

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION COLEMAN,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Feb 07 2022 01:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 82915

RESPONDENT'S APPENDIX
Volume 2

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Nevada Bar #001565
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Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 7th day of February, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

WALEED ZAMAN, ESQ.
Counsel for Appellant

TALEEN PANDUKHT
Chief Deputy District Attorney

/s/ J. Hall

Employee, Clark County
District Attorney's Office

TP/Megan Thompson/jh

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made on September 26,
2014 by Electronic Filing to:

DISTRICT ATTORNEY’S OFFICE
email: motions@clarkcountyda.com

/s/ Kathleen Fitzgerald

Legal Executive Assistant for
Special Public Defender

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 01, 2014

C-13-293296-2 State of Nevada
 vs
 Darion Muhammad-Coleman

**December 01, 2014 9:00 AM Motion to Withdraw as
Counsel**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Billie Jo Craig

RECORDER:

REPORTER: Robert Cangemi

PARTIES

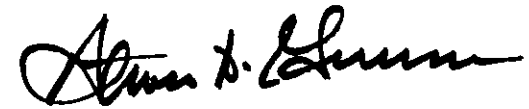
PRESENT: Muhammad-Coleman, Darion Defendant
 Schwarz, Michael H Attorney

JOURNAL ENTRIES

- Deputy District Attorney Caroline Bateman present. Special Public Defenders David Schieck and Randall Pike present.

Mr. Schwarz advised he was contacted by Mr. Christensen. Arguments by the State regarding previous Motions and a complaint with the State Bar. Court stated its findings, and ORDERED, the Special Public Defender's Motion to Withdraw as Counsel and Motion to Appoint New Counsel is GRANTED. Court noted this was a unique situation in a Murder Trial. Mr. Schwarz is APPOINTED to represent the indigent defendant. Mr. Schieck advised he would provide the file to Mr. Schwarz. Upon inquiry of the Court, Mr. Schwarz advised he would be ready for Trial. The Defendant's Pro Per Motion Seeking Dismissal scheduled on 12/17/14 is VACATED.

CUSTODY (COC)



CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CAROLINE BATEMAN
Deputy District Attorney
Nevada Bar #12281
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-0968
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DARION MUHAMMAD-COLEMAN,
aka, Darion Muhammadcoleman
#2880725

Defendant.

Case No. C-13-293296-2

Dept. No. XI

**STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO BAR
IMPROPER PROSECUTORIAL ARGUMENT**

DATE OF HEARING: January 5, 2015

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CAROLINE BATEMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion in Limine to Bar Improper Prosecutorial Argument.

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

///

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PROCEDURAL BACKGROUND
STATEMENT OF THE CASE

On October 11, 2013, the State of Nevada (hereinafter "State") filed an Indictment charging Darion Muhammad-Coleman (hereinafter "Defendant") with the following: Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Attempt Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Murder 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 Use of 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 Substance (Category E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

On November 26, 2013, Defendant filed a Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return to Defendant's Petition for Writ of Habeas Corpus. On April 2, 2014, the court denied Defendant's Petition for Writ of Habeas Corpus.

On September 26, 2014, Defendant filed the present Motion in Limine to Bar Improper Prosecutorial Argument to which the State's Response follows.

STATEMENT OF FACTS

On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa (Costa). Defendant 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. At the time, it was around 6 or 7 PM and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and purchasing some beer. McCampbell knew Defendant from a couple prior encounters when McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

Defendant told McCampbell that he wanted to go to the area of Sahara and Boulder Highway and that the trip would take ten minutes. McCampbell agreed to give Defendant a

1 ride and they agreed that McCampbell would receive \$10 in gas money. As this agreement
2 was struck, Bleak and Costa appeared and Defendant explained that they would be going along
3 for the ride too. Defendant sat in the front passenger seat, Bleak sat in the rear passenger seat
4 behind Defendant, and Costa sat in the rear passenger seat behind McCampbell.

5 As McCampbell drove, he was directed to the area of Charleston and Eastern where
6 there is a large shopping center containing a Lowe's, as well as a 7-11 and a Dotty's bar. Costa
7 told McCampbell to park around the side of the 7-11 building because he wanted to buy beers
8 for himself and Bleak. McCampbell started to become nervous that the men might rob the 7-
9 11 and informed them that he did not want any trouble. The three men told him everything
10 was cool and not to worry. Costa exited the car and entered the 7-11 while Bleak and
11 Defendant exited the car and engaged in what McCampbell would later term a "pow-wow."
12 Their discussion was not audible to McCampbell. Once they were back in the car,
13 McCampbell told Bleak and Defendant he really did not like the "pow wow" outside the car
14 or how the ride was turning into him driving to a bunch of different places without explanation.
15 The men again reassured McCampbell. Costa returned from the store with two white cans of
16 Hurricane beer.

17 McCampbell was then directed, primarily by Defendant, to drive through the Lowe's
18 parking lot and to the parking lot of the nearby Traveler's Inn located at 2855 East Fremont
19 Street. The Traveler's Inn had operational video surveillance in place, which recorded the
20 events described below. Once in the parking lot, although numerous parking spots were open,
21 the men directed McCampbell to back into a parking space directly adjacent to a set of stairs
22 that lead up to the second floor of the motel. Backing into the narrow parking spot proved
23 difficult resulting in McCampbell scraping the car against several surfaces. McCampbell
24 became quite upset, repeatedly asking the men why he was being required to back into the
25 parking spot, and telling them he did not feel good about the situation.

26 Once parked, Defendant and Bleak exited the vehicle while Costa stayed seated in the
27 back of the vehicle. Video surveillance depicts Bleak on a cell phone appearing to call
28 someone while Defendant leaned against the rear of the parked Brougham. After a short time,

1 the victim in this case, Dale "Spooky" Borero (Borero) walked down the stairs to meet Bleak.

2 Borero was a dealer of methamphetamine with multiple felony priors for
3 methamphetamine trafficking and gun possession. Borero was staying at the Traveler's Inn
4 with his girlfriend. Michael Herrod (Herrod), who was friends with both Borero and Bleak
5 and also a multi-time convicted felon trafficking in drugs would later be interviewed by
6 detectives and provide information about the relationship between Bleak and Borero. Herrod
7 would relate to detectives that prior to that night, Bleak had been staying with Herrod, but
8 Herrod ended up having to kick Bleak out of the house due to Bleak's erratic behavior and
9 drug use. Bleak subsequently called Herrod and told Herrod that he was going to do
10 "something big" that Herrod would hear about and Herrod would "be next." Herrod took this
11 to mean potentially being robbed for drugs. Herrod was also aware that Bleak and Costa had
12 lately been "punking" Borero, i.e., showing up and demanding that Borero provide them
13 methamphetamine or be beaten him up. At the time of Bleak and Defendant's meeting with
14 Borero on April 19, 2013, Borero had approximately eight (8) grams of methamphetamine and
15 \$3,000 in cash on his person

16 Video surveillance depicts Bleak engaged in conversation with Borero off to the side
17 of the Brougham. Eventually, Defendant, who had been leaning against the rear of the vehicle,
18 slowly walks over to the two men and casually pulls out a Ruger LC9 9mm pistol and points
19 it in Borero's face. During this confrontation, Bleak is not visible in the camera angle but
20 appears to be nearby Borero. As he points the pistol in Borero's face, Defendant reaches toward
21 Borero's person as if to grasp something. At one point, Defendant strikes Borero in the face
22 with pistol. After being held at gunpoint and struck in the face, Borero eventually produces
23 his own pistol, a .40 Ruger. Defendant is faster with his weapon and shoots Borero in the
24 abdomen while moving toward the front of the Brougham and continuing to fire. In total,
25 Defendant fires four times striking Borero twice, once in the upper abdomen inflicting a fatal
26 wound and once in the leg. As the shooting started, McCampbell almost immediately begins
27 to drive out of the parking lot while Bleak and Defendant struggle to get back into the car.
28 Mortally wounded, Borero falls to the ground where he fires repeatedly but strikes the

1 Brougham once in a rear post, missing Defendant, Bleak, Costa, and McCampbell. As Bleak
2 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was
3 carrying falls to the ground. Defendant and Bleak are successful getting back into the
4 Brougham, which drives off at great speed.

5 Once out of the Traveler's Inn parking lot, Defendant directed McCampbell to drive
6 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
7 told Defendant that he will tell what happened. Defendant responded by gesturing toward his
8 pistol and threatening McCampbell. McCampbell, who became cooperative after being
9 threatened, returned the men to "Naked City" area at which time Defendant, Bleak and Costa
10 go their separate ways. Back at the Traveler's Inn crime scene, LVMPD detectives and crime
11 scene analysts recovered the BB gun magazine, multiple cartridge casings from both Borero
12 and Defendant's pistols, bullet fragments, a white Hurricane beer can, and Borero's bag of
13 methamphetamine and U.S. currency. Borero was transported to UMC where he died from his
14 injuries.

15 The following day, McCampbell learned that Borero died as a result of the shooting
16 and he contacted LVMPD to tell them about the events leading to Borero's death. He
17 eventually took the Brougham to CCDC and surrendered himself to the first officer he came
18 into contact with. Homicide detectives responded, had the car impounded, and conducted a
19 recorded interview with McCampbell at Metro headquarters. McCampbell would later
20 positively identify Defendant, Bleak, and Costa in photo-ID lineups.

21 Bleak subsequently called his former roommate, Herrod, and admitted to participating
22 in Borero's death. He told Herrod that the drug robbery "didn't go down" as planned and that
23 he was unable to get any drugs or money from Borero.

24 Through McCampbell's statements and additional investigative work, detectives
25 identified Defendant and Bleak as suspects in Borero's death. On April 22, 2013, detectives
26 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
27 missing its magazine and located partially wedged into the seat cushion where Bleak had been
28 seated. Detectives took Bleak into custody and impounded the BB gun. Bleak was briefly

1 interviewed but invoked his right to counsel. He subsequently gave a proffer but denied
2 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be
3 interviewed and deny a plan to rob Borero.

4 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
5 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
6 property had discovered a black handgun inside of a black holster, which had been placed in
7 a toaster oven. Inside the residence, detectives discovered paperwork with Defendant's name
8 on it. A forensic toolmark analysis would later positively match bullets test-fired from that
9 Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July
10 3, 2013, detectives located Defendant and took him into custody.

11 POINTS AND AUTHORITIES

12 The State does not intend to commit misconduct during the prosecution of the instant
13 case. If and when defense counsel hears arguments regarded as objectionable, counsel is
14 obligated to object. At that time, the court will have the opportunity to rule on the specific
15 argument Defendant finds objectionable. The undersigned Deputy District Attorney is aware
16 of the ethical obligations inherent in prosecuting criminal cases. It is respectfully suggested
17 that defense counsel exercise the same high ethical standards that they espouse in their moving
18 papers to be necessary to the fundamental fairness of proceedings of such magnitude,
19 including compliance with the reciprocal discovery requirements of Chapter 174 of the
20 Nevada Revised Statutes.

21 The instant motion presents no cognizable request for relief and is apparently designed
22 to provide a tome on prosecutorial misconduct and to anticipatorily offend representatives of
23 the State long before the commencement of trial. It carries the identical weight that a motion
24 by the State to bar ineffective assistance of defense counsel at trial would carry with this Court.
25 Insomuch as the defense requests that the State "indicate which, if any, of the arguments
26 [regarding improper prosecutorial actions] the State believes it would be permitted to make,
27 whatever, the possible context," the State reiterates that it does not intend, during any stage of
28 trial, to commit prosecutorial misconduct.


1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests this Honorable Court to deny
3 Defendant's Motion in Limine to Bar Improper Prosecutorial Argument.

4 DATED this 30th day of December, 2014.

5 Respectfully submitted,

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

9 BY 
10 CAROLINE BATEMAN
11 Deputy District Attorney
12 Nevada Bar #012281

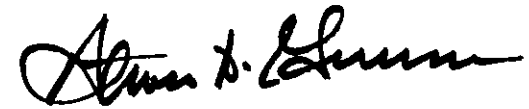
13 **CERTIFICATE OF ELECTRONIC FILING**

14 I hereby certify that service of State's Response to Defendant's Motion In Limine to
15 Bar Improper Prosecutorial Argument, was made this 2nd day of January, 2015, by
16 Electronic Filing to:

17
18 RANDALL H. PIKE, Deputy Public Defender
pdclerk@clarkcountynv.gov

19
20 
21 C. Jimenez
22 Secretary for the District Attorney's Office
23
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CB/cmj/L3



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CAROLINE BATEMAN
6 Deputy District Attorney
7 Nevada Bar #12281
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-0968
11 Attorney for Plaintiff

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12
13 DARION MUHAMMAD-COLEMAN,
14 aka, Darion Muhammadcoleman
15 #2880725

15 Defendant.

Case No. C-13-293296-2

Dept. No. XI

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO ADMIT EVIDENCE OF**
17 **THE DECEASED'S VIOLENT PROPENSITY**

18 DATE OF HEARING: January 5, 2015

19 TIME OF HEARING: 9:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through CAROLINE BATEMAN, Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in Opposition to Defendant's Motion to Admit
23 Evidence of the Deceased's Violent Propensity.

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

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///

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3 ride and they agreed that McCampbell would receive \$10 in gas money. As this agreement
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28 ///

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2 back of the vehicle. Video surveillance depicts Bleak on a cell phone appearing to call
3 someone while Defendant leaned against the rear of the parked Brougham. After a short time,
4 the victim in this case, Dale "Spooky" Borero (Borero) walked down the stairs to meet Bleak.

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6 methamphetamine trafficking and gun possession. Borero was staying at the Traveler's Inn
7 with his girlfriend. Michael Herrod (Herrod), who was friends with both Borero and Bleak
8 and also a multi-time convicted felon trafficking in drugs would later be interviewed by
9 detectives and provide information about the relationship between Bleak and Borero. Herrod
10 would relate to detectives that prior to that night, Bleak had been staying with Herrod, but
11 Herrod ended up having to kick Bleak out of the house due to Bleak's erratic behavior and
12 drug use. Bleak subsequently called Herrod and told Herrod that he was going to do
13 "something big" that Herrod would hear about and Herrod would "be next." Herrod took this
14 to mean potentially being robbed for drugs. Herrod was also aware that Bleak and Costa had
15 lately been "punking" Borero, i.e., showing up and demanding that Borero provide them
16 methamphetamine or be beaten him up. At the time of Bleak and Defendant's meeting with
17 Borero on April 19, 2013, Borero had approximately eight (8) grams of methamphetamine and
18 \$3,000 in cash on his person

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20 of the Brougham. Eventually, Defendant, who had been leaning against the rear of the vehicle,
21 slowly walks over to the two men and casually pulls out a Ruger LC9 9mm pistol and points
22 it in Borero's face. During this confrontation, Bleak is not visible in the camera angle but
23 appears to be nearby Borero. As he points the pistol in Borero's face, Defendant reaches toward
24 Borero's person as if to grasp something. At one point, Defendant strikes Borero in the face
25 with pistol. After being held at gunpoint and struck in the face, Borero eventually produces
26 his own pistol, a .40 Ruger. Defendant is faster with his weapon and shoots Borero in the
27 abdomen while moving toward the front of the Brougham and continuing to fire. In total,
28 Defendant fires four times striking Borero twice, once in the upper abdomen inflicting a fatal

1 wound and once in the leg. As the shooting started, McCampbell almost immediately begins
2 to drive out of the parking lot while Bleak and Defendant struggle to get back into the car.
3 Mortally wounded, Borero falls to the ground where he fires repeatedly but strikes the
4 Brougham once in a rear post, missing Defendant, Bleak, Costa, and McCampbell. As Bleak
5 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was
6 carrying falls to the ground. Defendant and Bleak are successful getting back into the
7 Brougham, which drives off at great speed.

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9 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
10 told Defendant that he will tell what happened. Defendant responded by gesturing toward his
11 pistol and threatening McCampbell. McCampbell, who became cooperative after being
12 threatened, returned the men to "Naked City" area at which time Defendant, Bleak and Costa
13 go their separate ways. Back at the Traveler's Inn crime scene, LVMPD detectives and crime
14 scene analysts recovered the BB gun magazine, multiple cartridge casings from both Borero
15 and Defendant's pistols, bullet fragments, a white Hurricane beer can, and Borero's bag of
16 methamphetamine and U.S. currency. Borero was transported to UMC where he died from his
17 injuries.

18 The following day, McCampbell learned that Borero died as a result of the shooting
19 and he contacted LVMPD to tell them about the events leading to Borero's death. He
20 eventually took the Brougham to CCDC and surrendered himself to the first officer he came
21 into contact with. Homicide detectives responded, had the car impounded, and conducted a
22 recorded interview with McCampbell at Metro headquarters. McCampbell would later
23 positively identify Defendant, Bleak, and Costa in photo-ID lineups.

24 Bleak subsequently called his former roommate, Herrod, and admitted to participating
25 in Borero's death. He told Herrod that the drug robbery "didn't go down" as planned and that
26 he was unable to get any drugs or money from Borero.

27 Through McCampbell's statements and additional investigative work, detectives
28 identified Defendant and Bleak as suspects in Borero's death. On April 22, 2013, detectives

1 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
2 missing its magazine and located partially wedged into the seat cushion where Bleak had been
3 seated. Detectives took Bleak into custody and impounded the BB gun. Bleak was briefly
4 interviewed but invoked his right to counsel. He subsequently gave a proffer but denied
5 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be
6 interviewed and deny a plan to rob Borero.

7 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
8 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
9 property had discovered a black handgun inside of a black holster, which had been placed in
10 a toaster oven. Inside the residence, detectives discovered paperwork with Defendant's name
11 on it. A forensic toolmark analysis would later positively match bullets test-fired from that
12 Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July
13 3, 2013, detectives located Defendant and took him into custody.

14 POINTS AND AUTHORITIES

15 **DEFENDANT IS NOT ENTITLED TO ADMIT EVIDENCE OF THE VICTIM'S** 16 **ALLEGEDLY VIOLENT PROPENSITY**

17 Defendant seeks to potentially advance a theory of self-defense in this case by admitting
18 evidence of allegedly violent past conduct by the victim. Defendant is charged, however, with
19 felony-murder for killing the victim in the course of an attempted robbery. Self-defense is not
20 a defense to a charge of robbery. *See People v. Costa*, 32 Cal. Rptr. 374 (Cal. App. 1963);
21 *State v. Lewis*, 233 P.3d 891 (Wash. App. 2010); *People v. Laurson*, 15 P.3d 791 (Colo. App.
22 2000). This being the case, self-defense does not excuse felony-murder. *See State v.*
23 *Richardson*, 462 S.E. 2d 492, 499 (N.C. 1995).

24 To the extent Defendant is arguing he is entitled to instructions of law on self-defense
25 as it relates to a premeditation and deliberation theory of first degree murder, Defendant seeks
26 to admit evidence of what he claims is Defendant's character trait of violence to show he was
27 more likely the initial aggressor. Specifically, it appears Defendant seeks to admit either
28 opinion or reputation testimony based on "aggravated stalking, destruction of property and

1 destruction of a vehicle.”

2 Generally, character evidence is inadmissible to actions in conformity therewith. NRS
3 48.045(1) provides an exception: “(b) Evidence of the character or a trait of character of the
4 victim of the crime offered by an accused ... and similar evidence offered by the prosecution
5 to rebut such evidence” This exception permits a defendant to present evidence of a victim's
6 character when it tends to prove that the victim was the likely aggressor, regardless of the
7 defendant's knowledge of the victim's character. *See Petty v. State*, 116 Nev. 321, 325, 997
8 P.2d 800, 802 (2000). Under NRS 48.055(1), when character evidence is admissible, “proof
9 may be made by testimony as to reputation or in the form of an opinion.” Specific instances
10 of conduct may only be inquired into if a character trait is an essential element of a charge,
11 claim or defense. *See* NRS 48.055(2). Given that a victim's violent character is not required
12 to establish self-defense, it may not be proven by specific acts. *See Daniel v. State*, 119 Nev.
13 498, 515, 78 P.3d 890, 901-02 (2003). Specific instances of conduct may, however, be proven
14 only if Defendant can demonstrate that he had prior knowledge of the acts. *See Burgeon v.*
15 *State*, 102 Nev. 43, 45–46, 714 P.2d 576, 578 (1986).

16 Here, Defendant seeks to preserve his ability to request self-defense instructions in this
17 case. He may do so if there is some evidence to support self-defense. *See Rosas v. State*, 122
18 Nev. 1258, 1269, 147 P.3d 1101 (2006). It does not appear Defendant intends to present
19 evidence that he had prior knowledge of any specific acts of violence on the part of the
20 deceased. Therefore, it only appears that Defendant seeks to introduce the deceased's
21 character evidence through eliciting from witnesses their opinion as to the deceased character
22 for violence or his reputation. He may not seek to introduce through those same witnesses any
23 testimony regarding specific acts. It is worth noting that the video surveillance evidence in
24 this case plainly demonstrates that Defendant was the initial aggressor as he pulled his gun out
25 first. As a result, opinion or character evidence does not sufficiently establish a basis for self-
26 defense instructions.

27 ///

28 ///

1 CONCLUSION


2 For the foregoing reasons, the State respectfully requests this Honorable Court to deny
3 Defendant's Motion to Admit Evidence of the Deceased Violent Propensity

4 DATED this 30th day of December, 2014.

5 Respectfully submitted,

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

9 BY

10 
11 CAROLINE BATEMAN
12 Deputy District Attorney
13 Nevada Bar #012281

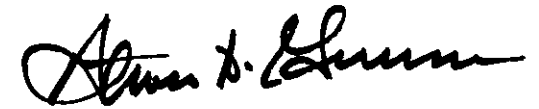
14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of State's Opposition to Defendant's Motion to Admit
16 Evidence of the Evidence of the Deceased's Violent Propensity, was made this 2nd day of
17 January, 2015, by Electronic Filing to:

18 RANDALL H. PIKE, Deputy Public Defender
19 pdclerk@clarkcountynv.gov

20 
21 C. Jimenez
22 Secretary for the District Attorney's Office

23
24
25
26
27 CB/cmj/L3
28



CLERK OF THE COURT

1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **CAROLINE BATEMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #12281**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-0968**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DARION MUHAMMAD-COLEMAN,
aka, Darion Muhammadcoleman
#2880725

Defendant.

Case No. C-13-293296-2

Dept. No. XI

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO EXCLUDE OTHER BAD
ACTS, CHARACTER EVIDENCE, AND IRRELEVANT PRIOR CRIMINAL
ACTIVITY**

DATE OF HEARING: January 5, 2015

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CAROLINE BATEMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Exclude Other Bad Acts, Character Evidence and Irrelevant Prior Criminal Activity.

This Response 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.

///

PROCEDURAL BACKGROUND
STATEMENT OF THE CASE

On October 11, 2013, the State of Nevada (hereinafter "State") filed an Indictment charging Darion Muhammad-Coleman (hereinafter "Defendant") with the following: Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Attempt Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Murder 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 Use of 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 Substance (Category E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

On November 26, 2013, Defendant filed a Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return to Defendant's Petition for Writ of Habeas Corpus. On April 2, 2014, the court denied Defendant's Petition for Writ of Habeas Corpus.

On September 26, 2014, Defendant filed the present Motion to Exclude Other Bad Acts, Character Evidence and Irrelevant Prior Criminal Activity to which the State's Response follows.

STATEMENT OF FACTS

On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa (Costa). Defendant 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. At the time, it was around 6 or 7 PM and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and purchasing some beer. McCampbell knew Defendant from a couple prior encounters when McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

///

1 Defendant told McCampbell that he wanted to go to the area of Sahara and Boulder
2 Highway and that the trip would take ten minutes. McCampbell agreed to give Defendant a
3 ride and they agreed that McCampbell would receive \$10 in gas money. As this agreement
4 was struck, Bleak and Costa appeared and Defendant explained that they would be going along
5 for the ride too. Defendant sat in the front passenger seat, Bleak sat in the rear passenger seat
6 behind Defendant, and Costa sat in the rear passenger seat behind McCampbell.

7 As McCampbell drove, he was directed to the area of Charleston and Eastern where
8 there is a large shopping center containing a Lowe's, as well as a 7-11 and a Dotty's bar. Costa
9 told McCampbell to park around the side of the 7-11 building because he wanted to buy beers
10 for himself and Bleak. McCampbell started to become nervous that the men might rob the 7-
11 11 and informed them that he did not want any trouble. The three men told him everything
12 was cool and not to worry. Costa exited the car and entered the 7-11 while Bleak and
13 Defendant exited the car and engaged in what McCampbell would later term a "pow-wow."
14 Their discussion was not audible to McCampbell. Once they were back in the car,
15 McCampbell told Bleak and Defendant he really did not like the "pow wow" outside the car
16 or how the ride was turning into him driving to a bunch of different places without explanation.
17 The men again reassured McCampbell. Costa returned from the store with two white cans of
18 Hurricane beer.

19 McCampbell was then directed, primarily by Defendant, to drive through the Lowe's
20 parking lot and to the parking lot of the nearby Traveler's Inn located at 2855 East Fremont
21 Street. The Traveler's Inn had operational video surveillance in place, which recorded the
22 events described below. Once in the parking lot, although numerous parking spots were open,
23 the men directed McCampbell to back into a parking space directly adjacent to a set of stairs
24 that lead up to the second floor of the motel. Backing into the narrow parking spot proved
25 difficult resulting in McCampbell scraping the car against several surfaces. McCampbell
26 became quite upset, repeatedly asking the men why he was being required to back into the
27 parking spot, and telling them he did not feel good about the situation.

28 ///

1 Once parked, Defendant and Bleak exited the vehicle while Costa stayed seated in the
2 back of the vehicle. Video surveillance depicts Bleak on a cell phone appearing to call
3 someone while Defendant leaned against the rear of the parked Brougham. After a short time,
4 the victim in this case, Dale "Spooky" Borero (Borero) walked down the stairs to meet Bleak.

5 Borero was a dealer of methamphetamine with multiple felony priors for
6 methamphetamine trafficking and gun possession. Borero was staying at the Traveler's Inn
7 with his girlfriend. Michael Herrod (Herrod), who was friends with both Borero and Bleak
8 and also a multi-time convicted felon trafficking in drugs would later be interviewed by
9 detectives and provide information about the relationship between Bleak and Borero. Herrod
10 would relate to detectives that prior to that night, Bleak had been staying with Herrod, but
11 Herrod ended up having to kick Bleak out of the house due to Bleak's erratic behavior and
12 drug use. Bleak subsequently called Herrod and told Herrod that he was going to do
13 "something big" that Herrod would hear about and Herrod would "be next." Herrod took this
14 to mean potentially being robbed for drugs. Herrod was also aware that Bleak and Costa had
15 lately been "punking" Borero, i.e., showing up and demanding that Borero provide them
16 methamphetamine or be beaten him up. At the time of Bleak and Defendant's meeting with
17 Borero on April 19, 2013, Borero had approximately eight (8) grams of methamphetamine and
18 \$3,000 in cash on his person

19 Video surveillance depicts Bleak engaged in conversation with Borero off to the side
20 of the Brougham. Eventually, Defendant, who had been leaning against the rear of the vehicle,
21 slowly walks over to the two men and casually pulls out a Ruger LC9 9mm pistol and points
22 it in Borero's face. During this confrontation, Bleak is not visible in the camera angle but
23 appears to be nearby Borero. As he points the pistol in Borero's face, Defendant reaches toward
24 Borero's person as if to grasp something. At one point, Defendant strikes Borero in the face
25 with pistol. After being held at gunpoint and struck in the face, Borero eventually produces
26 his own pistol, a .40 Ruger. Defendant is faster with his weapon and shoots Borero in the
27 abdomen while moving toward the front of the Brougham and continuing to fire. In total,
28 Defendant fires four times striking Borero twice, once in the upper abdomen inflicting a fatal

1 wound and once in the leg. As the shooting started, McCampbell almost immediately begins
2 to drive out of the parking lot while Bleak and Defendant struggle to get back into the car.
3 Mortally wounded, Borero falls to the ground where he fires repeatedly but strikes the
4 Brougham once in a rear post, missing Defendant, Bleak, Costa, and McCampbell. As Bleak
5 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was
6 carrying falls to the ground. Defendant and Bleak are successful getting back into the
7 Brougham, which drives off at great speed.

8 Once out of the Traveler's Inn parking lot, Defendant directed McCampbell to drive
9 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
10 told Defendant that he will tell what happened. Defendant responded by gesturing toward his
11 pistol and threatening McCampbell. McCampbell, who became cooperative after being
12 threatened, returned the men to "Naked City" area at which time Defendant, Bleak and Costa
13 go their separate ways. Back at the Traveler's Inn crime scene, LVMPD detectives and crime
14 scene analysts recovered the BB gun magazine, multiple cartridge casings from both Borero
15 and Defendant's pistols, bullet fragments, a white Hurricane beer can, and Borero's bag of
16 methamphetamine and U.S. currency. Borero was transported to UMC where he died from his
17 injuries.

18 The following day, McCampbell learned that Borero died as a result of the shooting
19 and he contacted LVMPD to tell them about the events leading to Borero's death. He
20 eventually took the Brougham to CCDC and surrendered himself to the first officer he came
21 into contact with. Homicide detectives responded, had the car impounded, and conducted a
22 recorded interview with McCampbell at Metro headquarters. McCampbell would later
23 positively identify Defendant, Bleak, and Costa in photo-ID lineups.

24 Bleak subsequently called his former roommate, Herrod, and admitted to participating
25 in Borero's death. He told Herrod that the drug robbery "didn't go down" as planned and that
26 he was unable to get any drugs or money from Borero.

27 Through McCampbell's statements and additional investigative work, detectives
28 identified Defendant and Bleak as suspects in Borero's death. On April 22, 2013, detectives

1 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
2 missing its magazine and located partially wedged into the seat cushion where Bleak had been
3 seated. Detectives took Bleak into custody and impounded the BB gun. Bleak was briefly
4 interviewed but invoked his right to counsel. He subsequently gave a proffer but denied
5 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be
6 interviewed and deny a plan to rob Borero.

7 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
8 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
9 property had discovered a black handgun inside of a black holster, which had been placed in
10 a toaster oven. Inside the residence, detectives discovered paperwork with Defendant's name
11 on it. A forensic toolmark analysis would later positively match bullets test-fired from that
12 Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July
13 3, 2013, detectives located Defendant and took him into custody.

14 POINTS AND AUTHORITIES

15 **DEFENDANT'S MOTION IS PREMATURE AND SHOULD BE DENIED**

16 Defendant seeks to exclude any evidence of Defendant's other bad acts or criminal
17 activity. However, at this time, the State has not filed a motion to admit such acts. Therefore,
18 Defendant's motion is premature and should be denied.

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1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests this Honorable Court to deny
3 Defendant's Motion to Exclude Other Bad Acts, Character Evidence and Irrelevant Prior
4 Criminal Activity.

5 DATED this 31st day of December, 2014.

6 Respectfully submitted,

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

10 BY

11 
12 CAROLINE BATEMAN
13 Deputy District Attorney
14 Nevada Bar #012281

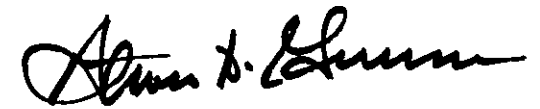
14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of State's Response to Defendant's Motion to Exclude Other
16 Acts, Character Evidence, and Irrelevant Prior Criminal Activity, was made this 2nd day
17 of January, 2015, by Electronic Filing to:

18 RANDALL H. PIKE, Deputy Public Defender
19 pdclerk@clarkcountynv.gov

20
21 
22 C. Jimenez
23 Secretary for the District Attorney's Office
24
25
26
27
28

CB/cmj/L3



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CAROLINE BATEMAN
6 Deputy District Attorney
7 Nevada Bar #12281
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-0968
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12
13 DARION MUHAMMAD-COLEMAN,
14 aka, Darion Muhammadcoleman
15 #2880725

15 Defendant.

Case No. C-13-293296-2

Dept. No. XI

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE**
17 **REFERENCES TO THE DECEASED AS THE "VICTIM"**

18 DATE OF HEARING: January 5, 2015

19 TIME OF HEARING: 9:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through CAROLINE BATEMAN, Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in Opposition to Defendant's Motion in Limine to
23 Preclude References to the Deceased as the "Victim."

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

27 ///

28 ///

PROCEDURAL BACKGROUND
STATEMENT OF THE CASE

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On November 26, 2013, Defendant filed a Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return to Defendant's Petition for Writ of Habeas Corpus. On April 2, 2014, the court denied Defendant's Petition for Writ of Habeas Corpus.

On September 26, 2014, Defendant filed the present Motion in Limine to Preclude References to the Deceased as the "Victim" to which State's Opposition follows.

STATEMENT OF FACTS

On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa (Costa). Defendant 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. At the time, it was around 6 or 7 PM and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and purchasing some beer. McCampbell knew Defendant from a couple prior encounters when McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

Defendant told McCampbell that he wanted to go to the area of Sahara and Boulder Highway and that the trip would take ten minutes. McCampbell agreed to give Defendant a

1 ride and they agreed that McCampbell would receive \$10 in gas money. As this agreement
2 was struck, Bleak and Costa appeared and Defendant explained that they would be going along
3 for the ride too. Defendant sat in the front passenger seat, Bleak sat in the rear passenger seat
4 behind Defendant, and Costa sat in the rear passenger seat behind McCampbell.

5 As McCampbell drove, he was directed to the area of Charleston and Eastern where
6 there is a large shopping center containing a Lowe's, as well as a 7-11 and a Dotty's bar. Costa
7 told McCampbell to park around the side of the 7-11 building because he wanted to buy beers
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10 was cool and not to worry. Costa exited the car and entered the 7-11 while Bleak and
11 Defendant exited the car and engaged in what McCampbell would later term a "pow-wow."
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14 or how the ride was turning into him driving to a bunch of different places without explanation.
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16 Hurricane beer.

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19 Street. The Traveler's Inn had operational video surveillance in place, which recorded the
20 events described below. Once in the parking lot, although numerous parking spots were open,
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23 difficult resulting in McCampbell scraping the car against several surfaces. McCampbell
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25 parking spot, and telling them he did not feel good about the situation.

26 Once parked, Defendant and Bleak exited the vehicle while Costa stayed seated in the
27 back of the vehicle. Video surveillance depicts Bleak on a cell phone appearing to call
28 someone while Defendant leaned against the rear of the parked Brougham. After a short time,

1 the victim in this case, Dale "Spooky" Borero (Borero) walked down the stairs to meet Bleak.

2 Borero was a dealer of methamphetamine with multiple felony priors for
3 methamphetamine trafficking and gun possession. Borero was staying at the Traveler's Inn
4 with his girlfriend. Michael Herrod (Herrod), who was friends with both Borero and Bleak
5 and also a multi-time convicted felon trafficking in drugs would later be interviewed by
6 detectives and provide information about the relationship between Bleak and Borero. Herrod
7 would relate to detectives that prior to that night, Bleak had been staying with Herrod, but
8 Herrod ended up having to kick Bleak out of the house due to Bleak's erratic behavior and
9 drug use. Bleak subsequently called Herrod and told Herrod that he was going to do
10 "something big" that Herrod would hear about and Herrod would "be next." Herrod took this
11 to mean potentially being robbed for drugs. Herrod was also aware that Bleak and Costa had
12 lately been "punking" Borero, i.e., showing up and demanding that Borero provide them
13 methamphetamine or be beaten him up. At the time of Bleak and Defendant's meeting with
14 Borero on April 19, 2013, Borero had approximately eight (8) grams of methamphetamine and
15 \$3,000 in cash on his person

16 Video surveillance depicts Bleak engaged in conversation with Borero off to the side
17 of the Brougham. Eventually, Defendant, who had been leaning against the rear of the vehicle,
18 slowly walks over to the two men and casually pulls out a Ruger LC9 9mm pistol and points
19 it in Borero's face. During this confrontation, Bleak is not visible in the camera angle but
20 appears to be nearby Borero. As he points the pistol in Borero's face, Defendant reaches toward
21 Borero's person as if to grasp something. At one point, Defendant strikes Borero in the face
22 with pistol. After being held at gunpoint and struck in the face, Borero eventually produces
23 his own pistol, a .40 Ruger. Defendant is faster with his weapon and shoots Borero in the
24 abdomen while moving toward the front of the Brougham and continuing to fire. In total,
25 Defendant fires four times striking Borero twice, once in the upper abdomen inflicting a fatal
26 wound and once in the leg. As the shooting started, McCampbell almost immediately begins
27 to drive out of the parking lot while Bleak and Defendant struggle to get back into the car.
28 Mortally wounded, Borero falls to the ground where he fires repeatedly but strikes the

1 Brougham once in a rear post, missing Defendant, Bleak, Costa, and McCampbell. As Bleak
2 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was
3 carrying falls to the ground. Defendant and Bleak are successful getting back into the
4 Brougham, which drives off at great speed.

5 Once out of the Traveler's Inn parking lot, Defendant directed McCampbell to drive
6 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
7 told Defendant that he will tell what happened. Defendant responded by gesturing toward his
8 pistol and threatening McCampbell. McCampbell, who became cooperative after being
9 threatened, returned the men to "Naked City" area at which time Defendant, Bleak and Costa
10 go their separate ways. Back at the Traveler's Inn crime scene, LVMPD detectives and crime
11 scene analysts recovered the BB gun magazine, multiple cartridge casings from both Borero
12 and Defendant's pistols, bullet fragments, a white Hurricane beer can, and Borero's bag of
13 methamphetamine and U.S. currency. Borero was transported to UMC where he died from his
14 injuries.

15 The following day, McCampbell learned that Borero died as a result of the shooting
16 and he contacted LVMPD to tell them about the events leading to Borero's death. He
17 eventually took the Brougham to CCDC and surrendered himself to the first officer he came
18 into contact with. Homicide detectives responded, had the car impounded, and conducted a
19 recorded interview with McCampbell at Metro headquarters. McCampbell would later
20 positively identify Defendant, Bleak, and Costa in photo-ID lineups.

21 Bleak subsequently called his former roommate, Herrod, and admitted to participating
22 in Borero's death. He told Herrod that the drug robbery "didn't go down" as planned and that
23 he was unable to get any drugs or money from Borero.

24 Through McCampbell's statements and additional investigative work, detectives
25 identified Defendant and Bleak as suspects in Borero's death. On April 22, 2013, detectives
26 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
27 missing its magazine and located partially wedged into the seat cushion where Bleak had been
28 seated. Detectives took Bleak into custody and impounded the BB gun. Bleak was briefly

1 interviewed but invoked his right to counsel. He subsequently gave a proffer but denied
2 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be
3 interviewed and deny a plan to rob Borero.

4 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
5 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
6 property had discovered a black handgun inside of a black holster, which had been placed in
7 a toaster oven. Inside the residence, detectives discovered paperwork with Defendant's name
8 on it. A forensic toolmark analysis would later positively match bullets test-fired from that
9 Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July
10 3, 2013, detectives located Defendant and took him into custody.

11 POINTS AND AUTHORITIES

12 **DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE THE USE OF THE** 13 **TERM "VICTIM" DOES NOT VIOLATE DEFENDANT'S PRESUMPTION OF** 14 **INNOCENCE**

15 Defendants are cloaked with the presumption of innocence. Hightower v. State, 123
16 Nev. 55, 59, 154 P.3d 639, 641 (2007). The use of the term victim is not prejudicial to a
17 defendant's rights when instructions to the jury clarify the State's burden to prove all elements
18 of a crime. U.S. v. Washburn, 444 F.3d 1007, 1013 (8th Cir. 2006); Server v. Mizell, 902 F.2d
19 611, 615 (7th Cir. 1990). To law enforcement officers, the word "victim" is a term of art
20 synonymous with "complaining witness" and the use of the term victim is not inappropriate
21 when there is no doubt that a crime has been committed and simply the identity of the
22 perpetrator is at issue. Jackson v. State, 600 A.2d 21, 24-25 (Del., 1991); see also State v.
23 Nomura, 79 Hawai'i 413, 417, 903 P.2d 718, 722 (Haw., 1995) (reference to a complaining
24 witness as a victim is only improper when the jury must determine whether the complaining
25 witness was the object of an offense).

26 Here, the State's use of the term "victim" will not lessen its burden of proof. During
27 trial, the court's instructions will clearly instruct the jury about Defendant's presumption of
28

1 innocence and the State's burden to prove every element of the charged crimes, beyond a
2 reasonable doubt, in order to find Defendant guilty of his charges. There is no doubt in this
3 case that Dale Borero was the victim of a crime and so there is no impropriety in referring to
4 him as the victim.

5 **CONCLUSION**

6 For the foregoing reasons, the State respectfully requests this Honorable Court to deny
7 Defendant's Motion in Limine to Preclude References to the Deceased as the "Victim."

8 DATED this 30th day of December, 2014.

9 Respectfully submitted,

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

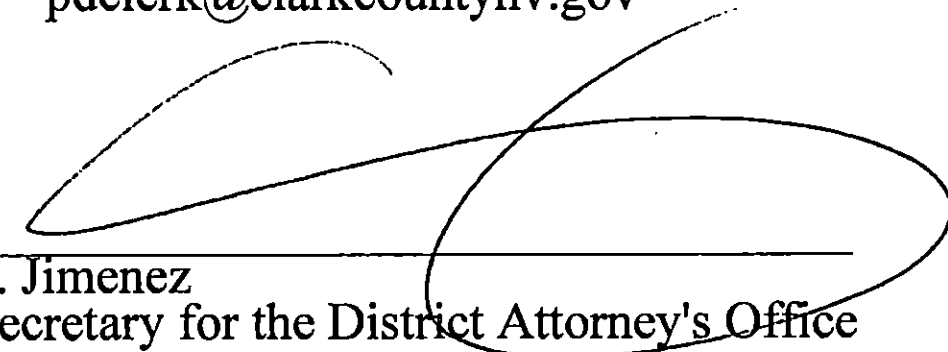
13 BY

14 
15 CAROLINE BATEMAN
16 Deputy District Attorney
17 Nevada Bar #012281

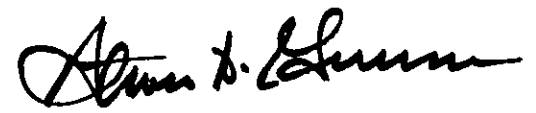
18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of State's Opposition to Defendant's Motion In Limine to
20 Preclude References to the Deceased as the "Victim", was made this 2nd day of January,
21 2015, by Electronic Filing to:

22 RANDALL H. PIKE, Deputy Public Defender
23 pdclerk@clarkcountynv.gov

24 
25 C. Jimenez
26 Secretary for the District Attorney's Office

27
28 CB/cmj/L3



CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CAROLINE BATEMAN
Deputy District Attorney
Nevada Bar #12281
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-0968
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DARION MUHAMMAD-COLEMAN,
aka, Darion Muhammadcoleman
#2880725

Defendant.

Case No. C-13-293296-2

Dept. No. XI

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO FEDERALIZE ALL
MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE
PROCEEDINGS IN THE ABOVE ENTITLED CASE**

DATE OF HEARING: January 5, 2015

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CAROLINE BATEMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Federalize all Motions, Objections, Requests and other Applications for the Proceedings in the Above Entitled Case.

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

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PROCEDURAL BACKGROUND
STATEMENT OF THE CASE

On October 11, 2013, the State of Nevada (hereinafter "State") filed an Indictment charging Darion Muhammad-Coleman (hereinafter "Defendant") with the following: Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Attempt Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330, 193.165); Murder 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 Use of 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 Substance (Category E Felony/Gross Misdemeanor – NRS 453.336, 193.330).

On November 26, 2013, Defendant filed a Petition for Writ of Habeas Corpus. On March 18, 2014, the State filed its Return to Defendant's Petition for Writ of Habeas Corpus. On April 2, 2014, the court denied Defendant's Petition for Writ of Habeas Corpus.

On September 26, 2014, Defendant filed the present Motion to Federalize all Motions, Objections, Requests and other Applications for the Proceedings in the Above Entitled Case to which the State's Opposition follows.

STATEMENT OF FACTS

On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa (Costa). Defendant 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. At the time, it was around 6 or 7 PM and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and purchasing some beer. McCampbell knew Defendant from a couple prior encounters when McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

1 Defendant told McCampbell that he wanted to go to the area of Sahara and Boulder
2 Highway and that the trip would take ten minutes. McCampbell agreed to give Defendant a
3 ride and they agreed that McCampbell would receive \$10 in gas money. As this agreement
4 was struck, Bleak and Costa appeared and Defendant explained that they would be going along
5 for the ride too. Defendant sat in the front passenger seat, Bleak sat in the rear passenger seat
6 behind Defendant, and Costa sat in the rear passenger seat behind McCampbell.

7 As McCampbell drove, he was directed to the area of Charleston and Eastern where
8 there is a large shopping center containing a Lowe's, as well as a 7-11 and a Dotty's bar. Costa
9 told McCampbell to park around the side of the 7-11 building because he wanted to buy beers
10 for himself and Bleak. McCampbell started to become nervous that the men might rob the 7-
11 11 and informed them that he did not want any trouble. The three men told him everything
12 was cool and not to worry. Costa exited the car and entered the 7-11 while Bleak and
13 Defendant exited the car and engaged in what McCampbell would later term a "pow-wow."
14 Their discussion was not audible to McCampbell. Once they were back in the car,
15 McCampbell told Bleak and Defendant he really did not like the "pow wow" outside the car
16 or how the ride was turning into him driving to a bunch of different places without explanation.
17 The men again reassured McCampbell. Costa returned from the store with two white cans of
18 Hurricane beer.

19 McCampbell was then directed, primarily by Defendant, to drive through the Lowe's
20 parking lot and to the parking lot of the nearby Traveler's Inn located at 2855 East Fremont
21 Street. The Traveler's Inn had operational video surveillance in place, which recorded the
22 events described below. Once in the parking lot, although numerous parking spots were open,
23 the men directed McCampbell to back into a parking space directly adjacent to a set of stairs
24 that lead up to the second floor of the motel. Backing into the narrow parking spot proved
25 difficult resulting in McCampbell scraping the car against several surfaces. McCampbell
26 became quite upset, repeatedly asking the men why he was being required to back into the
27 parking spot, and telling them he did not feel good about the situation.

28 ///

1 Once parked, Defendant and Bleak exited the vehicle while Costa stayed seated in the
2 back of the vehicle. Video surveillance depicts Bleak on a cell phone appearing to call
3 someone while Defendant leaned against the rear of the parked Brougham. After a short time,
4 the victim in this case, Dale "Spooky" Borero (Borero) walked down the stairs to meet Bleak.

5 Borero was a dealer of methamphetamine with multiple felony priors for
6 methamphetamine trafficking and gun possession. Borero was staying at the Traveler's Inn
7 with his girlfriend. Michael Herrod (Herrod), who was friends with both Borero and Bleak
8 and also a multi-time convicted felon trafficking in drugs would later be interviewed by
9 detectives and provide information about the relationship between Bleak and Borero. Herrod
10 would relate to detectives that prior to that night, Bleak had been staying with Herrod, but
11 Herrod ended up having to kick Bleak out of the house due to Bleak's erratic behavior and
12 drug use. Bleak subsequently called Herrod and told Herrod that he was going to do
13 "something big" that Herrod would hear about and Herrod would "be next." Herrod took this
14 to mean potentially being robbed for drugs. Herrod was also aware that Bleak and Costa had
15 lately been "punking" Borero, i.e., showing up and demanding that Borero provide them
16 methamphetamine or be beaten him up. At the time of Bleak and Defendant's meeting with
17 Borero on April 19, 2013, Borero had approximately eight (8) grams of methamphetamine and
18 \$3,000 in cash on his person

19 Video surveillance depicts Bleak engaged in conversation with Borero off to the side
20 of the Brougham. Eventually, Defendant, who had been leaning against the rear of the vehicle,
21 slowly walks over to the two men and casually pulls out a Ruger LC9 9mm pistol and points
22 it in Borero's face. During this confrontation, Bleak is not visible in the camera angle but
23 appears to be nearby Borero. As he points the pistol in Borero's face, Defendant reaches toward
24 Borero's person as if to grasp something. At one point, Defendant strikes Borero in the face
25 with pistol. After being held at gunpoint and struck in the face, Borero eventually produces
26 his own pistol, a .40 Ruger. Defendant is faster with his weapon and shoots Borero in the
27 abdomen while moving toward the front of the Brougham and continuing to fire. In total,
28 Defendant fires four times striking Borero twice, once in the upper abdomen inflicting a fatal

1 wound and once in the leg. As the shooting started, McCampbell almost immediately begins
2 to drive out of the parking lot while Bleak and Defendant struggle to get back into the car.
3 Mortally wounded, Borero falls to the ground where he fires repeatedly but strikes the
4 Brougham once in a rear post, missing Defendant, Bleak, Costa, and McCampbell. As Bleak
5 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was
6 carrying falls to the ground. Defendant and Bleak are successful getting back into the
7 Brougham, which drives off at great speed.

8 Once out of the Traveler's Inn parking lot, Defendant directed McCampbell to drive
9 away from the scene. McCampbell, who was distraught by being caught up in the shooting,
10 told Defendant that he will tell what happened. Defendant responded by gesturing toward his
11 pistol and threatening McCampbell. McCampbell, who became cooperative after being
12 threatened, returned the men to "Naked City" area at which time Defendant, Bleak and Costa
13 go their separate ways. Back at the Traveler's Inn crime scene, LVMPD detectives and crime
14 scene analysts recovered the BB gun magazine, multiple cartridge casings from both Borero
15 and Defendant's pistols, bullet fragments, a white Hurricane beer can, and Borero's bag of
16 methamphetamine and U.S. currency. Borero was transported to UMC where he died from his
17 injuries.

18 The following day, McCampbell learned that Borero died as a result of the shooting
19 and he contacted LVMPD to tell them about the events leading to Borero's death. He
20 eventually took the Brougham to CCDC and surrendered himself to the first officer he came
21 into contact with. Homicide detectives responded, had the car impounded, and conducted a
22 recorded interview with McCampbell at Metro headquarters. McCampbell would later
23 positively identify Defendant, Bleak, and Costa in photo-ID lineups.

24 Bleak subsequently called his former roommate, Herrod, and admitted to participating
25 in Borero's death. He told Herrod that the drug robbery "didn't go down" as planned and that
26 he was unable to get any drugs or money from Borero.

27 Through McCampbell's statements and additional investigative work, detectives
28 identified Defendant and Bleak as suspects in Borero's death. On April 22, 2013, detectives

1 eventually located Bleak and Costa during a vehicle stop and discovered a BB gun, which was
2 missing its magazine and located partially wedged into the seat cushion where Bleak had been
3 seated. Detectives took Bleak into custody and impounded the BB gun. Bleak was briefly
4 interviewed but invoked his right to counsel. He subsequently gave a proffer but denied
5 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be
6 interviewed and deny a plan to rob Borero.

7 On April 29, 2013, detectives arrived at 1712 Fairfield, Apt. 7, in response to the
8 discovery of a Ruger LC9 9mm pistol inside the property. The absentee-landlord/owner of the
9 property had discovered a black handgun inside of a black holster, which had been placed in
10 a toaster oven. Inside the residence, detectives discovered paperwork with Defendant's name
11 on it. A forensic toolmark analysis would later positively match bullets test-fired from that
12 Ruger LC9 pistol to the two bullets extracted from Borero's body during the autopsy. On July
13 3, 2013, detectives located Defendant and took him into custody.

14 POINTS AND AUTHORITIES

15 **DEFENDANT'S MOTION SHOULD BE DENIED AS A BLANKET REQUEST**

16 NRS 47.040 governs court rulings on evidence and it provides as follows:

17 1. Except as otherwise provided in subsection 2, error may not be
18 predicated upon a ruling which admits or excludes evidence unless a
19 substantial right of the party is affected, and:

20 (a) In case the ruling is one admitting evidence, a timely objection or
motion to strike appears of record, stating the specific ground of objection.

21 (b) In case the ruling is one excluding evidence, the substance of the
22 evidence was made known to the judge by offer or was apparent from the
context within which questions were asked.

23 2. This section does not preclude taking notice of plain errors affecting
substantial rights although they were not brought to the attention of the judge.

24 In other words, a timely and specific objection is required by the evidence code,
25 except in the unusual event of plain error. If a defendant seeks to later raise and preserve a
26 claim, he must bring such considerations to the attention of trial court, stating the specific
27 grounds of the objection. Edwards v. State, 90 Nev. 255, 524 P.2d 328 (1974). An appellate
28

1 court will not reverse a ruling admitting evidence unless specific grounds for objection were
2 stated at the time the objection was made. State v. Kallio, 92 Nev. 665, 557 P.2d 705 (1976).
3 In Silver v. Telerent Leasing Corp., 105 Nev. 30, 768 P.2d 879 (1989), the failure of a
4 defendant to object to particular testimony given at the trial precluded him from disputing
5 the admissibility and propriety of that testimony on appeal.

6 “A proper objection is a prerequisite to this court's consideration of an issue on appeal.”
7 Lord v. State, 107 Nev. 28, 38, 806 P.2d 548, 554 (1991). Proper objection affords the district
8 court an opportunity to avoid error by reconsidering or clarifying the basis for its decision.
9 The failure to speak in a situation which a party later claims to be filled with ambiguity may
10 constitute constitutional error that must be reviewed on appeal. Wainwright v. Witt, 469 U.S.
11 412, 431 n. 11, 105 S.Ct. 844 (1985). Moreover, a failure to object might reflect a tactical
12 decision by counsel that is not susceptible to review on direct appeal.” Leonard v. State, 117
13 Nev. 53, 17 P.3d 397, 405 (2001).

14 The courts have consistently held that blanket objections are patently improper. Ritacca
15 v. Abbott Laboratories, 203 F.R.D. 332, 335 n.4, 49 Fed.R.Serv.3d 1052 (N.D.Ill. 2001),
16 citing, e.g., Cotracom Commodity Trading Co. v. Seaboard Corp., No. Civ.A. 97-2391-GTV,
17 1998 WL 231135, at *1 (D.Kan. May 6, 1998) (finding general objections “worthless”); In re
18 Shopping Carts Antitrust Litig., 95 F.R.D. 299, 305-06 (S.D.N.Y.1982) (same). “This fact
19 should no longer be ‘news’ to a responding party.” Eureka Fin. Corp. v. Hartford Accident &
20 Indem. Co., 136 F.R.D. 179, 182 (E.D.Cal.1991). A review of case law shows that only 10
21 cases appear in WestLaw that use the adjective-turned-verb “federalize” in the same sentence
22 as the word “motion” at all. Most of the cases deal with gaining federal jurisdiction for
23 criminal charges or civil jurisdictional application. None of the cases discuss the meaning of
24 “federalize” in the context presented to the Court today. And, only one dealt directly with the
25 granting or denial of a motion to “federalize” any evidentiary objection. Bowman v.
26 Armontrout, 859 F.Supp. 369 (W.D.Mo.1994), judgment affirmed Bowman v. Gammon, 85
27 F.3d 1339 (1996), rehearing and suggestion for rehearing en banc denied, (1996), cert. denied,
28 520 U.S. 1128, 117 S.Ct. 1273, 137 L.Ed.2d 350 (1997).

1 Defendant's motion to "federalize" all motions and oppositions constitutes improper
2 blanket assertions. Any particular motion must establish standing to bring it and a ground
3 upon which the relief sought can be granted. Each motion, objection, request or issue raised
4 should be raised with independent thought and reflection of the established facts and the
5 applicable law before the court at the specific applicable moment. Insofar as this motion is
6 intended to operate prospectively, substituting for the stating of grounds for, or even the
7 making of, motions or objections, it must be denied. No party to any action can be heard to
8 assert that any objection he should make must be deemed made, and any grounds that should
9 have been asserted must be considered to have been so.

10 **CONCLUSION**

11 For the foregoing reasons, the State respectfully requests this Honorable Court to deny
12 Defendant's Motion to Federalize all Motions, Objections, Requests and other Applications
13 for the Proceedings in the Above Entitled Case.

14 DATED this 30th day of December, 2014.

15 Respectfully submitted,

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

19 BY

20 
21 CAROLINE BATEMAN
22 Deputy District Attorney
23 Nevada Bar #012281

24 ///

25 ///

26 ///

27 ///

1 **CERTIFICATE OF ELECTRONIC FILING**

2 I hereby certify that service of State's Opposition to Defendant's Motion to Federalize
3 All Motions, Objections, Requests and Other Applications for the Proceedings in the Above
4 Entitled Case, was made this 1st day of January, 2015, by Electronic Filing to:

5
6 RANDALL H. PIKE, Deputy Public Defender
pdclerk@clarkcountynv.gov

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9 C. Jiménez
10 Secretary for the District Attorney's Office
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CB/cmj/L3

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 05, 2015

C-13-293296-2 State of Nevada
vs
Darion Muhammad-Coleman

January 05, 2015 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Marwanda Knight

RECORDER: Patti Slattery

PARTIES Christopher F. Burton, Deputy District Attorney, present for the State of Nevada
PRESENT: Sam Bateman, Deputy District Attorney, present for the State of Nevada
Deft. Muhammand-Coleman, present in custody, appearing with M. Schwarz, Esq.

JOURNAL ENTRIES

**DEFENDANT'S MOTION IN LIMINE TO BAR IMPROPER
PROSECUTORIAL ARGUMENT**

**DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE REFERENCES TO THE DECEASED AS THE "VICTIM"**

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE ADMISSION OF PHOTOGRAPHS

**DEFENDANT'S MOTION TO ADMIT EVIDENCE OF THE
DECEASED'S VIOLENT PROPENSITY**

**DEFENDANT'S MOTION TO EXCLUDE OTHER BAD ACTS, CHARACTER EVIDENCE, AND
IRRELEVANT PRIOR CRIMINAL ACTIVITY**

**DEFENDANT'S MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND
OTHER APPLICATIONS FOR THE PROCEEDINGS IN THE ABOVE ENTITLED CASE**

STATUS CHECK: RESET TRIAL DATE

PRINT DATE: 01/07/2015

Page 1 of 2

Minutes Date: January 05, 2015

- Mr. Burton advised Mr. Bateman would be appearing on this case and requested the matter be traileed for his appearance. COURT SO ORDERED.

MATTER RECALLED. All parties present as before. Mr. Bateman now present.

Mr. Schwarz advised the Deft. was sent to Competency Court, and has a hearing set for January 12, 2015, in his case pending in Dept. 8. Mr. Bateman advised of being unaware of the Deft. being sent to competency and requested today's proceedings be continued until that matter is resolved. COURT ORDERED, all of the motions on today's calendar and the Status Check: Reset Trial Date CONTINUED.

CUSTODY (COC)

CONTINUED TO: 01/21/2015 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2015

C-13-293296-2 State of Nevada
 vs
 Darion Muhammad-Coleman

March 27, 2015 9:00 AM Challenge Hearing (Competency Court)

HEARD BY: Becker, Nancy

COURTROOM: RJC Courtroom 10C

COURT CLERK: Tia Everett

RECORDER: Yvette G. Sison

PARTIES

PRESENT: Muhammad-Coleman, Darion Defendant
 Pace, Barter G Deputy District Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Christina Greene of the Specialty Courts present.

APPEARANCES CONTINUED: Spencer Judd Esq. appearing for Defendant in case number C299066.

Mr. Judd advised he will be withdrawing his challenge to the competency finding. Court NOTED Drs. Bradley and Krelstein indicate competent; therefore, FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him and is able to assist counsel in his defense and ORDERED, matter TRANSFERRED back to the originating court for further proceedings. Court instructed Clerk to notify Mr. Schwarz of next date.

CUSTODY (COC)

4/06/2015 9:00 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT (DEPT. 11)

CLERK'S NOTE: Mr. Schwarz advised of next date via email. te

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 27, 2015

C-13-293296-2 State of Nevada
 vs
 Darion Muhammad-Coleman

July 27, 2015 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Alice Jacobson

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Muhammad-Coleman, Darion Defendant
 Schwartzer, Michael J. Attorney
 Schwarz, Michael H Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Matter submitted on the briefs. COURT ORDERED as followed:

Deft's Motion in Limine to Preclude Admission of Photographs, DENIED WITHOUT PREJUDICE.
Deft's Motion in Limine to Bar Improper Prosecutorial Argument, GRANTED.
Defts Motion in Limine to Preclude References to the Deceased as the Victim, DENIED.
Deft's Motion in Limine to Admit Evidence of Deceases Violent Propensity, RESERVED FOR
CALENDAR CALL.
Deft's Motion to Exclude Other Bad Acts Character Evidence and Irrelevant Prior Criminal Activity,
DENIED WITHOUT PREJUDICE.
Deft motion to Federalize All Motions Objections Requests and Other Application for the
Proceedings in the Above Entitled Case, DENIED.

Mr. Schwarz indicated that negotiations had fallen through and the matter was not resolved and
would go to trial. State indicated they were not available on this trial stack and was in another trial.

PRINT DATE: 07/31/2015

Page 1 of 2

Minutes Date: July 27, 2015

Trial was not Invoked. There being no objections, COURT ORDERED, trial dates VACATED/RESET.

CUSTODY (COC)

12/7/15 9:00 AM SC-TRIAL READINESS

1/6/16 9:00 AM CC

1/11/16 1:00 PM JT

Adam D. Blum

CLERK OF THE COURT

MC
PP
DA
AOR

1 DARION M. COLEMAN

2 1144228 NOOC

3 HOSP

4 P.O. BOX 650

5 INDIAN SPRINGS, NV

6

7

DISTRICT COURT

8

CLARK COUNTY, NEVADA

9

THE STATE OF NEVADA) CASE NO. C293296-2

10

V.

11

DARION M. COLEMAN) DEPT. NO. X1

12

Hearing Date: 03-02-2016 Time: 9:00AM

13

DEFENDANT'S PRO PER MOTION TO

14

WITHDRAW COUNSEL AND FOR A

15

FARETTA CANVASS

16

17

COMES NOW, THE DEFENDANT, DARION M.

18

COLEMAN, IN PROPER PERSON AND HEREBY RE-

19

QUESTS THIS COURT GRANT DEFENDANT'S PRO PER

20

MOTION AND CONDUCT A FARETTA CANVASS.

21

THIS MOTION IS MADE AND BASED UPON

22

ALL THE PAPERS AND PLEADINGS ON FILE

23

HEREIN, AND ORAL ARGUMENTS AT THE TIME

24

SET FOR HEARING THIS MOTION.

25

DATED THIS 2ND DAY OF FEBRUARY, 2016

26

BY DARION MOHAMMAD COLEMAN, DEFENDANT.

RA 297

RECEIVED

FEB 08 2016

CLERK OF THE COURT

NOTICE OF MOTION

TO:

YOU WILL PLEASE TAKE
NOTICE THAT DARION M. COLEMAN,
WILL BRING THE ABOVE AND FOREGOING
MOTION ON FOR HEARING BEFORE THE
COURT ON THE

DATED THIS DAY OF FEBRUARY,
2016.

BY _____
DARION M. COLEMAN
~~XXXXXXXXXX~~ DEFENDANT

RECEIPT OF COPY

RECEIPT OF COPY OF THE ABOVE AND
FOREGOING DEFENDANT'S PRO PER MOTION TO
WITHDRAW COUNSEL AND FOR A FARETTA
~~XXXXXXXXXX~~ CANVASS IS HEREBY ACKNOWLEDGED
THIS DAY OF FEBRUARY, 2016

BY _____

1 POINTS AND AUTHORITIES IN SUPPORT
2 OF MOTION TO WITHDRAW COUNSEL AND
3 FOR A FARRETTA CANNASS.

4 1. DEFENDANT HAS UNQUALIFIED RIGHT
5 TO REPRESENT HIMSELF OR HERSELF AT
6 TRIAL SO LONG AS HIS OR HER WAIVER OF
7 COUNSEL IS INTELLIGENT AND VOLUNTARY.
8 U.S.C.A. CONST. AMEND. 6.

9
10 2. REQUEST FOR SELF-REPRESENTATION
11 MAY NOT BE ~~DENIED~~ SOLELY BECAUSE COURT
12 CONSIDERS DEFENDANT TO LACK REASONABLE
13 LEGAL SKILLS OR BECAUSE OF INHERENT
14 INCONVENIENCE OFTEN CAUSED BY PRO SE
15 LITIGANTS. TAMMSEY V. STATE, 946 P.2D 148 (Mont 1997)

16
17 3. TRIAL JUDGE MAY APPOINT STANDBY COUNSEL
18 TO ASSIST ACCUSED WHO CHOOSES TO CONDUCT
19 HIS OWN DEFENSE. U.S.C.A. CONST. AMEND. 6.
20 MC KASKLE V. WIGGINS 465 U.S. 168, 173, 104
21 S. CT. 944, 949, 79 L. ED 2D 122 (1984) UNITED STATES
22 V. RYLANDER, 714 F.2D 996, 1005 9th CIR (1983)

ARGUMENT

1. DEFENDANT SUBMITS THIS REQUEST IN A TIMELY, RESPONSIBLE, AND UNEQUIVOCAL MANNER ABSENT OF INTENTION TO DELAY OR DISRUPT THE JUDICIAL PROCESS.

2. DEFENDANT REQUESTS THIS COURT CONSIDER APPOINTING STANDBY COUNSEL TO ASSIST ADVISE, RESEARCH MATERIALS, CONFORMITY WITH RULES OF PROCEDURE AND COURTROOM PROTOCOL, AND SETTING OF JURY INSTRUCTIONS.

3. DEFENDANT VOLUNTARILY AND INTELLIGENTLY REQUEST THE COURT TO RECOGNIZE, GRANT, AND PROTECT THE DEFENDANT'S RIGHT TO SELF-REPRESENTATION PROVIDED BY THE SIXTH ~~AND~~ AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

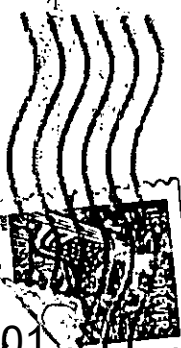
DATED THIS DAY OF FEBRUARY, 2016.
I, _____, DO SOLEMNLY SWEAR,

UNDER PENALTY OF PERJURY, THAT THE ABOVE MOTION IS CORRECT TO THE BEST OF MY KNOWLEDGE. RESPECTFULLY SUBMITTED,
DARION M. CALHOUN DEFENDANT

Darion Mahmoud - Colman # 1144228
HOSD
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS, NV 890

05 FEB 2016 PM 2:1

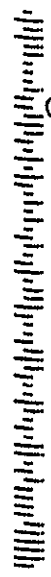


RA 301

Clark of Court

STEVEN D. GRIFFIN
200 Lewis Avenue 3rd
Las Vegas, NV 89155-1160

89101-630000



HIGH DESERT STATE PRISON

FEB 04 2016

UNIT 4 A/B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 09, 2016

C-13-293296-2	State of Nevada
	vs
	Darion Muhammad-Coleman

March 09, 2016 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
Olivia Black/ob
Anntoinette Naumec-Miller

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Muhammad-Coleman, Darion	Defendant
	Schwartz, Michael J.	Attorney for State
	Schwarz, Michael H.	Attorney for Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: TRIAL READINESS...DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL AND FOR A FARETTA CANVASS

Upon Court's inquiry, Defendant advised he wishes to represent himself. Colloquy regarding discovery. Court conducted Faretta Canvass. Defendant advised he is going to remain with his attorney. Mr. Schwarz advised he would like to move the trial given the concerns of Defendant. MATTER TRAILED.

MATTER RECALLED. All parties present as before. Colloquy regarding trial date. Upon Court's inquiry, Mr. Schwartz advised two weeks for trial. Mr. Schwarz concurred. CONFERENCE AT BENCH. COURT ORDERED, trial dates VACATED and RESET.

CUSTODY (COC-NDC)

PRINT DATE: 03/15/2016

Page 1 of 2

Minutes Date: March 09, 2016

RA 302

C-13-293296-2

11/28/2016 9:00 AM STATUS CHECK: TRIAL READINESS

12/28/2016 9:00 AM CALENDAR CALL

01/03/2017 1:00 PM JURY TRIAL



1 **RTRAN**

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 DARION MUHAMMAD-COLEMAN,

12 Defendant.
13

CASE NO.: C-13-293296-2

DEPT. NO. XI

14 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

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

19 **APPEARANCES:**

20 For the State:

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

22 For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

23
24
25 RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

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

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

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

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

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

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

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

9 MR. SCHWARTZER: Good morning, Your Honor.

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

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

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

14 THE COURT: Absolutely.

15 MR. SCHWARTZER: Thank you, Your Honor.

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

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

18 Your Honor, I see three issues that --

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

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

21 THE COURT: I read it.

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

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

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

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

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

10 MR. SCHWARTZER: Sure.

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

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

23 THE COURT: Six.

24 MR. SCHWARTZER: Six times.

25 THE COURT: Six times.

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

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

12 THE COURT: Okay. Anything else.

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

14 MR. HAMNER: No, Your Honor.

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

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

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

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

12 MR. SCHWARTZER: Yes, Your Honor.

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

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

16 THE COURT: May I see them?

17 MR. SCHWARTZER: Yes, Your Honor.

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

20 MR. SCHWARZ: Sure.

21 THE COURT: Okay.

22 MR. SCHWARTZER: Thank you.

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

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

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

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

2 MR. SCHWARTZER: Thank you, Your Honor.

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

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

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

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

10 MR. SCHWARTZER: Thank you, Your Honor.

11 MR. SCHWARZ: All right.

12 THE COURT: All right.

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

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

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

16 MR. SCHWARZ: I did, Your Honor.

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

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

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

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

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

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

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

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

14 THE COURT: So, anything else?

15 MR. SCHWARTZER: No, Your Honor.

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

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

25 MR. SCHWARTZER: I will, Your Honor.

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

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

3 MR. SCHWARZ: I agree.

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

5 MR. SCHWARZ: All right.

6 MR. SCHWARTZER: Thank you, Your Honor.

7 MR. SCHWARZ: Thank you.

8 THE CLERK: January 3rd at 1:30.

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

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

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

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

19 THE COURT: Anything else?

20 MR. SCHWARTZER: No, Your Honor.

21 MR. SCHWARZ: No.

22 THE COURT: All right.

23 MR. HAMNER: Thank you, Your Honor.

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

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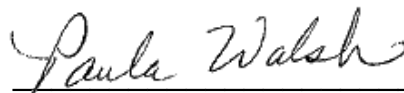
MR. SCHWARTZER: I will, Your Honor.

THE COURT: All right? Thank you.

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

* * * * *

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

A handwritten signature in cursive script that reads "Paula Walsh". The signature is written in dark ink and is positioned above a horizontal line.

Paula Walsh
Court Recorder/Transcriber

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 04, 2017

C-13-293296-2	State of Nevada
	vs
	Darion Muhammad-Coleman

January 04, 2017 3:00 AM Minute Order

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The instant case is assigned to District Court Department 1 and is currently set for trial to commence today, January 4, 2017. The parties are ready to proceed to trial. Due to an illness, Department 1 is unable to preside over the trial in this case at this time.

EDCR 1.30 (15) gives the Chief Judge of the Eighth Judicial District Court the authority to reassign cases between departments as convenience or necessity requires. EDCR 1.30 (11) also states that the Chief Judge must appoint a Judge to preside over the Criminal Division of the Court. EDCR 1.31 gives the Criminal Presiding Judge the authority to reassign pending criminal cases from one department to another. As with EDCR 1.30(15), the Presiding Criminal Judge s decision on reassigning pending criminal cases should be done as convenience and necessity require.

This court finds that convenience and necessity justify the reassignment of the instant matter for trial since Department 1 is unable to hear the trial. District Court Department 3 is available to preside over the trial. Therefore, based on the totality of circumstances present, this Court, as Criminal Presiding Judge, ORDERS, pursuant to EDCR 1.31, the reassignment of the instant case for trial to Department 3. The matter will proceed to trial as scheduled today, January 4, 2017, at 1:00 pm.

FILED IN OPEN COURT

STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 11 2017 2:08 PM

BY, Deborah Miller

DEBORAH MILLER, DEPUTY

1 VER

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO: C-13-293296-2

10 DARION MUHAMMAD-COLEMAN,
11 aka Darion Muhammadcoleman,

DEPT NO: 3

12 Defendant.

13 VERDICT

14 We, the jury in the above entitled case, find the Defendant DARION MUHAMMAD-
15 COLEMAN, aka Darion Muhammadcoleman, as follows:

16 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

17 *(Please check the appropriate box, select only one)*

18 ☐ Guilty of Conspiracy To Commit Robbery

19 ☒ Not Guilty

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

21 *(Please check the appropriate box, select only one)*

22 ☐ Guilty of Attempt Robbery With Use Of A Deadly Weapon

23 ☐ Guilty of Attempt Robbery

24 ☒ Not Guilty

25 C-13-293296-2

26 VER

27 Verdict
4813417



314

COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

- ☒ Guilty of First Degree Murder With Use Of A Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder With Use Of A Deadly Weapon
- ☐ Guilty of Second Degree Murder
- ☐ Not Guilty

COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

- ☒ Guilty of Battery With Use Of A Deadly Weapon
- ☐ Guilty of Battery
- ☐ Not Guilty

COUNT 5 - ASSAULT WITH A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☐ Guilty of Assault With A Deadly Weapon
- ☐ Guilty of Assault
- ☒ Not Guilty

COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT

(please check the appropriate box, select only one)

- ☒ Guilty of Conspiracy to Violate Uniform Controlled Substances Act
- ☐ Not Guilty

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1 **COUNT 7 - ATTEMPT TO POSSESS CONTROLLED SUBSTANCE**

2 *(please check the appropriate box, select only one)*

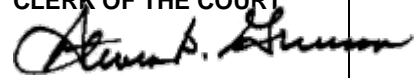
3 ☒ Guilty of Attempt To Possess Controlled Substance

4 ☐ Not Guilty

5 DATED this 11 day of January, 2017

6 

7 FOREPERSON



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
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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.

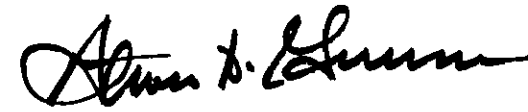
13 PROCEEDING CONCLUDED AT 10:15 A.M.

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

24 

25 SARA RICHARDSON
Court Recorder/Transcriber



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

DARION MUHAMMAD-COLEMAN,
#2880725

Aka Darion Muhammadcoleman

Defendant.

CASE NO. C293296-2

DEPT. NO. III

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165); COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); COUNT 5 – ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor - NRS 453.336, 193.330); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 3 – MURDER WITH USE

☐ Jury Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sent. (during trial)
☒ Conviction

1 OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165);
2 COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS
3 200.481); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED
4 SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT
5 TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor -
6 - NRS 453.336, 193.330); thereafter, on the 28th day of March, 2017, the Defendant was
7 present in court for sentencing with his counsel MICHAEL H. SCHWARZ, Esq., and
8 good cause appearing,

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
10 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00
11 DNA Analysis Fee; \$750.00 Indigent Defense Civil Assessment Fee, and a \$250.00
12 Fine, the Defendant is SENTENCED as follows:

13 COUNT 3 - TO LIFE with a MINIMUM parole eligibility of TWO HUNDRED
14 FORTY (240) MONTHS in the Nevada Department of Corrections (NDC), plus a
15 CONSECUTIVE sentence of a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of
16 TWO HUNDRED AND FORTY (240) MONTHS for the Deadly Weapon Enhancement,
17 for a total AGGREGATE sentence of LIFE with the possibility of parole after a
18 MINIMUM of THREE HUNDRED (300) MONTHS has been served;

19 COUNT 4 – a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of
20 ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections
21 (NDC), CONCURRENT with COUNT 3;

22 COUNT 6 – a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of
23 SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT
24 with COUNT 3; and

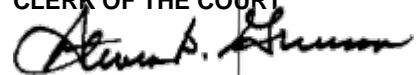
25 COUNT 7 – Defendant is adjudicated guilty of the **Felony** and is sentence to a
26 MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-EIGHT (48)
27 MONTHS in the Nevada Department of Corrections (NDC) to run CONCURRENT with
28 COUNT 3, and CONSECUTIVE to Case C299066.

1 IT IS FURTHER ORDERED that the Defendant shall receive SEVEN HUNDRED
2 TWENTY (720) DAYS credit for time served.

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4 DATED this 29th day of March, 2017.

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8 DOUGLAS W. HERNDON
9 DISTRICT JUDGE
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C293296-2

DEPT. NO. III

DARION MUHAMMAD-COLEMAN,
#2880725
Aka Darion Muhammadcoleman

Defendant.

AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165); COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); COUNT 5 – ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor - NRS 453.336, 193.330); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165); COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT

1 TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor -
2 - NRS 453.336, 193.330); thereafter, on the 28th day of March, 2017, the Defendant was
3 present in court for sentencing with his counsel MICHAEL H. SCHWARZ, Esq., and
4 good cause appearing,

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
6 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00
7 DNA Analysis Fee; \$750.00 Indigent Defense Civil Assessment Fee, and a \$250.00
8 Fine, the Defendant is SENTENCED as follows:

9 COUNT 3 - TO LIFE with a MINIMUM parole eligibility of TWO HUNDRED
10 FORTY (240) MONTHS in the Nevada Department of Corrections (NDC), plus a
11 CONSECUTIVE sentence of a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of
12 TWO HUNDRED AND FORTY (240) MONTHS for the Deadly Weapon Enhancement,
13 for a total AGGREGATE sentence of LIFE with the possibility of parole after a
14 MINIMUM of THREE HUNDRED (300) MONTHS has been served;

15 COUNT 4 – a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of
16 ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections
17 (NDC), CONCURRENT with COUNT 3;

18 COUNT 6 – a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of
19 SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT
20 with COUNT 3; and

21 COUNT 7 – Defendant is adjudicated guilty of the **Felony** and is sentence to a
22 MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-EIGHT (48)
23 MONTHS in the Nevada Department of Corrections (NDC) to run CONCURRENT with
24 COUNT 3, and CONSECUTIVE to Case C299066.

25 IT IS FURTHER ORDERED that the Defendant shall receive SEVEN HUNDRED
26 TWENTY (720) DAYS credit for time served.

27 THEREAFTER, on the 27th day of August, 2018, pursuant to a request from the
28 Court Clerk's Office, the Judgment of Conviction was administratively amended to

clarify that COUNT 3 is to reflect the charge of FIRST DEGREE MURDER WITH USE
OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165).

DATED this 27th day of August, 2018.


DOUGLAS W. HERNDON
DISTRICT JUDGE

em

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus**COURT MINUTES****October 13, 2020**

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

October 13, 2020 3:00 PM Minute Order

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Following review of the papers and pleadings on file herein, and considering the arguments of counsel, the COURT FINDS as follows. The Court finds that the Petition is not procedurally barred under NRS 34.726. The Court finds good cause for the delay. The COURT FURTHER FINDS that none of Petitioner s claims are waived pursuant to NRS 34.810. As for the claim regarding the sentencing court s reliance on improper evidence, the COURT FINDS that this claim lacks merit. The COURT FINDS that the sentencing court did not rely on improper evidence as there is no language in the sentencing transcript to indicate that the Court specifically relied on Detective Miller s testimony. The sentencing Court specifically stated that it had presided over the entire trial and that it was considering the evidence that was presented at trial to determine that the Petitioner was the first person to fire his weapon. The COURT FURTHER FINDS that the Detective Miller s testimony did not amount to comment on the Defendant s post-arrest silence. The COURT FURTHER FINDS that Petitioner did not receive ineffective assistance of counsel in counsel s cross examination and failure to object to the testimony of Detective Miller. Under Strickland v. Washington, the Petitioner must show that counsel s cross-examination of Detective Miller or failure to object to the Detective s testimony fell below an objective standard of reasonableness and that but for the errors, there is a reasonable probability that the result of the proceedings would have been different. Neither of those prongs are met here. The COURT FURTHER FINDS that Petitioner s PTSD self-defense theory claim

PRINT DATE: 10/13/2020

Page 1 of 2

Minutes Date: October 13, 2020

warrants an evidentiary hearing. Accordingly, the Petition for Writ of Habeas Corpus is DENIED IN PART.

The State is to prepare a Findings of Fact and Conclusions of Law consistent with this Order and submit it to the Court for signature within 10 days of the date of filing of this order. This case will be set for a status check hearing on October 21, 2020 at 8:30 to set a time and date for an evidentiary hearing.

Clerk's Note: This Minute Order was electronically served by Courtroom Clerk, Teri Berkshire, to all registered parties for Odyssey File & Serve. /tb

Writ of Habeas Corpus

COURT MINUTES

October 21, 2020

A-19-806521-W Darion Coleman, Plaintiff(s)
vs.
Renee Baker, Defendant(s)

October 21, 2020 08:30 AM Setting of Evidentiary Hearing

HEARD BY: Jones, Tierra COURTROOM: RJC Courtroom 14B

COURT CLERK: Berkshire, Teri

RECORDER: Boyd, Victoria

REPORTER:

PARTIES PRESENT:

Michael J. Schwartz Attorney for Defendant

Waleed Zaman Attorney for Plaintiff

JOURNAL ENTRIES

APPEARANCES CONTINUED: Mr. Schwartz present on behalf of the State, via video, through bluejeans technology.

Mr. Coleman not present and in the Nevada Department of Corrections. Court noted this matter is on for the limited PTSD issue. Colloquy regarding hearing times, counsel's availability, and coordinating with the Jail. Court directed Mr. Schwartz to do an order to produce, so the deft. will be transferred from NDC to CCDC. Mr. Zaman requested to expand the record and get the evaluation done by an independent doctor. COURT ORDERED request DENIED. Court noted what the Court is interested in, is the limited issue as to what Mr. Schwarz knew at the time, so any evaluation that occurs at this point, Mr. Schwarz would have no knowledge of that, at the time he should have argued the PTSD. Court noted this Court's JEA will be in touch with counsel after she confirms with DC7, that we can do this. FURTHER ORDERED, matter set for Hearing on the date given. Mr. Schwartz to prepare an order to transport.

NDC

12/04/20 from 8:00 a.m. to 10:00 a.m. HEARING - LIMITED ISSUE