

IN THE SUPREME COURT OF THE STATE OF NEVADA

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DARION COLEMAN,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

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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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Counsel for Appellant

Counsel for Respondent

## INDEX

<u>Document</u>	<u>Page No.</u>
Amended Judgment of Conviction (Jury Trial), filed 08/29/18 .....	RA II 335-337
Defendant's Pro Per Motion to Withdraw Counsel and For a Faretta Canvass, filed 02/09/16 .....	RA II 297-301
District Court Minutes of 10/18/13 (Further Proceedings: Competency) .....	RA I 1
District Court Minutes of 11/08/13 (Further Proceedings: Competency) .....	RA I 2
District Court Minutes of 11/18/13 (Status Check: Initial Arraignment).....	RA I 3
District Court Minutes of 05/12/14 (All Pending Motions) .....	RA I 207-208
District Court Minutes of 12/01/14 (Motion to Withdraw as Counsel) .....	RA II 252
District Court Minutes of 01/05/15 (All Pending Motions) .....	RA II 291-292
District Court Minutes of 03/27/15 (Challenge Hearing (Competency Court)) .....	RA II 293-294
District Court Minutes of 07/27/15 (All Pending Motions) .....	RA II 295-296
District Court Minutes of 03/09/16 (All Pending Motions) .....	RA II 302-303
District Court Minutes of 01/04/17 (Minute Order) .....	RA II 313
District Court Minutes of 10/13/20 (Minute Order) .....	RA II 338-339
District Court Minutes of 10/21/20 (Setting of Evidentiary Hearing).....	RA II 340
Judgment of Conviction (Jury Trial), filed 03/29/17.....	RA II 332-334
Motion in Limine to Bar Improper Prosecutorial Argument, filed 09/26/14 .....	RA I 209-226
Motion in Limine to Preclude Admission of Photographs, filed 09/26/14 .....	RA I 227-230
Motion in Limine to Preclude Reference to the Deceased as the "Victim", filed 09/26/14 .....	RA I 231-233
Motion to Admit Evidence of the Deceased's Violent Propensity, filed 09/26/14 .....	RA I 234-239
Motion to Allow Jury Questionnaire, filed 09/26/14.....	RA I 248- RA II 251
Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity, filed 09/26/14.....	RA I 244-247

Motion to Federalize All Motions, Objections, Requests and Other Applications for the Proceedings in the Above Entitled Case, filed 09/26/14 .....RA I 240-243

Petition for Pre-Trial Writ of Habeas Corpus, filed 11/26/13 .....RA I 4-16

Recorder’s Transcripts of 12/28/16 (Defendant’s Motion to Continue Trial Date), filed 09/07/17 ..... RA II 304-312

Recorder’s Transcripts of 03/28/17 (Sentencing: Jury Trial), filed 06/26/17 ..... RA II 317-331

Return to Writ of Habeas Corpus, filed 03/18/14.....RA I 17-206

State’s Opposition to Defendant’s Motion in Limine to Preclude References to the Deceased as the “Victim”, filed 01/02/15..... RA II 275-281

State’s Opposition to Defendant’s Motion to Admit Evidence of the Deceased’s Violent Propensity, filed 01/02/15..... RA II 260-267

State’s Opposition to Defendant’s Motion to Federalize All Motion, Objections, Requests and Other Applications for the Proceeding in the Above Entitled Case, filed 01/02/15 ..... RA II 282-290

State’s Response to Defendant’s Motion in Limine to Bar Improper Prosecutorial Argument, filed 01/02/15 ..... RA II 253-259

State’s Response to Defendant’s Motion to Exclude Other Bad Acts, Character Evidence, and Irrelevant Prior Criminal Activity, filed 01/02/15 ..... RA II 268-274

Verdict, filed 01/11/17 ..... RA II 314-316

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 7<sup>th</sup> 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*

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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](mailto: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**

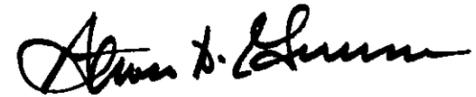
PRESENT:      Muhammad-Coleman, Darion      Defendant  
Schwarz, Michael H      Attorney

**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

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**

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

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

14 **Defendant.**

Case No. C-13-293296-2

Dept. No. XI

15  
16 **STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO BAR**  
17 **IMPROPER PROSECUTORIAL ARGUMENT**

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 Response to Defendant's Motion in Limine to**  
23 **Bar Improper Prosecutorial Argument.**

24 **This Response 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**

1  
2 On October 11, 2013, the State of Nevada (hereinafter "State") filed an Indictment  
3 charging Darion Muhammad-Coleman (hereinafter "Defendant") with the following:  
4 Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Attempt  
5 Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330,  
6 193.165); Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030,  
7 193.165); Battery with Use of a Deadly Weapon (Category B Felony – NRS 200.481); Assault  
8 with Use of a Deadly Weapon (Category B Felony – NRS 200.471); Conspiracy to Violate  
9 Uniform Controlled Substances Act (Category C Felony – NRS 453.401); and Attempt to  
10 Possess Controlled Substance (Category E Felony/Gross Misdemeanor – NRS 453.336,  
11 193.330).

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

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

**STATEMENT OF FACTS**

17  
18 On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his  
19 Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa  
20 (Costa). Defendant individually approached Richard "Mechanic" McCampbell (McCampbell)  
21 and asked him for a ride. McCampbell was well-known throughout the area as a fixer of cars  
22 and a person who would give people rides to do errands. At the time, it was around 6 or 7 PM  
23 and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and  
24 purchasing some beer. McCampbell knew Defendant from a couple prior encounters when  
25 McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

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

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**CONCLUSION**

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

DATED this 30th day of December, 2014.

Respectfully submitted,

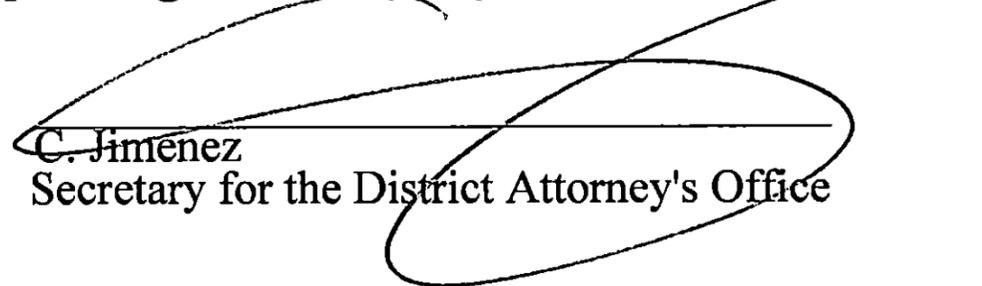
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
CAROLINE BATEMAN  
Deputy District Attorney  
Nevada Bar #012281

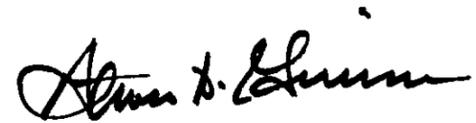
**CERTIFICATE OF ELECTRONIC FILING**

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

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

  
C. Jimenez  
Secretary for the District Attorney's Office

CB/cmj/L3



CLERK OF THE COURT

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**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
CAROLINE BATEMAN  
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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 ADMIT EVIDENCE OF  
THE DECEASED'S VIOLENT PROPENSITY**

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 Admit Evidence of the Deceased's Violent Propensity.

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 Admit Evidence of the Deceased's Violent Propensity 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  
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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  
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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  
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5 struggled to get back into the car, the magazine of a black Umarex BB gun pistol he was  
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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  
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5 planning a robbery with Defendant and denied any intent to rob Borero. Costa would also be  
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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.

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**CONCLUSION**

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

DATED this 30th day of December, 2014.

Respectfully submitted,

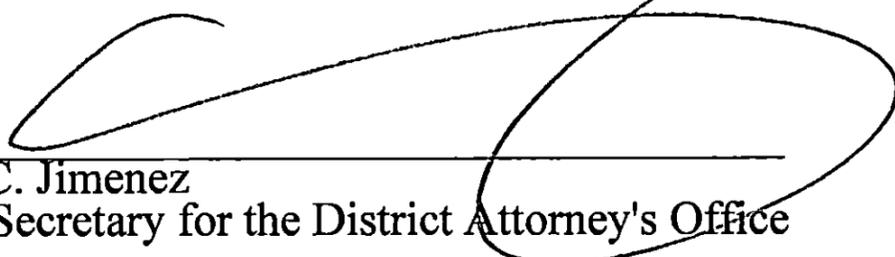
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
CAROLINE BATEMAN  
Deputy District Attorney  
Nevada Bar #012281

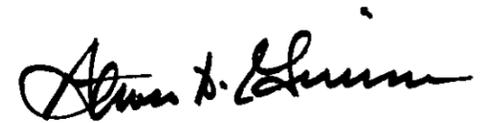
**CERTIFICATE OF ELECTRONIC FILING**

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

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

  
C. Jimenez  
Secretary for the District Attorney's Office

CB/cmj/L3



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

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

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

Defendant.

Case No. C-13-293296-2

Dept. No. XI

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

19 DATE OF HEARING: January 5, 2015

20 TIME OF HEARING: 9:00 AM

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

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

28 ///

**PROCEDURAL BACKGROUND**  
**STATEMENT OF THE CASE**

1  
2 On October 11, 2013, the State of Nevada (hereinafter "State") filed an Indictment  
3 charging Darion Muhammad-Coleman (hereinafter "Defendant") with the following:  
4 Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380); Attempt  
5 Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.330,  
6 193.165); Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030,  
7 193.165); Battery with Use of a Deadly Weapon (Category B Felony – NRS 200.481); Assault  
8 with Use of a Deadly Weapon (Category B Felony – NRS 200.471); Conspiracy to Violate  
9 Uniform Controlled Substances Act (Category C Felony – NRS 453.401); and Attempt to  
10 Possess Controlled Substance (Category E Felony/Gross Misdemeanor – NRS 453.336,  
11 193.330).

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

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

**STATEMENT OF FACTS**

18  
19 On April 19, 2013, in the area of the "Naked City," Defendant Coleman met with his  
20 Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa  
21 (Costa). Defendant individually approached Richard "Mechanic" McCampbell (McCampbell)  
22 and asked him for a ride. McCampbell was well-known throughout the area as a fixer of cars  
23 and a person who would give people rides to do errands. At the time, it was around 6 or 7 PM  
24 and McCampbell was sitting in his blue Cadillac Brougham, having just finished a job and  
25 purchasing some beer. McCampbell knew Defendant from a couple prior encounters when  
26 McCampbell had given Defendant and Defendant's girlfriend rides to do errands.

27 ///

28

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  
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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.

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  
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18         The following day, McCampbell learned that Borero died as a result of the shooting  
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24         Bleak subsequently called his former roommate, Herrod, and admitted to participating  
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27         Through McCampbell's statements and additional investigative work, detectives  
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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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**CONCLUSION**

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

DATED this 31st day of December, 2014.

Respectfully submitted,

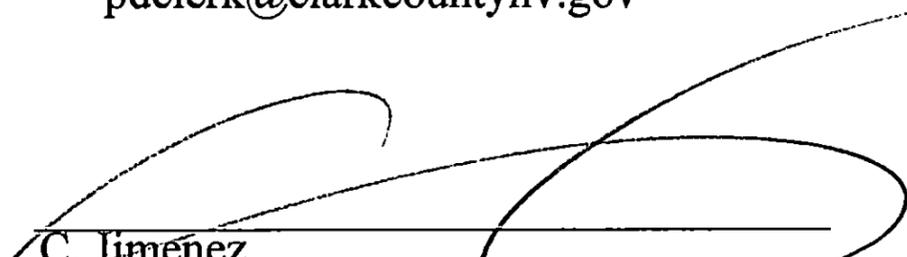
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
CAROLINE BATEMAN  
Deputy District Attorney  
Nevada Bar #012281

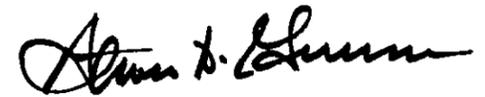
**CERTIFICATE OF ELECTRONIC FILING**

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

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

  
C. Jimenez  
Secretary for the District Attorney's Office

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

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

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  
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27 ///

28 ///

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14 On April 2, 2014, the court denied Defendant's Petition for Writ of Habeas Corpus.

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

**STATEMENT OF FACTS**

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19 Co-Defendant Dustin "Criminal" Bleak (Bleak) and Bleak's brother, Travis "Ponytail" Costa  
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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 **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

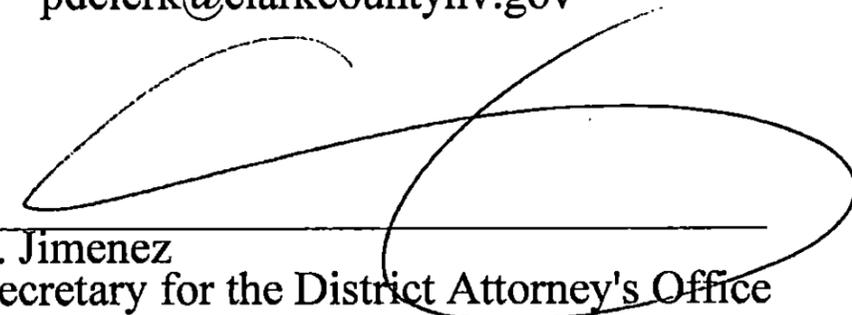
13 BY

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

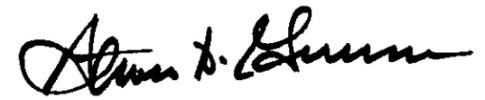
18 **CERTIFICATE OF ELECTRONIC FILING**

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

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 FEDERALIZE ALL**  
17 **MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR THE**  
18 **PROCEEDINGS IN THE ABOVE ENTITLED CASE**

19 DATE OF HEARING: January 5, 2015

20 TIME OF HEARING: 9:00 AM

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

26 This Opposition is made and based upon all the papers and pleadings on file herein, the  
27 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
28 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  
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6 interviewed and deny a plan to rob Borero.

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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  
21 motion to strike appears of record, stating the specific ground of objection.

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

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

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

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 CAROLINE BATEMAN  
21 Deputy District Attorney  
22 Nevada Bar #012281

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 05, 2015**

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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 PRESENT:** Christopher F. Burton, Deputy District Attorney, present for the State of Nevada  
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**

- Mr. Burton advised Mr. Bateman would be appearing on this case and requested the matter be trailed 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**

<b>PRESENT:</b>	Muhammad-Coleman, Darion	Defendant
	Schwartz, 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.

**C-13-293296-2**

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

CLERK OF THE COURT

MC  
PP  
DA  
AOR

1 DARION M. COLEMAN

2 1144228 NOOC

3 HOSP

4 P.O. BOX 658

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 2<sup>ND</sup> DAY OF FEBRUARY, 2016

26 BY DARION MOHAMMAD-COLEMAN, DEFENDANT.

RECEIVED  
FEB 08 2016

CLERK OF THE COURT

NOTICE OF MOTION

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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  
~~XXXXXXXXXXXXXXXXXXXX~~ DEFENDANT

RECEIPT OF COPY

RECEIPT OF COPY OF THE ABOVE AND  
FOREGOING DEFENDANT'S PRO PER MOTION TO  
WITHDRAW COUNSEL AND FOR A FARETTA  
~~XXXXXXXXXXXXXXXXXXXX~~ CANNASS 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. TAMBSLEY V. STATE, 946 P.2D 148 (MONT 1997)

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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. BYLANDER, 714 F.2D 996, 1005 9TH CIR (1983)

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## 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.

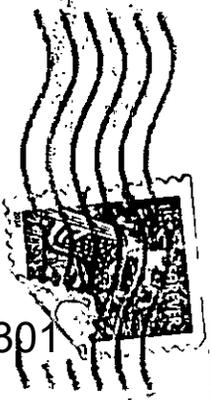
3. DEFENDANT VOLUNTARILY AND INTELLIGENTLY REQUEST THE COURT TO RECOGNIZE, GRANT, AND PROTECT THE DEFENDANT'S RIGHT TO SELF-REPRESENTATION PROVIDED BY THE SIXTH ~~AND~~ AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

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

Darton McMahon - Colman # 144228  
HOSP  
P.O. Box 650  
Indian Springs, NV 89070

LAS VEGAS, NV 890

05 FEB 2016 PM 2:1



RA 301

Clark of Court

STEVEN O. GRIFFINSON  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155-1160

89101-830000



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**

<b>PRESENT:</b>	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.

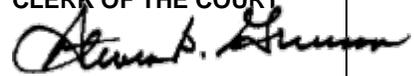
CUSTODY (COC-NDC)

**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



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DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

CASE NO.: C-13-293296-2

10 vs.

DEPT. NO. XI

11

DARION MUHAMMAD-COLEMAN,

12

Defendant.

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

15

**WEDNESDAY, DECEMBER 28, 2016**

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**

16

**CALENDAR CALL**

**DEFENDANT'S MOTION TO CONTINUE TRIAL DATE**

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APPEARANCES:

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For the State:

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

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For the Defendant:

MICHAEL H. SCHWARZ, ESQ.

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RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

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

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

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

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

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

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

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

9 MR. SCHWARTZER: Good morning, Your Honor.

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

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

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

14 THE COURT: Absolutely.

15 MR. SCHWARTZER: Thank you, Your Honor.

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

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

18 Your Honor, I see three issues that --

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

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

21 THE COURT: I read it.

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

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

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

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

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

10 MR. SCHWARTZER: Sure.

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

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

23 THE COURT: Six.

24 MR. SCHWARTZER: Six times.

25 THE COURT: Six times.

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

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

12 THE COURT: Okay. Anything else.

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

14 MR. HAMNER: No, Your Honor.

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

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

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

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

12 MR. SCHWARTZER: Yes, Your Honor.

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

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

16 THE COURT: May I see them?

17 MR. SCHWARTZER: Yes, Your Honor.

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

20 MR. SCHWARZ: Sure.

21 THE COURT: Okay.

22 MR. SCHWARTZER: Thank you.

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

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

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

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

2 MR. SCHWARTZER: Thank you, Your Honor.

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

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

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

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

10 MR. SCHWARTZER: Thank you, Your Honor.

11 MR. SCHWARZ: All right.

12 THE COURT: All right.

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

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

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

16 MR. SCHWARZ: I did, Your Honor.

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

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

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

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

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

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

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

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

14 THE COURT: So, anything else?

15 MR. SCHWARTZER: No, Your Honor.

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

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

25 MR. SCHWARTZER: I will, Your Honor.

1 THE COURT: So, how many standard jurors do you need, three panels?  
2 MR. SCHWARTZER: I would see -- yeah.  
3 MR. SCHWARZ: I agree.  
4 THE COURT: You're with Judge Cory Mon -- or Tuesday at 1:30.  
5 MR. SCHWARZ: All right.  
6 MR. SCHWARTZER: Thank you, Your Honor.  
7 MR. SCHWARZ: Thank you.  
8 THE CLERK: January 3<sup>rd</sup> at 1:30.  
9 THE COURT: Mr. 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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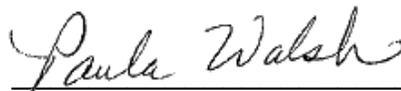
MR. SCHWARTZER: I will, Your Honor.

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.



\_\_\_\_\_  
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.

JAN 11 2017 2:08 PM

BY: Deborah Miller  
DEBORAH MILLER, DEPUTY

1 VER

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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

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28 C-13-293296-2

VER  
Verdict  
4613417



314

1 **COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON**

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

- 3  Guilty of First Degree Murder With Use Of A Deadly Weapon  
4  Guilty of First Degree Murder  
5  Guilty of Second Degree Murder With Use Of A Deadly Weapon  
6  Guilty of Second Degree Murder  
7  Not Guilty

8 **COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON**

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

- 10  Guilty of Battery With Use Of A Deadly Weapon  
11  Guilty of Battery  
12  Not Guilty

13 **COUNT 5 - ASSAULT WITH A DEADLY WEAPON**

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

- 15  Guilty of Assault With A Deadly Weapon  
16  Guilty of Assault  
17  Not Guilty

18 **COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES  
19 ACT**

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

- 21  Guilty of Conspiracy to Violate Uniform Controlled Substances Act  
22  Not Guilty

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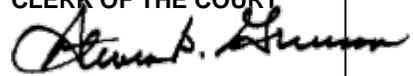
**COUNT 7 - ATTEMPT TO POSSESS CONTROLLED SUBSTANCE**

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

- Guilty of Attempt To Possess Controlled Substance
- Not Guilty

DATED this 11 day of January, 2017

  
\_\_\_\_\_  
FOREPERSON



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA, )

CASE NO. C-13-293296-2

6 )  
7 Plaintiff,

DEPT. NO. III

8 vs.

9 DARION MUHAMMAD-COLEMAN,

10 Defendant.

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

12  
13 TUESDAY, MARCH 28, 2017

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

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19 APPEARANCES:

20 For the State:

MICHAEL J. SCHWARTZER  
Chief Deputy District Attorney  
CHRISTOPHER S. HAMNER  
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 14<sup>th</sup>  
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 22<sup>nd</sup>. He's committed to formal probation with  
16 conspiracy to commit burglary in that case on May 5<sup>th</sup> 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 17<sup>th</sup>, 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 2<sup>nd</sup>, 2009, he has a violation of  
24 probation, battery by prisoner, which he was referred to suspended  
25 commitment on February 18<sup>th</sup> of 2010. And additionally, he has an

1 October 18<sup>th</sup>, 2011, arrest for possession of a firearm and a possession of  
2 unregistered firearm, which again in December 27<sup>th</sup>, 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. Borerero, 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. Borerero 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 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 28<sup>th</sup>, 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 22<sup>nd</sup> 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.

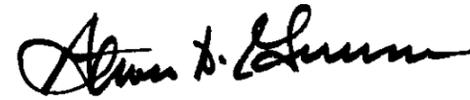
13 PROCEEDING CONCLUDED AT 10:15 A.M.

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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

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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.

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

<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input checked="" type="checkbox"/> 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 28<sup>th</sup> 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;

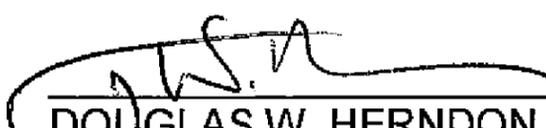
19 COUNT 4 – a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of  
20 ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections  
21 (NDC), CONCURRENT with COUNT 3;

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

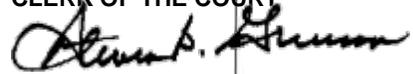
25 COUNT 7 – Defendant is adjudicated guilty of the **Felony** and is sentence to a  
26 MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-EIGHT (48)  
27 MONTHS in the Nevada Department of Corrections (NDC) to run CONCURRENT with  
28 COUNT 3, and CONSECUTIVE to Case C299066.

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

3  
4 DATED this 29<sup>th</sup> day of March, 2017.

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6   
7 DOUGLAS W. HERNDON  
8 DISTRICT JUDGE *DM*

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DISTRICT COURT

CLARK COUNTY, NEVADA

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4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 DARION MUHAMMAD-COLEMAN,  
8 #2880725  
9 Aka Darion Muhammadcoleman

10 Defendant.

CASE NO. C293296-2

DEPT. NO. III

11 AMENDED JUDGMENT OF CONVICTION

12 (JURY TRIAL)

13  
14 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
15 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS 200.380,  
16 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON  
17 (Category B Felony – NRS 200.380, 193.330, 193.165); COUNT 3 – MURDER WITH  
18 USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165);  
19 COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS  
20 200.481); COUNT 5 – ASSAULT WITH A DEADLY WEAPON (Category B Felony –  
21 NRS 200.471); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED  
22 SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT  
23 TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor -  
24 - NRS 453.336, 193.330); and the matter having been tried before a jury and the  
25 Defendant having been found guilty of the crimes of COUNT 3 – MURDER WITH USE  
26 OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165);  
27 COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS  
28 200.481); COUNT 6 – CONSPIRACY TO VIOLATE UNIFORM CONTROLLED  
SUBSTANCES ACT (Category C Felony – NRS 453.401) and COUNT 7 – ATTEMPT

RA 335

1 TO POSSESS CONTROLLED SUBSTANCE (Category E Felony/Gross Misdemeanor -  
2 - NRS 453.336, 193.330); thereafter, on the 28<sup>th</sup> 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 27<sup>th</sup> day of August, 2018, pursuant to a request from the  
28 Court Clerk's Office, the Judgment of Conviction was administratively amended to

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

3  
4 DATED this 27<sup>th</sup> day of August, 2018.

5  
6  
7 DOUGLAS W. HERNDON  
8 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

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