

APPENDIX A

Adam B. Schuman
CLERK OF THE COURT

1 MOT
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9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 CASE NO.: C-13-289274-1
15 DEPT NO.: XXV

16 vs.

17 AMMAR HARRIS,

18 Defendant.

19
20 **MOTION TO PRECLUDE THE
21 STATE FROM ADMITTING INTO
22 EVIDENCE PHOTOGRAPHS OR
23 VIDEOS WHICH ARE UNDUELY
24 PREJUDICIAL AND/OR
CUMMULATIVE**

25 COMES NOW, the Defendant, AMMAR HARRIS, by and through his attorneys of
26 record, and hereby moves this Honorable Court to, pursuant to the Sixth, Eighth, and Fourteenth
27 Amendments to the United States Constitution, Article 1 of the Nevada Constitution, and
28 applicable state law, preclude the State from moving to admit into evidence unduly prejudicial
29 or cumulative gruesome photographs or videos of the victims.

30 This motion is based upon the attached Memorandum of Points and Authorities, the
31 record herein, and any argument that this Court may hear in support of this motion.

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DATED this 14th day of April, 2015.

By: /s/ Thomas A. Ericsson
THOMAS A. ERICSSON, ESQ.
ROBERT L. LANGFORD, ESQ.
Attorneys for Defendant Harris

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NOTICE OF MOTION

2 TO: STEVE WOLFSON, DISTRICT ATTORNEY

DAVID STANTON, CHIEF DEPUTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO
RECLUDE THE STATE FROM ADMITTING INTO EVIDENCE PHOTOGRAPHS
OR VIDEOS WHICH ARE UNDUELY PREJUDICIAL AND/OR CUMMULATIVE

7 will be heard on the 27 day of April, 2015, at 9:00 AM.m. in
8 Department No. XXV in Eighth Judicial District Court.

DATED this 14th day of April, 2015.

By: /s/ Thomas A. Ericsson
THOMAS A. ERICSSON, ESQ.
ROBERT L. LANGFORD, ESQ.
Attorneys for Defendant Harris

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

Defendant AMMAR HARRIS (hereinafter "Defendant") is charged with three (3) counts of Murder with Use of a Deadly Weapon, one (1) count of Attempt Murder with Use of a Deadly Weapon, two (2) counts of Discharging Firearm at or into Structure, Vehicle, Aircraft, or Watercraft, and five (5) counts of Discharging Firearm out of Motor Vehicle.

Plaintiff State of Nevada is seeking the death penalty against Defendant in this matter.

Defendant has pleaded not guilty to all charges.

ARGUMENT

The State may seek to introduce into evidence gruesome and highly prejudicial photographs or videos of the victims. These photographs advance no evidentiary purpose and serve only to inflame the passions of the jury in violation of the Defendant's rights guaranteed by the state and federal constitutions.

Photographs and videos exist of the victims that are entirely gruesome, gory and

1 inflammatory and serve no evidentiary purpose. They are also cumulative. Because this is a
2 capital prosecution, exacting standards must be met to assure that it is fair. Johnson v.
3 Mississippi, 486 U.S. 578, 584 (1988); Gardner v. Florida, 430 U.S. 349, 363 - 64 (1977);
4 Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (White, J., concurring). This Court must
5 not permit these photographs or videos to be introduced at the upcoming trial of this matter.

6 At a capital trial, the avoidance of inflammatory appeals to the passions and prejudices
7 of juries is constitutionally protected. The United States Supreme Court has repeatedly held that
8 "because of the qualitative difference [between death and any other form of punishment], there
9 is a corresponding difference in the need for reliability in the determination that death is the
10 appropriate punishment in a specific case." Woodson v. North Carolina, 428 U.S. 280, 305
11 (1976); Gardner v. Florida, 430 U.S. 349, 357 - 58 (1977); Lockett v. Ohio, 438 U.S. 586, 604
12 (1978); Beck v. Alabama, 447 U.S. 625, 637 - 38 (1980).

13 It is well established that where the prejudicial effect of photographs outweighs their
14 probative value, they should not be admitted. Caylor v. State, 353 So.2d 8 (Ala.Cr.App. 1977).
15 See also, Commonwealth v. Scaramuzzino, 317 A.2d 225, 226 (Pa. 1974) ("photograph of a
16 wound at the back of the ear with the hair pulled away" too prejudicial); State v. Clawson, 270
17 S.E.2d 659, 671 (W.Va. 1980) (citing cases); accord McCullough v. State, 341 S.E.2d 706 (Ga.
18 1986); People v. Coleman, 451 N.E.2d 973, 977 (Ill.App.Ct. 1983); Brown v. State, 302 S.E.2d
19 347 (Ga. 1983); Commonwealth v. Richmond, 358 N.E.2d 999, 1001 (Mass. 1976); State v.
20 Childers, 536 P.2d 1349, 1354 (Kan. 1975); People v. Burns, 241 P.2d 308, 318 (Cal.App.
21 1952).

22 The Nevada Supreme Court has held, under NRS 48.035(1), that the relevance of victim
23 photographs may be "substantially outweighed by the danger of unfair prejudice". Where the
24 proffered photographs are "gruesome or unduly prejudicial," they should be excluded. Clem v.
State, 104 Nev. 351, 356; 760 P.2d 103 (1988); Dearman v. State, 93 Nev. 364, 369; 566 P.2d
407 (1977).

CONCLUSION

25 Based on the foregoing, the Defendant respectfully requests that this Court enter an

1 Order granting the Motion in Limine and prohibiting the prosecution from introducing into
2 evidence any prejudicial photographs or videos of the victims at either the guilt or penalty
3 phases of the upcoming trial. Further, the Defendant respectfully requests that the Court
4 conduct a pre-trial hearing at which the State will produce photographs or videos that it intends
5 to introduce for the Court's evaluation and ruling on this Motion.

6 DATED this 14th day of April, 2015.

7 By: /s/ Thomas A. Ericsson
8 THOMAS A. ERICSSON, ESQ.
9 ROBERT L. LANGFORD, ESQ
10 *Attorneys for Defendant Harris*

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CERTIFICATE OF SERVICE

2 I hereby certify and affirm that this document was filed electronically with the Nevada
3 State District Court in Clark County, Nevada, on April 14, 2015. Electronic Service of the
4 foregoing document shall be made in accordance with the Master Service List as follows:
5
6

7 STEVEN WOLFSON
8 Clark County District Attorney
9 DAVID STANTON
10 Chief Deputy District Attorney
11 PDMotions@clarkcountyda.com

12 By: */s/ Rachael Stewart*
13 EMPLOYEE OF ORONoz & ERICSSON LLC
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