

No. 83346

IN THE NEVADA SUPREME COURT

Electronically Filed
Mar 07 2022 10:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Eric Abasta,

Appellant,

v.

State of Nevada,

Respondent.

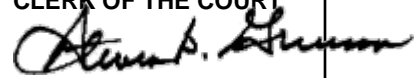
Direct Appeal from a Judgment of Conviction (Plea of Guilty)
Eighth Judicial District Court
Honorable Michael Villani, District Court Judge; Honorable
David Barker, District Court Judge; Honorable Cristina Silva,
District Court Judge, District Court Case No. C-20-349045-1

Appellant's Appendix (Volume 3 of 3)

JoNell Thomas
Special Public Defender
Nevada State Bar No. 4771
*Melinda Simpkins
Chief Deputy Special Public Defender
Nevada State Bar No. 7911
330 S. 3rd St., Suite 800
Las Vegas, Nevada 89155
(702) 455-6265
(702) 455-6273 (fax)
Melinda.Simpkins@ClarkCountyNV.gov
*Counsel for Eric Abasta

<u>VOLUME</u>	<u>PLEADING</u>	<u>PGS</u>
3	Amended Indictment (3/15/2021).....	460-69
3	Criminal Court Minutes (unfiled).....	580-606
3	Guilty Plea Agreement (5/12/2021)	526-36
2	Indictment (6/26/2020)	346-57
3	Judgment of Conviction (Plea of Guilty) (7/9/2021)	574-76
3	Motion to Dismiss Due to Speedy Trial Violations (3/12/2021)	443-56
3	Notice of Appeal (8/6/2021)	577-79
2	Opposition to State's Motion to Amend Indictment (2/17/2021)	421-24
3	Order Granting State's Motion to Amend Indictment (3/15/2021)	457-59
3	Second Amended Indictment (5/11/2021)	499-502
3	Settlement Conference Acknowledgement (4/6/21).....	495-98
2	State's Motion to Amend Indictment (2/10/2021).....	404-20
3	State's Opposition to Defendant's Motion to Dismiss Due To Speedy Trial Violations (3/19/2021).....	470-79
1	Transcript of Hearing Grand Jury Vol 1 June 18, 2020 (6/30/2020)	1-204
2	Transcript of Hearing Grand Jury Vol 2 June 25, 2020 (7/12/2020)	205-345
2	Transcript of Hearing June 26, 2020 (9/3/2021).....	358-66
2	Transcript of Hearing July 2, 2020 (8/24/2021)	367-76
2	Transcript of Hearing July 7, 2020 (9/7/2021)	377-82

2	Transcript of Hearing July 16, 2020 (9/7/2021)	383-86
2	Transcript of Hearing August 25, 2020 (9/7/2021)	387-93
2	Transcript of Hearing November 25, 2020 (9/3/21)	394-98
2	Transcript of Hearing January 13, 2021 (9/24/21)	399-400
2	Transcript of Hearing January 27, 2021 (9/24/2021)	401-03
2	Transcript of Hearing February 17, 2021 (9/27/21)	425-28
2	Transcript of Hearing February 23, 2021 (3/16/21)	429-36
2	Transcript of Hearing February 23, 2021 (second transcript) (9/7/2021)	437-42
3	Transcript of Hearing March 23, 2021 (9/7/2021)	480-87
3	Transcript of Hearing March 24, 2021 (9/3/2021)	488-94
3	Transcript of Hearing May 11, 2021 (9/7/2021)	503-25
3	Transcript of Hearing June 25, 2021 (9/7/2021)	537-73



MDSM
JONELL THOMAS
SPECIAL PUBLIC DEFENDER
Nevada Bar #4771
ROBERT ARROYO
Chief Deputy Special Public Defender
Nevada Bar #11512
TEGAN MACHNICH
Chief Deputy Special Public Defender
Nevada Bar #11642
330 South Third Street, Suite #800
Las Vegas, Nevada 89155
(702) 455-6265
FAX: (702) 455-6273
robert.arroyo@clarkcountynv.gov
tegan.machnich@clarkcountynv.gov
Attorneys for Abasta

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-20-349045-1
)	
v.)	DEPT. NO. 17
)	
ERIC ABASTA, ID #5010484)	
)	
Defendant,)	

MOTION TO DISMISS DUE TO SPEEDY TRIAL VIOLATION

COMES NOW, the defendant, ERC ABASTA, by and through his attorneys of record, JONELL THOMAS, Special Public Defender, ROBERT ARROYO, Chief Deputy Special Public Defender and TEGAN C. MACHNICH, Chief Deputy Special Public Defender, and hereby moves this Honorable Court to dismiss this case due to speedy trial violation.

This Motion is based upon the attached points and authorities, the papers and pleadings on file herein, and any oral argument at the time set for hearing on the matter.

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

TO: STEVEN WOLFSON, District Attorney, Attorney for Plaintiff

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above and foregoing Motion will be heard before the above entitled Court on the ____ day of _____, 2020, at _____.

8

9

10
11
12
13

4
5
6
7

18
19
20
21
22
23
24

20

1 The State filed a Motion to Amend on February 10, 2020 – after the case had been set
2 for trial and continued four times. In that Motion, the State sought to amend the Murder with
3 Use of a Deadly Weapon charge to include the theory of liability of Felony Murder.
4 Specifically, a subsection (2) was added that stated the following: “committed during the
5 perpetration or attempted perpetration of a robbery.”
6

7 Thirteen days after the Motion to Amend was filed, on February 23, 2020, Co-Defendant
8 Mason Arney entered his plea contingent on his agreement to testify against Defendant Abasta
9 (upon information and belief, and based upon conversations between Counsel and the State).
10 For the first time, in the Amended Indictment attached to Co-Defendant Mason Arney’s Guilty
11 Plea Agreement, Mr. Arney acknowledged involvement in an alleged robbery of the decedent.
12 Prior to this time, the Indictment had included only Mr. Abasta in relation to the decedent and
13 surrounding circumstances.
14
15

16 **ARGUMENT**

17 **This Court Should Dismiss Mr. Abasta’s Current Charges Pursuant to NRS 178.556(1)**
18 **Because the State Has Failed to Bring Mr. Abasta to Trial Within 60 Days and No Good**
19 **Cause Exists for the Delay.**

20 This Court should dismiss this case because Mr. Abasta was denied his statutory right
21 to a speedy trial when he was forced to continue his trial beyond 60 days from the date of his
22 arraignment due to the State’s failure to timely produce discovery and when the Court
23 continued his case multiple times due to the lack of courtrooms due to the self-imposed COVID
24 restrictions. Nevada law provides as follows: If no indictment is found or information filed
25 against a person within 15 days after he has been held to answer for a public offense which
26 must be prosecuted by indictment or information, the Court may dismiss the complaint. If a
27 defendant whose trial has not been postponed upon his application is not brought to trial within
28

1 60 days after his arraignment on the indictment or information, the district court may dismiss
2 the indictment or information. NRS 178.556(1) (emphasis added). The sixty-day time frame
3 is mandatory when there is no good cause for delay. *Byford v. State*, 116 Nev. at 230, 994 P.2d
4 at 710, citing *Sessions v. State*, 111 Nev. 328, 332 n.4, 890 p.2d 792 n.4 (1995). The burden is
5 on the prosecution to show good cause for delay. *Huebner v. State*, 103 Nev. 29, 31, 731 P.2d
6 1330, 1332 (1987). There is no presumption that good cause exists. *In re Morris*, 78 Nev. 123,
7 369 P.2d 456 (1962), cited, *In re Hansen*, 79 Nev. 492 at 495, 387 P.2d 659 (1963).
8

9 This case should be dismissed because Mr. Abasta should not have been forced into a
10 “Hobson’s choice” of choosing between his right to a Speedy Trial and right to a fair trial and
11 effective assistance of counsel. See *Simmons v. United States*, 390 U.S. 377, 394 (1968). Eric
12 was forced to announce he was not ready to proceed with trial due to the late disclosure of
13 evidence by the State. Late disclosure of evidence within the State’s control for months before
14 disclosure should not be considered good cause. Therefore, this Court should dismiss the
15 current charges pending against Mr. Abasta.
16
17

18 CONCLUSION

19 Mr. Abasta respectfully requests that this Court dismiss the case due to the State
20 violating his right to a trial within 60 days.
21

22 Dated: March 12, 2021
23

24 SUBMITTED BY:

25 /s/ *ROBERT ARROYO*

26 _____
27 ROBERT ARROYO
28 Attorney for Abasta

CERTIFICATE OF SERVICE

I hereby certify that service of the above Motion To Dismiss Due To Speedy Trial Violation, was made on March 12, 2021, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

/s/ Elizabeth (Lisa) Araiza

Legal Secretary
Special Public Defender

EXHIBIT A

Felony/Gross Misdemeanor

COURT MINUTES

June 26, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

June 26, 2020 11:00 AM Grand Jury Indictment

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Michael Dickerson Attorney for Plaintiff
State of Nevada Plaintiff

JOURNAL ENTRIES

Kenneth Dickinson, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 19CGJ051A to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-20-349045-1, Department III.

State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, NO BAIL; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

Upon Court's inquiry, the State advised there are no material witness warrants to quash. COURT FURTHER ORDERED, Exhibits 1-24 and 26-35 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 20F02017B DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (CUSTODY)

07/02/20 3:30 P.M. INITIAL ARRAIGNMENT (DEPT III)

Felony/Gross Misdemeanor

COURT MINUTES

July 02, 2020

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

July 02, 2020 03:30 PM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Ray, Stacey

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

INDICTMENT WARRANT RETURN... INITIAL ARRAIGNMENT...

APPEARANCES CONTINUED: Defendant ABASTA present in custody represented by Special Public Defender Robert Arroyo; Defendant MASON ARNEY present in custody represented by James Gallo Esq.; Defendant JAMES ARNEY present out of custody represented by Daniel Lippmann Esq.

Upon Court's inquiry, Mr. Arroyo stated the Special Public Defender's Office can confirm as counsel of record on behalf of Defendant ABASTA. Mr. Gallo informed the Court he did not have a chance to speak with Defendant MASON ARNEY, pointing out he went over to the jail twice and the Defendant was in transit each time. Upon Court's inquiry, Defendant JAMES ARNEY stated his first name was WAYLON, not JAMES. COURT SO NOTED. Upon Court's further inquiry, Defendant ABASTA stated Mr. Arroyo went over the charges with him, however he is confused as to what charges relate to him. DEFENDANT JAMES WAYLON ARNEY ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for status check. Mr. Lippmann requested a status check in two weeks. Upon Court's inquiry, Ms. Cannizzaro indicated she believed the matter is not going before the Death Review Committee with regards to Defendant ABASTA. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. COURT ORDERED, arraignment CONTINUED with regards to Defendants ABASTA and MASON ARNEY; status check SET with regards to Defendant JAMES WAYLON ARNEY. COURT FURTHER ORDERED, Defendant JAMES WAYLON ARNEY's presence can be waived at the next hearing, adding since this is a homicide case, the matter will need to be reassigned.

CUSTODY

7/7/2020 3:30 P.M. ARRAIGNMENT CONTINUED

Felony/Gross Misdemeanor

COURT MINUTES

July 07, 2020

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

July 07, 2020 03:30 PM Arraignment Continued

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Ray, Stacey

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

APPEARANCES CONTINUED: Defendant ABASTA present in custody represented by Special Public Defender Robert Arroyo; Defendant MASON ARNEY present in custody represented by James Gallo Esq.; Defendant JAMES WAYLON ARNEY present represented by Daniel Lippmann Esq.

DEFENDANT ABASTA ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. DEFENDANT MASON ARNEY ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Ms. Lacher indicated she does not know if the matter is going before the Death Review Committee with regards to Defendant ABASTA. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 17.

CUSTODY

7/16/2020 10:15 A.M. STATUS CHECK: TRIAL SETTING (DEPT 17)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 16, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

July 16, 2020**10:15 AM****Status Check: Trial Setting****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Reid, Shannon**RECORDER:** Georgilas, Cynthia**REPORTER:****PARTIES PRESENT:****Eric Abasta, Jr.****Defendant****Robert Arroyo****Attorney for Defendant****Sarah Overly****Attorney for Plaintiff****State of Nevada****Plaintiff****JOURNAL ENTRIES**

James Gallo, ESQ present on behalf of Co Defendant Mason Arney. Daniel Lippman, ESQ. present on behalf of Co Defendant James Arney.

Mr. Arroyo advised Defendants had invoked the 60-Day Rule. COURT ORDERED, matter SET for trial. COURT FURTHER ORDERED, Counsel has 21 days from the filing of the Grand Jury Indictment transcript to file a Writ.

CUSTODY**08/25/2020 8:30 AM CALENDAR CALL****09/08/2020 9:00 AM JURY TRIAL**

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 25, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

August 25, 2020 10:15 AM Calendar Call

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Reid, Shannon

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Daniel Lippman, ESQ. present on behalf of Co Defendant James Arney. James Gallo, ESQ. present on behalf of Co Defendant Mason Arney.

Court noted no trials were going forward due to COVID-19 pandemic. Upon Court's inquiry, Mr. Arroyo advised Defendants had previously invoked the 60-Day Rule. COURT FINDS good cause due to the Court's schedule and nature of this case to continue the trial beyond 60 days.

CUSTODY

11/17/2020 10:15 AM CALENDAR CALL

11/30/2020 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 25, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

November 25, 2020 02:00 PM Central Calendar Call

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Esparza, Kerry

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

JOURNAL ENTRIES

Co-Defendant Mason Arney present with counsel James Gallo, Esq. Parties present via Bluejeans.

State noted a file review was done with Mr. Arroyo and additional discovery was requested from the investigator some of which has been turned over. Court noted due to current Covid-19 protocols trials are unable to proceed and ORDERED, trial date VACATED and RESET.

CUSTODY

01/13/21 2:00 PM CENTRAL CALENDAR CALL (LLA)
01/19/21 9:00 AM JURY TRIAL (DEPT 17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

January 13, 2021 2:00 PM Central Calendar Call

HEARD BY: Jones, Tierra **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK:
Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Abasta, Eric, Jr.	Defendant
	Cannizzaro, Nicole J.	Attorney
	Machnich, Tegan	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Ms. Cannizzaro present via video, on behalf of the State. Ms. Machnich present via video, on behalf of deft.

Court noted the Court cannot currently do Jury trials at this time, due to orders from the Governor. COURT ORDERED, trial date VACATED and matter SET for Central Trial Readiness, on the date given, as to both defts.

CUSTODY ABASTA / ARNEY

01/27/21 11:30 A.M. CENTRAL TRIAL READINESS ABASTA / ARNEY

PRINT DATE: 01/26/2021

Page 1 of 2

Minutes Date: January 13, 2021

000455

Felony/Gross Misdemeanor**COURT MINUTES****January 27, 2021**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

January 27, 2021 11:30 AM Central Trial Readiness Conference

HEARD BY: Jones, Tierra **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Ortega, Natalie

RECORDER: Boyd, Victoria

REPORTER:

PARTIES PRESENT:

Danielle K. Pieper	Attorney for Plaintiff
Eric Abasta, Jr.	Defendant
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Special Public Defendant Robert Arroyo present with Defendant Eric Abasta, Jr. (C349045-1)

James C. Gallo, Esq., present with Defendant Mason Arney (C349045-2)

COURT NOTED this case could be accommodated on the February 22, 2021 as number 2 on the stack. Counsel announced trial ready. Colloquy regarding filing a motion to exclude and resolving the case. COURT ORDERED, trial SET.

CUSTODY - ABASTA

CUSTODY - ARNEY

02/17/21 2:00 PM CENTRAL TRIAL CALENDAR CALL (ABASTA and ARNEY)

02/22/21 9:00 AM CENTRAL TRIAL JURY TRIAL (ABASTA and ARNEY)

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIC ABASTA, aka Eric Abasta, Jr.,
#5010484

Defendant.

CASE NO: C-20-349045-1

DEPT NO: XVII

ORDER GRANTING STATE'S MOTION TO AMEND INDICTMENT

DATE OF HEARING: February 23, 2021
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 23rd day of February, 2021, the Defendant being present, represented by ROBERT ARROYO, Chief Deputy Special Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHAEL R. DICKERSON, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and took the matter under advisement.

Thereafter on the 1st day of March, 2021, after considering all pleadings and arguments, the Court renders its decision as follows: The State seeks to add an additional theory of liability felony murder for Count five murder with use of a deadly weapon of the Indictment. Under NRS 173.095(1), the court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged

1 and if substantial rights of the defendant are not prejudiced. Moreover, felony murder does
2 not amount to the charging of additional or different offenses. See State v. Eighth Judicial
3 Dist. Court, ex rel. County of Clark, 116 Nev. 374 378-79, 997 P.2d 126 129-130 (2000).
4 Here, the State request to amend their indictment merely adds an alternate liability theory,
5 felony murder. Also, the State placed Defendant on notice regarding felony murder during
6 grand jury. See GJT Vol. 2, at 40-53. Therefore, THIS COURT FINDS the amendment to
7 count five does not charge an additional offense, and the addition of felony murder theory
8 does not prejudice Defendant s substantial rights.

9 Therefore, COURT ORDERED, State's Motion to Amend Indictment, shall be, and it
10 is GRANTED.

11 Dated this 15th day of March, 2021

12 

13

DISTRICT JUDGE

14 STEVEN B. WOLFSON
15 Clark County District Attorney
Nevada Bar #001565

C2A CFD 300F 52B3
Michael Villani
District Court Judge

16
17 BY /s/ MICHAEL R. DICKERSON
18 MICHAEL R. DICKERSON
19 Chief Deputy District Attorney
20 Nevada Bar #013476
21
22
23
24
25
26
27

28 20F06387A/lm/GU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-20-349045-1

7 vs

DEPT. NO. Department 17

8 Eric Abasta, Jr.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/15/2021

15 Robert Arroyo

rarroyo@clarkcountynv.gov

16 Elizabeth Araiza

elizabeth.araza@clarkcountynv.gov

17 Office of the Special Public Defender

SpecialPDdocs@clarkcountynv.gov

18 District Attorney

motions@clarkcountynyda.com

19 James Gallo

james@gallolawoffice.com

20 Daniel Lippmann

daniel@lipplaw.vegas

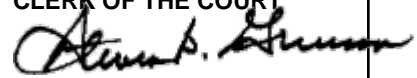
21 Tergan Machnich

Tegan.Machnich@ClarkCountyNV.gov

22 Dept 17 Law Clerk

dept17lc@clarkcountycourts.us

23
24
25
26
27
28
000459



AIND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIC ABASTA,
aka Eric Abasta, Jr., #5010484
MASON ARNEY, #8412715
JAMES WAYLON ARNEY,
aka Waylan Arney, Jr., #5098193

Defendant(s).

CASE NO: C-20-349045-1

DEPT NO: XVII

**AMENDED
INDICTMENT**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant(s) above named, ERIC ABASTA, aka Eric Abasta, Jr., MASON ARNEY, and JAMES WAYLON ARNEY, aka Waylan Arney, Jr., accused by the Clark County Grand Jury of the crime(s) of **ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460); CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350 (1)(d)(3) - NOC 51459); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF**

1 **A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138);**
2 **GRAND LARCENY AUTO (Category B Felony - NRS 205.228.3 - NOC 56014);**
3 **ATTEMPT ROBBERY (Category B Felony - NRS 200.380, 193.330 - NOC 50144);**
4 **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony -**
5 **NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031) and BATTERY WITH USE OF A**
6 **DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B**
7 **Felony - NRS 200.481 - NOC 50226),** committed at and within the County of Clark, State of
8 Nevada, on or between January 5, 2020, and March 24, 2020, as follows:

9 COUNT 1 - ASSAULT WITH A DEADLY WEAPON

10 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,
11 willfully, unlawfully, feloniously and intentionally place another person in reasonable
12 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
13 physical force against another person, to wit: ISIAH WASHINGTON, with use of a deadly
14 weapon, to wit: a firearm, by pointing an unknown make and/or model firearm at the said
15 ISIAH WASHINGTON.

16 COUNT 2 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

17 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,
18 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody
19 or control, a firearm, to wit: an unknown make and/or model firearm, the Defendant being a
20 convicted felon, having in 2016, been convicted of Battery with Substantial Bodily Harm, in
21 Case No. C311831-1, and/or, having in 2016, been convicted of Attempt Carry Conceal
22 Weapon, in case No. C318316-1, in the Eighth Judicial District Court, Clark County, a felony
23 under the laws of the State of Nevada.

24 COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

25 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020, then
26 and there willfully, unlawfully and feloniously carry concealed upon his person, a firearm or
27 other deadly weapon, to wit: an unknown make and/or model firearm.

28 //

1 COUNT 4 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,
3 willfully, unlawfully, and feloniously attempt to take personal property, to wit: a cell phone,
4 from the person of KEVIN FARNSWORTH, or in his presence, without the consent and
5 against the will of KEVIN FARNSWORTH, by means of force or violence or fear of injury,
6 immediate or future, to his person, the person of a member of his family, or of anyone in his
7 company at the time of the robbery, defendant using force or fear to attempt to obtain or retain
8 possession of the property, attempt to prevent or overcome resistance to the taking of the
9 property, and/or attempt to facilitate escape, by approaching the said KEVIN FARNSWORTH
10 and shooting at ot into the body of the said KEVINS FARNSWORTH while attempting to
11 take his property, with use of a deadly weapon, to wit: a firearm.

12 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

13 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,
14 willfully, unlawfully, feloniously and with malice aforethought, kill KEVIN FARNSWORTH,
15 a human being, with use of a deadly weapon, to wit: a firearm, by shooting at or into the body
16 of the said KEVIN FARNSWORTH, the said killing having been (1) willful, deliberate and
17 premeditated, and/or (2) committed during the perpetration or attempted perpetration of a
18 robbery.

19 COUNT 6 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

20 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,
21 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody
22 or control, a firearm, to wit: a firearm, the Defendant being a convicted felon, having in 2016,
23 been convicted of Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm,
24 in Case No. C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon
25 in Case No. C318316, in the Eighth Judicial District Court, Clark County, felonies under the
26 laws of the State of Nevada.

27 //

28 //

1 COUNT 7 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,
3 aka Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously
4 conspire with each other and J.G. to commit a robbery, by the Defendants and J.G. committing
5 the acts as set forth in Counts 8 and 9, said acts being incorporated by this reference as though
6 fully set forth herein.

7 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

8 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,
9 aka Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously
10 take personal property, to wit: U.S. Currency, a telephone, identification and a Mazda bearing
11 Nevada License No. 890ZFW, from the person of TRISTAN HIMLIN, or in his presence,
12 without the consent and against the will of TRISTAN HIMLIN, by means of force or violence
13 or fear of injury, immediate or future, to his person, the person of a member of his family, or
14 of anyone in his company at the time of the robbery, defendant using force or fear to obtain or
15 retain possession of the property, to prevent or overcome resistance to the taking of the
16 property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the
17 Defendant(s) being criminally liable under one or more of the following principles of criminal
18 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
19 commission of this crime, with the intent that this crime be committed, by counseling,
20 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
21 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
22 crime be committed, Defendants and/or J.G. aiding or abetting and/or conspiring by
23 Defendants and/or J.G. acting in concert throughout.

24 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

25 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY, aka
26 Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously
27 take personal property, to wit: U.S. Currency, a telephone, identification and a Mazda bearing
28 Nevada License No. 890ZFW, from the person of KAREN SALAZAR, or in her presence,

1 without the consent and against the will of KAREN SALAZAR, by means of force or violence
2 or fear of injury, immediate or future, to her person, the person of a member of her family, or
3 of anyone in her company at the time of the robbery, defendant using force or fear to obtain or
4 retain possession of the property, to prevent or overcome resistance to the taking of the
5 property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the
6 Defendant(s) being criminally liable under one or more of the following principles of criminal
7 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
8 commission of this crime, with the intent that this crime be committed, by counseling,
9 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
10 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
11 crime be committed, Defendants and/or J.G. aiding or abetting and/or conspiring by
12 Defendants and/or J.G. acting in concert throughout.

13 COUNT 10 - ASSAULT WITH A DEADLY WEAPON

14 Defendant JAMES WAYLON ARNEY, aka Waylan Arney, Jr. did on or about
15 January 26, 2020, willfully, unlawfully, feloniously and intentionally place another person in
16 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
17 attempt to use physical force against another person, to wit: TRISTAN HIMLIN, with use of
18 a deadly weapon, to wit: a firearm, by pointing said firearm at the said TRISTAN HIMLIN.

19 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

20 Defendant JAMES WAYLON ARNEY, aka Waylan Arney, Jr. did on or about January
21 26, 2020, willfully unlawfully, feloniously and intentionally place another person in
22 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
23 attempt to use physical force against another person, to wit: KAREN SALAZAR, with use of
24 a deadly weapon, to wit: a firearm, by pointing said firearm at the said KAREN SALAZAR.

25 COUNT 12 - GRAND LARCENY AUTO

26 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,
27 aka Waylan Arney, Jr. did on or about January 26, 2020, then and there willfully, unlawfully,
28 feloniously, and intentionally, with intent to deprive the owner permanently thereof, steal, take

1 and carry away, drive away or otherwise remove a motor vehicle owned by another person,
2 having a value of \$3,500.00, or greater, in the possession of TRISTAN HIMILIN, to wit: a
3 2014 Mazda 6, bearing Nevada License No. 890ZFW; the Defendant(s) being criminally liable
4 under one or more of the following principles of criminal liability, to wit: (1) by directly
5 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
6 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
7 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
8 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
9 and/or J.G. aiding or abetting and/or conspiring by Defendants and/or J.G. acting in concert
10 throughout.

11 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

12 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,
13 willfully, unlawfully, feloniously and intentionally place another person in reasonable
14 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
15 physical force against another person, to wit: PASQUAL ABASTA, with use of a deadly
16 weapon, to wit: a firearm, by brandishing said firearm in the said PASQUAL ABASTA'S
17 presence while cocking it and walking towards him.

18 COUNT 14 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

19 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,
20 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody
21 or control, a firearm, to wit: a firearm, the Defendant being a convicted felon, having in 2016,
22 been convicted of Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm,
23 in Case No. C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon
24 in Case No. C318316, in the Eighth Judicial District Court, Clark County, felonies under the
25 laws of the State of Nevada.

26 COUNT 15 - CONSPIRACY TO COMMIT ROBBERY

27 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,
28 willfully, unlawfully, and feloniously conspire with J.G. to commit a robbery, by the

1 Defendant and/or J.G. committing the acts as set forth in Count 16, said acts being incorporated
2 by this reference as though fully set forth herein.

3 COUNT 16 - ATTEMPT ROBBERY

4 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,
5 willfully, unlawfully, and feloniously attempt to take personal property, to wit: a golf cart
6 and/or cellular telephone, from the person of PAVEL ALLING-PENA, or in his presence,
7 without the consent and against the will of PAVEL ALLING-PENA, by means of force or
8 violence or fear of injury, immediate or future, to his person, the person of a member of his
9 family, or of anyone in his company at the time of the robbery, defendant using force or fear
10 to attempt to obtain or retain possession of the property, attempt to prevent or overcome
11 resistance to the taking of the property, and/or attempt to facilitate escape, by demanding the
12 keys to said golf cart and/or attempting to take said cellular telephone from PAVEL ALLING-
13 PENA while striking him; the Defendant being criminally liable under one or more of the
14 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
15 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
16 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
17 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
18 crime, with the intent that this crime be committed, Defendant and/or J.G. aiding or abetting
19 and/or conspiring by Defendant and/or J.G. acting in concert throughout..

20 COUNT 17 - ASSAULT WITH A DEADLY WEAPON

21 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,
22 willfully, unlawfully, feloniously and intentionally place another person in reasonable
23 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
24 physical force against another person, to wit: PAVEL ALLING-PENA, with use of a deadly
25 weapon, to wit: a vehicle, by driving said vehicle at the said PAVEL ALLING-PENA,
26 attempting to strike him.

27 //

28 //

1 COUNT 18 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or
3 about March 23, 2020, willfully, unlawfully, and feloniously conspire with each other to
4 commit a robbery, by the Defendants committing the acts as set forth in Count 19, said acts
5 being incorporated by this reference as though fully set forth herein.

6 COUNT 19 - ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or
8 about March 23, 2020, willfully, unlawfully, and feloniously take personal property, to wit: a
9 cellular telephone, from the person of ERNESTO SANTANA-ROSAS, or in his presence,
10 without the consent and against the will of ERNESTO SANTANA-ROSAS, by means of force
11 or violence or fear of injury, immediate or future, to his person, the person of a member of his
12 family, or of anyone in his company at the time of the robbery, Defendants using force or fear
13 to obtain or retain possession of the property, to prevent or overcome resistance to the taking
14 of the property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the
15 Defendant(s) being criminally liable under one or more of the following principles of criminal
16 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
17 commission of this crime, with the intent that this crime be committed, by counseling,
18 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
19 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
20 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in
21 concert throughout.

22 COUNT 20 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

23 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or about
24 March 23, 2020, willfully, unlawfully, feloniously and with malice aforethought attempt to
25 kill ERNESTO SANTANA-ROSAS, a human being, with use of a deadly weapon, to wit: a
26 firearm, by shooting at or into the body of the said ERNESTO SANTANA-ROSAS; the
27 Defendant(s) being criminally liable under one or more of the following principles of criminal
28 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the

1 commission of this crime, with the intent that this crime be committed, by counseling,
2 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
3 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
4 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in
5 concert throughout.

6 COUNT 21 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
7 SUBSTANTIAL BODILY HARM

8 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or about
9 March 23, 2020, willfully, unlawfully, and feloniously use force or violence upon the person
10 of another, to wit: ERNESTO SANTANA-ROSAS, with use of a deadly weapon, to wit: a
11 firearm, by shooting at or into the body of the said ERNESTO SANTANA-ROSAS, resulting
12 in substantial bodily harm to ERNESTO SANTANA-ROSAS, the Defendant(s) being
13 criminally liable under one or more of the following principles of criminal liability, to wit: (1)
14 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
15 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
16 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)
17 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
18 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

19 COUNT 22 - ASSAULT WITH A DEADLY WEAPON

20 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or
21 about March 24, 2020, willfully, unlawfully, feloniously and intentionally place another
22 person in reasonable apprehension of immediate bodily harm and/or did willfully and
23 unlawfully attempt to use physical force against another person, to wit: MATTHEW
24 WARREN, with use of a deadly weapon, to wit: a firearm, by pointing said firearm at the said
25 MATTHEW WARREN; the Defendant(s) being criminally liable under one or more of the
26 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
27 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
28 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise

1 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
2 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or
3 conspiring by Defendants acting in concert throughout.

4 COUNT 23 - ASSAULT WITH A DEADLY WEAPON

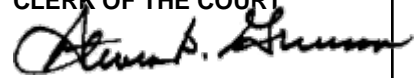
5 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or
6 about March 24, 2020, willfully, unlawfully, feloniously and intentionally place another
7 person in reasonable apprehension of immediate bodily harm and/or did willfully and
8 unlawfully attempt to use physical force against another person, to wit: KATELYN MENDES,
9 with use of a deadly weapon, to wit: a firearm, by pointing said firearm at the said KATELYN
10 MENDES; the Defendant(s) being criminally liable under one or more of the following
11 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
12 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
13 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
14 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
15 intent that this crime be committed, Defendants aiding or abetting and/or conspiring by
16 Defendants acting in concert throughout.

17 DATED this 9th day of March, 2021.

18 STEVEN B. WOLFSON
19 Clark County District Attorney
20 Nevada Bar #001565

21 BY /s/ MICHAEL R. DICKERSON
22 MICHAEL R. DICKERSON
23 Chief Deputy District Attorney
24 Nevada Bar #013476

25 19CGJ051A-C/C348213(20F06387A-B)/20F02017A-
26 B/20F06403X/C348152(20F07884X)/20F07202X/ed/lm/GU
27 LVMPD EV#200300114309; 200300108165; 200100022920
28 CCPP EV# 20010124150
HPD EV# 2000988
(TK3)



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIC ABASTA, aka
Eric Abasta, Jr., #5010484

Defendant.

CASE NO: C-20-349045-1

DEPT NO: XVII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS DUE TO SPEEDY TRIAL VIOLATIONS**

DATE OF HEARING: 3/25/2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL R. DICKERSON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss Due To Speedy Trial Violations.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

//

//

1 **POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 Defendant is charged by way of Indictment filed June 26, 2020, with the following
4 crimes:

5 Count 1 - Assault With A Deadly Weapon, Count 2 - Ownership Or Possession Of
6 Firearm By Prohibited Person, and Count 3 - Carrying Concealed Firearm Or Other Deadly
7 Weapon, reference the January 5, 2020 event related to named victim Isiah Washington;

8 Count 4 - Attempt Robbery With Use Of A Deadly Weapon, Count 5 - Murder With
9 Use Of A Deadly Weapon, and Count 6 - Ownership Or Possession Of Firearm By Prohibited
10 Person reference the January 14, 2020 event related to named, deceased victim Kevin
11 Farnsworth;

12 Count 7 - Conspiracy To Commit Robbery, Counts 8 and 9 - Robbery With Use Of A
13 Deadly Weapon, and Count 12 - Grand Larceny Auto reference the January 26, 2020 event
14 related to named victims Tristan Himlin and Karen Salazar;

15 Count 13 - Assault With A Deadly Weapon and Count 14 - Ownership Or Possession
16 Of Firearm By Prohibited Person reference the February 2, 2020 event related to named victim
17 Pasqual Abasta;

18 Count 15 - Conspiracy To Commit Robbery, Count 16 - Attempt Robbery, and Count
19 17 - Assault With A Deadly Weapon reference the March 15, 2020 event related to named
20 Pavel Alling-Pena;

21 Count 18 - Conspiracy To Commit Robbery, Count 19 - Robbery With Use Of A
22 Deadly Weapon, Count 20 - Attempt Murder With Use Of A Deadly Weapon, and Count 21
23 - Battery With Use Of A Deadly Weapon Resulting In Substantial Bodily Harm reference the
24 March 23, 2020 event related to named victim Ernesto Santana-Rosas;

25 Counts 22 and 23 - Assault With A Deadly Weapon reference the March 24, 2020 event
26 and related to named victims Matthew Warren and Katelyn Mendes.

27 //

28 //

II. STATEMENT OF THE CASE

On June 26, 2020, Defendant was charged by way of Indictment with the aforementioned criminal charges. The global COVID-19 pandemic had been going on for months at this point and, as such, the Court's trial and appearance restrictions were already in effect.

On July 2, 2020, the Special Public Defender confirmed as counsel and Defendant's arraignment was continued.

On July 7, 2020, Defendant was arraigned, pleaded not guilty and invoked his statutory right to proceed to trial within sixty (60) days.

On July 16, 2020, trial was officially set for September 8, 2020.

On August 25, 2020, calendar call was held for the September 8, 2020 trial. This Court made a record no trials were going forward due to COVID-19 pandemic and found good cause due to the Court's schedule and nature of this case to continue the trial beyond 60 days. At that time, the Court reset trial to November 30, 2020.

On September 9, 2020, at a Central Trial Readiness Conference, Defendant's counsel made a record that discovery was received three (3) weeks prior. The indication was that defense counsel needed additional time to review discovery. The Court continued conference for counsel to consider discovery.

On October 7, 2020, at the continued Central Trial Readiness Conference, defense counsel acknowledged they were looking for additional discovery and that a file review was pending. The Court continued the conference file review and any additional updates.

On October 28, 2020, at the continued Central Trial Readiness Conference, defense counsel advised they believed there was outstanding discovery and, as such, had a file review scheduled for the following week. Defense counsel indicated that they could not be ready for the upcoming November 30, 2020 trial. The Court set the case for Central Trial Calendar Call on November 25, 2020.

On November 25, 2020, at Central Trial Calendar Call, the record indicates that a file review was done with defense counsel and the State requested additional discovery from

1 investigating agencies. The Court made a record that, due to current COVID-19 protocols,
2 trials are unable to proceed. The Court reset trial to January 19, 2021.

3 On January 13, 2021, at Central Trial Calendar Call, the Court made a record that jury
4 trials cannot proceed at this time due to orders from the Governor of Nevada. The Court
5 scheduled this case for Central Trial Readiness Conference on January 27, 2021.

6 On January 27, 2021, the Court made a record that this case could be accommodated
7 for jury trial in 26 days, on the February 22, 2021, where it would be scheduled as second in
8 line behind one other case.

9 On February 10, 2021, the State filed State's Motion to Amend Indictment, which was
10 set to be heard on February 18, 2021. On February 12, 2021, the hearing was continued by
11 stipulation of the parties, to February 23, 2021. On February 17, 2021, Defendant filed
12 Opposition to State's Motion to Amend Indictment. The hearing was held on February 23,
13 2021, and the Court took the matter under advisement, ultimately issuing a minute order on
14 March 1, 2021, granting the State's Motion to Amend Indictment. Amended Indictment
15 charging the same crimes but adding a felony-murder theory to Count 5 - Murder With Use
16 Of A Deadly Weapon.

17 During that same timeframe covered in the paragraph above, the parties attended
18 Central Trial Calendar Call on February 17, 2021, at which time defense counsel sought a
19 continuance and referenced that they had received additional discovery, though provided no
20 specificity. The State would have been ready to proceed to trial as scheduled. The Court
21 vacated the February 23, 2021 trial.

22 Trial is currently scheduled to begin on March 29, 2021, which is 61 days since
23 COVID-19 health and safety protocols gave way for a jury trial to be made available in this
24 case.

25 On March 12, 2021, Defendant filed Motion to Dismiss Due to Speedy Trial Violation.
26 The parties have submitted a stipulated Order Shortening Time seeking to have this matter
27 heard by March 23, 2021.

28 //

III. ARGUMENT

Defendant now argues that “[t]his Court should dismiss this case because Mr. Abasta was denied his statutory right to a speedy trial when he was forced to continue his trial beyond 60 days from the date of his arraignment due to the State’s failure to timely produce discovery and when the Court continued his case multiple times due to the lack of courtrooms due to the self-imposed COVID restrictions.” (Def’s Mot. at 3:20-25). Good cause exists for all delay and no prejudice has been shown related to any delay in this case.

In Nevada, under NRS 178.556(1), a defendant has a statutory right to a trial within 60 days after arraignment. NRS 178.556(1) specifically provides “[i]f a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information.” Dismissal of the information or indictment is within the discretion of the district court where the defendant is not brought to trial within sixty days. See Browning v. State, 104 Nev. 269, 271, 757 P.2d 351, 352 (1988).

Where good cause for continuance or delay exists, dismissal is not warranted; to warrant dismissal, Defendant must show that unfair prejudice resulted from the delay. See Byford v. State, 116 Nev. 215, 230, 994 P.2d 700, 711 (2000) (one-year delay “not extreme, but long enough to conceivably cause prejudice,” though the alleged prejudice of allowing “the State to reassemble its witnesses” is not unfair prejudice); Sessions v. State, 111 Nev. 328, 332, at fn.4, 890 P.2d 792, 794 (1995) (defendant speedy-trial contentions meritless where the State demonstrated good cause for delay, and defendant failed to address the issue of prejudice attributable to delay); Huebner v. State, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987) (60–day time frame under NRS 178.556 is mandatory only when there is a lack of good cause for delay; 22-day delay due to unavailable critical State witness deemed good cause); Redmen v. State, 108 Nev. 227, 231, 828 P.2d 395, 398 (1992) (“Appellant cannot force the court to begin a trial when neither party is prepared to litigate;” good cause existed where prosecutor had scheduling conflict due to another trial and, though defense opposed State’s continuance, defense counsel indicated it could not be prepared to go to trial), overruled by on

1 other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995); Rodriguez v. State, 91
2 Nev. 782, 542 P.2d 1065 (1975) (defendant did not object that his right to a speedy trial had
3 been violated until the day of the trial, six-day delay was insubstantial and unprejudicial);
4 Schultz v. State, 91 Nev. 290, 291, 535 P.2d 166, 167 (1975) (“delay beyond the statutory [60-
5 day] period was insubstantial (2 days), and the prosecution showed good cause (plea
6 bargaining) for the delay.

7 **a. COVID-19 Global Pandemic is Good Cause for Delay.**

8 The cause for delay in this case has been due to the COVID-19 global pandemic¹ and
9 the resulting health and safety protocols that the Governor of the State of Nevada² and the
10 Chief Judge of this Court, with the co-signed authority of the Chief Justice of the Nevada
11 Supreme Court, were forced by necessity to enact to protect the health of all persons, including
12 Defendant. See EJDCAO 20-01 (issued March 13, 2020, by Chief Judge of this Court Linda
13 Bell and Chief Justice Kristina Pickering, finding that COVID-19 risk to the public necessities
14 alteration of court procedures, including suspending jury trials, to protect the public);
15 EJDCAO 20-06 (In The Administrative Matter Of Court Operations In Response To COVID-
16 19); EJDCAO 20-10 (In The Administrative Matter Of Court Operations In Response To
17 COVID-19); EJDCAO 20-13 (In The Administrative Matter Of Court Operations In Response
18 To COVID-19); EJDCAO 20-17 (In The Administrative Matter Regarding All Court
19 Operations In Response To COVID-19); EJDCAO 20-22 (issued October 21, 2020,
20 prioritizing trials based upon invocation, age of case and limited safety-configured

21
22 ¹ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (On March 11, 2020, the World Health Organization, noting their deep concern as to “both [] the alarming
23 levels of spread and severity, and [] the alarming levels of inaction,” to the COVID-19 outbreak, officially declared the
24 outbreak as a pandemic. While doing so, the WHO noted they “have never before seen pandemic that can be controlled,”
and since they were first notified, they have “called everyday [sic] for countries to take urgent and aggressive action,”
further noting, “[w]e have rung the alarm bell loud and clear.”)

25 ²http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Updates_Public_on_State_Action_and_Guidance_Regarding_COVID-19/;
26 <https://nvhealthresponse.nv.gov/preparation-in-nv/>; Governor Sisolak issued a Declaration of Emergency in
27 the State of Nevada on March 12, 2020. On Sunday, March 15, 2020, Governor Sisolak ordered all K-12 schools in the
28 State of Nevada closed through April 6, 2020. Later that same day, he announced further directives, which included:
closing state offices to the public, a call to transition to working as much as possible over the phone or online for essential
services, and strongly encouraged gaming properties to close to the public. Governor Sisolak stated these efforts are
required to “protect the health and safety of the public and our state workforce while ensuring that the important work of
our state government does not grind to a halt.” Further, he noted that we all “must do what we can to be part of the solution
and share[] responsibility for each other as Nevadans.”

1 courtrooms, and adopting COVID-19 Jury Trial Plan 9/28/2020); EJDCAO 20-23 (issued
2 November 11, 2020, suspending jury trials scheduled prior to November 30, 2020);EJDC
3 Administrative Order (“AO”) 20-24 (issued November 24, 2020, suspending jury trials from
4 November 2020 to January 11, 2021); EJDCAO 21-01 (In The Administrative Matter Related
5 To Extending The "Pause" In Response To COVID-19); EJDCAO 21-02 (In The
6 Administrative Matter Of Suspending Certain District Court Rules To Conform To The
7 Statewide Rules Of Criminal Practice); EJDCAO 21-03 (In The Administrative Matter
8 Regarding All Court Operations In Response To COVID-19). In the United States of America,
9 the current global pandemic has resulted in 29,699,099 cases of COVID-19 and caused
10 540,430 deaths, to date.³ Federal, state and local court systems across the country, and the
11 world, have had to enact safety measures to mitigate the extreme impact of this pandemic. All
12 delay resulting from the COVID-19 pandemic and the necessary health and safety protocols
13 was clearly for good cause and also tolled the time at issue here.

14 **b. Delay is Not Attributable to State, Good Cause Exists Were Delay**
15 **Attributable to the State, and the State is Ready To Start Trial and Suggests**
16 **March 26, 2021.**

17 As to any delay that Defendant attempts to attribute to the State, the allegation is
18 incorrect, as defense consistently indicated they were not ready, which is understandable given
19 the sheer size of this case and severity of the charges at hand. Delay is not because of any
20 discovery issues, as Defendant nakedly alleges without any specificity or indication of unfair
21 prejudice. This case consists of very serious charges and no less than seven (7) events that
22 took place during a months-long crime spree. As such, the discovery is substantial and also
23 involves at least three (3) separate investigating law enforcement agencies. The State has been
24 in regular and productive communication with current defense counsel about discovery in this
25 case, including seeking out and subsequently providing multiple productions of discovery at
26 defense counsel’s request and holding a file review on November 4, 2020. The previously
27 assigned prosecutor provided the substantive material evidence the State intended to introduce
28

³ <https://coronavirus.jhu.edu/map.html> (accessed 3/19/2021 12:01 PM).

1 in trial at the time. The State has never sought a continuance and has remained prepared to
2 afford Defendant his trial within 60-days.

3 In Browning, 104 Nev. at 270–71, 757 P.2d at 352, Browning was charged with first-
4 degree murder, robbery, and burglary, invoked statutory speedy trial, and the State
5 subsequently moved to continue due to an error by the deputy district attorney who had written
6 down the wrong trial date. The court granted the State’s continuance, setting the trial for
7 March 31, 1986, which was the date the deputy district attorney originally erroneously wrote
8 down. Id. The Nevada Supreme Court found that the “mere twenty-eight day delay is
9 insufficient to justify dismissal of the charges against him. Due to the severity of the crimes
10 charged, we will tolerate a longer delay than we might for a crime of less egregious
11 proportions.” Id., 104 Nev.at 271 (citing Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33
12 L.Ed.2d 101 (1972)). The Court added that “the deputy district attorney's honest, but
13 negligent, mistake in transcribing the appropriate trial date and the professed inability to locate
14 key prosecution witnesses prior to trial do not reveal an improper motive by the state in
15 requesting the delay. Thus, this is not a case involving a deliberate attempt to delay trial in
16 order to hamper the defense, and therefore we need not be so concerned with policing the
17 state's activity.” Id. Furthermore, the Court found “Browning has not reasonably identified
18 how the twenty-eight day delay has prejudiced his defense” and concluded “[i]n light of the
19 overwhelming evidence of guilt presented against him at trial, it is clear that any alleged
20 prejudice would not rise to the level justifying dismissal of the charged crimes.” Id.

21 Here, the undersigned prosecutor was assigned this case in early February 2021, after
22 the previously assigned lead prosecutor was called to serve the citizens of the State of Nevada
23 in another governmental position. The undersigned prosecutor immediately began reviewing
24 this case, including records of prior discovery productions and requests. The undersigned
25 prosecutor was ready, willing, and able to proceed to trial as scheduled from that point. On
26 February 9, 2021, defense counsel made a request of the undersigned prosecutor for additional
27 items of discovery, including audio of statements for which Defendant had already received
28 the transcripts, photos from a search warrant, color copies of items previously received in

1 black and white, and the raw case file from the forensic laboratory related to the firearm
2 experts' reports that had been previously provided. On February 11, 2021, defense counsel
3 requested all data recovered from cellular forensic examination, related to the data they had
4 already been provided in reports detailing the material findings of the digital forensic
5 examinations. The State very timely provided defense counsel the items they requested.
6 Furthermore, the undersigned provided defense counsel a large amount of the bates-stamped
7 discovery that was previously provided early in this prosecution but believed to be without
8 bates stamps. This additional bates stamping was done for the purpose of maintaining clear
9 communication and records with defense counsel and in litigation moving forward. The
10 undersigned has since received and provided Defendant a victim's medical records that were
11 held by Sunrise Hospital and within the power of defense counsel to obtain themselves should
12 they have wished. During this aforementioned time period, the State also relayed an offer for
13 plea negotiations to defense counsel, which has not been accepted or rejected to date. The
14 delay in this case is not attributable to the State. Even if delay were attributable to the State,
15 good cause exists by way of the State seeking out and providing records to defense counsel all
16 at defense counsel's request and said records not otherwise already existing in this party's
17 possession, extending an offer and being open to further negotiations at defense counsel's
18 request and also due to the personnel constraints faced by the State.

19 This case has only been able to proceed to trial within the current health and safety
20 protocols since January 27, 2021. On January 27, 2021, the Court notified the parties it could
21 accommodate the case for jury trial in 26 days, on the February 22, 2021. At that time, this
22 trial was in a stack of other trials and not first in line, so it was not certain the Court's calendar
23 could even accommodate this trial. Because the February 12, 2021 trial was continued at
24 defense counsel's request, the trial is now scheduled to begin on March 29, 2021. This equals
25 a 61-days, or a 1-day delay since the COVID-19 health and safety protocols gave way for a
26 jury trial to be made available in this case. To alleviate Defendant's concerns about his
27 statutory speedy trial right, the State is willing to begin trial on Friday, March 26, 2021, which
28 would provide Defendant a trial within 58 days of a trial being available.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

Based upon all of the foregoing, the State respectfully requests that Defendant's Motion to Dismiss be DENIED.

DATED this 19th day of March, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ MICHAEL R. DICKERSON
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476

CERTIFICATE OF ELECTRONIC TRANSMISSION

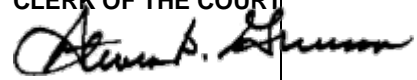
I hereby certify that service of the above and foregoing was made this 19th day of March, 2020, by electronic transmission to:

ROBERT ARROYO
Robert.arroyo@clarkcountynv.gov

TEGAN MACHNICH
Tegan.machnich@clakcountynv.gov

BY /s/ E. Del Padre
E. DEL PADRE
Secretary for the District Attorney's Office

MRD/ed/GU



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

ERIC ABASTA, JR.,
Defendant.

CASE NO: C-20-349045-1
DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
TUESDAY, MARCH 23, 2021

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
DEFENDANT'S MOTION TO DISMISS DUE TO SPEEDY TRIAL
VIOLATION**

APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

For the State: MICHAEL DICKERSON, ESQ.
Chief Deputy District Attorney

For Defendant Abasta: ROBERT ARROYO, ESQ.
Chief Deputy Special Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada; Tuesday, March 23, 2021

[Proceeding commenced at 9:26 a.m.]

THE COURT: Okay, page 22 is Eric Abasta. This is Special Public Defender's Office.

UNIDENTIFIED SPEAKER: Your Honor, I believe Mr. Arroyo is present.

MR. ARROYO: Yes, Your Honor. Good morning, Robert Arroyo on behalf of Mr. Abasta.

THE COURT: All right, and who do we have on behalf of the State?

MR. DICKERSON: Mike Dickerson on behalf of the State, Your Honor.

THE COURT: Okay, are the parties ready to go forward on the argument of the motion?

MR. DICKERSON: State's ready.

MR. ARROYO: Yes, Your Honor.

THE COURT: All right, go ahead, Mr. Arroyo.

MR. ARROYO: Your Honor, there's one thing I think I would agree with on the State's opposition is that there has been good communication between the defense and the State regarding discovery. Ms. Cannizzaro was originally the prosecutor handling the case before Mr. Dickerson took over the case. We were in constant contact with Ms. Cannizzaro regarding the discovery we needed.

This case has been pending since March. It was indicted in

1 June, and a bunch of individual cases were consolidated. But Mr.
2 Abasta's been in custody since March.

3 We took over the case in June, and as soon as we got on,
4 we've been talking about discovery. We had a file review in November,
5 and then, you know, we got a lot of stuff at the file review. But we also
6 made it clear what we were missing at that file review. We didn't get any
7 of it until February. So, that was on the eve of trial, we got a dump of a
8 hundred gigabytes of surveillance videos. And then, I think at that point
9 was the last time Ms. Cannizzaro was on the case.

10 Then, Mr. Dickerson took over the case right after that, and I
11 let him know what we were missing, and he was able to turn it over
12 within days. So, that was another hundred gigabyte of phone data,
13 witness statements.

14 So, the fact that Mr. Dickerson was able to get it so fast leads
15 me to believe that it's been ready. This isn't a case where we have DNA
16 that was outstanding and we were waiting for the different tests to be
17 completed. This is just discovery that Ms. Cannizzaro was sitting on and
18 just failed to turn over for months. And there's no reason why it couldn't
19 have been disclosed for the many months that we were asking for it.

20 I -- the State points out that a lot of the continuances were for
21 COVID-related lack of courtrooms, but I don't think that paints a whole
22 picture of what was happening. There were other options for trial.
23 There were several bench trials that went forward during the COVID era,
24 that if we had all discovery and we were prepared, we might have asked
25 for a bench trial to go forward.

1 Mr. Abasta has been wanting to go to trial for -- you know,
2 since I got on the case, he's made it clear that he wanted to go to trial,
3 but as his attorney, there's no way that we -- I could go forward when
4 he's facing the rest of his life in prison with all this outstanding discovery.
5 And we just got another dump on March 11th of jail calls from -- the jail
6 calls were between March 2020 and August 2020. Some of them were
7 previously disclosed, but others aren't. So, we're having to go back and
8 listen to each file again and compare it to what we had before.

9 All this stuff is just making it impossible for us to be ready for a
10 murder trial. All this new discovery is also leading for further
11 investigation. I need to go out of state, interview witnesses. So, Mr.
12 Abasta's been put in a situation where he's either -- goes to trial with an
13 attorney that's not prepared and not able to give him the best defense
14 possible or to ask for continuances and pretty much waive his right to a
15 trial within 60 days.

16 As we point out, our motion that's -- you know, that puts him in
17 an unfair position and the -- this is basically because of the State's late
18 disclosure of discovery which shouldn't be considered good cause for
19 any of the continuances. And based upon that, we believe his right to a
20 trial within 60 days has been violated. And therefore, the case should
21 be dismissed.

22 THE COURT: All right, I do note from the record that there
23 was a Central Trial Readiness on November 25th of last year and then
24 January 13th, 2021. Were both of those continuances based upon lack
25 of discovery or were there other reasons for the trials being continued at

1 those times?

2 MR. ARROYO: I believe -- in November -- I believe that was
3 COVID related that they were all continued. It was not until February
4 that we -- that I stated that we couldn't be ready. I believe it wasn't until
5 February that we had a solid trial date.

6 THE COURT: All right, anything further, Mr. Arroyo?

7 MR. ARROYO: No, Your Honor.

8 THE COURT: All right, let me hear from the State.

9 MR. DICKERSON: Mike Dickerson on -- Your Honor, as
10 you've seen in the briefing and heard from Mr. Arroyo, all the
11 continuances in this case up until February were as a result of the
12 COVID-19 global pandemic, which undoubtedly is good cause for a
13 continuance. And also -- so, that's not something on the State, that's
14 not something on the defense or even the Court. That's just pure
15 necessity of the natural causes that have occurred beyond anybody's
16 control, which led to these safety measures having to be put in place.
17 And ultimately, this trial having to be continued.

18 It wasn't until January 23rd -- or sorry, bear with me one
19 second. It wasn't until late January that we ultimately were made aware
20 that we could have a jury trial and that was January 27th, set for jury trial
21 for February 22nd. That was a 26-day setting. We did everything we
22 could to be ready to go at that time. Defense was provided discovery
23 before that, continued to request discovery, provided what they asked
24 for. They've been provided everything they've asked for, and we've had
25 to go to actually seek that out.

1 So, it's a massive case, as you've seen in the briefing, and
2 this isn't something where I just had discovery laying around when I took
3 this case over. I still had to go and then make efforts to find discovery,
4 contact detectives, contact law enforcement agencies to get what
5 defense counsel asked for and provide it to them, which did occur within
6 days. But it took a substantial amount of effort and time on my part. It
7 wasn't that these things were just sitting around and not discovered.

8 So, with that 26-day trial setting that was ultimately continued
9 in February brings us now to the trial setting that we have for March 29th.
10 It leads us to 61 days since this trial -- since this case has been
11 available for trial. As a result, I don't believe that the continuance that
12 occurred for the March 22nd trial -- or the February 22nd trial date is as a
13 result of the State's late disclosure. The basis of having to go to trial in a
14 speedy fashion in the first place, and especially on a case of this
15 magnitude, this many events, and this amount of seriousness involved is
16 going to cause any counsel to feel flustered, right? And I think that's
17 what obviously has occurred here.

18 But now, we sit at 61-day trial setting, the State is prepared to
19 go to trial. We're prepared to start trial this Friday. So, that would give
20 us a 58-day trial setting from the time the trial's become available in this
21 case. There would be no worries about Mr. Abasta's speedy trial rights
22 given that. And so, if that's what defense counsel would like to do, we're
23 ready, we've been pretrialing our witnesses, we've made sure that all
24 discovery is available. Let's go.

25 THE COURT: All right, and I do see that you have a Central

1 Calendar Call actually tomorrow; is that correct?

2 MR. DICKERSON: Correct.

3 MR. ARROYO: That is correct, Your Honor. And that's -- and
4 thank you for accommodating us earlier. That's why we asked that the
5 motion be heard today.

6 THE COURT: All right, anything further, Mr. Arroyo?

7 MR. ARROYO: Your Honor, I would just like to -- just once
8 again point out that had all this been disclosed earlier, we could have
9 gotten our investigation done, we may have asked for a bench trial. So,
10 there was other ways that trials were going forward beyond jury trials.
11 So, there were no jury trials going forward until February, but we do
12 know that there were a couple of bench trials that did go forward, and
13 Mr. Abasta did not have the option because we did not have all the
14 discovery.

15 THE COURT: All right, thank you. Based upon all the factors
16 that have been presented by both attorneys and the history of this
17 matter and particularly the COVID issues, I don't find any legal basis at
18 this time to dismiss the case based upon any speedy trial violations. I
19 don't know what's going to happen at Central Trial -- or the Central
20 Calendar Call tomorrow. But if the parties -- I don't know if there's going
21 to be a courtroom or not or what the status is, but if the parties want to
22 go forward on a bench trial, I'll be more than happy to accommodate the
23 parties. Obviously, everyone has to agree on that.

24 But we'll see how it, you know, pans out tomorrow for all of
25 you. And otherwise, we'll see you whenever I'm advised that this

1 matter's going to go forward, okay? But I am available for a bench trial.

2 MR. ARROYO: Thank you, Your Honor.

3 MR. DICKERSON: And with that, Your Honor, we've never
4 been approached requesting any sort of stipulation to a bench trial. At
5 this point in time, we would not have agreed to any bench trial. So,
6 we're still requesting a jury trial for the State.

7 THE COURT: Okay. No, I'm just saying I'm available if that's
8 -- it's up to the parties.

9 MR. DICKERSON: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. ARROYO: Thank you.

12 [Proceeding concluded at 9:37 a.m.]

13 * * * * *

14

15

16

17

18

19

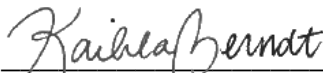
20

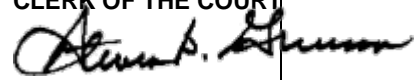
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

23

24

25


Kaihla Berndt
Court Recorder/Transcriber



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 ERIC ABASTA

12 Defendant.

CASE#: C-20-349045-1

DEPT. XVII

13
14 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE
15 WEDNESDAY, MARCH 24, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **CENTRAL CALENDAR CALL**

18 APPEARANCES:

19 For the State:

MICHAEL DICKERSON, ESQ.
Deputy District Attorney
Appeared by Video

21 For the Defense:

22 ROBERT ARROYO, ESQ.
TEGAN MACHNICH, ESQ.
Appeared By Video

23
24
25 RECORDED BY: PATTI SLATTERY, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Wednesday, March 24, 2021

[Case called at 2:09 p.m.]

THE COURT: Abasta. Mr. Abasta's present in custody
CCDC. Do I have a lawyer for Mr. Abasta remote?

MR. ARROYO: Good Afternoon, Your Honor, Robert Arroyo
and Tegan Machnich on behalf of Mr. Abasta.

THE COURT: Thank you, Mr. Arroyo. Do I have a district
attorney on this case?

MR. DICKERSON: Michael Dickerson on behalf of the State,
Your Honor.

THE COURT: Thank you, Mr. Dickerson. Time set central trial
readiness my notes reflect your -- originating out of seventeen. You are
on the top of the stack for trial next week.

Are the parties prepared to proceed?

MR. DICKERSON: State's prepared to go to trial, Your Honor.

THE COURT: Very good. Defense, Mr. Arroyo?

MR. ARROYO: Your Honor, we are not prepared to go to trial.
I know Mr. Abasta is not willing to waive his right to a trial within sixty
days. But I would note that this is a rather large case. We are less than
one year from indictment which is -- in any murder case it's extremely
quick during the Covid era. This case is actually seven individual cases,
different robberies in addition to the murder and they've all been
consolidated into one indictment.

There was a large amount of discovery that was produced in

1 February that was given to our expert who wouldn't be available to have
2 it all done and testify by next week. There's just no way that defense
3 counsel can be prepared to move forward. So, I'm going to be asking for
4 a continuance of the trial today over Mr. Abasta's reluctance to continue.

5 THE COURT: Mr. Abasta, your lawyer indicates he doesn't
6 believe he can be ready to defend you. Are you insistent on your sixty
7 day rights, knowing that your lawyer maybe hamstrung as a function of
8 that decision?

9 MR. ARROYO: And Your Honor, I would also just for the
10 record add that there was an amended indictment filed a couple weeks
11 ago which added a felony murder theory and a co-defendant recently
12 flipped just last -- just a couple weeks ago as well. There's just no way
13 that this case can be ready to proceed to trial next week.

14 You know, there's a reason why Mr. Abasta has counsel as
15 we know the evidentiary foundations and how this is all going to play out
16 at trial and just have two experienced attorneys on it that feel that there's
17 no way that this can go forward.

18 THE COURT: Mr. Abasta what's your position? Your lawyer
19 tells me that if we went to trial he doesn't believe, he believes there
20 wouldn't be a fair decision based upon merit because he hasn't had
21 adequate opportunity to prepare.

22 THE DEFENDANT: Yeah I understand that, I spoke to my
23 other counsel yesterday. They -- I mean I'm not willing to waive my sixty
24 day speedy trial but the same time I understand my counsels need more
25 time. We just got discovery not even a month ago, barely we were

1 handed over the discovery but if there's a way we could just extend it
2 from what my attorneys are asking and I could stay in the speedy trial.

3 THE COURT: Okay Mr. -- okay I understand. Mr. Dickerson
4 what is your position?

5 MR. DICKERSON: Our position is that discovery has been
6 provided in this case throughout. We actually had some litigation on that
7 earlier yesterday regarding defenses motion to dismiss the trial for
8 speedy trial violations, which was denied. Though there was discovery
9 provided in February, substantial material discovery which would have
10 been sufficient to introduce in the States case in chief to convict the
11 defendant was already produced prior to that time. We understand
12 defense counsel's request to continue. We just out of courtesy we don't
13 oppose that.

14 THE COURT: Okay.

15 MR. DICKERSON: I hear what Mr. Abasta's saying, I don't
16 think that's totally correct what he's saying. The place that this case is at
17 right now, and I don't know where Mr. Abasta's at, but it may be a good
18 time to discuss the possibility of a settlement conference. And if that's
19 the case I would suggest that we actually set that out for a settlement
20 conference and a status check on that rather than playing leap frog or
21 having Mr. Abasta continue to try and stay invoked despite him clearly
22 here indicating that he is okay with a continuance.

23 THE COURT: Mr. Arroyo, what is your thoughts on what Mr.
24 Dickerson is basically outlined? We're setting conference right now,
25 we've set them all, we're all in April we're pushing to May correct?

1 MS. PERRY: That's correct the first available is May 3rd at
2 1:30 p.m.

3 THE COURT: May 3rd at 1:30 is the next available
4 conference date. We could set a conference on this matter, have Mr.
5 Abasta procedurally remain invoked and if that effort isn't successful set
6 a trial date within 60 days thereafter. What are your thoughts?

7 MR. ARROYO: Your Honor, I believe that would be the best
8 course of action. I do think a settlement conference or settlement
9 conference talks would be the wise way to go at this point, and if as long
10 as Mr. Abasta doesn't have to waive his right to a speedy trial. I think he
11 would be okay.

12 THE COURT: Mr. Abasta, do you agree to that?

13 THE DEFENDANT: I was listening and I kinda understand but
14 what exactly are you speaking about? Your speaking about to set it for a
15 trial or a to without waiving my speeded trial but to set it for --

16 THE COURT: Right have you been, have you heard, or do
17 you know what a settlement conference is?

18 THE DEFENDANT: Yeah I believe so.

19 THE COURT: Okay, basically let me tell you kind of my view
20 of it. What happens is you get a senior judge that is not assigned to your
21 case, not your trial judge. You come down to this room. You between
22 now and the time of that settlement conference had a change to discuss
23 the evidence that the discovery and all the evidence that you think the
24 DA's going to present. We get a DA down here, your lawyers here,
25 you're here, frankly anybody who's important to the case either from

1 your side or from the DA's side can participate with in the rules and we
2 have a frank and honest discussion about the evidence of the case. And
3 we look for a compromise. We look for a settlement, some sort of
4 bargain of some sort that both sides can agree on. It's completely
5 voluntary you don't have to participate if you don't want to. But were
6 setting a lot of them and frankly we've had some success some good
7 success with being able to find that middle ground. But it requires
8 everybody to want to do it.

9 Are you interested in that?

10 THE DEFENDANT: Can I ask for my attorney?

11 THE COURT: I can actually bring you back next week if you'd
12 like, Mr. Arroyo so you can have a private conversation?

13 THE DEFENDANT: I would just like to know what his --

14 THE COURT: Thoughts are?

15 THE DEFENDANT: -- position --yeah just real quick.

16 THE COURT: Mr. Arroyo?

17 MR. ARROYO: Yeah I believe settlement conference is the
18 best course of action and Eric it's not binding so if we don't like the offer
19 at the end we just continue to trial.

20 THE DEFENDANT: All right that's fine.

21 THE COURT: All right so let's head that direction. Let's set a
22 conference.

23 MS. PERRY: Monday, May 3rd at 1:30 p.m.

24 THE COURT: Monday, May 3rd at 1 [sic] p.m. Of course, as
25 the lawyers appreciate continue to move forward in trial prep, it can only

1 help us, help all of you come to a greater understanding of the evidence
2 from both sides perspective at that conference. And of course again, if it
3 doesn't settle then you're further along ultimately in the evidence so a
4 trial, a real trial date set shortly thereafter can be a realistic one.

5 Everybody have your date gentlemen?

6 MR. DICKERSON: I do.

7 MR. ARROYO: Yes. Thank you.

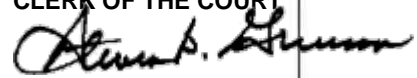
8 THE COURT: All right thank you.

9 [Proceedings concluded at 2:17 p.m.]

10 * * * * *

11
12
13
14
15
16
17
18
19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my
22 ability.

23 
24 _____
25 Kimberly Estala
Court Recorder/Transcriber



ACKN

Attorney Robert Arroyo

Bar # Nevada 11512

Address Clark County Special Public Defender

330 S. 3rd Street, Ste 800, Las Vegas, NV 89155

Telephone 702-455-6265

Fax 702-455-6273

Email robert.arroyo@clarkcountynv.gov

Attorneys for Abasta

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

ERIC ABASTA, #5010484,

Defendant.

CASE NO. C-20-349045-1

DEPT NO. 17

SETTLEMENT CONFERENCE ACKNOWLEDGMENT

Defendant ERIC ABASTA, following discussion with his (or her) counsel
ROBERT ARROYO, agrees to participate in the settlement conference program, which is
described in the attached Exhibit. Defendant understands that program is voluntary, that he (or
she) may

///

///

///

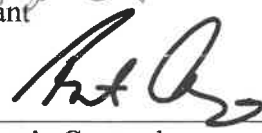
///

decline to participate, and that he (or she) may stop participating while the settlement conference is underway.

Dated this 1st day of APRIL, 2020.



Defendant



Defendant's Counsel

EXHIBIT
SUPREME COURT RULE 252

Rule 252(2).

Settlement conferences in criminal cases. The purpose of a settlement conference is to facilitate good faith discussions to resolve any criminal case before the district court in a manner that serves the interest of justice.

(a) In any criminal case before the district court, either party may request a settlement conference, or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.

(b) Beyond all else, participation in a settlement conference is voluntary by the parties, and no party has any right to an offer, or may raise any claim from any fact or circumstance that occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

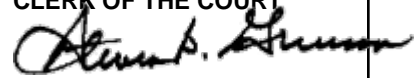
(d) Communications between the settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or

communication, except that the settlement judge may, without comment or observation, report to the trial judge that:

- (1) The parties cannot reach an agreement:
- (2) The parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant, and defense counsel and submitted to the court for approval;
- (3) Meaningful attempt to settle is ongoing; or
- (4) The settlement Judge withdraws from further participation in potential settlements.

(e) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a guilty plea agreement in accordance with NRS 174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the guilty plea agreement with the trial judge. Any party may withdraw from an agreement before the trial judge accepts the plea.

(f) If the parties reach a guilty plea agreement that involves any stipulations, the trial judge agrees that such a settlement shall be conditioned on the trial judge's acceptance of and agreement to follow the stipulations. If the trial judge is unwilling to abide by the stipulations, then either side may withdraw from the guilty plea agreement.



AIND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIC ABASTA,
aka Eric Abasta, Jr., #5010484

Defendant.

CASE NO: C-20-349045-1

DEPT NO: XVII

**SECOND AMENDED
INDICTMENT**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant(s) above named, ERIC ABASTA, aka Eric Abasta, Jr., accused by the Clark County Grand Jury of the crime(s) of **MURDER (FIRST DEGREE) (Category A Felony - NRS 200.010, 200.030 - NOC 50005); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); and ROBBERY (Category B Felony - NRS 200.380 - NOC 50137)**, committed at and within the County of Clark, State of Nevada, on or between January 5, 2020, and March 24, 2020, as follows:

COUNT 1 - MURDER (FIRST DEGREE)

Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020, willfully, unlawfully, feloniously and with malice aforethought, kill KEVIN FARNSWORTH, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at or into the body of the said KEVIN FARNSWORTH, the said killing having been (1) willful, deliberate and premeditated and (2) committed during the perpetration or attempted perpetration of a robbery.

1 COUNT 2 - ASSAULT WITH A DEADLY WEAPON

2 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,
3 willfully, unlawfully, feloniously and intentionally place another person in reasonable
4 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
5 physical force against another person, to wit: ISIAH WASHINGTON, with use of a deadly
6 weapon, to wit: a firearm, by pointing an unknown make and/or model firearm at the said
7 ISIAH WASHINGTON.

8 COUNT 3 - ROBBERY

9 Defendants ERIC ABASTA, aka Eric Abasta, Jr., did on or about January 26, 2020,
10 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, a
11 telephone, identification and a Mazda bearing Nevada License No. 890ZFW, from the person
12 of KAREN SALAZAR and TRISTAN HIMLIN, or in her presence, without the consent and
13 against the will of KAREN SALAZAR and TRISTAN HIMLIN, by means of force or violence
14 or fear of injury, immediate or future, to her person, the person of a member of her family, or
15 of anyone in her company at the time of the robbery, defendant using force or fear to obtain or
16 retain possession of the property, to prevent or overcome resistance to the taking of the
17 property, and/or to facilitate escape; the Defendant being criminally liable under one or more
18 of the following principles of criminal liability, to wit: (1) by directly committing this crime;
19 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime
20 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
21 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
22 crime, with the intent that this crime be committed, Defendant, JAMES WAYLON ARNEY,
23 aka Waylan Arney, Jr., and J.G. aiding or abetting and/or conspiring by Defendant acting in
24 concert throughout.

25 COUNT 4 - ASSAULT WITH A DEADLY WEAPON

26 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,
27 willfully, unlawfully, feloniously and intentionally place another person in reasonable
28 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use

1 physical force against another person, to wit: PASQUAL ABASTA, with use of a deadly
2 weapon, to wit: a firearm, by brandishing said firearm in the said PASQUAL ABASTA'S
3 presence while cocking it and walking towards him.

4 COUNT 5 - ASSAULT WITH A DEADLY WEAPON

5 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,
6 willfully, unlawfully, feloniously and intentionally place another person in reasonable
7 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
8 physical force against another person, to wit: PAVEL ALLING-PENA, with use of a deadly
9 weapon, to wit: a vehicle, by driving said vehicle at the said PAVEL ALLING-PENA,
10 attempting to strike him.

11 COUNT 6 - ROBBERY

12 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 23, 2020,
13 willfully, unlawfully, and feloniously take personal property, to wit: a cellular telephone, from
14 the person of ERNESTO SANTANA-ROSAS, or in his presence, without the consent and
15 against the will of ERNESTO SANTANA-ROSAS, by means of force or violence or fear of
16 injury, immediate or future, to his person, the person of a member of his family, or of anyone
17 in his company at the time of the robbery, Defendants using force or fear to obtain or retain
18 possession of the property, to prevent or overcome resistance to the taking of the property,
19 and/or to facilitate escape; the Defendant being criminally liable under one or more of the
20 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
21 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
22 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
23 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
24 crime, with the intent that this crime be committed, Defendant aiding or abetting and/or
25 conspiring by Defendant and M.A. acting in concert throughout.

26 COUNT 7 - ASSAULT WITH A DEADLY WEAPON

27 Defendant ERIC ABASTA did on or about March 24, 2020, willfully, unlawfully,
28 feloniously and intentionally place another person in reasonable apprehension of immediate

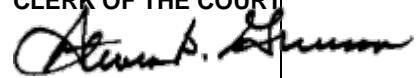
1 bodily harm and/or did willfully and unlawfully attempt to use physical force against another
2 person, to wit: MATTHEW WARREN and KATELYN MENDES, with use of a deadly
3 weapon, to wit: a firearm, by pointing said firearm at the said MATTHEW WARREN and
4 KATELYN MENDES; the Defendant being criminally liable under one or more of the
5 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
6 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
7 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
8 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
9 crime, with the intent that this crime be committed, Defendant aiding or abetting and/or
10 conspiring by Defendant and unnamed person(s) acting in concert throughout.

11 DATED this 11th day of May, 2021.

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #001565

15 BY /s/ MICHAEL R. DICKERSON
16 MICHAEL R. DICKERSON
17 Chief Deputy District Attorney
18 Nevada Bar #013476
19
20
21
22
23
24

25 19CGJ051A-C/C348213(20F06387A-B)/20F02017A-
26 B/20F06403X/C348152(20F07884X)/20F07202X/ed/lm/GU
27 LVMPD EV#200300114309; 200300108165; 200100022920
28 CCPP EV# 20010124150
HPD EV# 2000988
(TK3)



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 ERIC ABASTA, aka,
12 Eric Abasta, Jr.,

13 Defendant.

CASE #: C-20-349045-1

DEPT. XVII

14 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
15 TUESDAY, MAY 11, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **ENTRY OF PLEA**

18 APPEARANCES:

19 For the State:

MICHAEL DICKERSON
Chief Deputy District Attorney

20 For the Defendant:

21 ROBERT ARROYO
22 TEGAN C. MACHNICH
Chief Special Deputy Public Defenders
23 ASHLEY L. SISOLAK
Deputy Public Defender

24
25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 [Las Vegas, Nevada, Tuesday, May 11, 2021, at 5:03 p.m.]

2

3 THE COURT: Good afternoon, everyone. Is everybody
4 ready?

5 MS. SISOLAK: Yep, ready to go, Your Honor.

6 THE COURT: All right, thank you.

7 All right, Mr. Abasta, you've been advised that you went
8 through a settlement conference this afternoon and then you have
9 resolved your case. Is that correct, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And, sir, furthermore, I understand that Senior
12 Judge David Barker was your settlement judge. Is that correct?

13 THE DEFENDANT: I don't know.

14 MS. SISOLAK: Yes.

15 MR. ARROYO: Yes, he was.

16 THE DEFENDANT: Yeah. I don't know who the judge was,
17 but there was a judge here.

18 THE COURT: Okay. And, sir, did you sign an authorization to
19 enter into the settlement conference?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, sir, during the settlement conference, did
22 you have an opportunity to speak to your settlement judge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As well as discuss the settlement offer in this
25 matter with your attorneys?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'm going to ask one of your attorneys
3 to advise me as to what the negotiations are and then I'll go through
4 your entry of plea, sir, so please listen carefully. Counsel.

5 MR. ARROYO: Yes, Your Honor. Robert Arroyo on behalf of
6 Mr. Abasta. A negotiation was reached today. Mr. Abasta is going to
7 plead guilty to: Count 1, murder in the first degree; Counts 2, 4, 5, and 7,
8 assault with a deadly weapon; Counts 3 and 6, robbery. Both parties will
9 stipulate to an aggregate total sentence of 24 to 65 years in the Nevada
10 Department of Corrections which will be structured as follows: Count 1,
11 240 to 600 months in NDOC; Count 2, 28 to 72 months in NDOC,
12 consecutive to Count 1; Count 3, 48 to 180 months in NDOC,
13 consecutive to Count 1; Count 4, 28 to 72 months in NDOC, consecutive
14 to Count 1; Count 5, 28 to 72 months in NDOC, consecutive to Count 1;
15 Count 6, 48 to 180 months in NDOC, consecutive to Count 1, and Count
16 7, 28 to 72 months in NDOC, consecutive to Count 1; Counts 3 through
17 7 to run concurrent with Count 2.

18 Furthermore, the State agrees to dismiss the criminal
19 case pending in North Las Vegas Township Justice Court case against
20 Mary Anne Abasta, Case Number 20CRN001225.

21 THE DEFENDANT: Can I ask a question?

22 THE COURT: Yes, sir.

23 THE DEFENDANT: I just -- I was just curious, is it going to
24 matter if my mom's last name is Espinoza?

25 MR. DICKERSON: It does not matter, Your Honor. The case

1 number is what will be going off of there, and I negotiated that. I'm
2 handling that case, it should be no problem at all.

3 THE DEFENDANT: All right.

4 MS. SISOLAK: Thank you, Mr. Dickerson.

5 THE COURT: All right. Is Mary Anne Abasta -- is that your
6 mother, sir?

7 THE DEFENDANT: Yeah, that's my mother.

8 THE COURT: Okay. And so the State agrees, by entry of
9 your plea in this case, to dismiss the case pending against her. Is that
10 your understanding, sir?

11 THE DEFENDANT: That is my understanding.

12 THE COURT: Okay. And, sir, it looks like you have some
13 paperwork in front of you. Is that a copy of the Guilty Plea Agreement
14 that you have in your hand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Thank you.

17 Sir, do you wish to accept these negotiations to resolve
18 your case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And for the record, what is your legal name?

21 THE DEFENDANT: Eric Abasta, Junior.

22 THE COURT: How old are you?

23 THE DEFENDANT: Twenty-three.

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

25 THE DEFENDANT: I graduated, and I got my GED.

1 THE COURT: All right. Sir, so do you read, write and
2 understand the English language?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Sir, are you pleading guilty to Count 1, murder
5 in the first degree?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And are you pleading guilty to Count 2, assault
8 with a deadly weapon?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Count 3, robbery?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Count 4, assault with a deadly weapon?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Count 5, assault with a deadly weapon?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Count 6, robbery?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And Count 7, assault with a deadly weapon?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Before I can accept your pleas of guilty, I must
21 make sure they're freely and voluntarily entered. Has anyone forced you
22 to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Has anyone threatened you or anyone closely
25 associated with you in order to get you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: No one's threatened you, sir?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone threatened anyone closely
5 associated with you in order to get you to plead guilty?

6 THE DEFENDANT: I'm sorry. What was that?

7 THE COURT: Has anyone threatened you or threatened
8 anyone closely associated with you in order to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right.

11 Sir, I'm going to go over the -- I understand the
12 negotiations, and I'm going to go along with the negotiations. But I am
13 still required to advise you as to the possible penalties that you could be
14 facing, okay, sir. And I'm going to be going through page 2 and 3 of the
15 GPA; so if you want to follow along, go ahead and do so, sir. I'm going
16 to the bottom of page 2; I'm going to start there.

17 On Count 1, which is murder in the first degree, the
18 potential penalties for such a charge that the Court could sentence you
19 to life without the possibility of parole or life with the possibility of parole
20 with eligibility for parole beginning at 20 years, or a definite term of 50
21 years with eligibility of parole beginning at 20 years. Do you understand
22 that, sir?

23 MR. ARROYO: Those are just the possibilities.

24 THE DEFENDANT: Yeah.

25 THE COURT: Is that a yes? I have to have --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Thank you, sir.

3 Now, Counts 2, 4, 5, and 7, which are the assault with a
4 deadly weapon charges, okay. The Court can sentence you to no more
5 than six years; no less than one year, and you can also be fined the five
6 thousand dollars for each count. Do you understand that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And Counts 3 and 6, which are the robbery
9 counts, the Court can sentence you to no more than 15 years and no
10 less than two years in the Nevada Department of Corrections. Do you
11 understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that sentencing is
14 strictly up to the Court; no one can make any --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Hang on; no one can make any other promises
17 to you other than those identified in the Guilty Plea Agreement. Do you
18 understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir, did either one of your attorneys make any
21 additional promises to you other than those contained in the Guilty Plea
22 Agreement?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. And, sir, I know this case may have
25 started back in 2020; my question to you is, how long have you had to

1 discuss the facts and circumstances of your case with your attorney?

2 THE DEFENDANT: About, like, 10 months. I don't know,
3 like -- I think -- what June or July of last year.

4 THE COURT: Okay.

5 THE DEFENDANT: The end of June.

6 THE COURT: Like 10 months or so, okay. And then, sir, and
7 then you went through a settlement conference this afternoon. I believe
8 it started around 1:30, is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE RECORDER: Judge --

11 THE COURT: There had --

12 THE RECORDER: Judge, I'm sorry, this is your recorder.

13 Our BlueJeans session is going to expire in four minutes, so I'll just be
14 creating a new one.

15 THE COURT: All right.

16 THE RECORDER: So I have to log out of this one that you're
17 in now and log back in.

18 THE COURT: Do I need to go to a different BlueJeans?

19 THE RECORDER: Yes. Olivia sent you an e-mail, or I
20 forwarded you the e-mail with the link.

21 THE COURT: Okay, sir, we're just going to sign off and come
22 back in about one minute, okay.

23 THE DEFENDANT: All right.

24 THE COURT: Yes, go ahead and e-mail the new BlueJeans,
25 and I'll log back on. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE RECORDER: Okay.

THE CLERK: You should have it now.

THE RECORDER: You should have it now, Judge.

[Brief pause for the Court to rejoin BlueJeans]

THE RECORDER: There you go, Judge. Okay, we're on.

THE COURT: All right. Thank you.

All right, sir, have you ever been advised you have a
mental illness?

THE DEFENDANT: No.

THE COURT: Have you ever been diagnosed with a mental
illness?

THE DEFENDANT: I don't think so.

THE COURT: All right. Either, Counsel, are you aware as to
whether or not Mr. Abasta has ever been diagnosed with a mental
illness?

MR. ARROYO: Not that I've seen, Your Honor.

MS. SISOLAK: No.

THE COURT: All right.

Mr. Abasta, have you ever had to take special
education classes?

THE DEFENDANT: No.

THE COURT: During the last 30 days, sir, have you had to be
on any type of medication?

THE DEFENDANT: Yes.

THE COURT: And what type of medication is that, sir?

1 THE DEFENDANT: Um, I'm not sure what it was called. But
2 it's just like medication that they prescribed me in here when I seen a
3 doctor for -- um, I think it's like allergy related or -- um. I had a rash, so
4 it was just something for that.

5 THE COURT: Okay. And so are you on any medication
6 today, sir?

7 THE DEFENDANT: Well just what they give me.

8 THE COURT: All right, just for an allergy that you might
9 have?

10 THE DEFENDANT: Yes, something like that. Yeah.

11 THE COURT: Okay. Sir, is one of the reasons you are
12 pleading guilty to these various charges, because in truth and fact, you
13 are guilty of the charges you have pled guilty to? Is that why you're
14 pleading guilty, sir? Because, you, in fact are guilty of Count 1, 2 --
15 Count 1 through 7 of the Second Amended Indictment. Are you guilty of
16 those counts, sir?

17 MR. ARROYO: Remember, we talked about not having to
18 actually pull the trigger to be guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So you're guilty of all of the counts, Counts 1,
21 2, 3, 4, 5, 6, and 7 and, sir, I want you to look through your Guilty Plea
22 Agreement; at the back of the Guilty Plea Agreement is a copy of the
23 Second Amended Indictment. I want you to flip through that and tell me
24 if that's -- if you're guilty of all those counts and that's why you're
25 pleading guilty today.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Sir, I have a copy of the Guilty Plea
3 Agreement, it's a copy what you have in front of you. Did you authorize
4 your attorney to sign your name at page 6 of the agreement?

5 THE DEFENDANT: Well I signed it myself.

6 THE COURT: Yeah, you signed it yourself. Okay. And, sir,
7 did you read the agreement yourself? Or was it read to you by one of
8 your attorneys?

9 THE DEFENDANT: I read it. And also, Mr. Arroyo went over
10 it.

11 THE COURT: All right. Did you understand everything that
12 you read and everything that was read to you?

13 THE DEFENDANT: Yeah, I believe so.

14 THE COURT: Well I need to know. Do you believe so? Or
15 you know so?

16 THE DEFENDANT: Well, yeah. Yes, sir.

17 THE COURT: Okay, so you understood everything that you
18 read?

19 THE DEFENDANT: Yes, sir. And the things I didn't, Mr.
20 Arroyo answered.

21 THE COURT: Okay. Now, I'm going to -- I'm going to get to
22 that right now.

23 THE DEFENDANT: Oh, okay.

24 THE COURT: If you had any questions regarding the
25 agreement, were they answered by Mr. Arroyo?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And, sir, do you realize that, you have
3 the right to go to trial on all of the original charges?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And, sir, I'm going to -- since you -- since you
6 have the Guilty Plea Agreement in front of you, I'm going to ask you to
7 look to page 5 of the Guilty Plea Agreement. Under waiver of rights, it
8 advises you of your constitutional rights that you have. Did you read
9 those rights, sir?

10 THE DEFENDANT: Mr. Arroyo read them to me and went
11 over them with me.

12 THE COURT: Okay. And if you had questions regarding your
13 constitutional rights, were they answered by Mr. Arroyo?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And, sir, before we go any further, do you have
16 any questions for me about those rights?

17 THE DEFENDANT: No, sir.

18 THE COURT: Sir, did your attorneys have the opportunity to
19 go over the evidence with you? The evidence meaning any police
20 reports, witness statements; there could be photographs; there could be
21 forensic test; there could be reports from experts. Did they have an
22 opportunity to go over those reports with you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have your attorneys, through the last 10
25 months -- I know Ms. Sisolak may be new to your case. Has Mr. Arroyo,

1 in the last 10 months and particular today, have they been able to
2 answer all of your questions that you have?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Sir, based upon all the facts and circumstances
5 of your case, are you satisfied with the services of your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, do you feel that your attorneys have done
8 everything that they can do within the law to competently represent you
9 in this matter?

10 THE DEFENDANT: I certainly hope so.

11 THE COURT: Okay. Do you believe that they have? If they
12 have done everything you asked them to do?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Sir, are you a U.S. Citizen?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Sir, I'm going to read to you the
17 various allegations contained in the Second Amended Indictment. And
18 again, I want you to follow along with me. I'm going to ask you if you've
19 committed the acts contained in each of the counts, Counts 1 through 7.
20 Okay, sir, so please listen to me as well as follow along.

21 It says -- and I'm going to start at page 1, sir. It says
22 that on or between January the 5th, 2020 and March 24th, 2020, herein
23 Clark County, Nevada -- and this is going to reference Count 1 that, you
24 did on or about January 14, 2020, willfully, unlawfully, feloniously and
25 with malice aforethought, kill Kevin Farnsworth, a human being, with use

1 of a deadly weapon, to wit: a firearm, by shooting at or into the body of
2 the said Kevin Farnsworth; the said killing having been willful, deliberate
3 and premeditated and committed during the perpetration or attempted
4 perpetration of robbery.

5 Did you do those things that I just read?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Sir, and I'm going to page 2 of the
8 Second Amended Indictment, and I'm going to read that to you. It's
9 assault with a deadly weapon, it says Defendant Eric Abasta did on or
10 about January 5th, 2020, willfully, unlawfully, feloniously and intentionally
11 place another person in reasonable apprehension of immediate bodily
12 harm and/or did willfully and unlawfully attempt to use physical force
13 against another person, to wit: Isiah Washington, with use of a deadly
14 weapon, to wit: a firearm, by pointing an unknown make or model of a
15 firearm at said Isiah Washington.

16 Did you do those things, sir, I just read to you regarding
17 Count 2?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And I'm going to read to you Count 3, sir,
20 please follow along. It says Defendant Eric Abasta did on or about
21 January 26, 2020, willfully, unlawfully and feloniously take personal
22 property, to wit: U.S. Currency, a telephone, identification and a Mazda
23 bearing License Number 890ZFW, from the person of Karen Salazar
24 and Tristan Himlin, or in her presence, without the consent and against
25 the will of Karen Salazar and Tristan Himlin, by means of force or

1 violence or fear of injury, immediate or future, to her person, the person
2 of a member of her family, or of anyone in her company at the time of
3 the robbery, that you using force or fear to obtain or retain possession of
4 the property, to prevent or overcome resistance to the taking of the
5 property, and/or to facilitate escape; that you being criminally liable
6 under one or more of the following principles of criminal liability, to wit:
7 (1) by directly committing this crime and/or (2) by aiding or abetting in
8 the commission of this crime, with the intent that the crime be
9 committed, by counseling, encouraging, hiring, commanding, inducing
10 and/or otherwise procuring the other to commit the crime and/or
11 pursuant to a conspiracy to commit this crime, with the intent that the
12 crime be committed; that Defendant and James Waylon Arney, aka
13 Waylan Arney, Junior, and J.G. aiding or abetting and/or conspiring with
14 defendant acted in concert throughout.

15 Sir, did you do those things that I just read to you
16 regarding Count 3, the robbery charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Sir, I'm going to Count 4, please follow along.
19 Defendant Eric Abasta did on or about February 2nd, 2020, willfully,
20 unlawfully, feloniously and intentionally place another person in
21 reasonable apprehension or immediate bodily harm and/or did willfully
22 and unlawfully attempt to use physical force against another person, to
23 wit: Pasqual Abasta, with use of a deadly weapon, to wit: a firearm, by
24 brandishing said firearm in the said Pasqual Abasta's presence while
25 cocking it and walking toward him.

1 Did you do those things, sir, I just read to you regarding
2 Count 4?

3 THE DEFENDANT: Can I talk to my attorney real quick?

4 THE COURT: Absolutely.

5 [Colloquy between Mr. Arroyo and Defendant]

6 THE COURT: Mr. Abasta, we were on Count 4 -- yes,
7 Counsel?

8 MR. ARROYO: We're okay to proceed, Your Honor.

9 THE COURT: Okay.

10 Mr. Abasta, I'm going to read to you Count 4 again.
11 First off, Mr. Abasta, we just took a very brief break. Did you have an
12 opportunity to speak with Mr. Arroyo on the telephone?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And I'm assuming it's regarding -- you had
15 some questions regarding Count 4. I don't need to know the specifics
16 right now, but did he answer all of your questions regarding Count 4?

17 THE DEFENDANT: Yeah.

18 THE COURT: Okay. Are you sure? Because you sort of
19 hesitated; I want to make sure that he has answered your questions. If
20 you have more questions for him, we will take the time and he'll get you
21 back on the phone. Do you want to speak with your attorney one more
22 time, sir?

23 THE DEFENDANT: No, can you just -- nah, that's fine. We'll
24 just go forward, it doesn't matter.

25 THE COURT: Well it does matter, sir, okay. Sir, what we're

1 going to do is we're going to have Mr. Arroyo go back on the phone and
2 talk to you, okay.

3 [Colloquy between Mr. Arroyo and Defendant]

4 THE COURT: All right, Mr. Abasta, did you have another
5 opportunity to speak with your attorney?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, do you want to go forward? Or do you
8 want some more time to discuss your case with your attorney? Because
9 if the offer is still open --

10 THE DEFENDANT: I would like to go forward.

11 THE COURT: Okay. We can continue this another day, you
12 know, another day or two. Do you want to do that, sir?

13 THE DEFENDANT: I would like to go forward today if it's
14 possible please.

15 THE COURT: Okay. It is, but I just want to make sure. Did
16 Mr. Arroyo -- when he got on the phone with you a second time, did he
17 answer all of your questions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you still want -- you still want to go
20 forward, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. I'm going to read to you again Count
23 4, which is on page 2 and 3 of the Second Amended Indictment, so
24 please follow along. It says Defendant Eric Abasta did on or about
25 February 2nd, 2020, willfully, unlawfully, feloniously and intentionally

1 place another person in reasonable apprehension of immediate bodily
2 harm and/or did willfully and unlawfully attempt to use physical force
3 against another person, to wit: Pasqual Abasta, with use of a deadly
4 weapon, to wit: a firearm, by brandishing the said firearm at the said
5 Pasqual Abasta's presence -- or in the said Pasqual Abasta's presence
6 while cocking it and walking towards him.

7 Did you do those things, sir, I just read to you in regards
8 to Count 4?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And I'm going to Count 5, sir, and it's on page
11 3 of the Second Amended Indictment. Count 5 says that Eric Abasta did
12 on or about March 15, 2020, willfully, unlawfully, feloniously and
13 intentionally place another person in reasonable apprehension of
14 immediate bodily harm and/or did willfully and unlawfully attempt to use
15 physical force against another person, to wit: Pavel Alling-Pena, with
16 use of a deadly weapon, to wit: a vehicle, by driving said vehicle at the
17 said Pavel Alling-Pena, attempting to strike him.

18 Did you do those things, sir, in reference to Count 5?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And, sir, I'm going to read to you Count 6
21 which is on page 3 of the Second Amended Indictment. The
22 Defendant -- that's regarding robbery. Defendant Eric Abasta did on or
23 about March 23, 2020, willfully, unlawfully, and feloniously take personal
24 property, to wit: a cellular telephone from the person of Ernesto
25 Santana-Rosas, or in his presence, without the consent and against the

1 will of Ernesto Santana-Rosas, by means of force or violence or fear of
2 injury, immediate or future, to his person, the person of a member of his
3 family, or of anyone in his company at the time of the robbery; that you
4 using force or fear to obtain or retain possession of the property, to
5 prevent or overcome resistance to the taking of the property, and/or to
6 facilitate escape; that you being criminally liable under one or more of
7 the following principles of criminal liability, to wit: by directly committing
8 this crime and/or (2) by aiding or abetting in the commission of the
9 crime, with the intent that the crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring
11 the other to commit the crime and/or (3) pursuant to conspiracy to
12 commit the crime, with the intent that the crime be committed, Defendant
13 aiding or abetting and/or conspiring with Defendant and M.A. acting in
14 concert throughout.

15 Did you do those things, sir, I just read to you in regards
16 to Count 6, the robbery?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And, sir, I'm going to read to you now Count 7,
19 assault with a deadly weapon which is on page 3 and 4 of the Second
20 Amended Indictment. It says Defendant Eric Abasta did on or about
21 March 24, 2020, willfully, unlawfully, feloniously and intentionally place
22 another person in reasonable apprehension of immediate bodily harm
23 and/or did willfully and unlawfully attempt to use physical force against
24 another person, to wit: Matthew Warren and Katelyn Mendes, with use
25 of a deadly weapon, to wit: a firearm, by pointing said firearm at the said

1 Matthew Warren and Katelyn Mendes; that Defendant, you, being
2 criminally liable under one or more of the following principles of criminal
3 liability, to wit: by directly committing this crime and/or (2) by aiding or
4 abetting in the commission of the crime, with the intent that the crime be
5 committed, by counseling, encouraging, hiring, commanding, inducing
6 and/or otherwise procuring the other to commit the crime and/or (3)
7 pursuant to conspiracy to commit this crime, with the intent that the
8 crime be committed; that you aiding or abetting and/or conspiring by you
9 and an unnamed person acting in concert throughout.

10 Did you do those things, sir, I just read to you in
11 reference to Count 7?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Sir, have you considered your attorney's
14 advice in accepting these negotiations?

15 THE DEFENDANT: I'm sorry. What was that?

16 THE COURT: Have you considered your attorney's advice in
17 accepting the negotiations?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And, sir, do you understand even though your
20 attorney has recommended that you accept the negotiations, it is still up
21 to you as to whether or not you accept the negotiations. Do you
22 understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, sir, before we go any further, do you have
25 additional questions for your attorney?

1 THE DEFENDANT: No, sir.

2 THE COURT: Before we go any further, do you have any
3 questions for me?

4 THE DEFENDANT: No, sir.

5 THE COURT: And do you understand that I will not allow
6 anyone to rush you into accepting these negotiations?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand that if you do not want
9 to accept the negotiations, you do not have to; you can go to trial on all
10 the original charges. Do you understand that, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sir, based upon your discussions with your
13 attorney and the negotiations that, you determined that accepting the
14 negotiations are in your best interest?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you also made a determination that going
17 to trial on all of the original charges are contrary to your best interest?

18 THE DEFENDANT: Contrary means like not --

19 THE COURT: Yeah, it means to your best interest.

20 THE DEFENDANT: All right. Yes, sir.

21 THE COURT: Okay. And, sir, do you understand that you are
22 not guaranteed to have me as your sentencing judge? It can be any
23 constitutionally seated district court judge or any senior judge assigned
24 by the Supreme Court. Do you understand that, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Sir, what I'm saying to you is, for
2 example, if I am ill on a particular day, they could have another judge
3 sentence you.

4 THE DEFENDANT: Oh, yeah. Yes, sir.

5 THE COURT: Okay. And, sir, again, before we go any
6 further, do you have any additional questions for your attorney?

7 THE DEFENDANT: No, sir.

8 THE COURT: And, sir, are you entering your plea freely and
9 voluntarily?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, the Court so finds. And, sir, we will
12 set this matter for sentencing on the following day.

13 THE CLERK: We'll do June 25th at 8:30.

14 THE COURT: All right. And, Counsel Mr. Arroyo, I just want
15 to ask you are you convinced that Mr. Abasta is entering his plea freely
16 and voluntarily?

17 MR. ARROYO: Your Honor, we discussed it at length. And I
18 can't speak for Mr. Abasta, but he has represented that he is. I don't
19 have any concerns of the proceedings today.

20 THE COURT: Okay. All right. Thank you. And, sir, we will
21 see you at the time of sentencing. Okay, sir?

22 THE DEFENDANT: That was June 25th at 8:30, all right.

23 THE COURT: All right, sir. Thank you, everybody. Thank
24 you, Counsel and staff.

25 MS. SISOLAK: Thank you, Your Honor.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DICKERSON: Thank you, Your Honor.

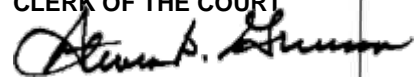
MS. SISOLAK: Thank you, Your Honor.

[Hearing concluded at 5:37 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Angie Calvillo
Court Recorder/Transcriber



ORIGINAL

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Chief Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIC ABASTA,
aka Eric Abasta, Jr., #5010484

Defendant.

CASE NO: C-20-349045-1

DEPT NO: XVII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **COUNT 1 - MURDER (FIRST DEGREE)**
(Category A Felony - NRS 200.010, 200.030 - NOC 50005); COUNTS 2, 4, 5, and 7 -
ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC
50201); COUNTS 3 and 6 - ROBBERY (Category B Felony - NRS 200.380 - NOC 50137),
as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

Both parties stipulate to an aggregate total sentence of twenty-four (24) to sixty-five (65) years in the Nevada Department of Corrections (NDOC), which will be structured as follows: Count 1 - two hundred forty (240) to six hundred (600) months in NDOC; Count 2 - twenty-eight (28) to seventy-two (72) months in NDOC, consecutive to Count 1; Count 3 - forty-eight (48) to one hundred eighty (180) months in NDOC, consecutive to Count 1; Count 4 - twenty-eight (28) to seventy-two (72) months in NDOC, consecutive to Count 1; Count 5

1 - twenty-eight (28) to seventy-two (72) months in NDOC, consecutive to Count 1; Count 6 –
2 forty-eight (48) to one hundred eighty (180) months in NDOC, consecutive to Count 1; and
3 Count 7 - twenty-eight (28) to seventy-two (72) months in NDOC, consecutive to Count 1;
4 Counts 3 through 7 to run concurrent with Count 2. Furthermore, the State agrees to dismiss
5 the criminal case pending in North Las Vegas Township Justice Court against Marianne
6 Abasta Case No. 20CRN001225.

7 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
8 and/or impounded in connection with the instant case and/or any other case negotiated in
9 whole or in part in conjunction with this plea agreement.

10 I understand and agree that, if I fail to interview with the Department of Parole and
11 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
12 by affidavit review, confirms probable cause against me for new criminal charges including
13 reckless driving or DUI, but excluding minor traffic violations, the State will have the
14 unqualified right to argue for any legal sentence and term of confinement allowable for the
15 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
16 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
17 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
18 twenty-five (25) year term with the possibility of parole after ten (10) years.

19 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
20 plea agreement.

21 CONSEQUENCES OF THE PLEA

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

24 **As to Count 1**, I understand that as a consequence of my plea of guilty the Court must
25 sentence me to imprisonment in the Nevada State Prison for Life without the possibility of
26 parole OR Life with the possibility of parole with eligibility for parole beginning at twenty
27 (20) years; OR a definite term of fifty (50) years with eligibility for parole beginning at twenty

28 //

1 (20) years. I understand that I am not eligible for probation for the offense to which I am
2 pleading guilty.

3 **As to Counts 2, 4, 5, and 7,** I understand that as a consequence of my plea of guilty
4 the Court must sentence me to imprisonment in the Nevada Department of Corrections for a
5 minimum term of not less than one (1) year and a maximum term of not more than six (6)
6 years (EACH COUNT). The minimum term of imprisonment may not exceed forty percent
7 (40%) of the maximum term of imprisonment. I understand that I may also be fined up to
8 \$5,000.00 (EACH COUNT). I understand that I am eligible for probation for the offense to
9 which I am pleading guilty. I understand that, except as otherwise provided by statute, the
10 question of whether I receive probation is in the discretion of the sentencing judge.

11 **As to Counts 3 and 6,** I understand that as a consequence of my plea of guilty the Court
12 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
13 term of not less than two (2) years and a maximum term of not more than fifteen (15) years
14 (EACH COUNT). The minimum term of imprisonment may not exceed forty percent (40%)
15 of the maximum term of imprisonment. I understand that I am eligible for probation for the
16 offense to which I am pleading guilty. I understand that, except as otherwise provided by
17 statute, the question of whether I receive probation is in the discretion of the sentencing judge.

18 I understand that the law requires me to pay an Administrative Assessment Fee.

19 I understand that, if appropriate, I will be ordered to make restitution to the victim of
20 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
21 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
22 reimburse the State of Nevada for any expenses related to my extradition, if any.

23 I understand that I must submit to blood and/or saliva tests under the Direction of the
24 Division of Parole and Probation to determine genetic markers and/or secretor status.

25 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
26 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
27 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
28 and may receive a higher sentencing range.

1 I understand that if more than one sentence of imprisonment is imposed and I am
2 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
3 the sentences served concurrently or consecutively.

4 I understand that information regarding charges not filed, dismissed charges, or charges
5 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

6 I have not been promised or guaranteed any particular sentence by anyone. I know that
7 my sentence is to be determined by the Court within the limits prescribed by statute.

8 I understand that if my attorney or the State of Nevada or both recommend any specific
9 punishment to the Court, the Court is not obligated to accept the recommendation.

10 I understand that if the offense(s) to which I am pleading guilty was committed while I
11 was incarcerated on another charge or while I was on probation or parole that I am not eligible
12 for credit for time served toward the instant offense(s).

13 I understand that if I am not a United States citizen, any criminal conviction will likely
14 result in serious negative immigration consequences including but not limited to:

- 15 1. The removal from the United States through deportation;
- 16 2. An inability to reenter the United States;
- 17 3. The inability to gain United States citizenship or legal residency;
- 18 4. An inability to renew and/or retain any legal residency status; and/or
- 19 5. An indeterminate term of confinement, with the United States Federal
20 Government based on my conviction and immigration status.

21 Regardless of what I have been told by any attorney, no one can promise me that this
22 conviction will not result in negative immigration consequences and/or impact my ability to
23 become a United States citizen and/or a legal resident.

24 I understand that the Division of Parole and Probation will prepare a report for the
25 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
26 sentencing, including my criminal history. This report may contain hearsay information
27 regarding my background and criminal history. My attorney and I will each have the
28 opportunity to comment on the information contained in the report at the time of sentencing.

1 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
2 comment on this report.

3 WAIVER OF RIGHTS

4 By entering my plea of guilty, I understand that I am waiving and forever giving up the
5 following rights and privileges:

- 6 1. The constitutional privilege against self-incrimination, including the right
7 to refuse to testify at trial, in which event the prosecution would not be
8 allowed to comment to the jury about my refusal to testify.
- 9 2. The constitutional right to a speedy and public trial by an impartial jury,
10 free of excessive pretrial publicity prejudicial to the defense, at which
11 trial I would be entitled to the assistance of an attorney, either appointed
12 or retained. At trial the State would bear the burden of proving beyond
13 a reasonable doubt each element of the offense(s) charged.
- 14 3. The constitutional right to confront and cross-examine any witnesses who
15 would testify against me.
- 16 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 17 5. The constitutional right to testify in my own defense.
- 18 6. The right to appeal the conviction with the assistance of an attorney,
19 either appointed or retained, unless specifically reserved in writing and
20 agreed upon as provided in NRS 174.035(3). I understand this means I
21 am unconditionally waiving my right to a direct appeal of this conviction,
22 including any challenge based upon reasonable constitutional,
23 jurisdictional or other grounds that challenge the legality of the
24 proceedings as stated in NRS 177.015(4). However, I remain free to
25 challenge my conviction through other post-conviction remedies
26 including a habeas corpus petition pursuant to NRS Chapter 34.

20 VOLUNTARINESS OF PLEA

21 I have discussed the elements of all of the original charge(s) against me with my
22 attorney and I understand the nature of the charge(s) against me.

23 I understand that the State would have to prove each element of the charge(s) against
24 me at trial.

25 I have discussed with my attorney any possible defenses, defense strategies and
26 circumstances which might be in my favor.

27 All of the foregoing elements, consequences, rights, and waiver of rights have been
28 thoroughly explained to me by my attorney.


1 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
2 that a trial would be contrary to my best interest.

3 I am signing this agreement voluntarily, after consultation with my attorney, and I am
4 not acting under duress or coercion or by virtue of any promises of leniency, except for those
5 set forth in this agreement.

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

9 My attorney has answered all my questions regarding this guilty plea agreement and its
10 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

11 DATED this 11 day of May, 2021.

12
13 
14 ERIC ABASTA, aka Eric Abasta, Jr.
Defendant

15 AGREED TO BY:

16
17 /s/ MICHAEL R. DICKERSON
18 MICHAEL R. DICKERSON
19 Chief Deputy District Attorney
Nevada Bar #013476
20
21
22
23
24
25
26
27
28

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 guilty pleas 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:
 - a. The removal from the United States through deportation;
 - b. An inability to reenter the United States;
 - c. The inability to gain United States citizenship or legal residency;
 - d. An inability to renew and/or retain any legal residency status; and/or
 - e. An indeterminate term of confinement, by with United States Federal Government based on the 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 the facts known to me and are made with my advice to the Defendant.
5. To the best of my knowledge and belief, the Defendant:
 - a. Is competent and understands the charges 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 I consulted with the Defendant as certified in paragraphs 1 and 2 above

Dated: This 11 day of May, 2021.


Chief Deputy Special Public Defender

20F06387A/lm/GU

1 **AIND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Chief Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-20-349045-1

11 -vs-

DEPT NO: XVII

12 ERIC ABASTA,
13 aka Eric Abasta, Jr., #5010484

14 Defendant.

**SECOND AMENDED
INDICTMENT**

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant(s) above named, ERIC ABASTA, aka Eric Abasta, Jr., accused by the
18 Clark County Grand Jury of the crime(s) of **MURDER (FIRST DEGREE) (Category A**
19 **Felony - NRS 200.010, 200.030 - NOC 50005); ASSAULT WITH A DEADLY WEAPON**
20 **(Category B Felony - NRS 200.471 - NOC 50201); and ROBBERY (Category B Felony -**
21 **NRS 200.380 - NOC 50137)**, committed at and within the County of Clark, State of Nevada,
22 on or between January 5, 2020, and March 24, 2020, as follows:

23 COUNT 1 - MURDER (FIRST DEGREE)

24 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,
25 willfully, unlawfully, feloniously and with malice aforethought, kill KEVIN FARNSWORTH,
26 a human being, with use of a deadly weapon, to wit: a firearm, by shooting at or into the body
27 of the said KEVIN FARNSWORTH, the said killing having been (1) willful, deliberate and
28 premeditated and (2) committed during the perpetration or attempted perpetration of a robbery.

EXHIBIT 1

1 COUNT 2 - ASSAULT WITH A DEADLY WEAPON

2 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,
3 willfully, unlawfully, feloniously and intentionally place another person in reasonable
4 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
5 physical force against another person, to wit: ISIAH WASHINGTON, with use of a deadly
6 weapon, to wit: a firearm, by pointing an unknown make and/or model firearm at the said
7 ISIAH WASHINGTON.

8 COUNT 3 - ROBBERY

9 Defendants ERIC ABASTA, aka Eric Abasta, Jr., did on or about January 26, 2020,
10 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, a
11 telephone, identification and a Mazda bearing Nevada License No. 890ZFW, from the person
12 of KAREN SALAZAR and TRISTAN HIMLIN, or in her presence, without the consent and
13 against the will of KAREN SALAZAR and TRISTAN HIMLIN, by means of force or violence
14 or fear of injury, immediate or future, to her person, the person of a member of her family, or
15 of anyone in her company at the time of the robbery, defendant using force or fear to obtain or
16 retain possession of the property, to prevent or overcome resistance to the taking of the
17 property, and/or to facilitate escape; the Defendant being criminally liable under one or more
18 of the following principles of criminal liability, to wit: (1) by directly committing this crime;
19 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime
20 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
21 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
22 crime, with the intent that this crime be committed, Defendant, JAMES WAYLON ARNEY,
23 aka Waylan Arney, Jr., and J.G. aiding or abetting and/or conspiring by Defendant acting in
24 concert throughout.

25 COUNT 4 - ASSAULT WITH A DEADLY WEAPON

26 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,
27 willfully, unlawfully, feloniously and intentionally place another person in reasonable
28 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use

1 physical force against another person, to wit: PASQUAL ABASTA, with use of a deadly
2 weapon, to wit: a firearm, by brandishing said firearm in the said PASQUAL ABASTA'S
3 presence while cocking it and walking towards him.

4 COUNT 5 - ASSAULT WITH A DEADLY WEAPON

5 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,
6 willfully, unlawfully, feloniously and intentionally place another person in reasonable
7 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use
8 physical force against another person, to wit: PAVEL ALLING-PENA, with use of a deadly
9 weapon, to wit: a vehicle, by driving said vehicle at the said PAVEL ALLING-PENA,
10 attempting to strike him.

11 COUNT 6 - ROBBERY

12 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 23, 2020,
13 willfully, unlawfully, and feloniously take personal property, to wit: a cellular telephone, from
14 the person of ERNESTO SANTANA-ROSAS, or in his presence, without the consent and
15 against the will of ERNESTO SANTANA-ROSAS, by means of force or violence or fear of
16 injury, immediate or future, to his person, the person of a member of his family, or of anyone
17 in his company at the time of the robbery, Defendants using force or fear to obtain or retain
18 possession of the property, to prevent or overcome resistance to the taking of the property,
19 and/or to facilitate escape; the Defendant being criminally liable under one or more of the
20 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
21 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
22 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
23 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
24 crime, with the intent that this crime be committed, Defendant aiding or abetting and/or
25 conspiring by Defendant and M.A. acting in concert throughout.

26 COUNT 7 - ASSAULT WITH A DEADLY WEAPON

27 Defendant ERIC ABASTA did on or about March 24, 2020, willfully, unlawfully,
28 feloniously and intentionally place another person in reasonable apprehension of immediate

1 bodily harm and/or did willfully and unlawfully attempt to use physical force against another
2 person, to wit: MATTHEW WARREN and KATELYN MENDES, with use of a deadly
3 weapon, to wit: a firearm, by pointing said firearm at the said MATTHEW WARREN and
4 KATELYN MENDES; the Defendant being criminally liable under one or more of the
5 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
6 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
7 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
8 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
9 crime, with the intent that this crime be committed, Defendant aiding or abetting and/or
10 conspiring by Defendant and unnamed person(s) acting in concert throughout.

11 DATED this 11th day of May, 2021.

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #001565

15 BY /s/ MICHAEL R. DICKERSON
16 MICHAEL R. DICKERSON
17 Chief Deputy District Attorney
18 Nevada Bar #013476
19
20
21
22
23
24

25 19CGJ051A-C/C348213(20F06387A-B)/20F02017A-
26 B/20F06403X/C348152(20F07884X)/20F07202X/ed/lm/GU
27 LVMPD EV#200300114309; 200300108165; 200100022920
28 CCPP EV# 20010124150
HPD EV# 2000988
(TK3)

Alvin B. Hanson

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

VS.

ERIC ABASTA, JR.
Defendant.

CASE#: C-20-349045-1
DEPT. XVII

BEFORE THE HONORABLE CRISTINA D. SILVA,
DISTRICT COURT JUDGE
FRIDAY, JUNE 25, 2021

RECORDER'S TRANSCRIPT OF HEARING:
SENTENCING

APPEARANCES ON PAGE 2:

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the State:

MICHAEL DICKERSON, ESQ.
Chief Deputy District Attorney

For the Defendant:

ROBERT ARROYO, ESQ.
TEGAN C. MACHNICH, ESQ.
Chief Deputy Special Public Defenders
[Appearing via videoconference]

ALSO PRESENT:

Victim Speakers:

JAMES FARNSWORTH
COREY FARNSWORTH
DEBRA FARNSWORTH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Friday, June 25, 2021

[Case called at 9:14 a.m.]

THE COURT: C349045, State of Nevada versus Eric Abasta Jr.

MR. DICKERSON: Good morning, Your Honor, Mike Dickerson on behalf of the State.

THE COURT: Good morning. Who is present on behalf of Mr. Abasta?

MR. ARROYO: Good morning, Your Honor, Robert Arroyo and Tegan Machnich for Eric Abasta.

THE COURT: All right and good morning to you as well. And Mr. Abasta is present in custody.

MR. DICKERSON: And, Your Honor, we have family for the deceased victim in this case, Kevin Farnsworth, outside, three victim speakers included. Can I -- they come in at this time?

THE COURT: They may.

MR. DICKERSON: Thank you.

THE COURT: All right. We'll get started here in a moment. Three victim speakers are coming in.

Good morning. Go ahead and have a seat.

MR. DICKERSON: Three of them will be speaking. Not all of them, I promise.

THE COURT: All right. Good morning. Go ahead and have a seat. I'm Judge Silva. I'm -- will be sentencing Mr. Abasta this morning.

1 We're going to go ahead and get started. I'm going to let everyone know
2 how this process is going to go. I'm going to first talk to Mr. Abasta's
3 attorneys. Then I'm going to talk to Mr. Abasta briefly. I'll speak to the
4 State. I will then return to talking to Mr. Abasta. He can make a
5 statement if he would like to. I will then talk to Mr. Abasta's attorney's
6 again regarding sentencing. And last to present this morning will be the
7 victim speakers. And you can choose whatever order you want to go in.
8 You are welcome to either stand at the table, you're welcome to stand
9 next to Mr. Dickerson or you're welcome to stand at the podium, the
10 choice is yours.

11 And we'll go ahead and get started at this time. So let me just
12 confirm that all parties are ready to proceed. Is that correct, counsel?

13 MR. DICKERSON: State is ready to proceed, Your Honor.

14 THE COURT: Mr. Arroyo, Ms. Machnich?

15 MR. ARROYO: Your Honor, there was an issue with
16 restitution. The State provided me with some documentation. I've been
17 trying to go through it. There seems to be some duplicate charges. So
18 I'm just trying to go through and make sure the numbers add up.

19 THE COURT: That's fine. So --

20 MR. ARROYO: So I am trying to get that done.

21 THE COURT: -- to the extent that we -- you are unable to
22 resolve any discrepancies before the end of sentencing here today, I'll
23 set this for a status check regarding restitution to finalize any
24 outstanding questions or concerns.

25 MR. DICKERSON: Fine with the State.

1 MR. ARROYO: Sounds good. Thank you, Your Honor.

2 THE COURT: All right. So let me start again with counsel for
3 Defendant. Have you reviewed the Presentence Investigation Report
4 dated June 4th, 2021?

5 MR. ARROYO: We have, Your Honor, and Mr. Abasta has a
6 copy.

7 THE COURT: All right any issues in there or anything that
8 needs to be changed or brought to my attention?

9 MR. ARROYO: No, Your Honor.

10 THE COURT: All right. Thank you.

11 And good morning, Mr. Abasta, can you hear me okay?

12 MR. ARROYO: Yes.

13 THE COURT: All right. Have you had an opportunity to
14 review that Presentence Investigation Report or has someone reviewed
15 it with you?

16 THE DEFENDANT: Yeah, I got it.

17 THE COURT: All right. Anything that needs to be changed or
18 brought to my attention?

19 THE DEFENDANT: No, it's fine.

20 THE COURT: All right. Thank you very much.

21 I'm going to turn back to the State at this time. I understand
22 that pursuant to negotiations the parties are stipulating to a certain term.
23 Is that State standing by that negotiation?

24 MR. DICKERSON: We are, Your Honor. We stipulated to the
25 total aggregate of the total sentence of 24 to 65 years in the Nevada

1 Department of Corrections. That came after settlement conference in
2 this case with consultation with the victims and the victim's families. As
3 far as that, we do submit as far as abiding by those negotiations today.
4 If you'd like to hear anything further about just a brief background of the
5 case, I'd be happy to give that to you. But I am asking you to follow the
6 negotiations.

7 THE COURT: All right. And I did read the summary of the
8 facts and based on the representation here the victims were involved
9 with the settlement conference, is that correct?

10 MR. DICKERSON: That's correct, Your Honor.

11 THE COURT: All right. I'm glad to hear that. I'm certainly
12 inclined to follow the negotiations in light of the fact that this is a
13 settlement case and the victims were heard as part of that settlement
14 conference. So thank you, I'm good.

15 I'm going to go ahead and turn back to Mr. Abasta. Mr.
16 Abasta, you can make a statement this morning, but you don't have to.
17 Would you like to make a statement?

18 THE DEFENDANT: No, I don't got nothing to say.

19 THE COURT: All right. No problem. Your attorneys can
20 speak on your behalf. I'll hear from your attorneys at this time.

21 MR. ARROYO: Your Honor, just briefly I would just say that
22 Mr. Abasta has taken responsibility today. There were two co-
23 defendants who got substantially less time, one them is on the street,
24 one of them will be on the street soon. So Mr. Abasta has taken
25 responsibility for his actions. He is doing a lengthy prison term, so we

1 would ask that you follow the negotiations as well.

2 THE COURT: All right. Thank you for that.

3 All right. Well this is the time for the victim speakers and Mr.
4 Dickerson, whoever would like to speak first can come up.

5 MR. DIGIACOMO: Yes. So the speakers are going to be
6 Kevin Farnsworth's family. First we're going to call his brother, James
7 Farnsworth.

8 THE COURT: Okay. All right. Mr. Farnsworth. And like I
9 said, you're welcome stand next to Mr. Dickerson. You can stand at that
10 table or you can come up to the podium, wherever you're most
11 comfortable.

12 THE RECORDER: Close to a microphone, Judge.

13 THE COURT: Yeah.

14 All right, we're going to swear you in. It's part of a standard
15 process for anyone who speaks before the Court, okay.

16 THE VICTIM SPEAKER: Okay.

17 **JAMES FARNSWORTH**

18 [having been called as a victim speaker and being first duly sworn,
19 testified as follows:]

20 THE CLERK: Thank you. Please state and spell your first
21 and last name for the record.

22 THE VICTIM SPEAKER: James, J-A-M-E-S, Farnsworth, F-
23 A-R-N-S-W-O-R-T-H.

24 THE COURT: All right, and good morning to you.

25 THE VICTIM SPEAKER: Good morning.

1 THE COURT: If you ever need a moment to take a break
2 you're welcome to do so and just talk to me.

3 THE VICTIM SPEAKER: Okay.

4 THE COURT: All right, when you're ready.

5 THE VICTIM SPEAKER: All right. Thank you, Judge Silva,
6 for being here this morning and your time in listening to the influence into
7 the great man that Kevin Farnsworth was.

8 Kevin was my younger brother with 5 years between us.
9 Growing up we shared a room until I was about 13. But our rooms were
10 still right next to each other. When we were able to separate, because
11 of the age gap, at the time of the life that we were in we were not very
12 close in childhood but we begun to become friends about the time that I
13 was 16 and 17. I was working a part-time job after school at a local
14 grocery store and one thing that I would do is I started bringing home
15 Little Caesar Pizza and that brought him around. And we would play
16 videogames together and begun bonding and sharing in those life
17 experiences together. This became something that we would do on a
18 continual basis. It would -- we'd get together, we'd get Little Caesar's
19 Pizza and we'd play videogames or watch movies.

20 When I was about 19 years old I would have left home to
21 serve a mission for the Church of Jesus Christ of Latter Day Saints. At
22 the beginning of that service, I was taken to Provo, Utah, the Missionary
23 Training Center and I had to say goodbye to my family who I would not
24 see for the next two years. I would only be able to email once a week
25 and occasionally write letters. But I would not be able to see them for

1 the next two years. As we parted to say our goodbyes, one was
2 missing. Kevin was hiding behind my older sister Jennifer, because he
3 was crying very hard. And it was in that moment that I realized how
4 much I meant to him. And it in turn filled a spot in my heart, one that
5 would be held by him for the remainder of his life.

6 Over the next two years as I served my church, I would write
7 Kevin learning more about him and we continued to be close. I helped
8 him, through encouragement, to pursue his Eagle Scout award, which
9 he waited until I got home from my service to receive that award so that
10 we could be there together.

11 Also when I came home from my mission, because Kevin had
12 grown physically while I was gone, he assumed because he hadn't seen
13 me that he was finally going to be big enough that we could wrestle and
14 he'd have a chance. Needless to say, I've always been about twice
15 Kevin's size. It's just the nature of us and so it came time that we could
16 finally have this wrestling match and Kevin, with all his might tried to
17 move me and he couldn't. And I flipped him one time, put him on the
18 ground and we never wrestled ever again. Because he was just -- I
19 mean, I tried to go antagonize him a couple times, but he would never
20 participate because he knew he didn't have a chance.

21 But we loved each other and -- anyway. I would have shortly
22 after getting back from LDS mission, would have gotten married to my
23 first wife and begun working two jobs. One of those jobs was at KFC
24 with Kevin. In that job we would have shared many times. Because
25 Kevin had worked there longer, he was my boss and so that was a little

1 bit different of a dynamic. But occasionally we would throw mashed
2 potatoes at each other and soapy water or other things just to banter
3 one another. And we don't -- we would always laugh.

4 One of the things that Kevin really loved in life was cars.
5 Shortly after being done at KFC I would have gotten a job at an Acura
6 dealership up in Salt Lake City, which was able to provide enough that I
7 could quit the two jobs and just have the one. And Kevin thought it was
8 the most wonderful thing in the world that I worked at Acura and he
9 would often come and visit. He loved coming to the storeroom to be
10 able to be there with the different luxury vehicles that were there.

11 After a short time, I would have been able to move up as a --
12 to a sales associate from the phone receptionist. And one of the perks
13 that came with having a sales associate position is I got to lease a
14 vehicle and the dealership paid for most of it. So I got a brand new
15 Acura TSX. And it was a lot of fun to drive and Kevin and I had an
16 exciting time riding in that.

17 I would shortly thereafter, I would have gone through a divorce
18 with my first wife which was a very difficult time. In so doing, Kevin was
19 the only one that was in the courtroom at the time of that proceeding.
20 And it was two days later that Kevin would have left himself on the
21 mission for the church to Scotland and Ireland. And I always felt like that
22 was a huge blessing that I got to have my brother there with me before
23 he parted ways.

24 While Kevin was gone though, I would have met my current
25 wife and she and I quickly fell in love. When we made the choice that

1 we would get married, we made sure that the plans were for after Kevin
2 had completed his mission as I would have no one else be my best man.
3 That was Kevin's title. Kevin came home on November 5th. My wife and
4 I got married on November 14th. He continued to be very involved in our
5 lives. He was my best friend. My wife and Kevin were also very close
6 because Kevin was just a very genuine person. He made everybody he
7 encountered with would feel as if they were the most special person on
8 earth.

9 In September of 2017 my wife and I would have planned a trip
10 to Orlando Florida to experience Universal Studios and Disney World.
11 At the time we had my son who was 9 months old. Knowing that we
12 would need to take turns on the ride we decided that we needed to invite
13 somebody else to be able to child swap with. And Kevin eagerly jumped
14 at that opportunity. So for the duration of that trip, two adults were able
15 to go on the rides together while one of us stayed back with the 9 month
16 old. And those will be cherished memories for the rest of my life and it's
17 something that my wife and I have talked about again and again since
18 his passing. It was a trip full of laughter. There's a lot of one-liners that
19 we still have from that trip. It was shortly thereafter that Kevin would
20 have moved to Las Vegas. He was always willing to talk on the phone
21 and catch up on things.

22 On January 14th, 2020, I went to work but something felt off
23 and I didn't know why. So I decided to take the day off. And I would
24 have called and talked to Kevin which was our final conversation and I'm
25 grateful that I was able to speak with him. The night before -- we, my

1 wife and I had been talking about wanting to go back to Orlando since
2 we had had another child in that time and wanted to experience those
3 same experiences. Amongst our conversation between Kevin and I, we
4 would have talked about making those plans to be able to go that fall. I
5 wish now that I would have known that this was the last time that I would
6 get to talk to him, but I'm grateful that I got to talk to him that day.

7 I know -- I knew he loved -- I'm sorry. I know he knew I loved
8 him, but I was not ready to let him go. I was shocked to be woken up
9 that night and told by my sister that she believed that he had been shot.
10 It didn't seem real as I was trying to wake up. It felt like it was a very
11 bad dream. My wife and I would have left our kids with her parents and
12 we drove to my parents. It was shortly after arriving that it was confirm
13 by -- over the phone by the Sheriff's Department that Kevin had been
14 murdered. This was by far the most difficult thing I've ever had to face.

15 Kevin, as I have said, was my best friend. He was the one
16 that I could go or would call when life got overwhelming and I needed to
17 talk to somebody that would not judge me or would not stab me in the
18 back. He was so easy to talk to and confide in. I will never be able to
19 [indiscernible] hole that's in my heart. He has left a legacy even with the
20 next generation in our family. He loved my kids along with my sister's
21 kids as well. He called his nieces and nephews the cutest humans on
22 the planet and he had a special relationship with all of them.

23 My children still today say hi to Uncle Kevin whenever we turn
24 on a memorial crystal we had made after he passed. They still tell him
25 about their day and how much they love him. In fact, earlier this week

1 on Monday, my wife unexpectedly went into labor with our third child at
2 32 weeks. My son, who my wife and I chose to name after Kevin was
3 born this week and I feel that Kevin, my brother had a lot to do with
4 making the events of that day go smoothly amongst the chaos. So I
5 named my son Kevin Wyatt after Kevin.

6 Kevin's impact on the world was huge. At his viewing we
7 stayed for a few hours after it was ended as people continued to come in
8 and share with our loss and to convey their loss they felt within their
9 hearts. The following day at his funeral, many who had not been able to
10 get in the night before tried to get in to share in their grief. As I heard the
11 stories from many people, it became clear that Kevin's reach was far
12 and wide. He touched many lives. People from all over the world came
13 to mourn his passing. He was a shining light wherever he went. I'm
14 grateful that I knew him and that I got to share so much of my life with
15 him and I hope to live my life in a way to be able to see him again in the
16 afterlife. Thank you.

17 THE COURT: Thank you. Congratulations on your new baby.

18 THE VICTIM SPEAKER: Thank you.

19 THE COURT: And I hope he's healthy.

20 THE VICTIM SPEAKER: Thank you.

21 THE COURT: And what a wonderful legacy.

22 THE VICTIM SPEAKER: Yeah, baby's doing as good as can
23 be.

24 THE COURT: Good. I'm glad to hear that.

25 THE VICTIM SPEAKER: Thank you.

1 THE COURT: Truly wonderful.

2 MR. DICKERSON: We'll next call Kevin's father, Cory
3 Farnsworth.

4 THE COURT: All right. Corey Farnsworth. Good morning.

5 THE VICTIM SPEAKER: Good morning.

6 THE COURT: We're going to swear you in as well.

7 THE CLERK: Please raise your right hand.

8 **COREY FARNSWORTH**

9 [having been called as a victim witness and being first duly sworn,
10 testified as follows:]

11 THE CLERK: Thank you. Please state and spell your first
12 and last name for the record.

13 THE VICTIM SPEAKER: My name is Corey. May I remove
14 this, Your Honor?

15 THE COURT: You may -- are you vaccinated?

16 THE VICTIM SPEAKER: I am not.

17 THE COURT: You're not vaccinated. So pursuant to court
18 policy you need to keep it on. I apologize. I know it's challenging. Take
19 your time and if you need to take a break. Because I know -- I have to
20 wear it too. Feel free to do that okay?

21 THE VICTIM SPEAKER: No, apologies necessary, but thank
22 you.

23 THE COURT: Well, you know, I think we're all over 2020. But
24 here we are in mid-2021 still going through it.

25 THE CLERK: Can you spell your name?

1 THE VICTIM SPEAKER: My name, first name is Corey,
2 spelled C--O-R-E-Y, last name Farnsworth, F-A-R-N-S-W-O-R-T-H.

3 THE COURT: Thank you. And thank you for being present
4 this morning. When you're ready, you can talk to me.

5 THE VICTIM SPEAKER: Thank you. And I wish to begin my
6 remarks by expressing a deep thanks to you personally for allowing us
7 as family members to come in and express our thoughts and feelings to
8 you. I know that that's not 100% policy across the board and that you
9 are in charge and we appreciate your generosity.

10 THE COURT: While I appreciate that, I have to say we have
11 to give thanks. We have three branches of the government, right. And
12 so our legislatures -- legislative here at our legislature here in Nevada
13 saw it fit that victims have a right to come in and speak, which I think is
14 appropriate, right, because one of the things I need to consider is the
15 impact on the victims. And so, absolutely, I'll let you in and that is part of
16 my policy it's also part of the law and we're -- we live in a great country
17 that we can let that happen, so but thank you for the thanks. I thank
18 you. So I can hear your words and hear how this impacted your family.

19 THE VICTIM SPEAKER: Thank you. Here comes a parental
20 point of view. This is very difficult for us to do obviously being in a
21 courtroom setting which is unusual for us, but also the reason for which
22 we are gathered is difficult for us. And I appreciate very much my son
23 and my wife being willing to come forward and share their thoughts
24 because of the challenge that's there.

25 Perhaps as you've been able to tell, we are a very close knit

1 family. Even us as parents with our children are in contact almost daily
2 with our children, Kevin's siblings have been very close throughout the
3 years. They've been the best of friends throughout their lives. They've
4 grown up -- as they have grown up into adulthood those bonds have
5 become much stronger and deeper.

6 Being single, Kevin had the unique opportunity and position
7 that allowed him to visit and associate with his siblings on a regular
8 basis. His older sister had previously been through a divorce and she
9 and Kevin spent a lot of time talking on the phone. He was her outlet
10 and go to person. She was the one on the phone with him the night that
11 he was killed. Kevin was her lifeline and to have this valuable resource
12 taken from her caused -- has caused enormous trauma. Professional
13 counseling has been able to help somewhat, but the challenges are
14 deep and continue for her. The toll on our little family has been
15 incalculable.

16 I would like to share a few more personal thoughts and
17 insights for myself. I've had the privilege you just heard of our son's
18 experience this week. As the father I've had the unique privilege and
19 opportunity to be present when each of our children were born. Each
20 was special but I was affected differently by Kevin's birth. All of the
21 deliveries are beautiful and a joyous experience. But there was just
22 something different as Kevin entered the world. It caught me by surprise
23 and caused heavy emotion within me. I've struggled to find the words to
24 accurately describe what I felt as it was a feeling. it was something very
25 profound and different than I had experienced with the previous three. It

1 was very special.

2 As a young boy Kevin was always on his bike riding through
3 the neighborhood, visiting with the neighbors. He knew everyone and
4 everyone knew him, even the adults. It wasn't uncommon to talk with
5 the neighbor and have them say, we sure enjoy our visit from Kevin this
6 week or Kevin stopped by to visit us this week. He seemed to know
7 everything that was going on in the neighborhood.

8 Kevin loved celebrations and activities, but Christmas was by
9 far his favorite. So much so that when he --that he wasn't satisfied with
10 having just a family Christmas tree. He wanted his own -- as a young
11 boy he saved his money and bought himself a Christmas tree and that
12 he would decorate every year. And it wasn't just the Christmas tree that
13 got decorated. His whole entire bedroom was decorated top to bottom
14 with lights and all kinds of Christmas decorations. His excitement was
15 contagious and it spread into us as family members and helped us catch
16 the Christmas spirit each year. This past Christmas we found a huge
17 hole as he was not there and I guess it will just be that way from this
18 point moving forward.

19 Kevin was very responsible. When he came of age to obtain
20 his driver's license he wasn't satisfied with the old jalopy form of
21 transportation we as parents were willing to provide. So he got a job
22 working part time after school to pay for a car. His job was, as you have
23 just heard, was in the fast food industry. He became a team lead and
24 was very instrumental in the success of that location. There were many
25 people that we found out came to that location just specifically for him,

1 knowing that he was there because of the service he provided. He was
2 a people person and he knew how to make people feel important.

3 When he turned 19 he also volunteered to spend two years as
4 a missionary for our church. He served in both Scotland and Ireland
5 during that timeframe. He touched and positively influenced the lives of
6 many, many people. We continue to receive messages from people in
7 that location. The correspondence sharing with us memories and about
8 something special he did to care for them during the time that he was
9 there.

10 I would like to share just a little bit of more personal
11 experience, something that came to me during his funeral. There was a
12 young man named Walton who came. He traveled the 450 miles one
13 way to attend Kevin's funeral and he told me he could not let the
14 opportunity go by without honoring Kevin for what he did for him
15 personally. Walton shared with me that many months earlier his mother,
16 Walton's mother, had been put in the hospital and because of her
17 condition had to stay for an extended period. And following the hospital
18 stay had to be transferred to a long care -- long-term care facility.

19 Walton is a young man of very simple means. His only
20 possession is a bicycle. Walton because of the distance involved from
21 where he lives as to where his mother was located, visiting her was very
22 difficult. Walton told me that when Kevin found out about the situation
23 his immediate response was, Walton, let's go see your mom. And he
24 drove her there -- drove him there to visit her. And that that Kevin
25 continued regularly thereafter to drive Walton to see his mother at the

1 hospital.

2 He, Walton, wasn't quite sure at the time he shared this story
3 with me what the future held for him and when he was going to be able
4 to see his mother again and deeply appreciated all the care and
5 generosity shown by Kevin. For Walton himself to attend Kevin's funeral
6 was in itself a miracle as he had to make special arrangements and
7 favors to coordinate the travel of that distance to and fro. To me this
8 was just one example of the depth of love and appreciation that people
9 have for our son, Kevin and how he went out of his way to show that
10 love -- his love and help for them. Kevin's death has not only devastated
11 our family, but has ruined the lives of many others.

12 Kevin had a deep love for our country. He always did. But it
13 seemed to sink deeper and more profound from the years -- the two
14 years he spent away as a missionary. When he returned home from
15 living away he found a small blanket of the United States flag and put
16 that on his bed and that was there at all times. He also chose to hang a
17 flag separately of -- he also chose to hang a flag of the United States in
18 his room. And he did so because for him it was a constant reminder of
19 the blessing it was to live in our great country and something that he
20 didn't take for granted.

21 The last two lines of a hymn seem relevant this morning.
22 They say let the lower lights be burning, send a gleam across the wave.
23 Some poor fainting struggling seaman you may rescue, you may save.
24 Imagine in the beginning of my remarks about the something special that
25 I felt when Kevin was born. I think in all that's gone on right now that

1 something special was an indication of the light he was going to be to
2 the world throughout his life by possessing a special ability to touch
3 others and to help others navigate some of the tides and currents of life.
4 He would be, as it were, a light upon the shore, helping to rescue,
5 helping to save as he assisted those around him getting through life's
6 challenges and difficulties.

7 The apparent positive influence he has had on so many has
8 been quite amazing to realize the apparent positive influence he has had
9 on so -- on people all over the world has been remarkable. As parents
10 we had no idea the magnitude of his positive impact. He truly had a
11 special way of making everyone feel as if they were his favorite.

12 Having Kevin taken from us has caused pain beyond
13 description and a grief deeper than we thought possible. We are
14 reminded daily that he's no longer with us. But we choose to help him
15 live on by allowing his life to be an example and working to be more --
16 for us to be more kind to those around us and helping others on their
17 way.

18 And again on behalf of my family and me we express thanks
19 to you for allowing us into your courtroom today to speak about him and
20 to share some of our thoughts. I am grateful for my dear son. He has
21 made me a much, much better person. He truly was wonderful and
22 outstanding. And I truly am proud to call him my son. And I thank you
23 for letting us be here.

24 THE COURT: Thank you so much. Those are truly wonderful
25 words and someone with that kind of life just because they're not here

1 doesn't mean they're not here.

2 THE VICTIM SPEAKER: Exactly. We continue to feel
3 influence even now.

4 THE COURT: And through your words and the words of your
5 family you can feel that. Thank you.

6 THE VICTIM SPEAKER: Thank you.

7 MR. DICKERSON: Lastly, Your Honor, we'll call Kevin's
8 mother Debra Farnsworth.

9 THE COURT: Okay. Debra.

10 UNIDENTIFIED SPEAKER: Oh, they gonna have a ton of
11 people.

12 MR. ARROYO: Your Honor, can I have permission for Mr.
13 Abasta to sit?

14 THE COURT: Yeah, that's perfectly fine, yes. Thank you.

15 MR. ARROYO: Sir, you can sit if you need to.

16 THE COURT: One second before we swear you in, okay.
17 They're getting a chair. Try and minimize some noise in the
18 background. Okay. All right, I think we're ready.

19 He can sit if he would like. And we're going to go ahead and
20 continue here.

21 THE CLERK: Please raise your right hand.

22 **DEBRA FARNSWORTH**

23 [having been called as a victim speaker and being first duly sworn,
24 testified as follows:]

25 THE CLERK: Thank you. Please state and spell your first

1 and last name for the record.

2 THE VICTIM SPEAKER: My first name is Debra, D-E-B-RA
3 and Farnsworth.

4 THE COURT: Okay. Thank you. When you're ready and like
5 everyone else, if you need to take a break or you need a moment, you
6 go ahead and do that okay.

7 THE VICTIM SPEAKER: Thank you.

8 I too would like to say good morning, Judge, and thank you for
9 allowing us to be here. As you've been able to hear this morning, I've
10 had the privilege of being the mother of four beautiful children. Jennifer
11 is our oldest, James is our second. Thank you. This is hard to follow
12 Corey and James. Melanie is my third and Kevin was our baby. And
13 being a mom I learned from my father to tell my children every day how
14 much I love them and how special they were and that there wasn't
15 anything in life they couldn't accomplish by just setting their mind to be
16 able to do it.

17 Kevin was a very busy little boy. He made me a better mom.
18 He was always so bus, like he was into one thing and on to ten more
19 and keeping track of him sometimes was challenging. He was full of
20 energy. He had so much energy. And one of Corey's clients nicknamed
21 him Mr. Energy.

22 And I know that I was necessarily perfect all the time. When I
23 did something or said something or didn't handle it in the best way, I
24 would always apologize to my children and tell them I was sorry. Losing
25 Kevin has been extremely devastating to our family. All of my children

1 have had to have therapy of some kind to deal with the grief and
2 separation and the heartache that this has caused, a senseless,
3 senseless act. So because my girls emotionally weren't able to come I
4 thought that it would be nice to share some of their thoughts with you
5 and --

6 UNIDENTIFIED SPEAKER: Hell no.

7 THE VICTIM SPEAKER: -- our daughter Jennifer,
8 Thanksgiving time this last year, our community did I'm Grateful For, for
9 about a week or ten days of writing things they're grateful for on
10 Facebook.

11 THE COURT: Uh-huh.

12 THE VICTIM SPEAKER: And this is what Jennifer wrote. And
13 Jennifer was the one that was talking to Kevin on the phone at the time
14 this happened. Jennifer says as I have grown older and become a
15 parent myself I have realized how much my parents sacrificed for me
16 and my siblings over the years. They gave us a safe loving environment
17 to grow up in and all the dreaded teen building activities over the years
18 paid off, because I really like spending time with my siblings. My parents
19 took us on fun family vacations near and far and those are some of the
20 best memories. They taught us the gospel of Jesus Christ and they
21 showed us how to be good people. They took me and my boys in when
22 we needed a place to live and they are wonderful grandparents. Today I
23 give thanks for goodly parents who love and support and encourage me,
24 Jennifer.

25 And then I chose to share from Melanie. Melanie would have

1 posted this on Facebook January 14th this year when it had been a year
2 that this tragic -- tragedy happened. And just to let you know she
3 addressed it -- all of my children gave Kevin nicknames out of love. And
4 my daughter Melanie called him Chummy [phonetic], and I'll explain that
5 in a minute. But this is what Melanie had to say on the year anniversary
6 of Kevin's death. She said I can't believe it's been a year already that
7 you were called home to heaven. I miss you dearly every day. But I am
8 very grateful for the love you continue to share with me from the other
9 side of the veil. Thank you for continuing to take good care of me and
10 make me laugh. I'm so grateful for all the good memories we have
11 together and for your ability to remind me of them. I can't wait to hug
12 you and see you again. Until then, thank you for being one of my
13 guardian angels watching over me and many others. You are the best.
14 Love always, Melon. And her name is Melanie, but Melon was what
15 Kevin called her. That was his nickname.

16 So Jennifer, her nickname for Kevin was Culley [phonetic]
17 because when he was a little boy he couldn't pronounce his Rs and so
18 he would say my name is Kevin Culley. And so Jennifer called him
19 Culley. And James called him the Chi. I don't really know why. But he
20 was the Chi for James. And like I said Melanie called him Chummy.
21 And so the thing that was unique about Kevin was that whoever he was
22 with, he had a way of making them feel like they were the most
23 important person ever.

24 And Jennifer and Kevin whenever they would get together
25 enjoyed watching romantic comedy movies together. And when James

1 and Kevin would get together they would watch science fiction, the Lord
2 of the Rings, those types of movies they really enjoyed. And my Melanie
3 daughter, I can still see and hear the two of them in the next room
4 laughing as they watched the reruns of Reba and how funny she was.

5 Corey mentioned that Kevin bought his own car when he was
6 16. He came to me one day. The car that we had for the kids to drive
7 was a Ford Tempo, 1990. And Kevin was born in '93. And so he came
8 to me and he said, Mom, do you realize that the Tempo is older than me.
9 And I said yes. And he said I can't drive a car older than me. And I said
10 well, you know, then you're just going to I guess have to get your own
11 car. And so that was what he started out to do. He didn't feel like
12 Melanie would share the car with him too much. By then Jennifer and
13 James had their own vehicles.

14 But he came back to me and showed me how much money he
15 made, very responsible. This is how much of a car payment I can
16 handle and it's over five years. And I said to him, well sweetheart you're
17 going to serve a mission for our church, so in reality you only have three
18 years to pay for that car. So he left and he came back and had worked
19 out a schedule where he could afford to pay for it for three years. And
20 like my husband said he, you know, went to work and in the beginning
21 had two jobs and just the one to carry out. And he completely paid for
22 that car before he left on his mission and sold it. So he was very, very
23 resourceful.

24 It's been mentioned that Kevin was an Eagle Scout. And
25 Kevin did all of the work and got his Eagle Scout a year before his

1 brother James was due to come home from his mission. But he didn't
2 want to receive his Eagle Scout without his brother. So he waited a year
3 for that award to be presented to him, so that his brother could be there.

4 Kevin and I took a lot of trips together and we went back and
5 forth to St. George a lot. It was one of our favorite places to hang out.
6 And I went to Vegas with him on another one. We also went to
7 California and enjoyed the beach the way that we so much enjoyed the
8 beach. And Kevin and I texted or talked every single day, maybe
9 occasionally we might skip a day or something. But generally speaking
10 we always were in communication with each other. The day that Kevin
11 died I actually talked to him, I texted him and I also Facetimed him.
12 Because he was my -- I had something going on with my phone. I
13 needed his help with and he's the one who could always help me with
14 that.

15 And Corey mentioned Kevin loving the holidays, the Fourth of
16 July. Like he said, he loved our American flag and for what it stood for.
17 But Christmas was definitely his favorite holiday. And when he was a
18 little boy he told me he wanted to have a Christmas tree in his own
19 bedroom. And I said okay, you need to save your allowance money, so
20 that you can, you know, buy it. And so he did. He diligently saved. And
21 of course he didn't save enough. Mom and dad had to, you know, pitch
22 in at the end. But he worked so hard for that tree and was so excited.

23 And his room was delightful. Rounding the corner in the
24 hallway where James and Kevin's bedrooms were, Kevin had light up
25 and around the door frame and in the room up and around the door

1 frame and the baseboard and the windows. And he had all decorations
2 everywhere. It was just decked out. And that was just Kevin.

3 I had the opportunity to be with Kevin his last Christmas.
4 Corey and I have two homes and one of our homes is in St. George.
5 Kevin's work didn't give him enough time to be able to get away to go up
6 north. So he and I were together and we did Facetime with family so we
7 were able to be a part of them that way. But at the end of the Christmas
8 day, we were sitting around the couch and the only lights in the room
9 that were one were the Christmas tree and he made a comment about
10 how beautiful they were and how much he loves the Christmas lights.
11 And I'm so grateful that I had that time with him.

12 I am the last one that got to spend time with Kevin. On
13 Sunday the 12th, I came from St. George and Kevin from Henderson and
14 we met in Mesquite and had brunch and spent the day together. And
15 that was the last time I was with Kevin.

16 It's been mentioned about Kevin's funeral. Our whole family
17 spoke and I was very proud of the good job that my kids did at such a
18 hard time and Corey and I. And people made contact with us or came
19 from Scotland, Ireland, France, Australia, from North Carolina to
20 California. Kevin, it was amazing, amazing to us, the love that we
21 received from people in support in this difficult time and how much he
22 did for people in sharing the light that he had.

23 I wanted to show this to you. This is our son, Kevin and this is
24 a book that our daughter, Jennifer made. I believe it was probably part
25 of her therapy. But inside there are pictures of Kevin and posts that

1 people made on Facebook and so you can see what a --

2 THE COURT: What a great memory.

3 THE VICTIM SPEAKER: -- a wonderful young man he was.

4 One of my neighbors, her name is Linda. She has a son that
5 lives in Henderson. They came down to see her grandbaby within a
6 month or so after the murder happened. And so she went to the place
7 where it happened and there was a memorial that was set up there on
8 the sidewalk for several months honoring Kevin. And she took the time
9 to call the Henderson police and she told them you need to find out who
10 did this. You need to get him off the streets. And you need to know that
11 our community is mourning for the loss of Kevin. He was such a
12 dynamic young man. When she called and told me that had been --

13 Kevin dated a young woman in high school. They worked
14 together. Her name was Kayla Christiansen and Kayla was back east.
15 Her husband was going to school. And one of their common friends,
16 Christian would have called her to tell her of Kevin's death. And she
17 described it to me that she was standing in her kitchen frying hamburger
18 when the phone call came in and Christian told her that Kevin had been
19 murdered. And she said I could not believe it. And she said I slid down
20 the stove onto the floor and just cried. I share this with you to let you the
21 dynamic of the love that people have for my son.

22 Another thing that I think that I think is worthy for you to know
23 is because I was in St. George, I drove here that night hoping to find my
24 son wounded and that I could take care of him and nurse him back to
25 health, but that was not what I found. That next day Corey flew into

1 Vegas and we started taking care of preparations that we had to,
2 because of what had just happened to our son. And it was about noon
3 and I realized that I hadn't called Corey -- or Kevin's work. And so we
4 stopped in the parking lot there and I took a minute and I asked for
5 Amber, because I knew that was his manager and they told me that she
6 wasn't there but that Damian was. And so I identified myself to Damian
7 who I was. And he said oh yeah, I've been calling Kev all morning. It
8 just goes to voicemail. We don't know why he hasn't shown up for his
9 shift. And I said well he was murdered last night. And you should have
10 heard him on the other end of the phone just fall apart.

11 And the thing that I was so touched by is that Kevin worked at
12 a bank. They waited on the customers that were there in the bank.
13 They closed the door and they locked it, after they heard that Kevin had
14 been murdered. And the bank was closed for an hour or so waiting for
15 other employees from other banks to come and they worked the shifts
16 and all of the employees that Kevin worked with were taken into a
17 conference room and for a couple of weeks instead of working they had
18 therapy sessions to be able to be taught how to deal with this kind of
19 grief. He just had a very, very, very strong love for people and was so
20 happy and his happiness just always [noise from videoconference].

21 Corey and I have been married for 38 years, a little bit over
22 that. And I want you to know that when I married my husband I gave
23 him my whole heart. I am so blessed. But when I think of my heart,
24 Corey has the whole of it. And I have four children and each of them
25 have a fourth of it. My heart where Kevin was has been blasted out. It's

1 shredded. It's just -- hold on -- that's what I get to deal with every day.
2 But I also feel like it wouldn't be fair to not to acknowledge from which
3 my blessings come from heaven. Because at the same time I feel like I
4 have a cocoon wrapped around me from my savior with his atonement
5 and knowing that my son is still my son and that after this life I can be
6 with him again.

7 In closing I would like to share this poem that says, in memory
8 of all those who left us too soon we remember you in the morning, at
9 night, in the song, a smell, a place, and when we look at the stars. You
10 will always be with us.

11 Thank you for letting me have this time.

12 THE COURT: Thank you so much. I can feel the love of a
13 mom and it's incredible.

14 THE VICTIM SPEAKER: It's been a privilege. Thank you.

15 THE COURT: Thank you.

16 All right. I want to thank the victim speakers again for coming
17 in this morning. I know it is very difficult to come in to put emotions to
18 words and try and convey the impact it had on your family and friends.
19 But I hope at a minimum it is cathartic and brings you some level of
20 closure. Of course I recognize they'll be never full closure. I do find that
21 often times, victims will say that it was important to come in and to say
22 those things because you need to be heard. And so I thank you for that.

23 I always hope that his legacy helps you -- by carrying on his
24 legacy and his positivity and his energy, which is very clear from all the
25 speakers that I heard from today and I'll note I also read a couple of

1 letters that came through on his behalf, that he was a positive energy
2 and how amazing that he has this network of family and friends who love
3 him and can carry that legacy on. That isn't always the case. And so
4 that in itself is truly wonderful. And there's, you know, very difficult to put
5 into words how to kind of move forward from here. But I certainly hope
6 that in some degree that you can, because this ends this chapter of that
7 part of your life. Certainly you'll carry the memory on and the trauma
8 with you.

9 I'm also really glad to hear that you are all in therapy,
10 absolutely necessary. I think often times people don't recognize the loss
11 of one person, but it's not just the loss of one person, right. It's the loss
12 of that person and everyone they touched, their lives are forever
13 changed and so I'm really glad to hear that. Certainly would have
14 wished certainly something different for you and your family. But I'm
15 grateful that you have each other and may that help carry you through
16 as well.

17 So, Mr. Abasta, we're going to go ahead and get started here.
18 In accordance with the laws of the State of Nevada, I hereby adjudge
19 you guilty of Count 1, murder in the first degree, which is a category A
20 felony, in violation of NRS 200.010 and 200.030. I also adjudge you
21 guilty of Counts 2, 4, 5, and 7, which is assault with a deadly weapon,
22 which is a category B felony, in violation of 200.471. And I adjudge you
23 guilty of counts 3 and 6, robbery, which is a category B felony in violation
24 of NRS 200.380.

25 I'm going to order that you pay some standard fines and fees.

1 That is a \$25 Administrative Assessment Fee, a \$150 DNA Fee. You're
2 to submit to testing for your DNA and there's a \$3 Collection Fee that
3 goes along with that. Last but not least, you do have to pay a \$250
4 Court Appointed Counsel Fee and that's for having the Public Defender
5 represent you during the pendency of this case.

6 As I noted I am inclined to follow the negotiations as this is the
7 result of a settlement conference that involved the victims. Given the
8 tragic nature of this offense, certainly they need to be part of that
9 process. I think somebody called this a senseless act and I think that is
10 correct. Mr. Abasta, not only did you take the life of someone who had
11 family and friends that loved him; you took your own life really. You're a
12 young man who should have been doing good things in the world and
13 making a difference in the world and instead you opted to commit this
14 senseless act of violence that forever changed not just one person by
15 taking his life, but the life of his family friends and everyone who knew
16 him.

17 It's always disheartening to me when I don't hear a particular
18 defendant apologize or express regret for the acts they did. Though I
19 also recognize that could be difficult. And it doesn't -- I'm not -- I don't
20 lose the fact that you did accept responsibility. It was just certainly a
21 huge step in the right direction.

22 I hope that you use this time that you are in custody to reflect
23 to get the help that you clearly need to prevent yourself from engaging in
24 this type of behavior before. It's a tragedy that you didn't learn from the
25 first two times you had contact with the criminal justice system that the

1 behavior you're engaging with is dangerous and certainly anytime that
2 firearms are involved that this sort of senseless act can happen.

3 But here we are and I do believe that the sentence that was
4 reached during the course of the settlement conference was sufficient
5 but not greater than necessary to achieve what I consider to be
6 important sentencing factors, one, taking into account you as an
7 individual, your criminal history, the need to protect the community, the
8 need to deter others from engaging in this type of conduct and hopefully
9 to provide needed therapy for you, because really there's just no reason
10 why an individual would engage in this type of behavior without the need
11 of some sort of help.

12 As I noted, I did read some letters. I do find them to be
13 reliable letters that were written on behalf of the victim. They are friends
14 -- or one is an aunt. One is a friend of the victim and the third -- excuse
15 me there as four that were two other friends. And so I want to thank
16 them for submitting these letters on his behalf. And again I thank the
17 family for being present here today.

18 You are going to be sentenced as follows: As to Count 1,
19 you'll be sentenced to 240 -- hold on, I want to make sure I'm saying this
20 right, Mr. Dickerson, so just go along with me.

21 MR. DICKERSON: Yeah, absolutely, Your Honor.

22 THE COURT: 200 to 600 months in the Nevada Department
23 of Corrections. Or is it 240?

24 MR. DICKERSON: 240.

25 THE COURT: All right.

1 MR. DICKERSON: Yeah.

2 THE COURT: 240 months in the Nevada Depart -- to 600
3 months in the Nevada Department of Corrections.

4 As to Count 2, you'll be sentenced to 28 to 72 months in the
5 Nevada Department of Corrections. And that will run consecutive to
6 Count 1.

7 As to Count 3, you'll be sentenced to 48 to 180 months in the
8 Nevada Department of Corrections. And that shall also run consecutive
9 to Count 1.

10 As to Count 4, you'll be sentenced to 28 to 72 months in the
11 Nevada Department of Corrections, also consecutive to Count 1.

12 Count 5, you'll be sentenced to 28 to 72 months in the Nevada
13 Department of Corrections, consecutive to Count 1.

14 Count 6, you'll be sentenced to 48 to 180 months in the
15 Nevada Department of Correction, consecutive to Count 1.

16 Count 7, you'll be sentenced to 28 to 72 months in the Nevada
17 Department of Corrections, consecutive to Count 1.

18 Counts 3 through 7 will run concurrent to Count 2.

19 MR. DICKERSON: That's going to give us --

20 THE COURT: I need a sentence for that. Is that --

21 MR. DICKERSON: That's correct, Your Honor. That's going
22 to give us an aggregate sentence of 288 months to 780 months.

23 THE COURT: And what is the sentence as to counts -- oh, I
24 see. I see. Counts 3 through 7 will run concurrent with Count 2 and that
25 will result in an aggregate sentence of 24 to 65 months -- 65 years in the

1 Nevada Department of Corrections.

2 I have the credit for time served calculation as 458 days. Do
3 both parties stipulate that's a correct calculation?

4 MR. DICKERSON: We do, Your Honor.

5 MR. ARROYO: Yes, Your Honor.

6 THE COURT: All right, thank you. All right, anything else that
7 we need to address this morning?

8 MR. DICKERSON: No, Your Honor, thank you.

9 THE COURT: Thank you and --

10 MR. ARROYO: Your Honor, I just wanted -- just real quick
11 because I'm not great at math. I just wanted to be clear that the parties'
12 intent was for the aggregate total sentence to be 24 to 65 years in
13 NDOC?

14 THE COURT: That's correct.

15 MR. ARROYO: Just in case this does come back.

16 THE COURT: Yeah, that is the intent that was my --

17 MR. ARROYO: I've had these come back sometimes.

18 THE COURT: That's my -- that was the attempt and I
19 announced that as the aggregate sentence. To the degree there needs
20 to be any more clarity, we can do that.

21 One thing we did not address his restitution. Mr. Dickerson,
22 do you have a restitution amount?

23 MR. DICKERSON: We did have a restitution amount
24 submitted by victim Ernesto Santana Rosas. It's for \$5,672.60. In
25 speaking with him this morning, that's for medical bills that he continues

1 to receive from being shot in his particular event in this case. I
2 submitted that restitution request to Mr. Arroyo. I think that he was
3 reviewing it. I'm not sure where he stands on that now.

4 THE COURT: All right. Mr. Arroyo, do you need some
5 additional time to review that restitution request?

6 MR. ARROYO: Well, Your Honor, I have gone through
7 everything while we were going through this calendar. And it's my
8 understanding that some of the bills are duplicates. Some are
9 collections for the original bills. And I have a total of \$3,756.30 is the
10 total I got to. So I guess it would be up to the State to either they accept
11 my representations or if we're going to set it for a hearing.

12 MR. DICKERSON: Well --

13 THE COURT: Well, why don't we go ahead and set this for a
14 status on the 16th of June for you all to meet and confer on that question
15 in case there is any questions regarding any duplicates or not.

16 MR. DICKERSON: What my thoughts are is that Mr. Abasta
17 is going to be spending the better part of his life, if not his whole life, in
18 prison. And that is very unlikely to be paid by him. We have two other
19 defendants in this case that can share the jointly and severally. I will be
20 seeking full restitution from those two. So I will accept the stipulation
21 that \$3,756.70 to be ordered to pay -- be paid by Mr. Abasta.

22 THE COURT: Okay. All right. I appreciate that Mr.
23 Dickerson. So, Mr. Arroyo, we'll accept your representation. I'm going
24 to order restitution in the amount of \$3,756.70. That is to be paid joint
25 and severally with his codefendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

All right, anything else we need to address this morning?

MR. ARROYO: Thank you, Your Honor.

MR. DICKERSON: No, Your Honor, thank you so much.

THE COURT: Okay. Thank you. And thank you all again.

[Hearing concluded at 10:19 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jessica Kirkpatrick
Court Recorder/Transcriber

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIC ABASTA aka
Eric Abasta Jr.
#5010484

Defendant.

CASE NO. C-20-349045-1

DEPT. NO. XVII

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – MURDER (FIRST DEGREE) (Category A Felony) in violation of NRS 200.010, 200.030; COUNT 2 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 3 – ROBBERY (Category B Felony) in violation of NRS 200.380; COUNT 4 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 5 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 6 – ROBBERY

000574

1 (Category B Felony) in violation of NRS 200.380; and COUNT 7 – ASSAULT WITH A
2 DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 25th
3 day June, 2021, the Defendant was present in court for sentencing with counsel ROBERT
4 ARROYO, Chief Deputy Special Public Defender and TEGAN C. MACHNICH, Chief Deputy
5 Special Public Defender, and good cause appearing,
6

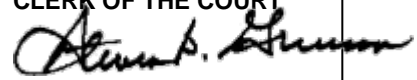
7 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
8 to the \$25.00 Administrative Assessment, \$250.00 Indigent Defense Civil Assessment Fee,
9 \$3,756.70 Restitution to be paid Jointly and Severally by Defendant and Co-Defendants Mason
10 Arney and James Arney to Victim Ernesto Santana-Rosas and \$150.00 DNA Analysis Fee
11 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is
12 sentenced to the Nevada Department of Corrections (NDC) as follows: COUNT 1 - a
13 MAXIMUM of SIX HUNDRED (600) MONTHS with a MINIMUM Parole Eligibility of TWO
14 HUNDRED FORTY (240) MONTHS; COUNT 2 – a MAXIMUM of SEVENTY-TWO (72)
15 MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS,
16 CONSECUTIVE to COUNT 1; COUNT 3 – a MAXIMUM of ONE HUNDRED EIGHTY
17 (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS,
18 CONSECUTIVE to COUNT 1; COUNT 4 – a MAXIMUM of SEVENTY-TWO (72)
19 MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS,
20 CONSECUTIVE to COUNT 1; COUNT 5 – a MAXIMUM of SEVNTY-TWO (72) MONTHS
21 with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to
22 COUNT 1; COUNT 6 – a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a
23 MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, CONSECUTIVE to COUNT
24 1; and COUNT 7 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM
25
26
27
28

1 Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to COUNT 1;
2 COUNTS 3,4,5,6 and 7 to RUN CONCURRENT with COUNT 2; with FOUR HUNDRED
3 FIFTY-EIGHT (458) DAYS credit for time served. The AGGREGATE TOTAL sentence is
4 SIXTY-FIVE (65) YEARS MAXIMUM with a MINIMUM of TWENTY-FOUR (24) YEARS.
5
6
7
8
9

10 Dated this 9th day of July, 2021

11 
12

13 69A 91A 6CB3 5128
14 Michael Villani
15 District Court Judge
16
17
18
19
20
21
22
23
24
25
26
27
28



NOA
Melinda Simpkins, NSB #7911
Chief Deputy Special Public Defender
Robert Arroyo, NSB #11512
Chief Deputy Special Public Defender
JoNell Thomas, NSB #4771
Special Public Defender
330 South Third Street, No. 800
Las Vegas NV 89101
702-455-6265
Fax 455-6273
Melinda.simpkins@clarkcountynv.gov
Robert.arroyo@clarkcountynv.gov
jonell.thomas@clarkcountynv.gov

Attorneys for Abasta

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

ERIC ABASTA, JR.

Defendant.

CASE NO. C-20-349045-1

DEPARTMENT: 17

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, Plaintiff,

TO: CLARK COUNTY DISTRICT ATTORNEY, Plaintiff's attorney; and

...

1 TO: DEPARTMENT 17 OF THE EIGHTH JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF
CLARK:

3 NOTICE is hereby given that Eric Abasta Jr. hereby appeals to the
4 Nevada Supreme Court from the Judgment of Conviction (Plea of Guilty)
5
6 filed July 9, 2021.

7 DATED August 6, 2021.

8
9 SUBMITTED BY:

10 /s/ MELINDA SIMPKINS

11
12 BY _____
13 MELINDA SIMPKINS
14 ROBERT ARROYO
15 JONELL THOMAS
16 Attorneys for ABASTA

17 **CERTIFICATE OF MAILING**

18 The undersigned does hereby certify that on August 6, 2021, I
19 deposited in the United States Post Office at Las Vegas, Nevada, a copy of
20
21 the Notice of Appeal, postage prepaid, addressed to the following:

22 District Attorney's Office
23 200 Lewis Ave., 3rd Floor
24 Las Vegas NV 89155

25 Nevada Attorney General
26 100 N. Carson
27 Carson City, NV 89701-4717
28

...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Eric Abasta Jr., ID 1165002
High Desert State Prison
P.O. Box 650
Indian Springs NV 89070

Dated: 8/6/2021

/s/ MELINDA SIMPKINS

An employee of The Special Public
Defender's Office

Felony/Gross Misdemeanor

COURT MINUTES

June 26, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

June 26, 2020 11:00 AM Grand Jury Indictment

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Michael Dickerson

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

Kenneth Dickinson, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 19CGJ051A to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-20-349045-1, Department III.

State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, NO BAIL; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

Upon Court's inquiry, the State advised there are no material witness warrants to quash. COURT FURTHER ORDERED, Exhibits 1-24 and 26-35 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 20F02017B DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (CUSTODY)

07/02/20 3:30 P.M. INITIAL ARRAIGNMENT (DEPT III)

Felony/Gross Misdemeanor

COURT MINUTES

July 02, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

July 02, 2020 03:30 PM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Ray, Stacey

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

INDICTMENT WARRANT RETURN... INITIAL ARRAIGNMENT...

APPEARANCES CONTINUED: Defendant ABASTA present in custody represented by Special Public Defender Robert Arroyo; Defendant MASON ARNEY present in custody represented by James Gallo Esq.; Defendant JAMES ARNEY present out of custody represented by Daniel Lippmann Esq.

Upon Court's inquiry, Mr. Arroyo stated the Special Public Defender's Office can confirm as counsel of record on behalf of Defendant ABASTA. Mr. Gallo informed the Court he did not have a chance to speak with Defendant MASON ARNEY, pointing out he went over to the jail twice and the Defendant was in transit each time. Upon Court's inquiry, Defendant JAMES ARNEY stated his first name was WAYLON, not JAMES. COURT SO NOTED. Upon Court's further inquiry, Defendant ABASTA stated Mr. Arroyo went over the charges with him, however he is confused as to what charges relate to him. DEFENDANT JAMES WAYLON ARNEY ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for status check. Mr. Lippmann requested a status check in two weeks. Upon Court's inquiry, Ms. Cannizzaro indicated she believed the matter is not going before the Death Review Committee with regards to Defendant ABASTA. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. COURT ORDERED, arraignment CONTINUED with regards to Defendants ABASTA and MASON ARNEY; status check SET with regards to Defendant JAMES WAYLON ARNEY. COURT FURTHER ORDERED, Defendant JAMES WAYLON ARNEY's presence can be waived at the next hearing, adding since this is a homicide case, the matter will need to be reassigned.

CUSTODY

7/7/2020 3:30 P.M. ARRAIGNMENT CONTINUED

Felony/Gross Misdemeanor

COURT MINUTES

July 07, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

July 07, 2020 03:30 PM Arraignment Continued

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Ray, Stacey

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

APPEARANCES CONTINUED: Defendant ABASTA present in custody represented by Special Public Defender Robert Arroyo; Defendant MASON ARNEY present in custody represented by James Gallo Esq.; Defendant JAMES WAYLON ARNEY present represented by Daniel Lippmann Esq.

DEFENDANT ABASTA ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. DEFENDANT MASON ARNEY ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Ms. Lacher indicated she does not know if the matter is going before the Death Review Committee with regards to Defendant ABASTA. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 17.

CUSTODY

7/16/2020 10:15 A.M. STATUS CHECK: TRIAL SETTING (DEPT 17)

Felony/Gross Misdemeanor**COURT MINUTES****July 16, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

July 16, 2020 10:15 AM Status Check: Trial Setting

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Reid, Shannon

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Robert Arroyo	Attorney for Defendant
Sarah Overly	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

James Gallo, ESQ present on behalf of Co Defendant Mason Arney. Daniel Lippman, ESQ. present on behalf of Co Defendant James Arney.

Mr. Arroyo advised Defendants had invoked the 60-Day Rule. COURT ORDERED, matter SET for trial. COURT FURTHER ORDERED, Counsel has 21 days from the filing of the Grand Jury Indictment transcript to file a Writ.

CUSTODY

08/25/2020 8:30 AM CALENDAR CALL

09/08/2020 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor**COURT MINUTES****August 25, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

August 25, 2020 10:15 AM Calendar Call

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Reid, Shannon

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Daniel Lippman, ESQ. present on behalf of Co Defendant James Arney. James Gallo, ESQ. present on behalf of Co Defendant Mason Arney.

Court noted no trials were going forward due to COVID-19 pandemic. Upon Court's inquiry, Mr. Arroyo advised Defendants had previously invoked the 60-Day Rule. COURT FINDS good cause due to the Court's schedule and nature of this case to continue the trial beyond 60 days.

CUSTODY

11/17/2020 10:15 AM CALENDAR CALL

11/30/2020 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

September 09, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

September 09, 2020 11:30 AM Central Trial Readiness Conference

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr. Defendant

Nicole J. Cannizzaro Attorney for Plaintiff

Robert Arroyo Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Also present: James Gallo, Esq. counsel for Co-Defendant Mason Arney who refused transport.

Mr. Gallo advised he is still waiting on an offer to be extended from the State. State advised it is still discussing potential offers with the victim and detective. Mr. Arroyo advised discovery was received three weeks ago and this appearance may be a bit premature. COURT ORDERED, matter CONTINUED for counsel to consider discovery and State to convey offers.

CUSTODY

CONTINUED TO: 10/07/20 11:30 AM

Felony/Gross Misdemeanor**COURT MINUTES****October 07, 2020**

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

October 07, 2020 11:30 AM Central Trial Readiness Conference

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Delgado-Murphy, Melissa

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr. Defendant

Robert Arroyo Attorney for Defendant

JOURNAL ENTRIES

Also present: Co-Defendant Mason Arney with counsel James Gallo, Esq.

Mr. Arroyo advised there is no current offer at this time and a file review is pending as there is potentially missing discovery. COURT ORDERED, matter CONTINUED for file review and any additional updates.

CUSTODY

CONTINUED TO: 10/28/20 11:30 AM

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

October 28, 2020 11:30 AM Central Trial Readiness Conference

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

JOURNAL ENTRIES

Co-Defendant Mason Arney present with counsel James Gallo, Esq.

Mr. Arroyo advised he is missing discovery however has a file review next week. State advised an offer has been extended to Defendant Arney but not Abasta. Mr. Gallo advised an offer was extended about two weeks ago and negotiations are on going. Mr. Gallo further advised he should know within two weeks if he will be ready for trial however he does not believe Defendant wants to waive speedy. Mr. Arroyo advised he does not think he can be ready. COURT ORDERED, department calendar call VACATED; central calendar call SET.

CUSTODY

11/25/20 2:00 PM CENTRAL CALENDAR CALL (LLA)

Felony/Gross Misdemeanor

COURT MINUTES

November 25, 2020

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

November 25, 2020 02:00 PM Central Calendar Call

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Esparza, Kerry

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Nicole J. Cannizzaro	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

JOURNAL ENTRIES

Co-Defendant Mason Arney present with counsel James Gallo, Esq. Parties present via Bluejeans.

State noted a file review was done with Mr. Arroyo and additional discovery was requested from the investigator some of which has been turned over. Court noted due to current Covid-19 protocols trials are unable to proceed and ORDERED, trial date VACATED and RESET.

CUSTODY

01/13/21 2:00 PM CENTRAL CALENDAR CALL (LLA)
01/19/21 9:00 AM JURY TRIAL (DEPT 17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 15, 2020

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

**December 15, 2020 10:15 AM Motion for Own Recognizance Release/Setting
Reasonable Bail**

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carina Bracamontez-Munguia/cbm

RECORDER: Cynthia Georgilas

PARTIES

PRESENT:	Abasta, Eric, Jr.	Defendant
	Arroyo, Robert	Attorney for Defendant
	Cannizzaro, Nicole J.	Attorney for Plaintiff
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Arroyo argued the State has the burden of proving proof evident presumption great and he believes they cannot meet that standard at this point. Ms. Cannizzaro argued for denial of motion and requested Deft. continue to be held without bail pursuant to statute because proof is evident and presumption great for first degree murder charge; if court is not inclined she would offer additional evidence regarding other charges in the indictment and request monetary bail. Court noted there are a lot of pieces to this puzzle and believes the State has presented enough for this Court that there is proof evident presumption great on the murder charge, therefore, COURT ORDERED Deft. HELD WITHOUT BAIL.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

January 13, 2021 2:00 PM Central Calendar Call

HEARD BY: Jones, Tierra **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK:
Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Abasta, Eric, Jr.	Defendant
	Cannizzaro, Nicole J.	Attorney
	Machnich, Tegan	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Ms. Cannizzaro present via video, on behalf of the State. Ms. Machnich present via video, on behalf of deft.

Court noted the Court cannot currently do Jury trials at this time, due to orders from the Governor. COURT ORDERED, trial date VACATED and matter SET for Central Trial Readiness, on the date given, as to both defts.

CUSTODY ABASTA / ARNEY

01/27/21 11:30 A.M. CENTRAL TRIAL READINESS ABASTA / ARNEY

PRINT DATE: 01/26/2021

Page 1 of 2

Minutes Date: January 13, 2021

000590

Felony/Gross Misdemeanor

COURT MINUTES

January 27, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

January 27, 2021 11:30 AM Central Trial Readiness Conference

HEARD BY: Jones, Tierra COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Ortega, Natalie

RECORDER: Boyd, Victoria

REPORTER:

PARTIES PRESENT:

Danielle K. Pieper	Attorney for Plaintiff
Eric Abasta, Jr.	Defendant
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Special Public Defendant Robert Arroyo present with Defendant Eric Abasta, Jr. (C349045-1)

James C. Gallo, Esq., present with Defendant Mason Arney (C349045-2)

COURT NOTED this case could be accommodated on the February 22, 2021 as number 2 on the stack. Counsel announced trial ready. Colloquy regarding filing a motion to exclude and resolving the case. COURT ORDERED, trial SET.

CUSTODY - ABASTA

CUSTODY - ARNEY

02/17/21 2:00 PM CENTRAL TRIAL CALENDAR CALL (ABASTA and ARNEY)

02/22/21 9:00 AM CENTRAL TRIAL JURY TRIAL (ABASTA and ARNEY)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 12, 2021

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

February 12, 2021 3:00 AM Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- By stipulation and agreement by Parties via communications with Court s Law Clerk. COURT ORDERED, matter SET for February 23, 2021 VACATED and RESET to February 18, 2021 at 8:30 AM.

CLERK'S NOTE: A copy of this Minute Order was distributed by e-mail to counsel. 2/12/2021 sa

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 17, 2021**

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

February 17, 2021 2:00 PM Central Calendar Call

HEARD BY: Jones, Tierra **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Abasta, Eric, Jr.	Defendant
	Arroyo, Robert	Attorney
	Dickerson, Michael	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Mr. Dickerson present via video, on behalf of the State. Mr. Arroyo present via video, on behalf of deft. Abasta. Mr. Gallo present on behalf of co-deft. Arney.

Upon Court's inquiry, Mr. Arroyo advised Mr. Dickerson recently took over the case from Ms. Cannizzaro, and there's been a lot of new discovery, and counsel will need to travel out of State for new witnesses. Further, deft. would like to keep his invoked status, and the State is not opposed. Mr. Dickerson advised that's correct, and they are open to negotiations, however, deft. would have to waive a certain amount of time to fully negotiate the case. Mr. Gallo advised that's fine, however, co-deft. would like to keep his invoked status also. Statements by deft. Court noted counsel can file a bail motion if they choose to do that, and that would be heard by Judge Villani. COURT ORDERED, trial date VACATED and RE-SET for Central Jury Trial and Central Calendar Call, on the date given. FURTHER COURT ORDERED, date for Motion in front of Judge Villani, STANDS. FURTHER, both Defendants REMAIN INVOKED.

PRINT DATE: 03/23/2021

Page 1 of 2

Minutes Date: February 17, 2021

000594

CUSTODY ABASTA/ARNEY

03/24/21 2:00 P.M. CENTRAL CALENDAR CALL - LLA

03/29/21 9:00 A.M. CENTRAL JURY TRIAL - 3E or 3F

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

February 18, 2021 08:30 AM State's Motion to Amend Indictment

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr. Defendant

Michael Dickerson Attorney for Plaintiff

Robert Arroyo Attorney for Defendant

Special Public Defender Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Court noted an Opposition had been filed yesterday, however has not had an opportunity to review it. COURT ORDERED, matter CONTINUED to Tuesday.

CUSTODY

CONTINUED TO: 2/23/2021 8:30 AM

Felony/Gross Misdemeanor

COURT MINUTES

February 23, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

February 23, 2021 08:30 AM State's Motion to Amend Indictment

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
Special Public Defender	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Dickerson requested to amend the Complaint to add the theory of felony murder. Mr. Dickerson argued that Defendant Abasta has been on notice due to the testimony before the Grand Jury, which indicated this was a murder committed in furtherance of an attempt robbery. Mr. Dickerson provided argument regarding the Chamberlain case and noted NRS 173.095(1) allows the State to amend an Information and an Indictment. Mr. Arroyo argued that the State presented only cases regarding the amending of an Information, not the amending of an Indictment which would require them to go back to the Grand Jury. COURT ORDERED, matter TAKEN UNDER ADVISEMENT and a decision would be issued today or tomorrow.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 01, 2021

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

March 01, 2021

3:00 AM

Minute Order

HEARD BY: Villani, Michael

COURTROOM: Chambers

COURT CLERK: Samantha Albrecht

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The State's Motion to Amend Indictment came before the Court, whereupon the Court took the matter under further advisement. After considering all pleadings and arguments, the Court renders its decision as follows:

The State seeks to add an additional theory of liability felony murder for Count five murder with use of a deadly weapon of the Indictment. Under NRS 173.095(1), the court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. Moreover, felony murder does not amount to the charging of additional or different offenses. See State v. Eighth Judicial Dist. Court, ex rel. County of Clark, 116 Nev. 374 378-79, 997 P.2d 126 129-130 (2000).

Here, the State request to amend their indictment merely adds an alternate liability theory, felony murder. Also, the State placed Defendant on notice regarding felony murder during grand jury. See GJT Vol. 2, at 40-53. Therefore, THIS COURT FINDS the amendment to count five does not charge an additional offense, and the addition of felony murder theory does not prejudice Defendant's substantial rights.

PRINT DATE: 03/01/2021

Page 1 of 2

Minutes Date: March 01, 2021

000598

Therefore, COURT ORDERED, Motion to Amend Indictment, GRANTED. COURT ORDERS State to submit a proposed order consistent with the foregoing and is approved by the State regarding its form and content within ten (10) days after Counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. Status check SET for March 16, 2021 at 8:30 am regarding the filing of the order. That date to be vacated if the Court receives the order prior to March 16, 2021.

CLERK'S NOTE: A copy of this Minute Order was provided to counsel via e-mail. 3/1/2021 sa

Felony/Gross Misdemeanor

COURT MINUTES

March 23, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

March 23, 2021 08:30 AM Defendant's Motion to Dismiss Due to Speedy Trial Violation

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
Special Public Defender	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Arroyo stated he agreed with the State's Opposition on the good communication regarding discovery and noted Ms. Canizzarro was previously on this case which had been pending since March. Mr. Arroyo noted they had a file review in November, however they did not receive the missing discovery until February. Mr. Arroyo further noted Mr. Dickerson turned over the discovery within a few days. Mr. Arroyo stated there were other options for trial and a bench trial might have been requested. Mr. Arroyo further stated they received additional jail calls on 3/11/2021, which require further investigation. Mr. Arroyo advised this puts the Defendant in a situation where his speedy trial rights would be violated as the trial would need to be continued or proceed with counsel not being fully prepared.

Mr. Dickerson noted the continuances were due to COVID and the State provided all the discovery to defense counsel. Mr. Dickerson stated the State was ready to proceed to trial.

Court FINDS based on all the factors and the COVID issues, there is no legal basis to dismiss the case, based on speedy trial violations, therefore ORDERED, Motion DENIED. Mr. Dickerson noted he had never been approached regarding a bench trial and would be opposed to a bench trial.

CUSTODY

Felony/Gross Misdemeanor

COURT MINUTES

March 24, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

March 24, 2021 02:00 PM Central Calendar Call

HEARD BY: Barker, David COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Garcia, Louisa

RECORDER: Slattery, Patti

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

JOURNAL ENTRIES

Court noted this case is on the top of the stack to start trial next week. Mr. Dickerson stated he is ready to proceed to trial.

Mr. Arroyo stated they are not ready to proceed to trial and the Deft. is not willing to waive his right to a speedy trial, however, noted this is a large case and received a large amount of discovery in February, 2021 that was given to the expert who wouldn't be available to have it all done and testify by next week, therefore, requested matter be continued over the Deft's objection. Upon Court's inquiry, Deft. stated that he understands, however, is not willing to waive the speedy trial rights and requested to extend the trial date without having to waive speedy trial rights. Statement by Mr. Dickerson; further, out of courtesy, doesn't have any objection and suggested this matter be set for a settlement conference. Colloquy between Court, counsel and the Deft. regarding a settlement conference. COURT ORDERED, matter SET for a settlement conference.

CUSTODY

5/03/21 1:30 PM SETTLEMENT CONFERENCE

CLERK'S NOTE: Minute order completed by Court Clerk, Kristen Brown by way of JAV's recording, kb 4/02/2021.

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

May 06, 2021 08:30 AM Status Check: Negotiations

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr. Defendant

Madilyn M. Cole Attorney for Plaintiff

Robert Arroyo Attorney for Defendant

Special Public Defender Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Mr. Arroyo advised this case was scheduled for a Settlement Conference on May 11th and requested a continuance after that date. COURT SO ORDERED.

CUSTODY

5/28/2021 8:30 AM STATUS CHECK: NEGOTIATIONS

Felony/Gross Misdemeanor

COURT MINUTES

May 11, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

May 11, 2021 03:50 PM Entry of Plea

HEARD BY: Villani, Michael COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Ashley L. Sisolak Attorney for Defendant

Eric Abasta, Jr. Defendant

Michael Dickerson Attorney for Plaintiff

Robert Arroyo Attorney for Defendant

Special Public Defender Attorney for Defendant

State of Nevada Plaintiff

Tegan Machnich Attorney for Defendant

JOURNAL ENTRIES

NEGOTIATIONS are as contained in the Guilty Plea Agreement to be electronically filed and placed on the record by Mr. Arroyo. DEFT. ABASTA ARRAIGNED AND PLED GUILTY TO COUNT 1 - MURDER (FIRST DEGREE) (F), COUNTS 2, 4, 5, 7 - ASSAULT WITH A DEADLY WEAPON AND COUNTS 3, 6 - ROBBERY (F). Court ACCEPTED plea, and ORDERED, matter SET for sentencing.

CUSTODY

6/25/2021 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 11, 2021

C-20-349045-1 State of Nevada
 vs
 Eric Abasta, Jr.

May 11, 2021

1:30 PM

Settlement Conference

HEARD BY: Barker, David

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Carina Bracamontez-Munguia/cbm

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

Parties participated in a settlement conference with Senior Judge Barker where a settlement was reached.

Felony/Gross Misdemeanor

COURT MINUTES

June 25, 2021

C-20-349045-1 State of Nevada
vs
Eric Abasta, Jr.

June 25, 2021 08:30 AM Sentencing

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11A

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Eric Abasta, Jr.	Defendant
Michael Dickerson	Attorney for Plaintiff
Robert Arroyo	Attorney for Defendant
Special Public Defender	Attorney for Defendant
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Arroyo stated they have reviewed the Pre-Sentence Investigation (PSI) Report with the Defendant. Defendant stated he has reviewed the Report and there is nothing to change. State submitted. Argument by Mr. Arroyo. Victim Speaker, James Farnsworth, SWORN and TESTIFIED. Victim Speaker, Corey Farnsworth, SWORN and TESTIFIED. Victim Speaker, Debra Farnsworth, SWORN and TESTIFIED. DEFT. ABASTA ADJUDGED GUILTY OF COUNT 1 - MURDER FIRST DEGREE (F), COUNTS 2, 4, 5, 7 - ASSAULT WITH A DEADLY WEAPON (F) AND COUNTS 3, 6 - ROBBERY (F). Pursuant to NRS 176.063, COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Collection fee, \$150.00 DNA Analysis fee including testing to determine genetic markers, \$250.00 Indigent Defense Civil Assessment fee, and Restitution in the amount of \$3,756.70 to Ernesto Santana-Rosas, to be paid jointly and severally by Defendant and Co-Defendants Mason Arney and James Arney, Defendant SENTENCED to the Nevada Department of Corrections (NDC) as follows: COUNT 1 - to a MAXIMUM OF SIX HUNDRED (600) MONTHS AND A MINIMUM OF TWO HUNDRED FORTY (240) MONTHS; COUNT 2 - to a MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM OF TWENTY-EIGHT (28) MONTHS, to run CONSECUTIVE to COUNT 1; COUNT 3 - to a MAXIMUM OF ONE HUNDRED EIGHTY (180) MONTHS AND A MINIMUM OF FORTY-EIGHT (48) MONTHS, to run CONSECUTIVE to COUNT 1; COUNT 4 - to a MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM OF TWENTY-EIGHT (28) MONTHS, to run CONSECUTIVE to COUNT 1; COUNT 5 - to a MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM OF TWENTY-EIGHT (28) MONTHS, to run CONSECUTIVE to COUNT 1; COUNT 6 - to a MAXIMUM OF ONE HUNDRED EIGHTY (180) MONTHS AND A MINIMUM OF FORTY-EIGHT (48) MONTHS, to run CONSECUTIVE to COUNT 1; AND COUNT 7 - to a MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM OF TWENTY-EIGHT (28) MONTHS, to run CONSECUTIVE to COUNT 1; COUNTS 3 TO 7 to run CONCURRENT to COUNT 2; for a TOTAL AGGREGATE SENTENCE of A MAXIMUM OF SIXTY-FIVE (65) YEARS AND A MINIMUM OF TWENTY-FOUR (24) YEARS in the NDC, with FOUR HUNDRED FIFTY-EIGHT

Printed Date: 7/1/2021

Page 1 of 2

Minutes Date:

June 25, 2021

Prepared by: Samantha Albrecht

000605

(458) DAYS credit for time served. Colloquy regarding restitution.

BOND, if any, EXONERATED.

NDC