

1 **POINTS AND AUTHORITIES**

2 John Morgan’s appeal falls within the rules for a Fast Track Statement.
3
4 His Fast Track Statement is currently due on 09/12/16. The court recorder has
5 not filed any trial transcripts at this point.

6 Morgan requests Court grant full briefing in his case due to the
7 complexity of the issues and because the “case raises one or more issues that
8 involve substantial precedential, constitutional, or policy questions.” NRAP
9 3C(k)(2)(B)(i) and (ii). Morgan asks Court to allow him to file an Opening
10 Brief on or about 09/12/16 rather than a Fast Track Statement.
11
12

13 Morgan identified issues presented in this motion through conversations
14 between his trial attorney and appellate attorney and upon review of district
15 court minutes. *See affidavit.*
16

17 If Court grants full briefing, Morgan will not object to court
18 recorder/reporter filing transcripts as allowed for a Fast Track Statements.
19

20 **FULL BRIEFING**

21 A party may seek removal of his appeal from the Fast Track system and
22 ask for full briefing pursuant to NRAP 3C (k) which states:
23

24 **(k) Full Briefing, Calendaring or Summary Disposition.**

25 (1) Based solely upon review of the rough draft transcript, fast track
26 statement, fast track response, and any supplemental documents, the
27 Supreme Court may summarily dismiss the appeal, may affirm or
28 reverse the decision appealed from without further briefing or
argument, may order the appeal to be fully briefed and argued or

1 submitted for decision without argument, may order that briefing and
2 any argument be limited to specific issues, or may direct the appeal to
3 proceed in any manner reasonably calculated to expedite its resolution
4 and promote justice.

5 **(2) Motion for Full Briefing.**

6 (A) A party may seek leave of the Supreme Court to remove an
7 appeal from the fast track program and direct full briefing. The
8 motion may not be filed solely for purposes of delay. It may be filed
9 in addition to or in lieu of the fast track pleading.

10 (B) The motion must identify specific reasons why the appeal is not
11 appropriate for resolution in the fast track program. Such reasons may
12 include, but are not limited to, the following circumstances:

13 (i) The case raises one or more issues that involve substantial
14 precedential, constitutional, or public policy questions; and/or

15 (ii) The case is legally or factually complex.
16

17 (C) If the issues or facts are numerous but not complex, full briefing
18 will not be granted but an excess page motion may be entertained.
19

20 **REASONS FOR FULL BRIEFING**

21 Full briefing is warranted in this case because this case raises several
22 issues that are legally and factually complex. Issues also include substantial
23 precedential, constitutional, or public policy questions regarding jury selection.
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26
27 The trial attorney identified the following issues for appeal:
28

1 1. Voir dire questions: Court denied Morgan's request to ask voir dire
2 questions about racial prejudice, overcharging by the State, and questions on the
3 theory of his case.
4

5 2. Use of peremptory challenges: Morgan objected when court required
6 him to exercise peremptory challenges before the entire jury panel was passed
7 for cause.
8

9 3. Jury venire: Morgan objected to jury venire as not being
10 representative of the community and court held a hearing allowing parties to
11 question the jury commissioner. Court overruled his objection to the venire.
12

13 4. Burden shifting: Morgan objected when court told jury both sides
14 were at the same starting line at the beginning of the trial. Morgan objected
15 because court's statement suggested it was a race and Morgan needed to run - to
16 do something – as if to say he had a burden of proof. Morgan asked for a new
17 jury panel which court denied. Court did not give a curative instruction. State
18 also told jury State and Morgan were at the same starting line. Morgan objected
19 again and court overruled.
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23 5. Batson challenge: Morgan made a *Batson* challenge when State
24 removed a juror after eliciting that the juror was not heterosexual. Court denied
25 *Batson* challenge.
26

27 6. Witness testimony: Morgan objected to a witness narrating a video.
28 Court overruled.

1 7. Request for mistrial when State introduced other bad act: Morgan
2 motioned for a mistrial when a police officer testified that Morgan resisted
3 arrest, arguing State introduced a bad act. Prosecutor admitted deliberately
4 introducing evidence of resisting arrest to show the robbery occurred with force.
5 Morgan then asked for a mistrial and dismissal because prosecutor acted
6 deliberately.
7

8
9 8. Jury instructions: Morgan presented numerous jury instructions that
10 were denied: (1) *Crawford* Instruction; (2) mere presence instruction; and (3)
11 lesser related jury instruction of petty larceny. Morgan objected to State's jury
12 instruction that indicated State did not need to recover stolen property in a
13 robbery case, arguing the instruction shifted and lowered State's burden of
14 proof beyond a reasonable doubt.
15

16
17 9. Closing argument: Morgan objected to State's Closing Argument
18 regarding facts not in evidence. Court disagreed and told Defense Attorney to
19 inform jury that she was wrong. When Defense Attorney did not completely
20 agree with court's assessment of the facts, court told jury that Defense Attorney
21 was incorrect. Morgan moved for a mistrial that court denied.
22

23
24 10. Rebuttal argument: Morgan objected to State's Rebuttal Argument.
25 During rebuttal, State argued for first time that the crime of robbery was
26 actually Morgan walking aggressively towards the victim and the force was not
27 the battery. Thus, State changed the theory of its case. Prior to trial Defense
28

1 Attorney litigated the lack of specificity in the charging document and court
2 denied Morgan's request for more specific pleadings. State's changed in the
3 theory of its case resulted in Morgan being convicted of a misdemeanor battery
4 and a robbery.
5

6
7 11. Competency: Prior to trial, Morgan filed a motion to dismiss because
8 of the lengthy delay in State processing and sending him to Lakes Crossing. *See*
9 *Exhibit A and B*.

10
11 The above listed issues are complex and full briefing would be beneficial
12 to allow a more thorough analysis. Moreover, upon receiving the trial transcripts
13 it is likely more issues will be discovered.
14

15 **CONCLUSION**

16 Accordingly, Morgan requests Honorable Court grant full briefing.
17

18
19 DATED this 15th day of July, 2016.

20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22 By /s/ Sharon G. Dickinson
23 SHARON G. DICKINSON, #3710
24 Deputy Public Defender
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5. This Motion for Full Briefing is made in good faith and not for the purpose of delay.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 15th day of July, 2016.

/s/ Sharon G. Dickinson
SHARON G. DICKINSON

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 15th day of July, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOHN DEMON MORGAN
NDOC No. 1158013
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89018

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office

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EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 06, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

August 06, 2015 9:00 AM Motion to Dismiss

HEARD BY: Barker, David COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT:	Craig-Rohan, Christy L.	Deputy Public Defender
	Lalli, Christopher J	Deputy District Attorney
	Morgan, John Demon	Defendant
	Sliwa, Susanne M	Deputy Attorney General

JOURNAL ENTRIES

- Ms. Craig stated the history of the case, noting Competency Court ordered Defendant to be transferred to Lake's Crossing on May 22, 2015. Further, counsel argued Defendant's due process rights have been violated, therefore, requested court dismiss charges and release him from custody. Ms. Sliwa noted there is a Federal lawsuit and a consent decree was entered, and efforts have been made on the process. Upon court's inquiry, Ms. Sliwa acknowledged they are not in compliance; however, dismissal is not the appropriate remedy. Ms. Lalli argued as to the lack of legal authority to dismiss, consent decree, and the substantial steps that have been done to alleviate the waiting period. Further arguments by Ms. Craig. Court stating FINDINGS, and ORDERED, Motion DENIED, noting dismissal is extreme and appropriate remedy is for State to comply with the order. Ms. Craig to provide an order to transport Defendant within seven (7) days.

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 22, 2016 8:30 AM Jury Trial

HEARD BY: Johnson, Susan COURTROOM: RJC Courtroom 15D

COURT CLERK: Melissa Murphy

RECORDER: Norma Ramirez

PARTIES PRESENT:	Craggs, Genevieve C. Graham, Elana L. Heshmati, Arlene Hojjat, Nadia Morgan, John Demon	Deputy District Attorney Deputy District Attorney Deputy Public Defender Deputy Public Defender Defendant
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JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Hojjat summarized a procedural overview of the case and noted the Deft will concede to identity at the start of trial. Mr. Graham added to the procedural overview of the case and noted the witness regarding the documents dropped at the scene is going to state they were documents with the Deft s name on it. Court advised it would like the parties to have a written stipulation regarding the piece of evidence. Court gave instructions regarding the Jury selection process. Blind Alternate selected (Seat # 13). Ms. Hojjat requested to pass 23 Jurors for cause. COURT ORDERED, request DENIED. Colloquy regarding potential Juror questions, scheduling and State’s exhibits. Ms. Hojjat placed her objections with respects to State’s Exhibits 1 and 8; however stipulated to foundation and authentication. Ms. Graham noted the photographs were relevant to the case and not prejudicial. Court advised it didn’t see a problem with the photographs so as long as there weren’t any authentication issues; however counsel can lodge their objections during trial.

PROSPECTIVE JURY PANEL PRESENT: Introduction by the Court and counsel. CONFERENCE AT BENCH. Prospective Jury panel sworn. Voir dire of panel.

PRINT DATE: 02/29/2016

Page 1 of 2

Minutes Date: February 22, 2016

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Hojjat placed her objections on the record with respects to challenges made at the bench and requested a new Jury panel. COURT stated FINDINGS and FURTHER ORDERED, request for new panel DENIED. Colloquy regarding challenges for cause.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued.

OUTSIDE THE PRESENCE OF JURY PANEL: Renewed motion by Ms. Hojjat requesting a hearing with the Jury commissioner on how the panel was put together. Opposition by Ms. Graham. COURT FURTHER ORDERED, oral Motion DENIED. Continued arguments regarding the method and resources of how the Jury is selected by the Commissioner. Court advised the Jury is not asked about race, creed or national origin and therefore will inquire whether the Jury Commissioner is available at 4:45 p.m. to testify.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. CONFERENCES AT BENCH.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court advised Jury Commissioner Witt would be available to come in at 4:30 p.m. Ms. Hojjat placed her Batson challenge on the record made at the bench conference in which the court denied. Further argued the Def't's right to Voir dire had been restricted. Ms. Graham placed her opposition on the record and noted objections were properly sustained by the Court. COURT SO NOTED.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. CONFERENCES AT BENCH. Twelve Jurors and one Alternate selected and sworn. Jury list FILED IN OPEN COURT. Court instructed the Jury regarding trial procedures and parameter. Clerk read the Information and stated Def't's plea thereto. Court admonished the Jury for evening recess and FURTHER ORDERED, Trial CONTINUED at the given time.

OUTSIDE THE PRESENCE OF THE JURY: Mariah Witt SWORN and TESTIFIED. Following arguments by counsel, COURT stated FINDINGS and ADDITIONALLY ORDERED, Motion to Disqualify panel DENIED.

CUSTODY

CONTINUED TO: 02/23/16 1:00 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 23, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 23, 2016 1:00 PM Jury Trial

HEARD BY: Johnson, Susan COURTROOM: RJC Courtroom 15D

COURT CLERK: Melissa Murphy

RECORDER: Norma Ramirez

PARTIES	Craggs, Genevieve C.	Deputy District Attorney
PRESENT:	Graham, Elana L.	Deputy District Attorney
	Heshmati, Arlene	Deputy Public Defender
	Hojjat, Nadia	Deputy Public Defender
	Morgan, John Demon	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

JURY PRESENT: Parties stipulated to State's Exhibits on the record. Testimony and exhibits presented (see worksheet). CONFERENCES AT BENCH.

OUTSIDE THE PRESENCE OF THE JURY: Ms. Hojjat moved for a mistrial without prejudice based upon the testimony given by Officer Law as to other bad acts. Opposition by Ms. Craggs. COURT stated FINDINGS and ORDERED, Motion for Mistrial DENIED. Ms. Graham requested to file an Amended Information to flip the order of the counts and to update the department number. Ms. Hojjat noted she had no objection to the department change; however argued switching the counts would be prejudicial to the Deft. COURT advised it didn't see it being prejudicial. Amended Information FILED IN OPEN COURT.

JURY PRESENT: Testimony presented (see worksheet). Magdalena Becerra, Spanish Interpreter present. CONFERENCES AT BENCH. Juror question asked by the Court, marked and admitted.

OUTSIDE THE PRESENCE OF THE JURY: Discussions regarding objections made at the bench conference regarding testimony of Maria Verduzco, perception of the officers as to what the charges were, and the 911 call by Mr. Gonzales. Court advised motions for mistrial regarding alleged 911 call and allegation on resisting arrest were denied at the bench. Further advised the Deft of his right not to testify under the constitution. Ms. Hojjat requested for the State's opening power point presentation be printed and admitted as a courts exhibit. Ms. Graham stated no opposition. COURT SO ORDERED. Ms. Graham requested to have the State's investigator testify about his efforts in obtaining a witness. Objection by Ms. Hojjat. Court advised the investigator will be allowed to testify. Colloquy regarding scheduling, witnesses remaining and preparation of Jury instructions.

JURY PRESENT: Testimony continued (see worksheet). CONFERENCES AT BENCH. COURT admonished the Jury for evening recess and ORDERED, Trial CONTINUED at the given time.

OUTSIDE THE PRESENCE OF THE JURY: Ms. Hojjat moved for mistrial regarding efforts to obtain witness Rubi Cruz and information that was not provided by the State. Opposition by Ms. Graham. COURT stated FINDINGS and ORDERED, Request for Mistrial DENIED. Ms. Hojjat requested Def't's investigator be allowed to testify. COURT SO NOTED. Further colloquy regarding Jury Instructions.

CUSTODY

CONTINUED TO: 02/24/16 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 24, 2016 9:30 AM Jury Trial

HEARD BY: Johnson, Susan

COURTROOM: RJC Courtroom 15D

COURT CLERK: Melissa Murphy

RECORDER: Norma Ramirez

PARTIES	Craggs, Genevieve C.	Deputy District Attorney
PRESENT:	Graham, Elana L.	Deputy District Attorney
	Heshmati, Arlene	Deputy Public Defender
	Hojjat, Nadia	Deputy Public Defender
	Morgan, John Demon	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

Defense Proposed Jury Instruction FILED IN OPEN COURT.

OUTSIDE THE PRESENCE OF THE JURY: Jury instruction and Verdict form, argued and settled on the record.

JURY PRESENT: Exhibits presented (see worksheet). State and Defense rested. Court instructed the Jury on the law. CONFERENCES AT BENCH. Jury Instructions FILED IN OPEN COURT. Parties stipulated to the documents that fell out of the Deft's bag containing his name on it. Closing arguments by Ms. Craggs and Ms. Hojjat.

OUTSIDE THE PRESENCE OF THE JURY: Following argument by Ms. Hojjat, COURT stated FINDINGS and ORDERED, oral Motion for Mistrial DENIED.

JURY PRESENT: Rebuttal argument by Ms. Graham. CONFERENCES AT BENCH. Court thanked

and admonished Alternate Juror. Amended Jury List FILED IN OPEN COURT. At the hour of 12:17 p.m. the Jury retired to deliberate. At the hour of 2:50 p.m. the Jury returned with a written Verdict FILED IN OPEN COURT. JURY FOUND Deft GUILTY OF COUNT 1 - ROBBERY and of COUNT 2 - BATTERY. Jury polled, thanked and excused.

OUTSIDE THE PRESENCE OF THE JURY: Ms. Graham requested the Deft be remanded without bail or have Deft s bail increased. Opposition by Ms. Hojjat. COURT ORDERED, State's Request DENIED; Deft s bail to REMAIN at \$50,000.00. COURT FURTHER ORDERED, matter REFERRED to the Division of Parole and Probation and SET for Sentencing.

CUSTODY

04/14/16 9:00 AM - SENTENCING

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EXHIBIT B

Anna L. Quinn
CLERK OF THE COURT

JOC

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOHN DEMON MORGAN
aka John Morgan
#1965837

Defendant.

CASE NO. C302450-1

DEPT. NO. XXII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY (Category B Felony) in violation of NRS 200.380, COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony) in violation of NRS 200.400.2; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – ROBBERY (Category B Felony) in violation of NRS 200.380; and COUNT 2 – BATTERY (Misdemeanor) in violation of NRS 200.481; thereafter, on the 14th day of April, 2016, the Defendant was present in court for sentencing with his counsel NADIA HOJJAT, Deputy Public Defender, and good cause appearing,

//

<input checked="" type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
2 addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil
3 Assessment Fee, and \$150.00 DNA Analysis Fee including testing to determine genetic
4 markers, plus a \$3.00 DNA Collection Fee, the Defendant is SENTENCED as follows:
5 AS TO COUNT 1 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with
6 a MINIMUM parole eligibility of TWENTY-SIX (26) MONTHS in the Nevada Department
7 of Corrections (NDC); and AS TO COUNT 2 – SIX (6) MONTHS in the Clark County
8 Detention Center (CCDC), Count 2 to run CONCURRENT with Count 1; with FIVE
9 HUNDRED THIRTY-THREE (533) DAYS credit for time served.
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13 DATED this 18th day of April, 2016.

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17 SUSAN JOHNSON DB
18 DISTRICT COURT JUDGE
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