

ARTHUR MOORE,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Case No. 82747

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 23, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

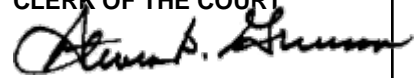
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARTHUR MOORE,
#2578207

Defendant.

CASE NO: C-16-316287-1

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA AND PROCEED TO TRIAL**

DATE OF HEARING: 2/19/2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE K. PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Withdraw Guilty Plea And Proceed To Trial.

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.

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STATEMENT OF FACTS

On February 20, 2009, Aric Brill, Terrell Moore, Joseph Bentley, and Angelo Gilbert, all classmates attending Global Community High School, met with Shannon Williams-Sutton and went to 65 Beesley to go to a party. GJT1 pp 7-10; pp 35-38; pp 73-74. As the five adolescents approached the wall in front of the property line, they heard multiple guns being racked. GJT1 p. 13; p. 74. They saw 4-5 men at the wall, the same wall Jackson saw the Defendants headed to just before the shooting. GJT1 p. 13; p. 38; p. 74; GJT2 p. 13. One of the men said, don't run or we will shoot. GJT1 p. 13; p. 38; p. 75. Then one of the assailants ripped off the chain that held Angelo Gilbert's phone around his neck. GJT1 p. 75. At that point, Joseph Bentley, Aric Brill, and Shannon Williams-Sutton began to run away. GJT p. 15; GJT p. 38; GJT p. 76. Then, one or two of the assailants begin shooting at Joseph Bentley and Aric Brill while they were running away. GJT p. 15; GJT p. 38; GJT p. 76. Well over 10 shots were fired at Aric Brill and Joseph Bentley. GJT p. 13; p. 40; p. 76. Joseph Bentley suffered multiple gunshot wounds including gunshot wounds to his elbow and his chest, causing a collapsed lung. GJT p. 42. Bentley survived his injuries but was in the hospital for over a week. GJT p. 42. Angelo Gilbert saw the group robbing and shooting all enter a mid-2000's blue, black or purple Chevrolet Malibu or Impala and flee the scene. GJT p. 85.

As the assailants were fleeing into the Chevrolet sedan, Terrell Moore was walking backwards and tripped over Aric Brill's body. GJT1 p. 19. Terrell Moore then cradled Aric Brill as Aric Brill was shaking. GJT1 p. 19. Terrell Moore couldn't tell where the blood was coming from, all he could see is that there was a lot of blood and that Aric Brill was shaking. GJT1 pp 19-20. Angelo Bentley recalled seeing Aric Brill run and then saw Aric Brill fall over. GJT1 p. 84. After seeing the assailants flee in the blue-ish Chevrolet, Bentley ran to Aric. Aric was convulsing. GJT1 p. 86. After the shooting, Tatiana Jackson exited her house and also saw Aric's body. GJT2 p. 21. To her it looked like he fell while running. GJT2 p. 22. Aric Brill died as a result of a perforating gunshot wound to his neck, the manner of his death was homicide. GJT2 p. 56, GJ Exh. 37. Aric Brill was 16 years old when was killed. GJ Exh. 37.

1 In February 0f 2016, LVMPD Detective Darin Cook was asked to review the murder
2 of Aric Brill. GJT2 p. 31. As part of his investigation, Detective Cook interviewed Defendant
3 Arthur Moore. When confronted with the facts from the shooting at 65 Beesley Defendant
4 Moore immediately broke down crying saying that he was going to go to prison. GJT2 p. 49.
5 Defendant Moore then proceeded to tell Detective Cook about that day and even drew a picture
6 of the crime scene. GJT2 p. 49, GJ Exh. 38. Defendant Moore drew the house and the wall
7 that Defendant Moore and his co-Defendants were sitting on just prior to the robbery. GJT2
8 p. 50. Defendant Moore said he saw five individuals walking up the street. GJT2 p. 50.
9 Defendant Moore stated he got off the wall and began to rob the five individuals. GJT2 p. 50.
10 At that time Defendant Moore stopped the interview. GJT2 p. 50.

11 **STATEMENT OF THE CASE RELEVANT TO THIS MOTION**

12 On July 7, 2016, Defendant along with co-Defendant's Nadim Hiko, Devonte Wash
13 and Devon Philips were arraigned, pleaded not guilty and waived their right to speedy trials.
14 Trial was set for August 29, 2016. The trial court set a status check for August 8, 2016 for the
15 State to determine whether it was going to seek the death penalty.

16 On August 8, 2016, the State advised the Court it would not be filing a Notice to Seek
17 the Death Penalty. This case went through four re-assignments based on changes in the
18 District Court and eventually Judge Leavitt was assigned this case.

19 On January 28, 2020, the defense requested a settlement conference and a trial date was
20 set for March 10, 2020. On February 7, 2020 a settlement conference was held with Judge
21 Bluth, the State, defense and the victim's family were all present. The parties met for
22 approximately 8 hours. While no settlement was reached, there was extensive discussion of a
23 negotiation between the parties. About a week after the conclusion of the first settlement
24 conference, the defense requested another settlement conference.

25 On February 21, 2020, the same parties again met with Judge Bluth for a settlement
26 conference for another 8 hours. During the settlement conference, no agreement had been
27 made, however an offer was made. The offer was for the Defendant to plead guilty Second-
28 Degree Murder, Conspiracy to Commit Robbery and Robbery. Both parties agreed to stipulate

1 to a sentence of 10-25 years on the Second-Degree Murder charge. The State would retain the
2 right to argue as to the Conspiracy to Commit Robbery and Robbery charge. Both parties
3 stipulated the Conspiracy to Commit Robbery would run consecutive to the Second-Degree
4 Murder and the Robbery would run consecutive to the Second-Degree Murder and Conspiracy
5 to Commit Robbery charge.

6 Prior to the calendar call on March 3, 2020, Defendant Moore agreed to accept the
7 offer.

8 On March 3, 2020, at the calendar call Defendant Moore requested a change in the
9 negotiation, and the State acquiesced. The Defendant agreed to plead guilty the Second-
10 Degree Murder, Conspiracy to Commit Robbery and Robbery. The negotiation as amended
11 and reflected in the guilty plea agreement was as follows: Both parties agreed to stipulate to a
12 sentence of 10-25 years on the Second-Degree Murder charge. The State would retain the
13 right to argue as to the Conspiracy to Commit Robbery (count 2) and Robbery charge (count
14 3). Both parties stipulated the Conspiracy to Commit Robbery (count 2) would run
15 consecutive to the Second Degree Murder (count 1) and the Robbery (count 3) would run
16 **concurrent** to the Second Degree Murder (count 1) and Conspiracy to Commit Robbery charge
17 (count 2). (Exhibit 1).

18 **POINTS AND AUTHORITIES**

19 **ARGUMENT**

20 **DEFENDANT’S PLEA WAS KNOWINGLY AND VOLUNTARILY** 21 **ENTERED AND HE HAS NOT ESTABLISHED A SUBSTANTIAL** 22 **REASON WARRANTING WITHDRAWAL OF HIS PLEA.**

23 “[A] motion to withdraw a plea of guilty...may be made only before sentence is
24 imposed or imposition of sentence is suspended” unless it is necessary “to correct manifest
25 injustice.” N.R.S. 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The
26 district court may grant a motion made prior to sentencing or adjudication of guilty for any
27 substantial reason that is fair and just. Stevenson v. State, 354 P.3d 1277, 131 Nev. Adv. Op.
28 61 (2015); State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

1 In determining whether a Defendant has “advanced a substantial, fair, and just reason
2 to withdraw a [guilty] plea, the District Court must consider the totality of the circumstances.
3 Id. A Court “has a duty to review the entire record to determine whether the plea was valid ...
4 [and] may not simply review the plea canvass in a vacuum.” Mitchell v. State, 109 Nev. 137,
5 141, 848 P.2d 1060, 1062 (1993). Moreover, a defendant has no right, to withdraw his plea
6 simply because he makes his motion prior to sentencing or because the State failed to establish
7 actual prejudice. See, Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

8 In determining whether a guilty plea was knowingly and voluntarily entered, the Court
9 reviews the totality of the circumstances surrounding the plea. Bryant v. State, 102 Nev. 268,
10 271, 721 P.2d 364, 367 (1986) (*superseded by statute*). However, a guilty plea is
11 presumptively valid. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In
12 addition, when a guilty plea is accepted by the trial court after proper canvassing as to whether
13 the defendant knowingly and intelligently entered his plea, such plea will be deemed properly
14 accepted. Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

15 If a proper canvass is conducted, the record will reflect the following: “(1) the defendant
16 knowingly waived his privilege against self-incrimination, the right to trial by jury, and the
17 right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the
18 result of a promise of leniency; (3) the defendant understood the consequences of his plea and
19 the range of punishment; and (4) the defendant understood the nature of the charge, i.e., the
20 elements of the crime.” Wilson v. State, 99 Nev. 362, 366, 664 P.2d 328, 330 (1983).
21 However, the failure to conduct a ritualistic oral canvass does not require that the plea be
22 invalidated. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

23 Here, the Court went through a thorough canvas of the Defendant. (Exhibit 2)

24 Ms. STRAND: Your Honor... Mr. Moore is going to be entering a guilty plea
25 today. The negotiations are as follows. Mr. Moore is going to be pleading guilty
26 to Count 1, Murder in the Second Degree, guilty to Count 2, Conspiracy to
27 Commit Robbery; and guilty to Count 3, Robbery. The parties are stipulating to
28 10-25 year in the Nevada Department of Corrections on the Second Degree
Murder. The State is going to retain the right to argue on Counts 2 and 3 but the
parties stipulate that Count 2 will run consecutive to Count 1 and Count 3 will

1 run concurrent to Count 2.

2 THE COURT: Okay, and its that your understanding of the negotiations, Mr.
3 Moore.

4 THE DEFENDANT: Yes, ma'am

5 THE COURT: And is that what you want to do today?

6 THE DEFENDANT: Yes, ma'am.

7
8 THE COURT: You received a copy of the second amended indictment in this
9 case charging you in Count 1 with murder in the Second Degree and Count 2,
10 conspiracy to commit Robbery and Count 3, Robbery?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You understand those charges?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you have had a chance to discuss them with your lawyers?

15 THE DEFENDANT: Yes, ma'am

16 THE COURT: How do you plead to the charges in the second amended
17 indictment?

18 THE DEFENDANT: Guilty, your honor

19 THE COURT: Are you entering into this plea today freely and voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Anyone threaten or coerce you into entering into his plea?

22 THE DEFENDANT: No, ma'am

23 THE COURT: Other than what's contained in this guilty plea agreement, anyone
24 make any promises to get you to enter this agreement?

25 THE DEFENDANT: No, ma'am.

26
27
28 Plea Canvass Transcript from March 3, 2020, p. 2-3 (attached as Exhibit 2).

1 Per the plea canvass, the Defendant was afforded multiple opportunities to ask
2 questions or to speak up and tell the Court, he did not understand what was going on.
3 Defendant could have stopped the Court entirely, but he did not stop the plea canvass
4 whatsoever. In fact, this Defendant was afforded a benefit. Originally the offer from the
5 settlement conference and the guilty plea agreement, “both parties stipulated that Count 2 will
6 run consecutive to Count 1 and Count 3 will run consecutive to Count 1 and 2.” However,
7 after he agreed to the original terms but prior to actually pleading on March 3, 2020, the
8 Defendant asked for Count 3 to run concurrent to Count 1 and 2 and the State acquiesced, as
9 shown by the change in the guilty plea. (Exhibit 1). Defendant understood what was going
10 on, he was not coerced, and he clearly understood the difference between consecutive and
11 concurrent time because he asked that Count 3 run concurrent to Counts 1 and 2.

12 Moreover, to the extent that a motion to withdraw plea is premised upon an allegation
13 of ineffective assistance of counsel, to succeed a Defendant must establish that: (1) counsel's
14 performance was deficient because it fell below an objective standard of reasonableness
15 measured by prevailing professional norms; and, (2) counsel’s deficient performance
16 prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Riley v.
17 State, 110 Nev. 638, 646, 878 P.2d 272, 277-78 (1995). The Court may consider both prongs
18 in any order and need not consider them both when a defendant’s showing on either prong is
19 insufficient. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). A defendant
20 demonstrates that Counsel’s performance was deficient when he can establish that counsel
21 made errors so grave that counsel was not functioning as the counsel guaranteed by the Sixth
22 Amendment. Strickland v. Washington, supra, 466 U.S. at 687. To satisfy the prejudice prong
23 of the Strickland standard, Defendant must establish a reasonable probability that but for
24 counsel’s errors, the defendant would not have pleaded guilty and would have insisted on
25 going to trial. Reeves v. State, 113 Nev. 959, 960, 944 P.2d 795, 796 (1997). A reasonable
26 probability means a probability sufficient to undermine confidence in the outcome of the
27 proceeding. Kirksey v. State, supra, 112 Nev. at 988.

28 //

1 “A fair assessment of attorney performance requires that every effort be made to
2 eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's
3 challenged conduct, and to evaluate the conduct from counsel's perspective at the time.”
4 *Kirksey v. State*, *supra*, 112 Nev. at 987-988 (citing *Strickland v. Washington*, *supra*, 466 U.S.
5 at 689). Moreover, “[t]he role of a court presented with allegations of ineffective counsel ‘is
6 not to pass upon the merits of the action not taken but to determine whether, under the
7 particular facts and circumstances of the case, trial counsel failed to render reasonably
8 effective assistance...’” *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)(citing
9 *Cooper v. Fitzharris*, 551 F.2d 1162, 1166 (9th Cir. 1977)). Trial counsel is not obligated not
10 make every conceivable motion regardless of the possibility of success in order to protect
11 himself from claims of ineffectiveness. *Id.* Thus, the Court starts with a presumption that
12 counsel offered effective assistance of counsel and then evaluates whether Defendant
13 demonstrated that counsel was ineffective. *See, Means v. State*, 120 Nev. 1001, 1012, 103
14 P.3d 25, 33 (2004).

15 In this case, Defendant now claims, several months after entering a plea, that he was
16 “coerced” to do so by his former defense counsel. The fact that he waited almost seven months
17 to move to withdraw his plea, demonstrates that Defendant did not enter the plea impulsively.
18 *See Stevenson v. State*, 354 P.3d 1277, 1281, 131 Nev. Adv. Rep. 61 (Nev. 2015)
19 (“[defendant] did not move to withdraw his plea for several months, which contradicts his
20 suggestion that he entered his plea in a state of temporary confusion”).

21 On March 3, 2020, Defendant signed a written Guilty Plea Agreement, wherein
22 he acknowledged:

23 I understand that I am waiving and forever giving up the following rights and
24 privileges: 1. The constitutional privilege against self-incrimination...2. The
25 constitutional right to a speedy and public trial by an impartial jury...3. The
26 constitutional right to confront and cross-examine any witnesses who would
27 testify against me...I have discussed the elements of the original charge(s)
28 against me with my attorney and I understand the nature of the charge(s) against
me.... **I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor...** All of the
foregoing elements, consequences, rights, and waiver of rights have been

1 thoroughly explained to me by my attorney. **I believe that pleading guilty and**
2 **accepting this plea bargain is in my best interest**, and that trial would be
3 contrary to my best interest. **I am signing this agreement voluntarily...and I**
4 **am not acting under duress or coercion or by virtue of any promise of**
5 **leniency, except for those set forth in this agreement...My attorney has**
6 **answered all my questions regarding this guilty plea agreement and its**
7 **consequences to my satisfaction and I am satisfied with the services**
8 **provided by my attorney (GPA 5-6).**

9 Defendant's prior counsel also signed the GPA. On page 7, Emily Strand affirmed she
10 explained the charges and potential sentences, that she believed Defendant understood the
11 charges and consequences, and that Defendant "executed this agreement and will enter all
12 guilty pleas pursuant hereto voluntarily..."

13 In addition, when Defendant entered his plea, the following exchanges occurred –

14 THE COURT: Okay, and you understand "consecutive" means you have to do
15 the first one and then the second one.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about that?

18 THE DEFENDANT: No, your honor.

19 Plea Canvass Transcript from March 3, 2020, p. 6 (attached as Exhibit 2).

20 The record clearly shows that Defendant had discussed his case with his attorney. There
21 were at least 16 hours in a settlement conference where not only was the case discussed but
22 the negotiations were discussed. Defendant had full knowledge about what was going on, the
23 nature and consequences of his plea and what his potential sentence could be because he asked
24 to change the negotiations. Defendant specifically asked for concurrent time between the
25 counts instead of consecutive.

26 During the plea canvass, he told the court that his attorney had answered all his
27 questions and signed a document that stated he had discussed his case with his attorney
28 including any possible defenses. More importantly, Defendant verbally told this Court and
acknowledged in the written GPA that he was not coerced into entering any deal. Thus, the
record belies Defendant's claim he was "coerced" into taking a deal and his motion should be

1 denied. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (“(a) defendant
2 seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations
3 belied or repelled by the record.”)

4 **CONCLUSION**

5 Defendant has failed to set forth any fair and just reason that should allow him to
6 withdraw a guilty plea agreement that he signed with the aid of counsel and was properly
7 canvassed. Therefore, the State respectfully request this Court to deny the Motion to Withdraw
8 Guilty Plea.

9 DATED this 11th day of February, 2021.

10 Respectfully submitted,

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

14 BY /s/ **DANIELLE K. PIEPER**
15 DANIELLE K. PIEPER
16 Chief Deputy District Attorney
17 Nevada Bar #008610

18 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

19 I hereby certify that service of the above and foregoing was made this 11th day of
20 February, 2021, by electronic transmission to:

21 DAN WINDER
22 winderdanatty@aol.com

23 BY /s/ **E. Del Padre**
24 E. DEL PADRE
25 Secretary for the District Attorney’s Office
26
27
28

DKP/ed/GU

EXHIBIT 1

ORIGINAL

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DANIELLE K. PIEPER
6 Chief Deputy District Attorney
7 Nevada Bar #008610
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

BY, HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-316287-1
GPA
Guilty Plea Agreement
4900763



THE STATE OF NEVADA,

Plaintiff,

-vs-

ARTHUR MOORE,
#2578207

Defendant.

CASE NO: C-16-316287-1

DEPT NO: XX

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **COUNT 1 - MURDER (SECOND DEGREE)**
(Category A Felony - NRS 200.010, 200.030.2 - NOC 50010); **COUNT 2 - CONSPIRACY**
TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147);
and **COUNT 3 - 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 ten (10) to twenty-five (25) years in the Nevada Department of
Corrections (NDOC) for the Second Degree Murder. Further, the State will retain the right to
argue as to Counts 2 and 3. Additionally, both parties stipulate that Count 2 will run
consecutive to Count 1, and Count 3 will run consecutive to Counts 1 and 2.

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

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

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

15 CONSEQUENCES OF THE PLEA

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

18 As to Count 1, I understand that as a consequence of my plea of guilty the Court must
19 sentence me to imprisonment in the Nevada State Prison for Life with the possibility of parole
20 with eligibility for parole beginning at ten (10) years; OR a definite term of twenty-five (25)
21 years with eligibility for parole beginning at ten (10) years. I understand that I am not eligible
22 for probation for the offense to which I am pleading guilty.

23 As to Count 2, I understand that as a consequence of my plea of guilty the Court must
24 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
25 of not less than one (1) year and a maximum term of not more than six (6) years. The minimum
26 term of imprisonment may not exceed forty percent (40%) of the maximum term of
27 imprisonment. I understand that I may also be fined up to \$5,000.00. I understand that I am
28 eligible for probation for the offense to which I am pleading guilty. I understand that, except

1 as otherwise provided by statute, the question of whether I receive probation is in the discretion
2 of the sentencing judge.

3 **As to Count 3**, I understand that as a consequence of my plea of guilty the Court must
4 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
5 of not less than two (2) years and a maximum term of not more than fifteen (15) years. The
6 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
7 imprisonment. I understand that, except as otherwise provided by statute, the question of
8 whether I receive probation is in the discretion of the sentencing judge.

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

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

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

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

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

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

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

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

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

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

- 6 1. The removal from the United States through deportation;
- 7 2. An inability to reenter the United States;
- 8 3. The inability to gain United States citizenship or legal residency;
- 9 4. An inability to renew and/or retain any legal residency status; and/or
- 10 5. An indeterminate term of confinement, with the United States Federal
11 Government based on my conviction and immigration status.

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

15 I understand that the Division of Parole and Probation will prepare a report for the
16 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
17 sentencing, including my criminal history. This report may contain hearsay information
18 regarding my background and criminal history. My attorney and I will each have the
19 opportunity to comment on the information contained in the report at the time of sentencing.
20 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
21 comment on this report.

22 WAIVER OF RIGHTS

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

- 25 1. The constitutional privilege against self-incrimination, including the right
26 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.

27 //

28 //

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

//

//


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

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

6 DATED this 3 day of March, 2020.

7
8 
9 ARTHUR MOORE
Defendant

10 AGREED TO BY:

11 
12 DANIELLE K. PIEPER
13 Chief Deputy District Attorney
14 Nevada Bar #008610

1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 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:

- 9 a. The removal from the United States through deportation;
10 b. An inability to reenter the United States;
11 c. The inability to gain United States citizenship or legal residency;
12 d. An inability to renew and/or retain any legal residency status; and/or
13 e. An indeterminate term of confinement, by with United States Federal
14 Government based on the conviction and immigration status.

15 Moreover, I have explained that regardless of what Defendant may have been
16 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.

- 17 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
18 consistent with the facts known to me and are made with my advice to the
19 Defendant.
20 5. To the best of my knowledge and belief, the Defendant:
21 a. Is competent and understands the charges and the consequences of
22 pleading guilty as provided in this agreement,
23 b. Executed this agreement and will enter all guilty pleas pursuant hereto
24 voluntarily, and
25 c. Was not under the influence of intoxicating liquor, a controlled
26 substance or other drug at the time I consulted with the Defendant as
27 certified in paragraphs 1 and 2 above.

28 Dated: This 3 day of March, 2020.

EMILY STRAND

lm/GU

1 **AIND**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **DANIELLE PIEPER**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #008610**
8 **BINU PALAL**
9 **Chief Deputy District Attorney**
10 **Nevada Bar #010178**
11 **200 Lewis Avenue**
12 **Las Vegas, Nevada 89155-2212**
13 **(702) 671-2500**
14 **Attorney for Plaintiff**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **THE STATE OF NEVADA,**
12 **Plaintiff,**

13 **-vs-**

14 **ARTHUR MOORE,**
15 **#2578207**

16 **Defendant.**

CASE NO: C-16-316287-1

DEPT NO: XX

**SECOND AMENDED
INDICTMENT**

17 **STATE OF NEVADA** }
18 **COUNTY OF CLARK** } **ss.**

19 The Defendant above named, **ARTHUR MOORE**, accused by the Clark County Grand
20 Jury of the crime(s) of **MURDER (SECOND DEGREE) (Category A Felony - NRS**
21 **200.010, 200.030.2 - NOC 50010); CONSPIRACY TO COMMIT ROBBERY (Category**
22 **B Felony - NRS 200.380, 199.480 - NOC 50147); and ROBBERY (Category B Felony -**
23 **NRS 200.380 - NOC 50137), committed at and within the County of Clark, State of Nevada,**
24 **on or about the 20th day of February, 2009, as follows:**

25 **COUNT 1 - MURDER (SECOND DEGREE)**

26 did willfully, unlawfully, feloniously, and with malice aforethought, kill **ARIC**
27 **BRILL**, a human being by shooting at and into the body of the said **ARIC BRILL**; the
28 Defendant being responsible under one or more of the following principles of criminal

EXHIBIT "1"

1 liability, to-wit: (1) by directly committing the act; and/or (2) by said Defendant aiding or
2 abetting and/or conspiring with NADIM HIKO, aka Nadin Hiko and/or DEVONTE WASH
3 and/or DAVON PHILLIPS and/or unknown co-conspirators, with the specific intent that a
4 killing occur, by counseling, encouraging, commanding or procuring the other to commit the
5 offense, Defendant ARTHUR MOORE and/or NADIM HIKO, aka Nadin Hiko and/or
6 DEVONTE WASH and/or DAVON PHILLIPS and/or unknown co-conspirators
7 accompanying each other to the crime scene at 65 Beasley, the Defendant ARTHUR MOORE
8 and/or NADIM HIKO, aka Nadin Hiko and/or DEVONTE WASH and/or DAVON PHILLIPS
9 and/or unknown co-conspirators pointing a firearm at TERRELL MOORE and/or ANGELO
10 GILBERT and/or ARIC BRILL and/or JOSEPH BENTLY and/or SHANNON WILLIAMS,
11 one or more of the Defendants and/or unknown co-conspirators telling TERRELL MOORE
12 and/or ANGELO GILBERT and/or ARIC BRILL and/or JOSEPH BENTLY and/or
13 SHANNON WILLIAMS not to run or the Defendants and/or unknown co-conspirators would
14 shoot, as one or more of the Defendants and/or unknown co-conspirators took property from
15 TERRELL MOORE and ANGELO GILBERT, as SHANNON WILLIAMS and/or JOSEPH
16 BENTLY and/or ARIC BRILL were running from the crime scene, one or more of the
17 Defendants and/or unknown co-conspirators started shooting in the direction of ARIC BRILL
18 and JOSEPH BENTLEY, shooting into the body of ARIC BRILL resulting in the death of
19 ARIC BRILL, the Defendants and/or unknown co-conspirators encouraging one another
20 throughout by actions and words, the Defendants acting in concert throughout; and/or (3) by
21 the Defendants and/or unknown co-conspirators conspiring with each other, with the specific
22 intent that a killing occur.

23 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

24 did then and there meet with NADIM HIKO, aka Nadin Hiko and/or DEVONTE
25 WASH and/or DAVON PHILLIPS and/or unknown co-conspirators and between themselves,
26 and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to
27 commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendants did commit
28

1 the acts as set forth in Count 3, said acts being incorporated by this reference as though fully
2 set forth herein.

3 COUNT 3 - ROBBERY

4 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
5 lawful money of the United States, from the person of TERRELL MOORE and/or ANGELO
6 GILBERT, or in their presence, by means of force or violence or fear of injury to, and without
7 the consent and against the will of the said TERRELL MOORE and/or ANGELO GILBERT;
8 the Defendant being responsible under one or more of the following principles of criminal
9 liability, to-wit: (1) by directly committing the act; and/or (2) by said Defendants and/or
10 unknown co-conspirators aiding or abetting each other, by counseling, encouraging,
11 commanding or procuring the other to commit the offense, Defendants ARTHUR MOORE
12 and/or NADIM HIKO, aka Nadin Hiko and/or DEVONTE WASH and/or DAVON PHILLIPS
13 and/or unknown co-conspirators accompanying each other to the crime scene at 65 Beasley,
14 the Defendants ARTHUR MOORE and/or NADIM HIKO, aka Nadin Hiko and/or DEVONTE
15 WASH and/or DAVON PHILLIPS and/or unknown co-conspirators pointing a firearm at
16 TERRELL MOORE and/or ANGELO GILBERT and/or ARIC BRILL and/or JOSEPH
17 BENTLY and/or SHANNON WILLIAMS, one or more of the Defendants telling TERRELL
18 MOORE and/or ANGELO GILBERT and/or ARIC BRILL and/or JOSEPH BENTLY and/or
19 SHANNON WILLIAMS not to run or the Defendants and/or unknown co-conspirators would
20 shoot, as one or more of the Defendants and/or unknown co-conspirators took property from
21 TERRELL MOORE and ANGELO GILBERT, and/or SHANNON WILLIAMS and/or
22 JOSEPH BENTLY and/or ARIC BRILL were running from the crime scene, one or more of
23 the Defendants and/or unknown co-conspirators started shooting in the direction of ARIC
24 BRILL and JOSEPH BENTLEY, shooting into the body of ARIC BRILL and/or JOSEPH
25 BENTLEY resulting in the death of ARIC BRILL, the Defendants and/or unknown co-
26 conspirators encouraging one another throughout by actions and words, the Defendants and/or
27 unknown co-conspirators acting in concert throughout; and/or (3) by Defendants and/or unknown


28 //

1 co-conspirators conspiring with each other to commit the offense whereby each is vicariously
2 liable for the foreseeable acts of the other made in furtherance of the conspiracy.

3 DATED this 21st day of March, 2020.

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

7 BY

8  10178
9 DANIELLE PIEPER
10 Chief Deputy District Attorney
11 Nevada Bar #008610
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28 15BGJ096A/ed/lm/GU

EXHIBIT 2



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ARTHUR MOORE,

Defendant.

CASE NO. C-16-316287-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, MARCH 3, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL**

APPEARANCES:

For the State:

BINU G. PALAL
Chief Deputy District Attorney

For the Defendant:

EMILY K. STRAND, ESQ.
OSVALDO E. FUMO, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 3, 2020, 10:22 A.M.

2 * * * * *

3 THE COURT: State versus Arthur Moore, C316287, Mr. Moore is present,
4 and he's in custody and this is on for -- it's resolved. Go ahead, counsel.

5 MS. STRAND: Your Honor, yeah, it's on for calendar call, that's going to be
6 called off. Mr. Moore is going to be entering a guilty plea today. The negotiations
7 are as follows: Mr. Moore is going to be pleading guilty to Count 1, murder in the
8 second degree; guilty to Count 2, conspiracy to commit robbery; and guilty to
9 Count 3, robbery. The parties are stipulating to 10 to 25 years in the Nevada
10 Department of Corrections on the second degree murder. The State is going to
11 retain the right to argue on Counts 2 and 3, but the parties do stipulate that Count 2
12 will run consecutive to Count 1 and Count 3 will run concurrent with Count 2.

13 THE COURT: Okay. And is that your understanding of the negotiations,
14 Mr. Moore?

15 UNIDENTIFIED SPEAKER: No, that was not my understanding.

16 THE COURT: What was that?

17 THE DEFENDANT: Yes, Your Honor.

18 MR. PALAL: Sorry, that was the victim's mother, Your Honor. I'll deal with
19 her.

20 THE COURT: Okay. I didn't know.

21 Is that your understanding of the negotiations, Mr. Moore?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And that's what you want to do today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Your true and full name for the record?

1 THE DEFENDANT: Arthur Ernest Moore, II.

2 THE COURT: How old are you?

3 THE DEFENDANT: 31.

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

5 THE DEFENDANT: I graduated high school.

6 THE COURT: Do you read write and understand the English language?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You received a copy of the second amended indictment in this
9 case charging you in Count 1 with murder in the second degree and Count 2,
10 conspiracy to commit robbery and Count 3, robbery?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You understand those charges?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you had a chance to discuss them with your lawyers?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: How do you plead to the charges in the second amended
17 indictment?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: Are you entering into this plea today freely and voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Anyone threaten or coerce you into entering into this plea?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Other than what's contained in this guilty plea agreement,
24 anyone make you any promises to get you to enter into this agreement?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: I have before me a guilty plea agreement, is that your
2 signature on page 6?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You had a chance to read it before you signed it?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. And this is your signature on page 6?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. And you had a chance to discuss it with your lawyer
9 prior to signing it?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And all your questions were answered to your satisfaction prior
12 to signing it?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you have any questions of the Court?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You understand as to Count 1, the murder in the second
17 degree, that you are facing life in the Nevada Department of Corrections with parole
18 eligibility beginning after a minimum of 10 years has been served or a definite term
19 of 25 years with parole eligibility beginning after a minimum of 10 years has been
20 served?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you understand as to Count 2, you're facing 1 to 6 years
23 in the Nevada Department of Corrections as well as a \$5,000 fine?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And as to Count 3 you're facing 2 to 15 years in the Nevada

1 Department of Corrections?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you understand that sentencing is completely within the
4 discretion of the Court?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: You understand that no one can make you any promises
7 regarding what will happen at the time of sentencing?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Anyone make you any promises?

10 THE DEFENDANT: I mean, other than what's in the document.

11 THE COURT: Okay. You understand that there is a stipulation between the
12 parties as to Count 1 that it would be 10 to 25 years in the Nevada Department of
13 Corrections?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And you understand that the State will retain the right to argue
16 as to Counts 2 and 3?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And they've also agreed that Count 2, you and the State
19 agreed that Count 2 will be consecutive and Count 3 will run concurrent to Count 2?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you have any questions about that?

22 MR. PALAL: And, Your Honor, just to clarify, so, it's not explicitly clear, so I
23 want to make it explicitly clear, Count 2 is running consecutive to Count 1, Count 3
24 is running concurrent to Count 2, but Count 3 would run consecutive to Count 1.

25 THE COURT: Okay. Thank you.

1 MR. PALAL: That was our understanding, I just wanted to --

2 MR. FUMO: For 3, yes.

3 MR. PALAL: We didn't -- we didn't write it down explicitly, and as we stand
4 here I didn't want there to be any confusion as to what the resolution was.

5 MR. FUMO: 2 and 3 will be consecutive to -- concurrent -- consecutive to 1.

6 THE COURT: Okay.

7 THE DEFENDANT: So they'll be together, but against Count 1?

8 MR. PALAL: Yes.

9 MR. FUMO: Consecutive to.

10 THE COURT: Okay. And you understand "consecutive" means you have to
11 do the first one and then the second one?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Do you have any questions about that?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You understand you're giving up all your trial rights by entering
16 into this plea today, that you do have a right to a speedy and public trial, that if this
17 matter went to trial the State would be required to prove each of the elements as
18 alleged in their charging document by proof beyond a reasonable doubt?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And your attorney did explain to you what the State would
21 have to prove if this matter went to trial?

22 THE DEFENDANT: Yes.

23 THE COURT: And you had a chance to discuss any defenses that you would
24 have to these charges?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And you understand at the time of trial you'd have the right to
2 testify, to remain silent, to have others come in and testify for you, to be confronted
3 by the witnesses against you and cross-examine them, to appeal any conviction,
4 and to be represented by counsel throughout all critical stages of the proceedings;
5 do you understand all these trial rights?

6 THE DEFENDANT: One moment.

7 THE COURT: Okay.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You understand all these trial rights?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And you understand you're giving them up by entering into this
12 plea today?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you have any questions about the rights you're giving up?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Any questions about this guilty plea agreement?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay. On or about the 20th day of February, 2009, in Clark
19 County, Nevada, as to Count 1, did you willfully, unlawfully, feloniously, and with
20 malice aforethought kill Aric Brill, a human being, by shooting at and into the body of
21 Aric Brill, being responsible under one or more of the following principles of criminal
22 liability, by directly committing this act and/or aiding or abetting and/or conspiring
23 with Nadim Hiko and/or Devonte Wash and/or Davon Phillips and/or an unknown
24 co-conspirator with the specific intent that a killing occur by counseling,
25 encouraging, commanding, or procuring the other to commit the offense, Defendant

1 Mr. Moore, and/or Nadim Hiko and/or Devonte Wash and/or Davon Phillips and/or
2 an unknown co-conspirator accompany each other to the crime scene at
3 65 Beasley, Mr. Arthur and/or Hiko, Wash, Phillips, and unknown conspirators
4 putting a firearm at Terrell Moore and/or Angelo Gilbert and/or Aric Brill and/or
5 Joseph Bently and/or Shannon Williams; one or more of the defendants and/or
6 unknown co-conspirators telling Terrell Moore and/or Angelo Gilbert and/or Aric Brill
7 and/or Joseph Bently and/or Shannon Williams not to run or the defendants or
8 unknown co-conspirators would shoot at one or more of the defendants and/or
9 unknown co-conspirators took property from Moore, Gilbert as Shannon Williams
10 and/or Joseph Bently and/or Aric Brill were running from the crime scene; one or
11 more of the defendants and/or unknown co-conspirators starting shooting in the
12 direction of Aric Brill and/or Joseph Bently, shooting into the body of Aric Brill
13 resulting in the death of Aric Brill; the defendant and/or unknown co-conspirators
14 encouraging one another throughout by actions and words; the defendant acting in
15 concert throughout and/or by the defendants and/or unknown co-conspirators
16 conspiring with each other with the specific intent that a killing occur?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. As to Count 2, did you meet with Nadim Hiko and/or
19 Devonte Wash and/or Davon Phillips and/or unknown co-conspirators and between
20 yourselves and each of you willfully, unlawfully, and feloniously conspire and agree
21 to commit a crime, robbery, and in furtherance of said conspiracy, you did commit
22 the acts as set forth in Count 3?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: As to Count 3, the robbery, did you willfully, unlawfully, and
25 feloniously take personal property, to wit: lawful money of the United States from

1 the person of Terrell Moore and/or Angelo Gilbert or in their presence by means of
2 force or violence or fear of injury to and without their consent and against the will of
3 Terrell Moore and/or Angelo Gilbert being responsible under one or more of the
4 following principles of criminal liability, by directly committing this act and/or by the
5 defendants and/or unknown conspirators aiding or abetting each other by
6 counseling, encouraging, commanding, or procuring the other to commit the offense,
7 Defendants Arthur Moore and/or Nadim Hiko and/or Devonte Wash and/or
8 Davon Phillips and/or an unknown co-conspirator accompany each other to the
9 crime scene at 65 Beasley, the defendants, Mr. Moore, Hiko, Devonte Wash, and
10 Davon Phillips and/or unknown co-conspirators pointed a firearm at Terrell Moore
11 and/or Angelo Gilbert and/or Aric Brill and/or Joseph Bently and/or
12 Shannon Williams; one or more of the defendants telling Terrell Moore and/or
13 Angelo Gilbert and/or Aric Brill and/or Joseph Bently and/or Shannon Williams not to
14 run or the defendants or unknown co-conspirators would shoot at one or more of the
15 defendants; and/or unknown co-conspirators took property from Terrell Moore
16 and/or Angelo Gilbert and/or Shannon Williams and/or Joseph Bently and/or
17 Aric Brill were running from the scene one or more of the defendants and/or
18 unknown co-conspirators started shooting in the direction of Aric Brill and
19 Joseph Bently, shooting into the body of Aric Brill and/or Joseph Bently resulting in
20 the death of Aric Brill; the defendants and/or unknown co-conspirators encouraging
21 one another throughout by actions and words, the defendants and/or unknown
22 co-conspirators acting in concert throughout and/or by the defendant or unknown
23 co-conspirators conspiring with each other to commit the offense whereby each is
24 vicariously liable for the foreseeable acts of the other made in furtherance of the
25 conspiracy?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Is the State satisfied with that?

3 MR. PALAL: Yes, Your Honor.

4 THE COURT: Okay. Any questions before I accept your plea, Mr. Moore?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. At this time the Court's going to accept your plea, make
7 a finding you've entered into it freely and voluntarily, that you understand the nature
8 of the charges and consequences of your plea. The matter will be referred to Parole
9 and Probation. It'll be set down for sentencing.

10 THE CLERK: May 20th at 8:30.

11 THE COURT: And your trial date is vacated.

12 MR. PALAL: Thank you, Your Honor.

13 THE COURT: Thank you.

14 PROCEEDING CONCLUDED AT 10:33 A.M.

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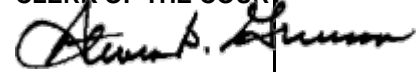
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24

25



SARA RICHARDSON
Court Recorder/Transcriber



DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569
ARNOLD WEINSTOCK, ESQ.
Nevada State Bar No.: 00810
LAW OFFICE OF DAN M. WINDER, P.C.
3507 W. Charleston Blvd.
Las Vegas, NV 89102
Telephone: (702) 474-0523
Facsimile: (702) 474-0631
winderdanatty@aol.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,)	Case No.:	C-16-316287-1
)		
Plaintiff,)	Dept. No.:	XII
)		
vs.)		
)		
ARTHUR MOORE, #2578207,)		
)		
Defendant,)		
)		

**DEFENDANTS REPLY TO STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO WITHDRAW GUILTY PLEA AND PROCEED TO TRIAL**

COMES NOW, Defendant, ARTHUR MOORE, by and through his attorney, DAN M. WINDER, ESQ., and hereby replies to the State's Opposition to the Motion to Withdraw Guilty Plea and Proceed to Trial.

This Reply is made and based upon all the papers and pleadings on file herein the attached points and authorities along with any evidence which may be introduced at the time of the hearing on this matter.

DATED this 11th day of February, 2021.

Respectfully Submitted,
LAW OFFICE OF DAN M. WINDER, P.C.

/s/Arnold Weinstock
DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569
ARNOLD WEINSTOCK, ESQ.
Nevada State Bar No. 000810

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I.

STATEMENT OF FACTS

On February 20, 2009, Defendant, ARTHUR MOORE (hereinafter referred to as “MOORE”), and several other persons had an altercation with several young adults. Gunshots were fired and Aric Brill, age 16, died. On June 22, 2016 the State presented its case to the Grand Jury who returned a true bill against Defendant MOORE and his three co-defendants. MOORE entered a Not Guilty plea, and this matter was ultimately set for a Jury Trial on March 10, 2020. Prior to trial, a settlement conference was held, but no settlement was reached. Thereafter, on February 21, 2020 a second settlement conference was held. At the March 3, 2020 calendar call, Defendant MOORE felt pressured by his then attorney, Ozzie Fumo to enter a guilty plea. He was told that if he did not enter a guilty plea that day that he would go to trial and be sentenced to prison for life. MOORE was led to believe, and it was his understanding, that he was pleading to one count of Second Degree Murder, one count of Conspiracy to Commit Robbery, and one count of Robbery. It was MOORE’S understanding that the parties were stipulating to a sentence of 10-25 years on the Second Degree Murder, with the other counts running concurrent.

MOORE ultimately entered his plea, but he was confused as to the legal terms. At his plea, the Guilty Plea Agreement MOORE signed was interlineated by the parties (see State’s Ex. 1, P.1, 1.26). At his plea allocation, the parties were confused and MOORE own counsel, Ozzie Fumo, Esq. stated “2 and 3 will be consecutive to - concurrent - consecutive to 1. “(see State’s Ex.2, P.6, 1.5). After his plea, before sentencing, MOORE filed a Motion to Withdraw Plea, and terminated Mr. Fumo.

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II.

**THE STATE’S OPPOSITION CONFIRMS THAT WITHDRAWAL
OF MOORE’S PLEA IS “FAIR AND JUST”**

The State concedes that Nevada Law allows the District Court to grant a motion made prior to sentencing or adjudication of guilt for any substantial reason that is fair and just. Stevenson v.

1 State, 354 P. 3d 1277, 131 Nev. Adv. Op. 61 (2015). Although the State alleges that the “Defendant
2 has failed to set forth any fair and just reason that should allow him to withdraw a guilty plea
3 agreement...” (See Opposition, P.10, 1.5-6), that conclusion is untrue. Defendant, MOORE, alleged
4 eight(8) reasons to support the withdrawal of his guilty plea. The State’s Opposition only addresses
5 one (1) reason offered by MOORE, and that opposition is insufficient.

6 Among other factors, it was pointed out that MOORE has a remedial IQ and is of special
7 needs and was confused about the meaning of concurrent and consecutive (see Motion, P.4, 1. 23-
8 24). The State never addresses that allegation, and although MOORE’S prior attorney, Mr. Fumo,
9 never brought that concern to the Court’s attention, that allegation when coupled with all of the other
10 reasons raised by MOORE makes it clear that withdrawal of the plea is warranted. Alternately, the
11 State should honor the negotiations that MOORE believes was what he agreed to, 10 to 25 years on
12 Count 1, with his sentence on Count 2 and Count 3 being run concurrent.

13 In further support of MOORE’S Motion, one only need to look at the Guilty Plea Agreement
14 signed by MOORE. On page 1, line 26 there was an interlineation made to the plea referring to the
15 concurrent aspect pf the plea. Apparently, even MOORE’S counsel, Ozzie Fumo, Esq., was
16 confused as to the plea when he stated to the Court that “2 and 3 will be consecutive to - concurrent
17 - consecutive to 1”. The State through MR. PALAL even conceded that the plea “it’s not explicitly
18 clear.” (State Ex.2, P.5, 1.22). If the attorneys couldn’t understand the plea, how could MOORE,
19 a young man with special needs and a remedial IQ be expected to understand the plea?

20 When this confusion as to the terms of the plea negotiations, is coupled with MOORE’S
21 claim that he was rushed into the plea by his counsel, along with MOORE’S claim that he was led
22 to believe that he was pleading to concurrent time between all counts, along with the other claims
23 MOORE stated in his Motion, all coupled with to MOORE’S remedial IQ and his stated confusion
24 as to concurrent vs. consecutive time, it is clear that due process and fundamental fairness mandate
25 the withdrawal of MOORE’S plea. See Molina v. State, 120 Nev. 185, 189 (2004).

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III

CONCLUSION

Based upon all of the above, after looking at the “totality of the circumstance” State v. Freese, 116 Nev. 1097, 1104 (2000), it is clear that either MOORE should be allowed to withdraw his plea and proceed to trial, or MOORE should be afforded his believed negotiation running his sentence on Count 2 and Count 3 concurrent with the stipulation 10-25 year sentence on Count 1

DATED this 11th day of January, 2021.

Respectfully Submitted,

LAW OFFICE OF DAN M. WINDER, P.C.

/s/ Arnold Weinstock

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