

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

WILBER ERNESTO MARTINEZ  
GUZMAN,

Petitioner,

v.

No. 82342 Electronically Filed  
Mar 18 2021 04:34 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE; THE HONORABLE  
CONNIE J. STEINHEIMER,  
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA

Real Party in Interest.

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**REAL PARTY IN INTEREST'S APPENDIX VOLUME 2**

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1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

CASE NO. CR19-0447

) DEPARTMENT NO. 4

14 WILBER ERNESTO MARTINEZ )

15 GUZMAN, )

16 Defendant. )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 MONDAY, OCTOBER 21, 2019, 10:00 A.M.

21 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

BY: CHRISTOPHER HICKS, ESQ.

DISTRICT ATTORNEY

TRAVIS LUCIA, ESQ.

DEPUTY DISTRICT ATTORNEY

1 S. SIERRA STREET

RENO, NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

BY: MARK B. JACKSON, ESQ.

DISTRICT ATTORNEY

P. O. BOX 218

MINDEN, NEVADA 89423

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

BY: JOHN ARRASCADA, ESQ.

PUBLIC DEFENDER

JOSEPH GOODNIGHT, ESQ.

KATHERYN HICKMAN, ESQ.

GIANNA VERNES, ESQ.

DEPUTY PUBLIC DEFENDERS

350 S. CENTER STREET

RENO, NEVADA

1 RENO, NEVADA; MONDAY, OCTOBER 21, 2019; 9:00 A.M.

2 -oOo-

3 THE COURT: Thank you. Please be seated. Please  
4 state your appearances for the record.

5 MR. HICKS: Good morning, Your Honor, Chris Hicks on  
6 behalf of the State.

7 MR. JACKSON: Mark Jackson on behalf of the State.

8 MR. LUCIA: Good morning, Travis Lucia for the State.

9 MR. ARRASCADA: Good morning. John Arrascada on  
10 behalf of Mr. Martinez Guzman.

11 MS. HICKMAN: Good morning. Kate Hickman on behalf  
12 of Mr. Martinez Guzman.

13 MR. GOODNIGHT: Good morning. Joe Goodnight for  
14 Mr. Martinez Guzman

15 MS. VERNES: Good morning. Gianna Verness for  
16 Mr. Martinez Guzman

17 THE COURT: The record should also reflect the  
18 previously sworn court interpreter is present with Mr. Guzman.

19 This is the time set for a status conference, but we  
20 also have oral arguments on the Motion to Continue. We'll  
21 begin with the Motion to Continue. Counsel.

22 MR. ARRASCADA: Your Honor, unless the Court has any  
23 specific questions, we would submit the Motion to Continue on  
24 the pleadings that we presented and also the Affidavits that

1       were provided, in particular in the Reply to the Opposition,  
2       and Dr. Mahaffey's Affidavit.

3               THE COURT:   Thank you. Counsel.

4               MR. HICKS: Thank you, Your Honor. Your Honor, seven  
5       months ago we all appeared here. Prior to that, the State and  
6       the defense counsel got together to talk about a trial date  
7       and to talk about the length of the trial. Then when we  
8       appeared here at the Arraignment, we agreed on a very  
9       reasonable trial date over a year away. And, Your Honor, the  
10      State submits to you today that is still a very reasonable  
11      trial date. That is still a very reachable trial date. What  
12      is important to note and is actually remarkable, Your Honor,  
13      is prior to that Arraignment seven months ago, the defense had  
14      already started mitigation, investigation by hiring a clinical  
15      psychologist, a well-known clinical psychologist who had met  
16      with the defendant before we even indicted him. They had  
17      already began an evaluation of intellectual disability. That  
18      was seven months ago. Now as we are here before Your Honor  
19      today, it is their burden. It is the defense counsels'  
20      burden, the defendant's burden to show you a reason why this  
21      case should be continued. And they have not met that burden,  
22      Your Honor. They have not shown you good cause. They have  
23      talked about generalities. They have talked about vague  
24      issues in representing a citizen from a different country in a

1 capital punishment case, but they have given nothing tangible  
2 that supports good cause to continue this case at this time.

3 Moreover, they have made an argument of a necessary  
4 witness, but they have not told you who this witness is. They  
5 have not told you what he will testify to. They have not told  
6 you why he is necessary, Your Honor. And so for all those  
7 reasons, their motions are basically hollow. They do not give  
8 Your Honor the evidence you need to continue this case.

9 Essentially, Judge, they are giving you reasons and  
10 excuses to continue this case that they don't even have. They  
11 are telling you this case needs to be continued because of an  
12 expert that they don't even need and are not entitled to. And  
13 so, Your Honor, we are going to ask you deny that motion.

14 I just want to go into a couple of points. I'll  
15 largely rely on our briefings, but in regards to their first  
16 motion, first and foremost their reliance on the ABA  
17 guidelines relative to capital punishment is totally  
18 misplaced. They rely on it as gospel. They say this is the  
19 framework in which they have to work, and that is just not  
20 true. Your Honor, they are guidelines. They are suggestions  
21 that say, hey, this is an area you might want to look at. When  
22 you rely on it as gospel as they try to do, you run into some  
23 obvious issues. And I will give an example, Your Honor. On  
24 page 7 of their motion, they cite on line 22, proper

1 preparation for ID mitigation necessarily includes locating  
2 and interviewing the client's family members, and virtually  
3 everyone else who knew the client and his family including  
4 neighbors, teachers, clergy, case workers, doctors and others.  
5 Your Honor, that is a lifetime of work right there. They are  
6 suggesting that you have to interview virtually everyone who  
7 ever knew the client and his family. That is taking the  
8 representation and mitigation investigation of an accused to  
9 an absurd level. Yeah, you would need a continuance if that  
10 were the standard, but it just isn't. Your Honor gets to  
11 decide what is good cause. Your Honor gets to decide what is  
12 effective representation. And I would submit to you at this  
13 point they have been very effective.

14 That is my next point. The assertion that is made in  
15 the motion that they are essentially going to be per se  
16 ineffective in their assistance of his defense is an awfully  
17 bold statement to make. It is an awfully bold statement to  
18 make when you look at what they have already done thus far in  
19 this case. First off, as I said, they hired Dr. Mahaffey  
20 before he was even indicted. They started an intellectual  
21 disability investigation before he was even indicted. They  
22 started mitigation investigation before he was even indicted  
23 through Dr. Mahaffey. Since he's been indicted, they have  
24 challenged the sufficiency of the evidence at Grand Jury.

1 They filed a Writ to the Nevada Supreme Court. They have four  
2 attorneys on this case. They have received over four thousand  
3 pieces of discovery, and they have reviewed it. We know that  
4 because they are reaching out to us saying, hey, some of these  
5 pages aren't clear as we have gone through them. And most  
6 importantly, they have gone to El Salvador already. The lead  
7 defense attorney along with two mitigation specialists have  
8 gone to El Salvador, himself. They have interviewed ten  
9 family members, two teachers, a principal, a caretaker or  
10 guard at one of the schools the defendant went to. They have  
11 gone to hospitals where there are records. They provided  
12 releases for those records. They have investigated potential  
13 pesticide exposure of the defendant when he worked in the  
14 fields in El Salvador. They have had contact with officials in  
15 El Salvador with the Consulate who are helping them in the  
16 mitigation investigation and in the intellectual disability  
17 challenge. Your Honor, they are right on target. They are  
18 doing what they should be doing. So the suggestion that they  
19 will be per se ineffective if Your Honor does not give a  
20 continuance is just not accurate.

21 Additionally, in their motion they move on to say  
22 they need a certain neuropsychologist in this case and they  
23 need a certain teaching expert for the intellectual disability  
24 component. I want to put at the backdrop of that argument what

1 is cited in our motion and has been held by the United States  
2 Supreme Court. First off in Britt versus North Carolina, an  
3 indigent defendant is entitled to the basic tools of an  
4 adequate defense. In Ross v. Moffit, an indigent defendant  
5 does not have the right to the legal arsenal that may be  
6 privately retained by a criminal defendant. In Ake v.  
7 Oklahoma, an indigent defendant is entitled to access to a  
8 competent psychiatrist when his sanity at the time of the  
9 offense was a significant factor in the trial, but not the  
10 expert of his choice.

11 Your Honor, what they are asking you to do is to  
12 continue this case based on a wish list of experts that they  
13 desire to have but they don't need. And more importantly, they  
14 give no good cause as to why they need him. There is no  
15 Affidavit from this neuropsychologist. There is no mention  
16 who this neuropsychologist is. There is no declaration as to  
17 what he would testify to. There is no mention as to what his  
18 exact availability is. There is nothing from him. Moreover,  
19 Your Honor, there is no authority anywhere in these types of  
20 cases that says you have to hire a neuropsychologist to do an  
21 intellectual disability challenge. The defendant is not  
22 entitled to the expert of his choice. He's not entitled to the  
23 legal arsenal that a privately retained criminal defendant may  
24 be. And he is entitled to the basic tools of an adequate

1 defense which, as I just earlier stated, he's getting.

2 So, Your Honor, then in regards to the claim of the  
3 need for a teaching expert. Although it does appear by the  
4 Affidavits that expert actually is available, I would submit  
5 to Your Honor there is no basis or good cause to continue this  
6 case for the availability of a teaching expert. Since when do  
7 we need an expert to teach the Court what the experts are  
8 going to tell the Court? That is what experts do. So the  
9 relevant expert in this case is going to be the one who  
10 clinically tests the defendant, not a different expert that is  
11 going to come in and tell Your Honor, "Let me educate you on  
12 what this is." That is what experts, themselves, do.

13 That leads me to my last point. They have an  
14 expert. They have already retained an expert who is entirely  
15 qualified to do all the things they are asking for. And when  
16 you look at District Court Rule 14, if you are making a Motion  
17 to Continue the case based on an unavailable necessary  
18 witness, which again as I have stated they have not shown in  
19 any way how these experts are necessary, you also have to  
20 consider the same facts can be proven by another witness. And  
21 that is what Dr. Mahaffey can do. Dr. Mahaffey is well-known  
22 in this jurisdiction. I would submit to the Court she's  
23 probably the most qualified Atkins expert in the entire State  
24 of Nevada. She's done twenty-three Atkins type evaluations

1 both for the prosecution and the defense. She's done one-half  
2 of the tests already on this particular defendant, and she's  
3 available and she's local. So why on earth would we need to  
4 continue this case for two other experts that can do the exact  
5 same thing. Now I recognize a neurologist can do some more,  
6 but there is no requirement for a neurologist in this case.  
7 And as Dr. Mahaffey said in her Affidavit, the majority of the  
8 twenty-three Atkins challenged cases she's been involved in,  
9 she was the sole psychologist. So it is clear that is not  
10 necessary.

11 Your Honor, she's bilingual, and she's already met  
12 with the defendant, and she has already tested his IQ. So  
13 their original motion, it falls flat. It does not give you  
14 what you need, good cause or otherwise, to actually continue  
15 this case that we set out over a year from the Indictment.

16 In then their Reply, Your Honor, I will quickly go  
17 through that. That also doesn't provide you what you need.  
18 First and foremost they cite to the Nika decision. Your  
19 Honor, I would actually suggest the Nika decision supports  
20 exactly what I am saying here today, and that is they are  
21 doing what they should be doing as we move forward to this  
22 trial date. When I say "they," I am referring to the defense  
23 team. They have already done exponentially more to prepare a  
24 mitigation case than was done in Nika. In Nika, there were

1       only two witnesses called in the penalty phase, his wife and  
2       his sister-in-law I think it was. And they basically  
3       testified he was an okay guy. The Habeas counsel subsequently,  
4       now this is when they are challenging it in Federal court,  
5       contacted the Consulate of the country from which Nika was  
6       from, did an investigation into his background in Serbia, his  
7       mental health, his intellectual capacity. Essentially what  
8       the Court said should have been done in Nika, that was done by  
9       the Habeas counsel, the defense team for this defendant has  
10      already done. And, again, they have been to El Salvador.  
11      They have located witnesses. And there is nothing before Your  
12      Honor that says any of those witnesses are unavailable. There  
13      is nothing before Your Honor that they have said they have  
14      discovered in El Salvador that makes this case need to be  
15      continued. In fact, as far as we know by the record, they  
16      have discovered witnesses and evidence they are going to be  
17      able to use in April. And so absent that, Your Honor, there is  
18      strictly no basis to continue this case.

19               The last thing I would say is in their Reply, again  
20      they refer to Dr. Mahaffey's Affidavit. As I stated, it really  
21      bolsters her qualifications. She has twenty-three prior Atkins  
22      cases. She usually works as a sole psychologist showing you  
23      don't need a teaching expert. You don't need a neurologist.  
24      What is important to note, just last week or the week before

1 the Nevada Supreme Court came out with the Bean decision where  
2 they recognized Dr. Mahaffey as a reliable expert, as a  
3 qualified expert. There was no mention in there for the need  
4 for a neurologist, Your Honor and she has said, or  
5 Mr. Arrascada said in a status hearing, all his experts at  
6 that time, this was a few months back, were available. But we  
7 know his expert was Dr. Mahaffey at that time because she  
8 started meeting with the defendant prior to the Indictment.  
9 Nothing in her Affidavit says she's unavailable for this  
10 trial. So they have the witness that they need. As far as her  
11 recommendations of hiring a neurologist or her recommendation  
12 of the defendant getting a MRI, that is just that, a  
13 recommendation, wish list. But that is beyond an adequate  
14 defense. That is beyond what Ake and Moffit say, and that the  
15 defendant is not entitled to experts of his choice.

16 Your Honor, I will just wrap up with this: The  
17 State submits this trial is on schedule. The defense is doing  
18 what they need to do, contrary to their assertions. They have  
19 not provided Your Honor anything whatsoever that gives  
20 tangible, good cause or tangible evidence of a necessary  
21 witness being unavailable that supports a continuance in this  
22 case. Certainly not a continuance for a whole other year.

23 The last thing I'd say, Your Honor, is when you are  
24 considering their request for a continuance, you have to

1 balance it against the State, the State's right to a speedy  
2 trial. And you also have to balance it now against the  
3 victims' rights. In this case, we have four innocent people  
4 that were murdered in their homes, and we have victim family  
5 members who come here, they are here for every hearing, and  
6 they have informed us they would like to invoke their  
7 Constitutional rights that our voters approved overwhelmingly  
8 last year, Marsy's law, that they have a timely disposition of  
9 this case. Now us agreeing to set it out a year I think was  
10 reasonable. But that is pushing the limits of that timely  
11 resolution of the case. But to continue it yet another year  
12 is not, for frankly no tangible evidence to do so, is not a  
13 fair balance to the victims' Constitutional rights in this  
14 state as well.

15 So for that reason, Your Honor, we would ask that  
16 you not continue this case, we continue to move forward. We  
17 still have a number of months to get this going. Thank you.

18 THE COURT: Okay. Mr. Arrascada.

19 MR. ARRASCADA: Your Honor, when experts request  
20 necessary information and are denied it, when testing  
21 requested by expert witnesses is not performed, when experts  
22 are placed on the stand with virtually no preparation or  
23 foundation, a capital defendant has not received effective  
24 penalty phase assistance of counsel.

1           THE COURT: Mr. Arrascada, I would really appreciate  
2 it if you would get to the specifics of Mr. Hicks' objection.  
3 This is your reply to him. I would like to know who your  
4 neurologist is, and why they are not available for the trial.

5           MR. ARRASCADA: Court's indulgence.  
6 Neuropsychologist, you mean, Your Honor?

7           THE COURT: Correct.

8           MR. ARRASCADA: Judge, we would be willing to go in  
9 chambers ex parte and discuss this with the Court. We feel we  
10 are getting very close, as I referenced in our motions, to  
11 Sechrest error. And that we are more than able and capable of  
12 presenting the information to you ex parte under seal as  
13 opposed to in open Court. We just feel we are at the point,  
14 Judge, balancing our candor to the tribunal and Sechrest  
15 error, that we are just getting too close to it, Your Honor.

16          THE COURT: Okay. With regard to the MRI, why can  
17 you not have an MRI performed in time?

18          MR. ARRASCADA: We are in the process of having that  
19 done, Your Honor. We had to locate a specific qualified  
20 neuroradiologist which we have, and we are in the process  
21 having that done and performed.

22          THE COURT: Okay. Dr. Mahaffey's Affidavit said that  
23 she advised you that the team and evaluation typically takes  
24 ten months for the individual to get it done. She also

1     advised you previously that from the first intelligence test  
2     to the end, the next intelligence test needed to be twelve  
3     months. We have a trial date set for April. Twelve months  
4     from her first intelligence test would certainly be within  
5     that realm of possibilities. It does set us out a bit in that  
6     we don't have an Atkins hearing until very close to the jury  
7     trial starting, but it is within her Affidavit which you said  
8     I should rely on. I, without a specific person who you are  
9     going to call that can't be here, I need more specifics. And  
10    I agree with the State, your learning psychologist who is  
11    going to tell me what I need to know about Atkins and how I  
12    should rule is not essential. You may be able to get them for  
13    your Atkins hearing. You may want to call them for that, but  
14    don't have to have them for that. You certainly can present  
15    the information yourself. So I just don't know. I don't have  
16    any specifics about why I need to continue this out. And I  
17    think the State's position is very clear, and it is very  
18    compelling. I need specifics. Now you are suggesting that I  
19    go into chambers and have an in-chambers hearing about who you  
20    intend to call and why they are not available. The State has a  
21    right to traverse that. They have a right to say wait a  
22    minute, that person is available, or, wait a minute, why is  
23    that person the only one, or is the person not available  
24    because they have a vacation planned with their family. That

1 would not be the basis of a good faith continuance by the  
2 Court, because we have victims' rights that we have to  
3 consider in this case, and the right to a speedy trial. And  
4 the Supreme Court has told us you have to expedite these  
5 cases. They take precedence over all other cases. Today I am  
6 starting a jury trial at 1:15, so that we would hear this.  
7 Everything gets put on hold until this case is resolved for  
8 you, and I know you are doing that, for the State and for the  
9 Court. So without more specifics, I am very concerned about  
10 granting a continuance today.

11 MR. ARRASCADA: Court's indulgence.

12 Your Honor, you can see from Dr. Mahaffey's  
13 Affidavit -- We are all grabbing on this ten months. She said  
14 that ten months is a minimum. It is more when it is in a  
15 setting or circumstance such as we have here where we would be  
16 traveling out of the country. As far as Dr. Mahaffey providing  
17 us this information, these recommendations, that was not done  
18 until we met with Dr. Mahaffey roughly in September, Your  
19 Honor. But notwithstanding that, we had already been reaching  
20 out to neuropsychologists within the United States that are  
21 Spanish speaking and have experience in El Salvador. We  
22 reached out to multiple ones, over three, and they were either  
23 unavailable or, quite candidly, I have a fiduciary duty as the  
24 Public Defender for the County of Washoe and they exceeded,

1 were too expensive and unavailable, Your Honor. We have a  
2 retained neuropsychologist. I provided the information, his  
3 availability. He's Spanish speaking. He does not have  
4 conflicts. That is the other problem is that --

5 THE COURT: Wait, wait, wait. You provided -- You  
6 found someone that is within your budget that is available on  
7 a date that is not our trial date. That is you picking an  
8 expert that you want that violates our trial date.

9 MR. ARRASCADA: None of the other experts were  
10 available during that trial date period that we knew of,  
11 Judge. So we are in a position where we have Dr. Mahaffey that  
12 recommending a neuropsychologist be used. We have one. We  
13 are in a position where Dr. Mahaffey recommends it takes  
14 longer than ten months in a circumstance such as this with a  
15 non-English speaker who the majority of his life was spent in  
16 El Salvador. We have the MRI which we are working on having  
17 that performed. But we do not have a neuropsychologist that  
18 is Spanish speaking that has the experience required and  
19 necessary to perform the testing that is recommended, Judge.

20 THE COURT: I'm not sure I have that. I'm not sure I  
21 can agree that the person you have is the only person  
22 available and that the person you have is only available in  
23 2021. You are asking for a trial date of March 2021.

24 MR. ARRASCADA: I thought -- Let me explain. I

1 thought I did in the briefing. But, Judge, what I explained is  
2 this: He's available to travel in March of 2020. I said in  
3 our opening brief on the Motion to Continue that he would have  
4 a report I believe around, he believes about the middle of May  
5 of 2020. He would be available, because he's a university  
6 professor, to testify during the Summer, July, August period,  
7 and those are for an Atkins hearing. That is his availability.

8 THE COURT: You haven't explained to me why he can't  
9 expedite that. If he's available in March, why can't he  
10 expedite his report? We all have to put everything on hold  
11 for death penalty cases. Why can't your expert?

12 MR. ARRASCADA: Judge, our expert is a university  
13 professor, and there are very few experts that meet all of  
14 these requirements. Right now in the United States just in the  
15 Federal court there is over fifty cases with El Salvadoreans  
16 that the death penalty is being sought. So these experts are  
17 not easy to come upon. They are hard to get scheduled. Judge,  
18 I give you my word as an officer of the Court, I pressed and  
19 said we really need this sooner, can you do it, is there  
20 anyway possible? Can you adjust your schedule? And the answer  
21 was no, he didn't have that availability, Judge. We have been  
22 pushing and pushing and pushing as this Court can see from the  
23 beginning of this case. Even when we set the trial date, yes  
24 we agreed to the trial date, Judge, but I said it was

1       ambitious. I believe Mr. Hicks and Mr. Jackson will both tell  
2       you I asked for a trial date in October of 2020. I thought  
3       that was a more realistic trial date for us to use. And so we  
4       have been candid with the Court and providing you almost in  
5       realtime information as we learn it. Even when I provided the  
6       Court with the information regarding Mr. Martinez Guzman's IQ,  
7       it was actually incorrect after Dr. Mahaffey finished scoring  
8       and finally wrote her report. I told the Court it was 66  
9       which was told to us, then we learned it is actually 62 which  
10      is much lower. So all along the way, Judge, we are moving, and  
11      hustling, and doing everything to have this case put in a  
12      position where it can be tried.

13             The Atkins issue, candidly, Judge, we didn't know if  
14      we would have it or not. We are not trying to do each and  
15      every step as the ABA guidelines state. We are doing what are  
16      the norms and what is reasonably necessary in order to provide  
17      a proper and adequate defense. If Mr. Guzman's IQ came back  
18      as an 88, Judge, we wouldn't be having these types of  
19      discussions, because he doesn't meet the first prong of  
20      Atkins. Once we learned that that was met, we began the next  
21      steps in moving the case along, and moving it as expeditiously  
22      as possible.

23             THE COURT: Your expert whom I don't know who he is  
24      and cannot traverse anything you have said, is he available

1 for your Atkins hearing on July 27th?

2 MR. ARRASCADA: He would be available for an Atkins,  
3 he has represented to us he will be available for an Atkins  
4 hearing in July and August. If the Court says July 27th of  
5 2020, we'll make sure he's available.

6 THE COURT: If the Court denies your Atkins motion,  
7 do you need this person for trial?

8 MR. ARRASCADA: He, in all likelihood, would testify  
9 at the trial, Judge.

10 THE COURT: I didn't say would. I didn't say you  
11 wanted him to. I said do you have to have him?

12 MR. ARRASCADA: Court's indulgence. Yes.

13 THE COURT: Why?

14 MR. ARRASCADA: Because, Judge, even if Mr. Martinez  
15 Guzman does not meet the Atkins standards, the  
16 neuropsychologist can testify in mitigation regarding his  
17 mental capacity and his mental ability and whether he has the  
18 proper brain functioning to understand and appreciate what has  
19 happened, what occurred and why he's present sitting there.  
20 So that witness would provide that type of information also.

21 THE COURT: Why can't Dr. Mahaffey provide that?

22 MR. ARRASCADA: Dr. Mahaffey also can also provide  
23 that type information at a trial.

24 THE COURT: So Dr. Mahaffey could review your

1 expert's report and testify at trial if your expert were  
2 unavailable.

3 MR. ARRASCADA: For a trial date, yes. Sorry.  
4 Court's indulgence. I am sorry. Judge, I'm sorry, regarding  
5 Dr. Mahaffey, she cannot testify to areas in neuropsychology,  
6 because she's not a neuropsychologist. She can testify  
7 generally to a lot of the information to a psychological  
8 standpoint. She's quite good.

9 THE COURT: Let's put it this way: I am not going  
10 to continue the trial. I either will consider a short  
11 continuance that is reasonable and necessary or I will just  
12 deny it, because I don't know who this person is. The State  
13 has not had an opportunity to traverse who he is and why he or  
14 she and why they aren't available on the trial date that we  
15 have. Doctor Mahaffey's Affidavit supports our trial date.  
16 Right now before me the only reason I would grant a  
17 continuance is because of your representation as an officer of  
18 the Court that you really, really have to have this particular  
19 person who we don't even know who they are. I am telling you  
20 right now I am not continuing the trial until March 2021. I am  
21 not continuing the trial until February of 2021. It is not  
22 going to happen.

23 MR. ARRASCADA: May I make a suggestion?

24 THE COURT: Yes.

1 MR. ARRASCADA: October 2020, Your Honor.

2 THE COURT: I won't do it in October either.

3 MR. ARRASCADA: We are doing an Atkins hearing in  
4 July of 2020, then we would have a trial date in October of  
5 2020. That is three months after the Atkins hearing.

6 THE COURT: Why do you need three months? The  
7 statute doesn't, none of the case law requires that you have  
8 three months. In fact, you don't even have to make an Atkins  
9 motion until much closer to the actual trial date. I mean it  
10 is because we have talked about preparing this case, the Court  
11 has taken some judicial incentive to make sure that we manage  
12 it. That is the only reason we are doing Atkins as early as  
13 we are. So there is no requirement for you to wait for three  
14 months before you have your trial after the Atkins hearing.

15 MR. ARRASCADA: Judge, if you set-- I guess then we  
16 are in a position here. Judge, the continuance is needed.  
17 Doctor Mahaffey's recommended a neuropsychologist must be  
18 involved in this. We have told you our available dates for  
19 the neuropsychologist. You made the reference to the date of  
20 July 27th for an Atkins hearing. As far as the trial setting  
21 from that point forward, if the Court wants to set the trial  
22 in September, we'll do everything to be ready to go regarding  
23 the trial, itself.

24 THE COURT: But you don't have an expert. So you

1 have a person you are going to bring to me in July, but you  
2 are telling me that person can't be available for a trial.

3 MR. ARRASCADA: I don't know his calendar regarding  
4 that time period, Judge. But if we have to fly him in on a  
5 day's notice and be here for a day of testimony and fly him on  
6 it, we'll make those reasonable accommodations, Judge. We  
7 will do everything we can. The reason I suggested October,  
8 one it is the date I originally thought would be proper for  
9 this. Also it falls from a timeline standpoint from the  
10 beginning of October till mid November, you're beating the  
11 holidays and also you are not getting that back to school  
12 rush. That is why I was suggesting the October trial date  
13 from the beginning.

14 THE COURT: I am not going to continue the date  
15 until you confirm that you have a neuropsychologist that would  
16 be available for a trial date. If I continue it, it will be  
17 July 27th Atkins hearing, August 31st trial and no other  
18 continuances. I'm not continuing it today. You have to  
19 determine -- There is no point in me continuing the trial if I  
20 am going to hear three, four, five months from now, oh, gee,  
21 my expert is not available, Judge, you have to continue it  
22 again. So find out if your expert is not going to be  
23 available for those dates and how they relate and I'll make a  
24 decision based on Dr. Mahaffey's Affidavit.

1           MR. ARRASCADA: Your Honor, just so I am clear, July  
2       27th for an Atkins hearing?

3           THE COURT:   Correct.

4           MR. ARRASCADA:   Is that a Monday?

5           THE COURT:   It is a Monday.   And I would anticipate  
6       it could take more than one day.

7           MR. ARRASSCADA:   That is what I was just going to  
8       say.

9           THE COURT:   So you have got the week.   I hope it  
10      won't take that long.

11          MR. ARRASCADA:   When did you say as far as the  
12      trial?

13          THE COURT:   August 31st.   The kids are back in  
14      school around the 10th of August.   Colleges have already  
15      started, and we don't -- we would only have one or two  
16      holidays.

17          MR. ARRASCADA:   It pushes us into Memorial--

18          THE COURT:   Labor Day.

19          MR. ARRASCADA:   I get them confused.

20          THE COURT:   It is five days before Labor Day which  
21      is perfect for picking the jury, starting the trial, and we  
22      would have a three-day holiday and we go on until the next  
23      holiday which would be Nevada Day, October 31st. We don't take  
24      Indigenous People Day off in October.

1 MR. ARRASCADA: Would the Court, once this is  
2 confirmed, can we then confirm to the Court via e-mail  
3 including the State, or do you want us to confirm via written  
4 motion? How does the Court want us to confirm?

5 THE COURT: I want you to confirm in writing and  
6 file with the Court that your expert will be available, all  
7 your experts will be available, anybody you plan on calling  
8 if we continue it that much including Dr. Mahaffey who I know  
9 you are going to need. And I don't know, the State hasn't  
10 talked to me who you have for rebuttal experts or for Atkins  
11 experts. I understand you may be waiting for reports.

12 MR. HICKS: That's correct. The state has begun the  
13 process of locating our experts, and we have, we have located  
14 an expert we believe will be sufficient for this intellectual  
15 disability challenge. Notably, that expert was available for  
16 our current trial date that is still set. And I will say,  
17 Your Honor, we spoke to several experts. Not a single one  
18 blinked their eye at being prepared to go forward on an Atkins  
19 hearing by February or March of 2020. But we do have experts  
20 we have been talking to and have to circle back with them and  
21 discuss that date, Your Honor.

22 The last thing I would say is, absent them showing  
23 what you are asking for, I still just want to make it clear to  
24 the Court Dr. Mahaffey is available, is qualified and can do

1 all the jurisprudence required testing in order to have an  
2 adequate defense in the Atkins challenge.

3 THE COURT: So I need more information before I  
4 grant a continuance. But if I do grant a continuance, it is  
5 going to be that four months or so. That will allow you time  
6 to do a more thorough Atkins hearing perhaps than you think  
7 you can do, but we will also set some deadlines for expert  
8 reports back and forth so that the State has adequate time to  
9 prepare for the hearing if we do continue it.

10 In the interim, I think we'll continue with our  
11 schedule the way we are. There is a Writ still pending at the  
12 Supreme Court, but we continued with our schedule even with  
13 that Writ pending. We do have a deadline coming up in  
14 November for some Pretrial motions. We need to make those  
15 other than the intellectual disability.

16 MR. ARRASCADA: Judge, we filed several motions  
17 Friday that I think touch down in the eFlex today.

18 THE COURT: Okay.

19 MR. ARRASCADA: In some of our motions, though,  
20 Judge we are asking the Court-- We cannot file them until the  
21 Supreme Court makes a ruling regarding the Writ, issues  
22 regarding severance, venue things of that nature. So we filed  
23 a motion asking for a motion to reserve the right to file  
24 after the ruling.

1 THE COURT: Have you heard anything about the Writ?

2 MR. ARRASCADA: Yes. I spoke with John Petty this  
3 morning. The writ has been assigned to the entire court, an en  
4 banc court and it has been "preview completed." So now it is  
5 with the entire court is all we know.

6 THE COURT: So your deadline was November 1st for  
7 your motions to be filed. So let's say we get a ruling this  
8 week from the Nevada Supreme Court, you are ready to go on  
9 your motions. You just don't wasn't to file them until you  
10 get your ruling; is that correct?

11 MR. ARRASCADA: Yes. But it may take some other  
12 analysis, Judge, but we'll do our best to have them filed.

13 THE COURT: Well, I will review whatever you  
14 provide.

15 MR. ARRASCADA: Very well.

16 THE COURT: State, do you have anything on that?

17 MR. HICKS: Your Honor, we have several motions  
18 we'll be filing within the scheduled timeline. We haven't seen  
19 the motions that were referenced by Mr. Arrascada yet, but I  
20 would just point out the Writ is an extraordinary measure, so  
21 if you were to, the inference is we are going to being going  
22 forward, you know, the way that we have been thus far. Again,  
23 this scheduling thing, we keep hedging on the schedules and it  
24 troubles the State because we don't want to compromise the

1 trial date. So, Your Honor, we have to wait and see what those  
2 motions say.

3 THE COURT: Currently our next hearing in the  
4 schedule is what, Ms. Clerk? So we are thinking, maybe you  
5 all can remind us, but right now we are scheduled for Pretrial  
6 motion hearings November 25, 26 and 27, so that would be the  
7 next hearing time that we would need in our status hearings as  
8 well as our substantive hearings unless there is something new  
9 that has been filed that I have to rule on before that. Is  
10 that what everyone agrees to?

11 MR. HICKS: That is the way we understand it, Your  
12 Honor.

13 THE COURT: The next time I will be seeing you will  
14 be Monday the 25th. I think that is set at 10:00 a.m. I  
15 review, once they are submitted to me, whatever the defense  
16 has filed thus far. But the deadline was November 1st for  
17 motions. If there is something in the pleadings that you filed  
18 on the 18th that you want expedited, you really should request  
19 a time shortening time. The State's response to those motions  
20 that apparently weren't in eFlex you said until this morning?

21 MR. ARRASCADA: That's my understanding, Judge.  
22 There is nothing we would ask for a motion to shorten time on.  
23 We are just filing our motions in good faith.

24 THE COURT: Okay. All right. Then we will just leave

1 the date of November 25th at 10:00 a.m., then you are going to  
2 file a supplement to your Motion to Continue with more  
3 specifics and the affirmance as to the expert you intend to  
4 call, experts' you intend to call availability, correct?

5 MR. ARRASCADA: Yes, Your Honor.

6 THE COURT: Okay. Yes, Mr. Hicks.

7 MR. HICKS: Your Honor, just one last point or one  
8 last issue I wanted to bring up. As you will recall, at the  
9 August 26th hearing when we were all here, this was just prior  
10 to when defense counsel was going to El Salvador, I raised  
11 some concerns about discovery from that trip and made a  
12 request of recording of interviews and notes be provided to  
13 the State. Your Honor entered an order that any information  
14 they obtained that their expert is going to be using be it  
15 notes, tests, documents, or statements they have to provide  
16 that to the State, preserve it and provide it. Consistent  
17 with your discovery order, we are past the discovery deadline,  
18 but we have a continuing duty to disclose. We still have not  
19 received anything discovery wise from their trip, who they  
20 talked to, who they saw, where they went, what they are  
21 relying on, who they interviewed, recordings, notes, written  
22 statements, nothing. We have nothing. And Your Honor ordered  
23 that. So we ask again that be followed up with that. We have  
24 been very good about providing discovery, continuing to

1 provide discovery as it comes in. We ask you remind the  
2 defense team to do the same.

3 THE COURT: Mr. Arrascada.

4 MR. ARRASCADA: Your Honor, experts have not relied  
5 upon any of that information yet, but like the State, their  
6 DNA experts, they get the information, they analyze it, they  
7 review it, they write a report and they provide us the report,  
8 then they provide us all the information they relied upon for  
9 the report. We'll do the same regarding our experts.

10 THE COURT: Well that isn't what I ordered you to  
11 do. I will tell you what, you want me to believe that your  
12 experts are on board, working on the case, looking at all the  
13 evidence that you are giving them and you are telling me that  
14 your expert can't be ready to go. They have to look at things  
15 in March and won't even have a report ready until I think you  
16 said May, and wouldn't be available to testify about it until  
17 July. So that is a long period of time, Mr. Arrascada, that  
18 your experts have this information that the State does not.  
19 That is not appropriate. I told you if you want your experts  
20 to rely on information that you gather, that you must share  
21 that. You know you have to do that. But I am not going to be  
22 happy if that sharing takes place at a time that requires a  
23 continuance of the trial, because it puts the State at such a  
24 disadvantage they can't call an expert. So that kind of delay

1 will not be tolerated by the Court. So that's why I entered  
2 the order saying give it to them when you get it. You know  
3 your expert is going to use it, give it to them. I have your  
4 expert tells you I am not going to use any of this, I don't  
5 need any of this and it has absolutely nothing to do with my  
6 evaluation, then you will have to have an Affidavit as an  
7 officer of the Court and your Rule 250 Memo better note it.

8 MR. ARRASCADA: Judge, you are putting us in a  
9 position of committing Sechrest error.

10 THE COURT: I don't think I am. If you hire an  
11 expert there is no secrets here.

12 MR. ARRASCADA: Sechrest.

13 THE COURT: I know. But isn't that what we are  
14 talking about, this is work product? Is it work product if  
15 you hired an expert and asked me to continue the trial based  
16 on that expert? This isn't work product. You told me you are  
17 calling this expert. You have told me he's relying on the  
18 information that you got in El Salvador. You already told me  
19 all of that. You have made that decision. It is work product  
20 if you don't know you are going to call an expert. It is work  
21 product if the expert is just advising you. But you already  
22 told me you want me to continue the trial for that expert.  
23 That puts you past work product. So you can't have everything  
24 here. You can't say it is work product for the next year and,

1 by the way, Judge, continue it because my expert is going to  
2 be looking at this work product, can't testify yet, even  
3 though I know I am going to call him. So that I don't think is  
4 Sechrest error. So the order was entered, and it continues to  
5 be your obligation.

6 Anything further for this morning?

7 MR.HICKS: Nothing from the State, Your Honor.

8 THE COURT: Anything further from the defense?

9 MR. ARRASCADA: No, Your Honor.

10 THE COURT: Okay. Thank you. Court's in recess.

11 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 4 of the above-entitled court on Monday, October 21, 2019  
9 at the hour of 10:00 a.m. of said day and that I then and  
10 there took verbatim stenotype notes of the proceedings had in  
11 the matter of THE STATE OF NEVADA vs. WILBER ERNESTO MARTINZ  
12 GUZMAN, Case Number CR19-0447.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-33 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 21st day of October, 2019.  
21  
22

23 /s/ Judith Ann Schonlau  
24 JUDITH ANN SCHONLAU CSR #18

1 JOHN L. ARRASCADA, # 4517  
2 GIANNA VERNES, # 7084  
3 JOSEPH GOODNIGHT, #8472  
4 KATHERYN HICKMAN, #11460  
5 350 S. CENTER STREET, 5TH FLOOR  
6 RENO, NV 89520-3083  
7 (775) 337-4800  
8 Attorney for Defendant

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE**  
11 **OF NEVADA IN AND FOR THE COUNTY OF WASHOE**  
12

13 THE STATE OF NEVADA,  
14 Plaintiff,

CASE NO: CR19-0447

15 v.

DEPT. NO.: 4

16 WILBER ERNESTO MARTINEZ-GUZMAN,

17 Defendant.  
18 \_\_\_\_\_/

19 **SUPPLEMENT TO MOTION TO CONTINUE (D-2)**  
20

21 COMES NOW, Defendant, Wilber Ernesto Martinez-Guzman, (hereinafter  
22 "Martinez-Guzman") by and through counsel, John L. Arrascada, Gianna Vernes,  
23 Joseph Goodnight and Kathryn Hickman, files this supplement to the previously  
24 filed Motion to Continue, confirming the availability of Mr. Martinez- Guzman's  
25 anticipated experts.

26 On October 21, 2019, this Court ordered Defense Counsel to consult with its  
experts, and confirm availability for a hearing regarding Intellectual Disability  
pursuant to NRS 174.098 ("Atkins Hearing") on July 27, 2019 and a trial  
date beginning August 31, 2019, if the Court were to grant Mr. Martinez-

1 Guzman's request for a continuance, to allow for the investigation and preparation  
2 for an Atkins Hearing.

3 Counsel has confirmed that all necessary experts will be available and  
4 prepared to testify at an Atkins Hearing beginning July 27, 2019 and for Trial  
5 beginning August 31, 2019.  
6

- 7 1. Neuropsychologist-Spanish speaking. Confirmed
- 8 2. Clinical Psychologist-Confirmed
- 9 3. Clinical Psychologist-Spanish speaking. Confirmed
- 10 4. Neuroradiologist-Confirmed
- 11 5. Neuroscience Psychologist-Confirmed
- 12 6. Intellectual Disability/Mitigation Specialist confirmed

13 Based on the confirmation of experts listed above, it is respectfully  
14 requested that this court continue the trial date set for April 6<sup>th</sup>, 2020. It is further  
15 respectfully requested that this court set a hearing pursuant to NRS 174.098  
16 "Atkins" to commence on July 27, 2020 and a trial date of August 31, 2019.  
17

### 18 CONCLUSION

19 Based on the foregoing, Mr. Martinez-Guzman respectfully requests that  
20 this Honorable Court grant the instant motion, and continue the trial currently set  
21 to commence April 6, 2020 and set an NRS 174.098 "Atkins" to commence on July  
22 27, 2020 and a trial date to commence with jury selection on August 31, 2020.  
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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

JOHN L. ARRASCADA  
Washoe County Public Defender

By /s/ John Arrascada  
JOHN L. ARRASCADA  
Washoe County Public Defender

By /s/ Gianna Verness  
GIANNA VERNES  
Chief Deputy Public Defender

By /s/ Joseph Goodnight  
JOSEPH GOODNIGHT  
Chief Deputy Public Defender

By /s/ Kathryn Hickman  
KATHERYN HICKMAN  
Chief Deputy Public Defender

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1 CODE No. 4105  
CHRISTOPHER J. HICKS  
2 #7747  
One South Sierra Street  
3 Reno, Nevada 89501  
(775) 328-3200  
4 Attorney for Plaintiff  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. CR19-0447

12 WILBER ERNESTO MARTINEZ GUZMAN,

Dept. No. 4

13 Defendant.  
14 \_\_\_\_\_/

**SUPPLEMENTAL OPPOSITION TO MOTION TO CONTINUE TRIAL DATE (D-2)**

15 COMES NOW, the State of Nevada, by and through CHRISTOPHER  
16 J. HICKS, Washoe County District Attorney, and MARK JACKSON,  
17 Douglas County District Attorney, and opposes the Supplemental  
18 Motion to Continue Trial (D-2) filed by Defendant Wilber Ernesto  
19 Martinez Guzman (hereinafter, "Guzman"). In his Supplemental  
20 Motion, Guzman fails to provide the specifics that the Court  
21 ordered for its consideration of the requested continuance.

22 During the October 21, 2019 Status Hearing, the Court  
23 refused to continue the trial date absent further information  
24 from Guzman. The Court noted that Guzman had failed to

1 establish "good cause" due to the vagueness of his original  
2 Motion and oral argument. Citing a need for specificity, the  
3 Court demanded the identity of his proposed experts along with  
4 particulars pertaining to their present unavailability so that  
5 the State of Nevada would have the ability to traverse those  
6 assertions. In emphasizing the difficulty of granting a  
7 continuance absent further specificity, the Court stated, "I am  
8 not going to continue the trial. I either will consider a short  
9 continuance that is reasonable and necessary or I will just deny  
10 it, because I don't know who this person is. The State has not  
11 had an opportunity to traverse who he is and why he or she and  
12 why they aren't available on the trial date that we have." See  
13 Trans. Status Hearing, Oct. 21, 2019, p. 21, ln. 9-15. Yet  
14 again, in his Supplemental Motion, Guzman fails to provide the  
15 requested information. Guzman has not provided good cause to  
16 continue the current trial date. See WDCR 13(1). Guzman's  
17 Motion and Supplemental Motion should be denied.

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1                   AFFIRMATION PURSUANT TO NRS 239B.030

2           The undersigned does hereby affirm that the preceding  
3 document does not contain the social security number of any  
4 person.

5                   DATED: October 22, 2019.

6   /s/ MARK JACKSON  
7 MARK JACKSON  
8 Douglas County District  
9 Attorney

6   /s/ CHRISTOPHER J. HICKS  
7 CHRISTOPHER J. HICKS  
8 Washoe County District  
9 Attorney

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John Reese Petty  
Katheryn Hickman  
Gianna Verness  
Joseph W. Goodnight

Chief Deputy Public Defenders

John L. Arrascada  
Washoe County Public Defender

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JOHN L. ARRASCADA, # 4517  
GIANNA VERNES, # 7084  
JOSEPH GOODNIGHT, #8472  
KATHERYN HICKMAN, #11460  
350 S. CENTER STREET, 5TH FLOOR  
RENO, NV 89520-3083  
(775) 337-4800  
Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,  
Plaintiff,

v.

WILBER ERNESTO MARTINEZ GUZMAN,  
Defendant.

CASE NO: CR19-0447

DEPT. NO.: 4

**SECOND SUPPLEMENT TO MOTION TO CONTINUE (D-2)**

Wilber Ernesto Martinez Guzman, by and through his attorneys of record, John L. Arrascada, Gianna Verness, Joseph Goodnight and Katheryn Hickman, files this second supplement to the previously filed Motion to Continue. This Second Supplement to Mr. Martinez Guzman's Motion to Continue has been precipitated by the unexpected and unforeseen resignation of the Washoe County Public Defender's office mitigation specialist effective December 2, 2019. This Second Supplement in support of Defendant's Motion to Continue incorporates by reference all previous pleadings, papers and declarations on file, all prior hearings conducted in this case and any oral argument that this Court may order.

## **POINTS AND AUTHORITIES**

The mitigation specialist assigned to this case was a full-time employee of the Washoe County Public Defender's office. She resigned to take on new employment, outside the County, effective December 2, 2019. The resignation of Mr. Martinez Guzman's mitigation specialist places the defense team in a position of non-compliance with ADKT 411, the ABA Standards previously cited and relevant case law. The resignation severely hampers defense counsel's pursuit of mitigation evidence and evidence of intellectual disability. This change in circumstance coupled with the reasons stated in the previous filings regarding the Motion to Continue (D-2) makes the granting of a continuance an absolute necessity in order to afford Mr. Martinez Guzman his right to Due Process under the United States Constitution, Nevada Constitution and relevant case law and court rules.

In Nevada, a mitigation specialist is required in all capital cases. See ADKT 411 Exhibit A: Nevada Indigent Defense Standards of Performance-Capital Case Representation, Standards 1,6,9 and 15. The role of a mitigation specialist cannot be born by counsel. See ABA Guideline 4.1, p.32. Regarding the individual roles of attorney, investigator and mitigation specialist, the Commentary notes that a trained investigator to discover and develop facts is necessary as "the prevailing national standard of practice forbids counsel from shouldering primary responsibility for the investigation." ABA Guideline 4.1, p. 32.

The mitigation specialist should possess "clinical and information-gathering skills and training" which most lawyers lack, and is a critical part of the defense team to ensure the penalty phase of the defense presentation is integrated into the entire defense case. The task of mitigation specialist includes development of a "comprehensive and well-documented psycho-social history" based on in-depth investigation as well as development of mitigation themes, locating and

1 coordinating appropriate experts, and development of a cohesive case in mitigation.  
2 ABA Guideline 4.1, p. 33.

3 Mr. Martinez Guzman's mitigation specialist had been performing these  
4 tasks. In addition, once defense counsel learned of Mr. Martinez Guzman's IQ, the  
5 defense team retained as consultants, Community Resource Initiative (CR-I). CR-I  
6 is a non-profit agency that specializes in intellectual disability/mitigation  
7 investigation. This company was retained as consultants due to their expertise in  
8 El Salvador. CR-I agreed to work on the case but limited their role to work in El  
9 Salvador and to provide guidance to this office's in-house mitigation specialist. CR-  
10 I does not currently have the capacity to act as the sole mitigation specialist in this  
11 case because of their prior committed case load. Specifically, due to their caseload,  
12 CR-I working alone is unable to provide a proper mitigation or intellectual disability  
13 investigation by the current April 6, 2020 trial date. CR-I agreed to work in  
14 conjunction with the Washoe County Public Defender's mitigation specialist in order  
15 to provide proper intellectual disability investigation and mitigation investigation.  
16 At this time however, the mitigation work is not nearly complete and without the  
17 in-house mitigation specialist will not be completed by the April 6, 2020 trial date.

18 This court has been provided Mr. Martinez Guzman's low IQ and other  
19 representations of his background which makes investigating intellectual disability  
20 and mitigation absolutely necessary for the case and requires following all leads  
21 that have been developed to conclusion. Mr. Martinez Guzman has a right—indeed  
22 a constitutionally protected right—to provide the jury with all the mitigating  
23 evidence that his trial counsel discovers or uncovers. See Williams v. Taylor 529  
24 U.S. 362 at 393, 120 S.Ct. 1495.

25 The failure to investigate, prepare and present a history of Mr. Martinez  
26 Guzman's background and mental health is outside the bounds of acceptable

1 advocacy and would be per se ineffective assistance of counsel. See Dumas v. State,  
2 111 Nev. 1270, 1271–72, 903 P.2d 816, 817 (1995). Further, the failure to have a  
3 trained mitigation specialist working on this case would be particularly troublesome  
4 when counsel has awareness of the client’s mental health and difficult background  
5 which has alerted counsel that further investigation by a mitigation specialist is  
6 necessary. Foust v. Houk, 655 F.3d 524, 537 (6th Cir. 2011).

7       Significant mitigation and intellectual disability investigation still needs to  
8 be conducted. To move this trial forward without a defense-retained mitigation  
9 specialist would be fundamentally unfair and violative of fundamental  
10 constitutional principles of due process. Bennett v. Scroggy, 793 F.2d 772, 774–75  
11 (6th Cir. 1986). The Constitutional error exists because denying the motion to  
12 continue would be “an unreasonable and arbitrary insistence upon expeditiousness  
13 in the face of a justifiable request for delay.” Morris v. Slappy, 461 U.S. 1 at 11, 103  
14 S.Ct. 1610 (1983).

15       Mitigation and intellectual disability investigations take time. The time is  
16 exasperated when a critical defense team member, the mitigation specialist, resigns.  
17 The request for a continuance is necessary to allow counsel to employ the necessary  
18 mitigation specialists, mental health experts and cultural experts to assist in the  
19 investigation and preparation of mitigation. A denial of the motion to continue will  
20 affect counsel’s performance throughout the preparation and presentation of  
21 mitigation evidence that is central to the preparation and presentation of the  
22 intellectual disability phase, the trial phase, and any penalty phase. Mr. Martinez  
23 Guzman may be ineligible for death due to intellectual disability, and to deny him  
24 the ability to establish this for the sole purpose of an expedited trial is in violation  
25 of his Constitutional Rights. Further, beyond the necessity of presenting evidence  
26

1 of his intellectual disability, he has a right to present full and complete mitigation  
2 to the jury.

3 With proper time for investigation, preparation and presentation, defense  
4 counsel anticipates proving that Mr. Martinez Guzman is ineligible for death by a  
5 preponderance of the evidence under NRS 174.098 and at trial would be able to  
6 present a cogent defense of mental incapacity in mitigation for his alleged crimes.  
7 See Dumas v. State, 111 Nev. 1270, 1271–72, 903 P.2d 816, 817 (1995).

8 A continuance is further justified to allow counsel to develop and present  
9 mitigation. In light of the resignation of the in house mitigation specialist, CR-I has  
10 agreed to complete the mitigation investigation. Unfortunately, due to its previous  
11 commitments, CR-I would not be available for trial in April or August of 2020.  
12 However, they are available and committed to be completely prepared for the  
13 Intellectual Disability hearing pursuant to NRS 174.098 in July 2020.

14 The full and complete preparation of mitigation will take longer. Mitigation  
15 evidence plays an “overwhelming” role in the just imposition of the death penalty,  
16 as it affords an opportunity to humanize and explain a person, such as Mr. Martinez  
17 Guzman, who is facing the death penalty. See Mayes v. Gibson, 210 F.3d 1284,  
18 1288 (10th Cir. 2000). The Court must be especially cautious in protecting a  
19 defendant's right to effective counsel at a capital sentencing hearing. See Silva v.  
20 Woodford, 279 F.3d 825, 847 (9th Cir.2002). “Because a sentencing jury is given  
21 broad latitude to consider amorphous human factors, in effect, to weigh the worth  
22 of one's life against his culpability, ... the presentation of relevant mitigation  
23 evidence is of *vital* importance to the jury's penalty determination.” Frierson v.  
24 Woodford, 463 F.3d 982, 993 (9th Cir.2006). Presently, the State will present  
25 evidence of four homicides and the reasons why it believes that Mr. Martinez  
26 Guzman is worthy of death. However, without the time needed to conduct sound,

1 proper, and effective investigation the jury will not hear in total about his  
2 intellectual disability, upbringing, education, troubled past or any other evidence  
3 which might humanize or individualize him. Absent a continuance this Court will  
4 not be given any meaningful aid in determining by a preponderance of the evidence  
5 whether Mr. Martinez Guzman is ineligible for death. Further, the jury will be  
6 deprived of complete mitigation evidence necessary to meaningfully aid it in its task  
7 of accurately evaluating whether it should sentence Mr. Martinez Guzman to death.

8 **CONCLUSION**

9 Based on the unforeseen resignation of Mr. Martinez Guzman's mitigation  
10 specialist which set in motion a cascade of additional investigation, work and delay  
11 it is respectfully requested that this court continue the trial date currently set for  
12 April 6, 2020 to a date in 2021 to allow a complete mitigation investigation and  
13 presentation at the penalty stage of his trial.

14 **AFFIRMATION PURSUANT TO NRS 239B.030**

15 The undersigned does hereby affirm that the preceding document does not  
16 contain the social security number of any person.

17 JOHN L. ARRASCADA  
18 Washoe County Public Defender

19  
20 By /s/ John L. Arrascada  
21 JOHN L. ARRASCADA  
22 Washoe County Public Defender

23 By /s/ Gianna Verness  
24 GIANNA VERNES  
25 Chief Deputy Public Defender

26 By /s/ Katheryn Hickman  
KATHERYN HICKMAN  
Chief Deputy Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing, with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks  
District Attorney  
Via ECF System

Travis Lucia  
Deputy District Attorney  
Via ECF System

Marc Jackson  
Deputy District Attorney  
Via ECF System

DATED this 6<sup>th</sup> day of December, 2019.

/s/ Misty Best  
MISTY BEST

1 CODE 2650  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-0447

15 v.

Dept: D04

16 WILBER ERNESTO MARTINEZ GUZMAN,

17 Defendant  
18 \_\_\_\_\_/

19 **OPPOSITION TO SECOND SUPPLEMENT TO MOTION TO CONTINUE (D-2)**

20 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.  
21 HICKS, Washoe County District Attorney, and MARK JACKSON, Douglas  
22 County District Attorney, and opposes the Second Supplement to Motion  
23 to Continue Trial (D-2) filed by Defendant Wilber Ernesto Martinez  
24 Guzman (hereinafter "Guzman"). This Opposition incorporates by  
25 reference all previous D-2 filings and is based on the pleadings and  
26 papers on file with this Court, the following Points and Authorities,  
and any argument this Court chooses to consider on this matter.

///

///

///

1 POINTS AND AUTHORITIES

2 **I. Relevant Factual Background**

3 Guzman's defense team consists of the following:

4 **Attorneys** - Washoe County Public Defender John Arrascada, Chief  
5 Washoe County Public Defender Katheryn Hickman, Chief Washoe County  
6 Public Defender Joe Goodnight, Chief Washoe County Public Defender  
7 Gianna Verness, and Chief Washoe County Public Defender John Petty.

8 **Investigators** - Washoe County Public Defender Investigators and,  
9 from March 2019 until December 2019, a full-time Washoe County  
10 Mitigation Specialist (WCMS).<sup>1</sup>

11 Additionally, Guzman has retained several experts to assist  
12 in his defense.

13 **Experts** - 1 Neuropsychologist, 2 Clinical Psychologists, 1  
14 Neuroradiologist, 1 Neuroscience Psychologist, and Community  
15 Resources Initiative (CS-I) a San Francisco-based consulting firm  
16 that specializes in mitigation and intellectual disability  
17 investigation.

18 **II. Discussion**

19 Before the Court rests a total of 8 motions, 5 of which  
20 were filed by Guzman, precipitated by his original Motion to Continue  
21 Trial Date (D-2). Throughout his filings, Guzman consistently fails  
22 to present adequate and specific information to justify a continuance  
23 of the trial date. Unfortunately, the Second Supplement maintains  
24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> The Washoe County Public Defender recently posted a job opening to Washoe County's website soliciting applications to fill the now-vacant WCMS position. The deadline to apply for interested applicants is December 23, 2019 which suggests a replacement WCMS could be hired in January of 2020. See State's Exhibit 1.

1 this theme and adds nothing but confusion to Guzman's original  
2 request to continue the scheduled trial date.

3 Washoe District Court Rule 13 requires a party moving for a  
4 continuance to demonstrate good cause. Furthermore, District Court  
5 Rule 14(1) requires that the moving party provide factual matters  
6 supporting the continuance in an affidavit. Guzman has not included  
7 an affidavit supporting his Second Supplement to Motion to Continue.<sup>2</sup>  
8 Without specific sworn factual support for the good cause assertion,  
9 the State is placed in the unfortunate position of being unable to  
10 traverse or defend against the claimed basis for the requested  
11 continuance. For this reason alone, Guzman's Second Supplement  
12 should not be considered.

13 Assuming *arguendo* that the Court considers the Second  
14 Supplement in the absence of a supporting affidavit, it adds nothing  
15 to Guzman's overall claim that good cause exists to continue the  
16 trial. According to Guzman, the recent departure of the WCMS, a  
17 single member of his 13-person defense/expert team, provides good  
18 cause to continue the trial date. While Guzman's defense team *may* be  
19 temporarily hampered by the circumstance, it is entirely unreasonable  
20 to assert a need to continue the trial to the year 2021 due to the  
21 WCMS vacancy. In fact, a review of Guzman's legal defense to date,  
22 supports a contrary conclusion.

23 ///

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24  
25 <sup>2</sup> In the absence of an affidavit, D.C.R. 14 allows for the moving party to be  
26 sworn and orally testify to the factual matters supporting the motion to continue  
at the motion hearing. If the Court is inclined to consider the instant  
Supplemental Motion to Continue without an affidavit, the state suggests that  
defense counsel be sworn and orally testify to the factual matters supporting their  
good cause allegation at the hearing.

1           Guzman has 5 Chief Deputy Public Defenders representing him  
2 who are highly skilled lawyers fully capable of preparing mitigation  
3 on his behalf. Additionally, he has the services of Public Defender  
4 Investigators assigned to his case who can conduct mitigation  
5 investigation and can receive investigative direction from the entire  
6 defense team. Furthermore, for the first 9 months of this case  
7 Guzman had the services of the full-time WCMS who, according to his  
8 Second Supplement, had been performing the following tasks,  
9 "development of a 'comprehensive and well-documented psycho-social  
10 history' based on in-depth investigation as well as development of  
11 mitigation themes, locating and coordinating appropriate experts, and  
12 development of a cohesive case in mitigation." See Second Supplement  
13 to Motion to Continue (D-2) pg. 2 and 3. Also, Guzman has retained  
14 CS-I a San Francisco-based mitigation consulting firm who is actively  
15 investigating this case. CS-I has already traveled to El Salvador  
16 with defense counsel and conducted valuable mitigation investigation  
17 including locating historical records and interviewing Guzman's  
18 family members, teachers, and a principal. Moreover, in March of  
19 2019, Guzman retained Spanish-speaking Clinical Psychologist Dr.  
20 Martha Mahaffey who has conducted clinical evaluations of Guzman for  
21 mitigation and who has completed the first prong of an *Atkins* claim.  
22 Lastly, the Washoe County Public Defender has already started the  
23 process of hiring a new WCMS with applications due on December 23,  
24 2019. The new WCMS could be working on the case as early as January  
25 of 2020 and, of course, will have the benefit of picking up where the  
26 former specialist left off after already completing 9 months of

1 mitigation investigation. Guzman fails to show how the short-term  
2 vacancy of the WCMS amounts to good cause for any continuance of the  
3 trial.

4           Additionally, contradictions in Guzman's motions and  
5 supplements coupled with the record create confusion as to the  
6 claimed need for a continuance and further bolster the value and  
7 necessity of required sworn testimony. In his Second Supplement,  
8 Guzman states that he hired CS-I upon learning of the IQ test  
9 results. The record reflects that Guzman's IQ test results were  
10 relayed to the State and the Court at the July 29, 2019, Status  
11 Hearing. Obviously, Guzman knew the results before that hearing.  
12 Thus, CS-I was retained during or before July of 2019, when the April  
13 6, 2020, trial date was still firmly in place. In fact, at the July  
14 29, 2019, Status Hearing Guzman's counsel confirmed that they had  
15 retained and were working with mitigation expert consultants, who we  
16 now know to be CS-I. See Trans. Status Hearing, July 29, 2019,  
17 pg. 7. Guzman's counsel further confirmed the availability of all  
18 defense experts for the April 6, 2020, trial date as ordered by the  
19 Court. *Id* at pg. 4. However, by the October 4, 2019, filing of  
20 Guzman's Motion to Continue Trial Date (D-2) CS-I had somehow become  
21 unavailable.

22           Unfortunately, there is further contradiction regarding CS-  
23 I's availability. In his first Supplement to Motion to Continue and  
24 in his Reply to State's Supplemental Opposition to Motion to  
25 Continue, Guzman confirmed for the court that all of his potential  
26 experts, including CS-I, are available and prepared to testify at an

Atkins Hearing in July of 2020 and for trial in August of 2020.  
However, now CS-I is somehow unavailable until 2021.

### III. Conclusion

Despite his Second Supplement, Guzman still fails to meet his burden to show a good cause basis to continue the trial date. He presently has a robust and able defense team with retained mitigation experts and a replacement WCMS on the horizon. His bevy of D-2 motions when squared with the record create confusion as to the actual authenticity of the alleged claims of the unavailability of CS-I. Absent an affidavit or sworn testimony, the State at this point can't help but question whether dilatory tactics are being utilized.

#### AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 13th day of December, 2019.

/s/ MARK JACKSON\_\_\_\_\_  
MARK JACKSON  
Douglas County District  
Attorney

\_/s/ CHRISTOPHER J. HICKS\_\_\_\_\_  
CHRISTOPHER J. HICKS  
Washoe County District  
Attorney

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PUBLIC DEFENDER'S OFFICE  
John Arrascada, Public Defender  
Kate Hickman, Esq.  
Gianna Verness, Esq.  
Joseph Goodnight, Esq.

DATED this 13th day of December, 2019.

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Exhibit 1      Washoe County Public Defender Mitigation Specialist  
job posting  
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# EXHIBIT 1

**EXHIBIT 1**

Home » Announcements » 2019 Announcements » Mitigation Specialist

### *Mitigation Specialist*

*The Washoe County Public Defender's Office is currently hiring for a Mitigation Specialist! Do you have experience in death penalty sentencing mitigation? Apply by December 23, 2019 to be considered for this excellent career opportunity!*

---

### **Mitigation Specialist**

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**Annual Salary:** \$61,942 - \$80,579

**Deadline for Applying:** Monday, December 23, 2019

**Position Information:** Under general supervision, performs journey level investigative work in the Public Defender's Office for mitigation; and performs related duties as required. An incumbent receives little supervision and minimal review in the performance of assignments.

This is an Open Competitive / Countywide Promotional recruitment being conducted to fill a current vacancy in the Public Defender's Office. The list established from this recruitment may be used to fill future vacancies as they occur.

**This recruitment uses a Training and Experience Exam (T&E). Due at the time of application.**

For more information on this position, please see the Job Specification at <https://www.washoecounty.us/humanresources/Careers/jobspecs.php>

**Visit the Washoe County Job Listings Page to apply for the position; click on the title to view the full Job Announcement including all requirements: <https://jobs.washoecounty.us>.**



## CLASS SPECIFICATION

Class Code: 6145  
Date Est: 10/2001  
Last Rev: 03/2018  
Last Title Chg:  
FLSA: non-exempt  
Probation: 12 months

### MITIGATION SPECIALIST

#### **DEFINITION**

Under general supervision, performs journey level investigative work in the Public Defender's Office for mitigation; and performs related duties as required. An incumbent receives little supervision and minimal review in the performance of assignments.

#### **EXPERIENCE AND TRAINING REQUIREMENTS**

A bachelor's degree from an accredited college or university in criminal justice, social work, psychology, human development and family studies or a related field AND one year of full-time experience in sentencing mitigation; OR equivalent combination of training and experience.

#### **LICENSE OR CERTIFICATE**

A valid driver's license is required at the time of appointment.

#### **SUPERVISION EXERCISED**

Exercises no supervision.

#### **EXAMPLES OF DUTIES** *(The following is used as a partial description and is not restrictive as to duties required.)*

Conduct criminal pre-trial investigations for felony death penalty and life cases.

Find alternatives to incarceration and submit recommendations to the Court.

Compile evidence and extensive documentation relating to client's background through investigation, interview and record search, collaborating with local law enforcement agencies, medical professionals and educational institutions.

Collect information and records on client's life history including: family background, prior personal relationships, educational, medical, employment and criminal history to obtain information to assist in mitigation.

Counsel clients and family members regarding procedures, possible sentences and local resources.

Collect and maintain all resource material relating to Death Penalty sentences and trends.

Obtain court orders, subpoenas and other legal process from the appropriate authority; execute same by locating parties named in each document and performing proper in-person service of document to named parties.

Locate witnesses, interview and coordinate court appearances, serve subpoena(s) and conduct background investigations as necessary; obtain statements as part of the evidentiary process by interviewing witnesses, defendants, informants, co-defendants, victims, suspects and other relevant parties.

Initiate and maintain a variety of resource materials, files and records (computerized and manual) related to case mitigation and information gathered.

Prepare written reports for attorneys and courts.

Testify in court regarding actions, involvement, observations and information obtained as it relates to assigned investigations.

Ensure that assigned personnel perform duties and responsibilities in a safe and prudent manner that does not expose them or others to unnecessary harm or risk of on-the-job injury.

### **JOB RELATED AND ESSENTIAL QUALIFICATIONS**

**Full Performance** *(These may be acquired on the job and are needed to perform the work assigned.)*

#### **Knowledge of:**

Departmental/divisional policies and procedures.

Federal, state and local laws, statutes, codes, regulations and standards applicable to the area of assignment, including criminal, investigative and trial procedures operating within Washoe County.

Terms and acronyms commonly used in the assigned function.

Management information systems and software programs used in the assigned area.

Principles of Criminal, Constitutional and Administrative Law.

Judicial procedures in criminal trials.

#### **Ability to:**

Independently plan and conduct investigations.

Prepare case components for presentation in court.

**Entry Level** *(Applicants will be screened for possession of these through written, oral, performance, or other evaluation methods.)*

#### **Knowledge of:**

Basic dynamics of human behavior.

Interviewing methods and techniques.

Research methods and available resources for obtaining information and documentation necessary to prepare a case for the defense.

#### **Ability to:**

Skillfully interview people and deal with hostile, aggressive and abusive clients.

Obtain evidence and information by observation, through interview and physical collection.

Build and establish rapport and instill confidence in witnesses, defendants and others connected with investigations from a wide range of socio-economic backgrounds.

Analyze and evaluate data, evidence and statements and formulate logically supported conclusions.

Read, interpret and apply pertinent laws, statutes, codes and regulations, including administrative and departmental policies and procedures.

Write comprehensive, detailed narrative reports.

Operate a personal computer.

Provide assistance to families and handle difficult situations with clients.

Communicate in a clear, concise manner both orally and in writing.

Establish, foster and maintain effective working relationships with those contacted in the course or work including attorneys, medical professionals, community agencies and the public.

**SPECIAL REQUIRMENTS** *(Essential duties require the following physical skills and work environment.)*

Work is performed in a standard office environment and various indoor and outdoor offsite locations including areas of risk. Ability to tolerate exposure to the elements. Ability to climb, stoop, crouch and kneel. Ability to lift and move objects weighing up to 25 lbs. Ability to operate office and investigative equipment including computers, telephones, calculators, copiers, FAX machines, still and video cameras, and audio/video recording equipment.

*This class specification is used for classification, recruitment and examination purposes. It is not to be considered a substitute for work performance standards.*

1 CODE 3795  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 JOHN L. ARRASCADA, #4517  
4 KATHERYN HICKMAN, #11460  
5 GIANNA VERNES, # 7084  
6 JOSEPH GOODNIGHT, #8472  
7 350 S. CENTER ST., 5<sup>TH</sup> FLOOR  
8 RENO, NV 89501  
9 (775)337-4800  
10 ATTORNEYS FOR DEFENDANT

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12  
13 IN AND FOR THE COUNTY OF WASHOE  
14

15 THE STATE OF NEVADA,

16 Plaintiff,

Case No. CR19-0447

17 vs.

Dept. No. 4

18 WILBER ERNESTO MARTINEZ GUZMAN,

19 Defendant.  
20 \_\_\_\_\_/

21 **REPLY IN SUPPORT OF SECOND SUPPLEMENT TO MOTION TO**  
22 **CONTINUE (D-2)**

23 COMES NOW, Defendant, Wilber Ernesto Martinez Guzman, (hereinafter  
24 "Martinez Guzman") by and through counsel, John L. Arrascada, Katheryn  
25 Hickman, Gianna Verness and Joseph Goodnight, and hereby files this Reply in  
26 Support of the Second Supplement to the Motion to Continue (D-2). This reply is  
based on the attached points and authorities, the original motion and supplements  
and any testimony, documentary, or real evidence that may be presented on this  
matter.

1 **POINTS AND AUTHORITIES**

2 At the time that the initial Motion to Continue the trial was filed, defense  
3 counsel had been appointed to represent Mr. Martinez Guzman for less than 8  
4 months and at the time that the trial was set, defense counsel had been on the  
5 case for thirty-eight days. Defense Counsel had no way of knowing how complex  
6 the defense of Mr. Martinez Guzman would be at the time of arraignment.

7 In those eight months, defense counsel attempted to digest thousands of  
8 pages of written discovery, hundreds of photos from multiple crime scenes, watch  
9 hours of interviews, of which multiple are conducted in Spanish, establish a  
10 relationship with a client that is undocumented, young, uneducated, and speaks a  
11 different language. Defense counsel has contacted and retained five experts,  
12 written numerous motions, appeared in Court multiple times, traveled to El  
13 Salvador and done everything within their power to be prepared to represent Mr.  
14 Martinez Guzman at a trial and potential penalty phase where the State will  
15 attempt to have him sentenced to death. Despite those best efforts, defense counsel  
16 is not prepared to proceed at this time.

17 Further, defense counsel has been extremely upfront and honest with the  
18 Court, reporting progress and changes in circumstances to the Court and the State  
19 as they happen, apparently to defense counsel and Mr. Martinez Guzman's  
20 detriment. The State refuses to acknowledge that strategy, circumstances,  
21 schedules and other intangible things change as a case moves forward.

22 At the time that trial was set, defense counsel did not know that Mr.  
23 Martinez Guzman's IQ was extremely low, meeting the first prong of intellectual  
24 disability. Defense counsel did not know that it would need to divert resources to  
25 litigating a claim of Intellectual Disability, or that they would need to make  
26 multiple trips to El Salvador. In fact, at the time that the trial was set, defense

1 counsel had just begun to develop a relationship with Mr. Martinez Guzman which  
2 would lead to discovering the current issues. As these issues came up, defense  
3 counsel informed the Court and the State.

4         The State's argument that Mr. Martinez Guzman's attorneys can prepare  
5 mitigation is directly in contrast ADKT 411 and the ABA guidelines, which were  
6 previously cited. The skill of Mr. Martinez Guzman's attorneys in the courtroom in  
7 no way translates to developing mitigation in a case as serious as the instant  
8 matter. In addition, if Mr. Martinez Guzman's attorneys took on the role of  
9 mitigation specialist, they would make themselves witnesses, thereby  
10 disqualifying them as attorneys in this case.

11         In addition, CR-I had been retained to assist in the investigation in El  
12 Salvador, and to consult with the in-house mitigation specialist in preparing this  
13 case for a potential penalty hearing. This allowed the in-house mitigation  
14 specialist to do the bulk of the work while relying on guidance from CR-I. If CR-I  
15 were to take over the mitigation work, their time commitment would increase  
16 exponentially, which accounts for the contradiction flagged by the State. To put it  
17 simply, CR-I was available as a consulting expert, but they are not available to do  
18 the entirety of the mitigation investigation without an in-house specialist at the  
19 Washoe County Public Defender's Office to carry the majority of the workload. CR-  
20 I is available for an Atkins hearing to be held in the summer of 2020, as previously  
21 represented to the Court, but will not be able to complete all of the mitigation  
22 work that still needs to be completed until 2021.

23         Further, as argued in previous filings, the fact that Mr. Martinez Guzman's  
24 attorneys and experts have been diligent in working on this case does not mean  
25 that more time is not required, and should not be held against Mr. Martinez  
26 Guzman as he makes the request to continue his trial to allow his counsel time to

1 prepare mitigation, a defense, and investigate the possible intellectual disability  
2 claim.

3 Here, Mr. Martinez Guzman requests a continuance for multiple reasons.  
4 These include the necessity of more time to investigate mitigation evidence, the  
5 unavailability of the neuropsychologist and the need for more time for him to  
6 conduct necessary interviews and testing, and the resignation of the mitigation  
7 specialist. All of these reasons constitute “good cause” under NRS 174.515(1).

8 NRS 174.515(1) allows this Court to grant a continuance, upon good cause  
9 shown by the moving party. The Sixth Amendment has been interpreted to allow  
10 for adequate preparation for trial. *Strickland v. Washington*, 466 U.S. 668, 104  
11 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *United States v. Cronin*, 466 U.S. 648, 656  
12 (1984) (“The right to the effective assistance of counsel is . . . the right of the  
13 accused to require the prosecution’s case to survive the crucible of meaningful  
14 adversarial testing.”). See also *Polk County v. Dodson*, 454 U.S. 312, 318, 102 S.Ct.  
15 445, 449, 70 L.Ed.2d 509 (1981) (“The system assumes that adversarial testing will  
16 ultimately advance the public interest in truth and fairness”); *Gardner v. Florida*,  
17 430 U.S. 349, 360, 97 S.Ct. 1197, 1206, 51 L.Ed.2d 393 (1977) (plurality opinion)  
18 (“Our belief that debate between adversaries is often essential to the truth-seeking  
19 function of trials requires us also to recognize the importance of giving counsel an  
20 opportunity to comment on facts which may influence the sentencing decision in  
21 capital cases”).

22 Defense counsel has an obligation to uncover and present mitigating  
23 evidence in a capital case, under prevailing professional norms. *Wiggins v. Smith*,  
24 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d 471 (2003). This is because mitigation  
25 evidence is relevant to a defendant’s moral culpability. *Id.* at 535. *Penry v.*  
26 *Lynnaugh*, 492 U.S. 302, 319, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) (“[E]vidence

1 about the defendant's background and character is relevant because of the belief,  
2 long held by this society, that defendants who commit criminal acts that are  
3 attributable to a disadvantaged background ... may be less culpable than  
4 defendants who have no such excuse’ ”); see also *Eddings v. Oklahoma*, 455 U.S.  
5 104, 112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982) (noting that consideration of the  
6 offender's life history is a “ ‘part of the process of inflicting the penalty of death’ ”);  
7 *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978)  
8 (invalidating Ohio law that did not permit consideration of aspects of a defendant's  
9 background).

10 The number and type of experts retained by Mr. Martinez Guzman is not  
11 unusual. In *U.S. v. Davis*, 611 F. Supp.2d 472 (D.Md.2009), the defense retained  
12 five expert witnesses: a developmental pediatrician, a pediatric neuropsychologist,  
13 two clinical psychologists, and a neuropsychiatrist. This reflects the prevailing  
14 professional norms in capital defense.

15 The State has cited to *Ake v. Oklahoma*, 470 U.S. 68, 105 S. Ct. 1087 (1985),  
16 to support the argument that Mr. Martinez Guzman should not even be entitled to  
17 retain or call a neuropsychologist to investigate and present evidence of his  
18 intellectual disability, because the State believes Dr. Mahaffey can provide similar  
19 testimony.<sup>1</sup> *Ake* does not support the State’s argument. *Ake* states that indigent  
20 defendants *shall* receive the assistance of all experts “necessary for an adequate  
21

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22 <sup>1</sup> The State also cites to *Britt v. North Carolina*, 404 U.S. 226(1971) and *Ross v. Moffitt*,  
23 417 U.S. 600 (1974) to support this argument. *Britt* involves the denial of trial transcripts  
24 to an indigent defendant and affirms that a transcript must be provided to an indigent  
25 defendant if it is needed for an effective defense or appeal. In this case, a  
26 neuropsychologist and a mitigation specialist are both essential for an effective defense,  
especially considering that the State’s ultimate goal is to kill Mr. Martinez Guzman. *Ross*  
stands for the proposition that there is no statutory or constitutional right to “appointed  
counsel regarding collateral, tax or discretionary appeals.” *Ross* is clearly inapplicable, as  
Mr. Martinez Guzman is not seeking counsel on a discretionary appeal, but rather seeks  
time to allow his attorneys and the retained experts defend him.

1 defense,” and that in cases where sanity is a significant factor, the denial of  
2 funding for a psychiatric examination and testimony would be devastating. *Id.* It  
3 further holds that “due process requires access to a psychiatric examination on  
4 relevant issues, to the testimony of the psychiatrist, and to assistance in  
5 preparation at the sentencing phase” of a capital case. *Id.* at 84, 105 S.Ct. 1087.

6 *Ake* supports the request for a continuance to allow for the  
7 neuropsychologist retained by Mr. Martinez Guzman time to complete the testing  
8 required to meet the burden of proof required by NRS 174.098. A  
9 neuropsychologist and a clinical psychologist have significantly different roles in  
10 determining intellectual disability, and Mr. Martinez Guzman should not be  
11 denied a necessary expert merely because he is indigent.

12 In addition to the authority given to this Court in NRS 174.515(1), Courts in  
13 other jurisdictions have generally held that a continuance should be granted, even  
14 if sought on or close to the day of trial, where the defendant had not previously  
15 sought continuances. *People v. Brown*, 2011 WL 1195778 (Colo. App. 2011) See,  
16 e.g., *People v. Courts*, 37 Cal.3d 784, 210 Cal.Rptr. 193, 693 P.2d 778, 782 (1985)  
17 (the “continuance request ... was only the second request by [defendant] for a  
18 continuance. (The first was a request for discovery which was denied.)”); *People v.*  
19 *Butcher*, 275 Cal.App.2d 63, 69, 79 Cal.Rptr. 618, 621 (1969) (“While appellant  
20 may be criticized for delaying as long as he did to engage private counsel ... there  
21 is no indication he was being dilatory or seeking to avoid trial. This was his first  
22 and only application for a continuance.”); *Fratcher v. State*, 842 So.2d 1044, 1046  
23 (Fla.Dist.Ct.App.2003) (“none of the prior delays were attributable to appellant”);  
24 *State v. Garcia*, 317 Mont. 73, 75 P.3d 313, 318 (2003) (the defendant's motion to  
25 continue trial “was his first such request”).

1 The request for a continuance is made in good faith and is not for delay. Mr.  
2 Martinez Guzman has clearly defined the prejudice that he will suffer if this case  
3 is not continued, namely, that he may be sentenced to death when there are strong  
4 indicators that such a sentence would violate the Eighth Amendment as cruel and  
5 unusual punishment, given his intellectual disability. The State will suffer little to  
6 no prejudice if this case were to be delayed, and do not argue any type of prejudice  
7 in any of the previous filings that would outweigh Mr. Martinez Guzman's  
8 constitutional rights to due process, the effective assistance of counsel, to be free  
9 from cruel and unusual punishment and the right to a fair trial.

10 **CONCLUSION**

11 Mr. Martinez Guzman respectfully requests that this Court grant his  
12 request for a continuance, to allow necessary experts to complete testing to allow  
13 the presentation of evidence of Mr. Martinez Guzman's intellectual disability, and  
14 to allow for the replacement of a mitigation specialist, a necessary and essential  
15 member of the defense team.

16 **AFFIRMATION PURSUANT TO NRS 239B.030**

17 The undersigned does hereby affirm that the following document does not  
18 contain the social security number of any person.

19 Dated this 20th day of December, 2019.

20  
21 JOHN L. ARRASCADA  
Washoe County Public Defender

22 By: /s/John L. Arrascada  
23 Public Defender

24 By /s/ Katheryn Hickman  
25 KATHERYN HICKMAN  
Chief Deputy Public Defender

26 By /s/ Gianna Verness

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GIANNA VERNES  
Chief Deputy Public Defender

By /s/ Joseph Goodnight  
JOSEPH GOODNIGHT  
Chief Deputy Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing, with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks  
Washoe County District Attorney

Travis Lucia  
Washoe County Deputy District Attorney

Marc Jackson  
Douglas County District Attorney

DATED this 20th day of December, 2019.

/s/ Carinne Glines  
CARINNE GLINES

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

CASE NO. CR19-0447

) DEPARTMENT NO. 4

14 WILBER ERNESTO MARTINEZ )

15 GUZMAN, )

16 Defendant. )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 MONDAY, JANUARY 13, 2020, 10:00 A.M.

21 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY  
  
BY:   CHRISTOPHER J. HICKS, ESQ.  
  
         DISTRICT ATTORNEY  
  
         TRAVIS LUCIA, ESQ.  
  
         DEPUTY DISTRICT ATTORNEY  
  
         1 S. SIERRA STREET  
  
         RENO, NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY  
  
BY:   MARK B. JACKSON, ESQ.  
  
         DISTRICT ATTORNEY  
  
         P. O. BOX 218  
  
         MINDEN, NEVADA 89423

FOR THE DEFENDANT:       OFFICE OF THE PUBLIC DEFENDER  
  
BY:   JOHN ARRASCADA, ESQ.  
  
         PUBLIC DEFENDER  
  
         KATHERYN HICKMAN, ESQ.  
  
         JOSEPH GOODNIGHT, ESQ.  
  
         GIANNA M. VERNES, ESQ.  
  
         DEPUTY PUBLIC DEFENDERS  
  
         350 S. CENTER STREET  
  
         RENO, NEVADA

1 RENO, NEVADA; MONDAY, JANUARY 13, 2020; 10:00 A.M.

2 -000-

3 THE COURT: Thank you. Please be seated. Good  
4 morning, counsel. Please make your appearances for the  
5 record.

6 MR. HICKS: Good morning, Chris Hicks on behalf of  
7 the State.

8 MR. JACKSON: Good morning, mark Jackson on behalf of  
9 the State.

10 MR. LUCIA: Good morning, Travis Lucia on behalf of  
11 the State.

12 THE COURT: Thank you.

13 MS. HICKMAN: Good morning, Kate Hickman on behalf  
14 of Mr. Martinez Guzman.

15 MR. ARRASCADA: Good morning, John Arrascada on  
16 behalf of Mr. Martinez Guzman.

17 MS. VERNES: Gianna Verness on behalf of  
18 Mr. Martinez Guzman.

19 MR. GOODNIGHT: Joe Goodnight for Mr. Martinez  
20 Guzman.

21 THE COURT: Mr. Petty, you are not going to tell us  
22 you are here?

23 MR. PETTY: Your Honor, I am here, but I am not going  
24 to participate today.

1           THE COURT:   Okay.   Thank you. This is the time set  
2   for a continued status conference and to resolve issues that  
3   have come up in the last month. I think we have a few things  
4   that are pending. The Court entered orders, and you all should  
5   have received those regarding the Motion to Dismiss for  
6   Improper Venue and the Motion to Dismiss based on the District  
7   Attorneys exceeding their statutory authority. Both of those  
8   motions have been denied, and those Orders have been entered.

9           We also have before us today Defendant's Motions  
10   D-16 and D-17 which were filed, I think the Motion D-16 was  
11   filed to allow late filing of a Motion in Limine with regard  
12   to evidence about being admitted after trial of the purported  
13   theft of the firearm from the Renken home. That issue was  
14   fully briefed and submitted to the Court.

15          Later, Mr. Guzman did file an errata to the Motion  
16   entitled Errata D-17 that Mr. Guzman wanted to withdraw the  
17   the defense Motion to preclude any testimony of suggestion or  
18   insinuation regarding a stolen firearm from Sophia Renken's  
19   home. That was filed December 6th because the Motion was  
20   filed in error. What I am understanding from that is that the  
21   defense in D-17 is asking the Court not to consider the  
22   submission of the Motion in Limine substantively, but only  
23   decide the Motion regarding permission to file that Motion in  
24   Limine. So that is the way I took it, and that is the way I

1 assumed the status was.

2 So moving to D-16, I have considered the pleadings,  
3 the arguments and Opposition and Reply as well as the Grand  
4 Jury testimony, and I am going to make some findings now.

5 It is possible the Defendant was confused about the  
6 State's intention regarding the firearm allegation in the  
7 Renkin home. The February police report and the Grand Jury  
8 testimony taken together could have led the defense to believe  
9 the State was not intending to pursue the theory regarding the  
10 handgun that was stated in the police report document which  
11 was created earlier than the Grand Jury testimony. Couple that  
12 with the State's motion to admit other act evidence which did  
13 not include this theory as requested the evidence to be  
14 submitted before the jury, the Court finds good cause to allow  
15 Mr. Guzman to file a late Motion in Limine on this issue.  
16 That is the admissibility before the jury on the theory  
17 Mr. Guzman stole the firearm which has not been recovered from  
18 Ms. Renkin. However, this ruling only relates to the trial  
19 evidentiary issue. It does not change any past consideration  
20 of the evidence if any has been made for any other Pretrial  
21 issue.

22 Further, the motion that the defense has requested  
23 to be filed late must be filed no later than January 17th.  
24 Oppositions must be filed no later than January 27th. Reply

1 will be allowed and must be filed no later than February 3rd.  
2 An evidentiary hearing is scheduled, well, currently a hearing  
3 is scheduled for February 14, 2020, so I will set this along  
4 with that to begin at 10:00 a.m. I will consider all the  
5 evidence that I have already heard on this issue, so I am not  
6 requiring additional testimony. But if any party wishes to  
7 put on any additional evidence, you may do so and arguments  
8 can be made and then the matter will be submitted to the Court  
9 substantively. So I think that resolves D-16 and D-17 at this  
10 time.

11 We also have a motion that was previously submitted  
12 and taken under advisement which was D-5. It relates to  
13 statements made that the defense is arguing are hearsay and  
14 inadmissible with regard to Counts I and II. The Court has  
15 had the opportunity to hear the evidence that was presented in  
16 November at the hearings that we had as well as review  
17 carefully the motions and arguments that counsel made in the  
18 November late hearing as well as the Grand Jury testimony and  
19 the record in the case. I do find at this time that the  
20 Motion in Limine is not well taken. I agree with the State's  
21 argument, and I am going to deny the motion. I will ask the  
22 State to prepare a proposed Order in accordance with that  
23 ruling.

24 With regard to the Motion to Stay Proceedings, that

1 was D-11, we are still waiting for the Supreme Court to make a  
2 decision, shocking we don't have any decision, but I don't  
3 think that impacts us moving forward, so I am going to deny  
4 the Motion to Stay formally. I will ask the State to prepare  
5 an Order. Once I enter that Order, the defense may ask or may  
6 go to the Supreme Court and ask for that stay from them. At  
7 this time, I am denying the stay. I don't find there is any  
8 prejudice to the defendant to proceed in the manner we are  
9 proceeding pending resolution by the Supreme Court of the  
10 Writ.

11 We also have pending before the Court an Ex-Parte  
12 Motion that was filed, I think it is Ex-Parte, so I am not  
13 sure if the State knows about that. A proposed Order was  
14 submitted to the Court with regard to that Ex-Parte motion,  
15 the Court is putting on the record that the methodology that  
16 is being proposed to be used by the defense is not  
17 appropriate. The Court will not be considering the Ex-Parte  
18 motion. If the defense wants to have a protective order  
19 entered in this case, they must file a Motion for Protective  
20 Order. That motion must be public. The things you want  
21 protected don't have to be identified, but the theory of the  
22 protection must be identified so that the State can oppose  
23 that motion if it is necessary in their opinion. If the Court  
24 has to take testimony or hear evidence outside the presence of

1 the State, the defense has to make a showing of the necessity  
2 for that. What I have before me is not sufficient, so the  
3 D-20 Ex-Parte Motion to Seal is denied for the reasons I just  
4 stated. And there is no D-21 motion. Nothing was filed with  
5 the Motion to Seal.

6 MS. HICKMAN: If I could sort of clarify for the  
7 Court, it is really confusing how to get something ex-parte in  
8 front of the Court. And every time we do it, it is a little  
9 bit different. So I think D-20 should be filed in a way that  
10 is public, right? That is our request, to file the motion  
11 ex-parte, then if the Court says, yes, you can file that  
12 motion ex-parte, then we can file the motion ex-parte.  
13 Otherwise, if we try to file the motion in any other way, the  
14 clerk's office will make it public. Does that make sense?

15 THE COURT: Well, a couple of things. Yes, you  
16 should file a public motion to file something under seal, and  
17 I think you are asking for it to be under seal and ex-parte.

18 MS. HICKMAN: Right.

19 THE COURT: But your motion that you filed which was  
20 D-20 did not give any legal authority or statutory authority  
21 or any indication of why that should be granted.  
22 Theoretically, your motion, which cannot be an ex-parte motion  
23 if it was noted as being an ex-parte motion, still has to be  
24 filed public.

1 MS. HICKMAN: I understand that D-20 will be filed  
2 public.

3 THE COURT: Not D-20. I think it is going to be  
4 D-21.

5 MS. HICKMAN: D-20 is denied.

6 THE COURT: Denied.

7 MS. HICKMAN: Just do it as D-21.

8 THE COURT: Right.

9 MS. HICKMAN: Perfect. Okay.

10 THE COURT: You have to, in that motion, explain  
11 what we should do in the submittal, whatever you want to do  
12 with that. The process, just so you know, if you file a  
13 motion under seal and accompany that motion under seal with a  
14 motion to seal it, the clerk's office will seal it.

15 MS. HICKMAN: That hasn't been my experience.

16 THE COURT: Well, that is the order. That is what  
17 they are suppose to do. If you don't feel comfortable with  
18 that, you certainly can file a motion to file a motion under  
19 seal. The problem we have, you have to give some indication  
20 what that motion is going to be in order for the Court and the  
21 State to know whether or not it is appropriate. See if you  
22 can work on it. Keep track.

23 MS. HICKMAN: Perfect. Thank you.

24 THE COURT: Thank you.

1           We have, I think the next thing, the only other  
2    thing right now is D-2 which is a Motion to Continue, the  
3    Supplemental Motion to Continue, and the Second Supplemental  
4    Motion to Continue, and I think it also relates to a motion  
5    that has not been submitted to the Court yet but is the  
6    defense D-18 which was a Motion to Extend Deadline for Notice  
7    of Experts. I think those kind of dovetail with each other.  
8    The State has not had an opportunity to respond to D-18  
9    because of the timing of it. I want you to have an  
10   opportunity to do that, but I also understand the Motion to  
11   Continue is kind of breathing down everyone's neck, and I have  
12   to decide whether I am going to continue. The Second  
13   Supplement to the Motion to Continue has been filed and fully  
14   briefed. Is there anything further the defense wants to add  
15   to the Motion to Continue?

16           MS. HICKMAN: There is, Judge. So what we are asking  
17   the Court to do, obviously, is continue the trial to allow us  
18   the necessary time to investigate, prepare and litigate the  
19   Atkins issue, and then confront the evidence against  
20   Mr. Martinez Guzman at trial, and to be able to investigate  
21   and prepare, to present mitigation at the penalty phase if we  
22   get there. That would allow each juror to reach their  
23   independent moral conclusion about whether or not the death  
24   penalty is appropriate, right? Ultimately, if this gets to

1 the penalty phase, that decision has to be made individually  
2 by each juror. At this point, we anticipate we'll be ready for  
3 the Atkins hearing in July as the Court has laid out. We'll  
4 not be prepared for a death penalty trial in April of 2020 or  
5 in August of 2020 as the Court has suggested, really at any  
6 point in 2020. What we are asking the Court to do is continue  
7 the trial at least until February of 2021. The standard for a  
8 continuance is good cause. Obviously, good cause is not black  
9 and white. It hasn't been succinctly defined, but we have  
10 laid out good cause in the filings we have done which is the  
11 Motion to Continue, Supplemental Motion to Continue and the  
12 Second Supplement to Continue. Again, Judge, those are the  
13 necessity for more time to investigate the mitigation  
14 evidence, the unavailability of our neuropsychologist, and the  
15 need for him to be able to conduct the necessary testing for  
16 the Atkins claim. And, most importantly, at this point in  
17 time and most unexpectedly, is the resignation of our in-house  
18 Mitigation Specialist. We have our ethical duties to conduct  
19 mitigation evidence. Those ethical duties tie to Mr. Martinez  
20 Guzman's right to effective assistance of counsel, the right  
21 to a fair trial, the prohibition against cruel and unusual  
22 punishment, especially as it goes to the Atkins issue, and to  
23 due process. And so what we are really just asking for is the  
24 Court to give us the adequate time necessary to provide those

1 Constitutional rights that Mr. Martinez Guzman is entitled to,  
2 and asking the Court continue trial into 2021. We are looking  
3 at February of 2021. That request, Judge, is not  
4 unprecedented, and it is not unreasonable. And when we are  
5 looking at the time that it takes to get a case, any death  
6 penalty case, really, from an arraignment to trial and the  
7 potential mitigation phase, that is the average time that it  
8 takes for death penalty litigation in Nevada.

9 THE COURT: Do you think it should be the average  
10 time in northern Nevada? Given the problems in Clark County,  
11 the significant issues in Clark County, the huge number of  
12 death penalty cases in Clark County, and the circumstances of  
13 the Courts in Clark County, I don't think that average should  
14 affect us.

15 MS. HICKMAN: Judge, so the thing about bringing  
16 that up is there is a Life-Death Commission that is part of  
17 the Commission on the Statewide Rules of Criminal Procedure.  
18 In February of 2016 they issued a report and recommendations.  
19 I actually brought a copy for the Court, because there are  
20 some things in it I would like to talk about. If I could have  
21 this marked. I also have a copy for the State.

22 THE COURT: Yes, you can mark it as an exhibit.  
23 She'll mark it next in order.

24 MS. HICKMAN: Perfect. I will give the Court a

1 copy.

2 THE COURT: Any objection to the Court considering  
3 this as part of argument today?

4 MR. HICKS: Thank you, Your Honor. Your Honor, I  
5 serve on the work group of that Commission. It has not been  
6 published. It has not been submitted to the whole group. It  
7 has not been made public. I don't know what relevance it has  
8 for today's purposes. I object to its submission.

9 THE COURT: Why am I looking at something the  
10 Commission hasn't adopted?

11 MS. HICKMAN: Judge, there is some findings that I  
12 think are very relevant to this case.

13 THE COURT: Who found those findings?

14 MS. HICKMAN: Well, maybe they are not findings. I  
15 think that was the wrong word. But the report and  
16 recommendations are based on the experience of the people on  
17 that Committee. The reason it is important for the Court to  
18 note --

19 THE COURT: Is this the names of the people?

20 MS. HICKMAN: Yes.

21 THE COURT: There is nobody on this list that is  
22 from northern Nevada except Chris Hicks who just told me he  
23 has never seen it.

24 MR. HICKS: That's not true. I have seen it. I was

1 part of this group. It is exclusively based on the Las Vegas  
2 problem. That is why we came together. But it is a Nevada  
3 Supreme Court Commission, and the Nevada Supreme Court has not  
4 adopted it, has not published it at this time. That  
5 Commission has not forwarded it on to the Supreme Court.

6 THE COURT: I am sorry, counsel, I am very familiar  
7 with the problems in Clark County, the delays in getting cases  
8 resolved in Clark County, problems they have had with death  
9 penalty cases, especially in Clark County at this time, the  
10 backlog of death penalty cases in Clark County. I just can't  
11 consider their experience as something that would be a basis  
12 for this Court to grant a continuance.

13 MS. HICKMAN: Judge, I am not asking you to make  
14 this as the reason you would grant a continuance. Here's why  
15 this is important, I will just let the Court know: This  
16 report and recommendation finds that an average death penalty  
17 case takes 18 to 24 months from an arraignment to trial. That  
18 says nothing of the backlog in Clark County. That says  
19 nothing of the issues in Clark County. And the reason it  
20 takes that amount of time is, on average, no matter how many  
21 cases you are working on, no matter how much litigation is  
22 going on in different cases, it takes on average in death  
23 penalty cases of 2000 attorney hours to get a case to trial.  
24 That doesn't include trial hours. That report also --

1 THE COURT: That is one year.

2 MS. HICKMAN: Huh?

3 THE COURT: Two thousand forty hours is forty hours  
4 a week.

5 MS. HICKMAN: Doing just that.

6 THE COURT: Right. And you have five Chief Deputies  
7 doing I don't know what. But the Supreme Court told us we are  
8 all supposed to be spending most of our time on this.

9 MS. HICKMAN: I think it is unrealistic we are  
10 spending the majority of our time on this. We are investing a  
11 huge amount of time which the Court and the State has actually  
12 argued for. But it is interesting, because what that talks  
13 about is the complexity of the case. It assumes that the  
14 attorneys would have a Mitigation Specialist. It assumes that  
15 the attorneys contact experts early on. It assumes that the  
16 attorneys would be efficient in working the case which is  
17 exactly what we are doing in this case. So, no, I don't think  
18 this is binding on the Court. I think it is illustrative of  
19 the issues we have run into in this case.

20 THE COURT: I guess, but if you have five Chief  
21 Deputies on this case each working two thousand forty hours, I  
22 mean that would be over ten thousand hours in one year. If  
23 you only do twenty percent of your time, you are doing two  
24 thousand hours in one year. And you're now telling me you

1       need two years?

2                   MS. HICKMAN: Right. Judge, that is what we are  
3       telling you. We are telling you that there is no arguable,  
4       colorful, arguable argument that we have not been working hard  
5       on this case, and we have not been doing everything which we  
6       need to do in this case. I think it is important for the  
7       Court to know the day this case was set for trial we had it  
8       for thirty-eight days. We had no time in Justice Court. We  
9       attempted to see Mr. Martin Guzman in Carson City before that.  
10      We were denied trying to go see him. He doesn't speak  
11      English. He's young. He's from a different country. All the  
12      investigation we have to do regarding mitigation has to be  
13      done in a language that none of the five Chief Deputies speak.  
14      It is in a country we don't live in. It is one of the most  
15      dangerous countries in the world. We hadn't started  
16      investigation, and the State knows that, because they invited  
17      us to present mitigation at the Committee to determine whether  
18      or not the death penalty should be pursued. We told them we  
19      don't know anything about him. That was in March. We don't  
20      know anything. We would appreciate the opportunity to look  
21      into his background and who he is and present that to you at a  
22      later time.

23                   So, Judge, all of those hours that we are talking  
24      about, even if we are talking about two thousand hours, that

1       says nothing of the Atkins issue that we have in this case.  
2       Once we determined there was a potential Atkins issue in this  
3       case which was really June, July when we realized we had  
4       something colorful, that is where all our resources have gone.  
5       It has been a Herculean effort by our team to get to where we  
6       are now, to get to the point where we have an expert who  
7       anticipates traveling in March, to have all of our mitigation  
8       and interviews and everything done to present to the Court in  
9       July. The import of us putting all of our effort to that  
10      Atkins issue, really it is constitutional. It violates the  
11      Eighth Amendment for the State to pursue death against  
12      somebody who is intellectually disabled. That is of  
13      Constitutional magnitude, and we have a duty to investigate  
14      that as we have been doing. The death penalty against somebody  
15      who is intellectually disabled serves no purpose. It runs  
16      against the national consensus and creates a risk the death  
17      penalty be imposed in spite of factors that may call for a  
18      much lessor penalty.

19               We put so much effort in the Atkins claim to be  
20      ready on the Court's schedule. The State can't argue we have  
21      been missing deadlines, haven't been diligent, when we come  
22      into Court we are not prepare, because we have been doing  
23      that. The reality is we are not ready and will not be ready.  
24      There is no pressure the Court or the State can put on us that

1 is going to change that. The experts that are necessary to  
2 investigate Atkins and the investigation that we have going to  
3 El Salvador is totally different than the investigation that  
4 needs to be done in mitigation. Yes, there is some overlap,  
5 but there is not enough to make that work that has been done  
6 sufficient if this gets to a penalty phase.

7 THE COURT: So you are telling me there is nothing I  
8 can do to get you to get ready, and yet you told me six months  
9 ago, five months ago, I guess, that you would be ready in  
10 July, even though we are going to be able to do it, for sure  
11 we can make those dates. If the Court would let us continue  
12 the April date to July and the end of August beginning of  
13 September, you could definitely be ready. Now today you can't  
14 be.

15 MS. HICKMAN: Right.

16 THE COURT: What is going to stop you from in  
17 November saying to me, Judge, we can't be ready. Sorry, we  
18 just aren't ready. Then what is going to stop you from saying  
19 six months after that, Judge, we can't be ready. You can't  
20 make us be ready.

21 MS. HICKMAN: Judge, I appreciate that. I am not  
22 saying you can't make us be ready. I don't mean to taunt the  
23 Court. What I am saying is it is impossible for us to do. I  
24 think back five, six months ago when we were sitting here we

1 had an in-house Mitigation Specialist. We had somebody whose  
2 sole job it was to prepare the mitigation for that penalty  
3 phase, and we don't have that right now. We have worked to  
4 mitigate the loss of our Mitigation Specialist. We have posted  
5 the job. We have contacted CRI who obviously is already  
6 familiar with the case because of their consulting work. They  
7 know Mr. Martinez Guzman, been in contact with his family.  
8 That would be the most efficient way to proceed. However,  
9 given their caseload and the work they are already doing, they  
10 cannot take on all of the mitigation for this case and be  
11 prepared until 2021.

12 THE COURT: Well, I thought your job closed a month  
13 ago or twenty days ago.

14 MS. HICKMAN: Judge, we don't have anybody right  
15 now, and if we hire somebody, that would actually -- if we  
16 hire somebody and put them on this case, the reality is that  
17 is going to be a less efficient way. That person not only has  
18 to be trained, become familiar, become familiar with the case,  
19 get to know Mr. Martinez Guzman, get to know his family, redo  
20 all the work that has been done and then start.

21 THE COURT: Why do you have to redo it?

22 MS. HICKMAN: Not redo it, become familiar with it,  
23 right? They have to know what is going on with the case.  
24 They have to meet the witnesses. They have to do the work,

1 because a Mitigation Specialist is significantly different  
2 than any other person on this team.

3 THE COURT: By your job description, you are hiring  
4 an experienced person who has to have a year's experience as a  
5 Mitigation Specialist just to be hired. I don't know why you  
6 haven't hired anybody yet if you closed December 23rd. I  
7 understand the holidays, but you are going to get somebody on  
8 board soon.

9 MS. HICKMAN: Potentially. It is an extremely  
10 difficult position to fill. The last time we opened it, we  
11 didn't have a single applicant who had any death penalty  
12 experience. I can't comment on any of the hiring that is  
13 being done now. Obviously, that is a different issue. It is  
14 extremely difficult to find a Mitigation Specialist who has  
15 the experience necessary to just jump right into one of these  
16 cases. That is the reality of it.

17 So what I am telling you though, Judge, we are not  
18 sitting back waiting for somebody to be hired. We have CRI  
19 who is willing to do it on a very reasonable timeline, but  
20 they won't be ready until 2021.

21 THE COURT: What is going to stop them from saying,  
22 sorry, we had something else come up. We have an ongoing  
23 client. Sorry, that other case got moved. We can't do it now  
24 in February of 2021. We aren't going to be available until

1 September of 2021. The problem is, from the Court's  
2 perspective, there is no finality. There is no work done, we  
3 are ready to go. And in reality, when I read your motion, I  
4 don't think there is ever a time you are one hundred percent  
5 sure that every piece of mitigation has been investigated.  
6 That can't be the standard.

7 MS. HICKMAN: Absolutely, Judge. I think there are  
8 two different positions, right? This is the very first  
9 continuance we have been looking at. This is the very first  
10 time we lost a Mitigation Specialist. This is the very first  
11 time we have come to the Court in good faith, given the work  
12 we have done, saying we are working extremely hard. We have  
13 prioritized this. We have begged experts to make this case a  
14 priority to them. But if we are not ready in six months, then  
15 in six months, then in six months, the Court can say, you know  
16 what, Ms. Hickman, I have heard this five times. Do what you  
17 can do. But now this first time, I am saying this is  
18 completely different than anything that may happen down the  
19 road.

20 THE COURT: I do understand there is a difference,  
21 and I understand there is a difference between a first request  
22 versus your second or third, however, the Court set this out.  
23 We didn't set this on a six month trial or nine month trial.  
24 We did set it out knowing we weren't going to have a

1       continuance, and now we have been dealing with the request for  
2       continuance for quite some time.

3               MS. HICKMAN: Absolutely. I think that goes to my  
4       initial point. When we set this for trial, we didn't know  
5       what we had, right? We didn't have all the discovery. We had  
6       just barely over a month of being on the case when we set the  
7       trial. It is not like this sat in Justice Court for a year  
8       where we knew Mr. Martinez Guzman, met his family, traveled to  
9       El Salvador and got here and said, Judge, we know we do or do  
10      not have an Atkins issue. We know or do not know what the  
11      issues are. We didn't have all the forensic evidence at that  
12      point. We didn't have the Mitigation Specialist who resigned.  
13      We didn't have any of those issues. We didn't have a case on  
14      Writ to the Supreme Court at that time. So I think what I am  
15      asking the Court and the State to recognize is things change.  
16      We have been extremely honest and candid with the Court as we  
17      should be. Just because we say something at one point then it  
18      changes six months down the road when something unexpected  
19      happens doesn't make us dishonest or disingenuous. It is us  
20      being candid with the Court. We have done that the whole  
21      time. I am being candid with the Court now when I say we have  
22      spent so much time working on this case, and we will not be  
23      ready. The effort that we have put into it has come at a  
24      certain cost, right? We met the Court deadlines to file

1 motions. We met the Court deadlines to do just about  
2 everything that we have, and now here we are in January and we  
3 are saying, Judge, we are not there. We don't even have a  
4 cogent defense strategy on the merit phase because we have  
5 been working so hard to do everything else. It is not easy  
6 for an attorney to come in and admit those things, but it is  
7 the truth, and it is where we are in the case. We need to  
8 conduct investigation into the merits of the case. We need to  
9 have a defense strategy. We need to hire our experts if we are  
10 going to present them at the merit phase or hire them to  
11 confront the State's evidence. They have seventeen experts.  
12 The majority of those experts work for the State. They are in  
13 the crime lab. We don't have experts on hand. Every one of  
14 the experts that we hire, every other case that they are  
15 working on is the Martinez Guzman in that jurisdiction. So,  
16 yes, we can beg them to prioritize us as CRI has done. We  
17 tell them we have this deadline, our Court really wants to  
18 make it, and they are working to make it happen. But at a  
19 certain point, there just aren't the hours in the day and it  
20 is not possible to do it. We have to be able to make strategic  
21 decisions, and we have to have the time to investigate and to  
22 work on the case in order to make these strategic decisions,  
23 to be able to defend those in the coming years, right, because  
24 we all know this case will be reviewed for years. And while I

1 understand we are always thinking about what will be done  
2 later on, what we are thinking about today is our ethical  
3 duties to Mr. Martinez Guzman right now and making the best  
4 choices, respecting his right to due process and not  
5 prioritizing efficiency over his right to effective assistance  
6 of counsel, due process, all of the things that he's entitled  
7 to.

8           Losing our Mitigation Specialist was devastating,  
9 absolutely devastating to our ability to be prepared for the  
10 case. The loss of that person really cannot be overstated. No  
11 one of our team can do mitigation evidence, sorry, mitigation  
12 investigation. I lost my train of thought. To be able to  
13 present that then to the jury and allow each individual juror  
14 to weigh mitigation to determine whether or not, under their  
15 own individual moral choice, that death is or is not  
16 appropriate. And, Judge, the Eighth and Fourteenth Amendments  
17 require that those sentencers not be precluded from  
18 considering any aspect of the defendant's character or record  
19 or any of the circumstances of the offense that the defense  
20 proffers as a basis for a sentence less than death.

21           At this point, we don't have the mitigation to  
22 present. We don't have the mitigation investigation done,  
23 because we know that it is there, or we -- I guess we don't  
24 know. We have made assumptions based on what we uncovered

1       that there is quite a bit there. I know the Court had said one  
2       of the things you don't want to consider is the Life-Death  
3       work group, but one of the things really interesting about  
4       that, it talks about the time that should be given to defense  
5       attorneys to litigate death penalty cases. Part of it is the  
6       difficulty in getting documents, school records, medical  
7       records. And in that, it says the subpoenaing of out-of-state  
8       materials is extremely complicated and it takes a long time.  
9       And we are talking about documents in El Salvador in a country  
10      that may or may not keep them, that are not digitized. We had  
11      to go and find people and say, hey, would you go look for  
12      those in boxes? We don't have all that yet. That takes time.  
13      That is nothing the Court can hurry. I am not saying -- I am  
14      not taunting the Court. We can't go to El Salvador and say  
15      our court in Reno says we have to have this by this date. And  
16      so recognizing those things take a long time in any case, but  
17      particularly this one, is something that is important to know  
18      and to recognize, and that we have taken huge efforts to get  
19      those things.

20               The other issue, Judge, of course is without a  
21      Mitigation Specialist, we are in violation of ADTK 411 which  
22      does recommend that we have a Mitigation Specialist which is  
23      why we have always had one. We don't have that right now.

24               Finally, Judge, I think that the importance of what

1 we are requesting and the prejudice Mr. Martinez Guzman would  
2 suffer cannot be overstated. It is not hyperbole to say it  
3 would be catastrophic if we didn't have the adequate time and  
4 resources to present mitigation at a penalty phase, to  
5 properly litigate an Atkins claim, to be prepared to meet the  
6 evidence that the State intends to present at a merit phase.  
7 That is not hyperbole. The prejudice I have we don't do our  
8 job, don't present those things and don't allow the jurors to  
9 know what is there or to let the Court know about the Atkins  
10 claim, the prejudice is that death can be pursued and may be  
11 imposed on somebody who is not eligible, on somebody that the  
12 Constitution says is not appropriate for the death penalty,  
13 that it serves no purpose against. And that is what we are  
14 asking the Court to consider, not for purpose of efficiency,  
15 not to put a year timeline that is somewhat arbitrary over due  
16 process when we are here telling you, Judge, we need more time  
17 to do our job.

18 THE COURT: Thank you. State.

19 MR. HICKS: Thank you, Your Honor. Your Honor, the  
20 defendant is indigent. He's entitled to an adequate legal  
21 defense. The problem is, why this train has gotten off the  
22 tracks, is because they are trying to create the dream team of  
23 experts, the dream team of Mitigation Specialists. And if you  
24 start hiring expert after expert after expert, of course you

1 are not going to have time. You are going to have scheduling  
2 conflicts. And so this is beginning to get beyond the bounds  
3 of what this defendant's, taxpayer funded defense is entitled  
4 to. Now I can't overstate how enormously frustrating all of  
5 these continuance requests are. Uniquely today, Your Honor,  
6 is the one year anniversary when Sophia Renkin was brutally  
7 murdered in her home. In two days it will be the one year  
8 anniversary of when the Davids were brutally murdered in their  
9 home. Three days ago was the one year anniversary when Connie  
10 Koontz was brutally murdered in her home. The victims' family  
11 members are enduring the grief for their loved once being  
12 stolen from them. At that same time they are having to come  
13 to court, they are here at every hearing, they are having to  
14 testify, that are having to listen to very difficult things.  
15 They are yanked into the criminal justice process which,  
16 frankly, is not forgiving for victims, and all the while they  
17 are doing it with grace. They are doing it with dignity. But  
18 they are also entitled to a just and efficient process.

19 When we were about to set this for trial, the State  
20 sat down with all the victims and explained to them that we  
21 were going to sit with the defense and reach a legitimate  
22 trial date that would be a go date. We said to them it is  
23 probably going to be more than a year from now. Surprising to  
24 them. Sure enough, we met with the defense. We said, listen,

1 and frankly, Judge, I would say if it were up to us this trial  
2 would be over. He would be sentenced to death. But we were  
3 reasonable. We said we'll go over a year out from the  
4 arraignment with the intention that is a legitimate date. We  
5 explained that to all of them, and they accepted it and they  
6 trusted us. And now here we are with these hollow assertions.  
7 They have not given you anything tangible yet for good cause.

8 Now, but I have to go through a couple of these  
9 arguments. There is three things I would ask that Your Honor  
10 just keep in mind when you consider their argument, you  
11 consider my argument, and you consider your ruling. First is  
12 this: The defense team, you have touched on it a little bit  
13 today, there are five attorneys assigned to his defense. The  
14 P.D. himself, four Chief Deputies. That, Your Honor, I have  
15 never seen a defense team, publically funded defense team like  
16 that in the history of my time in Washoe County, and I'd be  
17 surprised if you have in your illustrative career. They also  
18 have experts, excuse me, they have investigators. I know they  
19 have at least one assigned, but I would venture a guess there  
20 is more investigators assigned to this case out of the P.D.'s  
21 office. They have a mitigation consulting firm where at least  
22 two Mitigation Specialists already traveled to El Salvador  
23 with the defense. This is a monumental defense team. That is  
24 one point I would like Your Honor to consider.

1           Second is they already have the premiere expert in  
2     the State of Nevada for an Atkins claim. They had her before  
3     we even indicted the defendant. She has been acknowledged by  
4     the Nevada Supreme Court as being completely qualified to do  
5     an Atkins evaluation and testimony. They have her. She's  
6     bilingual. She's local, and she has been meeting with this  
7     defendant since March 4th when she gave him his very first IQ  
8     test.

9           The last thing I want you to please consider is  
10    Nevada Supreme Court Rule 250 which, as we all know, is what  
11    dictates what we are doing here. That Rule starts off with  
12    the scope of the rule. It says: "This Court places the  
13    highest priority on diligence and the discharge of  
14    professional responsibility in capital cases. The purpose of  
15    this rule is to ensure that capital defendant's receive a fair  
16    and impartial trial, appellate review, post conviction review,  
17    and to minimize error in capital cases and to recognize and  
18    correct any error." It ends with, "And to facilitate the just  
19    and expeditious final disposition of all capital case." It  
20    starts with the highest priority, professional responsibility  
21    and ends with just and expeditious disposition.

22           So, Your Honor, I am not going to rehash my argument  
23    from the original Motion to Continue, but there is a point  
24    that has to be made. As we sit, their motion was really filled

1 with kind of generalities. This is the problem with doing  
2 capital cases. There was nothing tangible to support good  
3 cause, and Your Honor keyed on that, because in their motion  
4 they didn't tell us who was unavailable, didn't tell us what  
5 they would testify to, didn't tell us why they weren't  
6 available, and that is important to remember, because in that  
7 hearing, Your Honor, several times, appropriately, you held  
8 them to task, said who are these people, what are they going  
9 to testify? The State hasn't had a chance to traverse these  
10 findings. The State can't even challenge the allegation there  
11 is good cause. At one point you said I am not going to  
12 continue the trial. I either will consider a short  
13 continuance that is reasonable and necessary, or I will just  
14 deny it, because I don't know who this person is. The State  
15 has not had an opportunity to traverse who he is or why they  
16 aren't available on the trial date we have.

17 They then filed a supplement and they still did not  
18 tell us who these people are, what they will testify to, why  
19 they are necessary. And to this day, they still haven't. The  
20 expert notice filing date has come and gone, and not one of  
21 the experts, with the exception of Dr. Greenspan and  
22 Dr. Mahaffey, none of the other ones, the neuropsychologist,  
23 the neurologist are still not noticed. They still haven't  
24 told us. The irony of that, they are saying in their Motion

1 to Continue the filing deadline, well, we are not prepared to  
2 endorse these experts. Well then why are they essential to  
3 the trial? Why are we continuing it? You aren't even  
4 prepared to say this is something we need. How can you do  
5 that? They are not complying with that Order, Your Honor.

6 I would say, for that reason alone, let's get this  
7 train back on the tracks, use the experts they have, go on  
8 April 6, 2020.

9 As an side, we were talking about lack of  
10 compliance, before they went to El Salvador, Judge, you were  
11 very clear, we expect you to record these interviews. We  
12 expect you to provide to the State what you turn up there. As  
13 of today, Judge, we still don't have anything. Four months  
14 ago you told them to do that when they got back. We still  
15 don't have that.

16 Back to my argument in regard to the Second  
17 Supplement, now the Washoe County Mitigation Specialist has  
18 resigned, and so now we have to continue the trial to over a  
19 year from now. Now, Your Honor, I would suggest that  
20 everything is not perfect as you touched on. You are not going  
21 to always have all the mitigation. When you have a defense  
22 team the size of their defense team, you make do and you get  
23 it done. Because you have to recognize they had their Washoe  
24 County Mitigation Specialist the first nine months. Again, I

1 would imagine this was the primary case the expert was  
2 focusing on, that Mitigation Specialist. They don't talk about  
3 the ability to hire a new one and when that is going to  
4 happen. They say they need a continuance despite the fact they  
5 have a mitigation consulting firm which they retained all the  
6 way back in June, seven months ago. They have this legal team  
7 as I said, and as I mentioned earlier, they have a local,  
8 bilingual clinical psychologist who does mitigation work, who  
9 has been meeting with the defendant, again, before we even  
10 indicted him.

11 Again, the question for me as I go through this, and  
12 I tell you it is so frustrating, what are we doing? How are  
13 we getting there? This was an agreed upon date. We have  
14 given them all the discovery promptly. Mr. Arrascada said it  
15 was the best discovery he had ever seen in a case. The State  
16 is doing everything we need to do. But this is not just and  
17 expeditious. This is not just for these victims to come in and  
18 say we need to continue this until February of 2021 when we  
19 already gave them a year, a stipulated trial date.

20 So the last thing, Judge, I just want to touch on,  
21 what drives this frustration secondary to what I am having to  
22 tell our victims is when you look at the record and you try to  
23 square, try to figure out how we are where we are, it doesn't  
24 make any sense. We are hearing different stories throughout.

1 I am not suggesting they are dishonest. I am very fond of all  
2 the attorneys to my left. But when we look at the record,  
3 Judge, we have regarding the Atkins claim, we have the defense  
4 team was sending Martha Mahaffey to do the very first IQ test  
5 on the defendant on March 4th of 2019. We didn't even set this  
6 trial until March 19th. So she was already administering an IQ  
7 test to the defendant.

8 Moreover, in June, Mr. Arrascada said we have been  
9 investigating the mental health concerns since day one. But  
10 then, Your Honor, as we start getting closer to them now  
11 wanting a continuance in the Second Supplement, they say at  
12 the time the trial was set, the defense team did not know it  
13 would need to divert resources to litigate a claim of I.D.  
14 They knew. And then at the 9, September 21 status hearing, it  
15 was again stated by Mr. Arrascada, we didn't know there was an  
16 I.D. issue until we received Martha Mahaffey's report. We  
17 received that report in September. She administered the first  
18 IQ test in March. They knew. So it is frustrating, Your  
19 Honor, because we are getting two different answers regarding  
20 availability of the experts. On June 29th, Judge, you said I  
21 want you all to exchange your experts and make sure they are  
22 available. At that hearing, the defense team confirmed the  
23 availability of Martha Mahaffey, the availability of the  
24 mitigation consulting firm and the availability of a

1       neuropsychologist. Completely adequate legal defense. As of  
2       July, they were all available for the hearing and for the  
3       trial in April.

4               Then on September of 21, the teaching expert,  
5       Greenspan, comes along. He's available too in the beginning  
6       of 2020, but now their other experts starts to come into the  
7       fold. We hear about one that is in Rome. Mr. Arrascada is  
8       going to meet him when he gets back. What happened to the  
9       three they had in July? Then you get the Motion to Continue  
10      which I have already argued to you, the original one. But in  
11      the Supplement to the Motion to Continue filed on October  
12      22nd, they state all our experts are available. Six of them  
13      for the July 27th date that Your Honor was contemplating as a  
14      continuance time for the Atkins hearing, and for the August  
15      31st trial. Six experts which, again, Your Honor, I think is  
16      pressing the bounds of adequate legal defense. But now,  
17      because of the sole resignation of the Washoe County  
18      Mitigation Specialist, this case has to be continued to  
19      February 2021. If we were to do that, Judge, I think you were  
20      touching on this point, in previous arguments for continuance,  
21      the defense team said, well, one of our experts is a college  
22      professor. In turn, he's not available in April. We have to  
23      wait until Summertime when he doesn't have class. That is one  
24      of the arguments presented. What are we going to do in

1 February? The guy is presumably still a teacher. So I see,  
2 as you were saying, the finality issue is going to continue.  
3 Then as I said again at this most recent notice to continue or  
4 request to continue filing deadline, they are not even  
5 endorsing experts. At this point, we are three months away  
6 from our trial date, Your Honor.

7 The last point I want to make in regards to what  
8 Ms. Hickman brought up, the last death penalty case that was  
9 tried in Washoe County was James Bela. That case was tried in  
10 less than a year. Tamir Hamilton, the same situation. I  
11 don't believe they had a Mitigation Specialist. They used  
12 investigators. I could be wrong. My recollection is the  
13 Washoe County Mitigation Specialist was created about three  
14 years ago. So it is helpful. It is a tool, but not the end  
15 all be all whether or not they can do this case.

16 So, Your Honor, we have got to get this back on the  
17 tracks. This trial needs to go. The Nevada Supreme Court Rule  
18 250 tells us that. They tell us it should be just and  
19 expeditious, and tells us it should be the highest priority.  
20 Frankly, Judge, I don't feel like that is what is going on.  
21 The State respectfully submits we still go to trial in April  
22 of 2020 and get this thing going. With that, I ask you deny  
23 their motion. They have an expert.

24 THE COURT: Ms. Hickman.

1 MS. HICKMAN: Thank you, Judge. I am going to start  
2 at the beginning, and it is hard to put into words how  
3 offensive it is to say that somebody who is indigent is  
4 entitled to a certain defense whereas the implication is  
5 somebody who is not indigent is entitled to a different  
6 defense.

7 MR. HICKS: Your Honor, excuse me, I am directly  
8 citing Supreme Court authority that I put in my last motion  
9 what you need, what the United State Supreme Court has said.

10 MS. HICKMAN: Your Honor, the case he's citing is  
11 Nika versus Oklahoma. And that case, that was a very small  
12 portion what Nika is about. You don't just give somebody an  
13 attorney and say that is enough. You give somebody an  
14 attorney, and you give them the ability to call experts and  
15 you give them the ability to have resources and time to defend  
16 that person. And it does not say an indigent person is  
17 entitled to less than somebody who is not. That is not juris  
18 prudence, and that is offensive. There is nobody who has come  
19 back and said in Nika, which was just overturned by the Ninth  
20 Circuit, the death sentence for lack of mitigation, nowhere in  
21 the Opinion did it say but he was indigent so he's not  
22 entitled to this. And the interesting thing about that  
23 Opinion, you know what they had? A neuropsychologist who was  
24 versed in his native language and in his native culture. That

1 is what we are asking for in this case. You know what they  
2 did in Nika? They went to where he was from. They  
3 interviewed his family. They got documents. It has taken  
4 years to unwind what was not done originally. And what we are  
5 trying to do is to represent Mr. Martinez Guzman  
6 Constitutionally with no thought to say, well, he's indigent.  
7 He's El Salvadorean, let's kill him within a year. Who cares.  
8 That is not the standard. The standard for every single  
9 person that the State wants to impose a death penalty on is  
10 the same. That is the effective assistance of counsel.

11 THE COURT: Counsel, you don't have any other cases,  
12 though, in the Washoe County Public Defenders Office right now  
13 that is death penalty do you?

14 MS. HICKMAN: We do not.

15 THE COURT: So have you in the last eight months had  
16 any cases in the Washoe County Public Defenders Office that  
17 was death penalty?

18 MS. HICKMAN: The most recent case that resolved was  
19 a case in Department 8. I don't know if it was less than  
20 eight months ago.

21 THE COURT: That was the case that was a retrial?

22 MS. HICKMAN: No. That was Mr. Montalongo. The  
23 State withdrew their notice of intent to seek death and he  
24 pled guilty to life wouldn't the possibility of parole. That

1 was less than eight months ago.

2 THE COURT: So you haven't had any death penalty  
3 cases going to litigation to the point of trial?

4 MS. HICKMAN: Not currently.

5 THE COURT: Nor have you?

6 MS. HICKMAN: Me? Ever?

7 THE COURT: No, no. I don't mean ever. I  
8 understand that. I mean the last eight months.

9 MS. HICKMAN: No. No. Sorry. I misunderstood the  
10 Court's question.

11 THE COURT: I am talking about resources. You are  
12 talking about the resources of indigents.

13 MS. HICKMAN: Right.

14 THE COURT: I don't think there is really any  
15 question that Mr. Guzman has had significant resources. It  
16 doesn't matter who pays for them. I get that. It is a  
17 question of whether or not he's had adequate resources, and he  
18 has.

19 MS. HICKMAN: Judge, I don't agree with you on that  
20 point. I would be more than happy to come into chambers with  
21 our team and lay out who we are talking to, where we are in  
22 their work, what their findings indicate and where we are  
23 going with that. The problem of course, if we come in here and  
24 lay all that out and we end up not using her or it ends up not

1     being an issue, the reality is it could be used against him.  
2     We have a duty to not disclose the preliminary findings or  
3     things that our experts have said, hey, as we are working,  
4     this is what we are seeing, until we have a report and we know  
5     if we are going to use it. We are not there yet. You know,  
6     the State talks about this dream team of experts. The reality  
7     is it is not true. This is death penalty litigation. This is  
8     what it looks like when the State decides it is going to use  
9     its awesome power to attempt to have somebody sentenced to  
10    death. That is the reality. These resources are not expended  
11    in a case where somebody is facing twenty years to life or  
12    life without the possibility of parole. But if a death  
13    penalty is imposed, there is no going back, right? Once the  
14    State has determined to kill somebody and they are dead, we  
15    are done, which is why Rule 250 doesn't say our primary goal  
16    is efficiency, and then after that if have they are indigent  
17    some experts but they're not more and due process. The very  
18    first thing that Rule 250 says is diligence on the discharge  
19    of professional responsibility. There is no argument we have  
20    not been diligent. There is none. Then the second purpose is  
21    to ensure that capital defendants receive fair and impartial  
22    trials, appellate review and post conviction review, and to  
23    minimize the occurrence of error. Those are the first things.  
24    And then efficiency. And efficiency over the top maybe the

1 blood loss the State has to have within a year it will be  
2 done, we are not there, Judge. What we are arguing does not  
3 discount what the families are going through or the victims  
4 are going through. There is no way we are trying to make this  
5 more painful for anybody. But there are two sides to that  
6 coin, because in the news the Court can see what the families,  
7 the victims when a case comes back fifteen years later and  
8 they have to re-testify, they have to re-open it, it is  
9 relitigated is significantly more painful. Allowing us time  
10 and resources to do our job now, we are not discounting that  
11 argument at all. While we are sympathetic to it, Judge,  
12 everybody in this courtroom has different roles and different  
13 people they are responsible for, and we are responsible to  
14 ensure that the death penalty is not imposed on somebody who  
15 does not deserve that. It is not adequate.

16 Again, the State has said we have these hollow  
17 assertions and this publically funded team of five attorneys  
18 is good enough. Judge, again I am more than comfortable  
19 telling you, letting you look at our time logs, letting you  
20 look at the work we have done to ensure we are diligent and  
21 honest when we say we can't do it. We may have five attorneys.  
22 We may have an investigator. We may not have a Mitigation  
23 Specialist, but look what we are up against. They have  
24 endorsed nineteen experts, and six is too many from our side?

1 They have five law-enforcement agencies, and one investigator  
2 is enough to go up against that? You can't compare those  
3 things. We are never going to have those resources, and we  
4 don't have to do the same amount of work they do. We have to  
5 do a significant amount of work. It is different and it takes  
6 different time, but to say just because there is five  
7 attorneys on it doesn't mean it can be done in an unreasonable  
8 time. And I don't know that would ever be defensible if it  
9 came back and they say well why didn't you do that, and we  
10 say, well, there was five of us. That is good enough. It  
11 didn't get done. It didn't get done. But there was five of  
12 us.

13 I want to address the argument about Dr. Mahaffey.  
14 And there are a couple of things I want to talk about. When  
15 the State wants to argue Dr. Mahaffey is enough. The first,  
16 if she's such a wonderful expert they have such confidence in  
17 her, why can't we just stipulate she's correct and be done  
18 with it? Why can't the State say, yes, we believe  
19 Dr. Mahaffey. She's your premier expert. Her determination  
20 carries the weight, and we agree this person is ineligible for  
21 the death penalty. Because I assume they are going to  
22 challenge it.

23 THE COURT: You haven't even filed a motion yet.

24 MS. HICKMAN: Right. We are not there yet. We are

1 not ready. And the State argues she's completely qualified,  
2 totally disregard the Affidavit she wrote. If you look at  
3 page 1, the fourth paragraph, she says: Yes, I have been the  
4 sole expert, but as the legal and psychological community  
5 gains experience with Atkins cases, it has become more known  
6 for the defense counsel to hire multiple psychologists to  
7 address Atkins issues. The State has two they want to rebut  
8 her with.

9 Further, she recommends a neuropsychologist be  
10 hired. Then she tells us why. She recommends an MRI be  
11 obtained. Those are things Dr. Mahaffey cannot do no matter  
12 how qualified she is and no matter how wonderful she is. I  
13 anticipate the State would challenge her on her limitations at  
14 the Atkins hearing.

15 THE COURT: Let's move beyond that. You have moved  
16 beyond that. You have a neuropsychologist.

17 MS. HICKMAN: Correct, which is why their assertion,  
18 just because she has done this testing, she's done and we are  
19 done. The other thing is she talks about how much data is  
20 required to be collected. She says it typically takes ten  
21 months to investigate and more time when it is in a foreign  
22 country. So this expert, who the State obviously has enormous  
23 confidence in, is recommending we do everything we are telling  
24 the Court we are doing, and that we just don't have the time

1 to complete, not because we are not being diligent, but  
2 because it is the reality of death penalty litigation, and  
3 these are the things we come up against when the State files  
4 that notice of intent to seek death. We wouldn't have an  
5 Atkins claim if was just a first degree murder.

6 Again, this is not your average case. We have three  
7 separate crimes. We have Carson City crime scenes. We have  
8 searches. We have thousands of photos. We have hours of  
9 interviews. A lot of them are in Spanish and they have to be  
10 translated. This is not your average case, right? This is  
11 not something we can just say, okay, yeah, in a year, he's  
12 indigent, let's be done.

13 Further, Mr. Hicks' argument about when Dr. Mahaffey  
14 started her evaluation highlights the Court's Order you just  
15 filed. He has no idea nor should he, what Dr. Mahaffey talked  
16 with Mr. Martinez Guzman about on March 4th. He shouldn't even  
17 know that she was there, right? But that is that playbook.  
18 Now they have information about that. We are asking the Court  
19 to not let them know.

20 MR. HICKS: Judge, it was in her report they gave us  
21 and gave the Court.

22 MS. HICKMAN: But they don't know she was conducting  
23 I.D. testing.

24 MR. HICKS: Yes, we do. She said in her report what

1 day she tested him.

2 MS. HICKMAN: It is just --

3 THE COURT: Well, I entered an Order with regard to  
4 the jail logs. Is that what you are talking about?

5 MS. HICKMAN: Right.

6 THE COURT: That Order has been issued.

7 MS. HICKMAN: Right. But to say, because we were so  
8 diligent in hiring somebody and having her go see him means we  
9 are also not diligent now when we pursued all those persons'  
10 recommendations just is not true, and it is misleading the  
11 Court about what we have been doing and the experts we tried  
12 to hire. Of course we hired an expert to go see him right  
13 away. Of course we hired somebody bilingual to go see him.  
14 That shouldn't be held against us when we are saying we have  
15 done everything we can do to get to the point to be ready.

16 Again, when the State says our motion doesn't tell  
17 us the why's. Why do they need to know who these people are?  
18 Why do they need to know what work they are doing to be  
19 prepared before we know?

20 THE COURT: I am not sure they need to know what  
21 work, but they don't believe you. Let's be honest. The State  
22 does not believe you really have experts, you really confirmed  
23 those experts, that you really want to go trial in a timely  
24 manner. The State's argument is you are delaying, and your

1 motions are for purposes of delay and not to seek a just  
2 resolution. That is just the reality here. That is why they  
3 have said they want to know who the experts are who are  
4 supposedly not available so that they question that person and  
5 ask are you really not available.

6 MS. HICKMAN: Judge, I think there is a difference  
7 between availability and preparedness, right? But, if the  
8 Court has similar doubts, we are happy to come show you.  
9 We'll show you who we are working with. We'll show you the  
10 contact we have had trying to figure out dates and time and  
11 availability in getting work done. We'll lay that all out to  
12 you. That is something the State is not entitled to know at  
13 this point. We are comfortable with these assertions being  
14 made to the Court. We filed our motion because we are not  
15 prepared to endorse. We have nothing to endorse. We have no  
16 reports. Our people have not finished doing their work. So to  
17 endorse them now is premature.

18 Again, Judge, when we are talking about endorsing  
19 experts, the State has endorsed nineteen of them. Again, if we  
20 are starting to endorse experts, we are starting to turn over  
21 things we don't really know the value of, we don't really know  
22 what it says, interviews that may have been done, not knowing  
23 how they fit in our strategy and just turning them over  
24 blindly for efficiency, the chances we commit error, the

1 chance of turning over something being harmful to Mr. Martinez  
2 Guzman, being used against him and violates our duty to our  
3 client goes up, right? We need the time to investigate, to  
4 digest, to make defense strategic decisions. Right now, Judge,  
5 we are running. We have our heads cut off. We are making  
6 split second decisions, this has to go, that has to be filed,  
7 you read this, you do this, and it is not good defense  
8 strategy. We are at the point, despite all of that, we are not  
9 ready.

10 Finally, we cannot do mitigation investigation. Our  
11 office has had a Mitigation Specialist since --

12 THE COURT: But you have Maizie Pusich. She is the  
13 Chief Deputy Public Defender. She's done mitigation expert  
14 testimony or workups for investigators for almost thirty  
15 years. She's probably one of the premiere experts on  
16 mitigation evidence. So you have her. She's a trial lawyer  
17 and an excellent trial lawyer, but we are all aware of her  
18 skills and her experience. Back in the day when you didn't  
19 have mitigation experts she did it, and she knows how to do  
20 it, so she certainly is available.

21 MS. HICKMAN: We are not trying this case thirty  
22 years ago. We are trying it today under the prevailing  
23 professional norms. The prevailing professional norm is not  
24 attorneys do mitigation investigation because it is so

1 specific and so detailed.

2 THE COURT: Actually, I am not sure I agree. I  
3 think the prevailing norm is the trial lawyer not do the  
4 mitigation, but there is no case law that says a person who  
5 has gone to law school is not able to do mitigation work,  
6 especially people that go to law school with underlying social  
7 degrees, social work degrees, sociology degrees, all those  
8 degrees they had before they went to law school. There is no  
9 case law that says a person cannot be a Mitigation Specialist  
10 just because they have a law degree.

11 MS. HICKMAN: She is not an in-house Mitigation  
12 Specialist. She's is not our Mitigation Specialist, and we  
13 have a consulting firm who can do it, is trained do it, who  
14 who is experienced, who knows Mr. Martinez Guzman. I don't  
15 agree with the suggestion, but I want to play that out to its  
16 logical conclusion. If we pull Ms. Pusich in on this case, how  
17 many months does it take with her caseload and her being a  
18 Chief Deputy to read all the discovery, to watch the  
19 interviews, visit with Mr. Martinez Guzman, get to know him  
20 with a translator, get to know his family? Those suggestions,  
21 while they may seem logical, will further delay this. That is  
22 what I am telling the Court. We are trying to do this in an  
23 expeditious timeline, and I am coming to the Court saying we  
24 can't.

1           You know, I understand Mr. Hicks is frustrated and  
2       that he wants the case to go to trial right away. But, Judge,  
3       that is not our concern. And that it frustrates Mr. Hicks  
4       cannot be your abiding concern, right? You have a lot to  
5       balance. One of those things is due process, and that is  
6       extremely important. And one of those things is ensuring  
7       somebody who is not eligible for the death penalty is not  
8       sentenced to death. And that is what we are asking the Court  
9       to allow us time to do. We will be ready we anticipate for the  
10      Atkins hearing in July if things go as planned. We anticipate  
11      our expert can travel to El Salvador in March. We anticipate  
12      our report will be done, ready to turn over to the State soon  
13      after that. CRI is willing to prioritize this case, and they  
14      have done a bunch of work for us in prioritizing it, because  
15      we had that in-house Mitigation Specialist.

16           Again, Judge, the State has said, you know, at one  
17      point they say this, at one point they say this. When we met  
18      with them when we had the case for a month, they say they can  
19      be ready in April. What we are saying Judge is things change.  
20      Timelines change. People come and go. The Atkins issue comes  
21      up. And I will show the Court if the Court would like to see  
22      the e-mails where we first started discussing it looks like we  
23      need to pursue Atkins. And that wasn't in March. When we say  
24      experts are available, sure, hey do you have time in April?

1 As we dig into things, start looking, start doing the work,  
2 they say, yeah, I can be there, but I won't be prepared. That  
3 is a difference. We'll all be in trial in April if you want  
4 us to, but what will we be doing? Not our job. Not providing  
5 Constitutional assistance of counsel. Not confronting the  
6 State's experts. More importantly not presenting the  
7 mitigation that is necessary for the jurors to determine  
8 individually, not Mr. Hicks, not the victims, not the  
9 community at large, but each individual juror to individually  
10 determine whether or not death is an appropriate sentence if  
11 we even get to that point. That is why we are asking for the  
12 time.

13 MR. HICKS: May I clarify one thing?

14 THE COURT: Yes.

15 MR. HICKS: If it seemed I was commenting on the fact  
16 he's indigent, I hope Your Honor did not take it that way.

17 THE COURT: I did not.

18 MR. HICKS: That has nothing to do with it. I was  
19 citing the Supreme Court authority. And merely the  
20 proposition you have to be practical. And what I meant, one  
21 of those cases say an indigent defendant is not entitled to a  
22 legal arsenal of a privately funded defense. That is the  
23 reality of the world. I am not making a comment in any way,  
24 shape or form.

1           THE COURT: That may be an appellate issue when  
2 Mr. Guzman alleges the Public Defender didn't spent the amount  
3 of money or resources necessary. The Court is not considering  
4 that as a basis for determining what is necessary for his  
5 initial defense. What he needs is what he needs, and  
6 mitigation is an important issue in death penalty. The Court  
7 is aware of the responsibility of the Court, and that is to  
8 balance the interests of the public and the victims in  
9 resolving this issue, and the case with Mr. Guzman's  
10 Constitutional rights. There is no question that he has the  
11 Constitutional right to fair and adequate representation. The  
12 defense argues they have not been able to have adequate time  
13 to prepare for the trial date. This circumstance really has  
14 not changed. In March the defense said yes, we'll be ready  
15 fourteen months from now. We don't like it. We would like a  
16 longer timeframe later, we don't want to do it in April, but  
17 we can be ready. We had a lot of hearings, lots of difficulty  
18 trying to move that along. Finally, we get a motion that  
19 people aren't available, and I am concerned, because I do  
20 believe the defense is entitled to experts. So I asked the  
21 defense to go back and determine some tentative dates for an  
22 Atkins hearing if an Atkins motion was filed, which still to  
23 this date has not been filed, taking place in July and a trial  
24 continuance to the last date of August which is really the

1 beginning of September. Will your experts be available? Oh,  
2 yes, Judge. Everybody is ready. Everybody can be available  
3 to go. That was approximately five months before the Court's  
4 notified an in-house Mitigation Specialist has now quit,  
5 therefore the case has to be tried in 2021 because the only  
6 way to make up for that specialist not being available is to  
7 hire the consulting firm which says they can't be ready to go  
8 by then.

9           The Court is frustrated somewhat by the change of  
10 reasons for a continuance. We have the first Motion for  
11 Continuance, then the Supplemental Motion, now a Second  
12 Supplement. In reality, the Second Supplement is probably the  
13 only one that presents good cause for a short continuance.  
14 The lack of the Mitigation Specialist in-house does create a  
15 problem, and the Court is very much aware of that and does  
16 find good cause to continue the trial. However, the person  
17 who has complete control over whether or not there is an  
18 in-house Mitigation Specialist is John Arrascada, the Washoe  
19 County Public Defender. He's the attorney for Mr. Guzman,  
20 personally. He's also the attorney for every indigent in  
21 Washoe County pursuant to the Rules. He has the ability to  
22 request additional funding if he needs it, special funding.  
23 He has the ability to hire someone, get them trained and move  
24 forward. He is the only person who has control over this, and

1       that is Mr. Guzman's attorney. In the unique circumstance,  
2       the Public Defender is also Mr. Guzman's attorney. So no  
3       attorney for Mr. Guzman has to convince an administrator that  
4       this is an essential position, must be funded and must be  
5       hired.

6               My comments about Ms. Pusich really were that she's  
7       clearly a Mitigation Specialist, whether that is her title or  
8       not. She can train a Mitigation Specialist. She can assist in  
9       moving that person forward if you hire someone. But the Court  
10      can't just say, oh, well, you don't have one, therefore we are  
11      going to continue the case out to a twenty-four month window.  
12      If I set this trial in February, it would be twenty-four  
13      months after the case started.

14             In your argument, Ms. Hickman, you have argued in  
15      Clark County the average is eighteen to twenty-four months,  
16      and that is with Atkins issues, mitigation specialists. Those  
17      people in Clark County, I see that Scott Coffee is the Chair  
18      of the committee that presented this report, they have been  
19      dealing with issue of mitigation and Atkins issues and people  
20      who speak foreign languages much more frequently than we do  
21      because of their huge backlog. Recently, Judge Herndon told us  
22      there were sixty-nine cases asking for death penalty right now  
23      in Clark County. So they have a lot of cases going on. They  
24      come in all different sizes and shapes. The average is

1       eighteen to twenty-four months. This case shouldn't really be  
2       any different.

3               All that considered, I could find, as I have just  
4       said, there is good cause because there is no in-house  
5       Mitigation Specialist, good cause to continue the trial from  
6       April. I am not going to make you go without a Mitigation  
7       Specialist. I think you do need time to bring someone on board  
8       to review what has already been done. However, there is  
9       nothing to stop that person from being reassigned, quitting,  
10      moving on even after you hire someone.

11              I am also concerned with finality. We have to move  
12      the case along at some point. There will always be more  
13      mitigation that could be argued, perhaps discovered, and there  
14      is a point where the Court has to say it is time to try the  
15      case. If there could have been more done that wasn't done we  
16      will deal with that. But we have to move the case to the  
17      point of the end result, and we can't just say the case has to  
18      be perfect. No case is ever perfect.

19              That all being said, I still think the date of July  
20      27, 28, 29, 30, 31st is reasonable to do an Atkins hearing if  
21      you file an Atkins motion. But the defense still hasn't filed  
22      that motion. But it has to be at that point we are going to  
23      try the case, and I still believe August 31st is the proper  
24      date to start the trial of this matter and for eight weeks.

1 That is what you have got scheduled. So I will give you a  
2 continuance until August 31st. That is an eight month  
3 continuance. It is more than eight months from here today, but  
4 it is eight months from today, an eight-month continuance.  
5 That should be adequate time. Because, as you have argued,  
6 the case law is you need adequate time, not all the time  
7 possible. And I do believe that to be adequate time,  
8 considering all of the arguments of counsel, the attorneys,  
9 investigators, Mitigation Specialist involved in this case,  
10 Rule 250 and balancing the interests of the public and the  
11 victims in resolving this issue with the serious concerns the  
12 Court has for Mr. Guzman's constitutional rights. I believe  
13 balancing all of that it is fair and just to set the case  
14 eight months from today. So I am going to grant the defense  
15 motion to continue the trial, and we will set it for those  
16 dates.

17 Now that gets us to the issue of experts and  
18 noticing experts. I understand the defense concern has been  
19 the endorsement of experts, but I think we have to move the  
20 case forward. We have to know who the experts are going to  
21 be. If you want to be ready for an Atkins hearing, we have to  
22 set a deadline for the experts, for the filing of an Atkins  
23 motion and noticing who those experts are in order to be ready  
24 to go with that hearing. As I understand it, the defense has

1 known since at the latest September 2019 that an Atkins motion  
2 would be appropriate in this case. So if we set the end of  
3 February as a deadline for filing an Atkins motion --

4 MS. HICKMAN: Judge, or expert is not traveling  
5 until March.

6 THE COURT: Okay. So you have more than one expert  
7 though, right?

8 MS. HICKMAN: Well, our neuropsychologist who is  
9 going to do the bulk of the work in El Salvador is traveling  
10 in March.

11 THE COURT: So when in March?

12 MS. HICKMAN: We are still working out the dates.  
13 Sometime in the first two weeks.

14 THE COURT: So if we have planned to have a hearing  
15 July 27th, the Court would need pleadings from the parties  
16 before then.

17 MS. HICKMAN: Absolutely.

18 THE COURT: And I think the Court would need at  
19 least two weeks before that hearing.

20 MS. HICKMAN: I'm sorry?

21 THE COURT: Before the hearing.

22 MS. HICKMAN: Before the July hearing?

23 THE COURT: Yes.

24 MS. HICKMAN: I missed that date. Sorry.

1           THE COURT: July 27th is the Atkins hearing if a  
2 motion is filed, and we are assuming one will be filed. The  
3 Court needs the time for your Motion, the Opposition and  
4 Reply --

5           MS. HICKMAN: Right.

6           THE COURT: -- to be considered, submitted to me so  
7 I can read it in advance of the hearing July 27th, starting  
8 July 27th. I anticipate there will be an evidentiary hearing,  
9 witnesses called, because we set the whole week.

10          MS. HICKMAN: Correct.

11          THE COURT: How much time do you think would be  
12 appropriate for the Court to review what you plan to give me  
13 before the July 27th hearing?

14          MS. HICKMAN: Judge, based on what I know today and  
15 what we anticipate happening, understanding things may change  
16 as we represented it today, I would anticipate we could have  
17 our motion filed the week of May 18th at the very latest.

18          THE COURT: So if you file that May 18th, the  
19 briefing schedule would require that it would ultimately get  
20 to the Court around June 22nd or 25th.

21          MS. HICKMAN: Judge, once we file our motion, of  
22 course everything is stayed because the State has to have time  
23 for their experts. I don't want to speak for them, but I  
24 would anticipate that they would need more than the normal

1 briefing schedule to respond to that motion.

2 THE COURT: Right. I was hoping to give them sixty  
3 days. If you can't get it done until May 18th, if they were  
4 given sixty days, that would be July 18th. Of course that  
5 wouldn't be enough time for me on July 27th, because I am sure  
6 you want to respond.

7 MS. HICKMAN: Right.

8 THE COURT: So March to May. You need sixty days to  
9 file your motion?

10 MS. HICKMAN: Well, he has to write his report.  
11 There are other experts, obviously.

12 THE COURT: Right.

13 MS. HICKMAN: So I guess, too, what I am trying to do  
14 is build in enough time for error so we aren't back later  
15 saying, Judge, we need two more weeks. I am anticipating a  
16 little longer than what really is appropriate to build in for  
17 any error that may or may not happen considering where we are  
18 traveling, mostly.

19 THE COURT: So how long would the State need to  
20 respond to the Atkins motion?

21 MR. HICKS: Your Honor, I would have to consult with  
22 our experts. We have kind of been waiting to see where this  
23 was going. But they have been -- It appears to us it won't  
24 take that much time. I think sixty days is fair. You know,

1 they are going to have to travel here, spend time with the  
2 defendant, do their own clinical evaluation. We would ask for  
3 the sixty days.

4 THE COURT: Does the defense want to waive replying  
5 to their Opposition?

6 MS. HICKMAN: No.

7 THE COURT: So the defense will have to file their  
8 Atkins motion no later than May 4th. There is no other way we  
9 can do this. So May 4th. That is two weeks short of what you  
10 want. That is really the best we can do. Then the State  
11 would have sixty days which would be July 5th to file their  
12 Response which would give you, if you have one, an opportunity  
13 to file a Reply which would be July 12th. Then the matter  
14 would be submitted to me about a week -- I am sorry. May 4th.  
15 The State will have until July 6th to oppose your Atkins  
16 motion, and then you will have until July 14th to file a  
17 Reply.

18 MS. HICKMAN: I am sorry. You said July 5th when  
19 they file theirs?

20 THE COURT: Sixth.

21 MS. HICKMAN: The Sixth. Then we would have the  
22 week.

23 THE COURT: The week and the weekend. I can do, it  
24 won't make a difference, July 14th if that is helpful to file

1 your Reply and then the Court will start the hearings July  
2 27th. Now, obviously, if the State files a non-opposition,  
3 then we will have to have a hearing before July 27th. We'll  
4 have a hearing back closer to their deadline for responding.  
5 But since the deadline to respond is July 6th, we'll probably  
6 keep that. If they file a non-opposition, we'll set a  
7 different set of parameters after July 27th. We'll vacate the  
8 evidentiary part of the hearing, but we'll have to have a  
9 hearing that date to determine where the case will go.

10 MS. HICKMAN: If we need those extra two weeks to  
11 file that motion, we'll let everybody know.

12 THE COURT: Don't. Tell your expert not to --

13 MS. HICKMAN: We'll do everything we can.

14 THE COURT: That is May 4th, is that what I said?  
15 Today is January 13th. Four months. One week short, but it is  
16 four months. So that is twelve weeks to get this done. But  
17 as you say, if you don't do it, there is very little the Court  
18 can do. All I can do is make a finding that you didn't have a  
19 good reason not to do it timely. I am saying you will  
20 continue the effort you have been making to be diligent and I  
21 appreciate that. And I am sure the public does, too. So we  
22 will continue to try to keep up with these deadlines. Now that  
23 gets us to any other experts. Do you have any experts to  
24 endorse that are not Atkins experts?

1 MS. HICKMAN: I don't know. That is the purpose of  
2 the motion to file the expert deadline. Really what I am  
3 concerned about, of course, are merit phase experts. We have  
4 the forensic testing, so it is not an issue whether or not the  
5 State has given us what we need, but we are still in the  
6 process of reviewing that and determining whether we even need  
7 to call somebody or are we just needing to hire somebody to  
8 consult with us. But what I can tell the Court, you can set  
9 another deadline, but as we know who we have, we'll endorse  
10 those people. I don't anticipate doing one large endorsement.  
11 Like if we know we have a DNA expert, we'll endorse him. If  
12 we have a firearms expert, we'll endorse him. Once we have  
13 that prepared, I am saying we will endorse sooner rather than  
14 later. But given the work we have done, that is a huge part  
15 of our argument is we also have to investigate those merit  
16 phase issues to know whether or not we need to call an expert,  
17 to know whether or not we need to reply to that expert portion  
18 of their case.

19 THE COURT: Okay. The State has an opportunity to  
20 oppose the motion to file expert disclosure past the deadline.  
21 You heard the argument now with regard to the continuance and  
22 the basis for that request. Do you want to waive your right  
23 to oppose their motion to set expert deadlines and I rule on  
24 it now?

1 MR. HICKS: Your Honor with the clarity of the  
2 continuance and everything, we'll trust Your Honor's  
3 scheduling of it. We are not going to oppose the continuance.  
4 We are just -- We expect they will be diligent and share with  
5 us.

6 THE COURT: Given the continuance, I find there is a  
7 good cause to move the date of disclosure. Final disclosure  
8 set for Atkins experts must be April 27th. I am setting that  
9 one week before the Atkins motion is due. The reason is I want  
10 you to disclose those experts before we stay the matter if at  
11 all possible, because I think that is the best plan even  
12 though the case is stayed, then the State can continue to work  
13 on what they need to work on with regard to your experts. If  
14 you anticipate filing your Atkins motion before the deadline  
15 which I picked for May 4th, the Court will set the deadline  
16 for disclosing experts one day before you file your Atkins  
17 motion.

18 MS. HICKMAN: Then, Judge, in that same vein, if we  
19 file our Atkins motion early, does the State then have sixty  
20 days from that filing to file their Opposition?

21 THE COURT: To the Atkins motion, yes.

22 MS. HICKMAN: We would have eight days. It is  
23 really sixty days when it is filed and eight days?

24 THE COURT: I gave specific dates. Of course, if

1     you file it sooner, we'll move everything back. The ruling  
2     with regard to expert disclosures is for everybody but Atkins  
3     and is based on the filing of the Atkins motion anticipating  
4     May 4th, but it would follow you would file at least one day  
5     before the Atkins motion. And the deadline for opposing the  
6     Atkins motion is approximately sixty days with holidays.

7             MS. HICKMAN: Absolutely.

8             THE COURT: But I gave specific dates, if you do it  
9     on May 4th. If you do it sooner, we can move it all back. We  
10    are all aware once you file that motion, the case is stayed  
11    for all purposes except for Atkins. The only problem I have  
12    is if you actually can file it sooner, I would like to move  
13    the Atkins hearing. I am not sure your experts are available  
14    for that, so I hate to say it is stayed for a long period of  
15    time, but I don't think that is going to happen based on your  
16    representation.

17            MS. HICKMAN: Thank you.

18            THE COURT: So we do have some pleadings that are  
19    going to happen with regard to D-21 we anticipate will be  
20    filed. We have some deadlines that are going to come from the  
21    briefing of that, so it makes sense I think for us to continue  
22    to be together on February 14th. We currently have February  
23    14th was the hearing with regard to juror questionnaires and  
24    the utilization of enhanced juror questionnaires. Even though

1 the trial has been continued, that issue can be resolved. We  
2 can work on it. It isn't predicated on it happening in April,  
3 so we can still keep those deadlines and move that forward,  
4 and set the February 14th hearing also as I have discussed  
5 previously in my rulings today. That was with regard to the  
6 Motion in Limine.

7 MS. HICKMAN: Yes.

8 THE COURT: February 14th we'll also discuss  
9 anything else that has come up in the interim that needs to be  
10 talked about if there is no issue with regard to the Atkins  
11 motion if you file the Atkins motion. At that time, we'll  
12 move forward.

13 MS. HICKMAN: Thank you.

14 THE COURT: Anything further for today?

15 Yes, Mr. Jackson.

16 MR. JACKSON: Following along with your Pretrial  
17 Order, the next matters that would have been due would have  
18 been the Trial Statement on March 2nd, 2020. I don't know if  
19 the Court would want to revisit that date. Also the Jury  
20 Instructions on March 9th with the objection filed by March  
21 16th.

22 THE COURT: Right. Thank you for calling that to my  
23 attention. Yes, those dates are vacated. We will set new  
24 dates for a trial statement and Jury Instruction deadline in

1       accordance with the September 30th -- August 31st date for  
2       trial. I will just, what I will do, I will enter a scheduling  
3       order that addresses those dates that just gives us a similar  
4       amount of time before the August date.

5               Anything further? Anything else at this time?

6               MS. HICKMAN: Nothing. Thank you.

7               MR. HICKS: No, Your Honor.

8               THE COURT: Okay. Any other motions pending anyone  
9       knows of? Thank you very much. I appreciate your argument  
10      today, Court's in recess.

11              (Whereupon, the proceedings were concluded.)

12                               --o0o--

1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 4 of the above-entitled court on Monday, January 13, 2020  
9 at the hour of 10:00 a.m. of said day and that I then and  
10 there took verbatim stenotype notes of the proceedings had in  
11 the matter of THE STATE OF NEVADA vs. WILBER ERNESTO MARTINEZ  
12 GUZMAN, Case Number CR19-0447.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-65 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 13th day of January, 2020.

21  
22 /s/ Judith Ann Schonlau  
23 JUDITH ANN SCHONLAU CSR #18  
24

1 CODE 2610  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 JOHN L. ARRASCADA, #4517  
4 JARRASCADA@WASHOECOUNTY.US  
5 KATHERYN HICKMAN, #11460  
6 KHICKMAN@WASHOECOUNTY.US  
7 GIANNA VERNES, # 7084  
8 GMVERNESS@WASHOECOUNTY.US  
9 JOSEPH GOODNIGHT, #8472  
10 JGOODNIGHT@WASHOECOUNTY.US  
11 350 S. CENTER ST., 5<sup>TH</sup> FLOOR  
12 RENO, NV 89501  
13 (775)337-4800  
14 ATTORNEYS FOR DEFENDANT

15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
16  
17 IN AND FOR THE COUNTY OF WASHOE

18 THE STATE OF NEVADA,

19 Plaintiff,

Case No. CR19-0447

20 vs.

Dept. No. 4

21 WILBER ERNESTO MARTINEZ GUZMAN,

22 Defendant.

23  
24 NOTICE OF INABILITY TO COMPLY WITH DEADLINES AND REQUEST  
25 TO VACATE CURRENT DEADLINES (D-24)

26 COMES NOW, Defendant, WILBER ERNESTO MARTINEZ GUZMAN,  
(hereinafter "Martinez Guzman") by and through counsel, Washoe County Public  
Defender, John L. Arrascada, Katheryn Hickman, Gianna Verness and Joseph  
Goodnight, and hereby files this Notice of Inability to Comply with Deadlines and  
Request to Vacate Current Deadlines. Mr. Martinez Guzman is unable to comply

1 with expert endorsements due on April 27, 2020 and the filing of the motion  
2 pursuant to NRS 174.098, due to the global pandemic COVID-19 and Dr. Puente's  
3 inability to conduct necessary testing and clinical interviews to support such  
4 motion. This Notice incorporates all prior filings in this case and is filed in good  
5 faith.

### 6 ARGUMENT

7 During the status hearing held January 13, 2020, the Court set a briefing  
8 schedule regarding the filing of a motion pursuant to NRS 174.098. Specifically, a  
9 motion to be filed by Mr. Martinez Guzman is due May 4, 2020. See Transcript of  
10 Status Hearing January 13, 2020 p. 58, ll. 7-8. Additionally, the Court ordered  
11 that expert endorsements related to this motion shall be filed no later than April  
12 27, 2020. Id. at p. 61 ll. 7-8. Finally, a hearing on this motion is scheduled to  
13 commence July 27, 2020. Id. at p. 56 ll. 1-2 and p. 59 ll.1-2.

14 On March 13, 2020, Mr. Martinez Guzman filed a Motion to Continue Due  
15 to Global Pandemic COVID-19 (D-23), requesting to continue the weeklong  
16 hearing scheduled to begin on July 27, 2020, and the eight-week jury trial, set to  
17 begin August 31, 2020. The basis for the continuance, as argued in the Motion to  
18 Continue Due to Global Pandemic COVID-19(D-23), is that Dr. Antonio Puente, a  
19 board-certified neuropsychologist, who is bilingual and familiar with Salvadoran  
20 culture and has been retained by Mr. Martinez Guzman, traveled to El Salvador  
21 on March 10, 2020. He was refused entry into El Salvador and returned to the  
22 United States without completing any testing or clinical interviews of witnesses  
23 pertinent to the anticipated *Atkins* motion, due to be filed by Mr. Martinez  
24 Guzman on May 4, 2020.

1 The State filed an Opposition to Mr. Martinez Guzman's Motion to Continue  
2 on March 19, 2020, arguing that because Mr. Martinez Guzman did not include  
3 information outlining for the Court why these critical tests and interviews with  
4 essential witnesses in El Salvador, during a global pandemic, could not be done  
5 telephonically or via videoconference, there is not good cause to grant the motion.

6 Mr. Martinez Guzman filed a Reply in Support of the Motion to Continue on  
7 March 26, 2020, and the matter was submitted to the Court.

8 A hearing on the Motion to Continue (D-23) was set for April 6, 2020.  
9 However, this hearing was vacated by the Court due to COVID-19 and will be  
10 reset once the Court determines when special set in-custody hearings can be  
11 heard. As of the filing of this Notice, the hearing on the Motion to Continue has  
12 not been reset, and the Court has not heard arguments or ruled on the Motion to  
13 Continue Due to Global Pandemic COVID-19(D-23).

14 El Salvador has not allowed travel into the country since Dr. Puente's ill-  
15 fated trip. El Salvador is currently under a government-imposed lockdown, which  
16 is being brutally enforced by criminal street gangs.<sup>1</sup> Further, authorities in El  
17 Salvador have arrested 2,073 people accused of violating the quarantine lockdown.  
18 El Salvador's President Bukele has indicated that he will defy the Supreme Court  
19 of El Salvador's Rulings that the government cannot confiscate vehicles, property  
20 or arrest people for failing to comply with the ordered lockdown.<sup>2</sup> It is abundantly  
21

---

22 <sup>1</sup> In El Salvador, gangs are enforcing the coronavirus lockdown with baseball bats.  
23 [https://www.latimes.com/world-nation/story/2020-04-07/el-salvador-coronavirus-](https://www.latimes.com/world-nation/story/2020-04-07/el-salvador-coronavirus-homicides-bukele)  
24 [homicides-bukele](https://www.latimes.com/world-nation/story/2020-04-07/el-salvador-coronavirus-homicides-bukele) (last visited April 23, 2020)

25 <sup>2</sup> El Salvador's president disregards top court rulings on coronavirus.  
26 [https://www.reuters.com/article/us-health-coronavirus-el-salvador/el-salvadors-president-](https://www.reuters.com/article/us-health-coronavirus-el-salvador/el-salvadors-president-disregards-top-court-rulings-on-coronavirus-idUSKCN21Y0IA)  
[disregards-top-court-rulings-on-coronavirus-idUSKCN21Y0IA](https://www.reuters.com/article/us-health-coronavirus-el-salvador/el-salvadors-president-disregards-top-court-rulings-on-coronavirus-idUSKCN21Y0IA) (last visited April 23, 2020)

1 clear that testing and clinical interviews cannot go forward on this case during  
2 such turbulent times. Further, even if El Salvador were to allow international  
3 travel and lifted its lockdown order, the United States has issued travel bans and  
4 stay at home orders that would prevent Dr. Puente's travel.

5 As previously presented to this Court, Dr. Puente and his findings are  
6 essential to Mr. Martinez Guzman's ability to carry his burden to show, by a  
7 preponderance of the evidence, that he is intellectually disabled, pursuant to NRS  
8 174.098. The global pandemic has prevented him from doing that work, including  
9 identifying and interviewing necessary witnesses that would support a finding of  
10 intellectual disability, and a prohibition against pursuing the death penalty  
11 against Mr. Martinez Guzman, in violation of the Eighth Amendment of the  
12 United States Constitution.

13 As outlined above, and in the previously filed Motion to Continue due to  
14 Global Pandemic COVID-19 (D-23), this case cannot proceed forward to an *Atkins*  
15 hearing or to trial without Dr. Puente being able to complete his work. Further,  
16 without any findings from Dr. Puente, which cannot be done because of the  
17 pandemic, Mr. Martinez Guzman is unable to file the anticipated motion pursuant  
18 to NRS 174.098, which would stay the case until the Court resolved the issue. It is  
19 unclear and ever changing when this will happen, but once movement is allowed  
20 in El Salvador and international travel is relatively safe, Dr. Puente and defense  
21 counsel will resume the efforts to travel to El Salvador to conduct essential and  
22 necessary interviews and testing to support the anticipated *Atkins* motion.

### 23 CONCLUSION

24 The unexpected and unprecedented global pandemic has prevented Dr.  
25 Puente from completing his work. Mr. Martinez Guzman therefore files this Notice  
26

1 to the Court that he is unable, through no fault of his own, to meet the deadlines  
2 imposed by the Court. Mr. Martinez Guzman cannot file a Notice of Experts on  
3 April 27, 2020 and cannot file a motion pursuant to NRS 174.098 at this time. Mr.  
4 Martinez Guzman requests that this Court take notice of the profound effect that  
5 the pandemic has had and will continue to have on the defense function in this  
6 case if forced to proceed under pre-pandemic scheduling orders and vacate the  
7 current scheduling order and create a new scheduling order once international  
8 travel can resume.

9 **AFFIRMATION PURSUANT TO NRS 239B.030**

10 The undersigned does hereby affirm that the following document does not  
11 contain the social security number of any person.

12 Dated this 24th day of April, 2020.

13  
14 JOHN L. ARRASCADA  
Washoe County Public Defender

15 By: /s/ John L. Arrascada  
16 Public Defender

17 By /s/ Kathryn Hickman  
18 KATHERYN HICKMAN  
Chief Deputy Public Defender

19 By /s/ Gianna Verness  
20 GIANNA VERNES  
Chief Deputy Public Defender

21 By /s/ Joseph Goodnight  
22 JOSEPH GOODNIGHT  
Chief Deputy Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing, with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks  
Washoe County District Attorney

Travis Lucia  
Washoe County Deputy District Attorney

Marc Jackson  
Douglas County District Attorney

DATED this 24th day of April, 2020.

/s/ Carinne Glines  
CARINNE GLINES

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

CASE NO. CR19-0447

) DEPARTMENT NO. 4

14 WILBER MARTINEZ GUZMAN, )

15 Defendant. )

16 \_\_\_\_\_)

17 TRANSCRIPT OF PROCEEDINGS

18 STATUS HEARING

19 MONDAY, DECEMBER 7, 2020, 10:00 A.M.

20 Reno, Nevada

21  
22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

BY: CHRISTOPHER HICKS, ESQ.

DISTRICT ATTORNEY

TRAVIS LUCIA, ESQ.

DEPUTY DISTRICT ATTORNEY

1 S. SIERRA STREET

RENO, NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

BY: MARK B JACKSON, ESQ.

DISTRICT ATTORNEY

P. O. BOX 218

MINDEN, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

BY: JOHN ARRASCADA, ESQ.

PUBLIC DEFENDER

KATHERYN HICKMAN, ESQ.

JOSEPH GOODNIGHT, ESQ.

GIANNA VERNES, ESQ.

DEPUTY PUBLIC DEFENDERS

350 S. CENTER STREET

RENO, NEVADA

1 RENO, NEVADA; MONDAY DECEMBER 7, 2020; 10:00 A.M.

2 -oOo-

3  
4 THE COURT: Thank you. Please be seated. Let the  
5 record reflect that this is a status hearing in State versus  
6 Wilber Martinez Guzman, CR19-0447. This session of the court  
7 is taking place on December 7, 2020, and is being held  
8 remotely because of the closure of the courthouse at 75 Court  
9 Street, Reno, Washoe County, Nevada, due to the national and  
10 local emergency caused by COVID 19. The Court and all the  
11 participants are appearing through simultaneous audiovisual  
12 transmission.

13 I am physically located in Reno, Washoe County,  
14 Nevada, which is the site of today's court session. I now ask  
15 the bailiffs identify themselves at this time and note where  
16 they are appearing from.

17 THE BAILIFF: Deputy Coss, Washoe County, Nevada.

18 THE INTERPRETER: Your Honor, the interpreter will  
19 switch to the Spanish channel.

20 THE COURT: Thank you, deputy Coss. Please switch.  
21 I'd ask that the other participants in the case at this time,  
22 the other court personnel I am going to start with, introduce  
23 themselves.

24 THE CLERK: Good morning. My name is Marci Stone

1 court clerk appearing from Washoe County, Nevada.

2 COURT REPORTER: Judy Schonlau, court reporter,  
3 Washoe County, Nevada.

4 THE COURT: We have the previously sworn court  
5 interpreter assisting us today who will identify herself at  
6 this time.

7 THE INTERPRETER: Good morning, Your Honor. Jessica  
8 Escobar, certified court interpreter for the State of Nevada.  
9 My certification number is NVEJ-100. I am in Washoe County,  
10 Nevada. If I may have a moment to interpret that into Spanish  
11 for Mr. Martinez Guzman.

12 THE COURT: Yes. Thank you.

13 THE INTERPRETER: Thank you, Judge.

14 THE COURT: The record should also reflect that the  
15 defendant is appearing from 911 Parr Boulevard located in  
16 Reno, Washoe County, Nevada.

17 The record should further reflect that this session  
18 of the court is open to the public for viewing and listening  
19 through the video-audio link found at [washoecourts.com](http://washoecourts.com). If at  
20 any time any of participants in this case cannot see and hear  
21 the other participants, please notify the Court immediately.

22 I ask that all participants identify themselves by  
23 name and their physical location when they make their first  
24 appearance. In addition, I'd ask that everyone acknowledge you

1 received the Notice that today's hearing is taking place  
2 pursuant to Nevada Supreme Court Rules Part IX relating to  
3 simultaneous audiovisual transmission in criminal matters, and  
4 let me know if you have any objection to proceeding today.

5 We will begin with Mr. Guzman. Good morning,  
6 Mr. Guzman. Can you hear me okay?

7 THE DEFENDANT: Yes. Yes, I do hear you Madam Judge.

8 THE COURT: Thank you. Can you see everyone that is  
9 participating?

10 THE DEFENDANT: Yes. Yes, I'm hearing you.

11 THE COURT: Okay. Thank you. I ask that the State  
12 make their appearance at this time. You are on mute,  
13 Mr. Lucia.

14 MR. LUCIA; It happens every time. Sorry. Travis  
15 Lucia from Washoe County, Nevada. I have received the Notice  
16 the Court mentioned and have no objection to proceeding in  
17 this manner.

18 THE COURT: Thank you.

19 MR. JACKSON: Good morning. Mark Jackson on behalf  
20 of the State. I am physically located here in Washoe County,  
21 Nevada. I received a copy of the Notice and have no objection  
22 to proceeding in this fashion.

23 THE COURT: Thank you.

24 MR. HICKS: Good morning. Chris Hicks on behalf of

1 the State. I have also received the aforementioned Order, and  
2 I have no objection to proceeding this way, and I am in Washoe  
3 County.

4 THE COURT: Thank you.

5 THE COURT: Counsel for the defense.

6 MR. ARRASCADA: Good morning, Your Honor.

7 John Arrascada on behalf of Mr. Martinez Guzman. I am  
8 appearing in Washoe County, Nevada. I am aware of the Court's  
9 Order regarding audiovisual and have no objections for  
10 purposes of this hearing.

11 THE COURT: Thank you.

12 MS. HICKMAN: Good morning, Your Honor. Kate Hickman  
13 appearing from Washoe County, Nevada, this morning. I am in  
14 receipt of the Orders, and I have no objection to proceeding  
15 this way this morning.

16 THE COURT: Thank you.

17 MS. VERNES: Good morning, Your Honor, Gianna  
18 Verness on behalf of Mr. Martinez Guzman. I am appearing from  
19 Washoe County, Nevada. I received the referenced Notice and  
20 Order and have no objection to appearing in this manner.

21 THE COURT: Thank you.

22 MR. GOODNIGHT: Good morning, Your Honor.

23 Joe Goodnight for Mr. Martinez Guzman. I am in Washoe County  
24 as well. I received the Notice and I have no objection.

1           THE COURT:   Okay.   Thank you. I think that concludes  
2   our appearances.

3           The first matter today is this is a status hearing.  
4   Pending at the last status hearing were decisions for D-23 and  
5   D-28 motions. The Orders have been entered with regard to  
6   those motions.

7           What is the next thing that you think needs to be  
8   done or if there is anything else you need to report to me?  
9   Mr. Hicks.

10          MR. HICKS:   Thank you, Your Honor. The State is in  
11   receipt of your Order for D-23 and D-28. We appreciate the  
12   Order. We appreciate the new trial date and the extra time  
13   given in August to file any other pretrial motions or Notice  
14   of Expert witnesses.

15          As to the schedule you set for the Atkins motion  
16   should the defense file their motion and the Atkins hearing,  
17   we reached out to our expert Dr. Sergio Martinez yesterday. I  
18   have not heard back from him yet about the scheduled time  
19   frame for the Atkins hearing and the scheduled time frame for  
20   the motion and opposition. But upon speaking to Dr. Martinez,  
21   if any issues arise, we'll bring them to the Court's attention  
22   immediately.

23          THE COURT:   Okay.   Thank you.

24          Mr. Arrascada.

1           MR. ARRASCADA: Thank you, Your Honor. We are in  
2 receipt of the Court Order that was filed on Saturday at 6:00  
3 o'clock in the evening. We're reviewing the same, and we'll  
4 proceed accordingly.

5           THE COURT: Thank you. Yes, the Court, even though  
6 we are in COVID, even though we are not in the courthouse, we  
7 are still working six, sometimes seven days a week as I am  
8 sure all of you are, too. Thank you for acknowledging that,  
9 Mr. Arrascada. We will -- Is there anything else for today or  
10 should we just set another status hearing for 30 days?

11          MR. ARRASCADA: Status hearing is fine with us, Your  
12 Honor.

13          THE COURT: Mr. Hicks.

14          MR. HICKS: Likewise, Your Honor. I am glad you  
15 bring that up. We were hopeful that we would get or maintain  
16 the track record of having a monthly status conference just to  
17 make sure how we are progressing. Beyond that, we have  
18 nothing else to bring at this time.

19          THE COURT: Okay then. Thank you, counsel.  
20 Ms. Clerk, we have not discussed this, but I'm sure you can  
21 find a date approximately 30 days from now that we can all  
22 meet.

23          THE CLERK: Just give me one moment, Your Honor.

24          THE COURT: Thank you. Your Honor, do you want this

1 on a Monday or is any day of the week sufficient?

2 THE COURT: Any day of the week would work, but  
3 Monday January 4th in the afternoon would work for us.

4 THE CLERK: Okay. Perfect. Is everyone available  
5 January 4th at 2:00 p.m.?

6 MR. HICKS: That works for the State. This is Chris  
7 Hicks.

8 MR. ARRASCADA: We are available, Judge.

9 THE COURT: Thank you very much. Then we will set  
10 our next status hearing for that date. Of course, we remain  
11 available to both sides if there are any emergencies or  
12 anything you need resolved between now and then.

13 The Court is aware that this case takes precedence  
14 over all other cases, and we will make sure that we continue  
15 to provide that precedence to it. Of course, we expect you  
16 both to do the same, both sides. And I appreciate the effort  
17 that you have made thus far to do so.

18 The circumstances that we are all faced with for the  
19 next bit is that we all must deal in this different world. We  
20 have been dealing with it the last nine months, but I am  
21 hopeful and optimistic you will be successful. You have all  
22 done a great job so far, and I am sure you will be able to  
23 continue to do that. And I think some of the work we need to  
24 do to get this case to the point we can try it in September

1 will be able to be done effectively and efficiently by both  
2 sides. Please let me know if you need a hearing before the  
3 one we have set, otherwise, we'll see you back on that date  
4 and time for the next hearing. Thank you.

5 Thank you, Mr. Guzman. If there is nothing further,  
6 we'll be in recess. Nothing further. Court is in recess.  
7 Thank you.

8 (Whereupon, the proceedings were concluded.)

9 --o0o--

1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 4 of the above-entitled court on MONDAY, DECEMBER 7, 2020,  
9 at the hour of 10:00 a.m. of said day and that I then and  
10 there took verbatim stenotype notes of the proceedings had in  
11 the matter of THE STATE OF NEVADA vs. WILBER MARTINEZ GUZMAN,  
12 Case Number CR19-0447.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-11 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 7th day of December, 2020.

21  
22 /s/ Judith Ann Schonlau  
23 JUDITH ANN SCHONLAU CSR #18  
24

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

CASE NO. CR19-0447

) DEPARTMENT NO. 4

14 WILBER ERNESTO MARTINEZ )

15 GUZMAN, )

16 Defendant. )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 MONDAY, JANUARY 4, 2021, 2:00 P.M.

21 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY

                                  BY:   CHRISTOPHER J. HICKS, ESQ.

                                  DISTRICT ATTORNEY

                                  TRAVIS LUCIA, ESQ.

                                  DEPUTY DISTRICT ATTORNEY

                                  1 S. SIERRA STREET

                                  RENO, NEVADA

                                  DOUGLAS COUNTY DISTRICT ATTORNEY

                                  BY:   MARK JACKSON, ESQ.

                                  DISTRICT ATTORNEY

                                  1038 BUCKEYE ROAD

                                  MINDEN, NEVADA

FOR THE DEFENDANT:           OFFICE OF THE PUBLIC DEFENDER

                                  BY:   JOHN ARRASCADA, ESQ.

                                  PUBLIC DEFENDER

                                  KATE HICKMAN, ESQ.

                                  JOE GOODNIGHT, ESQ.

                                  GIANNA VERNES, ESQ.

                                  DEPUTY PUBLIC DEFENDERS

                                  350 S. CENTER STREET

                                  RENO, NEVADA

1 RENO, NEVADA; MONDAY, JANUARY 4, 2020; 2:00 P.M.

2 -oOo-

3  
4 THE COURT: Thank you. Please be seated. Let the  
5 record reflect that this session of the court is taking place  
6 on January 4, 2021. It is being held remotely because of the  
7 closure of the courthouse at 75 Court Street, Reno, Washoe  
8 County, Nevada, due to the national and local emergency caused  
9 by COVID-19. The Court and all the participants are appearing  
10 through simultaneous audiovisual transmission.

11 I am physically located in Reno, Washoe County,  
12 Nevada, which is the sight of today's court session. We are  
13 being assisted by a bailiff here today. Introduce yourself.

14 THE BAILIFF: Deputy Vietti, Washoe County, Nevada.

15 THE COURT: Thank you. I ask that all other persons  
16 introduce themselves and state their physical location as well  
17 as their name when they make their first appearance.

18 We'll have the staff make their appearances now.

19 THE INTERPRETER: I am sorry to interrupt. I did not  
20 get a reply from the Spanish channel. Can I get a  
21 confirmation so I can continue in simultaneous interpretation?

22 THE COURT: Yes.

23 THE INTERPRETER: Thank you. No response. I think  
24 they're still on the English channel at the jail.

1           THE COURT: Deputy, if you are on the English  
2 channel, will you please change to the Spanish channel?

3           THE BAILIFF: We are on the Spanish channel.

4           THE COURT: I vaguely hear them saying they are.

5           THE INTERPRETER: I have confirmation they are being  
6 heard. Thank you for that.

7           THE COURT: We'll start with the court personnel  
8 introducing themselves.

9           COURT CLERK: Good afternoon. My name is  
10 Marci Stone, court clerk, appearing from Washoe County,  
11 Nevada.

12           COURT REPORTER: Judy Schonlau, court reporter,  
13 Washoe County, Nevada

14           THE COURT: We are being assisted by the court  
15 interpreter.

16           THE INTERPRETER: Good afternoon, Your Honor,  
17 Jessica Escobar certified court interpreter, certification  
18 number NVEJ-100. I, too, am in Washoe County, Nevada. If I  
19 may just have a moment to interpret that on the Spanish  
20 channel.

21           THE COURT: Thank you.

22           THE INTERPRETER: Thank you, Judge.

23           THE COURT: Good afternoon, Mr. Guzman. Can you  
24 hear me or hear the interpretation?

1 THE DEFENDANT: Yes. Yes, I can hear you. Good  
2 afternoon.

3 THE COURT: Thank you. This is the time set for  
4 case number CR19-0447, State of Nevada versus Wilber Ernest  
5 Martinez Guzman. I would ask that counsel for the Plaintiff  
6 introduce themselves at this time.

7 MR. LUCIA: Good afternoon, Your Honor, Travis Lucia  
8 appearing for the State of Nevada. I am appearing in Reno,  
9 Washoe County, Nevada.

10 THE COURT: Also, counsel, would you indicate whether  
11 or not you received notice that this hearing is taking place  
12 pursuant to Supreme Court Rules Part IX and whether or not you  
13 have any objection to proceeding in that manner?

14 MR. LUCIA: Thank you. I have received that notice  
15 and have no objection to proceeding in that manner.

16 THE COURT: Thank you.

17 MR. HICKS: Good afternoon, Your Honor. Chris Hicks  
18 on behalf of the State. I have also received said notice and  
19 I have no objection to proceeding in that manner, and I am in  
20 Washoe County, Nevada.

21 THE COURT: Thank you.

22 MR. JACKSON: Good afternoon. Mark Jackson on behalf  
23 of the State. I am physically located in Gardnerville,  
24 Douglas County, Nevada. I am currently under COVID isolation

1       probably for four more days. I have received a copy of the  
2       Notice pursuant to Supreme Court Rule Part IX, and I have no  
3       objection.

4               THE COURT: Okay. Thank you. Counsel, please, for  
5       the defendant make your appearances.

6               MR. ARRASCADA: Yes. Good afternoon, John Arrascada  
7       on behalf of Mr. Martinez Guzman located in Washoe County,  
8       Nevada. I am familiar with the standing Order and do not  
9       object to it for the purpose of this hearing.

10              THE COURT: Thank you.

11              MS. HICKMAN: Good afternoon, Your Honor, Kate  
12       Hickman on behalf of Mr. Martinez Guzman. I am in Washoe  
13       County. I, too, have notice of the Order, and I have no  
14       objection to proceeding this way this afternoon.

15              THE COURT: Thank you.

16              MS. VERNES: Good afternoon, Your Honor, Gianna  
17       Verness on behalf of Mr. Martinez Guzman. I am appearing today  
18       from Washoe County, Nevada. I have received the appropriate  
19       Notice and have no objection to proceeding in this manner.

20              THE COURT: Thank you.

21              MR. GOODNIGHT: Good afternoon, Your Honor, Joe  
22       Goodnight for Mr. Martinez Guzman. I am in Washoe County,  
23       Nevada. I received the Notice, and I have no objection.

24              THE COURT: Thank you. Mr. Guzman, are you still at

1 911 Parr Boulevard?

2 THE DEFENDANT: Yes, madam Judge.

3 THE COURT: Okay. Thank you, sir. This is the time  
4 set for a status hearing. Mr. Arrascada and Mr. Hicks, I  
5 don't know which one of you wants to go first.

6 MR. HICKS: I will go first since I made the  
7 appearance on the record first. I just wanted to update the  
8 Court that we have communicated with our witnesses about the  
9 dates that the Court recently set, specifically the dates Your  
10 Honor set for the intellectual disability litigation, assuming  
11 the defense does file such a motion. We have spoken primarily  
12 with our expert, Dr. Sergio Martinez, and he's available on  
13 those dates. He's aware of those dates, and he's beginning  
14 his preparation should that motion me forthcoming.

15 Additionally, we have notified all of our  
16 professional witnesses and our other expert witnesses of the  
17 trial date that Your Honor recently provided. There are some  
18 complications, but we don't think it is going to be-- We'll be  
19 able to work around it. But for planning purposes, Your Honor,  
20 I was wondering I have we could ask you today, I know in your  
21 previous Pretrial Order setting certain dates of certain  
22 hearings including jury selection, you had set a trial date of  
23 April 6th. That was the original date. And then the actual  
24 selection of the jurors was going to start on March 30th. My

1 question is, just for planning purposes, do you foresee the  
2 September 20th date being when we will start jury selection or  
3 the September 20th date, 2021, the day we'll actually start  
4 the trial? That is all I have to update, Your Honor, absent  
5 you having any questions.

6 THE COURT: Okay. Let me think on that. Let me  
7 think about that question, but thank you. Mr. Arrascada.

8 MR. ARRASCADA: Thank you, Your Honor. We are doing  
9 our best with our experts and witnesses through this worldwide  
10 global pandemic to be prepared.

11 THE COURT: Do you have a position with regard to  
12 whether or not we should start picking the jury on September  
13 20th?

14 MR. ARRASCADA: Court's indulgence.

15 THE COURT: Mr. Hicks, while Mr. Arrascada is  
16 conferring with his co-counsel, I would anticipate that we  
17 would at least start jury selection a week before in terms of  
18 excusing those people with obvious bias that both parties  
19 would agree to excusing without them having to make an  
20 appearance, or excusing those people that have health or  
21 significant personal obligations that both sides would  
22 stipulate to continuing their service, or we can do all that a  
23 week actually before the jury reports. I assume we would do  
24 that kind of preliminary screening once we have the jury

1 panel. I don't know, though, right now. We have only done  
2 three trials in the last ten months, three jury trials. I did  
3 two of them and another judge did the third. Both of us did  
4 the pre-screening and then had the jury trials. I'm hopeful  
5 that come September 20th we are going to be in a position that  
6 we are not going to have to be dealing with COVID  
7 pre-screening, but, you know, I still think the pre-screening  
8 makes sense. And I used that format on significant cases in  
9 the past, so it is nothing -- I didn't create it for COVID  
10 cases. It is something I have done on complex litigation  
11 before and found it to be very helpful. So I would want to do  
12 that again, but not calling witnesses and just actually  
13 selecting the jury with the jury appearing on the 20th.

14 MR. ARRASCADA: Your Honor this is John Arrascada on  
15 behalf of Mr. Martinez Guzman. We're fine with starting jury  
16 selection on the 20th, but I think the Court is anticipating  
17 the questionnaire we had discussed in the past plus the COVID  
18 questionnaire we still are in that unfortunate situation. I  
19 think for planning purposes, though, we need to look at jury  
20 selection, itself, because of the case of Witherspoon and Witt  
21 and qualifying a jury properly, we should set aside a two-week  
22 period of time for jury selection.

23 THE COURT: Well, we have eight weeks for the trial.  
24 That is including jury selection. So if it takes us two

1 weeks, we'll have a little less for evidentiary hearings. But  
2 I will be surprised if it takes us two weeks to pick a jury.  
3 But it will take what it takes, however long it takes.

4 MR. ARRASCADA: Thank you, Your Honor.

5 THE COURT: Did that answer your question?  
6 Mr. Hicks.

7 MR. HICKS: Yes, it did, Your Honor. Thank you. I  
8 assume the Court is perhaps finding this, but do you foresee  
9 providing an updated Pretrial Order that might set those dates  
10 that we previously had set for the April 6th trial date so we  
11 are aware of such as trial statements, certain things like  
12 that and those expectations?

13 THE COURT: Right. I will. I kind of wanted to see.  
14 I'd like to see us get through the intellectual disability  
15 portion because, depending on what the ruling is, if there is  
16 an intellectual disability motion and we have the hearing, if  
17 it is no longer a case eligible for the death penalty, those  
18 deadlines would be significantly different than if we are  
19 still dealing with the death penalty case. I would like to  
20 wait until we have that decision and I know for sure we are  
21 actually going forward.

22 Now if the defense does not meet those deadlines in  
23 filing the intellectual disability motion they indicated they  
24 thought they would file, then I will go ahead and enter the

1 deadline and just go forward with the death penalty case.

2 MR. HICKS: I understand, Your Honor. Thank you.

3 MR. ARRASCADA: Your Honor, I would suggest that we  
4 have another status conference in 30 days to discuss. As I  
5 mentioned, we're doing our best under this worldwide pandemic,  
6 and we'll be able to give the Court a better update as to  
7 where we are status wise regarding our intellectual disability  
8 investigation and preparation.

9 THE COURT: I'm fine with doing monthly status  
10 hearings, however, I would caution you not to wait for 30 days  
11 if you find yourself in a significant issue that is going to  
12 impact any of our dates.

13 MR. ARRASCADA: We'll notify the Court immediately.

14 THE COURT: Thank you. Mr. Jackson, did you have  
15 anything for the Court today?

16 MR. JACKSON: I don't, Your Honor. Thank you very  
17 much.

18 THE COURT: Okay. So, Ms. Clerk, can you give  
19 counsel a status hearing date approximately 30 days from now?

20 THE CLERK: Sure. Let me look at the calendar. Your  
21 Honor, in approximately 30 days we'll be in pretrial motions  
22 for one of our other cases. Are you okay if I go out a little  
23 further than that?

24 THE COURT: Are you thinking the 8th of February?

1           THE CLERK: We would still be in that. We could set  
2 it before.

3           THE COURT: Do we have two weeks set aside for the  
4 Sullivan pretrial?

5           THE CLERK: That is correct, February 1st through  
6 February 12th if it goes at this point.

7           THE COURT: Why don't we do the status on the 1st in  
8 this case and just start the Sullivan evidentiary hearing at,  
9 I don't know, 10:00 instead of 9:00?

10          THE CLERK: It is currently scheduled at 10:00 on  
11 that Monday morning, so that is fine.

12          THE COURT: Okay.

13          THE CLERK: That will be February 1st at 9:00 a.m.

14          MR. ARRASCADA: May I make a different suggestion:  
15 That we have the status hearing after you have the Sullivan  
16 hearings, and, if something comes up between now and then,  
17 we'll let the Court know and get right in front of the Court.  
18 It will give us a little more added time for a proper status.  
19 But, if you want the 1st, I am fine with that too, Judge.

20          THE COURT: I am just looking, trying to see. It  
21 pushes us out quite a ways because of the holiday and the fact  
22 I am a Tuesday crim calendar. We can't really put you on one  
23 of those days.

24          MR. ARRASCADA: Judge, the first is fine. If

1 something comes up let's say after the 1st, we'll let the  
2 Court know immediately. If something comes up before the first  
3 that needs court intervention, we'll let the Court know  
4 immediately.

5 THE COURT: Okay. We can all work around that then.

6 MR. ARRASCADA: Very well, Judge.

7 THE COURT: Thank you. The next status hearing is  
8 February 1st at 9:00 a.m. Is there anything the Court can do  
9 to assist anyone at this point?

10 MR. ARRASCADA: Nothing from the defense, Your  
11 Honor.

12 THE COURT: Anything from the State?

13 MR. HICKS: No, Your Honor. Thank you.

14 THE COURT: Okay. Then we'll see you back in  
15 February. Thank you for your appearance today. Thank you  
16 Mr. Guzman. We are just keeping your case going forward and  
17 your attorneys will be talking to you, okay?

18 THE DEFENDANT: Yes. Thank you very much, madam  
19 Judge.

20 THE COURT: You're welcome. Court's in recess.

21 (Whereupon, the proceedings were concluded.)

22 --o0o--  
23  
24

STATE OF NEVADA,                    )  
                                          )     ss.  
COUNTY OF WASHOE.                )

I, Judith Ann Schonlau, Official Reporter of the  
Second Judicial District Court of the State of Nevada, in and  
for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 10 of the above-entitled court on Monday, January 4, 2021, at the hour of 2:00 p.m. of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of THE STATE OF NEVADA vs. WILBER ERNESTO MARTINEZ GUZMAN, Case Number CR19-0447.

That the foregoing transcript, consisting of pages numbered 1-14 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 4th day of January, 2021.

/s/ Judith Ann Schonlau  
JUDITH ANN SCHONLAU CSR #18

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

CASE NO. CR19-0447

14 WILBER ERNESTO MARTINEZ )

15 GUZMAN, )

16 Defendant. )

17  
18 TRANSCRIPT OF PROCEEDINGS

19 STATUS HEARING

20 Monday, February 1, 2021, 9:00 A.M.

21 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY

                                  BY:   CHRIS HICKS, ESQ.

                                  DISTRICT ATTORNEY

                                  TRAVIS LUCIA, ESQ.

                                  DEPUTY DISTRICT ATTORNEY

                                  1 S. SIERRA STREET

                                  RENO, NEVADA

                                  DOUGLAS COUNTY DISTRICT ATTORNEY

                                  BY:   MARK B. JACKSON, ESQ.

                                  DISTRICT ATTORNEY

                                  1038 BUCKEYE ROAD

                                  MINDEN, NEVADA

FOR THE DEFENDANT:           OFFICE OF THE PUBLIC DEFENDER

                                  BY:   JOHN ARRASCADA, ESQ.

                                  PUBLIC DEFENDER

                                  KATHERYN HICKMAN, ESQ.

                                  JOSEPH GOODNIGHT, ESQ.

                                  GIANNA VERNES, ESQ.

                                  DEPUTY PUBLIC DEFENDERS

                                  350 S. CENTER STREET

                                  RENO, NEVADA

1 RENO, NEVADA; MONDAY, FEBRUARY 1, 2020; 9:00 A.M.

2 -000-

3  
4 THE COURT: Thank you. Please be seated. Good  
5 morning. Let the record reflect that this is February 1, 2021,  
6 and this session of the Court is taking place at approximately  
7 9:00 a.m. It is being held remotely because of the closure of  
8 the courthouse at 75 Court Street, Reno, Washoe County,  
9 Nevada, due to the national and local emergency caused by  
10 COVID-19. The Court and all the participants are appearing by  
11 simultaneous audiovisual transmission.

12 I am physically located in Reno, Washoe County,  
13 Nevada, which is the site of today's court session. The other  
14 court personnel who are present will identify themselves for  
15 the record and indicate where they are appearing from.

16 THE CLERK: Good morning. My name is Marci Stone,  
17 court clerk, appearing from Washoe County, Nevada.

18 COURT REPORTER: Judy Schonlau, court reporter,  
19 Washoe County, Nevada.

20 THE COURT: The record should reflect that this  
21 session of the Court is open to the public for viewing and  
22 listening to the proceedings through the video-audio link  
23 found at the washoecourts.com website.

24 If at any time anyone appearing in the case cannot

1 see and hear the other participants in their own case while it  
2 is going on, you must inform the Court.

3 I ask all participants state their physical location  
4 as well as their name when they make their first appearance  
5 for court. In addition, I ask counsel acknowledge they  
6 received notice this hearing is taking place pursuant to  
7 Supreme Court Rule IX relating to simultaneous transmission in  
8 criminal matters and the Second Judicial District Court  
9 Administrative Orders.

10 At this time, I will be calling on counsel to  
11 identify themselves. First, I think we should call the case  
12 which is CR19-0447, State of Nevada versus Wilber Martinez  
13 Guzman. Good morning, Mr. Guzman.

14 THE DEFENDANT: Good morning Madam Judge.

15 THE COURT: Can you see and hear me okay?

16 THE DEFENDANT: Yes, I can see you and hear you.

17 THE COURT: Thank you. The record should also  
18 reflect we are being assisted by the previously sworn court  
19 interpreter who will make her appearance at this time.

20 THE INTERPRETER: Good morning, Your Honor, Jessica  
21 Escobar, certified court interpreter for the State of Nevada.  
22 My certification number is NVEJ-100. I am appearing in Reno,  
23 Washoe County, Nevada. If I may have a moment to interpret  
24 that into Spanish for Mr. Martinez Guzman. Thank you, Your

1 Honor.

2 THE COURT: You're welcome. The record should also  
3 reflect Mr. Guzman is appearing from 911 Parr Boulevard, Reno,  
4 Washoe County, Nevada.

5 At this time, I'd ask counsel for the State to make  
6 their appearance.

7 MR. JACKSON: Good morning, Your Honor, Mark Jackson  
8 on behalf of the State. I am physically located here in Reno,  
9 Washoe County, Nevada. I have received a copy of the Notice  
10 and have no objection to proceeding in this manner.

11 THE COURT: Thank you.

12 MR. LUCIA: Good morning, Your Honor, Travis Lucia  
13 also appearing on behalf of the State. I, too, am in Washoe  
14 County, Nevada. I have received the aforementioned Notice and  
15 have no objection to proceeding in this manner.

16 THE COURT: Thank you.

17 MR. HICKS: Good morning, Your Honor, Chris Hicks on  
18 behalf of the State. I am also in Washoe County and  
19 acknowledge the aforementioned Order and have no objection to  
20 proceeding in that manner.

21 THE COURT: Okay. Thank you. Counsel for the  
22 defense, please make your appearance.

23 MR. ARRASCADA: Yes, good morning, Your Honor,  
24 John Arrascada on behalf of Mr. Martinez Guzman. I am

1 appearing in Washoe County, Nevada. I am familiar with the  
2 Court's Order and have no objection to proceeding in that  
3 fashion for purposes of this hearing.

4 THE COURT: Thank you.

5 MS. HICKMAN: Good morning, Your Honor, Kate Hickman  
6 on behalf of Mr. Martinez Guzman. I am present in Washoe  
7 County, Nevada. I have received notice of all the relevant  
8 Orders and have no objection to proceeding this way this  
9 morning.

10 MR. GOODNIGHT: Good morning, Your Honor,  
11 Joe Goodnight on behalf of Mr. Martinez Guzman. I am in Washoe  
12 County, Nevada. I have received the relevant Notice and have  
13 no objection.

14 THE COURT: Thank you.

15 MS. VERNES: Good morning, Your Honor, Gianna  
16 Verness on behalf of Mr. Martinez Guzman. I am appearing from  
17 Washoe County, Nevada. I received the aforementioned Notice,  
18 and I have no objection to proceeding in this manner.

19 THE COURT: Thank you. I think that concludes the  
20 appearances. This is the time set for a status hearing, so  
21 shall we proceed? Ms. Hickman are you going first or  
22 Mr. Hicks?

23 MR. HICKS: Your Honor, I went first last time. I  
24 am happy to let the defense go first, or I can proceed

1       whichever you prefer.

2               THE COURT: That is fine. We'll have Mr. Arrascada.

3               MR. ARRASCADA: Wrong guess. It will be Ms. Hickman  
4       today.

5               MS. HICKMAN: Good morning, Your Honor. We don't  
6       have really anything to report this morning. We don't have any  
7       news to report, and we don't really have anything to have the  
8       Court help us with at this time.

9               THE COURT: Okay. State.

10              MR. HICKS: Thank you, Your Honor. I do have a  
11       request. We are fastly approaching the April 20th deadline  
12       that Your Honor set for the defense to file an Atkins motion  
13       should they choose to do so. Once they do so, we, the State,  
14       will only have ten days to respond, and then there will be a  
15       two-week hearing twenty-five days after that. We are not  
16       waiting for that to act, Your Honor. We have already begun  
17       working with our own expert, so we are prepared for that type  
18       of hearing. He's actively reviewing evidence in this case.  
19       Nevertheless, when that motion is filed by the defense, the  
20       State will have approximately thirty days to then start  
21       reviewing their materials in our preparation for that hearing.  
22       And I suspect those materials, should that motion be filed,  
23       will include interviews of informants which, as you recall,  
24       are supposed to be recorded pursuant to your previous Order.

1 Likewise, there will be testing that will have been conducted  
2 that the State would need to review. We will also be able to  
3 then conduct our own testing. There has been mention of  
4 potential evidence about pesticide exposure as well as school  
5 records and medical records. So that is going to be a  
6 tremendous amount of information for the State and our expert  
7 to digest going into that thirty-day window.

8           So to my request, Your Honor: In the Summer of 2019  
9 you filed your Discovery Order. There was a deadline set which  
10 we are far past, but there was also relevant to this request  
11 to continue that discovery. In September 2019 almost a year  
12 ago the defense made their first trip to El Salvador. Through  
13 previous hearings that followed that time, we know the defense  
14 has been there or their mitigation experts or experts at least  
15 one more time since that September 2019 report. But in  
16 September of 2019, it was reported to the Court that in fact  
17 the defense team had located informants. They gave them what  
18 they believe to be a good faith determination to pursue an  
19 Atkins investigation. Those informants include family members,  
20 teachers, principals, as reported to the Court. Likewise, at  
21 that September 2019 hearing, the defense spoke of locating  
22 medical records of the defendant and also scholastic records  
23 in El Salvador with the government that they believed was  
24 going to help them get those materials. The State's request

1 is this, Your Honor: We don't know if they received any  
2 materials that were discussed nearly a year and a half ago.  
3 The only discovery the State has received is, as you recall,  
4 Dr. Mahaffey's original testing of the defendant and then some  
5 photographs that were taken on that first trip to El Salvador.  
6 Since then, we have received no discovery. So my request, Your  
7 Honor, as we are getting close to this upcoming potential  
8 hearing, is if you would ask the defense if they in fact do  
9 have any materials consistent with your Discovery Order and  
10 relevant to this upcoming hearing. And I am not talking just  
11 the lawyers. What I would ask is that the request be made of  
12 the defense team do their experts or do their mitigation  
13 specialists have any discovery that should be provided to the  
14 State. And we are asking for this, one, pursuant to the  
15 Discovery Order but, two, we have this hearing coming up. We  
16 are trying to prepare to meet those deadlines, and it is their  
17 burden of proof in the upcoming hearing, and they're obligated  
18 to give us those materials.

19 So if Your Honor would just ask them, and, if so, if  
20 you would please order them to provide the State any materials  
21 they have in their possession that fall within your Discovery  
22 Order. That is it. Thank you, Your Honor.

23 THE COURT: Okay. Thank you. Who on the defense  
24 would like to speak?

1 MS. HICKMAN: Thank you, Your Honor. I understand  
2 what Mr. Hicks is referring to. I think when these Orders  
3 were entered, we were not in the middle of a pandemic. We  
4 anticipated a lot more work being done prior to today.  
5 However, our duty to disclose materials relevant to Atkins are  
6 triggered when we file the motion. So when we file the motion  
7 is when our duty to disclose materials begins. Otherwise, we  
8 cannot disclose things if we don't know what they're relevant  
9 to, and if they are not relevant to Atkins and we turn them  
10 over to the State and they end up being detrimental to  
11 Mr. Martinez Guzman in some way, obviously, that would be on  
12 us. So we'll discover the materials relevant to that motion  
13 once the motion is determined to be appropriate and filed.

14 THE COURT: Mr. Hicks.

15 MR. HICKS: Thank you, Your Honor. I very much  
16 appreciate what Ms. Hickman is saying, however, these  
17 materials that I am asking for or referring to is mitigation  
18 evidence. So what your Discovery Order applies to is any  
19 evidence, mitigation evidence, that is within their  
20 possession. So they're not allowed to veil evidence they have  
21 because they're saying we may use it for intellectual  
22 disability if in fact they would use it in mitigation at trial  
23 or in the sentencing phase. Frankly, I don't think you can  
24 split those hairs. Let's say for example they have

1 scholastics records of Mr. Guzman. If they purport to suggest  
2 maybe a functional problem with his intelligence or lack of  
3 schooling when he was younger, you know, they're going to be  
4 in mitigation at trial and in sentencing. I don't think it is  
5 that simple to say at thirty days we have to provide that,  
6 because if it is anything whatsoever they would use at trial,  
7 they are in violation of your Discovery Order right now. So I  
8 would ask you order they provide us those materials.

9 THE COURT: Did you have anything else to add,  
10 Ms. Hickman?

11 MS. HICKMAN: I don't, Your Honor. We understand the  
12 Court's orders, and we understand our burden, and we intend to  
13 give the State what we have when it is the appropriate time  
14 and when we have it.

15 THE COURT: It is interesting to hear you argue the  
16 other side when I hear you argue that the State has an  
17 obligation to get that information to you in many other cases,  
18 and get it to you timely, and when the prosecutor says in your  
19 presence I don't have it yet, I can hear the arguments I have  
20 heard from you on numerous occasions about the obligation  
21 under the reciprocal discovery to provide it. So to hear you  
22 say we don't maybe have it yet or we haven't got it from our  
23 mitigation specialist is kind of interesting to the Court.  
24 The Order is clear. Mitigation evidence is discoverable and

1 needs to be provided under the reciprocal Discovery Order. If  
2 it is specific you think only to Atkins, I agree with you that  
3 that would not be something that you should or would be  
4 required to turn over, like an Atkins expert's report prior to  
5 filing the Atkins motion, so long as you do not intend or you  
6 do not try to use that evidence in mitigation. If you were to  
7 try to use the evidence in mitigation, you would be in  
8 violation of the Pretrial Order.

9 Now the Order is clear. It is discoverable if it is  
10 mitigation and it needs to be provided. I can't order more  
11 than what I have ordered. If you violate the Court's orders,  
12 and it is shown you violated the Court's orders, there is only  
13 certain things I can do about that. But I will remind you the  
14 Order does, as Mr. Hicks has argued, apply to mitigation that  
15 you intend to use during the trial whether or not you file a  
16 specific Atkins motion. And I think that is clear in the  
17 structure of an Atkins motion. An Atkins motion, as you all  
18 have argued on numerous occasions, can be filed whenever you  
19 are ready to file it. So that can happen. I have ordered it  
20 be done in a timely fashion, and we'll see what happens. I  
21 know there is a Writ pending in the Nevada Supreme Court again  
22 on some of those issues, so we'll see where we go with whether  
23 or not I have the authority to get it moving forward on a  
24 timely basis. But, whether I have that authority with regard

1 to the Atkins motion doesn't change that I have the authority  
2 to order reciprocal discovery, which I did. You still have to  
3 not violate that Order.

4 We'll have another status hearing in thirty days and  
5 see what the issues are. We'll just have to keep track of  
6 what you produced. I am not sure what to do if you refuse to  
7 produce it. We'll see.

8 MS. HICKMAN: Judge, I want to be clear, we are not  
9 refusing to produce things. I understand the Court's Order  
10 and we intend to comply with it. I think we made it pretty  
11 clear our struggle and the amount of work we are doing and how  
12 much effort we are putting into defending Mr. Martinez Guzman.  
13 I am not trying to play games with the Court. I don't want you  
14 to think I have a treasure trove of information that I am not  
15 supplying to them.

16 My point is, we understand the Court's Order. We  
17 understand the Atkins statute. We intend to comply with all  
18 of it as we go forward in the case.

19 THE COURT: The thing that gives me pause,  
20 Ms. Hickman, is you say you understand my Order, and you  
21 understand the Atkins structure. They are not necessarily the  
22 same thing. So that is the only reason we perhaps have some  
23 disagreement about what the obligations are of the defense. I  
24 agree you do not have to turn over certain things pursuant to

1 Atkins until you actually file an Atkins motion, clearly. But  
2 the argument that the State made I also agree with. There  
3 could be evidence that you have that can be used for both  
4 Atkins and mitigation. Because if you do not -- If you have an  
5 imperfect Atkins defense for instance, that imperfect Atkins  
6 defense would still be mitigation, and that is what we are  
7 talking about here. So when you get it, turn it over. Make  
8 every effort to turn it over as you need to, and make every  
9 effort to find it as the Order requires. And I am sure you are  
10 all keeping track of when you get everything, when it arrives  
11 and when it gets shared. I am sure the State has done that,  
12 correct, Mr. Hicks?

13 MR. HICKS: That's correct, Your Honor.

14 THE COURT: Okay. Is there anything the defense has  
15 not received in discovery?

16 MR. HICKS: No, Your Honor. We turn over anything  
17 when we get it. If I could just maybe hold off a little bit of  
18 what was just discussed. Your Honor, I am not casting  
19 aspiration at the defense, but I struggle to think in two  
20 trips to El Salvador with mitigation specialists going, there  
21 are no mitigation materials in their possession yet. It defies  
22 logic to think that. And so, again, I do not think, I would  
23 argue that that cannot be excluded under the veil of an  
24 upcoming Atkins hearing. I would ask Your Honor to ask

1 something as simple as do you have school records of  
2 Mr. Guzman from when he was in El Salvador. If they do and  
3 they say we have no intention of using them in mitigation,  
4 then that is one thing. But, Your Honor, I know they are  
5 saying they understand the Order, but I would argue it is not  
6 being followed.

7 THE COURT: Okay. I am happy to ask that question.  
8 Do you have school records of Guzman?

9 MS. HICKMAN: Your Honor, if I could just have one  
10 moment just quickly.

11 THE COURT: Certainly.

12 MS. HICKMAN: So, Judge, at this time I don't have  
13 school records that we are prepared to turn over.

14 THE COURT: You do have school records, but you are  
15 refusing to turn them over, is that the answer?

16 MS. HICKMAN: That's not what I am saying.

17 THE COURT: What are you saying?

18 MS. HICKMAN: I am saying we don't have school  
19 records that we are prepared to turn over.

20 THE COURT: Why don't we separate that answer. Do  
21 you have school records, yes or no?

22 MS. HICKMAN: Your Honor, I am trying to see what  
23 exactly we have there. And I think it is deeper than what we  
24 are talking about. We have had the hearings where we have

1       said school records in and of themselves may not be relevant.  
2       Because until we have been able to talk to the teachers and  
3       understand everything, we don't know what those mean. So just  
4       having school records in and of themselves doesn't mean  
5       anything. Okay. Sorry. I was trying to get some more  
6       information. We don't have school records at this point.

7               THE COURT: Okay. I think that our current mode of  
8       trying to get to the information each side needs to try the  
9       case is not adequate. If we were doing this the opposite way,  
10      if the defense wanted specific evidence that they believed the  
11      State had that the State was refusing to provide, the defense  
12      would file a specific motion and ask for specific instances,  
13      and the State would be on record to say yes, no, I don't have  
14      that, I couldn't find it, whatever. So as of that date we  
15      could go forward. I think we are going to have to do the same  
16      with the defense in this case, Mr. Hicks. I believe you should  
17      make a specific motion for them to comply with the Discovery  
18      Order that I entered and ask for specific things you believe  
19      they have. If the defense says they have those things but  
20      refuse to turn them over, that will be one thing. If they do  
21      not have those things, they will be on record not having them  
22      as of the date of the request. If it turns out they did have  
23      them and they lied to the Court or weren't being careful, then  
24      we'll deal with that as we move forward. I think, in light of

1 the response Ms. Hickman has given today, I do not believe a  
2 verbal request back and forth is sufficient. I think a  
3 specific request from the State for compliance with the  
4 Discovery Order and then the defense can respond in writing,  
5 we'll have it in writing, we'll have it clear. That gives them  
6 a chance to double check what they have or don't have in their  
7 record and not have to be held to something. As we all know,  
8 the Order will apply to counsel as well as all of counsel's  
9 experts and consultants just like it does the State. I think  
10 that is what we should do. We will have it at the next status  
11 hearing. So, Mr. Hicks, you can get that motion filed. The  
12 defense can have ten days to reply, and then I'll have  
13 something in writing before me, and it won't just be the oral  
14 back and forth which I just don't feel that is very  
15 productive.

16 MS. HICKMAN: Your Honor, I want to clarify. I  
17 wasn't really ready to address this this morning. I was kind  
18 of going through where we are. We don't have official school  
19 records, so we don't have a report card or like what you would  
20 think of as a school record. We do have some information that  
21 hasn't been translated, so we haven't processed it or given it  
22 to our expert at this point.

23 THE COURT: Okay. Thank you for that clarification.  
24 I think that makes it even more important for us to have a

1 request in writing from the State. You will have an  
2 opportunity to reflect on it, look at it, see what you have  
3 and make your response clear, and then I have a record of what  
4 is being requested and what has been given. Otherwise, we are  
5 going to be fighting through every day of trial, well, this  
6 wasn't provided, when did you get it, you violated this or you  
7 didn't do that, and that would be untenable for the Court. I  
8 want a record of when things have been disclosed and what  
9 things have not been disclosed. So, Mr. Hicks.

10 MR. HICKS: Your Honor we'll file that motion  
11 promptly. I just wanted to say I am not going to comment on  
12 the back and forth. I appreciate what you are saying. It is  
13 clear Ms. Hickman is reviewing the materials they have, so  
14 they are there. The difficulty for the State is we don't know  
15 exactly what it is. So we'll do the best we can to be  
16 specific in our discovery request, Your Honor, but it is a  
17 little bit of a struggle when we don't know what they have.  
18 And so we'll do our best to abide by that. We'll certainly  
19 get you that order, excuse me, that motion promptly.

20 THE COURT: Well, it sounds like some of the  
21 material they have has not been translated. If you are  
22 requesting non-translated material, you should make that  
23 clear, if you want to translate them for yourself.

24 MR. HICKS: Well, Your Honor, again the irony is

1 fairly thick here today. We regularly combat these kinds of  
2 arguments at the State. We just give over what we have. If it  
3 is not translated, we'll give it to them. If it is translated,  
4 then we'll give it to them when we do translate it. We are an  
5 open book. And now -- And that is demanded of us, and now we  
6 are asking the same. We believe it should be equal. That is  
7 what your Discovery Order says, Your Honor. And so we'll make  
8 our request. I very much appreciate why Your Honor is asking  
9 us to do so. We shouldn't have to, but we will. Thank you.

10 MS. HICKMAN: Your Honor, of course the difference  
11 between the State and the defense is the State is trying to  
12 take the liberty, in this case the life of somebody, so they  
13 have a different obligation to provide everything that is in  
14 the possession of the police. We have a different duty,  
15 because we are trying to defend somebody, and we are going to  
16 comply with and intend to give everything to the State. We  
17 are eight months from trial. We are not trying to play games.  
18 We are working to defend our client. I think we made that  
19 pretty clear at all the hearings. When we see the motion,  
20 we'll reply and give it to Mr. Hicks. Of course, we are not  
21 prosecuting anybody. The State is always welcome to go to El  
22 Salvador and conduct their own investigation, as they have  
23 indicated the State can travel. The borders are open.  
24 They're free to go and investigate as well.

1           THE COURT: Did you say the borders in El Salvador  
2 are open?

3           MS. HICKMAN: The State filed a motion indicating  
4 that the airport is open in El Salvador and we are free to  
5 travel there. That applies to the State as well. If there is  
6 information they believe exists, they are free to go get it as  
7 well, the same effort we are trying to make.

8           MR. ARRASCADA: Judge, to clarify, the State  
9 Department has recommended not to travel to El Salvador under  
10 their recommendation meter. And also I think it was two days  
11 ago the CDC has recommended no people travel within the  
12 country. So as far as travel is concerned, we are fairly  
13 restricted and constricted.

14          THE COURT: Okay. I will review the written motion.  
15 I will review the written response, and I will give you an  
16 opportunity to clarify your positions at the next hearing. I  
17 believe that the reciprocal discovery that is statutorily  
18 required applies in all cases. It doesn't just apply when it  
19 is a case of limited significance. It applies in all matters,  
20 and my Order applies whether this is involving the request by  
21 the State or where the ultimate penalty is to be a death  
22 penalty or a traffic ticket. That is the problem, and the  
23 defense, I will not hold the defense to any standard other  
24 than that which is required under the statutory scheme and the

1 Constitution. But it is easier for me to deal with it if I see  
2 it in writing and I see the response in writing. I don't  
3 worry about nuances of words, nuances of comments. I need to  
4 see specific statements, and then I will have specific  
5 statements in the record.

6 Ms. Clerk, we need a date thirty days hence for our  
7 next hearing. It will be a status hearing/discovery hearing  
8 anticipating the discovery motion is filed and responded to  
9 timely so we can hear it at the hearing you're going to give  
10 us the date now.

11 THE CLERK: Thank you, Your Honor. I am just looking  
12 for a time during that period. We will be in evidentiary  
13 hearings that week that we would normal set it. I am just  
14 asking for guidance. Would you like to go after that week  
15 like the week of March 8th?

16 THE COURT: I think we can do it the morning of  
17 March 8th even if we are still in evidentiary hearings. We  
18 could set this at 9:00 a.m. and still be able to do the  
19 evidentiary hearing.

20 THE CLERK: March 8th hopefully we'll be out of it,  
21 but that is the start of the next trial flight.

22 THE COURT: One month would be March 1st, is that  
23 what you're thinking?

24 THE CLERK: Yes. If you think we have enough time

1 from 9:00 to 10:00, we could do it on March 1st.

2 THE COURT: Okay. Let's do it March 1st then.

3 MR. HICKS: This is Chris Hicks on behalf of the  
4 State. I would ask respectfully if we could have it a week  
5 earlier than that, because, again, the Order is clear that we  
6 are promptly to be given this discovery. Every day that ticks  
7 by is a little less time we have to prepare and review. We'll  
8 file a motion by the end of this week. They have ten days to  
9 respond. We have five days. That would still fit in with a  
10 week earlier. If that is not consistent with the Court's  
11 calendar, that is fine. I thought I would make that request.

12 THE COURT: If you file your motion by the 5th of  
13 February, their response would be due February 15th. Is that  
14 what you are thinking? Mr. Hicks, we lost you. I was looking  
15 at the calendar rather than your face so I couldn't see if you  
16 were talking. If you can get it filed by the 5th, their  
17 response would be due the 15th which would set the hearing  
18 you're thinking the 22nd, that Monday?

19 MR. HICKS: That's correct, Your Honor.

20 THE COURT: Ms. Clerk, is that the date of the  
21 evidentiary hearing also?

22 THE CLERK: Yes. That is the start of the two-week  
23 evidence hearing. That would be February 22nd and March 1st.

24 THE COURT: So, Mr. Hicks, that evidentiary hearing

1 lead counsel is Ms. Hickman on that two-week evidentiary  
2 hearing. So I guess we could do it before that starts later  
3 in the week if you forewent your reply time.

4 MR. HICKS: That would be fine with the State, Your  
5 Honor.

6 THE COURT: Ms. Clerk, would you look at the  
7 Thursday before that, the Thursday or Friday before that?

8 MR. CLERK: Thursday March 18th does work.

9 THE COURT: February.

10 THE CLERK: I am sorry. You're right. February 18th  
11 does not work for the Court. We have pretrial motions in  
12 another matter with Ms. Hickman.

13 THE COURT: Okay.

14 THE CLERK: February 19th we have a 9:00 o'clock  
15 with NDOC and a 10:00 o'clock civil oral arguments that appear  
16 to be only scheduled until 11:00.

17 MR. ARRASCADA: I am not available the 19th. That is  
18 the State Sentencing Commission meeting. They last eight  
19 hours plus every time we have them.

20 THE COURT: Okay. What do we have on the 17th,  
21 Ms. Clerk?

22 THE CLERK: Our morning is full. We cannot handle  
23 anything more in the morning. We have a 2:00 o'clock prove up  
24 hearing in a civil matter.

1 THE COURT: We can get someone else to handle that  
2 for us, then we could do it the 17th. Is everyone available  
3 the afternoon of the 17th?

4 MR. HICKS: Yes, Your Honor. Thank you.

5 THE COURT: Mr. Arrascada?

6 MS. HICKMAN: We are, Your Honor, until about 3:30.

7 MR. ARRASCADA: That's correct.

8 THE COURT: All right. We'll move our calendar  
9 around. This case takes precedence over any other case, so we  
10 will move our schedule around. How about we set this for 1:15  
11 on February 17th.

12 MR. HICKS: That works. Thank you.

13 THE COURT: The sooner you get your motion filed,  
14 Mr. Hicks, the sooner the State -- the defense has their ten  
15 days triggered to respond.

16 MR. HICKS: Thank you, Your Honor.

17 THE COURT: All right, everyone, thank you. Is  
18 there anything else for today?

19 MS. HICKMAN: No, thank you.

20 THE COURT: Okay. Then we'll see you all back in a  
21 couple of weeks. Court's in recess.

22 (Whereupon, the proceedings were concluded.)

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I, Judith Ann Schonlau, Official Reporter of the  
Second Judicial District Court of the State of Nevada, in and  
for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 4 of the above-entitled court on MONDAY, FEBRUARY 1, 2020 at the hour of 9:00 a.m. of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of THE STATE OF NEVADA vs. WILBER ERNESTO MARTINEZ GUZMAN, Case Number CR19-0447.

That the foregoing transcript, consisting of pages numbered 1-26 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 1st day of February, 2020.

/s/ Judith Ann Schonlau  
JUDITH ANN SCHONLAU CSR #18

## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 18, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty  
Chief Deputy Public Defender

I further certify I served a copy of this document by e-mailing a true and correct copy to:

Hon. Connie J. Steinheimer  
Second Judicial District Court, Dept. 4

John Arrascada  
Washoe County Public Defender

Katheryn Hickman  
Chief Deputy Public Defender

Gianna Verness  
Chief Deputy Public Defender

Joseph W. Goodnight  
Chief Deputy Public Defender

/s/ Tatyana Kazantseva  
TATYANA KAZANTSEVA