

ORIGINAL

1 Case No. CR-1201004

2 Dept. No. 2

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5 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WHITE PINE

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

OPPOSITION TO DEFENDANT  
REPRESENTING HIMSELF

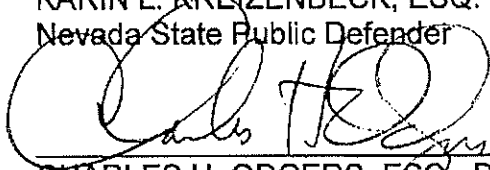
11 JAMES OFELDT,

12 Defendant.  
13 \_\_\_\_\_/

14  
15 COMES NOW, KARIN L. KREIZENBECK, ESQ., Nevada State Public  
16 Defender and CHARLES H. ODGERS, Deputy Nevada State Public Defenders, as  
17 appointed counsel for the Defendant, JAMES OFELDT, and files this Opposition to the  
18 Defendant's Motion to Represent Himself. This motion is made and is based on the  
19 attached points and authorities.

20 DATED this 13 day of Jan, 2014.

21  
22 KARIN L. KREIZENBECK, ESQ.  
Nevada State Public Defender

23   
24 CHARLES H. ODGERS, ESQ., Deputy  
25 Nevada State Public Defender  
26 P.O. Box 151690  
27 Ely, Nevada 89315  
28

White Pine County Clerk

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1 **POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION/STATEMENT OF FACTS**

4  
5 The Defendant herein is charged with Open Murder, a Felony, in violation of NRS  
6 200.010 and NRS 200.030. The allegation contained in the charging document alleges  
7 that he "willfully, unlawfully, and feloniously, with malice aforethought, either express or  
8 implied, and with premeditation and deliberation, killed another human being."

9 This is a complex case. The Defense itself has identified approximately 20  
10 witnesses that it plans to call during its case in chief regarding a multitude of issues,  
11 including mitigation, self defense, mental health of Mr. Ofeldt, the environment of the  
12 prison and how that impacts those living within the confines of the prison.

13 The Court is further aware of Mr. Ofeldt's disciplinary record while being housed  
14 in the Nevada Department of Corrections, including his time at Ely State Prison. The  
15 Court found his disciplinary record to be so egregious that the Court, following the  
16 Hyman hearing, made specific findings of facts and conclusions of law regarding his  
17 past history that it requires him to wear a "racc" belt at all times his is not shackled.

18  
19 Most importantly, as is involved in this case, is that Mr. Ofeldt has been  
20 diagnosed with an "organic brain injury". This diagnosis will, upon information and  
21 belief, make it difficult, if not impossible for him to defend himself. The diagnosis does  
22 not mean that he is "incompetent to stand trial" but it will affect his ability to process  
23 information during trial, it will affect his ability to think on his feet, to know what  
24 questions to ask of which witnesses, to illicit testimony that his helpful to his defense,  
25 and most importantly, may make it difficult for him to maintain control during trial and to  
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1 act out inappropriately during trial which could result in a mis-trial and cause the case to  
2 have to be retried.

3  
4 II.

5 LEGAL ARGUMENT

6 **A. MR. OFELDT HAS THE CONSTITUTIONAL RIGHT TO REPRESENT**  
7 **HIMSELF, BUT IT IS NOT IN HIS BEST INTEREST TO DO SO, NOR IS IT IN THE**  
8 **COURT'S BEST INTEREST TO ALLOW HIM TO DO SO, AS HE IS NOT**  
9 **COMPETENT TO REPRESENT HIMSELF IN THIS COMPLEX CASE.**

10 Nevada Supreme Court Rule 253 provides this Court with guidance on the  
11 inquiry to be made of Mr. Ofeldt in his Motion to Represent himself. The undersigned  
12 has met with Mr. Ofeldt regarding his motion. The undersigned has discussed the  
13 challenges of self-representation, the challenges of cross examining the State's  
14 witnesses let alone defense witnesses and the fact that he will be going against a highly  
15 skilled prosecutor, that he will be held to the same standards and court room decorum  
16 as an attorney, that he will not have additional access to legal material even though he  
17 would be representing himself, and he would not have in his care and custody, some of  
18 the items of discovery that could impact the security of the institution, including, but not  
19 limited to the interviews of witnesses who have dropped out of the various gangs and  
20 have been debriefed by the Office of the Inspector General.

21  
22 It is clear that Mr. Ofeldt has the constitutional right to represent himself. Nev.  
23 Sup. Ct. R. 253, U.S. Const. Art. VI, and Nev. Const. art. 1, section 8, cl. 1. However,  
24 that right can be denied by the District Court. If the Court makes findings that the  
25 defendant is unable or unwilling to follow courtroom protocol, denial of self  
26 representation. Vanisi v. State, 117 Nev. 330, 22 P. 3d 1164 (2001). Similarly, the  
27 complexity of the case can be considered by the court, if the complexity of the case  
28

1 would deny the defendant a fair trial. Id. If the Court finds dilatory motives for  
2 requesting to represent himself, or purposeful delay of the trial, then the Court may  
3 deny the motion. Id. While the complexity of the case and fair trial are relevant factors  
4 to be considered by the Court in determining whether the defendant understands the  
5 consequences of his/her decision, it is not an independent consideration. Id. at 341.  
6 The issue of the Faretta canvass is to determine the quality of the decision to represent  
7 oneself, not the quality of the ability to represent oneself. Id.  
8

9  
10 To this extent Nev. Sup. Ct. R. 253 (3) encourages the court to inquire into the  
11 defendant's education, background, health, and mental health history. Once the court  
12 determines that the defendant is competent to stand trial it is the same level of  
13 competence that is required to waive the right to counsel. Hymon v. State, 121 Nev.  
14 200, 212, 111 P.3d 1092,1101 (2005). A defendant may be denied the right to  
15 represent himself based on mental health history, even if it is not enough to make him  
16 incompetent to stand trial. Id. at 213 (internal citations omitted).  
17

18 Enclosed and incorporated by reference are three documents dating back to the  
19 year 2000 showing Mr. Ofeldt as having been diagnosed with organic brain injury. Ex.  
20 A (filed under seal due to privacy issues). Further, a review of medical records  
21 produced to the State on CD as far back as when Mr. Ofeldt was 9 years old, he was  
22 diagnosed as suffering from ADD/ADHD, he was diagnosed with defiance disorder, and  
23 a multitude of other mental health disorders which, in the undersigned's opinion, could  
24 very well make it difficult for Mr. Ofeldt to represent himself and maintain the courtroom  
25 decorum. Further, because of his mental health diagnosis, it is unclear from the  
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1 undersigned's perspective, if he could make a knowing, voluntary and intelligent waiver  
2 of his right to counsel.

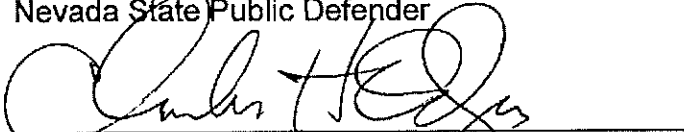
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4 III.

5 **CONCLUSION**

6 Based on the forgoing, it is respectfully requested that the Court deny Mr.  
7 Ofeldt's request to represent himself. The undersigned understands that Mr. Ofeldt has  
8 the right to represent himself, but it is unclear if he has the ability to make a knowing,  
9 voluntary and intelligent waiver of that right.

10 DATED this 13 day of Jan, 2014.

11  
12 KARIN L. KREIZENBECK, ESQ.  
Nevada State Public Defender

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14 

15 CHARLES H. ODGERS, ESQ., Deputy  
16 Nevada State Public Defender  
17 Nevada Bar No. 8596  
18 P.O. Box 151690  
Ely, Nevada 89315  
Nevada State Public Defender

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