

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO ANTONIO TORRES

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 83216

Appeal From A Judgment of Conviction (Guilty Plea)
Fifth Judicial District Court
The Honorable Kimberly Wanker, District Judge
District Court No. CR20-0092

APPELLANT'S APPENDIX VOLUME 4 OF 4

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Electronically Filed
Oct 14 2021 11:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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1 SUPREME COURT CASE NO. 83216

CASE NO. CR20-0092

2 DEPARTMENT I

3 FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF NYE

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE

6 KIMBERLY WANKER

7 -oOo-

8 THE STATE OF NEVADA,

9 PLAINTIFF,

10 -VS-

11 MARCO ANTONIO TORRES,

12 DEFENDANT.

13 _____/

14
15 TRANSCRIPT OF PROCEEDINGS

16 MOTION TO SUPPRESS/JACKSON DENNO HEARING

17 MARCH 25, 2021

18 COURTHOUSE

19 PAHRUMP, NEVADA

20
21
22 REPORTED BY:

SUZANNE KUES ROWE

23 Nevada CCR #127

24

1 APPEARANCES

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16
17 FOR THE DEPARTMENT OF NOT PRESENT
18 PAROLE AND PROBATION:
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1 THURSDAY, MARCH 25, 2021, 1:39 P.M., PAHRUMP, NEVADA

2 -oOo-

3 THE COURT: We are here on Case Number CR20-0092, State
4 versus Marco Antonio Torres. We are here on the Motion to
5 Suppress, and the defendant's statements, and the Jackson Denno
6 hearing.

7 I have appearing, obviously from the Tonopah jail, is
8 the defendant, Marco Torres. On behalf of Mr. Torres, his
9 attorney Daniel Martinez and attorney Ronni Boskovich.

10 On behalf of the State, I have Deputy District Attorney
11 Mike Allmon, and Suzy Rowe is our court reporter appearing via
12 Blue Jeans from Minden, Gardnerville.

13 Reminder. We are going to sit and speak into the
14 microphones so that Ms. Rowe can hear today.

15 So, I have looked at all of the pleadings that have
16 been filed since the last hearing.

17 So, I am in receipt of the following:

18 Defendant's Supplemental Brief in Support of Motion to
19 Suppress.

20 The State's Instant Response to the Defendant's
21 Supplemental Brief in Support of Motion to Suppress.

22 And Reply to State's Instant Response to Defendant's
23 Supplemental Brief in Support of Motion to Suppress.

24 And as you recall, before I heard a Motion to Dismiss,

1 and at that time I am the one who raised some issues and asked
2 for the supplemental briefing. So, that is in conjunction with
3 that.

4 In addition, back on February 26th of 2021,
5 Mr. Martinez filed a Motion to Suppress Defendant's Statements
6 and Request for Jackson vs. Denno hearing.

7 And then I have a Response to Defendant's Motion to
8 Suppress Defendant's Statements, and Request for Jackson vs.
9 Denno hearing.

10 So, my understanding of today is exactly that. We are
11 going to talk about the Motion to Suppress, which was originally
12 filed as a Motion to Dismiss, as well as move forward with our
13 Jackson vs. Denno hearing. That's my understanding of today, and
14 that's been set since February 26th of 2021.

15 So, I would like to address the Motion to
16 Dismiss/Motion to Suppress first, and then we can go to the
17 Jackson vs. Denno hearing, all right?

18 MR. MARTINEZ: Judge?

19 THE COURT: Yes.

20 MR. MARTINEZ: Just as a preliminary matter, my
21 understanding was that we were not here for the Jackson vs. Denno
22 hearing today. But, I know that I filed my request for a Jackson
23 vs. Denno hearing.

24 In my review of the law and whatnot, I think that's

1 something, after hearing motion argument, the Court could deny
2 that request for a Jackson vs. Denno hearing.

3 So, first, we would have motion argument on that, and
4 then if we were going to have a Jackson vs. Denno hearing, that
5 it would be set separately from today.

6 Then, again, perhaps that was my mistake. But, I would
7 not be prepared to go forward with the Jackson vs. Denno hearing
8 today, Your Honor.

9 THE COURT: I want to hear from the state. What was
10 your understanding of today?

11 MR. ALLMON: Your Honor, the state was unclear itself.
12 The state reached out and asked, and were told to be prepared.

13 So, the state did call its witnesses. However, I would
14 agree with the defense, that he would need to present his client,
15 and I would have no objection to setting that hearing later.

16 THE COURT: Let me explain something to both of you.
17 It seems like you guys aren't familiar with the rules, and this
18 is constant.

19 The person that is the most prepared is the judge with
20 the law. You guys should be ready to go today. And I know the
21 problem. The state doesn't have any way to play any of their
22 documents today or their exhibits, which are the confession,
23 this, that and the other, because they didn't make any
24 arrangements or ask the Court how they were going to do that.

1 And the problem is that I'm using the big screen to
2 bring the defendant in from the Tonopah jail, and to bring my
3 court reporter in.

4 So, no prior preparation. We are here at 1:30 for the
5 hearing. Oh, my gosh. How am I going to play stuff?

6 Now I want to make something abundantly clear to both
7 sides. Do not contact my office and ask what do I do, this, that
8 or the other. You've got ten attorneys over at the DA's office.
9 There is a group of Public Defenders. There are court rules.

10 You need to read them and figure them out on how things
11 need to be done procedurally. I can't give you legal advice. I
12 know how it's supposed to be done, but, my goodness, among ten
13 attorneys at the DA's office and the other side, Mr. Martinez,
14 you prepared the Notice of Hearing on the motion. And I filled
15 it out and signed it.

16 So, if you had any question about what today was going
17 to be, either side, you should have set the matter on my
18 calendar, on a law and motion day, and we could have discussed
19 it.

20 But, I have done nothing but prepare. There is a ton
21 of prep work that has been done by the Court for today. Pretty
22 much this is all I have done at night. I have been up until
23 2:30, three o'clock every morning this week, working on this.
24 Watching the video. Getting prepared. Rereading the preliminary

1 hearing transcript.

2 And it sounds like there's one person prepared for
3 today. The judge. That's unacceptable by both sides. I just
4 want to bring the fact that that is unacceptable to me.

5 All right? You guys need to figure this out.

6 With that being said, I am going to address something
7 on the Motion to Dismiss/Motion to Suppress. And that is this:

8 I'm a little disappointed that neither of you cited the
9 correct Nevada law.

10 Again, you've got ten attorneys. I would think that
11 somebody could do the legal research that would be able to get
12 the correct rendition of what the law is.

13 So, I'm going to give it to you. I am prepared and
14 ready to go, or I was until my stuff had to be moved around. I
15 had my bench all set up and ready to go this morning.

16 So, let's talk about the emergency aid exception. The
17 Nevada Supreme Court decision is Hannon, H A N N O N vs. State,
18 125 Nevada, 142, 207 Pacific 3rd, 344. It's a 2009 Nevada
19 Supreme Court decision.

20 This is what the law says:

21 "Warrantless home entries. The chief evil against
22 which the Fourth Amendment protects, (see Payton versus New York,
23 445 U.S. 573, 585, 100 Supreme Court 1371 63 Lawyers' Edition
24 2nd, 639, 1980,) are presumptively unreasonable unless justified

1 by a well delineated exception, such as when exigent
2 circumstances exist. See Camacho vs. State."

3 And for the court reporter, that's C A M A C H O, vs.
4 State, "119 NEV 395, 400. 75 Pacific 3rd, 370, 374, 2003.

5 "Under established law, see Alward A L W A R D, vs.
6 State, 112 Nevada 141, 151, 912 Pacific, 243, 250, 1996,
7 overruled in part on other grounds by Rosky, R O S K Y vs. State,
8 121 NEV 184, 190-91 and note ten, 111 Pacific 3rd 690, 694 and
9 note ten, 2005."

10 And Rosky, for the court reporter, is R O S K Y.

11 "One such exigency is the immediate need to, quote,
12 'render emergency assistance to an injured occupant or to protect
13 an occupant from imminent injury.'"

14 The citation is to a U.S. Supreme Court case, Brigham
15 City, 547 U.S. at 403, 126 Supreme Court, 1943.

16 "Unlike hot pursuit situations, or the need to preserve
17 evidence, warrantless entries for emergency reasons do not
18 require probable cause."

19 "See US vs. Snipe, S N I P E, 515 Fed. 3rd, 947, 952,
20 Ninth Circuit, 2008.

21 "Emergencies, therefore, are analytically distinct from
22 other exigent circumstances. Three, Wayne, W A Y N E, R.
23 LaFave, L A, capital F A V E, comma, search and seizure:

24 "A treatise of the Fourth Amendment, section 6.6(a), at

1 451, Fourth Edition, 2004:

2 "Thus, although some taxonomical debate exists
3 regarding its proper classification whether as a type of
4 exigency, or a freestanding exception to the warrant requirement,
5 id, compare U.S. versus Holloway, 290 F. 3rd, 1331,"

6 And for the court reporter, that's Holloway, H O L L O
7 W A Y.

8 "1331, 1337, 11th Circ., 2002."

9 Quoting: "Emergency situations involving endangerment
10 to life fall squarely within the exigent circumstances exception,
11 with People versus Hebert."

12 H E B E R T, 46 Pacific 3rd, 473, 478-9, this is a
13 Colorado case from 2002.

14 "Warrantless emergency entries fall within the
15 community caretaking exception, emergency entries are, 'assessed
16 separately and by a distinct test.'"

17 That's, again LaFave, L A capital F A V E, supra,
18 6.6(a), at 451 note six.

19 And that's coming from Hannon vs. State, the case that
20 nobody cited, 125 Nevada, 142, 145-46, 207 Pacific 3rd., 344,
21 346, 2009, as modified on June 2nd, 2009. And Lastine,
22 L A S T I N E versus State, 134 Nevada, 538, 547, 429 Pacific
23 3rd, 942, 951.

24 This is from the Nevada Appellate Court in 2018, the Nevada Court

1 of Appeals noted:

2 "Emergencies are analytically distinct from other
3 exigent circumstances."

4 And it's cited, it's at, see Hannon, H A N N O N vs.
5 State, 125 Nevada, 142, 145-46, 207 Pacific 3rd, 344, 346, 2009
6 Nevada Supreme Court decision.

7 Under the Brigham City versus Stewart case, which is
8 547 U.S. 398, 2006, United States Supreme Court decision.

9 "Under that standard, a law enforcement officer's
10 subjective motivation is irrelevant."

11 That's at 404, 126 Supreme Court, 1943.

12 "Rather, reasonableness of an emergency home entry
13 depends on whether, quote, 'the circumstances viewed objectively
14 justify the action.'"

15 And it's quoting Scott, S C O T T versus United States.
16 436 U.S. 128, 138, 98 Supreme Court, 1717, 56 Lawyers' Edition
17 Second, 167, it's a 1978 case.

18 "In other words, whether law enforcement had an
19 objectively reasonable basis to believe that there was an
20 immediate need protect the lives or the safety of self or others.

21 "See Snipe, 515 Fed 3rd. At 952, Najjar, N A J A R, 451
22 Fed. 3rd at 718. See also U.S. versus Huffman, H U F F M A N,
23 461 Fed. 3rd, 777, 785, Sixth Circuit, 2006."

24 And that's a citation from Hannon vs. State, 125

1 Nevada, 142 at 147, 207 Pacific 3rd, 344 at 347.

2 In U.S. vs. Garcia, 749 Fed. Appendix, App'x, A P P
3 apostrophe X, 516 on pages 520 to 521, again, a Ninth Circuit
4 decision from 2008, the Ninth Circuit Court of appeals stated:

5 "The emergency aid exception prevents law enforcement
6 officers to enter and search a home without a warrant when two
7 conditions are satisfied:

8 "One, considering the totality of the circumstances,
9 law enforcement had an objectively reasonable basis for
10 concluding that there was an immediate need to protect others or
11 themselves from serious harm.

12 "And two, the search of scope and manner were
13 reasonable to meet the need."

14 "Cited U.S. versus Snipe, S N I P E, 515 F 3rd., 947,
15 952, Ninth Circuit 2008.

16 "In determining whether law enforcement satisfied these
17 conditions, we assess officer's actions from the perspective of a
18 reasonable officer on the scene, rather than the 20/20 vision of
19 hindsight."

20 That is Sandoval, S A N D O V A L versus Las Vegas
21 Metro Police Department, 756 Fed. 3rd, 1154, 1163, Ninth Circuit
22 from 2014, quoting Ryburn, R Y B U R N vs. Huff, 565 U.S. 469,
23 477, 132 Supreme Court 987, 181, Lawyers' Edition 2nd, 966, 2012
24 U.S. Supreme Court decision.

1 "As the Supreme Court has repeatedly emphasized, the
2 calculus of reasonableness must embody allowance for the fact
3 that police officers are often forced to make split second
4 judgments in circumstances that are tense, uncertain, and rapidly
5 evolving."

6 And that's Ryburn, R Y B U R N, 565 U.S. at 477, 132
7 Supreme Court 987, quoting Graham vs. Connor C O N N O R, 490
8 U.S. 386, 396-97, 109 Supreme Court 1865 and 104 Lawyers' Edition
9 2nd, 443, 1989.

10 And that, again, is from United States versus Garcia,
11 749 Fed. App'x 516, 520-21, Ninth Circuit decision from 2018.

12 "Under the legal principles identified variously as the
13 Emergency Doctrine, the Emergency Aid Exception or the Emergency
14 Exception, law enforcement officers may enter a property without
15 a warrant to render emergency assistance to an injured occupant,
16 or to protect an occupant from imminent injury."

17 That's Michigan versus Fisher, 130 Supreme Court, 546,
18 548, 175 Lawyers' Edition 2nd, 410, 2009, U.S. Supreme Court
19 decision.

20 "This emergency aid exception does not depend on the
21 officer's subjective intent or the seriousness of any crime that
22 officers may be investigating when the emergency arises. The
23 test applied instead is an entirely objective one of whether
24 there was an objectively reasonable basis for believing that

1 there was an occupant in need of immediate aid or protection.

2 "Significantly, officers do not need ironclad proof of
3 a likely serious, life-threatening injury to invoke the emergency
4 aid exception."

5 130 Supreme Court at 549:

6 "The entirely objective inquiry into whether there was
7 an objectively reasonable basis for believing that assistance was
8 needed is not subject to a hindsight determination that there, in
9 fact, was no emergency."

10 The point I'm making with this and citing this
11 authority is no one came up with the Nevada Supreme Court
12 decision.

13 And Hannon versus State, the 2009 Nevada Supreme Court
14 decision on the Emergency Aid Exception, prior to that time, they
15 had crafted something very similar to what the defense had cited
16 in their supplemental briefing, and that was rejected explicitly
17 in the Hannon case by the Nevada Supreme Court, said:

18 "The standard that we follow is Brigham City."

19 So, I think there's been some confusion as to the
20 exigent circumstances.

21 In this case, and I will be honest with you. I have
22 looked at the body cams that were provided by the defense. And
23 they are talking on the cam, do we have probable cause? Don't we
24 have probable cause? I don't know if we have enough probable

1 cause. They didn't need probable cause under the Emergency
2 Exception. That is what makes it distinct from other exigent
3 circumstances.

4 And as the Nevada Supreme Court even delineated in
5 subsequent cases, that all that is needed is the objective
6 reasonable basis to believe that there was an immediate need to
7 protect the lives or safety of themselves or others.

8 Now, it is a little disheartening to me after watching
9 the body cam, that the Nye County Sheriff's Office waited.

10 The 911 call came in, and I went back and listened to
11 the 911 call, which is at about 2:59 a.m. And then there were
12 several attempts by the 911 operator, after the call went dead,
13 to call back. And was unsuccessful.

14 That led to the dispatch of the Nye County Sheriff's
15 Department. When they got there, Officer Gideon, and I believe
16 there was another officer, I'll tell you quickly who that is,
17 went, and the thing they did was, there was a trailer in front,
18 and there is video cam of them talking to the resident, who said,
19 "You want the trailer behind here."

20 It was Williams. I looked at the body cams. There was
21 a body cam from Gideon, which I had a hard time hearing.

22 There was a body cam from Williams, but I watched that,
23 so they knew that there were two people in the trailer behind.
24 They knew what their names were, that there had been arguing.

1 They knew they were Torres and Jonathan is what they
2 knew, or Marco and Jonathan were in that trailer.

3 There is over an hour where they are knocking on the
4 trailer. Nye County Sheriff's office. At some point about 30,
5 35 minutes in the Sergeant shows up. That's Sergeant Fernandez.
6 Again, they knock.

7 They are having a discussion, do we have enough
8 probable cause to break the door down? Well, they didn't need
9 probable cause. That's the whole point. They didn't need it.

10 So Fernandez says, Sergeant Fernandez says, I'm going
11 to go call Lieutenant McRae. So, she goes and calls Lieutenant
12 McRae and comes back and says Lieutenant McRae authorized a
13 locksmith. And a locksmith was called.

14 Now, what's so interesting about that, is either they
15 had probable cause, or they didn't. And whether they had broken
16 the door down or waited the additional 45 minutes or so, the
17 locksmith got there about 35 minutes after he was called.

18 But, then if you watch the body cam, it took him about
19 30 minutes to get the door open.

20 And while he is in the process of trying to unlock the
21 door, that's when Mr. Torres comes to the window and says, "Go
22 away." You can hear him. "Go away. We're fine in here. I'm
23 trying to sleep."

24 He becomes rather combative with the officers. And it

1 was only after the locksmith gets the door unlocked and they are
2 starting to open that door, he rushes in and then meets them.

3 But, it's interesting to me, whether they had broken
4 down the door or waited the 45 minutes, the issue would have been
5 the same. They were entering without a warrant.

6 So, to me, to be honest with you, it was very
7 surprising, to me, at the behavior of the Nye County Sheriff's
8 Office. When they got there, I think they should have broken the
9 door down when they couldn't arouse somebody, and it would have
10 been one two of things would have happened:

11 Either, the result probably wouldn't have been any
12 different here in terms of either they had probable cause or they
13 didn't. They didn't need probable cause.

14 So, waiting for that locksmith accomplished nothing.
15 That just seems to me to be the oddest thing I have ever seen.
16 You've got a call, help, help, help, false alarm.

17 They call back, they can't get anything.

18 They go to the first trailer, the man says they are
19 arguing. It's the trailer behind.

20 They come up to that trailer, they see a chair, they
21 see a rail that looks like it's freshly broken. You see
22 furniture outside.

23 You see a heater thrown out. You see all this stuff,
24 you walk around, you've got people stationed all around this

1 trailer.

2 You have tapped on the windows. At one point they were
3 going to take the screen off the window and see if they could
4 open the window and look in with their flashlights.

5 But, why would you wait for the locksmith? Either they
6 believe they had probable cause and could have broken the door
7 down, or they didn't have probable cause and breaking the door
8 down, with no probable cause, or having the locksmith enter with
9 no probable cause would have been the same outcome. It's just
10 that it delayed them entering into the residence.

11 Now, I would be happy, that's sort of how I see it
12 here. But, I think it's important to realize, I believe, that
13 there was confusion about the, from the Nye County Sheriff's
14 Office as to the exception. I think they believed they had to
15 have probable cause. I think the law is very clear that they did
16 not.

17 But, I will say this. That you guys both briefed this
18 on two occasions, and nobody came up with the Nevada Supreme
19 Court decision from 2009. It's not like it's new. It's been out
20 there for, what, 12 years? And yet I am the one who found it.
21 Not you guys, which is kind of surprising to me.

22 MR. MARTINEZ: Judge, I apologize for interrupting,
23 Your Honor. I wanted to hit on a few points from what you said.

24 First of all, Your Honor, both myself and Mr. Allmon,

1 we cited to that Hannon case and in my initial motion I cited to
2 that Hannon case, as did Mr. Allmon in his initial opposition.

3 THE COURT: Maybe. I just missed it then.

4 MR. MARTINEZ: But, we definitely did, Your Honor. I
5 just wanted to make that point. We did have that case law. We
6 came and we argued about the exigent circumstances last time.

7 THE COURT: Right.

8 MR. MARTINEZ: And what Your Honor wanted us to brief
9 was whether, the possibility of the expiration of the exigent
10 circumstances. So, I think that's why we left it out of our
11 supplemental briefs. Because we talked about it in our initial
12 one.

13 THE COURT: But, you guys never talk about it as being
14 a separate exception. Never talk about it being a separate
15 exception. If you look at the case authority from the Nevada
16 Supreme Court that has cited Hannon, it makes it very clear that
17 it is, how it's treated. It's not treated as part of the exigent
18 circumstances. It's treated as a separate exception.

19 In fact, there's another community caretaker exception
20 as well, and there's an issue there about what can you do. What
21 is the area that you can approach?

22 But, everybody just lumped it, and nobody really
23 delineated. Mr. Allmon did in his supplemental briefing, but
24 they kind of glossed over that the requirements for exigent

1 circumstances and the requirements for the medical emergency were
2 different.

3 Everybody argued probable cause. You didn't need
4 probable cause to get in there. So, with that, then why would
5 you get a warrant if you don't need probable cause to get it?
6 Why would you call a judge and get a warrant if you have exigent
7 circumstances? There's no reason to. That's not something that
8 is required. Why are you calling for the warrant? Because
9 you're telling the judge, I have probable cause to enter. But
10 you don't need probable cause to enter, so you don't need to call
11 the judge for a warrant.

12 But, it's clear to me that Nye County Sheriff's Office
13 didn't understand that, and I think that went as far up as the
14 lieutenant that was supervising that day.

15 MR. MARTINEZ: Your Honor, in the body cam footage you
16 mentioned a couple times now where they talk about whether or not
17 they have sufficient probable cause to enter the house.

18 THE COURT: They do.

19 MR. MARTINEZ: That's not what they talk about, Your
20 Honor. They specifically use the word exigent circumstances when
21 they're talking.

22 THE COURT: But, exigent circumstances is different.
23 Nevada Supreme Court treats it different, the word exigent
24 circumstances, meaning it is a probable cause determination, then

1 they do this other exception.

2 In fact, they discussed that in Mannon, and then
3 subsequently -- or Hannon, and then they subsequently talk about
4 it, here is a Court of Appeals decision from 2018, Lastine. And
5 they say this:

6 "Emergencies are analytically distinct from other
7 exigent circumstances."

8 So, even the Nevada Supreme Court and the Court of
9 Appeals have recognized that it's carved out separately. And I
10 will tell you that there are a number of unpublished decisions,
11 which I haven't cited to today, but, of course, I have read and
12 looked at, that make it clear that this is a different, this is a
13 different exception in the class of exceptions. Sort of how I
14 look at it.

15 The law is presumptively, any time you enter a dwelling
16 without a warrant, it's presumptively inadmissible, except, and
17 then you go down, what are the exceptions?

18 Exigent circumstances can be a variety of things.
19 There are a number of things that fall under this umbrella. But,
20 what the Nevada Supreme Court says is this is sort of a separate
21 exception that we carved out.

22 And the reason it's analytically different is because
23 it has a different burden of proof. It doesn't require the
24 probable cause element that's required for other exigent

1 circumstances.

2 So, I would carve it out in a list, as a separate
3 exception to the requirement of a warrant. And I think that's
4 exactly how the Nevada Supreme Court treats it. I think it's
5 completely different.

6 So, with that, and I think that's what happened, and
7 the courts are even guilty of this. A number of courts analyze
8 it, some analyze it as an exigent circumstance, some analyze it
9 as something else.

10 Now, I think the Nevada Supreme Court analyzes it as a
11 separate exception. That's the point I'm making.

12 But, taking that into consideration then, they weren't
13 required to have probable cause. If they weren't required to
14 have probable cause, you know, the fact that they bumbled around
15 is frightening to me, that the Nye County Sheriff's Office --
16 maybe, I get it when we have a deputy that doesn't know, if
17 they're new, but they should know, but it just shows to me that
18 they weren't very well trained on the exceptions to entering the
19 property.

20 Because we had the deputies out there. We have a
21 Sergeant and we have a Lieutenant. The Lieutenant, it's the
22 Sheriff, the Captain and her Lieutenant.

23 So, it goes all the way up the chain that they aren't
24 very well trained on the exceptions on entering the premises.

1 That's frightening to me, because what happened is, we
2 have a 911 call at 3:00 in the morning. 2:59 something. It's
3 3:00 when they are calling back. The deputy is on scene probably
4 about 3:05. They don't enter the premises until 4:30. They
5 should have gone there and broken the door down.

6 I realize I am arm chair quarterbacking it from the
7 back side. But, they knew what they knew. They knew that they
8 had a hang up.

9 In fact, I reread the transcript today from the
10 preliminary hearing, and one of the parties had said that they
11 had listened back to the 911 call, which made me go back and
12 listen to the 911 call today. And I thought that something they
13 said was really interesting. I can find it. He talks about what
14 he heard on the 911 call:

15 "I'm going break your hands."

16 MR. MARTINEZ: Judge, I know what you were referring
17 to. That was Detective Fancher, and he listened pretty intently
18 to that 911 call before he went to see Mr. Torres.

19 THE COURT: I think it's really telling.

20 At one point you're asking what he did before the
21 interview -- here it is. This is Deputy Fancher from the
22 preliminary, I'm sorry. Detective. Let me find it here.
23 Detective Fancher's preliminary hearing transcript testimony
24 begins on page 139. And then Mr. Vitto is questioning Detective

1 Fancher, and this is starting on page 188, line 19.

2 Q. "All right. Now have you had the opportunity to listen
3 to the 911 call to dispatch?

4 A. "Yes, I did."

5 Q. "What did you hear?"

6 A. "I heard a male's voice that sounds like the defendant
7 saying, 'Get off the phone or I'm going to break your hand,' or
8 something. 'I'm going to break your hand if you don't get off
9 the phone.'

10 "But, you can kind of hear, initially you can kind of
11 hear the decedent saying, 'Help,' in kind of like a low tone.
12 I'm not sure if, you know, he was trying to speak low so nobody
13 could hear him. I don't know if you can hear him say, 'Help.' I
14 kind of told that information backwards.

15 Q. "That's okay. You heard the decedent ask for help, and
16 you heard the defendant say, get off the phone, or maybe
17 something like, I'm going to break your hand?"

18 A. "Yes. And then it sounds like there is some scuffle or
19 something, you know? You know, on the phone something is going
20 on and then eventually it was disconnected or when he smashed the
21 phone they lost the connection."

22 So, that's the 911 call. And then we sent the deputy
23 out there, after 911 is unable to call back, and the deputies go
24 to the first trailer and there's some confusion, because the 911

1 system gives them an approximate location, but there are a number
2 of trailers on the property.

3 They speak to the gentleman who says it's the trailer
4 behind here. They go to the trailer, it's got a number 103 on
5 it, but it's really not trailer 103, I guess, but that's the
6 number.

7 And it's at that point then that the deputies are
8 walking around, knocking on the window, knocking on the door,
9 trying to get Mr. Torres to respond.

10 And then approximately about 35 minutes after that,
11 then Sergeant Fernandez shows up, and she's there, and they try
12 for 10 or 15 minutes, and then she calls Lieutenant McRae. And
13 Lieutenant McRae, she comes back and tells the deputies, Gideon
14 and the other deputy -- I can't remember his name now. I watched
15 his video cam, but that McRae has authorized a locksmith and the
16 locksmith is on his way.

17 So, with all of that, and the principles of law
18 involved, I don't see how one would lose if the Emergency
19 Exception, while I'm critical, and I am, of the fact that they
20 didn't just break the door down, especially when they tell, when
21 they're knocking on the door, saying, if you don't open this
22 door, if you don't come to this door, I am going to break the
23 door down.

24 And they don't do it. And they wait the 35 minutes for

1 the locksmith to arrive. And then it takes him 30 minutes. And
2 then when they were finally able to enter the trailer at
3 approximately 4:30, that's when they find the decedent is dead in
4 his bedroom.

5 And they see what appears to be a scuffle. Under the
6 facts and circumstances of that, I am not going to suppress any
7 evidence. I think that there was a valid exception. It did not
8 require probable cause, and I am not going to dismiss or suppress
9 any evidence from that.

10 While I'm critical of what the officers, how long the
11 officers waited, and would the outcome have been different? I
12 don't know. But, the fact remains, and I think that, quite
13 frankly, even after the locksmith arrives and shortly after he
14 arrived and started working on the door, that's when Mr. Torres
15 opened the window.

16 And I think that would have created even another reason
17 to have gone in. He admits that he and his roommate are there,
18 that they are sleeping. Go away. He is confrontational, and
19 agitated with the officers.

20 So, I think that, like I said, the Motion to Dismiss or
21 Motion to Suppress, I am going to deny that.

22 So, now let's talk about the Jackson Denno hearing.
23 I'm not sure why there was confusion about that. Apparently
24 there is, and it appears that neither side is prepared to move

1 forward today, is that my understanding?

2 MR. MARTINEZ: Judge, in all due respect to the state,
3 I believe they are prepared to move forward today. I am not
4 prepared to move forward today.

5 Ultimately, when we do have the Jackson Denno hearing,
6 my request is going to have Mr. Torres present in the courtroom
7 for his testimony.

8 This is a special hearing where he will be allowed to
9 testify and the testimony cannot be used against him at the time
10 of trial.

11 THE COURT: I want to make something very clear about
12 the Jackson Denno hearing.

13 So everybody understands the rules of that hearing, I
14 would direct your attention to Gonzales versus State. It is 131
15 Nevada, 481, 354 Pacific 3rd, 654, 2015 Nevada Supreme Court
16 decision.

17 And it goes through, and I can read it into the record.
18 I am happy to do that. But, just so we all understand, the
19 burden of proof is on the state to demonstrate by a preponderance
20 of the evidence that the defendant's incriminatory statements are
21 admissible.

22 And a reminder that there's going to be two parts to
23 this. I'm not sure; I couldn't tell from the reading of the
24 briefs in this case if both parts are going to be tested or not.

1 So, maybe I will just go through this. So we are all
2 on the same page. You understand exactly what I understand the
3 law to be on this.

4 "When a confession is challenged and a hearing is
5 requested under Jackson vs. Denno, 378 U.S. 368, 380, 84 Supreme
6 Court 1774, 12 Lawyers' Edition 2nd, 908, 1964.

7 "The state must prove by a preponderance of the
8 evidence that the defendant's incriminatory statements are
9 admissible."

10 That's Dewey vs. State, D E W E Y, for the court
11 reporter, vs. State, 123 Nevada, 483, 492, 169 Pacific 3rd, 1149,
12 1154, 2007.

13 "When a defendant has been subjected to interrogation,
14 the State must first demonstrate the police administered Miranda
15 warnings prior to initiating any questioning."

16 That's, see State vs. Taylor, T A Y L O R, 114 Nevada,
17 1071, 1081, 968 Pacific 2nd, 315, 323, 1998.

18 "If the warnings were properly given, the state must
19 then prove the defendant voluntarily, knowingly and intelligently
20 understood his Constitutional right to remain silent, and/or to
21 have an attorney present during any questioning, and agreed to
22 waive those rights."

23 See Mendoza vs. State, 122 Nevada, 267, 276, 130
24 Pacific 3rd, 176, 182 -- 181-82, 2006.

1 See also *Miranda versus Arizona*, 384 U.S. 436, 86
2 Supreme Court, 1602, 16 Lawyers' Edition 2nd, 694 1966 United
3 States Supreme Court decision.

4 "Even where such warnings were properly administered
5 and waived, the state must also separately show that the
6 defendants incriminatory statements were voluntary under the
7 totality of the circumstances."

8 See *Falcon vs. State*, 110 Nevada, 530, 534, 874 Pacific
9 2nd, 772, 775, 1994 Nevada Supreme Court decision.

10 "A confession is admissible as evidence only if it is
11 made freely, voluntarily and without compulsion or inducement."

12 That's *Echavarria, E C H A V A R R I A, vs. State*, 108
13 Nevada 734, 732, 839 Pacific 2nd 589, 595, 1992.

14 Quoting *Franklin vs. State, F R A N K L I N*, 96 Nevada,
15 417, 421, 610 Pacific 2nd, 732, 734, 1980 Nevada Supreme Court
16 decision.

17 See also *Passama, P A S S A M A, vs. State*, 103 Nevada,
18 212, 123-14, 735 Pacific 2nd, 321, 322, 1987, and it cites in
19 quotation marks:

20 "In order to be voluntary, a confession must be the
21 product of a rational intellect and a free will." Internal
22 quotation marks omitted.

23 "Voluntariness must be determined by reviewing the
24 totality of the circumstances, including such factors as the

1 defendant's age, education and intelligence, his knowledge of his
2 rights, the length of his detention, the nature of the
3 questioning, and the physical conditions under which the
4 interrogation was conducted."

5 It cites, again, Passama, P A S S A M A, 103 Nevada at
6 214, 735 Pacific 2nd at 323.

7 "A confession is involuntary if it was coerced by
8 physical intimidation or psychological pressure."

9 Brust, B R U S T, vs. State, 108 Nevada, 872, 874, 839
10 Pacific 2nd, 1300, 1301, 1992.

11 "The ultimate inquiry is whether the defendant's will
12 was overborne by the government's actions."

13 That's Chambers, C H A M B E R S, vs. State, 113
14 Nevada, 974, 981, 944 Pacific 2nd, 805, 809, 1997.

15 Now, my understanding is one of the issues here is
16 whether the defendant was intoxicated, whether under the
17 influence of alcohol or drugs.

18 This Gonzales case addresses that.

19 "As a general preposition intoxication is a factor the
20 district court must consider in determining whether a confession
21 was truly voluntary.

22 "However, intoxication is not by itself sufficient to
23 render a confession involuntary when the totality of the
24 circumstances otherwise indicate that the statements were

1 voluntary."

2 It goes on: "Eg, Chambers versus State, 113 Nevada,
3 974, 981-82, 944 Pacific 2nd, 805, 809-10, 1997.

4 "Confession voluntary even when given with blood
5 alcohol content, BAC, of .27 and other drugs were present in
6 defendant's system, and defendant was in pain from an open stab
7 wound in arm."

8 Also cites Kirksey, K I R K S E Y vs. State, 112
9 Nevada, 980, 992, 923 Pacific 2nd, 1102, 1110, 1996.

10 "To render confession involuntary defendant must have
11 been so intoxicated that he was unable to understand the meaning
12 of his comments." Internal quotation marks omitted.

13 Falcon vs. State, F A L C O N vs. State, 110 Nevada,
14 530, 533-35, 874 Pacific 2nd, 772, 774-75, 1994 case.

15 "Confession was admitted, even though defendant was
16 under the influence of illegal narcotics at time of questioning."

17 Tucker vs. State. T U C K E R vs. State, 92 Nevada,
18 486, 487-8, 553 Pacific 2nd, 951, 952, 1976 case.

19 "Confession admissible even though defendant's BAC was
20 .20 at the time he signed the confession."

21 Wallace vs. State, W A L L A C E vs. State, 284 Nevada,
22 603, 605, 447 Pacific 2nd, 30, 31, 1968 decision.

23 "Confession voluntary even when given in emergency room
24 after being shot."

1 So, I want everybody to know that that is my
2 understanding of the law. That when -- the problem I think the
3 state has today, and they are going to have to make arrangements
4 for, is to be able to play their whatever they want to play
5 today, because I've got my court reporter in on Blue Jeans. I
6 have got the defendant in on Blue Jeans. And even if the
7 defendant is present in the courtroom, and is prepared to
8 testify, I still will not have the availability of my big screen
9 TV in here.

10 So, you're going to have to have the equipment ready to
11 go and have it operating and ready to play so that I can see it.

12 The other thing is, when I have looked at a number of
13 Nevada Supreme Court decisions, probably 60, before coming in
14 today that I have read especially on these Jackson Denno
15 hearings, I would think that the state would want to make the
16 confession available to the judge to review prior to the time of
17 the hearing, because I think the intent was to play that
18 confession today in Court and to have the witnesses testify.

19 And I may be wrong. But, I can tell you this. That in
20 looking at the decisions that have been up on appeal on
21 determinations made by the judge, the other thing is I believe
22 the judge either has to clearly articulate the facts and the
23 reasoning, if they suppress the confession on the record, or if
24 they don't on the record, so the Appellate Court can look at it,

1 or it must be done in writing.

2 But, I did notice that in reading those decisions, the
3 judges have reviewed the confessions.

4 And I would think that that would be more than just the
5 judge sitting in court on the day that you intend to play it, and
6 the Court reviewing it, if you will, live from the courtroom.

7 It appeared that the judges had reviewed that either
8 before the hearing, or after the hearing and before rendering a
9 decision. So, I don't have that.

10 But, I just want to make everybody aware, if you need
11 equipment, you got to bring your own or you are going to have to
12 make sure that you've got everything here and ready to go before
13 the hearing.

14 MR. MARTINEZ: I have a quick question in that regard,
15 Your Honor.

16 THE COURT: Okay.

17 MR. MARTINEZ: Does the Court have tablets for use
18 during trial?

19 THE COURT: I do have some. I have 22 iPads that are
20 Wifi only.

21 MR. MARTINEZ: Okay. And just -- we can get in contact
22 with the court perhaps if that's an option if the big screen TV
23 isn't available, where Your Honor could have a tablet and, but
24 with the lesser number of people that we do have using those

1 tablets to play whatever media we need to.

2 THE COURT: My biggest concern is the quality of the
3 recordings. I will tell you that I tried to play the DVDs or CDs
4 that you provided on my laptop. I couldn't hear it. I paired it
5 with external speakers, I still couldn't hear it. I actually
6 paired it to the TV. I paired my laptop to the TV and then I
7 could finally hear it.

8 But, all I could hear was mumbling before then. And
9 that's my concern of trying that. If that is something the
10 parties intend to do, you better be sure we can hear it; because
11 I couldn't hear it. This TV that we have is very good. And that
12 was the only way.

13 So, I spent all day yesterday sitting in here
14 connecting up my laptop to the TV so I could hear it.

15 We just need to be sure that we have got arrangements,
16 we have got the equipment. Because I think that's the hold-up
17 for the state today. They don't have the equipment to play what
18 they want to play.

19 But, the next question is, when are we going to hear
20 this? I can't move the trial date for this reason.

21 Mr. Martinez, you are going to be leaving under the
22 Public Defender contract. I do not want to appoint another
23 Public Defender to start over on this process.

24 I fully intend to try this case on the dates that are

1 set on my calendar. We're going forward.

2 So, now the problem I have is I'm gone Wednesday the
3 31st through April 6th. I come back and I'm in Tonopah that
4 Thursday and Friday. Then Monday I start a criminal trial. I'm
5 going to do, that is the Meeh trial, and we are going to do jury
6 selection on that Monday at the Pahrump Nugget, because they are
7 big enough for the jury venire, Tuesday, Wednesday, Thursday,
8 Friday we are scheduled back here.

9 Starting the following Monday I am back at the Pahrump
10 Nugget on a civil case that is going in front of a jury that is
11 going to take the whole week of the following week.

12 So, now I'm getting worried, because obviously I got to
13 get my jury venire out, and I am not sure when I can hear this.

14 Obviously, I don't think if the confession is
15 inadmissible, and again, I don't know, would that affect the
16 trial? We can probably still go forward. It just would be a
17 different way that the State would be preparing, I'm assuming.

18 Am I right, State?

19 MR. ALLMON: That's accurate, Your Honor. But, the
20 State obviously wants the evidence.

21 THE COURT: I know. And I know we need to have the
22 hearing. I have got to find the space. I was ready to go today,
23 and I understand that we've got a glitch here. And I will say
24 this. I don't think that we ever expected with COVID to have to

1 bring parties in via our big screen. The point being for that
2 big screen television was that we could use it to play.

3 Now, unfortunately, that creates a problem with the
4 when the court reporter is coming in, because I can put the Blue
5 Jeans on, or I can put the evidence on, but I can't do both.

6 The other thought is, I'm not hot on what we currently
7 have. And that is the old screen that was here in the courtroom.
8 When we upgraded the JAVS equipment, they wouldn't let us use
9 those screens. They wouldn't warranty the system.

10 So, we placed that screen into the chambers and it's,
11 I'm not going to say permanently mounted, but it is. It's not
12 mounted on a rollable cart.

13 One thing that I have thought about, and this may be a
14 resolution to this, is that my jury room has a really old piece
15 of equipment that used to be on a stand that I mounted to the
16 wall. That is not like our current TV, so it will take, you can
17 play on it but it can't receive.

18 I don't know. It's very old technology and it's an old
19 40 inch. With today's technology and our 80 inch or 70 inch
20 monitors are no longer four or \$5,000.

21 In fact, I was at Walmart, and I think I saw a 75 inch
22 television there for about \$600. I don't know that I have a cart
23 we could put that on, but I would think that we can get something
24 that would be, I will tell you the other problem that I have had,

1 is, as you may know, I've had three eye surgeries in the past
2 year.

3 And the additional reading and strain has been very
4 hard on the eye that I had a torn and detached retina on, and
5 I've been kind of concerned about that.

6 So, from all the strain, that's why I like being able
7 to see it on a big monitor. And maybe the solution is that we
8 have a different monitor here in the courtroom that we could see
9 that the state could use, that would be separate and apart from
10 this.

11 And then I would, if I could get it set somewhat
12 mobile, then I could put it in my jury room, rather than mount it
13 on the wall. Perhaps mount it on a cart, and that would be
14 something that I would be willing to do.

15 Quite frankly, the Supreme Court has reached out to us
16 and asked us, Judges, what is something that you need as a result
17 of the Pandemic? As a result of the Pandemic I am now using my
18 big screen television. I need a big screen TV.

19 But, I would much prefer to be able to see it on a 70
20 or 75 inch monitor than I would on an eight inch laptop or iPad.

21 But, I do have those available. Yes, I do.

22 MR. ALLMON: And, Your Honor, then the state would ask,
23 I remember in Defendant Wychunas' case, where JAVS was played
24 from justice court, we had a big screen set up here that I

1 thought was the Court's. Maybe we could get that again?

2 THE COURT: We do have that. That isn't the biggest
3 problem. The biggest problem I have with that is I have got to
4 figure out a way on that piece of equipment to mount it
5 somewhere, where I can see it.

6 And maybe you have raised a really good issue here.
7 Maybe the Court needs to put another big screen up, perhaps mount
8 it to the wall over here. I mean these are circumstances, like I
9 said, that we, normally this wouldn't be an issue, and it created
10 an issue today. And I really can't go forward.

11 I know you were prepared. I know you had your
12 witnesses here. The hitch for you is how are we going to play
13 the information you want?

14 The hitch for the defense is they want their client to
15 testify. And right, wrong or indifferent, they were under the
16 impression that they didn't need him here in the courtroom today,
17 or I am sure they would have requested that I have him brought
18 down.

19 MR. MARTINEZ: Yes.

20 THE COURT: So, with that in mind, and thinking about
21 this, what I'm going to look at is to see when I can hear this.

22 MR. MARTINEZ: Your Honor, I don't mean to complicate
23 everything and throw more wrinkles in here, but just a couple
24 things I wanted to make a record of for Your Honor.

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THE COURT: Okay.

MR. MARTINEZ: First and foremost, I have my expert witness who is a forensic pathologist. I have been working with the state. He is probably, as we speak, getting in contact with the Clark County Coroner's Office to make a trip here to observe everything. The plan right now, I will be noticing him as an expert and he will be writing a report for me. I have told him about the trial dates. He hasn't explicitly told me that will not work; I can't get it done that fast.

More importantly than that, and more concerning to me than that, Judge, they have posted my Public Defender contract for interested parties. On the posting that the county made, they put in an anticipated start date for someone to take over for me of April 20th. That is in between the calendar call date and when we would start trial on this case.

Obviously, if that is to stick, I can't see how anyone would take over for me and be prepared for trial in May. So, that's a concern that I have, Your Honor.

THE COURT: That's a concern of mine too. But, if that were to occur, I guess then I would keep you on the case and have you bill the county. I mean just because there are Public Defender contracts doesn't mean that the Court cannot retain counsel.

And given the fact that you and Ms. Boskovich have

1 worked on this case from the beginning, it would seem now at the
2 11th hour, was they have done that, that really makes no sense to
3 me. But, that is concerning to me.

4 MR. MARTINEZ: Your Honor, can we have a quick side
5 bar?

6 THE COURT: Sure.

7 (Discussion at the bench off the record.)

8 THE COURT: So, Mr. Martinez is right. The calendar
9 call we set for April 2nd, which at least I think that's what I'm
10 looking at. April 2nd, it doesn't show on my calendar, but then
11 it shows down, interestingly, on the trial calendar that's when
12 I've set it for.

13 So, that's going to have to change. And I think we
14 probably did that just almost as an internal, for us to be sure
15 that we summoned a jury.

16 We had a proper jury summons in enough time.

17 Because it's a little different now that we're using
18 the Pahrump Nugget. But, rest assured, we are not going to be
19 doing the trial there.

20 One of my colleagues from Elko had a trial in a casino.
21 Apparently there's some issues that have arisen from that. One
22 of the jokes was whether or not the jurors were out gambling and
23 getting free drinks or whatever.

24 So, but they do have a banquet room that's big enough

1 for a jury venire of 120.

2 Why don't I do this. You're both going to be in court
3 tomorrow?

4 MR. MARTINEZ: I will be, yes.

5 THE COURT: Let me, Mr. Allmon, are you working the
6 courtroom tomorrow or is that Mr. Vitto?

7 MR. ALLMON: Mr. Vitto, Your Honor.

8 THE COURT: All right. So, why don't we do this. Why
9 don't I just add this on? Are you going to be here or from home
10 at work?

11 MR. ALLMON: I did not plan to be.

12 THE COURT: Okay. Can you give Mr. Vitto your
13 calendar?

14 MR. ALLMON: I can do that. I can be in coordination
15 with him. And I may by the end of the day have a date for you,
16 and just e-mail you to see when we can put the Jackson Denno
17 hearing on.

18 THE COURT: Let me ask you. How much time does each
19 side need to prep for that? If I say I'll squeeze it in, I can't
20 squeeze it in next week.

21 MR. MARTINEZ: Judge, if it was a couple of weeks, I
22 think I would be able to be ready in that time.

23 THE COURT: Okay. All right. They won't like it, but
24 if I had to, I think I could bump matters, I have two matters on

1 April 28th, but I want to get with Christel first. If I had to,
2 I could bump those matters out. That's a possible date.

3 Would that work for you, Mr. Allmon, if I took that
4 date?

5 MR. ALLMON: That does.

6 THE COURT: Wednesday, April 28th.

7 Let me ask you. If we've got five witnesses, maybe we
8 are going to need a full day. I noticed that on some of the
9 cases I reviewed, some of the Jackson Denno hearings were two
10 days or longer.

11 MR. ALLMON: If you could find a full day, that would
12 be great.

13 MR. MARTINEZ: I think we need to look for a full day.

14 THE COURT: We will find you a full day.

15 The other thing is, if I have to, when is our next drug
16 court graduation?

17 If I had to, one of the things I'm thinking is I could
18 take, I hate to do this, because my jury trials are going to bump
19 drug court for three weeks. I'm not going to be here sitting as
20 a drug court judge.

21 But, if worse came to worst, I guess on April 26th,
22 that's a Monday. I don't want to do that, but I might. That
23 would be another alternate the date that I could set. Well, I am
24 looking at, the 29th of April seems available too.

1 Actually, Thursday, April 29th looks like that would be
2 a good date, unless Ms. Raimondo, who I'm sure is listening,
3 tells me otherwise. Thursday, April 29th, and let's start at
4 nine o'clock.

5 MR. ALLMON: That works for the state, Your Honor.

6 THE COURT: Will that work for you, Mr. Martinez?

7 MR. MARTINEZ: Looks good, Judge.

8 THE COURT: That that would allow us to keep the trial
9 dates.

10 I would ask this. Why don't we set the calendar call
11 for April 2nd? You're going to call in anyway. If the parties
12 would call into the Tonopah courtroom on April 9th, on Friday
13 April 9th is my next criminal law and motion in Tonopah.

14 If you could let me know whether, if we've got any
15 issues, and we are ready to go. We will do the calendar call on
16 April 9th.

17 MR. MARTINEZ: Sounds good, Judge.

18 THE COURT: Anything else at this point that we need to
19 talk about?

20 And then by then, by April 29, when we do the Jackson
21 Denno hearing, I will have a television available for the
22 courtroom besides the one on the wall.

23 MR. ALLMON: Okay. I'm in May. I'm sorry. I
24 apologize.

1 THE COURT: I do that all the time, I give out the
2 wrong dates. April 29th, nine o'clock. By that date I will have
3 a method that the state can play, that they can hook up so that
4 we can see here in the courtroom.

5 MR. ALLMON: Thank you, Your Honor.

6 THE COURT: I'm going to ask the Supreme Court for some
7 funds, because they said that they would provide funds for the
8 district courts, some of the COVID relief funds. Maybe we will,
9 maybe we won't. But, in any event, I will have something because
10 it really has been a problem where the TV gets hogged up, if you
11 will, by other stuff that we're doing.

12 And we are so grateful. If it wasn't for Ms. Rowe, we
13 would be in a real bind here. She has been helping out the
14 district courts, and is even willing to help us on some of the
15 justice court things. Thank goodness. Because court reporters
16 are hard to come by.

17 All right. Anything else we need? So we understand
18 April 29th will be an evidentiary hearing. Everybody,
19 Mr. Martinez, and Ms. Boskovich, if you need Mr. Torres down here
20 sooner, whenever you need him down here, I will sign an Order for
21 you.

22 If you decide you need him down here a week ahead of
23 time or two weeks, whatever you need, you let me know. I will
24 get out an Order so you can have him down here, okay?

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MR. MARTINEZ: All right.

THE COURT: Again, if you need me to sign anything in terms of a subpoena or anything to get your witnesses here, let me know.

Okay. Great we will see you back here on April 9th. April 9th for calendar call.

(Whereupon proceedings concluded at 2:57 p.m.)

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STATE OF NEVADA)
) Ss.
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter,
licensed in the State of Nevada, License #127, and a Notary
Public in and for the State of Nevada, County of Douglas, do
hereby certify that the foregoing proceeding was reported by me
and was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings.

I further certify that I am not of counsel or attorney
for either or any of the parties in the foregoing proceeding and
caption named, or in any way interested in the outcome of the
cause named in said caption.

Date: July 24, 2021

SUZANNE KUES ROWE, CCR #127

1 Case No.: CR20-0092

MAR 30 2021

2 Dept. No.: 1

Nye County Clerk
Juanita Torres Deputy

3
4
5 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF NYE**

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

MOTION TO CONTINUE TRIAL DATE

10 MARCO ANTONIO TORRES,

11 Defendant.

12
13
14 COMES NOW, the Defendant, Marco Antonio Torres, by and through is Public Defender,
15 Daniel E. Martinez, Esq., hereby moves this Court to for an order vacating the trial dates set to
16 commence on May 10, 2021, and requests a new trial setting on a date convenient to the Court.

17 This Motion is made and based upon the papers and pleadings on file herein, and any
18 arguments of counsel entertained by the Court at the hearing of said Motion.

19 DATED this 30th day of March, 2021.
20

21 Daniel Martinez Law, LLC

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24 Daniel E. Martinez, Esq.
25 Nevada Bar No.: 12035
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DANIEL MARTINEZ LAW

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NOTICE OF MOTION

TO: Nye County, Plaintiff; and

TO: District Attorney, its Attorneys;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Continue Trial Date on Calendar for hearing in Department 1 of the above-entitled Court on the day of TBD, 2021, at a.m. or as soon thereafter as counsel may be heard.

DATED this 30th day of March, 2021.

Daniel Martinez Law, LLC



Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

DANIEL MARTINEZ LAW

DECLARATION OF COUNSEL

DANIEL E. MARTINEZ, ESQ. makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I have been appointed to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.
2. On September 4, 2020, Marco Antonio Torres appeared before this court for an Arraignment hearing, and the instant case was scheduled to proceed to trial beginning on January 13, 2021.
3. On December 3, 2020, a hearing was held on multiple defense motions, including a motion to continue to the trial. That motion was granted, and new dates were set to commence on March 15, 2021.
4. On January 27, 2021, another hearing was held on multiple defense motions, including another motion to continue the trial. That motion was again granted, and new dates were set to commence on May 10, 2021.
5. The reason for the motion to continue was because the Defense's expert was still in the process of reviewing all the discovery in this matter so that he could offer his opinion, and recommend additional work to be performed, including the possibility of an independent autopsy.
6. The Defense expert has now offered his opinion, and while an independent autopsy is not necessary, the Defense expert will be traveling to the Clark County Coroner's Office to view preserved samples from the autopsy of Jonathan Piper. This visit is scheduled for April 19, 2021.
7. It is anticipated that after the visit to the Clark County Coroner's Office, the Defense expert will prepare a report to be disclosed in discovery, and will be noticed as an expert witness.
8. April 19, 2021, is also 21 days prior to the state of trial, the deadline for filing expert

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disclosures. Thus, the Defense will not be able to file his expert disclosures in the time frame prescribed by statute.

9. Calendar Call in this case is currently set for April 9, 2021.

10. Because the Defense cannot file his expert disclosures in a timely fashion, the Defense will not be ready for trial in May. As such, I am requesting a continuance of the jury trial in this case.

11. This is the third trial setting in this matter.

12. This motion is made in good faith not for the purpose of delay.

13. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

EXECUTED this 30th day of March, 2021.



DANIEL E. MARTINEZ, ESQ.

CERTIFICATE OF SERVICE

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I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
Marco Antonio Torres, do hereby certify that I have served the following:
Defendant's Motion to Continue Trial Date in
Case No. CR20-0092
State of Nevada v. Marco Antonio Torres

upon said Plaintiff by delivering a true and correct copy thereof on March 30, 2021, to the following:
NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

DANIEL MARTINEZ LAW

1 SUPREME COURT CASE NO. 83216

CASE NO. CR20-0092

2 DEPARTMENT I

3 -oOo-

4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF NYE

6 BEFORE THE HONORABLE DISTRICT COURT JUDGE KIMBERLY WANKER

7 -oOo-

8 THE STATE OF NEVADA,

9 PLAINTIFF,

10 -VS-

11 MARCO ANTONIO TORRES,

12 DEFENDANT.

13 _____/

14
15 TRANSCRIPT OF PROCEEDINGS

16 MOTIONS

17 APRIL 15, 2021

18 COURTHOUSE

19 PAHRUMP, NEVADA

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22
23 REPORTED BY:

SUZANNE KUES ROWE

24 Nevada CCR #127

1 APPEARANCES

2
3 FOR THE STATE OF NEVADA: KIRK VITTO, CHIEF CRIMINAL
4 DEPUTY DISTRICT ATTORNEY
5 1520 EAST BASIN AVE., #107
6 PAHRUMP, NEVADA 89049
7

8
9
10 FOR THE DEFENSE: DANIEL MARTINEZ
11 ATTORNEY AT LAW
12 PAHRUMP, NEVADA 89049
13

14
15 FOR THE DEPARTMENT OF NOT PRESENT
16 PAROLE AND PROBATION:
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1 THURSDAY, APRIL 15, 2021, 8:30 A.M., PAHRUMP, NEVADA

2 -oOo-

3 THE COURT: So, folks, we are here for a status
4 conference on CR20-0092, State of Nevada versus Marco Torres.
5 He's appearing from the Tonopah jail.

6 We have our court reporter appearing on video
7 conference. We have Mr. Martinez in the courtroom on behalf of
8 Mr. Torres, and we have Chief Criminal Deputy District Attorney
9 Kirk Vitto in the courtroom.

10 We were looking at moving this to July 12th through the
11 23rd, and I wanted to check to see if we thought we would be
12 ready for that, during that period.

13 MR. MARTINEZ: So, Judge --

14 THE COURT: Okay. I'm sorry. Do we have -- I used the
15 TV yesterday when I was reviewing video. Is it possible it's the
16 wrong HDMI? I can try to pause it and start it again?

17 Do we have video turned off from our end?

18 THE COURT: So, let me do this. Let's call the case
19 again. We'll just start over.

20 We are here on CR20-0092, State of Nevada versus Marco
21 Torres. Mr. Torres is appearing via video conference from the
22 Tonopah jail. We have his attorney, Daniel Martinez, in the
23 Pahrump courtroom, and also present in the courtroom is Chief
24 Criminal Deputy District Attorney Kirk Vitto, along with Judge

1 Wanker and the Court staff.

2 So, the question that we had, before, was we were
3 waiting for some, the expert reports, and they weren't going to
4 be available in time to proceed in May, so I looked at setting
5 this trial from July 12th through the 23rd, and the parties were
6 going to talk to the witnesses to ensure that they would be
7 available at that time.

8 Will those weeks work for the parties?

9 MR. VITTO: Judge, I can tell you that -- oh, stay
10 seated. I can tell you that it looks like we have made contact
11 with everybody. We have three question marks, but they are not
12 question marks that I think would force changing that date. Let
13 me put them on the record.

14 We haven't spoke with Deputy Gideon yet. We don't
15 anticipate that being a problem.

16 We know that Deputy Garcia is not going to be
17 available. He is going to Boot Camp. He will be leaving prior
18 to the start of the trial, and he will be there through the
19 duration, obviously.

20 And he is the deputy who did the intake evaluation,
21 that could be important. We do anticipate calling him at the
22 suppression hearing April 29th and getting a cross-examine
23 transcript to coincide with the business record documents that we
24 have, that counsel has as discovery, and most importantly, from

1 my perspective, is Mr. LeDeux. Counsel will remember Mr. LeDeux
2 was the, like, property manager or something.

3 THE COURT: Was he the person, when they first went
4 out? I watched all the video. He's the person he says the two
5 people in the next trailer, is that the gentleman?

6 MR. MARTINEZ: No, Mr. LeDeux was the property manager
7 on-site who kind of lived behind where they were. The police did
8 not make contact with him that night; they made contact and spoke
9 with him the next morning. They gained some more information
10 that Mr. Piper had tried to call him the night when the
11 altercation was happening.

12 THE COURT: He's the gentlemen that came over and said
13 he had been at the house that same evening, approximately six
14 o'clock, and had a beer with the decedent.

15 MR. MARTINEZ: Yes.

16 THE COURT: Okay. So, we don't think he's going to be
17 available either?

18 MR. VITTO: The information I have is that apparently
19 after this incident he was asked to leave the property.

20 THE COURT: Yes.

21 MR. VITTO: I think he might be homeless-ish.

22 He wouldn't give an oral promise to appear. That's too
23 far in the future. I don't know exactly where I'm going to be or
24 what I'm going to be doing.

1 We're trying to track him down to personally serve him.
2 We are doing everything we can. I, frankly, anticipate -- I need
3 to talk to our office about getting a material witness arrest
4 warrant, if he's, you know, simply refusing, which at this point,
5 he is.

6 THE COURT: Well, that was going to be my
7 recommendation, that I would just simply issue a material witness
8 warrant.

9 Tell me a little more about Deputy Gideon. You said
10 he's at Boot Camp. Is he going to the National Guard or what is
11 he doing?

12 MR. VITTO: That's Garcia. And Garcia, if you will
13 give me some indulgence for a moment, he is going to -- it is
14 Boot Camp, and it is, um, I'm trying to remember what Michael
15 told me, Judge.

16 I thought it was -- I don't know why I want to say Army
17 National Guard, but it's not his drill. Apparently he's joining,
18 so he has to go through Boot Camp. That's my recollection.

19 THE COURT: When does he leave?

20 MR. VITTO: Prior to the trial. I asked -- I asked
21 Michael that. And he gave me the answer, and I, as you can see,
22 I'm desperately looking for the text, and I don't see it.

23 THE COURT: Maybe you could step away and find out when
24 he's leaving and when he's going to be back.

1 MR. VITTO: Do you mind if I call Michael right now?

2 THE COURT: No, that's fine. You probably want to do
3 that off the record. I don't necessarily need the court reporter
4 to take that down, your call. But I would suggest that we do
5 that, because I want to know.

6 Mr. Martinez, how about your witnesses? Will that give
7 them enough time to be ready?

8 MR. MARTINEZ: I confirmed with my expert, Your Honor,
9 the trial dates are good. I expect to have his report in mid-May
10 when we were talking, so I think his report is going to come to
11 me right in the middle of the trial dates that we previously had
12 scheduled in May, so that will be plenty of time to notice the
13 state of the report and my expert, and we will be ready to go in
14 July.

15 THE COURT: Okay.

16 MR. VITTO: Your Honor, apparently it's Army, or the
17 National Guard or the reserves. When does he leave? He thought
18 it was -- I've got two responses from Michael. One is time in
19 June, one was May. And trial is set for July.

20 MR. MARTINEZ: That's what we were looking at.

21 THE COURT: Originally it was set for May. So, did we
22 not reach out to him before?

23 MR. VITTO: The May date was after the trial in May.

24 MR. MARTINEZ: It might be end of May beginning of

1 June.

2 MR. VITTO: Right.

3 THE COURT: We're looking at Boot Camp in probably June
4 and July?

5 MR. VITTO: Yes.

6 THE COURT: The problem is, I'm looking at my calendar
7 then. I've got in the middle of August is the National
8 Association of Drug Court Professionals. I'm just looking.

9 MR. VITTO: Here's the problem. Because it's always,
10 we're always going to hear this, whatever trial date we set,
11 we're going hear something like this. If we moved it to
12 whenever, we're only going to have to do this again.

13 Frankly, we think we can survive Garcia. We will look
14 diligently for LeDeux. We've got the cross-examine preliminary
15 hearing transcript if we simply can't find him, and I'm not
16 concerned about Gideon. Gideon hasn't gotten back with us. But,
17 if we have to, tell the sheriff, all leaves, all liberties are
18 canceled.

19 THE COURT: I will issue a material witness warrant for
20 him too. We'll get him here.

21 MR. MARTINEZ: Your Honor, if I hear the state
22 correctly, Garcia, you intend to call at our hearing on the 29th,
23 so there would be cross-examination testimony there as well,
24 depending on what he testifies to, obviously, and I'm sure the

1 state would give me a little leeway in my questioning.

2 MR. VITTO: Absolutely. A hundred percent.

3 MR. MARTINEZ: So, we would be able to use that
4 transcript.

5 THE COURT: Probably our best bet is to continue from
6 the 12th to the 23rd, because we have got the expert who is going
7 to be there. It sounds like the other witnesses for the state
8 will be there, and the state wouldn't be crippled if we went
9 forward on those dates.

10 Doing that then, we are going to have to set a calendar
11 call. If we did July 12th through the 23rd we should set our
12 calendar call in June, which I'm thinking June 18th.

13 MR. VITTO: Perfect, Judge.

14 THE COURT: I'm going to have to move the Bautista
15 trial, but he's out of custody. I have moved it several times,
16 but I think that, and who knows. Maybe that will settle at the
17 last minute. There have been offers made, then he changes his
18 mind.

19 MR. MARTINEZ: Your Honor, I don't know how quickly you
20 would want to move that trial. I know it's hard to move all
21 these things. I can tell you that there have been offers for
22 negotiations on this case between myself and the state, and we
23 have gone back. The Jackson-Denno hearing and the result of that
24 are kind of a drop dead date.

1 So, I do believe that in this case there is a somewhat
2 good chance that we may come in on the 29th, and then rather than
3 go forward with the Jackson-Denno hearing, tell the Court that we
4 have this matter solved, and if that's the case, obviously we
5 won't need the trial dates in July, and we won't need to vacate
6 the other trial.

7 THE COURT: I got to tell you, we moved a hundred civil
8 matters. The criminal matters are easy for us to move. The
9 civil matters are not, because many of the people appear pro se.

10 So, it is a lot of work. So, I am holding on to not
11 moving stuff.

12 But, you know, at some point on the civil matters
13 because so many people are pro se, because they have to have
14 written Orders, it just kills us. So, this week has been good
15 and bad.

16 I mean, it's been nice to have a few days off, but on
17 the other hand, you know, the civil calendars I have coming up
18 are just frightening.

19 So, why don't we leave those dates, and I won't vacate
20 the Bautista trial at this time; I'm going to wait.

21 MR. VITTO: Judge, I would hold on to everything until
22 next week.

23 THE COURT: The 29th is the Jackson-Denno hearing at
24 nine a.m. So, we should be good.

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All right. We will just keep everything status quo until then.

MR. VITTO: Sounds great.

THE COURT: Thank you very much. Enjoy the rest of your day.

(Whereupon proceedings concluded at 8:45 a.m.)

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STATE OF NEVADA)
) Ss.
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter,
licensed in the State of Nevada, License #127, and a Notary
Public in and for the State of Nevada, County of Douglas, do
hereby certify that the foregoing proceeding was reported by me
and was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings.

I further certify that I am not of counsel or attorney
for either or any of the parties in the foregoing proceeding and
caption named, or in any way interested in the outcome of the
cause named in said caption.

Date: May 6, 2021

SUZANNE KUES ROWE, CCR #127

APR 15 2021

Nye County Clerk
Terri Pemberton

Case No. CR20-0092
Dept. 1P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

-v-

THIRD AMENDED
ORDER SETTING JURY TRIAL

MARCO ANTONIO TORRES,

Defendant,

IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in **Pahrump, Nevada**, commencing at **9:00 A.M. on Monday, the 12th of July, 2021**. **Ten (10)** days, July 12-16, 2021 and July 19-23, 2021 have been set aside for the trial. The services of the District Court Reporter are required. Stock Instructions will be provided by the Court, any special instructions are to be submitted to the Court no later than two (2) days before trial is to begin.

IT IS FURTHER ORDERED that a calendar call is set for the **18th day of June, 2021**, at the hour of **9:00 a.m.** Counsel and the Defendant must appear for the calendar call.

IT IS FURTHER ORDERED that the jury draw is set on the **18th day of June, 2021**, whereas the Nye County Jury Commissioner will draw a regular panel of 180 jurors at **4:30 p.m.** in the presence of all those who wish to attend.

IT IS FURTHER ORDERED that any pre-trial motions are to be heard on the **29th day of April, 2021**, at the hour of **9:00 a.m.**, with courtesy copies to the court by **April 22, 2021**, at the hour of **4:00 p.m.**

DATED this 15th day of April 2021.


KIMBERLY A. WANKER
DISTRICT JUDGE

Fifth Judicial District Court
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

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The undersigned hereby certifies that on the 15th day of April 2021, she mailed (or hand delivered) copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE
PAHRUMP, NV
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
PAHRUMP, NEVADA
(HAND DELIVERED)

RONNI BOSKOVICH, ESQ.
PAHRUMP, NEVADA
(HAND DELIVERED)

Melissa Stepp
MELISSA STEPP, Secretary to
DISTRICT JUDGE



APR 29 2021

Nye County Clerk

~~Terri Pemberton~~ Deputy

1 Case No. CR20-0092

2 Dept. No. 1

3 *The undersigned affirms that*
4 *this document does not contain*
5 *the social security number of*
6 *any person.*

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

9 THE STATE OF NEVADA,

10 Plaintiff,

GUILTY PLEA AGREEMENT

11 v.

12 MARCO ANTONIO TORRES,

13 Defendant. /

14 COMES NOW, THE STATE OF NEVADA ("Plaintiff"), by CHRIS ARABIA, Nye
15 County District Attorney, through KIRK VITTO, and MARCO ANTONIO TORRES,
16 ("Defendant"), represented by Attorney Daniel Martinez Esq., and files this Guilty Plea
17 Agreement (GPA) in the above-entitled case.

18 I, MARCO ANTONIO TORRES, hereby agree to plead **GUILTY** to a charge of
19 **SECOND-DEGREE MURDER** in violation of NRS 200.010/NRS 200.030, **A**
20 **CATEGORY "A" FELONY**, as more fully alleged in the Amended Information for case
21 number CR20-0092. My decision to plead guilty is based upon the plea agreement in
22 this case, which is as follows:

- 23 1. I agree to plead guilty to the Amended Information before the court, knowing I will
24 either be sentenced to life in prison with the possibility of parole, with eligibility for
parole beginning when a minimum of 10 years has been served; or for a definite

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

- 1 term of 25 years, with eligibility for parole beginning when a minimum of 10 years
2 has been served. I understand I **AM NOT** eligible for probation.
- 3 2. In exchange for pleading guilty, the prosecution will not pursue any other charges
4 related to the investigation culminating with 20NY-1112, this is a global
5 negotiation encompassing all known criminal activity within Nye County to date.
6 With this agreement I have reserved my right, pursuant to NRS 174.035(3) to
7 appeal the denial of my suppression motion to exclude evidence recovered at the
8 scene of the murder.
- 9 3. The prosecution is free to argue for any permissible sentence allowed by law and
10 remains free to argue all facts and circumstances surrounding the crime to which
11 I have plead guilty, including dismissed and/or reduced charges, and information
12 contained within my presentence investigation.
- 13 4. I agree to the forfeiture of any/all weapons or any interest in any weapons seized
14 and/or otherwise impounded in connection with the instant case and/or any other
15 case negotiated or resolved in whole or in part as a result of this agreement.
- 16 5. I understand I could be court ordered to reimburse Nye County for costs
17 associated with the appointment of a public defender to represent me, and that I
18 am responsible for any/all restitution appropriately considered in this case
19 including but not limited to: Funeral expenses for the person I murdered:
20 Jonathan A. Piper.
- 21 6. I acknowledge and accept that should I fail to interview with the Department of
22 Parole and Probation; fail to appear at any subsequent hearings in this case;
23 escape custody; provide a sample of breath, blood or urine that tests positive for
24 the unlawful use of a controlled substance, dangerous drug(s), or alcohol at any

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 point after my guilty plea pursuant to this GPA, I agree that the prosecution will
2 be free to argue that my sentence be enhanced as an Habitual Criminal and
3 sentenced to life in prison without the possibility of parole (LWOP), something for
4 which I concede eligibility, but would contest applicability.

5 I understand that the operative law at the time I committed the murder was that
6 with two prior felony convictions I could be sentenced from 5-20 years in prison,
7 and that with three prior felony convictions or more, I faced the potential of life in
8 prison without the possibility of parole, life with the possibility of parole, or a
9 sentence of 10-25 years in prison, and that law controls the offense to which I
10 have plead guilty.

11 **CONSEQUENCES OF THE PLEA**

12 I understand that by pleading guilty I admit the facts that support all the elements
13 of the offense(s) to which I now plead as set forth in Exhibit 1.

14 I understand that certain Administrative Assessment Fees are mandatory and
15 applicable, that I will be court ordered to pay them.

16 I understand that, if appropriate, I will be ordered to make restitution to the victim
17 of the offense(s) to which I am pleading guilty and to the victim of any related offense(s)
18 being dismissed or not prosecuted pursuant to this agreement. I also understand that
19 any victim to any offense I have plead guilty to, or any victim included for the purposes
20 of restitution, may testify at sentencing. I will also be ordered to reimburse the State of
21 Nevada for expenses related to my extradition, if any.

22 I understand that information regarding charges not filed, dismissed charges or
23 charges to be dismissed pursuant to this agreement may be considered by the judge at
24 sentencing, and that he alone will determine my sentence.

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 I have not been promised or guaranteed any particular sentence by anyone. I
2 know that my sentence will be determined by the Court within the limits prescribed by
3 statute. I understand that if my attorney or the State of Nevada or both recommend any
4 specific punishment to the court, the court is not obligated to accept the
5 recommendation.

6 I understand that the Division of Parole and Probation of the Department of Public
7 Safety will prepare a written report for the sentencing judge before sentencing. This
8 report will include matters relevant to the issue of sentencing, including my criminal
9 history. I understand that this report may contain hearsay information regarding my
10 background and criminal history. My attorney and I, and the prosecution, will each have
11 the opportunity to comment on the information contained in the report, if any, at the time
12 of sentencing, and I understand that probation is not an option for me having committed
13 the offense to which I have pleaded guilty.

14 **WAIVER OF RIGHTS**

15 By entering my plea of guilty, I understand that I have waived the following rights
16 and privileges:

- 17 1. The constitutional privilege against self-incrimination, including the right to
18 refuse to testify at trial, in which event the State would not be allowed to
19 comment to the jury about my refusal to testify.
- 20 2. The constitutional right to a speedy and public trial by an impartial jury,
21 free of excessive pretrial publicity prejudicial to the defense, at which trial
22 I would be entitled to the assistance of an attorney, either appointed or
23 retained. At trial, the State would bear the burden of proving beyond a
24 reasonable doubt each element of each offense charged.

- 1 3. The constitutional right to confront and cross-examine any witnesses who
- 2 would testify against me.
- 3 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 4 5. The constitutional right to testify in my own defense.
- 5 6. The right to appeal the conviction, with the assistance of an attorney, either
- 6 appointed or retained, unless the appeal is based upon reasonable
- 7 constitutional, jurisdictional, or other grounds that challenge the legality of
- 8 the proceedings and except as otherwise provided by subsection 3 of NRS
- 9 174.035.

VOLUNTARINESS OF PLEA

11 I have discussed the elements of all the original charges against me with my

12 attorney and I understand the nature of these charges.

13 I understand that the State would have to prove each element of each charge

14 against me at trial.

15 I have discussed with my attorney any possible defenses and circumstances that

16 might be in my favor.

17 All of the foregoing elements, consequences, rights and waiver of rights have

18 been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my best interests

20 and that a trial would be contrary to my best interests.

21 I am signing this agreement voluntarily after consultation with my attorney and

22 am not acting under duress or coercion or by virtue of any promises of leniency, except

23 for those set forth in this agreement.

24 ///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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I am not now under the influence of intoxicating liquor, a controlled substance or other drug(s) that would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered to my satisfaction all of my questions regarding this GPA and its consequences, and I am satisfied with the services provided by my attorney.

DATED this 29th day of April, 2021.



MARCO ANTONIO TORRES

AGREED to on this 27th day of April, 2021.

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY

By 

MICHAEL D. ALLMON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

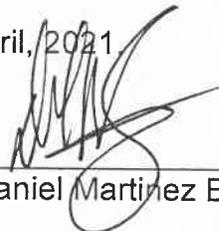
1. I have fully explained to the defendant the allegations contained in the charge(s) to which the guilty plea(s) is/are being entered.
2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.
3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to: removal from the United States through deportation; an inability to reenter the United States; the inability to gain United States citizenship or legal residency; an inability to renew and/or retain any leant residency status; and/or an indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status. Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.
4. All pleas of guilty offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.
5. To the best of my knowledge and belief, the defendant:

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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- (a) Is competent and understands the charge(s) and the consequences of pleading guilty as provided in this agreement;
- (b) Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily; and
- (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

DATED this 29th day of April, 2021



Daniel Martinez Esq.

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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EXHIBIT I

COPY

FILED
FIFTH JUDICIAL DISTRICT

APR 21 2021

Nye County Clerk

~~Brittani Smith~~ Deputy

1 Case No. CR20-0092

2 Department 1

3 *The undersigned affirms that*
4 *this document does not contain*
5 *the social security number of*
6 *any person.*

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

AMENDED INFORMATION
(CORRECTED CAPTION)

12 MARCO ANTONIO TORRES,

13 Defendant. _____ /

14 CHRIS ARABIA, District Attorney within and for the County of Nye, State of
15 Nevada, informs the Court that MARCO ANTONIO TORRES, before the filing of this
16 Information, did then and there, in Nye County, Nevada, commit the following
17 offenses, to wit:

18 SECOND-DEGREE MURDER, in violation of NRS 200.010/NRS
19 200.030, A CATEGORY 'A' FELONY, committed in the following
20 manner, to wit: That ON OR ABOUT APRIL 4, 2020, in Pahrump
21 Township, Nye County, Nevada, said Defendant, without authority of law,
22 did willfully, unlawfully, with malice aforethought, either express or
23 implied, kill and murder JONATHAN A. PIPER, a human being, by
24 beating and/or strangling the victim, causing asphyxia, at unit 4, marked
by numbers 103, 835 South Linda Street;

///

///

///

///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 All of which is contrary to the form, force, and effect of the statutes in such
2 cases made and provided, and against the peace and dignity of the State of Nevada.
3 Witnesses and their addresses known to the District Attorney of Nye County,
4 State of Nevada, at the time of the filing of this Information:
5 CAPTAIN DAVID BORUCHOWITZ DEPUTY COLTON WILLIAMS
6 NYE COUNTY SHERIFF'S OFFICE NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060 PAHRUMP, NEVADA 89060
7 DETECTIVE ALEXANDRA DEPUTY CHAD WHELAN
8 FERNANDES NYE COUNTY SHERIFF'S OFFICE
9 NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA
PAHRUMP, NEVADA
10 SERGEANT CORY FOWLES DEPUTY DAVID STONE
11 NYE COUNTY SHERIFF'S OFFICE NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060 BEATTY, NEVADA
12 DETECTIVE JOE MARSHALL DEPUTY DANIEL FISCHER
13 NYE COUNTY SHERIFF'S OFFICE NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA PAHRUMP, NEVADA 89060
14 DEPUTY CODY MURPHY STEPHANIE RUCKER
15 NYE COUNTY SHERIFFS OFFICE NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA PAHRUMP, NEVADA 89060
16 LARRY HENDRIK DRAPER DEPUTY AMANDA JANE CHRISTEN
17 980 AMARILLO (HEAD)
18 PAHRUMP, NEVADA 89048 NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA
19 REFUGIO DE JESUS DEPUTY ALEC AUGUSTINE
20 PAHRUMP FAMILY MORTUARY 5441 NYE COUNTY SHERIFF'S OFFICE
21 VICKI ANN ROAD PAHRUMP, NEVADA 89048
PAHRUMP, NEVADA 89048
22 DETECTIVE WES FANCHER DEPUTY XAVIER M. GIDEON
23 NYE COUNTY SHERIFF'S OFFICE NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA PAHRUMP, NEVADA 89060
24 DEPUTY BRITTON MICHAEL JAMES LOUIS MURZYN
HOFFMANN PAHRUMP FAMILY MORTUARY 5441
VICKI ANN ROAD
NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA 89048
PAHRUMP, NEVADA

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 JONATHAN A PIPER
3270 W LAURENCE
2 PAHRUMP, NEVADA 89061

KEVIN RILEY
4320 ELVIRA ST
PAHRUMP, NEVADA 89048

3 CHRISTOPHER PIPER
6065 CANYONSIDE ROAD
4 LA CRESCENTA, CALIFORNIA 91214

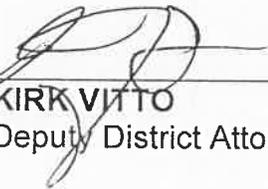
RICK MARTIN

5 DENNIS A LA DUE
835 S LINDA ST UNIT 9
6 PAHRUMP, NEVADA 89048

JULIA A BUNDY
4320 ELVIRA ST
PAHRUMP, NEVADA 89048

7 **DATED** this 21ST day of April, 2020.

8 **CHRIS ARABIA**
9 **NYE COUNTY DISTRICT ATTORNEY**

10
11 By 

12 **KIRK VITTO**
13 Deputy District Attorney
14
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1 CERTIFICATE OF SERVICE

2 I, Renne McKeen, Paralegal, of the Nye County District Attorney's Office, do
3 hereby certify that I have served the following:

4 **AMENDED INFORMATION (CORRECTED CAPTION) in**
5 **5TH JDC Case No(s). CR20-0092**
6 **STATE v. MARCO ANTONIO TORRES**

7 upon said Defendant(s) herein by delivering a true and correct copy thereof on

8 4/21/21 to the following:

9 DANIEL E MARTINEZ ESQ.

10 Via hand deliver at the Nye county District Attorney's Office in Pahrump Nevada.

11 
12 Renne McKeen

13 NYE COUNTY DISTRICT ATTORNEY
14 P.O. BOX 39
15 PAHRUMP, NEVADA 89041
16 (775) 751-7080

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1 SUPREME COURT CASE NO. 83216

CASE NO. CR20-0092

2 DEPARTMENT I

3 FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF NYE

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE

6 KIMBERLY WANKER

7 -oOo-

8 THE STATE OF NEVADA,

9 PLAINTIFF,

10 -VS-

11 MARCO ANTONIO TORRES,

12 DEFENDANT.

13 _____/

14
15 TRANSCRIPT OF PROCEEDINGS

16 CHANGE OF PLEA/ARRAIGNMENT

17 APRIL 29, 2021

18 COURTHOUSE

19 PAHRUMP, NEVADA

20
21
22
23 REPORTED BY:

SUZANNE KUES ROWE

24 Nevada CCR #127

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APPEARANCES

FOR THE STATE OF NEVADA: MICHAEL ALLMON
 DEPUTY DISTRICT ATTORNEY
 1520 EAST BASIN AVE #107
 PAHRUMP, NEVADA 89049

FOR THE DEFENSE: DANIEL MARTINEZ
 ATTORNEY AT LAW
 PAHRUMP, NEVADA 89049

FOR THE DEPARTMENT OF NOT PRESENT
PAROLE AND PROBATION:

1 THURSDAY, APRIL 29, 2021, 10:35 A.M., PAHRUMP, NEVADA

2 -o0o-

3 THE COURT: All right. So, you can hear me? Before we
4 get started, I want to remind everybody about the ground rules of
5 the microphones. Suzy, our court reporter, is appearing from
6 Minden/Gardnerville. It's absolutely essential that she hears
7 everything that goes on, because she is the official record.

8 So, we've got microphones with red rings. You need to
9 sit. Please do no rustle your papers, so she can't hear. And
10 when you speak, you may want to take your mask off today so that
11 way we are sure that we get this. So, this is originally set,
12 we're here on Case Number CR20-0092, State of Nevada versus Marco
13 Antonio Torres.

14 Originally today was set for a Jackson-Denno hearing.
15 My understanding is that there have been a change of plans, and
16 that Mr. Torres intends to plead guilty today to Second Degree
17 Murder. Am I correct on that?

18 MR. MARTINEZ: Yes, Judge.

19 THE COURT: Okay. So, today the intent is not to move
20 forward with the Jackson-Denno hearing, but instead to arraign
21 him on the Amended Information that was filed, charging him with
22 Second Degree Murder. Am I correct on that as well?

23 MR. MARTINEZ: Yes, Your Honor.

24 THE COURT: Okay. Then let's move forward.

1 The record will reflect here in Case Number CR20-0092,
2 State of Nevada versus Marco Antonio Torres. Mr. Torres is
3 present in the courtroom. He's represented by his attorney,
4 Daniel Martinez. Appearing on behalf of the state is Deputy
5 District Attorney Mike Allmon. We also have Chief Criminal
6 Deputy District Attorney Kirk Vitto. We have all officers of the
7 Court.

8 Mr. Torres, it is my understanding that you are going
9 to plead guilty today to the charge of Second Degree Murder, a
10 Category A felony.

11 Is that what you are doing today?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Now, you understand that Second Degree
14 Murder, which is a Category A felony, really, I only have two
15 options for punishment. For life in prison with the possibility
16 of parole, with parole eligibility beginning when a minimum of
17 ten years has been served, or for a definite term of 25 years
18 with parole eligibility beginning when a minimum of ten years has
19 been served. Is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand this offense is
22 nonprobationable, is that right?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. So, my understanding is this is a

1 global agreement, and that it would encompass all known criminal
2 activity within Nye County to date.

3 Is that your understanding?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Now, as part of this agreement, about a
6 month ago, I heard a Motion to Dismiss/Motion to Suppress the
7 evidence. And I denied that motion. As part of the Plea
8 Agreement in this case, you still have the right to appeal my
9 decision. Is that your understanding?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Do you understand that at the time
12 of sentencing, that the prosecution would be free to argue for
13 all of the facts and circumstances surrounding Second Degree
14 Murder, to which you are pleading guilty, or any other offenses
15 that they are dismissing as part of this deal, and they would
16 also be free to argue, they might get up and say, Judge, I either
17 want life with the possibility of parole, or I want a definite
18 term of 25 years. They can argue for whatever they want, as long
19 as it is legally permissible.

20 Do you understand that?

21 THE DEFENDANT: I do, kind of.

22 THE COURT: What "kind of" don't you understand?

23 THE DEFENDANT: I'm sorry. I understand it, but I also
24 thought that certain pieces of evidence could not be used at that

1 point, because I put in a plea.

2 THE COURT: When you say, "certain pieces of evidence,"
3 I think it's important that you and I have the same understanding
4 before I accept the guilty plea, so tell me what your
5 understanding of this Plea Agreement is.

6 THE DEFENDANT: Well, my understanding is that I am
7 pleading guilty to Second Degree Murder with the hopes of
8 appealing later on down the line for something a little better.
9 Of course, how can you blame me for not thinking that, or hoping
10 that.

11 Other than that, I know I did wrong, I didn't mean to
12 hurt my friend. But, other than that, I'm not sure exactly all
13 the evidence. There's a lot of evidence, I understand that. I
14 guess I was, maybe I'm a little confused.

15 THE COURT: Well, then I want to be sure before we move
16 forward today that we have all the confusion cleared up. Because
17 I am not going to accept a guilty plea unless you fully
18 understand what you're doing today. So, let me explain something
19 to you.

20 When you said you hoped if you were to appeal my
21 decision on the Motion to Suppress, you hope that you would get a
22 better deal. That's not how it works. This is what happens.

23 The issue that arose, as you may recall, was whether or
24 not your counsel filed a Motion to Dismiss/Suppress based upon

1 their belief that there were exigent circumstances that warranted
2 entry into the property.

3 I actually was very critical of the actions of the Nye
4 County Sheriff's Office. There are eleven exceptions to the
5 search warrant rule. Nye County Sheriff's Office should have
6 known that probable cause was not required. They should have
7 immediately broken the door down.

8 In my opinion, it was very negligent on their behalf,
9 and it went all the way up the chain. From the deputies to the
10 sergeant and to the lieutenant, who finally called a locksmith,
11 which made no sense, because if you broke the door down, there
12 was no warrant, or you waited, essentially, about 90 minutes
13 before they made entry, again, without a warrant.

14 So, if they needed probable cause, they clearly had
15 time to call for a warrant to one of the judges that were here in
16 Nye County. That was just incredible to me. But, they knew or
17 should have known that the law is very clear. That is one
18 exception that requires no probable cause, and that is a medical
19 emergency.

20 So, what I ruled is despite, I watched all the body
21 cams. In my opinion, despite the Keystone cop behavior of not
22 immediately breaking down the door, that they were justified,
23 whether they waited 90 minutes or they would have broken the door
24 down immediately when they got there, which common sense would

1 have dictated that would have been appropriate.

2 But, in either scenario here, they didn't need probable
3 cause to get into that door. And that was my ruling. And so if
4 the Nevada Supreme Court finds that I am wrong, or they push it
5 down to the Court of Appeals and they say, Judge Wanker, you are
6 wrong, then the evidence gets suppressed.

7 But, there's not a different deal. They may rule that
8 if there's suppression, they'll probably send it back, and either
9 order a new trial be had, but it's not going to simply reduce it
10 to manslaughter or, you know, aggravated assault, or anything
11 like that. It's not going to happen. So, I want to be sure you
12 understand that.

13 THE DEFENDANT: Yeah, I understand that.

14 THE COURT: I want to be clear. I spend a lot of time
15 on the law in preparation for that motion, and I may be wrong.
16 There are seven members of the Nevada Supreme Court and three
17 members of the Court of Appeals, but the law, in my opinion, is
18 very clear on that issue, and there is Nevada Supreme Court
19 authority right on point.

20 But, I agreed with the state, who said, Judge, Nye
21 County Sheriff's Office was justified. Yeah, they were
22 justified. The problem was, they should have got in 90 minutes
23 before they did.

24 But, and I blame that on training. Not so much the

1 deputies that showed up, but, my goodness. We have included the
2 lieutenant, and the lieutenant should know the law.

3 THE DEFENDANT: I'm sorry. I should have opened the
4 door.

5 (Discussion between defendant and counsel.)

6 THE COURT: Let's go back to the beginning, let's talk
7 about what the deal is. So, you are going to plead guilty to
8 Second Degree Murder.

9 You understand that the Court has two options for
10 sentencing. Life with the possibility of parole, with parole
11 eligibility not beginning until you have served at least ten
12 years in custody. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: The other option is, I could sentence you
15 to a definite term of 25 years with parole eligibility beginning
16 when a minimum of ten years has been served.

17 So, regardless of which sentence I impose, those are my
18 two options. You are going to serve a minimum of ten years in
19 prison.

20 Now, my understanding is this happened approximately a
21 year ago, so you have got one year in because you have been
22 incarcerated ever since the incident in question, which I believe
23 was like April 4th or something like that, of 2020. So, you've
24 got a year in, so you're really looking at serving a minimum of

1 nine years.

2 But, it isn't my decision. Once I impose the sentence,
3 the Department of Corrections, when you are eligible for parole,
4 they are the ones, you go before the parole board, and they will
5 determine whether or not you are eligible to get out; it will not
6 be the Court. So, I want to be sure you understand that.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. So, again, we talked about the
9 Motion to Suppress/Motion to Dismiss that I ruled against you and
10 ruled in favor of the Nye County Sheriff's Office.

11 Again, you still have the right to take that to the
12 Supreme Court. You may have already taken it to the Supreme
13 Court, I don't know.

14 But, if the Supreme Court agrees with you, then they
15 will probably vacate the Second Degree Murder and bring it back
16 here for further proceedings. That would be my guess as to what
17 they will do. But, they won't say, okay, Judge, we want you to
18 give him manslaughter, or we want you to do something different.
19 They won't do that. I want to be sure you understand.

20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. They could also agree with me. So,
22 you know, when you enter a plea today, what I want you to
23 understand is that you probably are going to serve either
24 sentence A or sentence B, which is, A, life in prison with the

1 possibility of parole, with parole eligibility beginning when a
2 minimum of ten years has been served, or a definite term of 25
3 years with parole eligibility beginning when a minimum of ten
4 years has been served.

5 But, you could serve longer than ten years. The Parole
6 Board may say you are not eligible. If I sentence you to the
7 latter, they may make you sit there the whole 25 years. I don't
8 have control over that, and I want you to be sure you understand
9 that.

10 THE DEFENDANT: Yeah, I understand it. I would hope it
11 would be not the latter.

12 THE COURT: Like I said, I don't have any control over
13 the Parole Board.

14 THE DEFENDANT: Right.

15 THE COURT: Okay? Once I enter a sentence and it goes
16 to the Department of Corrections, I have nothing to do with good
17 time credit or any of that. That's all done by a different
18 agency, okay?

19 I want you to understand. Different branch of
20 government.

21 THE DEFENDANT: Yes, I do.

22 THE COURT: And at the time of sentencing, the state's
23 going to be able to argue for any lawful sentence. And I want
24 you to understand that. That's part of your deal.

1 Do you understand that?

2 THE DEFENDANT: Yeah.

3 THE COURT: Okay. All right. Now, you are agreeing to
4 forfeit any and all weapons or any interest that you have in any
5 weapons seized or otherwise impounded in connection with this
6 case, or any other case negotiated or resolved, in whole or in
7 part, as part of this agreement.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: And I think part of that, if I recall back
11 to the evidence, there were some numchuks involved, so I would
12 think that would be part of the records that we are referencing.
13 Am I right, counsel?

14 MR. MARTINEZ: It wasn't anything specific, but, yes,
15 Judge.

16 THE COURT: Okay. And you also understand that I could
17 order that you reimburse Nye County the cost of your Public
18 Defender.

19 Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And you also understand that you are
22 responsible for any and all restitution that is considered, that
23 I consider appropriate in this case, including, but not limited
24 to, the funeral expenses for Jonathan Piper, right?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. Now, after I take your plea today,
3 and I agree to accept your plea, then you will interview with the
4 Department of Parole and Probation, and they will prepare what is
5 known as a Presentence Investigation Report.

6 If you fail to interview with them, if you fail to
7 appear at any subsequent hearings in this case, if you would
8 escape from the custody of the Nye County Sheriff's Office, if
9 you gave me a sample, whether it be blood, breath or urine
10 sample, and you were positive for any controlled substances
11 without a valid prescription, that would basically free the State
12 to argue for any lawful sentence, including as a habitual
13 criminal.

14 So, apparently you have three prior felony convictions,
15 is that right?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. So, let me explain something. Under
18 the habitual criminal statute that was in effect at the time this
19 crime was committed, if you had three or more felonies, had been
20 convicted of those, the Court could impose a habitual criminal
21 enhancement, which really, only a large criminal enhancement only
22 gives the Court three options. Life in prison with the
23 possibility of parole, with parole eligibility beginning when a
24 minimum of ten years has been served, a definite term of 25 years

1 with parole eligibility beginning when a minimum of ten years has
2 been served, or life in prison without the possibility of parole.
3 That would be a large enhancement.

4 If a small enhancement, it would be a definite term of
5 eight to 20 years, is that right? I don't recall off the top of
6 my head.

7 MR. MARTINEZ: It's five on the bottom, Your Honor.

8 THE COURT: Five to 20. But, regardless, I doubt that
9 they would be asking for the small habitual, since it's a lesser
10 sentence than the Second Degree Murder charge. They'd probably
11 come in and say, Judge Wanker, I want you to impose life without
12 the possibility of parole, because they would be freed up and
13 could argue that.

14 Right now they are not going to be able to argue that
15 as part of this Plea Agreement. But, if you don't hold up your
16 end of the bargain, then they are free from the agreement at the
17 time of sentencing.

18 Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Have you been promised anything else,
21 anything at all in order to get you to plead guilty today?

22 THE DEFENDANT: No. I just, I mean, for the record,
23 I'm not going to give in to any temptation that this might come
24 across to me when I'm in the state penitentiary. I'm not

1 interested in doing any drugs or alcohol. That's all.

2 THE COURT: Okay. That's good. I'm glad that is,
3 because I am sure that they look at your conduct, one of the
4 things that the Parole Board looks at is your conduct while you
5 are in prison when they make that decision.

6 If that's everything that you have been promised, then
7 we are going to move forward with the arraignment, okay?

8 THE DEFENDANT: Okay.

9 THE COURT: Mr. Torres, I would advise you that the
10 Amended Information, the charging document reads: State of
11 Nevada versus Marco Antonio Torres. Is that your true name?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: How old are you?

14 THE DEFENDANT: 58 years old.

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: About first semester of 12th grade.
17 First quarter.

18 THE COURT: Do you have a GED?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Okay. Can you read and write the English
21 language?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Have you ever been treated for a
24 mental disorder?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. And what is that disorder?

3 THE DEFENDANT: In 1987 I was diagnosed with manic
4 depression, bipolar Level II, hypomania.

5 THE COURT: Today, do you suffer from any of those
6 conditions that would prevent you from understanding what you're
7 doing?

8 THE DEFENDANT: Not chronically. I mean I have mania,
9 but I have outlets to end that. Positive outlets. Reading,
10 writing and working out.

11 THE COURT: Today as we sit in the courtroom, are you
12 experiencing any mania?

13 THE DEFENDANT: No, just a little caffeine.

14 THE COURT: Okay. All right. Just want to be sure.

15 Okay. You have a copy of the charges, the Amended
16 Information?

17 THE DEFENDANT: Yeah.

18 THE COURT: Have you read them?

19 THE DEFENDANT: Yes.

20 THE COURT: Our clerk today is Terri. She would be
21 happy to formally read the Amended Information, or you can waive
22 its formal reading. What would you like done?

23 THE DEFENDANT: I can waive it. I went over it quite
24 well. I just. Yeah. I have a good memory for that.

1 THE COURT: You have been provided a copy of the
2 Amended Information, wherein you have been charged with Second
3 Degree Murder. It is a violation of Nevada Revised Statute
4 200.010, and 200.030. It is a Category A felony.

5 And as I told you before and I will tell you again,
6 there are two possible sentences. Life in prison with the
7 possibility of parole with appeal eligibility, beginning when a
8 minimum of ten years have been served, or a definite term of 25
9 years with parole eligibility beginning when a minimum of ten
10 years have been served.

11 There is no possibility of probation in this case.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand what you are being
15 charged with in this case in the Amended Information?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Have you had the opportunity to sit down
18 with Mr. Martinez and discuss this case?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Are you ready to enter a plea today?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: As to the charge of Second Degree Murder,
23 how do you plead today?

24 THE DEFENDANT: Guilty.

1 THE COURT: Mr. Torres, before the Court will accept
2 your guilty plea, I need to be satisfied that that plea is
3 knowingly, freely and voluntarily given.

4 So I'm going to ask you a series of questions, and then
5 I will decide whether or not to accept your guilty plea today,
6 okay?

7 THE DEFENDANT: Okay.

8 THE COURT: My first question for you, Mr. Torres, is
9 are you a United States citizen?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: The reason I ask you that is because if you
12 are not a United States citizen, and you plead guilty to a
13 criminal offense, you can be arrested, detained and/or deported,
14 and your privilege to live and work in the United States can be
15 restricted or revoked. You have probably heard of an ICE hold.
16 That's what that is about.

17 THE DEFENDANT: Yes.

18 THE COURT: Are you under the influence of any type of
19 drugs, alcohol or other medications, prescription or
20 nonprescription, this morning?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Now, Mr. Torres, do you understand that by
23 pleading guilty today, you are waiving or giving up certain of
24 your constitutional rights?

1 THE DEFENDANT: Yes.

2 THE COURT: You have a right to a speedy and public
3 trial before a jury of your peers. Meaning, that you have a
4 right to a jury trial within 60 days from today's date, the date
5 of arraignment, or as quickly thereafter as I can place the
6 matter on my congested calendar.

7 Now, you may recall you have been arraigned in front of
8 me before and entered a plea of not guilty. You have waived your
9 right to a speedy trial. But, the point being, what I'm telling
10 you today is that normally when you enter a plea, and by pleading
11 guilty, you will be giving up that right to a jury trial within
12 60 days.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: You also have the right to make the state
16 prove the charges against you beyond a reasonable doubt at a
17 trial, whether that trial occurs within 60 days or sometime
18 thereafter.

19 And we know that we have set this case a couple of
20 times, I think three times for trial, and currently I have
21 blocked, you have two weeks in July to try this case.

22 Do you understand that by pleading guilty, there's not
23 going to be a trial at any time in this case?

24 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Do you understand that by pleading
3 guilty today, you are waiving or giving up your right to contest
4 the charge on file against you, the Second Degree Murder charge?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that by pleading guilty
7 today, you are giving up the right to present a defense to the
8 charge against you?

9 THE DEFENDANT: Okay. Yes.

10 THE COURT: Okay. Yes. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In other words, if you were to present a
13 defense, that would be at trial, but there isn't going to be a
14 trial in this case, because you are pleading guilty?

15 THE DEFENDANT: Right. I understand.

16 THE COURT: You have the right the face your accusers,
17 to confront them here in court, and to have your lawyer
18 cross-examine them. But, by pleading guilty today, you will be
19 giving up that right.

20 Do you understand this?

21 THE DEFENDANT: Yes.

22 THE COURT: You also have the right to have witnesses
23 subpoenaed and compelled to appear in court. But, by pleading
24 guilty today, you will be giving up that right.

1 Do you understand this?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, Mr. Torres, in our system of justice
4 in this country, you do not have to convict yourself. You have
5 the right against self-incrimination.

6 In other words, you have the right to remain silent and
7 not give any testimony against yourself. Should this case had
8 proceeded to trial in July, you and your attorney could sit right
9 there at counsel table and literally do nothing.

10 First, you wouldn't have to come up here to the witness
11 stand and give any witness testimony.

12 Next, your attorney would not have to call a single
13 witness, or any witnesses, to the stand to tell your side of the
14 story.

15 And finally, your attorney would not have to ask any
16 questions of any witnesses called by the state. So, literally,
17 you and your legal counsel can sit at that counsel table and do
18 nothing.

19 And the reason for this is that as a criminal
20 defendant, you have zero burden. The burden rests exclusively
21 with the state to prove the charges against you beyond a
22 reasonable doubt.

23 By pleading guilty today, you are waiving or giving up
24 your right against self-incrimination and you are, in fact,

1 convicting yourself. You are telling me, Judge Wanker, I am in
2 fact guilty of Second Degree Murder, a Category A felony.

3 Do you understand this?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you want to do this?

6 THE DEFENDANT: Yes, Your Honor. I feel like I have no
7 other choice, except I don't want to get life without, so, yes.

8 THE COURT: Let me explain something to you. There's
9 only one reason that one would plead guilty in Court, and that is
10 because they are guilty. If you do not feel that you are guilty
11 of this offense, by all means, don't plead guilty in my
12 courtroom. That's why we'd have a trial. We will have a jury of
13 your peers, and in court there's only two ways that, that people
14 are guilty.

15 The first is if, at the time of an arraignment, like
16 this, you plead guilty.

17 The second is if, and only if, a unanimous jury, a jury
18 of 12 members that are your peers, find two things:

19 One, they find that a crime or crimes have been
20 committed.

21 And two, that you are the person that committed those
22 crimes. That's the only two ways in this country that people are
23 convicted of a criminal offense, okay?

24 So, I don't want anybody to come into my courtroom and

1 say, you know what? I really didn't do this, but I'm going to
2 plead guilty because I think that that's probably in my best
3 interests to plead guilty, but I'm not really guilty.

4 I'm not going to accept a guilty plea from someone like
5 that, and I want to make that clear to you.

6 THE DEFENDANT: I did the crime, Your Honor. I have to
7 plead guilty.

8 THE COURT: Okay. I want to talk about your appeal
9 rights for a minute.

10 Do you understand that by entering a plea of guilty
11 today, you are, in effect, giving up your rights to an appeal,
12 other than the appealable issue that you saved as part of the
13 Plea Agreement, at least with respect to the subject of guilt or
14 innocence.

15 So, if you plead guilty, if I accept that guilty plea
16 today, other than your appeal on the Motion to Suppress/Dismiss,
17 you really are going to only be able to appeal for four reasons:

18 The Court has sentenced you illegally.

19 The state has failed to follow through with the terms
20 of the Plea Agreement.

21 Your guilty plea was not entered voluntarily.

22 Or the law is illegal or unconstitutional.

23 But, really, other than these four reasons, other than
24 the issue that we have talked about that you have preserved for

1 appeal, you are not going to be able to appeal your guilty plea.

2 So, in other words, if you go back to jail and you're
3 sitting in your cell, and you go, you know what? I've changed my
4 mind. I don't want to plead guilty anymore, I have had people
5 who have done that, and they have never been successful.

6 I want you to understand if you plead guilty today and
7 I accept your guilty plea, that you can't just simply change your
8 mind. It doesn't work that way.

9 THE DEFENDANT: I understand.

10 THE COURT: Okay. So, you understand?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Now, the state, what would you have
13 been prepared to prove beyond a reasonable doubt if this case had
14 gone to trial?

15 MR. ALLMON: Your Honor, had this case gone to trial
16 the state of been ready to prove that on or about April 4th,
17 2020, in Pahrump Township, Nye County, Nevada, said defendant,
18 without authority of law, did willfully, unlawfully with malice
19 aforethought, either express or implied, kill and murder Jonathan
20 A. Piper, a human being, by beating and/or strangling the victim,
21 causing asphyxia by use of force marked by numbers 103, 835 South
22 Linda Street.

23 THE COURT: That was here in Pahrump Township, Nye
24 County Nevada?

1 MR. ALLMON: Yes, Your Honor.

2 THE COURT: Okay. You have been charged with Second
3 Degree Murder, a Category A felony. I just want to remind you
4 one final time that the penalty that the Court can impose is only
5 two-fold.

6 One, life in prison with the possibility of parole,
7 with parole eligibility beginning when a minimum of ten years
8 have been served, or a definite term of 25 years with parole
9 eligibility beginning when a minimum of ten years have been
10 served.

11 Again, there's no guarantee after ten years that you
12 will be released. That is beyond the control of the Court. That
13 belongs to the control of the Parole Board.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, let's talk about your relationship
17 with Mr. Martinez for a moment. Have you had enough time to
18 discuss your case with him?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you need more time?

21 THE DEFENDANT: Not necessarily. Only if he calls upon
22 me.

23 THE COURT: Let me tell you this. If you need more
24 time to talk about this case, if you are not ready to enter a

1 plea today, I'm going to stop, and I am going to give you that.

2 THE DEFENDANT: No, I'm ready. Sorry about that.

3 THE COURT: I don't want you to be sorry. What I want
4 you to be is know what you're doing today, and that you are
5 comfortable with what you're doing, because there's only one
6 person that can make this decision today, and that is you.

7 It's not the Court, it's not Mr. Martinez, because not
8 one of us are going to go to the Department of Corrections and
9 serve a minimum of ten years in prison. That person would be
10 you.

11 THE DEFENDANT: Right.

12 THE COURT: So, you have got to be sure that this is
13 what you want to do today.

14 THE DEFENDANT: Yes, I'm sure. I know that I need to
15 pay a debt, and not a small debt, for what I've done. The only
16 reason I said I was sorry was for extra time I took. I
17 understand.

18 THE COURT: Are you satisfied with the legal
19 representation that Mr. Martinez has provided to you today?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Let's talk about sentencing for a moment.

22 Do you understand that regardless of the plea
23 negotiation between your attorney and the state, and any
24 representations that one or both may make on your behalf at the

1 time of sentencing, that all decisions regarding sentencing in
2 this case are entirely up to the Court.

3 Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: So, as the judge, I'm going to make the
6 decision on the sentence.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone promised you anything, other
10 than what we went through when we got started that is set forth
11 in your Plea Agreement in exchange for your plea of guilty today?

12 Have you been offered anything else?

13 THE DEFENDANT: No.

14 THE COURT: Has anyone threatened you, your family, or
15 anyone close to you in order to get you to plead guilty?

16 THE DEFENDANT: No.

17 THE COURT: Are you pleading guilty after having the
18 opportunity to sit down and discuss your case with Mr. Martinez?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Are you pleading guilty freely and
21 voluntarily?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Are you pleading guilty because you are, in
24 fact, guilty and for no other reason?

1 THE DEFENDANT: Yes.

2 THE COURT: Tell me what you did. Why are you in front
3 of me today?

4 THE DEFENDANT: I'm in front of you because I killed my
5 best friend, Jonathan Piper.

6 It was a terrible mistake. I didn't mean to do
7 anything. It happened. We were drinking, we were arguing.
8 There was a scuffle. I felt I -- I was being manipulated to
9 enable him to drink more, and I didn't want to, so I grabbed the
10 alcohol and took it away. That caused the scuffle. I squeezed
11 him too hard, and he's dead now. I'm sorry for what I did.
12 That's all I can say. At that point.

13 THE COURT: Okay. Do you have a copy of the written
14 Guilty Plea Agreement?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. And in taking a look at that
17 agreement, it looks to me like there is a signature line on page
18 six, and there's, above that signature line, it says Marco
19 Antonio Torres. Is that your signature on that line?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And it looks to me like, that you signed
22 this today, the 29th day of April, 2021. Is that right?

23 THE DEFENDANT: Yes.

24 THE COURT: I also see in the bottom right-hand corner

1 of pages one through six of the agreement, the initials MT. Are
2 those your initials?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: I will tell you why I have you do that. If
5 this agreement ever becomes an issue in Court, I don't want you
6 to come in and say, Judge Wanker, I saw the first page and I saw
7 the page with my signature on it, but I have never seen the pages
8 in between.

9 So, it protects you and it protects me. I know you and
10 I have seen the same agreement today.

11 Prior to the time that you signed and initialed this
12 agreement, did you read it?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you understand everything contained in
15 the agreement?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Prior to the time that you signed and
18 initialed this agreement, did you have the opportunity to sit
19 down and discuss this agreement with your attorney, Daniel
20 Martinez?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And did Mr. Martinez answer to your
23 satisfaction, any questions you had about the agreement?

24 THE DEFENDANT: Yes, he did.

1 THE COURT: Do you have any questions for the Court
2 about the agreement?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Did anyone threaten you, coerce you, or
5 force you in any way to sign or enter into this Guilty Plea
6 Agreement?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: You signed the agreement freely and
9 voluntarily?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: Now, Mr. Torres, do you have any questions?
12 Anything at all about the proceedings so far?

13 THE DEFENDANT: No.

14 THE COURT: Okay. Do you understand that by pleading
15 guilty today, you are waiving or giving up the constitutional
16 rights we talked about maybe five, ten minutes ago?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. Torres, I don't care whether you plead
19 guilty or not guilty. It doesn't affect my life in any way. The
20 person it impacts is you, and only you can make that decision.

21 There's two things that are really important to me as
22 the judge. One, that you have understood everything that's gone
23 on in court today.

24 So, have you understood everything that's gone on so

1 far?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And I always tell someone what the penalty
4 is. Generally, there's a maximum possible penalty. I have told
5 you what my two choices are. And the reason I have told you that
6 is I don't want you to come into Court, thinking that the Court
7 might sentence you to something less.

8 I have two options in this case. And I think I have
9 made them very clear. Life in prison with the possibility of
10 parole, with parole eligibility beginning when a minimum of ten
11 years has been served, or a definite term of 25 years with parole
12 eligibility beginning when a minimum of ten years has been
13 served. Those are my only options as the judge. And I want to
14 be sure that you understand.

15 Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Again, I don't care whether you plead
18 guilty or not guilty. I have a not guilty plea. I have a trial
19 set for two weeks in the month of July.

20 As a judge, I am happy to go forward with the trial. I
21 am happy to take the plea. It doesn't make any difference. My
22 life doesn't change in any way. Your life is the one that
23 changes.

24 So, this is what I'm going to do. I'm going to ask you

1 one more time how you want to plead. If you plead guilty, I move
2 toward the sentencing phase. If you plead not guilty, I simply
3 am ready to go to trial in July. So, it makes no difference to
4 me.

5 Mr. Torres, based upon my questions, how would you like
6 to plead today to the charge in the Amended Information of Second
7 Degree Murder, a Category A felony?

8 THE DEFENDANT: Guilty, Your Honor.

9 THE COURT: The Court finds that Mr. Torres understands
10 the offense for which he is charged, Second Degree Murder.

11 He understands the consequences of entering a plea of
12 guilty to that charge, and further finds that he has knowingly,
13 freely and voluntarily waived his Constitutional rights.

14 So, at this time, Mr. Torres I will accept your plea of
15 guilty.

16 The Court also finds that Mr. Torres understands the
17 terms of the written Guilty Plea Agreement, and further finds
18 that he has knowingly, freely and voluntarily entered into that
19 written Guilty Plea Agreement that was filed with the Court
20 today, April 29th, 2021.

21 This case is now being referred over to the Division of
22 Parole and Probation for the preparation of a Presentence
23 Investigation Report. It will be set for entry of Judgment and
24 Imposition of sentence on?

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THE CLERK: June 25th.

THE COURT: June 25th, 2021, at nine a.m.

As a reminder to you, Mr. Torres, as part of your Guilty Plea Agreement, you are to cooperate with Parole and Probation.

If you fail to do so, it would free the State, and they would be able to argue for the enhancement of the large habitual enhancement.

So, you have a vested interest in cooperating fully with Parole and Probation.

So, good luck. I will see you back here on June 25th at nine a.m. for sentencing. Thank you.

THE COURT: Thank you, everyone. Thank you.

(Whereupon proceedings concluded at 9:51 a.m.)

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STATE OF NEVADA)

) Ss

COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter,
licensed in the State of Nevada, License #127, and a Notary
Public in and for the State of Nevada, County of Douglas, do
hereby certify that the foregoing proceeding was reported by me
and was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings.

I further certify that I am not of counsel or attorney
for either or any of the parties in the foregoing proceeding and
caption named, or in any way interested in the outcome of the
cause named in said caption.

Date: May 12, 2021

SUZANNE KUES ROWE, CCR #127

JUN 25 2021

Nye County Clerk
Terri Pemberton Deputy

1 Case No. CR20-0092
2 Dept. 1P

3
4 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
5 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JUDGMENT OF CONVICTION

11 MARCO ANTONIO TORRES,

12 Defendant.
13

14 On April 29, 2021, the Defendant above named, appeared before the Court
15 with his counsel, Daniel Martinez, Esq., and entered a plea of guilty to the crime of *Second –*
16 *Degree Murder*, a violation of NRS 200.010, 200.030, a Category “A” Felony.

17 On June 25, 2021 the Defendant appeared personally and with his counsel, Daniel
18 Martinez, Esq. for entry of Judgment. No sufficient legal cause was shown by the Defendant
19 as to why judgment should not be pronounced against him. The Court adjudged the Defendant
20 guilty of the crime of *Second – Degree Murder*, a violation of NRS 200.010, 200.030, a
21 Category “A” Felony.
22

23 The court sentenced the Defendant to serve Life in Prison in the Nevada Department
24 of Corrections with parole eligibility after a minimum term of 10 years have been served.

25 Defendant shall pay to the Clerk of the Court a \$25.00 administrative assessment fee.

26 Defendant shall pay to the Clerk of the Court a \$3.00 DNA administrative fee.
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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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Defendant shall pay to the Clerk of the Court a \$150.00 DNA fee.
The Defendant shall receive credit for 447 days presentence incarceration.
DATED this 28th day of June, 2021.



KIMBERLY A. WANKER,
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 25th day of June 2021, she mailed (or hand delivered) copies of the foregoing **JUDGMENT OF CONVICTION** to the following:

NYE COUNTY DISTRICT ATTORNEY
PAHRUMP, NV
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
PAHRUMP, NV
(HAND DELIVERED)

NEVADA DIVISION OF PAROLE AND PROBATION
PAHRUMP, NV
(HAND DELIVERED)

NYE CO. SHERIFF (DETENTION)
PAHRUMP, NV
(HAND DELIVERED)

Melissa Stepp
MELISSA STEPP, secretary to
DISTRICT COURT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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SUPREME COURT CASE NO. 83216

CASE NO. CR20-0092

DEPARTMENT I

FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BEFORE THE HONORABLE DISTRICT COURT JUDGE

KIMBERLY WANKER

-oOo-

THE STATE OF NEVADA,

PLAINTIFF,

-VS-

MARCO ANTONIO TORRES,

DEFENDANT.

_____ /

TRANSCRIPT OF PROCEEDINGS

SENTENCING

JUNE 25, 2021

COURTHOUSE

PAHRUMP, NEVADA

REPORTED BY:

SUZANNE KUES ROWE

Nevada CCR #127

1 APPEARANCES

2
3
4
5
6 FOR THE STATE OF NEVADA: MICHAEL ALLMON
7 DEPUTY DISTRICT ATTORNEY
8 1520 EAST BASIN AVE #107
9 PAHRUMP, NEVADA 89049

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11
12
13 FOR THE DEFENSE: DANIEL MARTINEZ
14 ATTORNEY AT LAW
15 PAHRUMP, NEVADA 89049

16
17
18 FOR THE DEPARTMENT OF ANTHONY DAVIS
19 PAROLE AND PROBATION:
20
21
22
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24

1 FRIDAY, JUNE 25, 2021 PAHRUMP, NEVADA, 10:19 A.M.

2 -oOo-

3 THE COURT: Let's do Mr. Torres' case.

4 Case Number CR20-0092, State of Nevada versus Marco
5 Antonio Torres.

6 So, it's nice to see you again, Mr. Martinez.

7 MR. MARTINEZ: You too, Your Honor. Good morning.

8 THE COURT: How are you doing?

9 MR. MARTINEZ: Doing well.

10 THE COURT: Love your new job?

11 MR. MARTINEZ: I do. It's great.

12 THE COURT: Great.

13 Good morning, Mr. Torres. How are you today?

14 THE DEFENDANT: Not too bad. Thank you, ma'am.

15 THE COURT: You can sit down.

16 THE DEFENDANT: Okay.

17 THE COURT: Mr. Vitto, are we having Mr. Allmon come
18 and do the presentation on this?

19 MR. ALLMON: Yes, Your Honor. I did just text him. Do
20 you mind if I step out?

21 THE COURT: No, that's fine.

22 Good morning, Mr. Allmon. Are we ready?

23 MR. ALLMON: Yes, Your Honor.

24 THE COURT: This is the time and place set for

1 sentencing in Case Number 20-0092, State of Nevada versus Marco
2 Antonio Torres. He's present with his attorney, Daniel Martinez.
3 We have Deputy District Attorney Mike Allmon on behalf of the
4 State.

5 Is there any legal reason why we should not go forward
6 with Judgment and Sentencing today?

7 MR. MARTINEZ: Your Honor, over the past couple of
8 weeks, I have met with Mr. Torres. I have spoken with him, had
9 some extensive conversations to go over his Presentence
10 Investigation Report, to go over what to expect today, what he
11 would say when he addresses the Court.

12 What's in the mitigation report to go over the totality
13 of everything. Last I spoke with him prior to today was on
14 Wednesday of this week. We were planning and prepared to go
15 forward.

16 When I spoke with Mr. Torres this morning briefly, he
17 had lots or questions, lots more concerns about what's going to
18 happen, about the process of those things, and he did want to
19 request a continuance of his sentencing hearing to make sure
20 those questions are answered to his satisfaction.

21 I know that the state does have victim witness speakers
22 present today, so I am sure that they are going to be opposed to
23 any sort of continuance this morning.

24 THE COURT: Okay. Mr. Allmon, were you aware that

1 Mr. Torres was going to request a continuance this morning?

2 MR. ALLMON: I was not, Your Honor. This is the first
3 I've heard.

4 THE COURT: Do you have victim witnesses today?

5 MR. ALLMON: Yes, Your Honor. We have two.

6 THE COURT: And who are they?

7 MR. ALLMON: It's Christopher Piper and Paul Wilkins,
8 Your Honor.

9 THE COURT: Given the fact that you didn't know this,
10 and given the fact that I know from, remember I've got extensive
11 knowledge of this case, because I have watched the interviews
12 from all of the pretrial motions.

13 I have watched all the body cams of the incident. I
14 have watched the confession, the interviews at the Nye County
15 Sheriff's Office, I spent several, several hours reviewing the
16 materials.

17 I think it would be unfair to the victim witnesses that
18 came today to make them come back. I would be inclined, that
19 even though Mr. Torres has asked for a continuance, at least to
20 take the testimony of those witnesses today so that they, if they
21 wish to return, they could.

22 But, they would not be forced to return to give that
23 testimony.

24 MR. MARTINEZ: Thank you, Your Honor. That sounds

1 great, Your Honor. Can I have the Court's indulgence for one
2 minute to ask Mr. Allmon a question?

3 THE COURT: Sure.

4 (Discussion off the record.)

5 MR. MARTINEZ: Yes, Your Honor. I apologize. It
6 appears the state has two witnesses. One is the brother of the
7 victim in had case, who is absolutely allowed under every law in
8 the planet to testify. We are not opposing that.

9 The other witness that they had here is not a victim
10 witness speaker. He is a rebuttal witness, and that's what I was
11 getting from the state is a little bit about what that testimony
12 is. And I think we definitely have disagreement about whether
13 that testimony is going to be allowed.

14 Based on what I have heard thus far, we are not
15 rebutting anything, Your Honor.

16 THE COURT: Let's talk here a minute.

17 (Discussion at the bench off the record.)

18 THE COURT: We're going trail this matter.

19 (Whereupon other matters were heard.)

20 THE COURT: All right. So, are we ready on Case Number
21 20-0092, State of Nevada verses Marco Antonio Torres?

22 MR. ALLMON: The State's ready, Your Honor.

23 MR. MARTINEZ: May we approach briefly again, Your
24 Honor?

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THE COURT: Yes.

(Discussion at the bench off the record.)

THE COURT: So, this is the time and place set for sentencing in Case Number CR20-0092, State of Nevada versus Marco Antonio Torres.

I took a brief recess. Are we ready to go forward now, Mr. Martinez?

MR. MARTINEZ: Judge, Mr. Torres does have a request of the Court for how we can proceed. I know that there are a couple of witnesses for the state who are from out-of-state today.

Mr. Torres does want to continue the sentencing ultimately. So, what I would request today is allow Mr. Torres to give his statement to the Court today, allow the State's victims to speak today, perhaps the rebuttal witness if there is anything to rebut. But, I think we will ultimately argue about that, but ultimately still continue the sentencing date and have the attorneys argue about it and Your Honor pronounce sentence at a later date.

THE COURT: May I ask why that is? I mean why, Mr. Torres? What legal reason does he have for me not to move forward with sentencing today?

MR. MARTINEZ: Judge, he still has questions, he still has concerns about everything, and that's why he wants to make sure those are all answered satisfactorily before we go forward

1 today.

2 THE COURT: Mr. Torres, what are your concerns? The
3 Court would be happy to entertain any questions or provide any
4 answers that you may need today.

5 I don't understand why you want to be in control of the
6 sentencing procedure, because normally that's the purview of the
7 District Court Judge.

8 So, I'm trying to figure out why I should do that.

9 THE DEFENDANT: Um, okay. Your Honor, I'm not trying
10 to look bad in the Court's eyes or anything like that. It's just
11 one issue. An inmate that I been spending the last year with,
12 that we don't get along. Everyone else is good. Just one
13 inmate.

14 He just got sentenced just a couple of days ago and he
15 was sent back up to Tonopah. You already know who he is. You
16 have him in drug court.

17 THE COURT: I don't know who he is. I have no idea who
18 you are talking about.

19 THE DEFENDANT: I'm not a snitch, so I'm not saying
20 names. He's just, we don't get along. He likes me; I don't like
21 him. I don't like his ways. I would rather not be transported
22 with him. And so that's really, that's the only reason.

23 THE COURT: The only issue you have today, because I
24 will explain something to you. As I told you at the time of the

1 arraignment, the Court is very limited in their sentencing.

2 The Court has two options pursuant to the Nevada
3 Revised Statutes: Life in Prison With the Possibility of Parole
4 With Parole Eligibility Beginning When a Minimum of Ten Years Has
5 Been Served, or a definite term of 25 years with Parole
6 Eligibility Beginning When a Minimum of Ten Years Have Been
7 Served. Those are the Court's only two options. So, the Court
8 doesn't have a lot of sentencing options.

9 When the Court pronounces sentence and the Judgment of
10 Conviction is done in writing, and my staff, as early as it is
11 today, will probably have those judgments of conviction prepared,
12 and I will have them signed before the close of business today.

13 Then the only delay is for the Nevada Department of
14 Corrections to come and pick you up. That's it. So, you won't
15 be housed for a long period of time with this person. You may
16 not be housed and transported at all, because we will be waiting
17 for the Nevada Department of Corrections simply to come and pick
18 you up.

19 If I delay your sentencing today, you very well could
20 be transported and held for, you know, up to 30 days, depending
21 on when you're back on my calendar.

22 So, it would seem to me that based upon the reason that
23 you have given me, it would make sense to complete the sentencing
24 today. Is that the only concern that you have?

1 THE DEFENDANT: Yes. I'm okay with whatever you want
2 to do.

3 THE COURT: Okay. Well, I don't know what you consider
4 a snitch. I don't consider it a snitch. I sit at three
5 different courthouses. And so if there are issues, I want to
6 know what they are because I am going to make sure that they are
7 dealt with.

8 I don't put up with a lot of nonsense.

9 THE DEFENDANT: Really, a lot of immature game playing
10 beyond respect. Like, I've never seen anything like it. Really
11 incredibly ridiculous.

12 THE COURT: Okay.

13 MR. MARTINEZ: Mr. Torres has brought this issue up
14 with me in the past. This is an inmate that is verbally abusive
15 to Mr. Torres. But, this inmate says, I'm just joking, despite
16 what Mr. Torres is saying, don't talk to me. We are not just
17 joking were here not close like that, please stop doing that, it
18 persists.

19 THE COURT: So, the issue is, like I said, I would
20 assume that we will have the Judgment of Conviction done this
21 afternoon, and I will have it signed before I leave the
22 courthouse. And that then it should be as early as whenever,
23 sometime next week, the Nevada Department of Corrections, they do
24 a sweep. I used to sit in four different courthouses clear up to

1 Hawthorne.

2 So, as soon as I have pronounced sentence and signed
3 those judgments of convictions, the prison was there picking
4 people up.

5 I would be surprised if I pronounced sentence today
6 that they would transport you back to Tonopah. That would be
7 surprising to me. But, I don't control their transport.

8 But, I will tell you this. I don't put people in drug
9 court, if it's one of my drug court participants that is
10 harassing you, they may be harassing others. And I have zero
11 tolerance for that. So, unless I know about it, I can't deal
12 with it. And that may be grounds to kick them out of the
13 program.

14 So, you know, you may want to rethink about whether
15 it's a snitch or whether or not you are protecting others. It's
16 all a matter of perspective.

17 So, with that, I am going to go ahead and move forward.
18 Counsel, did you receive the Presentence Investigation
19 Report? It was prepared May 26th, 2021. Does everyone have a
20 copy of that report?

21 MR. MARTINEZ: I do, Judge.

22 THE COURT: Does anyone have any changes or additions
23 to that report?

24 MR. MARTINEZ: I do, Your Honor.

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THE COURT: On the non-Stockmeier issues?

MR. MARTINEZ: Yes, Judge. On credit for time served.

THE COURT: Okay.

MR. MARTINEZ: On page eight, it calculates the credit for time served from June 4th, 2020. The date of the offense when Mr. Torres was arrested was April 4th, 2020 so a total of 447 days credit for time served.

THE COURT: And I have no problem with that. I will give you credit for everything you are entitled to. Other than that, are we good?

MR. MARTINEZ: Yes, Judge.

THE COURT: The Court's review of the file reflects the following:

That on August 17th, 2020 the state filed an Information here in the District Court, charging the defendant with:

Count I, First Degree Murder of a Vulnerable Person, a Category A felony.

Count II, Open Murder, a Category A felony.

Count III, Invasion of the Home or Room, a Category B felony.

Count IV, Battery By Strangulation, a Category C felony.

Count V, Abuse of a Vulnerable Person, a Category B

1 felony. And that's B like in boy, Suzy.

2 Count VI, Interception, Interruption or Delay of
3 Message Sent Over Telephone Line, a gross misdemeanor.

4 Count VII, Possession of Dangerous Weapon, a gross
5 misdemeanor.

6 And Count VIII, Habitual Criminal, a Category A felony.

7 The defendant was arraigned in this Court on September
8 4th, 2020. Mr. Torres pled not guilty. He waived his right to a
9 speedy trial, and trial dates were set.

10 A change of plea occurred on April 29th, 2021. On
11 April 20th, 2021, the state filed an Amended Information charging
12 the defendant with Second Degree Murder, a Category A felony.

13 On September -- I'm sorry. On April 29th, 2021, the
14 Court arraigned Mr. Torres on the Amended Information. He pled
15 guilty. He was canvassed by this Court on his guilty plea. The
16 Court found that Mr. Torres had knowingly, freely and voluntarily
17 entered his plea of guilty.

18 Mr. Torres also entered into a written Guilty Plea
19 Agreement.

20 The Court canvassed Mr. Torres concerning his
21 understanding of that agreement, found that he understood the
22 Guilty Plea Agreement, and further found that he had knowingly,
23 freely and voluntarily entered into the written Guilty Plea
24 Agreement, which was filed with the Court, which leads to

1 sentencing today.

2 Now, pursuant to the terms of the written Guilty Plea
3 Agreement, the prosecution is free to argue.

4 Therefore Mr. Torres, the Court here by adjudges you
5 guilty of Second Degree Murder. It is a violation of Nevada
6 Revised Statute 200.010, and 200.030. It is a Category A felony.

7 Mr. Martinez, at this time you may proceed.

8 MR. MARTINEZ: Thank you, Your Honor. And I do want to
9 confirm, for the record, Your Honor is in receipt of my
10 mitigation report that I did?

11 THE COURT: It was prepared by Mr. Paglini?

12 MR. MARTINEZ: Yes.

13 THE COURT: I read it in preparation for court today.

14 MR. MARTINEZ: Thank you, Your Honor.

15 Your Honor, I'll start a little bit with just about the
16 facts of the case here. I know that it says in the presentence
17 investigation, as it did in the police report, as it did in the
18 press releases, when Mr. Torres was initially released. This all
19 happened about a bag of marijuana that got ripped, and that was
20 the reason for the argument.

21 That's not really the case, Your Honor. I know Your
22 Honor did watch, Mr. Torres' statement that was three hours long,
23 with the detectives. He goes a little bit more in detail about
24 what the argument was about. And it was much, much, much deeper

1 than just a bag of marijuana that got destroyed in an argument.
2 Mr. Torres and Mr. Piper, Jonathan Piper had a long history.

3 They had known each other since they were kids.
4 Mr. Torres moved out to Pahrump to help take care of Mr. Piper,
5 who was very sick.

6 They developed, they had a close relationship even at
7 that time. A relationship that almost bordered on the romantic,
8 Your Honor. Mr. Torres had some issues with Mr. Piper about how
9 he was being treated emotionally. About Mr. Piper ignoring him.
10 Not wanting to pay attention to him, not being there for
11 Mr. Torres either, which ultimately led to a lot of disagreement,
12 which led to arguments back and forth, and everything getting
13 amplified by alcohol that was consumed, by marijuana that was
14 consumed.

15 And we know a lot of it was consumed, Your Honor, in
16 part because there was an autopsy done on Mr. Piper, and that
17 includes toxicology levels. And Mr. Piper was about, if not more
18 than three times the legal limit. So, he was about a .23 and a
19 .24.

20 Mr. Torres has always maintained he was going drink for
21 drink with Mr. Piper as well, so I would expect him to be up in
22 about the same range. Being intoxicated, alcohol was certainly a
23 contributing factor that took everything up to another level to a
24 place where it never would have gone otherwise.

1 I think there is a big difference between someone who
2 is just going to snap over a bag of marijuana and someone who is
3 having a domestic dispute, and someone who is arguing with a
4 roommate, with a close friend, even with a spouse there's a big
5 difference between those two people, and what gets someone to
6 that point of anger.

7 So, I thought that was important to point out the
8 difference in the facts in argument, Your Honor.

9 The mitigation report in this case was very important
10 to me, Judge, because it paints a much better picture of
11 Mr. Torres.

12 I know Your Honor has noted multiple times on the
13 record how great Ms. Halicki was when we had her. How much time
14 she spent with the defendants when she went through the PSI
15 reports and wrote them. And, unfortunately, we don't have her
16 around anymore, and PSI's are lacking in a lot of cases.

17 So, Dr. Paglini's mitigation report that he did
18 prepare, I really think is very important in this case, because,
19 again, it gives us great detail into Mr. Torres's background.

20 There's no excuse for what happened, obviously, but
21 what's in the mitigation report is not making excuses, it's not
22 trying to give a reason for everything that has happened, they
23 are explainers. They help explain how we got to where we are,
24 how Mr. Torres got to where he is, and explain what happened, but

1 not excuse it, not give reasons for it.

2 Mr. Torres is someone that has suffered trauma, had
3 mental health issues from a very young age.

4 Even his substance abuse issues started at a very young
5 age. Notes in the mitigation report that his first drink of
6 alcohol came when he was seven years old. He got so intoxicated
7 then that he vomited.

8 He was sexually abused by a neighbor when he was 12.
9 When he threatened to say, I'm going to tell the police, this
10 shouldn't be happening, he began being paid. And that
11 transported him into a life of prostitution.

12 Mr. Torres, it's unfortunate, seems like he fell into a
13 vicious cycle. He suffered trauma. He had mental health issues,
14 and he had substance abuse issues, and he used one to cope and
15 deal with the others.

16 And, of course, that amplified everything, that took
17 everything up, and that sent him on that path, and on his life's
18 path, Your Honor.

19 I have been practicing for just about 11 years now,
20 Your Honor, and in the time that I have been practicing in the
21 courts, especially here in Nevada, and they have made great
22 strides.

23 And I know all across the country as well, in mental
24 health courts, in drug courts, in assessing the reasons why

1 someone commits a crime, and getting them into rehabilitation so
2 we don't see them again.

3 And that certainly is not something that was present,
4 we are going as far back as the eighties and nineties.

5 Obviously I am not going to blame the judicial system
6 for any of Mr. Torres' history and his substance abuse issues,
7 but it didn't help him in any way to get over that, Your Honor.

8 I've looked at the counseling that he was ordered to
9 do. Nothing was ever long-term, it doesn't seem.

10 Your Honor's the drug court judge. You know how long
11 someone needs to be in treatment. How long they need to be going
12 to counseling so they can address and they can get over their
13 addiction issues. And nothing like that ever occurred for Mr.
14 Torres in his past.

15 We have multiple psychiatric hospital visits that he
16 has gone to. And, again, it always seemed like he would go into
17 the psychiatric hospital as soon as he was stabilized enough that
18 he wasn't a threat to himself or anybody else, they kick him out
19 the front door.

20 And, unfortunately, he never had any support, probably
21 insurance, any money to go, continue going to see the therapist
22 to continue on medication.

23 Even from a young age when a doctor tried to prescribe
24 him Ritalin, his mother was the first one that said, no, we are

1 not going to put you on that medication. That kind of continued,
2 as he got older. He had been prescribed medication before. He
3 didn't like the way that it made him feel, so he would stop
4 taking that medication.

5 And it's, you know, if I told you about someone's
6 history like this, Judge, I don't think it would be any surprise
7 that that person spent quite a bit of time being homeless.
8 Whether he was literally living on the streets, was couch
9 surfing, not having a stable roof over their heads, That's what
10 happens with homeless. There's more violence that occurs,
11 whether it's them getting assaulted, having to assault, a lot of
12 his criminal history that is either, that is theft related is
13 clearly related to being homeless.

14 Being hungry, not having any money, needing to go in
15 and feel this way, that he can put food in his mouth so he
16 doesn't die. Obviously there's root causes to all these issues,
17 Your Honor, and that's how we get to where we are today.

18 The incident that occurred, again Mr. Torres totally
19 admits that he was very intoxicated and, unfortunately when he
20 drinks, he gets belligerent, and that's what happened. And it
21 kicked everything up, tilted the argument to a level it never
22 should have gotten to.

23 Again, Your Honor, it's no secret that when people are
24 intoxicated, or when they are high, they are a different person

1 than when they are sober. And that is certainly the case with
2 Mr. Torres, especially with his bipolar diagnosis.

3 He has those wild swings and, unfortunately, those wild
4 swings cause him the lash out, as he did in this case.

5 Ultimately Mr. Torres, I don't believe, is a bad
6 person. I think he is a good person. He is not someone worth
7 throwing away and saying you need to be locked up for the rest of
8 your life, because you are a danger to everybody in the world.
9 He's not. He is someone that has taken steps.

10 I know that he has been doing therapy while he's in
11 custody. He notes in his PSI as well as in the mitigation report
12 that there's a lot of self care. He has taken a lot to writing
13 his stuff on paper so he can say a lot of things.

14 I can tell, Your Honor, I have noticed that when I have
15 gone to visit with him, I have had his case for more than a year
16 now. I have had lots of meetings, lots of discussions with
17 Mr. Torres. There's never been any lashing out. There's never
18 been any violent swings. A big part of that is because he's
19 sober. There's no alcohol, there is no drugs that are in the
20 jail. So, being sober goes a long way.

21 He's taken advantage so far of resources that are
22 offered to him here, and I know we have had discussions about him
23 taking advantage of the resources at the Nevada Department of
24 Corrections will have to offer him as well, to make sure that

1 when he is eligible for parole, he can make parole.

2 And when he does make parole, that he will be a
3 contributing member of society. He has goals, he has plans, and
4 he wants to get there.

5 In short, I am asking the Court at the end to sentence
6 him to a definite term of 25 years with parole eligibility after
7 ten.

8 And Mr. Torres has a long, tortured history of a life,
9 but it's not one that I think we should necessarily cut short. I
10 think that there's still a lot of life left for Mr. Torres to
11 live, and I think he has a lot of good left to do with himself,
12 Your Honor.

13 Thank you.

14 THE COURT: Thank you. State, do you have any
15 witnesses?

16 MR. ALLMON: Yes, Your Honor. The state would call
17 Christopher Piper.

18 THE COURT: Before you sit down, if you would raise
19 your right hand I will have the clerk swear you in.

20 CHRISTOPHER PIPER,
21 called as a witness in the matter herein,
22 having been first duly sworn
23 was examined and testified as follows:
24

1 THE COURT: Thank you. Please be seated. Sitting in
2 front of you is this black box with a red ring. That is our
3 microphone and you will see up on the big screen, that my court
4 reporter, Suzy Rowe, she is the official record for all criminal
5 matters here in the state Nevada. So, it's important that she be
6 able to hear you because she creating the official record.

7 Before I have Mr. Allmon start asking you questions,
8 there is a question I have for you. Or a statement.

9 And that is, if you could please state and spell your
10 first and last name for the court reporter?

11 THE WITNESS: Christopher Piper. C H R I S T O P H E
12 R, P I P E R.

13 THE COURT: Thank you, Mr. Piper.

14 Mr. Allmon, you may proceed.

15 EXAMINATION

16 BY MR. ALLMON:

17 Q. Mr. Piper, would you introduce yourself to the
18 Court, explain your relationship to the victim?

19 A. I'm Jonathan Piper's only sibling.

20 Q. What's your relationship as far as who is the older
21 who is the younger?

22 A. My elder brother by four years and four months.

23 Q. Will you tell the Court about Jonathan?

24 A. Yeah. He loved nature. He would tend to live off

1 the grid. Last couple of years I would see him once a year when
2 we would go on vacations. The last one we went on was in Utah.
3 That was really nice.

4 Q. What was your brother's medical condition in his
5 later stage of life?

6 A. Stage four lymphoma.

7 Q. And how did that cancer impact him?

8 A. It was in his throat, first. And then he had to
9 have chemo, then it started spreading, and they were considering
10 ripping out his voice box, but I don't think he would have gone
11 for that. So, it was pretty serious.

12 Q. And do you know the defendant?

13 A. Yes.

14 Q. How do you know the defendant, Marco Torres?

15 A. We grew up together in the same neighborhood.
16 Jonathan knew him, met him in third grade. I'm four years
17 younger, so that's quite a bit of difference. I knew him when I
18 was four years old. I think I knew him when I was four years
19 old. Yeah.

20 Q. So, he was four years older than you. What was your
21 relationship with him as a child?

22 A. Well, he was like the neighborhood bully. He would
23 bully me, so I would try to avoid him. But, later on, that
24 mellowed, when I got older and he got older. Yeah.

1 Q. And did you reconnect with him as an adult?

2 A. Yeah. Like in my early thirties, then he went off to
3 Hawaii or somewhere, and then neither my brother or I had seen
4 him for many years. And then when I found out about my brother's
5 illness which was recently, we reconnected again.

6 Q. Explain how that reconnection happened?

7 A. Um, through mutual friends from the neighborhood, both
8 Marco and my brother's. I was trying to locate old friends. And
9 he located my brother, and then Marco was, I talked to him and
10 found you out he was sick, and he offered to take care of him.

11 Q. Who offered to take care of him?

12 A. Marco offered to take care of my brother.

13 Q. So, it was the defendant's offer to move in with your
14 brother?

15 A. We all thought it was a good idea, because he took care
16 of his mother before she died, and I was looking forward to
17 coming there once a month and doing things with the two of them,
18 going to Death Valley or things my brother loved, because I
19 wanted him to have things to be as good as possible in his
20 remaining days.

21 Q. And based on the defendant's offer, you thought that
22 that would actually achieve that, is that correct?

23 A. Yes.

24 Q. And when you met him, where was he living, the

1 defendant, where was he living?

2 A. In Venice, in a van.

3 Q. Living in a van. Did you do anything to help him out
4 in that situation?

5 A. Yes. He was an avid skateboarder, and he fell on his
6 butt, and he was, like, in agony. This was just right before we
7 were due to bring him up here.

8 And I, out of the kindness of my heart, went down there
9 and brought him food, because he could barely move. And I ended
10 up coming home in the daylight. A couple days later, I drove him
11 to the emergency room. And the nurses were in awe of what a good
12 friend I was. And unfortunately his piriformis --

13 Q. I'm sorry. What was that?

14 A. He had a bruised piriformis.

15 Q. Okay?

16 A. So, it wasn't serious, you know. And then a day later
17 I emptied his van, the contents of his van into my 4Runner, and
18 drove him up here.

19 Q. And was that to care for your brother?

20 A. Yes. And my brother had already secured a spot. And I
21 was, my dad and I were taking care of the finances.

22 Q. And when your brother moved about the house, was he
23 able to do any household chores?

24 A. He didn't have a lot energy, but he could still walk.

1 The upper half of his body was pretty weak.

2 Q. Was he able to pick up any objects of any significant
3 weight?

4 A. I don't think so, no. He was down to less than a
5 hundred pounds.

6 Q. And how tall was your brother?

7 A. Five eleven.

8 Q. Now, on the very early morning of April 4th, April 3rd
9 and April 4th, what was your involvement with the issue with the
10 defendant and your brother?

11 A. I was in bed and a got a call from him. I did not even
12 answer it because I didn't think it was that big of a deal,
13 because I was really tired and just went back to sleep.

14 MR. MARTINEZ: Judge, I apologize. I need to interject
15 and object a little bit at this point I think.

16 THE COURT: Okay.

17 MR. MARTINEZ: My understanding is the victim witness
18 speaker, they are testifying about obviously how the crime has
19 affected them. A lot of questions that we are asking now aren't
20 really along that vein. We are getting into the facts of the
21 case and what happened, so I don't think it's necessarily
22 appropriate for the testimony at the time of sentencing.

23 MR. ALLMON: And the state would disagree and cite
24 Denson vs. State 112 Nevada, 498, a 1996 Supreme Court case.

1 THE COURT: Let me take a look at it. Jamele, can you
2 move the screen down just a little bit?

3 It looks like, just looking at the head notes, I have
4 pretty wide discretion about what I hear. I will say this. As
5 you know, I'm the judge that reads everything, and I do it
6 myself. So, I haven't heard anything that I haven't already
7 known from my review of this case.

8 I spent a lot of time on this case, because obviously I
9 ruled on the pretrial motions, and so, I mean, I was forward and
10 backwards in the files and had looked at every bit of
11 surveillance tape video that was provided, whether it was the
12 body cams, I watched every deputy's body cam. I listened, I
13 watched all the DVDs that were filed with regard to the
14 interviews with Mr. Torres. I saw all of that. I spent several
15 hours working on this.

16 In fact, I had traveled to Texas for Easter, and that's
17 what I did on the plane, there and on the plane back. So, I had
18 at least six hours just in doing that.

19 MR. ALLMON: Your Honor, if I could just make a quick
20 record as to the issue the state believes is very important?

21 I think the Court is already onto it. In that case the
22 state played video, surveillance video, which was evidence of the
23 crime itself at sentencing.

24 It's the State's position that it's allowed to present

1 its sentencing argument in the most impactful method on the judge
2 who is ultimately going to decide that. It's a persuasive
3 sentencing issue, and that's where we're at.

4 THE COURT: I just would read this from the case, and
5 it says:

6 "Few limitations are imposed on the Judge's right to
7 consider evidence in imposing sentence. Courts are generally
8 free to consider information extraneous to the presentencing
9 report. Possession of proposed information possible concerning a
10 defendant's life and characteristics is essential to the
11 sentencing judge's task of determining the type and extent of
12 punishment.

13 "Further, sentencing proceedings is not a second trial,
14 and the Court is privileged to consider facts and circumstances
15 that would not be admissible at trial.

16 "A District Court is vested with wide discretion
17 regarding sentencing. But, this Court will reverse a sentence if
18 it is supported solely by impalpable and highly suspect
19 evidence."

20 And then the Nevada Supreme Court in this case went on
21 to say:

22 "We conclude that the District Court's consideration of
23 the surveillance videotape in the present case withstands the
24 Silks test, because the District Court sentencing decision was

1 not founded solely upon impalpable and highly suspect evidence.

2 "At Denson's preliminary hearing, the state presented
3 testimony from security personnel at five casinos regarding five
4 separate burglaries.

5 "At the sentencing hearing, Silva testified that he
6 personally saw Denson in Harrah's Casino on a number of occasions
7 and believed Denson was intending to rob casino customers."

8 So, it said:

9 "We conclude the District Court," going on, um, "did
10 not abuse its discretion by considering the videotape in
11 question."

12 I do want to point one other thing out that the state
13 has not referenced. I went back at looked at the Guilty Plea
14 Agreement in this case before coming in today, and I believe
15 there's some language that addresses this in the Guilty Plea
16 Agreement. Let me find that.

17 The Guilty Plea Agreement does say this in paragraph
18 three, page two:

19 "The prosecution is free to argue for any permissible
20 sentence allowed by law and remains free to argue all facts and
21 circumstances surrounding the crime to which I have pled guilty,
22 including dismissed and/or reduced charges and information
23 contained within my presentence investigation."

24 So, that is part of the Guilty Plea Agreement, as well.

1 That agreement, of course, he was canvassed on.

2 So, at this time I am mindful of the objection raised
3 by Mr. Martinez.

4 I am going to overrule the objection and give it the
5 weight, the information the weight that I think it deserves.

6 But, like I said, I have read everything before coming
7 in today. This was the last case I prepped for in getting ready
8 for today's hearing, and I spent a significant amount of time, I
9 held it to the end for a reason.

10 MR. MARTINEZ: I apologize for interrupting. I don't
11 normally want to interrupt the witness speakers.

12 THE COURT: Mr. Allmon, you may proceed.

13 MR. ALLMON: Thank you Your Honor.

14 BY MR. ALLMON:

15 Q. We were just talking about a phone call that your
16 brother made to you that time. How did that impact you?

17 A. Well, at the time I didn't think anything of it,
18 because I didn't know that it was serious. Afterwards I felt
19 bad.

20 If I could go back in time, I would have answered it
21 and I probably would have be driven out here immediately. I
22 would have got in my car and come right out here all the way from
23 LaCrescenta, California.

24 Q. Now, this is your time to speak to the judge. What

1 would you like to see done to the defendant, Marco Torres, in
2 this case?

3 A. Well, I want justice for my brother, but the most
4 important thing is to protect society from him, because he's, his
5 level of recidivism is off the charts. I mean, it surprises no
6 one that he would do this to Jonathan. Perhaps all the drugs
7 he's taken. I don't think he would have done this when he was a
8 kid. I just actually feel responsible, but to say that it should
9 be the maximum sentence.

10 Q. Do you trust the defendant?

11 A. Do I trust him now?

12 Q. Did you trust the defendant before?

13 A. I did.

14 Q. How do you feel about that betrayal? How do you feel
15 about that betrayal of trust?

16 A. It's so deep, I had to come up with little used
17 adjectives to try to describe it.

18 Q. Do you have anything you else you would like to add to
19 the Court?

20 A. Um.

21 Q. This is your last opportunity to speak to the Court, to
22 let the judge know what you want to occur?

23 A. I don't want him to get away with this. He hurt my
24 whole family. His own family. His friends felt betrayed. We

1 all do.

2 MR. ALLMON: Thank you, Mr. Piper.

3 THE COURT: Mr. Martinez, do you have any questions?

4 MR. MARTINEZ: No, Judge.

5 THE COURT: Mr. Piper, at the time you reconnected with
6 Mr. Torres, were you aware that he had any criminal history?

7 THE WITNESS: Um, petty stuff. I was not aware of the
8 more serious stuff.

9 THE COURT: Were you aware that he had been convicted
10 of six prior felonies?

11 THE WITNESS: No. Not six.

12 THE COURT: Any felonies?

13 THE WITNESS: Um, you said before I connected with him
14 this last time?

15 THE COURT: Yes.

16 THE WITNESS: Yeah. Um, I thought they were like
17 misdemeanors, something like that.

18 THE COURT: Okay. Any reason for you to be concerned
19 with any sort of violent behavior, Battery, anything like that?

20 THE WITNESS: Not with my brother. We all felt he
21 would be protective of my brother, because of how they were
22 together when they were kids. This was a real curve ball.

23 THE COURT: Sometimes you have friends and they're best
24 friends from grade school on. Was that the type -- they may not

1 see each other for ten years, but they just pick up where they
2 left off. Is that the kind of relationship between Mr. Torres
3 and your brother?

4 THE WITNESS: Yeah, it seemed like that's where it was
5 going, yes. I just dropped him off. I would call them and they
6 seemed to be happy.

7 THE COURT: I'm just curious. What brought your
8 brother to Pahrump of all places? Because he grew up in
9 California.

10 THE WITNESS: Before that, my brother had a problem
11 with alcohol. This guy's brother took him to Pahrump to help him
12 take care of his dogs while he was away, and then we finally got
13 him a trailer. Dad and I offered to bring him closer to us, but
14 he didn't want to. So, he was here.

15 THE COURT: I was just curious. Okay. Thank you very
16 much. I appreciate your time.

17 (Whereupon other matters were heard.)

18 THE COURT: All right. Sorry to interrupt.

19 Are you ready to proceed, Mr. Allmon?

20 MR. ALLMON: Yes, Your Honor.

21 Your Honor, we are here today because the defendant
22 took the life of Jonathan Piper. We're here because the
23 defendant's actions, his actions alone, he was entrusted with the
24 safety and well-being of Jonathan Piper in his final stage of

1 life and he betrayed that trust.

2 This is Jonathan Piper later in his life and before the
3 final stage.

4 Your Honor, there you see Jonathan Piper with the
5 defendant here in Pahrump, later in his stage of life. You can
6 see the difference between the two. He's frail. He's weak.

7 Your Honor, Dr. Sharda treated him for cancer. And Dr.
8 Sharda, in preparation for this trial, told me that at that stage
9 of cancer, he was in his final stage. Lifting 20 pounds above
10 his head would have been impossible.

11 When he took a ride to Las Vegas for his medical care,
12 he would lay down on the back seat, because his core strength had
13 been diminished so much that he didn't have the ability to sit
14 upright for that one-and-a-half hour ride to Las Vegas. That's
15 the weakened state he was in. And that's the state the defendant
16 was in.

17 On April 3rd, leading into April 4th, Your Honor is
18 familiar with the facts of the case, I know that. What's
19 important to remember is what the defendant did that night.

20 He got into an argument with his friend, Jonathan
21 Piper. Whatever the circumstances may be, whether it was a
22 romantic situation, whether it was over a bag of spilled
23 marijuana, the reason the narration about the bag was, it was the
24 defendant at the time that gave that narration to the police. He

1 put that out there. He denied that it was a romantic
2 relationship.

3 Whatever his reasons were for denying it and saying
4 that it is now, I don't know. But one story is not true.

5 Your Honor, that night, the defendant, in his fit state
6 and the victim's weakened state, attacked Jonathan Piper.

7 Jonathan Piper tried to retreat back to his room, his one safe
8 space that he should have had in his house.

9 Instead, the defendant came through the door, kicked
10 that door open, while the defendant was on the phone with 911.

11 What's important to remember too is the defendant, in
12 an altercation as it heated up, he reached out to people.

13 Reached out to the person he was closest to emotionally. That
14 was his brother that you heard from. He received that missed
15 call that night. He called a neighbor, hoping that that would
16 calm things down. Nothing happened. And finally he called 911.

17 (Whereupon a tape was played.)

18 MR. ALLMON: That night Jonathan Piper called 911 and
19 he said, I need some help. The defendant knew that the cops were
20 on their way, and he still grabbed Jonathan Piper in his weakened
21 state, strangled him by either choking him around the neck or by
22 asphyxiating his ribs to the point where he couldn't expand them
23 to breathe. That's what the defendant did to Jonathan Piper.

24 Here's Jonathan Piper's door. That's his room. That's

1 the one place in the house that he should have been able to go to
2 safely. Instead, the defendant kicked in that door. That
3 created the charge of home invasion of a room.

4 There's more evidence of what he did. He violently
5 kicked in that door. Whether he wants to say it's a romantic
6 relationship at the time, he said it was over spilled marijuana.
7 And that was the defendant. That's the man that Jonathan Piper
8 was up against that night. Jonathan Piper didn't stand a chance.

9 Jonathan Piper was at the mercy of that man that night.
10 A man that he trusted. A man that betrayed that trust and was
11 ultimately his slayer.

12 Jonathan Piper died at the hands of a man that he
13 thought was his friend. That is Jonathan Piper that night, Your
14 Honor. There wasn't much to him. That's what the defendant did.
15 That's who Jonathan Piper was up against. He didn't stand a
16 chance.

17 Your Honor, I would like to talk about the defendant
18 and his history. So, the defendant, in my opinion, the defendant
19 spent most of his life getting things over on people. He
20 manipulates. And if that doesn't work, he resorts to violence.

21 When he's caught with that, his next step is to blame
22 the victim. There are basically three plays that he has. He's,
23 he was a drug dealer before. He was a thief. He can say all he
24 wants about how he needed help. He was a drug dealer and a

1 thief, and he had the help provided to him by the courts.

2 Let's talk about the drug use, the opportunities that
3 he had.

4 Your Honor, the Presentence Investigation Report, if
5 you look at his conviction on March 15th of 2002, he was
6 sentenced to drug programs several times. In three cases, he was
7 sentenced to a drug program. One time there, and he was also
8 sentenced to a drug program in 2008.

9 In his Presentence Investigation Report, he also
10 received multiple commitments to probation whether that was
11 felony or misdemeanor probation, he was committed to probation in
12 both instances several times.

13 He had his opportunity. This is just, yet again, his
14 manipulation of the Court.

15 The defendant said something telling in his statement
16 to the police that night. Your Honor, you watched the video.
17 You remember what happened.

18 The first thing he did, he opened his mouth and he
19 decided to give the police a false story about Rich. Rich did
20 this. Rich came over to the house. (Inaudible.) When he was up
21 against a couple of detectives, he stood no chance in his ability
22 to pull one over on him. So, he finally admits that Rich is
23 false.

24 But, then he goes to his next thing. Says I'm hoping

1 there's a light at the end of the tunnel. More manipulation. He
2 tells the detectives, I think you're good guys. This is all part
3 of his scheme, his scam to get leniency. I think you're good
4 guys. I want a light at the end of the tunnel. That's going to
5 be much of what you're going to hear today too.

6 Your Honor, the defendant has the proclivity to lie.
7 Back in 1995 he was convicted of false imprisonment.

8 Battery misdemeanors. We just see how these escalate.
9 The criminal justice system tried with him.

10 1998, he's convicted of Assault, second degree felony
11 when he attacked somebody with a skateboard. That was in Maui.

12 In 1999, convicted of Domestic Battery.

13 2000, convicted of Battery.

14 2001, convicted of Battery.

15 He does manage to stay away from violent crime for a
16 while, I will give him that. Yet ultimately the final violent
17 act that he commits is the ultimate crime in society. He takes
18 the life of Jonathan Piper. He took his life from him. He
19 robbed him of his last days on this earth.

20 Jonathan Piper was not allowed to pass quietly,
21 surrounded by family, as all of us would like. Instead he dealt
22 with the defendant, a man who strangled him to death.

23 Your Honor, based on the facts of who this defendant
24 is, with six prior felony convictions, the trial that he was

1 facing, with a Home Invasion, with a Battery on an Elder Person,
2 a Battery on Strangulation, crimes that he admitted to, that was
3 it, this Court could have sentenced him to life without.

4 The defendant has gotten every break that he deserved
5 with his guilty pleas. He deserves no other breaks. The state
6 made a very lenient offer. He deserves nothing more than what's
7 already been given to him. He's a six-time convicted felon. He
8 committed the ultimate crime. Your Honor, sentence him to life
9 in prison. And to life. Jonathan Piper called out that he
10 needed help. Give Jonathan Piper the little bit that we can at
11 this point.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Mr. Martinez? Do you have anything to follow up that
15 you would like to add? If not, Mr. Torres, do you have anything
16 you would like to add?

17 THE DEFENDANT: Yeah.

18 THE COURT: Not yet, Mr. Torres.

19 THE DEFENDANT: I'm sorry.

20 MR. MARTINEZ: Court's indulgence. If I could have a
21 moment to think here? Thank you.

22 Judge, I'll say this. The state talked about
23 Mr. Torres' statement, that he stood no chance against the power
24 of detectives, and he was trying to manipulate them. First and

1 foremost, this is just from me, Your Honor. That's what the
2 detectives do.

3 They are trained on those manipulation techniques to
4 try and get a confession out of somebody, and get somebody to
5 talk, but no one else is allowed to do that.

6 But, that's not my big gripe. My gripe is this, Your
7 Honor. I know Your Honor did watch that entire confession. The
8 detectives didn't ultimately break down Mr. Torres. Mr. Torres
9 did that himself.

10 The detective left the room. When they came back,
11 Mr. Torres started crying. They said, "Why are you crying?" And
12 Mr. Torres spilled the beans. He told them what happened. That
13 guilt got the best of him. He needed to take responsibility.

14 This didn't have to do with detectives and their vast
15 experience and all of their skills breaking him down and getting
16 him to confess. It was the guilt, it was knowing what happened.
17 It was taking responsibility, as Mr. Torres has done.

18 Mr. Torres talks about it in the interview with police,
19 about the relationship they had. What the argument was about.
20 It was the bag of marijuana that the officers took, and just ran
21 with, and at the end of the day I don't think all of that
22 necessarily will be a deciding factor, what the fight was over,
23 but I just think it was important for me to point that out.

24 Again, Your Honor. I know the Court has read the

1 mitigation report, has read all the pleadings in this case,
2 looked at all the video, looked at everything.

3 I don't want to belabor everything too much, but we
4 have looked at his history, and it is one of the worst criminal
5 histories. And that we would be able to guess about the trauma
6 and the mental health issues and the drug use in the past.

7 The State's trying to pin a certain personality on him
8 (inaudible) and that's absolutely not the case. Unfortunately,
9 he hasn't dealt well with traumas, with his mental health issues
10 in his life, but I absolutely do not believe that Marco Torres is
11 inherently a bad person, and I don't think anybody in this
12 courtroom does. I still believe that the 10 to 25 is the
13 appropriate sentence in this case, Your Honor.

14 THE COURT: Mr. Torres, the law gives you the
15 opportunity to speak to me now, either to tell me some legal
16 reason why I should not move forward with Judgment and
17 Sentencing, or to tell me anything you would like me to consider
18 before I impose sentence? Is there anything you would like to
19 say?

20 THE DEFENDANT: Yeah. I would like to let my two
21 friends here know that I am completely, I mean, I failed. I did
22 fail you. I failed my family. I failed you, and I'm sorry for
23 that. I had no idea this was going to happen. I wish I would
24 have called you and told you to pull me out.

1 It's not John's fault. He wanted to drink. I enabled
2 him, and things got out of hand. And I picked the wrong night to
3 try to discuss the, a solution, um, to get out of there. I
4 probably shouldn't have got, never came in the first place.

5 So, I don't want to say a bunch of I'm sorry. I know
6 how you feel. I ruined your life. I did not mean to. And I'm
7 going to live with this, you know, even with the ten to 25, I may
8 not make it out. I'm sorry. I need to face you?

9 THE COURT: Yes.

10 THE DEFENDANT: My bad. I just wanted eye contact with
11 the two men over here that I grew up with, that I love dearly. I
12 care about them.

13 I know I failed everyone. My family included. I
14 shocked everybody. I was going to write a poem about it, maybe I
15 will do that at a later date, but that's just not necessary right
16 now.

17 I'm coming from the heart. I loved John. I cared
18 about him. Unfortunately, I went along with enabling him. And,
19 like I said, I picked the wrong night to try to talk about it,
20 and I lost my cool, and I wish I would not have.

21 And, um, I don't know what else to say, other than, um,
22 I am taking responsibility for it the best I can.

23 And considering also in September I recognized my 30th
24 year since I been diagnosed with HIV, this September is going to

1 be 31 since my diagnosis, and I been called a miracle for living
2 that long with the disease and whatnot.

3 Um, I don't know that I'm going to make it out of here
4 even in ten years, so, I'll try my best to get through this.

5 But, like I said, Christ, I'm sorry I failed you. And
6 I think of John every day. He comes to me in my dreams, and he
7 wasn't mad in the dreams that I have had.

8 We have talked, I believe, in the hereafter. And I'm
9 not a real big religious person, but I believe he's there, and
10 he's waiting for me too, if I end up going while I'm in here, I
11 don't know. Ten years is quite a while.

12 I feel that I could get a lot done in that time. I'm
13 writing several books right now. So, I'll just leave it at that.

14 I'm not a bad person. I have learned to live with love
15 more than hate in my life. It's hard for me to hate people. And
16 I'm just sorry, Chris, I didn't call you to ask you to come get
17 me. I thought about it, but I thought we would give it one more
18 shot.

19 John didn't want me to leave. I said, "Do you want me
20 to leave? I'll leave. Because all I am doing is enabling you to
21 drink yourself to death."

22 I don't know how long he would have lived with the
23 cancer, but I'm sorry I didn't call you, Chris, the come get me
24 and get me out of there.

1 I don't feel sorry for myself. I'm shaking myself
2 because it's so cold in here, I'm trying to get some warmth. I
3 don't know what else to say, other than you know, I didn't mean
4 to send him, to end his life like that.

5 But, I know if the afterlife is true, if we get to see
6 our loved ones in spiritual form, then he's with some wonderful
7 people right now.

8 But, I didn't mean to send him there. And I'm truly,
9 I'm really truly sorry for what I did. That's all I have.

10 THE COURT: Okay.

11 THE DEFENDANT: I hope somehow that I can be forgiven
12 by something better than ourselves. If not, then I don't blame
13 you, Chris, for not ever forgiving me, but I'm not that man, a
14 menace to society.

15 I miss butterflies and the nature and the talks that me
16 and John had about going on hiking trips and finding fossils, and
17 we were going to get a puppy, maybe a kitty cat. And I miss all
18 that. I wish it never would have happened and we could have gone
19 on.

20 And the truth about the romantic relationship. There
21 was no romantic relationship as adults. We experimented as
22 children. We had vows to each other to be friends for life, and
23 that was it. There was no romantic.

24 I love him dearly. I'll never forget him. He told me

1 he loved me too as a person, and all that. There was no reason
2 for anything to be yelling at. I feel bad.

3 But, I don't feel sorry for myself. So, that's. Yeah.
4 I have to take responsibility for what I've done. I will be
5 surprised if I can make it out of here in ten years. If my
6 syndrome goes for the worst, which at this point I'm getting
7 medication. It would have been hard to get the medication maybe,
8 during the time of the Corona virus, it might not have been easy
9 to get the medication.

10 I guess I'm right where I'm supposed to be. Without
11 beating myself you up, that's all I'll say.

12 THE COURT: Okay. Thank you.

13 Well, this is an unfortunate case. I think that's the
14 best way one can describe it. But, the events that occurred in
15 April of 2020 from, I heard that 911 call before. I watched all
16 of the body cam from the deputies who responded, the sergeant who
17 responded. And a couple, I want to make a couple of comments
18 here.

19 You know, I understand alcohol and substance abuse
20 problems. But, they are never an excuse for one's conduct,
21 regardless. No one forced anyone to drink. Nobody forced anyone
22 to use drugs. You made that conscious decision, and there are
23 consequences to decisions that we all make.

24 So, the, probably the most disturbing part about this

1 case for this judge, having watched everything, is two-fold. One
2 is the fact that when the Nye County Sheriff's Office responded,
3 they didn't break the door down.

4 To this day I do not understand the lack of
5 understanding that no probable cause was needed to breach the
6 door on the property and go in. Instead, after fumbling and
7 bumbling for 35 minutes, finally a lieutenant made the
8 determination to call a locksmith, and that took a significant
9 amount of time, and then it took the locksmith a significant
10 amount of time to get the door open.

11 And my comments are two-fold with regard to that. One
12 is that if you had time to call a locksmith, you had time to call
13 a judge, if you truly believed you needed probable cause.

14 But, there are eleven exceptions to the search warrant,
15 to entering a property without a search warrant. One is the
16 medical emergency exception. It's very well delineated under
17 Nevada law with Nevada case authority.

18 So, it's troubling to me, maybe I understood the
19 deputies, but it went from a deputy to a sergeant to a
20 lieutenant. The lieutenant report directly to the Sheriff. So,
21 we have eleven lieutenants here at the Nye County Detention
22 Center. And it's troubling to me that the deputies the sergeant
23 and the lieutenant did not understand that.

24 With that being said, it's equally as disturbing to me

1 when the Nye County Sheriff's Office was at that property,
2 knocking on the door, knocking on the windows, that Mr. Torres
3 stood silent. That they could hear movement in the property, but
4 he wouldn't come to the window, or to the door.

5 And it was finally when the locksmith opened door that
6 Mr. Torres was trying the push that door shut. But, before then,
7 about a half an hour, 45 minutes into all of this Mr. Torres,
8 opened the window and told them to go away. When they asked his
9 name, he said, "I'm Bozo the Clown," and slammed the window shut.
10 That's troubling.

11 And the reason this is so troubling to me, would the
12 outcome have been different? I don't know if we will ever know
13 that.

14 If the door had been broken down, was Mr. Piper still
15 alive? I don't know.

16 I will say this. I have read the preliminary hearing
17 transcripts in front of the Justice Court. It's concerning to me
18 that, of that testimony, a deputy who didn't seem to understand
19 the rules as it came to the exceptions to the search warrant
20 rule, seemed to know what agonal breathing was. I didn't know
21 what agonal breathing was; I had to look it up. And he said that
22 there was agonal breathing at the time that the Sheriff's Office
23 got in.

24 Now, if you look at what Mr. Torres said, he went limp,

1 and Mr. Torres believed he was dead, and he didn't take any
2 resuscitation efforts when in his room.

3 But, that whole scenario was very troubling to me. So,
4 it's troubling on a number of different levels to me.

5 But, most importantly, the Nye County Sheriff's Office
6 wouldn't have been there had this incident didn't occur and that
7 being that there was a tussle that occurred, whether it occurred
8 over marijuana, whether it occurred over another reason, this is
9 what we do know.

10 Both parties had been drinking that night. I have
11 never seen a domestic at the level of a District Court Judge that
12 comes in without alcohol and/or drugs.

13 So, they get into an argument. What we do know is at
14 some point Mr. Piper retreated to his room, locked the door,
15 called 911.

16 Mr. Torres broke that door down, and violently broke
17 that door down. I have looked at pictures. I have seen all of
18 this before today. Actually sprung the door off the frame. And
19 strangled or squeezed the life out of Mr. Piper, out of his
20 friend, Mr. Piper.

21 So, I think one has to answer for that kind of
22 behavior. I don't think anybody is a bad person in this but, I
23 think there are consequences for everyone's actions. And I think
24 the actions on the night the question were horrific.

1 And so I think, Mr. Torres, I looked at the mitigating
2 factors, and I think you had a rough childhood. I think you have
3 are a rough life. But, I have seen a lot of people who have had
4 rough lives who dust themselves off and put their life back
5 together.

6 And one of the things, I do think you have had a
7 history of substance abuse, but I have also seen that you have
8 had a number of opportunities for treatment as well.

9 And I think the courts are now much more astute in
10 looking at substance abuse and mental health issues from the
11 beginning than we were back in the early nineties.

12 But, nonetheless, you have been offered treatment. I
13 am not going to blame Mr. Piper for drinking. He was in the end
14 stages of life. One needs to look at him to see his condition,
15 and I'm sure that he suffered greatly with pain from being in the
16 condition that he was in at the time that this incident occurred.

17 So, what I think is fair, and I have done a lot of
18 thinking about this. So, what I am going to do is, in accordance
19 with the laws of the State of Nevada, I am going to assess a
20 \$25.00 administrative assessment fee, \$150 DNA analysis fee,
21 three dollar DNA administrative assessment fee.

22 It's going to be the Order and Judgment of the Court
23 that the defendant, Marco Antonio Torres, is sentenced to Life in
24 Prison With the Possibility of Parole With Parole Eligibility

1 Beginning When a Minimum of Ten Years Have Been Served.

2 Credit for time served I think was noted at I think you
3 told me 447 days, is that right?

4 MR. MARTINEZ: Yes, Judge. 447.

5 THE COURT: So, Mr. Torres, your life isn't over,
6 whether I gave you the life in prison, because you have the
7 possibility of parole.

8 What now governs is, really, your behavior at the
9 Nevada Department of Corrections.

10 So, now you have a chance to do something with your
11 life over the next ten years. What you choose to do with it is
12 up to you, but I think that is a fair resolution.

13 Again, like I said, this whole scenario was unfortunate
14 for everybody involved, and nobody walks away a winner. You
15 don't walk away a winner, the familiarly doesn't walk away a
16 winner. But, the whole scenario is very troubling to me on a
17 number of different levels.

18 So, good luck to you. Again, we will see what you do
19 with your life, because that's what the Parole Board will be
20 looking at when you become eligible for parole.

21 You have got 440 some days in, so you are looking at
22 really less than nine years before you first become eligible for
23 parole.

24 So what happens between now and then is entirely up to

1 you and your behavior.

2 Good luck to you. Thank you.

3 MR. MARTINEZ: Thanks, Judge.

4 THE COURT: All right. I think that's all the cases
5 that we have today. So, thank you, Ms. Rowe. Always a pleasure.

6 And for everybody here, court staff, thank you. Thank
7 you, Jamele, for coming in and helping us out.

8 So, everybody, good luck. And I will see you. Next
9 week I'm off, so I will see you in a couple weeks. Thank you.

10 (Whereupon proceedings concluded at 12:24 p.m.)

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STATE OF NEVADA)
) Ss.
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter,
licensed in the State of Nevada, License #127, and a Notary
Public in and for the State of Nevada, County of Douglas, do
hereby certify that the foregoing proceeding was reported by me
and was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings.

I further certify that I am not of counsel or attorney
for either or any of the parties in the foregoing proceeding and
caption named, or in any way interested in the outcome of the
cause named in said caption.

Date: July 24, 2021

SUZANNE KUES ROWE, CCR #127

1 DANIEL E. MARTINEZ, ESQ.
Nevada Bar No. 12035
2 OFFICE OF THE SPECIAL PUBLIC DEFENDER
3 330 S. Third St., Suite 800
Las Vegas, Nevada 89101
4 Telephone: 702-455-0212
Facsimile: 702-455-6273
5 Email: daniel.martinez@clarkcountynv.gov
Attorney for Defendant/Appellant

FILED
FIFTH JUDICIAL DISTRICT

JUL - 6 2021
Electronically Filed
Jul 15 2021 03:16 p.m.
~~Elizabeth A. Brown~~
Clerk of Supreme Court

7 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE**
8 **OF NEVADA IN AND FOR THE COUNTY OF NYE**

9 THE STATE OF NEVADA,
10 Plaintiff/Respondent

11 vs.

12 MARCO ANTONIO TORRES,
13 Defendant/Appellant

District Court Case No. CR20-0092

Department No. 1

Supreme Court Case No:

14 **NOTICE OF APPEAL**

15 DANIEL E. MARTINEZ, ESQ. of the Office of the Special Public Defender, attorney for
16 Defendant/Appellant, MARCO ANTONIO TORRES, hereby gives notice of intent to appeal to the
17 Supreme Court of Nevada from the final Judgment of Conviction entered the 25th day of June, 2021 in
18 the above-captioned matter.

19 A copy of the Judgment of Conviction appealed from is attached to this Notice of Appeal as
20 Exhibit "1" hereto.

21 DATED this 6th day of July, 2021

22
23 *Roumi N. Borovich #14484 DBD*
24 DANIEL E. MARTINEZ, ESQ.
Nevada Bar # 12035
330 S. Third St., Suite 800
Las Vegas, Nevada 89101
25 Telephone: 702-455-0212
26 Attorney for Defendant/Appellant
27
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2021, I, DANIEL E. MARTINEZ, ESQ., served the foregoing NOTICE OF APPEAL by depositing a copy in the U.S. Mail, first-class postage prepaid, addressed to the following person(s) at the following address(es):

NYE COUNTY DISTRICT ATTORNEY
Chris R. Arabia, Esq., District Attorney
Kirk D. Vitto, Esq. Chief Deputy District Attorney
1520 East Basin Avenue, Suite 107
Pahrump, Nevada 89060

Ronni N. Borovic #14484 OBO
DANIEL E. MARTINEZ, ESQ.

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EXHIBIT "1"

JUN 25 2021

Nye County Clerk
Terri Pemberton Deputy

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Case No. CR20-0092
Dept. 1P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA.

Plaintiff,

vs.

JUDGMENT OF CONVICTION

MARCO ANTONIO TORRES,

Defendant.

On April 29, 2021, the Defendant above named, appeared before the Court with his counsel, Daniel Martinez, Esq., and entered a plea of guilty to the crime of *Second - Degree Murder*, a violation of NRS 200.010, 200.030, a Category "A" Felony.

On June 25, 2021 the Defendant appeared personally and with his counsel, Daniel Martinez, Esq. for entry of Judgment. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against him. The Court adjudged the Defendant guilty of the crime of *Second - Degree Murder*, a violation of NRS 200.010, 200.030, a Category "A" Felony.

The court sentenced the Defendant to serve Life in Prison in the Nevada Department of Corrections with parole eligibility after a minimum term of 10 years have been served.

Defendant shall pay to the Clerk of the Court a \$25.00 administrative assessment fee.

Defendant shall pay to the Clerk of the Court a \$3.00 DNA administrative fee.

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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Defendant shall pay to the Clerk of the Court a \$150.00 DNA fee.

The Defendant shall receive credit for 447 days presentence incarceration.

DATED this 28th day of June, 2021.



KIMBERLY A. WANKER,
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

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The undersigned hereby certifies that on the 25th day of June 2021, she mailed (or hand delivered) copies of the foregoing **JUDGMENT OF CONVICTION** to the following:

NYE COUNTY DISTRICT ATTORNEY
PAHRUMP, NV
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
PAHRUMP, NV
(HAND DELIVERED)

NEVADA DIVISION OF PAROLE AND PROBATION
PAHRUMP, NV
(HAND DELIVERED)

NYE CO. SHERIFF (DETENTION)
PAHRUMP, NV
(HAND DELIVERED)

Melissa Stepp
MELISSA STEPP, secretary to
DISTRICT COURT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



FILED
FIFTH JUDICIAL DISTRICT

JUL - 6 2021

Nye County Clerk

 Deputy

1 DANIEL E. MARTINEZ, ESQ.
Nevada Bar No. 12035
2 **OFFICE OF THE SPECIAL PUBLIC DEFENDER**
330 S. Third St., Suite 800
3 Las Vegas, Nevada 89101
4 Telephone: 702-455-0212
Facsimile: 702-455-6273
5 Email: daniel.martinez@clarkcountynv.gov
Attorney for Defendant/Appellant

7 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE**
8 **OF NEVADA IN AND FOR THE COUNTY OF NYE**

9 THE STATE OF NEVADA,
10 Plaintiff/Respondent

District Court Case No. CR20-0092

11 vs.

Department No. 1

12 MARCO ANTONIO TORRES,
13 Defendant/Appellant

Supreme Court Case No:

14 **CASE APPEAL STATEMENT**

15 COMES NOW Defendant/Appellant, MARCO ANTONIO TORRES, by and through his
16 attorney, DANIEL E. MARTINEZ, ESQ., and hereby submits the following Case Appeal Statement
17 pursuant to N.R.A.P. 3(f):

18 1. Name of appellant(s) filing this case appeal statement:

19 MARCO ANTONIO TORRES
20

21 2. Identify the judge issuing the decision, judgment or order appealed from:

22 The Honorable Kimberly Wanker, Fifth Judicial District Court Judge, Nye County, Nevada,
23 Department 1

24 3. Identify each appellant and the name and address of counsel for each appellant:

25 MARCO ANTONIO TORRES, Defendant/Appellant
26 c/o DANIEL E. MARTINEZ, ESQ.
330 S. Third St., Suite 800
27 Las Vegas, Nevada 89101
28 Telephone: 702-455-0212

1 4. Identify each respondent and the name and address of appellate counsel, if known, for each
2 respondent:

3 THE STATE OF NEVADA, Plaintiff/Respondent
4 NYE COUNTY DISTRICT ATTORNEY'S OFFICE
5 CHRIS ARABIA, ESQ., DISTRICT ATTORNEY
6 KIRK VITTO, ESQ. CHIEF DEPUTY DISTRICT ATTORNEY
7 1520 East Basin Ave., Suite 107
8 Pahrump, NV 89060

9 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to
10 practice law in Nevada and, if so, whether the district court granted that attorney permission to appear
11 under SCR 42:

12 No attorney identified in section 3 or 4 is an unlicensed practitioner in the State of Nevada.

13 6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

14 Appellant was represented by court-appointed counsel, DANIEL E. MARTINEZ, ESQ., Nye
15 County Public Defender, at all relevant times in this matter in the Nye County District Court.

16 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

17 Appellant is represented by court-appointed counsel DANIEL E. MARTINEZ, ESQ., now
18 Chief Deputy Special Public Defender.

19 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of
20 the district court order granting such leave:

21 No. Defendant was represented by Nye County Public Defender DANIEL E. MARTINEZ,
22 ESQ. at all relevant times.

23 9. Indicate the date the proceedings commenced in the district court:

24 August 10, 2020

25 10. Provide a brief description of the nature of the action and result in the district court, including the
26 type of judgment and order being appealed and the relief granted by the district court:
27
28

1 This is a criminal Appeal, taken from a written Judgment of Conviction entered the 25th day of
2 June, 2021, adjudicating the Defendant/Appellant MARCO ANTONIO TORRES guilty of
3 Count 1: *Second Degree Murder*, a Category A felony. Defendant/Appellant pled guilty to the
4 above charge, waiving his right to a jury trial but expressly preserving his right to appeal the
5 denial of his motion to suppress. Defendant/Appellant was sentenced on June 25, 2021.
6 Appellant is seeking reversal of the denial of his motion to suppress.
7

8 11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding
9 in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

10 To the best of Counsel for Appellant's knowledge, this case has not previously been the subject
11 of an Appeal.

12 12. Indicate whether this appeal involves child custody or visitation:

13 This case does not involve child custody or visitation.
14

15 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

16 This is not a civil case.
17

18 RESPECTFULLY SUBMITTED this 6th day of July, 2021.

19 *Ronni N. Borovik #14484 OBO*
20 DANIEL E. MARTINEZ, ESQ.
21 Nevada Bar # 12035
22 330 S. Third St., Suite 800
23 Las Vegas, Nevada 89101
24 Telephone: 702-455-0212
25 Attorney for Defendant/Appellant
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2021, I, DANIEL E. MARTINEZ, ESQ., served the foregoing CASE APPEAL STATEMENT by depositing a copy in the U.S. Mail, first-class postage prepaid, addressed to the following person(s) at the following address(es):

NYE COUNTY DISTRICT ATTORNEY
Chris R. Arabia, Esq., District Attorney
Kirk D. Vitto, Esq. Chief Deputy District Attorney
1520 East Basin Avenue, Suite 107
Pahrump, Nevada 89060

Ranmi N. Barbora #14484 030
DANIEL E. MARTINEZ, ESQ.

Fifth Judicial District Court - Nye County
Case Summary

Run: 07/13/2021
11:51:50

Page 1

Case #: CR20-0092
Judge: WANKER, KIMBERLY
Date Filed: 08/10/2020 Department:
Case Type: Crimes Against Persons (Felony)

	Attorney(s)
Plaintiff	
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE
Defendant	
TORRES, MARCO ANTONIO	MARTINEZ, DANIEL

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
06/25/2021	ADMIN	\$5.00	\$0.00	\$0.00	\$5.00
06/25/2021	STADMIN	\$20.00	\$0.00	\$0.00	\$20.00
06/25/2021	DNA	\$150.00	\$0.00	\$0.00	\$150.00
06/25/2021	GENETIC	\$3.00	\$0.00	\$0.00	\$3.00

Charge: HABITUAL CRIMINAL - NRS 207.010(1)(A) F/A Count 1
Sent: LIFE WITH THE POSSIBILITY OF PAROLE AFTER 10 YEARS, \$25 ADMIN FEE, \$3 DNA FEE, \$150 DNA, 447 DAYS CTS

Disp/Judgment: Non-Trial: Guilty Date: 06/25/2021
Plea with Sentence
(Before Trial)

Hearings:

Date	Time	Hearing	Court Result
08/21/2020	9:00AM	45#ARRAIGNMENT HEARING (GC)	CANC
08/28/2020	9:00AM	25#ARRAIGNMENT HEARING	CANC
09/04/2020	9:00AM	30#ARRAIGNMENT (GC)	
11/30/2020	11:00AM	MOTION TO DISMISS	CANC
12/03/2020	1:30PM	DEFT'S MTN TO CONTINUE TRIAL DATE/WRIT OF HABEAS CORPUS/CALENDAR CALL/ MOTION TO DISMISS	
12/04/2020	9:00AM	30#CALENDAR CALL	CANC
12/04/2020	4:30PM	99#JURY DRAW 180 JURORS FILE TO MELISSA	CANC
12/04/2020	9:00AM	31#PRE TRIAL MOTIONS	CANC
12/04/2020	11:00AM	32#WRIT OF HABEAS CORPUS	CANC
01/13/2021	9:00AM	JURY TRIAL 6 DAYS JAN 13-14, 2021 JAN 19-22, 2021	CANC
01/27/2021	1:30PM	20#PRE TRIAL MOTIONS	
01/27/2021	4:30PM	30#JURY DRAW 180 JURORS	
01/27/2021	1:30PM	20#DEFT'S MTN TO CONTINUE TRIAL DATE	
02/12/2021	9:00AM	CALENDAR CALL	CANC

Run: 07/13/2021
11:51:52

Case Summary

Page 2

03/15/2021	9:00AM	JURY TRIAL MARCH 15-26	CANC
03/25/2021	1:30PM	PRE TRIAL MOTIONS	
03/25/2021	1:30PM	MOTION TO DISMISS/MOTION TO SUPPRESS	
04/02/2021	9:00AM	CALENDAR CALL	CANC
04/02/2021	4:30PM	JURY DRAW OF 180 JURORS	CANC
04/09/2021	9:00AM	05# CALENDAR CALL-TONOPAH/DEFENSE MAY CALL IN	
04/15/2021	8:15AM	STATUS CHECK	
04/29/2021	9:00AM	EVIDENTIARY HEARING/JACKSON V DENNO/PRE TRIAL MOTIONS	
05/10/2021	9:00AM	JURY TRIAL MAY 10-21	CANC
06/18/2021	9:00AM	CALENDAR CALL	CANC
06/18/2021	4:30PM	JURY DRAW 180 JURORS	CANC
06/25/2021	9:00AM	70#SENTENCING	
07/12/2021	9:00AM	JURY TRIAL JULY 12-23	CANC

Filings:

Date	Filing
08/10/2020	CASE FILED 08/10/2020 CASE NUMBER CR20-0092
08/10/2020	PROSECUTOR: DISTRICT ATTORNEY'S OFFICE ASSIGNED
08/10/2020	DEFENSE ATTORNEY: MARTINEZ, DANIEL ASSIGNED
08/10/2020	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT - Rec'd, Ref Case #CR20-0092: (Second Amended Criminal Complaint; Order; Media Request Allowing Electronic Equipment in the Courtroom; Amended Criminal Complaint; Receipt of Copy; Receipt of Copy; Order to Continue; Receipt of Copy; Receipt of Copy; Order to Continue; Receipt of Copy; Criminal Complaint; Affidavit and Application for Appointment of Counsel; Plaintiff Exhibits #1 - 24 and # 26-39, Medical Records from Cancer Care Center, Health Care Partners and Hope Cancer Case; Defendant Exhibits A andB).
08/10/2020	BINDOVER ORDER (BAIL N/A)
08/10/2020	JUDGE WANKER, KIMBERLY: ASSIGNED
08/17/2020	INFORMATION (FELONY/PERSON)
09/01/2020	TRANSCRIPT OF: PRELIMINARY HEARING****PJC DOCUMENT*****
09/02/2020	MEDIA REQUEST TO ALLOW ELECTRONIC RECORDING EQUIPMENT INTO THE COURTROOM

09/04/2020 COURT MINUTES-9/4/20 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: TRACY MANNING
BAILIFF: ERIC SCHLENER
APP: MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE

COURT CALLS THE MATTER AS AN ARRAIGNMENT HEARING. COURT OFFERS ADDITIONAL TIME FOR THE DEFENDANT TO SPEAK TO HIS ATTORNEY. THE DEFENDANT ASKS FOR SOME TIME TO SPEAK TO HIS ATTORNEY. COURT TRAILS THE MATTER TO 11 AM FOR THE DEFENDANT TO SPEAK WITH HIS ATTORNEY. COURT RECALLS THE MATTER. COURT NOTES NO GUILTY PLEA AGREEMENT HAS BEEN SUBMITTED. COURT CANVASS THE DEFENDANT, OUTLINES THE MAXIMUM POSSIBLE SENTENCE. COURT QUESTIONS THE DEFENDANT IF HE HAS ANY MENTAL DISORDERS THAT MAY AFFECT HIM MOVING FORWARD TODAY. THE DEFENDANT STATES HE DOES HAVE MULTIPLE DISORDERS AND HAS TRIED MEDICATIONS BUT THE THEY ARE NOT WORKING. COURT STATES THAT SHE CANNOT MOVE FORWARD IF THERE IS AN ISSUE WITH HIS MENTAL COMPETENCY. DEFENSE ADDRESSES AND STATES THAT HE HAS MET WITH THE DEFEDANT MULTIPLE TIMES AND HAS ZERO CONCERN WITH HIS COMPETENCY. COURT CONTINUES WITH THE CANVASS. COURT ASKS THE CLERK TO FORMALLY READ THE INFORMATION. CLERKS FORMALLY READS THE INFORMATION. DEFENDANT PLEADS NOT GUILTY TO ALL COUNTS. DEFENDANT WAIVES HIS RIGHT TO SPEEDY TRIAL.

TRIAL DATES JAN 13, 14 AND JAN 19-22, CC ON DEC 4

09/08/2020 ORDER SETTING JURY TRIAL(1/13-14/21 - 1/19-22/2021
09/14/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
09/14/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR INVESTIGATIVE COSTS
09/21/2020 ORDER FOR EXTRAORDINARY FEES FOR INVESTIGATIVE COSTS
09/21/2020 ORDER FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
09/23/2020 MOTION TO DISMISS
09/23/2020 DEFENDANT MARCO ANTONIO TORRES PETITION FOR WRIT OF HABEAS CORPUS
09/25/2020 TRANSCRIPT OF: ARRAIGNMENT(09/04/20)
10/06/2020 RESPONSE TO DEFENDANT'S MOTION TO DISMISS
10/12/2020 REPLY TO STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
10/12/2020 *****END OF FILE #1*****
10/16/2020 ORDER TO ISSUE WRIT OF HABEAS CORPUS (HEARING 12/04/2020, 11AM)
10/16/2020 WRIT OF HABEAS CORPUS (ISSUED - SHARON WEHRLY, SHERIFF, NYE COUNTY, NEVADA)
10/19/2020 WRIT OF HABEAS CORPUS/ RETURN OF SERVICE (SERVED 10/19/2020)
11/20/2020 RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS
11/20/2020 MOTION TO CONTINUE TRIAL DATE/ NOTICE OF MOTION (12/03/2020, 1:30PM)
(SUBMITTED BY DANIEL E. MARTINEZ, ESQ,. FOR DEFENDANT, MARCO ANTONIO
TORRES)
11/23/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
11/24/2020 ORDER FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
12/01/2020 RESPONSE TO DEFENDANT'S MOTION TO CONTINUE TRIAL DATE (SUBMITTED BY DA/
CDDA & DDA FOR STATE)

12/01/2020 COURT MINUTES-12/3/20 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: CECILIA THOMAS
BAILIFF: ERIC SCHLENER
APP: MIKE ALLMON AND KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE RONNI BOSKOVICH IS PRESENT AS SECOND CHAIR

COURT CALLS THE MATTER AS A MOTION TO DISMISS, MOTION TO CONTINUE TRIAL
DATES, CALENDAR CALL, WRIT OF HABEAS CORPUS. COURT REVIEWS THE PROCEDURE OF
A WRIT OF HABEAS CORPUS. COURT QUESTIONS THE STATE REGARDING THE
CONTINUANCE OF THE MOTION TO CONTINUE TRIAL. THE STATE DOES NOT OPPOSE.
DEFENSE STATES HE IS NOT PREPARED TO MOVE FORWARD. COURT SETS TRIAL DATES
MARCH 15-26 2021 AND CALENDAR CALL ON FEBRUARY 12 2021. COURT SETS PRE
TRIAL MOTIONS JANUARY 27 2021 AT 130 PM. COURT REVIEWS THE ISSUES WITH THE
STATUTES. COURT STATES SHE HAS NOT READ THE STATES RESPONSE AND REVIEWS HOW
IMPORTANT THE PROPER RESEARCH IS IN THE CASE TO MAKE A RULING.

12/03/2020 AMENDED ORDER SETTING JURY TRIAL(10 DAYS MARCH 15-26 2021)

12/22/2020 TRANSCRIPT OF MOTION TO CONTINUE TRIAL (HRG 12/03/20)

01/19/2021 MOTION TO CONTINUE TRIAL DATE/ NOTICE OF MOTION (01/27/2021, 1:30PM)
(SUBMITTED BY DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT)

01/27/2021

COURT MINUTES (1/27/2021) - JAVS TIME: 0223

JUDGE: KIMBERLY WANKER;

CLERK: JUANITA TORRES;

BAILIFF: ERIC SCHLENER

REPORTER: SUZANNE ROWE, VIA VIDEO (BLUEJEANS);

APPEAR: DEPUTY DISTRICT ATTORNEY, MICHAEL ALLMON, ON BEHALF OF THE STATE;
ATTORNEYS DANIEL MARTINEZ AND RONNI BOSKOVICH, ON BEHALF OF THE DEFENDANT,
WHO IS PRESENT IN CUSTODY, VIA VIDEO.

COURT CALLS THE MATTERS AS DEFENDANT'S MOTION TO DISMISS, PETITION FOR WRIT
OF HABEAS CORPUS AND MOTION TO CONTINUE TRIAL. COURT ANNOUNCES, ON THE
RECORD, THE PARTIES THAT ARE PRESENT IN THE COURTROOM.

MARTINEZ CONFIRMS HE FILED A REPLY TO THE STATE'S OPPOSITION; HE ARGUES NYE
COUNTY SHERIFF'S DEPUTIES MADE ENTRY WITHOUT A WARRANT, THE STATE CLAIMS
THE EXCEPTION TO PROVIDE AIDE TO A PARTY INSIDE, MARTINEZ ARGUES THERE ARE
NO FACTS TO SUPPORT THE EXCEPTION, DEPUTIES WERE RESPONDING TO A 911
DISCONNECT, THAT TURNED INTO A WELFARE CHECK, DEPUTIES HEARD FOOTSTEPS FROM
INSIDE, THERE WAS NO REASONABLE CAUSE TO TAKE IMMEDIATE ACTION, DEPUTIES
WAITED 1 ½ HOURS BEFORE ENTERING THE HOME; MARTINEZ OUTLINES THE STATES
DISCOVERY, INFORMATION IN THE SEARCH WARRANT WAS MADE AFTER ENTRY INTO THE
HOME; REQUEST DISMISS OR EVIDENTIARY HEARING ON THE MATTER.

COURT INQUIRES WHY THIS IS NOT A MOTION TO SUPPRESS EVIDENCE AND OUTLINES
THE PRELIMINARY TRANSCRIPTS.

MARTINEZ EXPLAINS IT WAS AN UNLAWFUL ENTRANCE, ALL EVIDENCE NEEDS TO BE
SUPPRESS, EXCEPT THE 911 CALL; HE DOES NOT BELIEVE THEY HAD PROBABLE CAUSE
TO DETAIN THE DEFENDANT; HE ADVISES THE COURT HE ALSO FILE A MOTION TO
CONTINUE TRIAL AND WILL BE FILING A MOTION TO SUPPRESS DEFENDANT'S
INTERVIEW.

STATE ARGUES DUE TO THE TOTALITY OF THE CIRCUMSTANCES THE DEPUTIES HAD
P.C., THERE ARE TWO ISSUES, FIRST EMERGENCY AID EXCEPTION APPLIES, SECOND
PROBABLE CAUSE DETERMINATION, DEPUTIES MAY ASSUME IT IS ADMISSIBLE; ALLMON
OUTLINES DEFENDANT'S REBUTTAL, OBJECTING TO WAITING FOR LOCKSMITH AS NOT
BEING SWIFT ENTRY; HE OUTLINES THE INCIDENT, N.C.S.O. KNEW THERE WAS A
SECOND PERSON IN THE HOME, ARGUES A WELFARE CHECK IS AN EMERGENCY; ARGUES A
MOTION TO DISMISS IS INAPPROPRIATE.

MARTINEZ ARGUES EMERGENCY AID, WOULD NOT APPLY; ARGUES DEPUTIES WERE
UNAWARE OF THE TOTALITY WHEN THEY ARRIVED ON SCENE; OUTLINES DIFFERENCE
BETWEEN WAITING FOR A SWAT TEAM, AS TO WAITING FOR A LOCKSMITH, WHY DID
N.C.S.O. WAIT SO LONG; CLAIMS HIS ARGUMENTS ARE APPROPRIATE FOR THE TRIAL
COURT.

COURT STATES THE GENERAL RULES FOR A WARRANT, SO THAT IT DOES NOT VIOLATE
THE 4TH AMENDMENT, FIRST PROBABLE CAUSE, SECOND EXIGENT CIRCUMSTANCE,
OUTLINING THE EMERGENCY AID EXCEPTION; COURT REVIEWS, IN DETAIL, EXHIBIT 4A
FROM THE PRELIMINARY HEARING, N.C.S.O.'S "CALL DETAIL RECORD" AS TO THE
FIRST 911 CALL AND WHEN THE FIRST DEPUTY ARRIVED; COURT INQUIRES IF
POSSIBLE EXIGENT CIRCUMSTANCES OR EMERGENCY AID EXEMPTIONS, EXPIRED; COURT
REVIEWS STEPHANIE RUCKER TESTIMONY REGARDING THE 911 CALL AND LOCATION OF
THE CALL AND DEPUTIES' RESPONSE ONCE ON SEEN, STOPPING AT THE FIRST
TRAILER, BEING TOLD THE PARTIES WERE IN THE TRAILER BEHIND; HOW THE
DEFENDANT IDENTIFIED HIMSELF TO DEPUTIES, COURT QUESTIONS IF THE DEPUTIES
LOST THE EXCEPTION, BY NOT IMMEDIATELY MAKING ENTRY, HOWEVER NO ONE BRIEF
THAT ISSUE; IF THEY HAD TIME TO CALL A SUPERVISOR AND A LOCKSMITH, WHY NOT
A JUDGE FOR A WARRANT; COURT BELIEVES THIS SHOULD HAVE BEEN MOTION TO
SUPPRESS, NOT A MOTION TO DISMISS; REQUEST THE COURT'S ISSUES BE BRIEFED
AND WHAT EVIDENCE NEEDS TO BE SUPPRESS. COURT ADDRESSES THE W.H.C. AS TO
THE HABITUAL ENFORCEMENT, THERE ARE NEW STATUTES THAT MAY AFFECT THE
CHARGES, CHARGE INVASION OF THE HOME ON AN INTERIOR BEDROOM.

MARTINEZ OUTLINES OLD/NEW LAWS REGARDING INVASION OF THE HOME AND THE
INTENT OF A ROOM, CITES NEVADA LAW REGARDING FORCIBLE ENTRY.

STATE ARGUES YOU CAN REVOKE CONSENT/ACCESS TO A ROOM, READS PAGE 13 OF
STATE'S RESPONSE ON THE RECORD.

COURT READS ON THE RECORD, ALFRED V. STATE, FOOTNOTE 2 CITED IN DEFENDANT'S
MOTION, COURT FINDS COUNT III, INVASION OF A HOME STANDS; COURT OUTLINES

EACH COUNTY IN THE INFORMATION; CHARGE VII, USE OF NUNCHAKUS BEING A DANGEROUS WEAPON, THERE IS NO TESTIMONY, SLIGHT OR MARGINAL EVIDENCE INJURIES CAUSED BY THE WEAPON.
STATE ARGUES REASONABLE EVIDENCE WERE IMPRINTS OF THE NUNCHAKUS ON THE INJURIES OF THE VICTIM.
COURT READS DETECTIVE FLANCHER'S TESTIMONY, PAGE 159 OF THE PRELIMINARY HEARING TRANSCRIPT.
STATE AGREES FLANCHER IS NOT AN EXPERT, BUT ARGUES A MEDICAL EXAMINER WILL TESTIFY AS TO THE INJURIES AT TRIAL.
COURT IS FINDING SLIGHT OR MARGINAL EVIDENCE HAS NOT BEEN PRESENTED.
STATE ARGUES CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT FOR PROBABLE CAUSE.
MARTINEZ ARGUES THERE IS NO CIRCUMSTANTIAL, NOR DIRECT EVIDENCE THAT NUNCHAKUS WERE USED, THERE WAS NO DNA EVIDENCE ON THE NUNCHAKUS.
COURT FINDS THERE IS NO SLIGHT OR MARGINAL EVIDENCE, CHARGE DISMISSED.
COURT ADDRESSES MOTION TO CONTINUE.
MARTINEZ ADVISES THE COURT THIS IS HIS SECOND MOTION TO CONTINUE, HIS EXPERT'S OPINION WOULD NOT BE AVAILABLE UNTIL FEBRUARY, AND ADDITIONAL TIME IS NEEDED, AS TO HIS MOTION TO SUPPRESS THE DEFENDANT'S INTERVIEW.
STATE HAS NOT WAIVED IT'S RIGHT TO SPEEDY TRIAL, HOWEVER DEFENDANT IS ALLOWED TO PREPARE FOR TRIAL, THE STATE IS NOT FORMALLY OPPOSING THE MOTION TO CONTINUE.
COURT GRANTS MOTION TO CONTINUE, SUPPRESSION ISSUES NEED TO BE FULLY BRIEFED/ADDRESSED.
MARTINEZ REQUEST MAY TRIAL DATES AND REQUEST THE CURRENT MARCH TRIAL DATE FOR HIS MOTION TO SUPPRESS.
COURT DENIES MOTION TO DISMISS AND SETS TRIAL DATES FOR:
JURY TRIAL 05/10/2021 - 05/21/2021,
PRETRIAL MOTIONS MARCH 25 AT 1:30 FOR THE MOTION TO SUPPRESS,
CALENDAR CALL APRIL 2, 2021 AT 09:00,
JURY DRAW APRIL 2, 2021.
DEFENDANT ADDRESS THE COURT, WOULD LIKE TO SPEAK TO MARTINEZ. COURT CONCURS AND CLEARS THE COURTROOM.
01/28/2021 SECOND AMENDED ORDER SETTING JURY TRIAL (MAY 10, 2021 @ 9 AM FOR 10 DAYS)
02/12/2021 DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
02/26/2021 MOTION TO SUPPRESS DEFENDANT'S STATEMENTS AND REQUEST FOR JACKSON V. DENNO HEARING
03/03/2021 THE STATE'S INSTANT RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
03/10/2021 RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS DEFENDANT'S STATEMENTS AND REQUEST FOR JACKSON V. DENNO HEARING
03/12/2021 REPLY TO STATE'S INSTANT RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
03/18/2021 REQUEST FOR DISCLOSURE
03/22/2021 TRANSCRIPT OF: MOTION TO DISMISS WRIT OF HABEAS CORPUS(1/28/21)

03/25/2021 COURT MINUTES-3/25/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP: MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE
136PM
COURT CALLS THE MATTER AS PRE TRIAL MOTIONS, MOTION TO SUPPRESS AND MOTION
TO DISMISS. COURT IS IN RECEIPT OF DEFENDANT'S SUPPLEMENTAL BRIEF, MOTION
TO SUPPRESS, STATES INSTANT RESPONSE, REPLY TO STATES INSTANT RESPONSE,
MOTION TO DISMISS-SUPPLEMENTAL BRIEFING. COURT WILL BEGIN WITH THE MOTION
TO SUPPRESS AND WILL THEN HEAR THE JACKSON V DENNO HEARING. DEFENSE
ADDRESSES AND STATES HE IS NOT PREPARED FOR THE JACKSON V DENNO HEARING AND
ASKS FOR A CONTINUANCE. THE STATE WAS NOT CLEAR ABOUT TODAY'S HEARING
EITHER AND HAS NO OBJECTION TO CONTINUE THE HEARING. COURT ADMONISHES THE
PARTIES FOR NOT BEING PREPARED. COURT ADDRESSES THE MOTION TO DISMISS AND
INFORMS THE PARTIES THAT THEY DID NOT REFERENCE THE NEVADA SUPREME COURT
DECISION. COURT SO INFORMS THE PARTIES IN DETAIL OF THE NEVADA SUPREME
COURT DECISION. COURT REVIEWS THE INCIDENT IN REGARD PROBABLE CAUSE AND OR
EXIGENT CIRCUMSTANCES FOR ENTRY INTO THE TRAILER. DEFENSE ARGUES THAT THE
NEVADA SUPREME COURT DECISION WAS IN THE INITIAL BRIEF. COURT STATES THAT
THE SHERIFF'S OFFICE DID NOT NEED PROBABLE CAUSE TO ENTER AS THEY DID HAVE
EXIGENT CIRCUMSTANCES. COURT REVIEWS IN DETAIL THE 911 CALL. COURT DENIES
THE MOTION TO SUPPRESS ANY EVIDENCE. COURT MOVES TO THE JACKSON V DENNO
HEARING. DEFENSE IS NOT READY TO MOVE FORWARD WITH THE JACKSON V DENNO
HEARING. COURT RECITES THE SUPREME COURT DECISION REGARDING JACKSON V DENNO
HEARING IN ORDER FOR THE PARTIES TO BE CLEAR ON WHAT TO EXPECT. DEFENSE
ADDRESSES AND HAS AN EXPERT WITNESS FOR TRIAL BUT THE EXPERT WITNESS WILL
NOT BE READY BY THE TRIAL DATES. DEFENSE ALSO STATES THAT HIS CONTRACT FOR
PUBLIC DEFENDER IS UP APRIL 20. DEFENSE ASKS FOR A SIDE BAR. COURT BACK IN
SESSION. DEFENSE NEEDS A FEW WEEKS TO PREPARE FOR THE JACKSON V DENNO
HEARING. ALL PARTIES NEED A FULL DAY FOR THE JACKSON V DENNO HEARING. COURT
SETS THE JACKSON V DENNO HEARING TO APRIL 29. COURT SETS THE CALENDAR CALL
TO APRIL 9 IN TONOPAH DEFENSE MAY CALL IN.

03/30/2021 (DEFENDANT'S) MOTION TO CONTINUE TRIAL DATE (TRIAL 05/10/2021)

04/09/2021 STATE'S OPPOSITION TO DEFENDANT'S THIRD MOTION TO CONTINUE TRIAL DATE

04/09/2021 COURT MINUTES - @ - CR CR20-0092 MARCO ANTONIO TORRES
JUDGE: KIMBERLY A WANKER;
REPORTER: SUZANNE ROWE;
BAILIFF: JOHN CHIDLEY
CLERK: CORI FREIDHOF,
JAVS: 09.01.36
APP: MISS BOSCOVICH, KIRK VITTO & CHRIS ARABIA DDA; OFFICER DAVIS, P&P;
DANIEL MARTINEZ VIA BLUE JEANS WITH THE DEFENDANT PRESENT IN CUSTODY;
DANIEL MARTINEZ IS NOT PREPARED TO GO FORWARD, EXPERT IS CURRENTLY PLANNING
ON GOING TO LAS VEGAS ON APRIL 19TH, WON'T HAVE REPORT READY ON TIME. HE
ADDRESSES THE COURT. COURT ADDRESSES AND WONDERS WHY ANOTHER CONTINUANCE.
FROM JANUARY. THE STATE ADDRESSES THE COURT. THEY ARE READY. THERE IS A
MOTION TO CONTINUE THE TRIAL. THE STATE OPPOSES THEY WILL WAIVE THE 21 DAY
RULE AND WILL GO WITH A 14 DAY FOR THE REPORT. BOTH PARTIES TO SUPPLEMENT
THEIR WITNESSES AND MEET WITH JUDGE Thursday MORNING 4/15 IN THE MORNING
AND CONFIRM. COURT ADDRESSES THE DEFENDANT AND EXPLAINS WHAT HAPPENED.
STATUS CHECK 4/15 @8:15 TO DETERMINE IF TRIAL CAN BE MOVED TO THE 12-23RD
OF JULY.

04/14/2021 COURT MINUTES-4/15/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: NONE
APP: KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE

COURT CALLS THE MATTER AS A STATUS CHECK ON TRIAL DATES. COURT NOTES THAT AT THE PREVIOUS HEARNG PARTIES DISCUSSED JULY 12-23 TRIAL DATES. COURT QUESTIONS THE PARTIES IF THEY WILL BE READY FOR THE JULY DATES. THE STATE REVIEWS COMMUNICATION BETWEEN THE STATE AND THE WITNESSES REGARDING THE TRIAL DATE CHANGE. THE STATE INFORMS THAT A WITNESS (THE LANDLORD) IS REFUSING TO MAKE AN ORAL AGREEMENT TO APPEAR. COURT SUGGESTS A MATERIAL WARRANT FOR THAT WITNESS. THE STATE INFORMS THAT THE INTAKE OFFICER (WITNESS) WILL BE LEAVING FOR BOOT CAMP AND WILL NOT BE AVAILABLE. DEFENSE STATES THAT THE EXPERT WITNESS WILL BE READY FOR THE JULY DATES AND ANY OTHER WITNESSES. DEFENSE STATES THAT WITNESSES WILL BE PRESENT AT THE JACKSON V DENNO HEARING AND IF NEED BE THE TRANSCRIPTS COULD BE USED AT TRIAL. COURT SETS CC TO 6/18/21 COURT SETS TRIAL DATES TO JULY 12-23.

04/15/2021 THIRD AMENDED ORDER SETTING JURY TRIAL

04/20/2021 INFORMATION(FELONY/PERSON)

04/21/2021 AMENDED INFORMATION(FELONY/PERSON) (CORRECTED CAPTION)

04/29/2021 COURT MINUTES-4/29/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP:MIKE ALLMON AND KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY

COURT CALLS THE MATTER AS A CHANGE OF PLEA. COURT NOTES THE MATTER WAS INITIALLY SET AS A JACKSON V DENNO HEARING. HOWEVER, THE MATTER IS NOW NEGOTIATED. GUILTY PLEA AGREEMENT SUBMITTED TO THE COURT. COURT OUTLINES THE NEGOTIATIONS. DEFENDANT HAS CONCERNS WITH THE PLEA AGREEMENT IN REGARD TO THE EVIDENCE. COURT INFORMS THE DEFENDANT OF THE NEGOTIATIONS, SUPPRESSION AND SENTENCING PROCESS. THE DEFENDANT DOES NOW UNDERSTAND. COURT ONCE AGAIN OUTLINES THE NEGOTIATIONS IN DETAIL FOR CLARIFICATION FOR THE DEFENDANT. DEFENDANT HAS BEEN DIAGNOSED PREVIOUSLY WITH A MENTAL DISABILITY BUT HAS NO ISSUES TODAY. DEFENDANT WAIVES FORMAL READING OF THE INFORMATION. COURT CANVASS THE DEFENDANT, OUTLINES THE GUILTY PLEA AGREEMENT FOR THE RECORD AND THE MAXIMUM POSSIBLE SENTENCE. DEFENDANT SO ACKNOWLEDGES, PLEADS GUILTY AND WAIVES HIS CONSTITUTIONAL RIGHTS TO TRIAL AND APPEAL RIGHTS. THE STATE SETS FORTH THE ELEMENTS ON THE RECORD. DEFENDANT ADDRESSES THE COURT AND ADMITS THE ALLEGATIONS. DEFENDANT DENIES ANY REQUEST FOR CONTINUANCE. COURT FINDS THE GUILTY PLEA AGREEMENT TO BE GIVEN FREELY AND ACCEPTS SAID PLEA. COURT SETS SENTENCING ON JUNE 25 2021 GUILTY PLEA AGREEMENT

04/29/2021

05/03/2021 TRANSCRIPT OF PROCEEDINGS: CALENDAR CALL (4/9/21)

06/07/2021 PRESENTENCE INVESTIGATION REPORT

06/09/2021 TRANSCRIPT OF: CHANGE OF PLEA/ARRAIGNMENT(4/29/21)

06/09/2021 TRANSCRIPT OF: MOTIONS(4/15/21)

06/25/2021 COURT MINUTES-6/25/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP:MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY

COURT CALLS THE MATTER AS A SENTENCING HEARING. DEFENSE ADDRESSES AND INFORMS THAT THE DEFENDANT ASKS FOR A CONTINUANCE FOR HIS SENTENCING AS THE DEFENDANT HAS MORE QUESTIONS. THE STATE WAS NOT AWARE THAT THE DEFENDANT WOULD BE ASKING FOR A CONTINUANCE AND INFORMS THAT THERE ARE 2 WITNESSES PRESENT. COURT FEELS THAT IT WOULD BE UNFAIR FOR THE WITNESSES TO COME BACK. COURT MOVES FORWARD WITH WITNESS TESTIMONY. DEFENSE STATES THAT ONE VICTIM IS THE BROTHER OF THE WITNESS WHICH HE DOES NOT OBJECT TO. THE SECOND "WITNESS" IS A "REBUTTAL WITNESS" AND DOESNT FEEL IT SHOULD BE ALLOWED. DEFENSE ASKS FOR A SIDE BAR. COURT BACK IN SESSION. COURT TRAILS THE MATTER. COURT RECALLS THE MATTER. DEFENSE REQUESTS TO CONTINUE THE SENTENCING BUT TO ALLOW THE STATEMENT FROM THE DEFENDANT, THE STATES SPEAKERS AND REBUTTAL WITNESS. COURT QUESTIONS THE DEFENDANT FOR HIS REQUEST FOR CONTINUANCE. DEFENDANT ADDRESSES AND STATES THAT THE INMATE HE WAS HOUSED WITH AND DOES NOT GET ALONG WITH WOULD BE TRANSPORTED WITH HIM AND HE DOES NOT WISH FOR THAT TO HAPPEN. COURT REVIEWS THE 2 OPTION'S OF THE SENTENCING AND INFORMS THE DEFENDANT THAT HE WOULD NOT BE TRANSPORTED WITH SAID DEFENDANT. COURT MOVES FORWARD WITH SENTENCING. DEFENSE STATES THE CTS IS INCORRECT IN THE PSI AND SHOULD BE 447 DAYS CTS. NO OBJECTION FROM THE STATE. COURT OUTLINES CASE HISTORY AND REVIEWS THE NEGOTIATIONS. THE STATE IS FREE TO ARGUE. COURT ADJUDICATES THE DEFENDANT GUILTY. DEFENSE REVIEWS THE FACTS OF THE CASE IN DETAIL. DEFENSE ARGUES FOR 10 TO 25 YEARS WITH PAROLE ELIGIBILITY AFTER 10 YEARS. THE STATE CALLS THE FIRST WITNESS CHRISTOPHER PIPER. CLERK SWEARS IN THE WITNESS CHRISTOPHER PIPER. THE STATE EXAMINES THE WITNESS IN REGARD TO HIS RELATIONSHIP WITH THE DEFENDANT AND VICTIM. THE WITNESS PROVIDES HIS TESTIMONY. DEFENSE OBJECTS TO THE TESTIMONY AS IT DOES NOT PERTAIN TO HOW THE INCIDENT HAS AFFECTED HIM. THE STATE ARGUES AND RECITES A SUPREME COURT CASE. COURT OVER RULES THE OBJECTION. THE WITNESS ASKS FOR THE MAXIMUM POSSIBLE SENTENCE. THE STATE PASSES THE WITNESS. DEFENSE HAS NO QUESTIONS FOR THE WITNESS. COURT QUESTIONS THE WITNESS. THE WITNESS IS RELEASED. COURT TRAILS THE MATTER. COURT RECALLS THE MATTER. THE STATE PROVIDES PICTURES AND VIDEO OF THE NIGHT OF THE INCIDENT. THE STATE ARGUES FOR LIFE IN PRISON WITH THE POSSIBILITY OF PAROLE IN 10 YEARS. DEFENSE REVIEWS THE CONFESSION IN DETAIL AND ARGUES FOR 10/25 YEARS. DEFENDANT APOLOGIZES TO THE WITNESSES, KNOWS HE FAILED THEM AND TAKES RESPONSIBILITY. COURT REVIEWS THE INCIDENT AND RESPONSE OF THE SHERIFF'S OFFICE IN DETAIL. COURT SENTENCES THE DEFENDANT TO LIFE WITH THE POSSIBILITY OF PAROLE IN 10 YEARS. \$25 \$3 AND \$150 447 DAYS CTS

06/25/2021 JUDGMENT OF CONVICTION(FELONY/PERSON)

07/06/2021 NOTICE OF APPEAL (SUBMITTED BY RONNI N. BOSKOVICH, ESQ., OBO DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT, MARCO ANTONIO TORRES)

07/06/2021 CASE APPEAL STATEMENT (SUBMITTED BY RONNI N. BOSKOVICH, ESQ., OBO DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT, MARCO ANTONIO TORRES)

FILED
FIFTH JUDICIAL DISTRICT

1 Case No. CR20-0092
2 Dept. 1P

JUN 25 2021

Nye County Clerk
Deputy

3
4 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
5 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

JUDGMENT OF CONVICTION

10 MARCO ANTONIO TORRES,

11 Defendant.
12 _____/

13
14 On April 29, 2021, the Defendant above named, appeared before the Court
15 with his counsel, Daniel Martinez, Esq., and entered a plea of guilty to the crime of *Second –*
16 *Degree Murder*, a violation of NRS 200.010, 200.030, a Category “A” Felony.

17 On June 25, 2021 the Defendant appeared personally and with his counsel, Daniel
18 Martinez, Esq. for entry of Judgment. No sufficient legal cause was shown by the Defendant
19 as to why judgment should not be pronounced against him. The Court adjudged the Defendant
20 guilty of the crime of *Second – Degree Murder*, a violation of NRS 200.010, 200.030, a
21 Category “A” Felony.
22

23 The court sentenced the Defendant to serve Life in Prison in the Nevada Department
24 of Corrections with parole eligibility after a minimum term of 10 years have been served.

25 Defendant shall pay to the Clerk of the Court a \$25.00 administrative assessment fee.

26 Defendant shall pay to the Clerk of the Court a \$3.00 DNA administrative fee.
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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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Defendant shall pay to the Clerk of the Court a \$150.00 DNA fee.
The Defendant shall receive credit for 447 days presentence incarceration.
DATED this 28th day of June, 2021.



KIMBERLY A. WANKER,
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

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The undersigned hereby certifies that on the 25th day of June 2021, she mailed (or hand delivered) copies of the foregoing **JUDGMENT OF CONVICTION** to the following:

NYE COUNTY DISTRICT ATTORNEY
PAHRUMP, NV
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
PAHRUMP, NV
(HAND DELIVERED)

NEVADA DIVISION OF PAROLE AND PROBATION
PAHRUMP, NV
(HAND DELIVERED)

NYE CO. SHERIFF (DETENTION)
PAHRUMP, NV
(HAND DELIVERED)

Melissa Stepp
MELISSA STEPP, secretary to
DISTRICT COURT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



Fifth Judicial District Court - Nye County
Case Summary

Run: 07/13/2021
11:51:50

Page 1

Case #: CR20-0092
Judge: WANKER, KIMBERLY
Date Filed: 08/10/2020 Department:
Case Type: Crimes Against Persons (Felony)

Plaintiff	Attorney(s)
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE
Defendant	
TORRES, MARCO ANTONIO	MARTINEZ, DANIEL

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
06/25/2021	ADMIN	\$5.00	\$0.00	\$0.00	\$5.00
06/25/2021	STADMIN	\$20.00	\$0.00	\$0.00	\$20.00
06/25/2021	DNA	\$150.00	\$0.00	\$0.00	\$150.00
06/25/2021	GENETIC	\$3.00	\$0.00	\$0.00	\$3.00

Charge: HABITUAL CRIMINAL - NRS 207.010(1) (A) F/A Count 1
Sent: LIFE WITH THE POSSIBILITY OF PAROLE AFTER 10 YEARS, \$25 ADMIN FEE, \$3 DNA FEE, \$150 DNA, 447 DAYS CTS

Disp/Judgment: Non-Trial: Guilty Date: 06/25/2021
Plea with Sentence
(Before Trial)

Hearings:

Date	Time	Hearing	Court Result
08/21/2020	9:00AM	45#ARRAIGNMENT HEARING (GC)	CANC
08/28/2020	9:00AM	25#ARRAIGNMENT HEARING	CANC
09/04/2020	9:00AM	30#ARRAIGNMENT (GC)	
11/30/2020	11:00AM	MOTION TO DISMISS	CANC
12/03/2020	1:30PM	DEFT'S MTN TO CONTINUE TRIAL DATE/WRIT OF HABEAS CORPUS/CALENDAR CALL/ MOTION TO DISMISS	
12/04/2020	9:00AM	30#CALENDAR CALL	CANC
12/04/2020	4:30PM	99#JURY DRAW 180 JURORS FILE TO MELISSA	CANC
12/04/2020	9:00AM	31#PRE TRIAL MOTIONS	CANC
12/04/2020	11:00AM	32#WRIT OF HABEAS CORPUS	CANC
01/13/2021	9:00AM	JURY TRIAL 6 DAYS JAN 13-14, 2021 JAN 19-22, 2021	CANC
01/27/2021	1:30PM	20#PRE TRIAL MOTIONS	
01/27/2021	4:30PM	30#JURY DRAW 180 JURORS	
01/27/2021	1:30PM	20#DEFT'S MTN TO CONTINUE TRIAL DATE	
02/12/2021	9:00AM	CALENDAR CALL	CANC

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11:51:52

Case Summary

Page 2

03/15/2021	9:00AM	JURY TRIAL MARCH 15-26	CANC
03/25/2021	1:30PM	PRE TRIAL MOTIONS	
03/25/2021	1:30PM	MOTION TO DISMISS/MOTION TO SUPPRESS	
04/02/2021	9:00AM	CALENDAR CALL	CANC
04/02/2021	4:30PM	JURY DRAW OF 180 JURORS	CANC
04/09/2021	9:00AM	05# CALENDAR CALL-TONOPAH/DEFENSE MAY CALL IN	
04/15/2021	8:15AM	STATUS CHECK	
04/29/2021	9:00AM	EVIDENTIARY HEARING/JACKSON V DENNO/PRE TRIAL MOTIONS	
05/10/2021	9:00AM	JURY TRIAL MAY 10-21	CANC
06/18/2021	9:00AM	CALENDAR CALL	CANC
06/18/2021	4:30PM	JURY DRAW 180 JURORS	CANC
06/25/2021	9:00AM	70#SENTENCING	
07/12/2021	9:00AM	JURY TRIAL JULY 12-23	CANC

Filings:

Date	Filing
08/10/2020	CASE FILED 08/10/2020 CASE NUMBER CR20-0092
08/10/2020	PROSECUTOR: DISTRICT ATTORNEY'S OFFICE ASSIGNED
08/10/2020	DEFENSE ATTORNEY: MARTINEZ, DANIEL ASSIGNED
08/10/2020	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT - Rec'd, Ref Case #CR20-0092: (Second Amended Criminal Complaint; Order; Media Request Allowing Electronic Equipment in the Courtroom; Amended Criminal Complaint; Receipt of Copy; Receipt of Copy; Order to Continue; Receipt of Copy; Receipt of Copy; Order to Continue; Receipt of Copy; Criminal Complaint; Affidavit and Application for Appointment of Counsel; Plaintiff Exhibits #1 - 24 and # 26-39, Medical Records from Cancer Care Center, Health Care Partners and Hope Cancer Case; Defendant Exhibits A andB).
08/10/2020	BINDOVER ORDER (BAIL N/A)
08/10/2020	JUDGE WANKER, KIMBERLY: ASSIGNED
08/17/2020	INFORMATION (FELONY/PERSON)
09/01/2020	TRANSCRIPT OF: PRELIMINARY HEARING****PJC DOCUMENT*****
09/02/2020	MEDIA REQUEST TO ALLOW ELECTRONIC RECORDING EQUIPMENT INTO THE COURTROOM

09/04/2020 COURT MINUTES-9/4/20 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: TRACY MANNING
BAILIFF: ERIC SCHLENER
APP: MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE

COURT CALLS THE MATTER AS AN ARRAIGNMENT HEARING. COURT OFFERS ADDITIONAL TIME FOR THE DEFENDANT TO SPEAK TO HIS ATTORNEY. THE DEFENDANT ASKS FOR SOME TIME TO SPEAK TO HIS ATTORNEY. COURT TRAILS THE MATTER TO 11 AM FOR THE DEFENDANT TO SPEAK WITH HIS ATTORNEY. COURT RECALLS THE MATTER. COURT NOTES NO GUILTY PLEA AGREEMENT HAS BEEN SUBMITTED. COURT CANVASS THE DEFENDANT, OUTLINES THE MAXIMUM POSSIBLE SENTENCE. COURT QUESTIONS THE DEFENDANT IF HE HAS ANY MENTAL DISORDERS THAT MAY AFFECT HIM MOVING FORWARD TODAY. THE DEFENDANT STATES HE DOES HAVE MULTIPLE DISORDERS AND HAS TRIED MEDICATIONS BUT THE THEY ARE NOT WORKING. COURT STATES THAT SHE CANNOT MOVE FORWARD IF THERE IS AN ISSUE WITH HIS MENTAL COMPETENCY. DEFENSE ADDRESSES AND STATES THAT HE HAS MET WITH THE DEFEDANT MULTIPLE TIMES AND HAS ZERO CONCERN WITH HIS COMPETENCY. COURT CONTINUES WITH THE CANVASS. COURT ASKS THE CLERK TO FORMALLY READ THE INFORMATION. CLERKS FORMALLY READS THE INFORMATION. DEFENDANT PLEADS NOT GUILTY TO ALL COUNTS. DEFENDANT WAIVES HIS RIGHT TO SPEEDY TRIAL.

TRIAL DATES JAN 13, 14 AND JAN 19-22, CC ON DEC 4

09/08/2020 ORDER SETTING JURY TRIAL(1/13-14/21 - 1/19-22/2021
09/14/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
09/14/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR INVESTIGATIVE COSTS
09/21/2020 ORDER FOR EXTRAORDINARY FEES FOR INVESTIGATIVE COSTS
09/21/2020 ORDER FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
09/23/2020 MOTION TO DISMISS
09/23/2020 DEFENDANT MARCO ANTONIO TORRES PETITION FOR WRIT OF HABEAS CORPUS
09/25/2020 TRANSCRIPT OF: ARRAIGNMENT(09/04/20)
10/06/2020 RESPONSE TO DEFENDANT'S MOTION TO DISMISS
10/12/2020 REPLY TO STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
10/12/2020 *****END OF FILE #1*****
10/16/2020 ORDER TO ISSUE WRIT OF HABEAS CORPUS (HEARING 12/04/2020, 11AM)
10/16/2020 WRIT OF HABEAS CORPUS (ISSUED - SHARON WEHRLY, SHERIFF, NYE COUNTY, NEVADA)
10/19/2020 WRIT OF HABEAS CORPUS/ RETURN OF SERVICE (SERVED 10/19/2020)
11/20/2020 RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS
11/20/2020 MOTION TO CONTINUE TRIAL DATE/ NOTICE OF MOTION (12/03/2020, 1:30PM)
(SUBMITTED BY DANIEL E. MARTINEZ, ESQ,. FOR DEFENDANT, MARCO ANTONIO
TORRES)
11/23/2020 EX PARTE MOTION FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
11/24/2020 ORDER FOR EXTRAORDINARY FEES FOR EXPERT WITNESS COSTS
12/01/2020 RESPONSE TO DEFENDANT'S MOTION TO CONTINUE TRIAL DATE (SUBMITTED BY DA/
CDDA & DDA FOR STATE)

12/01/2020 COURT MINUTES-12/3/20 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: CECILIA THOMAS
BAILIFF: ERIC SCHLENER
APP: MIKE ALLMON AND KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE RONNI BOSKOVICH IS PRESENT AS SECOND CHAIR

COURT CALLS THE MATTER AS A MOTION TO DISMISS, MOTION TO CONTINUE TRIAL DATES, CALENDAR CALL, WRIT OF HABEAS CORPUS. COURT REVIEWS THE PROCEDURE OF A WRIT OF HABEAS CORPUS. COURT QUESTIONS THE STATE REGARDING THE CONTINUANCE OF THE MOTION TO CONTINUE TRIAL. THE STATE DOES NOT OPPOSE. DEFENSE STATES HE IS NOT PREPARED TO MOVE FORWARD. COURT SETS TRIAL DATES MARCH 15-26 2021 AND CALENDAR CALL ON FEBRUARY 12 2021. COURT SETS PRE TRIAL MOTIONS JANUARY 27 2021 AT 130 PM. COURT REVIEWS THE ISSUES WITH THE STATUTES. COURT STATES SHE HAS NOT READ THE STATES RESPONSE AND REVIEWS HOW IMPORTANT THE PROPER RESEARCH IS IN THE CASE TO MAKE A RULING.

12/03/2020 AMENDED ORDER SETTING JURY TRIAL(10 DAYS MARCH 15-26 2021)

12/22/2020 TRANSCRIPT OF MOTION TO CONTINUE TRIAL (HRG 12/03/20)

01/19/2021 MOTION TO CONTINUE TRIAL DATE/ NOTICE OF MOTION (01/27/2021, 1:30PM)
(SUBMITTED BY DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT)

01/27/2021

COURT MINUTES (1/27/2021) - JAVS TIME: 0223

JUDGE: KIMBERLY WANKER;

CLERK: JUANITA TORRES;

BAILLIFF: ERIC SCHLENER

REPORTER: SUZANNE ROWE, VIA VIDEO (BLUEJEANS);

APPEAR: DEPUTY DISTRICT ATTORNEY, MICHAEL ALLMON, ON BEHALF OF THE STATE; ATTORNEYS DANIEL MARTINEZ AND RONNI BOSKOVICH, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT IN CUSTODY, VIA VIDEO.

COURT CALLS THE MATTERS AS DEFENDANT'S MOTION TO DISMISS, PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO CONTINUE TRIAL. COURT ANNOUNCES, ON THE RECORD, THE PARTIES THAT ARE PRESENT IN THE COURTROOM.

MARTINEZ CONFIRMS HE FILED A REPLY TO THE STATE'S OPPOSITION; HE ARGUES NYE COUNTY SHERIFF'S DEPUTIES MADE ENTRY WITHOUT A WARRANT, THE STATE CLAIMS THE EXCEPTION TO PROVIDE AIDE TO A PARTY INSIDE, MARTINEZ ARGUES THERE ARE NO FACTS TO SUPPORT THE EXCEPTION, DEPUTIES WERE RESPONDING TO A 911 DISCONNECT, THAT TURNED INTO A WELFARE CHECK, DEPUTIES HEARD FOOTSTEPS FROM INSIDE, THERE WAS NO REASONABLE CAUSE TO TAKE IMMEDIATE ACTION, DEPUTIES WAITED 1 1/2 HOURS BEFORE ENTERING THE HOME; MARTINEZ OUTLINES THE STATES DISCOVERY, INFORMATION IN THE SEARCH WARRANT WAS MADE AFTER ENTRY INTO THE HOME; REQUEST DISMISS OR EVIDENTIARY HEARING ON THE MATTER.

COURT INQUIRES WHY THIS IS NOT A MOTION TO SUPPRESS EVIDENCE AND OUTLINES THE PRELIMINARY TRANSCRIPTS.

MARTINEZ EXPLAINS IT WAS AN UNLAWFUL ENTRANCE, ALL EVIDENCE NEEDS TO BE SUPPRESS, EXCEPT THE 911 CALL; HE DOES NOT BELIEVE THEY HAD PROBABLE CAUSE TO DETAIN THE DEFENDANT; HE ADVISES THE COURT HE ALSO FILE A MOTION TO CONTINUE TRIAL AND WILL BE FILING A MOTION TO SUPPRESS DEFENDANT'S INTERVIEW.

STATE ARGUES DUE TO THE TOTALITY OF THE CIRCUMSTANCES THE DEPUTIES HAD P.C., THERE ARE TWO ISSUES, FIRST EMERGENCY AID EXCEPTION APPLIES, SECOND PROBABLE CAUSE DETERMINATION, DEPUTIES MAY ASSUME IT IS ADMISSIBLE; ALLMON OUTLINES DEFENDANT'S REBUTTAL, OBJECTING TO WAITING FOR LOCKSMITH AS NOT BEING SWIFT ENTRY; HE OUTLINES THE INCIDENT, N.C.S.O. KNEW THERE WAS A SECOND PERSON IN THE HOME, ARGUES A WELFARE CHECK IS AN EMERGENCY; ARGUES A MOTION TO DISMISS IS INAPPROPRIATE.

MARTINEZ ARGUES EMERGENCY AID, WOULD NOT APPLY; ARGUES DEPUTIES WERE UNAWARE OF THE TOTALITY WHEN THEY ARRIVED ON SCENE; OUTLINES DIFFERENCE BETWEEN WAITING FOR A SWAT TEAM, AS TO WAITING FOR A LOCKSMITH, WHY DID N.C.S.O. WAIT SO LONG; CLAIMS HIS ARGUMENTS ARE APPROPRIATE FOR THE TRIAL COURT.

COURT STATES THE GENERAL RULES FOR A WARRANT, SO THAT IT DOES NOT VIOLATE THE 4TH AMENDMENT, FIRST PROBABLE CAUSE, SECOND EXIGENT CIRCUMSTANCE, OUTLINING THE EMERGENCY AID EXCEPTION; COURT REVIEWS, IN DETAIL, EXHIBIT 4A FROM THE PRELIMINARY HEARING, N.C.S.O.'S "CALL DETAIL RECORD" AS TO THE FIRST 911 CALL AND WHEN THE FIRST DEPUTY ARRIVED; COURT INQUIRES IF POSSIBLE EXIGENT CIRCUMSTANCES OR EMERGENCY AID EXEMPTIONS, EXPIRED; COURT REVIEWS STEPHANIE RUCKER TESTIMONY REGARDING THE 911 CALL AND LOCATION OF THE CALL AND DEPUTIES' RESPONSE ONCE ON SEEN, STOPPING AT THE FIRST TRAILER, BEING TOLD THE PARTIES WERE IN THE TRAILER BEHIND; HOW THE DEFENDANT IDENTIFIED HIMSELF TO DEPUTIES, COURT QUESTIONS IF THE DEPUTIES LOST THE EXCEPTION, BY NOT IMMEDIATELY MAKING ENTRY, HOWEVER NO ONE BRIEF THAT ISSUE; IF THEY HAD TIME TO CALL A SUPERVISOR AND A LOCKSMITH, WHY NOT A JUDGE FOR A WARRANT; COURT BELIEVES THIS SHOULD HAVE BEEN MOTION TO SUPPRESS, NOT A MOTION TO DISMISS; REQUEST THE COURT'S ISSUES BE BRIEFED AND WHAT EVIDENCE NEEDS TO BE SUPPRESS. COURT ADDRESSES THE W.H.C. AS TO THE HABITUAL ENFORCEMENT, THERE ARE NEW STATUTES THAT MAY AFFECT THE CHARGES, CHARGE INVASION OF THE HOME ON AN INTERIOR BEDROOM.

MARTINEZ OUTLINES OLD/NEW LAWS REGARDING INVASION OF THE HOME AND THE INTENT OF A ROOM, CITES NEVADA LAW REGARDING FORCIBLE ENTRY.

STATE ARGUES YOU CAN REVOKE CONSENT/ACCESS TO A ROOM, READS PAGE 13 OF STATE'S RESPONSE ON THE RECORD.

COURT READS ON THE RECORD, ALFRED V. STATE, FOOTNOTE 2 CITED IN DEFENDANT'S MOTION, COURT FINDS COUNT III, INVASION OF A HOME STANDS; COURT OUTLINES

EACH COUNTY IN THE INFORMATION; CHARGE VII, USE OF NUNCHAKUS BEING A DANGEROUS WEAPON, THERE IS NO TESTIMONY, SLIGHT OR MARGINAL EVIDENCE INJURIES CAUSED BY THE WEAPON.
STATE ARGUES REASONABLE EVIDENCE WERE IMPRINTS OF THE NUNCHAKUS ON THE INJURIES OF THE VICTIM.
COURT READS DETECTIVE FLANCHER'S TESTIMONY, PAGE 159 OF THE PRELIMINARY HEARING TRANSCRIPT.
STATE AGREES FLANCHER IS NOT AN EXPERT, BUT ARGUES A MEDICAL EXAMINER WILL TESTIFY AS TO THE INJURIES AT TRIAL.
COURT IS FINDING SLIGHT OR MARGINAL EVIDENCE HAS NOT BEEN PRESENTED.
STATE ARGUES CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT FOR PROBABLE CAUSE.
MARTINEZ ARGUES THERE IS NO CIRCUMSTANTIAL, NOR DIRECT EVIDENCE THAT NUNCHAKUS WERE USED, THERE WAS NO DNA EVIDENCE ON THE NUNCHAKUS.
COURT FINDS THERE IS NO SLIGHT OR MARGINAL EVIDENCE, CHARGE DISMISSED.
COURT ADDRESSES MOTION TO CONTINUE.
MARTINEZ ADVISES THE COURT THIS IS HIS SECOND MOTION TO CONTINUE, HIS EXPERT'S OPINION WOULD NOT BE AVAILABLE UNTIL FEBRUARY, AND ADDITIONAL TIME IS NEEDED, AS TO HIS MOTION TO SUPPRESS THE DEFENDANT'S INTERVIEW.
STATE HAS NOT WAIVED IT'S RIGHT TO SPEEDY TRIAL, HOWEVER DEFENDANT IS ALLOWED TO PREPARE FOR TRIAL, THE STATE IS NOT FORMALLY OPPOSING THE MOTION TO CONTINUE.
COURT GRANTS MOTION TO CONTINUE, SUPPRESSION ISSUES NEED TO BE FULLY BRIEFED/ADDRESSED.
MARTINEZ REQUEST MAY TRIAL DATES AND REQUEST THE CURRENT MARCH TRIAL DATE FOR HIS MOTION TO SUPPRESS.
COURT DENIES MOTION TO DISMISS AND SETS TRIAL DATES FOR:
JURY TRIAL 05/10/2021 - 05/21/2021,
PRETRIAL MOTIONS MARCH 25 AT 1:30 FOR THE MOTION TO SUPPRESS,
CALENDAR CALL APRIL 2, 2021 AT 09:00,
JURY DRAW APRIL 2, 2021.
DEFENDANT ADDRESS THE COURT, WOULD LIKE TO SPEAK TO MARTINEZ. COURT CONCURS AND CLEARS THE COURTROOM.
01/28/2021 SECOND AMENDED ORDER SETTING JURY TRIAL (MAY 10, 2021 @ 9 AM FOR 10 DAYS)
02/12/2021 DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
02/26/2021 MOTION TO SUPPRESS DEFENDANT'S STATEMENTS AND REQUEST FOR JACKSON V. DENNO HEARING
03/03/2021 THE STATE'S INSTANT RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
03/10/2021 RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS DEFENDANT'S STATEMENTS AND REQUEST FOR JACKSON V. DENNO HEARING
03/12/2021 REPLY TO STATE'S INSTANT RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS
03/18/2021 REQUEST FOR DISCLOSURE
03/22/2021 TRANSCRIPT OF: MOTION TO DISMISS WRIT OF HABEAS CORPUS(1/28/21)

03/25/2021 COURT MINUTES-3/25/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP: MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE
136PM
COURT CALLS THE MATTER AS PRE TRIAL MOTIONS, MOTION TO SUPPRESS AND MOTION
TO DISMISS. COURT IS IN RECEIPT OF DEFENDANT'S SUPPLEMENTAL BRIEF, MOTION
TO SUPPRESS, STATES INSTANT RESPONSE, REPLY TO STATES INSTANT RESPONSE,
MOTION TO DISMISS-SUPPLEMENTAL BRIEFING. COURT WILL BEGIN WITH THE MOTION
TO SUPPRESS AND WILL THEN HEAR THE JACKSON V DENNO HEARING. DEFENSE
ADDRESSES AND STATES HE IS NOT PREPARED FOR THE JACKSON V DENNO HEARING AND
ASKS FOR A CONTINUANCE. THE STATE WAS NOT CLEAR ABOUT TODAY'S HEARING
EITHER AND HAS NO OBJECTION TO CONTINUE THE HEARING. COURT ADMONISHES THE
PARTIES FOR NOT BEING PREPARED. COURT ADDRESSES THE MOTION TO DISMISS AND
INFORMS THE PARTIES THAT THEY DID NOT REFERENCE THE NEVADA SUPREME COURT
DECISION. COURT SO INFORMS THE PARTIES IN DETAIL OF THE NEVADA SUPREME
COURT DECISION. COURT REVIEWS THE INCIDENT IN REGARD PROBABLE CAUSE AND OR
EXIGENT CIRCUMSTANCES FOR ENTRY INTO THE TRAILER. DEFENSE ARGUES THAT THE
NEVADA SUPREME COURT DECISION WAS IN THE INITIAL BRIEF. COURT STATES THAT
THE SHERIFF'S OFFICE DID NOT NEED PROBABLE CAUSE TO ENTER AS THEY DID HAVE
EXIGENT CIRCUMSTANCES. COURT REVIEWS IN DETAIL THE 911 CALL. COURT DENIES
THE MOTION TO SUPPRESS ANY EVIDENCE. COURT MOVES TO THE JACKSON V DENNO
HEARING. DEFENSE IS NOT READY TO MOVE FORWARD WITH THE JACKSON V DENNO
HEARING. COURT RECITES THE SUPREME COURT DECISION REGARDING JACKSON V DENNO
HEARING IN ORDER FOR THE PARTIES TO BE CLEAR ON WHAT TO EXPECT. DEFENSE
ADDRESSES AND HAS AN EXPERT WITNESS FOR TRIAL BUT THE EXPERT WITNESS WILL
NOT BE READY BY THE TRIAL DATES. DEFENSE ALSO STATES THAT HIS CONTRACT FOR
PUBLIC DEFENDER IS UP APRIL 20. DEFENSE ASKS FOR A SIDE BAR. COURT BACK IN
SESSION. DEFENSE NEEDS A FEW WEEKS TO PREPARE FOR THE JACKSON V DENNO
HEARING. ALL PARTIES NEED A FULL DAY FOR THE JACKSON V DENNO HEARING. COURT
SETS THE JACKSON V DENNO HEARING TO APRIL 29. COURT SETS THE CALENDAR CALL
TO APRIL 9 IN TONOPAH DEFENSE MAY CALL IN.

03/30/2021 (DEFENDANT'S) MOTION TO CONTINUE TRIAL DATE (TRIAL 05/10/2021)

04/09/2021 STATE'S OPPOSITION TO DEFENDANT'S THIRD MOTION TO CONTINUE TRIAL DATE

04/09/2021 COURT MINUTES - @ - CR CR20-0092 MARCO ANTONIO TORRES
JUDGE: KIMBERLY A WANKER;
REPORTER: SUZANNE ROWE;
BAILIFF: JOHN CHIDLEY
CLERK: CORI FREIDHOF,
JAVS: 09.01.36
APP: MISS BOSCOVICH, KIRK VITTO & CHRIS ARABIA DDA; OFFICER DAVIS, P&P;
DANIEL MARTINEZ VIA BLUE JEANS WITH THE DEFENDANT PRESENT IN CUSTODY;
DANIEL MARTINEZ IS NOT PREPARED TO GO FORWARD, EXPERT IS CURRENTLY PLANNING
ON GOING TO LAS VEGAS ON APRIL 19TH, WON'T HAVE REPORT READY ON TIME. HE
ADDRESSES THE COURT. COURT ADDRESSES AND WONDERS WHY ANOTHER CONTINUANCE.
FROM JANUARY. THE STATE ADDRESSES THE COURT. THEY ARE READY. THERE IS A
MOTION TO CONTINUE THE TRIAL. THE STATE OPPOSES THEY WILL WAIVE THE 21 DAY
RULE AND WILL GO WITH A 14 DAY FOR THE REPORT. BOTH PARTIES TO SUPRENOA
THEIR WITNESSES AND MEET WITH JUDGE THURSDAY MORNING 4/15 IN THE MORNING
AND CONFIRM. COURT ADDRESSES THE DEFENDANT AND EXPLAINS WHAT HAPPENED.
STATUS CHECK 4/15 @8:15 TO DETERMINE IF TRIAL CAN BE MOVED TO THE 12-23RD
OF JULY.

04/14/2021 COURT MINUTES-4/15/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: NONE
APP: KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY VIA
TELECONFERENCE

COURT CALLS THE MATTER AS A STATUS CHECK ON TRIAL DATES. COURT NOTES THAT AT THE PREVIOUS HEARNG PARTIES DISCUSSED JULY 12-23 TRIAL DATES. COURT QUESTIONS THE PARTIES IF THEY WILL BE READY FOR THE JULY DATES. THE STATE REVIEWS COMMUNICATION BETWEEN THE STATE AND THE WITNESSES REGARDING THE TRIAL DATE CHANGE. THE STATE INFORMS THAT A WITNESS (THE LANDLORD) IS REFUSING TO MAKE AN ORAL AGREEMENT TO APPEAR. COURT SUGGESTS A MATERIAL WARRANT FOR THAT WITNESS. THE STATE INFORMS THAT THE INTAKE OFFICER (WITNESS) WILL BE LEAVING FOR BOOT CAMP AND WILL NOT BE AVAILABLE. DEFENSE STATES THAT THE EXPERT WITNESS WILL BE READY FOR THE JULY DATES AND ANY OTHER WITNESSES. DEFENSE STATES THAT WITNESSES WILL BE PRESENT AT THE JACKSON V DENNO HEARING AND IF NEED BE THE TRANSCRIPTS COULD BE USED AT TRIAL. COURT SETS CC TO 6/18/21 COURT SETS TRIAL DATES TO JULY 12-23.

04/15/2021 THIRD AMENDED ORDER SETTING JURY TRIAL

04/20/2021 INFORMATION(FELONY/PERSON)

04/21/2021 AMENDED INFORMATION(FELONY/PERSON) (CORRECTED CAPTION)

04/29/2021 COURT MINUTES-4/29/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP:MIKE ALLMON AND KIRK VITTO FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY

COURT CALLS THE MATTER AS A CHANGE OF PLEA. COURT NOTES THE MATTER WAS INITIALLY SET AS A JACKSON V DENNO HEARING. HOWEVER, THE MATTER IS NOW NEGOTIATED. GUILTY PLEA AGREEMENT SUBMITTED TO THE COURT. COURT OUTLINES THE NEGOTIATIONS. DEFENDANT HAS CONCERNS WITH THE PLEA AGREEMENT IN REGARD TO THE EVIDENCE. COURT INFORMS THE DEFENDANT OF THE NEGOTIATIONS, SUPPRESSION AND SENTENCING PROCESS. THE DEFENDANT DOES NOW UNDERSTAND. COURT ONCE AGAIN OUTLINES THE NEGOTIATIONS IN DETAIL FOR CLARIFICATION FOR THE DEFENDANT. DEFENDANT HAS BEEN DIAGNOSED PREVIOUSLY WITH A MENTAL DISABILITY BUT HAS NO ISSUES TODAY. DEFENDANT WAIVES FORMAL READING OF THE INFORMATION. COURT CANVASS THE DEFENDANT, OUTLINES THE GUILTY PLEA AGREEMENT FOR THE RECORD AND THE MAXIMUM POSSIBLE SENTENCE. DEFENDANT SO ACKNOWLEDGES, PLEADS GUILTY AND WAIVES HIS CONSTITUTIONAL RIGHTS TO TRIAL AND APPEAL RIGHTS. THE STATE SETS FORTH THE ELEMENTS ON THE RECORD. DEFENDANT ADDRESSES THE COURT AND ADMITS THE ALLEGATIONS. DEFENDANT DENIES ANY REQUEST FOR CONTINUANCE. COURT FINDS THE GUILTY PLEA AGREEMENT TO BE GIVEN FREELY AND ACCEPTS SAID PLEA. COURT SETS SENTENCING ON JUNE 25 2021

04/29/2021 GUILTY PLEA AGREEMENT

05/03/2021 TRANSCRIPT OF PROCEEDINGS: CALENDAR CALL (4/9/21)

06/07/2021 PRESENTENCE INVESTIGATION REPORT

06/09/2021 TRANSCRIPT OF: CHANGE OF PLEA/ARRAIGNMENT(4/29/21)

06/09/2021 TRANSCRIPT OF: MOTIONS(4/15/21)

06/25/2021 COURT MINUTES-6/25/21 - JUDGE: KIMBERLY A WANKER
CLERK: TERRI PEMBERTON
REPORTER: SUZIE ROWE
BAILIFF: JAMELE TAYLOR
APP:MIKE ALLMON FOR THE STATE
DANIEL MARTINEZ IS PRESENT WITH THE DEFENDANT WHO IS IN CUSTODY

COURT CALLS THE MATTER AS A SENTENCING HEARING. DEFENSE ADDRESSES AND INFORMS THAT THE DEFENDANT ASKS FOR A CONTINUANCE FOR HIS SENTENCING AS THE DEFENDANT HAS MORE QUESTIONS. THE STATE WAS NOT AWARE THAT THE DEFENDANT WOULD BE ASKING FOR A CONTINUANCE AND INFORMS THAT THERE ARE 2 WITNESSES PRESENT. COURT FEELS THAT IT WOULD BE UNFAIR FOR THE WITNESSES TO COME BACK. COURT MOVES FORWARD WITH WITNESS TESTIMONY. DEFENSE STATES THAT ONE VICTIM IS THE BROTHER OF THE WITNESS WHICH HE DOES NOT OBJECT TO. THE SECOND "WITNESS" IS A "REBUTTAL WITNESS" AND DOESNT FEEL IT SHOULD BE ALLOWED. DEFENSE ASKS FOR A SIDE BAR. COURT BACK IN SESSION. COURT TRAILS THE MATTER. COURT RECALLS THE MATTER. DEFENSE REQUESTS TO CONTINUE THE SENTENCING BUT TO ALLOW THE STATEMENT FROM THE DEFENDANT, THE STATES SPEAKERS AND REBUTTAL WITNESS. COURT QUESTIONS THE DEFENDANT FOR HIS REQUEST FOR CONTINUANCE. DEFENDANT ADDRESSES AND STATES THAT THE INMATE HE WAS HOUSED WITH AND DOES NOT GET ALONG WITH WOULD BE TRANSPORTED WITH HIM AND HE DOES NOT WISH FOR THAT TO HAPPEN. COURT REVIEWS THE 2 OPTION'S OF THE SENTENCING AND INFORMS THE DEFENDANT THAT HE WOULD NOT BE TRANSPORTED WITH SAID DEFENDANT. COURT MOVES FORWARD WITH SENTENCING. DEFENSE STATES THE CTS IS INCORRECT IN THE PSI AND SHOULD BE 447 DAYS CTS. NO OBJECTION FROM THE STATE. COURT OUTLINES CASE HISTORY AND REVIEWS THE NEGOTIATIONS. THE STATE IS FREE TO ARGUE. COURT ADJUDICATES THE DEFENDANT GUILTY. DEFENSE REVIEWS THE FACTS OF THE CASE IN DETAIL. DEFENSE ARGUES FOR 10 TO 25 YEARS WITH PAROLE ELIGIBILITY AFTER 10 YEARS. THE STATE CALLS THE FIRST WITNESS CHRISTOPHER PIPER. CLERK SWEARS IN THE WITNESS CHRISTOPHER PIPER. THE STATE EXAMINES THE WITNESS IN REGARD TO HIS RELATIONSHIP WITH THE DEFENDANT AND VICTIM. THE WITNESS PROVIDES HIS TESTIMONY. DEFENSE OBJECTS TO THE TESTIMONY AS IT DOES NOT PERTAIN TO HOW THE INCIDENT HAS AFFECTED HIM. THE STATE ARGUES AND RECITES A SUPREME COURT CASE. COURT OVER RULES THE OBJECTION. THE WITNESS ASKS FOR THE MAXIMUM POSSIBLE SENTENCE. THE STATE PASSES THE WITNESS. DEFENSE HAS NO QUESTIONS FOR THE WITNESS. COURT QUESTIONS THE WITNESS. THE WITNESS IS RELEASED. COURT TRAILS THE MATTER. COURT RECALLS THE MATTER. THE STATE PROVIDES PICTURES AND VIDEO OF THE NIGHT OF THE INCIDENT. THE STATE ARGUES FOR LIFE IN PRISON WITH THE POSSIBILITY OF PAROLE IN 10 YEARS. DEFENSE REVIEWS THE CONFESSION IN DETAIL AND ARGUES FOR 10/25 YEARS. DEFENDANT APOLOGIZES TO THE WITNESSES, KNOWS HE FAILED THEM AND TAKES RESPONSIBILITY. COURT REVIEWS THE INCIDENT AND RESPONSE OF THE SHERIFF'S OFFICE IN DETAIL. COURT SENTENCES THE DEFENDANT TO LIFE WITH THE POSSIBILITY OF PAROLE IN 10 YEARS. \$25 \$3 AND \$150 447 DAYS CTS

06/25/2021 JUDGMENT OF CONVICTION(FELONY/PERSON)

07/06/2021 NOTICE OF APPEAL (SUBMITTED BY RONNI N. BOSKOVICH, ESQ., OBO DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT, MARCO ANTONIO TORRES)

07/06/2021 CASE APPEAL STATEMENT (SUBMITTED BY RONNI N. BOSKOVICH, ESQ., OBO DANIEL E. MARTINEZ, ESQ., FOR DEFENDANT, MARCO ANTONIO TORRES)

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

CERTIFICATION OF COPY

**STATE OF NEVADA
COUNTY OF NYE**

SANDRA L. MERLINO, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the Fifth Judicial District Court, does hereby certify that the foregoing is a true, full and correct copy of the original documents in the action entitled:

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR20-0092

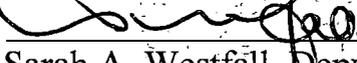
MARCO ANTONIO TORRES,

Defendant.

now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Fifth Judicial District Court at my office, Pahrump, Nevada, the 13th day of July, 2021.

SANDRA L. MERLINO, NYE COUNTY CLERK

By: 
Sarah A. Westfall, Deputy Clerk

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

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Tuesday, July 13th, 2021

SENT VIA E-FILE

Supreme Court of Nevada – Clerk’s Office
201 South Carson Street, #201
Carson City, Nevada 89701-4702

RE: THE STATE OF NEVADA, Plaintiff,
vs.
MARCO ANTONIO TORRES, Defendant.
District Court Case No. CR20-0092

Dear Clerk of Court:

I am submitting an appeal packet for an appeal received and filed July 6th, 2021, in the above referenced matter. As this is a criminal matter, no fees were collected.

Please feel free to contact me should you have any questions with regard to the foregoing.

Sincerely,

**SANDRA L. MERLINO
NYE COUNTY CLERK**

By 
Sarah A. Westfall
Deputy Clerk, Pahrump

cc: Daniel E. Martinez, Esq.
Nye County District Attorney
Honorable Kimberly A. Wanker