [Outside the presence of the jury panel]

22 THE COURT: Okay. You want to make a record?

23 MR. SCHWARZ: Yes.

24 THE COURT: Go ahead.

25 MR. SCHWARZ: Well, Judge, in my cross-examination of

1 Mr. McCampbell who essentially testified that, you know, he's just a, you
2 know, street mechanic, happy-go-lucky kind of guy, I wanted to impeach him
3 with his statement from the voluntary statement he gave on the 21st of April.

4 THE COURT: Okay.

5 MR. SCHWARZ: Wherein the detective interviewing him said and why --
6 and so you just go to the end of Philadelphia and you're sitting there, why do
7 you pick that spot?

8 Uh, like I said, you know, bad habits.

9 What's a bad habit?

10 Well, just sitting there drinking.

11 And is that, like, where you used to score your crack?

12 Well, you know --

13 THE COURT: Was that -- that was the detective that said that part, is
14 that --

15 MR. SCHWARZ: Yeah.

16 MR. SCHWARTZER: Correct.

17 THE COURT: -- where you used to score your crack?

18 MR. SCHWARZ: Well, you know, and -- and a lady comes through and
19 the ladies come through. Yeah, that's it.

20 So that's where you get your girls and your dope connect?

21 And he's says, yeah, basically, yeah.

22 THE COURT: Okay.

23 MR. SCHWARZ: Okay? So, you know, one of the things, of course,
24 Judge, I'm not preaching, I'm just making a record, that we use impeachment
25 for is to attack not only the credibility but, you know, the -- the -- the honesty

1 of statements he's making.

2 THE COURT: Sure.

3 MR. SCHWARZ: I mean, if he's sitting there and essentially lying saying I
4 go over there because I'm looking for work when that is farthest from the truth,
5 I think that's very relevant to his credibility as a witness especially when I asked
6 him directly if he was a crack cocaine addict and he said, no, I never did it,
7 when clearly he did. So that's why I thought it should have been admissible for
8 impeachment purposes.

9 THE COURT: So working from -- and we had discussed this at the bench
10 and I had indicated -- so the -- just so the record's clear, the objection was
11 contemporaneous, so that was preserved. I wanted that to be reflected. But I
12 had said at the bench I'm going to deny it then we can make a record later.

13 Working backwards from what you just said, the question you
14 asked him about have you ever used cocaine was inappropriate, it should have
15 been objected to, but it's not my job to do the State's job, so I didn't say
16 anything. But that -- that was irrelevant to anything. So whether he had ever
17 done it before shouldn't have been asked.

18 But more importantly, in regard to what you were proposing to
19 impeach him with, he was never asked on direct examination or never ever
20 offered any testimony about why he chose a particular spot to stop. He just
21 said I stopped there and I started drinking my alcohol. I read pages 1 through
22 12 of that transcript so that I could have all the context in and around page 8
23 which is what you wanted to bring up about impeaching him, and what had
24 occurred was he's -- the detectives ask him why did you choose that spot, not
25 what did do you while you were there. Had he said, well, I stopped there so

1 that I could score dope and try and pick up women, I would agree with you.
2 But he said I -- they asked him why did you stop there, different from the
3 conduct you engaged in when you were there. And he said, Bad habits. And
4 then the detective's kind of filling it in, Is that where you used to pick up dope
5 and girls? Yeah.

6 And as you go on and read through all that, he says, I didn't use -- I
7 didn't -- there's nothing in there that says I scored dope that night or I tried to
8 score dope that night or I tried to pick up women that night. In fact, he
9 explicitly says I didn't use any -- any drugs that day. So that was irrelevant to
10 try and impeach him with something that he hadn't even said inconsistent on
11 the stand during direct. And had it been a we want to use the fact that in the
12 past maybe he populated that area to pick up women and use drugs, there
13 would have needed to been a motion in limine about that as to why some past
14 drug use would have been relevant.

15 The question that you asked about did you use drugs that night,
16 that was okay. You can ask that about any witness if they were under the
17 influence of anything at the time they're offering observations. But that's
18 essentially why I said I was going to didn't deny the request to try and impeach
19 him with that because that wasn't relevant to what he had offered on direct
20 examination.

21 MR. SCHWARZ: Well, I mean, if -- if the detective had been a little mover
22 skillful and suggested to -- and said so him --

23 THE COURT: That's why I -- that's why --

24 MR. SCHWARZ: -- were you -- were you there to score dope and then it
25 comes in?

1 THE COURT: If the detective said were you --

2 MR. SCHWARZ: I'm at the victim of a bad detective?

3 THE COURT: Yeah.

4 -- had you parked there that night to try and score dope on
5 something, then I would agree, yeah, that would have been -- that would have
6 been admissible.

7 MR. SCHWARTZER: I think that's bad act evidence still, Your Honor. I
8 mean -- I mean, that was obviously we're now talking hypotheticals --

9 THE COURT: Yeah, look.

10 MR. SCHWARTZER: -- but, I mean, he specifically said he didn't use
11 crack that night or any drugs. And I got to admit, I missed the question where
12 he asked, Were you a crack addict, and -- I must have been talking with my
13 co-counsel because --

14 THE COURT: Well, he asked him if he used drugs that night and then had
15 you ever used drugs used crack cocaine.

16 MR. SCHWARTZER: I missed that second question, Your Honor.

17 THE COURT: He said no.

18 MR. SCHWARTZER: I would have objected to that.

19 THE COURT: So that's why I was saying I think that part was
20 objectionable. But more importantly, as the procedure or as the original request
21 to impeach was formed, it didn't impeach anything that he had said on direct;
22 nor did the statement in my mind say what you were proposing it said for
23 purposes of being usable as impeachment.

24 MR. SCHWARZ: Got it.

25 THE COURT: Got it? Okay. All right. You guys have anything else?

1 MR. SCHWARTZER: No, I just want to be really clear on that record
2 though that that question was asked after you already sustained the objection
3 to asking that line of questioning.

4 THE COURT: Yeah. But I didn't -- I didn't say anything to Mike at the
5 bench about you can't ask him if he used crack that night.

6 MR. SCHWARTZER: Right.

7 THE COURT: Because I would -- that's very much relevant just like were
8 you drunk that night.

9 MR. SCHWARTZER: I agree, absolutely.

10 MR. SCHWARZ: I'm shocked, I asked an improper question.

11 THE COURT: All right, guys.

12 MR. SCHWARTZER: Thank you, Your Honor.

13 MR. SCHWARZ: It will never happen again.

14 THE COURT: We'll see you in the morning.

15 PROCEEDING CONCLUDED AT 4:59 P.M.

16 * * * * *

17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON
25 Court Recorder/Transcriber



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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

12 FRIDAY, JANUARY 6, 2017

13
14 ***RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4***

15
16
17
18 APPEARANCES:

19 For the State:

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

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwartz	2	24
Cross-Examination by Mr. Schwarz	2	81
Redirect Examination by Mr. Schwartz	2	97
		105
Recross-Examination by Mr. Schwarz	2	104

Direct Examination by Mr. Hamner	3	8
Cross-Examination by Mr. Schwarz	3	15
Redirect Examination by Mr. Hamner	3	18

Direct Examination by Mr. Hamner	3	20
Cross-Examination by Mr. Schwarz	3	37
Redirect Examination by Mr. Hamner	3	46
Recross-Examination by Mr. Schwarz	3	49

Direct Examination by Mr. Hamner	3	51
Cross-Examination by Mr. Schwarz	3	61
Redirect Examination by Mr. Hamner	3	63

Direct Examination by Mr. Hamner	3	65
Cross-Examination by Mr. Schwarz	3	82
Redirect Examination by Mr. Hamner	3	85
Recross-Examination by Mr. Schwarz	3	88

Direct Examination by Mr. Schwartzer	3	91
Cross-Examination by Mr. Schwarz	3	103

INDEX OF WITNESSES (continued)

STATE'S WITNESSES:

DAY PAGE

ALANE OLSON

Direct Examination by Mr. Schwartz	3	107
Cross-Examination by Mr. Schwarz	3	124
Redirect Examination by Mr. Schwartz	3	125
Recross-Examination by Mr. Schwarz	3	126

JENNIFER REINER

Direct Examination by Mr. Schwartz	3	127
------------------------------------	---	-----

ADAM FELABOM

Direct Examination by Mr. Hamner	3	137
Cross-Examination by Mr. Schwarz	3	150

CLIFFORD MOGG

Direct Examination by Mr. Schwartz	3	158
Cross-Examination by Mr. Schwarz	3	188

KHUSHBOO NARECHANIA

Direct Examination by Mr. Hamner	4	7
Cross-Examination by Mr. Schwarz	4	13

ANYA LESTER

Direct Examination by Mr. Schwartz	4	14
Cross-Examination by Mr. Schwarz	4	35

ERIC SAHOTA

Direct Examination by Mr. Schwartz	4	40
Cross-Examination by Mr. Schwarz	4	64

TERRI MILLER

Direct Examination by Mr. Schwartz	4	66
Cross-Examination by Mr. Schwarz	4	105
Redirect Examination by Mr. Schwartz	4	112
Direct Examination on Rebuttal by Mr. Schwartz	4	168
Cross-Examination on Rebuttal by Mr. Schwarz	4	181
Redirect Examination on Rebuttal by Mr. Schwartz	4	186

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwarz	4	119
Cross-Examination by Mr. Schwartz	4	141
Redirect Examination by Mr. Schwarz	4	160
Recross-Examination by Mr. Schwartz	4	163

Cross-Examination by Mr. Schwartzer	4	141
-------------------------------------	---	-----

Recross-Examination by Mr. Schwartzer	4	163
---------------------------------------	---	-----

LIST OF EXHIBITS

STATE'S EXHIBITS

DAY PAGE

Exhibit 1	4	27
Exhibit 3	4	99
Exhibits 4 through 112	2	6
Exhibits 113 and 113a	2	73
Exhibit 114 and 114a	2	69
Exhibit 115 and 115a	2	69
Exhibit 118	3	179
Exhibit 119	3	178
Exhibit 120	4	56
Exhibit 122	3	35
Exhibit 123	4	114
Exhibit 124	4	172

DEFENDANT'S EXHIBITS

DAY PAGE

Exhibit A	3	124
-----------	---	-----

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 6, 2017, 10:15 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: Okay anybody have anything outside the presence?

5 MR. SCHWARZ: No, Your Honor.

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

7 MR. HAMNER: No, Your Honor.

8 THE COURT: Thank you.

9 Officer Porter, if you'd go ahead and get everybody and get 'em in
10 and we'll get started. Thank you.

11 THE MARSHAL: Do you want the jury?

12 THE COURT: Yeah, please.

13 THE MARSHAL: All rise for the jury.

14 [In the presence of the jury panel]

15 THE COURT: You guys can be seated. Thank you.

16 Good morning, folks. All right. We will be back on the record.
17 Mr. Muhammad-Coleman's present with his attorney; State's attorneys are
18 present; our jurors are present. We're going to continue on with the State's
19 case-in-chief.

20 So Mr. Hamner, Mr. Schwartzer, you-all can call your next witness.

21 MR. HAMNER: Thanks a lot. The State's going to call Tahir Shahab to
22 the stand.

23 THE COURT: Good morning, sir. If you could raise your right hand.
24 Thank you.

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TAHIR SHAHAB,

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

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

THE WITNESS: My name is Tahir. Middle name is Mohammad. And Shahab is my last name.

THE COURT: How do you spell your first name, sir?

THE WITNESS: Tahir.

THE COURT: How do you spell it?

THE WITNESS: T-A-H-I-R.

THE COURT: And your middle name.

THE WITNESS: Mohammad.

THE COURT: M-U --

THE WITNESS: M-O --

THE COURT: M-O?

THE WITNESS: Yeah.

THE COURT: H?

THE WITNESS: H.

THE COURT: And then what?

THE WITNESS: M-A -- A-E-D.

THE COURT: A-E-D. Thank you. And how do you spell your last name?

THE WITNESS: S-H-A -- S-H-A-H-A-B, Shahab.

THE COURT: Thank you. All right, sir, Mr. Hamner's going to ask you some questions, okay.

///

1 **DIRECT EXAMINATION OF TAHIR SHAHAB**

2 BY MR. HAMNER:

3 Q Good morning, sir.

4 A Good morning.

5 Q Sir, are you familiar with an address of 1712 Fairfield here in
6 Las Vegas, Clark County?

7 A Yes, sir, I do.

8 Q Okay. How do you -- how are you familiar with that particular
9 property?

10 A We -- we own that place.

11 Q And when you say "we," who else are you referring to?

12 A Well, it's me and John Fazil.

13 Q Okay.

14 A And Collette la Noori [phonetic] and Wasi Amar [phonetic].

15 Q Okay. So four of you own this particular property; is that right?

16 A We do.

17 Q Do you share it kind of equally, a quarter each, something like that?

18 A Quarter each.

19 Q Okay. Why don't you describe to the jury what -- describe that
20 particular address. What's located at 1712 Fairfield?

21 A It's -- it's a -- it's a eight-unit building, one bedroom all of them.
22 And we -- we own it quite a while. And unfortunately sometime we -- we have
23 this problem with the breaking in.

24 Q Okay. You mentioned that. I want to show you what's been
25 admitted as State's 88. It's a little dark.

1 THE COURT: Is this screen on right here, sir?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 THE WITNESS: Yes, I can see.

5 BY MR. HAMNER:

6 Q Do you see what we're looking at here?

7 A Yes. That's the building.

8 Q Okay. So that's the building. And so there's eight units; is that
9 right?

10 A It is.

11 Q Okay. Are they -- are there multiple bedrooms in each unit or is it
12 one bedroom; how does it work?

13 A It's one bedroom all of them.

14 Q Okay.

15 A One bedroom and one bath.

16 Q Okay. And I want to talk about, did you own it back in 2013?

17 A Yes, we did.

18 Q How many years have you owned the unit?

19 A I'm not sure. I think it's nine years we own it.

20 Q Okay. Now, back in 2013, let me take one step back.

21 Do you live here in Las Vegas?

22 A No. We don't, none of us.

23 Q Okay. You live -- where do you live? What state do you live in?

24 A I live in California.

25 Q Okay. Did you have a property manager in 2013 kind of working to

1 kind of manage the property while you guys lived out of state?

2 A Yes, we -- yes, we did.

3 Q All right. Now, I want to turn your attention to April -- April 2013,
4 and probably about a week before April 29th, around there, did you -- did you
5 get some information or contacted by your property manager about an issue
6 that was going on with one of the units?

7 A Yes, we did.

8 Q And in particular did you -- did this property manager alert you to an
9 issue that was going on in Unit Number 7?

10 A Right.

11 Q Okay. What was -- what was the issue? What did the property
12 manager kind of discover about Unit Number 7?

13 MR. SCHWARZ: Well, Judge, I'll object. It's hearsay I believe.

14 MR. HAMNER: It's not being offered for the truth but the effect on the
15 listener.

16 THE COURT: Hold on. Hold on. Why don't you guys approach the
17 bench real quick.

18 [Bench conference -- not transcribed]

19 THE COURT: I will overrule the objection.

20 MR. SCHWARZ: Thank you, Your Honor.

21 THE COURT: So you can go ahead and answer the question, sir.

22 BY MR. HAMNER:

23 Q So, Mr. Shahab, what happened? What did they kind of tell you
24 was going on with Unit Number 7?

25 A They told us that there is somebody living in this unit which is not

1 familiar.

2 Q Okay, so.

3 A Nobody knew him.

4 Q And let me clarify, did you -- had you -- was that apartment
5 technically vacant?

6 A Yes, it was.

7 Q So you didn't have technically a renter?

8 A That's right.

9 Q Explain -- explain this to me, you -- you rent -- you're obviously a
10 landlord, when you have a situation where there is someone who's not renting
11 a unit, do you have to take maybe steps with the police to maybe see if you
12 can take their items out or things along those lines?

13 A That's right. That's what we did.

14 Q Okay. Did you -- did you fly to out --

15 A We fly out here and then we -- and we check the unit from the
16 window. We saw there is stuff on the floor.

17 Q Okay. Did you contact then police to maybe get permission to
18 remove those items?

19 A Yes, we did.

20 Q Did the police give you permission to do so?

21 A Yes, they did.

22 Q I want to show you State's -- what's been admitted as State's 89.
23 What are we looking at there?

24 A That's the Unit Number 7.

25 Q Okay. So that's kind of the front door to it?

1 A That's right.

2 Q All right. And to be clear is this unit at Fairfield, is this kind of
3 located nearby the Stratosphere?

4 A It is.

5 Q In that area of town kind of behind the Stratosphere?

6 A Yes, it is. Yes, it is.

7 Q Okay. So when you started removing items out of the -- out of Unit
8 Number 7 was there any particular thing that you -- that you picked up that kind
9 of caught your attention?

10 A While we were cleaning and I saw this, the bottom of thing, there
11 was a toaster or oven, whatever, I don't know what you call it, but it was a
12 toaster, so when I pick it up something fell down.

13 Q Okay. And what -- what -- did you take a look to see what it was?

14 A So when -- and I -- when I looked there was a gun and I thought a
15 small gun. I thought it was a toy gun. So I pick it up, it was heavy, so I put it
16 back inside the toaster.

17 Q All right.

18 A And that's why we call the police.

19 Q Okay. And so you reach out to the authorities about that?

20 A Yes, we did.

21 Q All right. Do police come out to the property?

22 A They did.

23 Q All right. And do you -- do you show them this toaster or some sort
24 of device with the microwave or with the --

25 A Right.

1 Q -- with the gun in it?

2 A The gun inside.

3 Q Okay. And then where -- where are you kind of instructed to put it?

4 A The police told us to bring it outside and that's what they was
5 taking pictures of the toaster with the gun.

6 Q Okay. So you actually -- it was left outside?

7 A Yes.

8 Q For photographs to be taken of it?

9 A That's right.

10 Q Okay. I want to show you State's 90. What are we looking at
11 there?

12 A That's -- that's the toaster.

13 Q Okay. Is that kind of a fair and accurate depiction of what it looked
14 like on April --

15 A Yes. Yes, it does.

16 Q -- 29th, 2013?

17 A Yes.

18 Q All right. I'm going to show you State's 91. What are we looking
19 at there?

20 A That's -- that's the one.

21 Q Same thing just a --

22 A Yes.

23 Q -- little bit closer up?

24 A Yes.

25 Q Publishing 92, State's 92.

1 A Same thing.

2 Q Publishing State's 93.

3 A Here it is inside.

4 Q All right. Now, and let me publish State's 94. What are we looking
5 at there?

6 A We -- we couldn't see the -- the gun inside.

7 Q Okay. So now this monitor's kind of interesting, you can actually
8 take your finger --

9 A Yes.

10 Q -- and if you touch it, it can make a mark. Why don't you circle
11 where you see the gun in State's 9 -- take your finger and just circle it.

12 THE COURT: If you just use your finger on the --

13 MR. HAMNER: It will make a mark.

14 THE COURT: Hold on just second, sir. Okay. Go ahead.

15 THE WITNESS: On the gun, okay.

16 BY MR. HAMNER:

17 Q Go ahead just circle where you see the gun.

18 MR. HAMNER: All right. Let the record reflect that the witness in State's
19 94 circled the black object, what appears to be inside some type of white
20 plastic bag inside this, appears to be a microwave oven possibly, maybe a
21 toaster, but looks --

22 THE COURT: Okay.

23 MR. HAMNER: -- possibly like a microwave.

24 THE COURT: Record will reflect.

25 ///

1 BY MR. HAMNER:

2 Q Okay. So you brought this to their attention, they came out,
3 photographed it, and that's pretty much the last time you saw that item?

4 A That's -- that's the one.

5 Q Okay.

6 MR. HAMNER: I have no further questions at this time.

7 THE COURT: Mr. Schwarz.

8 MR. SCHWARZ: Yes.

9 **CROSS-EXAMINATION OF TAHIR SHAHAB**

10 BY MR. SCHWARZ:

11 Q How are you, sir?

12 A Yes, sir. Thank you. Fine. Thank you.

13 Q So when you arrive at the unit do you have to wait for the police to
14 come?

15 A We -- when we arrive, we -- we call the police to give the
16 permission to enter the unit.

17 Q Anybody in the unit when you got there?

18 A Nobody was in the unit.

19 Q Now, did you just start -- once the police arrived you got permission
20 to clear out the unit?

21 A Yes, sir.

22 Q Did you just start picking stuff up and taking it outside?

23 A Yes, we did.

24 Q How many people were helping you do that?

25 A Me and my colleague, excuse me, two to three people, we were

1 cleaning up.

2 Q Did they all come --

3 A Myself, John Fazil and Mr. Noori.

4 Q Okay. And were these -- are these people that live here locally that
5 met you there?

6 A No, we -- none of us live in Las Vegas.

7 Q So all three of you came?

8 A Yes.

9 Q From California?

10 A Yes.

11 Q Who actually handled the toaster oven?

12 A I, unfortunately, me that was me first, you know, because when I
13 pick it up the thing, the door opened and the gun fell down and --

14 Q Okay.

15 A -- that's what I pick it up.

16 Q Now, in the photograph that's still on the screen the gun is in a
17 bag.

18 A Yes.

19 Q Did it fall out that way in a bag?

20 A Yes. It fall down on the floor. Somehow when I pick it up maybe,
21 you know, it just twisted and the gun fall down on the floor.

22 Q Okay. My question is was it in a bag when it fell on the floor?

23 A I'm not sure. I don't remember that, sir.

24 Q Okay. Do you remember if you actually, when you picked the gun
25 up did you actually touch the gun or did you touch a bag?

1 A No, I touched the gun.
2 Q Okay. So you handled the gun?
3 A Yes, I did.
4 Q You don't know if it was you or the police who put the gun in the
5 bag?
6 A I -- I don't remember.
7 Q Okay. Could have been you?
8 A Could have been me or my friends.
9 Q Okay. Could have been the police?
10 A Or could have been the police.
11 Q Were you wearing gloves when you handled the gun?
12 A No, we didn't.
13 Q Okay. You were not responsible for, like, collecting rents and so
14 forth, right?
15 A No, we didn't.
16 Q So you didn't know any of the tenants, did you?
17 A I did. We -- we -- we -- we signed contract with them, of course.
18 Q Okay. Do you know my client?
19 A No, I didn't.
20 MR. SCHWARZ: I have nothing further. Thank you.
21 THE WITNESS: Thank you sir.
22 THE COURT: Thank you.
23 Mr. Hamner.
24 MR. HAMNER: Just very, very briefly.
25 ///

1 **REDIRECT EXAMINATION OF TAHIR SHAHAB**

2 BY MR. HAMNER:

3 Q When you found this gun in the toaster oven had you gotten really
4 far in the process of kind of emptying out this apartment?

5 A Yes, we did. We cleaned the whole unit.

6 Q Well, I know that you cleaned the whole unit, I know you ultimately
7 did that, but at the time that you found this gun is the unit completely clean or
8 is there still some stuff still?

9 A No, it was still some stuff there.

10 Q And I -- I just for clarification purposes, have you ever met someone
11 by the name of Darion Muhammad-Coleman?

12 A No, sir, we never did.

13 Q Okay. So you don't have any relationship with him?

14 A Never.

15 Q Let me ask you this --

16 A Never saw him.

17 Q -- have you ever been asked to keep -- keep charge or keep care of
18 any of his personal effects?

19 A The police told us -- there was -- there's a lady came, a young lady
20 came.

21 Q Uh-huh.

22 A African-American, and he -- she pick up a lot of the stuff and she
23 said that they're related to the man that was living in there.

24 Q Well, I just want to focus on you for a second. I know that you
25 cleared things out but just to be clear you never put anything, as far as you

1 know, belonging to Darion Muhammad-Coleman inside Unit Number 7, would
2 that be right?

3 A No, sir. No, never.

4 Q All right. Okay. Thank you very much.

5 A You're welcome.

6 THE COURT: Mr. Schwarz, anything further?

7 MR. SCHWARZ: I don't have anything further, Judge.

8 THE COURT: Anything from our jurors? No?

9 All right, Mr. -- do I pronounce it Shashab?

10 THE WITNESS: Shahab.

11 THE COURT: All right. Thank you very much for coming in.

12 THE WITNESS: Thank you.

13 THE COURT: I appreciate it. You are excused.

14 THE WITNESS: Thank you. I appreciate it.

15 THE COURT: All right. State may call their next witness.

16 MR. HAMNER: State's going to call Rachel Bishop to the stand.

17 THE COURT: Good morning. Could you raise your right hand for me,
18 please. Thank you.

19 **RACHEL BISHOP,**

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

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

23 THE WITNESS: Rachel Bishop, R-A-C-H-E-L; Bishop, B-I-S-H-O-P.

24 THE COURT: Thank you.

25 Mr. Hamner.

DIRECT EXAMINATION OF RACHEL BISHOP

BY MR. HAMNER:

Q Good morning, Rachel. How are you?

A I'm well, thank you.

Q How about yourself?

A I'm good.

Q Your voice sounds good today?

A Thank you.

Q Okay. Sorry, she had a little bit of a laryngitis yesterday.

I want to talk to you about a particular location. Are you familiar with the Travelers Inn located 2855 Fremont?

A Yes.

Q Okay. Now, back in 2013 were you living there?

A Yes.

Q Okay. Who were you living there with?

A My boyfriend and his brother and my two kids.

Q All right. And tell me what your boyfriend's name is.

A Jermaine Grace.

Q And his brother's name?

A LeCory Grace.

Q Okay. And your kids, how old are they?

A My son was 2 and my daughter was 7.

Q Okay. And when you're saying "was," let's talk about back in 2013, that was their age at that time?

A Uh-huh.

1 Q About -- tell us a little bit about the Travelers Inn kind of, what's
2 kind of the set-up, is it, like, a weekly? It is just a regular motel? What's the
3 se-up there?

4 A They do day-by-day but they also do weekly and monthly as well.

5 Q Okay. So how were you kind of set up with them? Was it week to
6 week? Day to day? Month to month?

7 A Day to day, week to week.

8 Q Okay. And around April of 2013, in particular April 19th of 2013,
9 how long had you been living at the Travelers Inn?

10 A Not that long, maybe about a month with my boyfriend.

11 Q Okay. And -- and around that time as of April 19th, LeCory was
12 also living with you as well?

13 A Yes.

14 Q All right. I want to show you what's been already admitted as
15 State's 8, do you know what we're looking at there?

16 A That's the hotel.

17 Q Okay. Were you living on the first floor or the second floor?

18 A The second floor.

19 Q And what unit number were you living in; do you remember?

20 A I don't recall. It was toward the end.

21 Q Okay. All right.

22 A Or the stairs.

23 Q Now, when -- are there other people there that kind of live there for
24 extended periods of time at Travelers?

25 A Yes.

1 Q All right. Now, did you -- did you know a guy named Dale Borero?

2 A Not personally.

3 Q Not personally? But the name sounds familiar?

4 A Yes.

5 Q You remember someone by the name of Dale?

6 A Yes.

7 Q Where did Dale live in relation to you?

8 A In between, like, the next door over.

9 Q Okay. Up on the second level?

10 A Yes.

11 Q Okay. So you had seen him around before?

12 A Yes.

13 Q Had you talked to him before in the past?

14 A Not, like, deep conversation but hello.

15 Q I want to talk about April 19th, 2013, particularly around that
16 evening, maybe around 8:00 o'clock, 9:00 o'clock. Kind of what was the plan
17 for your boyfriend, Jermaine and LeCory that night? What were they going to
18 do?

19 A We were going to camp out. I had gotten a separate room.

20 Q Okay.

21 A On the other side of Dale because Dale was in between us.

22 Q Uh-huh.

23 A So they put me on the other side of that so that me and my kids
24 could do, like, a movie night.

25 Q Okay. And what was -- what -- so you were going to do movie

1 might with the kids, what was Jermaine and LeCory going to do?

2 A I'm not sure. I think they were going to run some errands, but they
3 were coming right back to meet with me and the kids.

4 Q All right. Did you notice around that time that kind of caught your
5 attention?

6 A Yeah.

7 Q What did you notice?

8 A There was a car with three gentlemen downstairs parked next to
9 my car and they were just kind of hanging out there and they kept looking up at
10 the balcony.

11 Q Let's talk about that car for a second. What type of car was it?

12 A I don't recall. It was an older model.

13 Q Older car. Four doors? Two doors?

14 A It was a four-door.

15 Q Big car? Small car?

16 A I would say midsize.

17 Q Midsize?

18 A Uh-huh.

19 Q Do you remember if it was light or dark?

20 A I want to say it was, like, a greenish, like, a greenish brown.

21 Q Okay. I want to show you -- I want to show you what's been
22 admitted as State's 15. Do you look at -- do you recognize what we're looking
23 at here?

24 A Yeah. That's the parking structure.

25 Q And just to familiarize the jury for a little bit, this kind of, this set-up

1 I know we looked at over here in State's 8, is it kind of like a long rectangle
2 with just a series of units that just goes straight?

3 A Yeah. It's just that way right there, just that wall.

4 Q And it leads all the way out to Fremont; is that right?

5 A Yes.

6 Q Okay. And when we're looking -- when we're back looking at
7 State's 15, again, you mentioned you saw this car.

8 A Yes.

9 Q Do you see the area in which the car was parked here? Can you --
10 and if you look --

11 A Yeah.

12 Q -- in this photo can you see where it is?

13 A Yeah. My car was where the cones are.

14 Q All right. So --

15 A And then the car was parked in the second spot next to mine.

16 Q All right. So let's --

17 A And it was backed in.

18 Q I'm going to -- the monitor's kind of interesting. You can take your
19 finger, and if you touch it, it can draw lines and stuff. So what I'd like you to
20 do first is why don't you draw a circle where your car was parked.

21 A My car was in this spot.

22 Q Okay. And where do you remember this other car being parked?

23 A It was parked right next to mine in the second spot.

24 Q Okay. So what stands out to you is you remember this car being
25 parked right next to yours?

1 A Right next to me, uh-huh.

2 Q Okay. Now did you and Jermaine and LeCory all kind of share the
3 same car?

4 A Yes, well, it was my car but, yeah.

5 Q They can borrow it?

6 A Yes.

7 Q And when you mentioned that Jermaine and LeCory were going to
8 kind of go out that night, were they planning on taking your car?

9 A Yes.

10 Q Okay. So you remember that car being down there right next to
11 yours to the left in this photograph; would that be accurate?

12 A Yes.

13 Q Okay. Now, said you noticed some guys downstairs. How many
14 did you notice kind of standing around outside?

15 A It started off with two. There was two black guys and a white guy.
16 There was a heavysset black guy in the driver's seat. And then there was two
17 standing out on the driver's side --

18 Q So you remember a heavysset black guy?

19 A -- on the passenger side.

20 Q In the -- in the driver's seat?

21 A Yes.

22 Q And then there was another African-American guy also?

23 A And a Caucasian male.

24 Q And a Caucasian male. When -- let's talk about the
25 African-American guy, not the heavysset driver, but -- but the other male. Was

1 he stand -- he was standing outside of the car?

2 A He was standing outside on the passenger --

3 Q Where do you remember him standing, in relation to that other car,
4 where do you remember him standing at least initially?

5 A On the passenger side by the passenger door.

6 Q Okay. Front passenger side?

7 A I don't recall.

8 Q Okay. What type of clothing was he wearing? Was it light? Or
9 dark?

10 A T-shirt, jeans.

11 Q Okay. And then you remember a white guy out there as well?

12 A Uh-huh.

13 Q Is that right? Okay. And so they were -- they were standing there?

14 A Uh-huh.

15 Q Okay. How long were they standing out there?

16 A Quite a while.

17 Q Okay. So did they go to any of the rooms or anything like that?

18 A No.

19 Q They were just kind of standing out there?

20 A Yeah.

21 Q All right. And could you notice them from that upstairs vantage
22 point? Is that where you could see -- I know that there's -- it looks like there's
23 a walkway up there. Is that how you were noticing them?

24 A Yeah. But this -- this balcony goes all the way and I was leaning on
25 the balcony.

1 Q I'm going to show you --

2 A Yeah, here.

3 Q I'm going to show you State's 8. Why don't you circle, do you see
4 your room? I don't know if you can see it, but do you see your unit? I know
5 these are -- are these the stairs that we were seeing?

6 A Yeah. These are the stairs. Jermaine and Cory are here.

7 Q Why don't you --

8 A And I'm all the way back here.

9 MR. HAMNER: All right. And so let the record reflect that in this exhibit
10 the witness has circled the first door on the second level as being the unit
11 where her boyfriend was staying with her brother and then circles the door all
12 the way to the left-hand side of the picture as being as indicating the unit
13 where she was staying.

14 THE COURT: Is that correct?

15 THE WITNESS: Uh-huh.

16 THE COURT: Okay.

17 BY MR. HAMNER:

18 Q And so you could see from that vantage point up there what was
19 kind of going on?

20 A Yes.

21 Q Okay.

22 A I was leaning on the rail.

23 Q Did you ever see Dale up on that second level where you were kind
24 of standing?

25 A Yeah. He was standing next to me.

1 Q And was he screaming or yelling up on that second level?

2 A No.

3 Q Okay. What -- did he ever make eye contact with those people that
4 were down there?

5 A Yes.

6 Q Okay. What did you notice about when the two of them were
7 looking at each other?

8 A They weren't really talking to each other, it was more gestures, like,
9 head movements, like, what's up.

10 Q Okay.

11 A Hands.

12 Q Okay. Did you ever see, up on the second level, Dale waving
13 around a weapon or anything like that?

14 A No, sir.

15 Q Waving a knife or anything like that?

16 A No, sir.

17 Q Did you ever hear Dale yell out any death threats?

18 A No.

19 Q Any physical threats to hurt anyone?

20 A No.

21 Q Okay. Were they screaming anything of that same kind of nature at
22 Dale?

23 A No.

24 Q Okay. Now you mentioned Jermaine and LeCory are planning to go
25 out; is that right?

1 A Yes.

2 Q Do eventually they kind of make their way out?

3 A Yes.

4 Q Okay. So where do they go? I mean, can you, from leaving the
5 unit, where do they walk to?

6 A We always use the stairs on this side by the parking lot.

7 Q Okay.

8 A So before he left I asked him to come fix my window in my unit
9 because I also wanted to talk to him about the gentleman by the car.

10 Q Were you concerned about them?

11 A Yeah.

12 Q Okay. And so -- and I want to publish State's 15, again. Are these
13 the stairs that you're talking about?

14 A Yes.

15 Q And they're all -- and for the record, that's the stairwell all the way
16 to the left in State's 15 -- so those are the ones you typically walk down to to
17 get your car?

18 A Yes.

19 Q Is that the pathway that LeCory and Jermaine took?

20 A Yes.

21 Q And do they ultimately get into their car?

22 A Yes.

23 Q Into your car?

24 A Yes.

25 Q And do they leave?

1 A Yes.

2 Q All right. At that time as they're kind of making their way down are
3 either Dale or these men threatening to hurt anyone or anything like that?

4 A No.

5 Q Okay. No one's waving any weapons or anything like that as far as
6 you can see?

7 A No.

8 Q Okay. So your boyfriend and LeCory, they leave?

9 A Yes.

10 Q All right. Where do you go at that point?

11 A I turned around to go ahead and go back into my unit to be with the
12 kids.

13 Q Okay. Now, you mentioned that you saw Dale up on that second
14 level.

15 A Yeah.

16 Q Did you -- before you went inside, did you see where he went, if at
17 all?

18 A He was actually still on the patio, like, on the railing because we
19 were both leaning on the railing at the same time.

20 Q Okay.

21 A And he had his door open.

22 Q Okay. So he still had his door open?

23 A Yeah. He had some music.

24 Q Did you ever see him walk down those stairs?

25 A No.

1 Q Okay. So you go back in your -- in your -- in your unit?

2 A Uh-huh.

3 Q So what do you do once you get inside?

4 A The kids were jumping on the bed and I asked them if they wanted
5 to find a movie.

6 Q Okay.

7 A And they said "yes."

8 Q All right. And what happened after that?

9 A Literally, within maybe minutes, I heard gunshots.

10 Q How many?

11 A A lot.

12 Q Okay.

13 A I would say about five to six, continuous.

14 Q Okay. Prior to hearing those gunshots do you hear any one
15 screaming out death threats or physical threats at anyone?

16 A No.

17 Q Do you hear, like, a physical fight or a scuffle outside before you
18 hear those gunshots?

19 A No.

20 Q Do you hear any kind of senses of people maybe panicking outside
21 before you hear those gunshots?

22 A No.

23 Q Did you have any reason to expect to hear gunshots at that point
24 while you were back in that area trying to get your kids to watch a movie?

25 A Not gunshots, no.

1 Q Okay. So what do you do? You hear these gunshots, what
2 happens inside that room?

3 A I tell my kids to get down in between the two beds and to lay on
4 the floor. I grabbed my Taser and I peeked out the window to see what was
5 going on.

6 Q And what did you see when you looked out your window?

7 A I saw Dale in the parking lot firing shots back toward the car that
8 was just parked next to mine. It was pulling out of the lot.

9 Q And let me ask you about that car. Do you remember how was
10 positioned, if the front of the car was facing that wall there in State's 15 or if
11 the front of the car was facing out?

12 A No. It was backed in. It was backed in so that they could pull right
13 out.

14 Q So it's, like, a straight shot out?

15 A Yeah, like a straight shot out.

16 Q And so you're familiar with that area. I want to talk a little bit
17 about, in State's 15, I want to talk a little bit about this wall here. How high is
18 that wall?

19 A It's definitely taller than myself, so I would say about six feet or
20 more.

21 Q Okay. Is it -- is there any room? Is there anywhere to go beyond
22 that? Or are you cut off?

23 A I'm not sure.

24 Q You're not sure? Okay. As far as you know have you ever seen
25 anyone kind of going in any way, like, is there any exits far as you know back

1 towards that wall? Or is the only way out forward?

2 A The only way out is forward.

3 Q Okay. So if you're standing with your back to that wall, there's
4 nowhere to back up as far as you know?

5 A As far as I know, no.

6 Q Okay. So now you see Dale on the ground out in the parking lot.
7 Do you see in this picture roughly where he probably was laying? Or where he
8 was?

9 A Yes.

10 Q Why don't you make a circle in State's 15.

11 A He was right here on the ground.

12 MR. HAMNER: Okay. Let the record reflect the witness has made kind
13 of a small circle just to the right of three diagonal orange cones, kind of to the
14 center right of the photograph in State's 15.

15 THE COURT: So you're kind of indicating in that third parking spot from
16 the left?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 BY MR. HAMNER:

20 Q So you see Dale, what do you -- what do you decide to do, Rachel?

21 A I ran out of my unit to help.

22 Q Okay. And what did you see when you got there?

23 A He was laying on the ground moaning.

24 Q Okay.

25 A So I started to talk to him and ask him if he was okay and if he

1 could talk to me and tell me his name.

2 Q Was he -- was he able to answer your questions?

3 A No. He just kept moaning.

4 Q Okay. How did his eyes look?

5 A He had them closed. But it was more like in pain.

6 Q Okay. So you're trying to talk to him, he's not really responding;
7 what do you do then?

8 A Before I even made it downstairs, I had already called 9-1-1 when I
9 saw the commotion in the parking lot.

10 Q Okay. So you --

11 A So, by the time I made it down the stairs I was asking them to send
12 an ambulance and telling them that he had been shot in his abdomen.

13 Q Okay. And do you place any other phone calls to anyone around
14 that time?

15 A No. I just, I stayed on the phone with them until the ambulance
16 came.

17 Q Do you ever remember calling Jermaine to tell him what had
18 happened.

19 A I called him after when --

20 Q Okay. So you called him after talking to the police?

21 A Yes.

22 Q Okay.

23 A After everything was done.

24 Q And what did you -- all right. And what did you tell -- what did you
25 relay to him?

1 A I said those guys that were downstairs by that car shot the guy
2 next to us.

3 Q Okay. So you let them -- let him know as well?

4 A Yeah, I said, They just shot him.

5 MR. HAMNER: All right. Court's indulgence.

6 Your Honor, there is a stipulation that State's Proposed Exhibit 122
7 will be admitted --

8 THE COURT: Okay.

9 MR. HAMNER: -- by the parties.

10 MR. SCHWARZ: That's fine, Judge.

11 THE COURT: Thank you.

12 **[STATE'S EXHIBIT 122 ADMITTED]**

13 MR. HAMNER: Permission to publish State's 122?

14 THE COURT: You may.

15 For the record, is that the 9-1-1 call?

16 MR. HAMNER: Yes. Yes, it is.

17 THE COURT: Okay.

18 [9-1-1 call played]

19 BY MR. HAMNER:

20 Q Did you -- did you recognize anyone's voice on that call?

21 A Yes.

22 Q Who's voice did you recognize?

23 A Mine.

24 Q Okay. And I heard in that call you mentioned things like an
25 Oldsmobile or a Cadillac blue in color, does that help refresh your memory?

1 A Yeah.

2 Q Maybe about what it -- so -- so does that -- does that sound about
3 right?

4 A Yes.

5 Q Okay. And as far as you remember was it kind of a larger Cadillac
6 or --

7 A It was a larger. It was one of the -- it looked like an Oldsmobile.

8 Q Okay.

9 A Like the old school.

10 Q Okay. Kind of old school one? All right. And that's the one you
11 saw those guys kind of nearby?

12 A Uh-huh.

13 Q That particular? And is that the type of vehicle you saw speeding
14 out as well?

15 A Uh-huh.

16 Q Couple other follow-ups. When you got down the stairs was there
17 anyone out there kind of helping Dale?

18 A There was a Caucasian woman that was in the room with him.

19 Q Okay. Let me ask you this, did any of the -- any of the men who
20 you saw arrive in that vehicle, stand around that vehicle, did any of them stick
21 around?

22 A No.

23 Q Did any of them stick around to offer an explanation as to why
24 something even happened in the first place?

25 A No.

1 Q Okay. So did any of them come back at any point in time?

2 A No.

3 Q Okay. Did you ever see any of those guys ever again?

4 A No.

5 MR. HAMNER: Okay. Court's indulgence.

6 I have no further questions for this witness.

7 THE COURT: Thank you.

8 Mr. Schwarz.

9 MR. SCHWARZ: Yes, thank you, Your Honor.

10 **CROSS-EXAMINATION OF RACHEL BISHOP**

11 BY MR. SCHWARZ:

12 Q Good morning, Ms. Bishop, how are you?

13 A I'm well. Thank you. And yourself?

14 Q I'm -- I'm actually dandy. Thank you.

15 A Good.

16 MR. SCHWARZ: Is Number 8 here, Chris?

17 MR. HAMNER: 8 and 15, the ones I was using, are sitting on the
18 overhead.

19 MR. SCHWARZ: Okay. All right, great. Thank you. And I don't want to
20 knock these --

21 MR. HAMNER: I didn't know if you needed them or not so I just left
22 them.

23 MR. SCHWARZ: No, I'm good. Thank you.

24 MR. HAMNER: Okay.

25 MR. SCHWARZ: Thank you very much.

1 BY MR. SCHWARZ:

2 Q So Mr. Borero, Dale, is in Room 17?

3 A Uh-huh.

4 Q And your boyfriend and his brother are in Room 18?

5 A I think they are one more over.

6 Q Okay. And you're in Room 16?

7 A And I'm next to Dale, yeah.

8 Q Okay. So you're three together; is that I'm getting at?

9 A Uh-huh.

10 Q All right. Now, you indicated that there was a point when you
11 saw -- did you see the vehicle pull up?

12 A No, it was already there.

13 Q It was already there and then you were looking down at them?

14 A Uh-huh.

15 Q Okay. And you said they were looking up at you?

16 A Yeah. They were looking up at the railing.

17 Q Right. And you were looking down at them?

18 A Uh-huh.

19 Q And you didn't know them?

20 THE COURT: Is that a "yes"?

21 THE WITNESS: No, I don't know them.

22 THE COURT: Is that -- Ms. Bishop, is that a "yes"?

23 THE WITNESS: Yes, it was a "yes."

24 THE COURT: Okay. Thank you.

25 MR. SCHWARZ: Sorry, Judge.

1 BY MR. SCHWARZ:

2 Q And Dale was also there?

3 A Yes.

4 Q While you were looking down?

5 A Yes.

6 Q So the two of you were looking down at them?

7 A Yes.

8 Q And they were looking up at you?

9 A Yes.

10 Q And then your boyfriend, well, LeCory and Jermaine were also out
11 on the balcony around that same time?

12 A They were in the room. They were getting ready to leave.

13 Q But they came out at some point?

14 A Yeah, Cory went down stairs first and stood by the car to wait for
15 Jermaine because I asked him to come help me with my window.

16 Q So everybody was out on the balcony at some point?

17 A Yes.

18 Q Okay. And nobody knows each other?

19 A Not that I know of.

20 Q Okay.

21 A I think they've just seen each other.

22 Q All right.

23 THE COURT: Nobody whom knows each other?

24 MR. SCHWARZ: I heard it as soon as I said it, Judge.

25 ///

1 BY MR. SCHWARZ:

2 Q All right. So to the best of your knowledge, you know, there's
3 three guys downstairs, you don't know them, you know, doesn't appear that
4 Jermaine and LeCory know them, I know you can't tell me whether or not Dale
5 knew 'em; but basically it's just, you know, three people looking up, four
6 people looking down?

7 A Yeah.

8 Q Fair enough?

9 A Yeah.

10 Q Okay. All right. And then did you see Dale go down the stairs?

11 A No.

12 Q Okay. Now, do you remember giving the police a voluntary
13 statement?

14 A Yes.

15 Q In preparation for your testimony have you had an opportunity to
16 review your voluntary statement?

17 A No.

18 Q Did anyone come to your room that night looking for Dale?

19 A The night that he was shot?

20 Q Yes.

21 A I don't believe so, no.

22 Q Okay. So you were interviewed relatively soon after this incident
23 occurred, correct?

24 A Yes. I believe they came the next day, the next morning.

25 Q Okay. And you were actually interviewed on the 20th and this

1 happened on the 19th?

2 A Yeah. It was the next morning.

3 Q Of April, the very next day. And so do you remember telling the
4 detective that you saw the victim, presumably Dale, walking down the stairs?

5 A No.

6 Q And do you remember telling the detective, He came down the
7 stairs and he went over to the Cadillac and he was talking to the white male?

8 MR. HAMNER: What page number?

9 MR. SCHWARZ: I'm sorry, page 5.

10 MR. HAMNER: Thank you.

11 THE WITNESS: No.

12 BY MR. SCHWARZ:

13 Q If I showed you that page of your statement would that refresh your
14 recollection about this?

15 A Possibly.

16 MR. SCHWARZ: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. SCHWARZ:

19 Q So I'm talking about one, two, three, four lines down from the top.

20 THE COURT: You can just read that to yourself for a minute.

21 MR. SCHWARZ: Yeah, just read it to yourself.

22 THE WITNESS: Okay.

23 THE COURT: Ms. Bishop. Okay.

24 BY MR. SCHWARZ:

25 Q Okay. Does that refresh your recollection of what you told the

1 detectives?

2 A Yeah. Uh-huh.

3 Q So did you see him walking down the stairs?

4 A Honestly, as of right now, I'm not sure.

5 Q But you would agree with me?

6 A I can't really remember.

7 Q You would agree with me you told the detective that?

8 A Yes.

9 Q Okay. Now, you indicated that before any shots were fired you
10 went into your house?

11 A Yes.

12 Q All right. Do you recall telling the detective that after the shots you
13 grabbed your Taser, grabbed your phone, squatted down and open the
14 bottom --

15 A I opened the door.

16 Q Okay.

17 A And peeked out the crack of the door.

18 Q But looked down the bottom?

19 A Uh-huh.

20 Q Okay. And do you recall telling the detective that you saw the
21 victim standing and returning fire?

22 A Yes.

23 Q Okay. And is that your recollection today?

24 A Yes.

25 Q Okay. Give me a moment.

1 Do you recall the detective asking you if you could describe the
2 white male that you said you saw Dale talking to and your response to that
3 question?

4 A I do not recall my response.

5 MR. HAMNER: Page number?

6 MR. SCHWARZ: I'm on page 10.

7 MR. HAMNER: Thank you.

8 BY MR. SCHWARZ:

9 Q Do you recall telling the detective that the while male who was
10 talking to Dale seemed to be the most hostile?

11 A I would say so, yes.

12 Q Okay. Do you remember saying that he had -- well, do you
13 remember telling the detective, And then the victim came down stairs and was
14 talking to him, I mean, they were talking?

15 A I mean, they were talking?

16 Q I mean, they were talking. If you don't, I can show you the page
17 and refresh your recollection.

18 This is page 10.

19 And I'm just going to ask her to read about one-third of the way
20 down to two-thirds of the way down, so from here to there. Once you get to
21 there you can stop.

22 A Yeah.

23 Q Do you recall saying that to the detective?

24 A Yes.

25 Q Do you recall what you meant when you said, I mean, they were

1 talking?

2 A A heated discussion.

3 Q Heated discussion?

4 A Uh-huh.

5 Q Between Dale and the white male you saw?

6 A Uh-huh.

7 Q Okay. And you also -- did that refresh your recollection about
8 whether or not --

9 A Yeah.

10 Q -- Dale looked like he didn't want to hear it?

11 A Yeah.

12 Q Can you tell me what you meant by that?

13 A Like he wasn't trying to hear nothing that he had to say. He,
14 obviously, he had a complaint or he was upset about something and Dale just
15 didn't want to hear it.

16 Q Okay. Do you remember saying that -- that Dale's body language
17 said I don't like you and we've got some problems here?

18 A I don't recall using those words, but --

19 MR. SCHWARZ: Page 11.

20 BY MR. SCHWARZ:

21 Q And perhaps you're referring to the other white male.

22 MR. SCHWARZ: May I reproach, Judge.

23 THE COURT: You may.

24 BY MR. SCHWARZ:

25 Q Would it refresh your recollection to look --

1 A Sure.

2 Q -- at the statement?

3 MR. SCHWARTZER: Your Honor, I would ask her to read the end of page
4 10 into page 11 for the complete statement.

5 MR. SCHWARZ: You know what, I agree with you and so I have page 10
6 in my hand.

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

8 MR. SCHWARZ: Thank you, Mr. Schwartzer.

9 BY MR. SCHWARZ:

10 Q And so read from here.

11 Now, who -- so does this refresh your recollection about whether or
12 not you told the detective his body language said I don't like you and we've got
13 some problems here?

14 A Yeah.

15 Q Who was that in reference to? The white male or Dale?

16 A That was the white male.

17 Q Okay. All right.

18 MR. SCHWARZ: And I will just need a brief indulgence.

19 THE COURT: Okay.

20 BY MR. SCHWARZ:

21 Q You couldn't tell what they were talking about though, right?

22 A No.

23 Q And do you recall, and I'm on page 19, do you recall telling the
24 detective that Dale had his arms crossed and he had that I'm not trying to hear
25 what you -- what you're saying kind of face?

1 A Yes.

2 Q Okay. What did you mean by that?

3 MR. HAMNER: Page?

4 MR. SCHWARZ: I'm sorry, page 19.

5 MR. HAMNER: Thank you very much.

6 THE WITNESS: I don't know if I'm allowed to, but, you know, when
7 someone just, you know, they cross their arms and they're, like, shaking their
8 head, like, nope, I'm not -- I'm not listening, I'm not about to hear this.

9 BY MR. SCHWARZ:

10 Q Okay.

11 A Like, I'm not listening to nothing you're saying.

12 Q And so it would be fair to say that you did actually observe the --
13 the white guy and Dale?

14 A Uh-huh.

15 Q Having a heated conversation?

16 A Yes.

17 Q Okay. They appeared to be arguing with each other? Yes?

18 A Yes.

19 MR. SCHWARZ: I don't have anything further. Thank you?

20 THE COURT: Thank you.

21 Mr. Hamner.

22 MR. HAMNER: Thank you.

23 **REDIRECT EXAMINATION OF RACHEL BISHOP**

24 BY MR. HAMNER:

25 Q Yeah, let's talk about -- about this white male for a second, was

1 Dale with anybody when he went down and had that conversation or was he
2 alone?

3 A He was alone.

4 Q By himself? So you remember seeing a black male out there?

5 A Yes.

6 Q And there was a white male out there as well?

7 A Yes.

8 Q And you believe there was even more people in the car?

9 A There was one other guy in the car. He was the driver.

10 Q Okay. There are three people out there and Dale was by himself?

11 A Yes.

12 Q And the person that you notice who's angry amongst all these
13 people, was it Dale or was it the white male?

14 A The white guy.

15 Q So the white male, one of these multiple men, is angry at Dale; is
16 that right?

17 A Yes.

18 Q Okay. So he's angry?

19 A Yes.

20 Q And he's agitated?

21 A Yes.

22 Q Okay. And you said that Dale was standing there with his arms
23 crossed?

24 A Yes.

25 Q Did you ever see Dale shove the white male in response to the

1 angry, agitated nature?

2 A No.

3 Q Did you ever see him pull out a weapon or a knife and try to attack
4 the white male?

5 A No.

6 Q Did you ever see him put his hand on him in any way?

7 A No.

8 Q So Dale was just standing there?

9 A Yes, with his arms crossed.

10 Q Okay. So were you seeing Dale verbally kind of jaw back at him
11 and point in his face or was he just kind of --

12 MR. SCHWARZ: Well, Judge, I'm going to object. I think this is about
13 the fifth time. Asked and answered.

14 THE COURT: Well, overruled.

15 You can answer the question, or he hadn't actually finished the
16 question. So go ahead and ask the question.

17 BY MR. HAMNER:

18 Q So when you're watching this angry white male upset with him
19 having a conversation is Dale just kind of standing there with his arms crossed
20 not saying much or is he kind of jawing back and pointing in his face? What are
21 you seeing?

22 A No. His hands are crossed. He's kind of nonchalant.

23 Q Okay. And additionally there's a black male out there as well?

24 A Yes.

25 Q Is Dale jawing at -- at this black male?

1 A No.

2 Q Is he waving any weapon, as far as you could see when you were
3 out there, at the black male?

4 A No.

5 Q Was he putting his hands on him, pushing at him, pointing his finger
6 in his face, doing anything like that?

7 A No.

8 Q So he was doing nothing of the sort?

9 A No.

10 Q Okay. And so when -- when -- when Mr. Schwarz asked you, well,
11 it appears there's kind of an argument, does it sound like it's a two-way, angry
12 conversation or is it one person angry and the other person just kind of standing
13 there?

14 A I think one person's angry and the other person is -- doesn't care.

15 Q And let's be clear, who's the person who's not saying anything
16 and --

17 A Dale doesn't care.

18 Q -- doesn't appear to not care? Who is that?

19 A Dale.

20 Q Dale. Thank you?

21 MR. HAMNER: I have no further questions.

22 THE COURT: Mr. Schwarz.

23 **RECROSS-EXAMINATION OF RACHEL BISHOP**

24 BY MR. SCHWARZ:

25 Q Well, Ms. Bishop, I -- I -- I hate to suggest this, but I just asked you

1 a few minutes ago, if it appeared that they were having a heated discussion and
2 you said yes.

3 A Yeah, they were arguing.

4 Q Yes.

5 A But it wasn't Dale, it was the white guy that was upset.

6 Q Okay. And you said Dale had his arms folded in front of him.

7 A He didn't care.

8 Q And he had an expression on his face like he didn't care.

9 A Yeah. He was nonchalant.

10 Q And then I asked you if it appeared that they were arguing and you
11 said yes?

12 A Yeah, it was an argument. But it wasn't like Dale was the one, like,
13 going in, putting his fingers in his face. He was nonchalant.

14 Q Okay. So --

15 A It was more like the other guy may have been arguing with himself.

16 Q The guy was having an argument with himself; is that what you
17 meant?

18 A Yeah. Because he was upset. Dale didn't care.

19 Q Okay. And all Dale did was stand there with his arms folded?

20 A He had his arms crossed and you can read body language, of
21 course, the demeanor that was just, like, okay, and? Okay. Whatever his
22 problem was Dale obviously didn't care.

23 Q Okay. All right. Thanks.

24 THE COURT: Mr. Hamner, anything further?

25 MR. HAMNER: No, Your Honor.

1 THE COURT: Anything from our jurors?

2 Ms. Bishop, thank you very much for your time. I appreciate you
3 coming.

4 State may call their next witness.

5 MR. SCHWARTZER: Can we check to see who's out there?

6 MR. HAMNER: Court's indulgence. I think he's out here but --

7 THE COURT: Okay.

8 MR. HAMNER: State's going to call Sergeant David Rose to the stand.

9 THE COURT: Okay.

10 Good morning, Sergeant. You can raise your right hand for me
11 please. Thank you.

12 **DAVID ROSE,**

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

14 THE CLERK: You may be seated.

15 THE WITNESS: Thank you.

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

17 THE WITNESS: Sergeant David Rose, R-O-S-E.

18 THE COURT: Mr. Hamner.

19 MR. HAMNER: Thank you so much.

20 **DIRECT EXAMINATION OF DAVID ROSE**

21 BY MR. HAMNER:

22 Q Sir, what do you do for a living?

23 A I'm currently a sergeant with the Las Vegas Metropolitan Police
24 Department.

25 Q Okay. And how long have you been here with Metro?

1 A I've been employed with them a little over eight years.

2 Q Okay. So you're currently a sergeant. Tell us what area command
3 you're a part of.

4 A I currently work the Convention Center Area Command which is
5 responsible for patrolling the Strip.

6 Q Okay. Have you worked any other area commands around town?

7 A I have. Previously to this I worked Southeast which is responsible
8 for Boulder Highway. And then prior to that I was downtown which is
9 encompasses Fremont Street and the surrounding areas.

10 Q All right. Now, I want to turn your attention all the way back to
11 2013, about four years ago, particularly April 19th, 2013, what area command
12 were you a part of then?

13 A I was part of the Downtown Area Command.

14 Q Were you a sergeant at that time or something else?

15 A I was a patrol officer.

16 Q Okay. And on that particular evening, probably at around, you
17 know, 9:30 at night, were you working, on duty that night?

18 A Yes, I was.

19 Q All right. Were you in uniform on that night?

20 A Yes, I was.

21 Q Were you in a marked vehicle? A black-and-white vehicle? Or an
22 unmarked vehicle?

23 A A marked, black-and-white patrol vehicle.

24 Q Okay. And what was your kind of responsibilities on that night?

25 A My responsibilities that night is respond to calls for service. When

1 somebody calls 9-1-1 a call gets generated, I respond to those calls, and then I
2 also respond conduct proactive enforcement in the area.

3 Q Now, on that night were you working alone or did you have a
4 partner?

5 A I was alone.

6 Q All right. And do you remember around that time, around 9:00,
7 9:30-ish, something around that time, a call coming out, a call for service for
8 Travelers Inn at 2855 East Fremont here in Las Vegas, Clark County?

9 A I do.

10 Q Okay. And what was the general gist of the type of call you were
11 responding to?

12 A The call was, it came out coded as a 415A which means an
13 assault, battery with a gun. Somebody was either shot or shot at.

14 Q Okay. And as you kind of drive there, tell -- tell the jury a little bit
15 about kind of what your duties as a patrol officer are when you kind of respond
16 to that type of call, when you get to a scene like that, what are the sort of
17 things you're supposed to be doing as a patrol officer?

18 A First and foremost, as a patrol officer as we go to the call we're
19 listening for suspect description to see if maybe as we're going there the
20 suspect drives by us and we can kind of apprehend the person at that point.
21 And if that's not the case when we respond, we try to locate anybody who's
22 injured. Our number one priority is life safety, life preservation. So our number
23 one mission is to save a life.

24 So once we get on scene, we see if we can save a life and then we
25 work on scene preservation. We work on locking it down, nobody in or out.

1 We make sure that people don't destroy any evidence. That way in case
2 somebody is hurt, we can -- we can piece together what happened and find the
3 perpetrator.

4 Q The Travelers Inn, is that a motel here in town?

5 A Yes.

6 Q Okay. Tell us about kind of the entrance-exit of that place. How
7 many entrance, exits are there to the Travelers Inn?

8 A It's a small -- small property. It has a very small footprint. So
9 there's only one entrance in and out, right on to Boulder Highway, Fremont area
10 right as it transitions.

11 Q And is the -- is the motel kind of shaped like a long rectangle
12 alongside that kind of entrance and exit?

13 A Yes.

14 Q Okay. Now, when you arrived at that -- at that location, and I want
15 to show you what's been admitted as State's 8, do you recognize kind of what
16 we're looking at there?

17 A I do. So when you -- when you pull in there is a parking lot on this
18 side of the building, so the parking lot is right next to and faces that side of the
19 building.

20 Q And so is that -- are we looking at the Travelers Inn in that
21 photograph?

22 A Yes.

23 Q All right. And I'm publishing State's 10. Is that a better kind of far
24 out vantage point?

25 A Yes, it is.

1 Q Okay. And so when you pull in, are you one of the first officers to
2 arrive?

3 A I am.

4 Q Okay. Are there any other officers kind of arriving essentially at the
5 same time as you?

6 A Another officer arrives and starts walking up into the parking lot as
7 I'm pulling up, and so that car in the middle of the picture is mine because I see
8 him walking up, we know that somebody potentially has a firearm, so I wanted
9 to get close to make sure he wasn't going into a dangerous situation alone.

10 Q Okay. I want you to circle your vehicle. And the way you do that,
11 take your finger, touch the screen, make a circle.

12 MR. HAMNER: All right. Let the record reflect has, and I believe this is
13 State's 10, circled the police vehicle that's just to the right of the -- of the
14 structure and along a red curb.

15 THE COURT: The record will reflect.

16 BY MR. HAMNER:

17 Q Okay. So you get out of your vehicle. What do you see?

18 A We get out, we start approaching, we're -- we have a lot of
19 responsibilities at this point because we don't really know if the suspect went
20 inside, is waiting to ambush an officer as well. We see somebody down, we're
21 clearing cars as we walk by to make sure somebody's not in there laying off
22 waiting for us as well. And as we start walking up there's a subject down
23 towards the back of the parking lot.

24 Q Okay. And I want to talk about that subject for a second. Male or
25 female?

1 A A male.

2 Q Okay. Can you give us some descriptors about this particular male?

3 A He was covered in tattoos. He had on a white tank top. And he
4 was laying on the ground.

5 Q Okay. Was he -- was he saying anything or making any sounds at
6 the very least?

7 A He was moaning. He wasn't responding to any questions and
8 wasn't answering anything intelligibly. He just moaning and groaning.

9 Q Of the officers, and you mentioned there are multiple officers who
10 are arriving at this kind of scene at the same time, who's the officer that ends
11 up tending to this shooting victim?

12 A I did.

13 Q Okay. So what do you do?

14 A As I was approaching I put on latex gloves, that way in case there's
15 anything on me and there's an open wound I don't make anything worse.

16 Q Okay.

17 A I started, there's two people nearby, I don't really talk to them,
18 other officers are talking to them. Ultimately, I started telling him it's going to
19 be okay, it's going to be okay. I lay him flat on his back. I lift up his shirt and I
20 see a bullet wound just under his rib cage, a bullet hole. So I apply direct
21 pressure to that to help stop the bleeding. While I'm doing that he's moaning.
22 I'm like come on, it's going to be okay. We have medical coming, they're going
23 to help you out. He's not really responding. And as I have direct pressure on
24 him he stops breathing and his heart stops.

25 Q So what do you do?

1 A At that point I started chest compressions for about 15 seconds or
2 so, 20 seconds, and he regained consciousness, he started breathing again, his
3 heart rate picked up. Shortly after that, and I kept holding him, medical
4 responded, picked him up, and transported him to the hospital.

5 Q Did you get a chance to kind of look at him in his eyes when you
6 were there?

7 A I did.

8 Q How responsive was him from an eye contact perspective?

9 MR. SCHWARZ: Judge, I'm going to object as to foundation.

10 THE COURT: Well, you can go ahead and lay a little foundation, back up.
11 BY MR. HAMNER:

12 Q Did you -- did you look at him in the face?

13 A I looked at him in the face.

14 Q Okay. Are you trained when you're dealing with maybe someone
15 who's been injured to try to make eye contact with the victim, interact with the
16 victim?

17 A Yes.

18 Q Okay. Did you do that in this situation?

19 A I did. I was trying to get his focus on me because a lot of injuries,
20 if you can get the focus off of them, if you can get the person to focus on you
21 and they're not focusing on the injury, it helps alleviate some of the pain. It
22 helps distract them a little bit.

23 Q Were you able to make contact with this particular person as you
24 were trying to provide assistance?

25 A I was trying to but he wasn't responding to me. He was just

1 groaning.

2 Q Okay. You mention that then an ambulance came and took this
3 person away?

4 A Yes.

5 Q Now, were there other things that you did at that scene or helped
6 out or assisted with? I mean, I know that appears to be your primary
7 responsibility at that time, but what other things did you do maybe after that
8 fact?

9 A We made sure that the scene was secure. We had any -- other
10 officers had witnesses or people who called in, they had those people separated
11 so that detectives could talk to them. We looked around the ground. We saw
12 casings from firearms. We saw a firearm on the ground. And we saw a bag of
13 what appeared to be narcotics on the ground as well.

14 Q Okay. Let me do this, now, did -- did you find anything on his
15 person, this person's person that was of interest that was inventoried and
16 logged?

17 A I did. Before he got transported to the hospital we removed
18 everything from his pockets to make sure that if he regains consciousness, if
19 you're in a fight and you lose consciousness, when you regain consciousness
20 your first thought is to go right back to what you were doing, so if he was in a
21 fight he was going to wake up and start fighting again.

22 Q Okay.

23 A So we remove everything that way paramedics, hospital staff are all
24 safe. And in his pocket was a little over \$3300 cash.

25 Q All right. I'm going to publish what's been already admitted as

1 State's 42. Do you recognize what we're looking at there?

2 A I do. That is money that I removed from the subject's pocket.

3 Q That's how much money that guy on the ground had on him?

4 A Yes.

5 Q Publishing 41, what are we looking at here?

6 A In the pocket we have the money that we removed. He also had a
7 cell phone, a lighter, and a pack of cigarettes.

8 Q And what's all this writing here on the hood of the car?

9 A That writing is actually for the count for our impound for -- we take
10 an inventory of how much money and it's broken down in 100s, 20s, 10s, 5s,
11 and 1s. So we had --

12 Q So you write it on your car?

13 A We wrote it down on the car with dry erase markers that way an
14 officer counts it, I count it, and then because of the amount of money, another
15 officer verifies it and then a sergeant had to verify it as well.

16 Q Okay. So there's all that cash. You mentioned that had you
17 noticed that there was a firearm out there as well. Publishing State's 20. Do
18 you see that firearm in this photograph?

19 A I do. It's at the bottom of the picture.

20 Q Okay. You also -- did you -- did you ever also notice anything that
21 appeared to be, at least based on your training and experience, to be narcotics?

22 A I did, a bag of what appeared to be illegal narcotics.

23 Q Okay. And was that near -- was that near his body?

24 A Yes.

25 Q Okay. Now, in the case of when -- when someone passes away

1 and it kind of becomes a homicide, do other members of Metro kind of come to
2 the scene to kind of take over an investigation or is it all pretty much patrol at
3 that point?

4 A At this point, and this was before we decentralized, so at this point
5 Violent Crimes, Major Crimes would come out because the subject was still
6 alive when he got transported to the hospital. So a set detectives comes out
7 and we brief those detectives. And then once it turns into a homicide and the
8 subject passes away, then Homicide responds.

9 Q So in this case did Violent Crimes come out first?

10 A Yes.

11 Q Okay. And then are you alerted that it becomes the person has
12 passed away a little, a couple hours later or an hour and a half later or so
13 something along those lines?

14 A Yes.

15 Q Okay. And then Homicide comes out?

16 A Yes.

17 Q And then do you help brief the Homicide decks as well about the
18 things that you observed and things that you did?

19 A Yes. I helped brief both set of detectives as they came out.

20 Q Additionally, did crime scene analysts also come to the scene?

21 A Yes.

22 Q And did you assist them in briefing the things that you observed,
23 noted, things of that nature?

24 A I did.

25 Q Okay?

1 MR. HAMNER: Court's indulgence.

2 I have no further questions for this question.

3 THE COURT: Thank you.

4 Mr. Schwarz.

5 MR. SCHWARZ: Yes, thank you, Your Honor.

6 **CROSS-EXAMINATION OF DAVID ROSE**

7 BY MR. SCHWARZ:

8 Q Sergeant, how are you doing?

9 A Very well, sir. How about yourself?

10 Q I'm good. I'm good.

11 So, listen, when you got the initial call, did you get a description of
12 a vehicle or anything?

13 A At that point all I knew was that a subject was down and we were
14 really close. I was on scene very quickly, so I didn't have all that information
15 going forward at that point.

16 Q Okay. I guess my question is do you recall if they gave a
17 description of a vehicle or -- or not?

18 A I don't know if it was broadcast before I arrived or if we broadcast
19 it as we arrived.

20 Q Okay. All right. Fair enough. Now, you said that you go through
21 his pockets to make sure that there's nothing dangerous in there, right?

22 A Correct.

23 Q Because if he went down in a fight, if he comes to he's going to
24 think he's still in the same fight.

25 A Correct.

1 Q All right. So as you see this, you know, unfortunate man with a
2 gunshot wound laying on the ground, you don't know what he's got in his
3 pockets, correct?

4 A Correct.

5 Q Okay. And not until you actually put your gloves on and go in there
6 that you're going to discover what he has in his pockets?

7 A Correct.

8 Q And so when you went in his pockets, he had a bunch of money,
9 yes?

10 A Yes.

11 Q There were narcotics on the ground near his body, correct?

12 A Correct.

13 Q He had all of his personal effects in his pockets, yes?

14 A He had a lighter, cell phone, and some cigarettes, yes.

15 Q Okay. Did he have any jewelry on?

16 A Not that I recall. I didn't -- I don't remember any jewelry.

17 Q If he had --

18 A I didn't take any off.

19 Q -- if he had a neck chain?

20 A I'm not sure.

21 Q If he had neck chains on, would it have been your responsibility to
22 remove them?

23 A No.

24 Q Okay. That's not the type of personal inventory you're there to do?

25 A Correct.

1 Q And so he had all this stuff still on his body?

2 A Correct.

3 MR. SCHWARZ: All right. I don't have anything further. Thank you,
4 Sergeant.

5 THE COURT: Mr. Hamner.

6 MR. HAMNER: Just very briefly.

7 **REDIRECT EXAMINATION OF DAVID ROSE**

8 BY MR. HAMNER:

9 Q There were those questions about items found in his pockets, the
10 money was found in his pocket, correct?

11 A Yes.

12 Q What about the narcotics, were those found in his pocket or were
13 those found on the ground nearby his body?

14 A They were on the ground near his body.

15 Q Thank you.

16 MR. HAMNER: No further questions.

17 MR. SCHWARZ: I have nothing further, Judge.

18 THE COURT: Thank you.

19 Anything from our jurors?

20 Sergeant Rose, thank you very much for your time, sir. You are
21 excused.

22 THE WITNESS: Thank you, sir.

23 THE COURT: State may call their next witness.

24 MR. SCHWARTZER: Your Honor, could we approach briefly?

25 THE COURT: Yep.

1 [Bench conference -- not transcribed]

2 MR. SCHWARTZER: State calls Officer Kyle Downie.

3 THE COURT: Or actually, hold on a second, we're going to take a quick
4 recess before you put that officer on the stand.

5 Ladies and gentlemen, we'll take a quick recess. During the recess
6 you are admonished not to talk or converse among yourselves or within anyone
7 else on any subject connected with the trial or read, watch, or listen to any
8 report of or commentary on the trial -- its okay. You know what, now I forgot
9 where I was in that thing. Once I start saying that, if I stop then I can't
10 remember. But you guys remember it. You can't do any investigation, don't
11 talk to anybody, don't do any kind of recreations, and don't communicate by
12 Internet or watch any radio or television news reports.

13 All right. We'll be in recess. Go ahead. Like, 10 minutes, guys.

14 [Outside the presence of the jury panel]

15 THE COURT: So apparently, gentlemen, they have another inmate
16 downstairs that's going to be a witness, so we need to bring him up, and that's
17 one of the reasons we were going to take a break. So I don't know who needs
18 to communicate with who about getting him up here now. So we're going to --
19 we're going to -- there's an inmate witness downstairs, so we need to get him
20 up here and into the courtroom before we bring the jurors back up.

21 THE MARSHAL: So, it'll be longer than ten minutes, I'm sure?

22 THE COURT: Yeah, well, it shouldn't be too long. I think they've already
23 got him down there, they're just waiting for us to tell them they can go ahead
24 and bring him up.

25 THE MARSHAL: I'm going to take a quick restroom room myself then.

1 [Recess at 11:24 a.m.; proceedings resumed at 11:44 a.m.]

2 [In the presence of the jury panel]

3 THE COURT: You all can be seated. Thank you.

4 All right. We are back on the record. Mr. Muhammad-Coleman's
5 present with his attorney. State's attorneys are present. We're going to
6 continue on with the State's case-in-chief.

7 And your next witness, gentlemen, is?

8 MR. HAMNER: The State's going to call LeCory Grace to the stand.

9 THE COURT: All right. Mr. Grace, could you raise your right hand for
10 me, please, sir? Thank you.

11 **LeCORY GRACE,**

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

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

14 THE WITNESS: My names LeCory Grace, L-E-C-O-R-Y, G-R-A-C-E.

15 THE COURT: Okay. Thank you, Mr. Grace.

16 Mr. Hamner.

17 MR. HAMNER: All right.

18 **DIRECT EXAMINATION OF LeCORY GRACE**

19 BY MR. HAMNER:

20 Q Morning, Cory, how are you?

21 A All right.

22 Q All right. Fair to say you don't want to be here today, right?

23 A No.

24 Q Okay. You didn't come here voluntarily?

25 A No.

1 Q We made you come?

2 A Yes.

3 Q Right? You had no choice in the matter?

4 A No.

5 Q All right. Before we get started I just want to get a couple quick
6 things out of the way. You got a prior for burglary in 2016, correct?

7 A Yes.

8 Q And a prior for an attempt burglary in 2013; is that right?

9 A Yes.

10 Q Okay. What I want to talk though about is back in April of 2013
11 were you -- were you staying over at the Travelers Inn?

12 A Yes.

13 Q Okay. And that's located, like, 25 -- 2855 Fremont, right?

14 A Yes.

15 Q Okay. Were you there with other family members of yours?

16 A Yes.

17 Q Okay. And who were you kind of living with or sharing multiple
18 rooms with? Who was there?

19 A My brother and his girlfriend.

20 Q Is that Jermaine?

21 A Yes.

22 Q Jermaine Grace and is his girlfriend Rachel Bishop?

23 A Yes.

24 Q And their kids?

25 A Yes.

1 Q Or her kids?

2 Okay. I want to talk about April 19th, 2013, in particular. Okay?

3 Did you guys kind of live up on the -- staying up in rooms on the second level?

4 A Yes, sir.

5 Q All right. What were you planning on doing that night with your
6 brother?

7 A Going to the casino.

8 Q Okay. Now, there -- was there -- did you recognize a guy at that
9 kind of stayed in a room kind of between you and Rachel?

10 A Yes.

11 Q Okay. What did he kind of look like?

12 A Tatted, his skin, Puerto Rican, I don't know what race.

13 Q Okay. Hairstyle? Long? Short?

14 A Short.

15 Q Okay. You remember him being kind of tatted and looking kind of
16 Puerto Rican, tan of some sort. On that night before you decided to go out did
17 you see him?

18 A Yes, sir.

19 Q Okay. Was he kind of up on that second level with you guys
20 initially?

21 A Yes, sir.

22 Q All right. And where were you and your brother just planning on
23 going and hanging out that night?

24 A Fremont Street.

25 Q Okay. How were you going to get there?

1 A In Rachel's car.

2 Q Okay. And was Rachel's car parked in the parking lot?

3 A Yes, sir.

4 Q All right. And so it was just you and Jermaine who were going to
5 go out that night, right?

6 A Yes, sir.

7 Q Is that right? All right. I just want to show you just a couple of,
8 like, quick pictures. I want to just show you State's 15, do you recognize what
9 we're kind of look at there?

10 A Yes, sir.

11 Q What is that?

12 A It's the parking lot.

13 Q Okay. And was -- was Rachel's car -- do you see these kind of
14 three parking spots that are here in the picture?

15 A Yes, sir.

16 Q Was Rachel's car picked in the first spot? The middle spot? Or the
17 one to the right? As far as you can remember.

18 A The one to the right.

19 Q Okay. So the one over here?

20 A Yes, sir.

21 Q That's what you remember? Now, when you -- when you and your
22 brother kind of started making your way downstairs did you notice another car
23 parked next to Rachel's car?

24 A Not right next it, but, yes, sir.

25 Q Okay. If Rachel's car was here, do you remember this other car

1 being here in this first spot to the left or the spot next to it?

2 A In the first spot to the left.

3 Q So this one right here?

4 A Yes, sir.

5 MR. HAMNER: Okay. And let the record reflect that that's the parking
6 spot all the way to the left of the picture in State's 15.

7 THE COURT: Record will so reflect.

8 BY MR. HAMNER:

9 Q What type of car was it; do you remember?

10 A Dark Cadillac.

11 Q Okay. Older? Newer model?

12 A Older model.

13 Q Four doors? Two doors?

14 A Four-door.

15 Q Okay. Was there anybody standing out there?

16 A Yes, sir.

17 Q Were there a couple of people? One person?

18 A It was two people on the outside of the car.

19 Q Okay. And had you ever met those people before?

20 A No, sir.

21 Q All right. Tell me one of the guys, white? Black? Hispanic?

22 A Hispanic, white.

23 Q What about the other guy? White? Black? Hispanic?

24 A Black.

25 Q Okay. And were -- were they going anywhere? Were they just kind

1 of standing there?

2 A They were just kind of standing there.

3 Q All right. And -- and they were standing near the -- near this
4 Cadillac; is that right?

5 A Yes, sir.

6 Q Did you notice anyone sitting inside the car?

7 A Yes, sir.

8 Q Guy? Girl?

9 A Guy.

10 Q Black? White? Hispanic?

11 A Black.

12 Q What about the build of that guy?

13 A I don't --

14 Q You don't really remember? That's okay.

15 So when you guys, you make your way down, as you're making
16 your way down, do you see that guy who's living kind of in between you also
17 out up on that second level?

18 A Yes, sir.

19 Q Now, when you walk down, did the guy who lived up on that
20 second level, was he screaming or yelling at those people down by the Cadillac?

21 A No, sir.

22 Q Were they screaming or yelling at him?

23 A No, sir.

24 Q Was the guy up on the second level waving any weapons or trying
25 to go after them or attack them as far as you could see when you were out

1 there?

2 A No, sir.

3 Q And were those guys down there, were they attacking him in any
4 way?

5 A No, sir.

6 Q Okay. So there was no screaming or yelling or an argument going
7 on as far as you could see?

8 A As far as I could see.

9 Q All right. So then you and your brothers, you guys you make your
10 way down to your car; is that right?

11 A Yes, sir.

12 Q Do you get in your car and start heading out?

13 A We didn't head out right then. We sat for like two, three minutes.

14 Q Okay.

15 A That's when the neighbor came down stairs.

16 Q Okay. And so you saw the neighbor come -- make his way
17 down stairs?

18 A Yes, sir.

19 Q And when he came down stairs was he cursing or yelling at those
20 guys?

21 A No, sir.

22 Q Were they cursing and yelling at him?

23 A No, sir.

24 Q Was he waving around any kind of gun or a weapon at these guys?

25 A No, sir.

1 Q Were they doing the same thing to him?

2 A No, sir.

3 Q Okay. So he -- he went down there and what did you see him do
4 when he walked down there?

5 A Him and the white -- white guy were talking.

6 Q Okay. So they were just kind of talking?

7 A They were having a conversation.

8 Q Was the guy who lived upstairs, was he kind of pointing in his face
9 or yelling or doing anything like that?

10 A No, sir.

11 Q Do you remember kind of how he was standing or what he was
12 doing?

13 A He was standing closer to the -- the Dumpster-like thing right there.

14 Q Okay. So you remember him -- you see this Dumpster, this is that
15 red Dumpster here in State's 15?

16 A Yes, sir.

17 Q He was kind of standing there and he was having a conversation
18 with the white guy?

19 A Yes, sir.

20 Q And the black guy is a having a part of that conversation or is he
21 just kind of standing off?

22 A He's just standing off.

23 Q Was he kind of nearby the car or somewhere else?

24 A Close to the car.

25 Q Okay. As far as you could tell, was -- was the guy who came down

1 the stairs putting his hands on anybody?

2 A No, sir.

3 Q Threatening to fight anybody?

4 A No, sir.

5 Q So did he seem upset or really angry as he was talking with him?

6 A No.

7 Q Okay. So you get in your car and you guys leave?

8 A Yes.

9 Q And as you're pulling out do you see anything happen between
10 these guys?

11 A No, sir.

12 Q Okay. When you get in your car and you're kind of driving for a
13 couple minutes, does your brother get a phone call?

14 A Yes, sir.

15 Q Okay. And who's on the other end?

16 A Rachel.

17 Q And after kind of having -- and who's she talking to? Jermaine?

18 A Jermaine.

19 Q Okay. And then what is kind of relayed to you just as you're
20 driving?

21 A That it was a shooting.

22 Q Okay. And after you kind of get that relayed, do you see anything
23 that you had just seen back at the Travelers Inn?

24 A Yes, sir.

25 Q What did you see?

1 A The Cadillac.

2 Q You saw the Cadillac?

3 A Yes, sir.

4 Q Where are you kind of -- I know this is on Fremont, where are you
5 driving, whereabouts of town are you driving when the Cadillac starts driving by
6 you guys?

7 A A little past Charleston right before Eastern.

8 Q Okay. And so how many minutes do you think you'd been gone
9 for?

10 A Five.

11 Q Five minutes? Okay.

12 MR. HAMNER: Court's indulgence.

13 BY MR. HAMNER:

14 Q Which way was that Cadillac going? Which direction of travel was
15 it going?

16 A Towards Fremont.

17 Q Towards Fremont?

18 A Yes, sir.

19 Q Okay.

20 MR. HAMNER: We're going to publish Exhibit 7. Permission to publish
21 Exhibit 7.

22 THE COURT: Okay.

23 MR. HAMNER: If we could queue over.

24 BY MR. HAMNER:

25 Q So do you recognize what we're looking at here?

1 A Yes, sir.

2 Q Okay. Do you see Rachel's car?

3 A Yes, sir.

4 Q Which one is it?

5 A Green car.

6 Q Is it the green car facing -- facing -- having its rear kind of facing
7 towards the exit?

8 A Yes.

9 Q Is it -- is it up along kind of that parking spot in the middle of the
10 screen?

11 A Yes, sir.

12 Q All right.

13 THE COURT: You're indicating this car?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 BY MR. HAMNER:

17 Q And what about that car to the right, do you recognize that car to
18 the right?

19 A Yes, sir.

20 Q What's that?

21 A The Cadillac.

22 Q That's the one you were telling us about?

23 A Yes, sir.

24 Q Okay.

25 MR. HAMNER: We're going to play it.

1 THE COURT: And for the record the video started playing at about
2 21:15.

3 MR. HAMNER: I apologize, Your Honor.

4 THE COURT: That's okay.

5 MR. HAMNER: Could we stop it right there at 21 -- 21:21.

6 BY MR. HAMNER:

7 Q Do you see the individual coming down stairs?

8 A Yes, sir.

9 Q Do you recognize that individual?

10 A Yes, sir.

11 Q Who's that?

12 A That's the neighbor.

13 Q Okay. That's the guy you were saying was kind of tatted up kind
14 of Puerto Rican looking?

15 A Yeah.

16 Q Okay. Let's resume playing at 21:21.

17 I want to stop right now at 21:21:55. Now there's an individual in
18 an orange shirt with dreads. Who's that?

19 A That's me.

20 Q Okay. And the individual walking behind you, who's that?

21 A That's Jermaine.

22 Q Okay. So is this kind of around the time you're making your way to
23 your car so you guys can go out?

24 A Yes, sir.

25 Q Okay. Let's resume playing.

1 All right. Can we stop here at 21:22:53?

2 Now, do you see the neighbor in that screen?

3 A Yes, sir.

4 Q "Yes" or "no"?

5 A Yes, sir.

6 Q Okay. Where -- where is he?

7 A Standing by the little Dumpster thing.

8 Q And you know what, if you can even reach and you can touch that,
9 do you see him in the bottom corner? It makes marks when you touch it. So
10 he's right down there. Who is he talking to; do you remember? You mentioned
11 there was a white guy there --

12 A Yeah.

13 Q -- is that -- is that the -- is that kind of what your recollection of
14 what's happening there?

15 A That's my recollection is.

16 Q So that's kind of the white guy there chatting and talking with him?

17 A Yes.

18 Q That you remember. And do you see the black guy that you were
19 talking about, you said he was kind of hanging out by the car? If you could
20 just --

21 A He's still leaning on the car right there.

22 MR. HAMNER: Okay. Let the record reflect the witness made a mark all
23 the way on the left-hand side of the screen to indicate the neighbor and the
24 white guy having a conversation, that's just to the left of this car in the middle
25 frame which is a dark sedan and he indicated the black male sitting on the back

1 of the Cadillac and he made a mark right here to the driver's side near the trunk
2 area of the vehicle at 22 -- 21:22:53.

3 THE COURT: Yes.

4 MR. HAMNER: Okay. Could you resume playing? You can stop it now.

5 BY MR. HAMNER:

6 Q So, LeCory, I mean, you got a chance to watch that, does that kind
7 of refresh your memory, is that kind of what you described, the things that you
8 saw?

9 A Yes, sir.

10 Q And so when you left these guys weren't beefing or fighting as far
11 as you could tell?

12 A As far as I could tell, no.

13 Q Okay.

14 Now, after this happened you get -- you get -- the police come to
15 speak to you; isn't that right?

16 A Yes, sir.

17 Q Okay. And they come to speak to you about on April 25th, about
18 six days later; is that right?

19 A Yes, sir.

20 Q Okay. Do you remember them showing you a series of photographs
21 of people to see if you could pick someone out?

22 A Yes, sir.

23 MR. HAMNER: Okay. At this time showing opposing counsel what have
24 been previously marked as State's Proposed Exhibits 116A and B and 117 and
25 117 A. And I'm sorry if I misspoke, it's 116, 116A, 117, 117A.

1 THE COURT: Thank you.

2 MR. SCHWARZ: Okay.

3 THE COURT: Are you going to be moving their admission?

4 MR. HAMNER: Yes. Any objections or do you want to lay some
5 foundation?

6 MR. SCHWARZ: No, no, no.

7 THE COURT: Okay. Those'll be --

8 MR. SCHWARZ: I mean, you know, I'd like him to look at them first.

9 MR. HAMNER: Sure. I can do that. No problem.

10 Permission to approach.

11 THE COURT: You may.

12 MR. HAMNER: Let the record reflect I'm showing the witness State's
13 Proposed Exhibits 116, 116A, and 117 and 117A.

14 BY MR. HAMNER:

15 Q Let's start with 116. Do you recognize whose handwriting's on
16 there?

17 A Yes, sir.

18 Q Whose handwriting is that?

19 A Mine.

20 Q Is that your handwriting up here? Is that your signature?

21 A That's my handwriting.

22 Q Here? Is that your signature in the middle?

23 A Yes.

24 Q And do you remember kind of being shown at least these
25 photographs at that time?

1 A Yes, sir.

2 Q Okay. And that's in 116 and 116A. I want to show you 117. Do
3 you recognize whose signature that is?

4 A Yes.

5 Q Whose is that?

6 A That's mine.

7 Q And how about this handwriting?

8 A Mine.

9 Q And showing you 117A. Whose kind of handwriting is that?

10 A Mine.

11 Q Okay. So you remember -- at this we're going to -- and these are
12 fair and accurate representations of these pictures and your handwriting; is that
13 right?

14 A Yes, sir.

15 MR. HAMNER: Okay. At this time we're going to ask for the admission
16 of State's Proposed Exhibits 116, 116A, 117, 117A.

17 MR. SCHWARZ: No objection.

18 THE COURT: All right. Those will be admitted. Thank you. You can
19 publish.

20 **[STATE'S EXHIBITS 116, 116A, 117, AND 117A ADMITTED]**

21 BY MR. HAMNER:

22 Q With -- I'm going to publish --

23 MR. HAMNER: Permission to publish 117 and 117A.

24 BY MR. HAMNER:

25 Q When you were shown pictures in 117 you actually were able to

1 make an identification and I think it says you picked picture number 5; is that
2 right?

3 A Yes, sir.

4 Q And you said that this was the person standing behind the blue car
5 talking to the victim?

6 A Yes, sir.

7 Q All right. Publishing 117A. And this is the picture in number 5 you
8 picked; is that right?

9 A Yes, sir.

10 Q And that's about six days afterwards, right?

11 A Yes, sir.

12 Q And that's the white guy?

13 A Yes, sir.

14 Q Okay. Now, when you were shown 116, you weren't -- you kind of
15 indicated you weren't sure, but you thought maybe 4 or maybe 5 looked
16 similar, right? Didn't really make an ID, but you thought maybe 4 or 5 were the
17 closest?

18 A Yes, sir.

19 Q Okay. I want to publish 116 A.

20 So you thought either this picture or this picture may have been one
21 of them, right?

22 A Yes, sir.

23 Q But you didn't pick anybody in particular there?

24 A Yes, sir.

25 Q Okay. But you knew that was -- that was the guy?

1 A Yes, sir.

2 MR. HAMNER: Okay. I have no further questions for this witness.

3 THE COURT: Just for the record, the last one when you said you knew
4 that was the guy, you were pointing at the Exhibit 116A with the gentleman.

5 MR. HAMNER: That is absolutely correct. Thank you, Your Honor.

6 Or it's is 117A.

7 THE COURT: 117, I'm sorry.

8 MR. HAMNER: Thank you.

9 THE COURT: Okay.

10 MR. HAMNER: And I have no further questions of this witness.

11 THE COURT: Mr. Schwarz.

12 MR. SCHWARZ: Yes. Thank you, Judge.

13 **CROSS-EXAMINATION OF LeCORY GRACE**

14 BY MR. SCHWARZ:

15 Q Mr. Grace, I don't have a lot to ask you, I just want to nail
16 something down. Now at some point --

17 MR. HAMNER: Sorry, sir.

18 MR. SCHWARZ: That's all right.

19 BY MR. SCHWARZ:

20 Q At some point you and your brother and -- did you know this guy's
21 name that lived up there? Dale Borero, did you know his name?

22 A I didn't know him at the time. No, sir.

23 Q Okay. All right. But you know who I'm talking about?

24 A Yes, sir.

25 Q All right. At some point all three of you were out on the balcony?

1 A Yes, sir.

2 Q And all three of you were looking down, right?

3 A Yes, sir.

4 Q Do you recall giving a voluntary statement to the police?

5 A Yes, sir.

6 Q Do you recall discussing with the police that there was a concern
7 that all three of you were together?

8 A No, sir.

9 Q Okay.

10 MR. HAMNER: Just page number?

11 MR. SCHWARZ: Yeah, yeah, I'm -- just give me a minute, as you know
12 I'm old.

13 So I'm looking at page 8 about in the middle.

14 MR. HAMNER: Okay. Thank you .

15 BY MR. SCHWARZ:

16 Q All right. Do you recall telling the police, Because both of them
17 were on the phone and the white guy was on the phone, so I was thinking they
18 were having a conversation together because he -- the victim was telling him,
19 well, nobody up here with him, he was by himself; do you remember that?

20 A Yes, sir.

21 Q Okay. And did you have that same concern?

22 A I didn't.

23 Q Okay. You were not concerned at all? Your brother wasn't
24 concerned at all?

25 A He was concerned. I wasn't.

1 Q Oh, I see. And so it would be fair to say that the three of you are
2 up on the balcony, you can see the people by the blue Cadillac.

3 A Yes, sir.

4 Q And your brother had a concern that maybe they would think that
5 you two were together.

6 A Yes, sir.

7 Q Why would that be a concern if everybody was just, you know,
8 behaving nicely and, you know, basically not mad and not yelling or anything?

9 A At the time my brother, he's like a paranoid person, so he always
10 thinks the worst of people. So at the time he just thought it was -- it looked
11 strange.

12 Q Okay. Now, you saw the tape, you saw Dale go down first,
13 correct?

14 A Yes, sir.

15 Q And then you went down right after him?

16 A Yes, sir.

17 Q Okay. And you didn't know these people and they didn't know
18 you?

19 A No, sir.

20 Q Okay. And you two went directly to your car?

21 A Yes, sir.

22 Q Did you exchange any words with anybody?

23 A I didn't.

24 Q Did your brother?

25 A Not that I know of.

1 Q Okay. Why did you take a minute?

2 A Because he felt like they were -- they were giving us the eye, like,
3 they intimidating, like, he just didn't feel the vibe -- a good vibe at the time. He
4 told me when we got in the car that I should have been watching my
5 surroundings because he just didn't like the guys. He just didn't like them.

6 THE COURT: Is he older brother?

7 THE WITNESS: Older brother.

8 BY MR. SCHWARZ:

9 Q Yeah, so maybe he's not thinking that everybody's getting along?

10 A Yes.

11 Q And then you guys pulled out?

12 A Yes, sir.

13 Q All right. And you didn't hear any gunshots?

14 A I didn't hear anything.

15 MR. SCHWARZ: I don't have anything further. Thank you?

16 THE COURT: Mr. Hamner.

17 **REDIRECT EXAMINATION OF LeCORY GRACE**

18 BY MR. HAMNER:

19 Q Yeah, I want to, first, I'd like to, at least for completeness
20 purposes, kind of read out that full answer on page 8?

21 Permission to do so, Your Honor.

22 THE COURT: Okay.

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

24 THE COURT: Thank you.

25 MR. HAMNER: Thank you.

1 BY MR. HAMNER:

2 Q So the full answer was, Cuz both of them was on the -- he was on
3 the phone --

4 THE COURT: Well, for context, can you read what the question was as
5 well.

6 MR. HAMNER: Okay.

7 THE COURT: Thank you.

8 MR. HAMNER: The question was, Okay.

9 THE COURT: Oh, it was one of those. Okay.

10 MR. HAMNER: Earlier, Your Honor, to give context, there was a question
11 that was asked, Could you tell if they were arguing?

12 THE COURT: Okay. Thank you.

13 BY MR. HAMNER:

14 Q And you do you remember telling them, You know, they seemed to
15 be having a conversation?

16 A Yes, sir.

17 Q Okay. You didn't say arguing, but they were having a conversation.
18 And then you provided the following answer, Cuz both of them was on the -- he
19 was on the phone and the white guy was on the phone, so I was thinking they
20 were having a conversation together because he, uh, the victim was telling him,
21 well, nobody up there with him, he was by himself -- hisself, like, I mean,
22 that -- that -- that was the only part I heard, quote, I'm by myself and then he --
23 then he, uh, he -- he -- he passed me, walked down the stairs, and met the
24 white guy.

25 Do you remember kind of telling the police that?

1 A Yes, sir.

2 Q So the one part of the -- of the conversation was you heard Dale tell
3 who you believed to be the men downstairs or at least the white guy on the
4 phone, I'm by myself; is that right?

5 A Yes, sir.

6 Q And as far as you could tell was he alone?

7 A Yes, sir.

8 Q Okay. Then there were some cross-examination questions from
9 Mr. Schwarz about your brother not getting a good vibe; remember that?

10 A Yes, sir.

11 Q Did he tell you that he didn't get a good vibe from Dale, the
12 neighbor, or a good vibe from the guys at the Cadillac?

13 A The guys from the Cadillac.

14 Q Okay. Was he telling you, you know, watch yourself around Dale
15 or was he telling you watch yourself around the guys by the Cadillac?

16 A The guys around the Cadillac.

17 Q Okay. And then I think Mr. Schwarz kind of asked a follow-up
18 question of, like, oh, they weren't, well, they weren't getting along; do you
19 remember that kind of statement being asked to you on cross-examination?

20 A Yes, sir.

21 Q Okay. I think you had said yes. I just want to get a couple things
22 clarified. Your brother was more concerned about the Cadillac guys not --

23 A Dale.

24 Q -- Dale? Okay. And as far as you could tell from what you saw
25 from their conversations, were they fighting or in some heated argument from

1 what you could see?

2 A From what I could see, no, they wasn't.

3 Q Okay. It was just brother was more concerned about how those
4 guys at the Cadillac were looking at you because of the timing in which you
5 kind of follow --

6 A Dale down.

7 Q -- Dale down the stairs because you guys come right after them,
8 right?

9 A Yes, sir.

10 MR. HAMNER: Okay. I have no further questions.

11 **RECROSS-EXAMINATION OF LeCORY GRACE**

12 BY MR. SCHWARZ:

13 Q Well, I'm sorry, Mr. Grace, but I thought I asked you if your brother
14 expressed those concerns because of the entire situation?

15 A No.

16 Q Because of everybody?

17 A No, not Dale.

18 Q It was only the guys at the Cadillac?

19 A Only the guys at the Cadillac.

20 Q But there is only one guy at the Cadillac?

21 THE COURT: Whoa, whoa, we you got to let him finish the answer,
22 Michael, you keep going together.

23 MR. SCHWARZ: Okay.

24 THE WITNESS: Only the guys at the Cadillac, it's two guys at the
25 Cadillac on the trunk.

1 BY MR. SCHWARZ:

2 Q Okay.

3 A He felt like the two guys on the trunk were watching me or
4 something. But I was not paying attention to anything going around at that
5 time. If you watch the video, I was looking the opposite way when I walked to
6 the car.

7 Q Okay.

8 A That kind of made my brother mad and so that's why we sat in the
9 car for -- sat right there for as long as we did.

10 Q Okay. So --

11 A He was --

12 Q -- the white guy that you identified --

13 A Yes.

14 Q -- was not by the Cadillac, was he?

15 A At the time, yes.

16 Q But when you got in your car he wasn't, he was talking to Dale,
17 wasn't he?

18 A To Dale, yes.

19 Q And the black guy was by the Cadillac?

20 A Yes.

21 Q And he was leaning on the Cadillac?

22 A On the Cadillac, yes.

23 Q And Dale and the white guy were having a conversation?

24 A Yes, sir.

25 MR. SCHWARZ: Okay. I don't have anything further.

1 THE COURT: Anything, Mr. Hamner?

2 MR. HAMNER: No, Your Honor.

3 THE COURT: All right. Anything from our jurors? No? All right.

4 Can you guys approach the bench real quick?

5 [Bench conference -- not transcribed]

6 THE COURT: Okay. Folks, we need to take a quick break. We're not
7 taking lunch yet. But we're going to take a quick recess.

8 During the recess you are admonished not to talk or converse
9 among yourselves or with anyone else on any subject connected with the trial
10 or read, watch, or listen to any report of or commentary on the trial by any
11 medium of information including, without limitation, to newspaper, television,
12 the Internet, and radio or form or express any opinion on any subject connected
13 with the case 'til it's finally submitted to you.

14 If you all would step outside for just a couple of minutes. Okay.

15 [Outside the presence of the jury panel]

16 THE COURT: Okay. Officers, however you guys want to do it, go right
17 ahead.

18 [Recess at 12:11 p.m.; proceedings resumed at 12:18 p.m.]

19 [In the presence of the jury panel]

20 THE COURT: All right. You all can be seated. We will be back on the
21 record. Mr. Muhammad-Coleman's present with his attorney. State's attorneys
22 are present. Our jurors are all present. We'll continue on with the State's
23 case-in-chief.

24 And your next witness, gentleman.

25 MR. SCHWARTZER: Officer Kyle Downie, Your Honor.

1 THE COURT: Thank you.

2 Good morning, sir.

3 THE WITNESS: Good morning.

4 THE COURT: Thank you.

5 **KYLE DOWNIE,**

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

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

9 THE WITNESS: Kyle Downey, K-Y-L-E, D-O-W-N-I-E.

10 THE COURT: Thank you.

11 Mr. Schwartzer.

12 MR. SCHWARTZER: Thank you, Your Honor.

13 **DIRECT EXAMINATION OF KYLE DOWNIE**

14 BY MR. SCHWARTZER:

15 Q Officer Downie, how are you currently employed?

16 A I'm a police officer with the Las Vegas Metropolitan Police
17 Department.

18 Q How long have you been doing that?

19 A Eight years.

20 Q And back in 2013 were you doing the same thing?

21 A Yes.

22 Q Just four years less?

23 A Yes.

24 Q Directing your attention to April of 2013, what was your capacity
25 with the Las Vegas Metropolitan Police Department?

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1

2

3

1

4

1

1

6

8

9

10

11

14

1

15

12

16

10

17

17

19

INDEX

<u>Document:</u>	<u>BATES. No.</u>
Indictment.....	Vol. 1 - 001
Petition for Writ of Habeas Corpus and Exhibits.....	Vol. 1 - 010
Supplemental Appendix of Exhibits with NDOC Phone Calls.....	Vol. 3 - 716
State’s Opposition to Petition for Writ of Habeas Corpus.....	Vol. 3 - 724
Reply to State’s Opposition.....	Vol. 4 - 751
Notice of Entry of Findings of Fact, Conclusions of Law and Order.....	Vol. 4 - 761
Notice of Appeal.....	Vol. 4 - 788
RTRANS Petition for Writ of Habeas Corpus – October 12, 2020.....	Vol. 4 - 790
RTRANS Evidentiary Hearing – December 18, 2020.....	Vol. 4 - 811
RTRANS Supplement to Petition – February 22, 2021.....	Vol. 4 - 837
Certificate of Judgment – Supreme Court of the State of Nevada.....	Vol. 4 - 848
Defense Council’s Motion to Continue Trial.....	Vol. 4 - 858
Eighth Judicial District Court Minutes – November 28, 2016.....	Vol. 4 - 884
Competency Evaluations of Petitioner.....	Vol. 4 - 885

1 A I was assigned as a patrol officer in Downtown Area Command.

2 Q Okay. Specifically, did you have -- as a patrol officer, did you have
3 a certain role at that time?

4 A Yeah. That evening I went out as a directed patrol unit.

5 Q Okay. Let me stop you there, by "that evening" you're talking
6 about April 29th, 2013?

7 A Yeah, that shift.

8 Q Okay. "That shift"? Okay. So you were subpoenaed, you saw the
9 name on the subpoena, so you're aware of the incident that you were
10 subpoenaed for, correct?

11 A Yes.

12 Q And referring to something that occurred to you in your capacity as
13 a patrol officer on April 29th of 2013?

14 A Yes.

15 Q Okay. What was that capacity on that shift on April 29th, 2013?

16 A Basically as a directed patrol unit that evening I was not responsible
17 for calls for service. So any 9-1-1 or 3-1-1 call that came in to dispatch, when
18 you're a directed patrol unit you would not respond to those types of calls.
19 Instead you would just focus your efforts on high crime areas or problem
20 neighborhoods or any identified hot spots within our area command.

21 Q Before you go off on your patrol do you have what's known as
22 briefings?

23 A Yes, every shift.

24 Q And can you tell the ladies and gentlemen of the jury what a
25 briefing is?

1 A Briefing takes place at the beginning of every shift. It's generally
2 15 to 20 minutes, sometimes a full half hour. And we just go over information
3 that occurs within our sector beat and we talk about possible suspects that we
4 may be looking for, vehicles that we may be looking for, or anything that's
5 recent and currently trending within our area that we may stumble upon during
6 your shift.

7 Q During your briefing on April 29th, did you have any information
8 regarding a homicide on Fremont Street?

9 A Yes. There was a homicide that occurred on Fremont Street ten
10 days prior to that.

11 Q And specifically was Homicide asking for officers' help in trying to
12 locate a suspect?

13 A Yes. We had information that there was a suspect possibly related
14 to that homicide that occurred on Fremont, we had information that he went by
15 a moniker or an alias of Money. He was a black male and that he possibly
16 frequented the area of Chicago and Fairfield.

17 Q And Chicago and Fairfield is that located in an area that's known to
18 you?

19 A Yes.

20 Q And what's that area called?

21 A Well, it's basically in the neighborhood just west of the
22 Stratosphere known as Naked City. A lot of the streets are named after major
23 U.S. cities like New York, Chicago, Philadelphia. And they all are basically just
24 west of the Stratosphere Hotel.

25 Q I'm going to show you an exhibit, this has been already admitted as

1 Exhibit 5. It's a map. Do you recognize this area?

2 A Yes, I do.

3 Q So you have the Stratosphere right here; is that correct?

4 A Yes.

5 Q And for the record we are talking about Clark County, Nevada, as
6 well, right?

7 A Yes.

8 Q And so this area would be -- would this be the area, and I'm now
9 putting my hand around the entire left part of the photograph, is that what you
10 would consider Naked City?

11 A Yes.

12 Q Basically running from Industrial Road, I guess it would be Main
13 Street running towards Industrial Road?

14 A Yes.

15 Q Okay. And then you said major city street, so it's New York,
16 Chicago, Philadelphia, St. Louis, Boston, Baltimore, and Cleveland?

17 A Yes.

18 Q Okay. You mentioned it was a high crime area. What -- is that
19 correct?

20 A Yes.

21 Q Okay. And it's an area you're familiar with that?

22 A Yes.

23 Q So that night on April 19th, 2013, you were not responding to
24 calls, correct?

25 A That's correct.

1 Q So what did you and your partner decide to do that night?

2 A Well, based on the information that we had from briefing and
3 knowing that we possibly had a suspect that frequented the area of Chicago
4 and Fairfield, we basically focused our efforts in that area just to try and gather
5 any intelligence on who might know a subject named Money or where he may
6 be hanging out at or anything. So different times throughout that shift we
7 would go down there and try to make contact with people to just try to further
8 our investigation and maybe -- maybe stumble upon a lead or something for
9 him.

10 Q Okay. So during that time, did you -- when you were running
11 around the Chicago-Fairfield Avenue area, and then let's actually circle that area
12 for the ladies and gentlemen of the jury you're talking about -- why don't you
13 circle it for us?

14 A Well, Chicago and Fairfield's right here. Chicago's an east-west
15 street. Fairfield is --

16 THE COURT: You can go ahead and just draw on the screen with your
17 finger.

18 THE WITNESS: Oh, I can? Oh, okay. This is basically the inter --

19 THE COURT: Well, now you broke it.

20 THE WITNESS: Just pulled up a little menu.

21 THE COURT: There you go. Okay.

22 THE WITNESS: I'm going to circle the area. This intersection right here
23 is Chicago and Fairfield. Fairfield's a major northwest south street that cuts
24 through all of those city streets. Chicago is a east-west street right there.

25 THE COURT: Thank you.

1 BY MR. SCHWARTZER:

2 Q And so for the record you circled Chicago and Fairfield intersection.

3 A Yes.

4 Q That's on the top part of the photograph.

5 A Yes.

6 Q Exhibit 5. Okay.

7 So when you were -- one of those times you were in that area, did
8 something happen in which you decided to stop your vehicle or go to an
9 apartment?

10 A Yes. We were flagged down by a few individuals in the driveway of
11 1712 Fairfield, which is basically right at that intersection. And there was just
12 a couple people that -- we weren't assigned to a call, we were just kind of in
13 that area and they wanted to speak with us.

14 Q Okay. Could you describe those individuals?

15 A I just remember them being Hispanic descent or American Indian
16 descent or -- yeah.

17 Q Were they older or younger?

18 A I can't remember.

19 Q Okay. That's fine. When they flagged you down did you guys stop
20 your vehicle?

21 A Yeah. We got out of the car and talked to them.

22 Q And then you ended up talking to people?

23 A Yes.

24 Q You eventually did an officer's report in this case?

25 A I did.

1 Q Who were -- do you remember the names of the two people you
2 talked to?

3 A There were actually three. The main individual we spoke to and did
4 most of the speaking to was an individual named Tahir Shahab, if I'm
5 pronouncing that correctly. He was actually the landlord or an owner of that
6 1712 address, 1712 Fairfield address. And he had two of his friends that were
7 part owners as well. Their names are Noori, I'm probably not going to be able
8 to his last name, I apologize, and also John Fazil.

9 Q Okay. I'm just showing you Exhibit 88.

10 THE COURT: Thank you, Your Honor.

11 BY MR. SCHWARTZER:

12 Q And 89, just a close-up of 88. Are those -- is this 1712 Fairfield
13 Avenue?

14 A Yes, it is.

15 Q And this is the place where you were flagged down to?

16 A Yes.

17 Q And when you were flagged down were you informed by these
18 individuals that they found something in the apartment?

19 A Yes.

20 Q And what did they tell you was found?

21 A They were basically there cleaning out apartment 7 in an attempt to
22 make it available for rent and they were -- as they were cleaning out electronics
23 and appliances, Tahir had actually grabbed a toaster oven, like a stainless steel
24 toaster oven, he had waked it outside. He explained to me how he noticed how
25 it was --

1 Q I don't want to get into too much detail what they said.
2 A Okay.
3 Q Because --
4 A No worries.
5 Q But, specifically, was there something that he found in that toaster
6 oven?
7 A Yeah. He found a gun.
8 Q Okay. Did he show you where the toaster oven was?
9 A Yes.
10 Q And did he show you where the firearm was?
11 A Yes.
12 Q Okay. Showing you Exhibit 90. Is that where the toaster oven was
13 when you arrived?
14 A Yes.
15 Q And we see a little pony wall over here on the left part of
16 Exhibit 90.
17 A Yes.
18 Q And then if I move it down a little bit there seems to be, like, a
19 doorway in the back left corner.
20 A Yes.
21 Q Is that -- do you know what place that is?
22 A That's Apartment Number 7.
23 Q Okay?
24 A Yeah.
25 Q So this is basically the pony wall next to Apartment 7?

1 A Yes.

2 Q Where this individual claimed to find the toaster oven with the
3 firearm?

4 A Yes.

5 Q Okay. And then just to be clear, and so you actually looked inside
6 the oven to see if there was a firearm?

7 A Yes.

8 Q Showing you Number 94, does this look familiar to you?

9 A Yes.

10 Q Can you -- what is this?

11 A It's a firearm holstered inside of a bag which was inside of the
12 toaster oven with, like, a closed glass door.

13 Q You said "holster," where is the holster part?

14 A I believe it was, I mean, I never actually touched it, but I believe it
15 was holstered in like a --

16 Q Is that what that brown wrap --

17 A Yeah. I would say that that brown strap was part of the holster. I
18 can't recall exactly what the holster looked like.

19 Q And can you circle the brown strap?

20 A Yeah, right here.

21 Q And that's in the bottom left corner of Exhibit 90.

22 A Yes.

23 Q And then where's the firearm?

24 A The firearm's right here.

25 Q And when you found -- and that's in the middle part of Exhibit 90.

1 A Yes.

2 Q So when you saw this firearm, it was in this oven or toaster oven in
3 this bag?

4 A Yes.

5 Q Did you touch the bag at all?

6 A No.

7 Q Did you touch the gun at all?

8 A No.

9 Q Did someone -- were you informed the gun was actually touched
10 before you got there?

11 A Yes.

12 Q By who?

13 A I believe it was by John because he wanted to take a closer look at
14 it to make sure it was actually a gun after Tahir informed him that he found it.

15 Q Okay. So someone -- one of the people there touched the gun
16 before you were able to secure it for evidence?

17 A Yes.

18 Q Okay. Now, so you found a gun on Fairfield Avenue and Chicago,
19 you said this was a highly -- a high crime area, correct?

20 A Yes.

21 Q That doesn't seem like a huge surprise, right?

22 A No.

23 Q Okay. Eventually when you were talking to people around the --
24 this area did you have reason to contact Homicide?

25 A I did.

1 Q And why is that?

2 A After speaking with a few individuals there, there was a female who
3 came up claiming to be renting Apartment Number 7. She said that she had
4 known an individual named Money and that he may have been frequenting that
5 specific apartment.

6 MR. SCHWARZ: Well, I'm going to object as to hearsay, Judge.

7 MR. SCHWARTZER: It's why he contacted Homicide, Your Honor.

8 THE COURT: Well, I'll sustain the objection. You had -- and I'll strike the
9 statement's reference to the young woman.

10 You had a conversation with a woman and then based upon that,
11 you can follow up and ask what he did.

12 MR. SCHWARTZER: Okay.

13 MR. SCHWARZ: Thank you, Your Honor.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 BY MR. SCHWARTZER:

16 Q So based -- based on your conversation with this woman -- and
17 what was the woman's name?

18 A Tatiana Lee.

19 Q Okay. Tatiana Lee. Based on this conversation you had with this
20 individual, Tatiana Lee, you found out some information that may have
21 connected this apartment to the suspect you were looking for?

22 A Yes, possibly.

23 Q Possibly?

24 A Yeah.

25 Q I mean, you didn't see --

1 A I didn't know for sure.

2 Q You've never seen this guy before?

3 A No.

4 Q Based on that information you then contact Homicide?

5 A Yes.

6 Q Did Homicide come out?

7 A Yes.

8 Q Specifically a Detective Terri Miller?

9 A Yes.

10 Q Did you secure the scene until Detective Miller got there?

11 A We did.

12 Q Did you see any other material getting out of Apartment 7 before
13 Detective Miller got there?

14 A No.

15 Q And then did Detective Miller do a search of the place?

16 A Yeah, I believe he did. I wasn't there for that though.

17 Q You weren't there for that?

18 A No.

19 Q Okay. So by the time that Homicide detectives got there you left?

20 A I basically stayed in the area. I was available to them for
21 questioning, but I was not part of the actual investigation inside the apartment
22 or anything like that.

23 Q Okay. Okay. So you weren't part of the search or anything like
24 that?

25 A No.

1 Q Okay. And that was -- that would end what you did in this case?

2 A No.

3 Q You didn't do anything further in this case?

4 A Oh, no, nothing further, yeah.

5 MR. SCHWARTZER: Thank you, officer. I'll pass the witness.

6 THE COURT: Mr. Schwarz.

7 MR. SCHWARZ: Yes, briefly.

8 **CROSS-EXAMINATION OF KYLE DOWNIE**

9 BY MR. SCHWARZ:

10 Q How are you doing, officer?

11 A Good. How are you, sir?

12 Q I'm fine.

13 So you had a conversation with the person who was cleaning out
14 the apartment?

15 A I did.

16 Q Okay. And he's the one that found the gun?

17 A He did.

18 Q All right. And if you recall, what exactly did he tell you about him
19 handling the weapon?

20 A He basically said that he was just removing the -- his intentions
21 were to clean out the apartment. It was full of electronics and appliances and
22 just random stuff. He wanted to make his unit available for rent. So he started
23 walking items out of the house. As he was holding this toaster oven he noticed
24 that it was unusually heavy or something was kind of rocking inside of it. At
25 which time he put it down, took a closer look, and found a gun inside of a bag.

1 He informed one of his friends that were there helping him clean it
2 out, hey, I -- I found a gun in this toaster oven, we should call the police or
3 notify the police. And it was a short time after that, from what I understood,
4 that we were just in that area and kind of right place, right time, they flagged
5 us down.

6 Q Okay. Now, from the time you got there did they stop taking stuff
7 out?

8 A Yes. Yes.

9 Q Okay. Did you sort of freeze the premises?

10 A Yes.

11 Q Okay. Did you let anybody go in or out of there?

12 A We had actually gone in, but we didn't spend a significant amount
13 of time inside there. I remember stepping in myself briefly just to kind of begin
14 our preliminary investigation of what exactly it was that we were dealing with.
15 And when we stepped inside we noticed what the room was filled like. We -- I
16 observed the room. It was just, like I said, filled with electronics and
17 miscellaneous appliances and small items like a shopping cart and other stuff.
18 And we didn't -- we didn't allow them to move anything else out. We just said,
19 hey, just leave everything as-is. The toaster oven had already been placed
20 outside in the grass area, so we left that as-is and ended up taping that area
21 off.

22 Q Okay. So I guess my question is this, you received some
23 information which made you think that maybe this, you know, apartment and
24 this weapon might be more interesting than just, you know, a discarded gun?

25 A Yes.

1 Q Okay. From the time you got there, how long did it take before you
2 got that information?

3 A I would say within 20 minutes or half hour, it was relatively quick
4 that we started putting pieces of it together.

5 Q And so that's when you made the decision to freeze the premises?
6 Or was it prior to that?

7 A As far as taping it off or --

8 Q Yeah.

9 A It was -- it was pretty much immediate that we did not allow
10 anybody to touch the microwave. That was -- that was my primary concern
11 more than the apartment because the microwave or the toaster oven had the
12 gun in it. So I wanted to preserve that. It was almost immediate from the time
13 we were there, hey, nobody touch this and we basically just froze that.

14 But we did go inside the apartment and that wasn't froze right
15 away. I would say within the first 15, 20 minutes, like I said, we actually froze
16 the apartment and didn't allow them to move anything.

17 Q And you weren't present when -- or you were present when
18 Detective Miller came?

19 A Yes.

20 Q However, you weren't present when a search of the apartment was
21 conducted?

22 A That's correct.

23 MR. SCHWARZ: All right. I have nothing further, Your Honor.

24 MR. SCHWARTZER: Nothing, Your Honor. Thank you.

25 THE COURT: Anything from our jurors? No? All right.

1 Officer, thank you very much for your time. I appreciate it. You
2 are excused.

3 THE WITNESS: Thank you. No problem.

4 THE COURT: Okay. And with that we will go ahead and take our lunch
5 recess, ladies and gentlemen.

6 During the recess you are admonished not to talk or converse
7 among yourselves or with anyone else on any subject connected with the trial
8 or read, watch, or listen to any report of or commentary on the trial by any
9 medium of information including, without limitation, to newspapers, television,
10 the Internet, and radio and you cannot form or express any opinion on any
11 subject connected with the case 'til it's finally submitted to you. Nor can do
12 you any research investigation or recreations during our recess.

13 I will see you back in an hour. Okay. Thank you. And I will just
14 kind of tell you as you're planning ahead, what I am told by the attorneys is
15 that we are moving along very quickly and we are ahead of schedule in terms of
16 timing of the trial, which is a good thing. So see you back in an hour.

17 [Outside the presence of the jury panel]

18 THE COURT: Okay, guys, we will be in recess. I will see you back at
19 1:30.

20 [Recess at 12:36 p.m.; proceedings resumed at 1:40 p.m.]

21 [In the presence of the jury panel]

22 THE COURT: All right. You all can be seated. We're going to be back on
23 the record. Mr. Muhammad-Coleman's present with his attorney. State's
24 attorneys are present. Jurors are present. We're going to continue on with the
25 State's case-in-chief.

1 Our next witness is going to be?

2 MR. SCHWARTZER: State calls Dr. Olson, Your Honor.

3 THE COURT: Okay. Officer, could you grab Dr. Olson? Could you grab
4 Dr. Olson?

5 THE MARSHAL: Olson?

6 THE COURT: Thank you. Good afternoon, Doctor, thank you.

7 **ALANE OLSON,**

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

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

11 THE WITNESS: My name is Alane Olson. My first name is A-L-A-N-E.
12 My last name is spelled O-L-S-O-N.

13 THE COURT: Thank you.

14 Mr. Schwartzer.

15 **DIRECT EXAMINATION OF ALANE OLSON**

16 BY MR. SCHWARTZER:

17 Q Sorry about that, Doc. How are you currently employed?

18 A I am employed as a medical examiner at the Clark County Coroner's
19 Office.

20 Q What is that?

21 A A medical examiner is a medical doctor, either M.D. or D.O. and we
22 perform autopsies and other types of examinations with a goal of determining
23 the cause and manner of someone's death.

24 Q And although I'm sure we've all heard what an autopsy -- heard the
25 word autopsy on TV, what is an autopsy?

1 A An autopsy is an examination that has two parts. The first part, we
2 look at the body surfaces and we describe what we see: Hair color; eye color;
3 how tall -- well, how long someone is; how much they weigh; if they marks,
4 scars, tattoos; if they're wearing clothing, what it looks like. We do a general
5 external examination and then we do the internal examination. We start that by
6 making a Y-shaped incision from shoulder to shoulder down on to the chest and
7 then to the bottom of the abdomen. We move the skin away. We use a saw
8 to take off the front of the rib cage and we look at all of the organs as they lie
9 in the body.

10 And the whole goal of doing this type of exam is to document
11 natural disease as well as injuries. So once we've opened up the body cavities,
12 we take the organs out one by one and weigh them and individually examine
13 them. We also take specimens for toxicology as well as other kinds of testing
14 depending on the kind of case that we're doing. Once we look at all of the
15 organs in the body cavity, the main body cavity, we look at the brain.

16 So we make a cut in the scalp across the top of the head, move the
17 skin away, we use a saw to take off the top of the skull, look at the brain as it
18 lies in the head and then take it out, weigh it, and again look at it very carefully
19 on an individual basis.

20 So once an examination that I do is complete, I also look at X-rays
21 and I dictate that examination. I get the results of the testing back, if I've
22 ordered any. And once I've had a chance to edit the report, then I sign it and
23 it's finished.

24 Q And these reports you're trying to determine the cause and manner
25 of the death?

1 A Yes.

2 Q Okay. And in order to do these examinations and make this
3 determination, do you have to go through any type of specialized training?

4 A Yes.

5 Q Can you tell the ladies and gentlemen of the jury your background?

6 A Sure. I actually, I have a bachelor's degree in microbiology from the
7 University of Idaho. I went to school at the University of Nevada, School of
8 Medicine. That's where I got my M.D. degree. Once I finished medical school,
9 I moved to Portland, Oregon, and spent five years at Oregon Health Sciences
10 University in a pathology residency program.

11 Pathologists are the doctors who literally study disease. So if you
12 have a tissue removed at surgery, whether it's your gallbladder or anything else,
13 a pathologist is the one who looks at that under the microscopes and makes a
14 diagnosis. Pathologists are also the doctors who run clinical laboratories. So if
15 you've ever had your blood drawn by and large a pathologist is ultimately
16 responsible for certifying those results. So during my residency I learned how
17 to do all of the things that pathologists do including doing autopsies.

18 Once I finished my residency, which was five years, I moved to
19 Milwaukee, Wisconsin, and spent one year at the medical examiner's there
20 doing a forensic pathology fellowship and that was only doing autopsies in a
21 forensic setting. Once I completed that fellowship I moved to Reno and worked
22 at the coroner's office there for just over five years. And I've been in Las
23 Vegas since September of 2005.

24 Q During that period of time about how many -- I know this is going to
25 be hard number to calculate, but in ballpark, how many autopsies do you

1 believe you've performed?

2 A Somewhere between 3 and 4,000.

3 Q And does that equal 3 to 4,000 reports?

4 A Yes.

5 Q And during that period of time have you been called to court to
6 testify?

7 A Yes.

8 Q Regarding cause and manner of death?

9 A Yes.

10 Q And how many times do you believe you've been called to testify in
11 Nevada courts? Ballpark?

12 A Ballpark, 2 to 300 times.

13 Q And that's just specifically regarding your expertise for cause and
14 manner of death?

15 A Yes.

16 Q Now, I want to direct your attention to April 20th of 2013. There
17 was an autopsy done on a Dale Borero, B-O-R-E-R-O, in a case number
18 13-03901. You weren't the individual, the doctor that performed that autopsy,
19 correct?

20 A I did not. That's correct.

21 Q That would be Dr. Simms?

22 A Yes.

23 Q He's colleague of yours?

24 A Yes.

25 Q Dr. Sims is not in town?

1 A That's correct. He's on vacation.

2 Q Okay. So in preparation for this testimony did -- were you asked to
3 do certain things?

4 A Yes.

5 Q And what things did do you in order to prepare yourself to
6 testimony?

7 A Well, once I received the subpoena I looked at the report that Dr.
8 Simms prepared after he did the autopsy. I looked at the investigator's report
9 that was prepared by a coroner investigator. I looked at the toxicology report
10 and I looked at the photographs that were taken during the course of the
11 autopsy.

12 Q And to be clear there is over 100 photographs in this case?

13 A That sounds about right.

14 Q And these photographs include stuff from the scene as well as
15 internal and external examinations?

16 A Yes.

17 Q Okay. And when you're talking about an investigation report,
18 you're talking about an independent investigation report by your office?

19 A Yes, that's correct.

20 Q Not one done by Las Vegas Metropolitan Police Department?

21 A That's correct. Completely separate reports.

22 Q Okay. And your investigator, their goal is determination of cause
23 and manner as opposed to who did it, right?

24 A Well, yeah, our investigators go to scenes, they gather information
25 that the doctors then look at to help us figure out what was going on.

1 Q Okay. So based on all these items you review, do you think you
2 can make your own independent conclusion regarding cause and manner of
3 death in this case?

4 A Yes.

5 Q Now, going -- I have some photographs -- and you're familiar with
6 all photographs from -- from the autopsy, correct?

7 A I've looked at them, yes.

8 Q Okay. And so again this is April 20th of 2013, showing you
9 Exhibit 100, do you see that on your screen?

10 A I do.

11 Q This is -- it shows like a -- and this has been stipulated and admitted
12 Exhibit 100. Now, there's a blue bag here, correct?

13 A Yes.

14 Q With a lock and a tag. Can you tell the ladies and gentlemen of the
15 jury what they're seeing in this photograph?

16 A Sure. The blue bag that you see in the background is the body bag
17 in which the body is transported. The little tag here, it's actually a little plastic,
18 not quite a lock, but it's kind of like a zip-tie so that you close it. And the only
19 way you can open it is by cutting it. So we can tell if the body bag has been
20 opened after our exam -- after our investigator seals it.

21 Q All right, doctor.

22 MR. SCHWARTZER: And for the record, Dr. Olson put a yellow line
23 underneath a lock on Exhibit 100 in the bottom, middle left portion of the
24 exhibit. Thank you, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: Okay. So also in this photograph, in the center of the
2 photograph is a white tag and it includes information including the coroner's
3 case number which is a unique case number that every individual receives when
4 they come to the coroner's office. It also includes the decedent's name as far
5 as is known at the time and other information about the date of death and time
6 of death and you can read it on the tag.

7 And in the bottom, right corner of this photograph is a gray photo
8 tag. You can't really read it very well, but it contains his full case number and
9 we use that to label the photographs that our techs take during the course of
10 the examination.

11 MR. SCHWARTZER: And for the record, Dr. Olson made a yellow line in
12 the right corner portion of the exhibit underneath a yellow or -- a yellow dot,
13 silver tag.

14 THE COURT: Record will so reflect.

15 MR. SCHWARTZER: Thank you.

16 BY MR. SCHWARTZER:

17 Q So date of death would be April 19th, 2013, and the time of death
18 would be 22:33?

19 A That's correct.

20 Q Okay. So that would be 10:33 p.m. for us lay people?

21 A Yes.

22 Q Okay. And you have your age, sex, and all that, Hispanic male, 40
23 years old; is that correct?

24 A Yes.

25 Q And then his height is 71 inches?

1 A Correct.

2 Q And his weight is that 160 pounds?

3 A Yes.

4 Q Okay. So once you open -- so you have to cut the bag in order to
5 get to do your examination, correct?

6 A Actually, we don't have to cut the bag. We just have to cut the tag
7 off and then we can unzip the bag.

8 Q Thank you. So once you cut the lock and open up the bag, then
9 you have the body as it was at the time of death, correct?

10 A After it's been moved into the bag, yes.

11 Q So there's some medical inter -- a lot of times you'll have medical
12 intervention stuff on -- on the body?

13 A Yes, oftentimes there is.

14 Q Stuff's probably not the technical term?

15 THE COURT: Yeah.

16 THE WITNESS: Usually not, no.

17 THE COURT: Apparatus maybe?

18 BY MR. SCHWARTZER:

19 Q Showing you Exhibit 101. Is this how it looks when you open up
20 the bag?

21 A Yes.

22 Q And this is again one of the photographs you reviewed?

23 A Yes.

24 Q And is this to show the appearance of the individual again at the
25 time of death before they were put into the bag or as they were placed in the

1 bag?

2 A As they're or after they're placed in the bag, yes.

3 Q And this is for ID purposes?

4 A It's for documentation purposes in general.

5 Q Okay. And now we're going to go through some -- some body
6 photographs here. Showing you 102, okay, so this is the mid-portion section,
7 correct?

8 A Yes. This is the front of his body centered on his chest.

9 Q Here do we also see some signs of medical intervention?

10 A Yes.

11 Q And what signs are those?

12 A If you look on the left side of his chest, actually just below his
13 nipple, you can see part of a -- an incision or a surgical cut that has been
14 sutured closed. And on the right edge of the photograph you can see the start
15 of another incision or surgical cut on his abdomen, it's also been sutured. And
16 in the right upper chest there is -- it's called a thoracostomy catheter. It's
17 basically they put a needle in his chest in case he's got air in there and that can
18 help them with their resuscitation efforts.

19 Q So here do you see this is one -- when you're doing your external
20 review is there something here that would catch your eye as a possible
21 indication what his cause of death would be?

22 A Yeah, actually, if you look again towards the right edge of this
23 photograph just below the -- the surgical incision there is a gunshot entrance
24 wound.

25 Q Okay.

1 A Which I've circled.

2 Q There is a circle on the, as described by Dr. Olson, in the bottom,
3 right part of the photograph.

4 Let me get a close-up of that. Showing you Exhibit 104. Now, you
5 said it's a bullet entrance wound. Why do you believe it's a bullet entrance
6 wound?

7 A There are some typical changes that you can see on the skin
8 surface to help you distinguish between an entrance wound and an exit wound.
9 In this particular case it was a pretty easy thing to figure out because he still
10 had the bullet inside him. So it was a no-brainer.

11 But typically a gunshot entrance wound is round or oval and if you
12 try and put the edges back together you can't get the skin to lie smoothly
13 because the because the skin in that defect has actually been bored away by
14 the bullet as it goes through so you can't close it off neatly. That's in
15 distinction to a gunshot exit wound where when the bullet passes through the
16 skin when it exits the body, it actually tears the skin. It doesn't remove any of
17 it. So if you can get the edges together on an exit wound, you can make a nice
18 clean smooth surface again. Whereas, you can't do that with an entrance
19 wound.

20 In addition, sometimes with gunshot entrance wounds you can get
21 an idea of what the range of fire was meaning what the distance was between
22 the skin surface and the end of the barrel when the gun was fired. That can be
23 hampered by clothing that's in the way or any other substance or surface that's
24 in the way. But basically if you have a pretty close distance between the end
25 of the barrel and the skin surface then you see soot on the skin surface and

1 that's -- that represents burned gunpowder.

2 But as you get farther away you see less soot because soot doesn't
3 travel well and -- and you start to see what's called gunpowder tattooing or
4 stippling and that's actual fragments of unburned gunpowder that strike the
5 skin surface.

6 The farther away you get the less you see of those two things that
7 I've mentioned until, depending on the weapon and the ammunition, anywhere
8 from two to three feet away you won't see any of that.

9 Q Okay. Now showing you Exhibit -- I'm going to go even closer,
10 showing you that wound, Exhibit 105, do you see any of that soot you were
11 talking about on this wound?

12 A No, I don't.

13 Q So based on -- on your -- based on your experience that would be a
14 gunshot wound that was inflicted two or three feet away from this -- at least
15 two or three feet away from this individual?

16 A Yes. That's a possibility. It's also possible that he was wearing
17 clothing that prevented the soot or gunpowder from getting to his skin surface.
18 And with these kind of injuries I typically call them indeterminate range simply
19 because I don't have any indication of closer range firing.

20 Q What's the purpose of putting the ruler next to it?

21 A So you can see how large it is.

22 Q Now, that wasn't the only bullet entrance you have in this case,
23 correct?

24 A That's correct. There was another gunshot wound.

25 Q Showing you Exhibit 106. Actually, this would be a better one.

1 Showing you Exhibit 108, are you familiar with this photograph?

2 A Yes.

3 Q Okay. And this is Mr. Borero's leg?

4 A Yes. It's his right leg on the back of his right knee.

5 Q Okay. Is -- what do we see -- and I'll do a close-up of that when
6 it's 109. What are we seeing here, Doctor?

7 A This is a gunshot entrance wound. And, again, it's just below the
8 little tag that has his case number. It's an oval wounds and again it meets the
9 criteria. It's an entrance wound not an exit wound. Another reason that I
10 know that is because the bullet was recovered from his right leg.

11 Q Thank you, Doc.

12 Now, showing you -- back to that photograph I showed you --

13 THE COURT: And I apologize if I missed it, but where on his leg was
14 that?

15 THE WITNESS: The entrance wound was on essentially the back of his
16 knee, behind his knee, towards the center of his leg.

17 THE COURT: Thank you.

18 BY MR. SCHWARTZER:

19 Q Now going back to the initial photograph I showed of Mr. Borero's
20 leg, 106, it looks like there is a little mark here. What are we seeing in this
21 photograph?

22 A This particular photograph is actually a photo of his left leg from the
23 side and he did have some little scrapes, we call them abrasions on his left knee
24 at the outside. So that's what this photograph depicts.

25 Q And now, again, there is an external examination in which you do

1 photographs and you were able to review those photographs, correct?

2 A Yes.

3 Q Was there anything remarkable about Mr. Borero's hands?

4 A No.

5 Q Was there anything like bruising, knuckle bruising, anything like
6 that?

7 A Not that I could see in the photographs, no.

8 Q If someone's in a first fight or a fight in which that their hands were
9 used, would you see -- would you expect to find bruising and such on their
10 hands?

11 A You might.

12 Q You didn't see that in this case?

13 A I did not, no.

14 Q Now, you also, you also testified that there were two bullets, well,
15 one that there was a bullet recovered from the stomach wound and one from
16 the leg wound, correct?

17 A Yes.

18 Q Those are the only two gunshot wounds on this individual; is that
19 correct?

20 A Yes, that's correct.

21 Q Any other gunshot related wounds on this individual?

22 A No.

23 Q Okay. In both cases was the bullet recovered at autopsy?

24 A Yes.

25 Q And was that documented as well?

1 A It was.

2 Q Okay. Showing you 111, this is one of those bullets?

3 A Yes, it is.

4 Q Okay. And this is the one that was taken from his spine?

5 A Yes.

6 Q Okay. And so could you tell the ladies and gentlemen of the jury
7 the path that bullet took in order to get to Mr. Borero's spine?

8 A It went, we describe the paths of bullets referring to the person, so
9 it went from his front towards his back and it went downward. It didn't deviate
10 right or left. So it basically went from his upper abdomen into his spinal
11 column. It did not hit the spinal cord.

12 Q What kind of damage did it do during that path toward his spine?

13 A It went through his diaphragm on the right side, it went through his
14 liver, and it went through what's called the inferior vena cava, it's a large vein
15 that brings blood back to the heart from the abdomen and the legs.

16 THE COURT: When you said a moment ago it went into his spinal column
17 but not his spinal cord, can you kind of differentiate that for the jurors so they
18 know what you're talking about.

19 THE WITNESS: Sure. So your spine column is the bony structure that
20 contains your spinal cord. So you could think of it like building blocks that are
21 stacked up on top of each other and there is a front portion of the spinal
22 column and it's called the body and it's kind of a circular thing. And then in the
23 back there is another arc of bone and that's where the spinal cord is. So it
24 went into the front of his spinal column but it did not hit his spinal cord.

25 ///

1 BY MR. SCHWARTZER:

2 Q So he would have been able to walk? I mean --

3 A Yes.

4 Q He wasn't paralyzed from the damage to the spinal column because
5 it didn't hit the spinal cord?

6 A That's correct.

7 Q Okay. Now, you said -- you described the path and the damage to
8 the bullet did. By hitting that vein did it then cause intensive internal bleeding?

9 A Yes.

10 Q Okay. And then additionally you said there was a bullet found in his
11 leg as well. Showing you Exhibit 112. Do you recognize that bullet?

12 A Yes.

13 Q Okay. And what's -- where do you recognize that bullet from?

14 A Well, it's a photograph of the second bullet in this particular case.
15 And also in Dr. Simms' report he specifically describes the bullet that was
16 recovered from the leg as having a piece of fabric stuck to it. So this is the one
17 that was recovered from his leg.

18 Q Now did that -- what kind of damage did that projectile do?

19 A It went through muscle and soft tissue. Dr. Simms did not open his
20 leg up and describe specifically what damage was done.

21 Q Okay. But he did open up the area toward his abdomen area and
22 had photographs of the internal damage that was done there?

23 A Yes, correct.

24 Q You were able to make your own independent review regarding
25 that?

1 A Yes.

2 Q Okay. Was there also -- you mentioned early on when you were
3 talking about autopsies that you also do look at toxicology reports as well.

4 A Yes.

5 Q And in this case was one done?

6 A It was.

7 Q And was there any findings in there?

8 A Yes.

9 Q And can you tell the ladies and gentlemen of the jury what that
10 was?

11 A The toxicology lab found that in the hospital admission blood he had
12 methamphetamine at a level of 1,800 nanograms per milliliter and amphetamine
13 present at a level of 280, I believe.

14 Q Okay. In your experience as a doctor and having -- is that -- having
15 that amount of methamphetamine, could that make someone act irrationally?

16 A Possibly, yes.

17 Q But you wouldn't know without knowing what that person -- how
18 that person acts on that narcotic?

19 A That's correct.

20 Q Every individual is different?

21 A Yes.

22 Q Okay. In this case you haven't been able to review anything
23 showing the individual right before he passed away, correct?

24 A I don't know what he was doing before he died, no.

25 Q Okay. So you don't know how he was acting one way or the

1 other?

2 A That's correct.

3 Q Okay. So it could, but it's an individual basis?

4 A Yes. You can -- levels of drug suggest possible behaviors, but it
5 doesn't predict for an individual person what they will be like under the
6 influence.

7 Q Did the methamphetamine kill Mr. Borero?

8 A No.

9 Q What killed Mr. Borero?

10 A The gunshot wound to his abdomen.

11 Q And what was the mechanism?

12 A He bled to death.

13 Q And how did you classify the matter of this death?

14 A I personally clarify it as a homicide as does Dr. Simms.

15 MR. SCHWARTZER: Court's indulgence.

16 Pass the witness.

17 THE COURT: Can you just tell the jury from a medical standpoint what
18 you mean when you say homicide, what that means to you?

19 THE WITNESS: Sure. So when I say homicide it is not a legal definition
20 or term. It means that the actions of one person has resulted in the death of
21 another person.

22 THE COURT: Thank you. Dr. Olson.

23 THE WITNESS: You're welcome.

24 THE COURT: Mr. Schwarz.

25 MR. SCHWARZ: Thank you, Your Honor. And thank you for asking my

1 first question for me.

2 May I approach the witness?

3 THE COURT: Yes.

4 **CROSS-EXAMINATION OF ALANE OLSON**

5 BY MR. SCHWARZ:

6 Q Dr. Olson, you testified about the toxicology report.

7 A Yes.

8 Q I'm sure you got all the numbers right, but I want you to look at
9 my -- or the Defense Exhibit A; is that the toxicology report that you reviewed?

10 A Yes.

11 Q Okay. Is that a true and accurate copy of the original?

12 A It appears to be, yes.

13 MR. SCHWARZ: Judge, I'd move to have it admitted.

14 MR. SCHWARTZER: No objection, Your Honor.

15 THE COURT: Okay. That will be admitted. Thank you.

16 **[DEFENSE EXHIBIT A ADMITTED]**

17 THE COURT: You can publish it.

18 BY MR. SCHWARZ:

19 Q I'm guessing because you know a little bit about methamphetamine
20 use and possible side effects and so forth that that's all part of your training or
21 part of your job as a, you know, forensic pathologist?

22 A Yes.

23 Q Okay. So the result of 280 amphetamine, could that be a result of
24 methamphetamine use? In other words, it's not necessarily true he's taking
25 both drugs?

1 A You're correct. Methamphetamine is broken down by the body to
2 amphetamines. So if someone is -- has meth on board, we really do expect to
3 see amphetamine as well.

4 Q As an aside, this is one of the first times someone's told me I'm
5 correct in a week or so.

6 Now, the level of methamphetamine, 1800; is that high?

7 A That's fairly high, yes.

8 Q Okay. Would it be safe to assume he's under the influence?

9 A I would -- I would say it's safe to assume that, yes.

10 Q And is it -- is it true that someone at that level would possibly
11 exhibit aggressive behavior?

12 A It's possible, yes.

13 Q Is it possible that someone at that level might also have irrational
14 reactions?

15 A Yes, possibly.

16 MR. SCHWARZ: I have no further questions. Thank you.

17 THE COURT: Thank you.

18 Mr. Schwartzer.

19 **REDIRECT EXAMINATION OF ALANE OLSON**

20 BY MR. SCHWARTZER:

21 Q Doctor, is it possible for someone who's not on methamphetamine
22 to have irrational reactions?

23 A Yes, it is possible.

24 Q Is it possible for someone not on methamphetamine to have
25 aggressive behavior?

1 A Yes.

2 MR. SCHWARTZER: Thank you, Doctor.

3 MR. SCHWARZ: Judge, I just have one question.

4 **RECROSS-EXAMINATION OF ALANE OLSON**

5 BY MR. SCHWARZ:

6 Q Mr. Borerero, when you examined him, Doctor, he was not one of
7 those people who was not on methamphetamine, right?

8 A When he was examined? That is a correct statement, he was not.

9 Q Thank you.

10 A Two in one week.

11 MR. SCHWARZ: Thank you. Two in one week, thank you, Doctor.

12 THE COURT: Any questions from our jurors?

13 Dr. Olson, appreciate your time. Thank you very much for coming
14 to court.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: State may call their next witness.

17 MR. SCHWARTZER: Jennifer Reiner is outside. Jennifer Reiner.

18 THE COURT: Good afternoon.

19 **JENNIFER REINER,**

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

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

23 THE WITNESS: Jennifer Reiner, J-E-N-N-I-F-E-R, R-E-I-N-E-R.

24 THE COURT: Thank you. Mr. Schwartz.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 **DIRECT EXAMINATION OF JENNIFER REINER**

2 BY MR. SCHWARTZER:

3 Q Ms. Reiner, how are you currently employed?

4 A As a crime scene analyst with the Las Vegas Metropolitan Police
5 Department.

6 Q What is a crime scene analyst?

7 A We're actually, we're called out to crime scenes at the request of
8 patrol officers or detectives to process a scene. This entails detailed note
9 taking, photography, the identification, location, and preservation of evidence,
10 fingerprint processing, and recovery; in major cases, the completion of a
11 diagram and final reports are completed and then turned in.

12 Q Okay. So it sounds like you have lots of roles?

13 A Yes.

14 Q In a homicide case such as this one are there often multiple crime
15 scene analysts involved?

16 A Yes.

17 Q If, for example, something happens late at night or even at 9:00
18 p.m. --

19 A Uh-huh.

20 Q -- like this April 19th, 2013, the autopsy wouldn't be done until the
21 next day, correct?

22 A Correct.

23 Q And it would usually be a different crime scene analyst?

24 A Yes.

25 Q And why is that?

1 A Just because the shifts. Usually autopsies are done during the
2 daytime, so it's usually a day shift crime scene analyst going.

3 Q And then if another scene becomes important in the case three or
4 four days later it could be a whole another crime scene analyst taking care of it?

5 A Yes.

6 Q So just because a certain crime scene analyst appears more in the
7 beginning doesn't mean he or she is going to be the analyst all throughout the
8 case?

9 A Correct.

10 Q It's kind of on a rotation basis?

11 A Yes.

12 Q You guys all have about the same training?

13 A Yes.

14 Q And you're trained in kind of the same way, right?

15 A Yes.

16 Q Are there certain -- well, let's go there, what kind of training do you
17 guys go through?

18 A We go through ongoing training. You need to have at least an
19 associate's degree. Most of us have a bachelor's degree. And then you go
20 through ongoing training throughout the whole year and continually.

21 Q So you're constantly being -- taking classes and what have you?

22 A Yes.

23 Q In this case what's your background?

24 A I have a bachelor's of science degree in criminal justice and I've
25 completed over probably about 1,000 hours in crime scene investigations

1 related training.

2 Q I want to direct your attention to April 20th of 2013, did you
3 respond to an autopsy?

4 A Yes, I did.

5 Q An autopsy of a Dale Borero?

6 A Correct.

7 Q And that was, from your understanding, was that for a homicide?

8 A Yes, it was.

9 Q And why does a C.S.A. have to be at an autopsy?

10 A For documentation.

11 Q Why does a C.S.A. -- why do we have to document an autopsy?

12 A Again, for documentation, to document photos of the decedent,
13 collect any evidence that might be present.

14 Q Okay. So evidence that might be present, what kind of evidence
15 would you expect to be present at an autopsy?

16 A Generally, we'll collect a buccal swab which is basically a DNA
17 swab from the mouth. We'll collect, if there's hand bags on the hands, we'll go
18 ahead and collect those. We may swab the hands for potential DNA evidence
19 off of those as well or collect fingernail clippings. If there's a sheet wrapped
20 around the individual, we might collect that for trace evidence purposes. Any
21 sort of clothing that may be present, any sort of firearms related evidence that
22 might be present.

23 Q Firearm related evidence would that include projectiles found within
24 the body?

25 A Yes.

1 Q Okay. I want to show you some photographs that have been
2 stipulated to. Showing you Exhibit 54, is this Mr. Borero?

3 A Yes, it is.

4 Q Okay. Showing you Exhibit -- showing you Exhibit 56, is this a
5 wound on Mr. Borero?

6 A Yes, it is.

7 Q Apparent gunshot wound?

8 A Yes.

9 Q Now, there is ruler right here with J8167R. Do you know who put
10 that ruler there?

11 A That was my ruler. That's my initials and P number which is a
12 personnel number assigned to each individual on the police department.

13 Q Okay. Okay. So you were documenting where a gunshot wound
14 was on an individual on Mr. Borero?

15 A Yes.

16 Q And going -- and you did that here on Exhibit 58 as well on
17 Mr. Borero's leg, correct?

18 A Yes.

19 Q And Exhibit 57, showing some bruising on his other leg, correct?

20 A Yes.

21 Q Okay. Additionally are there X-rays done during an autopsy?

22 A Yes, there were.

23 Q And did you take some photographs of that autopsy or of those
24 X-rays?

25 A Yes, I did.

1 Q Showing as Exhibit 59, is this one of the X-rays?

2 A Yes.

3 Q And what's -- is there something that kind of stands out in this
4 one? Something of note?

5 A Yes, there's actually a bullet kind of in the spine area.

6 Q Can you circle that for the ladies and gentlemen of the jury? For
7 the record, you circled the middle portion toward the bottom.

8 A Yes.

9 Q And that appears to be a bullet?

10 A Yes.

11 Q Okay. Showing you 60?

12 MR. SCHWARTZER: Thank you, Your Honor.

13 BY MR. SCHWARTZER:

14 Q Is this an X-ray of Mr. Borero's leg?

15 A Yes.

16 Q And is there something of note in this X-ray?

17 A Yes. There is also a projectile in the leg area.

18 Q Okay. And this, for the record, again, middle portion now almost
19 dead center in the photograph.

20 A Yes.

21 Q You circled the projectile?

22 A Yes.

23 Q Now, once these -- were these bullets then recovered from
24 Mr. Borero's body?

25 A Yes.

1 Q And did you see that happen?

2 A No, I did not.

3 Q Okay. Were you given the bullet somehow?

4 A Yes, I was.

5 Q Can you tell the ladies and gentlemen of the jury how that goes
6 about?

7 A Generally, after we get done taking our photographs and collecting
8 any evidence, they'll go into another room at the coroner's office where the
9 medical examiner will perform his examination of the decedent. And at that
10 point if there's any sort of projectiles or firearm related evidence inside the
11 individual, they'll give it to me and then I take possession of it I impound it.

12 Q Now, are Homicide detectives also involved in this process?

13 A Yes.

14 Q And what are they doing during this period of time?

15 A They are observing the autopsy part of it.

16 Q So they would actually be in the autopsy with them?

17 A Yes.

18 Q Okay. You just wait outside?

19 A Yes.

20 Q Okay. When they -- when this -- in this case it would be Dr. Simms
21 came out of that examination room were you given any items of evidence?

22 A Yes, I was.

23 Q And you were given that directly by Dr. Simms?

24 A Yes.

25 Q And what was -- what was given to you?

1 A I was given two different bullets.

2 Q Okay. And did you document those?

3 A Yes, I did.

4 Q Showing you Exhibit 61. Again, we see that ruler with your initials
5 and P number?

6 A Yes.

7 Q And then what's this number right here?

8 A That is the event number.

9 Q Can you tell the ladies and gentlemen of the jury what an event
10 number is?

11 A That number is a number assigned to the case. It starts with the
12 year, so 13 is going to be 2013; the next two digits, 04 is for the month; 19 is
13 for the day; and the last four is the number per calls during that day.

14 Q So this would be the 4,147th call that Metro received on April 19th,
15 2013?

16 A Yes.

17 Q Okay. Showing you Exhibit 62. Again, we see that ruler and is this
18 your handwriting right here?

19 A Yes, it is.

20 Q And you wrote "spine"?

21 A Yes.

22 Q So this would be the bullet recovered from the spine?

23 A Yes.

24 Q Okay. Anything unique about this bullet at all?

25 A I guess that it looks like it's a mushroom pattern.

1 Q Finally after -- when -- you impounded these bullets, correct?

2 A Yes, I did.

3 Q And why do you -- and in order to -- you do so in order to ensure
4 the chain of custody, correct?

5 A Yes.

6 Q And why do you do that?

7 A To show that I'm the one that took possession of it.

8 Q Okay. Do you want to make sure that it's in a secure location in
9 case we want to do further testing in the case?

10 A Yes.

11 Q And you don't know, I mean, once you document it and secure it in
12 an evidence box, does it go into -- where does go to?

13 A We'll secure it at the it C.S.I. section and then a evidence
14 technician will come over and recover the evidence and take it back to the
15 evidence vault.

16 Q And the evidence vault's a secure location?

17 A Yes.

18 Q And so if we wanted to do further testing on these projectiles or
19 bullets, say by a ballistics' expert, they would then get it from this evidence
20 vault?

21 A Yes, they would.

22 Q They would be able to see your initials on this box?

23 A Yes.

24 MR. SCHWARTZER: Okay. No further questions.

25 MR. SCHWARZ: I have no questions.

1 THE COURT: Thank you. Anything from our jurors?

2 Yes, ma'am.

3 JUROR NO. 5: Is there any way they can say which bullet was shot
4 first?

5 THE COURT: Okay, you've got to write it down. Remember? You've
6 got to write it down, but not any more because you already said it. Why don't
7 you guys approach the bench.

8 [Bench conference -- not transcribed]

9 THE COURT: Unfortunately, that is not a question for this particular
10 witness, okay?

11 All right, ma'am, thank you very much for your time. I appreciate
12 it. You are excused.

13 THE WITNESS: Thank you.

14 THE COURT: State may call their next witness.

15 MR. HAMNER: Court's indulgence.

16 MR. SCHWARTZER: Your Honor, we have two witnesses that are
17 supposed to be here at 2:00.

18 THE COURT: All right.

19 MR. SCHWARTZER: They're 15 minutes late. They'll be here in 15
20 minutes.

21 THE COURT: All right. We will take a short recess, ladies and
22 gentlemen, my apologies. During the recess you are admonished not to talk or
23 converse among yourselves or with anyone else on any subject connected with
24 the trial or read, watch, or listen to any report of or commentary on the trial by
25 any medium of information including, without limitation, to newspapers,

1 television, the Internet, and radio or form or express any opinion on any subject
2 connected with the case 'til it's finally submitted to you. We'll be in recess.
3 Thank you.

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We're in recess, guys [Recess at 2:19 p.m.;
6 proceedings resumed at 2:41 p.m.]

7 [In the presence of the jury panel]

8 THE MARSHAL: Rise for the jury.

9 THE COURT: You all can be seated. Thank you. All right.

10 We'll be back on the record. We're going to continue on with the
11 State's case-in-chief. Mr. Muhammad-Coleman's here with his attorney.
12 State's attorneys present, jurors present.

13 Who's your next witness, guys?

14 MR. HAMNER: The State's going to call Adam Felabom to the stand.

15 THE COURT: Thank you.

16 MR. HAMNER: Thank you.

17 THE COURT: Just raise your right hand. Thank you.

18 **ADAM FELABOM,**

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

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

22 THE WITNESS: Adam Felabom, A-D-A-M, F-E-L-A-B-O-M.

23 THE COURT: Thank you.

24 Mr. Hamner.

25 MR. HAMNER: Thank you very much.

1 **DIRECT EXAMINATION OF ADAM FELABOM**

2 BY MR. HAMNER:

3 Q Sir, what do you do for a living?

4 A I'm a crime scene analyst with the Las Vegas Metropolitan Police
5 Department.

6 Q And how long have you been a C.S.A. for?

7 A Over eight years.

8 Q What did you do before that?

9 A Before that I worked in the dispatch center as a P.B.X. operator.

10 Q And before that?

11 A Before that I was a police officer.

12 Q With Metro?

13 A Yes.

14 Q Okay. How long were you a police officer with Metro?

15 A Commissioned? I resigned about a month and a half after I was
16 commissioned.

17 Q Okay. So you were kind in the academy and then decided to
18 switch it up?

19 A It was after I graduated the academy.

20 Q Okay. And then you switched it up and so you've been doing kind
21 of C.S.A. work now for about eight years; is that right?

22 A Correct.

23 Q Okay. How many cases do you go out on a night when you are
24 working as a C.S.A. on a shift?

25 A It can vary drastically, anywhere from none all the way up to six or

1 seven.

2 Q Okay. Is it -- do you typically work alone? Do you work in pairs?
3 Or it just depends on the situation?

4 A It just depends on the situation. Typically it's we're working by
5 ourselves unless it's a larger scene or a major type of crime.

6 Q What about shooting scenes? Homicides? Things of that nature?

7 A On homicides we'll typically take a group of C.S.A.s out.

8 Q Okay. I want to turn your attention back to April 19th, 2013, did
9 you respond as part a C.S.A. team to a 2855 Fremont Street, Travelers Inn,
10 here in Clark County?

11 A I did.

12 Q Okay. Who did you -- who were the C.S.A.s that you went out
13 with to that particular scene?

14 A Another crime scene analyst, Joel Albert, came with me as well as
15 a supervisor, Gary Reed.

16 Q Okay. Now, was that under the event number of 1304194147?

17 A Correct.

18 Q All right. Let's talk a little bit about kind of in general how you do
19 this. So you show up at the scene, some of your teammates are there on the
20 scene, what's the first thing that you typically do?

21 A Typically, the first thing we'll do is we'll get a briefing by some of
22 the first responding officers and the area detectives to get a general sense of
23 what information they have been able to -- to come up with in their initial
24 investigation as well as a briefing on the scope of the scene so we know if we
25 need to bring in more people or if we're -- we have adequate staffing.

1 Q Does that help kind of provide guidance about things to look for,
2 maybe the tasks that you're going to need to do for that kind of assignment?

3 A Correct.

4 Q When you -- and did do you that in this case?

5 A Yes, we did.

6 Q After you get a briefing, what's typically the next step?

7 A The next step we typically do is we'll do a walk-through of the
8 scene, just kind of get eyes on the scene and to be able to maybe find obvious
9 items of evidence, areas that we might want to look in more detail later on.
10 And then after we've done the walk-through we'll typically split up the duties.

11 Q Okay. What sort of things can you do at a scene? What sort of
12 things do you typically do as far as, like, a checklist of things that you're
13 handling?

14 A Typically, it'll vary depending on the type of scene that we're at
15 and what's inside the scene. But typically we'll take photographs and we'll
16 take notes that we can write our reports later. We'll take -- we'll collect items
17 of evidence that we find and we'll, if we need to, we'll process for fingerprints
18 as well.

19 Q So fingerprints, collecting items, how about taking DNA samples?

20 A Correct.

21 Q And photography. Which one of those things usually happens first?

22 A The first thing we'll do is we'll photograph the scene as it is, as we
23 found it before we start moving stuff around, that way we have a accurate
24 representation of how we found the scene.

25 Q Who did the photography that night?

1 A That night it was Joel Albert.

2 Q Joel Albert. I want to show you what has been already admitted as
3 State's 15. Do you recognize kind of what we're looking at there?

4 A Yes. This is the parking lot on the south side of the building.

5 Q Is that a fair and accurate depiction of what it looked like on that
6 evening?

7 A Yes.

8 Q Now, I see a series of orange cones in State's 15, why are those
9 there?

10 A A lot of times on scenes like this, shooting scenes and homicide
11 scenes and major seasons like this, patrol officers will almost always be the
12 first officers there and part of their duty is to preserve the scene to the best of
13 their ability. So what they'll do is if they see evidence that they, without
14 having to search or move stuff around, they'll typically mark it to warn other
15 people to watch out for this area so that you're not kicking evidence or
16 stepping on it or contaminating it in any way.

17 Q Publishing 18, that's kind of what we're seeing here as well?

18 A Correct. They've just moved a little bit around kind of going around
19 in a circle it looks like.

20 Q Now, when you come on the scene with you and your team, do you
21 start to replace those cones with anything else?

22 A Typically we'll eventually put down numbered markers that have
23 scales on them so that when we're taking close-up photographs of the items of
24 evidence you'll get a general sense of how big the item of evidence is.

25 Q So they've got a little rulers --

1 A As well as --

2 Q -- on them, right?

3 A They've got little rulers and little numbers to differentiate between
4 each item.

5 Q And do those numbers also help you in preparing a diagram maybe
6 of a scene?

7 A Yes.

8 Q All right. Publishing State's 44. What are we looking at there?

9 A This is a closer-up view of the -- looking east at the little storage
10 container that was at the east end of the parking lot and you see a lot of little
11 numbered markers that I was just describing.

12 Q And what was kind of marked as number 1?

13 A Number 1 is a Ruger P94 handgun.

14 Q Was that ultimately impounded into evidence?

15 A Yes.

16 Q All right. So that was kind of the number 1. I'm going to show
17 you, publish 46, State's 46. Is that just a close-up view of some of those other
18 numbers?

19 A Correct.

20 Q And what were these items, do you have any independent
21 recollection of kind of what those -- those little items are all marked are?

22 A These are ten cartridge cases that we found.

23 Q Okay. So that's kind of the spent cartridge that holds the bullet
24 after it's been fired?

25 A Correct.

1 Q It ejects out of the gun?

2 A Correct.

3 Q I want to show you State's 47. I know you mentioned 1 being kind
4 of the handgun, is this kind of just to the left of that? Is that a 1 over there?

5 A Yes.

6 Q Okay. So this is just kind of further over, other items that you've
7 marked?

8 A Correct.

9 Q You mentioned the Ruger that you found. Publishing State's 37, is
10 that a more close-up view of that?

11 A It is.

12 Q Publishing 45, same -- same thing as well?

13 A Yes.

14 Q I want to -- I want to show you State's 34 for a second. Do you
15 recognize what's there by that cone? I don't know if you can tell from that
16 angle, if you want me to zoom in that might help. Would that help you?

17 A Yes, please.

18 Q What is that?

19 A That's a baggie containing a white powder and crystal substance.

20 Q Was that also impounded into evidence?

21 A Yes.

22 Q Under the belief that it might possibly be narcotics?

23 A That was our assumption, yes.

24 Q All right. Publishing 35, another more close-up view of that.

25 A Correct.

1 Q And 48.

2 A Correct.

3 Q Is that that little ruler that we're talking about?

4 A Yes.

5 Q Okay. So you impounded this gun, you're noting a lot of spent
6 cartridges out there. You also got that bag that's noted appears to be
7 narcotics, potentially narcotics. I'm publishing 52, State's 52, what's that? Do
8 you remember what that is?

9 A That is a piece of car door molding from, like, the interior kind of,
10 like, the door handle portion of a car door.

11 Q Publishing 40 -- 53. Is that a more close-up view of that item?

12 A Correct.

13 Q Okay. All right. So you took a bunch of photographs, at or at least
14 Adam Felabom did, after you take photographs what was the next thing you did
15 at the scene?

16 A After we take our initial photographs then we'll --

17 Q Not Adam Felabom, Joel Albert.

18 A Yes.

19 Q That would be you. My bad.

20 A After we took our initial photographs we went through and marked
21 the different items of evidence. And we also conducted a search for further
22 evidence at that point.

23 Q Okay. What did -- did you try to process items for fingerprints?

24 A There were a few items that I processed for fingerprints including
25 the Ruger handgun, the magazine that was in the Ruger handgun. We also

1 found a BB gun magazine.

2 Q Is that found in one of the vehicles left at the scene?

3 A No. It was on the ground over by the west stairwell. We weren't
4 sure if it was associated or not, so just -- just to be safe we collected it and
5 processed it for fingerprints and we also processed this piece of molding as
6 well.

7 Q Let's talk about that for a minute.

8 Are there -- is there one way to kind of process for fingerprints? Is
9 there multiple ways to do it ?

10 A There are multiple ways of processing.

11 Q Could you explain to us kind of what are the ways that you could
12 do it.

13 A There are generally two different main methods. One is with
14 fingerprint powder and the second method is with chemicals. Fingerprint
15 powder you're taking a brush, dipping it in -- into a finely ground medium that
16 has turned -- that's in a powder form and lightly brushing it over the item. The
17 powder adheres to any moisture left by fingerprints and then can develop a
18 print that way.

19 And then there is also chemical fingerprint processing which has a
20 bunch of different subsets in there where you're looking for either -- you could
21 also be looking for moisture, you could be looking for amino acids or fats as
22 well.

23 Q Did you use kind of the dusting method with the powder with
24 respect to the wood paneling?

25 A No. I did chemical fingerprint processing with this using Super glue

1 fumes and a dye stain.

2 Q Explain that. How do you -- how do you do all that?

3 A The method I used I took the items that I was going to process, I
4 stuck them inside of an enclosed chamber and subjected them to Super Glue
5 fumes. Those fumes attached to the moisture and fingerprints and after that
6 you apply a dye stain which fluoresces under a laser light and then you can
7 visualize it using the laser light on the dye stain.

8 Q Okay. I'm publishing State's 84. Is that that same kind of view or
9 at least from a different angle of that same piece of wood paneling?

10 A It is. This is after I've gotten it back at the office and I'm
11 processing it for fingerprints.

12 Q Publishing State's 83. What do we see here?

13 A This is actually a fingerprint that I was able to see with just white
14 light without adding any chemicals to it yet and since I could see it without
15 processing, I photographed it before I did anything just in case, by processing
16 it -- there's is always a potential that you will lose the fingerprint or it might get
17 washed out or something like that.

18 Q Okay. So you document it. When you take a paragraph like that,
19 and let me publish also 85, is that another photograph of that same print? Or a
20 different portion? Or a different area?

21 A It's the same print. It's just after I have applied the Super Glue
22 fumes and the dye stain.

23 Q Okay. Publishing 86.

24 A This is -- this is also another photograph after I've processed for the
25 fingerprints.

1 Q And let's just jump back to the dusting for a second. When you
2 dust it and all that dust adheres to an oil, how do you get a print to fingerprint
3 examination?

4 A Typically when you're using powders you can just take a clear piece
5 of tape, lay it down on the object, on the fingerprint, just press it down really
6 well and when you lift the tape off it pulls all that powder off as well. So
7 you've basically got an exact copy of that fingerprint and then you can place it
8 down on a nice white backing which would give good contrast with black
9 powder.

10 Q And you mentioned before that when you've got kind of a physical
11 item there's sometimes a concern that fingerprint could get smudged off so you
12 take fingerprints or you take photographs of that fingerprint, right?

13 A Correct.

14 Q And that's what you did here. So what do you do when you're not
15 using the dust and you're not using the tape, how do you send something or
16 what do you send off to the fingerprint examiner to exam?

17 A In -- in this case when we're finger -- when we're chemically
18 processing for fingerprints, what we'll do is we'll take a photograph of the
19 fingerprint, what you see here and then because you see the scale here in the
20 photograph, when we print that photograph out we can print it at the exact
21 same size as what it is in real life because they just make the scale actually two
22 centimeters long and then the photo comes out at the proper scale.

23 Q Okay. And so when you took these photographs did you send
24 these off under that event number to -- or at least have them impounded under
25 that event number?

1 A Yes.

2 Q You, let's jump back for a second, you talked before about there
3 were ten cartridge casings you found with respect -- some of them were
4 belonging to what type of bullet; do you remember?

5 A We found actually more than ten. We found ten .40 caliber
6 cartridge cases and we found four 9 millimeter cartridge cases.

7 Q And approximately where are all these cartridges located at this
8 scene?

9 A They were all mainly at the west end of the parking lot -- or the
10 east end, I'm sorry.

11 Q Let me -- let's go back. I want to show you again State's 15,
12 where is the west end? Is this the west end?

13 A We're basically standing actually more towards the center of the
14 parking lot, but we're facing east in this photograph. The building is on the
15 north side of the parking lot.

16 Q Okay. So can you circle the area that you -- do you see the east
17 end that you're talking about?

18 A Yes.

19 Q Okay. Can you circle that general area for the jury?

20 MR. HAMNER: All right. Let the record reflect that the witness has
21 circled three kind of cones in the third parking spot if you were going from left
22 to right in State's 15.

23 THE COURT: Yeah.

24 BY MR. HAMNER:

25 Q Okay. So you've got the ten .40 caliber, what were the other four?

1 What type of caliber bullet was it? Or caliber cartilage was it?

2 A They were 9 millimeter.

3 Q Okay. Were there any bullet fragments recovered at the scene?

4 A Yes.

5 Q How many? Or how many bullets and/or bullet fragments were
6 recovered from the scene?

7 A I believe there were four in total.

8 Q And where were they found?

9 A There was one found on the sidewalk or this little paved area in the
10 back along the block wall. There was another one out in the parking stall area
11 at the east end and then there was another bullet we found basically on the
12 west side of the building, further west in the parking lot. And we also
13 recovered one from inside of room 12.

14 Q Okay. Is room 12 up on the upper level or the lower level?

15 A It was on the second floor.

16 Q Okay. So they're actually, one of the bullets actually struck one of
17 the rooms up there?

18 A It went through the window, yes.

19 Q Okay. Talking about that bag, what you believed to be possibly
20 narcotics, what was the gross weight of -- of those narcotics? I don't know if
21 you measured it or you knew.

22 A We -- I measured it and it was 8.3 grams.

23 Q All right. And that's also kind of in that east end area, right?

24 A Yes.

25 Q When you walked that scene, since we have State's 15 up, are

1 there any kind of exit areas back towards that wall? Is there any way to kind of
2 walk out or get away from that angle? If you remember.

3 A No. If I remember correctly, this is a chain-link fence along the
4 south side of the parking lot which connected with the block wall. The block
5 wall goes back a little bit, but and there's a small little gap. But if I recall
6 correctly, it didn't go anywhere. It just kind of butted up against the wall.

7 Q Okay. So it would actually dead ends?

8 A Yes.

9 Q So if -- the only way out is really back towards Fremont?

10 A Correct.

11 Q Okay. You mentioned that you impounded or at least dusted, you
12 know, BB gun magazine; is that right?

13 A Correct.

14 Q And that was impounded as evidence, right?

15 A Correct.

16 Q Were any pellets found?

17 A Yes. There were I believe 18 pellets found inside the BB gun
18 magazine.

19 Q Did you impound any money that was found there?

20 A Yes.

21 Q How much money was impounded?

22 A \$3,308.00.

23 Q Okay. Did you take any DNA swabs when you were out there?

24 A Yes.

25 Q And from what items did you take them from?

1 A I collected DNA swabs from the Ruger pistol, from the magazine
2 inside the Ruger pistol, from the BB gun magazine.

3 Q Okay. And did you collect a couple cigarette butts as well?

4 A And some cigarette butts, yes.

5 MR. HAMNER: All right. Court's indulgence.

6 THE COURT: Okay.

7 BY MR. HAMNER:

8 Q And just to be clear, all this was under event number 1304194147?

9 A Correct.

10 MR. HAMNER: All right. Thank you. I have no further questions at this
11 time.

12 THE COURT: Mr. Schwarz.

13 MR. SCHWARZ: Thank you, Your Honor.

14 **CROSS-EXAMINATION OF ADAM FELABOM**

15 BY MR. SCHWARZ:

16 Q Hello, Mr. Felabom. How are you today?

17 A Doing well. Thank you.

18 MR. HAMNER: Mike, do you want me to leave these photos up here?

19 MR. SCHWARZ: You know what, just the gun. Great. That would be
20 great. Yes, that's what I need.

21 MR. HAMNER: There you go.

22 MR. SCHWARZ: Thank you. And then you can take the rest of them.

23 MR. HAMNER: All right.

24 BY MR. HAMNER:

25 Q So, Mr. Felabom, you photographed the Ruger model P94?

1 A Yes.

2 Q Okay. And that's this photograph here, right?

3 A Yes.

4 Q Okay. How big is that gun?

5 THE COURT: Like, caliber or size?

6 MR. SCHWARZ: No, no, no. Thank you, Your Honor.

7 BY MR. SCHWARZ:

8 Q How -- all right, let me back up.

9 MR. SCHWARZ: Thanks, Judge, you jogged my mind.

10 BY MR. SCHWARZ:

11 Q Did you photograph that gun in the condition you located it in?

12 A Yes.

13 Q In other words, sometimes, and correct me if I'm wrong, but
14 sometimes somebody at a crime scene may make a gun safe, empty -- empty
15 the magazine, pull it back so that, you know, it's not a danger, yes?

16 A Correct.

17 Q That didn't happen on this?

18 A Not to my knowledge.

19 Q So that gun was located by you just the way it looks in the picture?

20 A Yes.

21 Q I noticed that the slide is back?

22 A Correct.

23 Q Does that indicate anything to you?

24 THE COURT: Could you, I'm sorry, could you show the jury what you
25 mean by the slide.

1 MR. SCHWARZ: Yes.

2 THE COURT: So they know.

3 MR. SCHWARZ: Yes. Thank you, Your Honor.

4 BY MR. SCHWARZ:

5 Q For the record, I am pointing to the back, the rear end of the pistol.

6 And would you agree with me, Crime Scene Analyst Felabom, that this is called
7 a slide?

8 A Yes.

9 Q Okay. So I'm suggesting to you that the slide is all the way back.

10 A Correct.

11 Q Okay. Does that have any significance?

12 A The slide on most semiautomatics are designed to lock in this
13 position, as you see in the photograph, when they no longer have any live
14 cartridges in the magazine to load into the chamber.

15 Q And can you tell from -- and just so ladies and gentlemen
16 understand, what is the magazine?

17 A The magazine is what holds all the cartridges. Typically in pistols
18 like this it goes in through the grip where you hold the gun.

19 Q Okay. So other than a revolver, which has a, like, a little barrel that
20 comes out and you stick bullets in holes, this has a magazine, bullets are
21 inserted into, it and then it goes into the handle?

22 A Correct.

23 Q Is the magazine still in the handle?

24 A Yes.

25 Q Okay. Now you indicated that you found ten spent .40 caliber

1 cartridges.

2 A Correct.

3 Q And do you know how many cartridges this gun can hold, this
4 particular gun?

5 A I do not know.

6 Q Okay. Would it be safe to assume, based on the fact that the slide
7 is in the rear position, the magazine is still in the gun, that this gun was fired
8 until it was empty?

9 MR. HAMNER: Objection. Calls for speculation.

10 THE COURT: I'll sustain the objection.

11 MR. SCHWARZ: Okay.

12 BY MR. SCHWARZ:

13 Q You found ten .40 caliber spent cartridges?

14 A Correct.

15 Q And you found this gun in the position that it is in now?

16 A Correct.

17 Q Okay. Now, when this slide, when you're determining how long a
18 handgun is you would close the slide obviously, right? If you wanted to
19 measure a handgun for length you wouldn't just measure it just like this, would
20 you?

21 A Probably not. We don't typically measure length on handguns.

22 Q Okay. Is this a is this a big gun?

23 A It would --

24 THE COURT: Big compared to? I mean --

25 ///

1 BY MR. SCHWARZ:

2 Q Let's put it this way --

3 A There should be a photo with the scale next to it to give a general
4 idea of how big it is.

5 Q Is this -- is this -- do you know what a pocket gun is?

6 A A pocket gun?

7 Q Yeah, you've never heard that term?

8 A No.

9 Q Okay. Is a .40 caliber a large caliber revolver?

10 A Is --

11 Q In other words --

12 A Is it a large caliber revolver?

13 Q In other words, what's the smallest caliber revolver that you're
14 aware of?

15 THE COURT: Revolver or semiautomatic?

16 MR. SCHWARZ: Or, I'm sorry, gun. Thank you.

17 BY MR. SCHWARZ:

18 Q What's the smallest caliber semiautomatic you're aware of.

19 A .22.

20 Q And then they get larger from there?

21 A Correct.

22 Q So, for example, you might go up to a .25?

23 A It's -- yeah.

24 Q Okay. And what does that refer to, by the way, "caliber"?

25 A Caliber is the size and inches of the bullet. So a .40 caliber is .4

1 inches in diameter.

2 Q Okay. And you sort of go up from a .25 to a .32 into a .380, then
3 you get to maybe a .40 caliber?

4 A Correct.

5 Q Okay. So, and you don't know how long this gun measured?

6 A No. We don't typically measure the overall lengths of handguns.

7 MR. SCHWARZ: Judge, Court's indulgence.

8 THE COURT: Okay.

9 MR. SCHWARZ: Because I think there is a picture of a gun with the gun
10 with the -- the gun with the --

11 THE COURT: You did believe there's one that has a ruler by it, correct?

12 THE WITNESS: I know there is.

13 THE COURT: Okay.

14 BY MR. SCHWARZ:

15 Q Is this what you're talking about?

16 A Yes.

17 Q Okay. Does that give you any indication as to how -- how long that
18 gun might be?

19 A Well, each of these marks on the scale, you can see is -- it's really
20 hard to read them because of the flash, but you have centimeter markings
21 along -- along the scale there, so this right here I believe is about three
22 centimeters.

23 Q Okay. All right. Can you tell or would you agree with me that this
24 gun is about seven and a half inches long?

25 A Approximately, sure.

1 Q Okay. Thanks. And how many spent 9 millimeter shells did you
2 find?

3 A Four.

4 Q Okay. So you found ten .40 millimeter shells, four 9 millimeter
5 shells, and this gun in the position that it would be in if it were fired until
6 empty?

7 A Correct. There were 40 or ten .40 caliber cartridge cases, four 9
8 millimeter cartridge cases, and -- and that is what happens when you fire a gun
9 until it is empty. Yes.

10 MR. SCHWARZ: Thank you. I have nothing further. Thank you.

11 THE COURT: Mr. Hamner.

12 MR. HAMNER: I have no questions.

13 THE COURT: Anything from our jurors? Yes, sir.

14 You guys can approach.

15 [Bench conference -- not transcribed]

16 THE COURT: You -- couple questions for you real quick, Mr. Felabom.
17 You didn't have any involvement in examining another weapon in this case, did
18 you?

19 THE WITNESS: No, I --

20 THE COURT: The jury received testimony earlier about --

21 THE WITNESS: -- only dealt with the scene.

22 THE COURT: -- about a gun that was found in a toaster oven at another
23 location. You didn't have any involvement in that?

24 THE WITNESS: No, sir.

25 THE COURT: Okay. But with regard to this particular photo, is there --

1 and this is exhibit number what, Chris?

2 MR. HAMNER: I apologize.

3 THE COURT: That's okay.

4 MR. HAMNER: It is 53.

5 THE COURT: -- 53 which depicts that piece of car molding you described
6 earlier. Is there any reason why the photo doesn't show one of the little -- little
7 numbered cones?

8 THE WITNESS: I -- there's probably another photograph with that and
9 they just didn't pick that photo.

10 THE COURT: Okay. So some photos taken before you place the cones
11 down just depicting how you find evidence?

12 THE WITNESS: Correct. We'll take photos before we mark evidence and
13 after. So we'll have photos with both. So that's why I was kind of going back
14 and forth with some of the photos.

15 THE COURT: Mr. Hamner, any questions based on mine?

16 MR. HAMNER: Just real briefly.

17 BY MR. HAMNER:

18 Q When you guys take a bunch of photos at a scene, they're kind of
19 logged in a database, right? Or something like Metro records, Onbase; is that
20 right?

21 A Yes. When they get uploaded into a computer system, yes.

22 Q And then when the D.A.s get a case we would request all those
23 photos and we get, like, a CD of the photos?

24 A I assume that's what you do.

25 Q You assume so. And you don't really have any kind of guidance as

1 to who's picking and choosing the photos for an actual trial?

2 A No, that's all you.

3 Q Okay. That's right. Okay. Thanks.

4 THE COURT: Mr. Schwarz, anything?

5 MR. SCHWARZ: No, Your Honor, thank you.

6 THE COURT: Mr. Felabom, thank you very much for your time. You are
7 excused, sir.

8 State may call their next witness.

9 MR. SCHWARTZER: State calls Detective Cliff Mogg, Your Honor.

10 THE COURT: Afternoon, Detective.

11 THE WITNESS: Good afternoon, Your Honor.

12 THE COURT: Raise your right hand. Thank you.

13 **CLIFFORD MOGG,**

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

15 THE CLERK: You may be seated. Would you please state and spell your
16 name or the record.

17 THE WITNESS: Clifford, C-L-I-F-F-O-R-D; Mogg, M-O-G-G.

18 THE COURT: Mr. Schwartzer.

19 **DIRECT EXAMINATION OF CLIFFORD MOGG**

20 BY MR. SCHWARTZER:

21 Q Detective, how are you employed?

22 A I'm a detective with the Las Vegas Metropolitan Police Department,
23 Homicide Section. I've been a police officer for over 30 years. I've been with
24 Metro over 20 and assigned to the Homicide Section for 13 and a half years.

25 Q Thank you, detective. So that's fair to say then on April 19th,

1 2013, you were employed as a Homicide detective for Las Vegas Metropolitan
2 Police Department?

3 A That's correct.

4 Q Could you tell the ladies and gentlemen of the jury how you become
5 a homicide detective?

6 A I spent several years in patrol, then I was assigned to a plain clothes
7 unit. After that I was assigned to the Repeat Offender Team, then the Robbery
8 section, then the Homicide section. You have to test and be selected and then
9 he have about a year of a probationary period after which you're off probation
10 and you're a Homicide detective.

11 Q And when a homicide occurs, how does your group go about
12 respond -- how does Homicide go about responding to it?

13 A First thing that happens is patrol officers respond to the scene once
14 they determine that the victim has met a violent death or suspicious death. At
15 the time the supervisors at the scene request the Homicide Section and crime
16 scene investigators respond to conduct a follow-up investigation to their initial
17 investigation. Normally, we will send a sergeant a lieutenant and a couple of
18 detectives to the scene. Another detective will be a assigned to respond to
19 whichever hospital, if the victim was transported from the scene to the hospital.

20 Q All right. So when you respond, you respond as a group, correct?

21 A That's correct.

22 Q And do you guys work of off -- guys and ladies -- work off of a
23 rotation?

24 A Yes.

25 Q And that rotation, how does that come about?

1 A Once a homicide occurs in Clark County within our jurisdiction, a
2 team is assigned to that investigation. Once that team determines that the case
3 that they're investigating is a murder, then that team goes down, the next team
4 goes up. Currently we have four teams assigned to the Homicide Section.
5 Each team consists of six detectives and within those six detectives are three
6 teams.

7 Q So, again, directing your attention to April 19th of 2013, were you
8 called out to a scene on Fremont Street, basically Fremont Street and Boulder
9 Highway at a place called Travelers Inn?

10 A I was.

11 Q And that's about, probably about 10:30 at night?

12 A I believe the incident occurred sometime around 9:30 in the
13 evening. Once the victim was determined to be deceased then the Homicide
14 Section was notified. We probably arrived there sometime between 10:00 and
15 10:30 at night.

16 Q Okay. And who responded -- so you said there's usually a group of
17 you who go out there, who -- do you recall who went out there with you from
18 the Homicide Division?

19 A Detective Miller, Detective Wilson, Detective Smith, and I believe
20 Sergeant Fabian went to the scene and I was directed to respond to the U.M.C.
21 Trauma Center where the victim had been transported and pronounced
22 deceased.

23 Q Okay. Now, when you guys go out to a scene as a group, how --
24 does someone take over as a lead detective?

25 A Yes.

1 Q And does someone basically take over the investigation?

2 A That's correct.

3 Q How does that come about? How does one become the lead
4 detective?

5 A Again, it just goes in rotation. Whoever is up to conduct the next
6 investigation, they'll take it. In this case it was detective Terri Miller.

7 Q So when Terri -- so Terri Miller was up in her rotation and she
8 became the lead detective, correct?

9 A That's correct.

10 Q And as lead detective, what was her role?

11 A Her role was to conduct the investigation of the crime scene,
12 document the crime scene, conduct follow-up investigation, and then to kind of
13 coordinate the course that the investigation would take.

14 Q And she basically, she delegates what other detectives will do in
15 order to help her with her investigation?

16 A That's correct.

17 Q Okay. What -- what did she have you do in this case?

18 A Sergeant Fabian that night directed me to respond to the U.M.C.
19 Trauma Center. The victim, Dale Borero, had been transported from the
20 Travelers Inn with a gunshot wound to the U.M.C. Trauma Center where he
21 subsequently was pronounced dead by the doctor.

22 Q Now, why -- why would you want to go out to the hospital? Why
23 would you want to go out to U.M.C.?

24 A Whenever you have a homicide, the body itself is actually a piece of
25 evidence. There is a lot of evidence that can be contained on a body. In this

1 case there were gunshot injuries to the victim. The victim still had his clothing
2 on, which could still be potential evidence. There's always potential evidence
3 that could be underneath someone's fingernails, on the palms of their hands,
4 other types of evidence that could be collected from the body at the hospital.
5 So we always direct a detective to proceed to the hospital along with a crime
6 scene investigator to meet with the coroner's office and make sure that the
7 body is properly documented, that the body is placed into a body bag, sealed,
8 and transported to the coroner's office.

9 Q And, Detective Mogg, did do you that in this case?

10 A I did.

11 Q And initially while you're at the hospital are there times that you try
12 to actually talk to the family members or the people who would check on the
13 person in the hospital?

14 A That's correct. There were several members there I believe his
15 girlfriend, Michelle Klassen, was there. I spoke briefly to her. A woman by the
16 name of Lindquest, I spoke to her. I think I spoke to the victim's brother who
17 was also there. None of them had any direct information as to who was the
18 person that committed the murder that resulted in Borero's death.

19 Q So you didn't have any eyewitnesses to the actual event there at
20 the hospital, correct?

21 A I did not.

22 Q And you didn't have any -- at that point you didn't have any leads
23 generated from the people at U.M.C.?

24 A That's correct.

25 Q So after you took peoples' statements down at U.M.C., made sure

1 everything was done with Mr. Borero's body in order to preserve evidence, did
2 you then go somewhere else that night?

3 A Well, I returned to the scene.

4 Q And that would be the Travelers Inn?

5 A That's correct. While at the scene, I reviewed surveillance video of
6 the shooting. And then on the 20th I conducted additional follow up
7 investigation. I don't remember approximately what time it was, could have
8 been early in the morning, could have been later in the morning.

9 Q Okay. And what was that follow up investigation?

10 A Had some information that a person by the name of Drawers,
11 Joaquin -- or Jaquon Brown, was staying at the Budget Suites at 4855 Boulder
12 Highway in an apartment there. I went to that apartment in an attempt to
13 locate him, but I wasn't able to find him.

14 Q And that would be the brother of Michelle Klassen?

15 A That's correct.

16 Q Okay. And eventually were you guys able to talk to Drawers?

17 A I believe we were.

18 Q And that would be something to ask the lead detective, right,
19 Detective Miller?

20 A I'm sorry.

21 Q Would that be something to ask Detective Miller?

22 A Yes.

23 Q Okay. Now I want to direct your attention, let's first go over the
24 scene a little bit and then we'll go to April 21st. So on April 19th, you
25 responded to the Travelers Inn. I'm going to show a Google map that's

1 Exhibit 6, do you recognize this?

2 A I do.

3 Q This building right here that I'm pointing to, well, it's actually more
4 like this, is this the Travelers Inn?

5 A It is.

6 Q It's right by the Silver State Glass and Mirror?

7 A Yes.

8 Q Okay. And there looks like there's only one way in and one way
9 out?

10 A That's correct.

11 Q And this item over here on the side on -- is that -- so you have the
12 structure right here, correct?

13 A Yes.

14 Q Pointing -- for the record, I'm pointing to the middle of the
15 photograph on Exhibit 6. And then there's a wall on this side or a fence
16 actually on the other side of the parking lot, correct?

17 A I believe it's a concrete wall.

18 Q Okay. And then on -- and then behind there's also a wall as well,
19 correct?

20 A That's correct.

21 Q Okay. Now showing you Exhibit 15, this is -- this is a photograph
22 from actually that night, correct?

23 A It is.

24 Q And you see the con -- you see the cinderblock wall right here in
25 the back?

1 A Correct.

2 Q And then again it's not clearest but there's some type of wall or
3 fence?

4 A Yes.

5 Q On the side. Along with, what would you call that? A storage unit
6 of some sort?

7 A It's a sea-land trailer that they put on semi-trucks and ships.

8 Q Okay. And you went to the -- the manager's office to see the video
9 or how did you view the --

10 A That's correct.

11 Q And then were detectives able to secure the video?

12 A I'm sorry?

13 Q Were detectives able to secure the video?

14 A Yes.

15 Q Maintained as evidence. And you're familiar with that video?

16 A I am.

17 Q Okay. And we'll get into that later in your testimony.

18 So then I want to direct your attention to about 12:00 p.m., 12 to
19 1:00 p.m. on April 21st of 2013, did you come in contact with someone of
20 interest of this case?

21 A I did.

22 Q Okay. And what was that individual's name?

23 A That person was Richard McCampbell.

24 Q Okay. I want to show a photograph here, Exhibit 76, do you
25 recognize that individual?

1 A I do.

2 Q Is that Richard?

3 A It is. It's a photograph taken outside of the transfer and release
4 area of the Clark County Detention Center. It would be on the west side of the
5 facility.

6 Q Okay. Detective, can you tell me how you came in contact with
7 Mr. McCampbell?

8 A I was working with Detective Wilson at the time. I received a call
9 that Mr. McCampbell was over at the Clark County Detention Center on a street
10 that borders the west side of the facility near the transfer and release area, that
11 he wanted to turn himself in in connection with a shooting which had occurred
12 a couple days earlier at the Travelers Inn.

13 I was also told that Mr. McCampbell was driving a white-over-blue,
14 four-door Cadillac Brougham.

15 Q Why was that important?

16 A I'm sorry?

17 Q Why was that important?

18 A That was the same description of vehicle that I saw on a
19 surveillance video arriving prior to the shooting and then departing with the two
20 suspects at the time of the shooting.

21 Q So did you then respond to -- this would be at Clark County
22 Detention Center, did you then respond to that area?

23 A I did. I received the call around 1:00 o'clock in the afternoon.
24 Detective Wilson and I went to the Clark County Detention Center.
25 Mr. McCampbell was detained by patrol officers at that location. I went over to

1 the vehicle, took a quick look around the car, and noticed that there was an
2 apparent bullet impact into the C-pillar which is the pillar on the back of the car.
3 It would be where the rear window is and then as the car wraps around to the
4 back door. Right there in that corner just slightly above the trunk area was
5 where that impact bullet impact was. The driver's window was rolled
6 completely down. The other windows were down slightly. I looked through the
7 driver's window and could see that the simulated plastic wood trim on the
8 passenger door where the controls for the window and door lock is was
9 missing.

10 Q Thank you, Detective.

11 I'm going to show you some photographs, 64, do you recognize
12 that photograph?

13 A I do.

14 Q And is that -- is this the car that we're talking about?

15 A It is.

16 Q The Cadillac that was with Mr. McCampbell?

17 A That's correct.

18 Q And this is with the window, the front driver window down?

19 A Correct.

20 Q I'm showing you a closer up of that would be Exhibit 66, you can
21 then -- you can still see the windows all the way down?

22 A That's correct.

23 Q And there's a license plate on there as well?

24 A Yes.

25 Q Could you read the license plate for the record, please?

1 A 441 Yellow, Victor, Union.

2 Q And that would be a Nevada plate?

3 A Yes, sir.

4 Q And then you mentioned again that -- that bullet mark, defect,
5 showing you Exhibit 67 and then 68, is that what you're talking about?

6 THE COURT: Turn --

7 THE WITNESS: That one's upside down. That's correct.

8 BY MR. SCHWARTZER:

9 Q There we go. Okay. And why was that important?

10 A Well, I knew that multiple -- excuse me -- multiple rounds, shots had
11 been fired by the victim at the time that the shooting at the Travelers Inn
12 occurred.

13 Q Okay. As the vehicle was speeding away?

14 A There were numerous impacts into the Travelers Inn building itself,
15 a concrete wall to the east, and just the trajectory of the bullets that hit the
16 building, one could have possibly hit the vehicle.

17 Q Okay. Showing you Exhibit 69, and then a close-up, Exhibit 70, is
18 this area right here, is that what you were talking about when you said there
19 appear to be damage to the passenger, front passenger side?

20 A That's correct. The right, front passenger door.

21 Q Did you notice any -- and could you circle where the damage was?

22 A It's not damage. It's just a missing piece of trim right around that
23 control assembly.

24 Q Why was that important to you?

25 A I was aware that we had found a piece of simulated wood trim at

1 the crime scene.

2 Q And that was, again, the front passenger seat, correct?

3 A That's correct.

4 Q And then the other parts of the vehicle, such as, like, say, the driver
5 side was that trim still in place?

6 A It was.

7 Q So after you -- so you viewed the vehicle and you also talked to
8 Mr. McCampbell that day; correct?

9 A That's correct.

10 Q And Mr. McCampbell, what was his demeanor like?

11 A He was cooperative.

12 Q And he gave you a statement?

13 A He did.

14 Q You asked him a bunch of questions, he answered them?

15 A I did.

16 Q Did he make himself available to you for different days and times?

17 A On numerous occasions.

18 Q So you talked to him on numerous occasions?

19 A Yes, sir.

20 Q Additionally, let me fast forward now to April 25th of 2013, did you
21 -- did you talk to Mr. McCampbell again?

22 A I did at his residence in the 7600 block of South Rainbow.

23 Q And to be clear, and you've talked to -- you talked to him on April
24 21st of 2013, did you talk to him about other periods between the 21st and the
25 25th as well?

1 A After the interview on the 21st he called me later that evening to
2 provide me with a phone number, albeit what he said was an old phone number
3 for the person he identified to me during the interview as Money.

4 Q Okay. And that was the number that you guys used, or detectives
5 s would use in the investigation?

6 A That's correct.

7 Q And that would be a number that you would provide to Detective
8 Miller?

9 A Yes.

10 Q Okay. Did you talk to him any other time between that period of
11 time and the 25th?

12 A I believe I spoke to him again either the evening of the 20th -- or
13 24th or early in the morning on the 25th to arrange a meeting with him in order
14 to show him some photos.

15 Q Okay. So on the 21st did you have -- did you have any idea who
16 Money was?

17 A I did not.

18 Q Okay. And Money became -- the person, Money, became a suspect
19 based on Mr. McCampbell's statements?

20 A That's correct.

21 Q And was he -- so based on the information he provided you on the
22 21st there was no name that you could -- or true name you could associate
23 with Money at that time, correct?

24 A I could not.

25 Q Eventually during the course of the investigation did a name become

1 developed associated with Money?

2 A Yes.

3 Q And what was that name?

4 A Darion Muhammad-Coleman.

5 Q And based on having that name did you decide to, or you or

6 Detective Miller, decide to create a photographic lineup?

7 A We did.

8 Q And why would you do that?

9 A In order to positively identify the person that Mr. McCampbell
10 identified to us as Money.

11 Q Okay. And by the 25th you were able to develop Darion
12 Muhammad-Coleman as the person associated with Money; is that correct?

13 A That's correct.

14 Q Do you see Darion Muhammad-Coleman in the courtroom today?

15 A What I recall, his hair was a lot shorter at the time, but he's seated
16 next to defense counsel in the brown suit.

17 MR. SCHWARTZER: The identification of the defendant, Your Honor, by
18 the witness.

19 THE COURT: Record will so reflect.

20 BY MR. SCHWARTZER:

21 Q All right, Detective, so on April 25th, 2013, when you went to talk
22 with Mr. McCampbell to do a photographic lineup is there anything you do
23 before you actually show the lineup?

24 A Yes.

25 Q And what's that?

1 A I talked to Mr. McCampbell a little bit first about what he
2 remembers to try to get his memory to go back to that point in time so that he
3 can get the best picture he can of the person he identified to me as Money in
4 his mind. Once he says he has a good idea of what the person looks like,
5 would be able to recall it, then I read him the witness instructions for the photo
6 lineup and after I do that I ask him if he understands them. If he says he does,
7 then at that point I present him with six photographs of suspect and five similar
8 looking African-American males.

9 Q Okay. I'm going to show you what's been marked as Exhibit 114.
10 So, this is the full document right here. Okay. Now -- sorry, showed you --
11 that was Detective Smith's writing, was it not?

12 A That's correct.

13 Q All right. Okay. For the record, I showed Detective Mogg what's
14 been admitted as Exhibit 114 and 114A which is a photo lineup of Mr. Bleak by
15 Detective Smith. Now I'm going to show you Exhibit 113. Do you recognize
16 this right here?

17 A That's my name.

18 Q Okay. And that's the event number associated with this homicide?

19 A That's correct.

20 Q And that's the location of where -- where you did this photographic
21 lineup?

22 A Yes.

23 Q Okay. This instruction right here, this is what you read to
24 Mr. McCampbell before you have him look at photographs?

25 A That's correct.

1 Q And I'm not going to have you read the whole thing, but that's --
2 you read this from the card, I mean, verbatim?

3 A I read this, excuse me, right off the sheet to Mr. McCampbell and
4 this interview was actually audio recorded.

5 Q Okay. And then why do you have him sign right here right after the
6 instructions?

7 A Just indicating that he understood instructions that I read to him.

8 Q Then you do a date and time as well?

9 A That's correct.

10 Q And then in the statement he wrote something down here, correct?

11 A That's correct.

12 Q And -- but you said it was also recorded as well?

13 A It was.

14 Q And did he give more information in that recorded statement?

15 A I believe so.

16 Q Okay. So after you read him the instructions and showed him the
17 photo lineup how -- was he able to make an identification?

18 A Immediately.

19 Q Okay. So you said immediately, so less than a second what -- how
20 much -- how would you time quantify it?

21 A Couple seconds, just time enough for you to take a look at six
22 photographs and identify somebody that you knew.

23 Q Okay. So this is the lineup right here. He picked out number 5,
24 correct?

25 A That's correct.

1 Q And then he signed it and dated it?

2 A That's correct.

3 Q Oka. Is that his signature and his date?

4 A Yes, he did that in front of me. I have them do that that way there
5 can be no question as to which photograph he selected.

6 Q Okay. And so when you do a photo lineup, do you have -- how do
7 you know who's who in that lineup?

8 A When we construct the photo lineup we obviously know who the
9 suspect is. When we pick the five similar looking individuals, we do what's
10 called a master list and that has the name and ID number of each individual on
11 that photo lineup.

12 Q Okay. And did do you that in this case?

13 A We did.

14 Q Did you show Mr. McCampbell that -- that key?

15 A We don't know anyone that one. That is just for internal use. We
16 don't want the person who's viewing the photo lineup to associate a name with
17 a moniker. In this case Mr. Coleman's name with the name money.

18 Q Okay. So is this the key? Detective? That the key for the lineup
19 that you showed Mr. McCampbell?

20 A It is. The ID numbers are underneath each person in their
21 respective position they were in in the photo lineup and then the key below that
22 is their name and ID number.

23 Q Okay. And number 5 would be?

24 A Darion Muhammad-Coleman.

25 Q Which is the person that Mr. McCampbell picked as Money?

1 A That's correct.

2 Q Okay. Now, that same day did you then talk -- did you go, excuse
3 me.

4 The next -- that same day on April 25th, 2013, did you go talk to
5 some additional witnesses that were at the scene on April 19th, 2013?

6 A We did.

7 Q And who was that?

8 A Detective Miller and I met with LeCory and Jermaine -- I can't recall
9 their last name at this point.

10 Q Okay. Would it refresh your memory if you saw the photographic
11 lineup that you did with them?

12 A Yes.

13 Q Okay.

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

15 THE COURT: You may.

16 BY MR. SCHWARTZER:

17 Q Showing you Exhibit 117 that's admitted.

18 A Grace.

19 Q So you did a interview with LeCory or you did a photographic lineup
20 with LeCory and Jermaine Grace?

21 A That's correct.

22 Q And to be clear, they were actually interviewed earlier in the
23 investigation, this was just for the lineup?

24 A They were.

25 Q Because it took a few days to develop Darion Muhammad-Coleman

1 as the suspect?

2 A That's correct.

3 Q Okay. And, again, you want -- you showed LeCory Grace the same
4 lineup you showed Mr. McCampbell; is that correct?

5 A That's correct.

6 Q Okay. Showing you Exhibit 116, so that's -- that looks like -- 2do
7 you recognize who that person would be?

8 A That's Detective Miller. I was with her when we conducted the
9 photo lineup and she actually read the instructions to Mr. Grace.

10 Q Okay. Were you there when she read the instructions?

11 A I was. I was sitting in the backseat.

12 Q And then he filled out the statement, right here? After the
13 instructions were read, he signed it; is that correct?

14 A That's correct.

15 Q And then he was viewed -- he was shown the lineup?

16 A Correct.

17 Q And after he was shown the lineup, he -- he made his decision?

18 A He did.

19 Q Okay. He was able to pick a specific photograph?

20 A No, he selected photos 4 and 5 of people that he thought looked
21 similar to Money.

22 Q Okay. And -- and that's -- and he basically wrote that in his
23 statement here?

24 A That's correct.

25 Q And then on the very bottom we have both -- it looks like Detective

1 Miller's initials and P number and that would be yours as well?

2 A That's correct.

3 Q Okay. And then you had LeCory Grace sign and date as well?

4 A Yes.

5 Q Okay. And to be clear, just similar to what you showed

6 Mr. McCampbell, 5 would be Darion Muhammad-Coleman?

7 A That's correct.

8 Q Finally, did you show LeCory and Jermaine Grace a photo lineup
9 that included the individual Dustin Bleak?

10 A We did.

11 Q And Dustin Bleak was the person identified as the white male
12 individual in the video, correct?

13 A That's correct.

14 Q Okay. Again, showing you LeCory Grace's photographic lineup,
15 same thing, event number, same date close in time, correct?

16 A Correct.

17 Q And then Detective Miller read him the instructions, he signed that
18 he understood the instructions?

19 A Yes.

20 Q Was he able to pick an individual out?

21 A Number 5.

22 Q Was -- how quick was that identification?

23 A From what I recall, it was fairly quickly.

24 Q Okay. And then he signed and dated as well?

25 A That's correct.

1 Q And that's your name along with Detective Miller's name?

2 A It is.

3 Q Number 5 is right here.

4 A That's correct.

5 Q That's LeCory Grace's initials?

6 A It is.

7 Q Okay. And did you have a key for that photo lineup as well?

8 A We did.

9 Q That's 117A.

10 MR. SCHWARTZER: Okay may. I approach?

11 THE COURT: Yes.

12 BY MR. SCHWARTZER:

13 Q Showing you Exhibit 119.

14 A This is the key for that photo lineup with Dustin Bleak.

15 Q And is this a fair and accurate representation of that document that
16 you used in order to ensure you knew who was who in the photographic lineup
17 with Mr. Grace?

18 A It is.

19 MR. SCHWARTZER: I move for admission of 119, Your Honor.

20 THE COURT: Thank you. Any objection?

21 MR. SCHWARZ: No, Your Honor.

22 THE COURT: That will be admitted.

23 **[STATE'S EXHIBIT 119 ADMITTED]**

24 BY MR. SCHWARTZER:

25 Q And showing you 119, is this the key as you stated, correct?

1 A Correct.

2 Q And number 5 would be Dustin Bleak?

3 A That's correct.

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

5 THE COURT: You may.

6 BY MR. SCHWARTZER:

7 Q Showing you Exhibit 118. Is this the key that you used in
8 Muhammad-Coleman photo lineups?

9 A That's correct.

10 Q And is this a fair and accurate representation of that lineup that you
11 used to ensure you knew who was who in those lineups?

12 A It is.

13 MR. SCHWARTZER: I move for admission of 118, Your Honor.

14 MR. SCHWARZ: No objection.

15 THE COURT: That will be admitted as well.

16 **[STATE'S EXHIBIT 118 ADMITTED]**

17 BY MR. SCHWARTZER:

18 Q Okay. Let's go back April 19th, 2013, you said you watched the
19 video, correct?

20 A That's correct.

21 Q And detectives were able to secure the video?

22 A Yes.

23 MR. SCHWARTZER: Okay. Could we switch over, please?

24 THE RECORDER: Yes.

25 MR. SCHWARTZER: Thank you, Madam Clerk.

1 BY MR. SCHWARTZER:

2 Q Just ignore this over here because I can't get rid of it. But besides
3 that, do you see -- do you recognize this feature? This video?

4 A I do. This is the monitor system for the video that was located in
5 the office of the Travelers Inn. There are some cameras on here that aren't
6 showing simply because of the way it downloaded. You actually have to click
7 on each box and then hit play to reveal what's on that camera.

8 Q So let's press play. So when we're pressing play we can see from
9 different angles, some of the times aren't moving or they jump sometimes; is
10 that correct?

11 A They're --

12 Q They're all moving right now.

13 A They're actually keeping time.

14 Q Then if you want to fast forward, you actually have to pause; is
15 that correct?

16 A I'm not sure that you can actually even fast forward from this
17 downloaded version.

18 Q Okay. So now you see other camera angles pop up as well?

19 A Correct.

20 Q Okay. Let me ask you this, in camera 3 do you see a car moving
21 into -- into screen?

22 A Yes. This is 9:16 in the evening, approximately, on April 19th,
23 2013. The white-over-blue, four-door Cadillac Brougham that I later identified
24 as belonging to Mr. McCampbell arrives at the parking lot at the Travelers Inn,
25 goes through the main entrance, past the office, all the way over to the east

1 side of the parking lot. He has to turn around, back up a few times, eventually
2 he backs into a parking space near the east stairway. Then he has to
3 renegotiate how he's parked because he doesn't have enough room for the
4 people on the passenger side to get out.

5 Q If you wanted to look at one of these angles in a more blown --
6 blow up one of these angles, you just click on the camera, right?

7 A That's correct.

8 Q So, for example?

9 THE COURT: For the record you just clicked on and expanded camera 3.

10 MR. SCHWARTZER: Camera 3.

11 BY MR. SCHWARTZER:

12 Q And then in order to go back, you would hit the camera again,
13 correct?

14 A Correct.

15 Q So now we're back --

16 THE COURT: Just so you understand, ladies and gentlemen, it may
17 sound a little tedious, but one of the reasons they're explaining that is you get
18 all these exhibits when you go back to deliberate, so to the extent you need to
19 operate and move through these things, that's kind of why the record gets
20 made about that.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 BY MR. SCHWARTZER:

23 Q And then just to show, you can fast forward when you pause by
24 pausing and then fast forwarding. So you can't fast forward when it's playing,
25 but when you pause you can actually fast forward it. Do you see that,

1 Detective?

2 A Yes.

3 Q So we're going to go back to camera -- we're going to blow up
4 camera 4 now or enlarge it.

5 A This is the Cadillac backing into that parking space and you'll see
6 they sit there for a minute. They're pretty close to the wall on the passenger
7 side. And then Mr. McCampbell actually has to renegotiate the vehicle so that
8 the passengers can get out.

9 We're now at 9:18, roughly a minute and a half after the vehicle
10 has arrived.

11 Q Okay. So now we're going to go back to all the camera angles. So
12 we have camera 1, camera 2, camera 3, 4, 5, 6, 7, and 8; is that correct.

13 A That's correct. There was no camera 9.

14 Q Nine being blank.

15 So at this point no one's out of the vehicle and that's at 21:18. So
16 right there I just want to pause it on camera 3, it was at 21:18 that it jumps
17 about 30 seconds. So does that mean the camera basically, it's motion
18 sensitive or appears to be motion sensitive?

19 A It could be that or it could be just the time catching up with the
20 D.V.R. to bring all the cameras into line.

21 Q Okay. And now starting at 21:19, at 22 on camera 4, did you see
22 two individuals just get out of the vehicle?

23 A Yes. A lighter skinned male who we later identified as Dustin Bleak
24 got out of the right, rear passenger seat. And then Mr. Coleman got out of the
25 front passenger seat.

1 Q Okay. And for the record I just enlarged camera 4.

2 A Once they get out of the vehicle, they walk to the area behind the
3 vehicle somewhere around the trunk and out of camera view for a few seconds.

4 Then down here in the lower, left hand corner of the screen, you're
5 looking at it, yes, lower left hand corner of the screen is Mr. Bleak and he has
6 what looks like a can in his left hand and in a moment you'll see the light from a
7 cell phone in his right hand.

8 Mr. Coleman is between the Cadillac and the dark-colored four-door
9 sedan which belongs to the Grace brothers.

10 Q Okay. Right there --

11 A You can see Mr. Coleman is also on his cell phone, that little light in
12 front of him.

13 Q So that's at 21:20:25?

14 A That's correct. At the same time that this is going on the victim is
15 standing on the second floor outside of his apartment looking over the railing
16 down in the direction of the Cadillac.

17 Q Let's -- so camera 1 now at 21:20, which now is enlarged, you
18 can --

19 A These are the Grace brothers that are walking toward you.

20 Q Okay. And once they walk past, before they got out, there was a
21 person standing at the railing, that would be the victim?

22 A That's correct. You can see in the background there up against the
23 railing in a white tank top, dark pants, that's the victim.

24 Q So I'm going to go back to camera 4. So at this point, based on
25 who you see in camera 1, the victim is looking down from the balcony area?

1 A That's correct.

2 Q And Mr. Muhammad-Coleman, the defendant, is between cars and
3 between the blue Cadillac and the four-door sedan and Mr. Bleak who's now
4 out of --

5 A Mr. Bleak is actually right next to Mr. Coleman.

6 Q Thank you. Thank you, Detective.

7 I'm replaying starting at 21:21.

8 A This is Jermaine or this is the victim coming down the stairs right
9 now and he'll walk around the front of the Cadillac, around the back of the
10 Grace vehicle.

11 Q Now he's walking in between cars.

12 A And this is LeCory Grace and Jermaine Grace coming down the
13 stairway.

14 Q Okay. And then the person who was walking in between cars, who
15 would that who would that be with the black hat?

16 A That's Mr. Coleman. Mr. Coleman is still between the two cars.
17 Mr. Bleak is closest to the Grace brother's vehicle.

18 Q Okay.

19 A So this would be Jermaine Grace getting into the driver's seat and
20 his brother getting into the passenger seat.

21 And then Mr. Coleman is back on his phone near the trunk of the
22 Cadillac and you can see the victim over near the front of the Grace vehicle.
23 He's the one wearing the white tank top. And then Mr. Bleak the person who
24 is in front of him wearing the baseball cap and the dark sweatshirt.

25 You will see Mr. Bleak kind of adjust his baseball cap here in just a

1 moment.

2 And that's the victim right there, that you can clearly see. He's got
3 his arms crossed.

4 Q And that would be at 21:23?

5 A Yes. At this point it doesn't appear that the victim has anything in
6 his hands.

7 Q And you can see both his hands on the video at this point.

8 A And there is Mr. Bleak with his baseball cap off scratching his head,
9 puts his cap back on. Mr. Coleman is still standing near the trunk of the
10 Cadillac.

11 Now the victim is taking something out of his pocket. You can't
12 really tell what it is. He's kind of manipulating it with both of his hands.
13 Mr. Bleak is kind in front of him off to his right side. And now you can see Mr.
14 Coleman walking around, pulls a pistol out, the victim has something in his right
15 hand that Mr. Coleman is trying to grab.

16 MR. SCHWARZ: Judge, I'm going to object. I mean, you know, this is
17 speculation at this point. With all due respect, I'm going to object. It's
18 speculation.

19 THE COURT: Approach the bench.

20 [Bench conference -- not transcribed]

21 THE COURT: Thank you.

22 BY MR. SCHWARTZER:

23 Q All right. Detective, we're going to have the video speak for itself
24 right now. And then I'll pause it a few times and ask you some questions.

25 A Okay.

1 Q So that's camera 4's angle, correct?

2 A That's correct.

3 Q I want to go to camera 3. Back it up a little bit.

4 Can you tell the ladies and gentlemen -- we're at 21:23 at 28 --
5 who -- do you see two individuals in this video?

6 A Yes. Yes.

7 Q In the back portion by the -- by that container?

8 A That's correct.

9 Q Okay. Who's who?

10 A The one closest to the trailer is the victim. The one immediately to
11 his right would be Mr. Bleak.

12 Q Okay?

13 THE COURT: On the left in the video, to the gentleman's right in
14 actuality.

15 THE WITNESS: Correct, Your Honor.

16 BY MR. SCHWARTZER:

17 Q And that would be the person wearing the white shirt would be the
18 victim?

19 A Yes.

20 Q Okay. And then who just drove away?

21 A The Grace brothers.

22 Q Okay. Okay. Someone just entered into the screen; do you see
23 that individual?

24 A That's Mr. Coleman.

25 Q Okay. He enters the screen within seconds of the Grace brothers

1 driving off?

2 A Correct.

3 Q And we'll pause it right there. There's another feature on this video
4 too where you can actually go scene by -- screen by screen; is that correct?

5 A Yes.

6 Q And that would be these two arrows right here?

7 A Yes.

8 Q So they go -- so now it's just moving basically screen by screen?

9 A Frame.

10 Q Frame by frame.

11 A Frame by frame.

12 Q Thank you, Detective.

13 We're at 21:24:02 at this point.

14 Now, did you see something?

15 A That was the first shot. That little flash that you saw between the
16 victim wearing the white shirt, Mr. Coleman with the dark clothing on.

17 Q Okay. So I'm going to play it one more time. So we went back?

18 A That's the first shot.

19 Q Okay. Where is it coming from?

20 A It's hard to tell. It could be Mr. Coleman firing the first shot. It
21 could be the victim with his pistol out at this point.

22 There's another shot. That one was Mr. Coleman.

23 Q So, again, we went back. So there's --

24 A That's the first shot.

25 Q Right. And then there's -- let me ask you this, after that first shot

1 what is the person in the white doing?

2 A He's trying to get away and then he falls down.

3 Q So he's falling down after that first shot?

4 A That's correct.

5 Q And then there's the second shot?

6 A Second shot. Third shot.

7 Q Okay. And did you see that fourth shot right there?

8 A Yes.

9 Q Okay.

10 A And then the smoke coming off the side of the building are bullets
11 impacting the stucco on the Travelers Inn and those shots were fired by the
12 victim.

13 Q Okay. Thank you, Detective.

14 MR. SCHWARTZER: I'll pass the witness.

15 THE COURT: Mr. Schwarz.

16 MR. SCHWARZ: Thank you.

17 **CROSS-EXAMINATION OF CLIFFORD MOGG**

18 BY MR. SCHWARZ:

19 Q Detective, I mean, I know you've seen the video a lot, I've seen it a
20 lot; isn't it true they both kind of fall away from each other after that first shot
21 is fired?

22 A The victim actually falls first.

23 Q Well, I mean, within moments they both fall away from each other?

24 A Within moments they --

25 Q Are you telling me Muhammad-Coleman never falls away from the

1 scene?

2 A No, he does. Looks like he trips as he's trying to get back to the
3 vehicle.

4 Q Okay. And in your opinion, right, after reviewing it, you still can't
5 tell who fired the first shot?

6 A I can't tell who fired the first shot.

7 Q Now, I want to go way back, like, three hours ago, when you were
8 at the hospital, you said you were there to see if there were any witnesses to
9 Mr. Borero's murder. You didn't really mean to say "murder," you meant to say
10 shooting death, right?

11 A No.

12 Q I mean, wouldn't you agree with me we are here to determine
13 whether or not what occurred is in fact a murder?

14 MR. SCHWARTZER: Objection.

15 THE WITNESS: I know what I was investigating.

16 BY MR. SCHWARZ:

17 Q You were investigating a shooting death?

18 A I was investigating a murder with the information I had.

19 Q Did you view the body?

20 A I did.

21 Q Do you recall if he had any jewelry? Mr. Borero?

22 A He did.

23 Q Was it your responsibility to recover anything from the body at that
24 time?

25 A I don't recall if we collected the jewelry at that point or not.

1 Sometimes we leave all the clothing and the jewelry on. It's collected the next
2 morning at autopsy by detectives and crime scene investigators. Sometimes
3 we collect the clothing and the jewelry that night.

4 Q Okay. And you don't recall what you did this time?

5 A I don't recall.

6 Q Okay. But he did have jewelry with him?

7 A He did.

8 Q Now, you indicated that you spoke to Mr. McCampbell when he
9 turned himself in which was the 21st.

10 A That's correct.

11 Q That was two days after the incident?

12 A Yes, sir.

13 Q Now, did Mr. McCampbell tell you he tried to call the police to turn
14 himself in earlier than that?

15 A He didn't tell me that during his interview.

16 Q Okay. So as far as you know he waited two days to turn himself
17 in?

18 A That's correct.

19 Q Now, I know you identified Dustin Bleak, we talked about
20 Mr. McCampbell, we talked about my client, there was another individual who
21 was present during all this too, wasn't there?

22 A There was seated in the backseat of the Cadillac behind the driver.

23 Q And who was that?

24 A I would have to refer to the report. I don't recall his name off the
25 top of my --

1 Q I don't think Mr. Schwarzter's going to object if I refresh your
2 recollection.

3 Does Travis Costa sound familiar?

4 A It does.

5 Q Okay. And Mr. McCampbell was never arrested or was never
6 charged in connection with this incident?

7 A He was not.

8 Q Okay. And neither was Mr. Costa?

9 A No, sir.

10 Q Mr. Bleak was and my client?

11 A That's correct.

12 MR. SCHWARZ: Okay. All right. I don't have anything further. Thank
13 you.

14 THE COURT: Thank you.

15 Mr. Schwartz.

16 MR. SCHWARTZER: No, Your Honor.

17 THE COURT: Anything from our jurors? Yes. You all can approach.

18 [Bench conference -- not transcribed]

19 THE COURT: Okay. Couple of questions for you, Detective. First off,
20 the lineups that you-all put together, you guys get photos from D.M.V., work
21 card information, all kinds of sources to get -- to get photos to try and develop
22 similar -- similar lineups for people, correct?

23 THE WITNESS: These photographs were actually collected from LVMPD
24 database and that's what we used to construct the photo lineup.

25 THE COURT: And do you have any idea how close in time to when you

1 did the lineup the photo of Mr. Coleman, Mr. Muhammad-Coleman was taken?

2 THE WITNESS: I don't recall the date on it.

3 THE COURT: And that's okay. Let me ask you just ask you this, his
4 appearance in the photo, was that similar to his appearance at the time as far
5 as you recall from having any interaction?

6 THE WITNESS: That's correct.

7 THE COURT: Okay. And when was it that Mr. Muhammad-Coleman was
8 arrested in this case; do you recall the date?

9 THE WITNESS: I don't recall the date. I wasn't involved in his arrest.
10 That was Detective Miller and other detectives.

11 THE COURT: Okay. Do you recall if it was days? Weeks? Months?

12 THE WITNESS: I don't, Your Honor.

13 THE COURT: Okay. I don't want you to speculate. That's okay.

14 You expressed an opinion, I believe, during the playing of the video
15 that Mr. Muhammad-Coleman was the gentleman that exited the front
16 passenger seat of the vehicle, correct?

17 THE WITNESS: That's correct.

18 THE COURT: I'm assuming that that opinion is based on the totality of
19 information you had available to you not just the watching of the video?

20 THE WITNESS: That's correct.

21 THE COURT: Okay. And there is a point in the video, the question is
22 when Mr. Muhammad-Coleman approaches the area where Mr. Borero is and
23 the question is are we seeing the defendant strike Mr. Borero in some fashion
24 with the gun prior to the first shot occurring?

25 THE WITNESS: That's what it appears to be.

1 THE COURT: Okay. All right. Mr. Schwartzer, based on my questions,
2 do you have any questions?

3 MR. SCHWARTZER: Yes, Your Honor, just one.

4 BY MR. SCHWARTZER:

5 Q Who appears to pull out the gun first?

6 A Mr. Coleman.

7 MR. SCHWARTZER: That's it, Your Honor.

8 THE COURT: Mr. Schwarz, anything questions?

9 MR. SCHWARZ: Yes.

10 BY MR. SCHWARZ:

11 Q Detective, just so we're clear, when you're looking at the video you
12 are -- you are representing what appears to be on the video based on your
13 viewing of it, yes?

14 A That's correct.

15 MR. SCHWARZ: Thank you very much.

16 THE COURT: Mr. Schwartzer, anything further?

17 MR. SCHWARTZER: No, Your Honor. Thank you.

18 THE COURT: Detective Mogg, thank you very much for your time, sir. I
19 appreciate it. You are excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: State may call their next witness.

22 MR. SCHWARTZER: Your Honor, we're -- we're done for today.

23 THE COURT: Okay. Approach the bench again if you would, guys.

24 [Bench conference -- not transcribed]

25 THE COURT: All right, folks. We're going to go ahead and break early

1 for your weekend. We continue to be substantially ahead of schedule such that
2 the attorneys are telling me they believe they'll be finished with the
3 presentation of evidence on Monday. I don't know if we'll finish in time to be
4 able to actually argue the case on Monday and get it to you for deliberations,
5 but if not, it will be Tuesday morning that you argue and start deliberations. So
6 we're at least a day, if not, more ahead of schedule. Okay?

7 With that, I'll release you for the weekend. I thank you very much
8 for the week. During the recess you are admonished not to talk or converse
9 among yourselves or with anyone else on any subject connected with the trial
10 or read, watch, or listen to any report of or commentary on the trial by any
11 medium of information including, without limitation, to newspapers, television,
12 the Internet, and radio and you cannot form or express any opinion on any
13 subject connected with the case 'til it's finally submitted to you.

14 And again, please, make sure over the weekend that you don't do
15 any kind of independent investigation or recreation or research on your own.
16 Yes.

17 JUROR NO. 12: What -- is it the same time?

18 THE WITNESS: We're going to start at 10:00 o'clock on Monday
19 morning. Okay?

20 JUROR NO. 12: 10:00 o'clock on Monday.

21 THE COURT: 10:00 o'clock, there you go. On Monday, yes. Unless you
22 want to come in over the weekend, no? Okay.

23 [Outside the presence of the jury panel]

24 MR. SCHWARTZER: Your Honor, before we break maybe we should
25 canvass as well --

1 THE COURT: Well, we'll do that tomorrow because we'll break at the
2 end of your case-in-chief. So I'm okay with that.

3 But I did want to make a record of the jury questions. And the
4 earlier ones that were asked there were no objections to those, correct?

5 MR. SCHWARZ: Yes.

6 THE COURT: All right. And then with regard to this witness, there were
7 questions that came in from two jurors. The first question was requesting to
8 ask about when the photo lineup picture was taken and why. So it was agreed
9 at the bench that we would ask about the picture and the similarities that
10 Mr. Muhammad-Coleman may have had at the time that this occurred to the
11 picture but not ask about why the picture was taken, correct?

12 MR. SCHWARTZER: That's correct, Your Honor.

13 MR. SCHWARZ: Yes, Your Honor.

14 THE COURT: Okay. And then the second question was asking about
15 when Mr. Coleman was arrested in the case and there was no objection to that,
16 correct?

17 MR. SCHWARTZER: That's correct.

18 MR. SCHWARZ: Yes, no objection.

19 THE COURT: And then the last question was, quote, "How does
20 Detective Mogg know that Mr. Coleman exited the front seat? I cannot see
21 faces on the video." And it was agreed at the bench to ask him about that with
22 the characterization of his testimony was based on all the information he had
23 not just watching the video and there was no objection to that, correct?

24 MR. SCHWARZ: Yes.

25 MR. SCHWARTZER: Correct, Your Honor.

1 THE COURT: And then finally, the last question that came from another
2 juror, quote, "Are we seeing the defendant pistol-whip Mr. Borero prior to the
3 first shot?"

4 And, Mr. Schwarz, you said that did you not object to the question
5 so long as we eliminated the word "pistol-whip" and replaced it with just that
6 the defendant struck Mr. Borero with the gun, correct?

7 MR. SCHWARZ: That's correct.

8 MR. SCHWARTZER: That's correct, Your Honor.

9 THE COURT: Okay. All right, guys, then I will see you Monday at 10:00
10 o'clock. Please don't forget to get jury instructions to us either over the
11 weekend or Monday morning. Okay?

12 MR. SCHWARTZER: Will do.

13 PROCEEDING CONCLUDED AT 4:12 P.M.

14 * * * * *

15
16
17
18
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio-video recording of this proceeding in the above-entitled case.

21 

22 SARA RICHARDSON
23 Court Recorder/Transcriber
24
25



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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

12 MONDAY, JANUARY 9, 2017

13
14 ***RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5***

15
16
17
18 APPEARANCES:

19 For the State:

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

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwartz	2	24
Cross-Examination by Mr. Schwarz	2	81
Redirect Examination by Mr. Schwartz	2	97
		105
Recross-Examination by Mr. Schwarz	2	104

Direct Examination by Mr. Hamner	3	8
Cross-Examination by Mr. Schwarz	3	15
Redirect Examination by Mr. Hamner	3	18

Direct Examination by Mr. Hamner	3	20
Cross-Examination by Mr. Schwarz	3	37
Redirect Examination by Mr. Hamner	3	46
Recross-Examination by Mr. Schwarz	3	49

Direct Examination by Mr. Hamner	3	51
Cross-Examination by Mr. Schwarz	3	61
Redirect Examination by Mr. Hamner	3	63

Direct Examination by Mr. Hamner	3	65
Cross-Examination by Mr. Schwarz	3	82
Redirect Examination by Mr. Hamner	3	85
Recross-Examination by Mr. Schwarz	3	88

Direct Examination by Mr. Schwartzer	3	91
Cross-Examination by Mr. Schwarz	3	103

INDEX OF WITNESSES (continued)

STATE'S WITNESSES:

DAY PAGE

ALANE OLSON

Direct Examination by Mr. Schwartz	3	107
Cross-Examination by Mr. Schwarz	3	124
Redirect Examination by Mr. Schwartz	3	125
Recross-Examination by Mr. Schwarz	3	126

JENNIFER REINER

Direct Examination by Mr. Schwartz	3	127
------------------------------------	---	-----

ADAM FELABOM

Direct Examination by Mr. Hamner	3	137
Cross-Examination by Mr. Schwarz	3	150

CLIFFORD MOGG

Direct Examination by Mr. Schwartz	3	158
Cross-Examination by Mr. Schwarz	3	188

KHUSHBOO NARECHANIA

Direct Examination by Mr. Hamner	4	7
Cross-Examination by Mr. Schwarz	4	13

ANYA LESTER

Direct Examination by Mr. Schwartz	4	14
Cross-Examination by Mr. Schwarz	4	35

ERIC SAHOTA

Direct Examination by Mr. Schwartz	4	40
Cross-Examination by Mr. Schwarz	4	64

TERRI MILLER

Direct Examination by Mr. Schwartz	4	66
Cross-Examination by Mr. Schwarz	4	105
Redirect Examination by Mr. Schwartz	4	112
Direct Examination on Rebuttal by Mr. Schwartz	4	168
Cross-Examination on Rebuttal by Mr. Schwarz	4	181
Redirect Examination on Rebuttal by Mr. Schwartz	4	186

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>DAY</u>	<u>PAGE</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

Direct Examination by Mr. Schwarz	4	119
Cross-Examination by Mr. Schwartz	4	141
Redirect Examination by Mr. Schwarz	4	160
Recross-Examination by Mr. Schwartz	4	163

Cross-Examination by Mr. Schwartzer	4	141
-------------------------------------	---	-----

Recross-Examination by Mr. Schwartzer	4	163
---------------------------------------	---	-----

LIST OF EXHIBITS

STATE'S EXHIBITS

DAY PAGE

Exhibit 1	4	27
Exhibit 3	4	99
Exhibits 4 through 112	2	6
Exhibits 113 and 113a	2	73
Exhibit 114 and 114a	2	69
Exhibit 115 and 115a	2	69
Exhibit 118	3	179
Exhibit 119	3	178
Exhibit 120	4	56
Exhibit 122	3	35
Exhibit 123	4	114
Exhibit 124	4	172

DEFENDANT'S EXHIBITS

DAY PAGE

Exhibit A	3	124
-----------	---	-----

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 9, 2017, 10:20 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

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

5 MR. SCHWARZ: I do not, Judge.

6 THE COURT: State?

7 MR. SCHWARTZER: No, Your Honor.

8 THE COURT: Okay. Joel, you can go ahead.

9 [In the presence of the jury panel]

10 THE MARSHAL: Jury's present, Your Honor.

11 THE COURT: You all can be seated. Thank you.

12 All right. Good morning, ladies and gentlemen. We are back on the
13 record. Mr. Muhammad-Coleman's present with his attorney. State's attorneys
14 are present. Our jurors are present. We're going to continue on this morning
15 with the State's case-in-chief.

16 So, the State, you-all may call your next witness.

17 MR. HAMNER: Okay. The State's going to call Khushboo Narechania to
18 the stand.

19 THE COURT: Thank you.

20 Good morning. Raise your right hand. Thank you.

21 **KHUSHBOO NARECHANIA,**

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

23 THE CLERK: You may be seated. Will you please state and -- state and
24 spell your name for the record.

25 THE WITNESS: Yes. First name Khushboo, spelled K-H-U-S-H-B-O-O,

1 last name Narechania, N-A-R-E-C-H-A-N-I-A.

2 THE COURT: Thank you. Mr. Hamner.

3 MR. HAMNER: Thank you very much.

4 **DIRECT EXAMINATION OF KHUSHBOO NARECHANIA**

5 BY MR. HAMNER:

6 Q Good morning.

7 A Morning.

8 Q Could you please explain to the jury what you do for a living.

9 A Yes. I am currently employed as a forensic scientist with the Las
10 Vegas Metropolitan Police Department's forensic laboratory in the chemistry
11 detail.

12 Q Okay. And how long have you been doing that for?

13 A Since June of 2005.

14 Q And prior to working for Metro what did do you?

15 A Well, it was my first job out of college.

16 Q Okay. So where did you go to college?

17 A I have a bachelor's of science degree in biology with a minor in
18 chemistry and a master's of science degree in forensic science all from the
19 University of Illinois.

20 Q Okay. So you come out here to Metro and what are your
21 responsibilities in that particular position?

22 A I analyze physical evidence for the presence or absence of a
23 controlled substance and I testify to those findings in a court of law.

24 Q Okay. On average how many times do you kind of do this sort of
25 analysis a year?

1 A On average, I would say I do maybe about 150 cases a year.

2 Q Okay. How often do you testify?

3 A I've testified on average, it's been running about six times a year.

4 Q Okay. Well, let me -- let me ask you this, have you -- were you kind
5 of asked to analyze kind of a package in an event number under 130419-4147?

6 A Yes.

7 Q Okay. And were you asked to analyze some sort of substance that
8 the police impounded that they believed possibly to be narcotics?

9 A Yes.

10 Q Why don't you explain to the jury a little bit about what that
11 process is like, you know, you get this request, how do you test it?

12 A I receive a request from my supervisor, after the requests have been
13 approved, and once I receive the request I can order the evidence from our main
14 evidence vault. Every item of evidence that comes through the department is
15 given a bar code and that bar code is scanned into a system. So I can very
16 easily pick and choose which items of evidence I want to be delivered and I
17 click and drag into a list. The evidence technicians at the main evidence vault
18 can access that list and then they bring us the evidence the next day.

19 Q And those requested items, the specific items, can they be made by
20 the either the police officer or maybe the district attorney or even -- even
21 yourself? Would that be accurate?

22 A The request can be submitted by a district attorney or an officer,
23 but the items of evidence that are booked into the system are generally booked
24 by an officer.

25 Q Okay. So after you kind of click and drag, do they bring them to

1 your -- your lab?

2 A Yes.

3 Q Okay. What do you do then?

4 A Once they bring it to the laboratory I go and receive it and the
5 transaction is tracked through our electronic system called ACE, it's Active
6 Control of Evidence, and that tracks all of the -- that is the official chain of
7 custody for the department. So that will track all the transactions within
8 department members. And once I bring the evidence back to my lab bench I
9 can begin my analysis.

10 Q Okay. And in this case did you request or have brought to your lab
11 an item under impound package number 6, impound item number 20?

12 A Yes, I did.

13 Q All right. And explain just to the jury what's a package and what's
14 an item?

15 A Sometimes for a specific case or event there may be several items
16 of evidence, so when the officers book the items they may need multiple
17 packages and the packages are numbered sequentially 1, 2, 3, 4, and so on and
18 then items are the same. So in this case the item that was requested of me
19 was package 6, item 20.

20 Q Okay. So there were 20 items in package -- well, at a minimum
21 there were 20 items in package 6, right, and you just picked that 20th item,
22 right, would that be accurate?

23 A In this case there was only one inside this package.

24 Q Okay.

25 A The previous 19 items may have been scattered through packages

1 1 through 5.

2 Q Okay. So you did that in this case. So now you get your -- you get
3 your item out of your package. What do you do next?

4 A First, before I even open the package, I'll make sure that the seals
5 and the markings on the package are in tact and that there's no evidence of
6 tampering which in this case there was not. So then I'll go ahead and open the
7 package and I'll take an inventory and compare the contents of the package to
8 what's listed on the outside booking label.

9 Q All right. So on the booking label does it indicate kind of the gross
10 weight of what the substance may be?

11 A At times it might.

12 Q Okay. In this case what was the gross weight of this package and
13 item?

14 A The gross -- excuse me, the gross weight that was listed on the
15 envelope was 8.3 grams.

16 Q And if you could explain to the jury, what is a gross weight mean in
17 terms of what you do?

18 A A gross weight is the weight of the substance inside whatever
19 packaging it's received in.

20 Q So the gross weight includes the weight of whatever the substance
21 is packaged in as well as the substance itself?

22 A Correct.

23 Q Okay. So 8.3, with this particular item, what do you do next?

24 A I'll then begin to note the physical appearance of the evidence,
25 whether it's a white powder or crystalline substance or a green leafy substance.

1 In this case it was an off-white crystalline substance. I'll then proceed to
2 measure the gross weight measure of the substance as received so I can
3 compare it to what was listed on the package and then I'll remove the
4 packaging and measure the net weight of the item and then I can begin my
5 chemical analysis.

6 Q And what was the net weight of the item?

7 A The net weight of this item was 7.15 grams.

8 Q Okay. And then you said you begin kind of your analysis at that
9 point?

10 A Yes.

11 Q Or chemical analysis possibly. All right. Explain what that process
12 is like to the jury.

13 A In this case I performed two chemical color tests which gave me an
14 indication of what the substance might contain and that helped me to prepare
15 the sample for injection on to our gas chromatograph mass spectrometer or
16 G.C.M.S. for short.

17 Q Now, you mentioned that you did kind of a color test first to kind of
18 help guide you, is that kind of the purpose of it to kind of give you a sense of
19 maybe what potential narcotic you may be dealing with?

20 A Yes.

21 Q Okay. And then you sent it over to some machine with a very
22 fancy name and I can't even attempt to pronounce at this point. What was that
23 again?

24 A It's G.C.M.S. for short.

25 Q Okay, G.C.M.S. What does that instrument do?

1 A The -- it's actually a two-part instrument. It's two instruments that
2 are coupled together. The first part will separate mixtures of compounds and
3 the second part will help to identify those isolated compounds.

4 Q Why do you want to separate them?

5 A If the compounds, if there's a mixture, then the data that you
6 receive from the second part of the instrument will be a mixture of two
7 compounds and it will be very difficult to identify and isolate those two
8 compounds. So the first part of the instrument separates it for us, so the
9 second part can give you better information on each individualized component.

10 Q Okay. So let's talk about the second part. How does the second
11 portion of that instrument work of the G.S.M.? Did I do that right?

12 A G.C.M.S.

13 Q G.C.M.S. Tell us about the second portion of that instrument, how
14 does that function?

15 A So the second portion of the instrument, once it receives each
16 individualized component, it subjects that component to a very high energy
17 beam which then fragments that molecule up into separate pieces and those
18 pieces are plotted on a graph and that gives us structural information about the
19 molecule. So if you think of the molecule like a jigsaw puzzle, when you drop a
20 jigsaw puzzle, say, from a certain height, it's always going to break at the same
21 points, it's always going to break at the weakest links and our molecule is the
22 same way. When you hit it with the same amount of force, a constant amount
23 of force, it's always going to break the same way. So we can compare our
24 spectrum to a spectrum of a known material and make an identification.

25 Q Okay. So you're kind of matching the structure of the item that

1 you have with -- with known structures?

2 A Correct.

3 Q Kind of also like maybe comparing fingerprints in a way?

4 A Yes.

5 Q Okay. So were you able to make a determination about what this --
6 the chemical structure was of this particular substance?

7 A Yes, I was.

8 Q And what was the determination that you made within a degree of
9 scientific certainty?

10 A I found that this substance tested positive for methamphetamine.

11 Q Okay. So it was meth and the net weight of that was 7.15 grams?

12 A Correct.

13 Q Okay.

14 MR. HAMNER: Court's indulgence. No further questions at this time.

15 THE COURT: Mr. Schwarz.

16 MR. SCHWARZ: Yes, very, very briefly.

17 **CROSS-EXAMINATION OF KHUSHBOO NARECHANIA**

18 BY MR. SCHWARZ:

19 Q You would only be responsible for testing the chemical compound?

20 A Correct.

21 Q So, for example, fingerprinting the bag or that kind of stuff that
22 would be somebody else?

23 A Correct.

24 MR. SCHWARZ: All right. I have nothing further. Thank you.

25 THE COURT: Anything further?

1 MR. HAMNER: No, Your Honor.

2 THE COURT: Anything from our jurors?

3 Narechania?

4 THE WITNESS: Yes.

5 THE COURT: All right, Ms. Narechania, thank you very much for your
6 time. I appreciate it. You can excused.

7 THE WITNESS: Thank you.

8 THE COURT: State mate call their next witness.

9 MR. SCHWARTZER: State calls Anya Lester, Your Honor.

10 THE COURT: You said Lester, right?

11 MR. SCHWARTZER: Yes, Your Honor.

12 THE COURT: Good morning.

13 **ANYA LESTER,**

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

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

17 THE WITNESS: My name is Anya, A-N-Y-A; Lester -- L-E-S-T-E-R.

18 THE COURT: Mr. Schwartzer.

19 MR. SCHWARTZER: Thank you, Your Honor.

20 **DIRECT EXAMINATION OF ANYA LESTER**

21 BY MR. SCHWARTZER:

22 Q Ms. Lester, how are you currently employed?

23 A I am a forensic scientist with the Las Vegas Metropolitan Police
24 Department, forensic laboratory in the firearms and toolmarks analysis unit.

25 Q What are some of the responsibilities of a forensic scientist in the

1 firearm and tool department?

2 A What I do is I examine firearms, ammunition, and ammunition
3 components and any other firearm's related evidence, particularly the
4 microscopic comparisons of ammunition components to determine if they were
5 fired by a particular firearm.

6 Q Now, how long have you been doing that for Las Vegas
7 Metropolitan Police Department?

8 A I joined the forensic lab in December of 2008 as a forensic lab aide
9 and I promoted into the forensic scientist position in December of 2009.

10 Q Did you have to go through any type of training in order to get that
11 position as a forensic scientist?

12 A Yes. I have a bachelor of science degree in forensic science and
13 since joining the firearms and toolmarks analysis unit in 2009, I completed a
14 comprehensive training program which consisted of about 2500 hours of
15 training. It included classes both internal to the lab and external agencies. I
16 also toured various firearm and ammunition manufacturing facilities. I took a
17 variety of manufacturer's armors courses. I did a series of mock cases
18 underneath an experienced examiner and also supervised casework underneath
19 an experienced examiner. And upon completion of that training I was required
20 to pass a series of competency tests which allowed me to begin my own
21 casework and that was in the spring of 2011.

22 Q How many cases on average do have you a year?

23 A I complete anywhere from 250 to 350 cases a year.

24 Q Are you often called to testify in court or in a grand jury regarding
25 your findings?

1 A Yes, I am.

2 Q About how many times do you think you've testified in the Eighth
3 Judicial District Court here in Clark County?

4 A In District Court, approximately 20 times.

5 Q And how about in court in general?

6 A Approximately 25 times.

7 Q Okay. On top of the 20?

8 A Correct. That would be 20 in District and maybe a handful of times
9 in Justice and Federal Court.

10 Q Okay. Now, when you're asked to look at a firearm what are you --
11 what are some of the roles you're asked to do regarding the observation of a
12 firearm?

13 A When I look at a firearm, the first thing I do is I just do a general
14 overall inspection of it. I gather what the manufacturer is, what the model is. I
15 like at the serial number. I check the safetys. I generally look at it, make sure
16 that I think it's safe enough for me to test fire it and --

17 Q Let stop you there.

18 A Sure.

19 Q I want to actually direct your attention to this event number,
20 130419-4147, were you asked to look at certain items in this case?

21 A Yes, I was.

22 Q Specifically, two specific firearms?

23 A Yes, sir.

24 Q That would be a Ruger .40 caliber, correct?

25 A Ruger model P94, .40 Smith and Wesson caliber semi-automatic

1 pistol was the first one, yes.

2 Q And then an LC 9 millimeter, again, a Ruger, correct?

3 A Yeah. Ruger model LC 9, 9 millimeter Luger caliber semi-automatic
4 pistol.

5 Q And that also -- and you were also asked to look at some casings
6 and bullets as well?

7 A Yes, that's correct.

8 Q Can you actually explain to the ladies and gentlemen of the jury
9 what a casing is versus a bullet?

10 A Sure. I have a model if I may use it?

11 MR. SCHWARTZER: Mr. Schwarz.

12 MR. SCHWARZ: I have no objection.

13 THE COURT: Go ahead.

14 MR. SCHWARZ: As long as there is going to be no firing.

15 THE WITNESS: No firing, just plastic model.

16 THE COURT: A big model.

17 THE WITNESS: So we refer to a cartridge, this is a single unit of
18 ammunition. Some people call this a round and sometimes it's erroneously
19 referred to as a bullet, like, people say I load my gun with bullets, but the whole
20 thing is actually called a cartridge. It has several components. Part of it is the
21 bullet or the projectile, that's the part that actually goes down the barrel and
22 comes out of the muzzle of the firearm and flies through the air. Everything is
23 held together by what we call a cartridge case.

24 And this case, it consists of here on this headstamp or this
25 breechface area, a little area called the primer, this is a chemical compound

1 that's shock sensitive so that when you pull the trigger you get a firing pin or a
2 striker that goes forward and it strikes that little chemical compound and makes
3 a spark. What that spark does is it ignites what's inside here which is the
4 powder and when that powder burns it liberates a large amount of gas and
5 that's what actually propels the bullet down the barrel and out of the muzzle of
6 the firearm.

7 BY MR. SCHWARTZER:

8 Q Thank you. Now, so when you're asked -- when I say you were
9 asked to look at some bullets and some casing, those are two separate items?

10 A Yes.

11 Q The projectile and the casing, right?

12 A Yes, that's correct.

13 Q And each of those things are something that you can compare to
14 the firearm, correct?

15 A Yes.

16 Q Okay. And now, again, referring to 130419-4147, where do you
17 get these items in order to do your analysis? Where do you get these firearms?
18 These casings? What have you?

19 A The -- the request comes into our laboratory usually by a detective
20 or it could be from the D.A.'s office or another officer, we get a request. When
21 that request comes in it goes to our manager and then the manager assigns it to
22 a particular analyst. Once that case is assigned to me I go into our evidence
23 management system and I, on my computer, I pull up those pieces of the
24 evidence that were requested from the case to be analyzed and then that goes
25 on to a list and then someone from our evidence vault does a run everyday,

1 they bring that evidence to our laboratory. It is secure moved from the person
2 who does the run to the evidence tech that's at our laboratory. And then the
3 evidence is secure moved from the evidence tech to me so I can do my
4 analysis.

5 Q Now, obviously, you're not the person going out there gathering the
6 evidence, that's the crime scene analyst's job, sometimes the detective's job,
7 correct?

8 A Correct.

9 Q But are you able to see on your forms where this evidence comes
10 from? Where the casings come from? Bullets come from? Guns come from?

11 A Yes. While I'm not the one who gathers the evidence out there at
12 the scene I have a impound form and also I have the container that the evidence
13 comes in and on there, it says where it was impounded from.

14 Q Okay. First I want to talk about the P94 .40 caliber Ruger. Is that
15 a Ruger?

16 A Ruger, yes.

17 Q Thank you. Now you said you test fired that, made sure the safety
18 worked, all that?

19 A Yes.

20 Q Okay. When you test -- tell the ladies and gentlemen of the jury
21 what you do when you test fire these weapons?

22 A When we test fire it, we have an indoor shooting range and we
23 have a shooting tank that's stainless steel. It's filled with about 600 gallons of
24 water. It has a pneumatic lid and a port that we're able to shoot through. So
25 when we test fire, we what we do is after I've done the initial exam that I

1 spoke about earlier making sure the gun is safe enough for me to actually fire it,
2 I go into that room where that shooting tank is and I close the lid and I test fire
3 into that port. The bullets go right into the water. Since water is denser than
4 air, the bullets slow down in the water and then they just fall down into the
5 bottom of the tank and then we have a vacuum tube to retrieve those out of
6 water.

7 What that allows me to do is it allows me to maintain pristine
8 samples from that particular firearm, test fires from that gun that I know came
9 from that gun because I fired them myself. The same thing, in conjunction with
10 that, we have a net that surrounds that shooting port and when the cartridge
11 cases are extracted and ejected they get caught inside that net and it allows me
12 to obtain those cartridge cases, test fires from that firearm that I know came
13 from that gun because again I fired them myself.

14 Q Okay. And in your experience with this P94, when the casing's
15 ejected from the firearm where do they tend to go to?

16 A In general if you hold the firearm upright the way it's supposed to
17 be held, not sideways, and if you hold the muzzle parallel with the ground, not
18 up or down, in general they eject back and to the right-hand side.

19 Q Now, were you asked to compare some casings and possibly bullets
20 to this -- to the P94?

21 A Yes, I was.

22 Q Okay. Where did the casings come from?

23 A If I may refer to my case file?

24 Q And that would refresh your memory?

25 A Yes, thank you.

1 MR. SCHWARTZER: And for the record, Your Honor, Ms. Lester does
2 have her -- her complete forensic file with her which has been provided to the
3 defense in discovery.

4 THE COURT: Okay.

5 MR. SCHWARZ: Judge, and with all due respect, I have no objection to
6 the witness refreshing her recollection when she needs to.

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

8 THE WITNESS: So I was asked to examine ten .40 Smith and Wesson
9 caliber cartridge cases and per the paperwork and the box those were retrieved
10 from 2855 Fremont Street.

11 BY MR. SCHWARTZER:

12 Q Okay.

13 A I was also asked to look at four Speer 9 millimeter Luger cartridge
14 cases and those came from that same location.

15 Q Okay. Let me ask you this, the nine mill -- the four 9 millimeters
16 you were asked to look at, would they -- would you expect them to be fired
17 interest this .40 caliber?

18 A I would not. They're a different caliber.

19 Q Okay. Were you able to compare the 40 -- the ten .40 caliber
20 casings that was found at that the Fremont Street address to that P94?

21 A Yes, I did compare those ten cartridge cases to the Ruger model
22 P94.

23 Q Can you tell the ladies and gentlemen of the jury how you go about
24 making that comparison?

25 A Sure. Once I've done the test firing, like I talked about earlier, and I

1 have the pristine samples that I shot from the gun myself, what I do is I take
2 those and I take two of the known samples and I put them on my comparison
3 microscope. What it is, it's like two microscopes that are hooked together by
4 what we call an optical bridge. It's a series of lenses that allows me to look
5 through the eyepieces and to see the two things simultaneously side by side in
6 my field of vision.

7 So what I do first is I take the two knowns, the test fires that were
8 from gun, the ones that I fired, and I compare those to each other. And I kind
9 of start broad, I look at the overall class characteristics. Those are the things
10 that help me narrow it down. Like I look at this firing pin impression, like, is it
11 circular in shape; is it square; is it rectangle. Then I look at the characteristics
12 of the marks that I see are they arced; are they circular; are they straight and
13 parallel; and I compare those to each other. Once I've seen that those are all
14 the same, then I go down on to the microscopic level and look at the individual
15 manufacturing marks to make the determination on the tests if I have sufficient
16 quality and quantity of marks for me to be able to use those test fires to
17 compare to the evidence item.

18 Once I have made that comparison, I have my comparison
19 microscope, I have the two knowns, one on each side, I'll remove one of the
20 knowns from one side and then I put the evidence one on the other side and I
21 do the same direct comparison, this time of the test fire to the evidence in order
22 for me to make a determination as to whether both of those things originated
23 from the same firearm.

24 Q Okay. And you did that in this case?

25 A Yes, I did.

1 Q As -- first off, that firearm, the P90, .40 -- .40 caliber, did that
2 come -- do you know where that came from?

3 A That also, per the paperwork and the box, that came from 2855
4 Fremont Street.

5 Q So the same place?

6 A Yes.

7 Q Those ten casings of .40 caliber casings, when compared to your
8 exam -- to your test fired casings, were you able to make a comparison?

9 A Yes, I was.

10 Q Were you able to make a conclusion in your opinion?

11 A Yes, I was.

12 Q And what was your opinion?

13 A I concluded that those ten cartridge cases were identified as having
14 been fired by that submitted Ruger P94 pistol.

15 Q Okay. Additionally, did you also look at bullets as well or a bullet?

16 A Yes.

17 Q For the -- for the .40 caliber?

18 A I look at several bullets, yes.

19 Q Okay. Several bullets in this case and a couple bullets for -- how
20 many bullets for this specific .40 caliber?

21 A I had two bullets that were consistent with . 40 caliber.

22 Q Okay. Do you do a comparison with the test fire -- bullet, to be
23 clear, is the projectile part of the --

24 A Of the cartridge.

25 Q Correct?

1 A Correct.

2 Q And you're holding up, for the record, you were just holding up the
3 projectile part of your model?

4 A Yes.

5 Q Were you able to compare the bullet portion from your test fired
6 bullet with those that were found at the -- that scene, at that Fremont Street
7 address?

8 A Yes. And I do that comparison the same way. I take those test
9 fired bullets that I test fired into the water tank from that water, I compare
10 them to each other on my comparison microscope. Once I've determined I have
11 sufficient quality and quantity of those microscopic marks, that that test fire's
12 sufficient for me to make a comparison, I take one off and then I put the
13 evidence on the other side of my microscope and I do the comparison.

14 Q And were you able to make any type of -- were you able to give any
15 type of opinion regarding the bullet found at the scene?

16 A The --

17 Q Or the --

18 A -- the two .40 caliber bullets?

19 Q Correct.

20 A Yes.

21 Q And what was -- what was your opinion?

22 A Let me make sure I have the numbers correct.

23 Q Please.

24 A So the bullet that was impounded by 8427, package 4, item 18
25 was consistent with .40 caliber and it did have a similar general overall

1 appearance as the bullets that I test fired from the Ruger P94. However, I
2 could not identify or exclude it because of the damage to that particular bullet.
3 So that one was inconclusive.

4 Q How about the second one?

5 A And then I had one other one that was from the same package and
6 that was impound item number 21 and that one was consistent with .40
7 caliber. And per my comparison, I identified that bullet as having been fired by
8 that Ruger P94.

9 Q Okay. So you were able to match one of the bullets to that firearm
10 that was found at the same scene?

11 A Yes, that's correct.

12 Q Thank you. Okay. Let's move on to that second firearm, the Ruger
13 model LC 9 millimeter firearm. Were you asked to look at that as well?

14 A Yes.

15 Q Okay. And when it comes to you in your lab does it come in a box
16 like this?

17 A Yes.

18 Q Now --

19 THE COURT: Bless you.

20 BY MR. SCHWARTZER:

21 Q -- at some point we're going to have you open this, so I could -- do
22 you want gloves or scissors?

23 A No. I'm -- I'm all right with it.

24 MR. SCHWARTZER: And, Your Honor, do you happen to have -- after we
25 have this open, do you want to make sure with your bailiff make sure it's safe.

1 THE COURT: Ms. Lester can tell us if it's secured in the fashion that it
2 needs to be.

3 MR. SCHWARTZER: May I approach?

4 THE COURT: Yeah.

5 BY MR. SCHWARTZER:

6 Q Now, I want to you to explain to the ladies and gentlemen of the
7 jury what these seals are and what we're looking at over here.

8 A These seals up here?

9 Q Well, first off, let me do this, do you recognize this item?

10 A Yes, I do.

11 Q Okay. How do you recognize this item?

12 A It has my name, my signature here signed on the chain of custody,
13 along with my personnel number and my assigned package number, along with
14 the date and time that I resealed the package after I examined it.

15 Q Do you also see your initials anywhere?

16 A And my initials are here on this blue tape on this side, here and
17 here. And when I sealed this here at the laboratory, we use the blue tape. It
18 says LVMPD forensic laboratory. And I use my initials and my personnel
19 number as well as the date sealed on the those seals.

20 Q Additionally, is there an event number on here as well?

21 A There is.

22 Q And is that the event number for the event number that you were
23 subpoenaed for today?

24 A Yes, it is.

25 Q And that's a unique number that would only be associated with this

1 specific case?

2 A Yes. It consists of the year, also the month and date of the event,
3 and then the last four are automatically assigned consecutively starting at
4 midnight and a computer generated as the events go throughout the day.

5 MR. SCHWARTZER: Move to admit Exhibit 1, Your Honor, and contents.

6 THE COURT: Any objection?

7 MR. SCHWARZ: No, Your Honor.

8 THE COURT: That will be admitted. Thank you.

9 **[STATE'S EXHIBIT 1 ADMITTED]**

10 BY MR. SCHWARTZER:

11 Q Now, Ms. Lester, you will see from the sheet here where this item
12 came from?

13 A Yes, it is written, the location on the evidence impound label.

14 Q Okay. And what's that location?

15 A Looks like 1712 Fairfield Avenue, Number 7.

16 Q Okay. And now can you -- and you can see what's in this package,
17 correct?

18 A Yes.

19 Q And what's -- what's listed in this package?

20 A Ruger model, LC9, 9 millimeter, semi-automatic pistol; also one
21 Speer 9 millimeter cartridge and one pistol magazine with seven FC 9 millimeter
22 Luger cartridges.

23 Q Now after all of that, there's, in red ink, chemical processed, what
24 does that mean?

25 A Normally when the crime scene analyst or whoever it is that

1 impounds this item, they may either swab this item for DNA or process it for
2 potential latent prints and that's the markings that they put on there when they
3 have processed it.

4 Q Okay. And that's to ensure that stuff is done before you start
5 doing your test fires?

6 A Right. So that I know before I actually go ahead and handle this
7 that it's already been swabbed for DNA and also processed for latent prints.

8 Q Ms. Lester, can you open?

9 A Certainly.

10 Q Can you ensure that the contents are safe for use in court?
11 Before you do that, that yellow package right there --

12 A Uh-huh.

13 Q -- it says specifically item 1; is that correct?

14 A Yes.

15 MR. SCHWARTZER: And we'll mark this as item 1, Exhibit 8.

16 THE COURT: Okay.

17 BY MR. SCHWARTZER:

18 Q And that would be specifically the pistol, correct?

19 A That should be the pistol.

20 Q Okay.

21 A If I could just open this? And this pistol, after we examine it at the
22 laboratory, we put a orange safety strap in here. So the pistol is open. I verify
23 that there is not a cartridge in the chamber and there is no magazine here in the
24 magazine well.

25 Q Okay. Is there --

1 MR. SCHWARZTER: So we'll mark that 1A and then 1 will that -- okay.

2 BY MR. SCHWARTZER:

3 Q So the envelope would be 1A, the firearm would be 1B. So this is
4 the firearm that you examined?

5 A Yes.

6 Q Okay. Specifically there's also -- is there a magazine in this as well?

7 A Yes.

8 MR. SCHWARTZER: We'll mark that as 1C.

9 THE COURT: Okay.

10 BY MR. SCHWARTZER:

11 Q And what's the capacity of that magazine?

12 A It's a seven round magazine.

13 Q Okay. So you can have seven in the magazine, plus one in the
14 chamber?

15 A Yes. If you have the firearm fully loaded, you could have seven
16 cartridges in here and one in this chamber.

17 Q Okay. Now, did you do -- you were asked to compare that firearm
18 from 1712 Fairfield Avenue to four -- to casings found at that Fremont Street
19 address, correct?

20 A To four cartridge cases, yes.

21 Q Okay. Specifically the 9 millimeters found at that Fremont Street
22 address, correct?

23 A Yes, that's correct.

24 Q Okay. You did the same comparison, the same testing that you did
25 that -- we talked about with the .40 caliber?

1 A Yes. I follow the same process every time I do a comparison. So
2 for this particular firearm, I did the same process as far as the test firing goes
3 and then comparing the test cartridge cases to each other before comparing
4 them to the evidence.

5 Q Okay. Specifically, what kind -- what was the brand on the
6 casings -- the cases found at the Fremont Street address?

7 A The four, 9 millimeter Luger cartridges cases were Speer brand.

8 Q Okay. And that magazine at one point were there casings involve --
9 were there casings in that -- in that magazine?

10 THE COURT: Cartridges or casings?

11 BY MR. SCHWARTZER:

12 Q Cartridges, excuse me, in the magazine?

13 A When I received it the cartridges were not in the magazine.

14 Q Okay. Were cartridges part of that package that you received?

15 A I believe they're in these two packages here, yes.

16 Q Okay. Can you open -- one would be 1D, one would be 1E. Could
17 you open which ever one?

18 A Sure. So I'll open the one that just has one first. This is from
19 item 2.

20 THE COURT: All right. The one with one will be marked as 1D.

21 THE WITNESS: So this is one Speer, 9 millimeter Luger cartridge.

22 BY MR. SCHWARTZER:

23 Q Okay. So the same --

24 THE COURT: It's going to be bag and contents. So 1D will be the bag
25 and the one cartridge.

1 MR. SCHWARTZER: Thank you, Your Honor.

2 THE COURT: Thank you.

3 BY MR. SCHWARTZER:

4 Q That's still the same brand that you were asked to compare from
5 the scene?

6 A Yes.

7 Q Okay. And then what about that 1E and contents?

8 A The second?

9 Q Which would be the multiple cartridge.

10 A So in here we have seven, 9 millimeter Luger cartridges and the
11 headstamp says FC which is consistent with being manufactured by Federal
12 Ammunition.

13 Q And can you hold one of them up so that the jury can see?

14 A Uh-huh. It's not unlike this. This is a larger version.

15 Q Okay. And for the record you held up both the model and one from
16 package 1E?

17 A Yes.

18 Q Okay.

19 THE COURT: So that's bag and contents, 1E is the bag and seven
20 Federal cartridges.

21 MR. SCHWARTZER: Thank you, Your Honor.

22 BY MR. SCHWARTZER:

23 Q So you did your comparison regarding the test fired shots for this 9
24 millimeter with the casings found at this Fremont Street address, correct?

25 A Yes, I did.

1 Q Okay. And what was your opinion based on your review of the
2 evidence?

3 A I determined that those four, 9 millimeter Luger cartridges cases
4 shared similar general overall characteristics with test fires that I fired from the
5 Ruger LC 9, 9 millimeter Luger caliber pistol. However, I was not able, due to
6 lack of microscopic marks, I was not able to identify or eliminate them from
7 that particular firearm.

8 Q Okay. So it has similar marks, but you can't say for sure whether it
9 was fired from that gun or not?

10 A That's correct.

11 Q Okay. Were you also asked to look at bullets, the actual projectiles
12 of a -- from nine -- of a 9 millimeter?

13 A Yes, I was.

14 Q That would be two specific bullets, correct?

15 A Yes. Just to make sure with the numbers, it was impound package
16 8167, package 4, numbers 7 and 8.

17 Q Okay. Where did those two bullets come from?

18 A Those were, per the paperwork and package, impounded from the
19 C.C.O.C.M.E., which is the Clark County Office of Coroner and Medical
20 Examiner.

21 Q Okay. And does it say specifically on 7 and 8 how they came in
22 contact, like, how did Metro actually receive them?

23 A I just know that they were impounded by Crime Scene Analyst,
24 P number 8167.

25 Q Okay. That would be and do you have her initials there as well?

1 A That's J. Reiner.

2 Q Okay. So impounded by -- at the Clark County Medical Examiner's
3 Office by Jennifer Reiner on April 20th of 2013?

4 A And let me just check that date. Yes.

5 Q Okay. Do you actually get the evidence impounded as part of your
6 package ?

7 A It's available in our computer system. I don't always receive it. It's
8 something that I can look up if I need to.

9 Q Do you have it in your file?

10 A Let me see.

11 Q Let me -- let me know if you have it in your file.

12 A Certainly. Just one moment.

13 Yes, I do have the evidence impound report of from Ms. Reiner.

14 Q Okay. And so does Ms. Reiner list where the bullets came from?

15 A Yes, she does.

16 Q And where does she list them from?

17 A Per the evidence impound report, item 7 says, From the hands of
18 Dr. Simms, from the left leg of the victim; and item 8 says, From the hands of
19 Dr. Simms from the spine of the victim.

20 Q Now, did you do, similar to what you did with the .40 caliber
21 firearm, did you do test firings and compare the bullets from your test fire with
22 the bullets from this impound?

23 A Yes, I do the exam in the exact same way, test firing, comparing
24 the knowns to each other, and then removing one and comparing the evidence
25 item to the known to make a determination as to whether or not it came from

1 that particular firearm.

2 Q And that, and before we get into your conclusion, we didn't -- I
3 didn't ask, I'm just going to go back the LC 9, is that similar to the .40 caliber
4 where the ejections typically go from the back to the right?

5 A Yeah. So if you held this particular firearm, again, in its normal
6 upright fashion with the muzzle parallel to the ground, in general the cartridge
7 cases would eject back and to the right.

8 Q So after you made the comparison with the test fire bullets with the
9 bullets from evidence impound from the autopsy or from Dr. Simms, from the
10 coroner's office, what was -- were you able to make any kind of opinion or
11 conclusion regarding the bullets?

12 A Yes, I was.

13 Q And what was your conclusion regarding the bullets found from the
14 medical examiner's office?

15 A Those two bullets -- yeah, those two bullets, items 7 and 8, were
16 identified as having been fired by the submitted Ruger, model LC9,
17 semiautomatic pistol.

18 Q So that gun fired those two bullets?

19 A That's correct.

20 MR. SCHWARTZER: No further questions, Your Honor. I'll pass the
21 witness.

22 THE COURT: Mr. Schwarz.

23 MR. SCHWARZ: Yes, thank you.

24 ///

25 ///

1 **CROSS-EXAMINATION OF ANYA LESTER**

2 BY MR. SCHWARZ:

3 Q Hi, Ms. Lester, how are you today?

4 A Hi, I'm good. How are you?

5 Q I'm good.

6 A Good.

7 Q I'm not trying to be snarky or anything, but --

8 A No problem.

9 Q -- how -- how, I mean, I'm listening to you testify and apparently
10 you received the evidence.

11 A Uh-huh.

12 Q You conduct your own test where you test fire the bullets, let's
13 say.

14 A Uh-huh.

15 Q And collect the cartridges and collect the bullets.

16 A Correct.

17 Q And then you sit at a microscope and make a comparison?

18 A Yes, that's correct.

19 Q Okay. So what I'm getting at is how conclusive are your
20 conclusions?

21 A Well, I can't compare the cartridge case or the bullet to every
22 firearm in the world. So I have this limited universe here of what was
23 submitted to me. So what I rely upon is what I call or what we firearms
24 examiners call the AFTE, which is the Association of Firearm and Toolmark
25 Examiner, theory of identification. And what I look for is agreements in all

1 those class characteristics, those general characteristics that I talked about, and
2 then sufficient agreement in those individual microscopic characteristics for me
3 to make the opinion that this item came from this particular firearm. And how
4 much that agreement is based on my education and experience, but it's also
5 based on that comparison I do with the two knowns and I look for how much
6 matching information is on those two knowns and I expect to see that amount
7 of information consistent from my known to my unknown.

8 I also expect that amount of agreement to be greater than what I
9 would expect to find on two items that I know did not come from the same
10 gun. And from looking at guns for a number of years, I've test fired guns,
11 looked at items to each other, and I have an idea, you know, in my head of how
12 much matching information I see on two things that didn't come from the same
13 gun versus two things that did.

14 So I'm meeting that threshold right there. And when I've met that
15 threshold in my mind, I say in my opinion that's an identification to that
16 particular firearm. Then before it's reported out, it is also verified by a second
17 independent examiner and they also say that in their opinion that they agree
18 that that came from that particular firearm.

19 Q Okay. That was my next question, does anybody review your
20 work.

21 A Uh-huh.

22 Q So you come to your conclusions and before you generate a report
23 you have someone review it?

24 A Correct. It's -- the actual evidence is verified on a microscope, so
25 they do actual microscopic comparison verification and they do note, and I do

1 have those notes in my case file, that they agreed with that conclusion. Then
2 once the case is completed, the entire case is technically reviewed and that's
3 by another experienced analyst to make sure that when did I my exam I
4 followed the correct technical procedures, the ones that we have written down
5 for our laboratory and for our department. Then after that review, it's reviewed
6 by another person who does an administrative review and that's just looking for
7 numbers, typos, page numbering, spellings, things like that.

8 Q Is that all usually down before you show up in court here to testify?

9 A Absolutely, yes.

10 Q Okay. And I'm guessing if there's some kind of problem down the
11 road you revise your report or so forth?

12 A Yes. If I had to make a revision, I would have a supplemental
13 report.

14 Q Okay.

15 A With the revision.

16 Q I just want to -- I'm looking at I think which is the first page of your
17 report.

18 A Sure.

19 Q You testified that that magazine from that Ruger held seven
20 cartridges?

21 A The one from the Ruger LC 9 held seven cartridges.

22 Q Okay. But correct me if I'm wrong, under your results and
23 conclusions on the first page of your report, doesn't it say that the magazine
24 has a capacity of ten cartridges?

25 A That's for the magazine that goes with the Ruger model P94.

1 Q Okay.

2 A And then the one that goes with the LC 9, that one holds seven.
3 That's in the next paragraph down or the next bullet point.

4 Q Okay. All right. Well, I guess I was confused because I thought
5 when Mr. Schwartzer was asking you questions about the -- the Ruger, the .40
6 caliber weapon, you said it was a seven. So to clarify, the magazine connected
7 with the Ruger .40 caliber weapon has a capacity of ten cartridges?

8 A That's correct, sir.

9 Q And that would be ten plus one?

10 A That's correct, sir.

11 Q If -- in other words, just -- how -- let me -- maybe you can explain to
12 the ladies and gentlemen of the jury --

13 A Sure.

14 Q -- how you would make it ten plus one.

15 A Uh-huh.

16 Q What that means.

17 A If I may use this one as an example, the cartridges, how you load
18 this firearm, you load cartridges here into the magazine, this is inserted here
19 into the magazine well. And then the thing is to shoot this, I still have to get
20 one of these into this gun. So to do that, normally what you do is you manually
21 pull back the slide and then when it goes forward it takes the top one off of
22 there and moves it into the chamber which is the rear part of this barrel, and
23 then it's ready for it to be fired.

24 So technically you could have no cartridge in there, you could have
25 seven in here and that would be seven. But if I took the seven in here,

1 manually cycled this back, had one here in the chamber, removed this, top this
2 off with one more, and put it in, I would have seven in here and then one in the
3 chamber.

4 In the same vein with the other firearm, the Ruger P94, the .40
5 caliber one, you could do the same thing with the exception of that magazine
6 held ten, so that could be ten plus one for maximum capacity.

7 Q Okay. And again there were ten cartridges submitted to you?

8 A Ten cartridge cases of .40 caliber.

9 Q From the .40 caliber?

10 A Correct.

11 Q Did you measure the .40 caliber Ruger?

12 A Like as far as its length?

13 Q Yes.

14 A Yes.

15 Q How big it is?

16 A The Ruger model P94, .40 caliber, has a barrel length of four and
17 one-quarter inches and an overall length of approximately seven and
18 five-eighths inches.

19 Q So that's just shy of eight inches?

20 A Seven and five-eighths is just shy of eight, yes.

21 Q Thank you.

22 A You're welcome.

23 MR. SCHWARZ: I have nothing further.

24 THE COURT: Mr. Scwhartzner.

25 MR. SCHWARTZER: No, Your Honor. Thank you.

1 THE COURT: Anything from our jurors? No?

2 Ms. Lester, thank you very much for your time.

3 THE WITNESS: Thank you, sir.

4 THE COURT: I appreciate it. You are excused. And you can just hand
5 me --

6 THE WITNESS: Certainly, let me just put it back in here.

7 Thank you, Your Honor.

8 THE COURT: All right. State may call their next witness.

9 MR. SCHWARTZER: State calls Eric Sahota.

10 THE COURT: Sir, if you could just remain standing and raise your right
11 hand for me please.

12 **ERIC SAHOTA,**

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

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

16 THE WITNESS: Eric Sahota, E-R-I-C; Sahota, S-A-H-O-T-A.

17 THE COURT: Thank you, Mr. Scwhartzter.

18 MR. SCHWARTZER: Thank you, Your Honor.

19 **DIRECT EXAMINATION OF ERIC SAHOTA**

20 BY MR. SCHWARTZER:

21 Q Mr. Sahota, can you tell the ladies and gentlemen of the jury how
22 you're employed?

23 A I'm employed as a forensic scientist in the latent print detail in the
24 Las Vegas Metropolitan Police Department, forensic laboratory.

25 Q Okay. Do you gotta do any type of special training to do -- to be a

1 forensic scientist in the latent print fingerprint department?

2 A Quite a bit, actually.

3 Q Can you tell the ladies and gentlemen what your background is?

4 A So I have a bachelor's of arts degree in the natural sciences from
5 the Johns Hopkins University. And following -- after receiving my degree, I
6 spent just over a year with the department of neuroscience at the Kennedy
7 Krieger Institute which is in Baltimore, Maryland. As part of the department of
8 neuroscience I did benchwork in cell biology and biochemistry, mostly D.N.A.
9 subcloning and expression.

10 After that I spent year and a half with the Baltimore City Police
11 Department as a crime lab technician. The job duties are very similar to what
12 you would call a crime scene investigator here in Las Vegas. My duties were to
13 respond to crime scenes, document and recover evidence. And my training
14 there included photography as well as the development and recovery of latent
15 prints. After I left Baltimore City in 2007, I came out to Las Vegas as a
16 forensic scientist trainee and I spent 18 months in an intensive training program
17 which consisted of both academic and practical exercises. I took a variety of
18 tests along the way and at the end of my training program I took my final
19 qualification exam and began doing benchwork. And I've been doing that
20 almost ten years now.

21 Q Okay. So for those ten years that you've been doing that, about
22 how many cases per year have you -- do you average that you look at prints?

23 A Well, it can vary from -- it can vary from year to year, but in a
24 typical year anywhere from 100 to 150 cases.

25 Q Okay. So you would say you've looked at, you try to make

1 comparisons in over 1,000 cases?

2 A I would say easily. And each case can have -- could have a few
3 dozen comparisons or it could have a few hundred.

4 Q Okay. Now, Mr. Sahota, have you testified in District Court before
5 here in the Eighth Judicial District Court?

6 A I have. I've -- I've testified in the Eighth Judicial District. I've also
7 testified in Federal Court for the district of Nevada.

8 Q Okay. And both those cases or in those cases was it as a latent
9 fingerprint examiner?

10 A It was.

11 Q And how many times do you believe you've testified in court as a
12 latent fingerprint examiner?

13 A I would estimate maybe two dozen times.

14 Q Okay.

15 A Three dozen.

16 Q Now I want you to explain to the ladies and gentlemen of the jury
17 what a latent fingerprint is.

18 A So the easiest way to understand what a latent print is is to really
19 just look at the skin on your fingers and your palm. From far away you can see
20 that there are these dark lines running across the palm of your hand, these are
21 the major creases of the palm. You also have creases along each joint in your
22 finger. If you look at the skin a little bit more closely, you can see that aside
23 from the creases you also see these, you see these ridges, you see these lines
24 running across your skin, we call those friction ridges and they're made of a
25 series of peaks and valleys and it behaves very much like an ink stamp.

1 So with an ink stamp you have some kind of -- you have some kind
2 of an impression, you have a template. It could be your name and address, it
3 could be your important account information or something like that. And with
4 an ink stamp you take that -- take that template, you put it on to the ink pad
5 and then you transfer that on to the sheet of paper and it leaves behind in ink a
6 representation of whatever was on that template, whatever the information
7 was.

8 Well, a latent fingerprint or a latent palm print is basically the same
9 thing except that the template is the ridges on your skin, instead of ink you
10 have sweat or other residue that may be present, and then when you touch
11 something, if you touch a sheet of paper, if you grab a doorknob, or pick up a
12 water glass, you might leave behind some of that residue and it retains the
13 shape and structure of those friction ridges from your skin.

14 We call them latent because it's not visible to the naked eye. We
15 will typically need to use some sort of physical or chemical development
16 procedure to make it visible and then we either have to capture it as a tape lift
17 or as a photograph.

18 Q Okay. So you said you might be able to make a comparison?

19 A Correct.

20 Q So putting my hand -- I'm putting my hand down right here,
21 pressing my fingers down on this banister right here, immediately after doing
22 that, if you went to process -- someone would look for prints on this, would
23 they find any fingerprints for sure?

24 A Not necessarily.

25 Q Okay. Why not?

1 A So, again, if we think about the -- if we think about the ink stamp
2 analogy, creating that impression is the interaction of three different materials.
3 One is the stamp or the template itself, one is the medium, the ink or sweat or
4 residues that's used to make the transfer and the third is the surface upon
5 which the impression is being made. If the template -- if the template is
6 damaged or contaminated, then that's going to -- that's not going to leave a
7 very good recording. If there's not enough -- if there's not enough ink, if
8 there's not enough sweat or residue or if there's too much, then again there will
9 be a transfer, but what gets left behind is not going to look -- is not going to
10 look exactly like what was on the template.

11 And then of course there's the surface that you're leaving the
12 impression on, we talk about, in latent prints, we talk about ideal and non-ideal
13 surface. And so an ideal surface would be something smooth and shiny like
14 clean -- clean glass or, you know, polished -- polished, painted surface. And
15 then, you know, things like the screen of your smartphone, I mean, I'm sure
16 everybody has had that experience either on their television screen, on their
17 tablet, or on their cell phone they see the -- you can see the fingerprint
18 impressions.

19 And then there are non-ideal surfaces which are exactly the
20 opposite. They tend to be the coarse, non-smooth, non-shiny surfaces. You
21 can think of something like coarse wood, sandpaper, any of those things are
22 not going to be very receptive to accepting that latent print impression.

23 Q Okay. So you -- in that -- in that answer you said sometimes a
24 template's damaged. What are some things that can damage the template?
25 Environment?

1 A There can be any -- well, any one of a number of reasons, when we
2 look at the demographics, we know that people say, for example, that work
3 with their hands, if you're a tradesperson, you know, you work in construction
4 or landscaping, you work with your hands, the condition of your skin is not
5 going to be as good. You could have -- you could have a skin condition.
6 There's some medical disorders that can cause problems with the -- with the
7 friction ridge skin and disrupt or destroy the template. Sometimes it's
8 temporary, sometimes it's permanent. You can have scarring, if you have
9 traumatic injury to the hand or to the fingers, there can be scarring and other --
10 other residual components from the traumatic injury that can -- that can distort
11 the template as well.

12 Q Okay. So if I put my hand down on this banister and it wasn't
13 looked at today, it was looked at a week from now, would that affect the ability
14 of getting fingerprints on that banister from myself?

15 A Potentially, so that goes a little bit to the -- the type of medium, the
16 type of transfer medium that we're talking about, what kind of sweat residue.
17 You actually -- the sweat residue on your skin can actually take on two or three
18 different forms and depending on -- and the major components typically of your
19 sweat residue is going to be water, it's going to be fats and oils, fatty acids and
20 oils, and it's going to be various salt compounds. But it's not necessarily going
21 to be always in the same ratio. Many times latent prints tend to be a little bit
22 high on the water content and a little bit low on the fats and oils and maybe on
23 the -- on the salt residues.

24 Every -- every individual is a little bit different. We're all kind of like
25 walking chemistry sets and we're not all secreting the same, the same

1 chemical, the same materials all the time. So depending on the chemical
2 composition of the sweat residue it could be very persistent. We've looked at
3 evidence that's six months, a year, 18 months old and successfully recovered
4 latent prints. We've looked at -- we've looked at evidence that was recovered
5 and submitted within a few weeks and recovered nothing.

6 Q Okay. Now I want to actually talk to you a little bit about how you
7 obtain evidence to look at.

8 A Sure.

9 Q So you said before you don't go out to the scene and take prints,
10 correct?

11 A Correct.

12 Q Okay. Who typically does that in a case?

13 A So generally speaking, the evidence that we're looking at will either
14 come from a crime scene analyst, that's the crime scene investigator who's
15 specific job duties are to go to the crime scenes and to locate, document, and
16 recover evidence. We will sometimes look at evidence that's recovered by
17 investigators, by detectives, and police officers. Typically that'll be actual
18 physical evidence, they'll bring back a -- they'll bring back a gun or they'll bring
19 back a bag of papers or something like that and we'll look at that evidence.

20 Q Okay. So when a crime scene analyst dusts for prints or tries to
21 obtain prints, do they always obtain a print that you can make a comparison to?

22 A No. So basically how that -- how that process is works is the crime
23 scene analysts have a very broad responsibility for identifying, documenting,
24 and recovering physical evidence from a crime scene. So they have very broad
25 parameters. They use a standard of what we call is suitable for recovery

1 meaning that when the crime scene analyst is processing for latent prints, they
2 see something that looks like a latent print, there are some latent print detail,
3 there's some friction ridge skin detail there. They're not going to make a
4 determination as to whether or not that's forensically useful for comparison
5 identification. Their job is to recovery that print, package it up, put it into the --
6 into our evidence system, start the chain of custody, and then it comes to a
7 specialist such as myself.

8 I'm particularly trained to look at these latent prints and then make
9 a decision as to whether they can be manually compared to known prints of
10 individuals, if they can be put in the computer system. The latent print
11 examiner is going to make those determinations.

12 Q Okay. And sometimes the crime scene analyst at the scene is
13 unable to even obtain prints for you to look at?

14 A Correct.

15 Q Okay. But you -- obviously, you wouldn't then get any information?

16 A Correct. And that's actually a rather common outcome.

17 Q Okay. Now, I want to direct your attention to event number
18 130419-4147, were you asked to do some comparisons in this case?

19 A Yes, I was.

20 Q Okay. How do -- how did you go about getting -- well, first off,
21 who makes that request?

22 A Typically the -- typically the laboratory requests come from the case
23 officer, will be a detective -- detective or investigator who's assigned to the
24 case. Occasionally we'll get requests directly from an attorney, from the
25 district attorney's office or another attorney related to the case.

1 Q Okay. Now, I imagine some cases you don't have someone to
2 compare to, cases where it's, I guess, a whodunit and they're trying to figure
3 out who the person is, correct?

4 A Correct.

5 Q Okay. And then in some cases you would have a person they'd ask
6 you to compare to, correct?

7 A Correct.

8 Q Okay. And when you want to make a comparison, not only do you
9 have your item of evidence that you're looking at to see if -- to obtain a latent
10 fingerprint that you can make a comparison to, but then you must have
11 something to compare it to?

12 A Correct.

13 Q And what is that thing you're comparing it to?

14 A So typically what happens, when I get a lab request and a lab
15 request is basically a work order, it's a document or it's an electronic request
16 that gives me the Las Vegas Metro event numbers, it basically tells me where
17 the evidence is, how to find it, and then it'll include a list of -- list of names
18 with their -- with their file numbers or dates of births or some kind of identifying
19 information. And then what I do is I take that -- take that file number, I go into
20 our fingerprint database, so we have a substantial electronic database of
21 fingerprint cards. I will then -- I'll then use that number or use that identifying
22 information to go into the database and collect the known prints of the
23 individual.

24 Q Those cards, they come from everywhere, right? They come from
25 people doing -- getting C.C.W.s, people who are applying for a sheriff's --

1 A Correct.

2 Q -- license?

3 A So most folks are probably familiar, it's -- there aren't that many
4 occupations here in Clark County that you can -- that you can go to work for
5 without going to civil fingerprint and being fingerprinted. So that's why when I
6 say we have a substantial database, most of the people in town are in the
7 fingerprint database. I'm in there, the D.A.s, and most of the people in the
8 courtroom are in that -- are in that database.

9 Q Now that you've scared everyone.

10 A Sure.

11 Q Is in this case, specifically, in event number 130419-4147, were
12 you asked to make -- was this one of the cases where you were asked to make
13 a comparison to certain individuals or was this one of the ones where you were
14 testing against a database?

15 A I was -- I received a work order to look at the latent print evidence
16 and make some comparisons against actually, there were -- there were quite a
17 few people, I think they were four or five subjects I was asked to compare.

18 Q Okay. Are some of those individuals Darion Muhammad-Coleman?

19 A Correct.

20 Q Dale Borero?

21 A Correct.

22 Q Richard McCampbell?

23 A Yes.

24 Q Okay.

25 A Or, no, I think McCampbell came up, McCampbell came up as part

1 of a database search.

2 Q Okay. So he came up in that extensive database you were just
3 talking about?

4 A Correct. Yes.

5 Q Okay. So specifically regarding Darion Muhammad-Coleman, his --
6 his example -- exemplar, the known prints, they came from the database from
7 July 3rd of 2013; is that correct?

8 A That's correct.

9 Q Okay. So those are prints that were taken from him on July 3rd,
10 2013?

11 A That's the date stamp that would be on the -- on the record.

12 Q Okay. And then you were asked to look at certain items, it looks
13 like all the items come from a 1990 Cadillac, Nevada 441YVU, expect for the
14 first item; is that correct?

15 A Correct. Yeah, the Brougham, yes.

16 Q Yeah. The -- did you see pictures of this -- this vehicle?

17 A No. But that information, when I receive the latent -- latent lift
18 cards, the vehicle information is printed on there by the C.S.A.

19 Q And then the first item you were asked to look at was seven
20 photographs from the side of broken piece of a car door molding?

21 A Correct.

22 Q And that was, in your report were you able to tell who obtained
23 those photographs?

24 A If I may refer to my --

25 Q If that will refresh your memory?

1 A It would.

2 Q And for the record, you're looking at your complete forensic file
3 which has been provided in discovery.

4 MR. SCHWARZ: And again, Judge, I have no objection if the witness has
5 to do that from time to time.

6 THE COURT: Thank you.

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

8 MR. SCHWARZ: I thank you as well.

9 THE WITNESS: The photographs were -- photographs were taken by a
10 C.S.A. Adam Felabom.

11 BY MR. SCHWARTZER:

12 Q Okay. Do you remember looking at those photographs?

13 A I do.

14 Q Okay. I'm going to show you what's been admitted to evidence
15 already, 81 through 86.

16 MR. SCHWARTZER: Sorry, Your Honor, may I approach?

17 THE COURT: You may.

18 MR. SCHWARTZER: Thank you.

19 BY MR. SCHWARTZER:

20 Q Let me know when you're done looking at those.

21 A Okay.

22 Q Okay? Are those photographs that were involved in your
23 comparison?

24 A Yes. These are the photographs.

25 THE COURT: Bless you.

1 THE WITNESS: Excuse me. These are the photographs that I looked at
2 that were submitted by the C.S.A., Felabom.

3 BY MR. SCHWARTZER:

4 Q So I'm showing you Exhibit 80, publishing Exhibit 81, 82, 83, 80 --
5 it's actually 85, 86, and this one's 84. Okay. So this is what's been labeled as
6 the car molding?

7 A Okay.

8 Q Correct? That was what that was labeled as in Mr. Felabom's
9 report, evidence impound?

10 A That's the information I received, yes.

11 Q Okay. And it appears in this -- did you actually look at this object
12 itself?

13 A I did not.

14 Q Okay. You just looked at photographs of this object?

15 A Correct.

16 Q And you believe you were able to make a comparison based on the
17 photographs of this object?

18 A Correct. Yes.

19 Q Okay. Can you explain to me how you were able to make a
20 comparison using photos as opposed to the physical evidence?

21 A Well, so it's, actually it's pretty simple, it's a practical matter that if
22 I'm going to be making a comparison to a known print and the cards, the
23 fingerprint cards we print off, they just come off on just a regular 8 1/2 by 11
24 sheet of paper. There's nothing -- there's nothing particularly special or fancy
25 about it. And the comparisons are -- comparisons are typically either going to

1 be done, what we call manually, where I take the -- I take the unknown
2 fingerprint and then I take the known fingerprint card and then I use some kind
3 of magnification tool, magnifying glass or a lens or a loupe and then I'll make
4 a -- I'll make a manual comparison by going back and forth between the two
5 images.

6 It's also actually quite common for us to make digital comparisons.
7 And in the digital comparison what I'll do is I'll take the -- I'll take the known
8 print, I'll take the known exemplar of the subject and I'll take the latent
9 fingerprint, if it's a powder print that's on a fingerprint card, and then I'll scan
10 those -- I'll scan those impressions, excuse me, at high resolution into
11 photoshop. So when the -- when the C.S.A.s photograph latent prints, it's
12 actually kind of saves us a step because the impressions are already in a digital
13 format. We can -- we can calibrate them. They're photographed, if you've
14 seen or if you're going to see again the photographs, there is a little sticker,
15 there is a little tag in there that actually has a calibrated -- calibrated metric
16 ruler. So we're able to calibrate those images one to one, make them life-size,
17 make them true-to-life size.

18 Q Let me stop you there, Mr. Sahota.

19 A Uh-huh, sure.

20 Q Let me put that exhibit up, 86, that will help explain it.

21 A Uh-huh. Sure. So we have the -- and we have this -- we have this
22 little metric ruler right there. We have --

23 Q For the record you're marking the ruler that's in the top portion of
24 the Exhibit 86.

25 A That's correct. And so there are handy tools that are already built

1 into the photoshop that let us take that known measurement, calibrate the
2 image so that it's -- so that it's true to size, or as we refer to it, one to one.
3 And then we can -- we can proceed with our comparison from there.

4 Q Okay. And then specifically with these photographs, you then
5 made a comparison to the people you were asked to make a comparison to?

6 A Correct.

7 Q Do you know when that request was made?

8 A Not specifically, no. If I may refresh my recollection?

9 Q If that will refresh your memory?

10 A That might be -- I don't have the specific date, but I can estimate
11 that the laboratory request was made sometime the beginning of 2014.

12 Q Okay.

13 A More than likely.

14 Q Well, fair to say if you didn't have the exemplar for
15 Mr. Muhammad-Coleman for July -- until July 3rd, 2013, it had to be sometime
16 after that?

17 A Correct.

18 Q Okay. Now, when you make a -- so you were asked to compare to
19 a bunch of people, Mr. Muhammad-Coleman, Mr. Borerio, not Mr. McCampbell.
20 Now, when you make -- when you're able to look at a latent print and compare
21 it to the exemplar of a known print and you make a conclusion that that's that
22 print, do you then go through everyone else that you were asked to compare to
23 or do you stop there?

24 A No. When -- let me rephrase that. Once we've made an
25 identification, if I'm comparing the latent print to the known exemplars and I

1 find a match and then that -- I continue the comparison and reach the
2 conclusion that it's an identification, then at that point the comparisons stop.
3 So if I have five subjects to look at and the first person, first subject I look at
4 matches a latent print, it's -- I conclude that it's an identification, then I stop, I
5 don't look at the remaining four subjects.

6 Q Okay. Now, with the -- that first item, the seven photographs from
7 the side of the broken piece car door molding, so you do what you just said,
8 you print it up with the special photo, blow it up, and then compare it to the
9 exemplar prints of the individuals you were asked to compare it to, correct?

10 A That's correct.

11 Q And when you do that, when do you the side-by-side, do you print
12 out photos of doing that side by side?

13 A In most cases.

14 Q Okay. In this case did do you that?

15 A I did.

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

17 THE COURT: Yes.

18 BY MR. SCHWARTZER:

19 Q Showing you Exhibit 1 -- State's Proposed Exhibit 120, do you
20 recognize this item?

21 A I do.

22 Q Okay. You recognize this as what? I mean, not what you're
23 specifically seeing, but is this actually your work?

24 A This is actually my work. It's a pair of side-by-side images. It's one
25 latent print or unknown print, the photograph of unknown print from Q1, that's

1 the photograph that was submitted by C.S.A. Felabom. And then on the
2 right-hand side is a -- is a digital scan of the known print of Darion
3 Muhammad-Coleman. And then you'll see there's some annotations on the
4 photographs that refer to some of the features that I was looking at.

5 Q Okay.

6 A In the comparison.

7 MR. SCHWARTZER: Move for admission of Exhibit 120, Your Honor.

8 MR. SCHWARZ: No objection, Your Honor.

9 THE COURT: That will be admitted. Thank you.

10 **[STATE'S EXHIBIT 120 ADMITTED]**

11 BY MR. SCHWARTZER:

12 Q Publishing 120, show the jury what we're talking about. So this
13 would be the right exemplar of Darion Coleman and this would be the
14 fingerprint from the photograph of the car molding?

15 A Correct. Yeah, that's the unknown -- that's the unknown print on
16 the left and that's the -- that's the known print, inked print on the right.

17 Q This isn't the greatest photograph, the photographs you use are a
18 little higher density?

19 A Correct. So what -- what happens is the C.S.A., they photograph
20 the -- they photograph the impressions at high resolution and then in this case,
21 so what happens is I recover that photograph, I use it for the comparison, I then
22 save it again as a digital image, it gets, you know, it gets printed every time --
23 every time you print and rescan an image is lose a little bit of a -- little bit of
24 resolution. And I believe the source for this is actually from a P.D.F. file, so
25 there's been -- there's been some image compression.

1 Q Okay.

2 A In this case.

3 Q So when you're making that comparison between the known print
4 to the unknown print, what do you do?

5 A So typically what's going to happen is any time -- any time I have a
6 latent print as part of my -- part of my analysis, part of my process to determine
7 if I want to compare the print, I'm going to be looking, I'm going to be looking
8 at the -- what information I have in there. So some of it is not as -- not as
9 specific, I look at thing like the shape, the shape of the impression, I look at the
10 general overall flow of the ridges which tells me some different information. So
11 I know here that I can kind of estimate here that the core area is down here.
12 So we're actually, this whole region up here, I can make a good estimate even
13 before looking at any of the known prints. I can make an estimate that the
14 region of the finger that I'm looking at is going to be in the tip area.

15 I'll give you the short version, but the slope and the slant of the --
16 slant of the ridges where you can see more curvature down here and then the
17 ridges tend to flatten and slide down, down and to the right, it's not -- it's not
18 necessarily conclusive, but it's a good indicator that I'm probably looking at --
19 I'm probably looking at a right thumb. So I look for information like that that
20 makes the -- makes my search a little bit more efficient. So if I'm going to start
21 looking at the known subjects for comparison, I'm going to start looking at the
22 right tip area of the right thumbs first and then -- are you able to enlarge a little
23 bit? Do you want to --

24 Q For the record you have made various marks --

25 THE COURT: Do you wish him to enlarge the known or unknown?

1 THE WITNESS: The unknown.

2 THE COURT: Okay.

3 BY MR. SCHWARTZER:

4 Q I can just get closer, if that helps?

5 A That'll -- that'll work too.

6 Q Tell me where to stop.

7 A Thank you. And the reason I asked to enlarge is you'll see, you
8 may or may not be able to see, there are little red dots.

9 THE COURT: Tell you what, hold on a second here.

10 THE WITNESS: Sure.

11 BY MR. SCHWARTZER:

12 Q Well, here I can actually zoom in to that.

13 A Okay. There you go.

14 So this particular impression is actually very good quality. Normally
15 the impressions that we look at are not this clear. So that was -- that was
16 fortunate that we had a -- I had a clear impression that I could -- that I could
17 work with. Now, what I'm -- so what I'm going to do is I'm going to make
18 some markings on to the screen to show you what I'm talking about in terms of
19 ridge path. Ridge paths are actually what we look at. We're not just interested
20 in the areas that are marked by the dots. We're interested in what the entire
21 ridge is doing.

22 So, for example, in this case you have a ridge that just -- that starts
23 there on right side of -- the right side of the impression, it runs all the way
24 across to the left and then if we come down right -- one ridge right below that
25 where one of the red dots is you'll see what we call a bifurcation. Bifurcation

1 just means that one ridge that splits into two and then from the other side we
2 have what we call a short ridge. You can see the -- you can see the beginning
3 and ending of both sides of the ridge and it's sandwiched in between these
4 other two up here and down there.

5 Partly because the impression is so clear, we typically -- or latent
6 print examiners are typically not going to trace the entire -- entire ridge in those
7 cases. We're just going to highlight -- we're just going to highlight these areas
8 where you see the red markings. These are what we call minutiae. So again,
9 we have another bifurcation over here. We have what we call a ridge ending,
10 meaning you can just see one -- one end of the ridge. And you have some
11 different -- different formations.

12 And that's -- and then taken in total, starting from the top or
13 starting from the bottom, I'll just work my -- I'll work my way through the --
14 through the print looking for all those types of features and information. And
15 then typically what I will do is I will pick something, what we call the target
16 area, I'll pick something that looks like a distinctive clustering of ridges of
17 minutiae and then I'll use that to conduct my search against the known prints.
18 If I find the corresponding ridge structure in one of the known prints and then
19 from that point then I expand my comparison out -- and I'm just drawing a
20 couple arrows up and down on the impression -- I'll then expand my -- my
21 region of comparison out from that area to look for additional matching detail.
22 And then I'll either render a conclusion that it's either a match in the
23 identification or it's an exclusion meaning it doesn't belong to that person.

24 Q Okay. For the record you made various marks.

25 A Correct.

1 Q On Exhibit 120.

2 So after going through this process with the unknown print are
3 you -- you're matching it -- are you trying to match it up with the known print,
4 these ridges?

5 A Correct.

6 Q Okay. And you did that -- you did so in this case?

7 A I did.

8 Q Okay. And what was your conclusion regarding the suitable print
9 from the photograph of the broken piece of car door molding?

10 A So with respect to the -- to the latent impression that I marked as
11 Q1A, I identified it to the right thumb of Darion Muhammad-Coleman.

12 Q Thank you. And then you also went through another five potential
13 prints, correct?

14 A Correct. There was another package of latent prints that was
15 submitted by C.S.A. Toeppen, now King.

16 Q Okay. And that's regarding from the 1990 Cadillac?

17 A Correct. Yeah, the Brougham.

18 Q Brougham. And in that case from -- we'll just go in order from your
19 report on your card Q2, lift card from the exterior, rear driver window of the
20 1990 Cadillac, were you able to match that palm print to somebody?

21 A I was. After the -- after comparing all the subjects, the named
22 individuals that have been provided to me in the work order, I wasn't able to
23 make an identification. So I did a computer-based search of our known print
24 database and was able to match that print to Richard McCampbell, I believe is
25 the name.

1 Q Would it be surprising to you that the owner of the vehicle's palm
2 print was on the vehicle?

3 A It would not surprise me. No.

4 Q Going to what you marked as Q3 which is a lift card from the
5 exterior rear drive door of the 1990 Cadillac, you were unable to -- fair to say
6 you weren't able to make a -- anyone you could compared it to was not the
7 person who left that print?

8 A Correct. That's the -- that's simply --

9 Q Roundabout way of saying it? Yeah?

10 A Right. I didn't -- I didn't necessarily have all the known prints I
11 needed to compare all of the subjects. So for the ones that I could compare,
12 there was no match, they were all excluded, conducted a computerized
13 database search as well, but was unable to identify the source of that
14 impression.

15 Q Okay. Q4, which was a lift card from the exterior passenger side of
16 the B-pillar, can you explain to the ladies and gentlemen of the jury what a
17 B-pillar is?

18 A B-pillar, do I have --

19 Q Let me help you with that.

20 A Yeah. Do we have a picture of a car?

21 THE COURT: Why don't you use the picture of the car.

22 MR. SCHWARZ: Your Honor, may we approach?

23 THE COURT: Yep.

24 [Bench conference -- not transcribed]

25 THE COURT: All right. We're going to take a quick recess, ladies and

1 gentlemen.

2 During the recess you are admonished not to talk or converse
3 among yourselves or with anyone else on any subject connected with the trial
4 or read, watch, or listen to any report of or commentary on the trial by any
5 medium of information including, without limitation, to newspapers, television,
6 the Internet, and radio. You cannot form or express any opinion on any subject
7 connected with the case 'til it's finally submitted to you, no research,
8 investigation, or re-creation. Be about 10 or 15 minutes. Okay? Thank you.

9 You can step down as well, Mr. Sahota.

10 [Outside the presence of the jury panel]

11 THE COURT: Okay. We're in recess, guys. Thank you.

12 MR. SCHWARZ: Thank you, Judge.

13 [Recess at 11:42 a.m.; proceedings resumed at 12:03 p.m.]

14 [In the presence of the jury panel]

15 THE MARSHAL: Jury's present, Your Honor.

16 THE COURT: Thank you. You all can be seated.

17 All right. We are back on the record. Mr. Muhammad-Coleman's
18 present with his attorney. State's attorneys are present, jurors are all present.
19 We're going to continue on with the direct examination of State's witness,
20 Mr. Sahota.

21 And I will remind you that you're still under oath, okay?

22 THE WITNESS: Understood.

23 THE COURT: Thank you.

24 All right, Mr. Scwhartzer.

25 ///

1 BY MR. SCHWARTZER:

2 Q All right, sir, showing you Exhibit 65, the last question is if you can
3 tell the ladies and gentlemen of the jury what the B-pillar is of the vehicle.

4 A Certainly. The short answer, and I'm going to go ahead and I'm
5 going to mark the vertical support strut that's in the -- in the center of the
6 vehicle, that's your B-pillar. And then you start from the front of the vehicle,
7 and that first vertical support strut is going to be your A-pillar, then the next
8 one's going to be your B-pillar, and then depending -- depending on who you
9 talk to, you might consider this to be, this third one on the right to be the
10 C-pillar and then depending on what kind of structural material are there, they
11 might -- might consider that the D -- the D-pillar or you might just lump it all
12 together and make it all make it all C.

13 But those lettered pillars are just basically the vertical support struts
14 that hold up the roof of the car.

15 Q Great. So that -- that lift card from the B-pillar from the 1990
16 Cadillac, you were able to identify that to the right palm of Richard
17 McCampbell?

18 A That's correct.

19 Q And Q5, which was a lift card from the exterior rear passenger
20 window of the 1990 Cadillac, there was a suitable print but you were unable to
21 link it up to anybody, but you were able to exclude the people you were asked
22 to compare it to including Darion Muhammad-Coleman?

23 A Yeah, I was able to exclude four of the subjects, two of the
24 subjects I didn't have sufficient known prints to make a comparison.

25 Q So the four people were Darion Muhammad-Coleman, Dale Borero,

1 Ashland Dennis [phonetic], and Richard McCampbell?

2 A That's correct.

3 Q And to clarify, Ashland Dennis was an individual that you got
4 fingerprints from with Tahir Shahab and a Quadratullah Noori?

5 A Correct. Yes.

6 Q Okay. So then the last one would be a Q6, which is a lift card from
7 an interior front passenger window?

8 A Correct.

9 Q In which you were not able -- there were no suitable prints for
10 comparison?

11 A Correct. There was nothing on that card that I could use to make a
12 comparison.

13 Q So you were able to find fingerprints of Richard McCampbell on that
14 1990 Cadillac?

15 A Correct.

16 Q And you were able to find the fingerprint, the right thumb print of
17 Darion Muhammad-Coleman on that broken piece of car door molding?

18 A Correct.

19 MR. SCHWARTZER: No further questions.

20 THE COURT: Thank you.

21 Mr. Schwarz.

22 MR. SCHWARZ: Yes, I just have one.

23 **CROSS-EXAMINATION OF ERIC SAHOTA**

24 BY MR. SCHWARZ:

25 Q How are you, sir?

1 A I'm doing well. Thank you.

2 Q I'm going to ask you the question that we all ask you, there is no
3 way to tell when these fingerprints were left on these items, right?

4 A No. No. The only -- the only answer I can give you is that the
5 fingerprint obviously couldn't have been left before that -- that material existed.

6 Q Thank you.

7 A So --

8 Q Thank you very much.

9 THE COURT: Anything further.

10 MR. SCHWARTZER: Nothing further from the State, Your Honor.

11 THE COURT: Anything from our jurors?

12 Mr. Sahota, thank you very much for your time. I appreciate it.
13 You are excused, sir.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: State may call their next witness.

16 MR. SCHWARTZER: The State calls Detective Terri Miller.

17 THE COURT: Thank you.

18 **TERRI MILLER,**

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

20 THE CLERK: You may be seated.

21 THE WITNESS: Thank you.

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

23 THE WITNESS: Terri, T-E-R-R-I; Miller, M-I-L-L-E-R.

24 THE COURT: Mr. Scwhartzter.

25 MR. SCHWARTZER: Thank you, Judge.

1 **DIRECT EXAMINATION OF TERRI MILLER**

2 BY MR. SCHWARTZER:

3 Q Detective Miller, how are you employed?

4 A I am a Homicide detective for the Las Vegas Metro Police
5 Department.

6 Q How long have you been a Homicide detective?

7 A Since April of 2012, so just coming up on five years.

8 Q And how long have you been a detective with Las Vegas
9 Metropolitan Police Department?

10 A I've been a police officer in the state of Nevada for about 25 and a
11 half years. With Metro, I spent five years with Nevada Highway Patrol. I came
12 over to Metro in 1996 and I did a variety of different jobs for them. I worked
13 patrol, I did undercover operations, Robbery. And prior to coming over to
14 Homicide, I spent five years on a FBI task force with Robbery and then I got
15 accepted over at Homicide, so I've been there since then.

16 Q Okay. And we've already had a detective, Cliff Mogg testify, is he
17 someone that works on your rotation?

18 A Yes, he is on my team. There's a team of six and a sergeant.

19 Q Okay. And so we won't go into rotation or anything like that. But I
20 want to direct your attention to April 19th, 2013, were you as part of that
21 team called out to an address on Fremont Street?

22 A Yes.

23 Q And that would be at the Travelers Inn?

24 A Yes.

25 Q And that would be around 10:30, 10:00 p.m.?

1 A Approximately.

2 Q Okay. And when -- when you rode out there to you -- I assume you
3 don't just sit around the station waiting for a homicide, you're probably doing
4 whatever you do in your personal life and then you get called out, correct?

5 A Yes, that's correct.

6 Q So you get called out and you meet with a group of people there?

7 A I do. When I arrive on the scene out there, there's already marked
8 units that are already there. They're the first responders. They're out there,
9 they secure our crime scene. And the way they do that is they use, you guys
10 all have seen it, the yellow crime scene tape. The marked units block off an
11 area to protect whatever evidence that we have until plain clothes, which is us,
12 the detectives that come out there. So when I get out there we have -- there's
13 only one entrance and exit to Travelers Inn and that's off of Boulder Highway.

14 Q Let me stop you there, Detective. Showing you Exhibit 10, if that
15 helps.

16 A Okay. Yes, it does. So when I arrive here, this is the entrance, the
17 driveway to the Travelers Inn. That's the only one in and out. Right here on
18 the southwest corner is where the office is located. There is a, like, wooden
19 fencing that's right along Boulder Highway, kind of decorative-type fencing.
20 But on the backside there's a large cinderblock cement wall that's fairly high,
21 that would be the north side of the building. The east side, which is the far
22 end, that has a 15 to 20, approximately 20 foot cinderblock wall. And then on
23 the south area there is chain-link-type of fencing with the green privacy plastic
24 strips. And then on -- south of that fencing it's just an open dirt lot.

25 So Boulder Highway would be right here, where you folks see the

1 tape.

2 THE COURT: You can draw , Terri, with your finger on there.

3 THE WITNESS: Okay. This is -- this would be the entrance and this is
4 going to be Boulder Highway right on this side.

5 THE COURT: Thank you.

6 BY MR. SCHWARTZER:

7 Q Okay. And for the record you made two red lines about the middle
8 of the photograph of Exhibit 10. So if I'm looking at the building, am I looking
9 north? If I'm looking at the structure?

10 A At the structure, yes, you would be looking north.

11 Q Okay.

12 THE COURT: From this photograph?

13 MR. SCHWARTZER: From this photograph.

14 THE WITNESS: Okay. Thank you.

15 BY MR. SCHWARTZER:

16 Q So once you get there and there's already been a perimeter
17 established by patrol you said?

18 A There's actually two perimeters which is difficult to see on this. So
19 you have your initial crime scene tape that blocks anybody from going in and
20 out of the area. And then where the patrol car is parked, that is a patrol car
21 there that's up against the building, there is another set of crime scene tape, I
22 believe.

23 Q Okay.

24 A So we have an inner and outer perimeter is what we call it. And all
25 of our evidence is going to be on that inner perimeter east, looking east towards

1 the -- the red shipping container.

2 Q Okay. So once -- when you're driving over there are you in a
3 vehicle which you can hear radio traffic?

4 A Yes.

5 Q Are you hearing what's going on regarding the crime scene? While
6 you're driving to the scene, do you have --

7 A A little bit of information. Typically, and at the time there wasn't a
8 cell phone law, typically you could be on the phone, you know, getting updates.
9 We talk to each other, assignments, who's going where, who's going to take
10 care of what, depending on the information that we have. So that's really more
11 what's happening as we're driving. But, yes, I have a plain car that I drive and
12 it does have radio, lights, and siren in it.

13 Q Okay. So once you're there and you've been talking over your cell
14 phone while driving there, does someone brief you about what happened at the
15 scene -- about what they have evidence-wise? Scene-wise? The information
16 they have as of that point?

17 A Absolutely, when we -- when we arrive and that's -- there's --
18 there's four other -- there's four Homicide detectives that responded and a
19 sergeant and a lieutenant that day. So what happens is the patrol officers who
20 are initial responders, they give information and at that time it was our Violent
21 Crime Section and we are briefed by the Violent Crimes detective, which was
22 Detective Pazos.

23 So he's put together all the information from the patrol officers,
24 anybody that was in the area, so we have an idea of who we need to talk to,
25 who's present, and what -- what we have, you know, initial basis of what we

1 have.

2 Q Who's -- who takes over as lead detective in this case?

3 A I do. This is -- this is my case. I'm considered to be the case agent
4 or the lead detective on this one.

5 Q As your role as lead detective or case agent, do you then delegate
6 responsibilities to individuals on your team?

7 A Yes. At that point Detective Mogg went to U.M.C. Trauma because
8 we knew that we had -- we had been advised that our victim had been
9 transported and wasn't expected to live. And then at the scene would have
10 been myself, Detective Wilson, Detective Smith, and Detective Embrey, as well
11 as Sergeant Fabian, and Lieutenant Ray Steiber.

12 Q Now as lead detective is it important for you to get a lay of the
13 land, to walk the scene, if you will?

14 A Yes. Typically before we start doing any interviews so that we can
15 get a visual on what we've been told and see exactly what the area of the
16 crime scene looks like, as a team, we'll go in and we'll, what we call, walk the
17 scene and that's going in under the tape that's been secured and taking a look
18 at what we have, so when we conduct those interviews we kind of have an
19 idea what we're talking about or what they're talking about, so you're all on the
20 same page.

21 Q So showing you Exhibit 14, this is part of the inner perimeter, is
22 that fair to say?

23 A Yes.

24 Q Okay. Showing you Exhibit 18, again part of the inner perimeter,
25 this is even closer to that --

1 A Yes. That's the far east wall that I was talking about and part of
2 shipping container.

3 Q Okay.

4 A So you're looking at the northeast corner of that whole property
5 right here in this scene.

6 Q So when you're walking this scene what of -- what was any -- if
7 anything important when you're walking the scene that you took note of that --
8 during your investigation?

9 A Well, there was several items that -- sir, yeah, can you move that
10 down a little bit? There we go.

11 So there is several items to note. The patrol officers did a great job
12 for us because they tried to protect -- there's people that are in these two, you
13 know, in the hotel rooms, there the motel rooms. So they have someone
14 stationed posted up over there to protect it. But they also went and took cones
15 and kind of marked important areas that, you know, they wanted us to see
16 where there's potential evidence, the gun, the cart casings, any blood, any
17 items of evidence that they would -- they think initially upon their initial
18 response would be important to us. So they try to help us.

19 Q Okay. Where -- what kind -- where there any type of gun evidence
20 at the scene?

21 A Yes.

22 Q And we already heard from -- from C.S.A. Felabom, there was two
23 different kind of caliber.

24 A A 9 millimeter and a .40.

25 Q Right. Where did you find the 9 millimeter casings generally?

1 A The 9s, well, there's -- so the way I look at this is there are four
2 parking stalls on this far east end. There's three painted lines which gives you
3 four stalls. So going from the building to the south one, two, three, and four.
4 So our .40 calibers were in the stall designated number 3, 4, right -- right in
5 that area, real close together.

6 Q Okay.

7 A Right in front of the -- the red shipping container, you know, in the
8 designated stalls.

9 Q So where generally did you find the 9 millimeter casings?

10 A There's two in stall number 3.

11 Q And can you -- you can make a mark.

12 A Pardon me?

13 Q Make a mark.

14 A Okay. So you can see the parking bumpers just barely, I believe,
15 right there. So this would be 3. Okay. And then there was one somewhere in
16 here and then somewhere back in here. So there's four 9s.

17 Q Okay. So they were in that in kind of toward the north side of the
18 building except for the one it looks like by the white car?

19 A Actually, they would be -- stall 3 would be to the east end of the
20 parking lot right behind the white Ford Taurus and then one towards the north
21 side, yeah, it would be northwest of the main scene right here in this area close
22 to the building.

23 Q Okay. And then was there also casings found of a .40 caliber?

24 A Yes.

25 Q And how many casings were those?

1 A There were ten .40 calibers and they were all right here in this area
2 right here where that cone is, they were all pretty much grouped right there
3 between stalls 3 and 4.

4 Q Okay. So they were more together than the 9 millimeters?

5 A Yes. The 9s were spread out, two and then and these two other
6 areas.

7 Q Showing you 32.

8 A There you go.

9 MR. SCHWARTZER: Can you clear that screen?

10 Thank you, Your Honor.

11 BY MR. SCHWARTZER:

12 Q So showing you Exhibit 32, does this show where all the .40
13 calibers were found?

14 A Yes.

15 Q And in fact -- go ahead?

16 A So this is stall 3 right here.

17 Q Yes.

18 A That I'm calling it. And this would be 4 and these were the
19 grouping that I was talking about for the .40 calibers.

20 Q And there is a -- can you see a firearm here as well?

21 A I don't know on this picture.

22 Q Let me zoom in for you.

23 A Right here.

24 Q Okay.

25 A Yep. There is the -- that would be the -- the .40.

1 Q Let me show you real fast.

2 MR. SCHWARTZER: May I approach?

3 THE COURT: Yeah.

4 BY MR. SCHWARTZER:

5 Q It's kind of hard to see it on the screen.

6 A Sorry.

7 Q No, you're fine.

8 A Right here, from this angle, yeah.

9 Q You see it right here?

10 A In the number 3. So --

11 Q Okay. Let me put it back on.

12 A I'm sorry.

13 Q So you see it now?

14 A Yes, I do.

15 Q Showing you Exhibit 32 again, and you know what, I made that
16 hard for you. Why don't we use Exhibit 33. Okay.

17 A There it is.

18 Q Okay.

19 THE COURT: By the big cone.

20 BY MR. SCHWARTZER:

21 Q So it's the big cone?

22 A Yes.

23 Q Okay. So going back to --

24 A I should wear my glasses.

25 Q Showing you -- that's okay. Showing you Exhibit 32, so back to

1 32, it's where the big cone is?

2 A Yes.

3 Q And all the .40 caliber casings are to the right of that cone?

4 A Yes.

5 Q Okay. Right and toward the back of that Matson storage container?

6 A Yes.

7 Q And that's where they're grouped up?

8 A Yep.

9 Q Did you find .40 calibers anywhere else?

10 A Nope, only in this area.

11 Q Okay. Was there also a -- so what you have is you have one
12 firearm at the scene, some .40 caliber casings, some 9 millimeter casings, is
13 there anything else of interest that might clue you into why there was a
14 shooting?

15 A Yes, narcotics were located there against the raised curb area on
16 that east end also, like stall number 3, I believe.

17 Q Okay. Why is that important?

18 A The narcotics?

19 Q Yeah.

20 A Well, it -- it indicates to us that it was probably a drug rip or a
21 robbery.

22 MR. SCHWARZ: I'm going to object, Judge. I believe that's speculation.

23 MR. SCHWARTZER: It's for purposes of the investigation, Your Honor.

24 THE COURT: Well, I'll overrule the objection.

25 ///

1 BY MR. SCHWARTZER:

2 Q Okay. So you have the narcotics in their location, the .40 caliber
3 casings in a certain location, and the 9 millimeters in a certain location?

4 A Yes.

5 Q Okay. Is there any additional evidence from the motel itself that
6 you were able to obtain that night?

7 A Actually, they had video surveillance, cameras posted on the
8 exterior. So we were able to also view surveillance footage.

9 Q Okay. So showing you Exhibit 50 and 51, are these some of the
10 cameras that you had around this Travelers Inn?

11 A Yes.

12 Q I imagine video surveillance is something that's helpful in your
13 profession?

14 A Extremely.

15 Q Okay. Let me ask you this was there any direct -- as of April 19th
16 of 2013, did you have any witnesses that said they saw what happened during
17 the shooting?

18 A No.

19 Q Okay. So you just have a whole bunch of casings, some drugs, and
20 no one that actually saw what happened?

21 A Exactly.

22 Q And then you have this video surveillance?

23 A Yes.

24 Q So like you said, that's extremely helpful?

25 A Yes, it is.

1 Q Did you review the video surveillance that that night?

2 A Yes, we did.

3 Q And based on that did you develop at least a profile of a suspect?

4 A We did. We knew we had two suspects and we knew we had a
5 white-over-blue Cadillac, like, older model Cadillac, a big car, four-door.

6 Q Okay. And why two suspects?

7 A Well, on the video surveillance we were able to see that two
8 suspects exited the -- the car pulls into the Travelers Inn and it backs into that
9 number 1 spot that's right alongside the northeast corner, right along the
10 building. Two males exit out of the vehicle and one stands and leans against
11 the back of the car and then there's another one that ends up, we can see on
12 the video, that's having a conversation with the victim who's later identified as
13 Dale Borero.

14 Q Okay. And then you were actually able to see the shooting on the
15 video -- and the jury's already seen the video.

16 A Okay.

17 Q So you were actually able to see the shooting --

18 A Yes.

19 Q -- on the video surveillance, correct?

20 A Yes.

21 Q And so is there a specific individual you're looking at as the shooter
22 in this case or the person who actually fired the mortal wound, if you will?

23 A Yes.

24 Q Okay.

25 A It was the black male of the two that exited the passenger side of

1 the vehicle was -- was the person that was involved in the shooting.

2 Q Okay. Now, did you have any names or -- or anything associated to
3 those two males on April 19th of 2013?

4 A No.

5 Q Did you talk to anyone related to the victim on April 19th, 2013?

6 A I did not.

7 Q Okay. Was there a room -- were you able to trace the victim,
8 Dale Borero to a room in that hotel -- or motel?

9 A I was.

10 Q Okay. And was he with an individual in that room?

11 A Yes. She had made contact with patrol officers and then eventually
12 Homicide detectives ended up interviewing her, doing a recorded interview with
13 her and we found out that she is a girlfriend of Dale Borero.

14 Q And showing you Exhibit 39, is this the individual?

15 A Yes.

16 Q And it looks like she has a consent to search card with -- with her?

17 A Yes. She signed a consent to search card after we found out that
18 she was the person who had rented the room. We obtained the records for the
19 room rental from the manager of the Travelers Inn, her name and her ID was
20 used on it and we requested to search that room that she had rented.

21 Q And she agreed to let do you that?

22 A Yes, she did.

23 Q And did you find anything in there that would help you in your
24 investigation?

25 A I don't -- no.

1 Q No?

2 A No, I don't think so.

3 Q Okay. Now, additionally to the narcotics and the firearm evidence,
4 were you also told that -- were you also informed that there was a large amount
5 of cash found on Mr. Borero?

6 A Yes. At the time when we were briefed by the Violent Crimes
7 detective, he pointed out to us that there was approximately \$3300 in U.S.
8 currency as well as two cell phones that had been on the victim. If you've seen
9 the video, you know that a couple of the officers tried to do C.P.R. and medical
10 intervention on Mr. Borero at the time. Those items were removed, they were
11 placed on a patrol car, and were there for us when we arrived and were briefed.

12 Q Okay. Additionally you said, you mentioned the blue Cadillac that
13 you see in the video and that we've all seen on the video, was there any piece
14 of evidence that was potentially left there by the vehicle that became important
15 to you?

16 A Yes. After dealing with the initial crime scene, the marked unit that
17 I showed you that was parked alongside the north, well, it would be the south
18 side of the building, they had actually driven over a piece of car molding and it
19 was kind of wooden, you know, the wood looking that you -- molding inside
20 your car interior, kind of decorative, and we located that at the scene also.

21 Q Okay. And that -- showing you Exhibit 53, is that that car molding?

22 A Yes.

23 Q Okay. So I want to fast forward, so at this point you have a video,
24 you have the physical evidence, you have no names, none of the witnesses
25 there can lead you to any names; is that fair to say?

1 A That's correct.

2 Q On April 20th of 2013, the next day, that would be a Saturday do
3 you attend the autopsy?

4 A I do. I go to autopsy.

5 Q Okay. And that was the autopsy of Dale Borero?

6 A Yes.

7 Q Okay. Additionally, do you find -- is there any information that you
8 gather or someone from your team gathers leading to any potential suspects?

9 A Well, we go back out to the scene and we do some more interviews
10 because some people had left that did not want to talk to us and while we were
11 out there we learn basically the same thing that we had -- we had seen on
12 video that there was two people who had left just prior to her shooting and so
13 we were able to get them identified and we found out that they were staying in
14 the room right next to the one that was rented by Shaquana Manor-Davies and
15 Dale Borero.

16 Q That would be will LeCory Grace and Jermaine Grace?

17 A Yes, and I believe Rachel Bishop.

18 Q Okay. Now did you -- did Detective Mogg talk to anyone at U.M.C.
19 that led to any information about Sam's Town?

20 A There was some information that came in, there were several
21 people that Detective Mogg ran into at U.M.C. Trauma, they had heard that he
22 was in critical condition, Dale Borero was in critical condition and they had
23 responded down to the hospital. So while he was there he did interviews with
24 those people who had responded and we learned that there was possibility that
25 one of the persons involved was staying at Sam's Town Hotel and Casino on

1 Boulder Highway.

2 Q Did you ever get a name associated with that individual?

3 A The female? Angelica Soto, I believe.

4 Q Or the individual that was involved in with the homicide?

5 A Yes. Dustin Bleak.

6 Q Okay. Now, at that point did you guys attempt to contact Dustin
7 Bleak at the Sam's Town -- on that April 20th, 2013, did you attempt to
8 contact Dustin Bleak at Sam's Town?

9 A No. On Saturday there was other things that were taking place. So
10 no, we did not on Saturday.

11 Q So on then go to Sunday, April 21st of 2013, did you then talk to --
12 well, did a Richard McCampbell turn himself into Clark County Detention
13 Center?

14 A Yes. Later that day we -- we are advised, we are out at Sam's
15 Town we've established a surveillance, some information had come in to us, we
16 were able to corroborate through phone numbers, through interviews with
17 certain people that we do have someone of interest, meaning Dustin Bleak at
18 Sam's Town, so we have surveillance established on a room that we have
19 identified, their room, 944.

20 Q Okay. So you have surveillance on Dustin Bleak during -- this is
21 Saturday or going on to Sunday of 2013?

22 A Yes.

23 Q April 21st?

24 A Yes, Sunday morning at 2:00 o'clock in the morning I get a phone
25 call from another detective that has information. Around 8:00 a.m. we

1 establish, start working Sam's Town, established that surveillance. Then
2 around 1:00 o'clock in the afternoon Detectives Mogg and Wilson respond to
3 Clark County Detention Center when we are advised by dispatch that there was
4 a male there who was trying to self-surrender and had information about a
5 shooting that had occurred at the Travelers Inn.

6 Q Okay. So I'm going to show you Exhibit 76, do you recognize that
7 individual?

8 A It's Mr. McCampbell.

9 Q Okay. Is that the individual that was trying to self-surrender on
10 April 21st of 2013?

11 A Yes.

12 Q Okay. And I don't want to get you, I mean, Mr. McCampbell's
13 already been on the stand and testified, so I don't want to get into his
14 statement at all.

15 A Okay.

16 Q But did he, based on the information he gave Detective Mogg and
17 Detective Wilson did another suspect name, slash, moniker emerge in your
18 investigation?

19 A Yes.

20 Q And what's that?

21 A Money.

22 Q Okay. Was Mr. McCampbell able to provide you with a true name
23 for Money at that time?

24 A No. He did not know his true name. But he did know a phone
25 number.

1 Q Okay. Now based on, well, we'll get there.

2 On April 22nd, 2013, do you have any breaks in this case?

3 A Yes.

4 Q And what's that?

5 A So on Monday, based on that surveillance that we had established
6 on the day before, our Criminal Apprehension Team makes an arrest over at the
7 Siegel Suites, like, less than two miles from the Sam's Town, where they get a
8 vehicle stop that Travis Costa was the driver, his girlfriend was the passenger,
9 and in the backseat they identify two females and Dustin Bleak.

10 Q Okay. Were those individuals -- was Dustin Bleak and Travis Costa
11 specifically detained?

12 A Yes, they were.

13 Q Was any anything interesting physical evidence-wise about the
14 vehicle?

15 A Well, the vehicle which had been reported stolen also had a, in the
16 backseat a BB gun and it was a Daisy BB gun. The interesting thing about that
17 it was tucked into, you know, where the backseat and the backrest and the
18 seat part meet, there was no magazine and we had recovered a BB gun
19 magazine and pellets at the original scene.

20 Q Okay. Did you get a chance to actually talk with Dustin Bleak and
21 Travis Costa?

22 A I did. I had both of them transferred to -- transported over to
23 headquarters where I was at and, you know, wanted to do an interview with
24 them.

25 Q Okay. I'm going to show you some pictures. Showing you

1 Exhibit 77, who is --

2 A That's Dustin Bleak.

3 Q Okay. Showing Exhibit 78, same happy individual there?

4 A Yes.

5 Q Okay. Showing you Exhibit 80.

6 A That's Travis Costa. He was the driver.

7 Q Showing you Exhibit -- and driver, are you talking about driver?

8 A Of the white vehicle.

9 Q Okay.

10 A At the time of the stop at the Siegel Suites.

11 Q On April 22nd?

12 A I'm sorry.

13 Q Of 2013?

14 A Yes.

15 Q And then Exhibit 79.

16 A Yes.

17 Q Because based on this --

18 THE COURT: Travis Costa again?

19 THE WITNESS: Yes, Travis Costa, sir.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 BY MR. SCHWARTZER:

22 Q Because based on the information that you received on April 21st,
23 did you believe you had the driver of the blue Cadillac?

24 A Yes.

25 Q And that was who?

1 A Mr. McCampbell.

2 Q Okay. So based on your interviews with Dustin Bleak and Travis
3 Costa did you receive further information about the African-American male that
4 was -- that you believe was the shooter in the video?

5 A Well, photo lineups were shown to them of who we --

6 Q I don't want you to get into the photo lineups.

7 A Okay.

8 Q But did that Money moniker re-emerge again?

9 A Yes.

10 Q Okay. And that was from Travis Costa?

11 A Yes.

12 Q Okay. Now, getting into, again, on April 22nd, 2013, were photo
13 lineups shown to Mr. McCampbell of Mr. Bleak and Mr. Costa?

14 A They were.

15 Q Okay. And specifically, we've gone through the lineups with Mr. --
16 with Mr. McCampbell and that the keys for Mr. Bleak for Mr. McCampbell -- for
17 Mr. McCampbell, but I want to ask you about this on one -- Exhibit 115?

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

19 THE COURT: You may.

20 BY MR. SCHWARTZER:

21 Q 115A, which has been admitted into evidence; do you recognize the
22 individual that Mr. McCampbell picked out?

23 A Yes.

24 Q Okay. And I'm going to show that on the screen. Publishing 115A,
25 who is the person that Mr. McCampbell circled on -- on April 22nd of 2013?

1 A That's Travis Costa.

2 Q Okay. Now, did you show photo lineups or did Mr. McCampbell
3 have photo lineups shown to him of -- with black males with the moniker of
4 Money?

5 A Yes.

6 Q Were any of those photographs of black males with the moniker of
7 Money including Darion Muhammad-Coleman on April -- I should be very clear
8 about that, on April 22nd, 2013, the photo lineup shown to Mr. McCampbell
9 with black males with the moniker Money, did that include Darion
10 Muhammad-Coleman?

11 A No.

12 Q Did Mr. McCampbell pick out anyone from that lineup?

13 A No.

14 Q Okay. So he said none of those people were Money?

15 A That's correct.

16 Q Okay. At that point did you have the name Darion
17 Muhammad-Coleman?

18 A No.

19 Q Okay. And just so we're clear, you've seen Darion
20 Muhammad-Coleman before?

21 A Yes.

22 Q Okay. And we'll get there, do you see him in the courtroom today?

23 A Yes.

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

25 A He's the gentleman in the light, I believe it's a light blue shirt with

1 the tan jacket.

2 MR. SCHWARTZER: Let the record reflect the identification of the
3 defendant, Your Honor.

4 THE COURT: The record will so reflect.

5 BY MR. SCHWARTZER:

6 Q Okay. So that's on April 22nd of 2013, so basically you have some
7 phone numbers, a phone number provided by Mr. Campbell and you have this
8 moniker Money, then did Mr. McCampbell give a general area of where he
9 knows Money hangs out at?

10 A Yes.

11 Q Okay. And where was that?

12 A Naked City which, like, behind the Stratosphere.

13 Q Okay. And at that point you didn't, on April 22nd of 2013, you
14 didn't have the name Darion Muhammad-Coleman?

15 A I did not.

16 Q Can you tell the ladies and gentlemen of the jury how you
17 developed that name?

18 A In -- we were -- Homicide works closely with the Criminal
19 Apprehension Team, which is called the CAT Team. We were able to -- they
20 knew that we were looking for a black male by the name of Money. So what
21 we do is we find a -- there's all kinds of records that we look at. In speaking
22 with Mr. McCampbell he stated that he had given Money and his girlfriend and
23 a child a ride to A and R Appliances. And he did that because they were trying
24 to sell a refrigerator and Mr. McCampbell also owned a white Ford Ranger, so
25 he took the refrigerator and them to A and R Appliances. They sell the

1 refrigerator there and there is a receipt. So when we go down and we talk to
2 the manager, Val Jensen of A and R Appliances she recalls exactly --

3 Q I don't want to get into, like, any hearsay, but does she provide you
4 with anything?

5 A Yes. She provides us with a receipt for the purchase of that
6 refrigerator that was sold.

7 Q Okay. And is there a name associated with that receipt?

8 A Yes.

9 Q Okay. And who is that?

10 A Keara Terrell.

11 Q Okay. Was there also a phone number that you were able to obtain
12 as well?

13 A Yes.

14 Q Okay. Was that from that receipt?

15 A Yes.

16 Q Okay. So based on that phone number and the name Keara Terrell
17 who you know was associated with Money, how do you then go about finding
18 out Darion Muhammad-Coleman's name?

19 A So what we do is we take that number and we run it through C --
20 Clark County Detention Center phone calls. We find that that numbers been
21 called. We pull the recording of that call and on that call is a woman who is
22 identified as an inmate at that time of Kamilah Muhammad. Kamilah
23 Muhammad on that call identifies herself as Money's momma.

24 Q Okay. And so based on that did you look into family records of Ms.
25 Muhammad?

1 A At that point we contacted family courts and we learned that
2 Kamilah Muhammad has one son and his name is Darion Muhammad-Coleman.

3 Q Based on that information did you believe that Money may be
4 Darion Muhammad-Coleman?

5 A Yes.

6 Q Based on that did you do a separate lineup with Mr. McCampbell on
7 April 25th of 2013?

8 A Yes.

9 Q And did you do, again, that six-pack photo lineup?

10 A Yes.

11 Q And in this case did you include Darion Muhammad-Coleman?

12 A Yes.

13 Q And now those photographs were they taken near that period of
14 time of April 19th, 2013?

15 A Yes.

16 Q Okay. So at that time those photo lineups would be more closely
17 associated with what Darion Muhammad-Coleman looked like as opposed to
18 today, four years later?

19 A Yes.

20 Q Okay. And was Mr. McCampbell able -- and you were there during
21 this -- this photo lineup?

22 A With Mr. McCampbell? No.

23 Q That was Detective Mogg?

24 A Yes.

25 Q Were you informed that that photo lineup was made -- identification

1 was made?

2 A Yes.

3 Q And that the identification was made to who? Who did
4 Mr. McCampbell identify as Money?

5 A Darion Muhammad-Coleman.

6 Q Later that day did you have the chance to meet with will LeCory
7 Grace?

8 A I did.

9 Q And you actually were there for that photo lineup?

10 A Yes. Detective Mogg and I both went.

11 Q Thank you, Detective.

12 And did you, again, the six-pack lineup with LeCory Grace, and
13 was -- and did you show him a six-pack lineup that included Darion
14 Muhammad-Coleman with photographs that more resembled him at that time as
15 they do now?

16 A Yes.

17 Q And was Mr. Grace able to make any types of identifications?

18 A He did.

19 Q Specifically, what did he do?

20 A He chose the photos depicted and marked as 4 and 5. He wasn't
21 quite sure which one, so he chose 4 and 5. Number 5 was Darion
22 Muhammad-Coleman is who he thought it was the same person he saw that
23 night when he came down the steps.

24 Q Okay. So he didn't make a specific finding that number 5 was
25 Money or -- or was the person who came down the stair -- sorry.

1 A Resembled.

2 Q Resembled the person that was, you know, by the car when he
3 came -- when LeCory Grace came down the stairs?

4 A Yes.

5 Q But that number 5 resembled that person?

6 A Yes.

7 Q Okay. To be fair. Now during this period of time, April 25th of
8 2013, were you providing any information to patrol in that area?

9 A So typically when we're trying to find someone, there's all different
10 avenues that we can do. One of things is on patrol briefings which allows us to
11 push information out so that obviously we can't be to every substation for
12 every briefing, every day, so what we do is we post photos, anything that we
13 need, information that we like, contact us, this is the person that's in charge of
14 this investigation, so please reach out to me if you locate this person. And
15 what I did is I put that we were looking for Darion Muhammad-Coleman, A.K.A.
16 Money, in the Naked City area.

17 Q So there were officers that were aware that you were looking for
18 this individual possibly in the Naked City area?

19 A Yes.

20 Q And on April 29th, 2013, so now we're talking about ten days after
21 the incident, correct?

22 A Yes.

23 Q And eight days after Mr. McCampbell turned himself in?

24 A Yes. He turned himself in on a Sunday and on Monday the 29th.

25 Q Okay. So on April 29th, 2013, were you then called out to a

1 apartment in Naked City?

2 A I was.

3 Q Okay. How did that come about?

4 A I received a phone call from an officer. There was two officers out
5 there actually, Officers Downie and Kibble, who stated that they he had
6 obtained, they had been waved down, they were doing some directed patrol
7 activity over there and some citizen had waved them down at the 1712
8 Fairfield, I believe, address stating that they had located an item that they
9 needed to talk to the police about.

10 Q Okay. Specifically was there any mention to you that Money might
11 have been -- this might be a place that Money might have been around?

12 A Yes. From people that were living in that area, they said that they
13 had seen a younger black male that was going in and out of a specific
14 apartment, which was number 7 over there, associated with that apartment.

15 Q Okay.

16 A Knowing that we were looking for Money and putting two and two
17 together, they contacted us and asked you us to respond out there.

18 Q Showing you Exhibit 88, this is -- I know it's dark and you can
19 barely, probably you can barely see it, but there's an address there. Does this
20 look familiar?

21 A Yes.

22 Q And this is the address you responded to on April 29th of 2013?

23 A Yes.

24 Q And that it would be 1712 Fairfield Avenue?

25 A Fairfield, yep.

1 Q And was there a specific apartment you were responding to?

2 A Seven.

3 Q Okay. Showing you 89, is this apartment number 7?

4 A Yes.

5 Q Okay. Now was the firearm actually inside the apartment when you
6 got there?

7 A No.

8 Q Okay. Showing you Exhibit 90, do you recognize that?

9 A Yes.

10 Q Okay. What's important in this photograph?

11 A This is a, like, Oster toaster oven and when they -- the owners of
12 the property had moved it out. When he picked it up, he noticed it was really
13 heavy. He had set it up there on that wall and it fell and inside of it is a gun.

14 Q Okay. Showing you Exhibit 94, do you recognize -- is this inside
15 that toaster oven?

16 A Yes. It's a brown belt. There is a black holster and inside that
17 holster is a 9 millimeter Ruger.

18 Q Did you have that holster and firearm tested for DNA?

19 A I did.

20 Q Did it come back with any results?

21 A It was inconclusive.

22 Q Okay. So it couldn't compare it to anybody?

23 A Nope.

24 Q Okay. And was the fingerprints attempted to taken off the firearm?

25 A We did.

1 Q And were they able to obtain any fingerprints off that firearm?

2 A No.

3 Q So based on the fact that this firearm is found in apartment
4 number 7, at least according to the witnesses, and that a person by the name --
5 a black male by the name of Money was found -- was seen going in and out of
6 that apartment, did you want to search that apartment?

7 A I did.

8 Q Were you able to get consent to search from an individual?

9 A Yes. While we were there a female identified as Tatiana Lee
10 showed up and stated that she had rented that apartment a couple of weeks
11 prior and she had established power being, Nevada Energy, service there and
12 she signed a consent to search and she also conducted a recorded interview
13 with us to enter is that apartment and search it.

14 Q Okay. Showing you Exhibit 87, is this the consent to search card?

15 A Yes.

16 Q Okay. Did you -- did you search the apartment?

17 A I did.

18 Q Okay. Can you -- were there any items of interest that you found in
19 that apartment?

20 A Yes. There were. She was very specific about what items were
21 hers prior to us going in. She was very, she told us exactly what was hers.
22 The rest of it she said she had no knowledge of who it belonged to. However,
23 there were several garbage bags full of clothing, papers.

24 Q What type of clothing?

25 A Male clothing. And when we started looking through there we

1 found a couple of items with the name of Darion and Kash on them.

2 Q Okay. I'm going to show you Exhibit 97. Do you recognize that?

3 A Yes. That's the composition notebook.

4 Q Anything inside that notebook of interest?

5 A Yeah. There's a letter signed with the name Darion.

6 Q Okay. Showing you --

7 A Or a note, I should said.

8 Q Showing you Exhibit 95, do you recognize this document?

9 A Yes. That's where we found the Kash and also on there right here
10 is Kamilah which is Darion's mom's name.

11 Q Okay. Showing you Exhibit --

12 THE COURT: And just to be clear, you said "that's where we found the
13 Kash," not cash money but the word Kash?

14 THE WITNESS: Yes, right here, it's a Skype name, Kash Muhammad.

15 THE COURT: Thank you.

16 BY MR. SCHWARTZER:

17 Q Okay. And Skype for the record is?

18 A It's like FaceTime. I don't use Skype, so.

19 Q Okay. Showing you Exhibit 96, you see the various documents in
20 here, but anything of interest for your investigation?

21 THE COURT: This is also within the composition notebook?

22 THE WITNESS: Inside the notebook. "Coleman" here and here.

23 BY MR. SCHWARTZER:

24 Q Is that "D. Coleman"?

25 A Yes.

1 Q Okay.

2 A Yes. Right here is D period Coleman, D period Coleman and here
3 we go again.

4 Q And then I'll pull it over. I just moved it on you. I'm sorry.

5 A Yes. Yes.

6 Q And then so there is various D. Coleman's all over this?

7 A Yes.

8 Q Okay. And then showing you Document 98, this appears to be a
9 document from U.M.C.; is that correct?

10 A Is that U.M.C. or Sunrise?

11 Q I might be wrong.

12 THE COURT: No, no, no, you're going to --

13 BY MR. SCHWARTZER:

14 Q It appears to be a medical document.

15 THE COURT: You're going to have to zoom out so that she can actually
16 see it because she can't see anything.

17 THE WITNESS: Right here is U.M.C., yeah.

18 BY MR. SCHWARTZER:

19 Q Okay.

20 A Yes. You were correct.

21 Q Great. Now, was that document found within that notebook or was
22 it found separate from the notebook?

23 A No. I think it was found separate. There was a lot of loose items
24 everywhere in the living room area, so I believe that was found separate from
25 the notebook.

1 Q And specifically there appears to be a name of the patient that was
2 treated on --

3 A Yes.

4 Q And that was --

5 A Muhammad-Coleman, Darion.

6 Q Okay.

7 A With a date of birth of 12-8 of '94.

8 Q Okay. And that's from -- for April, 2012, admission?

9 A Yes. Yes.

10 Q Okay. So you found male clothing, you found various document --
11 a composition notebook with D. Coleman all over it, and you found medical
12 documents with Darion Muhammad-Coleman's name on it?

13 A Yes.

14 Q Okay. Do you know where Ms. Muhammad, Darion's mom, was
15 living at the time?

16 A We had some information that she was staying in that area around,
17 not too far away, like, like, a block. I think it was on Chicago.

18 Q Let me ask you this, besides Ms. Lee, was there any females that
19 you talked to that came to the apartment that day?

20 A Yes. While speaking with Tatiana Lee, she says that she's been
21 locked out of that apartment for a week and a half, two weeks, that she hadn't
22 seen Money for about that time period --

23 Q Well, I don't want you -- I don't want you to get into what she said
24 or anything like that. Was there any women with her?

25 A Well, she went back to -- she was staying at an address on New

1 York and she went back and got her friend whose name was Keara Terrell.

2 Q So the same woman who was --

3 A Whose phone number --

4 Q -- on the receipt of the appliance store?

5 A Yes, that's correct.

6 Q Okay. And who also called -- who's also talking to Money's

7 momma on -- on the phone record?

8 A That's right.

9 Q So all that stuff got impounded? The documents?

10 A The items that were in number 7, yes, yes.

11 MR. SCHWARTZER: May I approach?

12 BY MR. SCHWARTZER:

13 Q Showing you State's Proposed 3.

14 A Yes.

15 Q Are those items that were impounded on that date --

16 A Yes.

17 Q -- on April 29th, 2013?

18 A Yes.

19 Q And basically the items that we were shown on -- by the

20 photographs, correct?

21 A Yep.

22 Q I'm going to have you cut this, but we won't go through it. We'll

23 let the jury do that.

24 A Okay.

25 Q Well, first off, there is an event number associated with this,

1 correct?

2 A Yes.

3 Q 130419-4147?

4 A That's correct.

5 Q And you see eight -- well, it's listed as eight documents found at
6 this location?

7 A It's item 8, there's papers and composition notebook with the
8 names D. Coleman, Darion Muhammad and M. Coleman.

9 Q Okay. And this was stuff that was impounded on 1712 Fairfield
10 Avenue, Apartment Number 7?

11 A Yes. It says the location right there with that address.

12 Q And that was during your search of the place?

13 A Yes.

14 MR. SCHWARTZER: Okay. I move for admission of Exhibit 3,
15 Your Honor.

16 MR. SCHWARZ: No objection, Judge.

17 THE COURT: All right. That will be admitted as envelope and contents.

18 MR. SCHWARTZER: Why don't we just say 3 and then contents as 3A?

19 THE COURT: No. It'll just be 3 and then envelope and contents.

20 MR. SCHWARTZER: Okay. Thank you.

21 **[STATE'S EXHIBIT 3 ADMITTED]**

22 BY MR. SCHWARTZER:

23 Q And to be clear when we go way back to April 22nd of 2013, did
24 you actually arrest Dustin Bleak for the -- for what happened in this case?

25 A I did.

1 Q Dustin Bleak's, as we've seen, is not an African-American male,
2 correct?

3 A No. He's a white male.

4 Q So he was arrested but he wasn't what you believed to be the
5 shooter in this case?

6 A That's correct.

7 Q Okay. Now, so after April 29th, 2013, you find these items at the
8 Fairfield address, when you go to this address are there -- I know you're not in
9 a black-and-white, but are there black-and-whites there with you? Officers in
10 uniform that -- you have to answer, I'm sorry.

11 A Yes, there were. Uh-huh.

12 Q Officers in uniform there?

13 A Yes.

14 Q You weren't hiding the fact you were trying to find Money?

15 A Oh, no. No. We had been in the area several times. The word was
16 out that we were, between uniform officers and with Homicide going over,
17 looking for him, as well as the CAT team, the Criminal Apprehension Team,
18 word was out that we were looking for Money.

19 Q And were you able to locate him on April 29th, 2013?

20 A No, I wasn't.

21 Q By May 3rd, 2013, were you able to locate Darion
22 Muhammad-Coleman?

23 A No.

24 Q Based on the fact that you haven't been able to find him and now
25 we're talking almost two weeks after, if not more, after the incident, do you

1 then do something?

2 A Yes.

3 Q And what's that?

4 A I obtained a warrant for his arrest.

5 Q Okay. After you have the arrest warrant is then there's -- is that
6 something that you're actively searching to arrest this individual?

7 A Yes.

8 Q Okay. Were you able to arrest him in May?

9 A No.

10 Q Were you able to arrest him in June?

11 A No.

12 Q Were you able to arrest him in July?

13 A Yes, July 3rd.

14 Q So on July 3rd, 2013, you're finally able to arrest Darion
15 Muhammad-Coleman?

16 A Yes.

17 Q The defendant?

18 A Yes. The CAT team located him.

19 Q Okay. He -- he didn't -- fair to say the defendant didn't turn himself
20 in to you?

21 A No, he did not.

22 Q Okay. After that arrest on July 3rd of 2013, is there additional
23 forensic evidence that you then receive as the lead agent, as the case agent?

24 A Yes.

25 Q And what does that entail?

1 A On April 16th, I believe, 2014, the forensic lab is able to, for all the
2 forensic testing that I had requested previously on items that had been
3 recovered evidence, we found out that we had a match on bullets recovered
4 from the original scene with the handgun recovered in the 1712 Fairfield,
5 Number 7 residence.

6 Q Okay.

7 A We also found out that we had fingerprints on the car molding that
8 came back, latent prints.

9 Q And just to go back to that apartment on April 29th, 2013, the --
10 what we just showed you that U.M.C. admission document that had the date of
11 birth, was that date of birth the date of birth of this defendant?

12 A Yes.

13 Q Okay. So based on all the information you gathered through your
14 investigation then did you decide to arrest Darion Muhammad-Coleman for
15 murder?

16 A Yes.

17 Q Thank you, Detective.

18 MR. SCHWARTZER: Court's indulgence.

19 I'll pass the witness.

20 THE COURT: I'm assuming you've got a little bit, Mike?

21 MR. SCHWARZ: Yes, Judge, and I'm not going to --

22 THE COURT: Okay. We'll go ahead and take our lunch recess at this
23 time. During the recess ladies and gentlemen, you are admonished not to talk
24 or converse among yourselves or with anyone else on any subject connected
25 with the trial or read, watch, or listen to any report of or commentary on the

1 trial by any medium of information including, without limitation, to newspapers,
2 television, the Internet, and radio or form or express any opinion on any subject
3 connected with the case 'til it's finally submitted to you, no research,
4 investigation, or re-creations during our break. We will see you back in an hour.
5 Okay? Thank you.

6 [Outside the presence of the jury panel]

7 THE COURT: Okay. You guys can be seated.

8 Or, Terri, you can take off obviously.

9 THE WITNESS: Okay. Thank you, Your Honor.

10 THE COURT: This is the State's last witness, correct?

11 MR. SCHWARTZER: Correct.

12 THE COURT: All right. So I anticipate when we get back from lunch we
13 will roll right into the defense case, Mr. Schwarz. So let me -- let me go over --

14 Mr. Muhammad-Coleman, there's a couple things I need to go over
15 with you before we move to the defense case about testifying, okay, and you
16 can sit down, you're okay. Under the Constitution of the United States and
17 under the Constitution of the State of Nevada, nobody can compel you to be a
18 witness you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That mean nobody can make you testify. That's a decision
21 that you get to reach solely by yourself based on your advice and counsel of
22 your attorney, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you decide you want to testify and you get up on the
25 stand and testify, you're subjected not only to questions by your attorney, but

1 questions by the prosecutors as well; you understand that?

2 THE DEFENDANT: Yes sir.

3 THE COURT: And anything that you say when testifying, whether it's
4 from questions by your attorney or questions by the State's attorney, any of
5 that is subjected to comments by the attorneys when they make their closing
6 arguments; you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. If you choose not to testify, we give a jury
9 instruction, if you and your attorneys want me to, that tells the jury that it is a
10 constitutional right of a defendant in a criminal case that he cannot be
11 compelled to testify and the jury can make no inference from that and cannot
12 consider it in any way when they have their deliberations. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So that would be a written instruction that they get if
15 you-all want me to give them that. Okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Finally, you need to understand that if you decide you do
18 want to testify, if you have a felony conviction or convictions and more than
19 ten years has not elapsed from the date you were convicted or discharged from
20 prison, parole, or probation then the attorneys would be able to ask you in front
21 of the jury have you before convicted of a felony or felonies, what the felony or
22 felonies, and when did the convictions occur. They cannot go into the
23 circumstances of any prior felony convictions unless that gets opened up in
24 some other fashion. Okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that as well?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right do you have any questions about any of
4 those -- those issues? No?

5 THE DEFENDANT: I'm ready.

6 THE COURT: Okay. All right. We will be in recess, guys. I will see you
7 back after lunch.

8 MR. SCHWARTZER: Thank you, Your Honor.

9 THE COURT: At 2:00 o'clock.

10 MR. SCHWARZ: All right. Thank you, Judge.

11 THE COURT: Thank you, guys.

12 [Recess at 12:58 p.m.; proceedings resumed at 2:06 p.m.]

13 [In the presence of the jury panel]

14 THE COURT: All right. We're going to be back on the record.

15 Mr. Muhammad-Coleman's present with his attorney. State's attorneys are
16 present. We're going to continue on with the testimony of Detective Miller.

17 I will remind you, Detective, that you're still under oath, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. Thank you.

20 All right, Mr. Schwarz.

21 MR. SCHWARZ: Thank you.

22 **CROSS-EXAMINATION OF TERRI MILLER**

23 BY MR. SCHWARZ:

24 Q Hi, Detective. How you doing?

25 A Good. Thank you, sir.

1 Q So let me ask you this, was Richard McCampbell, the guy who
2 drove the car, the only one that turned himself in?

3 A That self-surrendered, yes.

4 Q Okay. Did you ever interview Mr. McCampbell?

5 A I personally did not.

6 Q Okay. Did you -- were you ever aware that Mr. Campbell attempted
7 to turn himself earlier than -- in earlier than the date he actually surrendered at
8 the Clark County Detention Center?

9 A No, I was not aware of that.

10 Q And if -- and if you need to refer to a report, that's fine. So
11 Dustin Bleak and Travis Costa were arrested together?

12 A Yes.

13 Q And they're brothers, right?

14 A They are.

15 Q And this has been admitted as State's Exhibit 80. Now that's
16 Travis Costa. Yes?

17 A Yes.

18 Q Do you know how old Travis Costa was at the time he was
19 arrested?

20 A I would have to look.

21 Q You can. But does 33 sound about right?

22 A Approximately.

23 Q Okay all right. And then this is his brother, Dustin Bleak, right?

24 A Yes. That's Dustin.

25 Q And do you know how old he was, approximately, when he got

1 arrested?

2 A Again, I would have to look.

3 Q Would 26 sound about right?

4 A Yes.

5 Q Okay. And then this is the lineup you showed Mr. McCampbell, and
6 I think I'll just put it this way, and that's a picture of my client, correct?

7 A Yes.

8 Q And you testified that that photograph was a recent photograph in
9 the sense that it looked like my client as he looked on April 19th of 2013?

10 A Approximately.

11 Q Okay.

12 A Can I clarify?

13 Q Of course.

14 A That was from his most recent arrest from the Clark County
15 Juvenile, so whatever that date was.

16 Q I think I'm going to have to ask you to stop there and perhaps move
17 to strike.

18 THE COURT: Okay. I will grant that. I'll strike that.

19 BY MR. SCHWARZ:

20 Q Okay. So -- so essentially around the same time?

21 A Approximately, yeah.

22 Q Okay. All right. Thank you. Do you know how old my client was
23 on April 19th, 2013?

24 A I know he was born in '94 so that would have made him 15 or 16.

25 Q Okay. All right. And possibly a little older. If he was born in '94

1 he -- and his birthday hasn't come up yet, he's 18?

2 A December 8th, correct?

3 Q December 8th, '94?

4 A Yes.

5 Q This happened April 19th, 2013, he would, in my estimation he
6 would turn 19 on the following December, he would be 18 at the time of the
7 crime, yep?

8 A In '13?

9 Q Yes.

10 A December 13th. Okay.

11 Q Okay. So he's 18, Bleak's 26, Costa's 33, Darion's 18. Now you
12 indicated that when the officers arrived on the scene and you did go to the
13 scene, right?

14 A Yes, I was at the scene.

15 Q That the responding officers had already taken money out of
16 Mr. Barrio's pocket?

17 A Borero's pocket.

18 Q Borero's pocket.

19 A Yes, and two cell phones.

20 Q And two cell phones and some other personal items?

21 A I don't recall other items.

22 Q Cigarette, lighter, that kind of stuff.

23 A Okay.

24 Q And all of that was waiting for you when you got there?

25 A Yes.

1 Q Now, did you not go to the hospital?

2 A Detective Mogg did.

3 Q Right. But did you become aware, did you ever know or learn or
4 see that Mr. Borero had his jewelry on?

5 A Yes. Because it was -- it went to the coroner's office with the
6 coroner investigator and I was at autopsy the next day.

7 Q Okay. And the bag of methamphetamine that was located at the
8 scene, that was laying on the ground?

9 A Yes.

10 Q So obviously it was still there?

11 A Yes.

12 Q I know that that's a stupid question, but, you know, you've got to
13 ask it. I had to smile at myself.

14 Now, Travis Costa was not arrested or charged for this?

15 A Technically, he was arrested because he was taken into custody in
16 a stolen vehicle, but he was released.

17 Q So more appropriately, he was not charged in connection with the
18 shooting of Mr. Borero?

19 A That is correct.

20 Q And Richard McCampbell was not, well, he turned himself in, I
21 don't know if he was technically in custody, but he was not charged in the
22 shooting of Mr. Borero?

23 A No, wasn't.

24 Q Okay. And you -- you testified that to the best of your knowledge
25 after conducting this exhaustive investigation, there were no eye witnesses to

1 the actual shooting?

2 A No.

3 Q Nobody saw that happen?

4 A Nope, just the video.

5 Q Just the video. McCampbell didn't see it?

6 A No.

7 Q And neither did Costa?

8 A They denied it.

9 Q And they -- fair enough.

10 A Uh-huh.

11 Q And they -- they -- nobody admitted they saw it?

12 A Exactly.

13 Q Now, and you can correct me if I'm wrong, because you know it's a
14 long day and so forth, did you say that you spent a couple of weeks looking for
15 Darion before you got a warrant?

16 A We got the warrant on May 2nd and I believe he was identified,
17 positively identified on the 24th. So depending, a week and a half, two weeks,
18 approximately.

19 Q Okay. And why would you wait so long to get the warrant?

20 A Well, I was trying to find him to get his side of the story.

21 Q You would have preferred to arrest him without a warrant?

22 A I would prefer to talk to him before I decide if I'm going to arrest
23 him or not.

24 Q Okay. I see. So, you know, he's -- he's sort of a suspect, you can
25 sort of bring him in?

1 A No, he was a suspect.

2 Q Right.

3 A After he was identified.

4 Q He's a suspect, you can bring him, and you can sort of, you know,
5 tell him he's not under arrest?

6 A Uh-huh.

7 Q And --

8 A Give him the opportunity.

9 Q -- you just want to chat and that kind of stuff, but once you get a
10 warrant for his arrest then obviously that's out the window, right?

11 A That's correct.

12 Q Now you've got to read him his *Miranda* warnings and so forth?

13 A Yes.

14 Q And he's got to waive them before he'll talk to you?

15 A That is true.

16 Q And ultimately that is what happened, right?

17 A Yes.

18 Q Okay. So you held out on the warrant for?

19 THE COURT: Well, just could be clear, ultimately what is what
20 happened? What do you mean?

21 MR. SCHWARZ: Ultimately --

22 THE COURT: He was arrested.

23 BY MR. SCHWARZ:

24 Q Ultimately, you did get a arrest warrant?

25 A I did on May 2nd signed by the Honorable Judge Tao.

1 Q It's amazing you remember that.
2 And then ultimately he was arrested on it?
3 A Yes, on July 3rd.
4 Q Okay. And then --
5 A He was arrested on that warrant.
6 Q But not by you?
7 A The CAT team took him into custody.
8 Q And then notified you?
9 A Yes.
10 Q And then you and your partner went and interviewed him?
11 A He was brought to us.
12 Q Okay. All right.
13 MR. SCHWARZ: I don't have anything further. Thank you.
14 THE COURT: Thank you. Can you guys approach the bench.
15 [Bench conference -- not transcribed]
16 MR. SCHWARZ: Thank you, Your Honor, I have nothing further.
17 THE COURT: Thank you.
18 Mr. Scwhartzer.
19 MR. SCHWARTZER: Sure.

20 **REDIRECT EXAMINATION OF TERRI MILLER**

21 BY MR. SCHWARTZER:

22 Q Detective Miller, you were asked a line of questions about why you
23 didn't arrest Travis Costa -- if I arrested Travis Costa and Richard McCampbell
24 in this case, correct?

25 A Yes.

1 Q Do you remember that line of questioning?

2 A Yes.

3 Q Okay. Why did you decide to arrest Darion Muhammad-Coleman,
4 the defendant, as opposed to Travis Costa and Richard McCampbell?

5 A It was clear to us by the video that Travis Costa nor Richard
6 McCampbell ever got out of the vehicle. The primary aggressors on this were
7 the two that got out of the car that were going to commit this act. And when
8 we talked to both Mr. McCampbell and Mr. Costa, we made it quite clear that
9 this was an ongoing investigation because we didn't have everyone in custody
10 at that point to get everyone's story and that through the investigation,
11 depending on what happened at the outcome and our review with the D.A.'s
12 office, whether there would be charges is forthcoming.

13 Q Okay. So you charged Mr. Bleak and Mr. Muhammad-Coleman
14 based on your view of the video with them being the aggressors?

15 A That's true.

16 Q And you didn't Mr. Costa nor Mr. McCampbell involved in the
17 incident?

18 A Neither of them got out of that car.

19 MR. SCHWARTZER: Thank you. No further questions.

20 MR. SCHWARZ: I have nothing further, Your Honor.

21 THE COURT: Anything from our jurors?

22 Detective Miller, thank you very much for your time. I appreciate it.
23 You are excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right. State going to have any further witnesses?

1 MR. SCHWARTZER: We're not, Your Honor. There is a couple things we
2 need to do before we rest though.

3 THE COURT: Okay. In terms of just making sure all the evidence is
4 admitted?

5 MR. SCHWARTZER: Well, first off, the State and the defense have come
6 to an agreement regarding Exhibit 123 which is a sequential video of the actual
7 surveillance, it's Exhibit 123, we would ask for that admission.

8 MR. SCHWARZ: No objection, Your Honor.

9 THE COURT: All right. That will be admitted.

10 **[STATE'S EXHIBIT 123 ADMITTED]**

11 MR. SCHWARTZER: Additionally, the State and the defense, as opposed
12 to having a family member on the stand, have agreed to stipulate to the identity
13 of the individual who is the victim of the homicide as --

14 THE COURT: Okay.

15 MR. SCHWARTZER: -- Dale Borero.

16 MR. SCHWARZ: That's correct, Judge. No objection.

17 THE COURT: All right. So we will note that for the record as well.
18 Folks, and when the attorneys enter into stipulations, you accept that as facts
19 as if they were proven by testimony.

20 MR. SCHWARTZER: And, Your Honor, if I could just have a quick second
21 to look over the exhibit list, I think --

22 THE COURT: You may.

23 MR. SCHWARTZER: -- we will rest.

24 We're going to withdraw Exhibit 121.

25 THE COURT: Okay.

1 MR. SCHWARTZER: And with that the State will rest.

2 THE COURT: Very good. All right. Mr. Schwarz, we'll move over to the
3 defense case, you had deferred making an opening statement, do you wish to
4 make one at this point?

5 MR. SCHWARZ: Yes, thank you, Your Honor.

6 THE COURT: Okay.

7 MR. SCHWARZ: Good afternoon, ladies and gentlemen. In case you
8 forgot, my name is Mike Schwarz. I'm representing Darion Coleman. And this
9 is our opportunity to present some evidence to explain our position in this case,
10 what we commonly call the theory of our defense.

11 So on April 19th, 2013, my client, Darion Muhammad-Coleman,
12 was an 18-year-old kid. He lived in the area of Naked City behind the
13 Stratosphere, and on that particular night he ran into a couple of people, one he
14 knew a little bit and one he didn't know very well at all. And that's Travis
15 Costa and his brother, Dustin Bleak. Now they had a little bit of a conversation
16 and Travis Costa asked Darion if he had a car, they needed a ride, they needed
17 to go meet a guy by the name of Dale Borero. They needed to meet him
18 because they had arranged a transaction and they needed to get to Boulder
19 Highway.

20 Darion did not have a vehicle but he did have a friend, a guy by the
21 name of Richard McCampbell also known as The Mechanic. Darion and Travis
22 and Dustin Bleak approached Richard McCampbell who was sitting in his
23 vehicle, as he often did, over on Philadelphia Street. He hung out there quite a
24 bit. Darion will tell you that Mr. McCampbell was drinking, was in fact heavily
25 intoxicated, and Darion will also tell that you he observed Mr. McCampbell

1 smoking crack cocaine.

2 Now you may say to yourself, well, who would ride with such a
3 person? Well, certainly not people who are going to commit a robbery, but
4 people who are desperate to buy narcotics will certainly take that chance and
5 they did. They asked him for a ride, he agreed to give them a ride, he was paid
6 \$10.00 for the ride and off they went.

7 Now, there was a phone call between Dustin Bleak and someone.
8 My client cannot tell you who that person was. But the result of that phone
9 call was they had a little time, it wasn't urgent as it had been. And so Travis
10 Costa decided to stop at the 7-Eleven that's on the way. Now, I don't know if
11 you're familiar with this part of town, but there is a Lowe's over there on
12 Charleston and Fremont, Boulder area where it all kind of connects. And then
13 there's a Chase Bank. And then there's a 7-Eleven and a little strip mall and
14 then there's a Dotty's next to it. It's on the way. So Travis Costa said, hey,
15 we got a little time, let's go get some beer.

16 My client will testify there was no drama about where to park the
17 car, why to park the car, why they were stopping, nothing. Now when
18 Mr. Costa went in to get the beer, Dustin Bleak tapped my client on the
19 shoulder, wanted to have a word with him. Richard McCampbell testified that
20 it looked like they were having just a general old conversation. They were
21 discussing something, but they were certainly not planning a robbery and they
22 sat outside of the car, stood outside of the car until Mr. Costa got the beer, and
23 then off they went over to the Travelers Inn.

24 My client will testify that did he not, nor did anybody, tell
25 Mr. McCampbell to do that three-point turn. And I want you to watch that turn

1 on the video, Mr. McCampbell did that. They wanted him to park towards the
2 end, they pointed out the spot, and Mr. McCampbell did the three-point turn
3 and didn't execute it very well, as an aside. While they were sitting there, in
4 spot number 1, as it's been designated, my client began to notice some things.
5 Now, first and foremost, the only guy he knows in the car really well is
6 Mr. McCampbell and he doesn't know him all that well. He gives him rides
7 every now and again. He doesn't know Travis Costa but for, you know, a
8 couple of times he's met him. He doesn't know Dustin Bleak hardly at all.

9 Bleak's on the phone. He's looking up, he's seeing these people on
10 the balcony. He's seeing Dale Borero on the balcony. And by the way, my
11 client's heard of Dale Borero. Dale Borero has a reputation in the community.
12 Dale Borero has a reputation as being a drug dealer. He has a reputation in the
13 community of being a violent person. And he has a reputation in the
14 community of carrying a gun. And so my client is getting a little bit nervous,
15 Darion is. He's asking himself what have I gotten myself into.

16 Now, he doesn't know that the Grace brothers don't know Dale
17 Borero. All he knows is they're up on the balcony. That's all he knows. He
18 don't know that Ms. Bishop isn't involved in any of this, he just knows she's up
19 there too and so is Dale Borero on the phone, Dustin Bleak on the phone. All
20 these people up on the balcony, and I don't know what's going on is what's my
21 client's thinking.

22 Now at some point, the Gracie bother -- or Dale comes down the
23 stairs. You see what he's wearing. He's wearing a white tank top. He's
24 carrying a gun. My client sees the gun. He's carrying it on his right hip. It's a
25 big gun. It's not the Dirty Harry gun, it's not that big. But it's eight inches.

1 It's not the type of gun that you can fit in your pocket, it's a big gun and it's
2 visible under his tank top and my client sees it.

3 So now he's got a bunch of strangers milling around upstairs on the
4 balcony looking down at him and Dale Borero with a handgun right here. Now,
5 my client may be out of the vehicle at this time and saying, you know, I don't
6 remember the video frame for frame, but he is leaning against the car. He's not
7 involved in the conversation, he's there to secure an introduction to Mr. Borero
8 from whom he hopes in the future to someday buy methamphetamine to sell
9 himself. But he's not selling that night, he arranged a ride, he's looking to
10 secure an introduction, and then all of this is going on and then the next thing
11 you know, there's an argument.

12 Now, I don't know, ladies and gentlemen, I've seen a lot of
13 arguments some of them involve waving your hands, some of them do, but all
14 of them don't. Some of the worst once I've seen don't. And a lot of them
15 involve people who are standing there just like this.

16 MR. SCHWARTZER: Objection. Argumentative, Your Honor.

17 THE COURT: Well, I'll sustain the objection.

18 MR. SCHWARZ: My point is, the testimony will show that these two
19 were engaging in a heated discussion over money, over money owed to
20 Dale Borero by Dustin Bleak. And then a threat was made by Dale Borero and
21 that is when my client responded to the threat, that is when he walked over to
22 Mr. Borero and produced the handgun, does not shoot him. You can watch the
23 tape. Mr. Borero reaches up, tries to slap the gun away, my client puts the gun
24 in his face again. Mr. Borero's reaching for the gun, my client pulls it away,
25 puts it away again. And then my client decides, based on the available

1 evidence, that he needs to put this guy on the ground. Not that he needs to
2 shoot him, he needs to put him on the ground. He needs neutralize his threat,
3 and so he hits him. And after that Mr. Borero pulls his gun and then it's a
4 shoot-out.

5 Now, that's what happened. It's up to you good citizens, 12 -- 12
6 citizens, good and true, to listen to the testimony and make up your own mind.
7 That's what my clients going to tell you, that's what his testimony will be. And
8 if you believe him, you'll have no choice but to find him not guilty. Thank you.

9 THE COURT: Thank you. Defense may call their first witness.

10 MR. SCHWARZ: Judge, I'll call my client, Darion Muhammad-Coleman.

11 THE COURT: All right. Mr. Muhammad-Coleman, if you'll come on up to
12 the witness stand please, sir. Just remain standing and raise your right hand.

13 **DARION MUHAMMAD-COLEMAN,**

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

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

17 THE WITNESS: Darion Muhammad-Coleman, D-A-R-I-O-- D-A-R-I-O-N;
18 Muhammad, M-U-H-A-M-M-A-D, hyphen Coleman, C-O-L-E-M-A-N.

19 THE COURT: All right. Thank you.

20 Mr. Schwarz.

21 MR. SCHWARZ: Thank you, Your Honor.

22 **DIRECT EXAMINATION OF DARION MUHAMMAD-COLEMAN**

23 BY MR. SCHWARZ:

24 Q Darion, as you sit here today you've been convicted of four
25 felonies; is that correct?

1 A Yes, sir.

2 Q Do you know what the four felonies are?

3 A I can't recall.

4 Q One is conspiracy to commit robbery, one is burglary while in the
5 possession of a firearm, one is robbery with the use of deadly weapon, and one
6 is coercion with use of a deadly weapon; is that correct?

7 A Yes, sir.

8 Q When were -- when were you convicted of those?

9 A 2015.

10 Q And that was pursuant to a guilty plea?

11 A Yes, sir.

12 Q All right. Now, on the -- on April 19th, 2013, prior to meeting up
13 with Dustin Bleak and Travis Costa what were you doing?

14 A I was at my mom house.

15 Q And when you say your mom's house, where was that?

16 A That was on Chicago. I don't remember the exact address. It's
17 between Chicago and Fairfield.

18 Q All right. Can you speak up a little bit?

19 A It's between Chicago and Fairfield. I can't remember the exact
20 address.

21 Q And that would be the Naked City area?

22 A Yes, sir.

23 Q All right. And did you come in contact with anybody that we've
24 been talking about in the context of this trial?

25 A Yes, sir. I came in contact with Travis Costa and Dustin Bleak. I

1 was coming outside my mom house and I was on the phone with my little
2 sister. I seen Travis Costa and Dustin Bleak. I never met Dustin Bleak before,
3 but I met Travis Costa a couple times because he was friends with my
4 neighbor.

5 Q Okay. Now, when you met them, did you have a conversation?

6 A This time right here?

7 Q Yes.

8 A The previous times or this time?

9 Q Oh, this time.

10 A Yes, sir. So --

11 Q And what was that conversation about?

12 A So I was on the phone with my sister and Travis Costa got my
13 attention let me know that he would like to speak with me. So when I got off
14 the phone with my sister, I went to speak to Travis Costa. It was pretty much
15 small talk, you know, how you doing, where you been, stuff like that. Then he
16 asked me did I have a -- did I have a car because he needed a ride. I told him
17 no, but when I was on the phone with my sister I had seen Richard McCampbell
18 sitting across the street because in our apartment complex we're in the middle,
19 so to your left is Chicago, to the right is Philadelphia. So Richard McCampbell
20 was sitting in his car on Philadelphia, so I thought to myself I'm pretty sure I
21 know someone who can give us a ride -- who can give a ride.

22 Q Okay. And how did you know Mr. McCampbell?

23 A Oh, he gave me a couple rides, usually see him on the street
24 drinking, smoking.

25 Q Okay. And was it communicated to you why they needed the ride?

1 A Well, at first I asked them what did they need a ride for and where
2 was they going and he told me he was going to Boulder Highway, that he
3 wanted to buy some methamphetamines from a guy named Dale. So I had
4 heard of Dale name before.

5 Q Okay. Stop. Did they say Dale or Dale Borero?

6 A They said Dale. I don't know -- I didn't his last name.

7 Q Did you know who they meant?

8 A Well, I knew -- yes, I knew a Dale, yes.

9 Q Okay. And how did you know of Dale?

10 A Well, I heard about him, well, he's a big drug dealer on the east
11 Las Vegas -- east side of -- east Las Vegas. And, you know, I pretty much
12 heard he sells drugs, he's has a lot of women, he's violent, he carries a gun.
13 That's pretty much what I heard about him.

14 Q Was that his reputation in the community?

15 A Yes, sir. Yes, sir.

16 Q Okay. And so did you approach Mr. McCampbell's vehicle?

17 A Well, first, when I asked Travis Costa where was he going and --
18 and he told me he was going to meet Dale Borero, I asked him, I said -- when I
19 told him that I knew him, I said, well, if you going to meet him, I would like to
20 meet him because I want to be able -- you can introduce me and connect me
21 with him because I was planning on selling drugs and just trying to get some
22 extra money. So at that point then we went across the street to Philadelphia to
23 talk to Richard McCampbell.

24 Q All right. Now, right at the time were you selling drugs?

25 A No, I wasn't.

1 Q Had you sold drugs in the past?

2 A Yeah, I have before. Marijuana.

3 Q What type -- I'm sorry?

4 A Weed, marijuana.

5 Q Okay. And at that point you were not?

6 A No. No.

7 Q But you were looking for an opportunity to step up?

8 A Yes, sir.

9 Q Okay. Was there anything about the fact that these two were older
10 than you that --

11 A Yeah, well --

12 Q -- made you interested?

13 A Yeah, I wanted to have, well, yeah, Dale, yeah, because I knew he
14 was older, he was having money. Pretty much he had things that I wanted at
15 that time at 18 and pretty much naive way of thinking and, yeah.

16 Q And so you go to Richard McCampbell?

17 A Yes, sir. We went across the street. And I tapped on his window
18 because I'm the one who knew him. And when I tapped on the window, when
19 he rolled the window down, I seen he was drunk. He had a bottle in his lap and
20 he said, you know, what's up Money, you know, I went by Money. He said,
21 What's up, Money.

22 Q Okay. All right. Let me stop you right there.

23 A Okay.

24 Q How do you know he was drunk? Have you ever seen anybody
25 under the influence of alcohol?

1 A Yeah. Growing up my granddad drunk -- drank alcohol, so I seen
2 him drunk before, so I knew he was drunk.

3 Q Did you live with your granddad?

4 A Yeah, he raised me.

5 Q How many times would you say you'd seen him under the
6 influence?

7 A Fifty times.

8 Q And when you saw Mr. McCampbell you could tell he was drunk?

9 A Yes, sir. He was slurring of his words, you know, slouched over,
10 eyes red, also -- you want me to you -- also he had a crack pipe in his hand. I
11 knew he smoked crack.

12 MR. SCHWARTZER: Objection. Nonresponsive to the question.

13 MR. SCHWARZ: All right. That's fine.

14 THE COURT: I would sustain the objection. But you can ask the
15 follow-up question.

16 MR. SCHWARZ: All right.

17 BY MR. SCHWARZ:

18 Q Was he doing anything other than drinking?

19 A Yes, he was smoking crack cocaine.

20 Q Did he do that often?

21 MR. SCHWARTZER: Objection. Relevance.

22 THE COURT: Well, I'll overrule -- or excuse me, I'll sustain that objection.

23 MR. SCHWARZ: Okay.

24 BY MR. SCHWARZ:

25 Q And so why would you get in a car with this guy?

1 A Well, previous times when he was high --

2 MR. SCHWARTZER: Objection, Your Honor.

3 THE WITNESS: -- off crack cocaine.

4 THE COURT: I'll sustain the objection and strike that.

5 BY MR. SCHWARZ:

6 Q Okay. So why would you get in a car with the guy? Were there
7 other times that you -- that he had -- all right.

8 A I have rolled with him intoxicated off of alcohol before. He had
9 droven me. And we got to A and B destination safely, so I figured why not do
10 it again, it worked the first time, you know. And, you know, so I didn't feel,
11 I've done it before, so I guess because I was comfortable with it.

12 Q All right. Did he agree?

13 A For a ride?

14 Q Yes.

15 A Yes, sir. He just said he's needed \$10.00 and we can leave right
16 now.

17 Q And did you pay him?

18 A Well, Travis paid him. Travis and Dustin paid him because they --
19 they wanted the ride.

20 Q Okay. And what happened next?

21 A So he got out of the car and he put his bottle in the trunk. He had
22 two bottles. And he put one in the drunk. I don't know what he did with the
23 other bottle. He probably put it in the trunk as well. We got in the car. We
24 proceeded -- we was leaving Naked City, we was leaving Philadelphia and we
25 get to Philadelphia, you get to Fairfield and he made a left on Fairfield. And it

1 comes down to St. Louis, he made a right on St. Louis, now we on Las Vegas
2 Boulevard. He made a left on Las Vegas Boulevard and we came to Charleston.
3 So we made a right on Charleston. We was coming down Charleston, and by
4 this time Charleston take you all the way down to Fremont to Boulder.

5 Q All right. Let me stop you for a minute. Was anybody in the car
6 take talking about anything?

7 A No.

8 Q Was anybody in the car discussing a robbery?

9 A No, sir.

10 Q Was it your understanding you were going there to commit a
11 robbery?

12 A No, sir.

13 Q You had a pistol with you?

14 A Yes, sir.

15 Q Why did you have a gun with?

16 A Well, when I was 16 I used to box for Richard Steele, and when I
17 was leaving Richard Steele's gym when I was 16, it was about 8:00 o'clock at
18 night, I was on my way to the bus stop -- the bus stop on Cheyenne and Martin
19 Luther King, it's a bad neighborhood right there.

20 MR. SCHWARTZER: Judge, I'm going to object and actually ask to
21 approach at this point.

22 THE COURT: Okay.

23 [Bench conference -- not transcribed]

24 THE COURT: All right. You can continue.

25 ///

1 BY MR. SCHWARZ:

2 Q So what happened?

3 A So I was walking to the bus stop through a bad neighborhood and a
4 car pulled up on me and just -- they just dropped the window and they started
5 shooting at me and I was shot twice.

6 Q Where were you shot?

7 A In my foreman and my bicep.

8 Q Were you cooperative with the police with respect to that shooting?

9 A Yes, sir.

10 Q Oh, yeah? You answered all their questions and so forth?

11 A Yes, sir.

12 Q And you were carrying a gun why on April 19th, 2013?

13 A After that -- after the point I got shot, you know, I was -- they said I
14 was suffering from P.T.S.D. and --

15 Q Who said that?

16 A A doctor, I seen a doctor.

17 Q When you were treated for the gunshots?

18 A Yes, sir. And I used to be paranoid a lot. So I had bought a gun. I
19 was carrying it because at the time I was 18, but we -- we -- at 18 you can
20 have a shotgun, but you can't have a handgun 'til you're 21.

21 Q Okay. And that's why you were carrying a gun?

22 A I carried it for protection.

23 Q All right. Now, back to the car. Nobody's saying anything? Does
24 anything happen while you're in the vehicle?

25 A No, sir. Everyone was pretty quiet.

1 Q What happens next?

2 A So, as I was saying, we was coming down Charleston and we
3 arrived to Fremont in the intersection, the cross-over is Boulder Highway, but
4 Travis Costa, he's in the backseat to the left behind the driver, Richard
5 McCampbell, he asked to stop at the 7-Eleven because he wanted to buy a
6 beer. So as we were pulling into the 7-Eleven there's, like my attorney said,
7 there's a 7-Eleven, a Dotty's, and a Lowe's but the 7-Eleven and the Dotty's
8 are right next to each other, how they are now. So all the parking spaces are
9 full, I don't know if they all in the Dotty's or the 7-Eleven because I didn't go in.

10 So on the side of the building, you know, in the front is parking
11 spots, but right on the side of the building there's more parking spaces. Richard
12 McCampbell, he pulls in the -- in the parking space on the side of the building.

13 Q Was there any drama about parking the car?

14 A No. No, sir.

15 Q Did Travis Costa tell him, You park there?

16 A No, sir.

17 Q Did McCampbell have to move the car to park somewhere else?

18 A No, sir.

19 Q All right. Did anybody get out of the car?

20 A Yes, sir. Travis Costa got out of the car to go purchase a beer.

21 Q Okay. What about you?

22 A I stayed, I was -- no, I stayed in the car in the passenger seat. I
23 stayed in the car.

24 Q Dustin Bleak didn't get out of the car?

25 A No. He was behind me. No.

1 Q Okay. Did he come back with the beer?

2 A Well, before he came, yeah, he came back with the beer, yes.

3 Before he came back with the beer Dustin Bleak was in the rear of
4 me and he tapped me on my shoulder asking could he speak with me. And
5 when we got outside of the car he told me, he's like, Listen, man, me and Dale
6 was in prison together, let me do all the talking, then I introduce you-all because
7 he be trippin' sometimes, especially with people he doesn't know.

8 So this is my first time meeting him, this is my first time even trying
9 to be met to a person who sells methamphetamine, so I don't know what type
10 of person he is, so I just took his word for it. I said, okay. And then we got
11 back in the car. Then Travis Costa was coming back out of the store, I want to
12 say a minute later, a minute or so later.

13 Q Okay. What is -- what does it mean when Dustin Bleak tells you
14 sometimes Dale's trippin', what does that mean?

15 A I took it as --

16 MR. SCHWARTZER: Objection. Speculation, Your Honor.

17 BY MR. SCHWARZ:

18 Q Let me ask you this, Darion, does the word "trippin'" have a
19 common meaning where you come from?

20 A Yes, sir. It means you can be violent, hostile, pretty much violent
21 and hostile. It just means that you're -- you can become erratic.

22 Q Okay. All right. And is that what you understood it to mean?

23 A Yes, sir.

24 Q All right. And so basically Dale told you let him do all the talking?

25 A No, Dustin.

1 Q Or Dustin said let him do all the talking?

2 A Yeah, then he introduce me to him.

3 Q And then lay back?

4 A Yes, sir.

5 Q Okay. So after the beer episode -- oh, by the way, during that
6 conversation did you discuss robbing Dale Borero?

7 A No, sir.

8 Q After the beer episode what happened?

9 A So when we get back in the car, now from here I don't know where
10 we're going, so on the side of the Lowe's there is a light. Now, you can go
11 through the light and you can make a left on Boulder Highway, you can make a
12 right and you will be back on Fremont. So Dustin tell Richard McCampbell, The
13 Mechanic, to go through the light and make a left and we'll be back on Boulder
14 Highway. So he goes through the light, we make a left. And also Dustin
15 directs him to the -- because it's the Lowe's and right behind the Lowe's was
16 the Travelers Inn, it was the motel.

17 But when you get to the light, it's a light -- there's Travelers Inn,
18 there's a light, but there's no way to just turn in. You gotta to go to the light
19 and make a u-turn. So we go to the light and make the u-turn and now we're
20 coming to the motel.

21 Q All right. Now, you heard Mr. McCampbell testify that you're the
22 one that was telling him to go everywhere.

23 A How can I -- I didn't know where -- I didn't even know the guy. I
24 didn't know where we were going.

25 Q Did you give him any driving directions?

1 A No, sir.

2 Q Did you tell -- all right. So you're pulling into Travelers Inn, what
3 happens?

4 A So when we pull into the Travelers Inn, Richard McCampbell says
5 so where do I go, where do I park. And I'm not sure if it was Dustin Bleak or
6 Travis Costa, he just said go all the way to the end. That's where we're going,
7 we're going all the way to the end because there's a dead-end. You gotta go
8 all the way to the end.

9 So as we're going to the end, there's a parking spot over to your
10 left. Richard McCampbell pulls -- and -- when we get to the end, he pulls in a
11 parking spot to the right and then he just throws his car into reverse and then
12 backs in. As he's backing in, I realize how drunk he was, he hit the wall and he
13 wasn't too happy about himself hitting the wall. He straightened the car up and
14 he parks.

15 Q Did you tell him to do that?

16 A No, sir.

17 Q Did you tell him to back into the spot?

18 A No, sir. I didn't have a reason to.

19 Q All right. So once you got there --

20 A Uh-huh.

21 Q -- what did you notice? What did you see?

22 A Well, at first I didn't notice anything because we were inside the
23 car. Dustin gets a phone call and then he opens the car -- he's behind me, so
24 he got out of the car and said come on, so I got out of car. And I go to lean on
25 the trunk. And I don't know who's he talking to, well, I'm assuming it was

1 Dale because we going to meet -- we going to meet him.

2 So as I'm leaning on the car, he's talking, he walked off a little bit,
3 so he's out of earshot, so I couldn't hear him. But it feels like, you know how
4 if, like, someone was looking at me, like, you know how you can tell when
5 someone looking at you, you turn around and look at them, so when I looked
6 upstairs I seen Dale, I didn't know who it was then, I just heard, I didn't know
7 who it was. But I seen Dale and I seen two black dudes and I seen a lady
8 standing on the stairs just staring at me.

9 Q All right. You talking about the balcony?

10 A Yes. The second -- the second floor of the balcony.

11 Q The second floor?

12 A Yes.

13 Q Not the stairs, right?

14 A No, no, no.

15 Q Why did that concern you, if it did?

16 A Well, the part that concern -- it didn't concern me until when I
17 looked up there, they just kept staring at me and this went on for two minutes
18 at least. They just staring at me for no reason. So now I'm kind of, you know,
19 I'm uncomfortable because I don't know what's going on. I just went to a
20 situation where the guy who I'm outside the car with, I don't really know and
21 it's -- it's three people, four people but the lady, I think she went back in the
22 apartment, it's three people now, three guys, two black guys and a Hispanic
23 man just standing there, they're just staring at us. So in my mind I'm thinking
24 what's going on. So I just I said probably nothing, so as they're --

25 Q Did -- did you stay by the car?

1 A Yes, sir. I stayed on the car.

2 Q You stayed where you were told to stay?

3 A Yeah, he just told me --

4 Q To wait for your introduction?

5 A -- to wait for the introduction, yeah.

6 Q Were you -- were you staying by the car to wait for somebody to
7 come down to rob 'em?

8 A No, sir. No. No, sir.

9 Q So what happened next?

10 A So Dale starts coming towards the stairs, you know, we're by the
11 stairs, we're parked by the stairs. So he come -- he started coming by the
12 stairs, I'm still looking up there and as he's walking he has a tank top on, blue
13 jeans and white shoes, and the tank top is thin so I can see the butt of the gun
14 hanging outside his pants.

15 Q What color is the gun?

16 A He had the shirt over the gun. You could just see the butt, the
17 outlining of the gun when he's walking it's moving. So when he come down
18 the stairs, I'm looking at him and he had, like, a, like, a angry scrowl on his
19 face, you could tell he was angry about something. Then two black dudes,
20 when they come down stairs they're still staring at me. They haven't broke eye
21 contact with me. So Dale, he walks around the car and he goes around their
22 car to where Dustin is and their -- and the car I'm leaning on, their car is right in
23 front of me. So as I'm leaning on the car, it was -- it was black guy and
24 obviously it was his brother, two black guys. The one on the driver's side, he --
25 he opened the door and he hit the unlock button. But he just standing there,

1 just looking at me. He didn't open the door.

2 Q All right. All right. Did you have any concerns about that?

3 A Yeah. The part where I had the concern is when he opened the
4 door and started getting in the car he just stood there staring at me. So I'm
5 thinking to myself, you know, I'm just sitting here minding my own business
6 and they're looking at me, like, you know, I did something to 'em or something.
7 So they get in the car --

8 Q Did you do anything about that? Did you say anything to 'em?

9 A No. I just, no. I just sat there. So they close the doors and they're
10 still sitting in the car staring at me. So I'm more focused on what's going on
11 right here. I'm trying to figure out what's going on. This probably went on for
12 about a minute, 50 seconds to a minute. They pull out, now, I'm so focused on
13 why these two people were staring at me that I just realized that Dale and
14 Dustin are having an argument. So when I realized what was going on I heard
15 Dale say, so you came again without my --

16 Can I curse?

17 He says, So you came again without my fucking money.

18 Q Now, stop. When Dale says that who does he say it to?

19 A He said it to Dustin.

20 Q Were they the only two talking at that point?

21 A Yes, sir. Yes, sir.

22 Q What was Dustin doing when he said that?

23 A When he said that, well, that's when I looked, he, like, took his hat
24 off and put it back on and, like, rubbed his head and was, like, I'm sorry, man, I
25 just ain't got it right now. So as soon as he said that, that's when Dale -- Dale

1 crossed his arms and then he looked at me and then he looked back at Dustin.
2 He says, Somebody don't come up with my fucking money I shoot both of you
3 all. So when he said this, I don't what's going on now. This -- I didn't even
4 know that Dustin had owed Dale money. So my first thought was, man, you
5 should just go get back in this car.

6 Q Why didn't you do that?

7 A Because then my thought was, well, he just said he'd shoot both of
8 us if somebody don't come up with up with some money, so I'm thinking, well,
9 if I try to go get in this car, he might shoot me in my back or something. I
10 don't know -- I don't know, you know, I don't know what to do right now. I
11 don't know what's going on, so.

12 Q Did you have any concern about the Grace brothers?

13 A Well, I just seen them pulling off. I don't know -- my focus on Dale
14 now he just said he shoot me and this -- and Dustin over something, I don't
15 even know what their dispute is about. So I'm more focused on how am I
16 going to make sure my life isn't in danger, how am I going to get out of this
17 situation. And this -- this all happened pretty fast.

18 So I got off the car because I knew he just said somebody going to
19 give me some fucking money, I'll shoot both you-all, so my gun was on my
20 right side in a holster. So as I'm walking it's like I'm reaching in my pocket for
21 some money and I pull my gun. And I told him I don't know what's going on, I
22 don't want any problems, this don't have nothing to do with me.

23 Q All right. Let me stop you right there.

24 A Okay.

25 Q So you're reaching for your gun, you're pretending to be going into

1 your pocket.

2 A Yes, sir.

3 Q Why were you pretending to be going into your pocket?

4 A Because the whole point he was angry was over some money.

5 When he looked at us, when he looked at me then he looked at Dustin, he said

6 if somebody don't come up with my money I shoot both you-all. So he just

7 involved me in a situation I didn't know about. So I can't just -- if I just -- he

8 has a gun, I seen the gun. So if I just try and reach for my gun, he will pull his

9 gun and shoot. I didn't pull my gun to shoot him. I pulled my gun so we could

10 figure this out because I'm just -- I just want to get out of this situation now.

11 So instead of just pulling my gun out, provoking him to pull his gun out, and it

12 turned to a shoot-out, that's not what I wanted. So I had to act like I was

13 going to reach for some money so I could be able to pull my gun out.

14 Q Was he -- to the best of your knowledge were you looking at Dale
15 when this was going on?

16 A At what part?

17 Q While you were reaching in your pocket.

18 A No. I was looking down, like, you know when you reach in your
19 pocket, you know.

20 Q Okay. Do you know if he could see you? If you don't that's fine.

21 A I was walking -- I don't know. I was just walking, like, towards
22 him.

23 Q Okay. And does there a come a point when you pull your gun out?

24 A Yes, sir.

25 Q And when you pulled your gun out was it your intent to rob

1 Dale Borero?

2 A No, sir.

3 Q Was it your intent to shoot Dale Borero?

4 A No, sir.

5 Q Was it your intent to harm him in any way?

6 A No, sir.

7 Q What was your intent in pulling your gun out?

8 A Pretty much when he threatened to shoot me and Dustin, if
9 someone doesn't come up with his money I guess you -- to intimidate him just
10 so he know that I have a gun too and that we can just figure this out because
11 my first words were, I don't know what's going on, this don't have nothing to
12 do with me, I don't want no problem with you.

13 But what I was trying to say was, as soon as I said that, I see his
14 hand because I'm looking at him, so I see his hand come across like come
15 towards me. So I just smack his hand, I'm, like, stop, man, what you doing
16 and his hand come again and I smack it away.

17 Q Well, you were here when Detective Mogg testified and he said it
18 looked to him like he was trying to hand you a bag of methamphetamine?

19 A Yes, sir. I recall him saying that.

20 Q Was that what was happening?

21 A I didn't see what was in his hand, all I see, I just pulled my gun on
22 him.

23 Q Did you make any demands on him?

24 A No, sir. No, sir.

25 Q Did you ask him for money?

1 A No, sir.

2 Q Did you ask him for dope?

3 A No, sir.

4 Q What happened next?

5 A So after I smacked his hand away the second time, I seen him
6 before it happened because when I smacked his hand away, he looked -- he
7 looked at his gun and when he looked at his gun, I seen his right hand go like
8 this, so my first thought was if I hit him with the gun I could knock him to the
9 ground, so if I knock him to the ground, I could just run and get in the car. He
10 probably would shoot at the car, but I don't want to have to shoot this gun. I
11 do not want to have to shoot this gun.

12 But when I went to hit him with the gun, I'm not sure if I missed or
13 I grazed, like, I barely hit him. Because after I swung it, I seen this gun come
14 up. So when this gun came up, I turned my left -- because, you know, his gun
15 is on his right side and that's where my left shoulder is, so I had turned my left
16 shoulder and he fired. As he -- when he fired, I guess when I turned my left
17 shoulder, my momentum, it started backing me up and there was a parking
18 block right there. And as I'm tripping over the parking block, I fire the gun and
19 when I fired the gun, it seemed like we both fell at the same time.

20 So when we fell, I got up, and I ran to get in the car and then that's
21 when I heard the gunshots as I'm running to get in the car, I heard him
22 shooting, still shooting.

23 Q Do you know how many times you fired your gun?

24 A It felt like I only shot probably once or twice.

25 Q You know they found four shell casings?

1 A Yeah, I remember they told me. But when the situation like that,
2 you know, I -- I don't know how I didn't get shot and, you know, it just
3 happened so fast, you know, there is really no thinking in that situation
4 because, you know.

5 Q All right, Darion, let me ask you this, if this is just a tragic accident
6 like you claim --

7 A Yes, sir.

8 Q -- or just you trying to defend yourself after being threatened, why
9 didn't you turn yourself in?

10 A Well, for one, I wanted to get an attorney before I turned myself in
11 and we're not rich and I know that, you know, if I turn myself in at that point in
12 time with no attorney, I probably get a public defender or something, they
13 won't believe me. So I wanted to make sure that I was able to turn myself in
14 with a attorney and handle the situation accordingly.

15 Q Were you ever aware that a warrant was issued for your arrest?

16 A No. No, sir. I didn't know.

17 Q Were you ever aware that anybody -- that the police were looking
18 for you?

19 A No, sir.

20 Q Did you ever talk to anybody in the Naked City area that had been
21 advised that the police were looking for you?

22 A No, sir. I didn't -- no, I didn't know many people, no.

23 Q Did you want to -- did -- well, let me ask you this, okay, so now
24 you're in the car, right?

25 A Uh-huh.

1 Q Speeding away from the scene.

2 A Uh-huh.

3 Q Did you threaten Mr. McCampbell with the gun?

4 A No, sir. When I got back in the car we're still being shot at, so
5 McCampbell was driving pretty fast and he go through the light, we make a
6 left, we're on Boulder Highway. At this point when I fell I scraped my shoulder,
7 so my shoulder was burning. So when we got in the car first thing I did was to
8 check and see if I was shot or something because it was burning. When I made
9 sure that I was okay, when I looked up we were coming up on Oakey, we
10 coming up on Oakey, and I told McCampbell to make a right because I know
11 Oakey go all the way back up to the Stratosphere. And I when I told him to
12 make a right, go all the way up to the Stratosphere, after that everyone in the
13 car was quiet. I think everyone was pretty -- pretty shocked and they didn't --
14 no one knew really what just happened, so to answer your answer, no, I never,
15 I never threatened him.

16 Q Did you direct Mr. McCampbell to go to a dead-end street?

17 A No, sir. We just turned on Oakey and we went all the way up
18 Oakey. I don't know Oakey have a dead-end street.

19 Q When you went to the Travelers Inn was it your intention to buy
20 narcotics?

21 A When I went to the Travelers Inn?

22 Q Yes.

23 A No, sir. I just wanted to meet Dale, be introduced to him,
24 connected with him so I could purchase drugs later on in the future.

25 MR. SCHWARZ: I don't have anything further. Thank you.

1 THE COURT: Thank you.

2 Yeah, Mr. Schwartz.

3 **CROSS-EXAMINATION OF DARION MUHAMMAD-COLEMAN**

4 BY MR. SCHWARTZER:

5 Q Mr. Coleman, you didn't tell the detectives any of this, did you?

6 A No, sir.

7 Q You had the opportunity to but you decided not to, right?

8 A Yes, sir.

9 Q You talked to them July 3rd, 2013?

10 A Yes, sir.

11 Q Right?

12 A Yes, sir.

13 Q And you did not talk to them -- and you didn't say any of this?

14 A No, sir.

15 Q And do you remember Mr. Schwarz telling Mr. McCampbell, You
16 had two days to come up with your story, right?

17 A Yes, sir.

18 Q Do you remember that?

19 A Yes, sir.

20 Q You've had -- well, you were arrested on July 3rd, 2013, correct?

21 A Yes, sir.

22 Q This happened on April 19th, 2013.

23 A Yes, sir.

24 Q And here with are on January 9th, 2017.

25 A Yes, sir.

1 Q So how much time have you had to think about this?

2 A With this --

3 Q Almost four years, right?

4 A That's -- three and a half years, yes, sir.

5 Q Okay. So you've had a while?

6 A Yes, sir.

7 Q And you've seen this video?

8 A Yes, sir.

9 Q You've seen all these people walk into this courtroom and testify
10 before you got on here and testified, correct?

11 A Yes, sir.

12 Q Okay. I want to talk about some things that we can agree upon.

13 A Okay.

14 Q We can agree upon you approached Mr. McCampbell about a right,
15 correct?

16 A Yes, sir.

17 Q That you were in the passenger door side of Mr. McCampbell's
18 vehicle during this incident, correct?

19 A Yes, sir.

20 Q That Mr. McCampbell drove you to the 7-Eleven, correct?

21 A That he drove us, yes, sir.

22 Q That Mr. McCampbell drove you to the Travelers Inn?

23 A Yes, sir.

24 Q That Mr. McCampbell didn't know the other two people there in the
25 car with you?

1 A No, sir.

2 Q Mr. McCampbell didn't know Travis Costa and he didn't know
3 Dustin Bleak, correct?

4 A No, sir.

5 Q You say you didn't know Dustin Bleak until this -- this day?

6 A Yes, sir.

7 Q You knew Travis Costa but only in passing?

8 A Yes, sir.

9 Q But you decided to go to this drug exchange despite the fact you
10 don't know those two individuals that, well, you don't know and one you don't
11 know that well?

12 A Yes, sir.

13 Q And you've said you've heard of Dale, he's a guy who's violent
14 with guns, correct?

15 A Yes, sir.

16 Q But you decide, despite the fact you don't know any of these
17 people, Dustin, Travis, you were going to go with them anyway to this
18 Travelers Inn?

19 A Yes, sir.

20 Q Okay. That you deny that you told McCampbell where to park? He
21 just made that up on his own.

22 A Yes, sir.

23 Q Okay. That you got out of the Cadillac?

24 A Yes, sir.

25 Q That was you sitting on that backseat of that vehicle, correct?

1 A Yes, sir.

2 Q That was you on your phone every once in a while looking up at a
3 phone while you were sitting there leaning there, correct?

4 A I looked once, yes, sir.

5 Q Okay. So you were so concerned about, you know, the Grace
6 brothers and Dale and what's going on that you were able to look at your
7 phone?

8 A When we first got out the car is when I looked at the phone.

9 Q Okay. I see.

10 A I didn't look at the phone -- when I looked at the -- if you look at the
11 video, which you could play, when I got out of the car, I looked at the phone
12 then I looked up is when I seen them. I told you that I felt someone looking at
13 me.

14 Q All right. So you felt so at ease you were looking at your phone?

15 A Yes, sir.

16 Q Okay. That's fair to say. That Dustin Bleak and the victim was
17 having a conversation away from you?

18 A Yes, sir.

19 Q That you actually said you didn't hear that conversation for the first
20 part of that conversation?

21 A No, sir.

22 Q But then suddenly you were able to hear part of that conversation,
23 right?

24 A Yes, sir.

25 Q And then you actually pulled your gun out first; is that correct?

1 A Yes, sir.

2 Q And you put the gun to Mr. Borero, Dale's, head first?

3 A Yes, sir.

4 Q You put it -- how -- you were, what, about this close to him when
5 did you that?

6 A Probably a little farther back. But yes, sir.

7 Q And so, and you had the gun extended like this?

8 A Yes, sir.

9 Q So even, like that?

10 A Yes, sir.

11 Q So you did this before he took a gun out or anything like that?

12 A Yes, sir.

13 Q All right.

14 A You forgot to say that --

15 THE COURT: For the record you-all were about three to four feet apart.

16 BY MR. SCHWARTZER:

17 Q Okay. Would you say that's an aggressive act?

18 A No, sir. Because --

19 Q You wouldn't say walking up to an individual putting a gun to their
20 head --

21 THE COURT: Mr. Schwartz, you've got to let him finish his answer.
22 Okay?

23 MR. SCHWARTZER: All right.

24 THE COURT: Finish your answer.

25 THE WITNESS: No, sir, because I didn't pull my gun 'til he said he would

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

2 * * *

3 MUHAMMAD-COLEMAN, DARION,

Case No: 82915

4 Appellant,

5 vs.

6 STATE OF NEVADA,

7 Respondent.

8 **APPELLANTS APPENDIX**

9 (Volume 3)

10 (Appeal from Judgment of Conviction (Found Guilty at Trial)- Eighth Judicial
11 District Court)

12
13
14 Waleed Zaman, Esq.

Nevada Bar No. 13993

15 6620 S. Tenaya Way

Suite 100

16 Las Vegas, Nevada 89113

(702) 842-4242 TEL

17 (702) 920-8837 FAX

Wally@ZTlawgroup.com

18 Attorney for Appellant, Darion Muhammad-Coleman

INDEX

<u>Document:</u>	<u>BATES. No.</u>
Indictment.....	Vol. 1 - 001
Petition for Writ of Habeas Corpus and Exhibits.....	Vol. 1 - 010
Supplemental Appendix of Exhibits with NDOC Phone Calls.....	Vol. 3 - 716
State's Opposition to Petition for Writ of Habeas Corpus.....	Vol. 3 - 724
Reply to State's Opposition.....	Vol. 4 - 751
Notice of Entry of Findings of Fact, Conclusions of Law and Order.....	Vol. 4 - 761
Notice of Appeal.....	Vol. 4 - 788
RTRANS Petition for Writ of Habeas Corpus – October 12, 2020.....	Vol. 4 - 790
RTRANS Evidentiary Hearing – December 18, 2020.....	Vol. 4 - 811
RTRANS Supplement to Petition – February 22, 2021.....	Vol. 4 - 837
Certificate of Judgment – Supreme Court of the State of Nevada.....	Vol. 4 - 848
Defense Council's Motion to Continue Trial.....	Vol. 4 - 858
Eighth Judicial District Court Minutes – November 28, 2016.....	Vol. 4 - 884
Competency Evaluations of Petitioner.....	Vol. 4 - 885

1 shoot both of us.

2 BY MR. SCHWARTZER:

3 Q Okay. That didn't answer my question. When you walk up to an
4 individual and put a gun to their head within two feet, would you call that an
5 aggressive act?

6 MR. SCHWARZ: Well, I'm going to object. I think he answered the
7 question. It's asked and answered.

8 MR. SCHWARTZER: I don't think he answered.

9 THE COURT: The question isn't about the context. It's just about the act
10 itself.

11 So you can answer that question.

12 THE WITNESS: Yes, sir.

13 BY MR. SCHWARTZER:

14 Q Would you say that hitting an individual, striking an individual in the
15 head with a firearm is an aggressive act?

16 A Yes, sir.

17 Q Okay. And at -- so you had the gun to his head, Dale Borero
18 doesn't pull out his gun, correct?

19 A He went to reach for his gun. After I struck him, he was already --
20 it was all one motion. When I see him reaching for the gun, I struck him hoping
21 that he wouldn't be able to get it, but he already had it.

22 Q Okay. Let's get into this a little bit more then.

23 A All right.

24 Q You go up to him, you're two feet away from him, you have the
25 gun to his head, and you say you're not grabbing for anything?

1 A No, sir, I was smacking --

2 Q You're just striking down his hand?

3 A Yeah. Yes, sir.

4 Q You're not trying to reach out and grab something?

5 A No, swiping and grabbing's different.

6 Q Okay. So you're not reaching out and trying to grab anything?

7 A No, sir.

8 Q And just to be clear, you said earlier in your testimony that

9 Dale Borero had stuff you wanted like money?

10 A I never said that.

11 Q You didn't say that?

12 A No, sir.

13 Q Didn't you say earlier in your thing that you wanted to sell

14 methamphetamine?

15 A Oh, yes, yeah, yeah.

16 Q -- so you could have money like Dale Borero?

17 A I get -- I get your question now. Yes, I did.

18 Q Okay. So he has objects and stuff that you want like narcotics --

19 you wanted methamphetamine?

20 A I wanted to sell it, yes, sir.

21 Q You wanted money?

22 A That's what you sell -- yes, sir.

23 Q Okay. You wanted jewelry?

24 A I never said that.

25 Q You don't want jewelry?

1 A No.

2 Q So just the money and the drugs?

3 A Well, you know, sell drugs to get money, you know, you just take

4 care of yourself.

5 Q Okay.

6 A That's my whole purpose.

7 Q Okay. So Dale Borero has money and he has drugs.

8 A I know he have -- I knew that they were arranging a drug meet. I

9 don't know.

10 Q Dale Borero has money and drugs?

11 A Yes, sir.

12 Q You want money and drugs?

13 A Yes, sir.

14 Q Okay. So when you point the gun at him and you're saying you

15 don't reach out, you're just swiping.

16 A It was just swipe.

17 Q Now, before you approach him you say something to the effect that

18 Dale Borero says, I want my fucking money, correct?

19 A He said you came again without my fucking money.

20 Q Okay. Now, in order to do, I mean, I don't know how many drug

21 transactions any of us have done here, but usually if you don't have money,

22 drugs aren't produced; is that fair to say in a drug transaction?

23 A They know each other, so you know.

24 Q Okay. So Dustin Bleak come -- again, this is a person you don't

25 know?

1 A No. I know his brother.

2 Q Okay. Who's in the car by the way.

3 A Yeah.

4 Q And you're by the car when this first happens, right?

5 A I'm leaning on the car, yeah.

6 Q Okay. So you approach this guy who you think is dangerous by
7 reputation because you never met Dale before.

8 A Okay.

9 Q Who you know has a gun because you saw a bulge.

10 A Uh-huh.

11 Q For a guy that you don't know, Dustin Bleak, correct?

12 A Sure.

13 Q Okay. And as you're approaching there, Dustin -- Dale Borero has
14 drugs out, correct?

15 A I didn't see it.

16 Q You didn't see the drugs? You don't see him unwrapping the
17 drugs?

18 A No, sir. I told you I was looking --

19 Q Okay.

20 A I was looking at the --

21 Q Were drugs in his hands?

22 A -- car right in front of me. I didn't see it, sir.

23 Q Okay. Well, you saw that video, is he not unwrapping the drugs?

24 A You can't really see what's in the video.

25 Q Okay. Okay. But you would agree to me if money was a problem,

1 it's unlikely that Dale Borero would produce the drugs?

2 A Well, once again --

3 MR. SCHWARZ: I would objection this is speculation.

4 THE COURT: I'll sustain that objection.

5 BY MR. SCHWARTZER:

6 Q Okay. Okay. So you approached the victim, you pull your gun first
7 out, you aim your gun first, you swipe at him, and then you strike him, correct?
8 The victim, Dale Borero.

9 A Yes, sir, swipe his hand away.

10 Q And then after you strike him you actually go and try and grab some
11 something from him again, right?

12 A No, sir. After I struck him the second time when he --

13 Q What do you mean the second time? You struck him a first time?

14 A Yes, sir. When he reached his hand out, I swiped his hand away.

15 Q Okay.

16 A He reached his hand out again, I swiped his hand away. When he
17 went to reach for his gun is when I hit him with the gun is when he pulled his
18 gun and fired.

19 Q Okay. So after you strike him with the gun, which again, you
20 would say is an aggressive act, correct?

21 A Yes, sir.

22 Q Okay. You're saying nothing happened in between you striking him
23 with a gun and Dale Borero taking out his gun and firing?

24 A No, sir. Well --

25 Q You didn't try to grab anything after you struck him with the gun?

1 A No, sir.

2 Q Okay. And then you were saying he pulls out his gun, he starts
3 firing, you start firing?

4 A Yes, sir.

5 Q Who fires first?

6 A Dale Borero.

7 Q Okay. You think he fired first?

8 A I know he fired first because that's why I turned out the way of and
9 I end up falling trying to get out the way of the gunshots.

10 Q Well, you remember a lot of things but you don't remember firing
11 four times, right?

12 A Well, no, I told you it was -- listen --

13 Q I don't -- you don't remember firing four times, correct?

14 A I don't remember. No. No, sir.

15 Q You have a great attorney, he will ask you redirect questions.

16 A No, sir.

17 Q You don't to argue with me.

18 So they are aspects you don't remember?

19 A That's the only part I don't remember. I don't remember firing four
20 times.

21 Q Okay. So on that video, how many times does Dale shoot, well,
22 no, in your memory how many times does Dale shoot you before you start
23 shooting?

24 A I know for sure he shot once but as soon as he shot, I'm trying to
25 back out the way and I fell and I fired, so for sure once.

1 Q Okay. So you pull out a gun and put it to his head, he doesn't
2 shoot you, he doesn't try to shoot you, correct?

3 A Pulled out my gun, he went to reach for his gun.

4 Q He doesn't shoot you when you pull out your gun and put it to his
5 head; is that correct?

6 A No, sir.

7 Q Then you struck him. Now you're saying he tries to shoot you with
8 nothing in between?

9 A Yes, sir.

10 Q Okay. And to be clear, so we all know, you're the one that shot
11 and killed Dale Borero, right?

12 A Yes, sir.

13 Q Okay. And you're the one jumping into the car?

14 A Yes, sir.

15 Q And you tell McCampbell where to go?

16 A I told him to go down Oakey after we already -- yes, sir.

17 Q So you're telling McCampbell where to go?

18 A Yes, sir.

19 Q Okay. And you had the gun in your -- where do you have the gun
20 after you get in the car?

21 A I believe I put it in my pocket.

22 Q Okay. Mr. McCampbell says he's -- he's going to tell and you say
23 you're going to tell what?

24 A No, I never said that.

25 Q So he made that up too?

1 A Yes, sir.

2 Q Okay. And to be clear Mr. McCampbell knows you, right?

3 A The only one he know .

4 Q And he doesn't know Dustin Bleak or Travis Costa?

5 A No, sir.

6 Q Okay. I mean, he's helped you out before?

7 A He didn't help me out, you know , he gave me a ride. I helped him

8 out. He needed gas money. He gave me a ride.

9 Q He drove you to the appliance store?

10 A We helped each other out. We helped each other out.

11 Q Okay. Okay. So you drive to Naked City?

12 A Yes, sir.

13 Q And then you get out of the car with Dustin Bleak and

14 Travis Costa?

15 A No, I didn't get out of the car with them. They got -- Dustin and

16 Travis got out of the car, I don't where they went. I sat in the car for a couple

17 more seconds. Richard McCampbell pulled out his crack pipe. I got out of the

18 car and I headed -- started to head home. But I stopped first. I had a lady

19 friend who stayed in apartment 7 and I went there, she wasn't there but the

20 door was open. So I went inside and I put the gun in the microwave, then I

21 went out to figure out how I was going to get a lawyer and turn myself in.

22 Q Okay. So that same night is when you put the gun in Fairfield,

23 apartment number 7?

24 A Yes. As soon, like, as soon as I got out of the car before I went

25 home.

1 Q And that was in April 19th of 2013?

2 A Yes, sir.

3 Q And that's when you started thinking about trying to get an
4 attorney?

5 A Yes, sir.

6 Q And you don't call the police on April 19th?

7 A No, sir.

8 Q You don't call or talk to the police at all in April?

9 A No, sir.

10 Q Now, that lady friend of yours, her name is Tatiana Lee?

11 A Yes, sir.

12 Q So you were friends with her?

13 A Yes, sir.

14 Q She know how to get a hold of you during that period of time?

15 A Yes, sir.

16 Q Okay. She knows your mom?

17 A Yeah.

18 Q Okay. And, I mean, you were here, I mean, they found that gun in
19 that apartment on April 29th, 2013.

20 A Uh-huh.

21 Q And your testimony today is you didn't know police were looking
22 for?

23 A No, sir. No, sir.

24 Q You didn't know the police were looking for you despite the fact
25 they were looking, they were asking about a guy named Money, and you go by

1 Money, correct?

2 A Yes, sir, at that time. Yes.

3 Q Okay. And this friend of yours talks to police and knows a gun's
4 found in her apartment, but she doesn't contact you in April to say, hey, police
5 is looking for you?

6 A No, sir.

7 Q Okay. And you never ran from police?

8 A Have I ever ran from them?

9 Q You never ran from police --

10 A This right here?

11 Q -- when they tried -- when they tried to apprehend you the first
12 time?

13 A No, sir.

14 Q Okay. Now, this homicide was in the news, right, that blue
15 Cadillac?

16 A Yes, sir.

17 Q So you saw that in the news?

18 A I don't watch the news. I was 18.

19 Q Okay. So, but I'm assuming people like, you know, family members
20 and stuff watch the news, right?

21 A Yeah. But no one -- I assume. You know, I know my mom don't
22 watch the news.

23 Q So Mr. McCampbell who the next day knows all about them looking
24 for this blue Cadillac, but you have no idea they're looking for a blue Cadillac for
25 the next three months?

1 A Excuse me if I'm wrong, I believe Mr. McCampbell said his wife told
2 him that police were looking for the news.

3 Q Okay.

4 A Yeah.

5 Q That's fair. But McCampbell, then it's true that if his wife told him
6 Mr. McCampbell heard that they were looking for the blue Cadillac, correct?

7 A But that's his wife. We're two different households, sir.

8 Q Okay. But he heard that they were looking for -- in that 24-hour
9 period he knew that they were looking --

10 A His wife told him, yes. His wife told him, yes.

11 Q Okay. And the gun that you hid in the Fairfield Avenue address is
12 found and your friend doesn't tell you about it?

13 A No, she doesn't.

14 Q And Ms. Terrell, I forget her name, Keara?

15 A Yeah, Keara Terrell.

16 Q Okay. And she's friends with your mom as well, at least talks to
17 your mom, correct?

18 A Not, well, no, she was friends, she was a friend of my friend.

19 Q Okay.

20 A Yeah.

21 Q And so she doesn't -- you don't hear through her because you heard
22 she was there April 29th, 2013, that they were looking for you?

23 A No. Her friend that we knew each other by, how I knew her, he
24 had went back to California. So that's the only way, like, she wasn't a person
25 who I, you know, like, talked to on a regular basis for her to contact me or

1 nothing like that.

2 Q Okay. Okay. And then it's fair to say you never contacted police
3 'til they arrested you?

4 A I did not, sir.

5 Q Okay. You say you carry a gun -- and why did you hide the gun in
6 the toaster oven?

7 A I went and put it -- well, you know, I just went and put it in the
8 toaster oven. I know now -- I know what just happened, I know that there was
9 just a shooting. When I put the gun in the toaster oven. To be honest with
10 you, I was scared.

11 Q Okay.

12 A And, you know.

13 Q You carry a gun --

14 A I knew that --

15 Q You carry -- you carry a gun around --

16 A I always carry it.

17 Q -- because of protection, right?

18 A That's why it's in the holster.

19 Q Because you were shot when you were -- in 2012, right?

20 A Yeah, that was couple, probably, what, six, eight months before
21 this happened.

22 Q And you were saying you were cooperative with police on that?

23 A Yes, I was.

24 Q Would you be surprised that a detective wrote a report that you
25 weren't cooperative with them during that shooting?

1 A No.

2 Q That would not surprise you?

3 A Yeah, it would because I told him, I don't know who shot me and I
4 didn't see who shot me, I just know I was shot. A car pulled up and someone
5 jumped out and shot me.

6 Q Okay. Okay. So you carry this gun around for protection, but then
7 you quickly hide it in where -- that night on April 19th, 2013?

8 A Never quickly hid it. I went to the apartment, hid the gun in the
9 microwave. I had to figure out how I was going to get an attorney, then I went
10 to my mom's house. I'm respectful of my mom, not going to take this gun in
11 her house when I know what just happened until I can tell her what happened
12 and she'd -- you know, she'd hit me in my mouth and get a attorney then turn
13 myself in.

14 Q But you didn't do that by July of 2013?

15 A No, sir, I did not.

16 Q And when you -- the point of getting an attorney, which you
17 brought up, is so you could tell your side of the story, right?

18 A Well, yeah. You gotta have an attorney.

19 Q So you wanted to tell your side of the story?

20 A Yes.

21 Q So you were dying to tell someone, like the detectives, your story?

22 MR. SCHWARZ: Well, Judge, I'm going to -- I'm going to object. I think
23 we're getting close here.

24 THE WITNESS: I'll sustain the objection.

25 MR. SCHWARTZER: Okay.

1 BY MR. SCHWARTZER:

2 Q But you didn't tell the detectives this story, did you?

3 A I didn't have my attorney present.

4 Q Okay. This is the first time you've said this statement?

5 A No. My lawyer -- no. The detectives --

6 THE COURT: Hold on a second. I'm going to *sua sponte* strike that
7 question. Let's move on.

8 MR. SCHWARTZER: Okay.

9 BY MR. SCHWARTZER:

10 Q You drove to have Dale Borero's residence?

11 A Yes, we drove there.

12 Q You produced the gun first?

13 A After he threatened to shoot me. Yes.

14 Q You struck -- when he threat -- to be clear, when he threatened to
15 shoot you, you were at a car where there was a driver inside the car, correct?

16 A Sir, I'm on the outside of a car --

17 Q "Yes" or "no," again, you have Mr. Schwarz here to that will
18 redirect you.

19 A Okay.

20 Q You were sitting at the car where there was a driver inside when he
21 supposedly -- when Dale Borero supposedly said he was going to shoot you?

22 A Yes, sir.

23 Q And it was actually you wanted to go meet this individual in the
24 first place?

25 A Well, they were already going, but, yes.

1 Q Okay. But you didn't have to go with them?

2 A Yes, I wanted to meet him, yes.

3 Q Okay. And you wanted money and narcotics?

4 A Yes, sir.

5 Q And you shot and killed Dale Borerero?

6 A Yes, sir.

7 MR. SCHWARTZER: Thank you. No further questions.

8 THE COURT: Mr. Schwarz.

9 MR. SCHWARZ: Yes, thank you, Your Honor.

10 **REDIRECT EXAMINATION OF DARION MUHAMMAD-COLEMAN**

11 BY MR. SCHWARZ:

12 Q Listen, Darion --

13 A Yeah.

14 Q -- I mean, all things considered, if you're standing on the street and
15 two people are minding their own business and you walk up and point a gun in
16 somebody's face, that's aggressive, isn't it?

17 A Yes, it is.

18 Q Were you being aggressive when you did that to Dale Borerero?

19 A No, sir.

20 Q Can you explain to the ladies and gentlemen of the jury why?

21 A The only reason I pulled my gun because he threatened to shoot
22 both of us, I would not have pulled my gun otherwise. And if I wanted to shoot
23 him, wouldn't I just pulled my gun and shot him? I waited until I had to smack
24 his hand away twice, until he reached for his gun and fired before I fired my
25 weapon.

1 Q Now, you did say --

2 A What am I supposed to do?

3 Q You did say that Dale Borero had stuff that you wanted.

4 A Yes, I wanted, yeah.

5 Q Did you mean you wanted his exact stuff?

6 A No, I did not.

7 Q What did you mean by that?

8 A I meant that, you know, I knew he had money, he was older, he
9 was established, and that's what I wanted. I wanted money, cars, and things
10 like that, like that nature.

11 Q You mean your own money?

12 A I wanted to -- exactly, I wanted to buy the drugs so I could hustle
13 for myself, not take what's his into -- for my own benefit.

14 Q Because you're an 18-year-old knucklehead at the time?

15 A Yes, I was. Yes, I was.

16 Q Are you aware of drug dealers actually giving people drugs when
17 they don't have money?

18 A Yes, they do.

19 Q In fact, this happens all the time, isn't it?

20 A Loans, you know, credit. Yes, yes.

21 Q Now, this apartment were you put the gun in the toaster oven,
22 were you staying there sometimes?

23 A Yeah, sometimes, yes.

24 Q Okay. So it's not like you took the gun and flushed it down -- or
25 put it down the sewer, right?

1 A No, it -- it wasn't a secret hiding place, no, it wasn't.

2 Q And you didn't drive to Lake Mead and throw it in there, did you?

3 A No, I did not.

4 Q Okay. But you put it away somewhere?

5 A Yes, I did.

6 Q An apartment where you stayed sometimes in a toaster oven?

7 A Yes, sir. In the often -- in the microwave.

8 Q And then you went to your mother's house?

9 A Yes, sir.

10 Q And you didn't want to bring the gun there?

11 A No, sir.

12 Q All right. Darion, did you conspire with anyone to commit a
13 robbery?

14 A No, sir.

15 Q Did you commit a murder?

16 A No, sir.

17 THE COURT: Well, I'm going to *sua sponte* strike that question. That's a
18 jury determination.

19 MR. SCHWARZ: All right. All right. All right.

20 BY MR. SCHWARZ:

21 Q Did you conspire with anybody to commit a crime?

22 A No, sir.

23 Q Did you threaten Mr. McCampbell?

24 A No, sir.

25 Q Were you going there to buy drugs?

1 A No, sir.

2 Q Did you try and buy drugs?

3 A Did I try and buy drugs?

4 Q Yes.

5 A No, sir.

6 Q If you could possibly have avoided it -- strike that.

7 Why did you shoot Dale Borero?

8 A Man, because he reached for his -- well, you said why did I shoot
9 Mr. Borero?

10 Q Yes.

11 A Because he fired his weapon.

12 Q Prior to that --

13 A He tried to shoot me.

14 Q -- did you have any intention of shooting him?

15 A No, sir. I tried my hardest not to.

16 MR. SCHWARZ: I have nothing further.

17 MR. SCHWARTZER: Your Honor, could we approach?

18 THE COURT: Yep.

19 MR. SCHWARZ: Now what did I do?

20 [Bench conference -- not transcribed]

21 MR. SCHWARZ: I have nothing further, Judge, I think I said.

22 THE COURT: Okay. Anything further from the State?

23 **RECROSS-EXAMINATION OF DARION MUHAMMAD-COLEMAN**

24 BY MR. SCHWARTZER:

25 Q Dale Borero wasn't handing out free drugs that night, was he? He

1 wanted to be shown the money.

2 A I couldn't hear you.

3 Q Dale Borero wasn't giving out free drugs that night, was he?

4 A The drug transaction's supposed to be in between Dustin and Dale,
5 so I don't know about that part.

6 Q Well, he yells something about his money, right?

7 A He actually told Dustin, he said, You came again without my
8 fucking money.

9 Q So that indicates he wasn't just giving away free drugs that night?

10 A Yeah, I would assume so, yes.

11 MR. SCHWARTZER: Okay. I have no further questions of this witness,
12 Your Honor.

13 THE COURT: Anything further, Mr. Schwarz?

14 MR. SCHWARZ: I have nothing further, Judge.

15 THE COURT: Anything from our jurors? Yes?

16 Joel, if you would, please.

17 [Bench conference -- not transcribed]

18 THE COURT: All right. Mr. Muhammad-Coleman, I've got a couple --
19 what's that? Hold on, guys.

20 [Bench conference -- not transcribed]

21 THE COURT: Okay. First question, Mr. Muhammad-Coleman, is were
22 you working at the time that this occurred back in April of 2013?

23 THE WITNESS: Yeah, I was still -- I was still -- I couldn't box at the time
24 because of my arm was -- I had a rod place, screw, still healing but I still
25 worked at the boxing gym teaching and stuff.

1 THE COURT: All right. And did you reload the magazine of that gun
2 when you got home that evening after this occurred?

3 THE WITNESS: No, sir. That's why I didn't understand why when
4 they --

5 THE COURT: I just need you just answer exactly what I'm asking and I'll
6 let the attorneys follow up.

7 THE WITNESS: All right.

8 THE COURT: How many people do you know that sleep overnight in the
9 Naked City? And I'm assuming by this question we're talk talking about --

10 THE WITNESS: Sleep overnight?

11 THE COURT: -- sleeping outside a residence, correct? Okay. That are
12 just kind of sleeping in the Naked City in their cars.

13 THE WITNESS: It's a pretty -- Naked City is a area where there's a lot of
14 drug addicts, so that's -- that's -- that's pretty normal.

15 THE COURT: Okay. Where did your mom live at the time in April of
16 2013?

17 THE WITNESS: She stayed in Naked City on Chicago between Chicago
18 and Philadelphia.

19 THE COURT: At the time this occurred in April of 2013, did you have a
20 concealed weapon permit?

21 THE WITNESS: No, you couldn't have a -- at that time, at 18 --

22 THE COURT: Just "yes" or "no".

23 THE WITNESS: No, you couldn't have one at 18.

24 THE COURT: Was the gun that you were speaking of that you had that
25 night, was that gun registered?

1 THE WITNESS: No. No.

2 THE COURT: Okay did the gun accidentally discharge when you tripped
3 over the parking block or did you purposefully fire the gun?

4 THE WITNESS: It was kind of, you know , a little of both, little of both.

5 THE COURT: Did you know that Dale Borero had died?

6 THE WITNESS: No, I did not. I did not.

7 THE COURT: Did you ever inquire about whether he had died?

8 THE WITNESS: No, I did not. Honestly, from the way that I shot, I didn't
9 think the bullet hit him because I was falling down when I tripped over the
10 parking spot, so I didn't think the way the angle, I didn't know -- I didn't think
11 he was shot at all.

12 THE COURT: Okay. Did you ever have any conversations with
13 Mr. McCampbell or Mr. Bleak or Mr. Costa that led you to believe they did not
14 know each other or were you just kind of assuming they didn't know each
15 other?

16 THE WITNESS: I was assuming.

17 THE COURT: Okay. Mr. Schwarz, you have any questions based upon
18 mine?

19 MR. SCHWARZ: No, Your Honor, I do not.

20 THE COURT: And, State, do you have any questions based on mine?

21 BY MR. SCHWARTZER:

22 Q Is this the only shoot-out you were involved in in 2013?

23 A Yes, sir.

24 MR. SCHWARTZER: That's the only question I have.

25 THE COURT: Anything further?

1 MR. SCHWARZ: No, Your Honor.

2 THE COURT: Okay. Mr. Muhammad-Coleman, thank you very much for
3 your time. I appreciate it. You can step down.

4 Mr. Schwarz, does the defense have any further witnesses?

5 MR. SCHWARZ: No, Your Honor. However, the State and the defense
6 have entered into a stipulation whereby the jury will be informed of three of
7 Mr. Borero's prior felony convictions.

8 THE COURT: Okay.

9 MR. SCHWARZ: I have had them marked as court exhibits. They are not
10 going back with the jury and I will just read out the charges.

11 THE COURT: Okay.

12 MR. SCHWARZ: That's my understanding. Right, Mike?

13 MR. SCHWARTZER: Yes.

14 MR. SCHWARZ: All right. So number one is from 2000 -- July 24th,
15 2001, and that is an attempt possession of firearm by prohibited person.

16 THE COURT: Okay.

17 MR. SCHWARZ: Number two is December 10th, I believe, it's 2007.
18 Correct me -- yes, 2000 well, 2007, 2008, and that is two counts; one count
19 possession of firearm by prohibited person; one count of possession of stolen
20 property that being a firearm. And then the third one is from 2009, possession
21 of stolen property that being a firearm. And, again, they're court exhibits so
22 they won't go back to the jury.

23 THE COURT: Okay. Is that correct?

24 MR. SCHWARTZER: That's correct, Your Honor.

25 THE COURT: Yes?

1 MR. SCHWARTZER: That's correct, Your Honor.

2 THE COURT: Okay. No further witnesses?

3 MR. SCHWARZ: I have no further witnesses, Your Honor, and defense
4 rests.

5 THE COURT: State, going to have any rebuttal witnesses?

6 MR. SCHWARTZER: Yes, Your Honor. State's going to call Terri Miller.

7 THE COURT: Okay.

8 Detective Miller, I'll just remind you that you're still under oath.

9 THE WITNESS: Yes, thank you.

10 THE COURT: Thank you.

11 **TERRI MILLER,**

12 [having been called as a witness and being previously duly sworn, testified as
13 follows:]

14 **DIRECT EXAMINATION ON REBUTTAL OF TERRI MILLER**

15 BY MR. SCHWARTZER:

16 Q Good afternoon again, Detective.

17 A Good afternoon.

18 Q Thank you for coming back, Detective.

19 A You're welcome.

20 Q So since you've been gone we've heard that, from
21 Mr. Muhammad-Coleman that he gave a statement to police on July 3rd, 2013.
22 Were you there for that?

23 A I was.

24 Q Are those recorded audially and visually?

25 A Yes.

1 Q Was it done in this case?

2 A Yes.

3 Q Was it -- when the statement was given, was it -- where was it?

4 A At Metro headquarters.

5 Q Okay. And do you guys have a special room where you talk to
6 suspects and witnesses and what have you?

7 A Yes, we do.

8 Q At this point, Mr. Muhammad-Coleman was arrested on an arrest
9 warrant; is that correct?

10 A Yes.

11 Q And you were going to charge him with homicide?

12 A Yes.

13 Q Or murder?

14 A Yes.

15 Q And did you read Mr. Coleman his rights?

16 A I did.

17 Q How did you read him his rights?

18 A Directly from an advisement of rights card.

19 Q Okay. Did he acknowledge that he understood his rights?

20 A Verbally and he signed the card.

21 Q Okay. So the actual card you read his rights from you had him sign
22 it?

23 A I did.

24 Q And did Mr. Coleman actually decide to talk to you after being read
25 his rights?

1 A Yes, he did.

2 Q Okay. And that includes, you know, you have the right to remain
3 silent and the right to have an attorney during questioning?

4 A Yes.

5 Q Okay. And then you actually had a conversation with him about
6 April 19th, 2013?

7 A I did.

8 Q And I don't want to get into the contents of it just yet.

9 A Okay.

10 Q But before we get into it, I want to talk a little bit about what
11 happens when you go in with a suspect, someone that you suspect is involved
12 in a murder. So in your experience do you take certain -- do you do certain
13 tactical decisions?

14 A Yes.

15 Q Okay. Sometimes bad, you know, we've all heard
16 good-cop-bad-cop, that situation.

17 A Yes.

18 Q In this case did you guys do good-cop-bad-cop?

19 A I don't believe we did really.

20 Q Was it more of just like, What happened?

21 A Exactly.

22 Q Okay. Additionally, do you say some things in order to try to get
23 someone talking like maybe throw out self-defense, for example?

24 A Yes.

25 Q And you do that for the purposes to get an individual to talk about

1 an incident?

2 A Yes.

3 Q In your experience do people find it hard to talk about being
4 involved in a murder?

5 A Absolutely.

6 Q Okay. Did you do that in this case? Did you throw out
7 self-defense, you had to do it? That type of situation?

8 A Yes.

9 Q And were -- during that period of time, and we'll get into it with the
10 video, but did Mr. Coleman ever say that he had to do it, it was self-defense on
11 April 19th, 2013?

12 A No, he never mentioned that.

13 Q Now, I want to play this briefly so you can just lay some
14 foundation. Additionally, with these type of audio-visual things you get into a
15 lot of personal information, right?

16 A Yes, I do.

17 Q Some of those times that has to be redacted so, you know, we all
18 don't hear that redact -- that personal information?

19 A Yes, that's correct.

20 MR. SCHWARTZER: And, Your Honor, at this point I'm going to publish a
21 brief part of Exhibit 124 in order for Detective Miller to lay the foundation.

22 THE COURT: Okay.

23 MR. SCHWARTZER: Again, this has been provided in discovery.

24 THE COURT: Thank you.

25 ///

1 BY MR. SCHWARTZER:

2 Q Do you recognize -- do you recognize anyone in this photograph or
3 this video?

4 A I do. I recognize myself and Darion Muhammad-Coleman.

5 Q Is this how it looked on July 3rd, 2013?

6 A Yes.

7 Q And eventually, just to play a little bit further, another individual
8 walks in as well. I just want you to identify that person.

9 A That's Detective Sam Smith.

10 Q Okay. And is he a Homicide -- at that time was he a homicide
11 detective on your team?

12 A Yes, at that time.

13 Q Okay.

14 A Uh-huh.

15 Q Is this, again, a fair and accurate viewing of -- of that interview you
16 had with Darion Muhammad-Coleman on July 3rd, 2013?

17 A Yes.

18 MR. SCHWARTZER: I move for admission of 124.

19 THE COURT: All right. And you've had a chance to review the entirety
20 of the video, correct?

21 THE WITNESS: Yes.

22 THE COURT: That will be -- well --

23 MR. SCHWARZ: I don't have any objection.

24 THE COURT: That will be admitted.

25 **[STATE'S EXHIBIT 124 ADMITTED]**

1 BY MR. SCHWARTZER:

2 Q I'm going to play it.

3 [Video plays]

4 MR. SCHWARTZER: I'm going to try something real fast in order to get
5 us some better sound.

6 [Colloquy regarding the equipment]

7 MR. SCHWARTZER: All right, so.

8 [Video continues]

9 THE COURT: Do you have the volume on the computer up? Not just the
10 video, but the computer?

11 [Video continues]

12 THE COURT: Can you pause that, please, guys?

13 All right. We're going to take a break before we get too far into
14 this. During the recess, ladies and gentlemen, you are admonished not to talk
15 or converse among yourselves or with anyone else on any subject connected
16 with the trial or read, watch, or listen to any report of or commentary on the
17 trial by any medium of information including, without limitation, to newspapers,
18 television, the Internet, and radio or form or express any opinion on any subject
19 connected with the case 'til it's finally submitted to you.

20 We'll be in break for about ten minutes, okay.

21 [Outside the presence of the jury panel]

22 THE COURT: You can step down again. Did you guys not try and do
23 that before we came in?

24 MR. SCHWARTZER: No.

25 THE COURT: Sometimes the computers just don't get that loud. Usually

1 it plays through there, if you've got it hooked up right. But I don't know.

2 [Recess at 3:39 p.m.; proceedings resumed at 3:48 p.m.]

3 [Outside the presence of the jury panel]

4 THE COURT: All right. Mr. Schwarz?

5 We are outside the presence of the jury. Mr. Schwartzer.

6 MR. SCHWARTZER: Yes, Your Honor. I just want to get some
7 clarification of the Court, we have an officer, a detective by the name of Steven
8 Perry, who took down the report regarding the shooting that occurred in 2012
9 in which Mr. Coleman was the victim.

10 THE COURT: Okay.

11 MR. SCHWARTZER: In the report specifically says, and I'm pretty sure
12 this has all been provided in discovery as well along with all of his other F.I.
13 cards, that Mr. Coleman was non-cooperative and did not make sense regarding
14 what happened.

15 I wanted just some clarification regarding whether we can bring in
16 Officer Perry as part of our rebuttal case.

17 THE COURT: That it was he was non-cooperative and it didn't make
18 sense?

19 MR. SCHWARTZER: I can get the exact words, the report's out -- do you
20 want to hear the exact words in the report?

21 THE COURT: Okay.

22 MR. HAMNER: Your Honor, Christopher Hamner for the State. If I could
23 just kind of add to that. The defendant had gotten up gotten and stated
24 specifically to the question of when he was shot he said, yeah, I was just kind
25 of minding my own business and I was shot and he was specifically asked the

1 question, well, would it surprise you to learn that if you had not been
2 cooperative with the police. He says, yes, that would surprise me because I
3 didn't do anything, I was just kind of minding my own business. And the report
4 specifically states that Mr. Muhammad-Coleman would provide absolutely no
5 information regarding the shooting or any of those circumstances.

6 And that's clearly laid out in the report and I think it goes to his
7 credibility and it's, you know, given the fact that he was kind of offering it
8 almost as a good character or justification or a peaceful reason as to why he
9 would even need to carry protection, I think it's relevant to at least evaluate his
10 credibility as to that fact that he wasn't willing to provide any details as to why
11 he got shot when actually asked at the hospital.

12 THE COURT: Okay. Mr. Schwarz.

13 MR. SCHWARZ: Judge, the only purpose of that testimony was to show
14 that he had been the victim of a shooting before. It's got nothing to do with
15 anything else and dragging in some other case at this point is, in my opinion,
16 going to be, you know, a possible appellate issue. I mean, look, for crying out
17 loud, it's always the same, they got a loaf of bread under each arm, they want
18 another loaf. I mean, come on, how far are we going to go here?

19 The only whole purpose of the testimony was he was a gunshot
20 victim in the past, in the recent past before this incident. You know, whether
21 or not he was cooperative with the detectives has absolutely nothing to do with
22 this case.

23 MR. SCHWARTZER: I mean, it goes -- it was beyond that. I mean, even
24 before my questioning regarding would it surprise you, I mean, Mr. Coleman
25 made this story about how he was innocently walking out of a boxing gym and

1 he was just --

2 THE COURT: But how -- let's just cut to the chase, how does this get
3 around 50.085? Which is when you're asking questions about credibility you
4 don't go into specific instances of conduct through other evidence. You can
5 inquire about it.

6 MR. SCHWARTZER: Right.

7 THE COURT: But don't -- you don't prove it through trying to bring in
8 other evidence because it's because it's kind of ancillary to what the trial's
9 about.

10 MR. HAMNER: I think it's worth inquiring into, Your Honor. I mean, it --

11 THE COURT: Well, I get why it's worth it. But, quote, specific instances
12 of the conduct of a witness for the purpose of attacking or supporting credibility
13 other than conviction of a crime may not be proved by extrinsic evidence.

14 MR. HAMNER: Well, I mean, you could call that same officer and say, Do
15 you have an opinion as to his truthfulness based on your interactions with him
16 and he could say, In my opinion he's not forthcoming.

17 MR. SCHWARZ: I wouldn't want to go down that road.

18 THE COURT: That's a singular instance. So in any event, I'm going to --
19 I'm going to -- I'm going to prohibit that.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 MR. SCHWARZ: Thank you, Your Honor.

22 THE COURT: Detective Miller can stay here.

23 MR. SCHWARTZER: We're going to cut the other guy.

24 THE COURT: Yeah, yeah, yeah.

25 THE WITNESS: The other detective.

1 THE COURT: Sit down, Terri, you're not going anywhere.

2 THE WITNESS: Sorry, Your Honor.

3 THE COURT: You're all right.

4 [In the presence of the jury panel]

5 THE MARSHAL: Jury's present, Your Honor.

6 THE COURT: Thank you. You all can be seated. We're going to be back
7 on the record. Mr. Muhammad-Coleman's present with his attorney. State's
8 attorneys are present. Jurors are present.

9 We're going to continue on with the examination of Detective Miller
10 in the State's rebuttal case.

11 Detective Miller, I'll remind you again that you're still under oath.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Thank you.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 THE COURT: Mr. Scwhartzter.

16 BY MR. SCHWARTZER:

17 Q Detective Miller, we rewound it back to 2:01. We believe we
18 figured out a way to have more volume.

19 A Okay.

20 Q I'm going to play it and then I might pause here and there to ask
21 you some questions.

22 A Okay.

23 Q So starting Exhibit 124 at 2:01 for the record.

24 [Video plays]

25 ///

1 BY MR. SCHWARTZER:

2 Q Detective, who are you showing a photo of here; do you recall?

3 A No. I can't -- I can't tell from this direction. I'm sorry.

4 Q Okay.

5 A It's going to be one of the -- either McCampbell, Costa, or Bleak.

6 Q All right. Thank you, Detective. And that was at 6:12 into the --

7 [Video continues]

8 THE WITNESS: I can tell now. It looks like Bleak.

9 BY MR. SCHWARTZER:

10 Q I'm sorry, Detective?

11 A It looks like Bleak.

12 Q Okay.

13 [Video continues]

14 BY MR. SCHWARTZER:

15 Q Stopping at 6:42, did you see the photo you just showed the
16 defendant?

17 A It appears to be Travis Costa.

18 Q Okay. And then you're going to show him a third photo; is that
19 correct?

20 A Yes.

21 Q And who is that going to be?

22 A McCampbell, Mr. McCampbell.

23 [Video continues]

24 BY MR. SCHWARTZER:

25 Q All right, Detective, just a few more questions and then I'm done.

1 Did you release that video, well, let me ask you this. Now, I believe
2 you testified earlier that you had some type of release regarding the blue
3 Cadillac, correct?

4 A Some type of what?

5 Q Release about that blue Cadillac on that April 19th, 2013?

6 A A release?

7 Q A media release.

8 A Yes.

9 Q Did you ever release the video surveillance of the actual shooting
10 into the media?

11 A No.

12 Q Okay. So the only person who saw that video surveillance would
13 have been, at that point, would have been detectives, police personnel?

14 A That's correct.

15 Q There would have been no way for the defendant to have seen that
16 video surveillance before July 3rd, 2013?

17 A No.

18 Q Okay. So the story that the defendant gave on July 3rd, 2013, to
19 sum up is he doesn't know what you're talking about?

20 A Yes, that's correct.

21 Q Doesn't know Travis Costa?

22 A Nope.

23 Q Doesn't know Dustin Bleak?

24 A No, sir.

25 Q Never has been to a Travelers Inn or anywhere on Fremont?

1 A Nope.

2 Q And doesn't know Richard McCampbell?

3 A No.

4 Q And the whole talk about, you know, like, you tell us your side of
5 the story, you know, maybe he shot first, maybe he pulled first, is that what
6 we were talking about where you were just trying to get him to talk?

7 A Yes.

8 Q Because you saw the video?

9 A Yes.

10 Q You watched who did what?

11 A Exactly.

12 Q You knew who the aggressor was?

13 A Yes.

14 Q Okay. That was just because you knew he didn't see the video you
15 were just trying to get him to talk?

16 A Yes.

17 Q Okay. And despite telling them people talked about what happened
18 and that there was video surveillance, he still went with I don't know what
19 you're talking about?

20 A That's correct.

21 MR. SCHWARTZER: I have no further questions, Detective. Thank you.

22 THE COURT: Mr. Schwarz.

23 MR. SCHWARZ: Yes.

24 ///

25 ///

1 **CROSS-EXAMINATION ON REBUTTAL OF TERRI MILLER**

2 BY MR. SCHWARZ:

3 Q Detective --

4 A Yes.

5 Q -- let me ask you a question, why would it be in my client's best
6 interest to tell you anything about this crime?

7 MR. SCHWARTZER: Objection. Speculation and --

8 MR. SCHWARZ: It's the flip side of what he just asked, Judge.

9 THE COURT: Well, I'm going to sustain the objection.

10 BY MR. SCHWARZ:

11 Q All right. Let me ask you this, suppose that he had told you
12 everything that he just testified to and you weren't here and you knew what it
13 was, was he getting out?

14 MR. SCHWARTZER: Objection. There's no way for this witness to know
15 what was said when she was not here.

16 THE COURT: Well, overruled.

17 You can answer the question.

18 MR. SCHWARTZER: Thank you.

19 THE WITNESS: To the best of my knowledge at that point he would not
20 get out.

21 BY MR. SCHWARZ:

22 Q Of course. And so what you're trying to do at this point is extract
23 a confession from him?

24 A I'm trying to get his side of the story.

25 Q Well, assuming that his side of the story is going to be the truth,

1 that's a confession, isn't it?

2 A That's assuming.

3 Q Well, but you had already seen the videotape, you had painstakingly
4 developed my client as the person in the videotape, right?

5 A Yes.

6 Q I mean, at this point none of this is a mystery. Okay? You know
7 exactly what happened and you know exactly who was there. So how could
8 he have helped himself by telling you what happened?

9 A Depends on what he would have said.

10 Q Well, the fact of the matter is he couldn't have helped himself by
11 telling you what happened; isn't that true?

12 A No.

13 Q Now, you said, I'm going to give you the opportunity to help
14 yourself.

15 A Yes.

16 Q My question for as you is how could he have helped himself?

17 A Depending on what --

18 MR. SCHWARTZER: Objection, again. Objection. Speculation again.

19 THE COURT: Well, that's a different question. She can answer the
20 question.

21 Go ahead, Detective.

22 THE WITNESS: Depending on what he would have said. I have no idea
23 what he would have told me. I have the video of that nine minutes, I have no
24 idea what the rest of the story is.

25 ///

1 BY MR. SCHWARZ:

2 Q The warrant was already approved, right, because he was picked up
3 on it?

4 A Yes.

5 Q And then, you know, you told him, We get into a lot of stuff, goes
6 the wrong way, we do things we don't mean them to happen, right? You told
7 him sometimes we get in a hole --

8 A Yes. Yes.

9 Q And when you're telling him that, you're just trying to do what? I
10 mean, why are you telling him that? You know, sometimes things happen and
11 we don't mean it, what's your point in telling him that?

12 A Again, it's a technique that we use in interviewing people to try to
13 get them to talk.

14 Q Okay. Now, you said him -- you said to him that you had the DNA
15 out on the gun and you were sure it was going to come back to him.

16 A Yes.

17 Q Did you mean that when you said it?

18 A No.

19 Q Okay. So that was a lie?

20 A Yes.

21 Q Okay. And just so everybody is clear, the police get the lie to
22 suspects that they're interrogating?

23 MR. SCHWARTZER: Objection, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: Police do, if you want to call it lie, but so do suspects.

1 BY MR. SCHWARZ:

2 Q Right. I guess my point is if that's true then why does it make
3 Darion any more suspect if he lies to you?

4 THE COURT: Why does it make him more suspect to who?

5 MR. SCHWARZ: Well, let's put it this way, I'm --

6 THE COURT: I'm going to -- I think that's an improper question.

7 MR. SCHWARZ: That's fine. That's fine.

8 THE COURT: So I'll strike that question.

9 BY MR. SCHWARZ:

10 Q So as an investigative technique the police can lie to suspects that
11 they're asking questions to?

12 A Yes.

13 Q For example, and you didn't do it in this case, but for example you
14 could have taken a swab of him and said we found your DNA at the scene, we
15 know it was you, and that would be perfectly acceptable, yes?

16 A Yes.

17 Q Okay. Now, here's the thing that I sort of don't understand with
18 this interview. You didn't arrest him, so he was brought to you, right?

19 A Yes.

20 Q So how long had he been sitting in that position before the
21 interview started, before you turned on the video tape?

22 A I believe you see the officer bringing him in approximately 16:48
23 hours. The interview -- the tape starts as soon as he's brought in. You can see
24 the officer bringing him in and securing him. So I read him *Miranda* at 17:05.
25 So we're less than 15 minutes.

1 Q Okay. Well, I see an 18-year-old kid who's --

2 MR. SCHWARTZER: Objection. Testifying.

3 THE COURT: I'll sustain the objection. What you see is irrelevant.

4 BY MR. SCHWARZ:

5 Q There is an 18-year-old kid on the tape, correct?

6 A Yes.

7 Q He appears to be half asleep, correct?

8 A Either that or uncaring as to what's going on.

9 Q And then he becomes violently ill, correct?

10 A Yes, he did throw up.

11 Q Did you think this was an appropriate time to conduct an interview?

12 A I offered him medical attention.

13 Q And after he threw up you continued with the interview.

14 A I believe it ended shortly after that.

15 Q But it continued?

16 A Not much longer.

17 Q And that was only because he finally stopped it and asked -- and
18 invoked his right to an attorney?

19 A I don't think that's entirely true.

20 Q Okay. Why did it stop?

21 A Why did it stop?

22 Q If you recall.

23 A Because I -- well, actually I asked him if he would like to have an
24 attorney present then he can talk to me with his attorney and he said, yes,
25 that's in a nutshell, yes, that's probably a good idea.

1 Q Okay. Okay. Now we're splitting hairs.

2 A So basically I invoked for him.

3 Q You invoked for him?

4 A Yes.

5 MR. SCHWARZ: Okay. All right I don't have anything further. Thank
6 you.

7 THE COURT: Mr. Schwartz, anything?

8 **REDIRECT EXAMINATION ON REBUTTAL OF TERRI MILLER**

9 BY MR. SCHWARTZER:

10 Q Detective, in your experience in Homicide have you dealt with
11 self-defense cases before?

12 A Yes.

13 Q And dealt with suspects with self-defense -- who've presented you
14 with a self-defense argument before?

15 A Absolutely.

16 Q Do they, in your experience, do they experience the demeanor that
17 you saw in Mr. Coleman?

18 MR. SCHWARZ: Objection, Judge.

19 THE COURT: I'll sustain the objection. What anybody else does is not
20 relevant to deciding this case.

21 BY MR. SCHWARTZER:

22 Q Detective, did you -- did you have any indication that Mr. Coleman
23 was going to throw up in the beginning of that interview?

24 A That he was what?

25 Q That he was going to throw up in the beginning of that interview?

1 A No.

2 Q Did he appear to you to be sick at all during that interview before --

3 A No.

4 Q -- he told you he was going to throw up?

5 A No.

6 Q Okay. So if he was violently ill, as put by the defense counsel, in

7 the start of the interview, would you have held off until he got medical

8 treatment and then conducted the interview?

9 A Of course.

10 Q Okay. And to be clear, you read him *Miranda* rights and he decided

11 to talk with you, correct?

12 A Yes.

13 Q And he again denied everything?

14 A That's correct.

15 MR. SCHWARTZER: No further questions, Your Honor.

16 MR. SCHWARZ: I have nothing further, Judge.

17 THE COURT: Thank you.

18 Anything from our jurors? Yeah?

19 [Bench conference -- not transcribed]

20 THE COURT: Okay. Got a couple questions for you, Detective Miller.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: First off, isn't really for you though. One of you-all as

23 jurors asked the question and the attorneys agreed that I could just tell you, the

24 question was why wasn't an attorney present from the beginning. Under the

25 law an attorney's not present unless somebody being questioned invokes the

1 right to have an attorney present meaning they asked for an attorney to be
2 present before the questioning starts.

3 Okay. But for you, are you aware, Detective Miller, at all the
4 circumstances surrounding when he was arrested by the CAT team?

5 THE WITNESS: I have an idea. Yes.

6 THE COURT: Okay. And just the very specific question is do you know
7 whether or not he had a gun when he was arrested by the CAT team?

8 THE WITNESS: I not believe he did.

9 THE COURT: Okay. Did you -- you viewed the surveillance video from
10 the Travelers, correct?

11 THE WITNESS: Yes.

12 THE COURT: And was it, when you were viewing it did you have all
13 those different camera angles? I think there were eight different camera angles
14 available.

15 THE WITNESS: Yes.

16 THE COURT: Okay. So you would have viewed the same surveillance
17 video that's been introduced into evidence, correct, that the jurors have been
18 witnessing?

19 Gentlemen, you all agree with that?

20 MR. SCHWARZ: Yes, we all agree.

21 THE COURT: Okay.

22 Were you able in any fashion to zoom in on the video you were
23 seeing to try and identify people's faces or was it just what you got from
24 Travelers is all you got?

25 THE WITNESS: That's what we got.

1 THE COURT: Okay. Obviously, a defendant is not, quote, unquote,
2 "under oath" when they're being questioned by police, that's a kind of a
3 courtroom thing, right? You don't place a witness or a defendant under oath
4 when they come into the police department for an interview?

5 THE WITNESS: No.

6 THE COURT: Okay. And from your investigation were you able to
7 determine who shot first?

8 THE WITNESS: Technically, we have a fairly good idea. I can tell you
9 from my experience and training that when -- where the cartridge cases were
10 located, the who .40 caliber that Borero had was in stall 3 and 4. The 9
11 millimeter were spread in three behind Mr. Borero's vehicle and out in the
12 middle of the parking lot. On a Ruger, typically, they eject to the right. So I
13 would expect to find the .40s, if Dale Borero fired first because he was up
14 against the wall with the shipping container behind him, it would eject to the
15 right the casings should have been up there.

16 THE COURT: Okay.

17 THE WITNESS: That's -- that's the way I look at it.

18 THE COURT: So all of which your determination of who shot first was
19 what?

20 THE WITNESS: Is that it's -- there's no way to be exactly sure, but based
21 on the physical evidence I would say that Mr. Coleman shot first.

22 THE COURT: Okay. Mr. Scwhartzter, any questions based upon mine?

23 MR. SCHWARTZER: Yes, just based on that.

24 BY MR. SCHWARTZER:

25 Q Not the casings but before that, the video surveillance, I think

1 what's happening is you say multiple times, I saw you with my own eyes on
2 the video surveillance, correct?

3 A Yes.

4 Q You say that during the interview?

5 A Yes.

6 Q Now you're saying that, again, knowing that Mr. Coleman hadn't
7 seen the video?

8 A Right.

9 Q So you're just getting him to, again, confirm that he was there and
10 then start talking?

11 A Yes.

12 Q Okay. So you didn't actually -- you weren't able to actually
13 physically identify Mr. Coleman based on the video alone?

14 A No. It was a black male.

15 Q Okay. You were able to identify Mr. Coleman as the shooter based
16 on the things you testified to this morning?

17 A Yes.

18 Q Okay.

19 MR. SCHWARTZER: No further questions.

20 THE COURT: Mr. Schwarz, anything?

21 MR. SCHWARZ: Yeah.

22 BY MR. SCHWARZ:

23 Q Detective Miller?

24 A Yes.

25 Q You did the declaration of warrant in this case, didn't you?

1 A Yes.

2 Q Do you recall saying in there that it appeared that Dale Borero fired
3 the first shot?

4 A No.

5 Q Can you look over on page 2, do you have a copy of it with you?
6 And I am looking at about the middle of the --

7 A You're going to have to let me get some glasses, sorry.

8 Q That's all right. I need them to see far.

9 MR. SCHWARTZER: What page, counsel?

10 MR. SCHWARZ: Two, the third paragraph about the middle.

11 BY MR. SCHWARZ:

12 Q You know, Detective, I can just give you my copy.

13 A Okay.

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

15 THE WITNESS: Because all I have is the actual warrant.

16 MR. SCHWARZ: No, that's fine.

17 THE COURT: You can approach.

18 BY MR. SCHWARZ:

19 Q I'm looking at --

20 A Okay.

21 Q -- like right there.

22 A May I read that?

23 Q Yeah.

24 A At that point Borero pulled a handgun from his right pocket and
25 fired at the black male suspect, Muhammad-Coleman. I don't see where it says

1 fired first.

2 Q Well, if you look at the chronology of the events, the black made
3 pulled a handgun from his right and pointed it, Borero appeared to try to push
4 the gun away, black male struck the upper left side of Borero's body with the
5 butt of the gun, at that point Borero pulled a handgun from his right pocket
6 side, and fired. Nobody else has fired at the point that you make that
7 observation?

8 A Well, I don't read it that way. And based on physical evidence of
9 where those cartridges cases are and with the fact that most semiautomatic
10 handguns, I'm no firearms expert, but most fire and eject, when they eject, they
11 eject to the right. As you can see on the video where Mr. Borero was standing
12 in which direction he was facing prior to him heading west and south to the
13 fact of where Mr. Coleman was standing and where his cartridge casings were
14 located.

15 Q Does the video show who shot first?

16 A No.

17 Q All right.

18 A And I said that clearly.

19 Q All right. Thanks.

20 THE COURT: Anything?

21 BY MR. SCHWARTZER:

22 Q Your opinion is just based on the physical evidence?

23 A Yes.

24 THE COURT: Detective Miller, thank you again for your time again.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: You are excused. I appreciate it.

2 State, have any further rebuttal witnesses?

3 MR. SCHWARTZER: That's it, Your Honor, thank you.

4 THE COURT: All right. And there are no surrebuttal witnesses?

5 MR. SCHWARZ: No surrebuttal, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, absent the attorneys
7 making sure they've got all their evidence introduced, which we'll discuss after
8 we recess for the day, that rests the presentation of witnesses and evidence.
9 So tomorrow we will get you instructed and closing arguments and get you to
10 your deliberations. We're going to start tomorrow at 11:00 and my plan would
11 be that we go through argument and then we'll just buy you lunch. So you can
12 start your deliberations while you have lunch.

13 The two things that are we can get up here fairly quickly are pie
14 pizza which include salad, chicken fingers, things like that from a place that's
15 pretty descent, as well as sandwiches, sometimes, from downstairs. A lot of
16 times people don't want the sandwiches because they've been having
17 sandwiches every time we take a lunch recess during trial. But just think about
18 what you want and let Joel know and we'll arrange to have that for you
19 tomorrow. Okay. And with that I will see you tomorrow, 11:00 o'clock.

20 During the recess, ladies and gentlemen, you are admonished not to
21 talk or converse among yourselves or with anyone else on any subject
22 connected with the trial or read, watch, or listen to any report of or
23 commentary on the trial by any medium of information including, without
24 limitation, to newspapers, television, the Internet, and radio and you cannot
25 form or express any opinion on any subject connected with the case 'til it's

1 finally submitted to you. And again no investigation research or any type of
2 re-creation on your own outside of your deliberations.

3 Thank you for your time today. I will see you tomorrow.

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We will be in recess. They can stay in right now,
6 Joel. We're not -- we're just having some discussion on the record about stuff.

7 THE MARSHAL: Okay.

8 THE COURT: It's okay. One thing I wanted to make a record of was
9 when, and you guys can be seated, when the question occurred and we didn't
10 do this at the last recess, but when a question occurred with Detective Miller's
11 State's case-in-chief testimony, when Mr. Schwarz asked Detective Miller to
12 clarify what she meant about the photo that we used in the defendant's
13 six-pack lineup. So after the question was asked about the photograph and the
14 similarity to how Mr. Muhammad-Coleman looked around the time that this
15 occurred in April of 2013, and she said do you want me to clarify and
16 Mr. Schwarz said, yes, will you please clarify, I kind of anticipated she was
17 going to do what she did which was say the photo's from an arrest. I think
18 what she said was, It was a photo from his most recent juvenile arrest and then
19 she started to go on a little longer and then Mr. Schwarz said, well, you know
20 what, actually I think I should object. At which point I said, I sustain the
21 objection and I'll strike that.

22 I didn't say anything further as I explained at the bench, for a
23 couple of reasons, number one, the nature of that question I thought was
24 soliciting what she was going to talk about and I thought maybe there was a
25 reason, Mr. Schwarz, you wanted to go into that. Secondarily, I knew from

1 everything that Mr. Muhammad-Coleman was planning on testifying at which
2 point he was going to be questioned about four felony convictions. So when
3 we approached the bench and we were having that conversation, Mike, I did
4 offer at that time I think did you want me to do anything else, admonish the
5 jury in any other fashion and you said no, I didn't want --

6 MR. SCHWARZ: No, Judge. I -- I, you know, certainly don't want to call
7 any more attention to it.

8 THE COURT: Okay.

9 MR. SCHWARZ: I think it sort of went --

10 THE COURT: Okay. All right I just wanted to make sure that we that we
11 made a record of that.

12 In regard to jury instructions, did you guys have a chance to go
13 through each other's instructions?

14 MR. SCHWARZ: Well, actually, Judge, I only had one or two that I was
15 going to proffer and I believe that they are covered sufficiently in the State's
16 instructions.

17 THE COURT: Yeah. Look, you're entitled by law to the self-defense
18 instructions. I think the ones that you have are duplicitous of two of the ones
19 the State has.

20 MR. SCHWARZ: I'm agreeing.

21 THE COURT: Okay. And I think that there are -- there is about five or six
22 of them that are standard that I give every time we have a self-defense issue.
23 So the I think the ones that the State typed up include yours.

24 MR. SCHWARZ: Yeah. My only position is I would request a voluntary
25 manslaughter instruction.

1 THE COURT: Oh, a lesser-included for voluntary manslaughter.

2 MR. SCHWARZ: Yes.

3 THE COURT: Okay. What's the State's -- well, first off, do you have any
4 objection to any of the State's instructions?

5 MR. SCHWARZ: Yes, I have an objection to the flight instruction.

6 THE COURT: Okay. Which we don't have them numbered yet, but
7 what's the State's response on that?

8 MR. SCHWARTZER: What, to the objection?

9 THE COURT: Yeah.

10 MR. SCHWARTZER: I think this is pretty clear -- I think the evidence is
11 pretty clear of flight, Your Honor. In fact, you can see it on the video
12 surveillance, he jumped into the car and then drives away and then -- and then
13 according to his own testimony he then stashes the gun somewhere in Naked
14 City and then we don't hear from him again until the CAT team picks him up on
15 July 3rd of 2013. I think all the elements there establish flight.

16 THE COURT: Okay. I do think the -- the flight instruction is appropriate
17 based upon the facts that have been brought out in front of the jury at this
18 time. So I will give that.

19 Do you have any objection --

20 MR. SCHWARZ: Well, Judge, I understand your ruling; however, my
21 client does raise a good point and sometimes they do, the fact of the matter is
22 at that particular point he was being shot at.

23 THE COURT: Yeah. But that's -- that's argument to be made from either
24 side. The import of a jury instruction is there's some evidence that supports an
25 instruction being appropriate on a tentative law based on the facts that are

1 presented. So you're each free to argue about what flight means, whether it
2 was flight because I'm scared that guy's going to shoot me or flight because
3 I'm scared because of what I just did in shooting somebody else and knowing
4 that I committed a crime. So I will allow that.

5 Any objection any others, Mike?

6 MR. SCHWARZ: No, Your Honor.

7 THE COURT: All right. You just want to have voluntary manslaughter as
8 part of --

9 MR. SCHWARZ: I do.

10 THE COURT: -- the homicide, lesser-included. Okay. What's the State's
11 position on that?

12 MR. SCHWARTZER: I guess my argument, Your Honor, is I don't see any
13 evidence of heat of passion in this case. I mean, I understand if there's even an
14 indicia or suggestion of evidence that allows for it, but in this case I guess I
15 didn't -- I didn't hear any regarding which heat of passion element, voluntary
16 manslaughter would apply. And in fact it would just confuse the jury if they
17 just don't want to find him guilty, but want to consider -- other than perfect
18 self-defense which we know in the State of Nevada isn't allowed.

19 I mean, the voluntary manslaughter would just confuse -- without
20 having any evidence of voluntary manslaughter, I think it just confuses the jury.

21 UNIDENTIFIED AUDIENCE MEMBER: Could there be a parent objection?

22 THE MARSHAL: Ma'am, ma'am.

23 THE COURT: No, ma'am. Okay. You need to go ahead and sit down.
24 Thank you.

25 Okay. Mr. Schwarz, anything further?

1 MR. SCHWARZ: Well, Judge, I think there is evidence of heat of passion
2 and I think it came from my client when -- when he testified that Mr. Borero
3 looked at him and said I ought to shoot both of you and I think at that point,
4 yes, the heat of passion was around -- aroused and became part of the reason
5 why he was, you know, compelled to do what he did.

6 MR. HAMNER: Can I possibly respond at least briefly to that?

7 THE COURT: Sure.

8 MR. HAMNER: I don't think the testimony bears that out. The testimony
9 from the defendant with respect to that issue was when Dale Borero makes the
10 comment, according to him, that if you don't give me my money I'm going to
11 shoot both of you, his statement at that point was that not that he was
12 overcome by some sort of irresistible impulse and kind of loses his mind and
13 reacts, he actually says at that point I want to walk over and try to diffuse the
14 situation. What I decided to do was pull out a gun, shove it in his face to see if
15 that stops things. When he keeps reaching his hand out toward me at that
16 point, I then make another calculated decision of I'm going to pistol whip him
17 essentially in the face in the hopes of knocking him down to the ground so that
18 we can then leave.

19 It's only after he hits him in the face and then he claims that the
20 victim immediately reached for his gun, it's at that point he makes the decision
21 a decision of that's when I decided I wanted to shoot him. Based on his
22 testimony, if we accept it solely as true, that's not a voluntary manslaughter
23 testimony situation. He's not saying he temporarily lost his mind, he was
24 provoked and he couldn't stop himself. He actually takes a series of calculated
25 decisions and, according to him, to deescalate the situation by shoving a gun in

1 his face and pistol whipping him and then when he sees he might get shot, he
2 claims that's when I decided to shoot him.

3 So I don't think voluntary manslaughter, based on the defendant's
4 own testimony, even applies in this situation. Self-defense does but not -- not
5 voluntary manslaughter.

6 MR. SCHWARZ: Well, he also testified that he was scared at that point,
7 Judge. And that can be sufficient.

8 THE COURT: Yeah, but that's -- that's -- I mean, you can't mix voluntary
9 and self-defense and kind of create a voluntary based instruction because of a
10 self-defense argument. Self-defense is kind of a complete defense.

11 I mean, here's the way I look at it, I think that if you consider the
12 law of self-defense about who's the initial aggressor and that you can't be
13 engaged in some kind of wrongful conduct and start a provocation and then kill
14 somebody and then say, hey, self-defense, I think if you consider that, it's very
15 skinny that self-defense even applies here based on the way he testified. But I
16 think out of an abundance of caution, there is slight or marginal basis to give
17 you the self-defense instruction.

18 But I don't think there's anything that justifies a voluntary
19 manslaughter. I mean, it's -- even within the first or second degree or if he has
20 a complete self-defense argument that the jury buys, then it's an acquittal. But
21 I don't think -- even though homicide gets broken down into all those, absent
22 some evidence to support it, we don't just throw them all in there. And in this
23 case I don't really think there's any evidence to support voluntary
24 manslaughter. I mean, it's -- it's either of the degrees of murder or a complete
25 self-defense which would result in an acquittal.

1 Okay? What I will say is the information instruction needs to be
2 redone because it doesn't include the paragraph that talks about your verdict as
3 to one cannot control your verdict as to others. That gets left out a lot for
4 some reason in the macro in you-alls office. And I also would just ask that you
5 put that paragraph as well the it is the duty of the jury paragraph, both of those
6 at the end of the instruction. Okay?

7 MR. SCHWARTZER: The end of the instruction three, Your Honor, or the
8 end of the information instruction?

9 THE COURT: The information instruction, so right now the third
10 paragraph of that instruction, before you even start the charges is, It is the duty
11 of the jury to apply the rules of law , just move that to the very end of that
12 instruction.

13 MR. SCHWARTZER: Okay.

14 THE COURT: And then add that other paragraph about one verdict not
15 controlling the others.

16 MR. SCHWARTZER: Got it.

17 THE COURT: And have those at the end. And then on page 2 of that
18 instruction, you just have kind of one of the charges hanging down there by
19 itself, just move that down the next page so that it's --

20 MR. SCHWARTZER: I'm sorry, which -- was that the same --

21 THE COURT: Kind of a pet peeve type thing. The bottom of page 2 just
22 has, it's not going to be there after you remove that paragraph and place it
23 down, so it's really irrelevant I guess.

24 MR. SCHWARTZER: Okay.

25 THE COURT: Okay. And I'm going to get these in an order and I'll let

1 you know what that order is. You want to stick around for that or are you
2 worried about that?

3 MR. HAMNER: Whatever the Court's pleasure.

4 MR. SCHWARZ: No, Judge, I'm fine.

5 THE COURT: Okay. Then I'll just give them to you in the order in the
6 morning and you guys, if you're using them in PowerPoints or whatever then --
7 well, either side can stick around. I'm going to take a minute and rearrange
8 them a little bit. So if you want to know what the order's going to be, then
9 stick around. Actually stick around.

10 MR. SCHWARZ: All right. I'll stick around.

11 THE COURT: We're going to put the order and that way we can put it on
12 the record and we don't have to do it in the morning.

13 MR. SCHWARZ: All right.

14 THE COURT: So just sit tight or run and use the restroom, whatever you
15 need to do and give me five minutes and then we'll be done.

16 MR. SCHWARZ: Okey doke.

17 MR. SCHWARTZER: Thank you, Judge.

18 [Recess at had 4:44 p.m.; proceedings resumed at 4:50 p.m.]

19 [Outside the presence of the jury panel]

20 THE COURT: All right. We'll back on the record. And just so you know,
21 once it gets to the crime portion, I generally like to do them chronologically with
22 the way things are laid out in the charging documents.

23 MR. SCHWARTZER: Okay.

24 THE COURT: That's kind of why we ended up the way we're going to
25 end up here. But for the record, instructions to the jury, number 1 is going to

1 be, it is now my duty as judge; number 2, if in these instructions; number 3, an
2 amended indictment; number 4, to constitute the crime charged; number 5, the
3 defendant is presumed innocent; Number 6, you are here to determine the guilt
4 or innocence; number 7, the evidence which you are to consider; number 8, the
5 credibility or believability; number 9, a witness who has special knowledge;
6 number 10, the fact that a witness has been convicted of a felony.

7 Number 11 is going to be those certain recorded statements.
8 That's the first place we get a little out of order I think. So certain recorded
9 statements of the defendant have been admitted is number 11. And then we're
10 going to jump into the conspiracy instructions.

11 MR. SCHWARZ: All right. I'm not there yet, Judge. I'm sorry.

12 THE COURT: That's okay. Damn, must have been at the back.

13 MR. SCHWARTZER: It's after the verdict form.

14 MR. SCHWARZ: All right. I got it now.

15 THE COURT: Okay.

16 MR. SCHWARZ: And that is number what?

17 THE COURT: 12, a conspiracy is an agreement.

18 MR. SCHWARTZER: Recorded statements, number 11, if that's what
19 you're looking at.

20 MR. SCHWARZ: Okay. I just saw that one. A conspiracy is an
21 agreement is 12.

22 THE COURT: Yeah. 13, it is not necessary in proving a conspiracy.

23 MR. SCHWARZ: 13.

24 THE COURT: 14 where or more persons. And then 15 is going to be the
25 attempt, the elements of an attempt to commit a crime are; 16, robbery is the

1 unlawful taking.

2 And then we get into the murder instructions: 17, in this case the
3 defendant is accused; 18, murder is the unlawful killing; 19, malice
4 aforethought means; 20, express malice is; 21, murder of the first degree is;
5 22, willfulness is; 23, deliberation is.

6 MR. SCHWARZ: I'm sorry, Judge. Can you give me a minute?

7 THE COURT: Okay.

8 MR. SCHWARZ: Murder of the first degree is 21; willfulness is 22.

9 THE COURT: Deliberations is is 23.

10 MR. SCHWARZ: 23, okay.

11 THE COURT: 24, a deliberate determination; 25, premeditation is; 26,
12 premeditation need not be; 27, the law does not undertake; 28, the true test is;
13 29, the prosecution is not required; 30, the intention to kill; 31, there are
14 certain kinds of murder which carry with them; 32, while a guilty verdict must
15 be unanimous; 33, all murder which is not murder of the first degree; 34, if you
16 find that the State has established.

17 And then we're going to begin the self-defense instructions, so 35
18 is going to be the right of self-defense is not generally available; 36, the killing
19 of another person; 37 --

20 MR. SCHWARZ: I'm sorry.

21 THE COURT: That's okay.

22 MR. SCHWARZ: 35 is the right to self-defense?

23 THE COURT: Right. And then 36, the killing of another person.

24 MR. SCHWARZ: Okay. 36.

25 THE COURT: 37, actual danger is not; 38, if a person kills another in

1 self-defense; 39, if evidence of self-defense is present; 40, self-defense is not a
2 defense. And then we're getting into battery and assault now, so 41, battery
3 means any willful; 42, an assault with a deadly weapon is; 43, if you find the
4 defendant guilty of murder, attempt robbery, battery, or assault that's the
5 weapon instruction; 44, when two or more persons conspire, that's the first
6 controlled substance instruction; 45, except as authorized by law; 46, the flight
7 of a person; 40 -- and I think that's all the specials.

8 47, although you are to consider only the evidence; 48, in your
9 deliberation; 49, when you retire to consider your verdict; 50, if during your
10 deliberation; and 51, now you will listen to the arguments of counsel. It's going
11 to take me a while to read these tomorrow.

12 State has a copy of the 51?

13 MR. SCHWARTZER: We do, Your Honor.

14 THE COURT: And other than making the change to the information,
15 Number 3, to add that paragraph in, you have any objection to the giving of any
16 of the 51?

17 MR. SCHWARTZER: No, Your Honor.

18 THE COURT: And do you have any that you-all wish to mark as court
19 exhibits that are being proposed by the State but not given?

20 MR. SCHWARTZER: No, Your Honor.

21 THE COURT: And you're okay with the verdict form?

22 MR. SCHWARTZER: Yes, Your Honor.

23 THE COURT: Okay. Mr. Schwarz, you-all also have a copy of the 51?

24 MR. SCHWARZ: I do, Your Honor.

25 THE COURT: And that same caveat, other than getting a corrected copy

1 of the instruction, do you have any objection other than the objections raised
2 earlier to any of the 51?

3 MR. SCHWARZ: No, Your Honor.

4 THE COURT: And do you have any that you're proposing to be given that
5 the Court's not going to give that you want to have marked as court exhibits?

6 MR. SCHWARZ: No, Your Honor.

7 THE COURT: And any objection to the verdict form?

8 MR. SCHWARZ: No, Your Honor.

9 THE COURT: Okay. All right. Then we will see you all tomorrow at
10 11:00 o'clock, guys. Thank you very much.

11 MR. SCHWARZ: Thank you, Your Honor.

12 PROCEEDING CONCLUDED AT 4:58 P.M.

13 * * * * *

14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON
25 Court Recorder/Transcriber



1 RTRAN
2
3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
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 Borerero.

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 Borero? 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 Borero'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 Borero who are having this disagreement. Bleak's taking his hat off, and you know,
16 Borero 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. Schwartzer.

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.

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

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

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

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

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

[Outside the presence of the jury]

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

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

THE COURT: Okay.

MR. SCHWARZ: I do not, Your Honor.

• • •


...

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



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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.

23
24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

DAY	PAGE
-----	------

Direct Examination by Mr. Schwartz	2	24
Cross-Examination by Mr. Schwarz	2	81
Redirect Examination by Mr. Schwartz	2	97
		105
Recross-Examination by Mr. Schwarz	2	104

Direct Examination by Mr. Hamner	3	8
Cross-Examination by Mr. Schwarz	3	15
Redirect Examination by Mr. Hamner	3	18

Direct Examination by Mr. Hamner	3	20
Cross-Examination by Mr. Schwarz	3	37
Redirect Examination by Mr. Hamner	3	46
Recross-Examination by Mr. Schwarz	3	49

Direct Examination by Mr. Hamner	3	51
Cross-Examination by Mr. Schwarz	3	61
Redirect Examination by Mr. Hamner	3	63

Direct Examination by Mr. Hamner	3	65
Cross-Examination by Mr. Schwarz	3	82
Redirect Examination by Mr. Hamner	3	85
Recross-Examination by Mr. Schwarz	3	88

Direct Examination by Mr. Schwartzer	3	91
Cross-Examination by Mr. Schwarz	3	103

INDEX OF WITNESSES (continued)

STATE'S WITNESSES:

DAY PAGE

ALANE OLSON

Direct Examination by Mr. Schwartz	3	107
Cross-Examination by Mr. Schwarz	3	124
Redirect Examination by Mr. Schwartz	3	125
Recross-Examination by Mr. Schwarz	3	126

JENNIFER REINER

Direct Examination by Mr. Schwartz	3	127
------------------------------------	---	-----

ADAM FELABOM

Direct Examination by Mr. Hamner	3	137
Cross-Examination by Mr. Schwarz	3	150

CLIFFORD MOGG

Direct Examination by Mr. Schwartz	3	158
Cross-Examination by Mr. Schwarz	3	188

KHUSHBOO NARECHANIA

Direct Examination by Mr. Hamner	4	7
Cross-Examination by Mr. Schwarz	4	13

ANYA LESTER

Direct Examination by Mr. Schwartz	4	14
Cross-Examination by Mr. Schwarz	4	35

ERIC SAHOTA

Direct Examination by Mr. Schwartz	4	40
Cross-Examination by Mr. Schwarz	4	64

TERRI MILLER

Direct Examination by Mr. Schwartz	4	66
Cross-Examination by Mr. Schwarz	4	105
Redirect Examination by Mr. Schwartz	4	112
Direct Examination on Rebuttal by Mr. Schwartz	4	168
Cross-Examination on Rebuttal by Mr. Schwarz	4	181
Redirect Examination on Rebuttal by Mr. Schwartz	4	186

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

<u>DAY</u>	<u>PAGE</u>
------------	-------------

Direct Examination by Mr. Schwarz	4	119
Cross-Examination by Mr. Schwartz	4	141
Redirect Examination by Mr. Schwarz	4	160
Recross-Examination by Mr. Schwartz	4	163

Cross-Examination by Mr. Schwartzer	4	141
-------------------------------------	---	-----

Redirect Examination by Mr. Schwarz	4	160
-------------------------------------	---	-----

Recross-Examination by Mr. Schwartzer	4	163
---------------------------------------	---	-----

LIST OF EXHIBITS

STATE'S EXHIBITS

DAY PAGE

Exhibit 1	4	27
Exhibit 3	4	99
Exhibits 4 through 112	2	6
Exhibits 113 and 113a	2	73
Exhibit 114 and 114a	2	69
Exhibit 115 and 115a	2	69
Exhibit 118	3	179
Exhibit 119	3	178
Exhibit 120	4	56
Exhibit 122	3	35
Exhibit 123	4	114
Exhibit 124	4	172

DEFENDANT'S EXHIBITS

DAY PAGE

Exhibit A	3	124
-----------	---	-----

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 * * * * *

18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-video recording of this proceeding in the above-entitled case.

23 

24 SARA RICHARDSON
25 Court Recorder/Transcriber

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106)
(N.R.S. 53 amended 7/13/1993)

["Click to Add/Edit Event # on All Pages"](#)

Event Number: 130419-4147

STATE OF NEVADA)
) ss:
COUNTY OF CLARK) DOB: 12081994

TL Miller, being first duly sworn, deposes and says:

That she is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of fifteen years, assigned to investigate the crime(s) of Murder with Deadly Weapon, Conspiracy to Commit Murder with Deadly Weapon, Attempt Robbery With Deadly Weapon, Conspiracy to Commit Robbery committed on or about 04/19/2013, which investigation has developed Darion Muhammad-Coleman as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

On Friday, April 19, 2013, at approximately 2135 hours, LVMPD Emergency Dispatch received a 911 phone call regarding a shooting that had occurred at the Travelers Inn, located at 2855 East Fremont Street, Las Vegas, NV.

LVMPD marked patrol units responded to the area, under LVMPD Event# 130419-4147 and upon arrival were flagged down by persons in the parking lot, who indicated a victim needed medical attention in the northeast corner of the motel parking lot.

Officers located a Hispanic male lying on the ground with a gunshot wound to the abdomen. Officers rendered CPR to the victim and CCFD Paramedics responded and transported the male to the UMC Trauma, where he later died from his injuries. The male was later identified as Dale Allen Borero.

Video surveillance from the Travelers Inn revealed a white over blue older model Cadillac arrived at the Travelers Inn at approximately 2120 hours and backed into the furthest northeast parking space in the parking lot, adjacent to large cement wall. A white male(Bleak) and a black male(Muhammad-Coleman) exited the passenger side of the Cadillac and both males were observed talking on cell phones and standing by the left rear of the Cadillac, occasionally looking up to the second floor of the motel. The white male(Bleak) suspect appeared to be drinking something.

CONTINUATIONEvent #: 130419-4147

A male wearing a white t-shirt, jeans and white tennis shoes, was observed walking down the north steps of the Travelers Inn. He was later identified as Dale Allen Borero. Borero approached the two males and engaged the white male (Bleak) in a conversation in the far northeast corner of the parking lot, barely within view of the camera.

Both witnesses, Jermaine Grace and driver of the Cadillac, later identified as Richard McCampbell stated they overheard the white male (Bleak) and victim Borero in a "heated" argument over money.

At one point the black male suspect(Muhammad-Coleman) moved from the left rear of the Cadillac to stand on the opposite side of the white male (Bleak). The black male(Muhammad-Coleman) pulled a handgun from his right side and pointed it at Borero. Borero appeared to try to push the gun away and the black male(Muhammad-Coleman) struck the upper left side of Borero's body with the butt of the gun. At that point, Borero pulled a handgun from his right pocket and fired at the black male suspect(Muhammad-Coleman). The white male suspect(Bleak) was not in view of the camera. There was an exchange of gunfire between Borero and the black male suspect(Muhammad-Coleman), who began to back up as he fired his gun. At one point, the black male (Muhammad-Coleman) fell to the ground as he attempted to escape the gunshots being fired by the victim Borero.

Approximately fourteen (14) gunshots were exchanged between Borero and the black male(Muhammad-Coleman). The black male(Muhammad-Coleman) jumped up from the ground and continued to move toward the front of the Cadillac, which had begun to move westbound through the parking lot. The white male(Bleak) was observed trying to climb into the right rear passenger door of the Cadillac. The black male(Muhammad-Coleman) managed to get into the left front of the Cadillac.

The victim Borero was observed lying on the ground, firing shots at the fleeing vehicle.

The Cadillac was last seen exiting the Travelers Inn and northbound onto Fremont Street.

Witnesses interviewed at the Travelers Inn stated they had observed a white male adult(Bleak) and a black male(Muhammad-Coleman) standing in the parking lot arguing with Borero, prior to the shooting and a black male(Muhammad-Coleman) leaning against the left rear of the Cadillac, as well as a heavy set male(McCampbell) seated in the driver's seat of the Cadillac. Witnesses interviewed at the Travelers Inn identified three (3) persons in the vehicle, however, Detectives later learned there were a total of four(4) suspects.

A witness identified as LeCorey Grace stated he overheard Borero talking on the phone before Borero walked downstairs. He stated at the same time he observed a white male(Bleak) standing near the bottom north steps talking on the phone. L Grace indicated he thought the two were talking to one another and overheard one of the males say, "I'm by myself".

CONTINUATIONEvent #: 130419-4147

On Saturday, April 20, 2013, your Affiant and Homicide Detective R Wilson attended autopsy of the decedent at the Clark County Coroner's Office. Medical Examiner Dr. L Simms stated Borero died as the result of multiple gunshot wounds and ruled the death a homicide.

On Saturday, April 20th, Detective C Mogg received information from a different source that one of the suspects may be staying at Sam's Town. However, the source did not have more specific information.

On Sunday, April 21, 2013, your Affiant, received information from a source that a male had contacted him/her and advised that he had been involved in a shooting and had suffered a gunshot wound to the leg. The male told the source he was staying in room 944, with Shandin Wilson, at the Sam's Town Gambling Hall and Casino, located at 5111 Boulder Highway, Las Vegas, Nevada. According to the source, the male acted like he was "spun up" and kept repeating, "give a life, take a life", which scared the source. Your Affiant understands "spun up" to mean the male was under the influence of controlled substance.

The source identified the male who had called him/her as Dustin Bleak, with a cell phone number of 702-217-9783. A records check of Bleak's phone revealed it was a Trac Phone serviced by AT&T with no subscriber information listed.

Registration records were obtained from the front desk at Sam's Town, which indicated a female, who utilized the name of Sheila Paikai, was listed as a non-registered guest in room 944 with a second person named as Shannon Wilson. Paikai had registered at the hotel on Friday, April 19, 2013, at approximately 2200 hours and had prepaid until Monday, April 22, 2013 and with a credit card in her name to secure the room.

Surveillance footage captured at the hotel revealed a male and two females entered the room on Saturday, April 21, 2013, at approximately 1845 hours. Your Affiant later learned the male in the video was not Bleak.

While Detectives C Mogg and R Wilson were conducting an interview with the source, they received a phone call from LVMPD personnel that a male, who had identified himself as Richard McCampbell was at the Clark County Detention Center (CCDC) to turn himself in and he had information regarding a murder.

Detectives Mogg and Wilson responded to the area of 1st Street and Lewis, near the releasing area of CCDC and as they arrived, they observed a white over blue four door Cadillac bearing NV 441 YVU parked on the street. McCampbell was handcuffed and talking to a Patrol Officer near the Cadillac. Detective Wilson observed what appeared to be a bullet hole in the left rear "C" post of the roof of the Cadillac.

CONTINUATIONEvent #: 130419-4147

McC Campbell told Detectives Mogg and Wilson he had information regarding a murder that had occurred at the Traveler's Inn at 2855 East Fremont, Las Vegas, Nevada on Friday, April 19, 2013. McC Campbell agreed to voluntarily go with Detective Mogg and Wilson to LVMPD ISD Headquarters at 400 South Martin Luther King Blvd, to speak with Detectives.

At approximately 1353 hours, McC Campbell was read his Miranda rights by Detective Mogg and in a recorded interview, stated he was the legal owner of the 1990 Cadillac and that he was driving his vehicle on Friday, April 19, 2013.

According to McC Campbell, he was parked on Philadelphia Street, in area known as "The Naked City", "hanging out", when a black male adult, who he identified as "Money" knocked on his car window and asked for a ride. McC Campbell stated he did not know the other two other males with "Money", but "Money" told McC Campbell he would pay him \$10 to take them to and from the area of Sahara and Boulder Highway. McC Campbell stated both "Money" and a white male seated directly behind him in the Cadillac (Costa) directed him to the area of Boulder Highway and to a 7-11 located near Charleston and 30th Street. McC Campbell explained he cut through the parking lot of a Lowe's to reach the 7-11.

On Monday, April 22, 2013, Detective S Smith met with McC Campbell and asked him to view two separate photo lineups. Each contained six (6) similar looking white males. In the first photo lineup, McC Campbell identified the photo depicted as #4, as the white male who was seated directly behind him the Cadillac, with the pony tail. The photo marked #4 was Travis Costa ID# 1898877.

In the second photo lineup shown to McC Campbell, he identified the photo depicted in #5, as the male seated in the right rear seat of the Cadillac. The photo marked #5 was Dustin Charles Bleak ID# 1967098.

In the third photo line up McC Campbell was asked to view, which depicted six similar looking black males, McC Campbell was unable to identify the black male with a moniker of "Money".

McC Campbell identified "Money" seated in the right front of the vehicle and said he was wearing a black hoodie, blue jeans and white tennis shoes. He stated the two lighter skin males were in the back seat and described the male with the ponytail sitting in the left rear seat (Costa) and the male (Bleak) he described as "thicker" in the right rear.

McC Campbell stated he was directed to a strip mall and told to park between the 7-11 and Dotty's Casino on East Charleston. He said the male in the left rear (Costa) exited the vehicle to purchase beer for himself and his brother at the 7-11 and "Money" and the white male (Bleak) in the right rear passenger seat exited the vehicle and talked privately outside of the his car. When "Money" and the white male (Bleak) re-entered the car, he said, "I don't want no trouble" and admitted he originally thought all three males had planned to rob the 7-11. An

CONTINUATIONEvent #: 130419-4147

unopened white beer can was recovered from the crime scene, where the Cadillac was parked and it appeared to be the same brand of beer purchased at the 7-11, at approximately 2113 hours.

On Thursday, April 25, 2013, Detective C Mogg and your Affiant made contact with Lowe's Loss Prevention Manager Paul Sosa, located at 2875 East Charleston Blvd., at the intersection of Fremont Street and Charleston Blvd. Video surveillance located at the front of the store, revealed a white/blue Cadillac pass in front of the business on April 19, 2013 at approximately 2111:07 hours heading eastbound. The same Cadillac passed in front of the business heading westbound at 2120:09 hours.

McC Campbell told Detectives he was then told by Bleak to drive back to Boulder Highway and directed to the Travelers Inn, where he was given specific instructions on how and where to park in the parking lot of the Travelers Inn. McC Campbell stated he was told to back into the far northeast corner of the parking lot. During the investigation, your Affiant observed the far northeast corner to be dark, the furthest area away from the street, which would make it difficult for passerby's to observe their actions. By backing into the parking stall, the suspects ensured a quicker exit from the parking lot.

McC Campbell stated once he parked the Cadillac, "Money" and the male seated in the right rear(Bleak), exited the vehicle and met with another Hispanic male(Borero) who had walked down the steps, near where the vehicle was parked. McC Campbell said he never left his vehicle, but he could hear an argument between "Money", the thicker male(Bleak) and the male who they had met up with. He said he heard someone say, "get the money, get the money" or something to that effect. He also stated the male(Costa) in the vehicle with him yelled "take his dope." McC Campbell stated as the argument escalated he heard several gunshots and started his vehicle and stomped on the gas. According to McC Campbell, "Money" was attempting to climb back in the right front passenger seat of his vehicle, as he attempted to leave the area. McC Campbell said the right front interior simulated wood panel on the passenger door was missing from his vehicle and he thought "Money" may have knocked it off when he tried to get back in the car. Detectives recovered the door panel at the crime scene on April 19th. The Cadillac was photographed, sealed and towed by Quality Tow, to the LVMPD Forensic Lab on April 21, 2013.

On Monday, April 22, 2013, Detective T Faller P# 6749 observed a white 2000 Buick 4 door in the parking lot of the Siegel Suites, located at 4823 Boulder Highway, with five (5) occupants, bearing NV plate 808YEW. A records check on the registration revealed the Buick to be reported stolen out of North Las Vegas Police Department on April 4, 2013, by the registered owner Timothy Durant, who resided at 770 W Lone Mountain #1067 North Las Vegas, NV 89031. The stolen vehicle report was documented under OCA# 13040800-5932

CONTINUATIONEvent #: 130419-4147

Officers conducted a felony car stop on the vehicle and all five occupants were identified. Two of the occupants were identified as Dustin Bleak and Travis Costa, who identified Bleak as his brother. The other three occupants were interviewed and released. The vehicle was towed and the registered owner was notified via phone. During the inventory of the vehicle for the tow, Detective Faller located a black Umarex XBG bb gun, bearing serial number 12J2845, with no magazine near Bleak's position in the vehicle. A magazine containing bb's was recovered on the ground at the crime scene on April 19, 2013 in the area the Cadillac had been parked.

During a recorded interview with Costa, Homicide Detectives R Wilson and your Affiant learned Bleak was the blood brother of Costa. Costa stated he and his brother, Dustin, who used an aka of Criminal, were in the Naked City with a black male he identified as Money. According to Costa, an older black male, who he identified as Mechanic, made contact with Costa aka PT, Money and Bleak and was asked by Money to drive them to the area of Sahara and Boulder Highway to buy a quarter ounce of methamphetamine, from a source Bleak knew from time served in Lovelock prison. Costa stated he overheard his brother talking about the drug transaction on the phone while they were seated in the car. He also acknowledged he entered a 7-11 near the intersection of Charleston and Fremont and purchased two beers, one for himself and one for his brother.

Costa said Mechanic drove them to an unknown motel located near the Lamplighter Motel on East Fremont. The Lamplighter Motel is directly adjacent to the Travler's Inn. McCampbell was instructed to back into a parking stall on the northeast corner of the parking lot. Costa said neither he nor the Mechanic exited the vehicle, but Bleak and Money exited on the right side of the Cadillac.

According to Costa, he observed a Hispanic male, later identified as Dale Borero, walk down the steps near the Cadillac and speak with Bleak. Costa said he did hear an argument, but he was unsure what it was over. Then he heard several gunshots. Costa stated he covered his head and ducked down in the seat and Mechanic started the car and began to accelerate out of the parking space, just as Bleak attempted to enter the right rear passenger door of the Cadillac. He said Money was trying to get in the right front door. Costa stated Bleak was being dragged by the vehicle and he yelled for the Mechanic to stop, as he reached over to pull Bleak into the back seat.

Costa stated when he asked what happened, Money said Borero had pulled a gun and shot him. According to Costa, Money stated he had been shot in the hip. During the execution of a search warrant on McCampbell's vehicle, no blood was recovered, which indicated to your Affiant that neither "Money" or Bleak had suffered a gunshot wound.

Costa stated he had observed a black semi auto handgun, in a holster on "Money's" hip. When Money got back into the Cadillac, Costa stated the gun appeared to be empty of any bullets

CONTINUATIONEvent #: 130419-4147

because "Money" extracted the magazine and showed Costa he did not have any bullets left. However, he stated "Money" had pointed the gun at each occupant in the car and stated he would kill anyone who talked about the shooting. Costa stated he was in fear for his life and afraid to call police.

After the shooting Costa said Mechanic drove them to an apartment near the Stratosphere, where they all had drinks and later walked to the Stratosphere Hotel and Casino and gambled. According to Costa, Bleak disappeared and later contacted and advised him that he and his girlfriend had rented room 944 at the Sam's Town Hotel and Gambling Hall. Costa stated he and his girlfriend, LeSandra Huntley, date of birth 09-16-1975, went to Sam's Town and stayed with Bleak and other unidentified people. He was unsure if it was Saturday or Sunday night.

When asked who else had a gun in the Cadillac on April 19th, Costa stated Bleak carried a bb gun, but no one else except "Money" had a gun.

On Monday, April 22, 2013, Detectives R Wilson and TL Miller conducted a recorded interview with Dustin Bleak. Bleak was read his Miranda rights at approximately 1509 hours by Detective Wilson and acknowledged that he understood his rights. However, Bleak invoked his right not to speak with Detectives and asked to have his attorney present. Bleak was asked if he needed medical attention for any injuries and he stated no. Bleak was wearing only a pair of shorts and did not appear to have suffered from a gunshot wound to his leg.

On Tuesday, April 23, 2013, your Affiant and Detective C Mogg conducted a voluntary recorded interview with Michael Herrod, date of birth 04/04/1977. Herrod stated he had been incarcerated in Lovelock Prison with both Borero and Bleak. According Herrod, Bleak had broken into his home on Friday, April 19, 2013 and pointed a handgun at him. Herrod stated Bleak was accompanied by two other black males and he identified one of the suspects as Creep. Herrod stated Bleak appeared to be under the influence and had demanded he print illegal checks. Herrod said he eventually convinced the three males to leave his residence without incident. He stated he called Bleak's girlfriend, Shandin Wilson, who told him she had purchased a bb gun for Bleak, "at a Big 5." Herrod did not know when the bb gun had been purchased or at what location. However, he acknowledged he thought the gun in Bleak's possession at the time of the burglary was real.

Herrod stated Bleak had been staying with him for approximately 5 days prior to the murder, but Herrod had "kicked him out" due to his drug use and the fact that he had been stealing from his friend Janet.

According to Herrod, he heard about the shooting and called Bleak and asked him "if he really did it" and Bleak had stated, "yes, he pulled a gun first and I had to get him before he got me". Herrod also told Detectives Bleak had told him he was shot and he told Bleak to go to the hospital.

CONTINUATIONEvent #: 130419-4147

When asked about any problems between Borero and Bleak, Herrod stated he had heard Borero was being "fucked with" for the last month or so and Bleak and others unnamed had some sort of disturbance at AZ Charlies recently where Borero's dope and/or money had been taken from Borero.

On Wednesday, April 24, 2013, Detective B Embrey contacted Shannon Wilson, who was an occupant in the stolen vehicle and who had identified herself as the girlfriend of Bleak. Wilson was asked if she had recently purchased a bb gun. Wilson verbally acknowledged she had purchased a bb gun at WalMart, but stated it had broken after "a couple of days" and she had thrown it away.

On Wednesday, April 24, 2013, Detective Mogg and your Affiant received information which indicated "Money" was Darion Muhammad-Coleman, date of birth 12-08-1994.

On April 24, 2013, McCampbell told FBI Special Agent S Hendricks that he had given "Money", his girlfriend and a small child a ride to A&R Appliances, in his truck. McCampbell stated "Money" and the female were selling some appliances. However, when they returned to pick up a check for the sale the appliances, the female, later identified from a A&R receipt as Keara Terrell had become angry while in the store and caused a disturbance. The clerk at A&R recalled the female had been in a white Ford Ranger.

Information provided on the sales receipt listed Keara Terrell with a phone number of 562-528-2322. A records check through CCDC call records revealed a call to that number from an inmate identified as Kamilah Muhammad ID# 1223896. On the recorded phone call, Muhammad identified herself as "Money's Mama." A records check through family court records revealed Kamilah Muhammad had one son, Darion Coleman. Records check also revealed Kamilah Muhammad had a boyfriend identified as Richard Grimble. The phone number provided by McCampbell for "Money" 702-488-5138, had a subscriber listed as Richard Gimble. Therefore, Detective C Mogg contacted Clark County Juvenile Detention Center and obtained the photograph of Darion Muhammad-Coleman for the photo lineup.

Detective Mogg contacted the Clark County Juvenile Detention Center and learned they had a photograph of Muhammad-Coleman in their data system. Detective Mogg went to the Detention Center and constructed a photo lineup with a photograph of Muhammad-Coleman and five similar looking male's photos.

On Thursday, April 25, 2013, at approximately 0730 hours, Detective Mogg met with Richard McCampbell at McCampbell's residence and showed him the photo lineup. McCampbell immediately identified photo five (5) as a picture of the person he knew as "Money," and the person he saw shoot the victim on April 19, 2013. Photo number five was a photograph of Darion Muhammad-Coleman, date of birth 12-08-1994.

CONTINUATIONEvent #: 130419-4147

On Thursday, April 25, 2013, at approximately 0945 hours, Detectives Mogg and your Affiant met with Jermaine Grace, date of birth 04-30-1982 at 2855 East Fremont. Your Affiant showed Jermaine Grace two photo lineups, one contained six(6) photos of similar looking black males. The other photo lineup contained six (6) photos of similar looking white males.

J. Grace immediately identified photo #5 as the white male he observed talking with victim Dale Borero prior to the shooting, "in a heated discussion". The photo depicted as #5 was Dustin Charles Bleak, ID# 1967098.

J. Grace was then asked to view the photo lineup that contained six (6) similar looking black males and he stated the male depicted in photo #2 appeared to be the male who was leaning against the back of the Cadillac. He stated he wasn't sure if photo #2 was the same male because the black male he observed who "turned his face away" from him. Photo #2 was not the suspect, Darion Muhammad-Coleman aka Money, date of birth 12-08-1994.

On Thursday, April 25, 2013, at approximately 1000 hours, Detectives Mogg and your Affiant met with LeCorey Grace, date of birth 11-26-1983 at 2855 East Fremont. Your Affiant showed L. Grace two photo lineups, one contained six(6) photos of similar looking black males. The other photo lineup contained six (6) photos of similar looking white males.

L Grace immediately identified photo #5 as the white male he observed talking with victim Dale Borero prior to the shooting. The photo depicted as #5 was Dustin Charles Bleak, ID# 1967098.

L Grace was then asked to view the photo lineup that contained six (6) similar looking black males and he stated the males depicted in photos #4 and #5 both appeared to look like the male who was leaning against the back of the Cadillac. He described the suspect as having a "fatter" face and said he was unsure if the photo marked #4 or the photo marked #5 was the black male he observed. L Grace stated the black male saw L Grace look at him and he "turned his face away", as if to avoid anyone seeing him. Photo #4 was not Darion Muhammad Coleman, however the photo depicted as #5 was Darion Muhammad-Coleman date of birth 12-08-1994.

Your Affiant learned through the aforementioned facts that Bleak brokered a quarter ounce methamphetamine purchase with victim Borero prior to their arrival at the Traveler's Inn. Bleak and Muhammad-Coleman arrived at the Traveler's Inn with two handguns and instructed McCampbell to park in the furthest corner away from the street and to back his vehicle in to afford them a quick exit from the area. The victim contacted Bleak and Muhammad-Coleman in the corner of the parking lot to conduct an illegal narcotics transaction. Witnesses overheard some type of argument over money and Muhammad-Coleman pulled a concealed firearm and pointed it at victim Borero in an attempt to rob Borero of his narcotics and money.

CONTINUATIONEvent #: 130419-4147

Victim Borero pulled a handgun from his right front pocket and fired at Muhammad-Coleman. Video surveillance depicted an exchange of gunfire between Borero and Muhammad-Coleman but Bleak was out of camera view. Borero was struck by gunfire and later died as a result of his injuries. Your Affiant believes Bleak was in possession of a BB gun and dropped the magazine in the parking lot as he fled. Muhammad-Coleman and Bleak ran to the Cadillac, as driver McCampbell attempted to flee the area and managed to get into the vehicle. All four suspects left the area in the Cadillac. To date, due to McCampbell and Costa's limited involvement, they have not been charged. However, Bleak is currently in custody.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Darion Muhammad-Coleman on the charge(s) of Murder with Deadly Weapon, Conspiracy to Commit Murder with Deadly Weapon, Attempt Robbery With Deadly Weapon, Conspiracy to Commit Robbery .

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

Executed on this 26th day of April, 2019.

DECLARANT: _____

WITNESS: _____

DATE: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

"Click to Add/Edit Event Information on All Pages"

Event #: 130419-4147

STATE OF NEVADA) Dustin Bleak
) ss: ID#: 1967098
COUNTY OF CLARK) DOB: 07/20/1987 SS#: 563973998

"PRINT"

TL Miller, P# 5113, being first duly sworn, deposes and says that she is the affiant herein and is a Detective with the Las Vegas Metropolitan Police Department (LVMPD) presently assigned to the Homicide. That she has been employed with the LVMPD for the past 15 years and has been assigned to the Homicide for the past 1 year.

There is probable cause to believe that certain property hereinafter described will be found at the following described premises, to-wit: **Trac Phone cellular telephone 702-217-9783, and the AT&T.**

The property referred to and sought to be seized consists of the following:

- 1. Caller identification information ; and**
- 2. Post cut through dial digit extractions; and**
- 3. Cell site/sector (physical address) of call termination, call initialization and call progress locations (automated message accounting data); and**
- 4. Subscriber information, including Electronic Serial Number (ESN), Mobile Identification Number (MIN), International Mobile Subscriber Identity (IMSI) and International Mobile Equipment Identity (IMEI) and**
- 5. Historical call detail records inclusive of cell site/sector information from 0030 hours on April 1, 2013 to 1316 hours on April 22, 2013**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offense of **Murder with Deadly Weapon, Conspiracy to Commit Murder with Deadly Weapon, Attempt Robbery with Deadly Weapon and Conspiracy to Commit Robbery** has been committed.

In support of your affiant's assertion to constitute the existence of probable cause, the following facts are offered:

On Friday, April 19, 2013, at approximately 2135 hours, LVMPD Emergency Dispatch received a 911 phone call regarding a shooting which occurred at the Travelers Inn, located at 2855 East Fremont Street, Las Vegas, NV. LVMPD marked patrol units responded to the area, under LVMPD Event# 130419-4147 and upon arrival were flagged down by persons in the parking lot, who indicated a victim needed medical attention in the northeast corner of the motel parking lot. Officers located a Hispanic male lying on the ground with a gunshot wound to the abdomen. Officers rendered CPR to the victim and CCED Paramedics responded and transported the male to the UMC Trauma, where he later died from his injuries.

Video surveillance from the Travelers Inn revealed a white over blue older model Cadillac arrived at the Travelers Inn at approximately 2120 hours and two males exited the passenger side of the Cadillac. Another male, wearing a white t shirt, jeans and white tennis shoes, was observed walking down the north steps of the Travelers Inn and talking to the two males that exited the vehicle. All three males were observed arguing near the

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

northeast corner of the parking lot and gunfire was exchanged between the HMA victim who was later identified as Dale Borero, and an unidentified black male adult. The unidentified black male fell to the ground as he attempted to escape the gunshots being fired by Borero. Approximately fourteen (14) gunshots were exchanged. The two males managed to get back into the Cadillac and flee the area as the victim lay on the ground still firing rounds at the fleeing Cadillac. Witnesses interviewed at the Travelers Inn stated they observed a white male adult and a black male adult standing in the parking lot arguing with Borero, prior to the shooting.

On Sunday, April 21, 2013, your Affiant, received information from a source that a male who she knew as Dustin Bleak had contacted them and advised he had been involved in a shooting and had suffered a gunshot wound to the leg. Bleak stated he was staying in room 944, with an unidentified female, at the Sam's Town Gambling Hall and Casino, located at 5111 Boulder Highway, Las Vegas, Nevada. According to the source, Bleak acted like he was "spun up on dope" and repeatedly said, "give a life, take a life." The source identified the male caller as Dustin Bleak, who was calling from and uses cell phone number of 702-217-9783.

A records check of Bleak's phone revealed it was a Trac-Phone serviced by AT&T with no subscriber information listed. A registration check of room 944 at Sam's Town, indicated a female named Sheila Paikai, was listed as a non-registered guest in room 944, with a second person with the name of Shannon Wilson. Paikai was registered at the hotel on Friday, April 19, 2013, at approximately 2200 hours and was expected to check

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

out on Monday, April 22, 2013. Surveillance footage captured at the hotel revealed a male and two females entered the room on Saturday, April 20, 2013, at approximately 1845 hours. Per Assistant Security Manager Paul Ready, a "Do Not Disturb" request had been made on April 20, 2013, by the occupants in room 944. Therefore, no Sam's Town housekeeping personnel had accessed the room since Friday, April 19th, during the early morning hours for cleaning.

Based on the aforementioned facts your Affiant believed Bleak was involved in the murder at of Dale Borero at the Traveler's Inn and may be in need of immediate medical assistance. Your Affiant also believed Bleak would be in contact with the other outstanding suspect(s) involved in the murder of Dale Borero. For this reason, your Affiant is asking for previous and future call detail records to establish mutual contacts between Bleak and the other three suspects.

Your Affiant requests the court authorize precision location on Bleak's cellular phone due to the fact that your Affiant believed Bleak may possibly be in the company of the as yet identified suspect(s) who are considered to be armed and dangerous. The precision location will assist officers in tracking Bleak's movements, which your affiant believed will lead to the suspect(s), other witness, and/or evidence. Precision location will allow officers to take Bleak and/or the other suspects into custody at a time and location which presents the least danger to surrounding citizens. An emergency PEN Trap and Trace with Precision Location was established on 04/21/2013 after your Affiant and Sergeant P Fabian conferred with Sergeant P Rossi on 04/21/2013, at approximately 1205 hours.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

The exigent circumstances which existed at the time was your affiant believed Bleak was in contact with the other suspect(s), and Bleak presented an immediate danger to anyone who he may come into contact with. Additionally, your Affiant believed Bleak will likely require medical attention for any gunshot wound(s) he may have received during the exchange of gunfire with the victim.

Your Affiant requests that the court authorize the service of this warrant anytime during the day or night, to allow AT&T to access their computer network at a time that is convenient to them to obtain the requested information.

Based on the aforementioned information and investigation, your affiant believes grounds for issuance of a search warrant exists as set forth in Nevada Revised Statutes 179.035 and 1979.045 because the items sought constitute evidence which tend to show that a crime has been committed, and that a particular person has committed a crime. Your affiant is a member of a joint task force consisting of members from Las Vegas Metropolitan Police Department and the Federal Bureau of Investigations (FBI). It is the intent of the affiant and the task force peace officers executing the warrant to jointly use the information obtained from AT&T as it relates to cell phone number 702-217-9783 in order to locate Dustin Bleak and any associates/suspects involved in the murder of Dale Borero.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

WHEREFORE, affiant requests that a Search Warrant be issued directing a search for and seizure of the aforementioned items at the location set forth herein.

Detective TL Miller, AFFIANT

Subscribed and sworn to before me this 23rd day of April, 2013.

Judge

Approved by: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

WHEREFORE, affiant requests that a Search Warrant be issued directing a search for and seizure of the aforementioned items at the location set forth herein.

TL Miller, AFFIANT

Subscribed and sworn to before me this Day day of Month, 2013

JUDGE

Approved by:

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

WHEREFORE, affiant requests that a Search Warrant be issued directing a search for and seizure of the aforementioned items at the location set forth herein.

TL Miller, AFFIANT

Subscribed and sworn to before me this 06 day of March, 2013

JUDGE

Approved by:

SEARCH WARRANT

STATE OF NEVADA) Dustin Bleak
) ss: ID#: 1967098
COUNTY OF CLARK) DOB: 07/20/1987 SS#: 563973998

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before me by TL Miller, P# 5113, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely

1. **Caller identification information ; and**
2. **Post cut through dial digit extractions; and**
3. **Cell site/sector (physical address) of call termination, call initialization and call progress locations (automated message accounting data); and**
4. **Subscriber information, including Electronic Serial Number (ESN), Mobile Identification Number (MIN), International Mobile Subscriber Identity (IMSI) and International Mobile Equipment Identity (IMEI) and**
5. **Historical call detail records inclusive of cell site/sector information from 0030 hours on April 1, 2013 to 1316 hours on April 22, 2013**

and limited items of personal property which would tend to establish a possessory interest in the items seized pursuant to this search warrant, such as personal identification, photographs, utility receipts or addressed envelopes, are presently located at Trac Phone cellular telephone 702-217-9783, and the AT&T..

**SEARCH WARRANT
(Continuation)**

Page 2

And as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said property, serving this warrant anytime day or night and if the property is there to seize it, prepare a written inventory of the property seized. It is the order of this court, that the information obtained pursuant to this warrant be jointly utilized by the Las Vegas Metropolitan Police Department and the Federal Bureau of Investigation (FBI) to locate Dustin Bleak and any of his associates or other suspects, believed to be involved in the murder of Dale Borero.

Dated this 23 day of April, 2013

JUDGE

AA650

RETURN

(Must Be Made Within 10 Days of Issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s) was executed on the 23 day of April, 2013: ATT TRACPHONE 702-217-9783.

A copy of this inventory was left in the case file and provided to ATT.

The following is an inventory of property taken pursuant to the warrant:

The information requested in the search warrant

This inventory was made by: Det. T. Miller.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Event #: 130419-4147

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Buddy Embrey, P# 8644, being first duly sworn, deposes and says that he is the affiant herein and is a Detective with the Las Vegas Metropolitan Police Department (LVMPD) presently assigned to the Homicide. That he has been employed with the LVMPD for the past 8 years and has been assigned to the Homicide for the past 2 years.

There is probable cause to believe that certain property hereinafter described will be found at the following described premises, to-wit: **1990 Cadillac Brougham White/Light Blue 4 door VIN: 1G6DW54Y7LR722758 Nevada registration: 441 YVU License year 2014 Registered owner: Richard L McCampbell 7306 Cestrum Road Las Vegas, NV 89106 Date of Birth: 01/26/1954** The property referred to and sought to be seized consists of the following:

Handgun

Magazine

Ammunition

Trace evidence to include hairs, fibers, DNA and fingerprints, bullets

Black hooded sweatshirt

Blue Jeans

White earbuds

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

Black tennis shoes

Black windbreaker jacket

Black baseball cap

Light colored t-shirt

US Currency

Narcotics

Narcotic paraphernalia

Alcoholic beverage

7-11 receipts

Digital devices such as cameras or mp3 players

Wallets

Identification such as driver's license, passports etc.,

and articles of personal property which would tend to establish the identity of persons in control of said premises, which items of property would consist in part of and include, but not limited to papers, documents and effects which tend to show possession, dominion and control over said premises, including but not limited to keys, canceled mail envelopes, rental agreements and receipts, utility and telephone bills, prescription bottles, vehicle registration, vehicle repairs and gas receipts. Items which tend to show evidence of motive and/or the identity of the perpetrator such as photographs and undeveloped film, insurance policies and letters, address and telephone records, diaries, governmental notices, whether such items are written, typed or stored on computer disc. Objects which bear a person's name, phone number or address.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

The property hereinbefore described constitutes evidence which tends to demonstrate that the criminal offense of **Murder with Deadly Weapon** has been committed.

In support of your affiant's assertion to constitute the existence of probable cause, the following facts are offered: On Friday, April 19, 2013, at approximately 2135 hours, LVMPD Emergency Dispatch received a 9-1-1 phone call regarding a shooting that had occurred at the Travelers Inn, located at 2855 East Fremont Street, Las Vegas, NV.

LVMPD marked patrol units responded to the area, under LVMPD Event# 130419-4147 and upon arrival were flagged down by persons in the parking lot, who indicated a victim needed medical attention in the northeast corner of the motel parking lot.

Officers located a Hispanic male lying on the ground with a gunshot wound to the abdomen. Officers rendered CPR to the victim and CCFD Paramedics responded and transported the male to the UMC Trauma, where he later died from his injuries.

Video surveillance from the Travelers Inn revealed a white over blue older model Cadillac arrived at the Travelers Inn at approximately 2120 hours and two males exited the passenger side of the Cadillac. Another male, wearing a white t-shirt, jeans and white tennis shoes, was observed walking down the north steps of the Travelers Inn and talking to the two males that exited the vehicle. All three males were observed arguing near the northeast corner of the parking lot and gunfire was exchanged between the HMA victim,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

later identified as Dale Borero and an unidentified black male adult. The unidentified black male fell to the ground as he attempted to escape the gunshots being fired by the victim Borero. Approximately fourteen (14) gunshots were exchanged. The two males managed to get back into the Cadillac and flee the area as the victim lay on the ground, still firing rounds at the fleeing vehicle. The vehicle was last seen traveling northbound on Fremont Street.

Witnesses interviewed at the Travelers Inn stated they had observed a white male adult and a black male adult standing in the parking lot arguing with Borero, prior to the shooting.

On Sunday, April 21, 2013, your Affiant, received information from a source that a male had contacted him/her and advised that he had been involved in a shooting and had suffered a gunshot wound to the leg. The male stated he was staying in room 944, with an unidentified female, at the Sam's Town Gambling Hall and Casino, located at 5111 Boulder Highway, Las Vegas, Nevada. According to the source, the male acted like he was "spun up" and kept repeating, "give a life, take a life".

The source identified the male caller as Dustin Bleak, with a cell phone number of 702-217-9783. A records check of Bleak's phone revealed it was a Trac Phone serviced by AT&T phone with no subscriber information listed.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

Registration records were obtained from the front desk at Sam's Town, which indicated a female, who utilized the name of Sheila Paikai, was listed as a non-registered guest in room 944 with a second person with the name of Shannon Wilson. Paikai was registered at the hotel on Friday, April 19, 2013, at approximately 2200 hours and was expected to check out on Monday, April 22, 2013.

Surveillance footage captured at the hotel revealed a male and two females entered the room on Saturday, April 21, 2013, at approximately 1845 hours.

While Detectives C Mogg and R Wilson were conducting an interview with the source, they received a phone call from LVMPD personnel that a male, who had identified himself as Richard McCampbell was at the Clark County Detention Center(CCDC) to turn himself in and that he had information regarding a murder.

Detectives Mogg and Wilson responded to the area of 1st Street and Lewis, near the releasing area of CCDC and as they arrived, they observed a white over blue four door Cadillac bearing NV 441 YVU parked on the street. McCampbell was handcuffed and talking to a Patrol Officer near the Cadillac. Detective Wilson observed what appeared to be a bullet hole in the left rear "C" post of the roof of the vehicle.

McCampbell told Detectives Mogg and Wilson he had information regarding a murder that had occurred at the Traveler's Inn at 2855 East Fremont, Las Vegas, Nevada on Friday,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

April 19, 2013. McCampbell agreed to voluntarily go with Detective Mogg and Wilson to LVMPD ISD Headquarters at 400 South Martin Luther King Blvd, to speak with Detectives. At approximately 1353 hours, McCampbell was read his Miranda rights by Detective Mogg and in a recorded interview, stated he was the legal owner of the 1990 Cadillac and that he was driving his vehicle on Friday, April 19, 2013.

According to McCampbell, a black male adult, whom he identified as "Money", met with him in an area called The Naked City, on Philadelphia Street. McCampbell stated he did not know the other two other males with "Money", who told him he would pay him \$10 for a ride to the area of Sahara and Boulder Highway. McCampbell stated "Money" directed him to the area of Boulder Highway, near the Lowe's. McCampbell told Detectives he was given specific instructions on how and where to park in the parking lot.

McCampbell stated "Money" was in the right front seat of the vehicle and was wearing a black hoodie, blue jeans and white tennis shoes. He stated the two lighter skin males were in the back seat and described the male with the ponytail sitting in the left rear seat of the vehicle and the male he described as "thicker" in the right rear.

McCampbell stated once he parked the Cadillac, "Money" and the male seated in the right rear, exited the vehicle and met with another Hispanic male who had walked down the steps, near where the vehicle was parked. McCampbell said he never left his vehicle, but he could hear an argument between "Money", the thicker male and the male who they had

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

met up. He said he heard someone say, "show me the money". McCampbell stated as the argument escalated he heard several gunshots and started his vehicle and stomped on the gas. According to McCampbell, "Money" was attempting to climb back in the right front passenger seat of his vehicle, as he attempted to leave the area. McCampbell said the right front interior simulated wood panel on the passenger door was missing from his vehicle and he thought "Money" may have knocked it off when he tried to get back in the car. Detectives had recovered the door panel at the crime scene. The Cadillac was photographed, sealed and towed by Quality Tow, to the LVMPD Forensic Lab on April 21, 2013.

Based on McCampbell's description of the occurrence, the video surveillance footage observed by the Detectives of the occurrence, as well as the make and model of the suspect vehicle and the recovery of the door panel, your Affiant believes the 1990 Cadillac was used in the commission of the crime of Murder with Deadly Weapon.

//

//

//

//

//

//

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(Continuation)

Event #: 130419-4147

WHEREFORE, affiant requests that a Search Warrant be issued directing a search for and seizure of the aforementioned items at the location set forth herein.

Buddy Embrey, AFFIANT

Subscribed and sworn to before me this 22nd day of April, 2013

JUDGE

D Stanton

Approved by:

SEARCH WARRANT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark: Proof by Affidavit having been made before me by Buddy Embrey, P# 8644, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

Handgun

Magazine

Ammunition

Trace evidence to include hairs, fibers, DNA and fingerprints, bullets

Black hooded sweatshirt

Blue Jeans

White earbuds

Black tennis shoes

Black windbreaker jacket

Black baseball cap

Light colored t-shirt

US Currency

Narcotics

Narcotic paraphernalia

Alcoholic beverage

**SEARCH WARRANT
(Continuation)**

Page 2

7-11 receipts

Digital devices such as cameras or mp3 players

Wallets

Identification such as driver's license, passports etc.

and limited items of personal property which would tend to establish a possessory interest in the items seized pursuant to this search warrant, such as personal identification, photographs, utility receipts or addressed envelopes, are presently located at: **1990 Cadillac Brougham White/Light Blue 4 door VIN: 1G6DW54Y7LR722758 Nevada registration: 441 YVU License year 2014 Registered owner: Richard L McCampbell 7306 Cestrum Road Las Vegas, NV 89106 Date of Birth: 01/26/1954.**

And as I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

//

//

//

//

//

//

AA661

SEARCH WARRANT
(Continuation)

Page 3

You are hereby commanded to search forthwith said premises for said property, serving this warrant between the hours of 7:00 A.M. and 7:00 P.M., and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within ten days.

Dated this 22 day of April, 2013

JUDGE

AA662

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

1990 CADILLAC BROUGHAMNY LIC: 441 YVU VIN: 1G66DU54Y 7LR 722158

was executed on

4.22-13

(month, day, year)

A copy of this inventory was left with

AT PLACE OF SEARCH

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

1- DMV REGISTRATION FOR 1990 CADILLAC 441 YVU
UNDER NAME OF RICHARD McCAMPBELL

1- BROWN BASEBALL CAP

1- STRAND OF HAIR

1- TAN BEANIE HAT

1- BLACK "HOODIE" SWEATER

1- WHITE EAR BUDS

8- LATENT PRINTS EXTERIOR + INTERIOR

This inventory was made by:

B. S. [Signature]J. McCarthy D-4715

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

“We’re in a tough spot, and we’re all aware of that.”

STATE OF NEVADA) Darion Muhammad-Coleman
) ss:
COUNTY OF CLARK) DOB: 12081994

TL Miller, being first duly sworn, deposes and says:

That she is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of fifteen years, assigned to investigate the crime(s) of Murder with Deadly Weapon, Conspiracy to Commit Murder with Deadly Weapon, Attempt Robbery With Deadly Weapon, Conspiracy to Commit Robbery committed on or about 04/19/2013, which investigation has developed Darion Muhammad-Coleman as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

On Friday, April 19, 2013, at approximately 2135 hours, LVMPD Emergency Dispatch received a 911 phone call regarding a shooting that had occurred at the Travelers Inn, located at 2855 East Fremont Street, Las Vegas, NV.

LVMPD marked patrol units responded to the area, under LVMPD Event# 130419-4147 and upon arrival were flagged down by persons in the parking lot, who indicated a victim needed medical attention in the northeast corner of the motel parking lot.

Officers located a Hispanic male lying on the ground with a gunshot wound to the abdomen. Officers rendered CPR to the victim and CCFD Paramedics responded and transported the male to the UMC Trauma, where he later died from his injuries. The male was later identified as Dale Allen Borero.

Video surveillance from the Travelers Inn revealed a white over blue older model Cadillac arrived at the Travelers Inn at approximately 2120 hours and backed into the furthest northeast parking space in the parking lot, adjacent to large cement wall. A white male(Bleak) and a black male(Muhammad-Coleman) exited the passenger side of the Cadillac and both males were observed talking on cell phones and standing by the left rear of the Cadillac, occasionally looking up to the second floor of the motel. The white male(Bleak) suspect appeared to be drinking something.

CONTINUATION

Event #: 130419-4147

A male wearing a white t-shirt, jeans and white tennis shoes, was observed walking down the north steps of the Travelers Inn. He was later identified as Dale Allen Borero. Borero approached the two males and engaged the white male (Bleak) in a conversation in the far northeast corner of the parking lot, barely within view of the camera.

Both witnesses, Jermaine Grace and driver of the Cadillac, later identified as Richard McCampbell stated they overheard the white male (Bleak) and victim Borero in a "heated" argument over money.

At one point the black male suspect(Muhammad-Coleman) moved from the left rear of the Cadillac to stand on the opposite side of the white male (Bleak). The black male(Muhammad-Coleman) pulled a handgun from his right side and pointed it at Borero. Borero appeared to try to push the gun away and the black male(Muhammad-Coleman) struck the upper left side of Borero's body with the butt of the gun. At that point, Borero pulled a handgun from his right pocket and fired at the black male suspect(Muhammad-Coleman). The white male suspect(Bleak) was not in view of the camera. There was an exchange of gunfire between Borero and the black male suspect(Muhammad-Coleman), who began to back up as he fired his gun. At one point, the black male (Muhammad-Coleman) fell to the ground as he attempted to escape the gunshots being fired by the victim Borero.

Approximately fourteen (14) gunshots were exchanged between Borero and the black male(Muhammad-Coleman). The black male(Muhammad-Coleman) jumped up from the ground and continued to move toward the front of the Cadillac, which had begun to move westbound through the parking lot. The white male(Bleak) was observed trying to climb into the right rear passenger door of the Cadillac. The black male(Muhammad-Coleman) managed to get into the left front of the Cadillac.

The victim Borero was observed lying on the ground, firing shots at the fleeing vehicle.

The Cadillac was last seen exiting the Travelers Inn and northbound onto Fremont Street.

Witnesses interviewed at the Travelers Inn stated they had observed a white male adult(Bleak) and a black male(Muhammad-Coleman) standing in the parking lot arguing with Borero, prior to the shooting and a black male(Muhammad-Coleman) leaning against the left rear of the Cadillac, as well as a heavy set male(McCampbell) seated in the driver's seat of the Cadillac. Witnesses interviewed at the Travelers Inn identified three (3) persons in the vehicle, however, Detectives later learned there were a total of four(4) suspects.

A witness identified as LeCorey Grace stated he overheard Borero talking on the phone before Borero walked downstairs. He stated at the same time he observed a white male(Bleak) standing near the bottom north steps talking on the phone. L Grace indicated he thought the two were talking to one another and overheard one of the males say, "I'm by myself".

CONTINUATION

Event #: 130419-4147

On Saturday, April 20, 2013, your Affiant and Homicide Detective R Wilson attended autopsy of the decedent at the Clark County Coroner's Office. Medical Examiner Dr. L Simms stated Borero died as the result of multiple gunshot wounds and ruled the death a homicide.

On Saturday, April 20th, Detective C Mogg received information from a different source that one of the suspects may be staying at Sam's Town. However, the source did not have more specific information.

On Sunday, April 21, 2013, your Affiant, received information from a source that a male had contacted him/her and advised that he had been involved in a shooting and had suffered a gunshot wound to the leg. The male told the source he was staying in room 944, with Shandin Wilson, at the Sam's Town Gambling Hall and Casino, located at 5111 Boulder Highway, Las Vegas, Nevada. According to the source, the male acted like he was "spun up" and kept repeating, "give a life, take a life", which scared the source. Your Affiant understands "spun up" to mean the male was under the influence of controlled substance.

The source identified the male who had called him/her as Dustin Bleak, with a cell phone number of 702-217-9783. A records check of Bleak's phone revealed it was a Trac Phone serviced by AT&T with no subscriber information listed.

Registration records were obtained from the front desk at Sam's Town, which indicated a female, who utilized the name of Sheila Paikai, was listed as a non-registered guest in room 944 with a second person named as Shannon Wilson. Paikai had registered at the hotel on Friday, April 19, 2013, at approximately 2200 hours and had prepaid until Monday, April 22, 2013 and with a credit card in her name to secure the room.

Surveillance footage captured at the hotel revealed a male and two females entered the room on Saturday, April 21, 2013, at approximately 1845 hours. Your Affiant later learned the male in the video was not Bleak.

While Detectives C Mogg and R Wilson were conducting an interview with the source, they received a phone call from LVMPD personnel that a male, who had identified himself as Richard McCampbell was at the Clark County Detention Center (CCDC) to turn himself in and he had information regarding a murder.

Detectives Mogg and Wilson responded to the area of 1st Street and Lewis, near the releasing area of CCDC and as they arrived, they observed a white over blue four door Cadillac bearing NV 441 YVU parked on the street. McCampbell was handcuffed and talking to a Patrol Officer near the Cadillac. Detective Wilson observed what appeared to be a bullet hole in the left rear "C" post of the roof of the Cadillac.

CONTINUATION

Event #: 130419-4147

McC Campbell told Detectives Mogg and Wilson he had information regarding a murder that had occurred at the Traveler's Inn at 2855 East Fremont, Las Vegas, Nevada on Friday, April 19, 2013. McC Campbell agreed to voluntarily go with Detective Mogg and Wilson to LVMPD ISD Headquarters at 400 South Martin Luther King Blvd, to speak with Detectives.

At approximately 1353 hours, McC Campbell was read his Miranda rights by Detective Mogg and in a recorded interview, stated he was the legal owner of the 1990 Cadillac and that he was driving his vehicle on Friday, April 19, 2013.

According to McC Campbell, he was parked on Philadelphia Street, in area known as "The Naked City", "hanging out", when a black male adult, who he identified as "Money" knocked on his car window and asked for a ride. McC Campbell stated he did not know the other two other males with "Money", but "Money" told McC Campbell he would pay him \$10 to take them to and from the area of Sahara and Boulder Highway. McC Campbell stated both "Money" and a white male seated directly behind him in the Cadillac (Costa) directed him to the area of Boulder Highway and to a 7-11 located near Charleston and 30th Street. McC Campbell explained he cut through the parking lot of a Lowe's to reach the 7-11.

On Monday, April 22, 2013, Detective S Smith met with McC Campbell and asked him to view two separate photo lineups. Each contained six (6) similar looking white males. In the first photo lineup, McC Campbell identified the photo depicted as #4, as the white male who was seated directly behind him the Cadillac, with the pony tail. The photo marked #4 was Travis Costa ID# 1898877.

In the second photo lineup shown to McC Campbell, he identified the photo depicted in #5, as the male seated in the right rear seat of the Cadillac. The photo marked #5 was Dustin Charles Bleak ID# 1967098.

In the third photo line up McC Campbell was asked to view, which depicted six similar looking black males, McC Campbell was unable to identify the black male with a moniker of "Money".

McC Campbell identified "Money" seated in the right front of the vehicle and said he was wearing a black hoodie, blue jeans and white tennis shoes. He stated the two lighter skin males were in the back seat and described the male with the ponytail sitting in the left rear seat (Costa) and the male (Bleak) he described as "thicker" in the right rear.

McC Campbell stated he was directed to a strip mall and told to park between the 7-11 and Dotty's Casino on East Charleston. He said the male in the left rear (Costa) exited the vehicle to purchase beer for himself and his brother at the 7-11 and "Money" and the white male (Bleak) in the right rear passenger seat exited the vehicle and talked privately outside of the his car. When "Money" and the white male (Bleak) re-entered the car, he said, "I don't want no trouble" and admitted he originally thought all three males had planned to rob the 7-11. An

CONTINUATION

Event #: 130419-4147

unopened white beer can was recovered from the crime scene, where the Cadillac was parked and it appeared to be the same brand of beer purchased at the 7-11, at approximately 2113 hours.

On Thursday, April 25, 2013, Detective C Mogg and your Affiant made contact with Lowe's Loss Prevention Manager Paul Sosa, located at 2875 East Charleston Blvd., at the intersection of Fremont Street and Charleston Blvd. Video surveillance located at the front of the store, revealed a white/blue Cadillac pass in front of the business on April 19, 2013 at approximately 2111:07 hours heading eastbound. The same Cadillac passed in front of the business heading westbound at 2120:09 hours.

McC Campbell told Detectives he was then told by Bleak to drive back to Boulder Highway and directed to the Travelers Inn, where he was given specific instructions on how and where to park in the parking lot of the Travelers Inn. McC Campbell stated he was told to back into the far northeast corner of the parking lot. During the investigation, your Affiant observed the far northeast corner to be dark, the furthest area away from the street, which would make it difficult for passerby's to observe their actions. By backing into the parking stall, the suspects ensured a quicker exit from the parking lot.

McC Campbell stated once he parked the Cadillac, "Money" and the male seated in the right rear(Bleak), exited the vehicle and met with another Hispanic male(Borero) who had walked down the steps, near where the vehicle was parked. McC Campbell said he never left his vehicle, but he could hear an argument between "Money", the thicker male(Bleak) and the male who they had met up with. He said he heard someone say, "get the money, get the money" or something to that effect. He also stated the male(Costa) in the vehicle with him yelled "take his dope." McC Campbell stated as the argument escalated he heard several gunshots and started his vehicle and stomped on the gas. According to McC Campbell, "Money" was attempting to climb back in the right front passenger seat of his vehicle, as he attempted to leave the area. McC Campbell said the right front interior simulated wood panel on the passenger door was missing from his vehicle and he thought "Money" may have knocked it off when he tried to get back in the car. Detectives recovered the door panel at the crime scene on April 19th. The Cadillac was photographed, sealed and towed by Quality Tow, to the LVMPD Forensic Lab on April 21, 2013.

On Monday, April 22, 2013, Detective T Faller P# 6749 observed a white 2000 Buick 4 door in the parking lot of the Siegel Suites, located at 4823 Boulder Highway, with five (5) occupants, bearing NV plate 808YEW. A records check on the registration revealed the Buick to be reported stolen out of North Las Vegas Police Department on April 4, 2013, by the registered owner Timothy Durant, who resided at 770 W Lone Mountain #1067 North Las Vegas, NV 89031. The stolen vehicle report was documented under OCA# 13040800-5932

CONTINUATION

Event #: 130419-4147

Officers conducted a felony car stop on the vehicle and all five occupants were identified. Two of the occupants were identified as Dustin Bleak and Travis Costa, who identified Bleak as his brother. The other three occupants were interviewed and released. The vehicle was towed and the registered owner was notified via phone. During the inventory of the vehicle for the tow, Detective Faller located a black Umarex XBG bb gun, bearing serial number 12J2845, with no magazine near Bleak's position in the vehicle. A magazine containing bb's was recovered on the ground at the crime scene on April 19, 2013 in the area the Cadillac had been parked.

During a recorded interview with Costa, Homicide Detectives R Wilson and your Affiant learned Bleak was the blood brother of Costa. Costa stated he and his brother, Dustin, who used an aka of Criminal, were in the Naked City with a black male he identified as Money. According to Costa, an older black male, who he identified as Mechanic, made contact with Costa aka PT, Money and Bleak and was asked by Money to drive them to the area of Sahara and Boulder Highway to buy a quarter ounce of methamphetamine, from a source Bleak knew from time served in Lovelock prison. Costa stated he overheard his brother talking about the drug transaction on the phone while they were seated in the car. He also acknowledged he entered a 7-11 near the intersection of Charleston and Fremont and purchased two beers, one for himself and one for his brother.

Costa said Mechanic drove them to an unknown motel located near the Lamplighter Motel on East Fremont. The Lamplighter Motel is directly adjacent to the Travler's Inn. McCampbell was instructed to back into a parking stall on the northeast corner of the parking lot. Costa said neither he nor the Mechanic exited the vehicle, but Bleak and Money exited on the right side of the Cadillac.

According to Costa, he observed a Hispanic male, later identified as Dale Borero, walk down the steps near the Cadillac and speak with Bleak. Costa said he did hear an argument, but he was unsure what it was over. Then he heard several gunshots. Costa stated he covered his head and ducked down in the seat and Mechanic started the car and began to accelerate out of the parking space, just as Bleak attempted to enter the right rear passenger door of the Cadillac. He said Money was trying to get in the right front door. Costa stated Bleak was being dragged by the vehicle and he yelled for the Mechanic to stop, as he reached over to pull Bleak into the back seat.

Costa stated when he asked what happened, Money said Borero had pulled a gun and shot him. According to Costa, Money stated he had been shot in the hip. During the execution of a search warrant on McCampbell's vehicle, no blood was recovered, which indicated to your Affiant that neither "Money" or Bleak had suffered a gunshot wound.

Costa stated he had observed a black semi auto handgun, in a holster on "Money's" hip. When Money got back into the Cadillac, Costa stated the gun appeared to be empty of any bullets

CONTINUATION

Event #: 130419-4147

because "Money" extracted the magazine and showed Costa he did not have any bullets left. However, he stated "Money" had pointed the gun at each occupant in the car and stated he would kill anyone who talked about the shooting. Costa stated he was in fear for his life and afraid to call police.

After the shooting Costa said Mechanic drove them to an apartment near the Stratosphere, where they all had drinks and later walked to the Stratosphere Hotel and Casino and gambled. According to Costa, Bleak disappeared and later contacted and advised him that he and his girlfriend had rented room 944 at the Sam's Town Hotel and Gambling Hall. Costa stated he and his girlfriend, LeSandra Huntley, date of birth 09-16-1975, went to Sam's Town and stayed with Bleak and other unidentified people. He was unsure if it was Saturday or Sunday night.

When asked who else had a gun in the Cadillac on April 19th, Costa stated Bleak carried a bb gun, but no one else except "Money" had a gun.

On Monday, April 22, 2013, Detectives R Wilson and TL Miller conducted a recorded interview with Dustin Bleak. Bleak was read his Miranda rights at approximately 1509 hours by Detective Wilson and acknowledged that he understood his rights. However, Bleak invoked his right not to speak with Detectives and asked to have his attorney present. Bleak was asked if he needed medical attention for any injuries and he stated no. Bleak was wearing only a pair of shorts and did not appear to have suffered from a gunshot wound to his leg.

On Tuesday, April 23, 2013, your Affiant and Detective C Mogg conducted a voluntary recorded interview with Michael Herrod, date of birth 04/04/1977. Herrod stated he had been incarcerated in Lovelock Prison with both Borero and Bleak. According Herrod, Bleak had broken into his home on Friday, April 19, 2013 and pointed a handgun at him. Herrod stated Bleak was accompanied by two other black males and he identified one of the suspects as Creep. Herrod stated Bleak appeared to be under the influence and had demanded he print illegal checks. Herrod said he eventually convinced the three males to leave his residence without incident. He stated he called Bleak's girlfriend, Shandin Wilson, who told him she had purchased a bb gun for Bleak, "at a Big 5." Herrod did not know when the bb gun had been purchased or at what location. However, he acknowledged he thought the gun in Bleak's possession at the time of the burglary was real.

Herrod stated Bleak had been staying with him for approximately 5 days prior to the murder, but Herrod had "kicked him out" due to his drug use and the fact that he had been stealing from his friend Janet.

According to Herrod, he heard about the shooting and called Bleak and asked him "if he really did it" and Bleak had stated, "yes, he pulled a gun first and I had to get him before he got me". Herrod also told Detectives Bleak had told him he was shot and he told Bleak to go to the hospital.

CONTINUATION

Event #: 130419-4147

When asked about any problems between Borero and Bleak, Herrod stated he had heard Borero was being "fucked with" for the last month or so and Bleak and others unnamed had some sort of disturbance at AZ Charlies recently where Borero's dope and/or money had been taken from Borero.

On Wednesday, April 24, 2013, Detective B Embrey contacted Shannon Wilson, who was an occupant in the stolen vehicle and who had identified herself as the girlfriend of Bleak. Wilson was asked if she had recently purchased a bb gun. Wilson verbally acknowledged she had purchased a bb gun at WalMart, but stated it had broken after "a couple of days" and she had thrown it away.

On Wednesday, April 24, 2013, Detective Mogg and your Affiant received information which indicated "Money" was Darion Muhammad-Coleman, date of birth 12-08-1994.

On April 24, 2013, McCampbell told FBI Special Agent S Hendricks that he had given "Money", his girlfriend and a small child a ride to A&R Appliances, in his truck. McCampbell stated "Money" and the female were selling some appliances. However, when they returned to pick up a check for the sale the appliances, the female, later identified from a A&R receipt as Keara Terrell had become angry while in the store and caused a disturbance. The clerk at A&R recalled the female had been in a white Ford Ranger.

Information provided on the sales receipt listed Keara Terrell with a phone number of 562-528-2322. A records check through CCDC call records revealed a call to that number from an inmate identified as Kamilah Muhammad ID# 1223896. On the recorded phone call, Muhammad identified herself as "Money's Mama." A records check through family court records revealed Kamilah Muhammad had one son, Darion Coleman. Records check also revealed Kamilah Muhammad had a boyfriend identified as Richard Grimble. The phone number provided by McCampbell for "Money" 702-488-5138, had a subscriber listed as Richard Gimble. Therefore, Detective C Mogg contacted Clark County Juvenile Detention Center and obtained the photograph of Darion Muhammad-Coleman for the photo lineup.

Detective Mogg contacted the Clark County Juvenile Detention Center and learned they had a photograph of Muhammad-Coleman in their data system. Detective Mogg went to the Detention Center and constructed a photo lineup with a photograph of Muhammad-Coleman and five similar looking male's photos.

On Thursday, April 25, 2013, at approximately 0730 hours, Detective Mogg met with Richard McCampbell at McCampbell's residence and showed him the photo lineup. McCampbell immediately identified photo five (5) as a picture of the person he knew as "Money," and the person he saw shoot the victim on April 19, 2013. Photo number five was a photograph of Darion Muhammad-Coleman, date of birth 12-08-1994.

CONTINUATION

Event #: 130419-4147

On Thursday, April 25, 2013, at approximately 0945 hours, Detectives Mogg and your Affiant met with Jermaine Grace, date of birth 04-30-1982 at 2855 East Fremont. Your Affiant showed Jermaine Grace two photo lineups, one contained six(6) photos of similar looking black males. The other photo lineup contained six (6) photos of similar looking white males.

J. Grace immediately identified photo #5 as the white male he observed talking with victim Dale Borero prior to the shooting, "in a heated discussion". The photo depicted as #5 was Dustin Charles Bleak, ID# 1967098.

J. Grace was then asked to view the photo lineup that contained six (6) similar looking black males and he stated the male depicted in photo #2 appeared to be the male who was leaning against the back of the Cadillac. He stated he wasn't sure if photo #2 was the same male because the black male he observed who "turned his face away" from him. Photo #2 was not the suspect, Darion Muhammad-Coleman aka Money, date of birth 12-08-1994.

On Thursday, April 25, 2013, at approximately 1000 hours, Detectives Mogg and your Affiant met with LeCorey Grace, date of birth 11-26-1983 at 2855 East Fremont. Your Affiant showed L. Grace two photo lineups, one contained six(6) photos of similar looking black males. The other photo lineup contained six (6) photos of similar looking white males.

L Grace immediately identified photo #5 as the white male he observed talking with victim Dale Borero prior to the shooting. The photo depicted as #5 was Dustin Charles Bleak, ID# 1967098.

L Grace was then asked to view the photo lineup that contained six (6) similar looking black males and he stated the males depicted in photos #4 and #5 both appeared to look like the male who was leaning against the back of the Cadillac. He described the suspect as having a "fatter" face and said he was unsure if the photo marked #4 or the photo marked #5 was the black male he observed. L Grace stated the black male saw L Grace look at him and he "turned his face away", as if to avoid anyone seeing him. Photo #4 was not Darion Muhammad Coleman, however the photo depicted as #5 was Darion Muhammad-Coleman date of birth 12-08-1994.

Your Affiant learned through the aforementioned facts that Bleak brokered a quarter ounce methamphetamine purchase with victim Borero prior to their arrival at the Traveler's Inn. Bleak and Muhammad-Coleman arrived at the Traveler's Inn with two handguns and instructed McCampbell to park in the furthest corner away from the street and to back his vehicle in to afford them a quick exit from the area. The victim contacted Bleak and Muhammad-Coleman in the corner of the parking lot to conduct an illegal narcotics transaction. Witnesses overheard some type of argument over money and Muhammad-Coleman pulled a concealed firearm and pointed it at victim Borero in an attempt to rob Borero of his narcotics and money.

CONTINUATIONEvent #: 130419-4147

Victim Borero pulled a handgun from his right front pocket and fired at Muhammad-Coleman. Video surveillance depicted an exchange of gunfire between Borero and Muhammad-Coleman but Bleak was out of camera view. Borero was struck by gunfire and later died as a result of his injuries. Your Affiant believes Bleak was in possession of a BB gun and dropped the magazine in the parking lot as he fled. Muhammad-Coleman and Bleak ran to the Cadillac, as driver McCampbell attempted to flee the area and managed to get into the vehicle. All four suspects left the area in the Cadillac. To date, due to McCampbell and Costa's limited involvement, they have not been charged. However, Bleak is currently in custody.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Darion Muhammad-Coleman on the charge(s) of Murder with Deadly Weapon, Conspiracy to Commit Murder with Deadly Weapon, Attempt Robbery With Deadly Weapon, Conspiracy to Commit Robbery .

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

Executed on this 26th day of April, 2013.

DECLARANT: _____

WITNESS: _____

DATE: _____



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6
7 Plaintiff,

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

CASE NO. C-13-293296-2

DEPT. NO. III

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

12
13 TUESDAY, MARCH 28, 2017

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

15
16
17
18
19 APPEARANCES:

20 For the State:

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

21
22
23 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

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

2 * * * * *

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 rubbery 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 Borero. 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. Schwartzer 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.

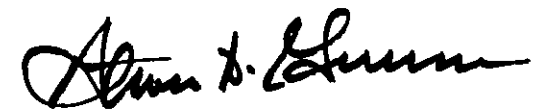
13 PROCEEDING CONCLUDED AT 10:15 A.M.

14 * * * * *

15
16
17
18
19
20
21
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



CLERK OF THE COURT

1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 PATRICK BURNS
6 Deputy District Attorney
7 Nevada Bar #11779
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

CASE NO: C-13-293296-2

DEPT NO: XI

15 -vs-

16 DUSTIN BLEAK, aka
17 Dustin Charles Bleak, #1967098
18 **DARION MUHAMMAD-COLEMAN,**
19 **aka Darion Muhammadcoleman,**
20 **#2880725**

INDICTMENT

Defendant(s).

21 STATE OF NEVADA)
22 COUNTY OF CLARK) ss.

23 The Defendant(s) above named, DUSTIN BLEAK, aka Dustin Charles Bleak and
24 DARION MUHAMMAD-COLEMAN, aka Darion Muhammadcoleman, accused by the
25 Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY
26 (Category B Felony - NRS 199.480, 200.380); ATTEMPT ROBBERY WITH USE OF A
27 DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165); MURDER
28 WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030,
193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS
200.481); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471);
CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT
(Category C Felony - NRS 453.401); and ATTEMPT TO POSSESS CONTROLLED

1 SUBSTANCE (Category E Felony/Gross Misdemeanor - NRS 453.336, 193.330),
2 committed at and within the County of Clark, State of Nevada, on or about April 19, 2013,
3 as follows:

4 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

5 The Defendants and/or unknown co-conspirators did then and there meet with each
6 other and between themselves, and each of them with the other, wilfully, unlawfully, and
7 feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said
8 conspiracy, Defendants did commit the acts as set forth in Counts 2 and 3, said acts being
9 incorporated by this reference as though fully set forth herein.

10 COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

11 did then and there wilfully, unlawfully and feloniously attempt to take personal
12 property, to-wit: lawful money of the United States and/or narcotics, from the person of
13 DALE BORERO, or in his presence, by means of force or violence, or fear of injury to, and
14 without the consent and against the will of the said DALE BORERO, Defendants using a
15 deadly weapon, to-wit: a handgun, during the commission of said crime, by pointing said
16 handgun at the said DALE BORERO and/or striking the said DALE BORERO with a
17 handgun and attempting to take said lawful money of the United States and/or narcotics from
18 the said DALE BORERO, the Defendants being responsible under one or more of the
19 following principles of criminal liability, to-wit: (1) by directly committing the crime; and/or
20 (2) pursuant to a conspiracy; and/or (3) by aiding or abetting in the commission of the crime
21 by DEFENDANT BLEAK committing the following acts: arranging for a meeting with
22 DALE BORERO under the pretext of purchasing a controlled substance and/or paying an
23 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
24 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
25 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
26 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning
27 himself to remove lawful money of the United States and/or narcotics from the person of the
28 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said

1 DALE BORERO at gunpoint.

2 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

3 did on or about April 19, 2013, then and there wilfully, feloniously, without authority
4 of law, and with premeditation and deliberation, and with malice aforethought, kill DALE
5 BORERO, a human being, by shooting at and into the body of the said DALE BORERO,
6 with a deadly weapon, to-wit: a handgun, the Defendants being responsible under one or
7 more of the following principles of criminal liability, to-wit: (1) by having premeditation and
8 deliberation in its commission; and/or (2) the killing occurring during the perpetration or
9 attempted perpetration of burglary and/or robbery and/or kidnapping, and/or (3) by aiding or
10 abetting in the commission of the crime by the Defendants accompanying each other to the
11 scene of the crime where a pretextual meeting was arranged with DALE BORERO by
12 DEFENDANT BLEAK, DEFENDANT MUHAMMAD-COLEMAN then moved from the
13 rear of a vehicle, pulled out said handgun and pointed it at the said DALE BORERO,
14 attempting to rob the said DALE BORERO of his narcotics and lawful money of the United
15 States, then DEFENDANT MUHAMMAD-COLEMAN struck the upper left side of the
16 body of the said DALE BORERO with the butt of the handgun, thereafter there was an
17 exchange of gunfire between DEFENDANT MUHAMMAD-COLEMAN and the said
18 DALE BORERO, the said DALE BORERO was struck by gunfire and later died as a result
19 of those injuries, DEFENDANT BLEAK aiding or abetting in the commission of the crime
20 by committing the following acts: arranging for a meeting with DALE BORERO under the
21 pretext of purchasing a controlled substance and/or paying an outstanding debt so DALE
22 BORERO could be robbed of any money or narcotics on his person; and/or by distracting
23 DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN attempted to rob DALE
24 BORERO at gunpoint; and/or by contributing to a show of force and/or brandishing a BB
25 gun; and/or by acting as a lookout; and/or by positioning himself to remove lawful money of
26 the United States and/or narcotics from the person of the said DALE BORERO while
27 DEFENDANT MUHAMMAD-COLEMAN held the said DALE BORERO at gunpoint, the
28 Defendants encouraging one another throughout by actions and words and acting in concert

1 throughout; and/or (4) by the Defendants conspiring with each other to commit murder
2 whereby each is vicariously liable for the acts of the other in furtherance of the conspiracy in
3 its commission.

4 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON

5 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
6 person of another, to-wit: DALE BORERO, with use of a deadly weapon, to-wit: a
7 handgun, by striking the said DALE BORERO in the body and/or head and/or face with said
8 handgun, the Defendants 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
11 DEFENDANT BLEAK committing the following acts: arranging for a meeting with DALE
12 BORERO under the pretext of purchasing a controlled substance and/or paying an
13 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
14 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
15 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
16 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning
17 himself to remove lawful money of the United States and/or narcotics from the person of the
18 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said
19 DALE BORERO at gunpoint

20 COUNT 5 - ASSAULT WITH A DEADLY WEAPON

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

27 ///

28 ///

1 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES
2 ACT

3 did on or about April 19, 2013, then and there meet with co-conspirator an
4 unidentified male individual and with each other and between themselves, and each of them
5 with the other, wilfully, unlawfully, and feloniously conspire and agree to violate Uniform
6 Controlled Substances Act, and in furtherance of said conspiracy, Defendants did commit the
7 acts as set forth in Count 9, said acts being incorporated by this reference as though fully set
8 forth herein.

9 COUNT 7 - ATTEMPT TO POSSESS CONTROLLED SUBSTANCE

10 did on or about April 19, 2013, then and there wilfully, unlawfully, knowingly,
11 intentionally and feloniously attempt to possess a controlled substance, to-wit: by traveling
12 to 2855 East Fremont Street, Las Vegas, meeting with DALE BORERO and attempting to
13 obtain Methamphetamine and/or Cocaine from the said DALE BORERO and/or by pointing
14 a firearm at the said DALE BORERO and demanding he turn over any Methamphetamine
15 and/or Cocaine on his person, the Defendants being responsible under one or more of the
16 following principles of criminal liability, to-wit: (1) by directly committing the crime; and/or
17 (2) pursuant to a conspiracy; and/or (3) by aiding or abetting in the commission of the crime
18 by DEFENDANT BLEAK committing the following acts: arranging for a meeting with
19 DALE BORERO under the pretext of purchasing a controlled substance and/or paying an
20 outstanding debt so DALE BORERO could be robbed of any money or narcotics on his
21 person; and/or by distracting DALE BORERO while DEFENDANT MUHAMMAD-
22 COLEMAN attempted to rob DALE BORERO at gunpoint; and/or by contributing to a show
23 of force and/or brandishing a BB gun; and/or by acting as a lookout; and/or by positioning

24 ///

25 ///

26 ///

27 ///

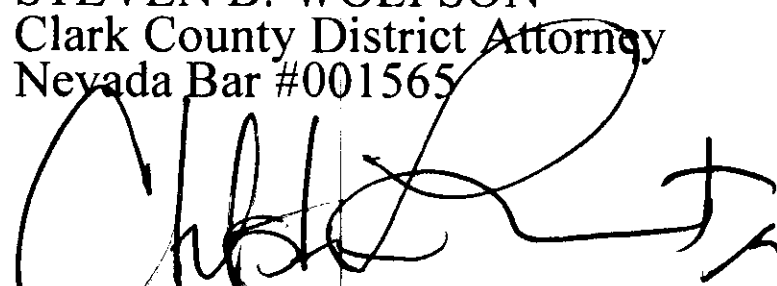
28 ///

1 himself to remove lawful money of the United States and/or narcotics from the person of the
2 said DALE BORERO while DEFENDANT MUHAMMAD-COLEMAN held the said
3 DALE BORERO at gunpoint.


4 DATED this 11 day of October, 2013.

5
6 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

7
8
9 BY


PATRICK BURNS
Deputy District Attorney
Nevada Bar #11779

10
11 ENDORSEMENT: A True Bill

12
13 
14 Foreperson, Clark County Grand Jury

1 Names of witnesses testifying before the Grand Jury:

2 GAVIN, DR. LISA, CCME, 1704 PINTO LN., LVN

3 MCCAMPBELL, RICHARD, 7600 S. RAINBOW, LVN

4 HERROD, MICHAEL, 7116 RAIN CLOUD DR., LVN

5 COLLINS, ERIC, LVMPD

6 MOGG, CLIFFORD, LVMPD P#5096

7 MILLER, TERRI, LVMPD P#5113

8 CROMWELL, MICHAEL, LVMPD

9
10 Additional witnesses known to the District Attorney at time of filing the Indictment:

11 ALBERT, JOEL, LVMPD P#13204

12 ATKINS, KEESHA, 4823 BOULDER HWY., LVN

13 BISHOP, RACHEL, 2900 E. CHARLESTON, LVN

14 BORERO, DANIEL, 4337 PARKDALE, LVN

15 BORERO, DESERAE, 4337 PARKDALE, LVN

16 BROWN, JAQUON, 4311 BOULDER HWY., LVN

17 CASTRO, ROBERTO, 6126 QUINTILLION AVE., LVN

18 COLON, MARC, LVMPD P#7585

19 COSTA, TRAVIS, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

20 CROMWELL, MICHAEL, LVMPD P#13203

21 CUSTODIAN OF RECORDS, CCDC

22 CUSTODIAN OF RECORDS, LVMPD DISPATCH

23 CUSTODIAN OF RECORDS, LVMPD RECORDS

24 DOWNIE, KYLE, LVMPD P#9487

25 EMBREY, BUDDY, LVMPD P#8644

26 FALLER, THOMAS, LVMPD P#6749

27 FAZIL, JOHN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

28 FELABOM, ADAM, LVMPD P#8427

1 GRACE, JERMAINE, 2855 E. FREMONT, LVN
2 GRACE, LECOREY, 2855 E. FREMONT, LVN
3 GRAHAM, DONALD, LVMPD P#5425
4 HANNAH, LISA, 2811 E. FREMONT, LVN
5 HAYNES, VINCENT, LVMPD P#13004
6 HUNTLEY, LASANDRA, 221 BRUCE ST., LVN
7 KIBBLE, JESSE, LVMPD P#13824
8 KLASSEN, MICHELLE, 3550 PAM LANE, LVN
9 LEE, TATIANA, 1712 FAIRFIELD, LVN
10 LINDQUEST, CARRIE, 4836 HOTSPRINGS AVE., LVN
11 LYNCH, SHANDRA, LVMPD P#13206
12 MALDONADO, JOCELYN, LVMPD P#6920
13 MANOR-DAVIES, SHANTE, 30996 GREENDALE, LVN
14 MORTON, LARRY, LVMPD P#4935
15 PAIKAI, SHANNON, 4714 SAN DREEK AVE., LVN
16 PATEL, KISHOR, TRAVELERS, INN, 2855 E. FREMONT, LVN
17 PAZOS, EDUARDO, LVMPD P#6817
18 POLLOCK, CHRISTOPHER, LVMPD P#13508
19 PONDER, KERRY, 303 JUDSON AVE., LVN
20 QUADRATULLAH, NOORI, c/o CCDA/VWAC, 200 LEWIS AVE., LVN
21 REED, GARY, LVMPD P#3731
22 REINER, JENNIFER, LVMPD P#8167
23 RENHARD, LOUISE, LVMPD P#5223
24 ROSE, DAVID, LVMPD P#13527
25 SAMS, JESSIE, LVMPD P#4793
26 SCHELLBERG, PETER, LVMPD P#5413
27 SHAHOB, TAHIR, c/o CCDA/VWAC, 200 LEWIS AVE., LVN
28 SIMMS, DR. LARY, CCME, 1704 PINTO LN., LVN

1 SMITH, SAMUEL, LVMPD P#6424
2 SOUSA, PAUL, LOWES/LP, 2875 E. CHARLESTON, LVN
3 SUTTON, MICHAEL, LVMPD P#5637
4 TAMAYO-SOTO, ANGELICA, 131 BEESLEY, LVN
5 TATE, RHONDA, 1720 W. BONANZA, LVN
6 TERRELL, KEARA, 217 W. NEW YORK, LVN
7 TOEPPEN, CAITLIN, LVMPD P#14372
8 TRIPP, BLANE, LVMPD P#6731
9 VAN, MICHAEL, 2855 E. FREMONT, LVN
10 WILSON, ROBERT, LVMPD P#3836
11 WILSON, SHANDIN, 1849 INDIAN BEND DR., HENDERSON, NV

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 12BGJ159A-B/13F06471X/13F06746X/dd-gj
28 LVMPD # 130419-4147
(TK5)

Denied

COA 4/3 130

STATE OF NEVADA -v-
Darun Mohammad - Column
 ID NO.: 2880725 2880725
☐ Interpreter Required

CLARK COUNTY
COURTS

JUSTICE COURT CASE NO. 13FC6746X DEPT. 11
 DISTRICT COURT CASE NO. 0292331 TRACK DEPT. _____

REQUEST FOR EVALUATION(S) FOR COMPETENCY

I, Jeremy Strains, on behalf of Darun Mohammad - Column do hereby request that the
 above named defendant be evaluated for competency based on the following:

The defendant DOES NOT:

- | | |
|--|--|
| <input checked="" type="checkbox"/> appear to understand the charges or allegation | <input checked="" type="checkbox"/> understand the range and nature of the penalties |
| <input checked="" type="checkbox"/> understand the adversarial nature of the legal process | <input type="checkbox"/> display appropriate courtroom behavior |
| <input type="checkbox"/> appear to disclose to defense attorney pertinent facts | <input type="checkbox"/> demonstrate ability to provide relevant testimony |

9/3/13 Date
[Signature] Signature of Person Requesting Evaluation
455-3366 ⁰⁰²⁴ Contact Number

ORDER FOR COMPETENCY EVALUATION(S)

THIS MATTER having come before the Court at a hearing where the Defendant was
☐ PRESENT ☒ NOT PRESENT

THE COURT FINDS AND ORDERS that doubt has arisen as to the competence of the Defendant and that the proceedings are suspended until the question of competence is determined.

IT IS FURTHER ORDERED that pursuant to N.R.S. 178.415 the appropriate evaluation(s) will be conducted; the defendant having been charged with a

☐ MISDEMEANOR ☒ GROSS MISDEMEANOR / FELONY competency hearing to be set at 9:30 A.M. in
 District Court Department 7 on the 27th day of September, 2013.


FURTHERMORE, IT IS ORDERED the following records be made available to the Specialty Court Division of the Clark County Courts: 1) Any and all jail records to include, but not limited to, custody records, psychiatric records, medical records and incident reports. 2) Any and all criminal records, including but not limited to, criminal complaint, police records and discovery.

ADDITIONALLY, it is ordered that the Clark County Detention Center and/or NaphCare shall provide the referring attorney and/or attorney's staff with any and all medical/psychiatric records of the defendant upon request and NaphCare staff including but not limited to physician and nursing records. Lastly, they shall speak with the referring attorney and/or their staff about the defendant's condition including but not limited to prognosis, diagnosis and treatment.

IT IS FINALLY ORDERED that the report(s) of said examination be submitted to the Specialty Courts Division no later than 5:00 PM on the third judicial day preceding the scheduled hearing.

DATED this 3rd day of September, 2013

[Signature]
 JUDGE

13F06746X
 RFEC
 Request for Evaluation for Competency
 2890388


COMPETENCY EVALUATION - COVER SHEET

☒ **COMPETENT**
☐ **NOT COMPETENT**

DEFENDANT NAME: Darion Muhammad-ColemanCASE NO: 13F06746XEVALUATION DATE: 9/13/13LENGTH OF EVALUATION: 1.5 hoursREPORT DATE: 9/16/13INFORMED CONSENT: ☒ YES ☐ NO**SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES**

Is there substantial impairment or gross deficit in the following areas:	YES	NO
1. Capacity to understand the nature of the criminal charges.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Capacity to understand the nature and purpose of court proceedings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Capacity to aid and assist counsel in the defense.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DSM-V DIAGNOSES:1. R/O 295.90 Schizophrenia2. V65.2 Malingering

3. _____

PSYCHIATRIC HISTORY:

	YES	NO
Currently medication for mental illness:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes, specify: <u>Zyprexa</u>		
Prior mental health treatment:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior hospitalizations:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes, dates and duration: <u>Spring Mountain Treatment Center, duration unknown</u>		

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT**REVIEW OF RECORDS - COLLATERAL INFORMATION**

☒ Discovery ☒ Jail Medical Records
☐ Jail Disciplinary Records ☐ Mental Health Records
☐ Other _____

Submitted by: Mark J. Chambers, Ph.D.

Signature: Mark J. Chambers, Ph.D.



MARK J. CHAMBERS, PH.D., L.L.C.
CLINICAL AND FORENSIC PSYCHOLOGIST

8275 S. EASTERN AVE., STE. 200
LAS VEGAS, NEVADA 89123

Forensic Psychological Evaluation

NAME: Darion Muhammad-Coleman
D.O.B.: 12/8/94
CASE NO.: 13F06746X
DATE INTERVIEWED: 9/13/13
SUBJECT: Competency to stand trial

SOURCES OF DATA:

Interview of defendant by Mark J. Chambers, Ph.D.; criminal complaint; Las Vegas Metro Police Department declaration of warrant/summons; CCDC medical records.

REFERRAL AND BACKGROUND INFORMATION:

Mr. Muhammad-Coleman was referred by Judge Linda Bell for evaluation of his competency to stand trial and to assist in his defense on charges of conspiracy to commit robbery, murder with use of a deadly weapon, attempt robbery with use of a deadly weapon, and battery with use of a deadly weapon. The charges stem from a 4/19/13 incident, the result of which was that the victim, Dale Borero, was shot to death. The charges state that one of the defendant's alleged co-conspirators engaged the victim in a heated argument, then the defendant pointed a gun at the victim and demanded drugs. This reportedly resulted in an exchange of gunfire between the victim and defendant, injuring the defendant and killing the defendant.

Prior to the present evaluation, this examiner was contacted by the defendant's attorney, Deputy Special Public Defender Jeremy Storms, to express his concerns about the defendant's mental health. Mr. Storms noted that there is a history of schizophrenia in the defendant's family, notably his grandmother, who has expressed "bizarre ideas," he said. He also stated that in recent weeks the defendant has "shut down" and seems "severely depressed." In addition, he said that the defendant may be "responding to internal stimuli" and "won't communicate with us," in apparent "denial about his circumstances."

CCDC medical records include several kites written by the defendant requesting mental health services. One such document, dated 8/14/13, reads, in part, "Need to see psychiatric doctor because I have been living in frightenince (sic). I've become disassociative. . . . I'm not able to comprehend any court room proceedings until I get evaluated by psychiatric doctors. . . . I'm hearing strange noises and voices, seeing flashes of insects crawling around my bed. Just completely devastated

TELEPHONE: 702-614-4550 FACSIMILE: 702-938-1042
MARKJCPHD@AOL.COM WWW.MARKJCHAMBERSPHD.COM

crushed mentally and emotionally."

On 8/17/13, the defendant wrote, "I'm hearing voices. The deivill (sic) keeps talking there (sic) trying to kill me every where I go when I go to the bathroom they tryna kill me when I go to court I can't take it anymore I'm going to kill myself or someone else I'm ready to die. I can't take it any more. I need to see a doctor there trying to kill me help me." Apparently as a result of this message, the defendant was transferred to 2C for observation.

On 8/28/13, the defendant submitted another kite which read, "Does anyone know when I'm going to be evaluated by a psyhatric (sic) facility I'm going threw (sic) a lot of thing and need help to figure out what's going on."

In a psychiatric progress noted dated 9/3/13, CCDC medical staffer David Mathis noted that although the defendant was complaining of auditory and visual hallucinations, he was not compliant with medication treatment and was oriented times 3 with "unimpaired" memory and "coherent" speech. This examiner also noted that the defendant "did not appear to be internally stimulated," and a diagnosis of "r/o psychotic disorder nos r/o malingering for unclear gain" was assigned. A previous note, dated 8/20/13, states that although the defendant was reporting auditory hallucinations, they were "vague in content" and "poorly specified."

A psychiatric screening, conducted at the time of the defendant's booking on 7/3/13, indicates that the defendant denied any history of hallucinations or prior psychiatric treatment. The report of this screening also indicates that the defendant was aware that he had been arrested for murder and battery with a deadly weapon. The forms containing this information were apparently signed by the defendant as an attestation of their accuracy.

SUMMARY OF FINDINGS:

The present evaluation found Darion Muhammad-Coleman to be competent to stand trial, to a reasonable degree of psychological certainty.

STANDARDS AND DEFINITIONS:

The present evaluation was conducted using the definition of competency as determined in *Dusky v. United States 1960*. *Dusky*, which is the standard used by most jurisdictions in the U.S., specifies that to be competent, a defendant must be "rational," have a sufficient present ability to consult with counsel with a "reasonable degree" of rational understanding, and have both a rational and factual understanding of the proceedings, including the nature of the charges against him. This standard was later expanded by *Drope v. Missouri*, which also stipulated that a defendant must have the ability to assist counsel in preparing his or her defense.

BEHAVIORAL OBSERVATIONS/MENTAL STATUS:

Mr. Muhammad-Coleman was interviewed for the present evaluation at the Clark County Detention

Center. Prior to the start of the interview, he was informed of the purpose of the evaluation and the limits of confidentiality. He indicated that he understood these instructions and verbally consented to proceed with the evaluation.

Mr. Muhammad-Coleman communicated effectively throughout his interview and responded appropriately to all questions. His affect (emotional demeanor) was appropriate, and there were no indications of homicidal or suicidal ideation. Although no formal assessment of Mr. Muhammad-Coleman's intellectual ability was conducted, he appeared to be of approximately average intelligence. He exhibited no significant problems with either recent or remote memory and seemed oriented to time, person, and place, despite his claims that he did not know the date or the name of the location where he is currently residing. The defendant's thoughts appeared to be well-organized and coherent, and there were no indications of distractibility or attention to internal stimuli. No tangentiality, flight of ideas, perseveration, or other signs of a thought disorder were observed.

The defendant reported having visual hallucinations, specifically "dragons" that he said are colored black and green. They tell him that they "really exist," he said, and are "in the mountains hiding." He also claimed to have seen bugs in his bed, biting him on the arms and legs, but when he consulted the CCDC nurse about this, he said, she did not observe any bites on his body.

The defendant went on to report that he sees people crawling and jumping out of the walls, telling him to punch the wall or bang his head against the wall. He also noted that "everyone's trying to kill me."

PSYCHOSOCIAL HISTORY:

The defendant stated that he grew up in Las Vegas, attending school only through the sixth grade. He explained that he had difficulty comprehending what was taught and was placed in special education programs. He was raised by his mother and grandmother, he said, as his father was not in the picture.

The defendant claimed that he began experiencing mental health problems at the age of 9, when he poured hot grease on his hand because he believed that "something was biting it." He also described talking to "dead people" who he said would "come to see me from time to time." He described these symptoms to his mother, he said, but she told him it was "hereditary" and that "nothing was wrong with me."

The defendant stated that he first began receiving medication treatment at the age of 13, when he was prescribed Abilify, Concerta, Seroquel and Risperdal. Some of these medications caused him to have memory loss, he said, a comment apparently intended to explain some of the memory deficits exhibited by him on the present evaluation. Asked if he had ever experienced suicidal ideation, he said that he attempted to choke himself with a pillowcase about a year ago, but he denied being suicidal at present. He admitted when asked that he had been sent to 2C several weeks prior to the present evaluation because of suicidal ideation.

Darion Muhammad-Coleman
September 16, 2013

Page 4

Asked about his prior arrest history, the defendant stated that at the age of 13 he was charged with battery with a deadly weapon after stabbing someone in self defense when three males "jumped" him with a knife. Following his arrest, he said, he was sent to Spring Mountain Treatment Center for treatment of "bipolar disorder, schizophrenia and memory loss." He claimed that the current case is his first arrest as an adult.

The defendant denied having any significant employment history. Asked about drug use, he admitted to smoking marijuana, which he said "helps stop racing thoughts," but he denied any other drug use or consumption of alcohol.

DSM-V DIAGNOSIS:

R/O	295.90	Schizophrenia, undifferentiated, chronic
	V65.2	Malingering

UNDERSTANDING OF LEGAL SITUATION:

This examiner found it noteworthy that at the beginning of the present evaluation, when informed of the purpose of the visit but prior to being asked any questions, Mr. Muhammad-Coleman spontaneously remarked, "I don't understand what a judge is for." Later, when the competency assessment portion of the interview commenced, the defendant denied knowing what he is charged with and insisted that his attorney has not discussed the charge with him. He admitted to having the opportunity to review the discovery from his case, but he claimed that he did not know what these documents said. Later, the defendant said, "They told me that I'm charged with murder, but I don't know what that means." With further questioning, the defendant clarified that he meant he did not know what the word "murder" means. When informed by the examiner that it refers to "killing someone," he then claimed that he did not know what "killing" means. However, he then referred to his uncle being dead, suggesting that he at least knew that the term referred to someone being deceased.

The defendant gave similar responses to other competency-related questions, claiming that he did not know what a jury or a plea bargain were, and answering "I don't know" when asked to explain what "the right to remain silent" means. The defendant also claimed to be unfamiliar with the term "attorney," but he then almost immediately made reference to his defense attorney, stating that "he's not here to help me," indicating that he did, in fact, know the meaning of the word.

Because of the defendant's claims that he was unfamiliar with common words such as "murder," "killing," or "attorney," he was administered the Vocabulary subtest from the Wechsler Abbreviated Scale of Intelligence. On this test, the defendant scored below the low end of the available range on the test, earning the minimum possible T-score of 20. The defendant claimed that he did not know the meanings of words such as "calendar," "bell," and "vacation," and when asked to define the word "pet," he responded, "Like a worm." Interestingly, when asked to define "police," he first answered, "I don't know," then said, "These are C.O.'s, they're the guys to help you," indicating that he was aware of a connection between the term "police" and the corrections officers that work

AA703

Darion Muhammad-Coleman
September 16, 2013

Page 5

in the detention center.

The defendant was also administered the Registration section of the Mini-Mental Status Examination. This item involves having the examinee repeat three words spoken by the examiner, both to register his level of alertness and attentiveness but also to test his recall of these words later, after an intervening task. When this defendant was asked to repeat the three words (apple, penny, table), he responded, "Apple, penny, forgot the last one." After the words were read a second time, he responded, "Table . . . forgot again." After a third recitation of the words, the defendant gave a similar response, saying, "Table . . . sorry, forgot again."

CONCLUSIONS CONCERNING COMPETENCY TO STAND TRIAL:

This examiner is firmly convinced that the defendant, Darion Muhammad-Coleman, is malingering the apparent cognitive deficits exhibited during the present evaluation. During the course of informal, non-evaluative conversation with the defendant, he provided a coherent personal history with no gaps in memory or word-finding difficulties. Furthermore, he exhibited appropriate attention and concentration to questions and exhibited no signs of thought disorder that would be consistent with the presence of a psychosis, as his claimed auditory and visual hallucinations would suggest. He had no difficulty naming the various medications (Zyprexa, Risperdal, Abilify, Concerta, Seroquel, etc.) he has been prescribed, but he claimed to not know the meanings of the words "murder" and "vacation." These behaviors are not consistent with known mental disorders.

This examiner also noted considerable evidence suggesting that the defendant is actively promoting the idea that he is not competent to stand trial. On a kite filed with CCDC medical staff, the defendant claimed that he is "not able to comprehend any court room proceedings" due to his mental condition, and he asserted to this examiner that he does not understand "what a judge is for" even prior to being asked any competency-relevant questions. It should also be noted that during his intake screening evaluation at the time of his arrest, he denied any mental health history or hallucinations, contrary to his current claims, and CCDC medical staff have expressed concerns about possible malingering on the part of the defendant based on their observations of his behavior in custody.

Finally, the defendant's performance on formal assessment measures is strongly suggestive of malingering. On the Vocabulary subtest of the Wechsler Abbreviated Scale of Intelligence, the defendant scored at the lower limit of the test, despite displaying no vocabulary deficits in casual conversation. Also, his claimed inability to repeat three simple words is a deficit that is rarely seen even among the most cognitively impaired individuals and certainly not among individuals who are capable of normal verbal discourse. As it is often the case that malingerers tend to feign a level of disability that is more severe than legitimately impaired individuals, these findings are strongly suggestive that this defendant's poor performance on these instruments was simulated.

Based on the available information, I find that, within a reasonable degree of psychological certainty, the defendant, Darion Muhammad-Coleman, is competent to stand trial and participate in his own defense. At the time of his booking into CCDC, he was aware of his charges, and based on the defendant's overall clinical presentation along with supporting documentation, it is likely that he

Darion Muhammad-Coleman
September 16, 2013

Page 6

is able to consult with counsel and participate in his own defense. These conclusions are not contingent on whether the defendant has a legitimate history of mental health problems as he reports, but rather on his current level of mental functioning.

I appreciate having the opportunity to evaluate Mr. Muhammad-Coleman.

A handwritten signature in black ink, reading "Mark J. Chambers, Ph.D." in a cursive style.

Mark J. Chambers, Ph.D.
Clinical and Forensic Psychologist
Nevada License PY267

COMPETENCY EVALUATION - COVER SHEET

☐ COMPETENT
☒ NOT COMPETENT

DEFENDANT NAME: Damon Muhammad

CASE NO.: BF06746X

EVALUATION DATE: 9-16-13

LENGTH OF EVALUATION: 40 min

REPORT DATE: 9-16-13

INFORMED CONSENT: ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:

YES NO

1. Capacity to understand the nature of the criminal charges.
2. Capacity to understand the nature and purpose of court proceedings.
3. Capacity to aid and assist counsel in the defense.

vs malingering
☒ YES ☐ NO
☒ YES ☐ NO
☒ YES ☐ NO

DIAGNOSTIC IMPRESSIONS:

Axis I Malingering B/O Schizophrenia vs Schizoaffective D
Axis II B/O Learning Disability
Axis III None
Axis IV Legal
Axis V Unable to assess

PSYCHIATRIC HISTORY:

YES NO

Currently taking medication for mental illness:

☒ YES ☐ NO

If yes, specify: Zyprexa

Prior mental health treatment:

☒ YES ☐ NO

Prior hospitalizations:

☐ YES ☒ NO

If yes, dates and locations:

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingering disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT

REVIEW OF RECORDS - COLLATERAL INFORMATION

☒ Discovery ☒ Jail Medical Records

☐ Jail Disciplinary Records ☐ Mental Health Records

☒ on phone consult with Public Defender

Submitted by: Lawrence Kapel
Print

Lawrence Kapel
Signature

LAWRENCE KAPEL, Ph.D.

**1090 Wigwam Pkwy #100
Henderson, NV 89074**

(702) 454-0201

Competency Evaluation

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

Date of Report: 9-16-13

The results of my evaluation are summarized in this report. It is my psychological opinion that Mr. Muhammad wasn't genuinely engaging the undersigned making it very difficult to render an opinion regarding competency. His public defender has reported that he has not been able to meaningfully engage Mr. Muhammad and that there is family history of psychiatric illness. Further, malingering doesn't mean that there isn't also psychiatric illness as well and therefore I would conservatively recommend that Mr. Muhammad be found incompetent and sent to Lakes Crossing.

Information used to render the above opinion:

1. Declaration of warrant #130419-4147
2. Jail medical record
3. Request for evaluation of competency
4. Criminal complaint
5. Brief phone consult with Mr. Storms (public defender)
6. Clinical interview with Mr. Muhammad

Identifying information: Darion Muhammad is an 18 year old male who was evaluated in the Clark County Detention Center (CCDC). He is charged with Conspiracy to Commit Robber, Murder with use of a Deadly Weapon, Attempt Robbery with use of a Deadly Weapon and Battery with use of a Deadly Weapon. He was referred by the Eighth Judicial District Court, Specialty Courts Division to aid in determining if he is competent to stand trial. He was advised that a copy of this report would be sent to the court and the customary psychologist-client confidentiality didn't apply. He agreed to proceed with the evaluation.

Mr. Storms was contacted for a brief phone consult. Mr. Storms related that he is having marked difficulty getting his client to communicate with him. He reported that there is family history of psychiatric illness.

Behavioral observation and mental status: Darion Muhammad presented in an inconsistent fashion. He was able to relate very specific information about his past to include specific medication he was on and details about his juvenile arrest record yet

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

reported not knowing what murder or kill meant. He was able to relate having been in juvenile hall and foster care yet stated he didn't know what a jail or prison was. His speech was fluent and goal directed. He was very invested in communicating the severity of his psychotic symptoms but he did this in a fashion that was goal directed and not suggestive of loose associations or tangential thinking. He reported that the year was 2009 and he didn't know the season or month of the year. He reported that he was "in a big mansion having fun". He was unable to answer what 4 plus 5 equaled. He was unable to spell WORLD forward. He was unable to count backward from 10-1. He was unable to answer even basic verbal abstract questions (e.g. how a dog and lion are alike, how are orange and banana alike). This poor mental status was noteworthy because when he was relating his symptoms and history that were self-serving he clearly was able to relate at a higher level. He was particularly impoverished in his responses related to all of the legal questions. Overall, Mr. Muhammad presented as one who wasn't putting forth effort and his responses were suggestive of malingering.

Current psychological symptoms: Jail medical records note that he was transferred to 2C secondary to "hallucinations, bizarre behavior". Mr. Muhammad wrote a request for psychiatric care on 8-17-13 in which he reported "I'm hearing voices....The devil keeps talking there trying to kill me every where I go ". He wrote several other requests for psychiatric help noting psychotic symptoms and mental problems. Psychiatric note of 9-3-13 noted that "will stop Risperdal (start) Zyprexa follow up two weeks".

Mr. Muhammad reported "I feel horrible". He reported poor sleep. He reported good appetite. He reported low energy level. He reported memory and concentration were "not good". He reported marked anxiety in which it was "hard to breathe". He reported marked mood swings with periods of marked increase in energy and anger. He reported episodic suicidal ideation "when the voices won't leave me alone". He reported "I feel like everyone is trying to kill me". He reported that "I see dead people". He also related that government officials are trying to kill him and "I know they are aliens". He related that he was "abducted by a UFO". He also related seeing dragons that are "green and black" and "smell like rotten meat" and "roar like thunder". He reported that he is currently taking Zyprexa and he was aware that this was for psychosis.

Past mental health history: Mr. Muhammad reported that he was diagnosed with "bipolar disorder" from age 14-17 and he was treated with Abilify and Concerta. He reported that he was not under psychiatric care since the age of 17.

Family mental health history: Mr. Muhammad reported that his mother was diagnosed with "schizophrenia, bipolar disorder and PTSD".

Substance abuse history: Mr. Muhammad denied alcohol abuse. He reported that he would smoke marijuana "every other day" prior to his arrest.

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

Legal history: Mr. Muhammad reported that this is his first arrest as an adult. He related having been arrested three times as a juvenile to include a "battery" charge in which he reported that he was accused of knifing someone but that he was acting in self-defense.

Health: Mr. Muhammad denied significant health issues.

Education: Mr. Muhammad reported that he left school in the sixth grade secondary to his being in juvenile placements. He reported that he was in special education and "didn't understand" the work.

Psychosocial history: Mr. Muhammad stated that he was raised in Las Vegas by his grandmother. He reported that he spent time as an adolescent both in group homes and juvenile incarceration. He has never had a job and isn't married.

Competency issues: Mr. Muhammad reported that he didn't know what his charges were. He later stated that his charges were "like stealing candy from a store". I related to him that the most severe charge was murder and he reported not knowing what that meant. I reported that this meant killing someone and he stated "what's killing". He reported not knowing what guilty or not guilty meant. He reported no knowing if the charges were severe. He reported "I should be going home anytime". He reported not knowing what a plea bargain was. He reported not knowing who his attorney was or what his attorney's job entailed. He reported not knowing what the prosecuting attorney's job entailed. He reported not knowing what a witness is or what evidence was. Overall it was very clear that Mr. Mohammad was denying any knowledge of how the legal system or worked or why he was incarcerated. He stated that he was in a "big mansion having fun". Overall it was very clear that he wasn't going to relate any information that would allow the undersigned to make a genuine assessment of his competency.

Impression:

Axis 1: Malingering R/O Schizophrenia vs Psychosis NOS vs Schizoaffective disorder

Axis 2: R/O Learning disability

Axis 3: None

Axis 4: Legal

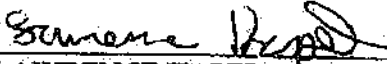
Axis 5: Unable to assess

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

Findings: Mr. Muhammad appeared to be greatly exaggerating his cognitive deficits, psychiatric symptoms and his deficits as it related to his understanding of the legal process. He related his history well to include previous legal charges and medical regimen yet he couldn't answer even basic legal questions. However, malingering doesn't mean that he isn't also sick and it doesn't mean that he is competent. The undersigned doesn't feel that I can genuinely assess his competency given his presentation. Given the severity of the charge and that his attorney is relating a history of family mental health and that his attorney has been unable to meaningfully engage Mr. Muhammad I would conservatively recommend that he be transferred to Lakes Crossing where his abilities can better be assessed and the role of malingering and genuine mental illness can be observed and treated as needed.



LAWRENCE KAPEL, Ph.D.
Licensed Clinical Psychologist

COMPETENCY EVALUATION - COVER SHEET

☒ COMPETENT
☐ NOT COMPETENT

DEFENDANT NAME: Dan Muhammad

CASE NO: 13F067496X

EVALUATION DATE: 10/21/13

LENGTH OF EVALUATION: 30 min

REPORT DATE: 10/21/13

INFORMED CONSENT: ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:

YES

NO

1. Capacity to understand the nature of the criminal charges.
2. Capacity to understand the nature and purpose of court proceedings.
3. Capacity to aid and assist counsel in the defense.

☐
☐
☐

☒
☒
☒

DIAGNOSTIC IMPRESSIONS:

Axis I Malingering R/o Schizophrenia

Axis II _____

Axis III _____

Axis IV _____

Axis V _____

PSYCHIATRIC HISTORY:

YES

NO

Currently taking medication for mental illness:

☒

☐

If yes, specify: _____

Prior mental health treatment:

☒

☐

Prior hospitalizations:

☐

☐

If yes, dates and duration: unknown

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT

REVIEW OF RECORDS - COLLATERAL INFORMATION

☒ Discovery

☐ Jail Medical Records

☐ Jail Disciplinary Records

☐ Mental Health Records

☐ Other _____

Submitted by: Gus Hickey, MD

Print

[Signature]
Signature

**Greg Harder, Psy.D.
Licensed Psychologist #PY0338
4955 South Durango Dr. Suite 221
Las Vegas, NV 89113**

Phone: (702) 685-5297

Fax: (702) 685-5314

October 21, 2013

Judge Bell
Specialty Court
Eighth Judicial District Court

RE: Darion Muhammad
Case #: 13F067446x

Reason For Referral:

Per your request, I evaluated Mr. Muhammad at the Clark County Detention Center on October 21, 2013. The purpose of the evaluation was to determine if the Defendant is presently competent to stand trial. The results of this evaluation are described below.

Competency Determination:

Mr. Muhammad is likely competent to stand trial and malingering.

Review of Records:

According to the Criminal Complaint, the Defendant is charged with Murder, Robbery, and Battery with Use of a Deadly Weapon.

Informed Consent:

Before interviewing the Defendant, I explained to him that he was being evaluated to determine if he is competent to stand trial. I explained to him that the results of the evaluation

would be released to the judge and possibly the attorneys on both sides of the case, as well as the jail psychiatrist. He understood the purpose of the evaluation, and the limits of his confidentiality, and orally consented to participate in the evaluation in a voluntary manner.

Competency Standard:

The Defendant was evaluated according to the Dusky Standard, which is a federal standard of competency, and similar to the Nevada revised standard. The Dusky standard states "Whether he (the defendant) has a rational as well as factual understanding of the proceedings against him" and whether he (the defendant) has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding."

Interview of Defendant:

Capacity to Understand Charges:

Before interviewing Mr. Muhammad, I explained to him that one doctor found him to be competent to stand trial and one doctor found him to be not competent, and that I had been sent to evaluate him to "break the tie." I asked him why he thought a competency evaluation had been requested on him. He stated that the doctor yelled at him and told him he was lying. He stated that the doctor "did not believe in the alien." When I asked him what he was charged with, he stated what they charged him with is like stealing candy from a store. I explained to him that he was charged with murder, which was not at all similar to stealing candy from a store, and he dismissed that as untrue. Mr. Muhammad claimed not to know anything about his case, or that matter, anything about his life. He stated that he did not know how long he had been in jail. He denied knowing what murder is. He denied knowing who the alleged victim was. He claimed not to know anything about the amount of time he might be facing for the charges.

Understanding of Court Proceedings and Legal Terminology:

Mr. Muhammad stated that he has a 6th grade education. He stated that he does not know why he did not finish school other than it was too hard. He was in special education classes. He told me his birthdate was 12/8/94 and that he is 18 years old. He denied knowing what a public defender is. He denied knowing what a district attorney is. He denied knowing what a judge does. He denied knowing what his choices for pleading were. He denied knowing what guilty or not guilty mean.

Ability to Assist Counsel:

He admitted to having a history of mental illness. He stated that he has been diagnosed with ~~Bipolar and PTSD~~. He stated he was diagnosed at age 13. He denied ever being in a psychiatric hospital. He has been on numerous medications, including Abilify, Concerta, Seroquel, and Respiradol. He stated that a dragon talks to him. He also stated that he is living in a mansion right now, meaning the jail is a mansion, not a jail. He stated that the aliens kidnapped him and did experiments on him. He stated that the president is an alien. He stated he was abducted when he was 12 and they put a drill in his head. He stated he remembered everything and now they are after him. He stated they put him in this mansion so they can watch over him. When I asked him what medications he is on, he stated that he is prescribed "genocide." He told me that he was on Zyprexa in the past. He stated his mother thinks he is normal. He denied ever being on disability. When I asked him what caused him to be diagnosed with PTSD, he could not tell me. He stated his doctor told him he takes things too hard. He denied using drugs or alcohol. He stated he is "sort of in a relationship with somebody and has a kid on the way."

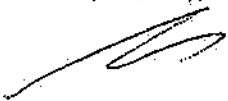
Conclusion:

Mr. Muhammad is probably competent to stand trial. His claims about aliens abducting him, a dragon talking to him, the president being an alien, and other strange statements seemed like an attempt to appear mentally ill rather than an actual mental illness. He also claimed not to know anything about his case. He denied knowing what murder is, said he is charged with something like taking candy from a store, which seemed like a ridiculous attempt to appear not to understand his case, and claimed not to know anything about the court process. He denied knowing what his lawyer does, what a district attorney does, what a judge does, or what guilty or not guilty mean. He claimed to be living in a mansion right now and that the aliens put him there to watch him. Although there is always a small possibility that the defendant could be a legitimately psychotic individual, all the data supports the fact that his delusions are made up and not at all consistent with most legitimate Schizophrenic patients. Mr. Muhammad is facing serious charges for murder and it is highly likely that his statements are deliberate attempts to feign mental illness.

Recommendations:

Mr. Muhammad is recommended to be found competent and probably malingering.

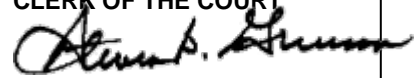
Respectfully,



Greg Harder, Psy.D.

Licensed Psychologist

Thank you for your referral. Please contact me if you have any questions or feedback about this report.



APP

Waleed Zaman, Esq.
Nevada State Bar No. 13993
Zaman & Trippiedi, PLLC
6620 S. Tenaya Way, Suite 100
Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
Wally@ZTlawgroup.com
Attorney for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

In the Matter of the Application of

Case No: A-19-806521-W

(Criminal Case No: C293296)

DARION MUHAMMAD-COLEMAN

Dept. No: X

AKA DARION M COLEMAN

Petitioner,

**APPENDIX OF EXHIBITS IN
SUPPORT PETITION FOR WRIT OF
HABEAS CORPUS (POST-
CONVICTION)**

For a Writ of Habeas Corpus.

COMES NOW, Defendant, DARION MUHAMMAD-COLEMAN, by and through counsel, Waleed Zaman Esq., of Zaman & Trippiedi, PLLC, and hereby files his Appendix of Exhibits in support of the Supplement to Petition for Writ of Habeas Corpus (Post-Conviction).

DATED this 16th day of February 2021.

TITLE/DESCRIPTION OF DOCUMENT	EXHIBIT
NDOC Phone Records	A

submitted by: Waleed Zaman
Waleed Zaman, Esq.
Nevada Bar Number: 13993
Attorney for Petitioner

AA716

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing **SUPPLEMENT TO PETITION FOR WRIT**
3 **OF HABEAS CORPUS (POST-CONVICTION)** with the Eighth Judicial District Court by using the
4 Wiznet E-Filing system. I certify that the following parties or their counsel of record are registered as e-
5 filers and that they will be served electronically by the system:
6 PDMotions@clarkcountyda.com.

7 DATED this 16th day of February 2021.

8
9 By: /S/ Yanni Sitsis

10 An Employee of Waleed Zaman, Esq.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Call Detail Report
Facility: Nevada DOC

Call Start	Inmate ID	Last Name	Dialed Number	End Reason	Rec Alrt	Call Type	Tariff Band	Talk Secs	Billed Mins	Rated Cost	Fee Amt	Tax Amt	Final Cost
2019-03-20 14:46	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	IntraState	301	6	0.84	0.00	0.00	0.84
2018-09-05 13:22	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-09-05 13:16	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-09-05 13:14	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-08-06 12:23	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-07-13 12:30	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-07-10 13:37	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-07-10 13:35	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-07-09 12:25	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	588	10	1.40	0.00	0.00	1.40
2018-05-18 12:57	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	39	1	0.14	0.00	0.00	0.14
2018-03-27 13:52	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	653	11	1.54	0.00	0.00	1.54
2018-03-15 09:10	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-02-28 10:13	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-01-30 14:06	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	316	6	0.84	0.00	0.00	0.84
2018-01-17 12:29	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2018-01-04 13:29	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	455	8	1.12	0.00	0.00	1.12
2017-12-27 12:24	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	44	1	0.14	0.00	0.00	0.14
2017-11-08 13:35	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	0	0	0.00	0.00	0.00	0.00
2017-09-01 14:45	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	274	5	0.70	0.00	0.00	0.70
2017-08-17 15:09	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	IntraState	641	11	1.54	0.00	0.00	1.54

Call Detail Report
Facility: Nevada DOC

Call Start	Inmate ID	Last Name	Dialed Number	End Reason	Rec Alrt	Call Type	Tariff Band	Talk Secs	Billed Mins	Rated Cost	Fee Amt	Tax Amt	Final Cost
2017-07-26 13:50	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	453	8	1.12	0.00	0.00	1.12
2017-07-25 14:41	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-07-13 14:50	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	468	8	1.12	0.00	0.00	1.12
2017-05-26 14:39	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	235	4	0.56	0.00	0.00	0.56
2017-05-24 18:50	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-04-14 14:10	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	272	5	0.70	0.00	0.00	0.70
2017-03-06 10:24	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	316	6	0.84	0.00	0.00	0.84
2017-03-03 08:20	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-03-03 08:09	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-03-03 08:07	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-02-23 15:14	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2017-02-07 15:46	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	715	12	1.68	0.00	0.00	1.68
2016-12-21 08:31	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-12-15 13:36	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	1490	25	3.50	0.00	0.00	3.50
2016-12-13 15:27	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-12-13 15:25	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-12-07 13:35	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	309	6	0.84	0.00	0.00	0.84
2016-12-06 15:50	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	319	6	0.84	0.00	0.00	0.84
2016-11-30 13:26	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	264	5	0.70	0.00	0.00	0.70
2016-11-03 12:16	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	1098	19	2.66	0.00	0.00	2.66

Call Detail Report
Facility: Nevada DOC

Call Start	Inmate ID	Last Name	Dialed Number	End Reason	Rec Alrt	Call Type	Tariff Band	Talk Secs	Billed Mins	Rated Cost	Fee Amt	Tax Amt	Final Cost
2016-10-21 13:51	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	24	1	0.14	0.00	0.00	0.14
2016-10-14 14:11	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	359	6	0.84	0.00	0.00	0.84
2016-10-12 13:53	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	51	1	0.14	0.00	0.00	0.14
2016-10-10 13:37	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Called Party Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-10-04 09:51	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-09-30 14:39	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Called Party Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-09-27 12:01	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	405	7	0.98	0.00	0.00	0.98
2016-09-22 13:21	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Presnswer Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-09-22 13:20	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Called Party Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-09-20 14:15	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	61	2	0.28	0.00	0.00	0.28
2016-09-09 14:46	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	408	7	0.98	0.00	0.00	0.98
2016-09-08 14:31	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	40	1	0.14	0.00	0.00	0.14
2016-09-07 13:11	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	33	1	0.14	0.00	0.00	0.14
2016-08-18 08:38	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	1110	19	2.66	0.00	0.00	2.66
2016-07-11 14:34	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	542	10	1.40	0.00	0.00	1.40
2016-06-16 13:38	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	163	3	0.42	0.00	0.00	0.42
2016-06-09 13:39	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	119	2	0.28	0.00	0.00	0.28
2016-05-12 10:21	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Inmate Hangup	-	Collect	Intralata	197	4	0.56	0.00	0.00	0.56
2016-05-06 15:32	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2016-05-06 15:05	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00

Call Detail Report
Facility: Nevada DOC

Call Start	Inmate ID	Last Name	Dialed Number	End Reason	Rec Airt	Call Type	Tariff Band	Talk Secs	Billed Mins	Rated Cost	Fee Amt	Tax Amt	Final Cost
2016-04-05 14:03	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	46	1	0.14	0.00	0.00	0.14
2016-03-21 12:07	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	111	2	0.28	0.00	0.00	0.28
2016-02-08 14:56	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	35	1	1.13	0.00	0.00	1.13
2016-02-01 14:38	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	1024	18	3.34	0.00	0.00	3.34
2016-01-29 13:50	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	35	1	1.13	0.00	0.00	1.13
2016-01-28 15:23	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	42	1	1.13	0.00	0.00	1.13
2016-01-27 15:07	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	40	1	1.13	0.00	0.00	1.13
2016-01-21 14:27	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	81	2	1.26	0.00	0.00	1.26
2016-01-20 15:58	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Time limit	-	Collect	Intralata	101	2	1.26	0.00	0.00	1.26
2016-01-20 15:28	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	1104	19	3.47	0.00	0.00	3.47
2016-01-11 15:06	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	210	4	1.52	0.00	0.00	1.52
2015-12-21 13:22	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	317	6	1.78	0.00	0.00	1.78
2015-12-11 14:34	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-12-11 14:32	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-12-11 14:30	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-12-11 14:28	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-12-11 14:26	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-11-16 14:09	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	585	10	2.30	0.00	0.00	2.30
2015-11-15 14:59	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Hangup	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-10-27 14:27	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	18	1	1.13	0.00	0.00	1.13
2015-10-20 15:30	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	286	5	1.65	0.00	0.00	1.65

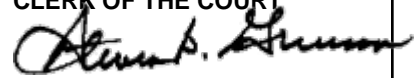
Copyright Inmate Calling Solutions, LLC — Confidential Information — All rights reserved

AA722

Call Detail Report
Facility: Nevada DOC

Call Start	Inmate ID	Last Name	Dialed Number	End Reason	Rec Alrt	Call Type	Tariff Band	Talk Secs	Billed Mins	Rated Cost	Fee Amt	Tax Amt	Final Cost
2015-10-13 15:29	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal Max Accept	-	Collect	Intralata	136	3	1.39	0.00	0.00	1.39
2015-10-12 12:48	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Time	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-10-12 12:44	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Refused	-	Collect	Intralata	0	0	0.00	0.00	0.00	0.00
2015-10-05 10:30	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	36	1	1.13	0.00	0.00	1.13
2015-09-02 14:41	1144228	MUHAMMAD-COLEMAN	1-702-598-3909	Normal	-	Collect	Intralata	31	1	1.13	0.00	0.00	1.13
Grand Total										17.000	306	58.08	58.08

AA723



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Deputy District Attorney
Nevada Bar # 13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

DARION MUHAMMAD-COLEMAN,
#2880725

Defendant.

CASE NO: A-19-806521-W /
C-13-293296-2

DEPT NO: III

**STATE'S OPPOSITION TO DEFENDANT'S POST-CONVICTION PETITION FOR
WRIT OF HABEAS CORPUS AND REQUEST FOR EVIDENTIARY HEARING**

DATE OF HEARING: APRIL 9, 2020
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Deputy District Attorney, and moves this Honorable Court for an order denying the Defendant's Post-Conviction Petition for Writ of Habeas Corpus and Request for an Evidentiary Hearing

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

///

///

///

///

AA724

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On October 11, 2013 the State of Nevada filed an Indictment charging Darion
4 Muhammad-Coleman (hereinafter “Petitioner”) with the following: Count 1: Conspiracy to
5 Commit Robbery (Category B Felony – NRS 199.480, 200.380); Count 2- Attempt Robbery
6 with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Count
7 3 - Murder with Use of a Deadly Weapon (Category A Felony NRS 200.010, 200.030,
8 193.165); Count 4 - Battery with Use of a Deadly Weapon (Category B Felony – NRS
9 200.481); Count 5 - Assault with Use of a Deadly Weapon (Category B Felony – NRS
10 200.471); Count 6 – Conspiracy to Violate the Uniform Controlled Substances Act (Category
11 C Felony – NRS 453.401); and Count 7 - Attempt to Possess Controlled Substance (Category
12 E Felony/Gross Misdemeanor - NRS 453.336, 193.330).

13 On October 18, 2013, Petitioner’s initial arraignment was continued for a competency
14 evaluation at defense counsel’s request. Subsequently, Petitioner was found competent to
15 stand trial on November 8, 2013.

16 Petitioner was then arraigned on November 18, 2013, and pled not guilty. On
17 November 26, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. On March
18 18, 2014, the State filed its Return. On April 2, 2014, the district court denied Petitioner’s pre-
19 trial Petition for Writ of Habeas Corpus and set a trial date.

20 Petitioner then filed a Motion to Dismiss Counsel of Record, which was heard on May
21 12, 2014. The motion was denied.

22 On September 26, 2014, Petitioner filed a Motion to Allow the Use of Jury
23 Questionnaire; this motion was denied and the trial date was re-set.

24 Defense counsel filed a motion seeking to withdraw from representation of Petitioner,
25 and this motion was granted on December 1, 2014; as a result, the trial date was re-set.

26 On January 5, 2015, the district court was notified that Petitioner was in competency
27 court in one of his other cases. Petitioner was once again found competent and the matter was
28 referred back to district court.

1 On July 25, 2015, Petitioner advised the court that the possible plea negotiations had
2 fallen through, and the trial date was re-set yet again.

3 Petitioner then filed a Motion to Withdraw Counsel and for a Faretta canvass, which
4 was heard on March 2, 2016. On March 9, 2016, the court conducted a Faretta canvass and, at
5 the conclusion, Petitioner advised the court that he wanted to remain with his attorney; the
6 trial date was vacated and re-set.

7 On November 28, 2016, the State announced ready for trial, however, Petitioner again
8 requested a continuance of the trial date orally; the court directed counsel to file a written
9 motion. On December 19, 2016, Petitioner filed a Motion to Continue Trial Date. On
10 December 28, 2016, the court denied Petitioner's Motion to Continue Trial Date and sealed
11 copies of each of Petitioner's competency evaluations.

12 Trial was set to begin on January 3, 2017, however, the presiding judge fell ill and the
13 trial was transferred to a different district court department and began the next day on January
14 4, 2017. The trial lasted six days and on January 11, 2017, the jury returned the following
15 verdict: Count 1, Conspiracy to Commit Robbery, not guilty; Count 2, Attempt Robbery with
16 Use of a Deadly Weapon, not guilty; Count 3, Murder with Use of a Deadly Weapon, guilty
17 of First Degree Murder With Use of a Deadly Weapon; Count 4 Battery with Use of a Deadly
18 Weapon, guilty of Battery with Use of a Deadly Weapon; Count 5 Assault with a Deadly
19 Weapon, not guilty; Count 6, Conspiracy to Violate Uniform Control Substances Act, guilty
20 of Conspiracy to Violate Uniform Substances Act; Count 7 Attempt to Possess Controlled
21 Substance, guilty of Attempt to Possess Controlled Substance.

22 Petitioner was sentenced as follows: Count 3 - to Life with a Minimum parole eligibility
23 of two hundred forty consecutive months in the Nevada Department of Corrections, plus a
24 consecutive sentence of a minimum of sixty months and a maximum of two hundred and forty
25 months for the Deadly Weapon Enhancement, for a total Aggregate sentence of Life with the
26 possibility of parole after a minimum of three hundred months have been served; Count 4 – a
27 minimum of forty-eight months and a maximum of one hundred twenty months in the Nevada
28 Department of Corrections concurrent with Count 3; Count 6 – a minimum of twenty-four

months and a maximum of sixty months in the Nevada Department of Corrections, concurrent with Count 3; and Count 7 – Defendant is adjudicated guilty of the Felony and is sentenced to a minimum of nineteen months and a maximum of forty-eight months in the Nevada Department of Corrections to run concurrent with Count 3, and consecutive to Case C299066. Petitioner received seven hundred twenty days credit for time served.

The Judgement of Conviction was filed on March 29, 2017.

On April 14, 2017, Petitioner filed a Notice of Appeal. On July 3, 2018, the Supreme Court of Nevada affirmed Petitioner's conviction. Remittitur was issued on July 30, 2018.

An Amended Judgment of Conviction was filed on August 29, 2018.

On August 1, 2019, Petitioner filed a Motion to Extend Time for Petition for Post-Conviction Writ of Habeas Corpus. Petitioner requested an additional sixty (60) days to file his Petition. On August 27, 2019, Petitioner and the State entered into a Stipulation and Order to Extend Time. Petitioner and the State stipulated to extend the time for filing Petitioner's Petition from August 2, 2019 to October 1, 2019.

On December 6, 2019, Petitioner filed his Petition for Writ of Habeas Corpus.

STATEMENT OF FACTS

On April 19, 2013, in the area of the “Naked City,” Petitioner met codefendant Dustin “Criminal” Bleak (“Bleak”) and Bleak’s brother, Travis “Ponytail” Costa (“Costa”). v individually approached Richard “Mechanic” McCampbell (“McCampbell”) and asked him for a ride. McCampbell was well-known throughout the area as a fixer of cars and a person who would give people rides to do errands. McCampbell was sitting in his blue Cadillac Coupe DeVille, having just finished a job and purchasing some alcoholic beverages. McCampbell knew Petitioner from prior encounters when McCampbell had given Petitioner rides to do errands.

Petitioner told McCampbell that he wanted to go to the area of Boulder Highway and that the trip would take ten minutes. McCampbell agreed to give Petitioner a ride and they agreed that McCampbell would receive ten dollars in gas money. As this agreement was struck, Bleak and Costa appeared and Petitioner explained that they would be going along for

1 the ride too. Petitioner sat in the front passenger seat, Bleak sat in the rear passenger seat
2 behind Petitioner, and Costa sat in the rear passenger seat behind McCampbell.

3 As McCampbell drove, he was directed to the area of Charleston and Eastern where
4 there is a large shopping center containing a Lowe's and a 7-11. Costa told McCampbell to
5 park around the side of the 7-11 building because he wanted to buy beers for himself and
6 Bleak. McCampbell started to become nervous that the men might rob the 7-11. The three men
7 told him everything was cool and not to worry. Id. Costa exited the car and entered the 7-11
8 while Bleak and Petitioner exited the car and engaged in conversation. Their discussion was
9 not audible to McCampbell. Once they were back in the car, McCampbell told Bleak and
10 Petitioner that he did not like the conversation outside the car or how the ride was turning into
11 driving to several different places without any explanation. Petitioner and Bleak again
12 reassured McCampbell.

13 McCampbell was then directed, primarily by Petitioner, to drive through the Lowe's
14 parking lot and to the parking lot of the nearby Traveler's Inn. The Traveler's Inn had video
15 surveillance in place, which recorded the events described below. Once in the parking lot,
16 although numerous parking spots were open, the men directed McCampbell to back into a
17 parking space directly adjacent to a set of stairs that led up to the second floor of the motel.
18 Backing into the narrow parking spot proved difficult resulting in McCampbell scraping the
19 car against several surfaces; McCampbell became quite upset, repeatedly asking the men why
20 he was being required to back into the parking spot and telling them he did not feel good about
21 the situation.

22 Once parked, Petitioner and Bleak exited the vehicle while Costa stayed seated in the
23 back of the vehicle. Video surveillance depicted Bleak on a cell phone appearing to call
24 someone while Petitioner leaned against the rear of the parked Cadillac. After a short time, the
25 victim, Dale "Spooky" Borero ("Borero"), walked down the stairs to meet Bleak.

26 Borero was a dealer of methamphetamine and was staying at the Traveler's Inn. Video
27 surveillance showed Bleak engaged in conversation with Borero off to the side of the Cadillac.
28 Eventually, Petitioner, who had been leaning against the rear of the vehicle, slowly walked

over to the two men and casually pulled out a Ruger LC9 9mm pistol and pointed it in Borero's face. Petitioner reached toward Borero as if to grasp something. Petitioner then struck Borero in the face with the pistol.

After being held at gunpoint and struck in the face, Borero eventually produced his own pistol, however, Petitioner shot Borero in the abdomen; Petitioner moved toward the front of the Cadillac and continued to fire. In total, Petitioner fired four times, striking Borero twice, once in the upper abdomen (inflicting a fatal wound) and once in the leg. As the shooting began, McCampbell almost immediately began to drive out of the parking lot while Bleak and Petitioner struggled to get back into the car. Mortally wounded, Borero fell to the ground, firing and striking the Cadillac once in the rear post but missing Petitioner, Bleak, Costa, and McCampbell. As Bleak struggled to get back into the car, the magazine of the black Umarex BB gun pistol he was carrying fell to the ground. Petitioner and Bleak managed to get back into the Cadillac, and it drove off at great speed.

Once out of the Traveler's Inn parking lot, Petitioner directed McCampbell to drive away from the scene. McCampbell, who was distraught by being caught up in the shooting, told Petitioner that he would report what happened. Petitioner responded by gesturing toward his pistol and threatening McCampbell. McCampbell cooperated with Petitioner after being threatened and returned the men to "Naked City" where Petitioner, Bleak, and Costa went their separate ways. Detectives and a Crime Scene Analyst responded to the crime scene at the Traveler's Inn and recovered a BB gun magazine, multiple cartridge casings from both Borero's and Petitioner's pistols, bullet fragments, a bag of methamphetamine, and U.S. currency. Borero was transported to UMC where he died from his injuries.

The following day, McCampbell learned that Borero died as a result of the shooting and he contacted the police to report the events leading to Borero's death. McCampbell drove the Cadillac to the Clark County Detention Center and surrendered himself to the first police officer he came into contact with. Homicide detectives responded, impounded the Cadillac, and conducted a recorded interview with McCampbell. McCampbell later positively identified Petitioner, Bleak, and Costa in photo-ID lineups.

Through McCampbell's statements and additional investigative work, detectives identified Petitioner and Bleak as suspects in Borero's death. On April 22, 2013, detectives eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was missing its magazine and located partially wedged into the seat cushion where Bleak had been seated. Detectives took Bleak into custody and impounded the BB gun.

On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the property had discovered a black handgun inside of a black holster, which had been placed in a toaster oven. Inside the residence, detectives discovered paperwork with Petitioner's name on it. A forensic tool-mark analysis would later positively match bullets test-fired from that Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July 3, 2013, detectives located Petitioner and took him into custody.

ARGUMENT

I. THE PETITION IS PROCEDURALLY BARRED

a. The Petition is Time Barred Pursuant to NRS 34.726(1)

Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726(1):

Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

- (a) That the delay is not the fault of the petitioner; and
- (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from

//

1 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
2 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

3 The one-year time limit for preparing petitions for post-conviction relief under NRS
4 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
5 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
6 evidence presented by the defendant that he purchased postage through the prison and mailed
7 the Notice within the one-year time limit.

8 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
9 consider whether a defendant's post-conviction petition claims are procedurally barred. State
10 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
11 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
12 conviction habeas petitions is mandatory,” noting:

13 Habeas corpus petitions that are filed many years after conviction are
14 an unreasonable burden on the criminal justice system. The necessity
15 for a workable system dictates that there must exist a time when a
16 criminal conviction is final.

17 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
18 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
19 has granted no discretion to the district courts regarding whether to apply the statutory
20 procedural bars; the rules must be applied.

21 In the instant case, the Judgment of Conviction was filed on March 29, 2017. Petitioner
22 appealed his conviction, which was affirmed by the Supreme Court of Nevada. Remittitur was
23 issued on July 30, 2018. While an amended Judgment of Conviction was filed on August 29,
24 2018, an amended Judgment of Conviction does not change the deadline to file a timely post-
25 conviction Petition for Writ of Habeas Corpus. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d
26 761, 764 (2004). Therefore, Petitioner’s Petition was due by July 30, 2019.

27 //

28 //

Approximately one (1) month after the filing due date, the State and Petitioner entered into a stipulation to extend the filing due date to October 1, 2019. Such a stipulation was improper. The Supreme Court of Nevada has held:

The parties in a post-conviction habeas proceeding cannot stipulate to disregard the statutory procedural default rules. We direct all counsel in the future not to enter into stipulations like the one in this case and direct the district courts not to adopt such stipulations.”

State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003). Further, even if such a stipulation was proper, Petitioner filed the instant Petition on December 6, 2019, over two (2) months after the stipulated extended filing deadline. By any account, the instant Petition is untimely. Barring a showing of good cause and prejudice, the instant Petition must be denied.

b. Claims III and IV Are Waived Pursuant to NRS 34.810

NRS 34.810(1) reads:

The court shall dismiss a petition if the court determines that:

(a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly or that the plea was entered without effective assistance of counsel.

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

• • •

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.

The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they *will be considered waived in subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). “A

1 court must dismiss a habeas petition if it presents claims that either were or could have been
2 presented in an earlier proceeding, unless the court finds both cause for failing to present the
3 claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State,
4 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

5 Petitioner brings claims that the sentencing court relied on improper evidence at
6 sentencing (Claim Three) and that the State elicited testimony regarding Petitioner’s post-
7 arrest silence (Claim Four). Besides having no merit (see Section II(b)-(c)), these claims could
8 and should have been brought when Petitioner filed his direct appeal. Neither claim was
9 addressed on appeal. Absent a showing of good cause and prejudice, these claims were waived
10 pursuant to NRS 34.810 and Franklin v. State.

11 **II. PETITIONER HAS NOT SHOWN GOOD CAUSE**

12 A showing of good cause and prejudice may overcome procedural bars. “To establish
13 good cause, appellants must show that an impediment external to the defense prevented their
14 compliance with the applicable procedural rule. A qualifying impediment might be shown
15 where the factual or legal basis for a claim was not reasonably available at the time of default.”
16 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
17 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at
18 526.

19 In order to establish prejudice, the defendant must show ““not merely that the errors of
20 [the proceedings] created possibility of prejudice, but that they worked to his actual and
21 substantial disadvantage, in affecting the state proceedings with error of constitutional
22 dimensions.”” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United
23 States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). A showing of undue
24 prejudice under NRS 34.726 necessarily implicates the merits of the post-conviction claims.
25 Rippo v. State, 134 Nev. 411, 422, 423 P.3d 1084, 1097, amended on denial of reh'g, 432 P.3d
26 167 (Nev. 2018).

27 To find good cause there must be a “substantial reason; one that affords a legal excuse.”
28 Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105

1 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition
2 must not be the fault of the petitioner. NRS 34.726(1)(a).

3 In the instant Petition, Petitioner has not even alleged, much less shown that an
4 impediment external to his defense kept him from filing his Petition in a timely manner. As
5 such, Petitioner cannot establish good cause sufficient to overcome the mandatory procedural
6 bars and this Petition should be denied.

7 Further, Petitioner cannot show that he was prejudiced at trial because none of the
8 underlying claims have any merit. The underlying claims of this Petition lack merit for the
9 following reasons.

10 **a. Petitioner Did Not Receive Ineffective Assistance of Counsel**

11 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
12 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
13 defense.” The United States Supreme Court has long recognized that “the right to counsel is
14 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
16 (1993).

17 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
18 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
19 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
20 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
21 representation fell below an objective standard of reasonableness, and second, that but for
22 counsel's errors, there is a reasonable probability that the result of the proceedings would have
23 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
24 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
25 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
26 inquiry in the same order or even to address both components of the inquiry if the defendant
27 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

28 //

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should “second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success.” Id. To be effective, the constitution “does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s

challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.” (emphasis added).

i. Counsel Was Not Ineffective in Cross-Examining Detective Miller

In Ground One, Petitioner alleges that trial counsel's cross-examination of Detective Miller established ineffective assistance of counsel. Pet. at 17. Specifically, Petitioner claims that Detective Miller's reports were sufficiently ambiguous that they merited impeachment material in regards to Detective Miller's testimony that Petitioner fired the first shot. Pet. at 17-18. According to Petitioner, this deprived him of a self-defense affirmative defense. Pet. at 17-19.

At trial, during the State's rebuttal, the Court elicited the following testimony from Detective Miller following a juror question:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

Q: I'm looking at –

A: Okay.

Q: --like right there.

A: May I read that?

Q: Yeah.

A: At that point Borero pulled a handgun from his right pocket and fired at the black male suspect, Muhammad-Coleman. I don't see where it says fired first.

Q: Well, if you look at the chronology of the events, the black made pulled a handgun from his right and pointed it, Borero appeared to try to push the gun away, black male struck the upper left side of Borero's body with the butt of the gun, at that point Borero pulled a handgun from his right pocket side, and fired. Nobody else has fired at the point that you make that observation.

A: Well, I don't read it that way. And based on physical evidence of where those cartridge cases are and with the fact that most semi-automatic handguns, I'm no firearms expert, but most fire and eject, when they eject, they eject to the right. As you can see on the video where Mr. Borero was standing in which direction he was facing prior to him heading west and south to the fact of where Mr. Coleman was standing and where his cartridge casings were located.

Q: Does the video show who shot first?

A: No

PS at 508-510

The declaration of warrant counsel used to impeach detective Miller read in relevant part:

At one point the black male suspect (Muhammad-Coleman) moved from the left rear of the Cadillac to stand on the opposite side of the white male (Bleak). The black male (Muhammad-Coleman) pulled a handgun from his right side and pointed it at Borero. Borero appeared to try and push the gun away and the black male (Muhammed-Coleman)

1 struck the upper left side of Borero's body with the butt of the gun.
2 At that point, Borero pulled a handgun from his right pocket and fired
3 at the black male suspect (Muhammad-Coleman).

4 PS at 595.

5 The record is clear. The Court elicited testimony from Detective Miller that she
6 believed Petitioner shot first based on the physical evidence. Petitioner's counsel immediately
7 attempted to impeach Detective Miller with the exact statement petitioner now alleges counsel
8 should have used. In fact, the relevant portion of the document was read almost word for word,
9 by Detective Miller, into the record and in front of the jury. As such, any claim that counsel
10 did not impeach Detective Miller is belied by the record. Pursuant to Hargrove, such an
11 allegation is insufficient to succeed on an ineffective assistance of counsel claim.

12 Petitioner also seems to allege that it was ineffective for counsel not to identify that the
13 above statement also appeared in Detective Miller's Application and Affidavit for search
14 warrant.¹ Pet. at 17. It is unclear how such a strategy would have made a more favorable
15 outcome at trial probable. When Detective Miller was impeached on the stand, she testified
16 that counsel was misreading the declaration of warrant. PS at 508-510. Detective Miller
17 indicated that she did not intend the statement to be construed as Borero shot first. Detective
18 Miller further reiterated that based on the physical evidence she believed Petitioner shot first.
19 To the extent Petitioner wanted to draw attention to the alleged inconsistency in Miller's
20 statements, his counsel accomplished that. However, given that Detective Miller offered an
21 explanation for this alleged inconsistency, it is dubious that showing another instance where
22 that exact same statement (which likely would have been explained the exact same way)
23 occurred would have had any additional effect. Given the dubious probative value of such a
24 line of questioning, whether to engage in it was clearly a strategic decision reserved for
25 counsel. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)(stating: Trial counsel has
26 the "immediate and ultimate responsibility of deciding if and when to object, which witnesses,

27 //

28 ¹ While Petitioner claims Detective Miller made this statement on three separate occasions, he only cites to
two documents: The Declaration of Warrant/Summons and Application and Affidavit for Search Warrant.

1 if any, to call, and what defenses to develop.”). Therefore, such a decision was neither
2 unreasonable, nor did it prejudice Petitioner.

3 Petitioner argues in the alternative that “to the extent the previous and impeachment
4 worthy statements were not identified at the time of trial, this amounted to IAC as a result of
5 an insufficient investigation.” A defendant who contends his attorney was ineffective because
6 he did not adequately investigate must show how a better investigation would have rendered
7 a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538
8 (2004). Given that counsel in fact impeached Detective Miller with the complained of
9 statement, it cannot be seriously alleged that counsel’s investigation was insufficient to the
10 point that he did not discover the statement. As such, this claim is belied by the record and is
11 suitable only for summary dismissal. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,
12 225 (1984).

13 Given that this claim is belied by the record, it should be denied.

14 **ii. Counsel Adequately Investigated and Utilized Information**
15 **Regarding Petitioner’s PTSD.**

16 In Ground One (c), Petitioner alleges his counsel “made a Motion to explore Darion’s
17 PTSD claims shortly before trial, and without sufficient investigation.” It is unclear if
18 Petitioner is alleging that trial counsel was ineffective for allegedly failing to investigate his
19 PTSD before filing the Motion, or before trial started. Either way, Petitioner is not entitled to
20 relief.

21 A defendant who contends his attorney was ineffective because he did not adequately
22 investigate must show how a better investigation would have rendered a more favorable
23 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

24 While counsel was aware that Petitioner had been shot at in his past, such knowledge
25 does not mean counsel should have inquired about PTSD. Petitioner had previously been
26 evaluated for competency on multiple occasions. Petitioner had also seen multiple mental
27 health professionals who all evaluated his mental health. PS at 661-678. None of them found
28 that he has PTSD. In fact, Petitioner does not present any evidence at this point that he has

1 ever suffered from PTSD. Instead, Petitioner cites to evaluations done to determine his
2 competency. None of these evaluations even mention Post-Traumatic Stress Disorder, let
3 alone imply that Petitioner suffers from it. Further, Petitioner's counsel's representations were
4 that Petitioner informed him of his alleged Post-Traumatic Stress Disorder "only recently"
5 before counsel was forced to file a Motion to Continue Trial Date. Motion to Continue Trial
6 Date, at 4, filed December 19, 2016. It is unclear why Petitioner believes his counsel should
7 have known about this alleged PTSD when trained mental health professionals were unable to
8 make such a diagnosis and Petitioner did not previously inform his counsel of the alleged
9 disorder.

10 Further, Petitioner has not shown that such an investigation would have rendered a
11 more favorable outcome at trial probable. As the State previously articulated, there is no
12 evidence Petitioner even has PTSD. Further, any evidence submitted that he did would have
13 been rebutted by the State by the various competency reports suggesting that Petitioner was
14 malingering. See PS at 661-678. As such, counsel's investigation was not ineffective, and this
15 claim has no merit.

16 **iii. Counsel Had No Obligation to Object to Detective Miller's**
17 **Testimony**

18 Petitioner alleges in Ground Two that Detective Miller's testimony regarding whether
19 Petitioner or Borero shot first was inappropriate expert testimony. Pet. at 23. Petitioner further
20 alleges that counsel was ineffective for failing to object to such testimony. Pet. at 23.

21 NRS 50.265 states:

22 If the witness is not testifying as an expert, the witness's testimony in
23 the form of opinions or inferences is limited to those opinions or
24 inferences which are:

- 25 1. Rationally based on the perception of the witness; and
- 26 2. Helpful to a clear understanding of the testimony of the witness or
the determination of a fact in issue.

27 A lay witness is not precluded from forming conclusions based on their perceptions.
28 Duran v. Mueller, 79 Nev. 453, 457, 386 P.2d 733, 735-36 (1963). In the instant case,

detective Miller was a detective who responded to the scene. She personally observed the locations of the various casings left in the parking lot as a result of the shooting. PS at 389-90. Further, Detective Miller viewed the surveillance video of the shooting. Therefore, there is no question that her testimony as to the location of the casings and the location of the two men were proper lay witness testimony.

The only other factor Detective Miller relied on in coming to the conclusion was that Petitioner likely fired first was the fact that the model of gun used by Borero typically discharges cases to the right. As such, Detective Miller deduced that Borero was probably not the one to fire first, as there were no casings recovered from where the casings would be found if Borero had fired first. PS at 508-510. To the extent that information regarding how Borero's gun discharged casings required expert testimony, said testimony had already been admitted through ballistics expert Anya Lester. PS at 352. Therefore, there was no reason for counsel to object to Detective Miller's testimony, as it was either based on her personal observations, or merely restated evidence already properly admitted. As such, whether to object on this basis was clearly a strategic decision. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object...).

Further, Detective Miller's conclusion was not expert testimony either. Detective Miller merely formed a conclusion based on observed phenomenon. Such a conclusion is not expert testimony pursuant to Duran, 79 Nev. at 457, 386 P.2d at 735-36 (finding that an investigator who had testified as to skid marks, point of impact, apparent car direction, and car damage could also testify to how two automobiles collided). Given that Detective Miller's testimony was based on her own observations, it was properly admitted lay witness testimony. To the extent that Borero's firearm discharged casings required expert testimony, her testimony was corroborated by expert witness Anya Lester. As such, any objection would not have kept any information from the jury, and Petitioner cannot successfully claim that counsel's decision was either unreasonable or prejudicial. Therefore, counsel was not ineffective and this underlying claim has no merit.

1 issue with defense counsel's representation that Petitioner being the defendant instead of the
2 victim in this case was "happenstance" by stating:

3
4 But I -- I understand and I don't think the State was making the
5 argument that 8-to-20 was too light in that case, it's how do you view
6 the murder knowing that with a month prior to this case occurring
7 those other things were occurring. . And I agree that those are -- those
8 are two separate events and they both deserve recognition from a --
9 from a punishment standpoint because we're dealing with horribly
10 violent crimes. But I will also tell you that I sat through the same trial
11 that you all did obviously and -- and it was -- and I agree with you,
12 Mike, that you can't just watch a video and tell what it is that -- that
13 happened in a vacuum. But I think watching the video, listening to the
14 testimony, looking at what the forensic evidence was about where
15 shell casings were found, I am convinced that your client not only
16 pulled the weapon first but he shot first as well before Mr. Borero had
17 produced a handgun.

18
19 And that's based in part on the conduct of the people in the video, the
20 reaction to certain things occurring. I think Mr. Borero was shot and
21 going down before he started firing his gun. And I think that's why
22 the jury convicted your client of first degree murder regardless of
23 whether they think a robbery actually occurred, I think there was
24 evidence for them to say you produced a gun and shot the man and
25 they -- they found him guilty on the premeditated and deliberate
26 theory. So, in any event, I won't belabor it.

27 PS at 644, 649-50.

28
29 Nowhere in the sentencing transcript is Detective Miller or her testimony specifically
30 mentioned. The sentencing judge was clear that it relied on all of the facts proven beyond a
31 reasonable doubt at trial, as well as Petitioner's violent history. Given that neither of these
32 considerations are improper, the sentencing court did not rely on improper evidence at
33 sentencing.

34
35 Finally, the State would note that the sentencing court issued a sentence of twenty (20)
36 years -- life imprisonment on the first-degree murder charge (the only charge to which
37 Detective Miller's allegedly improper testimony would have been relevant). Pursuant to NRS
38 200.030, that is the lightest sentence Petitioner could have received on this charge. Therefore,

1 even if Petitioner is correct in stating that the sentencing court relied on improper evidence,
2 he cannot show prejudice. Therefore, this underlying claim has no merit.

3 **c. The State Did Not Elicit Testimony Regarding Petitioner's Post-Arrest**
4 **Silence**

5 In Ground Four, Petitioner alleges that Detective Miller "specifically acknowledged
6 Darion's post-arrest silence regarding any self-defense theory."

7 "The prosecution is forbidden at trial to comment upon a defendant's election to remain
8 silent following his arrest and after being advised of his rights as required by *Miranda v.*
9 *Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)." Murray v. State, 113 Nev. 11,
10 17, 930 P.2d 121, 124 (1997) (citing Neal v. State, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990).
11 In Murray, the defendant did not make a statement to authorities until he testified before the
12 grand jury. Id. at 15, 930 P.2d at 123. The State sought to impeach the defendant by stating
13 that trial was the first time the defendant had explained his side of the story. Id. at 17-18, 930
14 P.2d at 124-25.

15 A statement in reference to a recorded statement made by a defendant to authorities is
16 not a comment on the defendant's right to remain silent under plain error review. Houtz v.
17 State, No. 60858, 2013 WL1092730, Mar. 14, 2013, 129 Nev. 1123 (2013) (unpublished
18 disposition). Further, any cross-examination into inconsistencies between a defendant's
19 testimony and defendant's voluntary statement to authorities after being read his rights under
20 Miranda is not an impermissible comment on post-arrest silence. Morales v. State, No. 54216,
21 2010 WL3384992, Jul. 15, 2010, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished
22 disposition). Comments on a defendant's post-arrest silence are held to be harmless beyond a
23 reasonable doubt if "(1) at trial there was only passing reference, without more, to an accused's
24 post-arrest silence, or (2) there was overwhelming evidence of guilt." Morris v. State, 112
25 Nev. 260, 263, 913 P.2d 1264, 1267 (1996).

26 Petitioner alleges that Detective Miller inappropriately commented on his post-arrest
27 silence when she claimed Petitioner never mentioned that he acted in self-defense. Pet. at 24.
28 In context, the following exchange occurred between the State and Detective Miller:

1 Q At this point, Mr. Muhammad-Coleman was arrested on an arrest
2 w arrant; is that correct?

3 A Yes.

4 Q And you were going to charge him with homicide?

5 A Yes.

6 Q Or murder?

7 A Yes.

8 Q And did you read Mr. Coleman his rights?

9 A I did.

10 Q How did you read him his rights?

11 A Directly from an advisement of rights card.

12 Q Okay. Did he acknowledge that he understood his rights?

13 A Verbally and he signed the card.

14 Q Okay. So the actual card you read his rights from you had him sign
15 it?

16 A I did.

17 Q And did Mr. Coleman actually decide to talk to you after being read
18 his rights?

19 A Yes, he did.

20 Q Okay. And that includes, you know , you have the right to remain
21 silent and the right to have an attorney during questioning?

22 A Yes.

23 Q Okay. And then you actually had a conversation with him about
24 April 19th, 2013?

1 A I did.

2

3
4 Q Okay. Additionally, do you say some things in order to try to get
5 someone talking like maybe throw out self-defense, for example?

6 A Yes.

7 Q And you do that for the purposes to get an individual to talk about
8 an incident?

9 A Yes.

10 Q In your experience do people find it hard to talk about being
11 involved in a murder?

12 A Absolutely.

13 Q Okay. Did you do that in this case? Did you throw out self-defense,
14 you had to do it? That type of situation?

15 A Yes. Q And were -- during that period of time, and we'll get into it
16 with the video, but did Mr. Coleman ever say that he had to do it, it
17 was self-defense on April 19th, 2013?

18 A No, he never mentioned that.

19 PS at 487-89.

20 The transcript reveals that Detective Miller's testimony regarded Petitioner's voluntary
21 statement made after being informed of his rights under Miranda. As such, this was not an
22 improper commentary on Petitioner's post-arrest silence. Morales v. State, 126 Nev. 740, 367
23 P.3d 802 (2010) (unpublished disposition). For Petitioner to claim otherwise is puzzling given
24 that he does not appear to have remained silent or to have invoked his right to remain silent
25 during this conversation. Instead, Detective Miller merely explained what information
26 Petitioner did or did not disclose during a voluntary and legal interrogation.

27 To the extent Detective Miller's testimony constituted a commentary on Petitioner's
28 post-arrest silence, such a commentary was harmless. First, there was only passing reference

made as to Petitioner not previously stating he acted in self-defense. The State brought out that Petitioner's story was inconsistent only twice: first during the testimony of Detective Miller, and then again during closing arguments. PS at 550. Second, the evidence of guilt was overwhelming in the instant case. An eyewitness and surveillance video placed Petitioner as the individual who shot and killed the victim. Further, forensic evidence demonstrated that Petitioner fired first, thereby negating any self-defense claim.

As such, the underlying claim has no merit. Since none of Petitioner's underlying claim have merit, Petitioner was not prejudiced at trial. Petitioner has also failed to show that an impediment external to his defense kept him from overcoming the mandatory procedural bars. Since the Petition was untimely pursuant to NRS 34.726, and Grounds Three and Four were waived for failure to bring on appeal, Petitioner's Petition should be denied.

III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held*.
2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it

existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

Further, the United States Supreme Court has held that an evidentiary hearing is not required simply because counsel's actions are challenged as being unreasonable strategic decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc rationalization for counsel's decision making that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

In the instant case, all of Petitioner's claims can be disposed of without expanding the record. First, the Petition is procedurally barred. Second, Petitioner has failed to show that an impediment external to his defense kept him from complying with the procedural bars. Third, Petitioner was not prejudiced at trial. Petitioner's Supplement provides adequate ground to ascertain that counsel was not ineffective, that the sentencing court did not rely on improper evidence, and that the State did not improperly comment on Defendant's post-arrest silence. As such, this request should be denied.

IV. THERE IS NO CUMULATIVE ERROR

Defendant asserts a claim of cumulative error in the context of ineffective assistance of counsel. The Nevada Supreme Court has never held that instances of ineffective assistance of counsel can be cumulated; it is the State's position that they cannot. However, even if they could be, it would be of no moment as there was no single instance of ineffective assistance in Defendant's case. See *United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir. 1990) (“[A]

1 cumulative-error analysis should evaluate only the effect of matters determined to be error,
2 not the cumulative effect of non-errors.”). Furthermore, Defendant’s claim is without merit.
3 “Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the
4 issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the
5 crime charged.” Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). Furthermore, any
6 errors that occurred at trial were minimal in quantity and character, and a defendant “is not
7 entitled to a perfect trial, but only a fair trial.” Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114,
8 115 (1975).

9 In the instant case, there was no error in Petitioner’s proceedings. Further, the issue of
10 guilt was not close, as multiple witnesses, video surveillance, and forensic evidence were
11 presented against petitioner at trial. Finally, the gravity of the crime charged is extreme, given
12 that Petitioner was convicted of first-degree murder. Therefore, this claim should be denied.

13 CONCLUSION

14 For the reasons set forth above, the court should deny Petitioner’s Post-Conviction
15 Petition for Writ of Habeas Corpus.

16 DATED this 5th day of March, 2020.

17 Respectfully submitted,

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

20
21 BY /s/ KAREN MISHLER
22 KAREN MISHLER
Deputy District Attorney
Nevada Bar #13730

23 CERTIFICATE OF ELECTRONIC SERVICE

24 I hereby certify that service of the foregoing, was made this 5th day of March, 2020,
25 by electronic service to:

26 WALEED ZAMAN, ESQ.
27 E-mail Address: wally@zamanlegal.com

28 KM/re/lm/GU /s/ Laura Mullinax
Secretary for the District Attorney's Office

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1

2

3

1

4

1

1

6

8

9

10

11

14

1

15

19

16

10

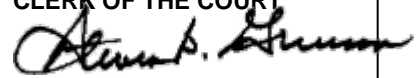
17

17

18

INDEX

<u>Document:</u>	<u>BATES. No.</u>
Indictment.....	Vol. 1 - 001
Petition for Writ of Habeas Corpus and Exhibits.....	Vol. 1 - 010
Supplemental Appendix of Exhibits with NDOC Phone Calls.....	Vol. 3 - 716
State’s Opposition to Petition for Writ of Habeas Corpus.....	Vol. 3 - 724
Reply to State’s Opposition.....	Vol. 4 - 751
Notice of Entry of Findings of Fact, Conclusions of Law and Order.....	Vol. 4 - 761
Notice of Appeal.....	Vol. 4 - 788
RTRANS Petition for Writ of Habeas Corpus – October 12, 2020.....	Vol. 4 - 790
RTRANS Evidentiary Hearing – December 18, 2020.....	Vol. 4 - 811
RTRANS Supplement to Petition – February 22, 2021.....	Vol. 4 - 837
Certificate of Judgment – Supreme Court of the State of Nevada.....	Vol. 4 - 848
Defense Council’s Motion to Continue Trial.....	Vol. 4 - 858
Eighth Judicial District Court Minutes – November 28, 2016.....	Vol. 4 - 884
Competency Evaluations of Petitioner.....	Vol. 4 - 885



RPLY

Waleed Zaman, Esq.
Nevada State Bar No. 13993
Zaman Legal
2880 S. Jones Blvd., Suite 3
Las Vegas, NV 89146
Ph: 702-359-0157
F: (702) 920-8837
Wally@ZamanLegal.com
Attorney for Petitioner, Darion Muhammad-Coleman

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

DARION MUHAMMAD-COLEMAN,

Petitioner,

vs.

RENEE BAKER, WARDEN,

Respondent.

Case No: A-19-806521-W/ C-13-293296-2

Dept. No: III

**REPLY TO STATE'S OPPOSITION TO
PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)**

COMES NOW, Defendant, Darion Muhammad-Coleman, by and through counsel, Waleed Zaman, Esq., of Zaman Legal LLC, and submits the following Reply to State's Opposition to Petition for Writ of Habeas Corpus (post-conviction). This Petition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this honorable Court.

DATED this 17th day of April 2020.

submitted by: /s/ Waleed Zaman

Waleed Zaman, Esq.
Nevada Bar Number: 13993
2880 S. Jones Blvd. Suite #3
Las Vegas, Nevada 89146
Tel: (702) 359-0157
Attorney for Petitioner

1 **LEGAL ARGUMENT**

2 **I. Darion's claims are not procedurally barred, or alternatively, are supported by good**
3 **cause.**

4 NRS 34.726(1) provides this Court discretion to extend the time for filing based upon good
5 cause. Here, good cause exists, given that the basis for filing on several claims did not exist until
6 after the additional investigation prior to filing was complete. Such matters were further stipulated
7 to by all parties, including the District Court and the State. Furthermore, this resulting impediment
8 was external to the defense, as it concerned Darion's reasonable expectation based on the
9 aforementioned parties' behavior that good cause was impliedly found, and that the date of filing
10 caused no procedural bar. Additionally, such was clearly not Darion's fault, nor was it due to any
11 intentional delay. Furthermore, to the extent the delay was necessary to properly and effectively
12 allow for proper claim exhaustion, good cause exists to overcome any procedural bars should the
13 Court find that any exist.

14 Furthermore, the laches factors weigh in favor of allowing the instant petition to be heard on
15 its merits. First, Darion's delay is excusable, as it is both minimal in time, and indicates that he
16 waited only the time necessary to conduct the proper investigation to support his petition before
17 filing. *See Harris v. State*, 130 Nev. 435, 440, 329 P.3d 619, 622 (2014). The instant Petition also
18 only constitutes approximately two (2) months delay, as opposed to several-years-long delays, for
19 which the Court has previously denied relief. *See State v. Eighth Judicial Dist. Court (Riker)*, 121
20 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Additionally, Darion did not knowingly acquiesce to
21 anything causing such delay. *Id.* Finally, the State has made no specific allegations regarding
22 prejudice to it in this case, other than the length of time that has elapsed. Therefore, Darion has
23 established good cause to overcome any procedural bars pursuant to NRS 34.726 or NRS 34.810(2).

24 **a. Good cause exists to hear Claims III and IV despite that they were not argued**
25 **on direct appeal.**

26 Importantly, Claims III and IV are supported by good cause. Specifically, Claims III and IV
27 concern conduct for which Darion is effectively claiming trial counsel was ineffective. This shows
28 it would be unreasonable to further prejudice Darion by disallowing such arguments at this time.

1 This also suggests that there would have existed a conflict to address the same at direct appeal, as
2 the arguments may have required acknowledging that there was no timely objection at trial.
3 Notwithstanding, Darion additionally realleges the good cause indicated *supra*, and has established
4 good cause for the District Court to hear his argument on the merits.

5 **II. IAC both existed and prejudiced Darion.**

6 **a. The State errs in its analysis of Det. Miller's testimony, and as a result,**
7 **previous counsel's failure to properly argue Detective Miller's contradictory**
8 **statements amounted to IAC.**

9 The State takes Detective Miller's denial of her own chronologically detailed report at face
10 value, despite that it is illogical. *See Opps.* at 16. Detective Miller's testimony that she never sought
11 to have her chronological report be read so when it did not suit her, poses two inescapable problems.
12 *See Id.* First, in the light most favorable to the State, this means that it was ineffective for previous
13 counsel to fail to mention the same at closing. Should his cross-examination have been sufficient as
14 the State indicates, the only purpose of such would be to lay the groundwork for argument at closing,
15 and yet the matter was completely ignored. *See Supp.* at 555-62. Alternatively, there is no reasonable
16 reading of Det. Miller's search warrant application, other than that it unambiguously indicates who
17 shot first, and her testimony was therefore clearly contradictory to her own previous statements under
18 penalty of perjury. *See Suppl.* at 594-953. And again, while the State claims that Det. Miller was
19 impeached with her statement, it neglects to point out that previous counsel's failure to make even
20 passing reference to such at closing was central to destroying Darion's credibility. *See Opps.* at 17.
21 As a result, the jury could only believe that Det. Miller never implied that Mr. Borero fired first, and
22 the lack of pointing such out to the jury amounted to IAC. This is exacerbated by the fact that previous
23 counsel abandoned the line of questioning during cross-examination about such inconsistencies only
24 to confirm that the video did not show who shot first, while neglecting the argument thereafter.

25 Additionally, the State claims that other investigative evidence produced by Det. Miller
26 indicating the same regarding the shooting sequence produces only dubious evidentiary value. *See*
27 *Opps.* at 16. However, the matter of who shot first was central to this case, and each additional claim
28 by Det. Miller implying that the Mr. Borero shot first, only compounds the doubt cast against her

1 credibility at trial, had they been mentioned. Indeed, its importance was evidenced by the fact that a
2 juror specifically posed the question to Det. Miller. *Supp.* at 507. Therefore, it was IAC to fail to
3 impeach Det. Miller, and alternatively, it was IAC to fail to argue to the jury regarding the same
4 during closing.

5 **b. The State incorrectly argues that previous counsel adequately and reasonably**
6 **investigated and utilized information regarding Petitioner's PTSD.**

7 Although previous counsel indicated that the claims for PTSD were made to him only
8 recently, this is belied by record, and does not minimize counsel's duty to investigate the same,
9 particularly when it was crucial to Darion's self-defense argument. First, there are at least two (2)
10 competency referrals that indicate the prior shooting and/or PTSD, the dates of which are September
11 and October of 2013 respectively. *Supp.* at 670-78. This timeline belies the State's inference that the
12 failure to timely investigate PTSD was petitioner's fault due to indicating them to counsel "only
13 recently." *Opps.* at 18. Clearly, a reasonable basis upon which previous counsel could rely existed
14 years prior to his Motion on December 19, 2016. *Opps.* at 18. Furthermore, and upon information
15 and belief, Darion is prepared to testify that he requested the PTSD evaluation significantly before
16 such date.

17 Notwithstanding the above, the State argues that no such failure can be held against previous
18 counsel due to the failure of trained mental health professional to make such a diagnosis. *Opps.* at 18.
19 However, this fails to consider that the competency reports, by both their own unambiguously written
20 words, and their legal directive, rely on the *Dusky* standard, asking only whether the defendant
21 understands the charges against him/her, and whether the defendant can assist in his/her
22 representation. *Supp.* at 676-77. To consider this evaluation tantamount to an evaluation for PTSD,
23 posits an unreasonable expectation to address matters outside its scope, as such are simply not the
24 purpose of the medical professionals' findings and recommendations. This is akin to arguing that the
25 lack of a finding of a broken bone on an MRI is dispositive that no bone is broken.

26 Alternatively, the State argues that the same competency reports found Darion to be
27 malingering, but the State does not address that the same reports acknowledge that their findings were
28 not dispositive regarding mental illness. *Supp.* at 670-78. As stated in the Petition, Dr. Harder's

1 evaluation indicates that his findings are not inconsistent with any other mental illness. *Supp.* at 677.
2 Thus, the State's proposed argument that Darion is malingering is contradicted by the very reports
3 the State would seek to use to prove the same. *Opps.* at 17-18. Additionally, the evidence showing
4 that such would have provided a more favorable outcome was mentioned at length in the Petition.
5 *Petn.* at 21. For instance, there was no percipient eyewitness, which put particular emphasis on
6 Darion's actions and his explanations thereof, giving great weight, *arguendo*, to why he might feel
7 necessary to pull a firearm when another reasonable person might not. Therefore, failure to properly
8 investigate the PTSD claims or timely prepare such an evaluation for Darion before trial amounted
9 to IAC.

10 **c. Previous Counsel failure to object to Det. Miller's testimony was due to IAC,**
11 **as the testimony did not concern lay witness testimony and Det. Miller was not**
12 **noticed as an expert witness.**

13 Failure to object to improperly produced expert testimony amounted to IAC. The State
14 correctly argues that Det. Miller's testimony of her personal observations of the locations of the
15 casings at the scene are proper but errs in its analysis when it does not consider that her claims
16 reconstructing the shooting amounted to expert testimony. *See Opps.* at 18. The State seeks to
17 minimize this by claiming Detective Miller based her finding on the location from which the bullet
18 casings in Mr. Borero's gun ejected. *See Opps.* at 19. However, this does not make immaterial the
19 substantial science that likely supports shooting reconstruction testimony, and for which Det. Miller
20 has no such expert witness disclosure. Moreover, it is simply not dispositive that no casing were
21 located near the location of the initial confrontation, as the scene was not immediately locked down
22 afterwards, there was an abutting wall over which such casings could have been found, and finally
23 the people nearby could have disturbed the casings. *See Suppl.* at 282. This is the precise reason why
24 a lay observation of the location of bullet casings cannot substitute for an expert shooting
25 reconstruction, lest expert witness testimony be rendered meaningless, and officers are allowed to
26 substitute their own scientific opinions solely on the basis of their training and experience.

27
28

1 **III. Improper evidence was relied upon at sentencing pursuant to *Allred*, not because the**
2 **Court abused its discretion, but because it was not armed with information central to**
3 **casting doubt on a finding that prejudiced Darion.**

4 Although the State argues that Det. miller was not mentioned at sentencing, it appears that
5 the Court found her testimony about the shooting sequence credible. *See Opps.* at 21; *Suppl.* at 649.
6 Although the District Court did not specifically mention Det. Miller by name, it did indicate that its
7 decision was based on the testimony, of which the most damning against Darion was Det Miller's.
8 For the District Court to not thereafter be provided information that would contradict the finding that
9 Darion shot first, caused substantial prejudice to Darion. While the State correctly notes that the
10 punishment was the minimum allowable by law for the murder charge, the fact that it was imposed
11 consecutively to Darion's other matter is evidence of prejudice. *See Opps.* at 21. Furthermore, it is
12 reasonable to assume that multiple pieces of evidence unambiguously impeaching Det Miller's
13 statements could have challenged the Court's views that Darion shot first, and that he shot first before
14 Mr. Borero even produced a weapon. *Suppl.* at 649. This is crucial because this precise fact is
15 unambiguously contradicted in Det. Miller's reports, which indicate that no weapon was shot prior
16 to Mr. Borero producing his handgun. *See Suppl.* at 628. Moreover, Darion's claims are not that the
17 Court abused its discretion in sentencing him, but that the unchallenged evidence provided to the
18 same was verifiably untrue, and the existence of such was prejudicial to Darion. Therefore, the
19 Judgment of Conviction must be overturned pursuant to *Allred*.

20 **IV. The State improperly commented on Darion's post arrest silence in its case in chief, in**
21 **its cross examination of Darion, and in its closing arguments.**

22 Although the State claims that it only referenced Darion's silence in passing, the references
23 were in fact repeated, and highly prejudicial to his credibility. *See Opps.* at 24-25. For instance, Det.
24 Miller's claim that Darion did not claim self-defense at any time during the interview is concerning,
25 given that she also claimed that she invoked for him near the end of the same interview. *Suppl.* at
26 503-04.

27 Furthermore, established case law shows that the aforementioned, as well as comments
28 during closing about post-arrest silence are disallowed. *Morris v. State*, 913 P.2d 1264 (Nev. 1996).

1 In *Morris*, the Court held that comments on post-arrest silence are equally prejudicial and forbidden
2 when used in the State's case-in-chief, in addition to when used to impeach a defendant. *Id.* The
3 Court has also said that "the prosecution is forbidden at trial to comment upon a defendant's election
4 to remain silent following his arrest and after being advised of his rights" whether or not *Miranda*
5 warnings have been provided. *Murray v. State*, 930 P.2d 121 (Nev. 1997). Finally, such comments
6 are not shown to be harmless beyond a reasonable doubt and are thus such that demand reversal. *Id.*

7 Similarly, such comments about Darion's silence and his time throughout that silence to
8 concoct a story are improper comments on his post-*Miranda* silence prior to trial. For instance,
9 in *Murray*,

10 "the prosecutor referred to Murray's silence as evidence of his lack of veracity and
11 his guilt, making the following statements. "He's had over six years to manufacture
12 this." "There's another inescapable fact that you can conclude: What kind of person
13 maintains silence for six and-a-half years about the horrible murder and burning of
14 a human being? The man that did it."

15 The State's comments at closing are almost indistinguishable and as follows: "The four year plan,
16 what's that? Well the Defendant has four years to figure out what he was going to say on the stand."
17 *Supp.* at 550. In an substantially more similar case, this Court held that it was improper for the State
18 to claim that the defendant did not tell the story he told at trial to the Detective upon his arrest, and
19 that "Does he tell anyone? Does he tell anyone? No. He tells the attorneys later as he begins to work
20 on his story." *Neal v. State*, 106 Nev. 23, 787 P.2d 764 (1990). The comments in the instant matter
21 are indistinguishable from the above, and therefore, the State improperly commented on Darion's
22 post arrest silence.

23 **V. There must be an evidentiary hearing to expand the record based on the claims**
24 **alleged herein that are supported by the record.**

25 Petitioner respectfully contends that the claims herein demand an evidentiary hearing as they
26 find support in the record that does not belie or repel them. First, the procedural bars, as discussed
27 *supra*, are supported by good cause. Additionally, the PTSD claims are supported by the record, and
28 if true, entitle Darion to the relief he seeks. The State's implication that Darion's own delay caused

1 him prejudice is belied by the record. *See Opps.* at 18. Furthermore, previous counsel’s claim that
2 he only recently learned of the PTSD does not repel Darion’s claims. *Id.* In fact, such is repelled by
3 this case’s record. Additionally, in the light most favorable to the State, the competency reports are
4 inconsistent regarding PTSD, and thus do not belie or repel Darion’s claims. This means an
5 evidentiary hearing is demanded before this Petition can be resolved, should the Court not find
6 enough to grant the relief requested solely on the pleadings.

7 **VI. Cumulative error is particularly important given the close issue of innocence and**
8 **guilt, and the crucial significance of the errors that precluded Darion from presenting**
9 **his defense.**

10 As a result, Darion humbly pleads that the errors alleged herein, when combined, caused
11 impermissible cumulative error. Furthermore, the Court considers that the “relevant factors to
12 consider in evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the
13 quantity and character of the error, and (3) the gravity of the crime charged.” *Mulder v. State*, 116
14 Nev. 1, 17, 992 P.2d 845, 855 (2000). Here, the State claims that the issue of guilt was not close,
15 however the evidence at trial was limited, as even the District Court acknowledged at sentencing
16 that the video did not clearly identify (in a vacuum) what occurred. *Supp.* at 649; *see also Opps.* at
17 27. Moreover, the video surveillance and the forensic evidence to which the State point are not
18 dispositive, as Darion acknowledged that he shot the victim, but claimed that he did so in self-
19 defense. This is in addition to the fact that Darion was found “Not Guilty” of felony murder, or of
20 the also charged robbery, further evidencing that the issue of guilt was close. Additionally, the errors
21 alleged are substantial because they concern failure to challenge crucial evidence in the State’s case
22 that contradicted Darion’s self-defense claim and were central to his credibility. Finally, counsel
23 acknowledges the instant matter is serious, but posits that the totality of the factors nonetheless
24 weight in favor of cumulating such errors. Thus, the combined errors herein violated both Darion’s
25 federal and state constitutional rights, even if this Court does not find any individual error discussed
26 as an independently sufficient basis for the relief sought.

27 ///

28 ///

1 CONCLUSION

2 Pursuant to the arguments above, Mr. Muhammad-Coleman requests that this Court; 1) strike
3 the Judgment of Conviction in this matter, or alternatively, set this matter for an evidentiary hearing,
4 and 2) grant any other relief to which petitioner may be entitled or the Court deems proper.
5

6 */s/ Waleed Zaman*
7 *Waleed Zaman, Esq.*
8 *Attorney for Petitioner*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing document with the Eighth Judicial
3 District Court by using the Wiznet E-Filing system. I certify that the following parties or their counsel
4 of record are registered as e-filers and that they will be served electronically by the system:
5 PDMotions@clarkcountyda.com; Karen.Mishler@clarkcountyda.com.

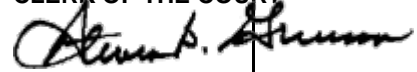
6 I further certify that on April 17th, 2020, I served a true and correct copy of the foregoing
7 **REPLY TO STATE'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**
8 **(POST-CONVICTION)** through personal mail, addressed in a sealed and prepaid envelope to:

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Darion Muhammad-Coleman, #1144228
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

DATED this 17th day of April 2020.

By: /s/Waleed Zaman
Waleed Zaman, Esq.



1 NEFF

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 DARION COLEMAN,

5
6 Petitioner,

Case No: A-19-806521-W

Dept No: X

7 vs.

8 RENEE BAKER,

9 Respondent,

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

10
11 **PLEASE TAKE NOTICE** that on April 23, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on April 26, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 26 day of April 2021, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23 ☒ The United States mail addressed as follows:

24 Darion Coleman # 1144228 Waleed Zaman, Esq.
1200 Prison Rd. 6620 S. Tenaya Way, Ste 100
25 Lovelock, NV 89419 Las Vegas, NV 89113

26 /s/ Amanda Hampton

27 Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DARION MUHAMMAD-COLEMAN,
#2880725

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-806521-W

(C-13-293296-2)

DEPT NO: X

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: FEBRUARY 22, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable TIERRA JONES, District Judge, on the 22nd day of February, 2021, the Petitioner present, represented by WALEED ZAMAN, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

//

//

//

//

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On October 11, 2013 the State of Nevada filed an Indictment charging Darion
4 Muhammad-Coleman (hereinafter "Petitioner") with the following: Count 1 – Conspiracy to
5 Commit Robbery (Category B Felony – NRS 199.480, 200.380); Count 2 – Attempt Robbery
6 with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Count
7 3 – Murder with Use of a Deadly Weapon (Category A Felony NRS 200.010, 200.030,
8 193.165); Count 4 – Battery with Use of a Deadly Weapon (Category B Felony – NRS
9 200.481); Count 5 – Assault with Use of a Deadly Weapon (Category B Felony – NRS
10 200.471); Count 6 – Conspiracy to Violate the Uniform Controlled Substances Act (Category
11 C Felony – NRS 453.401); and Count 7 – Attempt to Possess Controlled Substance (Category
12 E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

13 On October 18, 2013, Petitioner's initial arraignment was continued for a competency
14 evaluation at defense counsel's request. Subsequently, Petitioner was found competent to
15 stand trial on November 8, 2013.

16 Petitioner was then arraigned on November 18, 2013, and pled not guilty. On November
17 26, 2013, Petitioner filed a pre-trial Petition for Writ of Habeas Corpus. On March 18, 2014,
18 the State filed its Return. On April 2, 2014, the district court denied Petitioner's pre-trial
19 Petition for Writ of Habeas Corpus and set a trial date.

20 Petitioner then filed a Motion to Dismiss Counsel of Record, which was heard on May
21 12, 2014. The motion was denied.

22 On September 26, 2014, Petitioner filed a Motion to Allow the Use of Jury
23 Questionnaire; this motion was denied and the trial date was re-set.

24 Defense counsel filed a motion seeking to withdraw from representation of Petitioner,
25 and this motion was granted on December 1, 2014; as a result, the trial date was re-set.

26 On January 5, 2015, the district court was notified that Petitioner was in competency
27 court in one of his other cases. Petitioner was once again found competent and the matter was
28 referred back to district court.

1 On July 25, 2015, Petitioner advised the court that the possible plea negotiations had
2 fallen through, and the trial date was re-set yet again.

3 Petitioner then filed a Motion to Withdraw Counsel and for a Faretta canvass, which
4 was heard on March 2, 2016. On March 9, 2016, the court conducted a Faretta canvass and, at
5 the conclusion, Petitioner advised the court that he wanted to remain with his attorney; the trial
6 date was vacated and re-set.

7 On November 28, 2016, the State announced ready for trial, however, Petitioner again
8 requested a continuance of the trial date orally; the court directed counsel to file a written
9 motion. On December 19, 2016, Petitioner filed a Motion to Continue Trial Date. On
10 December 28, 2016, the court denied Petitioner's Motion to Continue Trial Date and sealed
11 copies of each of Petitioner's competency evaluations.

12 Trial was set to begin on January 3, 2017; however, the presiding judge fell ill and the
13 trial was transferred to a different district court department and began the next day on January
14 4, 2017. The trial lasted six days and on January 11, 2017, the jury returned the following
15 verdict: Count 1, Conspiracy to Commit Robbery, not guilty; Count 2, Attempt Robbery with
16 Use of a Deadly Weapon, not guilty; Count 3, Murder with Use of a Deadly Weapon, guilty
17 of First Degree Murder With Use of a Deadly Weapon; Count 4 Battery with Use of a Deadly
18 Weapon, guilty of Battery with Use of a Deadly Weapon; Count 5 Assault with a Deadly
19 Weapon, not guilty; Count 6, Conspiracy to Violate Uniform Control Substances Act, guilty
20 of Conspiracy to Violate Uniform Substances Act; Count 7 Attempt to Possess Controlled
21 Substance, guilty of Attempt to Possess Controlled Substance.

22 Petitioner was sentenced as follows: Count 3 – to Life with a Minimum parole
23 eligibility of two hundred forty consecutive months in the Nevada Department of Corrections,
24 plus a consecutive sentence of a minimum of sixty months and a maximum of two hundred
25 and forty months for the Deadly Weapon Enhancement, for a total Aggregate sentence of Life
26 with the possibility of parole after a minimum of three hundred months have been served;
27 Count 4 – a minimum of forty-eight months and a maximum of one hundred twenty months
28 in the Nevada Department of Corrections concurrent with Count 3; Count 6 – a minimum of

1 twenty-four months and a maximum of sixty months in the Nevada Department of Corrections,
2 concurrent with Count 3; and Count 7 – Defendant is adjudicated guilty of the Felony and is
3 sentenced to a minimum of nineteen months and a maximum of forty-eight months in the
4 Nevada Department of Corrections to run concurrent with Count 3, and consecutive to Case
5 C299066. Petitioner received seven hundred twenty days credit for time served.

6 The Judgment of Conviction was filed on March 29, 2017.

7 On April 14, 2017, Petitioner filed a Notice of Appeal. On July 3, 2018, the Supreme
8 Court of Nevada affirmed Petitioner’s conviction. Remittitur was issued on July 30, 2018.

9 An Amended Judgment of Conviction was filed on August 29, 2018. On August 1,
10 2019, Petitioner filed a Motion to Extend Time for Petition for Post-Conviction Writ of Habeas
11 Corpus. Petitioner requested an additional sixty (60) days to file his Petition. On August 27,
12 2019, Petitioner and the State entered into a Stipulation and Order to Extend Time. Petitioner
13 and the State stipulated to extend the time for filing Petitioner’s Petition from August 2, 2019
14 to October 1, 2019.

15 On December 6, 2019, Petitioner filed his Petition for Writ of Habeas Corpus. On
16 March 5, 2020, the State filed its Opposition to Petitioner’s Petition for Writ of Habeas Corpus.
17 On April 17, 2020, Petitioner filed his Reply. On October 12, 2020, the Court heard oral
18 arguments on the briefings from both parties. On October 13, 2020, the Court filed a minute
19 order denying Petitioner’s Petition in part, but finding that an evidentiary hearing was needed
20 prior to ruling on Petitioner’s claim that counsel was ineffective in investigating Petitioner’s
21 PTSD prior to trial. On December 18, 2020, the Court held the evidentiary hearing on the
22 limited issue of Petitioner’s PTSD claim. The Court withheld its ruling on the matter so that
23 counsel could investigate a possible phone call between Petitioner and his previous counsel in
24 March of 2016 which may have contained information regarding the PTSD issue. On February
25 22, 2021, the Court denied Petitioner’s Petition and found as follows.

26 FACTS

27 On April 19, 2013, in the area of the “Naked City,” Petitioner met codefendant Dustin
28 “Criminal” Bleak (“Bleak”) and Bleak’s brother, Travis “Ponytail” Costa (“Costa”). v

1 individually approached Richard "Mechanic" McCampbell ("McCampbell") and asked him
2 for a ride. McCampbell was well-known throughout the area as a fixer of cars and a person
3 who would give people rides to do errands. McCampbell was sitting in his blue Cadillac Coupe
4 DeVille, having just finished a job and purchasing some alcoholic beverages. McCampbell
5 knew Petitioner from prior encounters when McCampbell had given Petitioner rides to do
6 errands.

7 Petitioner told McCampbell that he wanted to go to the area of Boulder Highway and
8 that the trip would take ten minutes. McCampbell agreed to give Petitioner a ride and they
9 agreed that McCampbell would receive ten dollars in gas money. As this agreement was
10 struck, Bleak and Costa appeared and Petitioner explained that they would be going along for
11 the ride too. Petitioner sat in the front passenger seat, Bleak sat in the rear passenger seat
12 behind Petitioner, and Costa sat in the rear passenger seat behind McCampbell.

13 As McCampbell drove, he was directed to the area of Charleston and Eastern where
14 there is a large shopping center containing a Lowe's and a 7-11. Costa told McCampbell to
15 park around the side of the 7-11 building because he wanted to buy beers for himself and
16 Bleak. McCampbell started to become nervous that the men might rob the 7-11. The three men
17 told him everything was cool and not to worry. Id. Costa exited the car and entered the 7-11
18 while Bleak and Petitioner exited the car and engaged in conversation. Their discussion was
19 not audible to McCampbell. Once they were back in the car, McCampbell told Bleak and
20 Petitioner that he did not like the conversation outside the car or how the ride was turning into
21 driving to several different places without any explanation. Petitioner and Bleak again
22 reassured McCampbell.

23 McCampbell was then directed, primarily by Petitioner, to drive through the Lowe's
24 parking lot and to the parking lot of the nearby Traveler's Inn. The Traveler's Inn had video
25 surveillance in place, which recorded the events described below. Once in the parking lot,
26 although numerous parking spots were open, the men directed McCampbell to back into a
27 parking space directly adjacent to a set of stairs that led up to the second floor of the motel.
28 Backing into the narrow parking spot proved difficult resulting in McCampbell scraping the

1 car against several surfaces; McCampbell became quite upset, repeatedly asking the men why
2 he was being required to back into the parking spot and telling them he did not feel good about
3 the situation.

4 Once parked, Petitioner and Bleak exited the vehicle while Costa stayed seated in the
5 back of the vehicle. Video surveillance depicted Bleak on a cell phone appearing to call
6 someone while Petitioner leaned against the rear of the parked Cadillac. After a short time, the
7 victim, Dale "Spooky" Borero ("Borero"), walked down the stairs to meet Bleak.

8 Borero was a dealer of methamphetamine and was staying at the Traveler's Inn. Video
9 surveillance showed Bleak engaged in conversation with Borero off to the side of the Cadillac.
10 Eventually, Petitioner, who had been leaning against the rear of the vehicle, slowly walked
11 over to the two men and casually pulled out a Ruger LC9 9mm pistol and pointed it in Borero's
12 face. Petitioner reached toward Borero as if to grasp something. Petitioner then struck Borero
13 in the face with the pistol.

14 After being held at gunpoint and struck in the face, Borero eventually produced his own
15 pistol, however, Petitioner shot Borero in the abdomen; Petitioner moved toward the front of
16 the Cadillac and continued to fire. In total, Petitioner fired four times, striking Borero twice,
17 once in the upper abdomen (inflicting a fatal wound) and once in the leg. As the shooting
18 began, McCampbell almost immediately began to drive out of the parking lot while Bleak and
19 Petitioner struggled to get back into the car. Mortally wounded, Borero fell to the ground,
20 firing and striking the Cadillac once in the rear post but missing Petitioner, Bleak, Costa, and
21 McCampbell. As Bleak struggled to get back into the car, the magazine of the black Umarex
22 BB gun pistol he was carrying fell to the ground. Petitioner and Bleak managed to get back
23 into the Cadillac, and it drove off at great speed.

24 Once out of the Traveler's Inn parking lot, Petitioner directed McCampbell to drive
25 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
26 told Petitioner that he would report what happened. Petitioner responded by gesturing toward
27 his pistol and threatening McCampbell. McCampbell cooperated with Petitioner after being
28 threatened and returned the men to "Naked City" where Petitioner, Bleak, and Costa went their

1 separate ways. Detectives and a Crime Scene Analyst responded to the crime scene at the
2 Traveler's Inn and recovered a BB gun magazine, multiple cartridge casings from both
3 Borero's and Petitioner's pistols, bullet fragments, a bag of methamphetamine, and U.S.
4 currency. Borero was transported to UMC where he died from his injuries.

5 The following day, McCampbell learned that Borero died as a result of the shooting
6 and he contacted the police to report the events leading to Borero's death. McCampbell drove
7 the Cadillac to the Clark County Detention Center and surrendered himself to the first police
8 officer he came into contact with. Homicide detectives responded, impounded the Cadillac,
9 and conducted a recorded interview with McCampbell. McCampbell later positively identified
10 Petitioner, Bleak, and Costa in photo-ID lineups.

11 Through McCampbell's statements and additional investigative work, detectives
12 identified Petitioner and Bleak as suspects in Borero's death. On April 22, 2013, detectives
13 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
14 missing its magazine and located partially wedged into the seat cushion where Bleak had been
15 seated. Detectives took Bleak into custody and impounded the BB gun.

16 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
17 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
18 property had discovered a black handgun inside of a black holster, which had been placed in a
19 toaster oven. Inside the residence, detectives discovered paperwork with Petitioner's name on
20 it. A forensic tool-mark analysis would later positively match bullets test-fired from that Ruger
21 LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July 3,
22 2013, detectives located Petitioner and took him into custody.

23 ANALYSIS

24 **I. THE PETITION IS NOT PROCEDURALLY BARRED**

25 Pursuant to NRS 34.726(1):

26 Unless there is good cause shown for delay, a petition that challenges the
27 validity of a judgment or sentence must be filed within 1 year of the entry
28 of the judgment of conviction or, if an appeal has been taken from the
judgment, within 1 year after the Supreme Court issues its remittitur. For

1 the purposes of this subsection, good cause for delay exists if the
2 petitioner demonstrates to the satisfaction of the court:

3 (a) That the delay is not the fault of the petitioner; and

4 (b) That dismissal of the petition as untimely will unduly prejudice the
5 petitioner.

6 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
7 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
8 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
9 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
10 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

11 The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726
12 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the
13 Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence
14 presented by the defendant that he purchased postage through the prison and mailed the Notice
15 within the one-year time limit.

16 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
17 consider whether a defendant's post-conviction petition claims are procedurally barred. State
18 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
19 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
20 conviction habeas petitions is mandatory,” noting:

21 Habeas corpus petitions that are filed many years after conviction are an
22 unreasonable burden on the criminal justice system. The necessity for a
23 workable system dictates that there must exist a time when a criminal
24 conviction is final.

25 Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
26 when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court
27 has granted no discretion to the district courts regarding whether to apply the statutory
28 procedural bars; the rules must be applied.

1 In the instant case, the Judgment of Conviction was filed on March 29, 2017. Petitioner
2 appealed his conviction, which was affirmed by the Supreme Court of Nevada. Remittitur was
3 issued on July 30, 2018. An amended Judgment of Conviction was filed on August 29, 2018.

4 The State and Petitioner entered into a stipulation to extend the filing due date to
5 October 1, 2019. Petitioner filed the instant Petition on December 6, 2019. While Petitioner's
6 Petition was not filed within the one (1) year time period pursuant to NRS 34.726, the Court
7 finds that good cause exists for the delay. A finding of good cause will allow for an otherwise
8 untimely Petition to be considered on the merits, rather than having the procedural bar
9 imposed. See NRS 34.726. As such, the Court finds that the instant Petition is not subject to
10 the procedural bar articulated in NRS 34.726.

11 In addition, the Court finds that contrary to the State's pleadings, Petitioner's claims
12 three (3) and four (4) were not waived pursuant to NRS 34.810. Therefore, the Court finds that
13 the instant Petition is not procedurally barred, and Petitioner's claims must be considered on
14 their merits.

15 **II. ANALYSIS REGARDING PETITIONER'S INEFFECTIVE ASSISTANCE** 16 **OF COUNSEL CLAIMS**

17 Petitioner brings three (3) ineffective assistance of counsel claims in his Petition. The
18 Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
19 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
20 defense." The United States Supreme Court has long recognized that "the right to counsel is
21 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
22 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
23 (1993).

24 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
25 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
26 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
27 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
28 representation fell below an objective standard of reasonableness, and second, that but for

1 counsel's errors, there is a reasonable probability that the result of the proceedings would have
2 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison
3 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).
4 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the
5 inquiry in the same order or even to address both components of the inquiry if the defendant
6 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

7 The court begins with the presumption of effectiveness and then must determine
8 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
9 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
10 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
11 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
12 537 P.2d 473, 474 (1975).

13 Counsel cannot be ineffective for failing to make futile objections or arguments. See
14 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
15 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
16 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
17 (2002).

18 Based on the above law, the role of a court in considering allegations of ineffective
19 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
20 whether, under the particular facts and circumstances of the case, trial counsel failed to render
21 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
22 (1978). This analysis does not mean that the court should “second guess reasoned choices
23 between trial tactics nor does it mean that defense counsel, to protect himself against
24 allegations of inadequacy, must make every conceivable motion no matter how remote the
25 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
26 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
27 cannot create one and may disserve the interests of his client by attempting a useless charade.”
28 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

1 “There are countless ways to provide effective assistance in any given case. Even the
2 best criminal defense attorneys would not defend a particular client in the same way.”
3 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
8 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

9 Even if a defendant can demonstrate that his counsel’s representation fell below an
10 objective standard of reasonableness, he must still demonstrate prejudice and show a
11 reasonable probability that, but for counsel’s errors, the result of the trial would have been
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
14 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,
15 694, 104 S. Ct. at 2064-65, 2068).

16 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
17 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
18 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
19 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
20 be supported with specific factual allegations, which if true, would entitle the petitioner to
21 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
23 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims
24 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
25 petition to be dismissed.”

26 **A. Counsel’s Cross Examination of Detective Miller Was Not Ineffective**

27 In Ground One, Petitioner alleges that trial counsel’s cross-examination of Detective
28 Miller established ineffective assistance of counsel. Pet. at 17. Specifically, Petitioner claims

1 that Detective Miller's reports were sufficiently ambiguous that they merited impeachment
2 material in regards to Detective Miller's testimony that Petitioner fired the first shot. Pet. at
3 17-18. According to Petitioner, this deprived him of a self-defense affirmative defense. Pet. at
4 17-19.

5 At trial, during the State's rebuttal, the Court elicited the following testimony from
6 Detective Miller following a juror question:

7
8 THE COURT: Okay. And from your investigation were you able to
determine who shot first?

9
10 THE WITNESS: Technically, we have a fairly good idea. I can tell you
11 from my experience and training that when – where the cartridge cases
12 were located, the who .40 caliber that Boreo had was in stall 3 and 4. The
13 9 millimeter were spread in three behind Mr. Boreo's vehicle and out in
14 the middle of the parking lot. On a Ruger, typically, they eject to the right.
So I Would expect to find the .40s, if Dale Borero fired first because he
was up against the wall with the shipping container behind them, it would
eject to the right the casings should have been there.

15 THE COURT: Okay.

16 THE WITNESS: That's – the way I look at it.

17
18 THE COURT: So all of which your determination of who shot who first
was what?

19
20 THE WITNESS: Is that it's – there's no way to be exactly sure, but based
21 on the physical evidence I would say Mr. Coleman shot first.

22 Petitioner's Supplement ("PS") at 507. As a follow up question, Petitioner's counsel
23 elicited the following testimony.

24 Q: Detective Miller?

25 A: Yes.

26
27 Q: You did the declaration of warrant in this case, didn't you?

28 A: Yes.

1 Q: Do you recall saying in there that it appeared that Dale Borero fired
2 the first shot?

3 A: No.

4 Q: Can you look over on page 2, do you have a copy of it with you? And
5 I am looking at about the middle of the –

6

7 Q: I'm looking at –

8 A: Okay.

9 Q: --like right there.

10 A: May I read that?

11 Q: Yeah.

12 A: At that point Borero pulled a handgun from his right pocket and fired
13 at the black male suspect, Muhammad-Coleman. I don't see where it says
14 fired first.

15 Q: Well, if you look at the chronology of the events, the black made
16 pulled a handgun from his right and pointed it, Borero appeared to try to
17 push the gun away, black male struck the upper left side of Borero's body
18 with the butt of the gun, at that point Borero pulled a handgun from his
19 right pocket side, and fired. Nobody else has fired at the point that you
20 make that observation.

21 A: Well, I don't read it that way. And based on physical evidence of
22 where those cartridge cases are and with the fact that most semi-automatic
23 handguns, I'm no firearms expert, but most fire and eject, when they eject,
24 they eject to the right. As you can see on the video where Mr. Borero was
25 standing in which direction he was facing prior to him heading west and
26 south to the fact of where Mr. Coleman was standing and where his
27 cartridge casings were located.

28 Q: Does the video show who shot first?

A: No

1 PS at 508-510.

2 The declaration of warrant counsel used to impeach detective Miller read in relevant
3 part:

4 At one point the black male suspect (Muhammad-Coleman) moved from
5 the left rear of the Cadillac to stand on the opposite side of the white male
6 (Bleak). The black male (Muhammad-Coleman) pulled a handgun from
7 his right side and pointed it at Borero. Borero appeared to try and push
8 the gun away and the black male (Muhammed-Coleman) struck the upper
9 left side of Borero's body with the butt of the gun. At that point, Borero
10 pulled a handgun from his right pocket and fired at the black male suspect
11 (Muhammad-Coleman).

12 PS at 595.

13 A review of the record shows that the Court elicited testimony from Detective Miller
14 that she believed Petitioner shot first based on the physical evidence. Petitioner's counsel
15 immediately attempted to impeach Detective Miller with the exact statement Petitioner now
16 alleges counsel should have used. In fact, the relevant portion of the document was read almost
17 word for word, by Detective Miller, into the record and in front of the jury. As such, any claim
18 that counsel did not impeach Detective Miller is belied by the record. Pursuant to Hargrove,
19 such an allegation is insufficient to succeed on an ineffective assistance of counsel claim.

20 Petitioner also seems to allege that it was ineffective for counsel not to identify that the
21 above statement also appeared in Detective Miller's Application and Affidavit for search
22 warrant. Pet. at 17. It is unclear how such a strategy would have made a more favorable
23 outcome at trial probable. When Detective Miller was impeached on the stand, she testified
24 that counsel was misreading the declaration of warrant. PS at 508-510. Detective Miller
25 indicated that she did not intend the statement to be construed as Borero shot first. Detective
26 Miller further reiterated that based on the physical evidence she believed Petitioner shot first.
27 To the extent Petitioner wanted to draw attention to the alleged inconsistency in Miller's
28 statements, his counsel accomplished that. However, given that Detective Miller offered an
explanation for this alleged inconsistency, it is dubious that showing another instance where
that exact same statement (which likely would have been explained the exact same way)

1 occurred would have had any additional effect. Given the dubious probative value of such a
2 line of questioning, whether to engage in it was clearly a strategic decision reserved for
3 counsel. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)(stating: Trial counsel has
4 the “immediate and ultimate responsibility of deciding if and when to object, which witnesses,
5 if any, to call, and what defenses to develop.”). Therefore, the Court finds that such a decision
6 was neither unreasonable, nor did it prejudice Petitioner.

7 Petitioner argues in the alternative that “to the extent the previous and impeachment
8 worthy statements were not identified at the time of trial, this amounted to IAC as a result of
9 an insufficient investigation.” A defendant who contends his attorney was ineffective because
10 he did not adequately investigate must show how a better investigation would have rendered
11 a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538
12 (2004). Given that counsel in fact impeached Detective Miller with the complained of
13 statement, it cannot be seriously alleged that counsel’s investigation was insufficient to the
14 point that he did not discover the statement. As such, this claim is belied by the record and is
15 suitable only for summary dismissal. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,
16 225 (1984).

17 After consideration of this claim and the relevant portions of the record, the Court finds
18 that counsel’s cross-examination was not unreasonable, and that Petitioner has not
19 demonstrated that he was prejudiced by counsel’s cross-examination. As such, the Court finds
20 that counsel cannot be found ineffective on this ground, and this claim is denied.

21 **B. Counsel Was Not Ineffective for Not Objecting to Detective Miller’s Testimony**

22 Petitioner alleges in Ground Two that Detective Miller’s testimony regarding whether
23 Petitioner or Borero shot first was inappropriate expert testimony. Pet. at 23. Petitioner further
24 alleges that counsel was ineffective for failing to object to such testimony. Pet. at 23.

25 NRS 50.265 states:

26
27 If the witness is not testifying as an expert, the witness’s testimony in
28 the form of opinions or inferences is limited to those opinions or
inferences which are:

1. Rationally based on the perception of the witness; and
2. Helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.

A lay witness is not precluded from forming conclusions based on their perceptions. Duran v. Mueller, 79 Nev. 453, 457, 386 P.2d 733, 735-36 (1963). In the instant case, detective Miller was a detective who responded to the scene. She personally observed the locations of the various casings left in the parking lot as a result of the shooting. PS at 389-90. Further, Detective Miller viewed the surveillance video of the shooting. Therefore, her testimony as to the location of the casings and the location of the two men were proper lay witness testimony.

The only other factor Detective Miller relied on in coming to the conclusion was that Petitioner likely fired first was the fact that the model of gun used by Borero typically discharges cases to the right. As such, Detective Miller deduced that Borero was probably not the one to fire first, as there were no casings recovered from where the casings would be found if Borero had fired first. PS at 508-510. To the extent that information regarding how Borero's gun discharged casings required expert testimony, said testimony had already been admitted through ballistics expert Anya Lester. PS at 352. Therefore, there was no reason for counsel to object to Detective Miller's testimony, as it was either based on her personal observations, or merely restated evidence already properly admitted. As such, the Court finds that whether to object on this basis was clearly a strategic decision. See Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (stating: Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object...).

Further, Detective Miller's conclusion was not expert testimony either. Detective Miller merely formed a conclusion based on observed phenomenon. Such a conclusion is not expert testimony pursuant to Duran, 79 Nev. at 457, 386 P.2d at 735-36 (finding that an investigator who had testified as to skid marks, point of impact, apparent car direction, and car damage could also testify to how two automobiles collided). Given that Detective Miller's testimony was based on her own observations, it was properly admitted lay witness testimony. To the extent that Borero's firearm discharged casings required expert testimony, her testimony was

1 corroborated by expert witness Anya Lester. As such, any objection would not have kept any
2 information from the jury, and Petitioner cannot successfully claim that counsel's decision was
3 either unreasonable or prejudicial. The Court therefore finds that counsel decision to not object
4 to this testimony was neither unreasonable, nor did it prejudice Petitioner. As such, the Court
5 finds that counsel cannot be found ineffective on this ground.

6 **C. Whether Counsel Was Ineffective in Investigating and Utilizing Information**
7 **Regarding Petitioner's PTSD Requires an Evidentiary Hearing**

8 In Ground One (c), Petitioner alleges his counsel "made a Motion to explore Darion's
9 PTSD claims shortly before trial, and without sufficient investigation." As such, Petitioner is
10 challenging whether trial counsel's investigation of his PTSD and use of information regarding
11 his PTSD to support his self-defense theory at trial was effective.

12 After review of the pleadings, records provided, and hearing oral argument, the Court
13 found that a limited evidentiary hearing was required to rule on this claim. The Court held an
14 evidentiary hearing regarding this issue on December 18, 2021. Prior to the commencement
15 of the evidentiary hearing, post-conviction counsel represented that he had recently learned of
16 the existence of a phone call between Petitioner and his counsel, which may not have been
17 recorded, wherein, post-conviction counsel represented, there may have been a discussion
18 about PTSD during that phone call. Post-conviction counsel represented that he was unsure if
19 that call would have been retained, but wanted to further investigate the because there may
20 have been a possibility that PTSD was discussed during such call. The Court stated that
21 because the parties were prepared to move forward with the evidentiary hearing that day, until
22 this disclosure was made the night before, the hearing would proceed, but the Court would
23 give post-conviction counsel the opportunity to see if he could obtain the phone call and
24 supplement the briefing after the hearing.

25 Mr. Schwarz testified that as soon as he found out about Petitioner's claim that he
26 suffered from PTSD he filed a Motion to Continue the Trial and did so on an Order Shortening
27 Time, so it could be heard at the Calendar Call hearing prior to trial. Mr. Schwarz argued at
28 the Calendar Call hearing using all six (6) of the competency evaluations and the Court denied

1 the Motion and set the matter for trial. Had the Motion been granted, Mr. Schwarz testified
2 that he would have hired a Psychologist to evaluate Petitioner. It was Mr. Schwarz's
3 recollection that Petitioner stated the reason he suffered from PTSD was due to being shot in
4 the instant case.

5 During Petitioner's testimony, Petitioner testified that he received competency
6 evaluations. On February 9, 2016, Petitioner testified that he filed a Motion to Withdraw
7 Counsel, but did not include that it was because of the PTSD issue, which he claims started to
8 bother him after he was shot in May 2012. Petitioner stated he spoke to Mr. Schwarz after that
9 hearing but did not discuss his PTSD claim. Petitioner claimed that he spoke to his attorney
10 about needing an evaluation for PTSD during a phone call the following March in 2016. This
11 phone call was about one (1) week after the Motion to Withdraw Counsel hearing. Petitioner
12 also testified that he was not suffering from PTSD prior to the age of 16. Additionally,
13 Petitioner explained that he believed that, during his Pre-Sentence Investigation Report in his
14 previous robbery case, he was asked about his mental health and the report makes no mention
15 that he suffered from PTSD. Petitioner also testified that Mr. Schwarz mentioned that
16 Petitioner was sensitive to guns because he had been shot in the past during his closing
17 argument and during Petitioner's testimony at trial in the instant case. After the testimony, the
18 Court continued the hearing for post-conviction counsel to obtain the call logs he mentioned
19 and would also hear the parties' argument on that day.

20 At the subsequent hearing, on February 22, 2021, post-conviction counsel represented
21 that he submitted call logs between defense counsel and Petitioner, but was not able to get a
22 recording of those calls to submit to the Court. This Court reviewed the call logs and permitted
23 the parties to argue. The Court finds that with the evidence in front of it, it is very clear that
24 when Mr. Schwarz stated he was notified about Petitioner's PTSD claim, he filed a Motion to
25 Continue the Trial on an Order Shortening Time. Indeed, there is no evidence that prior to that
26 time Mr. Schwarz even attempted to file a motion or act in anyway regarding the PTSD claim.
27 Ultimately, the evidence before the Court is insufficient to establish that Mr. Schwarz's
28 performance fell below an objective standard of reasonableness. Accordingly, Petitioner has

1 not demonstrated the first prong of the analysis. Strickland, 466 U.S. at 687-88, 694, 104 S.
2 Ct. at 2065, 2068. Moreover, even if this Court found that the first prong was satisfied, which
3 it does not, the Court reviewed the video, and based on that review, Petitioner cannot establish
4 that the result of the trial would have been different to establish the prejudice prong of the
5 analysis. Id. Therefore, the claim is denied.

6 **III. THE SENTENCING COURT DID NOT RELY ON IMPROPER EVIDENCE**

7 Courts are given “wide discretion” in sentencing decisions, and these are not to be
8 disturbed “[s]o long as the record does not demonstrate prejudice resulting from consideration
9 of information or accusations founded on facts supported only by impalpable or highly suspect
10 evidence.” Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004).

11 Petitioner alleges in Ground Three that the Court relied on improper evidence at
12 sentencing. The only allegedly improper evidence Petitioner identifies is Detective Miller’s
13 testimony. However, as the Court articulated above, there was nothing improper about
14 Detective Miller’s testimony. Therefore, it was not error for the sentencing court to rely on it.

15 Further, the Court finds that contrary to Petitioner’s assertions, there is no language in the
16 sentencing transcript that indicates the sentencing court relied specifically on Detective
17 Miller’s testimony. The sentencing court stated:

18
19 For the first degree murder charge, I have, under 193.165, considered the
20 use of the weapon and the circumstances surrounding it, your criminal
21 history, use of a weapon in the past, any mitigating factors for purposes
22 of adjudging an appropriate enhancement. So for the murder charge, I’m
23 going to sentence you to 20 to life, that’s 240 months, that’s --

24 ...

25 This is life in prison with the minimum 240 months before parole
26 eligibility. For the weapon enhancement, 240 months maximum, 60
27 months minimum. That runs consecutive to the murder portion. So it’s a
28 total of life -- aggregate of life in prison with a minimum 300 months
before parole eligibility. For Count 4, 48 to 120 months concurrent; Count
6, 24 to 60 months concurrent; Count 7, 19 to 48 months concurrent; and
this case will run consecutive to the sentence you’re serving in 299066. I
believe I had gone through and calculated the credit up and through June

1 22nd of 2015, which is when he was sentenced in the other case and that
2 is 720 days.

3 PS at 650-51. The sentencing court made note of the circumstances of the shooting as
4 playing a role in sentencing. In discussing the circumstances of the shooting, the sentencing
5 court took issue with defense counsel's representation that Petitioner being the defendant
6 instead of the victim in this case was "happenstance" by stating:

7
8 But I -- I understand and I don't think the State was making the argument
9 that 8-to-20 was too light in that case, it's how do you view the murder
10 knowing that with a month prior to this case occurring those other things
11 were occurring. And I agree that those are -- those are two separate events
12 and they both deserve recognition from a -- from a punishment standpoint
13 because we're dealing with horribly violent crimes. But I will also tell
14 you that I sat through the same trial that you all did obviously and -- and
15 it was -- and I agree with you, Mike, that you can't just watch a video and
16 tell what it is that -- that happened in a vacuum. But I think watching the
17 video, listening to the testimony, looking at what the forensic evidence
18 was about where shell casings were found, I am convinced that your
19 client not only pulled the weapon first but he shot first as well before Mr.
20 Borero had produced a handgun.

21
22 And that's based in part on the conduct of the people in the video, the
23 reaction to certain things occurring. I think Mr. Borero was shot and going
24 down before he started firing his gun. And I think that's why the jury
25 convicted your client of first degree murder regardless of whether they
26 think a robbery actually occurred, I think there was evidence for them to
27 say you produced a gun and shot the man and they -- they found him
28 guilty on the premeditated and deliberate theory. So, in any event, I won't
belabor it.

PS at 644, 649-50.

The Court notes that nowhere in the sentencing transcript is Detective Miller or her
testimony specifically mentioned. The sentencing judge was clear that it relied on all of the
facts proven beyond a reasonable doubt at trial, as well as Petitioner's violent history. Given
that neither of these considerations are improper, the Court finds that the sentencing court did
not rely on improper evidence at sentencing.

1 **IV. DETECTIVE MILLER’S TESTIMONY DID NOT AMOUNT TO A**
2 **COMMENT ON PETITIONER’S POST-ARREST SILENCE**

3 In Ground Four, Petitioner alleges that Detective Miller “specifically acknowledged
4 Darion’s post-arrest silence regarding any self-defense theory.”

5 “The prosecution is forbidden at trial to comment upon a defendant’s election to remain
6 silent following his arrest and after being advised of his rights as required by *Miranda v.*
7 *Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).” Murray v. State, 113 Nev. 11,
8 17, 930 P.2d 121, 124 (1997) (citing Neal v. State, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990).
9 In Murray, the defendant did not make a statement to authorities until he testified before the
10 grand jury. Id. at 15, 930 P.2d at 123. The State sought to impeach the defendant by stating
11 that trial was the first time the defendant had explained his side of the story. Id. at 17-18, 930
12 P.2d at 124-25.

13 A statement in reference to a recorded statement made by a defendant to authorities is
14 not a comment on the defendant’s right to remain silent under plain error review. Houtz v.
15 State, No. 60858, 2013 WL1092730, Mar. 14, 2013, 129 Nev. 1123 (2013) (unpublished
16 disposition). Further, any cross-examination into inconsistencies between a defendant’s
17 testimony and defendant’s voluntary statement to authorities after being read his rights under
18 Miranda is not an impermissible comment on post-arrest silence. Morales v. State, No. 54216,
19 2010 WL3384992, Jul. 15, 2010, 126 Nev. 740, 367 P.3d 802 (2010) (unpublished
20 disposition). Comments on a defendant’s post-arrest silence are held to be harmless beyond a
21 reasonable doubt if “(1) at trial there was only passing reference, without more, to an accused’s
22 post-arrest silence, or (2) there was overwhelming evidence of guilt.” Morris v. State, 112 Nev.
23 260, 263, 913 P.2d 1264, 1267 (1996).

24 Petitioner alleges that Detective Miller inappropriately commented on his post-arrest
25 silence when she claimed Petitioner never mentioned that he acted in self-defense. Pet. at 24.
26 In context, the following exchange occurred between the State and Detective Miller:

27 Q At this point, Mr. Muhammad-Coleman was arrested on an arrest w
28 arrant; is that correct?

1 A Yes.

2 Q And you were going to charge him with homicide?

3 A Yes.

4 Q Or murder?

5 A Yes.

6 Q And did you read Mr. Coleman his rights?

7 A I did.

8 Q How did you read him his rights?

9 A Directly from an advisement of rights card.

10 Q Okay. Did he acknowledge that he understood his rights?

11 A Verbally and he signed the card.

12 Q Okay. So the actual card you read his rights from you had him sign it?

13 A I did.

14 Q And did Mr. Coleman actually decide to talk to you after being read his rights?

15 A Yes, he did.

16 Q Okay. And that includes, you know, you have the right to remain silent and the right to have an attorney during questioning?

17 A Yes.

18 Q Okay. And then you actually had a conversation with him about April 19th, 2013?

19 A I did.

20

1 Q Okay. Additionally, do you say some things in order to try to get
2 someone talking like maybe throw out self-defense, for example?

3 A Yes.

4 Q And you do that for the purposes to get an individual to talk about an
5 incident?

6 A Yes.

7 Q In your experience do people find it hard to talk about being involved
8 in a murder?

9 A Absolutely.

10 Q Okay. Did you do that in this case? Did you throw out self-defense,
11 you had to do it? That type of situation?

12 A Yes. Q And were -- during that period of time, and we'll get into it
13 with the video, but did Mr. Coleman ever say that he had to do it, it was
14 self-defense on April 19th, 2013?

15 A No, he never mentioned that.

16 PS at 487-89.

17 The transcript reveals that Detective Miller's testimony regarded Petitioner's voluntary
18 statement made after being informed of his rights under Miranda. As such, the Court finds that
19 this was not an improper commentary on Petitioner's post-arrest silence. Morales v. State, 126
20 Nev. 740, 367 P.3d 802 (2010) (unpublished disposition). For Petitioner to claim otherwise is
21 puzzling given that he does not appear to have remained silent or to have invoked his right to
22 remain silent during this conversation. Instead, Detective Miller merely explained what
23 information Petitioner did or did not disclose during a voluntary and legal interrogation.

24 The Court further finds that to the extent Detective Miller's testimony constituted a
25 commentary on Petitioner's post-arrest silence, such a commentary was harmless. First, there
26 was only passing reference made as to Petitioner not previously stating he acted in self-
27 defense. The State brought out that Petitioner's story was inconsistent only twice: first during
28 the testimony of Detective Miller, and then again during closing arguments. PS at 550. Second,

1 the evidence of guilt was overwhelming in the instant case. An eyewitness and surveillance
2 video placed Petitioner as the individual who shot and killed the victim. Further, forensic
3 evidence demonstrated that Petitioner fired first, thereby negating any self-defense claim.

4 V. SUMMATION OF FINDINGS

5 The Court finds that Petitioner's claims are not procedurally barred under either NRS
6 34.726 or NRS 34.810. The Court has therefore examined each of the claims on the merits.

7 The Court further finds that the sentencing court did not rely on improper evidence at
8 sentencing. There is nothing in the record stating that the sentencing court specifically relied
9 on Detective Miller's testimony. The sentencing court specifically stated that it had presided
10 over the entire trial and was considering the evidence presented at trial. Therefore, the Court
11 finds that any claim to the contrary is without merit, and this claim is denied.

12 The Court further finds that Detective Miller's testimony did not amount to a comment
13 on Petitioner's post-arrest silence, and this claim is denied.

14 The Court further finds that Petitioner's trial counsel was not ineffective in cross-
15 examining Detective Miller, nor was counsel ineffective for not objecting to the testimony of
16 Detective Miller. Petitioner has failed to establish both that counsel's action were
17 unreasonable, or that Petitioner was prejudiced as a result of counsel's actions. As such, both
18 of these claims are denied.

19 Additionally, as discussed *infra*, the Court finds that Petitioner's claim regarding PTSD
20 does not satisfy the Strickland standard and is also therefore denied.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
Dated this 23rd day of April, 2021
shall be, and it is, hereby denied.



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

2A8 CCD A462 0F81
Tierra Jones
District Court Judge

BY /s/ **KAREN MISHLER**
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this ____ day of May,
2021, by electronic transmission to:

WALEED ZAMAN
wally@zamanlegal.com

BY /s/ **E. Del Padre**
E. DEL PADRE
Secretary for the District Attorney's Office

KM/bg/ed/GU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Darion Coleman, Plaintiff(s)

CASE NO: A-19-806521-W

7 vs.

DEPT. NO. Department 10

8 Renee Baker, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 4/23/2021

15 Waleed Zaman

Wally@ZamanLegal.com

16 Waleed Zaman

Wally@ztlawgroup.com

17 Yanni Sitsis

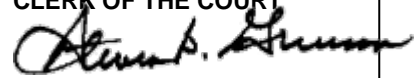
Yanni@ztlawgroup.com

18 Dept 3 Law Clerk

dept03lc@clarkcountycourts.us

20
21
22
23
24
25
26
27
28

AA787



1 **NOASC**
2 **WALEED ZAMAN, ESQ.**
Nevada State Bar No. 13993
3 **MICHAEL TRIPPIEDI, ESQ.**
Nevada State Bar No. 13973
4 **ZAMAN & TRIPPIEDI**
6620 S. Tenaya Way, Suite 100
5 Las Vegas, NV 89113
Ph: 702-359-0157
F: (702) 920-8837
6 *Attorneys for Appellant*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 * * *

10 **DARION MUHAMMAD-COLEMAN,**
11 **Petitioner,**
12 **vs.**

Case No: A-19-806521-W
Dept. No: X

13 **THE STATE OF NEVADA,**
14 **Respondent.**

NOTICE OF APPEAL

15 **TO: THE STATE OF NEVADA; *Respondent,***

16 **TO: STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA, and**

17 **TO: DEPARTMENT X OF THE EIGHTH JUDICIAL DISTRICT COURT.**

18 Notice is hereby given that DARION MUHAMMAD-COLEMAN, Petitioner in the above-
19 entitled action, appeals to the Nevada Supreme Court from the Findings of Fact, Conclusions of
20 Law and Order, filed on April 23, 2021.

21 DATED this 11^h day of May 2021.



22 **WALEED ZAMAN, ESQ.**
Nevada State Bar No. 13993
23 **MICHAEL TRIPPIEDI, ESQ.**
Nevada State Bar No. 13973
24 **ZAMAN & TRIPPIEDI**
6620 S. Tenaya Way, Suite 100
25 Las Vegas, NV 89113
Ph: 702-359-0157
26 F: (702) 920-8837
27 *Attorneys for Petitioner*

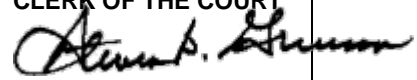
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9 and EDCR 8.02, I hereby certify that I am an employee of ZAMAN
3 & TRIPPIEDI, and on the 11th day of May 2021, I served the foregoing **NOTICE OF APPEAL** as
4 follows:

5 Steven B. Wolfson, Esq.
6 Steven S. Owens, Esq.
7 Clark County District Attorney's Office
8 Via email: Motions@clarkcountyda.com

9 Darion Muhammad-Coleman, #1144228
10 Petitioner
11 Lovelock Correctional Center
12 1200 Prison Rd.
13 Lovelock, Nevada 89419
14 Via First Class Mail

15
16
17
18
19
20
21
22
23
24
25
26
27
28
/s/ Jonathan Sitsis
An Employee of Zaman & Trippiedi



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DARION COLEMAN,
9 Plaintiff,

10 vs.

11 RENEE BAKER,

12 Defendant.

) CASE#: A-19-806521-W

) DEPT. X

13 BEFORE THE HONORABLE TIERRA JONES
14 DISTRICT COURT JUDGE
MONDAY, OCTOBER 12, 2020

15 **RECORDER'S TRANSCRIPT OF PENDING PETITION**

16
17 APPEARANCES:

18 For the Plaintiff:

WALEED ZAMAN, ESQ.

19 For the Defendant:

MICHAEL J. SCHWARTZER, ESQ.

20
21
22
23
24
25 RECORDED BY: TOSHIANA PIERSON, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Monday, October 12, 2020

[Case called at 9:11 a.m.]

THE COURT: Coleman v. Baker. May the record reflect that Mr. Coleman is not present. He is in custody at the Nevada Department of Corrections. Mr. Zaman is here on his behalf.

Mr. Zaman, can we have your bar number?

MR. ZAMAN: Of course, Your Honor, 13993.

THE COURT: Okay. And Mr. Schwartz is here on behalf of State. Mr. Schwartz, can we have your bar number?

MR. SCHWARTZ: Yes, Your Honor. It's 10747.

THE COURT: Okay. So this is on for the petition for writ of habeas corpus. I have had -- and I do apologize, gentlemen, that I was not prepared last time. Thank you guys so much for coming back. I have read the petition, I have read the opposition, and I have read the reply.

Mr. Zaman, do you have anything else that you want to add to your argument?

MR. ZAMAN: Please, Your Honor, and I'm going to try to keep this short. I'm going to start with the PTSD claim, Your Honor. I think that's the one that demands the evidentiary hearing the most. I think the entire -- the reason it's so important, Judge, and I think based on seeing the video and knowing what the evidence --

THE COURT: And just one second, Mr. Zaman. I don't mean to interrupt you, but I want to go through these one at a time. So as you

1 get to the arguments, I'm going to tell you coming out of the gate where
2 I'm concerned. So feel free to argue anything you would like to argue,
3 but if you could just make sure you can highlight what it is I'm concerned
4 about.

5 MR. ZAMAN: Sure. And, Your Honor, honestly if you want --

6 THE COURT: Because in regard to the --

7 MR. ZAMAN: -- if you just tell me what the Court's concerns
8 are and that way I can try and address them directly.

9 THE COURT: Well, in regard to the PTSD, the Court's
10 concern is I know that you're saying that you want an evidentiary
11 hearing, but when Mr. Schwartzer argues that the only evidence that
12 your client has PTSD -- the only thing you can even point to that has
13 anything to do with any psychiatric testing is his competency eval. And
14 when your client was evaluated for competency, there was no mention
15 of PTSD.

16 MR. ZAMAN: Sure, Your Honor.

17 THE COURT: So I would like to know exactly how it is that
18 this information was known to the lawyer at that time that would have
19 put this lawyer on notice, hey, this is something that I definitely need to
20 raise, because the medical evidence that the lawyer had says he was
21 malingering.

22 MR. ZAMAN: Yeah.

23 THE COURT: And I'm not making any findings one way or
24 another as to whether or not he was malingering, but what I'm saying is
25 we -- I've been where you're standing, and if I'm you, and you're you, the

1 only medical evidence you have says he's malingering, but now we're
2 talking about he should have known about this PTSD. So talk to me
3 about that.

4 MR. ZAMAN: Of course, Judge. So I think there's two
5 things. Preliminarily there's a motion to continue -- I think we cite to it in
6 the petition where the attorney mentions -- previous counsel mentions
7 that Darion told him about it, but he says it was too late and that's why
8 there was nothing he could do. The motion to continue was denied. So I
9 think that there's at least the evidence as of that moment that he knew as
10 of that date.

11 The competency reports, I think, suggest that the evidence
12 that he's talking about was available to him before. I think there's two
13 reasons we cannot look at the competency reports to exclude the mental
14 health illness just because of malingering findings. The primary reason,
15 I think, Your Honor, is because the doctors themselves say that you
16 should. I think Dr. Harder specifically states that even though he finds
17 malingering -- and he's the one who most strongly finds malingering, his
18 finding has nothing to do with whether or not or the extent of Darion's
19 mental health history or any illnesses he has. He makes it very clear
20 that's all these competency reports are.

21 They're only asking two questions, Judge. Can you
22 understand the proceedings against you, and can you reasonably assist
23 your attorney? That's not mutually exclusive with whether or not Darion
24 has PTSD. And that I would note the competency reports -- and again I
25 think -- I don't want to guess the doctor's name here, Judge, but the

1 other doctor indicated as well that, you know, there may be -- essentially,
2 there may be a history of mental health, but he's not going into that
3 because, again, they're just focused on those two particular issues.

4 Our purpose for the competency report was to show that
5 there was a factual basis for this in the record well before previous
6 counsel came and testified and said, oh, I was just recently told, so I
7 don't have the time. I think more so than disproving whether or not he
8 has the mental illness, they essentially show that there's a reasonable
9 probability that counsel should have known before that, Your Honor.
10 And that's what Darion is going to testify to. He's going to testify to the
11 fact that he indicated to counsel from day one.

12 THE COURT: And has he had any sort of -- you know, a lot of
13 people that have suffered from PTSD they've seen their own doctors. Is
14 there anything that you're aware of, that's out there, that he had seen the
15 doctor? Or how --

16 MR. ZAMAN: I have not, Judge. I know that under NRS
17 34.790, this Court has the authority to expand the record to allow the
18 evidentiary hearing, so what I would ask, if that's the case -- because we
19 would have done it, but we ran out of funds. I would ask to allow him to
20 get that evaluation, Judge, within the authority of the NRS. I don't think
21 there is anything to answer your question. I think that -- I don't want to
22 speculate, but I think, you know, the timeline and the number of cases he
23 has, I don't know that he ever had that opportunity to get evaluated --

24 THE COURT: Okay.

25 MR. ZAMAN: -- because he was in custody.

1 THE COURT: Okay. All right. And then let's talk about
2 Detective Miller's testimony.

3 MR. ZAMAN: Yes, Your Honor.

4 THE COURT: So talk about the objections that you -- your
5 allegation were not made in regards to Detective Miller's testimony.

6 MR. ZAMAN: So I think -- after reading the State's
7 opposition, Your Honor, I think the best way to frame that is that if you
8 were to look at it in the light saying that he did in fact make those
9 objections, I think then you can say it's ineffective. That they were
10 completely ignored at closing, right, because the big argument here is
11 whether or not Detective Miller can stand by and not call it perjury when
12 she writes a chronology and every single thing in that chronology is in
13 chronological order, but at the moment which she is determining the
14 most important point of that particular chronology, we're to believe that
15 that's not how she would read it.

16 So I think that that's the particular thing I would want
17 previously counsel to impeach. He says it three different times. It's on
18 the application for search warrant. It's twice in the declaration of arrest
19 report. The strongest incident is in the declaration of arrest report
20 because she specifically says and lays it out in a timeline where this
21 person shoots, and then this person shoots back. And there's no other
22 reading of that that isn't essentially perjury, so even if he does object to
23 it, Judge, I think it has to be ineffective for him to not bring it up at
24 closing.

25 The jury points out how incredibly important it is to them to

1 understand the timeline, to understand what's going on, and for him to
2 not indicate to --

3 THE COURT: But you would agree, Mr. Zaman, and I don't
4 mean to interrupt you --

5 MR. ZAMAN: No, of course.

6 THE COURT: -- but you would agree that the jury is
7 instructed by the Court, and this was instructed by Judge Herndon, and
8 I've tried cases in front of Judge Herndon, so I have no reason to believe
9 -- I did not review the jury instructions in this case, and I have no reason
10 to believe that this jury was not instructed, the jury is to consider all of
11 the evidence. Everything they heard.

12 So this testimony came from Detective Miller, and they heard
13 it when it was testified to. They heard the objection, they heard Judge
14 Herndon sustain the objection. So what evidence do you have that just
15 because counsel did not reiterate it in closing -- because, as you know,
16 we can do trials that last two weeks and a closing that's 30 minutes of
17 this exact same trial, we don't repeat everything that was said. So what
18 is the evidence that this jury completely disregarded it, because it was
19 not restated in closing?

20 MR. ZAMAN: Well, I don't know that I can prove whether or
21 not the jury disregarded it, but I think I can show that it's deficient
22 performance from previous counsel to concede the point.

23 THE COURT: But is it ineffective, is my question? Because
24 what is -- I mean, when we start talking about ineffective, you know
25 under that fifth analysis, we have to get to prejudice.

1 MR. ZAMAN: Sure.

2 THE COURT: So what can you show us, prejudice to your
3 client based on the fact they heard the testimony, they heard the
4 objection, they heard Judge Herndon's ruling. The jury heard all of it.
5 They were here for all of that. So because prior counsel did not restate it
6 again.

7 MR. ZAMAN: Well and, Your Honor, here's the thing. He
8 didn't object. He attempted to cross-examine her on it.

9 THE COURT: I'm sorry, cross-examine. Yes.

10 MR. ZAMAN: Right. And so, essentially, once she essentially
11 said, no, it wasn't that, he conceded the point and said, well, the video
12 doesn't show. I can't show you for sure what the jury would show, but I
13 think that the prejudice analysis requires a reasonable probability of a
14 different result. I think what I can prove is that that particular sequence
15 is the number one thing in the jury's mind. They did not indicate there
16 was felony murder, so they must have found, as a matter of finding of
17 murder, right, that he wasn't justified by self-defense.

18 So for that particular piece of evidence, when there is no
19 eyewitness testimony, when the video -- I watched it so many times, and
20 I don't find it to be particularly clear -- when all that exists and a lead
21 detective on the case is not -- it's not coming out properly that she, when
22 looking at the same evidence four years prior, came to a completely
23 opposite conclusion, Your Honor. And I think that -- sure, I can't tell you
24 for sure it would have made a difference, but if I'm a juror sitting there
25 and that's my big question, is who shot first, and I'm not told that this

1 detective had a 100 percent opposite view of who shot first and swore to
2 it under oath, I mean it would make a difference in my decision, I would
3 suspect.

4 THE COURT: Okay. All right. Let's talk about Detective
5 Miller's -- your allegation that Detective Miller commented on your
6 client's post-arrest silence. Detective Miller's statement is your client
7 does not mention self-defense.

8 MR. ZAMAN: Correct.

9 THE COURT: Talk to me about how we're making the leap
10 that Detective Miller is asked, did he ever tell you that this was self-
11 defense? No. Talk to me about that.

12 MR. ZAMAN: Of course, Judge. I hate to switch gears there,
13 but after reading the State's opposition, and then reading a new case
14 that came out, *Woodstone*, about six -- maybe a little more than eight
15 months ago, I think the State's correct. That particular line of
16 questioning is appropriate because it was about that moment. However,
17 I think there's some other things that we do need to consider, Judge.

18 I think that the State's comment on Darion's post-arrest
19 silence is what's concerning the most. I'm going to quote what the State
20 said in its opening/closing. "The four year plan, what's that? Well, the
21 Defendant has four years to figure out what he was going to say on the
22 stand." So to me, there's no other reading of that than that is a comment
23 on Darion's silence from the moment he is invoked until the moment he
24 takes the stand at trial.

25 THE COURT: How? Because I've seen the State when I was

1 a defense attorney and as a prosecutor say that with people who actually
2 testify. Because people who have actually testified -- you know what I
3 mean? Like they are commenting on you testified, and you gave a
4 statement, because they've impeached this person -- if they've
5 impeached this person with something that was said in the statement.
6 And so I've seen the State do that where the person gives a statement,
7 then the person testifies. Well, he had four years to remember things
8 more clearly now, which is always the State's argument. He's had three
9 years; he's had 18 months. Whatever the case may be, to remember it
10 more clearly.

11 And the State uses this argument when they also go back to,
12 well, what did he say that day? It was way more clear in his mind that
13 day than it is four years later. They use that argument in the reverse. So
14 tell me how that argument, basically saying he is here testifying to you
15 today, and it's been four years, and he's had every single day of this four
16 years to think about what he was going to say to you --

17 MR. ZAMAN: Sure.

18 THE COURT: -- tell me how that argument is telling this jury
19 that he did not make a statement?

20 MR. ZAMAN: And I think that's kind of where *Woodstone*
21 becomes important, because *Woodstone* talks about two different
22 things. They talk about general versus specific tailoring, right. So I think
23 they find that specific tailoring, at least in the *Woodstone* case, is okay,
24 right, because you can sit there, and you can say, hey, the defendant saw
25 everybody testify. Maybe he utilized that in, you know, kind of framing

1 his testimony. However, I think where the line is crossed is when it goes
2 into the general tailoring. And that goes not to any specifics, right? And
3 I think -- I'm not going to argue this is not on the border, Judge, because
4 I think if you limit it to what he said in his statement and if it contradicts
5 what he says in his statement, that's appropriate.

6 But at the moment that you indicate to the jury that there has
7 been four years of silence from the moment he said anything to the day
8 of the trial, when you tell the jury there's been four years of silence, it
9 absolutely begs the question that why was there four years of silence
10 and if he's telling the truth, why wouldn't he come forth sooner.
11 Because you do that, Judge, I think that's an impermissible comment on
12 his right to remain silent because, obviously, he has no obligation to
13 come forward any moment before that.

14 THE COURT: What is the *Woodstone* case that you're citing
15 to?

16 MR. ZAMAN: Brief indulgence.

17 THE COURT: Since you didn't cite to it in your reply.

18 MR. ZAMAN: And I'm sorry, Judge, I --

19 THE COURT: Because I checked, because I was like I don't
20 remember reading this.

21 MR. ZAMAN: I did not.

22 THE COURT: Because I'm looking at your reply right now,
23 and you didn't cite to it. So what is the cite for *Woodstone*?

24 MR. ZAMAN: It is -- brief indulgence. It is Christopher
25 Stewart Woodstone -- well, I have it in front of me. I have the order in

1 front of me. 74238, Judge. I have the order of affirmance in front of me.

2 THE COURT: From the Nevada Supreme Court?

3 MR. ZAMAN: Yes, Your Honor.

4 THE COURT: The Defendant's name is Christopher
5 Woodstone?

6 MR. ZAMAN: Christopher Stewart Woodstone. And I did
7 want to be clear, they -- in this particular case, they did not find --

8 THE COURT: When did they affirm it?

9 MR. ZAMAN: I'm sorry, Judge?

10 THE COURT: The order of affirmance is when?

11 MR. ZAMAN: February 22nd, 2019.

12 THE COURT: Okay.

13 MR. ZAMAN: I didn't know about it until two weeks ago.

14 THE COURT: And can you read for me verbatim what -- the
15 arguments the State made that you're referring to? You started, and I
16 interrupted you. I apologize.

17 MR. ZAMAN: Oh, of course, Judge. So I think there's -- let
18 me find it here. So this is the closing, I'm just going to quote it here.

19 "The four year plan, what's that? Well, the defendant has four years to
20 figure out what he was going to say on the stand." That's it, judge.

21 THE COURT: Okay.

22 MR. ZAMAN: And there's some other --

23 THE COURT: Okay. That was the statement. Okay.

24 MR. ZAMAN: -- some other quotes. I have one in rebuttal.
25 "Having four years to contemplate it, Mr. Coleman sees the video then

1 has to admit certain things."

2 THE COURT: Okay.

3 MR. ZAMAN: And to be clear, Judge, I don't find that second
4 statement to be a general tailoring issue. I do find the first statement to
5 be, however.

6 THE COURT: Okay. I can't find -- Christopher Woodstone.

7 MR. ZAMAN: I can share it with the Court --

8 THE COURT: I'm trying to find it.

9 MR. ZAMAN: -- or whatever is the easiest way.

10 THE COURT: Okay. I do have it. Okay. I have it. The
11 remittitur was issued March 21st of 2019. Okay.

12 MR. SCHWARTZER: Do you want me to speak, Your Honor?

13 THE COURT: Just one second. Is that all you had to add, Mr.
14 Zaman?

15 MR. ZAMAN: Yes, Your Honor. Did you have any questions
16 about the expert --

17 THE COURT: I did not have any further questions, but if
18 there's anything else that you want to add, go ahead and add that.

19 MR. ZAMAN: Sure, Judge. Very briefly on the expert test --
20 just so I can hit everything on the expert testimony versus the lay
21 witness testimony.

22 THE COURT: Yes.

23 MR. ZAMAN: I would just say that because you need
24 particularized knowledge to indicate who shot first, not -- because you
25 don't need particularized knowledge to indicate which direction the

1 casing would eject from a gun, but I'm sure Your Honor is aware there is
2 a lot of different things that can happen with mechanical failure, et
3 cetera, with the gun, all of which would require expert testimony. I think
4 to the extent that Detective Miller was allowed to testify about that,
5 Judge, and was not noticed as an expert, obviously, that's
6 impermissible.

7 And, Judge, I submit other than any response or any
8 questions the Court has.

9 THE COURT: Okay. Mr. Schwartzer. Mr. Schwartzer, you
10 say in your brief that this is time barred. I mean, you start with your first
11 argument, Judge, this is time barred you shouldn't even consider it. But
12 you guys stipulated to give him more time, and you're saying that that's
13 procedurally improper. Well, if it was procedurally improper why did
14 you guys do it?

15 MR. SCHWARTZER: Well, I think that's the confusion
16 between the State, Your Honor. The person who gave -- I'll be clear. The
17 person who gave Mr. Zaman extra time was myself. He contacted me
18 directly. This was my trial. I said, okay.

19 THE COURT: Uh-huh.

20 MR. SCHWARTZER: Apparently, that didn't get back to
21 appellate, so the person who filed the appellate brief did the time bar
22 thing.

23 THE COURT: Okay.

24 MR. SCHWARTZER: My understanding with reading the
25 case, it doesn't matter whether I agreed to it or not. I don't feel -- I

1 personally don't feel comfortable arguing that it's time barred since I
2 agreed to the --

3 THE COURT: Well that was my question.

4 MR. SCHWARTZER: -- continuance. Yes.

5 THE COURT: Because I was like you guys agreed to it, and
6 now you're saying that that's procedurally wrong. Well, why would you
7 agree to it if you knew it was procedurally wrong.

8 MR. SCHWARTZER: Right.

9 THE COURT: Okay.

10 MR. SCHWARTZER: I'm not comfortable, because -- I'll make
11 the representation to the Court, I was contacted, I agreed to it. I think I
12 did it twice, if I remember right.

13 MR. ZAMAN: Yeah, for as many times as I needed it, Your
14 Honor.

15 THE COURT: Okay.

16 MR. SCHWARTZER: So I don't -- you know, I'll submit on
17 those arguments, Your Honor, but I don't find that argument particularly
18 persuasive, especially in a trial that led to a first degree murder case.

19 THE COURT: Okay.

20 MR. SCHWARTZER: Going into the arguments with the
21 PTSD claim. I don't think we need to have a hearing on this. We already
22 had a hearing on this when we did the motion to continue on the order
23 shortening time. Mr. Schwarz announced ready after multiple years of
24 getting ready for this case. He writes in his motion that he only recently
25 found out about the PTSD claim that Mr. Muhammad-Coleman has told

1 him about it. We know what -- I mean, Mr. Schwarz, we could take his
2 representations when he writes the motion and puts his affidavit in that
3 motion, we can take it at face value from that motion that he didn't know
4 about the PTSD claim.

5 And that's a claim then that was argued in front of Judge
6 Gonzalez, who -- the State made those competency briefings part of the
7 record because it shows specifically that Mr. Muhammad-Coleman was
8 shown by multiple doctors to be malingering and every time he went
9 back to competency court it was something different. And everything
10 changed when he was seen by doctors multiple times. So you could
11 see --

12 THE COURT: Well, you would agree with Mr. Zaman that
13 competency is making a determination as to whether or not you can
14 assist counsel in your trial proceedings --

15 MR. SCHWARTZER: Sure.

16 THE COURT: -- is what we're talking about. If somebody has
17 PTSD, it can still be reasonable that they can still be able to assist in their
18 defense. They could have PTSD, they could be medicated, they could be
19 not medicated and still be able to assist in their defense. So a
20 competency evaluation isn't necessarily testing to see do you have any
21 sort of mental health issues. The basis of that test is can you assist in
22 your defense.

23 MR. SCHWARTZER: I agree with that. But one of the things
24 -- I absolutely agree with that. But one of the things that they consider
25 when they do these evaluations is the history of mental health, right.

1 One of the things they consider is all the diagnoses --

2 THE COURT: Right.

3 MR. SCHWARTZER: -- and any prior diagnoses you've had.
4 So they stated that mental health -- and one of the things that would be
5 considered would be PTSD. And since that was not something that Mr.
6 Coleman decided to provide to these doctors, I think it the kind of
7 bootstraps what Mr. Schwarz says, which he was only recently informed
8 after the counter call of this PTSD claim.

9 And quite frankly, Your Honor, Mr. Coleman did testify, and
10 Mr. Coleman did claim that he was shot earlier before this murder
11 occurred and that that's the reason why he brought a gun to this drug
12 deal or what have you.

13 THE COURT: Right.

14 MR. SCHWARTZER: So a lot of that testimony still came in
15 anyway when Mr. Coleman testified. So I don't see -- a) I don't see how
16 you get past the fact that he's ineffective, when he didn't know, and he
17 said in a motion he didn't know, Mr. Schwarz, the attorney of record. But
18 second, I don't see how it makes a difference when they used the same
19 argument and the same testimony anyway.

20 And quite frankly, Your Honor, we don't have any additional
21 documents to provide because this is their burden, the clear and
22 convincing burden from the Defense side that he even has PTSD or that
23 would have affected the case. So, Your Honor, I don't think it's a cedes
24 on that.

25 Regarding Detective Miller's testimony, it seems -- I mean,

1 you've seen the -- I just want to make it very clear, because this who shot
2 first thing, if you watched our closings or you read our closings, I don't
3 think it matters. It doesn't matter who shot first because it's clear from
4 that video that Mr. Muhammad Coleman brought out the gun first, then
5 Mr. Muhammad Coleman struck the victim first with the gun -- twice
6 actually -- before any gun fire occurred.

7 Now the argument -- and that's something that argued both
8 in closing and rebuttal. Obviously, as the initial aggressor, Mr.
9 Muhammad Coleman doesn't have the right for self-defense and that's
10 something that was argued quite a bit by the State and actually the
11 Defense in the opposite way during our closing.

12 But on top of all that, what Detective Miller is doing is she's
13 taking the testimony -- you already have an expert Anya Lester who
14 testified that this type of gun fires to the right if the gun is in this specific
15 position, if the gun is held in a neutral position, not to the side or what
16 have you. And you have the CSA talking about the casing scene and
17 where the casings were found.

18 So all you're having Detective Miller do is make the
19 conclusion between these two things, saying that this is -- based on that,
20 this is why I believe Mr. Muhammad Coleman shot first. Now she
21 doesn't say it in absolutes. She didn't say I absolutely think he shot first.
22 She said based on this evidence, this is why I think so. And then that --
23 and then she was cross-examined quite thoroughly by Mr. Schwarz
24 regarding the declaration affidavit. So I don't think Mr. Schwarz did
25 anything ineffective when he went at her regarding the affidavit, nor do I

1 think that Detective Miller's testimony is expert testimony.

2 THE COURT: And just so -- so you're saying that -- because,
3 basically, your position is she said because of the casings, and because
4 of what I know about firearms, and because of these things this is why I
5 believe he shot first. So you take that to be testimony from the lead
6 detective on the case and not expert testimony?

7 MR. SCHWARTZER: Correct, Your Honor.

8 THE COURT: Okay.

9 MR. SCHWARTZER: I don't believe it's expert testimony.

10 THE COURT: Okay.

11 MR. SCHWARTZER: I believe it's an opinion she can make
12 based on her knowledge as a lay witness.

13 I don't -- the Judge Herndon argument wasn't addressed. I
14 think it's pretty clear that Judge Herndon was relying on his own
15 thoughts on the case when he said from watching the testimony, and
16 watching the video, and listening to the forensics, I determined that I
17 believe Mr. Muhammad Coleman shot first. I think that's very clear for
18 the record. I don't think that has anything to do with Detective Miller.

19 And then finally with the right to remain silent, I mean Mr.
20 Muhammad Coleman decided not to remain silent, instead he gave
21 testimony -- instead he gave a statement to Detective Miller four years
22 before he took the stand saying he doesn't -- he never heard of the
23 Travelers Inn. He's never heard of any of these people before. He hasn't
24 heard of any of those things. That's before he knew we had a video.
25 And then four years later he takes the stand, and it's a very different

1 story and that's just been -- that's what was pointed out by the State,
2 which is, look, before he knew we had a video, I never heard of the
3 Travelers Inn. I never heard of this person. I never heard of that person.
4 But as soon as he saw that he was on video and there was forensic
5 evidence like fingerprints putting him at the scene, then the story
6 changes. I think that's more than fair for the State to point out in their
7 closing.

8 THE COURT: Okay. Mr. Zaman, any reply to those things? I
9 saw you feverishly writing over there.

10 MR. ZAMAN: Just one thing, because I finally found it.

11 THE COURT: Okay.

12 MR. ZAMAN: I just want to make clear one of the three
13 doctors, because it was Dr. Chambers, Dr. Harder, and Dr. Kapel, Dr.
14 Kapel did find and recommend Darion for Lake's and asked to have his
15 mental health addressed there. That's why Dr. Harder was breaking the
16 tie.

17 And then I would just -- I found the quote as well, Judge. Dr.
18 Chambers specifically says, "findings were not contingent on whether
19 Defendant's mental health history exists." So with that specific findings
20 in the doctor's report, I don't think that we can, in good faith, say that the
21 reports themselves show there's not PTSD. I submit, Judge.

22 THE COURT: Okay. I'm going to read the *Woodstone* case,
23 and then I'll issue a minute order. And if we need an evidentiary
24 hearing, then my staff will contact you guys to set it up. Okay.

25 MR. ZAMAN: Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHWARTZER: Thank you, Your Honor.

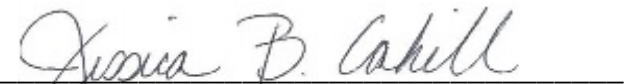
THE COURT: Thank you. And just so you know, if we do need an evidentiary hearing because your client's in prison, it's going to be done on a Friday morning. So we'll just have to pick a Friday to do it, if we need one. Okay.

MR. ZAMAN: Thank you for the Court's time, Your Honor.

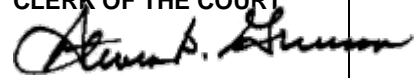
THE COURT: Thank you.

[Proceedings concluded at 9:33 a.m.]

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



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN
2
3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DARION COLEMAN,

9 Plaintiff,

10 vs.

11 RENEE BAKER,

12 Defendant.

CASE NO. A-19-806521-W

DEPT. X

13 ***BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE***

14 ***FRIDAY, DECEMBER 18, 2020***
15 ***RECORDER'S TRANSCRIPT RE:***
16 ***EVIDENTIARY HEARING***

17 APPEARANCES:

18 For the Plaintiff:

WALEED ZAMAN, Esq.

19
20 For the Defendant:

21 MICHAEL SCHWARTZER, Esq.
22 CHIEF DEPUTY DISTRICT ATTORNEY

23
24
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada, Friday, December 18, 2020 at 9:00 a.m.

2
3 THE COURT: Darion Coleman v. Renee Baker. This is the date and time set
4 for the evidentiary hearing on the limited issue of whether or not counsel was
5 ineffective in investigating and utilizing information at trial regarding petitioner's
6 PTSD. Are both parties prepared to go forward?

7 MR. ZAMAN: Your Honor, there is a preliminary matter I need to have
8 addressed today. I know Your Honor told me to file written motions in District Court.
9 In the last 24 hours, Judge, I learned of the existence of a phone call that was
10 between Darion and previous counsel that would possibly not have been recorded
11 because I don't think his previous counsel would not have potentially been
12 registered as his attorney at that time because he had substituted in. I believe there
13 is a possibility there was discussion of the PTSD on that phone call. It would have
14 been March 2016. I tried to confirm, Judge, if they still would retain that. I wasn't
15 able to confirm or deny if that call would be retained. But my issue is I don't know
16 what's on the call but if there is a possibility it was discussed on this March 2016 call
17 I would be ineffective to not at least find that out because alternatively, Judge, I feel
18 like I would end up wasting the Court's time with moving forward today and then I
19 subpoenaed this and got this and then had to address it at that time, if it exist.

20 THE COURT: Okay. Mr. Schwartzer. Mr. Schwartzer, you're muted.

21 MR. SCHWARTZER: Your Honor, obviously the State is ready to - - I'll say
22 this. Mr. Zaman did contact me yesterday and did tell me last night, late last night,
23 saying that he was going to make that request, and I do appreciate him giving me
24 that courtesy but that said the State is prepared to go forward. I mean he's been
25 representing Mr. Coleman for over a year now. The fact that Mr. Coleman just

1 decides to disclose this phone call is really on the fault of the defendant and the
2 State would ask to go forward at this point.

3 THE COURT: Mr. Zaman, this is what we're going to do. When you had filed
4 the writ when the State responded and everything, and as everyone was preparing
5 for this hearing today, it's my understanding from your representations you had no
6 knowledge of this call so I have every reason to believe that you intended to go
7 forward without it up and until this was made known to you as of yesterday. So
8 since we do have everybody here what we're going to do is we're going to start the
9 evidentiary hearing. I will give you the opportunity at the end of the hearing to see if
10 you can get that call and if you would like to supplement your briefing after the end
11 of this hearing but with everybody here, with Mr. Schwarz here and having reserved
12 this time we are going to begin the evidentiary hearing and get the testimony out
13 today. I will not make a ruling on this today, and if you wish to supplement any
14 evidence you deem necessary at the end of the hearing I will give you an
15 opportunity to do that.

16 MR. ZAMAN: Thank you, Your Honor. We're ready to proceed. I appreciate
17 that.

18 THE COURT: Mr. Schwartz, can you mute yourself until we call you.

19 MR. SCHWARTZ: Sure, Judge.

20 THE COURT: Thank you. All right. Are both parties prepared to go forward
21 other than that?

22 MR. ZAMAN: Yes, Your Honor.

23 MR. SCHWARTZER: Yes, Your Honor.

24 THE COURT: Okay. Mr. Zaman, this is your hearing. You may call your first
25 witness.

1 MR. ZAMAN: Call Michael Schwartz. Just get him out of here as soon as
2 possible.

3 THE COURT: Mr. Schwarz, if you could unmute yourself now. Sorry, we
4 could just hear you crumbling all that paper.

5 MR, SCHWARZ: Sorry, Judge.

6 THE COURT: It's okay. Mr. Schwarz, if you could please raise your right
7 hand so my clerk can swear you in.

8 (MICHAEL SCHWARZ SWORN AS A WITNESS.)

9 THE COURT: This Court is going to make a record that this Court is familiar
10 with Mr. Schwarz and this Court can authenticate that is the person who is
11 appearing via Blue Jeans.

12 Mr. Zaman, whenever you are ready.

13 MR. ZAMAN: Thank you, Your Honor,

14 Q. Mr. Schwarz, good morning and thank you for your time today. Do you
15 recall representing Darion in this case?

16 A. Yes.

17 Q. Do you recall what the charges were?

18 A. I know it was - - I believe it was one count of open murder, one count of
19 robbery, one count of conspiracy to commit robbery and then there was some other
20 charges too that I don't recall off the top of my head.

21 Q. Did you ultimately represent Darion in the trial in this matter?

22 A. I did.

23 Q. In your mind what were the defenses that you had?

24 A. Our defense was self defense.

25 Q. And in your training and experience how would a post traumatic stress

1 disorder claim, how would that tend to or would that tend to support a self-defense
2 claim or how would that affect it?

3 A. Well, I did a motion and I cited to a case. I don't know the case off the top
4 of my head but the Supreme Court sort of indicated that PTSD might be a
5 determining factor in a self-defense case.

6 Q. So for that reason in this case you wanted the opportunity to sort of
7 evaluate Darion for PTSD?

8 A. Yes.

9 Q. And then how would that have worked? What would the next - - let's say
10 had your motion to continue been granted what would your next step have been
11 regarding the PTSD?

12 A. Well, I would have had him evaluated by a psychologist or psychiatrist and
13 then depending on the results of that evaluation I may or may not have called that
14 individual to be a witness.

15 Q. Just to clarify, Mr. Schwarz, you were appointed on this case, correct?

16 A. That's correct, yes.

17 Q. Would you have to do anything to get approval to get that evaluation?

18 A. Yeah, I have to get approval through the office of appointed counsel but
19 they're pretty lenient if you can give them a good reason.

20 Q. And I want to talk to you a little bit about your communication with Darion.
21 Where did Darion reside during the time you represented him?

22 THE COURT: Just one second. Mr. Schwarz, before you answer that
23 question.

24 Mr. Coleman, it is my understanding that you are waiving your attorney, client
25 privilege with Mr. Schwarz for the limited purpose of having this hearing so he can

1 testify about conversations that he had with you. Is that correct?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. Thank you so much, sir.

4 THE DEFENDANT: Okay. You're welcome.

5 THE COURT: If you could please repeat the question so Mr. Schwarz can
6 answer it.

7 MR. ZAMAN: Of course, Your Honor.

8 Q. During the time you represented Darion where did he reside?

9 A. I believe he was in prison on another case for part of that time, but I know
10 that at some point I requested him to be remanded to the Clark County jail so we
11 could have, you know, contact. And that was in the good old days when we could
12 actually have contact.

13 Q. Pre covid, right?

14 A. Yep.

15 Q. How would you communicate with Darion specific by person, by phone?

16 A. Sometimes by phone. But in preparation for trial it was always face to
17 face.

18 Q. Do you recall how frequently you met with Darion during the year 2016?

19 A. I don't but I think as we get closer to trial we met frequently.

20 Q. I want to ask you about - - so was there a point in your relationship with
21 Darion that maybe the relationship deteriorated might be a way to say it?

22 A. No, I don't recall that happening.

23 Q. Do you recall him filing a motion to withdraw you as counsel in March of
24 2016?

25 A. Yes, I do recall him doing that. I believe he pulled it back.

1 Q. Do you know what the basis of that was or did you discuss that with him?

2 A. I'm sure I did but I don't recall at the moment.

3 Q. Let me ask you this. What were the major pretrial issues that you and
4 Darion discussed as you were preparing for trial?

5 A. Off the top of my head I just don't know. I mean we worked on his
6 testimony but I'm not remembering any pretrial issues although I do believe I filed
7 some motions.

8 Q. So just to clarify other than the PTSD which we've discussed and
9 Darion's testimony was there anything else about the case pretrial that you thought
10 would be worthy of looking it.

11 A. Well, I had an investigator appointed to the case.

12 MR. SCHWARTZER: I'm going to object. Your Honor.

13 THE COURT: I'm sorry.

14 MR. SCHWARTZER: I'm going to object. Again this goes past the scope of
15 the evidentiary hearing.

16 THE COURT: Mr. Zaman.

17 MR. ZAMAN: And, Judge, I just want to get into what investigation was and
18 wasn't done. I understand that this is limited just to the PTSD I can tailor my
19 questions therefore if that's the case.

20 THE COURT: Please do.

21 MR. ZAMAN: All right.

22 Q. Mr. Schwarz, when to the best of your knowledge do you recall when
23 Darion first indicated PTSD to you?

24 A. To my knowledge it would have been a short time to my filing the motion to
25 continue the trial in this case,

1 Q. When you say short time prior are we talking days? Are we talking
2 weeks?

3 A. Yeah, it would have been days.

4 Q. So your testimony today is that the motion to continue you filed was a few
5 days after - - maybe not a few days. Days after Darion first indicated to you that
6 there was any knowledge of PTSD?

7 A. That was my recollection, yes.

8 MR. ZAMAN: Brief indulgence. Judge, that's it. No further questions.

9 THE COURT: Mr. Schwartzer, your cross.

10 MR. SCHWARTZER:

11 Q. Mr. Schwarz, as soon as you found out about Mr. Coleman's claim that he
12 had PTSD and that he thought that could be useful to your case you filed a motion,
13 is that correct?

14 A. Yes, I did. And I filed an order shortening time so it could be heard at the
15 calendar call.

16 Q. That was my next question. It was so close to the time of the calendar call
17 that you actually also filed a motion for OST that was granted?

18 A. That's correct.

19 Q. Then you argued it in front of Judge Gonzalaz at the calendar call on
20 December 28th, I believe?

21 A. Yes.

22 Q. And after extensive arguments including all six of the competency
23 evolutions Judge Gonzalez denied it, is that correct?

24 A. That's correct.

25 Q. And Judge Gonzalez set the case for trial and it went to trial?

1 A. Yes.

2 Q. Despite the ruling Mr. Coleman was able to testify at the trial, correct?

3 A. Yes.

4 Q. I'm sorry, I didn't here you, Mr. Schwarz.

5 A. Yes, he did testify at the trial.

6 Q. And he did testify about being shot prior to this murder happening back

7 when he was 16?

8 A. I believe so, yes.

9 Q. And at some point during your close you were able to at least mention the

10 fact that he was shot past for the reason why he would have had a gun in this type

11 of interaction?

12 A. Yes. I reviewed a portion of the transcript involving my closing then and I

13 did make mention of that in my closing argument.

14 Q. Now going back to what you would have done if this motion was granted,

15 you would have hired or had the county hire a psychologist to do an evaluation, is

16 that correct?

17 A. Yes.

18 Q. So he would have gone through an evaluation similar, I know not the

19 same to the six evaluations he did throughout the course of this case, is that correct?

20 A. Well that is what I would believe, sure.

21 Q. Are you familiar at all with the six evaluations?

22 A. Yes, I reviewed them.

23 Q. And every one of those evaluations was there mention of Mr. Mohammed

24 Coleman malingering psychological issues?

25 A. There was mentions of malingering, yes.

1 Q. Let me ask you this. I don't know if you recall when did Mr. Coleman say
2 he had PTSD at what age did he get diagnosed or suffer from PTSD, do you recall?

3 A. I don't recall that but I believe he was 16 years old when he was shot.

4 Q. So you believe that came from the time he was shot at 16 years old?

5 A. That's correct.

6 Q. And is your recollection today is that's the reason why he said he had
7 PTSD, Mr. Coleman?

8 A. That's my recollection, yes.

9 MR. SCHWARTZER: No further questions, Your Honor.

10 THE COURT: Any redirect, Mr. Zaman?

11 MR. ZAMAN: Yes, Your Honor. Very briefly.

12 Q. I want to talk a little bit about those competency reports. Mr. Schwarz, do
13 you recall reading in Dr. Harder's competency report that a diagnosis of malingering
14 is not inconsistent with other mental illness?

15 A. I don't remember specifically from that report but, yeah, I've read that in
16 reports, sure.

17 Q. Based on the fact that you did file that motion to continue obviously you
18 didn't see anything in these competency reports that you wouldn't have a good faith
19 basis to thus evaluate Darion for PTSD?

20 A. My recollection in the six reports there was one that mentioned PTSD but
21 it didn't go into any great detail. I think it was just a statement by the defendant to
22 the interviewer.

23 Q. Do you recall when you came across that knowledge about the mention
24 of PTSD in one of those competency evaluations?

25 A. I don't but I would have looked through them before I filed the motion.

1 Q. And then last question. You were just asked about how you filed an order
2 shortening time on the motion to continue. Do you recall a hearing in this case that
3 was on November 20th, 2016, of approximately 30 days before the original calendar
4 call or the calendar call?

5 A. If that was in the motion - - I don't remember the hearing before the
6 hearing on the motion.

7 Q. Okay. Would it surprise you that there was a hearing on November 20th,
8 2016 where he indicated to the Court that there was some issues and the Court
9 directed you to file a motion?

10 A. No, that wouldn't surprise me. I believe you.

11 MR. ZAMAN: No further questions. Thank you very much, sir.

12 THE COURT: Anything else, Mr. Schwartzer?

13 MR. SCHWARTZER: No, Your Honor. Thank you.

14 THE COURT: Is Mr. Schwarz excused?

15 MR. SCHWARTZER: Yes.

16 MR. ZAMAN: Yes.

17 THE COURT: Mr. Schwarz, thank you so much for spending your Friday with
18 us and being here to testify. We really appreciate it. You are excused, sir. Thank
19 you. Have a good weekend.

20 MR. SCHWARTZER: Thank you, Your Honor. You too.

21 MR. ZAMAN: Thank you, Mr. Schwarz.

22 THE COURT: Mr. Zaman, do you have any other witnesses?

23 MR. ZAMAN: Just one, Your Honor. I was going to call Darion Muhammad-
24 Coleman.

25 THE COURT: Mr. Coleman, sir, if you could raise your right hand so that you

1 can be sworn in by the clerk. Thank you, sir.

2 (DARION MUHAMMAD-COLEMAN SWORN AS A WITNESS.)

3 THE COURT: Mr. Zaman, you are familiar with Mr. Coleman through your
4 representation of him, can you attest that that is Mr. Coleman who is appearing via
5 video from the Lublock Correctional Center?

6 MR. ZAMAN: Yes, Your Honor, it does appear to be him.

7 THE COURT: Okay. Mr. Zaman, whenever you're ready.

8 MR. ZAMAN: Thank you, Your Honor.

9 Q. Darion, good morning.

10 A. Good morning.

11 Q. Do you know why we're here today, Darion?

12 A. Yes, sir, I'm here for the writ of habeas corpus.

13 Q. Do you remember your attorney in this case who represented you in the
14 trial?

15 A. Yes, sir, it was Michael Schwarz.

16 Q. And so I'm going to be tailoring my questions to just this issue, post
17 traumatic stress disorder. But I want to first make just a real quick time line. Do you
18 remember when Mr. Schwarz was appointed on your case?

19 A. Yes, he was appointed December 1st, 2014.

20 Q. And then you recall being referred to competency evaluations, right?

21 A. Yes, sir. I think I was referred - -

22 Q. In your mind when did you and Mr. Schwarz first get an opportunity to
23 really start discussing your case, your defenses?

24 A. Well, when he was first appointed to me I went right into competency
25 evaluations, I want to say it was January 12th of 2015, I think it was like three weeks

1 after he was appointed so he had come to see me, told me that we wouldn't talk
2 about the case until after the competency evaluation, and that lasted for several
3 months. That lasted for several months so we didn't discuss strategy until like
4 October of 2015.

5 Q. You recall at some point you did discuss PTSD with your previous
6 attorney?

7 A. Yes, sir.

8 Q. But talk to me about the circumstances in which that came up. How did
9 you bring that up?

10 A. Well, March 9th, 2015 I had filed a motion to withdraw counsel because our
11 communication had broken down completely, and the Judge had asked would we be
12 able to fix our problems that we had going on, and he agreed he would address all
13 my concerns but after Court he told me to give him a call and I gave him a call about
14 a week later and on that call I told him that I needed a PTSD evaluation because
15 since I've been shot I haven't been the same mentally, and I felt that had a major
16 impact on how I reacted to everything in my case.

17 Q. So let me slow you down just a little bit, okay. When you're talking about
18 motions you did file a motion 2016, February 9th, would that be the motion you're
19 talking about?

20 A. Yes, sir.

21 THE COURT: And I'm sorry, Mr. Zaman, did you say February 9th of 2016?

22 MR. ZAMAN: That's correct.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay.

25 MR. ZAMAN:

1 Q. So let me back up a little bit. Tell us more why did you think that you had
2 PTSD?

3 A. I just kept - - I couldn't sleep. It's been on my mind. Ever since the day I
4 was shot it's been on my mind and sounds, just a lot of different things made me
5 feel like something was wrong because I wasn't like that before I got shot. And I
6 never really adjusted to anyone - - after I was shot when I was at the hospital there
7 was two things they told me. They said, one, you have to go to physical therapy.
8 And, two, you might have to go see a psychologist from this experience. And I did
9 neither and over the course of the years I just knew something was wrong, and it
10 actually got worse. It didn't get better. It got worse.

11 Q. When did this shooting happen?

12 A. It happened I think it was May of 2012.

13 Q. Now we're talking about this motion to withdraw. You didn't mention
14 PTSD specifically in that motion, you don't recall or do you recall?

15 A. No, sir, I just put in the motion that I wasn't able to discuss anything with
16 my attorney. We didn't have any type of communication.

17 Q. So after you filed that motion what was the next communication you had
18 with your attorney?

19 A. After I filed the motion I called him around end of February and I was able
20 to get in contact with him, and I had told him that I had filed a motion to withdraw
21 and I told him why and I had asked him can you send me my whole discovery, and
22 he sent me some of it.

23 Q. Was there any mention of PTSD on that call?

24 A. Not on the February call, no, sir.

25 Q. So what was then your next communication with him because let me ask

1 just to make this more direct. There was a Court hearing about a month later,
2 March 9, 2016, do you remember that hearing?

3 A. Yes, sir.

4 Q. And did you have a chance to talk with your attorney at that hearing?

5 A. Yes, sir, that's where he told me to give him a call. That's where we
6 agreed that I was going to stay with him. He told me to give him a call and he would
7 address my concern.

8 Q. Did you make that call to him later?

9 A. Yes, sir, I called him about a week later.

10 Q. About a week later. Okay. So about a week after the March 9th hearing
11 you called him. What did you discuss on that call?

12 A. It started off fairly good. I just asked him - - I told him that I needed a
13 PTSD evaluation and I told him that I hadn't been the same since I was shot and we
14 started discussing the circumstances surrounding me being shot and he told me that
15 is possible that I do have PTSD. So we do need to get that evaluation and he told
16 me that he would have to put some type of motion in or something for the Courts to
17 pay for the evaluation because he was Court appointed.

18 Q. Just to clarify you both agreed on that call that he would try to get you an
19 evaluation for PTSD? Is that a fair statement of what you're saying?

20 A. Yes, sir, he told me that we would get the evaluation. He told me he
21 would have to put a motion in for the Courts to pay for the evaluation.

22 Q. Did you guys set up any kind of follow up call to discuss this or what was
23 the plan to follow up?

24 A. Yes, sir, he told me to call him back in 90 days.

25 Q. Why did he want you to call back in 90 days?

1 A. So he can check up about the evaluation and put a motion in to the Court
2 and proper procedures that he would have to make for me to get the evaluation.
3 And he also told me that he was going to get my medical records.

4 Q. Did you end up having another conversation around that 90 days after?

5 A. Yes, sir, I called him July 2nd of 2016.

6 Q. What was discussed on that July 2nd, 2016 call?

7 A. I started off good. I asked him what he was going to do for 4th of July. He
8 told me he was just going to spend the holiday with his girlfriend. Then I went right
9 to it. I asked him what was the status of the evaluation. He told me that he hadn't
10 put the paperwork in, the motion for the evaluation yet but he told me he would do it
11 before calendar call. And then we started talking about the importance of the
12 evaluation and how it would be part of our defense.

13 Q. Because you were alleging self-defense at trial?

14 A. Yes, sir.

15 Q. Did you hear from him after July 2nd, 2016?

16 A. No, sir, I wasn't able to speak to him again until status check I believe it
17 was.

18 Q. When you say status check are you talking about like a calendar call?

19 A. The November 28th status check.

20 Q. Did you and him communicate at all at that status check?

21 A. Well, yeah, he told me that he was - - he had put in a motion to continue
22 with and then he had said I had recently told him that I had PTSD which was
23 surprising to me because I told him at least eight months before this Court date that
24 I needed the PTSD evaluation and he agreed so I didn't understand why he had
25 said that in the motion but he assured me - -

1 Q. So, Darion, I just wanted you to answer not about what was in the motion
2 but at that status check hearing did you and your previous attorney talk at all or did
3 he just talk to the Judge?

4 A. Well, he just talked to the Judge, yeah; he mostly just talked to the Judge.

5 Q. And if you don't remember it's totally okay to say you don't remember
6 rather than guess, all right, because I know it's a lot of dates and it's a long time in
7 the past. So that was November 20th, 2016 - - brief indulgence.

8 So just to sum it up to your recollection maybe not the exact date but you're
9 pretty certain that about one week after that March 9th, 2016 hearing on your motion
10 to withdraw that you called and you discussed specifically your PTSD claim with
11 your attorney and how you would go about that?

12 A. Well, yes, because remember that was coming out of the motion to
13 withdraw and before that we hadn't spoken for at least three months, you know, so I
14 was happy to talk to him and I wanted to make sure since I decided to keep him that
15 this time we wouldn't have the same problems that we had before I filed the motion
16 to withdraw counsel.

17 MR. ZAMAN: No further questions. I pass the witness.

18 THE COURT: Cross, Mr. Schwartzer?

19 MR. SCHWARTZER: Sure, Your Honor.

20 Q. Mr. Coleman, you're claiming this PTSD issue came out when you were
21 16 years old, is that correct?

22 A. Yes, sir.

23 Q. You are absolutely certain that's when - - that's absolutely certain when
24 you would have supposedly suffered from PTSD?

25 A. Can you repeat the question?

1 Q. You are absolutely certain that's when you would have suffered from the
2 PTSD?

3 A. I would be absolutely certain I suffer from PTSD. That's when I was shot
4 when I was 16.

5 Q. So you wouldn't have mentioned having PTSD any earlier than 16 years
6 old?

7 A. You say I wouldn't have mentioned having PTSD any earlier than 16?

8 Q. Yeah, to any doctor or to any lawyer or anything like that?

9 A. Before I was 16?

10 Q. Correct.

11 A. No, I would have no reason to before I was 16.

12 Q. You wouldn't have been diagnosed with it at 13 years old, right?

13 A. No, sir, not that I recall.

14 Q. So if you told someone that that would have been a lie, correct?

15 A. I don't recall ever saying that, sir.

16 Q. Okay. Now you've done a total of six psychological evaluations in this
17 case, correct?

18 A. Quite a few.

19 Q. Okay. And have you been able - -

20 MR. ZAMAN: Objection, Your Honor. Sorry, I was on mute when I objected.
21 my apologies. I just wanted to clarify that they're competency evaluations. They are
22 not psychological evaluations.

23 THE COURT: Okay.

24 MR. SCHWARTZER: Okay.

25 THE COURT: All right. Mr. Schwartzer.

1 MR. SCHWARTZER: I'll rephrase the question.

2 Q. You did six competency evaluations that were done with individuals with
3 psychological training, is that correct?

4 A. I had six competency evaluations, yes, sir.

5 Q. And in all six of those there was mentions that you were malingering
6 symptoms, is that correct?

7 A. It was not in all six, no, sir.

8 Q. Okay. Would it surprise you if they were found in all six that they didn't
9 rule out malingering?

10 A. It would because I do recall some finding me incompetent.

11 Q. Yeah, but even if you are possibly found incompetent there is still room for
12 saying you are malingering, is that fair to say?

13 A. Yes, sir.

14 Q. Okay. So even in the ones that you were found supposedly not
15 competent there was mention that malingering could not be ruled out?

16 A. Can you repeat the question?

17 Q. Even on the two evaluations where they said that you were not competent
18 both those evaluations the person said they could not rule out malingering?

19 A. Are you asking me or are you telling me?

20 Q. I'm asking you.

21 A. If that is what the reports say I mean I guess. I don't have the reports in
22 front of me so I don't know.

23 Q. What does malingering mean?

24 A. I think it means you're not being truthful.

25 Q. Okay. So you're at least admitting in four of those they found you were

1 not being truthful, is that fair to say?

2 A. I don't have the reports if front of me. If that's what you say I'm going to go
3 with it.

4 Q. Okay. Additionally there was a presentence investigation report done in
5 your robbery case, is that correct?

6 A. Yes, sir.

7 Q. The date the report was prepared was December 23rd, 2014, do you have
8 any reason to not believe that?

9 A. No, sir.

10 Q. And they interviewed you for this, is that fair to say?

11 A. For the PSI?

12 Q. Yeah, by they I mean Parole and Probation interviewed you.

13 A. Yes.

14 Q. And they actually asked you about your mental health, is that correct?

15 A. No, sir, they went off of if I recall my - - yes, I think they did actually, yes.

16 Q. Okay. And do you recall there was no mention of you or anyone saying
17 that you had PTSD in that evaluation or in that PSI?

18 A. No, I don't recall.

19 Q. Would you have any reason to not believe me that on page 3 of your PSI
20 there is no mention in your mental health history of possible PTSD?

21 A. Not if you're looking at it I believe you.

22 Q. That would have been something that you could have mentioned to the
23 PSI writer, is that correct?

24 A. Yes, sir. There is a lot of things I could have mentioned.

25 Q. Despite the motion to be continued being denied you were still able to

1 bring up the fact that you were shot from the jury, is that correct?

2 A. Yes, sir, {inaudible}.

3 Q. Okay. I understand what you're feeling is but at the end of the day you
4 were able to talk about one of the reasons why you brought a gun to this drug deal
5 is because you were shot before, is that right?

6 A. Yes, sir.

7 Q. And also in your testimony you mentioned being sensitive to guns
8 because you had been shot in the past, is that fair to say?

9 A. Yes, sir.

10 Q. So all that stuff was mentioned during your examination?

11 A. Yes, sir.

12 Q. And in fact Mr. Schwarz even mentioned it at least briefly in his closing as
13 well?

14 A. Yes, sir, I believe.

15 Q. And then your argument at trial was self-defense, is that right?

16 A. Yes, sir.

17 Q. In fact I believe I cross examined you at the trial, is that right?

18 A. Yes.

19 Q. But that wasn't what you told Detectives when you were arrested, right?

20 A. I had been shot before?

21 Q. No, that this was self defense?

22 MR. ZAMAN: Judge, I'm going to object because if we're just here for the
23 purpose - - one second, Darion - - if we're just here for the purpose of PTSD I don't
24 see how any inconsistencies in his testimony about or any failure to state anything
25 about a self defense claim when he was arrested would be relevant.

1 MR. SCHWARTZER: It would go to the probability of success at trial, Your
2 Honor.

3 THE COURT: Okay. I'll allow that one question.

4 Mr. Coleman, if you remember the question you can answer. Do you
5 remember what the question was?

6 THE DEFENDANT: No, ma'am, I don't.

7 THE COURT: Mr. Schwartzer, could you please rephrase the question?

8 MR. SCHWARTZER: Absolutely.

9 Q. That's not the version of events you told detectives when you were
10 arrested, right, that it was self defense?

11 A. No, sir, I had a brief conversation with detectives.

12 Q. Do you recall there was an audio video recorded - - an audio video
13 recorded video of you with Detective Miller?

14 A. Yes, I remember.

15 Q. And during that I wouldn't call it brief but in those 20 minutes that you
16 talked to Detective Miller you denied being at the hotel and denied knowing anyone
17 involved, is that fair to say?

18 A. Yes, sir.

19 Q. You haven't had an evaluation done for PTSD since this trial?

20 A. No, sir, I haven't been able to. I thought I would have had one but it didn't
21 happen.

22 Q. And you're not being treated for it at the prison?

23 A. No, sir, we have really no contact with anybody in the prison right now.

24 Q. But you are being treated for other mental health issues?

25 A. No, sir.

1 Q. You're not being treated for bipolar or other stuff?

2 A. No, sir.

3 MR. SCHWARTZER: I have no further questions, Your Honor.

4 THE COURT: Mr. Zaman, any redirect?

5 MR. ZAMAN: Yes, Your Honor. Thank you.

6 Q. So, Darion, the District Attorney was asking you some questions about
7 your PSI and about maybe why you hadn't mentioned it. We just talked about today
8 how you didn't mention the PTSD to your previous attorney until March 2016. Why
9 wouldn't you mention something like that right away?

10 A. To my attorney?

11 Q. Well, just in general. Is there any reason that you wouldn't like just
12 disclose that to everybody or disclose it to the - - let's make it more specific. Is there
13 any reason you wouldn't kind of want to share that with the PSI interview person?

14 A. Well, to be honest with the PSI interview person they were being pretty
15 short - - it was short answers. It was short questions. They really wasn't elaborate.
16 They told me they basically already knew everything. They were just asking me
17 questions. It was really yes or no questions.

18 Q. So by this time this was December 23rd, 2014, you had not been
19 diagnosed with PTSD?

20 A. No, sir.

21 Q. But what your testimony is is that you were shot when you were 16 and
22 you had lingering thoughts that you could have PTSD?

23 A. Yes.

24 MR. ZAMAN: No further questions.

25 THE COURT: Any follow-up, Mr. Schwartzer?

1 MR. SCHWARTZER: No, Your Honor.

2 THE COURT: Okay. Thank you very much, Mr. Coleman. Thank you very
3 much for your testimony here today.

4 Mr. Zaman, do you have any more witnesses?

5 MR. ZAMAN: No, Your Honor. We'll rest.

6 THE COURT: You rest. Mr. Schwartzer, does the State have any witnesses?

7 MR. SCHWARTZER: No, Your Honor, but the State does want to make sure
8 before it rest that you're aware of, I believe, seven exhibits that were stipulated
9 between me and Mr. Zaman which include the six competency evaluations and the
10 presentence investigation report from December 23rd, 2014?

11 THE COURT: Yes, I was just about to get to that. We received an email that
12 you guys are stipulating to Exhibits A-G and they have been submitted to the Court.
13 Based on the stipulation of the parties Exhibits A-G will be admitted and they will be
14 submitted as the exhibits for this hearing. Since they are numbered as letters, Mr.
15 Zaman, we'll mark these as defense exhibits.

16 THE DEFENDANT: Your Honor.

17 MR. SCHWARTZER: Thank you, Your Honor.

18 THE COURT: Just one second, Mr. Coleman. We still got to get through the
19 formalities.

20 THE DEFENDANT: Okay.

21 THE COURT: All right.

22 THE DEFENDANT: All right. All right. I apologize.

23 THE COURT: It's okay.

24 So do you guys have anything else that you want to add for today?

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

1 THE COURT: Mr. Zaman.

2 MR. ZAMAN: Nothing other than argument, Your Honor.

3 THE COURT: And like I previously stated in light of the fact that Mr. Zaman
4 believes that there may be this call out there that may be relevant to the
5 proceedings that we are having here today, Mr. Zaman, I'm going to give you a
6 couple of weeks I assume to reach out to the prison or the Clark County Detention
7 Center, wherever this call may have been made to see if they have retained that
8 call. So what I'm going to do is I'm going to set this case down to have a status
9 check on the call. We're going to set it down for a status check on January 6th at
10 8:30.

11 Mr. Coleman, what do you want to say?

12 THE DEFENDANT: I just wanted to say, Your Honor, about the competency
13 evaluations. They just wanted to know - -

14 THE COURT: Mr. Coleman, you don't get to make any argument on your
15 behalf. You have a lawyer.

16 MR. ZAMAN: Darion, I got it.

17 THE COURT: There is no question pending. In these next two weeks if you
18 want to reach out - -

19 THE DEFENDANT: Okay.

20 THE COURT: Okay. When I'm talking you're not. In these next two weeks if
21 you want to reach out to Mr. Zaman and tell him whatever the issues are that you
22 have and if he feels the need to file a motion or whatever he needs to do he can
23 make those decisions at that time.

24 THE DEFENDANT: I understand, Your Honor.

25 THE COURT: We'll be back here on January 6th for a status check. On that

1 date we'll see what's going on with the phone call and then we will decide when
2 we're going to have argument on this issue.

3 MR. ZAMAN: Thank you, Your Honor. Thank you, Mr. Schwartzer.

4 MR. SCHWARTZER: Your Honor, I'm sorry. Could I ask Mr. Zaman one
5 question?

6 THE COURT: Yes.

7 MR. ZAMAN: Yes.

8 MR. SCHWARTZER: Mr. Zaman, are the calls from the prison or from the
9 jail?

10 MR. ZAMAN: It would be High Desert State Prison.

11 MR. SCHWARTZER: Thank you. Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MR. ZAMAN: Thank you, Your Honor.

14
15 (Proceedings concluded at 9:40 a.m.)

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

18
19
20 *Victoria W. Boyd*

21 5-4-21

22 _____
23 Victoria W. Boyd
Court Recorder/Transcriber

24 _____
Date



1 RTRAN
2
3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 DARION MUHAMMAD-COLEMAN,

9 Plaintiff,

10 vs.

11 STATE OF NEVADA,

12 Defendant.

CASE NO. A-19-806521-W

DEPT. X

13
14 ***BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE***

15 ***MONDAY, FEBRUARY 22, 2021***
16 ***RECORDER'S TRANSCRIPT RE:***
17 ***SUPPLEMENT TO PETITION***

18 APPEARANCES:

19 For the Defendant:

MICHAEL SCHWARTZER, Esq.
Chief Deputy District Attorney

20 For the Plaintiff:

21 WALEED ZAMAN, Esq.

22
23
24
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada, Monday, February, 22, 2021 at 9:25 a.m.

2
3
4 THE COURT: Is Mr. Coleman present at NDOC?

5 MR. SCHWARTZER: He should be at Lovelock, Your Honor.

6 MR. ZAMAN: I see somebody that looks like they are on video.

7 THE COURT: Mr. Coleman, can you hear me?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. There he is. He's present in custody at the Nevada
10 Department of Corrections. Mr. Zaman is here on his behalf. And Mr. Schwartzer is
11 here on behalf of the State. This is on - - Mr. Zaman, did you submit the call log?

12 MR. ZAMAN: I did, Judge. We submitted - - we did the affidavit of exhibits.
13 It's just a few pages of calls between Darion and prior counsel. Quite frankly,
14 Judge, we were hoping to get an actual recording. We weren't able to get that. We
15 were just able to get the logs themselves.

16 THE COURT: I realize that but I'm just now seeing the logs right now. I
17 haven't seen them. Was this just submitted today?

18 MR. ZAMAN: Not that I know, Judge. Let me double check. I think
19 something should have been submitted last week. Let me double check.

20 THE COURT: Do you have the call logs?

21 MR. SCHWARTZER: Mr. Zaman sent it to me by email, Your Honor.

22 THE COURT: I see them.

23 MR. ZAMAN: I'm sorry, Judge. We should have sent Your Honor a courtesy
24 copy. They were filed on the 16th.

25 THE COURT: I see them now.

1 MR. ZAMAN: And we're okay if - -

2 THE COURT: And I apologize. I have not seen these. But it appears that
3 Mr. Coleman is making calls from the prison. That's what these are.

4 MR. ZAMAN: Yeah, Judge. We're prepared to proceed, Judge. Again, that
5 would just be the calls from the prison. I think he was already in prison at that time
6 while he was awaiting trial for the instant matter.

7 THE COURT: Okay. But there is no additional actual recording of a call.

8 MR. ZAMAN: Correct, Your Honor.

9 THE COURT: So, Mr. Zaman, in light of that are you prepared to argue
10 today?

11 MR. ZAMAN: Yes, Your Honor, if that's okay.

12 THE COURT: All right. Mr. Zaman, it's your petition.

13 MR. ZAMAN: Thank you, Your Honor.

14 So, Judge, we're here on a pretty limited issue. I think the first thing to
15 discuss is the timeline we were able to draw out at the evidentiary hearing. The big
16 question being was there sufficient time that counsel had to then go ahead and get
17 that PTSD evaluation. Trial counsel was clear nothing he said was indicative that he
18 thought there was any malingering or anything other than he agreed that getting the
19 evaluation for PTSD would be the effective thing to do, that it would be useful for
20 trial. The question then becomes, Judge, whether or not Darion timely indicated
21 sufficient basis so that trial counsel could make a timely request. Obviously the
22 issue as far as we see it is that the motion to continue trial being filed nine days - -
23 excuse me, about 17 days before trial was to start obviously it gets denied knowing
24 that the trial in this case was originally scheduled on April of 2014.

25 So here's the timeline to the best of my knowledge, Judge, and this is kind of

1 based on my recollection as well as the record we have. So we know at evidentiary
2 hearing trial counsel made clear that there was no other issues. So any issues that
3 he indicates on the record naturally would have to be about this PTSD. If you go
4 through the record you have minutes on November 28th, 2016, which is about 70
5 days or so from trial where trial counsel indicates there was some concerns by
6 Darion. He wants to address them to the Court. The Court says file a motion.
7 Motion is thereafter filed about 23 days later December 19th and the motion is heard
8 on December 28th at which time it is denied.

9 So I think the record is clear that at the very least it is unambiguous that as of
10 November 28th, 2016, well in advance - - 35 days prior to trial. At the very least
11 counsel has made a record that this is an issue. The other thing that I think is
12 important is we ask questions about how long would this take, how difficult would it
13 be and trial counsel was again unambiguous that it would be within a few days, not
14 weeks. That it would easy and it would be a matter of simply - - I don't think he said
15 a phone call or email but just contacting the office of appointed counsel.

16 But additionally, Judge, the only thing from the calls I wanted to point out is
17 they show five calls between September 2016 - - excuse me, seven calls in 2016,
18 five calls in October 2016 and then one call right before that status check or few
19 weeks, November 3rd, 2016. So if counsel is indicating to us there is only one issue
20 as we are preparing for trial I think we can reasonably impute that within the several
21 months prior to trial at the very least it was brought to counsel's attention especially
22 when we consider counsel's own admission at the November 28th status check.
23 Obviously he must have got that message from Darion prior to November 28th. His
24 last call before November 28th looks like it was November 3rd, 2016. That gives him
25 an additional 25 days.

1 So I think the question of whether Darion timely made the indication I think
2 we've proven that, Judge. Granted 45 days in a vacuum is not a lot but three years
3 into a case right before a trial setting where everybody is anticipating you're going to
4 go forward that's a crucial amount of time. That then takes us to the second step of
5 the analysis, Judge, is whether or not prejudice can be inputted there and then I
6 think that's where our strongest argument is, Judge. If you look at the case itself the
7 State was seeking felony murder, and Darion was not guilty on those charges.
8 Meaning that the essential evidence that the jury had was what happened in that
9 very, very short maybe five to ten seconds when Mr. Guerra and Darion drawn guns
10 on each other. They were both pointing guns at each other's faces, and I'll be quite
11 frank, Judge, to me the video is so hard to tell who shot first, but nonetheless what
12 that shows when combined with the fact that there was no eyewitness testimony,
13 there was no clear surveillance, nobody that saw what happened that why Darion
14 chose at that moment to draw a gun when an ordinary person or otherwise a person
15 without PTSD might not draw a gun would have been crucial to his defense, Judge,
16 and that's particularly true because he was found not guilty of the felony murder
17 meaning that the jury found there wasn't enough evidence that this was all sort of a
18 plan.

19 Meaning that within that very tiny moment of time is where all the jury's focus
20 was, and whether or Darion has PTSD goes precisely to that argument. Because of
21 that, Judge, I don't think this IS something that we can consider harmless error.
22 Obviously if we knew whether or not he had PTSD that would help things, and if the
23 Court is considering denying this instead of granting it what I would at the very least
24 request is give us the opportunity to actually do the evaluation. If he comes back
25 and has PTSD we can move forward from there but if he doesn't, Judge, then I

1 mean obviously this argument is moot. But I think we have enough that there was a
2 sufficient amount of time before a very serious murder case that all that needed to
3 be done was take the steps necessary to get that evaluation. With knowing that
4 Darion was shot very recent to that there's enough there that there is reasonable
5 probability of a different outcome. Meaning there is enough there to think that there
6 is a reasonable probability he would have had PTSD and that would have influenced
7 the jury.

8 The final thing I will say, Judge is I just want to emphasize the competency
9 reports. We know that any medical reports have to be stated with a reasonable
10 degree of medical certainty so when these reports tell us they are only evaluating
11 two particular things pursuant to the Dusky(phonetic) standard. Does Darion
12 understand what's going on and can he assist his attorney. That is not mutually
13 exclusive with whether or not he has PTSD. Even if the Court finds that he was
14 malingering in relation to these reports again, Judge, these reports are specifically
15 not to determine mental illness so whether or not they say he's malingering or the
16 Court finds that credible that has no bearing in our mind on whether or not he has a
17 valid PTSD claim and that it was ineffective to not get that evaluation because of the
18 impact it would have had on trial.

19 And I just, submit, Judge, and just reserve some time for rebuttal.

20 THE COURT: Thank you. Mr. Zaman.

21 Mr. Schwartzer.

22 MR. SCHWARTZER: Your Honor, I'll be brief. We don't even get past the
23 first prong here. I mean there's a lot - - the burden is on the defense when it comes
24 this type of hearing. And while they are making inferences and jumping to
25 conclusions saying oh, Mr. Schwarz should have known 25 days before versus the

1 week or two before that he actually testified to, again that's just assumptions being
2 made by the defense. Mr. Schwarz is a very experienced defense attorney came on
3 the stand and said that within a week or two of being informed of this issue from his
4 client who has a history of malingering and saying things and malingering he filed
5 this motion, and we know he filed the motion because it's on the record and on top
6 of that he tried to get that motion on quicker because in order to get the continuance
7 to do the PTSD evaluation there wasn't enough time to even file the motion at the
8 proper time. They needed to do an OST. That got granted as well. He argued it.
9 We have a thorough argument in front of Judge Gonzalez in which Judge
10 Gonazalez considered not only what Mr. Schwarz said but also what was in the
11 competency reports, and she denied it.

12 There is nothing else whether that is judicial error or not that's already been
13 done with the Supreme Court. When it comes to whether Mr. Schwarz was
14 ineffective it's clear he did what he could have done in order to try to get this issue
15 from the Court and was eventually denied on it. Now when it comes to the
16 prejudice, and Your Honor, we've provided you the video, right?

17 THE COURT: Yes.

18 MR. SCHWARTZER: That's a very different view of what the video actually
19 shows. If you've actually watched the video, Your Honor, it's not them drawing guns
20 at the same time. Mr. Coleman has his gun out the whole time - - for a while,
21 actually pistol whips the victim once he goes to grab for something which we said
22 the drugs but he was obviously going and grabbing for something as well. It's pretty
23 clear from the video that the aggressor and the person who did the first shooting is
24 Mr. Coleman. And whether you want to argue or not who did the first was Mr.
25 Coleman or not it's very clear the initial aggressor by all accounts by watching that

1 video is Mr. Coleman. He has that gun out for multiple moments well before the
2 victim after getting pistol whipped decides to eventually pull out his gun which leads
3 to the fatal exchange.

4 On top of all that, Your Honor, Mr. Coleman also testified at this evidentiary
5 hearing and he said oh, this PTSD comes when I was shot when I was 17 or a year
6 before all this occurred. Again this is a person who has a history of malingering. If
7 you look at Dr. Harder's report which is Appellate Record 677 and he talks about the
8 one person he talks to in all the evaluations involving PTSD is Dr. Harder and he
9 says he was diagnosed at the age of 13 in that report. So Mr. Coleman can't even
10 keep his stories straight to when he had PTSD when he testified in front of Your
11 Honor and when he talked to Dr. Harder. So when you put all things considered,
12 Your Honor, clearly Mr. Schwarz did what he could when it came to this issue. In
13 fact he even brought up part of that issue when he argued it at closing as to what
14 was brought out during his testimony,

15 But even if you want to go to the second prong when it comes to the fact that
16 Mr. Coleman has given multiple versions of when he had this PTSD and when you
17 combine that with the video in this case there would be no error that would have
18 affected the change of outcome in this case and because of that, Your Honor, we'd
19 ask you to deny this petition. I'll submit it, Your Honor.

20 THE COURT: Thank you, Mr. Schwartz.

21 Mr. Zaman, your response.

22 MR. ZAMAN: Thank you, Your Honor. Thank you, Mr. Schwartz. Just very
23 briefly. Just going in order regarding the assumptions being made. Here's what I
24 want to say. The minutes are very clear November 28th, 2016, trial counsel comes
25 to Court, says I'm going to need a continuance. The evidentiary hearing also makes

1 clear the only issue that we had going on at that time was buying some time or
2 getting this PTSD evaluation. So based on that, Judge, I'm just trying to say there is
3 no reasonable explanation for the minutes on November 28th, 2016, based on the
4 testimony we have other than what was being discussed was the PTSD because if it
5 wasn't PTSD then at the evidentiary hearing we would have had an indication of
6 there being at least one other issue and that's why it was so important that trial
7 counsel made clear this was the only issue with any sort of contention between the
8 two.

9 Secondly, Judge, Mr. Schwartzer is correct in terms of the timeline event so
10 let me just make that part of it clear. Darion 100 percent took the gun out first.
11 There was 100 percent a pistol whip, but the question again is going to be and this
12 is why the PTSD is so relevant. The criminal activity of which he was convicted was
13 murder. Whether or not he was the initial aggressor I think that's particularly what
14 the PTSD claim would show, right. So the State's theory was he was going there to
15 rob Mr. Guerra of drugs, guilty - - jury found him not guilty of that but again the
16 question were trying to get to, the heart of the matter is why would Darion in that
17 position pull out a gun first and that's where the PTSD where someone may be in
18 his shoes that didn't have that prior experience or had been shot before might not be
19 the first person to pull a gun where Darion might do so and that might be something
20 the jury would find reasonable.

21 Again, finally, Judge, I'll just say the important thing is trial counsel didn't have
22 any of these concerns. The State is pointing out trying to say that maybe Darion
23 isn't being honest and doctors have been noting he's malingering. The question
24 here is what trial counsel thought. Trial counsel 100 percent thought this was going
25 to be valid. And the only reason it wasn't done was because of the Court denying

1 him. Our claim is that there was sufficient time to timely make that claim. So I think
2 whether or not the Court thinks there may be some issues with malingering the fact
3 still remains that the two prongs we're looking at is would it have been deficient
4 conduct to wait and our position is that it is because we have what we feel to be
5 good evidence that from November 28th, 2016 that knowledge was with trial counsel
6 and, B, is there reasonable probability it would have made a difference. I would
7 pause it to Your Honor in this particular case where he's already been found not
8 guilty of the felony murder if in fact Darion does have PTSD and an expert testifies
9 to that I mean that goes precisely into the elements of the offense the State is trying
10 to prove. And with that I will submit, Judge.

11 THE COURT: Okay. Thank you very much, Mr. Zaman.

12 Well, I mean this is the thing, Mr. Zaman, I understand that you're talking
13 about what these minutes state and that counsel wanted to file motions but I can't
14 jump to the conclusion that Mr. Schwarz knew about something ahead of time and
15 didn't file a motion when the evidence before is very clear that Mr. Schwarz says he
16 was notified about this he filed a motion. Not only does he file a motion he knows
17 it's too late to get it on calendar, he files an order shortening time, and there is no
18 real evidence indicating that prior to that he even attempted to file this motion, he
19 even attempted to do anything in regards to this PTSD. So the evidence before me
20 is insufficient to establish that Mr. Schwarz's performance failed the low and
21 objective standard based upon the fact that we can make assumptions about what
22 was in these minutes. I can't make assumptions. I have to only make rulings
23 dealing with evidence.

24 So the State is correct that you don't meet the first prong of the analysis.
25 However, even if the Court made a finding that that first prong was met I also agree

1 with the State in the sense that I have watched that video and I do believe based on
2 the actions that were taken by both of the individuals in that video you have failed to
3 make a showing that the result would have been different establishing the prejudice
4 that was suffered by Mr. Coleman. So in light of that the Court is going to deny the
5 petition. State, you are going to be ordered to prepare a findings of fact and
6 conclusions of law consistent with the Court's order.

7 MR. SCHWARTZER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. ZAMAN: Understood. Thank you, Your Honor. Thank you, State.

10
11 (Proceedings concluded at 9:42 a.m.)
12

13
14 ATTEST: I do hereby certify that I have truly and correctly transcribed the
15 audio/video proceedings in the above-entitled case to the best of my ability.
16
17
18

19 *Victoria W. Boyd*

5-6-21

20 _____
21 Victoria W. Boyd
22 Court Recorder/Transcriber

Date

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN, A/K/A
DARION MUHAMMADCOLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 72867
District Court Case No. C293296

FILED

AUG 03 2018

A. A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 3rd day of July, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 30, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-13-293296-2
CCJA
NV Supreme Court Clerks Certificate/Judgm
4768161



IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN,
A/K/A DARION
MUHAMMADCOLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72867

FILED

JUL 03 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first degree murder with use of a deadly weapon, battery with use of a deadly weapon, conspiracy to violate Uniform Controlled Substances Act, and attempt to possess controlled substance. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In April 2013, appellant Darion Muhammad-Coleman was involved in an altercation and shooting with a drug dealer, Dale Borero, in which Borero was fatally shot. Appellant was charged and convicted of first-degree murder with use of a deadly weapon, battery with use of a deadly weapon, conspiracy to violate the Uniform Controlled Substances Act, and attempt to possess controlled substance. Appellant now appeals, arguing that (1) the district court erred by denying his motion for a continuance of the trial date, (2) there is insufficient evidence to sustain his first-degree murder conviction, and (3) the district court erred by denying his request for a lesser-included voluntary manslaughter jury instruction. We conclude these arguments lack merit and therefore affirm.

The district court did not abuse its discretion by denying appellant's motion for a continuance of trial

Appellant argues that the district court abused its discretion in denying his request for a trial continuance. We disagree.

"This court reviews the district court's decision regarding a motion for continuance for an abuse of discretion." *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). "[W]hen a defendant fails to demonstrate that he was prejudiced by the denial of a continuance, the district court's decision denying a continuance is not an abuse of discretion." *Rose*, 123 Nev. at 206, 163 P.3d at 416.

Between 2013 and 2016, appellant's trial date was continued on six occasions and he was evaluated for competency by five separate mental health professionals. Approximately one month before the January 2017, trial date, appellant requested another continuance of trial in order to complete a psychological evaluation for post-traumatic stress disorder (PTSD). Appellant alleged that such an evaluation was necessary to present his self-defense theory. Following a hearing, the district court denied appellant's motion and stated:

It appears that there has been adequate evaluation of the defendant's mental health history; and while I understand there may not have been a direct investigation of the PTSD element, there have clearly been lengthy examinations of the defendant's mental health history.

Appellant now argues the district court erred in denying his motion because (1) PTSD was not the focus of the five previous psychological examinations, and (2) he did not tell counsel that he was suffering from PTSD until November 2016. However, defense counsel had been counsel of record since December 2014. Thus, appellant waited nearly two years before suggesting to counsel that he suffered from PTSD. See *Mulder v.*

State, 116 Nev. 1, 9-10, 992 P.2d 845, 850-51 (2000) (upholding a district court's denial of a motion to continue in part because the delay was "attributable" to the defendant). Next, although PTSD was not the "focus" of the first five psychological evaluations, appellant does not argue that the evaluating mental health professionals were not qualified or otherwise capable of recognizing and diagnosing PTSD. Accordingly, we conclude the circumstances presented to the district court did not warrant a continuance of trial, and therefore, the district court did not abuse its discretion. See *Higgs*, 126 Nev. at 9, 222 P.3d at 653.

Sufficient evidence was presented at trial to sustain appellant's first-degree murder conviction

Appellant argues that there is insufficient evidence that he acted willingly, with deliberation and premeditation, to sustain his first-degree murder conviction. We disagree.

"In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Guitron v. State*, 131 Nev. 215, 221, 350 P.3d 93, 97 (2015) (internal quotation marks omitted). "[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (internal quotation marks omitted) (alteration in original).

Murder perpetrated by a "willful, deliberate and premeditated killing" is first-degree murder. NRS 200.030(1)(a).

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

Byford v. State, 116 Nev. 215, 236-37, 994 P.2d 700, 714 (2000). "Circumstantial evidence may be considered and provide sufficient evidence to infer" premeditation and deliberation. *Leonard v. State*, 117 Nev. 53, 75, 17 P.3d 397, 411 (2001).

The State's theory of the case was that appellant planned to shoot Borero and take the money and methamphetamine found on Borero's body.¹ The jury was shown video surveillance of the shooting, which the State argued showed appellant sneaking up on Borero, pointing the gun at Borero's head, and waiting for potential witnesses to leave the scene before shooting Borero. The jury also heard testimony from the lead detective on the case that the physical evidence at the scene suggested that appellant fired the first shot. Further, the jury heard testimony from appellant that he (1) pulled his gun out as he walked toward Borero, (2) pointed the gun at Borero's head, and (3) struck Borero in the head with the gun before Borero ever pulled out his own gun. Viewing the evidence in the light most favorable to the State, we conclude that a rational juror could find that appellant acted willfully, deliberately and with premeditation when he shot Borero. *See Guitron*, 131 Nev. at 221, 350 P.3d at 97.

The district court did not abuse its discretion by denying appellant's request for a voluntary manslaughter jury instruction

Appellant next argues that the district court abused its discretion by denying his request for a jury instruction on voluntary manslaughter as a lesser-included offense. We disagree.

¹Borero had 7 grams of methamphetamine in his hand and \$3,000 in his pocket when he was shot.

"The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). A defendant "is entitled to a jury instruction on a lesser-included offense if there is any evidence at all . . . under which the defendant might be convicted of that offense." *Rosas v. State*, 122 Nev. 1258, 1264-65, 147 P.3d 1101, 1106 (2006), *abrogated on other grounds by Alotaibi v. State*, 133 Nev., Adv. Op. 81, 404 P.3d 761 (2017) (internal quotation marks omitted).

In Nevada, voluntary manslaughter is a lesser-included offense of murder. *See Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983). Voluntary manslaughter occurs when there is "a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing." NRS 200.050(1). Further,

[t]he killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder.

NRS 200.060.

While settling jury instructions, appellant requested that the court instruct the jury on voluntary manslaughter as a lesser-included

offense.² The State objected, arguing that no evidence had been presented to suggest that appellant acted in the heat of passion, and therefore, a voluntary manslaughter instruction was inappropriate. The district court agreed and sustained the State's objection, stating:

I don't think there's anything that justifies a voluntary manslaughter [instruction]. I mean, it's – even within the first or second degree or if he has a complete self-defense argument that the jury buys, then it's an acquittal. But I don't think – even though homicide gets broken down into all those, *absent some evidence to support it*, we don't just throw them all in there. And in this case *I don't really think there's any evidence to support voluntary manslaughter*.

(Emphases added.)

We conclude that the district court did not abuse its discretion in denying appellant's request. The evidence of provocation and passion that appellant relies on consists of his testimony that Borero threatened to shoot him. Appellant also testified that after Borero allegedly threatened to shoot him, his "first thought was, man, you should just go get back in this car." Rather than getting in the car, however, appellant approached Borero and pulled out his gun. Appellant testified that his intent in pulling his gun out was "to intimidate [Borero] just so he know that I have a gun too and that we can just figure this out." Rather than suggesting that appellant shot Borero as a result of a "sudden, impulse of passion," NRS 200.060, this testimony suggests that appellant made a series of deliberate decisions. We therefore conclude the district court did not abuse its discretion in

²The record does not include a proposed instruction, nor does it appear from the record that defense counsel provided the court with a proposed instruction.

determining that insufficient evidence supported giving a voluntary manslaughter instruction.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry J.
Cherry

Parraguirre J.
Parraguirre

Stiglich J.
Stiglich

cc: Hon. Douglas W. Herndon, District Judge
Law Office of Michael H. Schwarz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 7/30/18

Supreme Court Clerk, State of Nevada

By  Deputy

AA856

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN, A/K/A
DARION MUHAMMADCOLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 72867
District Court Case No. C293296

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 30, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Douglas W. Herndon, District Judge
Law Office of Michael H. Schwarz
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

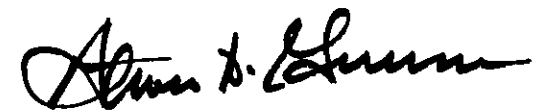
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on AUG 03 2018.

HEATHER UNGERMANN 
Deputy District Court Clerk

**RECEIVED
APPEALS**

AUG 03 2018

CLERK OF THE COURT



CLERK OF THE COURT

MICHAEL H. SCHWARZ, ESQ.
Nevada Bar 5126
626 South 7th Street, Ste. 1
Las Vegas, Nevada 89101
(702) 598-3909
michaelHschwarz@gmail.com
Attorney for Defendant
Darion Muhammad-Coleman

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DARION MUHAMMAD-COLEMAN,
#2880725
Defendant.

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

MOTION TO CONTINUE TRIAL DATE

Date of Hearing:

Time of Hearing:

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

Dated this 19 Day of December, 2016



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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3

4

5

6

7

8

1

2

4

6

0

1 Petition.

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

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

9 Additionally, because the Defendant is charged in this case with Open Murder, should he be
10 convicted of first degree murder, the prior conviction which is currently under challenge, can be used
11 as an aggravating factor.
12

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

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

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

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

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

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

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

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

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

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

19 LEGAL AUTHORITY

20 EDCR Rule 7.30 States.

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

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

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

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

- 1 (3) What the affiant has been informed and believes will be the testimony of the absent witness,
2 and whether the same facts can be proven by witnesses, other than parties to the suit, whose
attendance or depositions might have been obtained.
- 3 (4) The date the affiant first learned that the attendance or deposition of the absent witness could
not be obtained.
- 4 (5) That the application is made in good faith and not merely for delay.
- 5 (c) Except in criminal matters, if a motion for continuance is filed within 30 days before the date
6 of the trial, the motion must contain a certificate of counsel for the movant that counsel has
provided counsel's client with a copy of the motion and supporting documents. The court will
7 not consider any motion filed in violation of this paragraph and any false certification will result
in appropriate sanctions imposed pursuant to Rule 7.60.
- 8 (d) No continuance may be granted unless the contents of the affidavit conform to this rule,
except where the continuance is applied for in a mining case upon the special ground provided
by NRS 16.020.
- 9 (e) No amendments or additions to affidavits for continuance will be allowed at the hearing on
the motion and the court may grant or deny the motion without further argument.
- 10 (f) Trial settings may not be vacated by stipulation, but only by order of the court. The party
11 moving for the continuance of a trial may obtain an order shortening the time for the hearing of
the motion for continuance. Except in an emergency, the party requesting a continuance shall
12 give all opposing parties at least 3 days' notice of the time set for hearing the motion. The
hearing of the motion shall be set not less than 1 day before the trial.
- 13 (g) When application is made to a judge, master or commissioner to postpone a motion, trial or
14 other proceeding, the payment of costs (including but not limited to the expenses incurred by the
party) and attorney fees may be imposed as a condition of granting the postponement.
- 15 (h) Motions or stipulations to continue a civil trial that also seek extension of discovery dates
must comply with Rule 2.35.

16 CONCLUSION

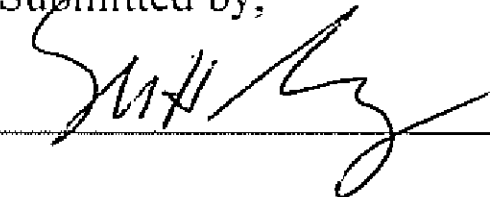
17 Defendant is requesting that this Honorable Court grant a continuance of the Trial date currently
18 set for January 3, 2017. As stated above, the reasons for the request are twofold. First, Defendant is
19 currently awaiting a decision by the District Court, Department 8, on his Post-Conviction Writ. His
20 petition involves his breach of the Guilty Plea entered in another case, which was tied to his agreement
21 to enter a plea in the instant case. Should Defendant prevail, it will have implications for the instant
22 case, including, but not limited to, removing an aggravating factor should he be convicted here or first
23 degree murder. Second, and perhaps most importantly, Defendant has only recently advised the
24 undersigned that he is suffering from Post Traumatic Stress Disorder. In order to fully investigate the
25 validity of this claim, the undersigned will have to have the Defendant evaluated by a competent
26 professional. This is especially important, as Post Traumatic Stress Disorder is an element of a self
27
28

1 defense case, as it can negate the necessary intent for the most serious charge the Defendant currently
2 faces.

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

5 Dated this 19 day of December, 2016.

6
7 Submitted by,

8 
9

10 MICHAEL H. SCHWARZ, ESQ.

11 Nevada Bar 5126

12 626 South 7th Street, Ste. 1

13 Las Vegas, Nevada 89101

14 (702) 598-3909

15 michaelhschwarz@gmail.com

16 *Attorney for Defendant*

17 *Darion Muhammad-Coleman*
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

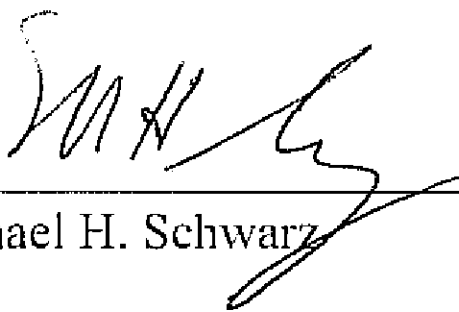
- 1) That I am an attorney duly licensed in the State of Nevada, currently in good standing.
- 2) That I have just recently been informed by the Defendant that he may have been suffering from Post Traumatic Stress Disorder at the time of the alleged incident.
- 3) That additionally, Defendant has a companion case set for hearing on a Post Conviction Writ on January 9, 2017 in Department 8, which may have a bearing on the instant case.
- 4) That I am not making this request for purposes of delay, or any other unnecessary reason.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

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

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



Michael H. Schwarz

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

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

OCT - 3 2014

BY Billie Jo Craig
BILLIE JO CRAIG/DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff;

11 -vs-

12 DARION MUHAMMAND-COLEMAN,
13 #2880725

14 Defendant.

CASE NO: C-14-299066-1

DEPT NO: VIII

15 **GUILTY PLEA AGREEMENT**

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

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

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

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

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

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

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

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

27 //

28 //

CONSEQUENCES OF THE PLEA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAIVER OF RIGHTS

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

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

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

4 VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

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

24 *Defender*
25 *[Signature]*

24 *[Signature]*
25 DARION MUHAMMAD-COLEMAN
Defendant

26 AGREED TO BY:

27 SONIA V. JIMENEZ
28 Chief Deputy District Attorney
Nevada Bar #008818

1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
charge(s) to which guilty pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
and explained to Defendant that if Defendant is not a United States citizen any
8 criminal conviction will most likely result in serious negative immigration
consequences including but not limited to:
- 9 a. The removal from the United States through deportation;
- 10 b. An inability to reenter the United States;
- 11 c. The inability to gain United States citizenship or legal residency;
- 12 d. An inability to renew and/or retain any legal residency status; and/or
- 13 e. An indeterminate term of confinement, by with United States Federal
14 Government based on the conviction and immigration status.
- 15 Moreover, I have explained that regardless of what Defendant may have been
told by any attorney, no one can promise Defendant that this conviction will not
16 result in negative immigration consequences and/or impact Defendant's ability
to become a United States citizen and/or legal resident.
- 17 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
consistent with the facts known to me and are made with my advice to the
18 Defendant.
- 19 5. To the best of my knowledge and belief, the Defendant:
- 20 a. Is competent and understands the charges and the consequences of
pleading guilty as provided in this agreement,
- 21 b. Executed this agreement and will enter all guilty pleas pursuant hereto
22 voluntarily, and
- 23 c. Was not under the influence of intoxicating liquor, a controlled
24 substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

25 Dated: This 3rd day of ~~September~~ October, 2014.

26 
27 ATTORNEY FOR DEFENDANT

28 mmw/GCU

1 **AIND**

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

7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DARION MUHAMMAD-COLEMAN,
#2880725
14 DAVID MAJIED, #2887363
15 ANTWON WALKER, #2827424

16 Defendants.
17

CASE NO: C-14-299066-1

DEPT NO: VIII

18
19
20
21
22
23
24
25
26
27
28
**AMENDED
INDICTMENT**

18 STATE OF NEVADA)
19 COUNTY OF CLARK) ss.

20 The Defendants above named, DARION MUHAMMAD-COLEMAN, DAVID
21 MAJIED, and ANTWON WALKER, accused by the Clark County Grand Jury of the crimes
22 of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480
23 - NOC 50147); BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B
24 Felony - NRS 205.060 - NOC 50426); ROBBERY WITH USE OF A DEADLY WEAPON
25 (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and COERCION WITH USE
26 OF A DEADLY WEAPON (Category B Felony - NRS 207.190, 193.165 - NOC 53160),
27 committed at and within the County of Clark, State of Nevada, on or about the 14th day of
28 March, 2013 as follows:

EXHIBIT 1

1 COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

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

4 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

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

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

5 COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON

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

24 COUNT ⁴8 – COERCION WITH USE OF A DEADLY WEAPON

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

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

14 DATED this 30th day of September, 2014.

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

18
19 BY /s//SONIA V. JIMENEZ
SONIA JIMENEZ
Chief Deputy District Attorney
Nevada Bar #08818
20
21
22
23
24
25
26

27 13BGJ112ABC/13F04218X/13FN0594X/14F03170X/dd-GJ
28 LVMPD EV# 1303144076; NLVPD EV# 1304402
(TK11)

STIPULATION FOR COMPROMISE OF SEIZED PROPERTY

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

Seizing Law Enforcement Agency LVMPD 112000

Seizure Event Number 1303144076 & 1303144402

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

I. PROSECUTOR CHECKS THE APPROPRIATE PARAGRAPHS:

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

IT IS SO STIPULATED and AGREED

Darion Muhammad-Coleman
Defendant

12/3/14
Date

Steven B. Wolfson
Attorney for Defendant, Nevada Bar # 10095

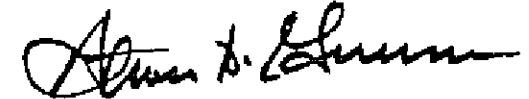
12/3/14
Date

Sonia V. Jimenez
SONIA V. JIMENEZ
Clark County Deputy District Attorney, Nevada Bar #008818

12/3/14
Date

EXHIBIT A

EXHIBIT B



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DARION MUHAMMAD-COLEMAN,

Defendant.

Case No. C-14-299066-1

Dept. No. VIII

Date of Hearing:


Time of Hearing:

MOTION TO WITHDRAW GUILTY PLEA

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

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

DATED this 31st day of October, 2014.


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

Spencer M. Judd, Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff, and

TO: STEVEN WOLFSON, District Attorney

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

DATED this 31st day of October, 2014.

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

POINTS AND AUTHORITIES
STATEMENT OF FACTS

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

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

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

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

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

7 Defendant has reflected on the conversations he had with Storms and Judd. He believes that
8 he was pressured by Storms to take a deal in this case believing he would somehow get a better deal
9 in the other matter – other than that which was listed in the plea agreement. He maintains that he is
10 not guilty of the crimes alleged in this case and would like to withdraw the plea, on the basis that it
11 was coerced by counsel, and go forward to a trial on the merits.
12
13

14 ARGUMENT

15 NRS 176.165 provides that a Defendant may, by motion, move to withdraw a plea of guilty,
16 “only before sentence is imposed.” A motion to withdraw a guilty plead may be granted in the
17 District Court’s discretion for any “substantial reason” if it is “fair and just.” See Molina v. State,
18 120 Nev. 185, 191; 87 P.3d 533, 537 (2004) (citing Woods v. State, 114 Nev. 468, 475; 958 P.2d 91,
19 95 (1998)). A District Court must examine the totality of the circumstances in order to determine
20 whether a Defendant entered his plea voluntarily, knowingly, and intelligently. Molina, at 191
21 (citing Crawford v. State, 117 Nev. 718, 722; 30 P.3d 1123, 1125-26 (2001); NRS 176.165).
22
23

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

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

3 **CONCLUSION**

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

6 DATED this 31st day of October, 2014.

7
8 \s\ Spencer Judd
9 SPENCER M. JUDD, ESQ.
10 Nevada Bar No. 10095
11 325 So. Third St., #5
12 Las Vegas, NV 89101
13 (702) 606-4357
14 *Attorneys for Defendant*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Spencer M. Judd, Esq.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 28, 2016

C-13-293296-2 State of Nevada
vs
Darion Muhammad-Coleman

November 28, 2016 9:00 AM Status Check: Trial Readiness

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Katrina Hernandez

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Muhammad-Coleman, Darion	Defendant
	Schwartz, Michael J.	Attorney
	Schwarz, Michael H	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Schwarz advised he is requesting a continuance of the trial. Court directed Counsel to file a motion. Mr. Schwartz announced ready and advised 7 days for trial.

CUSTODY (COC-NDC)

COMPETENCY EVALUATION - COVER SHEET

☐ COMPETENT
☒ NOT COMPETENT

DEFENDANT NAME: Darion Muhammad-Coleman CASE NO.: C299066

EVALUATION DATE: 1/28/15 LENGTH OF EVALUATION: 45 minutes

REPORT DATE: 1/30/15 INFORMED CONSENT: ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:

	YES	NO
1. Capacity to understand the nature of the criminal charges.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Capacity to understand the nature and purpose of court proceedings.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Capacity to aid and assist counsel in the defense.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DIAGNOSTIC IMPRESSIONS:

- I) Schizoaffective Disorder, Bipolar Type / Cannabis and PCP Abuse/ h/o ADHD.
- II) Deferred
- III) GSW x 2 left volar with interval fixation at 16.
- IV) Problems with legal system; Occupational
- V) 25

PSYCHIATRIC HISTORY:

	YES	NO
Currently taking medication for mental illness:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes, specify: <u>Risperdal 7mg QHS/ Remeron 30mg QHS</u>		
Prior mental health treatment: <u>treated 14 - 17 y.o. for Bipolar d/o</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior hospitalizations:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes, dates and duration: <u>SMTC at 13</u>		

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☐ YES ☐ NO ☒ NOT RULED OUT
 Poor effort, strong h/o malingering

REVIEW OF RECORDS - COLLATERAL INFORMATION

☐ Discovery ☐ Jail Medical Records
☐ Jail Disciplinary Records ☐ Mental Health Records
☒ Other Request for Comp Eval, Competency Evals Dra. Chambers, Kapel, Harder, Indictment Warrant

Submitted by: Daniel Sussman, M.D.

Print

Signature

Daniel Sussman, M.D., Esq., MBA

ABPN Certified Psychiatrist
4205 Mont Blanc Way
Mt. Charleston, Nevada 89124
(702)493-5203 (cell)

Attn: Christina Greene
Eighth Judicial District Court
Justice Court, Las Vegas Township
Specialty Courts Division
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Fax (702)671-3325

Defendant Name: Darion Muhammad-Coleman
ID Number: 2880725
DOB: 12/8/94
Case Number: C299066
Date of Evaluation: January 28, 2015 at Clark County Detention Center

PSYCHIATRIC EVALUATION**REFERRAL SOURCE & INFORMED CONSENT:**

This defendant was referred by Specialty Court Manager Connie Yeo via order on January 23, 2015 for a psychiatric evaluation to determine competency to stand trial. Competency hearing is scheduled February 13, 2015.

Prior to beginning the evaluation, Mr. was advised of the purpose of this evaluation and informed that the usual doctor/patient relationship did not exist. He was told that information he chose to provide would not be kept confidential. Mr. was informed that a report would be prepared and submitted to the court. He was informed that in order to maintain continuity of care, this report would be distributed to the treating jail psychiatrist, in addition to the Court and attorney of record. His comments during the discussion of these issues indicated that he understood the limits of confidentiality and the purpose of the evaluation. He was periodically reminded of these conditions as the interview progressed.

SOURCES OF INFORMATION:

1. Defendant Interview 1/28/15
2. Court Order for Evaluation 1/23/15
3. Indictment Warrant 7/27/14
4. Indictment Warrant Return 7/27/14
5. Amended Indictment 9/30/14
6. Guilty Plea Agreement 10/3/14

7. Competency Evaluation Mark Chambers, Ph.D. 9/16/13
8. Competency Evaluation Lawrence Kapel, Ph.D. 9/16/13
9. Competency Evaluation Greg Harder, Psy.D. 10/21/13
10. CCDC Violation History
11. CCDC Psychiatric Services Records
12. Request for Evaluation for Competency 12/31/14

IDENTIFICATION:

Male evaluated for competency to stand trial.

RECENT HISTORY:

P.D. Spencer Judd believes the defendant does not understand the charges or allegations, nor the range and nature of the penalties, nor disclose pertinent facts.

Charged with 2 counts of Conspiracy to Commit Burglary, 2 counts of Burglary While in Possession of a Firearm, 3 counts of Robbery with UDW, 2 counts of First Degree Kidnapping with UDW, 2 counts of Coercion with UDW, and 1 count of Grand Larceny Auto. Charges arise from incidents on 3/14/13.

On 9/16/13 Dr. Chambers deemed the defendant competent with diagnosis Schizophrenia, Undifferentiated, Chronic and Malingering. That stemmed from an incident in which a victim was shot to death. At the time he was complaining of auditory and visual hallucinations, and paranoia. He was non-compliant with Rx.

On 9/16/13 Dr. Chambers deemed the defendant incompetent with a high likelihood of Malingering. Diagnosis was Malingering, rule out Schizophrenia vs. Schizoaffective Disorder, rule out Learning Disorder.

On 10/21/13 Dr. Harder deemed the defendant competent and diagnosed Malingering, rule out Schizophrenia.

PAST PSYCHIATRIC HISTORY (Per Defendant & Records):

Inpatient: SMTC at 13.

Outpatient: Treated from 14 – 17 for Bipolar Disorder, but not since.

Suicidality / Self-Injurious behavior: Tried to choke self 2012 when tired of living.

Past Diagnosis: See HPI. Bipolar Disorder (+manic cluster). MH history started at 9 when he poured hot oil on his hand because he believed "someone was biting it" (per records, but defendant states he never did, rather his grandfather poured oil on him), and talked to "dead people". States that people tell him that he told them to call him "Jimmy", when defendant has no recollection of that.

Family Psychiatric History: Mother Schizophrenia, Bipolar, PTSD; Maternal Grandmother Schizophrenia, Bipolar.

Trauma: physically abused by GF 9-15 ("real bad", burned defendant's right hand with grease leaving visible scarring).

Past Psychotropic Medication: started at 13: Abilify (helped), Concerta (helped), Seroquel (helped), Risperdal, Zyprexa.

Substance Abuse: No h/o treatment, pre-contemplative regarding abstinence.

THC: QOD to DOA, st 11.
Sherm: QOD to DOA, st 17.

PAST MEDICAL AND SURGICAL HISTORY (Per Defendant & Records): see Axis III

ALLERGIES : NKDA

CURRENT MEDICATIONS: Risperdal 7mg HS / Remeron 30mg HS – not helpful, AE-
"have me confused, spaced out." Defendant reports he refuses about 50% of the time.

SOCIAL HISTORY: (Per Defendant & Records):

Legal: Battery with UDW at 13 (defendant states he stabbed someone when attacked by 3 assailants). States ongoing Murder charge.

Relations / Children: Raised by mother and grandmother, with no father in picture.
Only child. Never married. 2 y.o. daughter, no contact.

Education: 8th grade (Special Ed) (math and reading deficit).

Occupational: never worked.

Residence: Raised and lived in Las Vegas. Group Homes and juvenile incarceration during some adolescence.

MENTAL STATUS EXAM:

General: Alert, cooperative, inattentive at times, poor Eye Contact, mild PMR

Speech: Soft. Conversant, normal rate/rhythm.

Mood/affect: "Bad, scared, confused", dysphoric, constricted. (+) passive death wishes/ No SI/HI.

Symptom Review: Endorses racing thoughts or hyperactivity. Endorses euphoria, irritability, anger, mood swings, or depression. Sleep and appetite poor.

Thought process /content: Endorses auditory hallucinations and "severe" paranoia.
No formal thought disorder.

Insight: fair.

Judgment: good during interview.

Intelligence: mildly below average.

Cognition:

Alert and Oriented x 1/24/16

Short Term Recall: 3 of 3 at 5 minutes.

Fund of Knowledge: last 3/5 Presidents

Abstraction: good

Serial 7's: unable

Long Term Recall: fair.

COMPETENCY BASED EVALUATION:

Ability to comprehend charges and court proceedings:

- Demonstrates minimal ability to understand criminal charges, with poor self-recital (only stating "Robbery and Murder").
- Demonstrates understanding of proceedings against him.
- Limited ability to understand and differentiate possible outcomes.
- Poor understanding the implications of guilty and non-guilty pleas, with good self-recital. Unaware of Not Guilty by Reason of Insanity pleas/outcomes. Poor retention when explained.
- Defendant unaware of possible range of sentences.
- Understands the role of Judge, Public Defender, and Prosecutor, with inability to self-recite prosecutor or understand the adversarial system. Poor retention when explained.

Ability to assist in his own defense:

- States ambivalence about cooperating with his defense team because "I have to because I don't know what's going on, but on the other hand I'm mad at him and don't trust him. He's lied to me once." Met Public Defender Judd once.
- States he would get agitated and yell in court because "I don't understand and always get mad."
- Feels he could provide accurate account regarding his behavior and whereabouts at time of arrest. He completely denies the allegations or having any knowledge of the index incidents. "Those are fake charges." Subsequently denies that this could have happened during one of his "blackouts", "because if I did, I would have remembered."

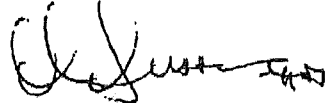
MULTIAXIAL DIAGNOSIS:

- I) Schizoaffective Disorder, Bipolar Type / Cannabis and PCP Abuse/ h/o ADHD.
- II) Deferred
- III) GSW x 2 left volar with interval fixation at 16.
- IV) Problems with legal system; Occupational
- V) 25

SUMMARY AND CONCLUSIONS:

- 1) INCOMPETENT. regarding ability to understand charges and court proceedings, and to assist in his own defense per the Dusky standard. Concentration and ability to comprehend appear impaired. Explanations are inadequate.

- 2) Probability of restoration fair with competency training and legitimate effort by defendant.
- 3) Malingering Potential: not ruled out. Effort appeared poor on competency based part of interview. Understanding may be truly impaired however.
- 4) Psychotropics recommended: Change Risperdal to Abilify, titrate to psychotic symptoms and ability to focus. Consider Strattera. Encourage full compliance.
- 5) Transfer to Lakes Crossing Center if not fully compliant.



Daniel Sussman, M.D., Esq., MBA
Diplomate of the American Board of Psychiatry & Neurology

COMPETENCY EVALUATION - COVERSHEET

[X] COMPETENT
[] NOT COMPETENT

DEFENDANT NAME: Darion Muhammad-Coleman CASE NO: C-14-299066-1
EVALUATION DATE: February 9, 2015 LENGTH OF EVALUATION: 45 minutes
REPORT DATE: February 10, 2015 INFORMED CONSENT: [X]YES [] NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:	YES NO
1. Capacity to understand the nature of the criminal charges.	[] [X]
2. Capacity to understand the nature and purpose of court proceedings.	[] [X]
3. Capacity to aid and assist counsel in the defense.	[] [X]

DIAGNOSTIC IMPRESSIONS:

- Malingering
- Cannabis Use Disorder
- Phencyclidine (Sherm) Use Disorder

PSYCHIATRIC HISTORY:

	YES	NO
Currently taking medication for mental illness:	[X]	[]
If yes, specify:		
Prior mental health treatment:	unreliable report	
Prior hospitalizations:	unreliable report	
If yes, dates and duration:		

MALINGERING:

Is there a substantial degree of weakness in the interview, response style or testing data that suggests a malingered disorder is present?

[X] YES [] NO [] NOT RULED OUT

REVIEW OF RECORDS-COLLATERAL INFORMATION

[X] Discovery	[X] Jail Medical Records
[] Jail Disciplinary Records	[] Mental Health Records
[X] Other: previous competency evaluations	

Submitted by: Shera D. Bradley, Ph.D.
Print


Signature



**Innovative
Psychological
Solutions**

Gary Lenkeit, Ph.D.
Licensed Psychologist

Shera D. Bradley, Ph.D.
Licensed Psychologist

Carla Perlotto, Ph.D.
Licensed Psychologist

Competency Evaluation

Name: Darion Muhammad-Coleman
Case No.: C-14-299066-1
Date of Birth: December 8, 1994
Age: 30 years
Ethnicity: African-American
Gender: Male
Examiner: Shera D. Bradley, Ph.D.
Date of Evaluation: February 9, 2015
Date of Report: February 10, 2015

Evaluation Procedures:

1. Interview with Mr. Muhammad-Coleman conducted by Shera D. Bradley, Ph.D. at the Clark County Detention Center (CCDC).
2. Review of records provided by the Specialty Court Division of the 8th Judicial District Court:
 - Clark County Courts, Request for Evaluation(s), dated September 3, 2013 and December 31, 2014.
 - Competency evaluation completed by Mark Chambers, Ph.D., dated September 16, 2013.
 - Competency evaluation completed by Lawrence Kapel, Ph.D., dated September 16, 2013.
 - Competency evaluation completed by Greg Harder, Psy.D, dated October 21, 2013.
 - Las Vegas Metropolitan Police Department, Temporary Custody record, dated June 27, 2014.
 - Clark County District Court, Indictment Warrant Return, dated June 30, 2014.
 - Clark County District Court, Amended Indictment, dated October 3, 2014.
 - Clark County District Court, Guilty Plea Agreement, dated October 3, 2014.
 - Las Vegas Township Justice Court, Pretrial Services Information Sheet, dated
 - Clark County Detention Center medical, disciplinary, and mental health records.

Reason for Referral: Mr. Muhammad-Coleman was referred for a competency evaluation by Spencer Judd on December 31, 2014 as he did not appear to understand the charges or allegations, appear to disclose pertinent facts to the defense attorney, or understand the range and nature of the penalties. He was previously referred for an evaluation on September 3, 2013 by Jeremy Storms.

Mr. Muhammad-Coleman was indicted for two counts of Felony Conspiracy to Commit Robbery, two counts of Felony Burglary While in Possession of a Firearm, three counts of Felony Robbery with Use of a Deadly Weapon, two counts of Felony First-Degree Kidnapping with Use of a Deadly Weapon, two counts of Felony Coercion with Use of a Deadly Weapon, and one count of Felony Grand Larceny Auto on June 30, 2014.

The indictment was amended on October 3, 2014 and he was indicted on charges of Felony Conspiracy to Commit Robbery, Felony Burglary While in Possession of a Firearm, Felony Robbery with Use of a Deadly Weapon, and Felony Coercion with Use of a Deadly Weapon. Mr. Muhammad-Coleman pled guilty to Conspiracy to Commit Robbery, Burglary While in Possession of Firearm, Robbery with Use of a Deadly Weapon, and Coercion with Use of a Deadly Weapon as well as Second-Degree Murder with Use of a Deadly Weapon from another case.

Limits of Confidentiality: Mr. Muhammad-Coleman was informed that he was referred for a competency evaluation by the Specialty Courts. Mr. Muhammad-Coleman was informed that the information he provides during the evaluation is not confidential and a report will be prepared and sent to the presiding judge. Mr. Muhammad-Coleman acknowledged the limits of confidentiality and agreed to participate in the evaluation.

Mental Status Examination/Behavioral Observations

Mr. Coleman-Muhammad is a 30-year-old African-American male who reported that he is 5'12" tall and stated he did not know his weight. He was well-groomed with short black hair and a mustache. He correctly identified the current and preceding Presidents of the United States. He stated he did not know a current event.

He denied any current suicidal and homicidal ideation. He stated that he experiences auditory hallucinations and stated, "They are all around and loud... I look for them and I cannot find them... There are too many, I can't understand what they are saying. It started after I was shot." He stated that he is prescribed Risperdal, but it does not help the voices. He stated they never go away. He denied experiencing any visual hallucinations. He stated that he recalled one out of three words in a short term memory recall task. He did not appear to be internally stimulated. His thoughts were goal-oriented and were not reflective of delusional content. His rate and tone of speech were within normal limits. His motoric activity was within normal limits.

Toward the end of the interview, Mr. Coleman-Muhammad was challenged about his presentation during the interview not being forthright, he briefly became agitated and insisted that he was being forthright; however, when making that insistence, he smiled slightly. I told him that I was going to end the interview as he repeatedly stated that he did not know the answer to the questions I was asking, he said, "go ahead."

Brief Psychosocial History

Mr. Muhammad-Coleman stated that he was born on December 8, 1994 in Las Vegas. He stated that his mother is diagnosed with Posttraumatic Stress Disorder and Schizophrenia and his maternal grandmother is diagnosed with Schizophrenia and depression. He denied any siblings.

Mr. Muhammad-Coleman stated that he stopped attending school in the sixth grade. He stated he received special education classes in math and reading.

Mr. Muhammad-Coleman stated that he has never worked and stated that his family supports him.

Mr. Muhammad-Coleman stated he was diagnosed with Schizophrenia and Bipolar Disorder by Dr. Kithas when he was "young." He stated he was also diagnosed with something that starts with an "F" and he described it as a disorder that is "in-between Schizophrenia and bipolar." He stated that sometimes he does not remember who people are and that he "loses stuff." He stated he was hospitalized at Spring Mountain Treatment Center for two years when he was 15 years of age. He stated "they" sent me there. He stated that he has received outpatient mental health services for "voices and stuff" and stated it did not help. He stated that previously has been prescribed Seroquel, Abilify, Concerta, and Remeron. He stated the medications do not help and that is why he refuses medication at the jail and then asked for something different. He stated he attempted suicide at 15 years of age when he tried to strangle himself with a pillow case.

Contrary to his report during this evaluation, he told Dr. Chambers that he attempted suicide with a pillowcase in 2012. Though he denied experiencing visual hallucinations during this evaluation, he told Dr. Chambers, Dr. Harder, and Dr. Kapel that he did experience visual hallucinations. He denied any history of inpatient treatment to Dr. Harder.

Mr. Muhammad-Coleman stated that he has used Sherm one time per week since the age of 13. He stated that he has been using marijuana on a daily basis since he was eight years of age. He stated he last used alcohol when he was 17 years of age. He stated that he used cocaine monthly as a teenager and stated his last use occurred a "couple" years ago. He stated that he used ecstasy monthly as a teenager and stated his last use was a "couple" years ago. He stated that he has abused Lortab. He denied use of all other illicit substances and any substance abuse treatment.

Mr. Muhammad-Coleman denied any medical problems and stated that he had a head injury when he was 16 years of age when he lost consciousness for several minutes.

Mr. Muhammad-Coleman denied any prior legal involvement. He stated this is his first time in jail.

Review of Records

Mr. Muhammad-Coleman was previously evaluated for competency. Dr. Chambers opined that Mr. Muhammad-Coleman was malingering and gave him a rule out Schizophrenia diagnosis, in his report dated September 16, 2013. Dr. Kapel completed a competency evaluation, dated September 16, 2013. He diagnosed Mr. Muhammad-Coleman with Malingering, Rule-out Schizophrenia vs. Schizoaffective Disorder and Rule-out Learning Disability. However, Dr. Kapel opined that he was not competent to proceed. Dr. Harder completed an evaluation, dated October 21, 2013. Dr. Harder opined that Mr. Muhammad-Coleman was competent to proceed and diagnosed him with Malingering and Rule-out Schizophrenia. Dr. Chambers, Dr. Harder, and Dr. Kapel noted that Mr. Muhammad-Coleman presented with symptoms that are not consistent with true mental illness. Dr. Chambers detailed a number of requests that Mr. Muhammad-Coleman made to jail personnel that were an attempt to show mental illness.

Mr. Muhammad-Coleman refused Geodon on multiple occasions in October and November 2013 and Zyprexa on multiple occasions in September 2013. In a request, dated August 15, 2013, Mr. Muhammad-Coleman wrote, in parts, "I have become disassociative I do not want to be around anyone. At this present moment I feel tortured and tormented, psychologically, physically,

nutritionally, emotionally drained mentally damaged and weak." In a request, dated September 29, 2013, he wrote, "The aliens are after me I need help there [sic] working with the government everybody in the White House are aliens please help me. I see them." He also drew a picture of the aliens. In a request, dated January 13, 2014, Mr. Muhammad-Coleman stated, "I am hearing things the voices are telling secrets I am having racing thoughts I see cats and I hear babys [sic] crying. The devil chokes me in my sleep."

Mr. Muhammad-Coleman wrote a request on March 16, 2014 stating, "I have been having side effects on my medication which is Rimron [sic] and I need to get off because it is giving me memory loss." Mr. Muhammad-Coleman also refused Trazodone on multiple dates in April and May 2014. Mr. Muhammad refused Mirtazapine (Remeron) on multiple dates in March, June, July, August, and September 2014. He requested, on September 4, 2014, "I need to be put back on my Remeron the psych doctor said to notify if I have any problems. I need to be put back on my medication ASAP." A psychiatric request, dated December 31, 2014 indicates that Mr. Muhammad-Coleman stated, "I would like to talk to the psych doctor about my medication because I am hearing voices all the time."

A psychiatric progress note, dated August 13, 2013 indicates that he was sent on a legal 2000 and endorsed hallucinations. In a psychiatric evaluation, dated August 18, 2013 Mr. Muhammad-Coleman reported that he was diagnosed with Bipolar Disorder at age 7 and stated he began taking Abilify and took that until age 14. He denied a history of psychiatric hospitalizations. A psychiatric progress note, dated October 9, 2013 indicates that Mr. Muhammad-Coleman reported that his previous medications, including Risperdal, Zyprexa, and Geodon, were not working and he continued to experience hallucinations. He was diagnosed with Rule-out Psychotic Disorder Not Otherwise Specified and Rule-out Malingering for unclear gain. A psychiatric progress note, dated February 25, 2014 indicates that he reported that he is not sleeping, is seeing things off and on and he stopped taking his medication in November because it was not working. In a psychiatric progress though, dated November 13, 2014, it is noted that Mr. Muhammad-Coleman was diagnosed with Mood Disorder Not Otherwise Specified by History (Consider Conduct Disorder, ODD, Bipolar Disorder), history Of Cannabis Abuse, and Antisocial Personality Disorder Features.

Jail records indicate multiple disciplinary infractions by Mr. Muhammad Coleman for not following directions, not following instructions by correctional officers, and destroying jail property.

Diagnostic Impressions

- Malingering
- Cannabis Use Disorder
- Phencyclidine (Sherm) Use Disorder

Opinion Regarding Competency: According to the Dusky v. United States standard, substantial impairment or gross deficit in (1) The capacity to understand the nature of the criminal charges, (2) The capacity to understand the nature and purpose of the court proceedings or (3) The capacity to aid and assist counsel in defense, would need to be present in order for an individual to be incompetent to stand trial.

Coleman-Muhammad, Darion
Page 5

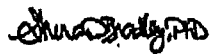
Mr. Muhammad-Coleman stated he does not know why he is in jail and stated that he does not understand what he is being told. When asked about his attorney, he identified that Spenser, who is "some guy," has been telling him that he is going to help Mr. Muhammad-Coleman. When challenged about not knowing his charges and why he is in jail, he did state that he is charged with "Burglary, Robbery, Coercion, and Kidnap." He stated the police are accusing him of "trying to take something." He stated he did not know any further details. When asked what could happen if he is found guilty, he stated that he does not know. I asked him what the options were and again he stated he did not know. I asked him if he could go to prison and he said, "No, I didn't do nothing." When asked for an example of a more serious charge than his he stated, "I don't know what anything means."

He stated that he fired his previous defense attorney, Jeremy, and stated that he has not seen his new lawyer. He stated the defense attorney's job is "trying to help me, with the names on that paper [referring to his charges]." He stated he did not know what the prosecutor did. He stated he did not know who is responsible for proving his guilt. He stated the judge "tells people what to do, people in that room." When asked what room, he stated "that big room [referring to the courtroom] they bring us to."

We discussed what it means to be found incompetent and I challenged him that he knew more information than he was revealing. It was at that point that he told me I could go ahead and leave.

Mr. Coleman-Muhammad is seen as competent to proceed. Previous competency evaluations indicate that he was malingering psychotic symptoms. His previous evaluations indicate that he reported a different history to those evaluators as compared with his report during this evaluation. He previously reported that he experiences visual hallucinations but denied experiencing visual hallucinations during this evaluation. He previously denied any inpatient psychiatric treatment but told me that he had been psychiatrically hospitalized. He told me he attempted suicide as a teenager but told previous evaluators that he attempted suicide a couple years ago. During this evaluation, he did report that he experienced hallucinations; however, his report is not consistent with that of true psychosis. In addition, his jail requests point to him exaggerating symptoms. For example, he drew a picture of his reported visual hallucination. When it came to discussing the court's procedures and his involvement in it, he generally replied that he did not know the information.

Respectfully submitted,



Shera D. Bradley, Ph.D.
Licensed Psychologist

COMPETENCY EVALUATION – COVER SHEET

☒ **COMPETENT**
☐ **NOT COMPETENT**

DEFENDANT NAME: Darion Muhammad-Coleman

CASE NO.: C299066

EVALUATION DATE: 2/15/15

LENGTH OF EVALUATION: 30 minutes

REPORT DATE: 2/21/15

INFORMED CONSENT: ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:	YES	NO
1. Capacity to understand the nature of the criminal charges.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Capacity to understand the nature and purpose of court proceedings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Capacity to aid and assist counsel in the defense.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DIAGNOSTIC IMPRESSIONS:

Malingered psychosis
Malingered procedural incapacity
Mood disorder not otherwise specified
Polysubstance abuse

PSYCHIATRIC HISTORY:

	YES	NO
Currently taking medication for mental illness:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes, specify: _____		
Prior mental health treatment:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior hospitalizations:	Unknown	
If yes, dates and duration: _____		

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT

REVIEW OF RECORDS – COLLATERAL INFORMATION

☒ Discovery ☒ Jail Medical Records
☐ Jail Disciplinary Records ☐ Mental Health Records
☐ Other _____

Submitted by: Michael S. Krelstein, MD
Print


Signature

MICHAEL S. KRELSTEIN, M.D.

Psychiatry - General & Forensic
3663 East Sunset Road, Suite #504
Las Vegas, NV 89120
Tel: (702) 743-1911
E-mail: michael.krelstein@yahoo.com

February 21, 2015

Regarding:

The State of Nevada vs.
Darion Muhammad-Coleman
Case No. C299066

Referral Source:

Connie "CJ" Yao
Specialty Court Manager
Eighth Judicial District Court
Justice Court, Las Vegas Township

COMPETENCY TO STAND TRIAL EVALUATION

OPINIONS HELD WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY: Applying standardized clinical measures for the reliable and verifiable determination of a defendant's capacity to understand the nature of the criminal charges against him, the nature and purpose of court proceedings, and the capacity to aid and assist counsel in the defense, Mr. Muhammad-Coleman is *presently competent to stand trial*.

CIRCUMSTANCES OF REFERRAL: Mr. Muhammad-Coleman is a 20 year-old man with a history of malingered mental illness, who is currently incarcerated at the Clark County Detention Center (CCDC), charged with numerous Felony counts including CONSPIRACY TO COMMIT ROBBERY, BURGLARY WHILE IN A POSSESSION OF A FIREARM, ROBBERY WITH USE OF A DEADLY WEAPON, COERCION WITH USE OF A DEADLY WEAPON. There is also reference to prior charges of 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. A signed Guilty Plea Agreement, dated 10/3/14 includes several of these charges, along with SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON. Mr. Muhammad-Coleman was referred to the undersigned psychiatrist for the purpose of evaluating his mental & procedural capacity (e.g. competency) to proceed to trial.

NOTIFICATIONS: Prior to commencing the evaluation, the undersigned reviewed with Mr. Muhammad-Coleman the medical-legal purpose of our meeting. Specifically, I informed Mr. Muhammad-Coleman that I am a psychiatrist retained by the Competency Court to evaluate his current mental capacity to stand trial. Mr. Muhammad-Coleman was subsequently informed that clinical services and confidentiality would not be provided

and that any material he disclosed during the interview would be submitted to the Court in the form of a report. Mr. Muhammad-Coleman was informed of his Fifth Amendment rights against self-incrimination, and told that he was not required to answer my questions without first consulting with his attorney. Mr. Muhammad-Coleman indicated that he understood my notifications and he competently agreed to proceed with the evaluation.

METHODOLOGY: The undersigned reviewed all known discovery, including legal and medical documentation (see list below) according to standard medical-legal practice. Primary (source) data was collected during an approximate 30-minute contact interview conducted with the defendant on 2/15/15 at CCDC. The defendant's procedural capacity was assessed via administration of a semi-structured interview in line with McGarry and the Group for the Advancement of Psychiatry (GAP) competency criteria.

MATERIALS REVIEWED PRIOR TO ASSESSMENT: The undersigned requested from the Court Mr. Muhammad-Coleman's entire legal file. This request yielded approximately 300 pages of discovery documentation. Such documentation includes, but is not limited to (1) Order for competency evaluation(s); (2) Criminal complaint; (3) Declaration of arrest/warrant/summons; (4) Arrest reports of the instant offense; (5) Investigation reports; (6) Minutes from preliminary hearings; (7) Mental health and medical records from CCDC (includes inmate request and grievance forms, disciplinary records, mental health screening and treatment documentation); (8) Three prior split competency evaluations dated September 2013 (Dr. Chambers-competent, Dr. Kapel-not competent, Dr. Harder-competent) and two split competency reports dated January-February 2014 (Dr. Sussman-not competent, Dr. Bradley-competent).

According to Mr. Muhammad-Coleman's attorney (as documented on the Request for Evaluation for Competency) there is expressed concern regarding the defendant's ability to understand the charges, pertinent facts to his attorney and understand the range and nature of the penalties.

STANDARDS AND DEFINITIONS: In 1960 the U.S. Supreme Court articulated the modern American standard for competency to stand trial (*Dusky v. United States* 1960). This standard depends on whether a criminal defendant "has sufficient ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him."

CLINICAL BACKGROUND: Unlike previous interviews (see Dr. Bradley's report) Mr. Muhammad-Coleman endorsed a primary history of Attention Deficit Hyper Activity with confusion and concentration problems in his interview with the undersigned. (Previously, Mr. Muhammad-Coleman claimed to have a history of schizophrenia and bipolar disorder). Similar to his interview with Dr. Bradley, Mr. Muhammad-Coleman endorsed hearing unintelligible "voices all around," though primarily localizing in his right ear. He is not currently taking any psychiatric medications. He acknowledges that he has tried many different psychiatric medications over time, though only one of them

(Abilify) has helped. He is unclear as to why he is not taking this, or any other psychiatric medication.

Mr. Muhammad-Coleman acknowledged that he has used alcohol and illicit drugs, such as PCP, cocaine, marijuana, and pills.

According to jail records, Mr. Muhammad-Coleman is diagnosed with mood disorder not otherwise specified, conduct disorder, and cannabis abuse. Though complaining of various bizarre psychotic symptoms (e.g. being under attack by aliens and by the devil) on a number of his KITES, he has not ever diagnosed with psychosis or major mood disorder. Yet, he has been prescribed numerous medications, including antipsychotic agents (i.e. Abilify, Geodon, Zyprexa), but has discontinued them all due to "side effects." Likewise, he has demonstrated considerable help seeking, help rejecting behavior. He clearly does not want to take medicines. Rather, he has several times requested hospitalization in psychiatric facility for stress relief and to collect his thoughts. Since his arrest, Mr. Muhammad-Coleman's mental status and observed behavioral function generally benign. Consistent with general sanity, Mr. Muhammad-Coleman has consistently evidenced reality based self concern in his numerous hand written KITES in requesting help for various medical and psychiatric discomforts.

PRESENT MENTAL STATUS: Mr. Muhammad-Coleman presented himself as a superficially cooperative, though fatigued and inattentive young man with poor effort and a limited capacity for meaningful exchange of information. He sat through the entire interview with his head down on the table, and provided short, non-revealing two or three word answers to all questions. At the same time, he was observed to listen carefully to all questions, actually raising his head from the table and establishing eye contact in between questions—indicating an accurate registration and careful consideration of information, though a poor effort with his responses. Frequently he would mumble.

Mr. Muhammad-Coleman reported that his mood was "always down." He claims that he would not mind if he did not wake up. He once tried to strangle himself with a pillow case, but denied active suicidal ideation.

Mr. Muhammad-Coleman endorsed copious auditory hallucinations, but he was never observed to be actively hallucinating or internally preoccupied. Likewise, Mr. Muhammad-Coleman's behavior was well-modulated, non-bizarre, non-psychotic, and he demonstrated adequate impulse control. Mr. Muhammad-Coleman convincingly denied present suicidal ideation and/or impulse.

Regarding his legal circumstances, Mr. Muhammad-Coleman claimed to know nothing about his case. He does not understand why he is jail, he does not know his charges, he can't understand his paperwork, and is uncertain whether he has a Public Defender or Attorney. My efforts to review specific details of his case (such as individual charges, engagement with his attorney, court proceedings, considered plea-bargains) were either ignored or categorically rejected, evidence of poor effort.

RESULTS PERTAINING TO DUSKY:

1. Capacity to understand the nature of the criminal charges
 - o *No substantial impairment or gross deficit*
2. Capacity to understand the nature and purpose of court proceedings
 - o *No substantial impairment or gross deficit*
3. Capacity to aid and assist counsel in the defense
 - o *No substantial impairment or gross deficit*

Special comment: The above competency criteria estimates are in reference to the defendant's psychological and cognitive *capacity* as opposed to cooperative effort, participatory desire, and subjective view towards his attorney and the criminal-justice system. An uncooperative, though otherwise competent defendant, may elect not to aid and assist counsel, avoid awareness of his legal circumstances, or purposefully withhold information critical to his defense.

DSM V DIAGNOSIS:

Malingered psychosis
Malingered procedural incapacity
Mood disorder not otherwise specified
Polysubstance abuse

DISCUSSION: The primary finding of this interview was Mr. Muhammad-Coleman's poor effort and claimed categorical ignorance over any details regarding his legal case. Contrasted with a lengthy medical record showing self efficacy and a relatively benign mental status and behavioral function, the undersigned concludes that the bulk of Mr. Muhammad-Coleman's currently proffered mental dysfunction is malingered, consistent with prior competency evaluations.

For all intents and purposes, Mr. Muhammad-Coleman's poor effort during the interview was equivalent to refusing examination.

According to US Supreme Court landmark case law (e.g. see *Medina v. California*, 505 U.S. 437 (1992) and *Cooper v. Oklahoma*, 517 U.S. 348 (1996)) criminal defendants are presumed competent to stand trial, unless the defense affirmatively proves otherwise by a preponderance of the evidence. It is not generally the burden of the State to prove that a criminal defendant is competent to stand trial. The preponderance standard is currently used in federal courts and in at least 46 of the states.

According to the *Medina* Court, "Once a State provides a defendant access to procedures for making a competency evaluation, . . . we perceive no basis for holding that due process further requires the State to assume the burden of vindicating the defendant's constitutional right by persuading the trier of fact that the defendant is competent to stand trial."

Arguably, a defendant (or his counsel) who claims incompetency but then refuses to comply with the "procedure for making a competency evaluation," and is not otherwise obviously incompetent, psychotic, or severely impaired by mental illness does not meet the affirmative burden for establishing procedural incompetence.

In sum, in light of the available evidence, Mr. Muhammad-Coleman's refusal to be examined (via his poor effort and claimed categorical ignorance regarding the entirety of his legal circumstances) does not meet his affirmative preponderance burden, and the defendant should be **presumed** procedurally competent in my opinion.

It is noteworthy that there is no evidence in his extensive jail records to undermine the veracity of this presumption.

The above medical-legal opinions are rendered within a reasonable degree of medical probability and are based upon the evidence before me at the time of report writing. Inferences relied upon may be drawn from evidence not explicitly revealed in this report. The undersigned reserves the right to amend, modify or reverse his opinions should any additional relevant material come to light.

Respectfully submitted,



Michael S. Krelstein, M.D.
Board Certified Forensic Psychiatrist



MARK J. CHAMBERS, PH.D., L.L.C.
CLINICAL AND FORENSIC PSYCHOLOGIST

8275 S. EASTERN AVE., STE. 200
LAS VEGAS, NEVADA 89123

Forensic Psychological Evaluation

NAME: Darion Muhammad-Coleman
D.O.B.: 12/8/94
CASE NO.: 13F06746X
DATE INTERVIEWED: 9/13/13
SUBJECT: Competency to stand trial

SOURCES OF DATA:

Interview of defendant by Mark J. Chambers, Ph.D.; criminal complaint; Las Vegas Metro Police Department declaration of warrant/summons; CCDC medical records.

REFERRAL AND BACKGROUND INFORMATION:

Mr. Muhammad-Coleman was referred by Judge Linda Bell for evaluation of his competency to stand trial and to assist in his defense on charges of conspiracy to commit robbery, murder with use of a deadly weapon, attempt robbery with use of a deadly weapon, and battery with use of a deadly weapon. The charges stem from a 4/19/13 incident, the result of which was that the victim, Dale Borero, was shot to death. The charges state that one of the defendant's alleged co-conspirators engaged the victim in a heated argument, then the defendant pointed a gun at the victim and demanded drugs. This reportedly resulted in an exchange of gunfire between the victim and defendant, injuring the defendant and killing the defendant.

Prior to the present evaluation, this examiner was contacted by the defendant's attorney, Deputy Special Public Defender Jeremy Storms, to express his concerns about the defendant's mental health. Mr. Storms noted that there is a history of schizophrenia in the defendant's family, notably his grandmother, who has expressed "bizarre ideas," he said. He also stated that in recent weeks the defendant has "shut down" and seems "severely depressed." In addition, he said that the defendant may be "responding to internal stimuli" and "won't communicate with us," in apparent "denial about his circumstances."

CCDC medical records include several notes written by the defendant requesting mental health services. One such document, dated 8/14/13, reads, in part, "Need to see psychiatric doctor because I have been living in frightenince (sic). I've become disassociative. . . I'm not able to comprehend any court room proceedings until I get evaluated by psychiatric doctors. . . I'm hearing strange noises and voices, seeing flashes of insects crawling around my bed. Just completely devastated

TELEPHONE: 702-614-4550 FACSIMILE: 702-938-1042
MARKJCPHD@AOL.COM WWW.MARKJCHAMBERSPHD.COM

crushed mentally and emotionally."

On 8/17/13, the defendant wrote, "I'm hearing voices. The deivill (sic) keeps talking there (sic) trying to kill me every where I go when I go to the bathroom they tryna kill me when I go to court I can't take it anymore. I'm going to kill myself or someonē else I'm ready to die. I can't take it any more. I need to see a doctor there trying to kill me help me." Apparently as a result of this message, the defendant was transferred to 2C for observation.

On 8/28/13, the defendant submitted another kite which read, "Does anyone know when I'm going to be evaluated by a psyhatic (sic) facility I'm going threw (sic) a lot of thing and need help to figure out what's going on."

In a psychiatric progress noted dated 9/3/13, CCDC medical staffer David Mathis noted that although the defendant was complaining of auditory and visual hallucinations, he was not compliant with medication treatment and was oriented times 3 with "unimpaired" memory and "coherent" speech. This examiner also noted that the defendant "did not appear to be internally stimulated," and a diagnosis of "r/o psychotic disorder nos r/o malingering for unclear gain" was assigned. A previous note, dated 8/20/13, states that although the defendant was reporting auditory hallucinations, they were "vague in content" and "poorly specified."

A psychiatric screening, conducted at the time of the defendant's booking on 7/3/13, indicates that the defendant denied any history of hallucinations or prior psychiatric treatment. The report of this screening also indicates that the defendant was aware that he had been arrested for murder and battery with a deadly weapon. The forms containing this information were apparently signed by the defendant as an attestation of their accuracy.

SUMMARY OF FINDINGS:

The present evaluation found Darion Muhammad-Coleman to be competent to stand trial, to a reasonable degree of psychological certainty.

STANDARDS AND DEFINITIONS:

The present evaluation was conducted using the definition of competency as determined in *Dusky v. United States 1960*. *Dusky*, which is the standard used by most jurisdictions in the U.S., specifies that to be competent, a defendant must be "rational," have a sufficient present ability to consult with counsel with a "reasonable degree" of rational understanding, and have both a rational and factual understanding of the proceedings, including the nature of the charges against him. This standard was later expanded by *Drope v. Missouri*, which also stipulated that a defendant must have the ability to assist counsel in preparing his or her defense.

BEHAVIORAL OBSERVATIONS/MENTAL STATUS:

Mr. Muhammad-Coleman was interviewed for the present evaluation at the Clark County Detention

Center. Prior to the start of the interview, he was informed of the purpose of the evaluation and the limits of confidentiality. He indicated that he understood these instructions and verbally consented to proceed with the evaluation.

Mr. Muhammad-Coleman communicated effectively throughout his interview and responded appropriately to all questions. His affect (emotional demeanor) was appropriate, and there were no indications of homicidal or suicidal ideation. Although no formal assessment of Mr. Muhammad-Coleman's intellectual ability was conducted, he appeared to be of approximately average intelligence. He exhibited no significant problems with either recent or remote memory and seemed oriented to time, person, and place, despite his claims that he did not know the date or the name of the location where he is currently residing. The defendant's thoughts appeared to be well-organized and coherent, and there were no indications of distractibility or attention to internal stimuli. No tangentiality, flight of ideas, perseveration, or other signs of a thought disorder were observed.

The defendant reported having visual hallucinations, specifically "dragons" that he said are colored black and green. They tell him that they "really exist," he said, and are "in the mountains hiding." He also claimed to have seen bugs in his bed, biting him on the arms and legs, but when he consulted the CCDC nurse about this, he said, she did not observe any bites on his body.

The defendant went on to report that he sees people crawling and jumping out of the walls, telling him to punch the wall or bang his head against the wall. He also noted that "everyone's trying to kill me."

PSYCHOSOCIAL HISTORY:

The defendant stated that he grew up in Las Vegas, attending school only through the sixth grade. He explained that he had difficulty comprehending what was taught and was placed in special education programs. He was raised by his mother and grandmother, he said, as his father was not in the picture.

The defendant claimed that he began experiencing mental health problems at the age of 9, when he poured hot grease on his hand because he believed that "something was biting it." He also described talking to "dead people" who he said would "come to see me from time to time." He described these symptoms to his mother, he said, but she told him it was "hereditary" and that "nothing was wrong with me."

The defendant stated that he first began receiving medication treatment at the age of 13, when he was prescribed Abilify, Concerta, Seroquel and Risperdal. Some of these medications caused him to have memory loss, he said, a comment apparently intended to explain some of the memory deficits exhibited by him on the present evaluation. Asked if he had ever experienced suicidal ideation, he said that he attempted to choke himself with a pillowcase about a year ago, but he denied being suicidal at present. He admitted when asked that he had been sent to 2C several weeks prior to the present evaluation because of suicidal ideation.

Darion Muhammad-Coleman
September 16, 2013

Page 4

Asked about his prior arrest history, the defendant stated that at the age of 13 he was charged with battery with a deadly weapon after stabbing someone in self defense when three males "jumped" him with a knife. Following his arrest, he said, he was sent to Spring Mountain Treatment Center for treatment of "bipolar disorder, schizophrenia and memory loss." He claimed that the current case is his first arrest as an adult.

The defendant denied having any significant employment history. Asked about drug use, he admitted to smoking marijuana, which he said "helps stop racing thoughts," but he denied any other drug use or consumption of alcohol.

DSM-V DIAGNOSIS:

R/O 295.90	Schizophrenia, undifferentiated, chronic
V65.2	Malingering

UNDERSTANDING OF LEGAL SITUATION:

This examiner found it noteworthy that at the beginning of the present evaluation, when informed of the purpose of the visit but prior to being asked any questions, Mr. Muhammad-Coleman spontaneously remarked, "I don't understand what a judge is for." Later, when the competency assessment portion of the interview commenced, the defendant denied knowing what he is charged with and insisted that his attorney has not discussed the charge with him. He admitted to having the opportunity to review the discovery from his case, but he claimed that he did not know what these documents said. Later, the defendant said, "They told me that I'm charged with murder, but I don't know what that means." With further questioning, the defendant clarified that he meant he did not know what the word "murder" means. When informed by the examiner that it refers to "killing someone," he then claimed that he did not know what "killing" means. However, he then referred to his uncle being dead, suggesting that he at least knew that the term referred to someone being deceased.

The defendant gave similar responses to other competency-related questions, claiming that he did not know what a jury or a plea bargain were, and answering "I don't know" when asked to explain what "the right to remain silent" means. The defendant also claimed to be unfamiliar with the term "attorney," but he then almost immediately made reference to his defense attorney, stating that "he's not here to help me," indicating that he did, in fact, know the meaning of the word.

Because of the defendant's claims that he was unfamiliar with common words such as "murder," "killing," or "attorney," he was administered the Vocabulary subtest from the Wechsler Abbreviated Scale of Intelligence. On this test, the defendant scored below the low end of the available range on the test, earning the minimum possible T-score of 20. The defendant claimed that he did not know the meanings of words such as "calendar," "bell," and "vacation," and when asked to define the word "pet," he responded, "Like a worm." Interestingly, when asked to define "police," he first answered, "I don't know," then said, "These are C.O.'s, they're the guys to help you," indicating that he was aware of a connection between the term "police" and the corrections officers that work

Darion Muhammad-Coleman
September 16, 2013

Page 5

in the detention center.

The defendant was also administered the Registration section of the Mini-Mental Status Examination. This item involves having the examinee repeat three words spoken by the examiner, both to register his level of alertness and attentiveness but also to test his recall of these words later, after an intervening task. When this defendant was asked to repeat the three words (apple, penny, table), he responded, "Apple, penny, forgot the last one." After the words were read a second time, he responded, "Table . . . forgot again." After a third recitation of the words, the defendant gave a similar response, saying, "Table . . . sorry, forgot again."

CONCLUSIONS CONCERNING COMPETENCY TO STAND TRIAL:

This examiner is firmly convinced that the defendant, Darion Muhammad-Coleman, is malingering the apparent cognitive deficits exhibited during the present evaluation. During the course of informal, non-evaluative conversation with the defendant, he provided a coherent personal history with no gaps in memory or word-finding difficulties. Furthermore, he exhibited appropriate attention and concentration to questions and exhibited no signs of thought disorder that would be consistent with the presence of a psychosis, as his claimed auditory and visual hallucinations would suggest. He had no difficulty naming the various medications (Zyprexa, Risperdal, Abilify, Concerta, Seroquel, etc.) he has been prescribed, but he claimed to not know the meanings of the words "murder" and "vacation." These behaviors are not consistent with known mental disorders.

This examiner also noted considerable evidence suggesting that the defendant is actively promoting the idea that he is not competent to stand trial. On a kite filed with CCDC medical staff, the defendant claimed that he is "not able to comprehend any court room proceedings" due to his mental condition, and he asserted to this examiner that he does not understand "what a judge is for" even prior to being asked any competency-relevant questions. It should also be noted that during his intake screening evaluation at the time of his arrest, he denied any mental health history or hallucinations, contrary to his current claims, and CCDC medical staff have expressed concerns about possible malingering on the part of the defendant based on their observations of his behavior in custody.

Finally, the defendant's performance on formal assessment measures is strongly suggestive of malingering. On the Vocabulary subtest of the Wechsler Abbreviated Scale of Intelligence, the defendant scored at the lower limit of the test, despite displaying no vocabulary deficits in casual conversation. Also, his claimed inability to repeat three simple words is a deficit that is rarely seen even among the most cognitively impaired individuals and certainly not among individuals who are capable of normal verbal discourse. As it is often the case that malingerers tend to feign a level of disability that is more severe than legitimately impaired individuals, these findings are strongly suggestive that this defendant's poor performance on these instruments was simulated.

Based on the available information, I find that, within a reasonable degree of psychological certainty, the defendant, Darion Muhammad-Coleman, is competent to stand trial and participate in his own defense. At the time of his booking into CCDC, he was aware of his charges, and based on the defendant's overall clinical presentation along with supporting documentation, it is likely that he

Darion Muhammad-Coleman
September 16, 2013

Page 6

is able to consult with counsel and participate in his own defense. These conclusions are not contingent on whether the defendant has a legitimate history of mental health problems as he reports, but rather on his current level of mental functioning.

I appreciate having the opportunity to evaluate Mr. Muhammad-Coleman.

A handwritten signature in black ink, reading "Mark J. Chambers, Ph.D." with a stylized, cursive script.

Mark J. Chambers, Ph.D.
Clinical and Forensic Psychologist
Nevada License FY267

COMPETENCY EVALUATION - COVER SHEET

☐ COMPETENT
☒ NOT COMPETENT

DEFENDANT NAME: Damon Muhammad

CASE NO: 13F06746X

EVALUATION DATE: 9-16-13

LENGTH OF EVALUATION: 40 min

REPORT DATE: 9-16-13

INFORMED CONSENT: ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:	YES	NO
1. Capacity to understand the nature of the criminal charges.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Capacity to understand the nature and purpose of court proceedings.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Capacity to aid and assist counsel in the defense.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DIAGNOSTIC IMPRESSIONS:

Axis I: Malinger vs Schizophrenia vs Schizoaffective

Axis II: Learning Disability

Axis III: None

Axis IV: Legal

Axis V: Unable to assess

PSYCHIATRIC HISTORY:

YES NO

Currently taking medication for mental illness:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If yes, specify: <u>Zyprexa</u>		
Prior mental health treatment:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior hospitalizations:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes, dates and location:		

MALINGERING:

Is there a substantial degree of weakness in the history, response style, or testing data that suggests a malingering disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT

REVIEW OF RECORDS - COLLATERAL INFORMATION

☒ Discovery ☒ Jail Medical Records

☐ Jail Disciplinary Records ☐ Mental Health Records

☒ one phone consult with Public Defender

Submitted by: Lawrence Kapel
Print

Lawrence Kapel
Signature

LAWRENCE KAPEL, Ph.D.

1090 Wigwam Pkwy #100
Henderson, NV 89074

(702) 454-0201

Competency Evaluation

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

Date of Report: 9-16-13

The results of my evaluation are summarized in this report. It is my psychological opinion that Mr. Muhammad wasn't genuinely engaging the undersigned making it very difficult to render an opinion regarding competency. His public defender has reported that he has not been able to meaningfully engage Mr. Muhammad and that there is family history of psychiatric illness. Further, malingering doesn't mean that there isn't also psychiatric illness as well and therefore I would conservatively recommend that Mr. Muhammad be found incompetent and sent to Lakes Crossing.

Information used to render the above opinion:

1. Declaration of warrant #130419-4147
2. Jail medical record
3. Request for evaluation of competency
4. Criminal complaint
5. Brief phone consult with Mr. Storms (public defender)
6. Clinical interview with Mr. Muhammad

Identifying information: Darion Muhammad is an 18 year old male who was evaluated in the Clark County Detention Center (CCDC). He is charged with Conspiracy to Commit Robbery, Murder with use of a Deadly Weapon, Attempt Robbery with use of a Deadly Weapon and Battery with use of a Deadly Weapon. He was referred by the Eighth Judicial District Court, Specialty Courts Division to aid in determining if he is competent to stand trial. He was advised that a copy of this report would be sent to the court and the customary psychologist-client confidentiality didn't apply. He agreed to proceed with the evaluation.

Mr. Storms was contacted for a brief phone consult. Mr. Storms related that he is having marked difficulty getting his client to communicate with him. He reported that there is family history of psychiatric illness.

Behavioral observation and mental status: Darion Muhammad presented in an inconsistent fashion. He was able to relate very specific information about his past to include specific medication he was on and details about his juvenile arrest record yet

Client Name: Darion Muhammad
Case Number: 13F06746X
Date of Evaluation: 9-16-13

reported not knowing what murder or kill meant. He was able to relate having been in juvenile hall and foster care yet stated he didn't know what a jail or prison was. His speech was fluent and goal directed. He was very invested in communicating the severity of his psychotic symptoms but he did this in a fashion that was goal directed and not suggestive of loose associations or tangential thinking. He reported that the year was 2009 and he didn't know the season or month of the year. He reported that he was "in a big mansion having fun". He was unable to answer what 4 plus 5 equaled. He was unable to spell WORLD forward. He was unable to count backward from 10-1. He was unable to answer even basic verbal abstract questions (e.g. how a dog and lion are alike; how are orange and banana alike). This poor mental status was noteworthy because when he was relating his symptoms and history that were self-serving he clearly was able to relate at a higher level. He was particularly impoverished in his responses related to all of the legal questions. Overall, Mr. Muhammad presented as one who wasn't putting forth effort and his responses were suggestive of malingering.

Current psychological symptoms: Jail medical records note that he was transferred to 2C secondary to "hallucinations, bizarre behavior". Mr. Muhammad wrote a request for psychiatric care on 8-17-13 in which he reported "I'm hearing voices....The devil keeps talking there trying to kill me every where I go". He wrote several other requests for psychiatric help noting psychotic symptoms and mental problems. Psychiatric note of 9-3-13 noted that "will stop Risperdal (start) Zyprexa follow up two weeks".

Mr. Muhammad reported "I feel horrible". He reported poor sleep. He reported good appetite. He reported low energy level. He reported memory and concentration were "not good". He reported marked anxiety in which it was "hard to breathe". He reported marked mood swings with periods of marked increase in energy and anger. He reported episodic suicidal ideation "when the voices won't leave me alone". He reported "I feel like everyone is trying to kill me". He reported that "I see dead people". He also related that government officials are trying to kill him and "I know they are aliens". He related that he was "abducted by a UFO". He also related seeing dragons that are "green and black" and "smell like rotten meat" and "roar like thunder". He reported that he is currently taking Zyprexa and he was aware that this was for psychosis.

Past mental health history: Mr. Muhammad reported that he was diagnosed with "bipolar disorder" from age 14-17 and he was treated with Abilify and Concerta. He reported that he was not under psychiatric care since the age of 17.

Family mental health history: Mr. Muhammad reported that his mother was diagnosed with "schizophrenia, bipolar disorder and PTSD".

Substance abuse history: Mr. Muhammad denied alcohol abuse. He reported that he would smoke marijuana "every other day" prior to his arrest.

Client Name: Darion Muhammad
Case Number: 13F06746X
Date of Evaluation: 9-16-13

Legal history: Mr. Muhammad reported that this is his first arrest as an adult. He related having been arrested three times as a juvenile to include a "battery" charge in which he reported that he was accused of knifing someone but that he was acting in self-defense.

Health: Mr. Muhammad denied significant health issues.

Education: Mr. Muhammad reported that he left school in the sixth grade secondary to his being in juvenile placements. He reported that he was in special education and "didn't understand" the work.

Psychosocial history: Mr. Muhammad stated that he was raised in Las Vegas by his grandmother. He reported that he spent time as an adolescent both in group homes and juvenile incarceration. He has never had a job and isn't married.

Competency issues: Mr. Muhammad reported that he didn't know what his charges were. He later stated that his charges were "like stealing candy from a store". I related to him that the most severe charge was murder and he reported not knowing what that meant. I reported that this meant killing someone and he stated "what's killing". He reported not knowing what guilty or not guilty meant. He reported not knowing if the charges were severe. He reported "I should be going home anytime". He reported not knowing what a plea bargain was. He reported not knowing who his attorney was or what his attorney's job entailed. He reported not knowing what the prosecuting attorney's job entailed. He reported not knowing what a witness is or what evidence was. Overall it was very clear that Mr. Muhammad was denying any knowledge of how the legal system or worked or why he was incarcerated. He stated that he was in a "big mansion having fun". Overall it was very clear that he wasn't going to relate any information that would allow the undersigned to make a genuine assessment of his competency.

Impression:

Axis 1: Malingering R/O Schizophrenia vs Psychosis NOS vs Schizoaffective disorder

Axis 2: R/O Learning disability

Axis 3: None

Axis 4: Legal

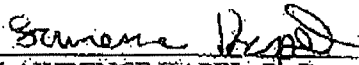
Axis 5: Unable to assess

Client Name: Darion Muhammad

Case Number: 13F06746X

Date of Evaluation: 9-16-13

Findings: Mr. Muhammad appeared to be greatly exaggerating his cognitive deficits, psychiatric symptoms and his deficits as it related to his understanding of the legal process. He related his history well to include previous legal charges and medical regimen yet he couldn't answer even basic legal questions. However, malingering doesn't mean that he isn't also sick and it doesn't mean that he is competent. The undersigned doesn't feel that I can genuinely assess his competency given his presentation. Given the severity of the charge and that his attorney is relating a history of family mental health and that his attorney has been unable to meaningfully engage Mr. Muhammad I would conservatively recommend that he be transferred to Lakes Crossing where his abilities can better be assessed and the role of malingering and genuine mental illness can be observed and treated as needed.


LAWRENCE KAPEL, Ph.D.
Licensed Clinical Psychologist

COMPETENCY EVALUATION - COVER SHEET

☒ **COMPETENT**
☐ **NOT COMPETENT**

DEFENDANT NAME: Daron Muhammad

CASE NO.: 13F067496X

EVALUATION DATE: 10/21/13

LENGTH OF EVALUATION: 30 min

REPORT DATE: 10/21/13

INFORMED CONSENT: ☒ YES

☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES

Is there substantial impairment or gross deficit in the following areas:

YES

NO

1. Capacity to understand the nature of the criminal charges.
2. Capacity to understand the nature and purpose of court proceedings.
3. Capacity to aid and assist counsel in the defense.

☐
☐
☐

☒
☒
☒

DIAGNOSTIC IMPRESSIONS:

Axis I Malingering R/o Schizophrenia
Axis II _____
Axis III _____
Axis IV _____
Axis V _____

PSYCHIATRIC HISTORY:

YES

NO

Currently taking medication for mental illness:

☒

☐

If yes, specify: _____

Prior mental health treatment:

☒

☐

Prior hospitalizations:

☐

☐

If yes, dates and duration: unknown

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☒ YES ☐ NO ☐ NOT RULED OUT

REVIEW OF RECORDS - COLLATERAL INFORMATION

☒ Discovery

☐ Jail Medical Records

☐ Jail Disciplinary Records

☐ Mental Health Records

☐ Other _____

Submitted by: Greg Hinder, PM

Print

[Signature]
Signature

Greg Harder, Psy.D.
Licensed Psychologist #PY0338
4955 South Durango Dr. Suite 221
Las Vegas, NV 89113

Phone: (702) 685-5297

Fax: (702) 685-5314

October 21, 2013

Judge Bell
Specialty Court
Eighth Judicial District Court

RE: Darion Muhammad
Case #: 13F067446x

Reason For Referral:

Per your request, I evaluated Mr. Muhammad at the Clark County Detention Center on October 21, 2013. The purpose of the evaluation was to determine if the Defendant is presently competent to stand trial. The results of this evaluation are described below.

Competency Determination:

Mr. Muhammad is likely competent to stand trial and malingering.

Review of Records:

According to the Criminal Complaint, the Defendant is charged with Murder, Robbery, and Battery with Use of a Deadly Weapon.

Informed Consent:

Before interviewing the Defendant, I explained to him that he was being evaluated to determine if he is competent to stand trial. I explained to him that the results of the evaluation

would be released to the judge and possibly the attorneys on both sides of the case, as well as the jail psychiatrist. He understood the purpose of the evaluation, and the limits of his confidentiality, and orally consented to participate in the evaluation in a voluntary manner.

Competency Standard:

The Defendant was evaluated according to the Dusky Standard, which is a federal standard of competency, and similar to the Nevada revised standard. The Dusky standard states "Whether he (the defendant) has a rational as well as factual understanding of the proceedings against him" and whether he (the defendant) has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding."

Interview of Defendant:

Capacity to Understand Charges:

Before interviewing Mr. Muhammad, I explained to him that one doctor found him to be competent to stand trial and one doctor found him to be not competent, and that I had been sent to evaluate him to "break the tie." I asked him why he thought a competency evaluation had been requested on him. He stated that the doctor yelled at him and told him he was lying. He stated that the doctor "did not believe in the alien." When I asked him what he was charged with, he stated what they charged him with is like stealing candy from a store. I explained to him that he was charged with murder, which was not at all similar to stealing candy from a store, and he dismissed that as untrue. Mr. Muhammad claimed not to know anything about his case, or that matter, anything about his life. He stated that he did not know how long he had been in jail. He denied knowing what murder is. He denied knowing who the alleged victim was. He claimed not to know anything about the amount of time he might be facing for the charges.

Understanding of Court Proceedings and Legal Terminology:

Mr. Muhammad stated that he has a 6th grade education. He stated that he does not know why he did not finish school other than it was too hard. He was in special education classes. He told me his birthdate was 12/8/94 and that he is 18 years old. He denied knowing what a public defender is. He denied knowing what a district attorney is. He denied knowing what a judge does. He denied knowing what his choices for pleading were. He denied knowing what guilty or not guilty mean.

Ability to Assist Counsel:

He admitted to having a history of mental illness. He stated that he has been diagnosed with Bipolar and PTSD. He stated he was diagnosed at age 13. He denied ever being in a psychiatric hospital. He has been on numerous medications, including Abilify, Concerta, Seroquel, and Respiradol. He stated that a dragon talks to him. He also stated that he is living in a mansion right now, meaning the jail is a mansion, not a jail. He stated that the aliens kidnapped him and did experiments on him. He stated that the president is an alien. He stated he was abducted when he was 12 and they put a drill in his head. He stated he remembered everything and now they are after him. He stated they put him in this mansion so they can watch over him. When I asked him what medications he is on, he stated that he is prescribed "genocide." He told me that he was on Zyprexa in the past. He stated his mother thinks he is normal. He denied ever being on disability. When I asked him what caused him to be diagnosed with PTSD, he could not tell me. He stated his doctor told him he takes things too hard. He denied using drugs or alcohol. He stated he is "sort of in a relationship with somebody and has a kid on the way."

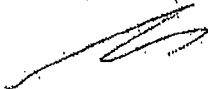
Conclusion:

Mr. Muhammad is probably competent to stand trial. His claims about aliens abducting him, a dragon talking to him, the president being an alien, and other strange statements seemed like an attempt to appear mentally ill rather than an actual mental illness. He also claimed not to know anything about his case. He denied knowing what murder is, said he is charged with something like taking candy from a store, which seemed like a ridiculous attempt to appear not to understand his case, and claimed not to know anything about the court process. He denied knowing what his lawyer does, what a district attorney does, what a judge does, or what guilty or not guilty mean. He claimed to be living in a mansion right now and that the aliens put him there to watch him. Although there is always a small possibility that the defendant could be a legitimately psychotic individual, all the data supports the fact that his delusions are made up and not at all consistent with most legitimate Schizophrenic patients. Mr. Muhammad is facing serious charges for murder and it is highly likely that his statements are deliberate attempts to feign mental illness.

Recommendations:

Mr. Muhammad is recommended to be found competent and probably malingering.

Respectfully,



Greg Harder, Psy.D.

Licensed Psychologist

Thank you for your referral. Please contact me if you have any questions or feedback about this report.