

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3  
4 JOHN DEMON MORGAN, )

5 Appellant, )

6 vs. )

7  
8 THE STATE OF NEVADA, )

9 Respondent. )  
10 )

Electronically Filed  
Sep 13 2016 08:53 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Case No. 70424

11 **APPELLANT'S MOTION FOR EXTENSION OF TIME**  
12 **AND RENEWED MOTION FOR FULL BRIEFING.**

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14 Comes Now Appellant JOHN DEMON MORGAN, by and through  
15 Deputy Public Defender SHARON G. DICKINSON, and moves for Full Briefing  
16 with the Opening Brief due 30 days from the filing of the Order. Alternatively,  
17 Morgan asks for a 30 day extension of time from Monday, September 12, 2016  
18 through and including Wednesday, October 12, 2016, to file the Fast Track  
19 Statement in this case. The grounds for this request are described in the attached  
20 Declaration.  
21  
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23 DATED this 12<sup>th</sup> day of September, 2016.

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25 PHILIP J. KOHN  
26 CLARK COUNTY PUBLIC DEFENDER

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28 By /s/ Sharon G. Dickinson  
SHARON G. DICKINSON, #3710  
Deputy Public Defender



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

(1) Based solely upon review of the rough draft transcript, fast track statement, fast track response, and any supplemental documents, the Supreme Court may summarily dismiss the appeal, may affirm or reverse the decision appealed from without further briefing or argument, may order the appeal to be fully briefed and argued or submitted for decision without argument, may order that briefing and any argument be limited to specific issues, or may direct the appeal to proceed in any manner reasonably calculated to expedite its resolution and promote justice.

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

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

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

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

(ii) The case is legally or factually complex.

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

7. Full briefing is warranted in this case because this case raises several issues that are legally and factually complex. Issues also include substantial

1 precedential, constitutional, or public policy questions regarding jury selection.

2 8. The trial attorney identified the following issues for appeal:

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4 (1) Voir dire questions: Court denied Morgan's request to ask voir dire  
5 questions about racial prejudice, overcharging by the State, and questions on the  
6 theory of his case.  
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8 (2) Use of peremptory challenges: Morgan objected when court required  
9 him to exercise peremptory challenges before the entire jury panel was passed for  
10 cause – all 23 jurors. *See* NRS 175.301. The plain meaning of wording of NRS  
11 175.031 indicates court must initially examine and qualify **prospective jurors**  
12 before supplemental questioning and before the parties use peremptory challenges.  
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15 (3) Jury venire: Morgan objected to jury venire as not being representative  
16 of the community and court held a hearing allowing parties to question the jury  
17 commissioner. Morgan requested a hearing with the jury commissioner. Court  
18 overruled his objection to the venire then allowed Morgan to question jury  
19 commissioner.  
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22 (4) Burden shifting: Morgan objected when court told jury both sides were  
23 at the same starting line at the beginning of the trial. Morgan objected because  
24 court's statement suggested it was a race and Morgan needed to run - to do  
25 something – as if to say he had a burden of proof. Morgan asked for a new jury  
26 panel which court denied. Court did not give a curative instruction. State also told  
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1 jury State and Morgan were at the same starting line. Morgan objected again and  
2 court overruled.

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4 (5) Batson challenge: Morgan made a *Batson* challenge when State  
5 removed a juror after eliciting that the juror was not heterosexual. Court denied  
6 *Batson* challenge.  
7

8 (6) Witness testimony: Morgan objected to a witness narrating a video.  
9 Court overruled.  
10

11 (7) Request for mistrial when State introduced other bad act: Morgan  
12 motioned for a mistrial when a police officer testified that Morgan resisted arrest,  
13 arguing State introduced a bad act. Prosecutor admitted deliberately introducing  
14 evidence of resisting arrest to show the robbery occurred with force. Morgan then  
15 asked for a mistrial and dismissal because prosecutor acted deliberately. Morgan  
16 also challenged the 911 call and other testimony of the witnesses.  
17  
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19 (8) Request for mistrial due to information not being provided by State and  
20 efforts to obtain one witness was denied by the court.  
21

22 (9) Jury instructions: Morgan presented numerous jury instructions that  
23 were denied: (1) *Crawford* Instruction; (2) mere presence instruction; and (3)  
24 lesser related jury instruction of petty larceny. Morgan objected to State's jury  
25 instruction that indicated State did not need to recover stolen property in a robbery  
26 case, arguing the instruction shifted and lowered State's burden of proof beyond a  
27 reasonable doubt.  
28

1           (10) Closing argument and motion for a mistrial: Morgan objected to  
2 State's Closing Argument regarding facts not in evidence. Court disagreed and  
3 told Defense Attorney to inform jury that she was wrong. When Defense Attorney  
4 did not completely agree with court's assessment of the facts, court told jury that  
5 Defense Attorney was incorrect. Morgan moved for a mistrial that court denied.  
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8           (11) Rebuttal argument: Morgan objected to State's Rebuttal Argument.  
9 During rebuttal, State argued for first time that the crime of robbery was actually  
10 Morgan walking aggressively towards the victim and the force was not the battery.  
11 Thus, State changed the theory of its case. Prior to trial Defense Attorney litigated  
12 the lack of specificity in the charging document and court denied Morgan's request  
13 for more specific pleadings. State's changed in the theory of its case resulted in  
14 Morgan being convicted of a misdemeanor battery and a robbery.  
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18           (12) Competency: Prior to trial, Morgan filed a motion to dismiss because  
19 of the lengthy delay in State processing and sending him to Lakes Crossing.  
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21           The above listed issues are complex and full briefing would be beneficial to  
22 allow a more thorough analysis.  
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9. According, I am asking for full briefing with the Opening Brief due 30 days from the filing of the Order. Alternatively, I am asking for a 30 day extension to file the Fast Track Statement in this case..

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

EXECUTED on the 12<sup>th</sup> day of September, 2016.

/s/ Sharon G. Dickinson  
SHARON G. DICKINSON

