

# IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY DELLO MORGAN,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Jul 14 2022 02:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: C-19-344461-1

Docket No: 84898

# RECORD ON APPEAL VOLUME 2

**ATTORNEY FOR APPELLANT**  
GREGORY MORGAN # 1196223,  
PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

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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 5<sup>th</sup> day of November, 2020.

10 AGREED TO BY:

11  
12   
13 CHAD N. LEXIS  
14 Chief Deputy District Attorney  
Nevada Bar #010391

7  
8   
9 GREGORY DELLO MORGAN  
Defendant

10 Signed by Alexander  
11 Bassett on behalf of  
12 Gregory Morgan

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  
9 and explained to Defendant that if Defendant is not a United States citizen any  
10 criminal conviction will most likely result in serious negative immigration  
11 consequences including but not limited to:

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

18 Moreover, I have explained that regardless of what Defendant may have been  
19 told by any attorney, no one can promise Defendant that this conviction will not  
20 result in negative immigration consequences and/or impact Defendant's ability  
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are  
23 consistent with the facts known to me and are made with my advice to the  
24 Defendant.

- 25 5. To the best of my knowledge and belief, the Defendant:

- 26 a. Is competent and understands the charges and the consequences of  
27 pleading guilty as provided in this agreement,  
28 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 5<sup>th</sup> day of November, 2020.

  
ALEXANDER BASSETT,  
DEPUTY PUBLIC DEFENDER

ckb/L4

1. **AIND**  
2. **STEVEN B. WOLFSON**  
3. **Clark County District Attorney**  
4. **Nevada Bar #001565**  
5. **CHAD N. LEXIS**  
6. **Chief Deputy District Attorney**  
7. **Nevada Bar #010391**  
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,**

11. **-vs-**

12. **GREGORY DELLO MORGAN,**  
13. **#2752270**

14. **Defendant(s).**

**CASE NO: C-19-344461-1**

**DEPT NO: XX**

**SECOND AMENDED**  
**SUPERSEDING**  
**INDICTMENT**

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

18. **The Defendant(s) above named, GREGORY DELLO MORGAN, accused by the Clark**  
19. **County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category**  
20. **B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY (Category B Felony - NRS**  
21. **200.380 - NOC 50137) and BURGLARY (Category B Felony - NRS 205.060 - NOC**  
22. **50424), committed at and within the County of Clark, State of Nevada, on or between July 4,**  
23. **2019 and September 24, 2019, as follows:**

24. **COUNT 1 - CONSPIRACY TO COMMIT ROBBERY**

25. **Defendant did on or between September 20, 2019 and September 24, 2019, willfully,**  
26. **unlawfully, and feloniously conspire with ANDRE GRANT SNIPES to commit a robbery, by**  
27. **the defendants committing the acts as set forth in Count 2, said acts being incorporated by this**  
28. **reference as though fully set forth herein.**

***EXHIBIT "1"***

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1 COUNT 2 - ROBBERY

2 Defendant did on or about September 20, 2019, willfully, unlawfully, and feloniously  
3 take personal property, to wit: merchandise, from the person of BRYAN LAWS, or in his  
4 presence, and on or about September 24, 2019, willfully, unlawfully, and feloniously take  
5 personal property, to wit: merchandise, from the person of ABREGO ALDEN, or in his  
6 presence, without the consent and against the will of BRYAN LAWS and ABREGO ALDEN,  
7 by means of force or violence or fear of injury, immediate or future, to their person, the person  
8 of a member of their family, or of anyone in their company at the time of the robbery, defendant  
9 using force or fear to obtain or retain possession of the property, to prevent or overcome  
10 resistance to the taking of the property, and/or to facilitate escape, the Defendant(s) being  
11 criminally liable under one or more of the following principles of criminal liability, to wit: (1)  
12 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
13 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
14 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
15 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
16 Defendant and ANDRE SNIPES aiding or abetting and/or conspiring by Defendant and  
17 ANDRE SNIPES acting in concert throughout.


18 COUNT 3 - BURGLARY

19 Defendant GREGORY MORGAN did on or between July 4, 2019 and October 2, 2019,  
20 willfully, unlawfully, and feloniously enter various buildings, on or about July 4, 2019, owned  
21 or occupied by NIKE, located at 9851 South Eastern Avenue, and on or about September 20,  
22 2019, FOOTLOCKER, located at 3200 South Las Vegas Boulevard, and on or about  
23 September 24, 2019, CHAMPS SPORTS, located at 3200 South Las Vegas Boulevard, and on  
24 or about September 29, 2019, FOOTLOCKER, located at 2120 Festival Plaza Drive, and on  
25 or about October 2, 2019, NIKE, located at 9851 South Eastern Avenue, Las Vegas, Clark  
26 County, Nevada, with intent to commit larceny, the Defendant(s) being criminally liable under  
27 one or more of the following principles of criminal liability, to wit: (1) by directly committing  
28 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that

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

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

8  
9 BY

  
10 CHAD N. LEXIS  
Chief Deputy District Attorney  
Nevada Bar #010391  
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26 18CGJ163A-B/19F21141A-B/ed-GJ/ckb/L4  
27 LVMPD EV# 190900115154;  
28 190900095652; 191099999927  
(TK9)

**THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
249 - 258  
WILL FOLLOW VIA  
U.S. MAIL**

*Heather A. Smith*

CLERK OF THE COURT

1 JOCP  
2  
3

4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-  
10

11 GREGORY DELLO MORGAN  
12 #2752270

13 Defendant.

CASE NO. C-19-344461-1

DEPT. NO. XXXII

14 JUDGMENT OF CONVICTION  
15 (PLEA OF GUILTY)  
16

17 The Defendant previously appeared before the Court with counsel and entered a plea of  
18 guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B  
19 Felony) in violation of NRS 200.380, 199.480; COUNT 2 – ROBBERY (Category B Felony) in  
20 violation of NRS 200.380; and COUNT 3 – BURGLARY (Category B Felony) in violation of  
21 NRS 205.060; thereafter, on the 14<sup>th</sup> day January, 2021, the Defendant was present in court for  
22 sentencing with counsel KEDRIC A. BASSETT, Deputy Public Defender, and good cause  
23 appearing,  
24

25 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition  
26 to the \$25.00 Administrative Assessment and \$150.00 DNA Analysis Fee including testing to  
27 determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is sentenced to the  
28



1 Nevada Department of Corrections (NDC) as follows: COUNT 1 - a MAXIMUM of SIXTY  
2 (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS;  
3 COUNT 2 – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a  
4 MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONSECUTIVE to COUNT 1;  
5 and COUNT 3 – a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility  
6 of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 2; with FOUR  
7 HUNDRED SIXTY-SIX (466) DAYS credit for time served. The AGGREGATE TOTAL  
8 sentence is ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM of  
9 SIXTY (60) MONTHS. COURT recommends Defendant for the 184 Program while  
10 incarcerated.  
11  
12

13 Dated this 21st day of January, 2021

14   
15  
16  
17

DISTRICT COURT

18 3D8 633 0879 7D89  
19 Christy Craig  
20 District Court Judge  
21  
22  
23  
24  
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1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 State of Nevada

CASE NO: C-19-344461-1

7 vs

DEPT. NO. Department 32

8 Gregory Morgan  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Judgment of Conviction 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: 1/21/2021

15 Dept 20 Law Clerk

Dept20LC@clarkcountycourts.us

16 Erin Prisbrey

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17 DeLois Williams

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18 Cynthia Bush

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19 Alexander Bassett

alexander.bassett@clarkcountynv.gov

20 Janet Robertson

Janet.Robertson@clarkcountyda.com

21 Brett Spratt

Brett.Spratt@clarkcountynv.gov



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-19-344461-1  
C-19-344461-2

10 vs.

DEPT. VII

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
15 FRIDAY, NOVEMBER 1, 2019

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **GRAND JURY INDICTMENT**

18 APPEARANCES:

19 For the State: MICHAEL J. SCHWARTZER, ESQ.,  
20 Chief Deputy District Attorney  
21 ASHLEY A. LACHER, ESQ.  
22 Deputy District Attorney

23 For the Defendants: NO APPEARANCE

24 ALSO PRESENT: LAWRENCE HOLMES, GRAND JURY FOREPERSON

25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 FRIDAY, NOVEMBER 1, 2019 AT 11:26 A.M.

2  
3 MR. SCHWARTZER: Yesterday the Grand Jury met on  
4 Grand Jury case number 18CGJ163A and B and by a vote of 12 or more  
5 returned a true bill against Gregory Morgan and Andre Snipes.

6 Regarding Gregory Morgan, it's three counts of grand larceny,  
7 two counts of conspiracy to commit robbery, two counts of robbery with  
8 use of a deadly weapon, two counts of burglary while in possession of a  
9 deadly weapon, and one count of burglary.

10 THE COURT: Mr. Foreman, did --

11 MR. SCHWARTZER: Regard -- I'm sorry.

12 THE COURT: Oh, I'm sorry.

13 MR. SCHWARTZER: Do you want me to do the second one  
14 or wait?

15 THE COURT: Yeah, sorry, no.

16 MR. SCHWARTZER: No problem. And with the -- with  
17 Defendant Snipes it's three counts of grand larceny, two counts of  
18 conspiracy to commit robbery, two counts of robbery with use of a  
19 deadly weapon, two counts of burglary while in possession of a deadly  
20 weapon, and one count -- three counts of burglary.

21 THE COURT: All right. Mr. Foreman, did -- this is -- I know  
22 this question, it's just been a really long morning. All right. Did at least  
23 12 members of the Grand Jury concur in finding a true bill as to each  
24 count as to each Defendant charged in the Indictments?

25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: Thank you.

2 The Indictment will be filed with respect to Mr. Morgan and  
3 receive case number C-19-344461-1 and be assigned to Department  
4 number 20. Indictment will be filed with respect to Mr. Snipes and  
5 receive case number C-19-344461-2 and be assigned to Department  
6 number 20.

7 What is the position of the State regarding a warrant or  
8 summons?

9 MS. LACHER: As for Mr. Morgan, he was held without bail  
10 due to a parole hold pursuant to NRS 178.484(2). I'd ask that that  
11 remain.

12 And then as to Defendant Snipes, out of initial arraignment  
13 court he -- bail was set in the amount of \$25,000.00, and I'd ask that that  
14 stand as well.

15 THE COURT: All right. So, what's the basis -- so, with  
16 respect to Mr. Morgan, warrant will issue given the fact that he was on  
17 parole at the time of the offense, bail will be set at no bail.

18 With respect to Mr. Snipes, what is the basis of the request?

19 MS. LACHER: The basis of the request is that the -- starting  
20 with the facts of the case this was two armed robberies at -- first at the  
21 Foot Locker at the Fashion Show Mall as well as the Champs at the  
22 Fashion Show Mall with his co-defendant.

23 Additionally, the Defendant has substantial ties to the other  
24 community, that being Washington. Per the NPR, a 1997 conviction out  
25 of Washington for theft, a 1999 out of Washington as well for theft, 1999,

1 Washington for residential burglary, as well as 2001 for possession of  
2 controlled substance with intent to sell. In addition I added, I believe,  
3 four additional counts as to him as continued investigation revealed the  
4 justification for adding different counts for a Foot Locker burglary at the  
5 Meadows Mall as well. So, based upon that, I was asking for the --

6 THE COURT: All right.

7 MS. LACHER: -- for that amount.

8 THE COURT: Based on Mr. Snipes' extensive criminal  
9 record, it appears he's a danger to the community. A warrant will issue,  
10 bail will be set at \$25,000.00. Las Vegas Justice Court case 19F21141A  
11 and B will be dismissed. We'll set a date one week in the department.

12 THE COURT CLERK: November 7<sup>th</sup> at 9 a.m.

13 THE COURT: Exhibits 1 through 11 will be lodged with the  
14 Clerk of the Court and I'll order a Pretrial Risk Assessment. And then,  
15 were there any material witness warrants in this case?

16 MS. LACHER: No, Your Honor.

17 THE COURT: Great. Thank you.

18 MS. LACHER: Thank you.

19 [Proceedings concluded at 11:29 a.m.]

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.

24 

25 Trisha Garcia  
Court Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-19-344461-1  
C-19-344461-2

10 vs.

DEPT. VII

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
15 FRIDAY, JANUARY 10, 2020

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **SUPERSEDING INDICTMENT**

18 APPEARANCES:

19 For the State: ERIKA MENDOZA, ESQ.,  
20 Chief Deputy District Attorney  
21 ASHLEY A. LACHER, ESQ.  
22 Deputy District Attorney

23 For the Defendants: NO APPEARANCE

24 ALSO PRESENT: LAWRENCE HOLMES, GRAND JURY FOREPERSON

25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 FRIDAY, JANUARY 10, 2020 AT 11:29 A.M.

2  
3 MS. MENDOZA: Yesterday the Grand Jury met on Grand  
4 Jury case number 18CGJ163A and B and by a vote of 12 or more  
5 returned a true bill against Gregory Dello Morgan and Andre Grant  
6 Snipes on the following charges.

7 As to Defendant Morgan, three counts of burglary, five counts  
8 of grand larceny, two counts of conspiracy to commit robbery, two  
9 counts robbery with use of a deadly weapon, two counts burglary while  
10 in possession of a deadly weapon, and one count participation in  
11 organized retail theft.

12 As to Defendant Snipes, five counts of burglary, four counts of  
13 grand larceny, two counts of conspiracy to commit robbery, two counts  
14 of robbery with use of a deadly weapon, two counts burglary while in  
15 possession of a deadly weapon, and one count participation in  
16 organized retail theft.

17 THE COURT: Mr. Foreman, did at least 12 members of the  
18 Grand Jury concur in finding a true bill as to each charge contained in  
19 the Indictment?

20 THE FOREPERSON: Yes, Your Honor.

21 THE COURT: Thank you.

22 The Indictment will be filed with respect to -- the Superseding  
23 Indictment will be filed with respect to Mr. Morgan. The case has  
24 already received case number C-19-344461-1 and been assigned to  
25 Department number 20.



1           The Indictment -- Superseding Indictment will be filed with  
2       respect to Mr. Snipes. The case has already been assigned case  
3       number C-19-344461-2 and has also been assigned to number --  
4       Department number 20.

5           What is the position of the State regarding a warrant or  
6       summons?

7           MS. LACHER: Your Honor, as to Defendant Gregory Morgan,  
8       the A Defendant, I just ask that it remain at no bail. This particular  
9       Defendant picked up these cases while on parole, hitting the number of  
10      the same stores as his case in C-17-37775-1 [sic]. And in Justice Court,  
11      the origination of my case, he was held without bail because of the  
12      parole hold. He was revoked on parole, and I'd ask that that just be  
13      maintained.

14          THE COURT: All right.

15          MS. LACHER: As to Mr. Snipes, the bail was originally set in  
16      Justice Court when there was only, I believe, seven charges at  
17      \$25,000.00. I added ten additional counts, but I'm still asking that it  
18      remain at \$25,000.00 warrant as to Andre Snipes, the B Defendant.

19          THE COURT: Does he have any criminal history or failures to  
20      appear?

21          MS. LACHER: Yes, Your Honor, based upon the NPR,  
22      there's a 1997 Washington conviction for theft, 1999 Washington  
23      conviction for theft, '99 Washington residential burglary, 2001  
24      Washington conviction for PCS with intent to sell, two other  
25      misdemeanor convictions.

1 THE COURT: All right. So, with respect to Mr. Morgan,  
2 warrant will issue. I'll set bail at no bail given that he was on parole at  
3 the time of the offense.

4 With respect to Mr. Snipes, I find that he is a danger to the  
5 community given his prior criminal history. Warrant will issue and then  
6 bail will be set at \$25,000.00.

7 We'll set a date one week in the department.

8 THE COURT CLERK: January 14<sup>th</sup> at 8:30 a.m.

9 THE COURT: And there's no Justice Court case to dismiss;  
10 that's already happened. Exhibits 1A, 1B and 12 through 22 will be  
11 lodged with the Clerk of the Court along with the previously lodged  
12 exhibits. Were there any material witness warrants in this case?

13 MS. LACHER: No, Your Honor.

14 THE COURT: Great. Thank you.

15 MS. LACHER: Thank you.

16  
17 [Proceedings concluded at 11:32 a.m.]  
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.

24 

25 Trisha Garcia  
Court Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-19-344461-1  
C-19-344461-2

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
Appeared Via Video Conference

15 WEDNESDAY, OCTOBER 21, 2020

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **CENTRAL TRIAL READINESS CONFERENCE**

18 APPEARANCES:

19 For the State:

KENNETH N. PORTZ, ESQ.  
Chief Deputy District Attorney  
Appeared Via Video Conference

21 For the Defendant Morgan:

ALEXANDER B. BASSETT, ESQ.  
Deputy Public Defender  
Appeared Via Video Conference

23 For the Defendant Snipes:

DANIEL J. HILL, ESQ.

24  
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

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WEDNESDAY, OCTOBER 21, 2020 AT 11:59 A.M.

THE COURT: All right. State of Nevada versus Gregory Morgan, case number C344461. He's present in custody.

MR. BASSETT: Hello, Your Honor, Alex Bassett on behalf of Mr. Morgan.

MR. PORTZ: Nick Portz for the State, Your Honor. There's also a co-defendant, Mr. Snipes.

THE COURT: Oh, yep, and Andre Snipes. Do we have Mr. Hill?

MR. HILL: Hi, Judge. I'm down in the courtroom.

THE COURT: Okay. And Mr. Snipes is present also in custody?

MR. HILL: Yes, Judge.

DEFENDANT SNIPES: Yeah.

THE COURT: Okay. So, how are things going? You -- I had a note --

MR. BASSETT: We're --

THE COURT: -- that in July you were going to reach out to set a settlement conference, but I don't see that that happened.

MR. BASSETT: Your Honor, it did happen two weeks ago.

THE COURT: Okay.

MR. BASSETT: I --

THE COURT: Oh, okay.

MR. BASSETT: And we were offered a date of December 8<sup>th</sup>

1 for that settlement conference.

2 THE COURT: All right.

3 MR. BASSETT: My client wanted to accept that. My client  
4 has wanted to negotiate this case since before preliminary hearing. He  
5 does not want to go to trial. We could be prepared to go to trial. The  
6 reason we did not confirm the settlement conference date was because  
7 we were waiting to hear back from Mr. Hill on whether Mr. Snipes would  
8 be willing to be involved in that as well.

9 MR. HILL: And, Your Honor, in all candor, my wallet was  
10 stolen and I don't have credentials to get into the jail, which has caused  
11 a whole logistical problem the last --

12 THE COURT: Okay.

13 MR. HILL: -- week. So, Mr. Snipes is set for trial November  
14 the 9<sup>th</sup>. I have another case on today, Mr. Christopher Butt, also set for  
15 trial on November the 9<sup>th</sup>. I have not had an opportunity to discuss with  
16 Mr. Snipes if he is amenable to talking about negotiation with the State,  
17 so -- he's shaking his head no. So, I got two trials set for the 9<sup>th</sup>, Judge.

18 DEFENDANT SNIPES: I'm shaking my head because I'm  
19 like, I don't want to negotiate anymore. The only thing I'm interested in  
20 is my trial, so I can care less about --

21 THE COURT: Okay.

22 DEFENDANT SNIPES: -- negotiating. All I -- the only thing --

23 MR. BASSETT: And [indiscernible] --

24 DEFENDANT SNIPES: -- I want is my --

25 THE COURT: All right. So --

1                   DEFENDANT SNIPES: -- speedy trial. That's all I'm asking  
2 for.

3                   THE COURT: Okay. Mr. Bassett, Mr. Hill, if you were to go to  
4 trial in this case would you have co-counsel?

5                   MR. BASSETT: Yes, I would, Your Honor.

6                   THE COURT: Okay.

7                   MR. HILL: At -- I'm not sure right now. It's possible, Judge.

8                   THE COURT: Okay. It just -- it creates a bit of a space issue  
9 because we can really only accommodate four.

10                  So, Mr. Portz, is any -- so, just the logistical issue with co-  
11 defendants right now is that we can seat four people on each side, so if  
12 there's two defendants and three lawyers or four lawyers, that's not  
13 going to work, so we may end up having to set the trial separately  
14 anyway.

15                  MR. PORTZ: You mean bifurcate the Defendants, Your  
16 Honor?

17                  THE COURT: Right.

18                  MR. HILL: And --

19                  MR. PORTZ: Well, I --

20                  MR. HILL: And on that note, Judge --

21                  MR. PORTZ: The State's not -- I mean, the State would  
22 object to that. I think we'd have to litigate that or figure that out, but I --  
23 our point is we're ready to --

24                  THE COURT: Well, I mean, we just can't logistically -- we  
25 don't have the ability logistically to do that; we just don't.

1 MR. HILL: And, Judge, just to jump in here, one of the --

2 MR. PORTZ: Well, if we're going to have to call witnesses  
3 twice in a row I don't -- I guess that's going to throw a wrench in our  
4 ability to announce ready because I don't know what dates we're going  
5 to be given for two separate defendants. But the bottom line is that  
6 these negotiations have always been contingent. One Defendant has  
7 wanted the deal, the other hasn't. And we anticipate being ready for the  
8 November setting. So, I mean, that's the only thing I can report, Your  
9 Honor.

10 MR. BASSETT: And, Your Honor, that is --

11 THE COURT: Okay.

12 MR. BASSETT: -- accurate. Were the case to be bifurcated, I  
13 do not anticipate our trial would actually go to trial. Mr. Morgan has  
14 wanted to take a deal since February of this year.

15 MR. PORTZ: Your Honor, this case has been pending for a  
16 long time and I just -- I'm going to reiterate that we're ready to go  
17 November 9<sup>th</sup>, but our strong preference in -- is that they go together.  
18 This is a large series. It would be a monumental waste of judicial  
19 resources, of juror resources during a time when trials are hard to come  
20 by --

21 THE COURT: Wait, I -- Mr. --

22 MR. PORTZ: -- as it is, so I --

23 THE COURT: I understand that. Mr. Portz, I'm telling you we  
24 have space for four people on each side. They -- I -- there is not the  
25 possibility. And he's absolutely entitled to have two attorneys for the

1 trial. If he has two attorneys for the trial, then they're not going to fit.  
2 They -- I can't manage the Coronavirus precautions and try two  
3 defendants that have more than two lawyers. It's just not --

4 MR. PORTZ: I understand that, Your Honor.

5 THE COURT: It's not possible. So, I am -- I'm -- it seems like  
6 it would be easier for the State to resolve at least part of this than to do  
7 co-defendant cases right now anyway. I --

8 MR. PORTZ: I -- with all due respect, Your Honor, I mean,  
9 we're not going to change our negotiating position, and I think that if they  
10 can't have it done together, that might be grounds to remain invoked and  
11 move the trial date if there are other trials that can go that week, but, I  
12 mean, we are ready and we anticipate going forward on both of them. I  
13 understand the Court, what the Court's explaining to the State, but at the  
14 same time, I don't know what grounds there is to just force a bifurcation.  
15 I guess I'm unfamiliar with that. So, I -- I'm just making our record --

16 THE COURT: Well --

17 MR. PORTZ: -- and our position very clear that --

18 THE COURT: Okay.

19 MR. PORTZ: -- this would --

20 THE COURT: I mean, I understand, Mr. Portz, but we're also  
21 not normally in the middle of a pandemic, right? So, we have very strict  
22 protocols to be able to do jury trials at all, and that's just what we have.  
23 And so, you know, we have invoked people that need to go to trial, so  
24 we can pick one and set it for next week. If Mr. Morgan wants to do a  
25 settlement conference I'd be inclined to have the Snipes one set for the



1 9<sup>th</sup>.

2 I'm not sure, Mr. Hill, what your other case is for the 9<sup>th</sup>. Is  
3 that the --

4 MR. HILL: Butt.

5 THE COURT: Butt, okay, which is -- this is the older of the  
6 cases.

7 MR. BASSETT: And also, to clarify, Your Honor, Mr. Morgan  
8 is not invoked. He waived his right to that back --

9 THE COURT: Okay.

10 MR. BASSETT: -- in February.

11 MR. HILL: Oh.

12 THE COURT: All right. But Mr. Snipes is?

13 MR. BASSETT: Correct.

14 DEFENDANT SNIPES: I just want to --

15 THE COURT: Okay.

16 DEFENDANT SNIPES: -- add, man, like, I have been waiting  
17 for a trial for an entire year. I have been invoked since December of  
18 2019. I mean, I've been sitting in custody for a very, very long time --

19 THE COURT: Yeah.

20 DEFENDANT SNIPES: -- waiting for a trial. So, I just wanted  
21 to put that out there. I've been in custody for an entire year waiting for a  
22 trial. I want a trial.

23 MR. BASSETT: And Mr. Morgan does not.

24 THE COURT: Got it.

25 All right. So -- well, then let's go ahead and -- we'll reset the

1 calendar call for Mr. Snipes to November 4<sup>th</sup> at 2 p.m., and we'll vacate  
2 the November 3<sup>rd</sup> calendar call date in front of Judge Johnson. And  
3 then I'm going to put Mr. Morgan on the same date as well, but we'll also  
4 set the settlement conference and then we'll just see what we can sort  
5 out between now and then.

6 MR. PORTZ: Well, okay. And for the State, Your Honor --

7 THE COURT: I'll just -- I'll set that --

8 MR. PORTZ: -- I'm covering for --

9 THE COURT: I'm sorry. Mr. Portz, hang on a second.

10 So, I'll set the settlement conference date so you have that  
11 date preserved because they do fill up pretty quickly, and then -- but  
12 we'll still set them both for a calendar call for the 4<sup>th</sup>, and then we'll see  
13 where things are.

14 I'm sorry, Mr. Portz. Go ahead.

15 MR. PORTZ: Okay. Just so I have the dates clear, so both  
16 Defendants are set for calendar call November 4<sup>th</sup> at 2 p.m.?

17 THE COURT: Right.

18 MR. PORTZ: And is that -- that's before Your Honor, the  
19 central trial readiness, or is that before --

20 THE COURT: Yes. No, we'll vacate the one in front of Judge  
21 Johnson so you don't have to appear two places.

22 MR. PORTZ: Okay. Thank you.

23 MR. BASSETT: And, Your Honor, just to clarify, you're going  
24 to give us -- you're going to give Mr. Morgan a settlement conference  
25 date right now; is that the idea?

1 THE COURT: Yes, so that it's preserved.

2 MR. BASSETT: Okay.

3 MR. PORTZ: And I'm standing in for another DA, so if Mr.  
4 Bassett could clarify. It's my understanding the State has not agreed to  
5 enter into a settlement conference because our negotiations haven't  
6 changed, so there wouldn't be a good faith basis for us to go into that.  
7 Unless him and Ms. Lacher have come to some sort of different  
8 agreement, it would still be -- and he can illuminate us as to that point --  
9 it would still be the State's position that we're not entering into a  
10 settlement conference with either Defendant.

11 MR. BASSETT: And, Your Honor, Ms. Lacher did make clear  
12 that she would be open to a settlement conference if both Defendants  
13 were willing to participate. What I'd ask you to consider doing is go  
14 ahead and give Mr. Morgan a settlement conference date, then if the  
15 cases are bifurcated because we can't proceed with that many attorneys  
16 and defendants, at that point we would have no objection to Mr. Snipes  
17 going first because he has invoked. So, I'd ask for the settlement  
18 conference date. If we end up -- if Ms. Lacher -- if the cases are not  
19 bifurcated, it will be vacated, if they are bifurcated and Ms. Lacher still  
20 isn't willing to do a settlement conference, we can still vacate it, but I  
21 would like to lock in that date just in case.

22 THE COURT: All right, Mr. Portz, so let's just do that. We'll  
23 just set the date understanding that if the State decides that they don't  
24 want to participate, obviously it won't go forward.

25 MR. HILL: And, Judge --

1 MR. PORTZ: Okay, Judge.

2 MR. HILL: Judge, can I --

3 THE COURT: Great.

4 MR. HILL: -- step in here on one logistical issue? So --

5 THE COURT: Yep.

6 MR. HILL: -- what I'm unclear on is, so I have pretty  
7 compelling grounds to sever separate and apart from the courtroom, the  
8 room in the courtroom. I learned this yesterday --

9 THE COURT: Yeah.

10 MR. HILL: -- or the day before in a conversation with Mr.  
11 Bassett. So, what have -- are we for sure -- do I need to not file that  
12 now?

13 THE COURT: So, no, you need to file the motion. If there is  
14 legal grounds, obviously that changes the posture of things as well, so, I  
15 mean, that needs to happen immediately. Let's -- how soon are you  
16 planning to file that?

17 MR. HILL: Well, I could get it in today or tomorrow. It won't  
18 be my best work, but it will be enough to get a discussion --

19 MR. BASSETT: And --

20 MR. HILL: -- going.

21 MR. BASSETT: -- Dan, if --

22 THE COURT: Okay.

23 MR. HILL: I'll --

24 MR. BASSETT: Dan, if you give me a call after we get out of  
25 court here, I can talk to you about that too.

1 MR. HILL: Okay. Great.

2 DEFENDANT MORGAN: And what motion are we filing --

3 THE COURT: And I --

4 DEFENDANT MORGAN: -- Your Honor? It's Mr. --

5 THE COURT: I'm sorry?

6 DEFENDANT MORGAN: -- Morgan speaking. What motion

7 is he filing?

8 MR. BASSETT: It's a motion to --

9 THE COURT: To sever your cases.

10 Is Judge Johnson Tuesday, Thursday?

11 MR. BASSETT: Yes, Your Honor.

12 THE COURT: So, could I set that motion on his calendar on

13 the 29<sup>th</sup> so that there's a chance that it would get heard before the

14 calendar call?

15 MR. HILL: Yes, Judge.

16 THE COURT: Does that work for -- Mr. Portz, does that work

17 for the State?

18 MR. PORTZ: I guess, Judge. I mean, I think we're entitled to

19 time to respond. So, if Mr. Hill gets it in today, then we'll have some

20 time to respond before that hearing.

21 THE COURT: I mean, I can put it on the 3<sup>rd</sup> as well. It just

22 doesn't give you a lot of time to, you know, know what's -- the deal is

23 before the calendar call.

24 MR. PORTZ: The State will submit, Judge.

25 THE COURT: No, Mr. Portz, it's your -- I mean, I -- it's not -- I

1 don't -- it doesn't matter at all to me. I'm just trying to -- what's going to  
2 be better for you.

3 MR. HILL: If it helps --

4 MR. PORTZ: Let's do the 28<sup>th</sup>, Your Honor.

5 MR. HILL: Oh, all right.

6 THE COURT: The 29<sup>th</sup> or say the 29<sup>th</sup>?

7 MR. PORTZ: That's fine with the State.

8 THE COURT: Okay. Great. Thank you.

9 THE COURT CLERK: And that would be 1:45 p.m. in  
10 Department XX. And, Your Honor, did you want to set the settlement  
11 conference now or --

12 THE COURT: Yes.

13 THE COURT CLERK: I didn't do that. So, the first available  
14 date that I have is actually the 3<sup>rd</sup>. I'm sorry, let me pull the calendar  
15 back up. It's the -- November 3<sup>rd</sup> at 8 a.m. Does that work?

16 MR. BASSETT: Your Honor, I --

17 THE COURT: Not if they're --

18 MR. BASSETT: Just because we --

19 THE COURT: Not if --

20 MR. BASSETT: I'd -- sorry.

21 THE COURT: Is -- not if they're -- because the State isn't  
22 agreeing right now and the co-defendant isn't agreeing right now, so it's  
23 probably best to set it a little bit after and see kind of how everything  
24 sorts out, if it's still necessary.

25 Do you agree, Mr. Bassett?

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DEFENDANT MORGAN: Well --

MR. BASSETT: I agree, Your Honor. I was just going to say let's set it for after the trial date because the only reason -- the only way that settlement conference would go forward is if the case is bifurcated, so --

THE COURT: Okay.

THE COURT CLERK: So then the next available I have is November 30<sup>th</sup> or I can go into December.

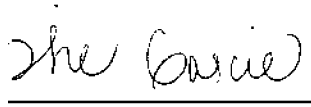
MR. BASSETT: November 30<sup>th</sup> would be fine.

THE COURT CLERK: And that will be at 11:30 a.m.

THE COURT: All right. Thank you.

[Proceedings concluded at 12:13 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.

  
\_\_\_\_\_  
Trisha Garcia  
Court Transcriber



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

GREGORY DELLO MORGAN,  
ANDRE GRANT SNIPES,  
Defendant(s).

CASE NO: C-19-344461-1/2  
DEPT. XXXII

**HEARD IN LOWER LEVEL  
ARRAIGNMENT**

BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE  
WEDNESDAY, NOVEMBER 4, 2020

**RECORDER'S TRANSCRIPT OF HEARING RE:  
CENTRAL CALENDAR CALL**

**APPEARANCES:**

For the State: MICHAEL J. SCARBOROUGH, ESQ.  
Deputy District Attorney  
(Appearing via Video Conference)

For the Defendant(s)  
Andre G. Snipes: MICHAEL W. SANFT, ESQ.  
(Appearing via Video Conference)

Gregory Morgan: ALEXANDER BASSETT, ESQ.  
TYLER GASTON, ESQ.  
Deputy Public Defenders

RECORDED BY: MELISSA DELGADO-MURPHY, COURT RECORDER



1 **Las Vegas, Nevada; Wednesday, November 4, 2020**

2 [Proceeding commenced at 2:19 p.m.]

3  
4 THE COURT: State of Nevada versus Gregory Morgan and  
5 Andrew Snipes.

6 MR. GASTON: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. BASSETT: Or afternoon.

9 MR GASTON: Afternoon, sorry.

10 THE COURT: All right. Yeah, it's hard to keep track.

11 MR. GASTON: Tyler Gaston and Alex Bassett from the Public  
12 Defender's Office on behalf of Mr. Morgan.

13 THE COURT: I highlighted my -- the case in blue so I would  
14 know it's a co-defendant case and now I can't read any of it. We'll get  
15 through it. All right. And -- Ms. Cannizzaro, are you here on this one. I  
16 had it was Mr. Portz.

17 MS. CANNIZZARO: No, Your Honor, I'm here on Zayveon  
18 Scott.

19 THE COURT: Okay. Do we have Mr. -- I had Ms. --

20 UNIDENTIFIED SPEAKER: Your Honor, which case is this?

21 THE COURT: It's Morgan and Snipes.

22 UNIDENTIFIED SPEAKER: Mr. Portz is out of the -- okay.

23 MR. SCARBOROUGH: Jory Scarborough from the State.

24 THE COURT: There we go. Okay. All right. So this is set on  
25 the 9<sup>th</sup>. Is this ready to go?

1 MR. GASTON: Yes, Your Honor.

2 THE COURT: All right. And we have -- do we have Mr. Hill?

3 MR. SANFT: Your Honor, this is Michael Sanft, I'm going to  
4 step in today for Mr. Hill.

5 THE COURT: Okay. Is he also ready to go? I know that  
6 there was a motion -- there were some -- there was a motion to --

7 MR. SCARBOROUGH: Judge, I can -- yeah. I could fill in the  
8 Court on what's going on with that, so. In Eric Johnson's Department, it  
9 looks like there was a motion to sever that was supposed to be heard. I  
10 wasn't there to argue it. Deputy District Attorney Nick Portz was there to  
11 argue it.

12 THE COURT: Uh-huh.

13 MR. SCARBOROUGH: And it looks like Judge Johnson then  
14 kicked it to you and he did not decide on any motion to sever. And I  
15 would just note that there's -- this is the second motion to sever.

16 MR. GASTON: Denied -- Your Honor, that's not --

17 MR. SCARBOROUGH: She denied their motion to sever.  
18 Sorry about that.

19 MR. GASTON: Yeah, so that's not quite accurate.

20 MR. SCARBOROUGH: She denied their motion to sever and  
21 now it's set in front of you, Judge Bell.

22 THE COURT: Right. For calendar call.

23 MR. SCARBOROUGH: And then it looks like on Thursday, it's  
24 set in case you elect to sever it for entertainment on the motion to rejoin.

25 THE COURT: Well, no. So what I understood from the

1 minutes was that he denied the request, invited a motion to be filed under  
2 seal because there was some information that the Defense did not want  
3 to provide. Did I -- am I remembering that correctly? I might be --

4 MR. BASSETT: That's not quite right, Your Honor, what  
5 happened was --

6 THE COURT: Okay. How about I let you explain since you  
7 were there.

8 MR. BASSETT: -- yeah, that's fine. Because I was there  
9 yesterday. And what happened, Your Honor, the motion was filed by --  
10 I'm sorry, the motion was filed by Dan Hill.

11 THE COURT: Okay.

12 MR. BASSETT: We did file a similar motion back in February  
13 that was denied without prejudice.

14 THE COURT: Got it.

15 MR. BASSETT: Dan Hill filed a similar motion which was  
16 denied without prejudice yesterday. The debate over whether to file  
17 something under seal was the --

18 THE COURT: Okay.

19 MR. BASSETT: -- crux of the motion was we're arguing that  
20 we are going to be presenting mutually antagonistic defenses.

21 THE COURT: Right.

22 MR. BASSETT: And under *Throckmorton*, we're arguing that  
23 that should be denied. Judge Johnson said that in order to consider  
24 ruling on the merits of that motion, he would need to hear what the  
25 defenses were and we decided that we did not want to place on the

1 record what our defense theories were going to be.

2 THE COURT: Got it.

3 MR. BASSETT: And when we went to renew the motion at  
4 trial, we --

5 MR. GASTON: To clarify that, when we filed our original  
6 motion to sever back in February, we did approach, also with our motion  
7 to continue, and explained ex parte to the Judge what our defense theory  
8 was. He granted our motion to continue at that time, but denied our  
9 motion to sever.

10 MR. BASSETT: Right.

11 MR. GASTON: So yes, he invited us to, basically, to revisit  
12 our original defense that we had disclosed and had our motion to sever  
13 denied, but since he already denied our motion to sever back when, we  
14 decided that we didn't want to put our defense on the record, essentially,  
15 presumably, to have him deny it again.

16 THE COURT: Understand. All right. So we have some  
17 logistical issues that I'm trying to sort out in terms of co-defense counsel.

18 MR. SCARBOROUGH: And Judge, just to really -- to get it out  
19 there right now, even -- even if it's severed, even if it's not severed, even  
20 without this holiday in the middle of next week, this is not a week-long  
21 trial. It would take longer than a week.

22 THE COURT: Okay.

23 MR. SCARBOROUGH: It's, like, seven or eight events,  
24 multiple witnesses on each event.

25 THE COURT: So how many days?

1 MR. SCARBOROUGH: I know that's a big -- I would say at  
2 least a week and a half, at least.

3 THE COURT: Okay.

4 MR. BASSETT: They noticed 40 different witnesses.

5 MR. SCARBOROUGH: It definitely would not be done in a  
6 week. I can -- I can -- as an officer of the court, guarantee that. There's  
7 just too many events.

8 THE COURT: It doesn't need to be done in a week. How  
9 many witnesses?

10 MR. SCARBOROUGH: 14 to 18.

11 MR. BASSETT: They noticed more than 40.

12 THE COURT: Okay. And what would you anticipate in terms  
13 of witnesses?

14 MR. BASSETT: Three maybe.

15 MR. GASTON: Three.

16 THE COURT: Okay, three. And Mr. Sanft.

17 MR. SANFT: Yes, Your Honor.

18 THE COURT: Do you know what Mr. Hill would anticipate in  
19 terms of witnesses?

20 MR. SANFT: Your Honor, at this particular point, I would  
21 believe maybe two witnesses.

22 THE COURT: Okay.

23 MR. SANFT: I'm -- looking here at the notes.

24 THE COURT: Do you know if Mr. Hill intends to try the case  
25 by himself?

1           MR. SANFT: At this particular point, yes, Your Honor, that's  
2 correct. By himself.

3           THE COURT: Okay. All right. So, I mean, I just have to work  
4 out the logistical issue. It probably would mean that one of you would  
5 have to sit, like, kind of, in front --

6           MR. GASTON: Right.

7           THE COURT: -- because there's space for four people on the  
8 defense side, but I -- we will sort it out. For one person, I know we can  
9 figure it out. But it may be worth doing a walk-through.

10          MR. GASTON: Just to clarify, because I wasn't here the first  
11 calendar call --

12          THE COURT: Sure.

13          MR. GASTON: -- and so I was just, kind of, going off what I  
14 was told.

15          THE COURT: Yep.

16          MR. GASTON: My understanding was that the last time the  
17 Court indicated that it might have to sever the cases -- sever the cases  
18 because of the number of people.

19          THE COURT: Well, we --

20          MR. GASTON: Is that no longer an issue?

21          THE COURT: -- have -- so the way that the COVID  
22 courtrooms are set up -- I don't -- have you guys been in there yet?  
23 Okay. So they -- we removed all of the gallery seating and pushed -- put  
24 the tables behind the bar so there's table -- there's two tables on each  
25 side and there's plexiglass dividers so you can put four people on each

1 side. Unfortunately, because the door's in the middle, we probably  
2 would've been better off to put six on one side and two on the other, but  
3 that many couldn't walk into the courtroom. It creates a logistical issue  
4 about where co-counsel would sit.

5 We do have headphones to allow for confidential  
6 communications so, again, I think it is a -- it is -- we've -- I've been having  
7 -- we've been discussing the issue and how to make this work and I  
8 certainly think, you know, you're entitled to have two people if that's how  
9 you choose to present your case.

10 MR. GASTON: And I'm not trying to be difficult. I just want to  
11 make sure that's -- if we do it in a way that's, kind of, safe, but that I can  
12 talk to Mr. Bassett and the Defendant at the -- like, concurrently with  
13 what's going on.

14 THE COURT: Yeah. So you would have headphones. You  
15 would be able to do that.

16 MR. GASTON: Okay.

17 THE COURT: Just logistically, we just have to figure -- it's just  
18 a little bit of a logistical issue that we've got to sort out which I am  
19 confident that we'll be able to do.

20 MR. GASTON: Okay.

21 THE COURT: It's particularly easier if Mr. Hill is --

22 MR. BASSETT: Solo.

23 THE COURT: -- solo because then it's just one less person  
24 that we have to find, I think, there's a corner there we can -- we can put  
25 one of you in --

1 MR. SCARBOROUGH: For Mr. Hill.

2 THE COURT: -- front and you two on the end.

3 MR. SCARBOROUGH: Just --

4 THE COURT: So I think it will work out.

5 MR. GASTON: Okay.

6 THE COURT: Perhaps, look, we can tomorrow or Friday, find  
7 a time that we can walk-through Mr. Hill's welcome, Mr. Scarborough, we  
8 can walk-through and look to sort that issue out and just so you are  
9 aware of what we're looking at in terms of facilities. So is this ready to go  
10 then? Are there --

11 MR. GASTON: The only thing the Defense has is -- I assume  
12 it was on tomorrow for status check, so I assume we'd raise that in front  
13 of Judge Johnson. I don't know exactly how the pre-trial calendar works,  
14 but we have an issue with their expert notice. And I didn't know if we  
15 address that to you or --

16 THE COURT: No.

17 MR. GASTON: -- Judge Johnson, but ultimately, we're --  
18 other than that issue --

19 THE COURT: Yeah.

20 MR. GASTON: -- we're ready to go.

21 THE COURT: The other thing -- I'm not exactly sure who  
22 would end up trying the case because Judge Johnson has the other --  
23 the other case that's going at this point. So I will identify somebody that  
24 has not been a problem so far. We have a couple judges who aren't  
25 coming -- who are not doing trials, so.



1 MR. GASTON: And if we go -- if we end up going to -- is it --  
2 'cause I don't -- if it's, like, the overflow thing or how it works, but if we  
3 end up going to a different judge for the expert witness issue, is that  
4 something that we would -- even if the different trial judge, we would still  
5 raise that in front of Judge Johnson tomorrow?

6 THE COURT: You should address that in front of Judge  
7 Johnson --

8 MR. GASTON: Okay.

9 THE COURT: -- tomorrow.

10 MR. GASTON: Okay.

11 THE COURT: And we'll work on this -- I've -- I mean, we've  
12 also had, I don't know about these cases, but we've had -- every case  
13 we've set has ended up resolving, so. It may be that his other one  
14 resolves and then this one goes, so --

15 MR. GASTON: Okay.

16 THE COURT: -- I just don't have an answer for that.

17 MR. GASTON: Thank you, Your Honor.

18 THE COURT: -- we'll have this start at 9:00 am on Monday.  
19 Oh no, that's not going to work. We're going to have to start this on -- if  
20 we start this on Thursday, will that work? We'd start Thursday and then,  
21 two days to pick a jury, I'm guessing. Okay. So we'll do a Thursday start  
22 and that way you'd have Thursday and Friday to pick the jury and --

23 MR. SCARBOROUGH: I'm so sorry, Judge --

24 THE COURT: That's okay.

25 MR. SCARBOROUGH: -- you're saying the Thursday start of

1 next week?

2 THE COURT: Yes.

3 MR. SCARBOROUGH: So not a Monday the 9<sup>th</sup>, but  
4 Thursday the -- Thursday the 12<sup>th</sup> would be --

5 THE COURT: Right. So --

6 MR. SCARBOROUGH: -- our start? Okay.

7 THE COURT: -- so Judge Johnson has another trial that's --  
8 that has a German interpreter that's really problematic. So that's going to  
9 start on Monday and they're anticipating two days to pick a jury and then  
10 Wednesday's a holiday. So we can start this one Thursday and get the  
11 jury picked and then the trial would go, I would imagine, the whole next  
12 week, right?

13 MR. SCARBOROUGH: It looks like it at this point, yes.

14 THE COURT: Okay. Great.

15 MR. SCARBOROUGH: Do we have full days, Judge, in those  
16 departments?

17 THE COURT: Yes, absolutely; 9:00 to 5:00, full days.

18 MR. SCARBOROUGH: Oh. Okay.

19 THE COURT: We're covering everybody's calendars to make  
20 sure that we make the best use of the --

21 MR. BASSETT: My apology, you said trials are [indiscernible]  
22 full days?

23 THE COURT: Yeah.

24 MR. BASSETT: Okay.

25 THE COURT: We're doing -- we're covering people's

1 calendars so that -- because it's just a limited resource we have with the  
2 court -- we have two courtrooms, so make sure that they get done.

3 MR. GASTON: And I know I feel like I'm the guy -- I feel like  
4 I'm the guy with all the questions here. I just want to ask one more thing.

5 THE COURT: No. That's okay.

6 MR. GASTON: So my understanding is one of the things that  
7 the State potentially intended to address tomorrow in front of Judge  
8 Johnson, I believe, they were only intending to do this if Your Honor  
9 severed this 'cause they were going to try to get to Judge Johnson to  
10 reconsolidate, but they were going to try to limit how many defense  
11 counsel Mr. Morgan was entitled to have to one instead of two. Is that  
12 something that's --

13 THE COURT: I -- the issue -- the issue is the logistical issue  
14 that I was talking to you about. So I don't -- I think that there are other  
15 alternatives, so --

16 MR. GASTON: Okay.

17 THE COURT: -- I don't think that that is necessary. It's just  
18 we've struggled a little bit, you know, all of this has been quite a  
19 challenge. So we've struggled a little bit to get -- to just figure this piece  
20 out and I am confident we will work it out and it's going to be fine, but I  
21 am not -- that's -- I don't feel like that's an acceptable option.

22 MR. GASTON: Okay. I just didn't want to get an email on  
23 Friday that we're limited to one. I wanted to at least bring it up in front of  
24 some judge.

25 THE COURT: Yeah. No.

1 MR. GASTON: Okay. All right. Thank you.

2 THE COURT: We'll -- we'll -- just like I said that logistically  
3 you may not be able to sit in a row.

4 MR. GASTON: But we still have the headphones and stuff.

5 THE COURT: Yeah.

6 MR. GASTON: Okay.

7 THE COURT: Okay. So gentlemen, Mr. Morgan, all right.  
8 Mr. Morgan, sir, do you understand that if you go to trial, everybody's in  
9 the courtroom is going to be wearing a mask at all times.

10 DEFENDANT MORGAN: Yes, ma'am.

11 THE COURT: All the time. All right. So witnesses, jurors. So  
12 you and your lawyers won't have the opportunity to see the full  
13 expressions of people. You understand that?

14 DEFENDANT MORGAN: Yes, ma'am.

15 THE COURT: And you also understand that no members of  
16 the public can go in to the courtroom just because we don't have room for  
17 them to sit, but the trial will be livestreamed. So you wouldn't be able to  
18 have friends or family come in and sit in there during the trial, but they  
19 would be able to watch the trial. Do you understand that as well, sir?

20 DEFENDANT MORGAN: Yes, ma'am.

21 THE COURT: Do you have any issues with that?

22 DEFENDANT MORGAN: No, ma'am.

23 THE COURT: No. All right. And sir, do you understand we  
24 would continue the trial if you had concerns about it, we would continue it  
25 until you were -- until we didn't have these restrictions anymore, but,

1 obviously, I don't know how long that's going to be.

2 DEFENDANT MORGAN: Yes, ma'am.

3 THE COURT: Do you have any questions for me about that,  
4 sir?

5 DEFENDANT MORGAN: No, ma'am.

6 THE COURT: All right.

7 MR. GASTON: And before you go on to Mr. Snipes or --  
8 maybe we come back, actually, if you want to go to Mr. Snipes and Mr.  
9 Bassett and I have a question.

10 THE COURT: Yeah. Okay. And so Mr. Snipes, you heard all  
11 of that, right? So you understand everybody's going to be wearing  
12 masks all the time?

13 DEFENDANT SNIPES: I understand that and I'm okay with  
14 that, but, like, I'm not waiving any of my constitutional rights by  
15 addressing.

16 THE COURT: Sir, I'm not asking you to waive any rights at  
17 all. We just have coronavirus instructions --

18 DEFENDANT SNIPES: 'Cause I do have a right to a  
19 confrontation, right? I have a right to be confronted by witnesses against  
20 me.

21 THE COURT: The witness will be present in the courtroom,  
22 they'll just be wearing a mask, sir.

23 DEFENDANT SNIPES: Okay.

24 THE COURT: So I just want to make sure that you  
25 understand that.

1           DEFENDANT SNIPES: I understand that. But I do have that  
2 right to be confronted so like -- and when they -- when they testify against  
3 me, they're being cross-examined, so when they're wearing a mask --

4           THE COURT: That's what I'm telling you, sir. They have --  
5 because of the coronavirus precautions, they have to wear a mask at all  
6 times. If you do not want to go forward with that condition, I will continue  
7 your case.

8           DEFENDANT SNIPES: No, I want to go forward, I just want to  
9 know, like, is it possible if I can challenge that at a later -- after the trial, if  
10 possible.

11          THE COURT: Well, that's something that you need to talk to  
12 your attorneys about, but I'm just telling -- if you are not comfortable with  
13 that, then we will find another date.

14          DEFENDANT SNIPES: No, we can move forward. It's -- it's  
15 okay.

16          THE COURT: Okay.

17          DEFENDANT SNIPES: We can move forward.

18          THE COURT: Okay. And you also understand that there is  
19 no place for an -- a public audience, but -- but the trial will be  
20 livestreamed so that if you had friends or family members, that they could  
21 -- they would be able to watch it, just not in the courtroom.

22          DEFENDANT SNIPES: Yeah. I understand that.

23          THE COURT: Okay.

24          DEFENDANT SNIPES: Could I ask you another question? I  
25 mean, just --

1 THE COURT: Sure.

2 DEFENDANT SNIPES: -- theoretically, why does it have to be  
3 facemasks, why can't it be face shields?

4 THE COURT: Sir, the face shields don't really -- so we  
5 provide them to jurors in addition to the masks if they want to wear them,  
6 but the shields don't really protect everybody, especially when you're in  
7 the courtroom for a long time because the air you breathe out goes under  
8 and all around instead of capturing it like a mask does.

9 DEFENDANT SNIPES: I understand.

10 THE COURT: Yeah. So.

11 DEFENDANT SNIPES: All right.

12 THE COURT: All right. I know more about coronavirus than I  
13 ever wanted to. All right. So 9:00 am on Thursday.

14 MR. GASTON: Thank you.

15 THE COURT: And I'll be in touch with all of you.

16 MR BASSETT: Thank you, Your Honor.

17 DEFENDANT MORGAN: What time on Thursday hearing at?

18 THE COURT: 9:00 am on Thursday.

19 MR. SCARBOROUGH: What courtroom is that going to be --

20 THE COURT: Jury Services.

21 THE CLERK: No. Go ahead, Mr. Scarborough.

22 MR. SCARBOROUGH: No, Judge Bell answered, Jury  
23 Services. Sorry about that.

24 THE CLERK: Your Honor, on the Morgan case, there's a  
25 settlement conference still set on November 30<sup>th</sup>. Are we keeping that or

1 are we're vacating that?

2 THE COURT: Let's just hang onto it until we see what  
3 happens.

4 THE CLERK: Great. Thank you.

5 [Proceeding concluded at 2:36 p.m.]

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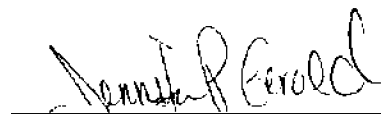
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

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Jennifer P. Gerold  
Court Recorder/Transcriber





1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE NO. C-19-344461-1  
C-19-344461-2

10 vs.

DEPT. NO. XX

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants,

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

15 TUESDAY, MARCH 3, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **STATE'S NOTICE OF MOTION IN LIMINE**  
18 **DEFENDANTS STATEMENTS AND MOTION TO ADMIT EVIDENCE**  
19 **OF OTHER BAD ACTS OR IN THE ALTERNATIVE TO PUT**  
20 **DEFENDANTS ON NOTICE OF THE STATE'S INTENTION TO ADMIT**  
21 **PRIOR JUDGMENT OF CONVICTION; CALENDAR CALL**

22 SEE APPEARANCES ON PAGE 2:  
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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

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|-----------------------|--|
| For the State:        | LAURA GOODMAN, ESQ.<br>ASHLEY A. LACHER, ESQ.<br>Deputy District Attorneys |
| For Defendant Morgan: | ALEXANDER B. BASSETT, ESQ.<br>Deputy Public Defender                       |
| For Defendant Snipes: | JAMES J. RUGGEROLI, ESQ.<br>Chief Deputy Special Public Defender           |

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Las Vegas, Nevada; Tuesday, March 3, 2020

[Hearing commenced at 9:08 a.m.]

THE COURT: State of Nevada vs. Gregory Morgan, Case  
Number C344461.

Go ahead, counsel, make your appearances.

MR. BASSETT: Good morning, Your Honor, Alex Bassett for  
Mr. Morgan.

MS. GOODMAN: Laura Goodman for the State.

THE COURT: All right. The -- you've talked with the State in  
regard to calendar call?

MR. BASSETT: Yes.

THE COURT: And your request for a continuance?

MR. BASSETT: Yes.

THE COURT: Just so I sort of have an expectation, what's  
the State's position, do you know?

MR. BASSETT: I --

MS. GOODMAN: I have no clue, Your Honor --

THE COURT: That's why I'm asking him --

MS. GOODMAN: I will find out.

THE COURT: -- since he --

MS. GOODMAN: Oh yeah.

MR. BASSETT: They indicated to me when we spoke last  
week, Ms. Lacher said she was going to be announcing ready.

THE COURT: Okay. So how old -- this isn't that old of a  
case.

1 MR. BASSETT: It's not, Your Honor. This is the second  
2 calendar call. It also went to Grand Jury so I didn't actually get the case  
3 until mid-December.

4 THE COURT: Okay. I'm looking at -- you've got a State's  
5 notice of motion in limine to -- for other bad acts evidence. I don't have  
6 a response from you.

7 Do you not oppose to State's motion?

8 MR. BASSETT: That's part of the reason for the -- for the  
9 request, Your Honor, along with four other reasons.

10 MS. GOODMAN: And, Your Honor, I do have from -- Ms.  
11 Lacher is going to be up here but she is going to object. And obviously  
12 a opposition that hasn't --

13 THE COURT: All right.

14 MS. GOODMAN: -- been filed isn't a basis for a continuance.

15 THE COURT: All right, okay. Now I know at least what we're  
16 going to be having to deal with here in a couple minutes. And so let's let  
17 Ms. Lacher hear your -- your four other reasons so that she can  
18 respond.

19 You can sit down, sir.

20 [Colloquy regarding another case]

21 THE COURT: Just an added question, Mr. Bassett. Do you  
22 know if -- has your client waived the 60 days?

23 MR. BASSETT: Yes, Your Honor. He waived that back in  
24 January.

25 THE COURT: Okay. I just --

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[Colloquy between counsel and the Court]

[Proceedings trailed]

[Proceeding resumed at 9:14 a.m.]

THE COURT: State of Nevada vs. Gregory Morgan, Case  
Number C344461.

Counsel, please note your appearances for the record.

MS. LACHER: Ashley Lacher for the State.

MR. BASSETT: Alex Bassett for the Defense.

THE COURT: Okay. This is on for calendar call and then  
also State's notice of motion in limine, defendant's statements and  
motion in limine to admit evidence of other bad acts, and/or in the  
alternative, to put defendants on notice of the State's intention to admit  
prior judgement of conviction.

So why don't we deal with the immediate issue of trial that's  
scheduled for the 9<sup>th</sup>, where do we stand with calendar call?

State's position?

MS. LACHER: State's ready.

THE COURT: Okay.

MR. BASSETT: The defense is not prepared -- is asking for it  
to be continued.

THE COURT: All right. You previously indicated you had four  
reasons.

MR. BASSETT: Yes.

THE COURT: So let's hear the four reasons.

MR. BASSETT: Your Honor, the first -- in no particular order,

1 the first response to the motion in limine. I was going to be asking Your  
2 Honor for a brief extension to allow me to file a response to that. I had a  
3 case that I anticipated was going to be going to trial last week and that  
4 sucked up a lot of my time. That ended up settling. I -- if I could have  
5 even two days, I could get a response filed, I don't anticipate the  
6 arguments in that motion are going to be particularly strong, but for the  
7 record, I should file a response.

8 More pressingly, Your Honor, the other issues here. One, we  
9 do have ongoing investigation in this case. We have my investigator  
10 looking into possibly getting additional video footage from some of the  
11 locations where the alleged events occurred. That's the first point.

12 The second point, perhaps even more crucially for my  
13 preparedness for trial, my second chair attorney on this case, whom I  
14 had been coordinating with on strategy and breaking down the elements  
15 of the trial, informed me yesterday that they have to back out of the trial.  
16 So as of today, I do not have a second chair to help me with this case. I  
17 will be able to find one. Although getting them up to snuff and getting  
18 the work prepared that had already been done in the next six days  
19 would be -- I would worry about the effectiveness of them in preparation  
20 for trial. That was genuinely unexpected and, quite frankly, a blow to my  
21 morale about handling this case.

22 Thirdly, Your Honor, at this point it's become clear that -- and  
23 it only has become clear in the last week or two that the two co-  
24 defendants are at diametrically opposed strategies to dealing with this  
25 case. If you were to allow an extension, Your Honor, I'd be filing a

1 motion to sever for a couple of reasons.

2 Mr. Morgan, from the beginning, Your Honor, has not wanted  
3 to take this case to trial. He has told me that from the very first and so  
4 subsequently I've engaged in extensive negotiations with the State.  
5 Obviously, the State is of course not required by law to make an offer.  
6 But I will point out, Your Honor, they did extend an offer originally which  
7 was to plead guilty to one count of burglary, one count of robbery with a  
8 right to argue and an agreement not to habitualize Mr. Morgan, that was  
9 the initial offer.

10 As things go with negotiations, we went back and forth. The  
11 State did not budge on that offer and as of last week, Mr. Morgan  
12 agreed to the offer. However, the State made the offer contingent which  
13 means, of course, that Mr. Snipes would have to agree. Mr. Snipes has  
14 been consistently difficult to work with in negotiations.

15 THE COURT: Okay, let's -- let me. Was there another  
16 reason? I know I've got the --

17 MS. BASSETT: That's the four, Your Honor.

18 THE COURT: -- I've got the gist of this one. That's the four?

19 MR. BASSETT: That's -- that's the four.

20 THE COURT: What's the State's position?

21 MS. LACHER: Your Honor, I believe this is the second setting  
22 in the case. The first setting we had set a status check for negotiations.  
23 I made sure that both Mr. Ruggeroli and Mr. Bassett had -- we had done  
24 -- had done our file review at that time. Would three weeks be enough  
25 time to discuss the case and their offer with their clients, yes? They did

1 not want to accept that offer at that time and it was rejected and revoked  
2 was my understanding of it. But I did make sure that they had had all  
3 the discovery, we had done our file review and left them ample time to  
4 discuss the case with their clients and they didn't want it at that time.

5 We were ready at that first setting; I had no objection to a  
6 continuance. I'm ready again, I am objecting to a continuance. He  
7 didn't file a motion and now all of a sudden there's all these other things.  
8 When I remember the Court asking is there any other additional  
9 information that you think you need from the State or anything else you  
10 want to do, they said, no. And we have the other, I think, both  
11 defendants were an invoked status as well.

12 MR. BASSETT: A couple corrections there, Your Honor. The  
13 offer was not revoked. Ms. Lacher confirmed --

14 THE COURT: I'm more concerned about the invoked status.  
15 You had said in --

16 MR. BASSETT: Mr. Morgan waived his --

17 THE COURT: Okay.

18 MR. BASSETT: -- right to a speedy trial.

19 THE COURT: I believe you.

20 MR. BASSETT: Mr. Morgan waived his right to a speedy trial  
21 on January 14<sup>th</sup>, Your Honor.

22 THE COURT: Okay.

23 MS. LACHER: The other one is invoked.

24 THE COURT: Oh, the other one's invoked? Okay.

25 MS. LACHER: Yeah. Snipes is invoked.



1 THE COURT: All right. Well let's wait until Mr. Ruggeroli gets  
2 here.

3 MR. BASSETT: And also for the record, Your Honor --

4 MS. LACHER: And two, there were -- there wasn't just one  
5 offer. There was a stip time offered to one felony and they -- and I  
6 had -- did go back and forth in the final offer that I made clear at that last  
7 time was the robbery, burglary, right to argue contingent, no habitual.

8 THE COURT: Okay.

9 MS. LACHER: They didn't want it.

10 MR. BASSETT: And that offer was not revoked and the State  
11 has failed to provide any rationale behind making it contingent.

12 THE COURT: Well, hey, that's up to the State.

13 MR. BASSETT: I understand that.

14 THE COURT: So all right. Let's wait and see what Mr.  
15 Ruggeroli's position's going to be because I will say that I don't  
16 necessarily see a basis, --

17 MS. LACHER: And --

18 THE COURT: -- you know, Mr. Ruggeroli's client has invoked  
19 to continue the trial next week on what you've represented. Mr.  
20 Ruggeroli's in sort of the same stack, just for the record so that --  
21 because the only thing that really caught my ear at all was you indicated  
22 additional investigation.

23 What are you looking for?

24 MR. BASSETT: Your Honor, my investigator is -- basically,  
25 Your Honor, their -- the video footage we have is footage from outside

1 the store fronts, not actually showing the incidents. My investigator has  
2 -- is looking into seeing if there is any video footage available from inside  
3 the store or from inside the parking garage where some of the incidents  
4 took place. There are cameras and the State has not provided that  
5 evidence, I don't believe the State has that evidence. But my  
6 investigator had said that additional time would be useful to confirm or  
7 deny whether or not that footage exists, which would go a long way  
8 towards answering some of the questions in our defense.

9 THE COURT: Okay. When did you start looking for this?

10 MR. BASSETT: I put in the request approximately three  
11 weeks ago.

12 THE COURT: Well it's a little late in the ball game. I mean  
13 the case has been on par since November. All right, let's see what  
14 Mr. --

15 MR. BASSETT: Well, Your Honor, I was not assigned to it  
16 until December. And, again, the top priority, per Mr. Morgan, was  
17 negotiating a deal 'cause he's never wanted to go to trial.

18 THE COURT: Well -- all right. Let's see what Mr. Ruggeroli's  
19 position is.

20 [Proceedings trailed]

21 [Proceeding resumed at 9:43 a.m.]

22 THE COURT: Recalling State of Nevada vs. Gregory Morgan  
23 and now calling State of Nevada vs. Andre Snipes, Case Number  
24 C344461.

25 Counsel, please note your appearances again for the record.

1 MS. LACHER: Ashley Lacher for the State.

2 MR. RUGGEROLI: Good morning, Your Honor, James  
3 Ruggeroli.

4 MR. BASSETT: Alex Bassett for Mr. Morgan.

5 MR. RUGGEROLI: Judge, I can give the Court some  
6 additional information --

7 THE COURT: All right.

8 MR. RUGGEROLI: -- as to my client.

9 Judge, he is very much wanting to go to trial. We have been  
10 working very diligently to meet with him, have the investigator go over,  
11 provide him with the number of videos and surveillance that the State  
12 has provided us with. And so if you recall last time this was continued,  
13 he did not waive his speedy trial so he does want to go forward.

14 It's my understanding that Public Defender has raised issues  
15 of severance which I do concur with. I think that there are some  
16 difficulties. I don't know if that was raised in court.

17 THE COURT: Briefly.

18 MR. RUGGEROLI: Okay. My request is that we go forward  
19 and that you consider severing as to the Public Defender's client. We're  
20 ready to go.

21 THE COURT: Okay. Well, let me hear the State's position.

22 MS. LACHER: Your Honor, I think in order to sever, the  
23 Defense should've filed a motion. They've had this case since -- both  
24 Mr. Ruggeroli and the Public Defender's Office have had this case since  
25 its inception in October 11<sup>th</sup> of 2019.

1 MR. BASSETT: False, Your Honor. We have not.

2 MS. LACHER: That's when they were appointed. Mr. Morgan  
3 was appointed Mr. Bassett on October 11<sup>th</sup>, 2019 in Justice Court and  
4 Mr. Snipes was appointed Mr. Ruggeroli on that same date. They didn't  
5 file a motion so --

6 THE COURT: Well --

7 MS. LACHER: -- they have not set forth the basis.

8 THE COURT: -- severance can be raised at any time even  
9 during the middle of trial if a basis arises for the purposes of severance.  
10 So I mean I'm not opposed to them raising the severance at this point in  
11 time. But I mean, it's a fairly high standard to justify severance and just  
12 tell -- and inconsistent defenses does not necessarily justify a  
13 severance.

14 What I'm -- and what I'm inclined to do is set this for -- we'll  
15 set the -- we're going to set this for trial on Monday.

16 [Colloquy between the Court and Staff]

17 MR. BASSETT: Your Honor, Your Honor, if I may just briefly  
18 be heard.

19 I -- if you are inclined to set this for trial -- allow the trial to go  
20 forward next week, I would request a Tuesday start for a very simple  
21 reason. I have a long standing commitment. I will be out of the  
22 jurisdiction until 7:30 a.m. on Monday. I have a flight that lands at that  
23 time. I should be able to get to court by 9:00 a.m. on Monday, but given  
24 that narrow time frame, I would be more comfortable if we could delay  
25 the start of the trial one day.

1 THE COURT: Well, I want to try to get the jury selected in the  
2 trial on Monday. So I appreciate you'll arrive, but I will agree in view of  
3 your situation that all we will do on Monday is jury selection. I won't  
4 require you to have anything so we'll set it for 9 'o clock on Monday.  
5 We'll keep us posted as to -- beauty of flying early in on the morning is  
6 usually the planes take -- are there and take off on-time so you should  
7 be able to get in on Monday.

8 I'm going to set the State's motion. I'm going to give you a  
9 chance to file by the end of tomorrow a response to the State's motion in  
10 limine. I'll let you have the same thing if you want to, Mr. Ruggeroli.  
11 And then I also want you to file something in writing as to the severance  
12 and we'll consider those issues on Thursday afternoon at --

13 [Colloquy between the Court and Staff]

14 THE COURT: Should be able to get started at 1:30. So we'll  
15 set this for 1:30 on Thursday.

16 I will tell you in terms of responding to the motion in limine, I  
17 do agree with the State's rendition of the law relating to admission of  
18 defendant's statement. However, I'm not going to grant that part. I  
19 consider, you know, there are other basis's for admitting a defendant's  
20 statement then for the truth of the matter.

21 So I mean if you've got a non-hearsay reason or another  
22 hearsay exception that is -- that applies to a defendant's statement, I'll  
23 be glad to hear that at the time of trial. I'll expect the State to enter in an  
24 objection. So I'm not going to enter a blanket order relating to, you  
25 know, I'll recognize the State accurately stated the law relating to

1 admission of a defendant's statement by a party opponent but there are  
2 other reasons -- ways to admit a statement. So I'm not going to grant a  
3 blanket motion. So you don't need to respond to that part of their  
4 motion. I'm more interested in the bad act aspect of the motion.

5 All right, anything else at this point in time?

6 MR. RUGGEROLI: One issue as far as housekeeping. There  
7 had been an offer extended and I did want to make a record that the  
8 State had offered Mr. Snipes to plead guilty to one count of robbery and  
9 one count of burglary. The State would have retained the right to argue.  
10 They would not have sought habitual treatment. It was a contingent  
11 offer.

12 I had indicated to Mr. Snipes that I would attempt to make a  
13 counter offer, which I did. He was open to a couple of grand larcenies. I  
14 don't think that the State will consider that and so I just wanted to make  
15 a record that the offer has been extended and rejected.

16 THE COURT: Okay.

17 MS. LACHER: Right.

18 MR. BASSETT: And again a couple of housekeeping matters  
19 in my end, as well, Your Honor.

20 THE COURT: Sure.

21 MR. BASSETT: Again, just wanted to note that I am  
22 concerned about my ability to be effective going forward next week for  
23 the reasons stated earlier. And also just wanted to emphasize again for  
24 the Court, the only reason Mr. Morgan is going to trial is because his co-  
25 defendant is forcing him.

1 THE COURT: Well, that --

2 MR. BASSETT: I just want to make sure that Your Honor is  
3 aware of that.

4 THE COURT: I understand what you're saying. I'm -- like I  
5 said the State made -- you know, has that prerogative and there's not  
6 really any way I can get involved with it --

7 MR. BASSETT: I'm just asking you to --

8 THE COURT: -- whether I agree with your perspective or not,  
9 it is what it is. So no -- and I do understand the reasons that you gave  
10 earlier. I do think you've had -- sounds like discovery in this matter for a  
11 sufficient period of time. I do appreciate you don't have your co-counsel  
12 -- has stepped out for next week. But you do have other people in the  
13 office who can fill in, in the co-counsel role.

14 I appreciate the information relating to additional video and I'm  
15 open if your investigator indicates or you indicate something specific as  
16 to what you expect to find on that video. And the likelihood of finding  
17 that video at this point in time to -- on Thursday afternoon, if you want to  
18 renew your motion to continue at that point in time. And so, you know,  
19 you know, Mr. Ruggeroli's client wants to go to trial.

20 I -- at the moment, you know, absent seeing what you've got  
21 for severance, there's a strong preference that people indicted together  
22 should go to trial together. And so I'm inclined to force this to trial next  
23 week. All right.

24 MS. LACHER: All right and --

25 THE COURT: Oh.

1 MS. LACHER: -- Your Honor, just if it wasn't clear, for the  
2 offer is revoked as to both defendants and we're ready and I just want to  
3 be --

4 THE COURT: You won't keep it open until Thursday  
5 afternoon?

6 MS. LACHER: No.

7 THE COURT: All right.

8 MS. LACHER: And so the motions will be heard on Thursday  
9 afternoon and then?

10 THE COURT: Right.

11 MS. LACHER: Okay. At 1:30?

12 THE COURT: So I should see tomorrow a response -- and I  
13 said it's open to you, Mr. Ruggeroli, if you want to file something.

14 MR. RUGGEROLI: It will be filed by tomorrow, Your Honor.

15 MS. LACHER: Okay.

16 THE COURT: Filed by the end of tomorrow; response to the  
17 motion to admit evidence of other bad acts and severance. Something  
18 in writing explaining your severance position, I'm not going to require the  
19 State to respond. You can respond orally on Thursday afternoon. And I  
20 will allow you to make a renewed motion for continuance on Thursday if  
21 you've got something more you can give me in terms of the investigator.

22 MR. BASSETT: I'll talk to my investigator today, Your Honor.

23 THE COURT: All right.

24 MS. LACHER: And, Your Honor, I'm in trial this week in  
25 Judge Ellsworth, that only has afternoons, but I'll make sure somebody



1 from our office is here for the motion part for Thursday.

2 THE COURT: Okay. All right.

3 MS. LACHER: But it won't be me, just so the Court's aware.

4 THE COURT: Oh darn, okay. All right, thank you.

5 THE CLERK: How many days? How many witnesses?

6 MS. LACHER: There's about, I believe, around 7 to 8 events  
7 probably 15 to 20.

8 THE CLERK: How many days?

9 MS. LACHER: I think, we'll -- are we having half days or?

10 THE COURT: We'll go pretty much full days Monday. I'm not  
11 sure about Wednesday's now because I have some -- I'm having to  
12 schedule some things on Wednesdays now.

13 MS. LACHER: I think it'll probably be a week and a half.

14 THE COURT: Okay. All right, we'll anticipate a little over a  
15 week. I'll try to get it to move.

16 MS. LACHER: I know you move --

17 THE COURT: All right.

18 MS. LACHER: -- move the trials, Judge so --

19 THE COURT: All right.

20 MS. LACHER: -- I think we can.

21 THE COURT: Anything further?

22 MR. RUGGEROLI: No, Judge.

23 MR. BASSETT: No.

24 THE COURT: All right, thank you, guys.

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MS. LACHER: Thank you.

[Hearing concluded at 9:53 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.



Angelica Michaux  
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE NO. C-19-344461-1  
C-19-344461-2

10 vs.

DEPT. NO. XX

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

15 THURSDAY, OCTOBER 29, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **STATUS CHECK: POSSIBLE MOTION TO SEVER**

18 SEE APPEARANCES ON PAGE 2:  
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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

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| For the State:        | KENNETH N. PORTZ, ESQ.<br>Chief Deputy District Attorney |
| For Defendant Morgan: | ALEXANDER B. BASSETT, ESQ.<br>Deputy Public Defender     |
| For Defendant Snipes: | DANIEL HILL, ESQ.<br>[via video conference]              |

1 Las Vegas, Nevada; Thursday, October 29, 2020

2 [Hearing commenced at 3:17 p.m.]

3 THE COURT: But we'll need to continue the -- there's one  
4 severance motion. That we'll need to continue 'til --

5 THE CLERK: It looks like --

6 THE COURT: -- Tuesday.

7 THE CLERK: -- I do have one of those matters actually set on  
8 November 3<sup>rd</sup> already, so I can set them both there.

9 THE COURT: Okay. Because that's -- are you wanting --  
10 where's Mr. Hill?

11 MR. PORTZ: He's on the phone, Your Honor.

12 THE CLERK: He's online on BlueJeans now, Your Honor.

13 THE COURT: Oh okay. All right, I know we don't have the  
14 defendant here, but let me just ask. Are you both committed to going to  
15 trial on the week of the 9<sup>th</sup>?

16 MR. PORTZ: I think there's a couple issues there, Your  
17 Honor.

18 I mean, first, obviously this is Mr. Hill's motion to sever. All the  
19 parties announced ready in the Central Trial Readiness Calendar,  
20 however, counsel who represents the -- Mr. Morgan, I believe, stated  
21 that he was going to have a second defense attorney do the case with  
22 him. Judge Bell said, based on the COVID courtroom requirements,  
23 that's going to force a severance; essentially, make Your Honor, hear  
24 this case two times because they can't accommodate an additional  
25 attorney if there's two defendants at counsel's table. So that's -- that's

1 one issue, the other is Mr. Hill's motion to sever, which is severance  
2 based on legal grounds that the State's position is Your Honor already  
3 denied some months ago on this case.

4 THE COURT: Did I?

5 MR. PORTZ: You did.

6 MR. BASSETT: Without prejudice.

7 THE COURT: Okay, without prejudice.

8 MR. BASSETT: And I --

9 MR. PORTZ: Nothing has been brought up, Judge.

10 MR. BASSETT: -- and we filed it, not Mr. Hill.

11 MR. PORTZ: But he joined. His client joined.

12 THE COURT: Okay, well I read the motion. I mean, being  
13 promised that these are incompatible defenses is -- I've seen very few  
14 successful incompatible defenses severances out there so.

15 MR. BASSETT: And I'd be happy to if you wanted -- I was -- if  
16 -- is Mr. Hill online or?

17 MR. HILL: I'm here and I'd be happy to spill the beans but it's  
18 Mr. Bassett's defense.

19 MR. BASSETT: And, Your Honor, I'd be happy to approach  
20 and explain what our defense strategy is going to be. I would prefer not  
21 to put that on the record.

22 MR. PORTZ: And I think it's problematic. One, the clients  
23 aren't here; two, the --

24 THE COURT: Yeah.

25 MR. PORTZ: -- the State can't hear what it is to argue the

1 merits of severance. And three, they literally did this in January or  
2 March and Your Honor heard outside the presence of the State their  
3 quote, unquote incompatible defenses and you denied the motion--

4 THE COURT: Has that changed?

5 MR. BASSETT: Yes.

6 MR. HILL: Well -- and, Judge, if I may, this is Dan Hill.  
7 What's changed is I -- my client stands to be significantly more  
8 prejudiced by the situation than Mr. Morgan and the last time was Mr.  
9 Morgan's motion. I don't think Mr. Morgan stands to be prejudiced by  
10 my defense hardly at all.

11 MR. PORTZ: Mr. Snipes joined in the motion that Your Honor  
12 denied back in March, so.

13 THE COURT: Yeah, well, all right.

14 MR. PORTZ: But the -- I guess the pressure or the pressing  
15 issue is that the 9<sup>th</sup> is the trial date. And so it's -- if we have this  
16 wrapped up, if Your Honor decides that a severance is not warranted on  
17 Tuesday, we'll need to address the trial status of everything.

18 THE COURT: All right and both defendants have invoked?

19 MR. BASSETT: No.

20 MR. PORTZ: No.

21 MR. BASSETT: Mr. Morgan is not invoked.

22 THE COURT: Oh, okay.

23 MR. BASSETT: Mr. Snipes is. And we have a central --

24 THE COURT: Are you wanting to go to the trial on the 9<sup>th</sup>?

25 MR. BASSETT: If we need to be, yes.

1 THE COURT: Okay.

2 MR. BASSETT: Yeah, we announced that at the Trial  
3 Readiness Conference last week. Calendar call was actually moved out  
4 of this courtroom to the Central Calendar Call on November 4<sup>th</sup>.

5 THE COURT: Right.

6 MR. PORTZ: But Judge, you need to be aware that the  
7 central trial, Judge Bell who's overseeing that, despite already your  
8 denial of a motion to sever, was going to just *sua sponte* grant a  
9 severance because defense -- solely because the Public Defender's  
10 Office announced they're going to have two defense attorneys. And  
11 they can't accommodate one extra attorney at the COVID -- in the  
12 COVID courtroom according to Judge Bell.

13 So based on that, this is a nine event series, dozens of  
14 witnesses and it's going to go twice simply based on that issue. If you're  
15 not going to grant the severance for legal grounds then I believe you  
16 have cause to say that the invoked defendant, we're going to continue to  
17 the trial over his objection to give them a new invoke date.

18 THE COURT: Okay.

19 MR. BASSETT: And Your Honor, that is partially accurate.  
20 Both me and Mr. Hill indicated that we intend to have co-counsel as is  
21 our right at trial. And we both indicated that to the Judge before she told  
22 us that would result in a severance because it'd be too many people  
23 sitting at the defense table. I was not aware that was the policy and I did  
24 not request a severance based on COVID restrictions and neither did  
25 Mr. Hill.



1 MR. PORTZ: And I'm unaware of a right to two attorneys for  
2 any defendant, but that being said --

3 THE COURT: Well, I mean, that that --

4 MR. PORTZ: -- it's still is --

5 THE COURT: -- I mean, generally one has the right to be  
6 represented by whoever he wants to be represented -- whether, you  
7 know, obviously that's not generally a problem.

8 MR. PORTZ: Right.

9 THE COURT: You know, we have generally plenty of room if  
10 we can stay within -- get within six feet of each other.

11 MR. PORTZ: And I understand that and the State will be  
12 ready to go. But I'm just saying that we're going to have to do this twice  
13 if -- if they sever it on that issue. And I think that's a massive waste of  
14 judicial resources, Your Honor's time, your staff's time, jury's --

15 THE COURT: Well I agree with you on that. I mean, there's  
16 times you have to sever it but other times --

17 MR. PORTZ: Right.

18 THE COURT: -- you don't. I also have another case that's --  
19 has a firm trial date set for that date so -- the 9<sup>th</sup> -- so I'd have to look  
20 and see if somebody was available to take this on an overflow.

21 MR. BASSETT: Has the second courtroom opened up for  
22 trials yet?

23 THE COURT: It's supposed to next week but that hasn't yet  
24 so don't hold your breath. But it is supposed to open up next week. All  
25 right, let's put this on the calendar on Tuesday for -- and we'll get to

1 the -- we'll deal with the severance motions and issues then. If you can  
2 find anything on whether or not you're entitled to two attorneys at a trial,  
3 I'd be interested to see that. I'll ask my brain trust here to see if they -- if  
4 there's anything else.

5 MR. PORTZ: Mr. Bassett said there was a right to it, but I  
6 didn't -- I've never --

7 THE COURT: Well, I mean and I appreciate Mr. --

8 MR. PORTZ: And that's fine, I'll see if there's anything about  
9 it.

10 THE COURT: There is, you know, generally it doesn't make  
11 any difference. I don't --

12 MR. PORTZ: Right.

13 THE COURT: -- know if you have a absolute right when it's  
14 going to cause an extreme hardship because of facilities usage -- right  
15 to more than one attorney but I mean, you know, I -- looked --

16 MR. BASSETT: I doubt that's been litigated.

17 THE COURT: The -- it's -- you know. You'd have to have a  
18 really small courtroom and --

19 MR. PORTZ: If it's like a capital case, I believe.

20 THE COURT: -- in non-COVID times, you'd have to have a  
21 really small courtroom for two attorneys on the defense side to cause a  
22 facility issue. So I doubt that it's ever been seriously litigated but --

23 MR. PORTZ: Right.

24 THE COURT: We'll ponder that between now and Tuesday, I  
25 guess.

1 MR. PORTZ: And that's -- that is just a side issue, Your  
2 Honor. I think the matter before you is Mr. Hill's motion to sever for legal  
3 grounds, not because of COVID.

4 THE COURT: Mm-hm.

5 MR. PORTZ: So I just want you to be aware that if you  
6 choose not to sever, you may have to address the trial status because if  
7 it goes to the Central Trial Readiness calendar, Judge Bell's indicated  
8 she will just sever it if they want an extra attorney.

9 MR. BASSETT: Which we do, which my client is entitled to.

10 MR. PORTZ: Right.

11 MR. BASSETT: And Mr. Hill has indicated --

12 MR. PORTZ: Which I think would be good.

13 MR. BASSETT: -- that he's going to have a co-defendant -- a  
14 co-counsel, as well.

15 THE COURT: And Mr. Hill's going to have co-counsels?

16 MR. PORTZ: And I think that would be grounds to --

17 THE COURT: Well --

18 MR. PORTZ: -- to continue so they can be heard at the same  
19 time.

20 THE CLERK: Mr. Hill is still on the line, Your Honor.

21 THE COURT: I know. Mr. Hill's there.

22 THE CLERK: Oh okay. I'm sorry.

23 THE COURT: Silently, stealthily in the background but he's  
24 still there.

25 MR. HILL: I'm pondering.

1 THE COURT: You're pondering? Very good.

2 All right, I will tell you, I mean, I tend to think that the State has  
3 a right to hear what the inconsistent defenses are because I think the  
4 State has a right to -- to rebut that these are inconsistent to the point that  
5 they have to require a severance. But I have not researched that  
6 recently, but I will tell you that's my general reaction is that you've got to  
7 -- there has to be a record of what is out there that's so inconsistent that  
8 -- but at a minimum, I would ask you, Mr. Bassett, to put together a  
9 supplement to your motion.

10 MR. BASSETT: It's not my motion, Your Honor.

11 THE COURT: It's not your motion now?

12 MR. BASSETT: Mr. Hill's motion.

13 THE COURT: Oh.

14 MR. HILL: Now -- and that's what's kooky about it, Judge, is  
15 it's -- it's like kind of -- its somewhat -- it's privileged -- it's not. It's tough  
16 'cause it's not my information to share. But nevertheless, I know it and it  
17 would be rather problematic.

18 THE COURT: Well --

19 MR. BASSETT: And my problem is basically, Your Honor,  
20 we'd have to completely reveal our trial strategy before trial began.

21 THE COURT: Well, you know, my gut is if you aren't  
22 prepared to do that now, there is no factual basis on the record for a  
23 severance and you can move for severance at any time. I mean, if at  
24 trial, the defense has clearly become inconsistent, you can move it, you  
25 know. The severance can be moved at any time and so it may be that if,

1 you know, for strategic reasons, you'll have to wait til we get to trial and  
2 into trial --

3 MR. HILL: Well --

4 THE COURT: -- to move for severance.

5 MR. BASSETT: I understand, Your Honor, but this --

6 MR. HILL: What I think would -- I think that would happen in  
7 opening statement, Judge. And then -- and then now the strategies, I  
8 mean, I'll leave it to Mr. Bassett. But, I mean, if it happens in opening  
9 then I guess my guy -- I'd make the motion and then maybe he can just  
10 go forward right there and then with his strategy, which might not be the  
11 most efficient. But that'd be the only way to keep Mr. Morgan's defense  
12 close to the vest.

13 THE COURT: Well -- I -- I'll -- Mr. Hill, I mean I'm going to tell  
14 you, to talk to Mr. Bassett, prepare -- I'm not going to -- guess what, I'm  
15 not going to grant a severance on the promise that this is really  
16 inconsistent. That is not --

17 MR. HILL: No.

18 THE COURT: -- going to happen. So at minimum, you're  
19 going to have to provide me something in-camera so go ahead and  
20 prepare that.

21 MR. BASSETT: Could it be filed under seal, Your Honor?

22 THE COURT: Huh?

23 MR. BASSETT: Could it be filed under seal?

24 THE COURT: Well, I mean, yeah. I mean, yes you can file it  
25 under seal but I'm going to do some research and I'm then going to ask

1 you guys. You're asking for it to be under seal. You're asking for me to  
2 do a severance when the -- and not allow the State to be able to defend  
3 the severance. I don't think you -- that that's appropriate, but if you can  
4 find case law out there that says that in these circumstances you can  
5 keep the State and I have to do a decision as far as severance through  
6 something in-camera, then fine, I'll be glad to consider it.

7 But as I said, as I sort of sit here now, my gut is that it's going  
8 to have to wait until trial to -- 'cause I think the State does have a right to  
9 -- State has a general right to try the case as it feels that it should be  
10 tried. If it feels it's a multi-defendant case and they should be joined, it  
11 has a right to have them joined unless there is a basis to break them up.  
12 And the State has a right to -- to defend that basis so.

13 But I'm just telling you, at a very minimum, regardless of what  
14 you find, whether or not you find that it can be filed under seal and I  
15 make an in-camera decision or you find that -- or we don't find it, you  
16 know, I'm going to have to know what the basis is. So you might as well  
17 prep at least a memo that you're going to want to file in-camera and we'll  
18 consider all this on Tuesday, so.

19 MR. BASSETT: I'll get that written over the weekend.

20 THE COURT: All right.

21 MR. BASSETT: Although to be fair, that's just a supplement  
22 to Mr. Hill's argument. I'm not officially --

23 MR. HILL: Yeah, that's what's --

24 MR. BASSETT: -- joining in the motion.

25 MR. HILL: -- I feel bad having Mr. -- not that I'm volunteering

1 mind you.

2 THE COURT: Oh, I wouldn't want you to do that, Mr. Hill so.

3 MR. HILL: It's Nevada Day weekend, come on.

4 THE COURT: I understand, I didn't -- anyway. I'm just telling  
5 you, I'm going to have to know whether or not --

6 MR. HILL: Of course.

7 THE COURT: -- you keep it -- keep it in your pocket from the  
8 State. I'm not sure I'm -- I agree with that, but I haven't ever researched  
9 that issue. So take a look at that and then we'll look at it on -- on  
10 Tuesday and then we'll decide that severance issue and then, you know,  
11 we'll see where we're at.

12 I mean, did Judge Bell indicate you would be near top of the  
13 priority list if -- if you went on the 9<sup>th</sup>?

14 MR. PORTZ: It wasn't discussed to my recollection. All I do  
15 recall is that Judge Bell indicated, based on that COVID issue, she  
16 would sever the case, which we didn't think was appropriate given she's  
17 not hearing it, this Court is, and there's no grounds for it.

18 THE COURT: Mm-hmm. Well --

19 MR. HILL: Yeah, I didn't -- I didn't know there was still like a  
20 stack, Judge. It just sounded to me like it was gonna go.

21 THE COURT: No, there's a -- I'm sure there's a stack. I  
22 mean, we have like a hundred some invoked cases that we're trying to  
23 work through.

24 MR. BASSETT: Do you happen to know, Your Honor, if the  
25 case that's already set for the 9<sup>th</sup>, when that's from? 'Cause I believe

1 this case is from December of last year, I think.

2 THE COURT: Well this case is getting a firm trial setting  
3 because the defendant speaks a language that we have to have an  
4 extended period of time to get a translator.

5 MR. BASSETT: Got it.

6 THE COURT: And so -- so we're just --

7 MR. BASSETT: So it sounds like this all might be a moot  
8 issue for the 9<sup>th</sup> anyway.

9 THE COURT: Well, we may be opening up the second  
10 courtroom next week.

11 MR. PORTZ: I think they're also planning on stacking cases  
12 at this point.

13 THE COURT: Yeah, they're going to stack cases so I mean  
14 you can be --

15 MR. PORTZ: And 'cause cases are sometimes dealing.

16 THE COURT: You can be case number three in the --

17 MR. PORTZ: Yeah.

18 THE COURT: -- courtroom one and/or case number two in  
19 courtroom two so, I mean, we're moving to a stack system so that we  
20 hopefully are using that courtroom every week.

21 MR. PORTZ: Right.

22 THE COURT: Because the problem we're having now is  
23 everybody decides to plead out the day of trial and we've got nobody  
24 using the courtroom so. All right, we'll deal with it on Tuesday with the  
25 defendant present and that'll give him -- and we'll deal --



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MR. HILL: Very well, Judge.

THE COURT: -- with the substantive issues at this time.  
I'm sorry what, Mr. Hill?

MR. HILL: I said very well, Judge.

THE COURT: Okay.

MR. HILL: But the good news on this one is it's for sure not  
going to plead out on the day of trial so don't worry about that.

THE COURT: All right. That was -- going to toss and turn on  
that all night tonight.

THE CLERK: So the continuance will be to November 3<sup>rd</sup> at  
1:45.

MR. PORTZ: Thank you.

THE COURT: All right. Thank you, guys.

MR. HILL: Thank you, Your Honor.

[Hearing concluded at 3:32 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.



---

Angelica Michaux  
Court Recorder/Transcriber



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

GREGORY DELLO MORGAN,  
ANDRE GRANT SNIPES,  
Defendants.

CASE NO. C-19-344461-1  
C-19-344461-2

DEPT. NO. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 3, 2020

**RECORDER'S TRANSCRIPT OF HEARING:  
POSSIBLE MOTION TO SEVER**

SEE APPEARANCES ON PAGE 2:

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State: KENNETH N. PORTZ, ESQ.  
Chief Deputy District Attorney

For Defendant Snipes: DANIEL HILL, ESQ.  
[via video conference]

For Defendant Morgan: ALEXANDER BASSETT, ESQ.  
RAFAEL NONES, ESQ.  
Deputy Public Defenders

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Las Vegas, Nevada; Tuesday, November 3, 2020

[Hearing commenced at 2:40 p.m.]

THE COURT: Page 9, State of Nevada vs. Andre Snipes,  
Case Number C344461.

Counsel, please note your appearances for the record.

MR. PORTZ: Nick Portz for the State, Your Honor, good  
afternoon.

MR. HILL: Dan Hill for Mr. Snipes and I think -- it's a co-  
defendant case, Mr. Bassett is there as an involved --

MR. BASSETT: That's correct, Your Honor.

MR. HILL: -- party in this.

MR. BASSETT: This is Mr. Hill's motion but I am here  
because it's a co-defendant case.

THE COURT: Okay. This is on for defendant's motion to  
sever. We talked about it the other day. You know, my -- my general  
review is I -- if you're going to make a motion to sever for inconsistent  
defenses, you got to tell me what the defenses are, otherwise, you're  
waiting 'til -- you can obviously move at trial when you've divulged what  
the defenses are and move to sever at that point in time. But -- you  
telling me and me taking in-camera, I don't see as -- I don't think it's  
appropriate or what's provided -- or what is permissible by the law.

So if you don't want to tell me what your -- tell the State and  
me what your inconsistent defenses are -- you certainly have a right not  
to do that. But I'm not going to be granting your motion to sever at this  
point in time. I would be denying it without prejudice.

1 MR. HILL: Well, very well, Your Honor. It's not my defense to  
2 divulge so we'll just -- I'll make it during opening.

3 MR. BASSETT: And, Your Honor, I did consult with my co-  
4 counsel in this case, Tyler Gaston and -- but we both agree -- did  
5 research, we could not find any relevant case law that indicated that we  
6 would be required to divulge our theory of defense in order for you to  
7 rule on and/or grant a motion of severance. We would be happy to  
8 provide an explanation of the antagonistic defenses to you ex parte but  
9 we are not prepared to put on the record --

10 THE COURT: No and I --

11 MR. BASSETT: -- what are defenses are.

12 THE COURT: -- appreciate that. I appreciate that but I don't  
13 think, you know, the State generally has a right to try the case as the  
14 State wants to try the case and I don't think -- I think that if you're going  
15 to move for inconsistent defenses, the State has a right to respond to  
16 that. So that's -- that's anyway my position at this point in time.

17 MR. BASSETT: It's fine, Your Honor. We can renew it after  
18 opening statements.

19 THE COURT: You can -- you can move for severance up until  
20 the time the case goes to the jury.

21 MR. PORTZ: This -- and accepting Your Honor's ruling, this  
22 brings up an issue that I mentioned last week. This case will now go  
23 before Judge Bell tomorrow in the Central Trial Readiness Call and as  
24 Mr. -- as Defense Counsel, I'm so sorry.

25 MR. BASSETT: Alex Bassett.

1 MR. PORTZ: Mr. Bassett, I apologize.

2 MR. BASSETT: That's okay.

3 MR. PORTZ: Mr. Bassett indicated he's going to be having  
4 co-counsel on this case. He made that representation at the last status  
5 check at the -- Central Trial Readiness and Judge Bell indicated that if  
6 there was one additional attorney at Defense table, it would not be  
7 COVID compliant. And because they can't find a workaround for that,  
8 they can't find another table or add an additional person, she's going to  
9 *sua sponte* over your now having twice denied their motions to sever --  
10 force a severance.

11 The State's position is, Your Honor, it's the law of the case  
12 that this shouldn't be severed. You've already ruled it shouldn't be  
13 severed way back in March of this year. You've ruled it again today and  
14 now that rule -- ruling will be effect -- effectively voided tomorrow by  
15 Judge Bell, who will say, I'm severing it despite Judge -- Judge  
16 Johnson's ruling.

17 Now, you've mentioned numerous times that -- and continued  
18 cases and found good cause to continue an invoked case because of  
19 the limited resources we have due to the pandemic. And therefore,  
20 rendering it a reasonable excuse to find an extension rather than hear  
21 this case twice. So you should just be aware that we will try this case  
22 twice, if we have to. It's an eight event robbery series that covers the  
23 span of four months and involves a significant number of surveillance  
24 video and documentary evidence. And I just worry about the incredible  
25 waste of judicial resources that will result after you've already denied

1 their motion to sever.

2 I mean, there's good reason that it's written in the statute, the  
3 joinder is the preferred method, particularly when we're talking about an  
4 eight event series that these two commit together and are arrested  
5 together at the same time. To use that one defendant,  
6 Mr. Hill's client is invoked, and that Mr. -- and Mr. Morgan's attorneys  
7 want to have two people sitting at the table and that's the sole  
8 justification for bifurcating this trial and forcing it to go twice would be a  
9 waste of resources in the State's mind.

10 I would ask that Your Honor find good cause at this point to  
11 continue the trial date; keep it an invoked date and hopefully they'll find  
12 a way to allow one more attorney to sit in court for the trial setting.

13 MR. BASSETT: Your Honor, I'm gonna strenuously object to  
14 that. I realize that -- I'm not -- this is an entirely separate issue from the  
15 motion, Mr. Mill -- Mr. Hill filed. But the State is misrepresenting the  
16 facts of the situation here. You denied the motion based on  
17 *Throckmorton* grounds which was the main argument that Mr. Hill made  
18 in his motion.

19 Severing a case, due to COVID restrictions, is an entirely  
20 separate issue. And for the State -- if the State wants to request a  
21 continuance and I would request that they do so in writing so we have  
22 the opportunity to respond and do the relevant legal research. They  
23 seem to be continuously -- they've -- this is the second time now that the  
24 State has seemingly implied that Defense Counsel is not entitled to  
25 multiple attorneys or that that does not -- or that that -- the State's

1 judicial economy precludes that being the major that -- excuse me. That  
2 judicial economy overrules the defendant being able to have adequate  
3 representation.

4 THE COURT: Oh, I don't know. And I'll be -- I'll be honest, I  
5 don't know if defendant really is entitled to more than one attorney.

6 MR. PORTZ: He's not, Your Honor.

7 THE COURT: It's never -- it's never really come up because  
8 we've always had plenty of space and, you know, and it's never been a  
9 problem. But I don't think technically, under the Constitution of the laws,  
10 he's entitled to more than one attorney representing him.

11 MR. BASSETT: Your Honor, we haven't done -- we have not  
12 done any research on that and I would request if that is the State's  
13 argument that they do so, they make that motion in writing so we have  
14 the proper channel to respond. Rather than me just trying to off-the-cuff  
15 argue against the State's perspective issue.

16 And again, this is all perspective because the calendar call is  
17 tomorrow. The cases are still together. We are prepared to go forward  
18 at trial on Monday, if we need to. So this is -- this is all premature and  
19 also inappropriate because the State is making a motion on legal  
20 grounds. They say there's no sources; they're not citing any of these  
21 things. We need to be able to see the State's argument so we can  
22 respond adequately.

23 THE COURT: Well I'm not -- I'm not disagreeing with you,  
24 necessarily, but I'm just saying I'm not sure that there is a constitutional  
25 right to more than one attorney. Normally it's not a big deal but I mean



1 we're in a COVID situation where it could impact upon judicial economy.  
2 I agree with the State that it makes more sense for this to be tried  
3 together than separate. And so we end up utilizing the limited resources  
4 we have in a wasteful manner if we have to try the case twice.

5 MR. BASSETT: I would also point out, Your Honor, that --

6 THE COURT: So I mean I'm concerned about that but I'm not  
7 -- this is one of those things we're going to need to -- I'm going to need  
8 to --

9 MR. PORTZ: Your Honor, this isn't --

10 THE COURT: -- bring up with the jury selection committee. I  
11 -- hopefully we can do that maybe before tomorrow.

12 MR. PORTZ: And this isn't a State's motion to continue. I'm  
13 just -- I'm just --

14 THE COURT: I don't consider it the State's --

15 MR. PORTZ: -- I'm just --

16 THE COURT: -- motion to continue. You want to --

17 MR. PORTZ: -- putting out the reality.

18 THE COURT: -- keep them together.

19 MR. PORTZ: Yeah.

20 THE COURT: Yeah.

21 MR. PORTZ: And then the reality is that Judge Bell, who  
22 really doesn't have jurisdiction in this case, other than due to the  
23 pandemic, she is overseeing the Central Trial Readiness Calendar who  
24 will not be hearing this case, is not the Judge overseeing this case is  
25 going to --

1 MR. BASSETT: Your Honor, this is all argument and if the  
2 appropriate channel --

3 THE COURT: Well --

4 MR. BASSETT: -- would be for them to file a motion if they --

5 THE COURT: -- you know --

6 MR. BASSETT: -- receive an adverse ruling.

7 THE COURT: -- you know, it is all -- how many times have I  
8 dealt with arguments that you guys have all brought up, both sides in the  
9 middle of hearings and trial and stuff? Stuff happens. This is an issue,  
10 we got to sort of work through for tomorrow. I know -- I'm not appalled  
11 that the State's raising it.

12 I tend to agree with you that to some degree it's premature,  
13 but I'm not exactly sure what to do because this isn't -- we're working  
14 through these trial calendars and this is an issue which hasn't been  
15 really considered by the -- by the Court or the jury trial committee or the  
16 Court so I'm not sure how -- what to do. I plan to raise the issue when I  
17 get off the bench. But whether I'll have an answer by tomorrow or where  
18 we'll be at the end of tomorrow, you know --

19 MR. BASSETT: And, Your Honor, my argument is just then  
20 let's wait until then so we can be better prepared for those arguments.

21 THE COURT: All right, well what we're going to do --

22 MR. BASSETT: I was not prepared on this motion to argue  
23 this today.

24 THE COURT: -- we'll do is -- we'll set this on for a status  
25 check on Thursday. See where we are at the end of tomorrow.

1 THE CLERK: November 5<sup>th</sup> at 1:45.

2 MR. PORTZ: And so, Your Honor, what's the plan for that  
3 date? I mean, if Judge Bell has ordered that she's going to sever the  
4 cases because they're insisting they get a second attorney, which  
5 they're not legally required --

6 THE COURT: Well, I mean --

7 MR. PORTZ: -- a constitutional right to.

8 THE COURT: -- I'm not sure what -- what we'll do on  
9 Thursday. You could move to reconsolidate the cases and maybe I  
10 could go ahead and do that. Who knows? Let me see where we are on  
11 -- when we get to Thursday. As I said, I plan to raise this as an issue  
12 with the jury trial committee once I get off the bench. And maybe we  
13 can make some -- some -- get some sense of where we are and what  
14 we all think is the best way to handle it before tomorrow.

15 MR. PORTZ: Well if we can find one --

16 DEFENDANT SNIPES: Dan --

17 MR. PORTZ: -- a way to add one additional seat for Defense  
18 Counsel then we'll go forward with everything.

19 THE COURT: You're probably not going to find -- unless  
20 there's very little compromise I found when it comes to dealing with the  
21 COVID-19. So I'm guessing that's probably not going to work, but we'll  
22 see where we are on Thursday. I'll set this for status conference on  
23 Thursday.

24 What were you about to say, Mr. Hill?

25 DEFENDANT SNIPES: Dan Hill, are we still going to trial?

1 So are we going to trial, yes or no?

2 MR. HILL: Yes.

3 DEFENDANT SNIPES: Okay, thank you.

4 THE COURT: All right. We'll see where we are on Thursday.  
5 And I'll raise the issue with the Court when we get off the bench.

6 All right, thank you.

7 [Hearing concluded at 2:51 p.m.]

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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.

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Angelica Michaux  
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C344461-1, -2  
DEPT. XX

10 vs.

11 GREGORY DELLO MORGAN,  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, MARCH 5, 2020

16 RECORDER'S PARTIAL TRANSCRIPT OF HEARING:  
17 **UNSEALED PORTION ONLY OF STATE'S NOTICE OF MOTION IN**  
18 **LIMINE DEFENDANTS STATEMENTS AND MOTION TO ADMIT**  
19 **EVIDENCE OF OTHER BAD ACTS OR IN THE ALTERNATIVE TO**  
20 **PUT DEFENDANTS ON NOTICE OF THE STATE'S INTENTION TO**  
21 **ADMIT PRIOR JUDGMENT OF CONVICTION**

22 APPEARANCES ON PAGE 2:

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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:

JORY SCARBOROUGH, ESQ.  
ASHLEY A. LACHER, ESQ.  
Deputy District Attorneys

For the Defendants:  
Gregory Morgan

TYLER GASTON, ESQ.  
ALEXANDER BASSETT, ESQ.  
Deputy Public Defenders

Andre Snipes

JAMES J. RUGGEROLI, ESQ.

1 Las Vegas, Nevada, Thursday, March 5, 2020

2  
3 [Case called at 2:06 p.m.]

4 THE COURT: State of Nevada versus Gregory Morgan.  
5 What's the other --

6 MR. GASTON: Andre Snipes, Your Honor.

7 THE COURT: -- And Andre Snipes, case number C344461.  
8 Counsel, go ahead and make your appearances for the record.

9 MR. GASTON: Tyler Gaston and Alex Bassett from the Public  
10 Defender's Office on behalf of Mr. Morgan who's present in custody.

11 MR. RUGGEROLI: Good afternoon, Your Honor, James  
12 Ruggeroli on behalf of Mr. Snipes who is present in custody. He is in  
13 blue.

14 MR. SCARBOROUGH: Jory Scarborough for the State, bar  
15 number 14265.

16 THE COURT: Okay. This is on for a variety of different things  
17 for trial. We got set for Monday. So --

18 MR. GASTON: Your Honor, the defense tried to file a -- for  
19 Mr. Morgan defense tried to file a motion to continue under seal  
20 yesterday. I was informed, I believe, that Your Honor reviewed the  
21 motion and felt that -- we could file it in the court today, but it wasn't  
22 going to be under seal if it we wanted if filed today.

23 THE COURT: I think the State's got to be able to the -- I  
24 mean, I do appreciate a couple of things that you had in there.

25 MR. GASTON: Sure.

1 THE COURT: That you might want to keep close to your  
2 breast.

3 MR. GASTON: Right.

4 THE COURT: But on the overall, the vast majority of the --  
5 you know, ninety percent of the stuff was -- and I think the State has a  
6 right to argue against that.

7 MR. GASTON: What we would have done if we had enough  
8 time to get it is we would have filed a motion publically and then done an  
9 affidavit with the defense sensitive stuff under seal. What I would  
10 request the Court to do is just allow us to argue orally the motion to  
11 reconsider if the -- on the defense. And I can make my additional  
12 arguments and then forward the sensitive information regarding the  
13 specifics of the -- our defense and the lack of investigation essentially  
14 done fair. Maybe we could approach and do that part ex parte, but the  
15 rest of the part can be public in front of Mr. Scarborough.

16 THE COURT: Okay.

17 MR. GASTON: Would that be appropriate?

18 THE COURT: Okay. We'll make it work someway.

19 MR. SCARBOROUGH: Okay.

20 THE COURT: Sounds good. All right.

21 MR. GASTON: Thank you.

22 THE COURT: All right. We'll play it by ear.

23 MR. GASTON: Okay. With respect to the other two motions  
24 also not -- so it -- I'm here -- I'm second chair on the case. I'm going to  
25 argue the defense motion to reconsider -- or the defense motion for the



1 Court to reconsider the matter of our continuance.

2 THE COURT: Okay.

3 MR. GASTON: And then I have to run because I'm doing a  
4 *Frank's* hearing in front of Judge Miley.

5 THE COURT: You have a what?

6 MR. GASTON: Like a *Petrocelli* hearing for the sex stuff in  
7 front of Judge Miley which was going on 10 minutes ago. Nadia is  
8 handling that. So Mr. Bassett will be handling the motion to sever and  
9 the bad acts motion to the extent that the Court denies our motion to  
10 continue or still wants to hear the motions today.

11 THE COURT: Okay.

12 MR. GASTON: Just so it doesn't disrespectful if I win or lose  
13 and just leave --

14 THE COURT: You know, I --

15 MR. GASTON: -- after the motion to continue.

16 THE COURT: Well, I mean, I appreciate you telling me.

17 MR. GASTON: Of like mic drop and leave.

18 THE COURT: It would have been more concerning to me if --  
19 I'm not saying what I'm going to do if I deny it --

20 MR. GASTON: And then I left.

21 THE COURT: -- and you threw something on the table and  
22 walked out.

23 MR. GASTON: That's more what I was afraid of, yes.

24 THE COURT: But otherwise, I would make the assumption  
25 that you had a good reason.

1 MR. GASTON: Thank you. With respect to our motion, we  
2 would ask the court -- obviously I wasn't here on Tuesday, so I don't  
3 know exactly what record was made or not made. But if I'm restating  
4 any arguments Mr. Basset's already made I would just ask you to  
5 reconsider those arguments. If I'm stating additional arguments, I would  
6 like you just to view it all together and reconsider of your denial of our  
7 request to continue.

8 Ultimately our request for continue comes under a couple  
9 categories. The first as the Court may be aware Mr. Morgan has been in  
10 the prison the entire time for this case. And that's made conversations  
11 with the Defendant about the case extremely difficult. Every time Mr.  
12 Basset -- we can't call into the prison. If Mr. Morgan calls us, he has to  
13 do it at his own expense. And so it's been extremely difficult, because  
14 the only way we can communicate with Mr. Morgan is when he's brought  
15 to court in this way or we have to go all the way out to the prison, which  
16 takes a whole afternoon, and clear our whole schedule and talk to him  
17 up there. So to make conversations quick --

18 MR. BASSETT: And we can only visit defendants at NDOC  
19 one day a week.

20 MR. GASTON: So it's made it very difficult both in terms of  
21 communicating about this case. If the Defendant were to testify which is  
22 a decision that is of course viable in this case and possible, advising him  
23 appropriately of the consequences of that decision, as well as preparing  
24 him to testify to see if it would be a good idea, bad idea, and so you  
25 know, he has an idea what to expect, has not been done, has not been

1 done adequately at least.

2 And furthermore, interviewing the Defendant regarding  
3 possible defenses and what evidence could be out there in order for us  
4 to go and obtain, has also not been done in this case. A lot of the -- and  
5 as I continue to make my arguments about all the things I think should  
6 have been done in order to have effective defense counsel for Monday  
7 and what hasn't been done, I think a lot of it -- what has to do with  
8 because defense counsel thought this case was going to negotiate.  
9 Therefore a lot of it was towards the eye of negotiation and not preparing  
10 for trial. And whether that was a good idea or a bad idea, it doesn't  
11 change the fact and whether defense counsel was negligent or not in  
12 trying to not get this stuff done, doesn't change the fact it should've been  
13 done and it hasn't been done. And we would be absolutely ineffective to  
14 go forward on Monday.

15 And so furthermore, I'll save for last my part about the defense  
16 theory and the investigation that hasn't been done, since that's the ex  
17 parte part that I want to request. But in addition to that, there's the  
18 respect with the motions, the State had filed an opposition -- or State  
19 filed a motion to admit bad acts. The defense had filed no opposition. It  
20 sounds like the Court and the State's allowing us to file an opposition in  
21 here today. But at the time of calendar call the defense had filed no  
22 opposition to that motion. We had to file our opposition to that motion.

23 Additionally, we had filed no motion to sever the co-  
24 defendants which is a motion that absolutely should have been filed in a  
25 more timely manner. We -- Court was going to allow us to do that.

1 Additionally, we did an oral request to continue it. I think it was  
2 important that we did get a written request to continue.

3 THE COURT: I'm not laughing at your argument.

4 MR. GASTON: That's --

5 THE COURT: I'm sorry.

6 MR. GASTON: If you laugh at my arguments and then reject  
7 it, it's more hurtful then if you don't laugh.

8 THE COURT: It's something else. I apologize and --

9 MR. GASTON: We should have filed a written motion to  
10 continue as well for Tuesday which wasn't done. So we wanted to do all  
11 that done for Thursday. We did get all that done for Thursday, but we  
12 did it haphazardly. We did it fast -- best as we could.

13 THE COURT: I thought it was very good.

14 MR. GASTON: Oh, thank you. But we did it as best as we  
15 could while -- I also was brought on this case on Tuesday. So I had to  
16 review all of the discovery in this case. I have not been able to review all  
17 the discovery, watch the surveillance footage. This is a very surveillance  
18 footage intensive case. I haven't been able to review that at all. I  
19 haven't been able to review the bodycam footage. I've skimmed all the  
20 pages of discovery the best I could while responding to the three -- while  
21 writing three different motions. And that's all being done super-last  
22 second.

23 Now also the motions, if the Court were to deny my request for  
24 continuance the Court would adjudicate the remaining motions that we  
25 filed today. Then we would have to incorporate the results of the

1 motions into our defense whichever way the Court goes and with a  
2 business day and a half left to prepare for trial on Monday. And that is  
3 also not a sufficient amount of time. The point of State filing timely  
4 motions and us filing timely responses, other than making sure we both  
5 do a good job with our motions, is that once we get the Court's ruling, we  
6 get time to incorporate those results into our defense strategy.

7           Moreover, part of the argument -- I know the -- I believe the  
8 State objected to our request for a continuance on Tuesday. But I think  
9 also the co-Defendant has invoked his speedy trial right and wishes to  
10 go. That's not a reason to deny our request for a continuance if the  
11 Court feels that we need a continuance to be effective. Mr. Snipes'  
12 desire to go forward and have is statutory speedy trial right is great.  
13 Congrats for him and he can --

14           THE COURT: No, and I would agree with you --

15           DEFENDANT SNIPES: That affects me man.

16           THE COURT: -- and if you --

17           DEFENDANT SNIPES: That directly affects me.

18           THE COURT: -- If you convince me that for -- that you have a  
19 constitutional need for a continuance, I would need to grant it regardless  
20 of any --

21           MR. GASTON: Okay.

22           THE COURT: -- the application of a speedy trial. However, if  
23 you don't convince me that there's a constitutional basis for the  
24 continuance, then his right to a speedy trial does impact upon my  
25 decision whether or not to allow the continuance. Because obviously if

1 everybody is in agreement that there's a need for a continuance, there's  
2 no big deal if we kick this off for a little bit. That's a different  
3 consideration on the Court's part as opposed constitution -- non-  
4 constitutional request for a continuance versus a speedy --

5 MR. GASTON: Trial.

6 THE COURT: States' speedy trial --

7 MR. GASTON: And a large basis --

8 THE COURT: -- assertion.

9 MR. GASTON: -- as to why. I'm sorry, I didn't mean to  
10 interrupt you.

11 THE COURT: No, that's all right.

12 MR. GASTON: A large basis of the reason I feel like it's a  
13 constitutional issue as well is because of how ineffective we'll be which  
14 I'll lay out further with respect to the investigation that should have been  
15 done to explore various defenses that has not been done.

16 Additionally, the defense filed a notice of witness which I  
17 believe is three days late. And I know the State can try to alleviate that  
18 issue by simply not objecting to our late notice of witness, but the fact is  
19 that also indicates what little time the defense has spent investigating  
20 this case, investigating the case, noticing a witness, interviewing that  
21 witness to make sure that witness has exculpatory things to say,  
22 incorporating that into our defense, and that --

23 THE COURT: Well just because you put them on your list  
24 doesn't mean you have to call him.

25 MR. GASTON: No, but if I put them on my list and they don't

1 say helpful things and I don't call him, it could tip the State off that that  
2 person might have something to say that would rebut my theory. So I  
3 don't make it a habit to notice witness as defense if I thought they could  
4 say things that are contradictory to my defense. Now we ultimately did  
5 have a brief phone call with the -- the witness that we set that we noticed  
6 and to that extent it seems that she'll be helpful and notice her. But  
7 even our notice is three days late. And while -- just because they waive  
8 -- just because they waive an objection to that doesn't change the fact  
9 that that's a sign of all the things we still need to do.

10 I'll make additional arguments in a second about the rest of  
11 the investigation that should have been done. But just to loop back to  
12 the point about the second chair just getting on speed, it wasn't the --  
13 Mr. Bassett's fault. He had another person who was on the case.  
14 Turned out that once the schedule was more available that person had  
15 to back out and then I ended up being brought on the case on Tuesday  
16 when Mr. Bassett realized that the Court had denied the request for  
17 continuance.

18 It is true that Mr. Bassett has been on this case the whole  
19 time. But just because the first chair has been on the case the whole  
20 time doesn't obviate the need for the second chair to also be brought up  
21 to speed. We do -- there is no Public Defender trial that you will see that  
22 we do it in teams of one. Everyone is teams of two. And that's because  
23 our office in complying with Rule ADKT411, we feel that the way that we  
24 need to be effective as attorney, as defense attorneys is to do teams of  
25 two. That means both parties, both attorneys have fully read through the

1 discovery, prepared for the defense and are ready to participate in the  
2 trial --

3 DEFENDANT SNIPES: Exactly.

4 MR. GASTON: -- not just one.

5 And so I don't have any other arguments to raise other than  
6 the specific stuff with respect to the investigation that hasn't been done.  
7 So other than the additional stuff that I want to raise in the second, I'll  
8 submit.

9 THE COURT: All right. State's response.

10 MR. SCARBOROUGH: I mean, so I jumped on the case  
11 Tuesday as well. So Ms. Lacher is in trial and I reviewed the motions. I  
12 reviewed the motions to admit prior bad acts, the motions to sever co-  
13 Defendants. I mean, I'm prepared to argue all those and I'm getting up  
14 to speed on the case.

15 I think what I've been informed of by Ms. Lacher, and correct  
16 me if I'm wrong, but procedurally there was an offer open on this case,  
17 and speaking to what Mr. Gaston was talking about going to the prison,  
18 having effective conversations with the Defendant, I believe the offer  
19 was -- I think in the range of a burglary and a robbery, right to argue, if  
20 I'm wrong. And that offer was kept open for a period of around three  
21 weeks and the negotiation discussions were at length. So in terms of  
22 them not having effective conversations, not to be rude or make  
23 disparaging comments, but that's, you know, their use of time when they  
24 go out to the prison. The offer was kept open and then after rejecting  
25 the offer Ms. Lacher revoked it and now the State is ready to go.



1           So in terms of their investigation, I believe -- again I've been  
2 informed of this that they've had the case since Justice Court, the PDs  
3 have, and this case has been open for quite a while. This is the second  
4 setting if I'm not incorrect. It has been continued once already over the  
5 objection of the State I believe. Again and I'm -- this is what I've been  
6 informed so we would object to any continuance.

7           And in terms of pinning the State into whether or not we want  
8 to sever the case in order to give someone a constitutional continuance,  
9 I mean, there's obviously positions that the State would hold in that  
10 regard as well. If they continue the case or if you deny their motion to  
11 continue --

12           THE COURT: I will -- I'll listen to Mr. Ruggeroli of course. But  
13 I do think I have the authority if I feel that there is a need to continue the  
14 case as to one Defendant, to continue the case as to both Defendants.

15           MR. SCARBOROUGH: Okay.

16           THE COURT: Even past -- even in view of the assertion of  
17 the 60-day.

18           MR. SCARBOROUGH: Okay. I did want to hit on that.

19           THE COURT: Don't worry, Mr. Ruggeroli, I'm going to give  
20 you your chance to argue that. But I'm just saying that I do think that I  
21 have that option.

22           MR. SCARBOROUGH: Okay. Thank you for clarifying and I  
23 did want to hit on that and just to reiterate I believe Ms. Lacher's done  
24 file reviews. There has been no additional request for evidence. In  
25 terms of a late notice of witnesses, I mean, again these are

1 conversations that could have been had and should have been had  
2 when they were visiting the Defendant up at NDOC while the offer was  
3 open for three weeks. I think that's not the State's fault and I don't think  
4 that the State should be held responsible and all the witnesses that  
5 we've lined up should be delayed again. I mean, the State's ready to go,  
6 so we're just objecting to that request to continue and we'd like to  
7 proceed on Monday.

8 THE COURT: All right.

9 MR. BASSETT: Your Honor, if I may just provide one point of  
10 clarification. The offer was indeed a burglary and a robbery right to  
11 argue no habitual. Mr. Morgan wanted to take that --

12 THE COURT: You --

13 MR. BASSETT: -- I --

14 THE COURT: You made that clear on the --

15 MR. BASSETT: I understand, Your Honor, I'm just clarifying  
16 because with the State --

17 THE COURT: - whatever, Tuesday or --

18 MR. BASSETT: -- Tuesday.

19 THE COURT: Yeah.

20 MR. BASSETT: And I realize he just jumped on the case so  
21 he's not familiar with the procedural history. It was contingent on the co-  
22 Defendant.

23 MR. SCARBOROUGH: That's correct, yes.

24 MR. BASSETT: I spoke with Ms. Lacher last Monday in  
25 anticipation of the -- about the negotiation. I asked here, I said, hey, I

1 intend to talk to Mr. Morgan end of this week. If I can convince him to  
2 take that deal, would you be willing to reconsider the contingent? She  
3 said yes, talk to me after you speak with Mr. Morgan. I emailed her and  
4 attempted to contact her on Friday to have that negotiation. She sent  
5 me a three sentence email denying -- not allowing the --

6 THE COURT: Rejecting --

7 MR. BASSETT: Rejecting my attempts to continue the  
8 conversation about getting rid of the contingent requirement. So until  
9 Friday of last week, I was under the impression that this would be able to  
10 be negotiated.

11 MR. GASTON: And again, my investigation addition with  
12 responding to the State's point of with respect to things should have  
13 been done and we should have been more -- it doesn't really matter.  
14 The fact is it hasn't been done and absolutely has to have been done for  
15 us to be effective.

16 THE COURT: Well, you're --

17 MR. GASTON: And a continuance would solve --

18 THE COURT: -- here's the thing, you haven't articulated  
19 anything that hasn't been done that is absolutely necessary for you to be  
20 effective.

21 MR. GASTON: But I will --

22 THE COURT: You've said, you know, we'd like to do this or  
23 we'd like to do that. But that doesn't rise to ineffectiveness absent more  
24 specificity. You want to talk to me --

25 MR. GASTON: Yes.

1 THE COURT: -- at sidebar?

2 MR. GASTON: Yes.

3 THE COURT: All right. State, all right if I hear whatever  
4 defense issue --

5 MR. SCARBOROUGH: I'll submit to your discretion on that.

6 THE COURT: I mean, let's -- let me hear what it is. We'll go  
7 from there.

8 MR. RUGGEROLI: Judge, do you want me to accompany?

9 THE COURT: You can if you -- well that's up to them. If you  
10 don't want him, I mean, --

11 MR. SCARBOROUGH: In terms of the motion to sever, I feel  
12 like they go hand in hand.

13 MR. GASTON: For what it's worth, it doesn't matter for this  
14 purpose because Mr. Ruggeroli and I -- before we filed the motion to  
15 sever, Mr. Ruggeroli and I spoke about our respective defenses to  
16 determine whether they would be antagonistic or not with respect to  
17 filing a motion.

18 THE COURT: Okay. All right, I'll have everybody. C'mon up.  
19 [Bench conference 2:06 - 2:38 p.m., outside the presence of the State --  
20 sealed and not transcribed]

21 [Hearing resumed inside the presence of the State at 2:38 p.m.]

22 THE COURT: Let me hear your argument, Mr. Ruggeroli, as if  
23 I was to grant a continuance, why I wouldn't -- would not have  
24 necessarily authority to allow it to also include your client in that.

25 MR. RUGGEROLI: Thank you, Your Honor. And just for Mr.

1 Snipe's edification the colloquy we just had off the record or behind  
2 scenes, these were conversations that the State should not be privy to  
3 and that was the reason for it. But it's something that I could share with  
4 my client later if necessary. But it's not something I'm hiding in any way  
5 from him.

6 Specifically as to the motion to continue, I point out a couple of  
7 things. The period of delay leading up to next week's trial date is  
8 actually longer than it appears, because the State went back to the  
9 Grand Jury. I think this is the second setting, but there were some other  
10 delays. So I think that we're actually beyond 60 days from what would  
11 have been the initial appearance at an original arraignment. And so  
12 there has been an invocation of his right to a speedy trial, a continuance,  
13 and now we're looking at the possibility of a second.

14 I think that I don't want to get too far ahead of this, because I  
15 know you're dealing with the motion to continue, but there are elements  
16 of the motion to sever that are important. I'm not going to go too much  
17 into it. But I would say that if you look at the competing interest, you've  
18 got Mr. Snipes, which I would argue has the highest valued interest at  
19 stake regarding what you're going to decide today. Because he  
20 asserting his speedy trial right statutorily, but also potentially  
21 constitutionally. I know we're not really close to that yet. But that is out  
22 there. And so he has a right to a speedy trial. He's invoked it. That's  
23 what he wants to do.

24 It was unfortunate last time because I -- we didn't have to deal  
25 with these arguments last time; it was mainly scheduling. But his

1 interest is one of the top interests. Mr. Morgan has what his attorneys  
2 have argued is a very, very important and potentially constitutional  
3 interest. Then when you get over to the State, I would argue to Your  
4 Honor that their interest in proceeding and having to have both in one  
5 rather than a severed trial, where Mr. Snipes proceeds first and Mr.  
6 Morgan can take care of whatever business his defense thinks is  
7 necessary. The State's interests are the least, because all they really  
8 have is judicial economy. And it's of course more of a burden to have to  
9 go through it twice if necessary. But keep in mind, number one, they've  
10 made an offer that Mr. Morgan would like to accept. So if Mr. Snipes is  
11 convicted, if the State doesn't want a second trial, they can just offer that  
12 to Mr. Morgan again and problem solved.

13 When you look at these competing interests the State's at the  
14 bottom end. And I don't think they've presented a reason that competes  
15 with Mr. Snipes' request for a speedy trial right. I'm not here to argue on  
16 behalf of Mr. Morgan, but I say he comes in second and the State is  
17 following behind in a distant third.

18 THE COURT: Okay. Thank you. You're at a disadvantage, I  
19 know, since you weren't back there. I'm going to be -- most of what I  
20 heard didn't rise to a level of ineffectiveness. There are two things.  
21 There is one where it sounds like you might be able to put together a  
22 credible defense that's not necessarily completely speculative.

23 MR. GASTON: That's resounding praise, Your Honor. Thank  
24 you.

25 THE COURT: So in view of the fact that it's my understanding

1 the State plans to seek large habitual?

2 MR. SCARBOROUGH: If that was Ashley's representations  
3 then yes, Ms. Lacher.

4 MR. BASSETT: She did file a motion to that effect on  
5 Tuesday, March 3<sup>rd</sup>.

6 THE COURT: Okay. I mean, so we are playing high stakes  
7 with -- are both of them habitual eligible?

8 MR. GASTON: I don't think --

9 MR. BASSETT: Just Mr. Morgan.

10 THE COURT: Just Mr. Morgan?

11 MR. SCARBOROUGH: Yeah, only one.

12 MR. BASSETT: And, Your Honor, if you would be inclined to  
13 hear arguments on the motion to sever before you were to --

14 THE COURT: Oh, I --

15 MR. BASSETT: -- rule on the motion to continue?

16 THE COURT: Oh, I will. I will. I'll let Mr. Gaston go. He's  
17 probably in contempt now so we may not see him before Monday either.

18 MR. GASTON: Does it sound like the Court's granting our  
19 motion to continue and then deciding whether -- the severance issue?

20 THE COURT: Oh, well --

21 MR. GASTON: Because if you don't -- obviously if you sever,  
22 then Mr. Snipes can just go forward.

23 THE COURT: That would probably be what would happen,  
24 yeah.

25 MR. GASTON: Okay. But Mr. Morgan's case is getting

1 continued?

2 THE COURT: I haven't made a final decision on that. But I  
3 am going to --

4 MR. BASSETT: And I can speak -- I can speak to the motion  
5 to sever.

6 THE COURT: I'm sure Mr. Bassett can handle things for you.

7 MR. SCARBOROUGH: He's just anxious. He wants to  
8 know.

9 MR. GASTON: If the Court has any questions or concerns  
10 further about why it should continue the case --

11 THE COURT: Your just down the hall, right?

12 MR. GASTON: I'm just down the hall and I would love the  
13 opportunity to respond to any of the Court's concerns before the Court  
14 denies our request for a continuance.

15 THE COURT: I think you said everything you could say back  
16 there.

17 MR. GASTON: I always can say more. I just don't want the  
18 Court to have questions --

19 MR. BASSETT: And, Your Honor, I can attest to that.

20 MR. GASTON: -- and deny the motion to continue and then I  
21 didn't get a chance to respond.

22 THE COURT: Don't worry, if I've got a question and Mr.  
23 Bassett looks blank, I'll -- we'll go down --

24 MR. GASTON: Okay. I will be in 12C.

25 THE COURT: -- grab you.



1 MR. GASTON: Thank you.

2 THE COURT: Okay.

3 MR. RUGGEROLI: Judge, if I may, a couple of other issues  
4 just to make you aware of regarding a continuance and whether if you  
5 don't sever for Mr. Snipes. I have a couple of cases that have been  
6 continued and the Court would need to be aware of. In April I have a  
7 shaken baby that's over three years old. It's not a death case but the  
8 child, if he dies, I've been alerted by the State that they will be seeking  
9 capital punishment. And so that's a very important case and we've  
10 continued it a number of times. It's a co-defendant case. That's April  
11 20<sup>th</sup>. June 1<sup>st</sup>, I have inherited a case which has already been continued  
12 over a year that's a first-degree kidnapping, multi-count sex assault that  
13 was given a special date. And I reference that date before Your Honor  
14 with one of the other trials that I have in here that's set for June 1<sup>st</sup>.

15 So I do have some cases that are pretty much locked in. I  
16 know that everybody has that. But in looking at trying to preserve Mr.  
17 Snipes' speedy, I know that we are going to face some difficulties  
18 potentially if you were to continue him. And I did want to make the Court  
19 aware of that as well.

20 THE COURT: Okay. Let's talk severance real quick or as  
21 long as we need to.

22 MR. BASSETT: Your Honor, I can assure I will be less  
23 loquacious than Mr. Gaston. Your Honor, I -- the motion that I wrote and  
24 submitted to you, I know you read it. I just want to highlight the main  
25 arguments here. There are three major reasons why I believe

1 severance is in order here.

2 THE COURT: Well let me cut to one of the -- do you plan to  
3 introduce the -- where we have a *Bruton* issue?

4 MR. SCARBOROUGH: No, not at all. That was going to be  
5 my main point. I mean, --

6 THE COURT: Okay. I'll ask --

7 MR. SCARBOROUGH: -- largely surveillance based, so --

8 THE COURT: We don't need to deal with that one.

9 MR. BASSETT: Well, Your Honor, I would just also point out  
10 that in addition to just the interview with the police officer, there were text  
11 messages exchanged between Mr. Morgan and police officers the night  
12 they were arrested that did make reference to Mr. Snipes. And Mr.  
13 Snipes was found in the vehicle that arrived at the police officers. So the  
14 *Bruton* motion would also extend to -- the *Bruton* applies to any out of  
15 court statement.

16 MR. SCARBOROUGH: Agreed.

17 MR. BASSETT: And so that would apply to not only the brief  
18 interview that Mr. Snipes did with the police officers --

19 THE COURT: Well, I mean, --

20 MR. BASSETT: -- It would also apply --

21 THE COURT: -- do you plan to introduce the text messages?

22 MR. SCARBOROUGH: No.

23 THE COURT: Okay.

24 MR. SCARBOROUGH: It's inadmissible hearsay anyway I  
25 believe so.

1 MR. BASSETT: Well we would argue it's inadmissible  
2 hearsay, but when I -- in my ex parte -- in my out of court discussions  
3 with Ms. Lacher she indicated she had planned to introduce them. So  
4 I'm just going based on those.

5 THE COURT: Okay.

6 MR. SCARBOROUGH: Okay.

7 MR. BASSETT: Obviously the State's strategy can change.  
8 And one quick note on *Bruton* before I move on, the only thing I would  
9 note is that just because the State does not intend to seek -- intend to  
10 introduce the out of court statement does not mean that they are  
11 precluded from doing so. They are allowed to change their mind --

12 THE COURT: Well they do, but you know, --

13 MR. BASSETT: -- barring an order from the Court.

14 MR. SCARBOROUGH: It would be redacted as such.

15 THE COURT: -- severance is available to you at -- severance  
16 can be moved at any time.

17 MR. BASSETT: I understand and we're just trying to --

18 THE COURT: -- that you feel that there's a --

19 MR. BASSETT: -- anticipate the issue.

20 THE COURT: -- any so a trial can be severed in the middle of  
21 the trial. And I've seen trials get severed in the middle of the trial.

22 MR. BASSETT: Of course.

23 THE COURT: And it's not the prettiest thing in the world to  
24 have happen, but --

25 MR. BASSETT: Of course, Your Honor. And yes, and again

1 the *Bruton* motion would be rendered moot if the State did not introduce  
2 that evidence. So let me move on to what I think is the strongest  
3 argument for severance here, which is the fact that --

4 THE COURT: Actually I thought the *Bruton* was probably the  
5 strongest argument. But we'll -- I'll be -

6 MR. BASSETT: Well, I --

7 THE COURT: -- I'm anxious to hear this one.

8 MR. BASSETT: The -- if the State does not introduce it, it  
9 would render it moot which is the only reason I don't think -- because  
10 that's the only reason I don't think that's the strongest one.

11 THE COURT: Okay.

12 MR. BASSETT: The mutually antagonistic defenses, that is I  
13 think necessitates a defense here. *United States v. Throckmorton*  
14 establishes a standard by which a motion -- a defendants/co-defendants  
15 can be severed due to antagonistic defenses. And it says that the core  
16 of the defendant's defense must be so irreconcilable with the core of the  
17 co-defendant's defense that the acceptance of the co-defendant's theory  
18 of the jury precludes acquittal of the defendant.

19 And, Your Honor, as we spoke to you -- as we, Mr. Ruggeroli  
20 and I explained our theories of defense to you when we were speaking  
21 ex parte, I think it is pretty much a guarantee that were Mr. Morgan's  
22 theory of defense to be accepted by the jury that would necessarily  
23 preclude Mr. Snipe's theory of defense from being accepted. Given  
24 what we plan to argue, what our plan of defense is, that would directly  
25 implicate Mr. Snipes and therefore directly undermine his theory of

1 defense. The jury would be receiving two directly contradictory theories  
2 of defense. It would be incompatible for them to accept both as true,  
3 because they are arguing objectively different things.

4 And *Chartier v. State*, which is the main controlling case on  
5 this, states that conflicting irreconcilable differences when it raises a  
6 danger to the jury will unjustifiably infer that conflict alone demonstrates  
7 both are guilty. Our client's plan, the co-Defendant's plan to put forth  
8 different theories of defense which would imply to the jury that at least  
9 one of those co-defendants is lying and raise the *Chartier* issue of these  
10 two wildly different theories of defense, meaning that one is lying, they  
11 can't determine which, both must be lying and would necessarily raise  
12 that issue.

13 And again, -- and again the third argument as noted here was  
14 the trial readiness. Severing was the issue --

15 THE COURT: You don't need to go there.

16 MR. BASSETT: No, we discussed that at length, Your Honor.  
17 But just that the -- but severing Mr. Morgan from this case would cure all  
18 of these issues. Mr. Snipes would be able to proceed on Monday,  
19 preserving his speedy trial right. Our -- Mr. Morgan's defense counsel  
20 would have more adequate time to prepare as necessary or reopen  
21 negotiations with the State, which again is what Mr. Morgan has wanted  
22 to do from the day he was assigned to the Public Defender's Office. It  
23 would also eliminate any issue of *Bruton*. And most crucially and most  
24 egregiously I think it would eliminate the possibility and indeed likelihood  
25 of two mutually antagonistic defenses being presented, which under a

1     slew of Supreme Court decisions is unconstitutional. I think that were  
2     this trial to proceed with the theories of defense of these two co-  
3     defendants as joined currently, it would create an appealable decision  
4     immediately for both Mr. Snipes and Mr. Morgan.

5             THE COURT: All right.

6             MR. BASSETT: And I'll submit to that.

7             THE COURT: You want to add anything, Mr. Ruggeroli?

8             MR. RUGGEROLI: I just join in the idea of severance --

9             THE COURT: Okay.

10            MR. RUGGEROLI: -- whether or not you give a continuance, -

11     -

12            THE COURT: Okay.

13            MR. RUGGEROLI: -- based on those representations.

14            THE COURT: All right. I know again you're at a disadvantage  
15     here.

16            MR. SCARBOROUGH: Yeah, and I would agree it's pretty  
17     tough to argue against what defenses would be antagonist when, I  
18     mean, I don't know what they're going to be.

19            THE COURT: Yeah.

20            MR. SCARBOROUGH: And that's -- I understand that's a part  
21     of the game. But I'll just start with I think Mr. Ruggeroli kind of swept  
22     over the policy and the judicial economy aspect of severing any trial.  
23     We're looking at a seven event burglary and robbery series that we  
24     would have to put on twice with about 20 witnesses each if these are  
25     severed. Joint trials are heavily favored, especially when the defendants

1 are acting in concert.

2 And at this point, Your Honor, I get -- I'm speculating now as  
3 to what any mutual antagonistic defenses would be. We have a litany of  
4 burglary and grand larceny charges. One would have to say that one -- I  
5 intended to enter, he forced me to enter. There's like no duress defense  
6 alleged here. Again, I'm speculating with robbery charges they're acting  
7 in concert the entire time, one saying that maybe one didn't know about  
8 the gun or the deadly weapon being used in the robbery charge.

9 I just -- I don't know how to defend against antagonistic  
10 defenses when I haven't been made aware of any. But given the  
11 charges, I'm not really seeing what they're trying to say is so  
12 contradictory to each other. Burglary is an intent crime, the gist is the  
13 intent upon entry. We're looking at grand larceny charges where they're  
14 on video acting in concert, stealing a bunch of merchandise from the  
15 stores, walking in together, setting up the scheme together, operating in  
16 concert and then grabbing the clothes and then leaving.

17 The robbery charges, both of them walking in, doing the same  
18 common scheme or plan, running away. One of them brandishing the  
19 weapon and then after brandishing the weapon, then both of them getting  
20 into the same vehicle and leaving, into the same taxicab. I just -- I fail to  
21 realize their cognizable --

22 THE COURT: Well I'm going to tell you stop, because I'm not  
23 going to grant it so.

24 MR. SCARBOROUGH: Okay.

25 THE COURT: All right.

1 MR. BASSETT: Your Honor, just one final point for the  
2 record.

3 THE COURT: At this point in time -- all right, go ahead and  
4 then I'll make --

5 MR. BASSETT: One final point for the record. I understand  
6 judicial economy is important, but that is not paramount to a fair trial.  
7 And if the defendants, co-defendants had to proceed on -- on this trial  
8 together, that would violate their right to a fair trial. And that should  
9 overrule the judicial economy aspect here.

10 THE COURT: Okay. And I'm not disagreeing with you on that  
11 point. I mean, judicial -- the State is correct in that there is a general  
12 presumption that defendants that are indicted together should be tried  
13 together. And I think that judicial economy is a major factor and  
14 consideration. And generally courts have found that any confusion the  
15 jury may have can be dealt with limiting instructions. You are right about  
16 antagonistic defenses. But at this point Mr. Ruggeroli is still keeping his  
17 fairly close to his chest, which he has a right to do. But it's -- I'm not  
18 convinced yet that the ultimately defenses here are going to be  
19 antagonistic.

20 And based on how you indicated you planned to prove your  
21 defense, my initial reaction is that Mr. Ruggeroli will have due process in  
22 terms of dealing with that adequate due process in terms of being able  
23 to deal with that. So again, I'm denying this, but as I have emphasized  
24 over and over, severance can be raised at any time even in the middle  
25 of closing arguments. So once we get to this trial and there is a



1 presentation that convinces me differently, I'll be glad to hear the  
2 arguments relating to severance once again. But at this point in time,  
3 based on what I understand about Mr. Ruggeroli's defense and based  
4 on how you intend to prove your defense, I don't see this as volative of  
5 due process.

6 Turning to the issue of continuance, I'm loath to grant the  
7 continuance and I will state that for the most part the indication that you  
8 want to do additional investigation without giving me any real specifics  
9 other than a fishing expedition, generally I don't feel indicates an  
10 ineffectiveness on your part. You did raise one defense that I thought  
11 was --

12 MR. BASSETT: Meritorious.

13 THE COURT: -- specific. I'm not sure if -- well the jury will  
14 ultimately determine if it's meritorious. But one defense that was specific  
15 that you are probably pressed in terms of time to defend, to put together.  
16 And looking at the fact that this does potentially carry a life tail with the  
17 large habitual if convicted, I am leaning toward giving you the additional  
18 time to take a look at that.

19 MR. BASSETT: A short setting is all we're asking, Your  
20 Honor.

21 THE COURT: And so --

22 MR. BASSETT: As short is 2-4 weeks.

23 THE COURT: I mean, weighing that, weighing the potential  
24 impact of this case on the defendant's life and that I do think you have --  
25 and I do -- and I will note for the record, people do tend to shut down

1 preparation when there are serious negotiations.

2 MR. BASSETT: I can attest to that fact, Your Honor.

3 THE COURT: And I've heard even from the State's side --

4 MR. SCARBOROUGH: That's fair.

5 THE COURT: -- a few --

6 MR. SCARBOROUGH: No, that's fair.

7 THE COURT: -- a few times that defendant indicated they  
8 were going to --

9 MR. SCARBOROUGH: He told me to call off my witnesses --

10 THE COURT: Yeah.

11 MR. SCARBOROUGH: I think that's fair. I understand.

12 THE COURT: And things have happened. So I do take that  
13 into consideration with the fact that you do have what I think is a credible  
14 position in that regard. So I am inclined to grant the continuance. I'm  
15 not inclined to grant severance.

16 While we're here let's talk about that State's motion to admit  
17 evidence of other bad acts. Moving to introduce convictions, and I'm not  
18 sure that I see the convictions being relevant of anything other than for  
19 potentially credibility if when somebody testifies. But, I mean, I can see  
20 maybe the underlying actions that occurred during the course of the  
21 prior, of the activity that resulted in the prior convictions being potentially  
22 relevant to some issues.

23 For instance, I don't know what's going to be the defense at  
24 trial. But, I mean, if someone was to take the position -- and who was  
25 the one who was convicted in 2017?

1 MR. BASSETT: That was Mr. --

2 THE COURT: You don't need to raise your hand.

3 MR. BASSETT: Mr. Morgan.

4 THE COURT: -- Mr. Morgan. You know, you have the one  
5 where they went back to the same --

6 MR. SCARBOROUGH: Establishment.

7 THE COURT: -- establishment and everybody remembered  
8 him from the prior, you know, if he's contesting identity, then probably  
9 that prior bad act is relevant for purposes of credibility as to the  
10 witnesses identification of him. Now if it's not contesting identity, then I  
11 don't think that going into that prior bad act becomes -- I think it  
12 becomes unduly prejudicial or substantially out weighs the probative  
13 value. So I guess that's -- I --

14 MR. SCARBOROUGH: I get your drift. I understand. I'll  
15 submit.

16 THE COURT: I --

17 MR. BASSETT: And, Your Honor, basically our issue was the  
18 fact that that State was moving to admit this before they had to do so in  
19 order to rebut one of our defenses -- as which was the theme we kept  
20 hitting back and forth in response.

21 THE COURT: Well I'd like to have -- because, I mean, if they  
22 know pretty well what one of your defenses is going to -- this is one of  
23 the problems by everybody not telling what they're defense is going to  
24 be. If they know what -- pretty good idea what one of the defenses is  
25 we've got to deal with the issue of *Petrocelli* hearing.

1 MR. BASSETT: Of course, but Your Honor, --

2 THE COURT: And so, you know, I mean, I really hate to be,  
3 you know, you all the sudden get up in your opening and you say he was  
4 never there. These people are making wrong false identifications of him.  
5 And, you know, then I've got to be scheduling a 7:30 *Petrocelli* hearing  
6 to bring in the 2017 people to say yep that's him and I remember him  
7 because of -- well, you know, I had to deal with him all this time back in  
8 2017.

9 And there is some potential that some of this other stuff, you  
10 know, that he did back in 2017 could be, depending on what your  
11 defense is.

12 MR. BASSETT: I --

13 THE COURT: Based on what I have generally understand  
14 now, I will say I don't see the 2017 acts -- again I'm obviously, you know,  
15 if he testifies --

16 MR. SCARBOROUGH: Right.

17 THE COURT: -- 2017 conviction, that's a different issue.

18 MR. SCARBOROUGH: Perfect.

19 THE COURT: But I don't see the conviction being admissible  
20 as to these issues. You know, it's got to be the act --

21 MR. SCARBOROUGH: Okay.

22 THE COURT: -- that, you know, somebody comes in and  
23 testifies, yeah, he was stealing stuff.

24 MR. SCARBOROUGH: Right.

25 THE COURT: And he was working with another person or

1 you know, --

2 MR. SCARBOROUGH: I would agree.

3 THE COURT: -- something like that. I think that's what we're  
4 -- you're going to need to do if you make it relevant. But at this point in  
5 time, based on what I know, I don't feel that my general sense is  
6 whatever relevance these have would be substantially outweighed by  
7 the probative value. So I'm not inclined to go that way with the 2017 --

8 MR. BASSETT: And Your Honor, --

9 THE COURT: -- at this point in time.

10 MR. BASSETT: -- that was the thrust of our response was  
11 that at this point it's inappropriate to introduce the conviction. Were Mr.  
12 Morgan to testify, at that point it could be raised again and we could  
13 address it at that point. But again that's the summation of our argument.

14 THE COURT: I do want arguments.

15 MR. SCARBOROUGH: If he does raise those defenses as  
16 you are alluding to I --

17 MR. BASSETT: Of course, if we raise them, --

18 THE COURT: You know, --

19 MR. BASSETT: -- they have the right use it to rebut.

20 THE COURT: And I'll just say, I don't think you're going to get  
21 there. But the last thing that Mr. Gaston raised --

22 MR. BASSETT: Yes, yes, yes, yes, yes, yes.

23 THE COURT: -- I do think would potentially implicate the  
24 2017 in the acts underlying the 2017 in what occurred here in 2019.

25 MR. BASSETT: Correct.

1 THE COURT: That's just letting you know that ahead of time.  
2 And if you are going to go down the last thing that Mr. -- let me put on  
3 the record I'm not granting a continuance on that.

4 MR. BASSETT: I understand.

5 THE COURT: You're certainly free in the time that's allowed  
6 to look at that.

7 MR. BASSETT: Of course.

8 THE COURT: And if you decide to go down that way, I think  
9 we do need to have some notice on your part --

10 MR. BASSETT: We -- I --

11 THE COURT: -- ahead of time, because I think they are going  
12 to be able make a pretty good argument for a -- for -- and again I don't --  
13 again, I'd rather not be doing a *Petrocelli* hearing --

14 MR. BASSETT: The morning of trial, I understand.

15 THE COURT: -- at 7:30 on the morning of trial.

16 MR. BASSETT: And, Your Honor, I think that's a reasonable  
17 request. If we ultimately do decide to plan on having Mr. Morgan testify  
18 with the continuance, we could give notice to the State to have a  
19 *Petrocelli* hearing on the issue relating to his testimony. Again the thrust  
20 of our response here was that at this time --

21 THE COURT: Okay.

22 MR. BASSETT: -- it's in appropriate to introduce.

23 THE COURT: Based on what I understand now, I will grant --  
24 or deny the motion without prejudice.

25 MR. SCARBOROUGH: Okay.

1 THE CLERK: The State's motion?

2 THE COURT: Yeah. All right.

3 MR. SCARBOROUGH: Thank you. So reset a date.

4 THE COURT: So what is your schedule? And I will make  
5 findings on the records that I think under the statute relating to the  
6 defendant's statutory speedy trial right, I do have the authority in view of  
7 the case where the Defendants are joined to continue the trial. I think  
8 that under the circumstances here with the ongoing negotiations, that --  
9 the negotiations breaking down and the existence of a potentially  
10 credible defense that it is in the interest of justice that both defendants  
11 be continued.

12 So what's your schedule Mr. Ruggeroli, because I would set  
13 this on a short stack about 30 days?

14 MR. RUGGEROLI: So I have a murder trial that looks like it's  
15 going to continue on the 24<sup>th</sup> of this month. And then the next significant  
16 case is April 20<sup>th</sup>. If we could do it 30 days puts us the first week of  
17 April.

18 THE CLERK: How about April 6<sup>th</sup>?

19 MR. BASSETT: I have a trial scheduled to start on April 4<sup>th</sup>,  
20 but I'm not -- it's too early to tell at this point whether that one is going to  
21 be going forward.

22 THE CLERK: It's going on a Saturday?

23 MR. BASSETT: I'm sorry, April 6<sup>th</sup> is the Monday. It is April  
24 6<sup>th</sup>. I apologize. I knew it was an even number. It's April 6<sup>th</sup>, Your  
25 Honor. It's a -- it's the first setting, so it's possible it can be continued

1     although the client has --

2             THE COURT: This is an older case so.

3             MR. BASSETT: It's true.

4             THE COURT: This one I think take priority.

5             THE CLERK: Mr. Gaston has one on the 6<sup>th</sup> too.

6             THE COURT: Well you can get your old trial counsel back.

7             MR. BASSETT: It's possible, Your Honor. Would it be  
8     possible to do one week later?

9             THE COURT: Well, I --

10            MR. RUGGEROLI: Judge, because of the length of this one,  
11     I'm already running into problems with preparing for that other trial.  
12     That's why I -- it is different in the --

13            THE COURT: All right. I'll give you the -- we'll set it as April  
14     6<sup>th</sup> criminal calendar.

15            THE CLERK: Yes.

16            THE COURT: All right. I'll set it on April 6<sup>th</sup>.

17            MR. BASSETT: For calendar call or trial?

18            THE COURT: Trial.

19            THE CLERK: Trial. Your calendar call is March 31<sup>st</sup> at 8:30.

20            MR. BASSETT: Thank you Judge.

21            THE COURT: Good job, Mr. Gaston.

22            MR. GASTON: Thank you. For what it's worth, I have in  
23     custody invoked trial on that date so.

24            THE CLERK: Yeah.

25            MR. GASTON: So obviously, I --



1 THE COURT: Mr. Bassett is lead counsel. He's -- I explained  
2 that. You have two -- I don't know how many. You have a bunch of  
3 people over there and his prior lead counsel who was supposedly totally  
4 prepared may be able to come back on.

5 MR. GASTON: Oh, I already got fired off the case?

6 THE COURT: No, I didn't fire you.

7 MR. SCARBOROUGH: Nope, done. Thank you, Judge.

8 MS. LACHER: Thank you.

9 MR. SCARBOROUGH: Thank you, guys. Hey, thank you.  
10 Very nice of you, thank you.

11 [Hearing concluded at 3:06 p.m.]

12 \* \* \* \* \*

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21 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.

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24 Jessica Kirkpatrick  
25 Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE #: C-19-344461

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN and  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, NOVEMBER 07, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **INITIAL ARRAIGNMENT; INDICTMENT WARRANT RETURN**

18 APPEARANCES:

19 For the State: JOHN T. JONES, JR.  
Chief Deputy District Attorney

20 For Defendant Morgan: RAFAEL NONES  
21 Deputy Public Defender

22 For Defendant Snipes: JAMES J. RUGGEROLI, ESQ.  
23

24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Thursday, November 07, 2019, at 9:09 a.m.]

2

3 THE COURT: State of Nevada versus Gregory Morgan and  
4 Andre Snipes, case number C344461. Counsel, please note your  
5 appearances for the record.

6 MR. JONES: John Jones on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James  
8 Ruggeroli on behalf of Mr. Snipes who's present in custody.

9 MR. NONES: Rafael Nones. I'm standing in for Alex Bassett  
10 on Gregory Morgan, who I've just confirmed is not in custody as well,  
11 according to the CCDC website. He's not present. He wouldn't have  
12 known to be here. Mr. Bassett asked me to add to the record today that,  
13 he didn't received a Marcum notice on this.

14 THE COURT: Okay. So, what do we want to do? Proceed  
15 with the arraignment as to Mr. Snipes?

16 MR. RUGGEROLI: Well, Judge, I have an issue with that. I  
17 have concerns about his competency in speaking with him this morning  
18 and going over the discovery previously in custody as well as trying to  
19 explain where we're at and why because of the grand jury indictment. I  
20 have concerns that he needs to be looked at, so I've got the paperwork  
21 for the request, if I may approach.

22 THE COURT: Sure. Thank you, sir. I assume the State has  
23 no position on this.

24 MR. JONES: None, Your Honor.

25 DEFENDANT SNIPES: Can I make a statement?

1 THE COURT: It's not in your interest to make a statement.

2 Mr. Ruggeroli, if you want to walk up there and find out  
3 what he's concerned about.

4 MR. RUGGEROLI: Judge, in light of competency issues; I  
5 don't know how you want to proceed, but he would like to request a new  
6 attorney as well.

7 THE COURT: Well before he made the request, you indicated  
8 he needed to go to competency. So, at this point in time, I'm going to  
9 put him into competency. And once he gets out of that, and if he still  
10 wants a new attorney, we can go forward from there. All right.

11 THE CLERK: So that is December 6<sup>th</sup> at 10 a.m. in  
12 Department 7.

13 MR. RUGGEROLI: Thank you, Judge.

14 THE COURT: Okay.

15 THE CLERK: What are we doing about Mr. Morgan?

16 MR. JONES: And just -- with respect to Morgan, Your  
17 Honor, I show that Marcum notice was served on 10/11/19. I show it  
18 was served in open court. I additionally have like numerous notes  
19 throughout this file that he was being held no bail, so I'm very concerned  
20 why he's not in custody.

21 THE COURT: I don't know.

22 MR. NONES: I also don't have any representations to make  
23 about that. I'll have Mr. Bassett look into that October 11<sup>th</sup> Marcum.  
24 What I'd ask is just for an opportunity for us to try and get a hold of Mr.  
25 Morgan and bring him back on a day that Mr. Bassett is present because

1 he could probably shed some light. He's, unfortunately, leaving on his  
2 honeymoon. He'll be back -- the next day that we can do is December  
3 3<sup>rd</sup> if that's okay with the Court.

4 THE COURT: That's a long ways off since we don't know  
5 where -- I mean, I'm just saying, he's not in custody; the State shows  
6 that he's being held no bail, and you aren't exactly sure where he's at;  
7 that's not a high percentage situation. I don't mind kicking it off, but I'd  
8 like us to know where he's at.

9 Is there somebody who can reach out? And we just set  
10 a status check in a week to see if he appears.

11 MR. NONES: We can do a week. And I'll see if Mr. Bassett  
12 can figure out some information and one of us can make representations  
13 on it, even if he's gone. Sure.

14 THE COURT: Okay. All right. I'm good with -- since it  
15 appears there is some confusion as to him; give him a week before we  
16 go the bench warrant route.

17 THE CLERK: Okay. November 14<sup>th</sup> at nine a.m. And we'll  
18 just put it on for a status check?

19 THE COURT: Let's put it on for a status check arraignment. I  
20 mean -- you know, maybe if you can get him here, Mr. Bassett -- if he  
21 would feel comfortable with one of you guys handling the arraignment for  
22 him that day.

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MR. NONES: Absolutely, Your Honor.

THE COURT: If not, we'll -- once we confirm he's -- I don't have a problem -- he legally out of custody, I don't have a problem kicking it off to December 3 or 4 or whatever date it was.

[Hearing concluded at 9:13 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.

  
\_\_\_\_\_  
Angie Calvillo  
Court Recorder/Transcriber



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 GREGORY DELLO MORGAN and  
12 ANDRE GRANT SNIPES,

13 Defendants.

CASE #: C-19-344461

DEPT. XX

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 TUESDAY, JANUARY 14, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **INITIAL ARRAIGNMENT: SUPERSEDING INDICTMENT;**  
**CALENDAR CALL**

18 APPEARANCES:

19 For the State:

ASHLEY A. LACHER  
Deputy District Attorney

21 For Defendant Morgan:

ALEXANDER BASSETT  
Deputy Public Defender

23 For Defendant Snipes:

JAMES J. RUGGEROLI, ESQ.

24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Tuesday, January 14, 2020, at 10:22 a.m.]

2  
3 THE COURT: State of Nevada versus Gregory Morgan, case  
4 number C344461. Counsel, please note your appearances for the  
5 record.

6 MS. LACHER: Ashler Lacher for the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James  
8 Ruggeroli appearing on behalf of Mr. Snipes. He's maybe on a different  
9 page, this is a co-defendant case.

10 MR. BASSETT: And Alex Bassett present for Gregory  
11 Morgan.

12 THE COURT: State of Nevada versus Andre Snipes with the  
13 same case number. All right. Okay. We're here on initial arraignment  
14 superseding indictment and calendar call.

15 So, where do we stand with all of this?

16 MR. RUGGEROLI: Judge, I have not received a copy of the  
17 superseding indictment, I made Mr. Snipes aware of it. We've also been  
18 provided with a great deal of discovery that needs to be gone through.  
19 My investigator is going through portions and plans to review that with  
20 Mr. Snipes.

21 Mr. Snipes -- if we had the superseding indictment;  
22 would enter a not guilty plea. I think the State was going to put on the  
23 record what the offer had been or is. She's going to hold it open for a  
24 certain amount of time, but I think we need to come back for the  
25 arraignment.



1 MS. LACHER: Yes. Your Honor, I had made both the court  
2 aware in an e-mail and defense counsel that I would be adding a  
3 superseding indictment back when Defense and I did our file review.  
4 That didn't make it over in the mail run over to me, so I don't have those.  
5 So we would have to, if the Court will allow, kick it for the initial  
6 arraignment.

7 But Defense had notified me at our file review that they  
8 would be seeking a continuance, and I let both your JEA and law clerk  
9 know. As for the offer that I'll hold open for three weeks from today, it's  
10 to plead guilty to a category B, robbery; burglary 1<sup>st</sup>, category B; full right  
11 to argue; name all victims; State will agree not to seek habitual  
12 treatment, and then contingent on both defendants and restitution.

13 THE COURT: Okay. All right.

14 MR. BASSETT: And, Your Honor, just for the record. Mr.  
15 Morgan, as you can see from his orange, is currently up at NDOC. I  
16 have been trying to get up there to meet with him for the last month and  
17 been forwarded by the insane red tape and bureaucracy that goes into  
18 doing a visit up there. So I explained the situation to Mr. Morgan this  
19 morning, and he had no objections to continuing the case for a couple of  
20 weeks so that we can discuss the offer and trial strategy if the offer  
21 doesn't go through and work out because we just have not had the  
22 opportunity to do that yet.

23 THE COURT: All right. So both of you -- both defendants are  
24 requesting continuances?

25 MR. RUGGEROLI: Judge, I'm not ready to proceed. I don't

1 think Mr. Snipes agrees to the continuance. But with the amount of  
2 discovery that we have; with the superseding indictment that I haven't  
3 even been able to review to really understand what the new charges are,  
4 I'm not prepared to announce ready.

5 MR. BASSETT: I have not seen the superseding indictment  
6 either. Mr. Morgan is prepared to agree to a continuance.

7 DEFENDANT MORGAN: I'm here.

8 THE COURT: Mr. Morgan.

9 DEFENDANT MORGAN: Yes, sir.

10 THE COURT: Did he invoke at his original --

11 MR. BASSETT: It was invoked, this went through -- this went  
12 through Grand Jury, so it was invoked and set before I actually was  
13 given the case. But Mr. Morgan's aware of the situation, he and I  
14 discussed it. I turned over a copy of the physical discovery I handed to  
15 him today which is the first time he's had the chance to look over it. We  
16 just -- we just haven't had time to prepare for a trial that's going forward  
17 in a week because at NDOC I have no ready access to him.

18 THE COURT: All right.

19 Mr. Morgan, do you recall at the time of your  
20 arraignment on December 3, 2019, you invoked, what's referenced as  
21 the 60-day rule, a right to at trial, within 60 days of your date of  
22 arraignment?

23 DEFENDANT MORGAN: Yes, sir.

24 THE COURT: All right. Your attorney is representing that  
25 today that you're prepared to waive that right and allow a continuance of

1 your trial, is that correct?

2 DEFENDANT MORGAN: Yes, sir.

3 THE COURT: Okay. All right.

4 And then let me -- Mr. Snipes, do you recall on your  
5 arraignment on December 12, 2019, you had also invoked the  
6 60-day rule?

7 DEFENDANT SNIPES: Yes.

8 THE COURT: All right. Are you prepared to waive the 60-day  
9 rule and to allow a continuance of your trial?

10 DEFENDANT SNIPES: Absolutely not. No, I didn't discuss  
11 that with him.

12 THE COURT: You didn't discuss it with him at all, Mr.  
13 Ruggeroni?

14 DEFENDANT SNIPES: Not about waiving my speedy rights,  
15 absolutely not.

16 THE COURT: Well, I mean, I'm not asking you that there  
17 would be an agreement. I'm asking, did you discuss that with him?

18 MR. RUGGEROLI: No. We've discussed it, but he doesn't  
19 agree to it.

20 THE COURT: Okay.

21 MR. RUGGEROLI: So he's made it very clear he doesn't  
22 want to waive.

23 THE COURT: Okay. All right.

24 Can you give me a sense of how much discovery you're  
25 talking about?

1 MR. RUGGEROLI: Its multiple compact discs that have  
2 surveillance or video footage. There's a great deal that the State  
3 provided us, this is multiple events. And with the new superseding  
4 indictment -- I mean, it would be one thing if you were inclined to sever  
5 those counts, but I still am getting my investigator to go through things.

6 And if you recall, and I don't know if you do, but Mr.  
7 Snipes originally was sent to -- for competency evaluation. And so there  
8 was a great deal of time that we did not have the availability to discuss  
9 the case. I have met with him at least two times since he returned. And  
10 he's made very clear, he doesn't want to waive. But I'm in a position  
11 where we get a file review; the State was very diligent in giving me the  
12 materials, but there's just a lot.

13 THE COURT: All right. Well I can grant a continuance as one  
14 in that -- and with the joinder of the two defendants, the continuance as  
15 to the one is a basis for the continuance as to the other. Also, that's for  
16 the purposes of the judicial economy and witness economy.

17 Also, I will find, based upon the representations relating  
18 to the discovery, that counsel does need additional time in order to  
19 effectively prepare for trial and that good cause exists for an extension  
20 past the 60 days.

21 This looks -- I assume, to be a trial that would take more  
22 than one week to try? Or do you think it could be overflow eligible?

23 MS. LACHER: There's about six events at different stores. I  
24 know you move pretty quick, I think I can do it in five days but that's  
25 pushing.

1 THE COURT: All right. Let's set this on the next criminal  
2 stack.

3 MR. RUGGEROLI: Judge, I have the end of May through  
4 April that is full.

5 THE COURT: End of May -- April?

6 MR. RUGGEROLI: Excuse me.

7 THE COURT: Let's try the end of April through the end of  
8 May.

9 MR. RUGGEROLI: The end of March through April.

10 THE COURT: So May is the earliest you could do this?

11 MR. RUGGEROLI: Unless you can do in March the 7<sup>th</sup>.

12 DEFENDANT SNIPES: If he can't do it, I need a new lawyer.  
13 I'll take a new attorney, he ain't ready. I've been in here hundreds of  
14 days.

15 THE CLERK: When did you say?

16 MR. RUGGEROLI: March 7<sup>th</sup>.

17 THE CLERK: Well March 9<sup>th</sup>?

18 MR. RUGGEROLI: Yes.

19 THE CLERK: That's the last date of our civil stack.

20 THE COURT: Let's take a shot and see if we --

21 THE CLERK: Can do it then.

22 THE COURT: -- can do it then.

23 THE CLERK: Calendar call is March 3<sup>rd</sup> at 8:30; jury trial  
24 March 9<sup>th</sup> at nine a.m.

25 THE COURT: We do need to do the arraignment, so do you

1 want -- when do you want to the arraignment and status check  
2 negotiations and arraignment? When do you want to do that?

3 MS. LACHER: I need to do another transport order for  
4 Morgan. So the jail -- the prison tells me about two weeks to get him  
5 back, if the Court's calendar allows or outside of that just so they have  
6 notice to get him down.

7 THE COURT: All right.

8 THE CLERK: How about January 30<sup>th</sup> at nine a.m.?

9 MS. LACHER: Thank you.

10 MR. RUGGEROLI: Thank you, Judge.

11 THE COURT: All right. Thank you.

12 [Hearing concluded at 10:31 a.m.]

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14  
15 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
16 audio/video proceedings in the above-entitled case to the best of my ability.

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18 Angie Calvillo  
19 Court Recorder/Transcriber  
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1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE #: C-19-344461

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN and  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, JULY 30, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **STATUS CHECK: TRIAL SETTING**

18 **APPEARANCES:**

19 For the State: KENNETH N. PORTZ  
Chief Deputy District Attorney  
20  
21 For Defendant Morgan: JESSICA SMITH-PETERSON  
Deputy Public Defender  
22  
23 For Defendant Snipes: DANIEL J. HILL, ESQ.

24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Thursday, July 30, 2020, at 1:57 p.m.]

2  
3 THE COURT: State of Nevada versus Andre Snipes, case  
4 number C344461. Counsel, please make your appearances for the  
5 record.

6 MS. GOODMAN: Laura Goodman for the State.

7 MR. PORTZ: Nick Portz for the State, Your Honor, and this is  
8 a co-defendant case.

9 THE COURT: Co-defendant is on page 3, that's State of  
10 Nevada versus Gregory Morgan, same case number C344461.  
11 Counsel, why don't you go ahead and make your appearance.

12 MR. HILL: Dan Hill for Mr. Snipes.

13 THE COURT: All right. This is on for a trial setting --

14 MR. HILL: Does the co-defendant have an attorney here,  
15 Judge?

16 THE COURT: Sorry, what?

17 MR. HILL: Does the co-defendant have an attorney here?

18 THE COURT: I thought we had -- that's page 2. Did we have  
19 somebody check in for page 2?

20 MR. PORTZ: It's the public defender who represents the co-  
21 defendant.

22 THE COURT: All right. Page 3, Mr. Morgan. Is somebody  
23 online for Mr. Morgan.

24 MR. HILL: I think Alex -- Alex, are you on page 3?

25 MS. SMITH-PETERSON: No, I will be standing in for Mr.



1 Bassett.

2 THE COURT: All right. So is there somebody for page 3?

3 MS. SMITH-PETERSON: Your Honor, can you hear me?

4 THE COURT: I can hear you.

5 MS. SMITH-PETERSON: I said I'm standing in for Mr.  
6 Bassett on page 3.

7 THE COURT: Okay, so Ms. Smith-Peterson. All right, very  
8 good. We're sort of there. All right, this is on for a trial setting. Where  
9 do we stand with setting a trial, Mr. Hill?

10 MS. SMITH-PETERSON: So I did speak --

11 THE COURT: Oh, go ahead, Ms. Smith-Peterson.

12 MS. SMITH-PETERSON: Okay. I did speak with Mr. Bassett.  
13 He would like to set a trial, but he would also like to set a settlement  
14 conference, if possible, prior to the trial for Mr. Morgan and his Co-  
15 defendant Mr. Snipes. However, if we are setting a trial within the 2020  
16 year, he would ask for some time in the last weeks of September or  
17 October.

18 THE COURT: Okay.

19 MS. SMITH-PETERSON: Preferably, October.

20 THE COURT: What's your thoughts, Mr. Hill?

21 MR. HILL: I'll second Ms. Smith-Peterson.

22 THE COURT: Do you want me to order a settlement  
23 conference?

24 MR. PORTZ: If Mr. Hill's client is willing and wants to go to a  
25 settlement conference, I think he's kind of the hold up on a global

1 negotiation, so the State will do that if everyone is interested and going  
2 forward. But I think that's kind of up to the defendant if he doesn't want  
3 to deal, then there's no point doing a settlement conference when we  
4 can get the calendar call and trial date.

5 THE COURT: No, I agree with you, Mr. Portz. That's why I  
6 was asking Mr. Hill if he was -- if he wanted to do the settlement  
7 conference, so --

8 MR. HILL: I mean, I'm always open to it, Judge, but my  
9 intelligence from Mr. Ruggeroli is that perhaps Mr. Snipes wouldn't be  
10 open to that discussion.

11 THE COURT: I mean I'm not going to order it.

12 Mr. Portz, is there any interest in having a settlement  
13 discussion as to Mr. Morgan? Hold on.

14 DEFENDANT SNIPES: Hello.

15 THE COURT: Who's raising the --

16 DEFENDANT SNIPES: As long as -- this is Andre Snipes. As  
17 long as it doesn't slow down my trial or push it back any further, I'm okay  
18 with it. But if it's going to -- if it's going to block my trial or slow it down  
19 or push it back in any kind of way, then no.

20 THE COURT: Okay. Well the situation with the pandemic is  
21 what's controlling in terms of doing jury trials, not the settlement  
22 conference. We can have a settlement conference up to -- you know, at  
23 any time and it doesn't impact upon the trial date.

24 DEFENDANT SNIPES: I'm willing to listen --

25 THE COURT: So are you interested in discussing a

1 settlement with the State?

2 DEFENDANT SNIPES: I'm willing to listen, yes.

3 THE COURT: Okay. All right.

4 Mr. Portz, are you still interested in that?

5 MR. PORTZ: Your Honor, that's fine. We'll be happy to talk.

6 THE COURT: I'll go ahead and order the settlement  
7 conference. I'll ask Mr. Bassett to reach out on behalf of both  
8 defendants to Judge Bell's office to schedule the settlement conference.

9 Now in terms of a trial date, I mean, that's a different  
10 issue. Let me ask, Mr. Hill, have you been contacted in regard to the  
11 trial readiness conferences that are being run by Judge Bell and the  
12 senior judges for those cases which have invoked?

13 MR. HILL: Not on this case, Your Honor.

14 THE COURT: Okay. All right. How long do we think this  
15 case will take? Two weeks?

16 MR. PORTZ: I would say that that's a fair estimate, Your  
17 Honor.

18 [The Court and Clerk confer]

19 THE COURT: What about the first week of November?

20 MR. PORTZ: That's fine with the State, Judge.

21 THE COURT: Mr. Hill.

22 MS. SMITH-PETERSON: That works as well for Bassett.

23 MR. HILL: That's okay.

24 THE COURT: Okay. All right. Let's try -- we'll see -- we'll  
25 keep our fingers crossed that we can go then.

1           DEFENDANT MORGAN: Your Honor, can I speak please.

2           THE COURT: Well it's probably best for you to speak through  
3 your attorney. I mean, what generally are you wanting to say?

4           DEFENDANT MORGAN: I was under the impression I spoke  
5 with Alex Bassett, about two weeks ago, that he filed a motion for a bail  
6 hearing that was going to be heard today.

7           THE COURT: I don't have that on my calendar today. I don't  
8 know if Mr. Bassett -- I don't show it at the moment.

9           DEFENDANT MORGAN: He said he filed my motion.

10          THE COURT: Do you know anything, Ms. Smith-Peterson,  
11 about a bail motion?

12          MS. SMITH-PETERSON: Not on the calendar, Your Honor.

13          THE COURT: Okay. All right.

14          MR. HILL: I don't see anything as well, Your Honor.

15          THE COURT: You haven't received anything, Mr. Portz?

16          MR. PORTZ: No.

17          DEFENDANT MORGAN: He told me he filed a motion about  
18 two and a half weeks ago, sir, and I was just waiting on a court date; it  
19 might be heard today. He told me that out of his mouth personally.

20          THE COURT: All right. Ms. Smith-Peterson, will you pass  
21 that on to Mr. Bassett?

22          MS. SMITH-PETERSON: Yes, Your Honor.

23          THE COURT: All right. So we got -- like I said, I'll order Mr.  
24 Bassett on behalf of both defendants to reach out to Judge Bell's office  
25 in regard to scheduling a settlement conference, and then we'll set this

1 for the trial date.

2 THE CLERK: So I have calendar call will be November 3<sup>rd</sup> at  
3 8:30; jury trial November 9<sup>th</sup> at nine a.m.

4 MR. HILL: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 [Hearing concluded at 2:06 p.m.]  
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13 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
14 audio/video proceedings in the above-entitled case to the best of my ability.

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16 Angie Calvillo  
17 Court Recorder/Transcriber  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE #: C-19-344461

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN and  
12 ANDRE GRANT SNIPES,  
13 Defendants.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, JANUARY 30, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **STATUS CHECK: NEGOTIATIONS**

18 APPEARANCES:

19 For the State: ASHLEY A. LACHER  
Deputy District Attorney

20 For Defendant Morgan: ALEXANDER BASSETT  
21 Deputy Public Defender

22 For Defendant Snipes: JAMES J. RUGGEROLI, ESQ.  
23

24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Thursday, January 30, 2020, at 9:14 a.m.]

2  
3 THE COURT: State of Nevada versus Andre -- State of  
4 Nevada versus Gregory Morgan and Andre Snipes, case number  
5 C344461. Counsel, please note your appearances for the record.

6 MR. RUGGEROLI: Good morning, Your Honor. James  
7 Ruggeroli, bar number 7891, appearing on behalf of Mr. Snipes who is  
8 present in custody. Judge, he's to your left in the box.

9 MR. BASSETT: Alex Bassett appearing on behalf of Gregory  
10 Morgan, Your Honor.

11 MS. LACHER: And Ashley Lacher for the State.

12 THE COURT: Okay. This is set for a status check:  
13 negotiations. So what's our status?

14 MR. RUGGEROLI: Judge, there's also a amended  
15 superseding indictment that they have not been arraigned on yet. I can  
16 make a record that there was an offer extended for my client to plead  
17 guilty to a simple robbery and simple burglary, first offense. The State  
18 would retain the right to argue. I've explained that and met with Mr.  
19 Snipes. He is not accepting that this morning. I've made a counteroffer  
20 to the State on a number of occasions additionally this morning for what  
21 Mr. Snipes had authorized me to do, and the State is not willing to agree  
22 to that. So right now, we just need to have him arraigned and move  
23 forward.

24 THE COURT: All right. Where do you stand, Mr. Bassett?

25 MR. BASSETT: And, Your Honor, I just spoken to Mr. Morgan

1 about some sort of negotiations he would be willing to take. And those  
2 have changed, and I just presented the most recent offer to Ms. Lacher.  
3 And she said that -- she rejected that offer. She did not want to plead  
4 them out in different ways. So at this point, we are ready to be arraigned  
5 and move forward as well.

6 THE COURT: All right. I didn't have arraignment --

7 MS. LACHER: My offer was contingent --

8 THE COURT: I'm sorry, Ms. Lacher.

9 MS. LACHER: Yes, my offer -- that offer that Mr. Ruggeroli  
10 talked about were contingent upon both co-defendants, so that is  
11 correct. I gave both counsel the amended superseding to arraign them  
12 on. And I don't know if you have a copy, it was filed on Odyssey though.  
13 But they have three copies each.

14 THE COURT: All right. I didn't have arraignment down so I  
15 don't have a copy of the amended superseding indictment.

16 MR. RUGGEROLI: May I approach?

17 THE COURT: Go ahead, Mr. Ruggeroli. Were defendants  
18 charged in all counts together?

19 MS. LACHER: No.

20 THE COURT: Okay, let's see if we can get through this.

21 Mr. Morgan.

22 DEFENDANT MORGAN: Yes, sir.

23 THE COURT: Have you received a copy of the amended  
24 superseding indictment against you?

25 MR. BASSETT: He has not, Your Honor. I was just handed it



1 by Ms. Lacher when the case was called.

2 THE COURT: Okay. Let's start then with Mr. Snipes. Mr.  
3 Snipes, have you received a copy of the amended superseding  
4 indictment against you?

5 DEFENDANT SNIPES: Yes, I have, sir.

6 THE COURT: Have you read it?

7 DEFENDANT SNIPES: Yes, I have.

8 THE COURT: And will you waive me reading it out loud here  
9 in court today?

10 DEFENDANT SNIPES: No, it's not necessary.

11 THE COURT: Thank you. Please state your true name.

12 DEFENDANT SNIPES: Andre Grant Snipes.

13 THE COURT: How old are you?

14 DEFENDANT SNIPES: Thirty-seven.

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

16 DEFENDANT SNIPES: Eleventh grade.

17 THE COURT: Do you read, write and understand the English  
18 language?

19 DEFENDANT SNIPES: Yes, I do.

20 THE COURT: All right, you've been provided a true copy of  
21 the amended superseding indictment which charges you in Counts 3, 9,  
22 13 and 16 of grand larceny, a category C felony in violation of Nevada  
23 Revised Statute 205.220.1 and 205.222.2; in Counts 4 and 10 with  
24 conspiracy to commit robbery, a category B felony in violation of Nevada  
25 Revised Statute 200.380 and 199.480; in Counts 5 and 11 with robbery

1 with use of a deadly weapon, a category B felony in violation Nevada  
2 Revised Statute 200.380 and 193.165; in Counts 6 and 8 with burglary  
3 while in possession of a deadly weapon, a category B felony in violation  
4 of Nevada Revised Statute 205.060; in Counts 7, 12, 14, 15, 17 with  
5 burglary, a category B felony in violation of Nevada Revised Statute  
6 205.060, and in Count 18 with participation in organized retail theft, a  
7 category B felony in violation of Nevada Revised Statute 205.08345.

8 Do you understand the nature of the charges against  
9 you as contained in the amended superseding indictment?

10 DEFENDANT SNIPES: Yes, I do.

11 THE COURT: And have you discussed these charges  
12 sufficiently with your attorney for you to enter a plea here today?

13 DEFENDANT SNIPES: Yes, I have.

14 THE COURT: How then do you plead to the charges?

15 DEFENDANT SNIPES: Not guilty.

16 THE COURT: All right, not guilty. Let's see, we've already  
17 got this set for trial.

18 MR. RUGGEROLI: That's correct.

19 THE COURT: We'll keep that current trial date of March 9,  
20 2020.

21 MS. LACHER: Yes, please.

22 THE COURT: All right. We'll keep that.

23 Mr. Morgan.

24 DEFENDANT MORGAN: Yes, sir.

25 THE COURT: Have you received a copy of the amended

1 superseding indictment against you?

2 DEFENDANT MORGAN: Yes, sir.

3 THE COURT: Have you read it sufficiently for you to enter a  
4 plea here today?

5 DEFENDANT MORGAN: Yes, sir.

6 THE COURT: Do you waive me reading it out loud here in  
7 court?

8 DEFENDANT MORGAN: Yes, sir.

9 THE COURT: All right. Please state your full name.

10 DEFENDANT MORGAN: Gregory Dello Morgan, Jr.

11 THE COURT: How old are you?

12 DEFENDANT MORGAN: Thirty-six.

13 THE COURT: And how far did you go in school?

14 DEFENDANT MORGAN: Twelfth grade.

15 THE COURT: Did you graduate?

16 DEFENDANT MORGAN: No, sir.

17 THE COURT: All right. Do you read, write and understand  
18 the English language?

19 DEFENDANT MORGAN: Yes, sir.

20 THE COURT: All right. You've been provided with a true  
21 copy of the amended superseding indictment against you which charges  
22 you in Count 1 with burglary, and Counts 2, 3, 9, 13, 16 of grand larceny,  
23 and Counts 4 and 10 with conspiracy to commit robbery, and Counts 5  
24 and 11 with robbery with use of a deadly weapon, and Counts 6 and 8  
25 with burglary while in possession of a deadly weapon, and Counts 14

1 and 15 with burglary, and Count 18 with participation in organized retail  
2 theft.

3 Do you understand the nature of the charges against  
4 you in the amended superseding indictment?

5 DEFENDANT MORGAN: Yes, sir.

6 THE COURT: Have you discussed them sufficiently with your  
7 attorney to enter a plea here today?

8 DEFENDANT MORGAN: Yes, sir.

9 THE COURT: How then do you plead to the charges in the  
10 amended superseding indictment, guilty or not guilty?

11 DEFENDANT MORGAN: Not guilty, sir.

12 THE COURT: Not guilty, all right. We also have him set for  
13 trial on March 9, 2020, so we'll keep that date.

14 Is there anything else at this point in time?

15 MS. LACHER: I don't believe so, Your Honor.

16 MR. RUGGEROLI: No, Your Honor.

17 MS. LACHER: I have transport orders for Morgan done. I  
18 don't think there's anything else, we've done a file review already. And I  
19 told counsel if anything comes up that they think they don't have; please  
20 let me know, and I'll do another check to make sure that all of  
21 discovery's been given to them. But I think as of right now, it has been.

22 THE COURT: All right. You, guys, need anything?

23 MR. RUGGEROLI: Not right now, Judge.

24 MR. BASSETT: Not at the moment.

25 THE COURT: Okay.

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MR. RUGGEROLI: Thank you.

MS. LACHER: Thank you.

THE COURT: Thank you.

[Hearing concluded at 9:21 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.

  
\_\_\_\_\_  
Angie Calvillo  
Court Recorder/Transcriber



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

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June 03, 2021

**Attorney:** Public Defender  
Clark County Public Defender  
309 S 3rd Street Suite #2  
Las Vegas NV 89101

**Case Number:** C-19-344461-1  
**Department:** Department 32

**Defendant:** Gregory Dello Morgan

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion For Credits**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 7  
Deputy Clerk of the Court

Page #1

District Court Clark County Nevada

200 Lewis Avenue  
89155

Eighth Judicial District

Case No: C-19-344461-1  
Dept No: XXXII (32)

Motion for Credits  
Order for credits under Nev Rev statutes  
209.4465 for B felony and C felony

Come Now  
Consentation for Credits under Nev stat  
209.4465

Page #2

Points 3 Authorities

Credits that the defendant earned under  
Nev Rev Statue 209.4465 should be  
applied to his P.E.D (Parole Eligibility Date)

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CLERK OF THE COURT

(1) Where the legislature intended to set forth a specific term that must be served before an offender becomes eligible for parole NRS. 209.4461 for Inmate Morgan 1196223 this NRS. 209.4465 should be applied to all credit reserved from NRS. 209.4465

Page #3 Motion for Credit

Nev. Rev. Stat 209.4465 (7) (b) provide(s) that credits earned pursuant to Nev. Rev. Stat 209.4465 apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole. Where an offender was sentenced pursuant to such a statute that requires a minimum term of not less than a set number of year(s) credit do apply to eligibility for parole as provided in 209.4465 (7) (b)



Page #4

## Points & Authorities Post Conviction Proceedings

Nev. Rev. Stat. 209.4465 (7) provides that credit earned pursuant to 209.4465 (a) must be deducted from a prisoners maximum term of imprisonment and (b) apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole. The first part of subsection 7(b) establishes a general rule that credits earned pursuant to 209.4465 apply to eligibility parole. Thus if the sentence statute did not specify a minimum sentence that has to be served before parole eligibility, credits should be deducted from a prisoners minimum sentence making an inmate eligible for parole sooner than he would be without the credit.

Page # 5

Remedy: Credits that defendant earned under Nev. Rev. 209.4465 should be applied to his parole eligibility for any sentence he is currently serving and on which he had not appeared before the ~~parole~~ parole board. Section 209.4465 (7)(b) set forth an exception to Nev. Rev. Stat. 213.120 (2)

Submitted by

Gregory D. Morgan

Gregory D. Morgan

Date 5.26.21

Dear Mr. Grierson

5 26 21

Case No: C-19-344461-1  
Dept No: XXX II (32)

Mr. Grierson my name is Mr. Gregory D. Morgan. I ask that you file this hand written motion on my behalf with the court. Also I ask that you send me a filed stamped copy. Here at High Desert State Prison we do not have access to the Law Library & so the best I could do was write this motion myself on line paper.

Thank you kindly,

Gregory D. Morgan

Gregory Morgan # 1196223  
H.D.S.P 2-B-22  
P.O. Box 650  
Indian Springs, NV 89070

Legal  
Mail

Steven D. Gnerson, Clerk of the Court  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155-1160

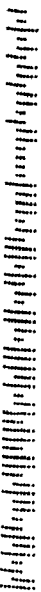
LAST OFFICE MAY 2000  
HIGH DESERT STATE PRISON  
27 MAY 2021 PM 5 L

UNIT 2A/B



FOREVER USA

89101-630000



July 22, 2021  
11:00 AM

FILED

JUN 30 2021

*John T. Blum*  
CLERK OF COURT

MDC

Name Gregory Dello Morgan #1196223

Address P.O. Box 208 S.D.C.C.

City/State/Zip Indian Spring NV 89070

Defendant In Proper Person

## Eighth Judicial District Court

State of Nevada

vs

Gregory Dello Morgan  
#1196223

Case No:

C-19-344461-1

Dept No: 32

### Motion to Dismiss Counsel & Appoint Alternate Counsel

Come now, the defendant Gregory Dello Morgan,  
and moves this honorable Court to dismiss  
defendants counsel. Alex Bassett and appoint  
alternate counsel to represent defendant.

This Motion is based upon all papers,  
readings and documents on file

### Points and Authorities

It is respectfully requested of this court  
to grant this Motion to Dismiss Counsel

PP  
PA  
PD

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JUN 23 2021

CLERK OF THE COURT

Appoint Alternate Counsel for the Reasons listed below:

## 1) Procedural Background & Factual Summary

Since Alex Bassett was appointed as counsel on Oct 14, 2019 Defendant has been prejudiced and suffered manifest injustice based on counsel's refusal or failure to:

- 1.) File appropriate pre-trial motions in a timely and cooperative manner (Nevada Rule 1.2 & Nevada Rule 1.3 (2) Maintain a professional line of communication with defendant at High Desert State Prison & Clark County Detention Center, via mail via telephone calls, and via third party messages made by family members (Nevada Rule 14 & Nevada Rule 4.2 for the purposes of preparation of trial strategy and conveyance of case developments (Young v State) (3) Present defendants requested representations "on the record" at prior proceedings. (Nevada Rule 1.1 & Nevada Rule 1.3. (4) Investigate facts

and consider the legal defense of defendant (Buffalo v State, 111 Nev 1139 901 P.2d 647 111 Nev Adv Rep 127 1995 Nev Lexis 125 Nev 1995) by not hiring a Private Investigator and other time Sensitive Specialists for defendant which would prove innocence. (5) Tell defendant the "truth" (State Appointed Attorney told defendant blatant "Lies" about defendant's case, Drug Court

## II. Argument

Defendant Gregory Dello Morgan asserts that he is being denied his right to effective representation due to wholly inadequate actions of his Court appointed Counsel, Further Counsel's actions constitute a violation of the Defendant's due process rights under the following cases, Statutes, and/or rules of professional conduct:

1. Break down in lawyer-client relationship (Young v Nev, 120 Nev 963, 102 P3d 572, 120 Nev Adv Rep 98, 2004 Nev Lexis 141 (Nev 2004))

(2) Counsel ineffective for failure to object to prosecutorial comments (Thomas v State)  
(3) Nevada Rules 1.2, 1.3, 1.4, 1.1, 4.2, 2.1 and Rule 8.4 Defendant Morgan has an inalienable, unqualified right to legal assistance that is in accordance with the Constitution of the United State of America "The right to Counsel is the Right (also) to effective assistance of counsel Thus, the adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of advocate (Anderson v California, 875 ct 1396 (1967))

Wherefore, the undersigned prays that the court grant Defendant's Motion to Dismiss Counsel and Appoint Alternate Counsel

Dated this 20<sup>th</sup> day of June, 2021

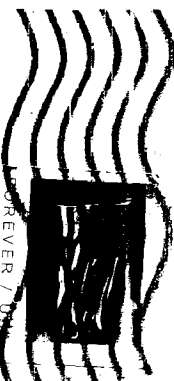
Respectfully Submitted

Gregory Dello Morgan  
Gregory Dello Morgan  
Defendant



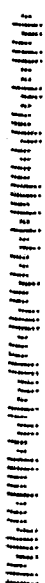
Gregory Morgan #1196223  
P.O. Box 208  
S.D.C.C.  
Indian Spring NV, 89070

LAS VEGAS NV 890  
24 JUN 2021 PM 4 L



Steven D. Garrison, Clerk of Court  
200 Lewis Avenue, 3rd floor  
Las Vegas NV 89155-1160

89101-630000



CODE: 3860

Name: Gregory Morgan #119023

Address: 5000 P.O. Box 208

Indian Spring NV 89070

Telephone: 775

Acting in Proper Person

**FILED**

**AUG 09 2021**

*A. J. Williams*  
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF Clark

**August 31, 2021  
11:00 am**

THE STATE OF NEVADA,  
Plaintiff

CASE NO. C-19-344461-1

v.

DEPT. NO. 32

Gregory Delle Morgan  
Defendant.

MOTION TO WITHDRAWAL PLEA

COMES NOW, Defendant, Gregory Delle Morgan -, proceeding in proper person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea Agreement in the the case number C-19-344461-1, on the date of 5 in the month of Nov in the year 2020, where defendant was then represented by Alex Bassett as counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of Defendant.

Dated this 27 day of July, 2021

Respectfully submitted,

Gregory Delle Morgan  
Defendant in Proper Person

CLERK OF THE COURT

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AUG 02 2021

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts:

The defendant entered the plea of "guilty because of off-the-record promises made by his Counsel. Defendants Counsel promised he would hire and have available an expert witness and experts report at Sentencing for exculpatory evidence to be used in the defendants favor. Video evidence to be used as defendants exculpatory evidence that counters certain accusations made by the prosecution, and allowing your honor to see through those false and frivolous accusations, which would affect sentencing greatly. Those promises made by the defendant's State Appointed Counsel have yet to be fulfilled, thus had an expert witness been obtained, especially when first promised, there would have been exonerating evidence that a competent lawyer would have discovered and that would have inspired the defendant to go to trial, in which the defendant has a viable chance at trial.

Also, State Appointed Counsel of the defendant failed to effectively investigate the defendant's case by

ADDITIONAL FACTS OF THE CASE:

1 Not obtaining the expert witness, also by not filing  
2 an motions on defendant's behalf, also by never  
3 allowing the defendant to view video evidence in  
4 his case. State Appointed Counsel never presented  
5 a meaningful defense strategy for trial, but never  
6 the less convinced defendant that conviction at trial  
7 was automatic, yet there is exonerating evidence  
8 that would prove otherwise had defendant's counsel  
9 properly investigated and acted competently. Had  
10 not the defendant's counsel of representation made  
11 off-the-record promises mentioned earlier in this  
12 motion, the defendant never would have agreed to  
13 the term of the guilty plea agreement, nor would  
14 he have allowed his counsel to sign the guilty plea  
15 on his behalf, especially through the misadvice  
16 made by and given by the defendant's State Appointed  
17 counsel, which affected the defendant's full  
18 understanding of the effect of the plea, the binding  
19 of the plea, and his rights.

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AFFIDAVIT OF: \_\_\_\_\_

STATE OF NEVADA )  
                          )  
COUNTY OF CLARK )      ss:

TO WHOM IT MAY CONCERN:

I, Gregory D Morgan the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

the following: 1) I am the defendant in this proceeding. 2) I was charged with the crimes of

- 1. Burglary 6 counts, 2 Grand larceny Less than \$3,500 5 counts,
- 3 Conspiracy Robbery 2 counts 4. Robbery Enhancement Deadly Weapon 2 counts, 5) Burglary While in Possession of Gun 2 counts
- 6 Participation in Organized Retail theft Ring \$3,500 - 10,000

3) On Nov 5<sup>th</sup> 2020, in the united States District court for Eighth Judicial District of Clark County, Nevada, and entered a plea of "Guilty" for the charges of 1 count Conspiracy to commit Robbery 1 count Robbery (1) Count Burglary

4) When the plea of "Guilty" was entered I was Represented By Ineffective assistance of State Appointed Counsel, Misadvised information, and therefore prejudiced I am innocent of the crimes charged and seek my day in court in order to prove my innocence

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 27 Day of July

2021.

BY: Gregory Dello Morgan  
SDCC # 119623  
Post Office Box-203 (SDCC)  
Indian Springs, Nevada. 89070. /  
Affiant, In Propria Personam:

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 27 day of July, 2021.

Respectfully Submitted,

Gregory Dello Morgan

**CERTIFICATE OF SERVICE BY MAILING**

I, \_\_\_\_\_, hereby certify, pursuant to NRCP 5(b), that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, I mailed a true and correct copy of the foregoing \_\_\_\_\_, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

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CC: File

Dated this 27 day of July, 2021

BY: Gregory Dello Morgan  
P.O. Box 208  
Indian Spring NV 89407

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion to Withdraw Plea  
(Title of Document)

filed in District Court Case number C-19344461-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Gregory Dello Morgan  
Signature

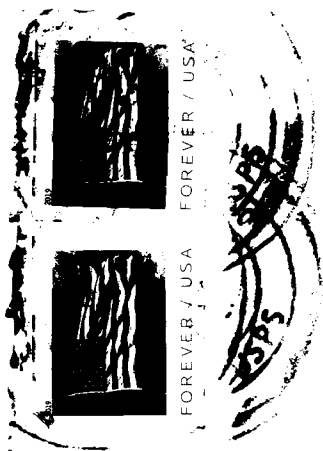
7-26-21  
Date

Gregory Dello Morgan  
Print Name

\_\_\_\_\_  
Title



Gregory Morgan #1196223  
S.D.C. 5-A14  
P.O. Box 208  
Indian Spring NV, 89070

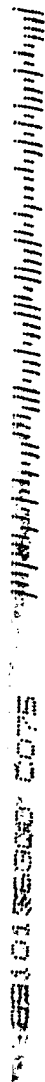


Steven D. Grierson  
C/o Clerk of the Court 3rd Floor  
200 Lewis Avenue  
Las Vegas NV, 89155

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AUG - 2 2021

CLERK OF THE COURT



*Heather L. Hume*  
CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
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-

GREGORY MORGAN,  
#2752270

Defendant.

CASE NO: C-19-344461-1

DEPT NO: XXXII

**4-DAY EXPEDITED**

**ORDER FOR TRANSCRIPT**

Upon the ex-parte application of the State of Nevada, represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through, JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, in order to create a full and accurate record on appeal and necessary for the State to prepare its Court ordered Response, good cause appearing therefor,

IT IS HEREBY ORDERED that a transcript of the Status Check: Possible Motion to Sever (Plea Hearing) heard on the 5 day of November, 2020, be prepared by Kaihla Berndt, Court Recorder for the above-entitled Court within 4 days by August 18, 2021.

Dated this 16th day of August, 2021

DATED this \_\_\_\_\_ day of August, 2021.

*Christy Craig*  
DISTRICT JUDGE

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

BY /s/ Jonathan E. VanBoskerck  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528

C1A 308 97B1 FDDF  
Christy Craig  
District Court Judge

jjg/CAU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-19-344461-1

7 vs

DEPT. NO. Department 32

8 Gregory Morgan  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/16/2021

15 Dept 20 Law Clerk

Dept20LC@clarkcountycourts.us

16 Erin Prisbrey

erin.prisbrey@clarkcountynv.gov

17 DeLois Williams

Delois.Williams@clarkcountynv.gov

18 Cynthia Bush

cynthia.bush@clarkcountyda.com

19 Alexander Bassett

alexander.bassett@clarkcountynv.gov

20 Janet Robertson

Janet.Robertson@clarkcountyda.com

21 Brett Spratt

Brett.Spratt@clarkcountynv.gov



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE #: C-19-344461-1

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN,  
12 Defendant.

13  
14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, NOVEMBER 05, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **POSSIBLE MOTION TO SEVER**

18 **APPEARANCES:**

19 For the State:

CHAD N. LEXIS  
Chief Deputy District Attorney  
LAURA ROSE-GOODMAN  
Deputy District Attorney

22 For the Defendant:

ALEXANDER BASSETT  
Deputy Public Defender

23  
24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Thursday, November 05, 2020, at 2:17 p.m.]

2

3 THE COURT: State of Nevada versus Gregory Morgan, case  
4 number C344461. Counsel, please note your appearances for the  
5 record.

6 MR. LEXIS: Chad Lexis for the State.

7 MR. BASSETT: Alex Bassett for the Defense.

8 THE COURT: All right.

9 MR. BASSETT: Your Honor, I did e-file the signed Guilty Plea  
10 Agreement a couple of hours ago.

11 THE COURT: Okay, give me a second.

12 MR. BASSETT: Sure.

13 [Brief pause in proceeding]

14 THE COURT: All right. Mr. Morgan --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: -- I want you to listen carefully because in a  
17 second, I'm going to ask your attorney to state the substance of your  
18 negotiations with the State. By that, I mean the primary or most  
19 important terms of your negotiations. I want you to listen carefully  
20 because when he's done, I'm going to ask you if you heard what he said  
21 and if he accurately stated the substance of your negotiations with the  
22 State. Will you do that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Go ahead, Mr. Bassett.

25 MR. BASSETT: Yes, Your Honor. Today, Mr. Morgan is

1 going to be pleading guilty to three felony counts: (1) conspiracy to  
2 commit robbery; one count of robbery; one count of burglary. Both  
3 parties agreed to stipulate as to the sentences in that case. Specifically  
4 on Count 1, conspiracy to commit robbery, they were to stipulate to 24 to  
5 60 months NDOC; on Count 2, robbery, agreed to stipulate to 36 to 120  
6 months, and on Count 3, the burglary, were to stipulate to 24 to 60  
7 months; all in the Nevada Department of Corrections.

8                   It is agreed that Count 2 and Count 1 will run  
9 consecutive, and Count 3 will run concurrent with Count 1. So an  
10 aggregate -- that would be a total of five to 15 --

11               THE COURT: All right.

12               MR. BASSETT: -- and the remaining 13 felonies will be  
13 dismissed.

14               THE COURT: Mr. Morgan, did you just hear your attorney go  
15 through the substance of your negotiations with the State?

16               THE DEFENDANT: Yes, sir.

17               THE COURT: And did he accurately state the substance, that  
18 is the primary and the most important terms of the negotiations with the  
19 State?

20               THE DEFENDANT: Yes, sir.

21               THE COURT: All right. Let me ask you, do you read, write  
22 and understand the English language?

23               THE DEFENDANT: Yes, sir.

24               THE COURT: Now, have you received or have read to you a  
25 copy of the amended -- Second Amended Superseding Indictment,

1 which charges you in one count with conspiracy to commit robbery, a  
2 category B felony, in violation of Nevada Revised Statute 200.389 and  
3 193.480, and one count with robbery, a category B felony, in violation of  
4 Nevada Revised Statute 200.380, and in one count of burglary, a  
5 category B felony, in violation of Nevada Revised Statute 205.060?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Which is it? Did you receive a copy of it? Or  
8 was it read to you?

9 THE DEFENDANT: It was read to me.

10 MR. BASSETT: We only received the Guilty Plea Agreement  
11 yesterday, so --

12 THE COURT: I'm not criticizing --

13 MR. BASSETT: No, I --

14 THE COURT: I just want to make sure we're having a clear  
15 record here.

16 MR. BASSETT: Yes, yes.

17 THE COURT: And, Mr. Bassett, do you confirm for the record  
18 that it was read to your client?

19 MR. BASSETT: Yes, Your Honor.

20 THE COURT: All right.

21 MR. BASSETT: I spoke with him last night and this morning.

22 THE COURT: All right. Now, have you discussed with your  
23 attorney the charges in the Indictment to which you intend to plead  
24 guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you need me to -- do you need me to read  
2 out loud, here in court today, the Indictment to you again?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. Now, before accepting your guilty plea,  
5 there are a number of questions I'm going to have to ask you to assure  
6 myself you're entering a valid plea. If you do not understand any of the  
7 questions, will you please let me know so I can rephrase the question?

8 THE DEFENDANT: Yes, sir.

9 [Pause in proceeding]

10 THE COURT: And then -- if at any time you wish to take a  
11 break in the proceedings so you can discuss matters in private with your  
12 attorney, will you let me know that so I can give you the opportunity to do  
13 so?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. How old are you?

16 THE DEFENDANT: Thirty-seven years old, sir.

17 THE COURT: And where were you born?

18 THE DEFENDANT: Seattle, Washington.

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

20 THE DEFENDANT: Twelfth grade.

21 THE COURT: Have you taken any drugs, medicine, pills of  
22 any kind or drunk any alcoholic beverages in the past 24 hours?

23 THE DEFENDANT: High blood pressure medicine.

24 THE COURT: What is it? Do you know?

25 THE DEFENDANT: Lisinopril.



1 THE COURT: Does that affect in any way your ability to read  
2 or to hear or to understand what's going on around you?

3 THE DEFENDANT: Not at all, sir.

4 THE COURT: All right. When was the last time you took  
5 that?

6 THE DEFENDANT: About 10 o'clock last night.

7 THE COURT: All right. Now, are you on any other  
8 medications over at the jail?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Have you ever been treated for any  
11 mental illness or addiction to narcotic drugs of any kind?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you understand what's happening here  
14 today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Tell me in your own words what's happening  
17 here today.

18 THE DEFENDANT: Pleading guilty to a count of robbery,  
19 burglary; conspiracy to commit robbery.

20 THE COURT: Does either Counsel have any doubts as to the  
21 defendant's competence to plead at this time?

22 MR. BASSETT: No, sir.

23 THE COURT: Mr. Lexis?

24 MR. LEXIS: No, sir.

25 THE COURT: Okay. Well based on Counsel's

1 representation, and the court's own observations of the defendant, I find  
2 the defendant is competent to plead in this matter. Now, have you had  
3 ample opportunity to discuss your case with your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you discussed with him any possible  
6 defenses, defense strategies and circumstances which might be in your  
7 favor?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied to have him as your attorney  
10 and the advice he's given you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that, under the Constitution  
13 laws of the United States; the State of Nevada, you're entitled to have an  
14 attorney represent you at every stage of the proceedings against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand under the Constitution laws  
17 of the United States; the State of Nevada, you're entitled to a trial by jury  
18 on the charges contained in the Indictment?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that, in order to convict you,  
21 all of the jurors would have to agree that you are guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that, at trial, you would be  
24 presumed to be innocent and the State would have to overcome that  
25 presumption and prove you guilty beyond a reasonable doubt by

1 competent evidence, and you would not --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- have to prove that you were innocent?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that, in the course of the  
6 trial, the witnesses for the State would have to come to court and testify  
7 in your presence and your attorney could cross-examine those  
8 witnesses and could object to evidence offered by the State?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that, at trial, your attorney  
11 would have the right to call witnesses and present evidence on your  
12 behalf?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that, at trial, while you  
15 would have a right to testify if you chose to do so, you would also have  
16 the right not to testify, and if you decided not to testify at your trial, the  
17 State would not be able to use the fact you didn't testify against you in  
18 any way to prove the State's case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If I accept your guilty plea, do you understand  
21 that you'll be waiving, that is giving up your right to a jury trial and all of  
22 the other rights I've just discussed?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In pleading guilty, do you understand you'll also  
25 have to waive your right not to testify against yourself because you'll

1 have to admit you committed the crimes charged in the Indictment and I  
2 am going to have to ask you some questions about what you did to  
3 satisfy myself that you are guilty as charged?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, you've been charged in Count 1 of the  
6 Amended Indictment with conspiracy to commit robbery. Do you  
7 understand that, for you to be guilty of this crime, the State would have  
8 to prove beyond a reasonable doubt that you were in Clark County,  
9 Nevada, between July 4, 2019 and September 24, 2019 and during that  
10 period of time and in Clark County, in this instance, between Sept. 20<sup>th</sup>,  
11 2019 and September 24, 2019, you did willfully and unlawfully conspire,  
12 that is reach an agreement with Andre Snipes to commit a robbery; by  
13 you committing the acts as set forth in Count 2 of the Indictment against  
14 you? Do you understand the State would have to prove all of those facts  
15 beyond a reasonable doubt for you to be guilty of Count 1, conspiracy to  
16 commit robbery?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that Count 2, robbery, for  
19 you to be guilty of this crime, the State would have to prove beyond a  
20 reasonable doubt that you were in Clark County, Nevada on September  
21 20, 2019, and on that date and in Clark County, you did willfully and  
22 unlawfully take personal property, that being merchandise, from the  
23 person or in the presence of Bryan Laws, and that on September 24,  
24 2019 that, you willfully and unlawfully took personal property, that being  
25 merchandise, from the person or in the presence of Abrego Alden and

1 that you did this without the consent and against the will of either Bryan  
2 Laws or Abrego Alden and that you did this by means of force or  
3 violence or fear of injury, immediate or in the future, to their person, a  
4 person of a member of their family, or anyone in their company at the  
5 time of the robbery and that you did this using force or fear to obtain or  
6 retain the property -- the possession of the property to prevent or  
7 overcome resistance of taking the property and/or to facilitate escape  
8 with you either doing these acts directly in committing the crime or by  
9 aiding and abetting another in the commission of this crime, with the  
10 intention that the crime be committed, or pursuant to a conspiracy to  
11 commit this crime with the intent that the crime could be committed  
12 with -- do you understand the State would have to prove all of those  
13 facts beyond a reasonable doubt for you to be found guilty of robbery?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, as to Count 3, burglary, do you  
16 understand that for you to be guilty of this crime, the State would have to  
17 prove beyond a reasonable doubt that, you were in Clark County  
18 Nevada, between July 4, 2019 and October 2<sup>nd</sup>, 2019, and that during  
19 this time and while in Clark County, that on -- about on -- on or about  
20 July 4, 2019, you entered a building owned or occupied by Nike, located  
21 on South Eastern Avenue, Clark County, and that on September 20,  
22 2019, you entered a building owned or occupied by Footlocker, located  
23 on South Las Vegas Boulevard in Clark County, and that on or about  
24 September 24, 2019, you entered a building occupied -- owned or  
25 occupied by Champs Sports, located on South Las Vegas Boulevard,

1 and then on or about Sept. 29, 2019, you entered a building owned or  
2 occupied by Footlocker, located on Festival Plaza Drive, and on or about  
3 October 2<sup>nd</sup>, 2019, that you entered a building owned or occupied by  
4 Nike, located on South Eastern Boulevard [sic], and that in doing these  
5 various entries, you entered with the intent to commit larceny; you being  
6 either being criminally responsible either by directly doing the crimes  
7 yourself or aiding and abetting the commission of these crimes, with the  
8 intent that the crimes be committed, or pursuant to a conspiracy to  
9 commit the crime with the intent that the crime be committed. Do you  
10 understand the State would have to prove all of these facts beyond a  
11 reasonable doubt for you to be guilty of burglary?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Do you understand that, as to Count  
14 1, conspiracy to commit robbery that, the penalty for this crime is a  
15 minimum of one year and a maximum of six years in the Nevada  
16 Department of Corrections?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that, in addition to or  
19 separate for any term of imprisonment on Count 1, you can be fined up  
20 to ten thousand dollars?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: As to Count 2, robbery, do you understand that  
23 the penalty for this crime is a minimum sentence of two years to a  
24 maximum sentence of 15 years imprisonment in the Nevada Department  
25 of Corrections?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: As to Count 3, burglary, do you understand  
3 that the penalty for this crime is a minimum of one year to a maximum of  
4 10 years imprisonment in the Nevada Department of Corrections?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And as to burglary, do you understand that in  
7 addition to or separate from any sentence of imprisonment, you can be  
8 fined up to ten thousand dollars?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you also understand that an assessment  
11 fee of \$25, a DNA assessment fee of \$3, and if you're not already been  
12 tested, a DNA testing fee of \$150 will be imposed at the time of  
13 sentencing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that, if you're not previously  
16 been tested, you'll be ordered to be tested for DNA at the time of  
17 sentencing?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, pursuant to the statutes to which you are  
20 pleading guilty, you are eligible for probation. Do you understand that  
21 the decision whether to grant you probation on any count is my decision  
22 as the sentencing judge, regardless of any recommendation or  
23 stipulation of your attorney and the prosecutor; if I decline or decide not  
24 to sentence you to probation and you're not happy with my sentence, do  
25 you understand that you cannot withdraw your plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand if I was to sentence  
3 you to probation, you would be required to abide by conditions specified  
4 by the court and that probation can be revoked if you've violated any of  
5 those conditions?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you also understand if probation is revoked  
8 for any reason, you can be imprisoned for the full term of any suspended  
9 sentence I might give in this matter?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you also understand the Court may order  
12 you to make any restitution to any victim of the offenses to which you  
13 are pleading guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand the offenses to which you  
16 are pleading guilty are felony offenses?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If your pleas are accepted, you'll be adjudged  
19 guilty of a felony and that may deprive you a valuable civil right, such as  
20 a right to vote, the right to serve on a jury, the right to possess any kind  
21 of firearm, the ability to apply to a foreign government for a Visa, or the  
22 ability to travel freely and internationally. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, has anyone threatened you or forced you  
25 to be plead guilty?



1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone told you if you do not plead guilty,  
3 some other adverse action will be taken against you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Now, have you through your attorney entered  
6 into a plea agreement with the State?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'm holding in my hand a document entitled,  
9 Guilty Plea Agreement, which at page 6 shows the signature for you and  
10 it shows that it was signed by Mr. Bassett on your behalf. Is that  
11 correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did you do this -- did you direct Mr.  
14 Bassett to sign your signature on your behalf?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And before directing your attorney to  
17 sign the plea agreement for you, did you have the plea agreement read  
18 to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And before directing your attorney to sign the  
21 plea agreement for you, did you talk with your attorney about the terms  
22 of the guilty plea agreement?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And did your attorney discuss with you that he,  
25 signing your name at your direction to the guilty plea agreement, will be

1 treated the same as if you actually signed the guilty plea agreement?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, you're here today to enter your actual  
4 plea of guilty to the three charges in the superseding indictment. I want  
5 to make clear for the record that the signature that's been placed on the  
6 guilty plea agreement in front of me, by your attorney, is to be treated by  
7 the same as if you've signed the plea agreement. Is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And you do this knowingly, willingly  
10 and voluntarily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, do you feel you understand the plea  
13 agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that your attorney at the  
16 start of this proceeding went through the substance or the primary terms  
17 of your plea agreement with the State that this written plea agreement  
18 contains in writing everything you and the State are agreeing to?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that even if your attorney  
21 did not mention a term or understanding with the State orally at the  
22 beginning of the proceedings, if it's in your plea agreement and in  
23 writing, you're also agreeing to these terms?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, has anyone made any promise to you

1 other than what's set forth in the plea agreement to induce you or cause  
2 you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand that any request,  
5 recommendation or stipulation of sentence, made by or agreed by your  
6 attorney, or an attorney for the State is not binding on the Court and that  
7 you might on the basis of your guilty plea receive a more severe  
8 sentence than that requested, recommended or stipulated?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that, if that was to happen,  
11 you would not have the right to withdraw your guilty plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Other than what's set forth in the plea  
14 agreement, has anyone made any prediction or promise to you as to  
15 what your sentence will be?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you understand that, under your agreement  
18 with the State, if you failed to interview with the Department of Parole  
19 and Probation, failed to appear at any subsequent hearings in this case,  
20 or an independent magistrate by affidavit review confirms probable  
21 cause you committed new criminal charges, including reckless driving or  
22 DUI but excluding minor traffic violations, the State will have the right to  
23 argue for any legal sentence and term of confinement allowable for the  
24 crimes to which you are pleading?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about what you are  
2 alleged to have done in the Second Amended Superseding Indictment?

3 THE DEFENDANT: No, sir.

4 THE COURT: How then do you plead to the charge in Count  
5 1 of the Second Superseding Indictment, conspiracy to commit robbery,  
6 guilty or not guilty?

7 THE DEFENDANT: Guilty, sir.

8 THE COURT: How do you plead to Count 2, robbery, guilty or  
9 not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: How do you plead to Count 3, burglary, guilty  
12 or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: All right. Let me ask you as to Count 2, I'm  
15 going to go there first, robbery. Were you in Clark County, Nevada, on  
16 or about September 20, 2019 and September 24, 2019?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And on September 20, 2019, did you willfully  
19 and unlawfully take personal property, that being merchandise from the  
20 person of Bryan Laws?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And on -- from the person or in the presence of  
23 Bryan Laws?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And on September 24, 2019, did you willfully

1 and unlawfully take personal property, that being merchandise from the  
2 person or in the presence of Abrego Alden?

3 THE DEFENDANT: You said that I take personal property? I  
4 don't understand that verse.

5 THE COURT: I said, did you willfully or unlawfully take  
6 personal property, that being merchandise from the person or in the  
7 presence of Abrego Alden?

8 THE DEFENDANT: That's where I don't understand you  
9 because -- can I talk to my attorney?

10 THE COURT: All right. Do you have the number?

11 MR. BASSETT: Yep.

12 THE COURT: Okay, we'll go ahead and have him give you a  
13 call.

14 [Proceeding ended at 2:36 p.m.]

15 [Proceeding resumed at 3:02 p.m.]

16 THE COURT: All right.

17 Mr. Morgan, are you still there?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Let's go over your charges.

20 Now, Mr. Morgan, were you in Clark County, Nevada,  
21 on September 20, 2019 and September 24, 2019?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And I'm talking about Count 2, your robbery  
24 count. On September 20, 2019, did you willfully and unlawfully take  
25 personal property, that being merchandise from the person or in the

1 presence of Bryan Laws?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And then on September 24, 2019, did you  
4 willfully and unlawfully take personal property, that being merchandise  
5 from the person or in the presence of Abrego Alden?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did you do this without the consent and  
8 against the will of Bryan Laws and Abrego Alden?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you do this by means of force or  
11 violence or fear of injury, either immediate or in the future, to their  
12 person, the person of a member of their family, or of anyone in their  
13 company at the time of the robbery?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did you do this using force or fear to obtain  
16 or retain possession of the property to prevent or overcome resistance  
17 of taking of the property or to facilitate estate?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did you personally do these acts directly to  
20 commit the crime? Or did you aid and abet in the commission of the  
21 crime with the intent that the crime be committed? Or did you participate  
22 in a conspiracy to commit the crimes with the intent the crimes be  
23 committed?

24 THE DEFENDANT: No, I personally did it.

25 THE COURT: Okay, very good.

1                   Then as to Count 1, conspiracy to commit property [sic],  
2 were you in Clark County, Nevada, on or between September 20, 2019  
3 and September 24, 2019?

4                   THE DEFENDANT: Yes, sir.

5                   THE COURT: And did you willfully and unlawfully conspire,  
6 that is reach an agreement with Andre Snipes to commit robbery by  
7 committing the acts that I just described in Count 2 concerning robbery?

8                   THE DEFENDANT: Yes, sir.

9                   THE COURT: And then as to Count 3, burglary, were you  
10 in -- let's see. Did you -- were you on January 4, 20 --

11                  MR. BASSETT: July 4<sup>th</sup>.

12                  MS. ROSE-GOODMAN: July 4<sup>th</sup>.

13                  THE COURT: Yeah, July 4<sup>th</sup>, 2019. Did you willfully enter a  
14 building owned or occupied by Nike and located on South Eastern  
15 Avenue?

16                  THE DEFENDANT: Yes, sir.

17                  THE COURT: And on September 20, 2019, did you enter a  
18 building owned or occupied by Footlocker on South Las Vegas  
19 Boulevard?

20                  THE DEFENDANT: Yes, sir.

21                  THE COURT: And on September 24, 2019, did you enter a  
22 building owned or occupied by Champs Sports on South Las Vegas  
23 Boulevard?

24                  THE DEFENDANT: That's correct.

25                  THE COURT: And on September 29, 2019, did you enter a

1 building owned or occupied by Footlocker on Festival Plaza Drive?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And on October 2, 2019, did you enter a  
4 building owned or occupied by Nike and located on South Eastern  
5 Avenue?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And were all these buildings in Clark County,  
8 Nevada?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you enter these buildings with the  
11 intent to commit larceny?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did you enter the buildings directly in  
14 committing the crimes or aiding and abetting another in a commission of  
15 the crimes with the intent the crimes be committed, or pursuant to a  
16 conspiracy to commit the crimes with the intent the crimes be  
17 committed?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that sufficient for the State?

20 MS. ROSE-GOODMAN: Yes, Your Honor.

21 THE COURT: All right. Since you -- since you acknowledge  
22 that you are in fact guilty as charged, since you know your right to trial,  
23 what the maximum possible punishment is, since you're voluntarily  
24 pleading guilty, I will conditionally accept your guilty plea. It's the finding  
25 of court, the defendant is fully competent and capable of entering an



1 informed plea. The plea of guilty is knowing and voluntary supported by  
2 an independent basis in fact containing the essential elements of the  
3 offense charged. Again, his plea is therefore conditionally  
4 accepted. Let's set a sentencing date.

5 THE CLERK: December 22<sup>nd</sup>, at 1:45.

6 THE COURT: Okay.

7 MR. BASSETT: Thank you.

8 [Hearing concluded at 3:07 p.m.]  
9

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

12 

13 Angie Calvillo  
14 Court Recorder/Transcriber  
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25



**OPPM**  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

GREGORY DELLO MORGAN,  
# 2752270

Defendant.

CASENO: C-19-344461-1

DEPT NO: XXXII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW  
PLEA**

DATE OF HEARING: AUGUST 31, 2021  
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Plea.

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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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 1, 2019, the Grand Jury indicted Gregory Dello Morgan  
4 ("Defendant") with Count One: Grand Larceny (Category C Felony – NRS 205.220.1,  
5 205.222.2); Count Two: Conspiracy to Commit Robbery (Category B Felony – NRS  
6 200.380, 199.480); Count Three: Robbery with Use of a Deadly Weapon (Category B  
7 Felony – NRS 200.380, 193.165); Count Four: Burglary While in Possession of a  
8 Deadly Weapon (Category B Felony – NRS 206.060); Count Five: Burglary (Category  
9 B Felony – NRS 205.060); Count Six: Burglary While in Possession of a Deadly  
10 Weapon (Category B Felony – NRS 206.060); Count Seven: Grand Larceny (Category  
11 C Felony – NRS 205.220.1, 205.222.2); Count Eight: Conspiracy to Commit Robbery  
12 (Category B Felony – NRS 200.380, 199.480); Count Nine: Robbery with Use of a  
13 Deadly Weapon (Category B Felony – NRS 200.380, 193.165); Count Ten: Burglary  
14 (Category B Felony – NRS 205.060); Count Eleven: Grand Larceny (Category C  
15 Felony – NRS 205.220.1, 205.222.2); and Count Twelve: Burglary (Category B Felony  
16 – NRS 205.060). Indictment filed 11/1/19 ("Indictment") at 1-5. These events occurred  
17 between September 20, 2019, and October 2, 2019. Indictment at 1.

18 On January 10, 2020, the State filed a superseding indictment adding additional  
19 counts of Grand Larceny and burglary, as well as a charge of Participation in Organized  
20 Retail Theft (Category B Felony – NRS 205.08345). Superseding Indictment filed  
21 1/10/20. This was amended on January 14, 2020, to add an additional count for a total  
22 of eighteen (18) counts. Amended Superseding Indictment filed 1/14/20.

23 The State filed a motion to admit Defendant's prior bad acts and previous  
24 convictions. State's Notice of Motion in Limine Defendants Statements and Motion to  
25 Admit Evidence of Other Bad Acts or in the Alternative to Put Defendants on Notice of  
26 the State's Intention to Admit Prior Judgment of Conviction, filed 2/19/20. The State  
27 also filed a motion to seek punishment as a habitual criminal. State's Notice of Intent  
28 to Seek Punishment as a Habitual Criminal, filed 3/3/20. The motion to admit prior bad

1 acts and previous convictions was denied, as was Defendant's motion to sever his trial  
2 from his co-defendants. Minutes filed 3/5/20. Defendant moved to dismiss his counsel  
3 but in open court withdrew that motion. Motion to Dismiss Counsel and Appoint  
4 Alternate Counsel filed 9/21/20; Minutes filed 10/13/20.

5 On November 4, 2020, the Court set trial for November 12, 2020. The next day,  
6 Defendant entered into a guilty plea agreement. Guilty Plea Agreement ("GPA") filed  
7 11/5/20. In the GPA, Defendant pled guilty to Count One: Conspiracy to Commit  
8 Robbery (Category B Felony – NRS 200.380, 199.480); Count Two: Robbery with Use  
9 of a Deadly Weapon (Category B Felony – NRS 200.380); and Count Three: Burglary  
10 (Category B Felony – NRS 205.060). GPA at 1. The other fifteen (15) felony charges  
11 were dropped and Defendant was not sentenced as a habitual criminal. GPA at 1. As a  
12 habitual criminal, he risked life without the possibility of parole. GPA at 2.

13 The Judgment of Conviction ("JOC") was filed January 21, 2021. Defendant was  
14 sentenced according to the terms of the GPA to 24-60 months in the Nevada Department  
15 of Corrections for count one; 36-120 months for count two, consecutive to count one;  
16 and 24-60 months for count three, concurrent with count two. JOC at 2; GPA at 1. He  
17 received 466 days credit for time served. JOC at 2. His aggregate sentence is 60 to 180  
18 months. JOC at 2. The court recommended drug treatment while in custody. JOC at 2.

19 Defendant did not appeal his conviction. On June 30, 2021, Defendant moved to  
20 dismiss his counsel and requested new counsel. Motion to Dismiss Counsel & Appoint  
21 Alternate Counsel, filed 6/30/21. The court granted his motion to dismiss his counsel  
22 but did not appoint new counsel. Minutes filed 7/22/21.

23 On August 9, 2021, Defendant filed a Motion to Withdraw Plea.

#### 24 **STATEMENT OF THE FACTS**

25 The district court relied on the PSI for the facts of the case at sentencing:

26 On September 20, 2019, two males entered the Footlocker store on  
27 South Las Vegas Boulevard and began to look around the store. The first  
28 male went to the cashier to return merchandise and was refunded \$70.37  
in cash. The other male eventually joined the first male and they  
continued to walk through out the store. The two males then picked up

1 23 NBA jerseys worth approximately \$1,300.00 and quickly walked out  
2 of the store without paying for the jerseys. The cashier followed the men  
3 and called 911. When the one suspect noticed the cashier following them,  
4 he pulled up his shirt revealing a semi-automatic pistol in his waistband.  
5 The cashier then stopped his pursuit of the men.

6 On September 24, 2019, officers were dispatched to Champs  
7 Sports inside the Fashion Show mall. Officers made contact with the  
8 manager who explained that two males entered the store and he asked if  
9 he could help them. The two subjects began going through the store and  
10 picking out jerseys from the racks. When the two men attempted to leave  
11 the store without paying, the manager stepped in front of the men and  
12 told them they could not do that. One of the men lifted his shirt and  
13 brandished a black handgun in his waistband. An estimated total of  
14 \$1,732.05 in merchandise was taken from the store.

15 Once detectives reviewed surveillance, they noticed the suspects  
16 were the same two suspects from the armed Robbery that occurred at  
17 Footlocker four days prior. Foot locker managers advised that over the  
18 past few days people have been calling the stores across the valley asking  
19 if they could refund jerseys at various locations. One of the men  
20 identified himself as the co-defendant, Andre Snipes.

21 On September 29, 2019, two men entered the Footlocker store in  
22 Festival Plaza in Downtown Summerlin. On September 30, 2019, the  
23 manager of that Footlocker informed detectives of the names and  
24 identification information for the two suspects, one being the defendant,  
25 Gregory Morgan, and other being co-defendant Andre Snipes.

26 Photo lineups were taken to the Champs and Footlocker stores and  
27 both witnesses were positive the defendant and co-defendant were the  
28 men who stole the merchandise from their stores. On October 7, 2019,  
officers located a social media website where the defendant was  
attempting to sell a couple pair of tennis shoes. A purchase agreement  
was set up with the defendant, who met him in a parking lot. Once the  
suspects arrived at the location of the transaction, they were taken into  
custody.

PSI at 7-8.

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## ARGUMENT

After sentencing, a motion to withdraw a plea is not the correct remedy for post-conviction relief; a habeas petition is. Defendant's allegations are conclusory, however, and cannot support the procedural requirements of a petition for writ of habeas corpus. Therefore, the Court should deny Defendant's motion in its entirety.

### **I. A POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS IS THE EXCLUSIVE REMEDY TO CHALLENGE THE VALIDITY OF A GUILTY PLEA AFTER SENTENCING**

Each of Defendant's claims is either substantive or an ineffective assistance of counsel ("IAC") claim challenging the validity of his guilty plea and sentence. Substantive claims must be raised on direct appeal. NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). IAC claims must be raised in a petition for a writ of habeas corpus. See NRS 34.724(2)(b); Harris v. State, 130 Nev. 435, 449, 329 P.3d 619, 628-29 (2014).

After pleading guilty, a petitioner is limited in the types of claims he may raise. A motion to withdraw guilty plea is not the appropriate method to challenge a guilty plea after sentence has been imposed, as that is reserved for a writ of habeas corpus. NRS 34.724(2)(b). Under Nevada law, a motion to withdraw a guilty plea "may be made only before sentence is imposed or imposition of sentence is suspended. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea." NRS 176.165; see also Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

In Harris v. State, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014), Court said, "after sentence has been imposed, the statutory post-conviction habeas petition takes the place of a motion to withdraw a guilty plea." Accord; NRS 34.724(2)(b). "Pursuant to NRS 34.724(2)(b), a post-conviction petition for a writ of habeas corpus comprehends and

1 takes the place of all other common-law, statutory, or other remedies which have been  
2 available for challenging the validity of the conviction or sentence and must be used  
3 exclusively in place of them.” Harris, 130 Nev. at 444, 329 P.3d. at 626 (internal  
4 quotations omitted). Excepted from this exclusivity are remedies that are “incident to  
5 the proceedings in the trial court.” Id. (citing NRS 34.724(2)(a)). However, the Nevada  
6 Supreme Court has clearly stated “that a motion is ‘incident to the proceedings in the  
7 trial court’ when it is filed prior to sentencing.” Id., 130 Nev. at 447, 329 P.3d at 627.  
8 “Thus, a motion to withdraw the guilty plea filed after sentencing is not ‘incident to the  
9 proceedings in the trial court.’” Id.

10 Therefore, habeas is the correct remedy for a defendant seeking to challenge his  
11 guilty plea after sentencing.

12 **II. THIS COURT SHOULD DECLINE TO TREAT THIS MOTION AS A**  
13 **PETITION FOR WRIT OF HABEAS CORPUS BECAUSE IT FAILS**  
14 **TO COMPLY WITH NRS 34.735**

15 Although a petition for the writ of habeas corpus is available to Defendant, this  
16 Court should decline to treat this Motion as a petition. Defendant has the right to file a  
17 habeas writ but he does not have the right to have this Court do it for him.

18 A proper petition for post-conviction relief must set forth specific factual  
19 allegations. N.R.S. 34.735(6) states, in pertinent part:

20 [Petitioner] must allege specific facts supporting the claims in  
21 the petition [he] file[s] seeking relief from any conviction or  
22 sentence. Failure to raise specific facts rather than just  
conclusions may cause [the] petition to be dismissed.

23 See also Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding  
24 that bare or naked allegations are insufficient to entitle a defendant to post-conviction  
25 relief).

26 NRS 34.735 prescribes the mandatory form of the habeas petition and includes  
27 several important notices to defendants, including that any ineffective-assistance-of-  
28 counsel claim operates to waive the attorney-client privilege as a matter of law and that

1 they must raise all habeas claims in their first, timely petition. Further, as a post-  
2 conviction Petition, the instant filing and any supplemental filings will be subject to the  
3 rules and procedural requirements outlined in NRS Chapter 34.

4 Because Defendant's motion does not comply with the requirements of NRS  
5 34.735, this Court should decline to treat the motion as a post-conviction petition for  
6 writ of habeas corpus and Defendant's Motion should be summarily denied. Defendant  
7 does not comply with the mandatory form, name the warden as respondent, or allege  
8 specific facts. NRS 34.735. Defendant has failed to include in his petition whether he is  
9 currently serving a sentence under this case number or any other, whether he appealed  
10 from the judgment of conviction – and if not, why not – whether he has previously filed  
11 any petitions, applications, or motions with respect to the judgment in this case, or  
12 whether any petition or appeal with respect to this judgment of conviction is pending in  
13 any court. Most worrisome, Defendant makes only vague, general allegations that do  
14 not aver specific facts. Those few allegations that are specific are belied by the record.  
15 All his allegations are suited for summary judgment under Hargrove.

16 Defendant's filing is not substantially consistent with the form provided by NRS  
17 34.735. The State does not waive its objection to the form of this "petition." This Court  
18 should dismiss the motion.

19 **III. SHOULD THIS COURT DECIDE TO TREAT DEFENDANT'S**  
20 **MOTION AS A PETITION, THE PETITION SHOULD BE DENIED AS**  
21 **MERITLESS**

22 Defendant alleges he entered his guilty plea based on "off-the-record promises"  
23 his attorney made. Motion to Withdraw Plea, filed 8/9/21, ("Motion") at 2. These  
24 included a promise to have expert witnesses at sentencing to provide exculpatory  
25 information. Motion at 2. He alleges his attorney promised him video evidence that  
26 would counter the prosecution's accusations and allow the judge "to see through those  
27 false and frivolous accusations." Motion at 2. He opines a competent lawyer would have  
28 discovered exonerating evidence. Motion at 2. He claims his attorney filed no motions



1 on his behalf, did not provide the video to Defendant, and did not have a meaningful  
2 defense strategy for trial. Motion at 3. Defendant avers he would not have pled guilty if  
3 his counsel had not convinced him he was sure to be convicted at trial. Motion at 3. He  
4 alleges his attorney's conduct "affected the defendant's full understanding of the effect  
5 of the plea, the binding of the plea, and his rights." Motion at 3. He further proclaims  
6 he is "innocent of the crimes charged and seek[s] my day in court in order to prove my  
7 innocence." Motion at 5.

8 Each of Defendant's claims is either substantive or an ineffective assistance of  
9 counsel ("IAC") claim. Substantive claims must be raised on direct appeal. NRS  
10 34.810(1)(a). Defendant has waived his substantive claims by not pursuing a direct  
11 appeal. IAC claims must be raised in a petition for a writ of habeas corpus. NRS  
12 34.724(2)(b). For his IAC claims, Defendant fails to show deficient performance and  
13 prejudice under Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063  
14 (1984).

15 **A. Defendant's substantive claims are waived for failure to pursue them**  
16 **on direct appeal**

17 Substantive claims are beyond the scope of habeas relief and are waived if not  
18 brought up on direct appeal. NRS 34.724(2)(a); NRS 34.810(1)(a); Evans, 117 Nev. at  
19 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059, disapproved on  
20 other grounds, Thomas, 115 Nev. 148, 979 P.2d 222. To the extent this court considers  
21 Defendant's claims as a substantive challenge to his guilty plea, they are waived due to  
22 his failure to pursue them on direct appeal. Defendant's substantive claims are also  
23 waived due to his decision to enter a guilty plea. Woods v. State, 114 Nev. 468, 477,  
24 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-46, 673 P.2d 493, 493  
25 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969).

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1 In a petition for the writ of habeas corpus, the court must dismiss claims that  
2 could have been brought on direct appeal. The only claim a defendant who pled guilty  
3 may pursue on habeas is that he pled involuntarily, unknowingly, or without the  
4 effective assistance of counsel:

5 The court *shall* dismiss a petition if the court determines that:

6 (a) The petitioner's conviction was upon a plea of guilty or  
7 guilty but mentally ill and the petition is not based upon an  
8 allegation that the plea was involuntarily or unknowingly entered  
or that the plea was entered without effective assistance of  
counsel.

9 . . .

10 unless the court finds both cause for the failure to present the  
11 grounds and actual prejudice to the petitioner.

12 NRS 34.810(1) (emphasis added).

13 A defendant may only escape these procedural bars if he meets the burden of  
14 establishing good cause and prejudice:

15 Pursuant to subsections 1 and 2, the petitioner has the burden of  
16 pleading and proving specific facts that demonstrate:

17 (a) Good cause for the petitioner's failure to present the claim or  
for presenting the claim again; and

18 (b) Actual prejudice to the petitioner.

19 NRS 34.810(3).

20 **1. Defendant fails to show good cause**

21 Where a defendant does not show good cause for failure to raise claims of error  
22 upon direct appeal, the district court is not obliged to consider them in post-conviction  
23 proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975). "To establish good  
24 cause, appellants *must* show that an impediment external to the defense prevented their  
25 compliance with the applicable procedural rule. A qualifying impediment might be  
26 shown where the factual or legal basis for a claim was not reasonably available at the  
27 time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis  
28 added). The Court continued, "appellants cannot attempt to manufacture good cause[.]"

1 Id. at 621, 81 P.3d at 526. To find good cause there must be a “substantial reason; one  
2 that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506  
3 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)).  
4 Clearly, any delay in the filing of the petition must not be the fault of the petitioner.  
5 NRS 34.726(1)(a). Additionally, “bare” and “naked” allegations are not sufficient to  
6 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove  
7 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

8 Here, Defendant cannot demonstrate good cause to overcome the procedural bars  
9 and does not allege an impediment external to the defense. Defendant does not even  
10 address good cause in his motion. Instead, Defendant merely raises his claims without  
11 addressing why they were not raised on direct appeal. All the facts and law alleged in  
12 Defendant’s motion were available within the timeframe for direct appeal.

13 Defendant has failed to demonstrate good cause to overcome the procedural bars  
14 and his motion must be denied.

## 15 **2. Defendant fails to show prejudice**

16

17 In order to establish prejudice, the defendant must show “‘not merely that the  
18 errors of [the proceedings] created possibility of prejudice, but that they worked to his  
19 actual and substantial disadvantage, in affecting the state proceedings with error of  
20 constitutional dimensions.’” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716  
21 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596  
22 (1982)).

23 It is unclear whether Defendant argues ineffective assistance of counsel sufficient  
24 to allow withdrawal of his plea, or that substantively his plea was not entered  
25 voluntarily. Regardless, the alleged errors, whether treated as ineffective assistance  
26 claims or substantive claims, are insufficiently prejudicial to warrant ignoring  
27 Defendant’s procedural defaults, as all his claims are belied by the text of the GPA and  
28 the November 5, 2020, plea canvass. He entered his plea knowingly and voluntarily.

1 Attacks as to the validity of the plea itself are substantive and must be brought up on  
2 direct appeal.

3 “A guilty plea is presumptively valid and the burden is upon appellant to show  
4 that the denial of a motion to withdraw the plea constituted a clear abuse of discretion.”  
5 Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The defendant has the burden  
6 of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102  
7 Nev. 268, 272, 721 P.2d 364, 368 (1986). In determining whether a guilty plea is  
8 knowingly and voluntarily entered, the court will review the totality of the  
9 circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at  
10 367. The proper standard set forth in Bryant requires the trial court to personally address  
11 a defendant at the time he enters his plea in order to determine whether he understands  
12 the nature of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev.  
13 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas  
14 “do not require the articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573,  
15 575, 516 P.2d 1403, 1404 (1973). It requires only “that the record affirmatively disclose  
16 that a defendant who pleaded guilty entered his plea understandingly and voluntarily.”  
17 Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United  
18 States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

19 A “guilty plea will be considered properly accepted if the trial court sufficiently  
20 canvassed the defendant to determine whether the defendant knowingly and  
21 intelligently entered into the plea.” Baal, 106 Nev. at 72, 787 P.2d at 394. Specifically,  
22 the record must affirmatively show the following: 1) the defendant knowingly waived  
23 his privilege against self-incrimination, the right to trial by jury, and the right to confront  
24 his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a  
25 promise of leniency; 3) the defendant understood the consequences of his plea and the  
26 range of punishment; and 4) the defendant understood the nature of the charge, i.e., the  
27 elements of the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970).  
28 Consequently, in applying the “totality of circumstances” test, the most significant

1 factors for review include the plea canvass and the written guilty plea agreement. See  
2 Hudson v. Warden, 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

3 The Nevada Supreme Court decided Stevenson v. State, 131 Nev. 598, 354 P.3d  
4 1277 (2015), holding that the statement in Crawford v. State, 117 Nev. 718, 30 P.3d  
5 1123 (2001), which focuses the “fair and just” analysis solely upon whether the plea  
6 was knowing, voluntary, and intelligent is narrower than contemplated by NRS  
7 176.165. The Nevada Supreme Court therefore disavowed Crawford’s exclusive focus  
8 on the validity of the plea and affirmed that the district court must consider the totality  
9 of the circumstances to determine whether permitting withdrawal of a guilty plea before  
10 sentencing would be fair and just. However, the Court also held that none of the reasons  
11 appellant presented warranted the withdrawal of Stevenson’s guilty plea, including  
12 allegations that the members of his defense team lied about the video to induce him to  
13 plead guilty. Stevenson, 131 Nev. at 604, 354 P.3d at 1281. The Court found similarly  
14 unconvincing Stevenson’s contention that he was coerced into pleading guilty based on  
15 the compounded pressures of the district court’s evidentiary ruling, standby counsel’s  
16 pressure to negotiate a plea, and time constraints. Id. As the Court noted, undue coercion  
17 occurs when a defendant is induced by promises or threats which deprive the plea of  
18 the nature of a voluntary act. Id., quoting Doe v. Woodford, 508 F. 3d 563, 570 (9th  
19 Cir. 2007).

20 The Nevada Supreme Court also rejected Stevenson’s implied contention that  
21 withdrawal was warranted because he made an impulsive decision to plead guilty  
22 without knowing definitively whether the video could be viewed. Id. Stevenson did not  
23 move to withdraw his plea for several months. Id. The Court made clear that one of the  
24 goals of the fair and just analysis “is to allow a hastily entered plea made with unsure  
25 heart and confused mind to be undone, not to allow a defendant to make a tactical  
26 decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes  
27 that he made a bad choice in pleading guilty.” Id. at 605, 354 P.3d at 1281-82, quoting  
28 United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991). The Court found that

1 considering the totality of the circumstances, there was no difficulty in concluding that  
2 Stevenson failed to present a sufficient reason to permit withdrawal of his plea. Id. at  
3 605, 354 P.3d at 1282. "Permitting him to withdraw his plea under the circumstances  
4 would allow the solemn entry of a guilty plea to become 'a mere gesture, a temporary  
5 and meaningless formality reversible at the defendant's whim.'" Id., quoting United  
6 States v. Barker, 514 F. 2d 208, 222 (D.C. Cir. 1975).

7 **a. The Plea Was Knowing**

8 Defendant pled guilty to three felonies because he did not want to go to trial for  
9 eighteen felonies and as a habitual criminal. On March 3, 2020, his attorney told the  
10 court Defendant waived his speedy trial rights and has always wanted to negotiate a  
11 deal. Minutes filed 3/3/20. The barrier was that the State made the deal contingent on  
12 acceptance by both defendants.

13 Defendant now contends his attorney's conduct affected his ability to understand  
14 his rights and his plea. Motion at 3. This is belied by the record and suitable only for  
15 summary denial. "Bare" and "naked" allegations are not sufficient to warrant post-  
16 conviction relief, nor are those belied and repelled by the record. Hargrove, 100 Nev. at  
17 502, 686 P.2d at 225. "A claim is 'belied' when it is contradicted or proven to be false  
18 by the record as it existed at the time the claim was made." Mann v. State, 118 Nev.  
19 351, 354, 46 P.3d 1228, 1230 (2002).

20 Defendant further states he would not have pled guilty if his counsel had not  
21 convinced him he was sure to be convicted at trial. Motion at 3. Considering the  
22 considerable evidence against Defendant for eighteen felonies, his counsel had a duty  
23 to inform Defendant that he faced a very real chance of conviction on all counts if he  
24 proceeded to trial. Defendant knew his chances were slim at trial, which is why he  
25 consistently opposed trial and continued his case to allow time for negotiations.  
26 Regarding the State's offer, Defendant's counsel said:

27 MR. BASSETT: My client wanted to accept that. My client has wanted  
28 to negotiate this case since before preliminary hearing. He does not

1 want to go to trial. We could be prepared to go to trial. The reason we  
2 did not confirm the settlement conference date was because we were  
3 waiting to hear back from Mr. Hill on whether Mr. Snipes would be  
willing to be involved in that as well.

4 Recorder's Transcript of Proceedings: Central Trial Readiness Conference on October  
5 21, 2020, filed 3/3/20, at 3. Counsel then said:

6 MR. BASSETT: Were the case to be bifurcated, I do not anticipate our  
7 trial would actually go to trial. Mr. Morgan has wanted to take a deal  
8 since February of this year.

9 Recorder's Transcript of Proceedings: Central Trial Readiness Conference on October  
10 21, 2020, filed 3/3/20, at 5. Defendant, present at these proceedings, did not object to  
11 his attorney's characterization.

12 The plea canvass in open court confirms Defendant understood the nature of his  
13 plea and the deal he made. Recorder's Transcript of Hearing: Possible Motion to Sever,  
14 filed 8/19/21 ("Transcript"). After his counsel read the terms of the deal into the record,  
15 Defendant agreed that he "accurately state[d] the substance, that is the primary and most  
16 important terms of the negotiations with the State." Transcript at 2-3. He said his  
17 attorney read the entire GPA to him and discussed the charges. Transcript at 4. In his  
18 own words, he stated he was in court that day "pleading guilty to a count of robbery,  
19 burglary, conspiracy to commit robbery." Transcript at 6. He agreed he had ample  
20 opportunity to discuss his case with his attorney, as well as possible defenses or  
21 strategies. Transcript at 7. The Court explained the constitutional protections available  
22 to Defendant, who acknowledged he understood the rights he gave up in order to plead  
23 guilty. Transcript at 7-8.

24 The Court allowed Defendant to speak in private with his attorney when he had  
25 questions:

26 THE DEFENDANT: That's where I don't understand you  
27 because -- can I talk to my attorney?

28 THE COURT: All right. Do you have the number?

MR. BASSETT: Yep.

1 THE COURT: Okay, we'll go ahead and have him give you a  
2 call.

3 [Proceeding ended at 2:36 p.m.]

4 [Proceeding resumed at 3:02 p.m.]

5 THE COURT: All right. Mr. Morgan, are you still there?

6 THE DEFENDANT: Yes, sir.

7 Transcript at 5, 18.

8 Considering the possibility of a much longer sentence if he had gone to trial on  
9 all eighteen felonies as a habitual criminal, Defendant cannot now argue that but for his  
10 attorney's conduct, he would have chosen to go to trial. Defendant has suffered no  
11 prejudice that would excuse his not bringing his substantive claims up on direct appeal,  
12 as a favorable deal that avoided trial has always been his goal.

#### 13 **b. The Plea Was Voluntary**

14 According to Defendant's GPA, Defendant acknowledged that he was entering  
15 his plea voluntarily:

#### 16 VOLUNTARINESS OF PLEA

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

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

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

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

26 I believe that pleading guilty and accepting this plea bargain is in  
27 my best interest, and that a trial would be contrary to my best  
28 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.

I am not now under the influence of any intoxicating liquor, a  
controlled substance or other drug which would in any manner



1           impair my ability to comprehend or understand this agreement or  
the proceedings surrounding my entry of this plea.

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

4           GPA at 5-6. Defendant's claims to the contrary are belied by the GPA itself.

5           The plea canvass also underscores the voluntariness of Defendant's plea.

6           THE COURT: All right. And you do this knowingly, willingly  
7           and voluntarily?

8           THE DEFENDANT: Yes, sir.

9           Transcript at 15.

10          THE COURT: All right. Since you -- since you acknowledge that  
11          you are in fact guilty as charged, since you know your right to  
12          trial, what the maximum possible punishment is, since you're  
13          voluntarily pleading guilty, I will conditionally accept your  
14          guilty plea. It's the finding of court, the defendant is fully  
15          competent and capable of entering an informed plea. The plea of  
16          guilty is knowing and voluntary supported by an independent  
17          basis in fact containing the essential elements of the offense  
18          charged.

19          Transcript at 21-22.

20          Defendant cannot demonstrate good cause or prejudice and, therefore,  
21          Defendant's substantive claims are waived and must be denied. Defendant cannot  
22          demonstrate that, but for counsel's alleged failure to explain the consequences of the  
23          plea, he would not have signed the plea and would have instead elected to go to trial.

24          Defendant entered his plea knowingly and voluntarily. Transcript at 15. No  
25          manifest injustice will occur from holding defendant to his side of the bargain he made  
26          with the State. See Baal, 106 Nev. at 72, 787 P.2d at 394. That he now has buyer's  
27          remorse is an issue he can take up in a habeas petition.

28          As such, Defendant's Motion must be denied.

**B. Defendant received effective assistance of counsel**

          The majority of Defendant's claims related to an alleged ineffective assistance of  
counsel. Because his counsel was effective and because the results for Defendant would

1 not have changed if his counsel had acted differently, Defendant cannot demonstrate an  
2 entitlement to relief. Defendant's claims of ineffectiveness fail because the decision to  
3 enter a guilty plea waived these challenges and that decision belonged to Defendant.  
4 Rhyne, 118 Nev. at 8, 38 P.3d at 167. Further, Defendant was actually satisfied with his  
5 attorney. Transcript at 7.

6 The Sixth Amendment to the United States Constitution provides that, "[i]n all  
7 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of  
8 Counsel for his defense." The United States Supreme Court has long recognized that  
9 "the right to counsel is the right to the effective assistance of counsel." Strickland, 466  
10 U.S. at 686, 104 S. Ct. at 2063; see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d  
11 322, 323 (1993).

12 To prevail on a claim of ineffective assistance of trial counsel, a defendant must  
13 prove he was denied "reasonably effective assistance" of counsel by satisfying the two-  
14 prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109  
15 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first  
16 that his counsel's representation fell below an objective standard of reasonableness, and  
17 second, that but for counsel's errors, there is a reasonable probability that the result of  
18 the proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065,  
19 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505  
20 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding  
21 an ineffective assistance claim to approach the inquiry in the same order or even to  
22 address both components of the inquiry if the defendant makes an insufficient showing  
23 on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

24 The court begins with the presumption of effectiveness and then must determine  
25 whether the defendant has demonstrated by a preponderance of the evidence that  
26 counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004).

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1 “Effective counsel does not mean errorless counsel, but rather counsel whose  
2 assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal  
3 cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

4 Counsel cannot be ineffective for failing to make futile objections or arguments.  
5 See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has  
6 the “immediate and ultimate responsibility of deciding if and when to object, which  
7 witnesses, if any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8,  
8 38 P.3d 163, 167 (2002).

9 Based on the above law, the role of a court in considering allegations of  
10 ineffective assistance of counsel is “not to pass upon the merits of the action not taken  
11 but to determine whether, under the particular facts and circumstances of the case, trial  
12 counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.  
13 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should  
14 “second guess reasoned choices between trial tactics nor does it mean that defense  
15 counsel, to protect himself against allegations of inadequacy, must make every  
16 conceivable motion no matter how remote the possibilities are of success.” Id. To be  
17 effective, the constitution “does not require that counsel do what is impossible or  
18 unethical. If there is no bona fide defense to the charge, counsel cannot create one and  
19 may disserve the interests of his client by attempting a useless charade.” United States  
20 v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

21 “There are countless ways to provide effective assistance in any given case. Even  
22 the best criminal defense attorneys would not defend a particular client in the same  
23 way.” Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel  
24 after thoroughly investigating the plausible options are almost unchallengeable.”  
25 Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State,  
26 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the

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1 reasonableness of counsel's challenged conduct on the facts of the particular case,  
2 viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at  
3 2066.

4 Even if a defendant can demonstrate that his counsel's representation fell below  
5 an objective standard of reasonableness, he must still demonstrate prejudice and show  
6 a reasonable probability that, but for counsel's errors, the result of the trial would have  
7 been different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999)  
8 (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a  
9 probability sufficient to undermine confidence in the outcome." Id. (citing Strickland,  
10 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

11 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove  
12 the disputed factual allegations underlying his ineffective-assistance claim by a  
13 preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33  
14 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition  
15 for post-conviction relief must be supported with specific factual allegations, which if  
16 true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225.  
17 "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by  
18 the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific  
19 facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather  
20 than just conclusions may cause your petition to be dismissed." (emphasis added).

21 Defendant's contention that his attorney made him promises not reflected on the  
22 record is belied in the GPA itself, where Defendant stated, "I am signing this agreement  
23 voluntarily, after consultation with my attorney, and I am not acting under duress or  
24 coercion or by virtue of any promises of leniency, except for those set forth in this  
25 agreement." Motion at 2; GPA at 5-6.

26 Defendant reiterated in the plea canvass that all promises made to him were  
27 incorporated in the plea agreement he signed knowingly and voluntarily. The Court  
28 asked if defense counsel had read all the important terms of the agreement in open court:

1 THE COURT: And did he accurately state the substance, that is  
2 the primary and the most important terms of the negotiations with  
3 the State?

4 THE DEFENDANT: Yes, sir.

5 Transcript at 3.

6 Next, the Court determined if Defendant pled guilty out of fear:

7 THE COURT: Now, has anyone threatened you or forced you to  
8 be plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anyone told you if you do not plead guilty,  
11 some other adverse action will be taken against you?

12 THE DEFENDANT: No, sir.

13 Transcript at 13-14.

14  
15 Finally, the Court asked if any other promises had been made. The Court pointed  
16 out that sentencing was up to the judge, not the attorneys, and that Defendant would not  
17 be able to withdraw his plea if he were unsatisfied with his sentence:

18 THE COURT: Now, has anyone made any promise to you other  
19 than what's set forth in the plea agreement to induce you or cause  
20 you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand that any request,  
23 recommendation or stipulation of sentence, made by or agreed  
24 by your attorney, or an attorney for the State is not binding on  
25 the Court and that you might on the basis of your guilty plea  
26 receive a more severe sentence than that requested,  
27 recommended or stipulated?

28 THE DEFENDANT: Yes, sir.

//

1 THE COURT: Do you understand that, if that was to happen, *you*  
2 *would not have the right to withdraw your guilty plea?*

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Other than what's set forth in the plea agreement,  
5 has anyone made any prediction or promise to you as to what  
6 your sentence will be?

7 THE DEFENDANT: No, sir.

8  
9 Transcript at 15-16 (emphasis added). Defendant's allegations of unfulfilled promises  
10 is belied by the record.

11 Defendant's contention he did not receive the physical discovery, Motion at 3, is  
12 belied by the record where his attorney in open court and in the defendant's presence  
13 said he had given discovery to his client and needed more time to review it with him  
14 because the material was so extensive:

15 MR. BASSETT: I turned over a copy of the physical discovery I handed  
16 to him today which is the first time he's had the chance to look over it.  
17 We just -- we just haven't had time to prepare for a trial that's going  
forward in a week because at NDOC I have no ready access to him.

18 Recorder's Transcript of Hearing: Initial Arraignment: Superseding Indictment;  
19 Calendar Call on January 14, 2020, filed 3/12/20, at 4. His co-defendant's attorney  
20 clarified the material for the court:

21 MR. RUGGEROLI: Its multiple compact discs that have surveillance  
22 or video footage. There's a great deal that the State provided us, this is  
23 multiple events. ... the State was very diligent in giving me the  
materials, but there's just a lot.

24  
25 Recorder's Transcript of Hearing: Initial Arraignment: Superseding Indictment;  
26 Calendar Call on January 14, 2020, filed 3/12/20, at 6.

27 Defendant next alleges a competent attorney would have developed a meaningful  
28 defense strategy for trial even though he never intended to allow his case to proceed to

1 trial. Motion at 3. He asserts a competent attorney would have discovered exonerating  
2 evidence despite the actual facts of the case. Motion at 2. He claims his case needed a  
3 full investigation and a panoply of expert witnesses. Motion at 2. Defendant does not  
4 say how a trial strategy would have aided his plea negotiations, what a full investigation  
5 would have revealed, what expert witness might have aided his cause, or what  
6 exonerating evidence might potentially exist. Defendant fails to show what a better  
7 investigation would have shown. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538  
8 (2004). These conclusory allegations do not fulfill the specificity requirements of NRS  
9 34.735 and are ripe for summary dismissal under Hargrove.

10 Defendant also categorically states his attorney filed no motions on his behalf.  
11 Motion at 3. This is belied by the court's records, which show defense counsel opposed  
12 the State's motion to admit bad acts. Defendant's Opposition to State's Motion to Admit  
13 Prior Bad Acts, filed 3/4/20. The same day, counsel filed a Motion to Sever Co-  
14 Defendants. Despite the Court and the State's desire to try the two co-defendants  
15 together, counsel was eventually successful in severing their trials. Defendant fails to  
16 allege what other motions his counsel should have filed. This claim is both conclusory  
17 and belied by the record.

18 These equivocal allegations do not comply with the mandates of NRS 34.735 for  
19 a habeas petition. Defendant's claims are bare and naked assertions. Further, he entered  
20 into his plea agreement knowingly and voluntarily. Accordingly, Defendant's claims  
21 are suitable only for summary denial pursuant to Hargrove.

22 //

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1 CONCLUSION

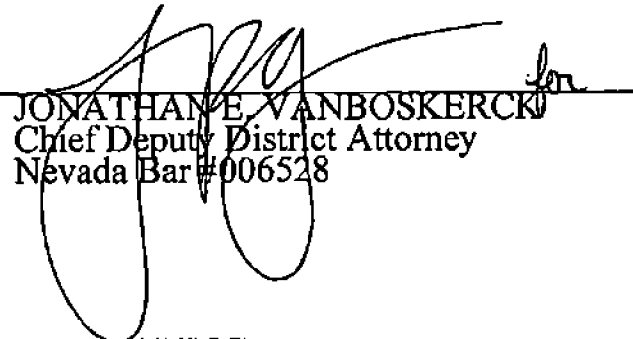
2 For the above reasons, the State respectfully requests that this Court deny  
3 Defendant's Motion to Withdraw Plea.

4 DATED this 24 day of August, 2021.

5 Respectfully submitted,

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

9 BY

  
10 JONATHAN E. VANBOSKERCK  
11 Chief Deputy District Attorney  
12 Nevada Bar #006528

13 CERTIFICATE OF MAILING

14  
15 I hereby certify that service of the above and foregoing was made this 24 day  
16 of August, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17  
18 GREGORY DELLO MORGAN, #1196223  
19 SDCC  
20 P.O. BOX 208  
21 INDIAN SPRINGS, NV, 89070-0208

22  
23  
24 BY



25 Secretary for the District Attorney's Office  
26  
27  
28

19F21141A/sr/JV/ckb/L4





1 AIND  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 CHAD N. LEXIS  
6 Chief Deputy District Attorney  
7 Nevada Bar #010391  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

CASE NO: C-19-344461-1

11 -vs-

DEPT NO: XX

12 GREGORY DELLO MORGAN,  
13 #2752270

14 Defendant(s).

SECOND AMENDED  
SUPERSEDING  
INDICTMENT

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

18 The Defendant(s) above named, GREGORY DELLO MORGAN, accused by the Clark  
19 County Grand Jury of the crime(s) of **CONSPIRACY TO COMMIT ROBBERY (Category**  
20 **B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY (Category B Felony - NRS**  
21 **200.380 - NOC 50137) and BURGLARY (Category B Felony - NRS 205.060 - NOC**  
22 **50424)**, committed at and within the County of Clark, State of Nevada, on or between July 4,  
23 2019 and September 24, 2019, as follows:

24 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

25 Defendant did on or between September 20, 2019 and September 24, 2019, willfully,  
26 unlawfully, and feloniously conspire with ANDRE GRANT SNIPES to commit a robbery, by  
27 the defendants committing the acts as set forth in Count 2, said acts being incorporated by this  
28 reference as though fully set forth herein.

1 COUNT 2 - ROBBERY

2 Defendant did on or about September 20, 2019, willfully, unlawfully, and feloniously  
3 take personal property, to wit: merchandise, from the person of BRYAN LAWS, or in his  
4 presence, and on or about September 24, 2019, willfully, unlawfully, and feloniously take  
5 personal property, to wit: merchandise, from the person of ABREGO ALDEN, or in his  
6 presence, without the consent and against the will of BRYAN LAWS and ABREGO ALDEN,  
7 by means of force or violence or fear of injury, immediate or future, to their person, the person  
8 of a member of their family, or of anyone in their company at the time of the robbery, defendant  
9 using force or fear to obtain or retain possession of the property, to prevent or overcome  
10 resistance to the taking of the property, and/or to facilitate escape, the Defendant(s) being  
11 criminally liable under one or more of the following principles of criminal liability, to wit: (1)  
12 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
13 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
14 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
15 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
16 Defendant and ANDRE SNIPES aiding or abetting and/or conspiring by Defendant and  
17 ANDRE SNIPES acting in concert throughout.

18 COUNT 3 - BURGLARY

19 Defendant GREGORY MORGAN did on or between July 4, 2019 and October 2, 2019,  
20 willfully, unlawfully, and feloniously enter various buildings, on or about July 4, 2019, owned  
21 or occupied by NIKE, located at 9851 South Eastern Avenue, and on or about September 20,  
22 2019, FOOTLOCKER, located at 3200 South Las Vegas Boulevard, and on or about  
23 September 24, 2019, CHAMPS SPORTS, located at 3200 South Las Vegas Boulevard, and on  
24 or about September 29, 2019, FOOTLOCKER, located at 2120 Festival Plaza Drive, and on  
25 or about October 2, 2019, NIKE, located at 9851 South Eastern Avenue, Las Vegas, Clark  
26 County, Nevada, with intent to commit larceny, the Defendant(s) being criminally liable under  
27 one or more of the following principles of criminal liability, to wit: (1) by directly committing  
28 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that

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

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

8  
9 BY 

10 CHAD N. LEXIS  
Chief Deputy District Attorney  
Nevada Bar #010391

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27 LVMPD EV# 190900115154;  
190900095652; 191099999927  
28 (TK9)



1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE #: C-19-344461-1

10 vs.

DEPT. XX

11 GREGORY DELLO MORGAN,  
12 Defendant.

13  
14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE  
15 THURSDAY, NOVEMBER 05, 2020

16 **RECORDER'S CORRECTED TRANSCRIPT OF HEARING:**  
17 **POSSIBLE MOTION TO SEVER**

18 APPEARANCES:

19 For the State:

CHAD N. LEXIS  
Chief Deputy District Attorney  
LAURA ROSE-GOODMAN  
Deputy District Attorney

22 For the Defendant:

ALEXANDER BASSETT  
Deputy Public Defender

23  
24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Thursday, November 05, 2020, at 2:17 p.m.]

2

3 THE COURT: State of Nevada versus Gregory Morgan, case  
4 number C344461. Counsel, please note your appearances for the  
5 record.

6 MR. LEXIS: Chad Lexis for the State.

7 MR. BASSETT: Alex Bassett for the Defense.

8 THE COURT: All right.

9 MR. BASSETT: Your Honor, I did e-file the signed guilty plea  
10 agreement a couple hours ago.

11 THE COURT: Okay, give me a second.

12 MR. BASSETT: Sure.

13 [Brief pause in proceeding]

14 THE COURT: Mr. Morgan --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: -- I want you to listen carefully because in a  
17 second, I'm going to ask your attorney to state the substance of your  
18 negotiations with the State. By that, I mean the primary or the most  
19 important terms of your negotiations. I want you to listen carefully  
20 because when he's done, I'm going to ask you if you heard what he said  
21 and if he accurately stated the substance of your negotiations with the  
22 State. Will you do that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Go ahead, Mr. Bassett.

25 MR. BASSETT: Yes, Your Honor. Today, Mr. Morgan is

1 going to be pleading guilty to three felony counts: (1) conspiracy to  
2 commit robbery; one count of robbery; one count of burglary. Both  
3 parties agreed to stipulate as to the sentences in that case. Specifically  
4 on Count 1, conspiracy to commit robbery, they were to stipulate to 24 to  
5 60 months NDOC; on Count 2, robbery, agreed to stipulate to 36 to 120  
6 months, and on Count 3, the burglary, were to stipulate to 24 to 60  
7 months; all in the Nevada Department of Corrections.

8                   It is agreed that Count 2 and Count 1 will run  
9 consecutive, and Count 3 will run concurrent with Count 1. So an  
10 aggregate -- that will be a total of five to 15 --

11               THE COURT: All right.

12               MR. BASSETT: -- and the remaining 13 felonies will be  
13 dismissed.

14               THE COURT: Mr. Morgan, did you just hear your attorney go  
15 through the substance of your negotiations with the State?

16               THE DEFENDANT: Yes, sir.

17               THE COURT: And did he accurately state the substance, that  
18 is the primary and the most important terms of the negotiations with the  
19 State?

20               THE DEFENDANT: Yes, sir.

21               THE COURT: All right. Let me ask you, do you read, write  
22 and understand the English language?

23               THE DEFENDANT: Yes, sir.

24               THE COURT: Now, have you received or have read to you a  
25 copy of the amended -- second amended superseding indictment, which

1 charges you in one count with conspiracy to commit robbery, a category  
2 B felony, in violation of Nevada Revised Statute 200.389 and 193.480,  
3 and one count with robbery, a category B felony, in violation of Nevada  
4 Revised Statute 200.380, and in one count of burglary, a category B  
5 felony, in violation of Nevada Revised Statute 205.060?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Which is it? Did you receive a copy of it? Or  
8 was it read to you?

9 THE DEFENDANT: It was read to me.

10 MR. BASSETT: We only received the guilty plea agreement  
11 yesterday, so --

12 THE COURT: I'm not criticizing --

13 MR. BASSETT: No, I --

14 THE COURT: I just want to make sure we're having a clear  
15 record here.

16 MR. BASSETT: Yes, yes.

17 THE COURT: And, Mr. Bassett, do you confirm for the record  
18 that it was read to your client?

19 MR. BASSETT: Yes, Your Honor.

20 THE COURT: All right.

21 MR. BASSETT: I spoke with him last night and this morning.

22 THE COURT: All right. Now, have you discussed with your  
23 attorney the charges in the indictment to which you intend to plead  
24 guilty?

25 THE DEFENDANT: Yes, sir.

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**