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IN THE SUPREME COURT OF THE STATE OF NEVADA

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LAILONI MORRISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Case No. 40097

FILED

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APPELLANT'S REPLY BRIEF

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FACTUAL MATTERS

The State in its Statement of the Case makes reference that MORRISON, Ashley Bennett and Anthony Gantt were charged by way of Information with murder. (Ans. Br. p. 1) This is a little misleading as originally these three along with Antwan Graves, Jermaine Webb, and Louis Matthews had been charged in Justice Court by Criminal Complaint. (1 APP 1-3) It was the change of story from Pam Neal that resulted in only the three defendants being bound over to District Court and thus named in the Information. Her obvious story change showed that her testimony was inherently irreliable.

The State incorrectly informed this Court the incident started when the individuals were attending a funeral for Mark Doyle. (Ans. Br. p. 2) The actual event was a gathering at Mark Doyle's house who had been killed the day before not at a funeral. (2 APP 24) The State also incorrectly indicates that the group was "turned away" by security guards and decided to take a different route to the Hunt house. (Ans. Br. p. 2) According to Wayne Gantt they had just run into security and had turned around going back where they came from. (2 APP 30)

The State misstates Gantt's testimony further by stating that he testified that MORRISON fired first which prompted at least two others to start firing. (Ans. Br. p. 2) The testimony of Gantt was that T Wak (Graves) fired first and that then others fired. (2 APP 33) Likewise, without citation to the record the State misrepresents that when MORRISON "started

to fire, Doughboy attempted to turn and run away." (Ans. Br. p. 2) There is nothing in Gantt's testimony that supports this factual representation.

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ARGUMENT

I.

THE COURT ERRED IN DENYING MORRISON'S MOTION TO SUPPRESS HIS STATEMENT

The State seems to take the position initially that if a defendant is read his Miranda rights then the statement is voluntary and admissible. Does the State contend that if the police read you the Miranda warning and then beat you with a rubber hose that the statement is admissible? The Stat also mischaracterizes what transpired in the interview room. MORRISON did not answer the detective when asked if he understood his rights and instead Bodnar told him to "go ahead and put 'yes'". (1 APP 35) MORRISON was never asked if he wanted to give a statement or waive his right to remain silent.

The State also implies that the District Court granted the Motion to Suppress for anything after MORRISON asked for a lawyer. On page 78 of the Statement MORRISON asked for a lawyer and a phone call, which was refused and Detective Bodnar remained in the room talking to MORRISON, and began asking more questions. (1 APP 54) The District Court allowed the admission of the statement for 14 more pages before suppressing the last few pages of the statement.

The State cites to State v. McKellips, 118 Nev.Ad.Op. 50, 49 P.3d 655 (2002) in support of its position, however, the case has little relevance to the issue raised by MORRISON. McKellips dealt with the suppression of blood and urine

samples, not with an alleged confession. Further, there was no suppression hearing in the case at bar, but rather the Court reviewed the transcript and videotape of the interrogation. Thus there were no findings of fact made by the District Court to be disturbed on appeal.

MORRISON set forth in substantial detail what occurred during his interrogation in his Opening Brief, most of which the State ignores in its Answering Brief. The most salient point of the interrogation takes place soon after the detectives enter the room and before MORRISON is given his right's card to read. He asks why he is brought to an interview room and why he didn't go to jail. (1 APP 35) Clearly he did not want to give a statement and was invoking his right to remain silent. The detectives totally ignored this request and began the interrogation despite his request not to talk but to go to jail.

The United States Constitution commands that the police not engage in tactics designed to defeat the invocation of a citizen's right to remain silent. Malloy v. Hogan, 378 U.S. 1, 8 (1964); Combs v. Coyle, 205 F.3d 269, 283 (6th Cir. 2000). MORRISON'S repeated requests, even before he asks for a lawyer, are the equivalent of saying he did not want to talk to the police. These requests to stop the questions and be taken to jail fell upon deaf ears.

Based on the totality of the circumstances (Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987)) there can be little

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question that MORRISON'S right to remain silent and right to the assistance of counsel were violated. The only proper result would be to order the entire statement suppressed and to remand the case to District Court for further proceedings.

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II.

THE DISTRICT COURT IMPROPERLY LIMITED THE CROSS-EXAMINATION OF PURPORTED EYEWITNESS PAM NEAL

The State once again has the facts wrong with respect to the claims of MORRISON. The State incorrectly informs the Court, without citation to the record, that "Defendant contended that this belief caused the witness to go to a house where she believed Defendant to be located and shoot into the house." (Ans. Br. p. 9) The actual facts were that witness Pam Neal went to a residence where she believed Antonio Looney (T Loo) lived with a gun because she believed he either was involved or knew who was involved in the homicide of her cousin Eric Bass. (2 APP 5-7) It was later that she learned and believed that MORRISON was involved in the shooting of Bass, and thus her motivation to implicate MORRISON in the case at bar.

The State argues at great length about the admissibility of extrinsic evidence to impeach a witness. MORRISON was not asking to be allowed to introduce extrinsic evidence, but rather to simply be allowed to ask the witness herself about the incident to establish motive to lie and bias toward MORRISON. The cases cited by the State actually support MORRISON'S position. See, e.g., Sherman v. State, 114 Nev. 998, 965 P.2d 903 (1998).

The State is correct that the trial court allowed MORRISON to ask some questions of Neal concerning her arrest and whether

the arrest had to do with Neal trying to find out who had killed her cousin. (2 AA 157-158) Neal admitted that the authorities claimed that she had shot into a building. (2 AA 158) She also admitted that she had testified at the preliminary hearing that she thought MORRISON was involved with her cousin's death. (2 AA 160-161) Having admitted that she was reported to have been charged with the five felonies, MORRISON should have been allowed to complete the cross-examination and show full details of the incident.

The inability to fully and completely impeach Neal deprived MORRISON of Due Process and a fundamentally fair trial, as well as violated his Sixth Amendment right to effective cross-examination. Based thereon his conviction should be reversed.

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III.

IT WAS ERROR TO ADMIT THE PRIOR CONSISTENT STATEMENTS OF WAYNE GANNT

The State correctly informs the Court that NRS 51.035(2)(b) requires that in order to be admissible, a prior consistent statement must have been made at a time when there was no motive on the part of the declarant to fabricate. Daly v. State, 99 Nev. 564, 665 P.2d 798 (1983). Unfortunately the State is unable to argue any facts in support of a contention that Gannt did not have a motive to fabricate when he gave his statement to the police on May 7, 2001. In fact he had every motive in the world to fabricate about his involvement in the murder when he spoke to Detective Bodnar.

At trial the State did not even argue that the statement was admissible because Gannt had no motive to fabricate. Instead the prosecutor argued that because Gannt had subsequently entered into a guilty plea agreement somehow the hearsay rule was no longer applicable. The State also makes the argument that because MORRISON impeached Gannt with his prior inconsistent statements then the prior consistent statements became inadmissible. Such a position is not supported by the plain language of NRS 51.035(2).

MORRISON respectfully urges this Court to find that the prior consistent statement was improperly admitted and was prejudicial to MORRISON and based thereon reverse his conviction.

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IV.

THE COURT ERRED IN DENYING MORRISON'S MOTION FOR MISTRIAL BASED ON THE ADMISSION OF THE OTHER BAD ACT TESTIMONY

The State admits that the statement by Detective Bodnar did indicate a prior bad act but argues that any error was harmless. This is similar to part of the State's argument concerning the prior consistent statement issue. All of this error at some point must be deemed to be reversible error.

None of the exceptions contained in NRS 48.045(2) are applicable to MORRISON'S alleged admission that he was using controlled substances on the date of the incident. The fact that the bad act came from MORRISON'S own statement does not make the testimony admissible. Walker v. State, 112 Nev. 819, 921 P.2d 923 (1996).

This Court must at some point stop the repeated use of improper bad act testimony during trials, especially where the State continually claims it was inadvertent and harmless. Reversal of convictions would cure the problem.

V.

THE COURT ERRED IN GIVING INSTRUCTION NUMBERS 10 AND 11 WHICH DEFINED EXPRESS AND IMPLIED MALICE AND MALICE AFORETHOUGHT

MORRISON respectfully submits this issue based on the arguments and authorities contained in the Opening Brief on file herein.

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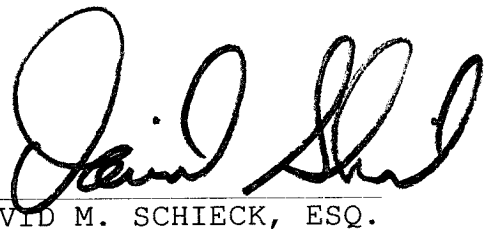
CONCLUSION

Based on the authorities herein contained and in the Opening Brief heretofore filed with the Court, it is respectfully requested that the Court reverse the conviction and sentence of LAILONI MORRISON.

Dated this 16 day of July, 2003.

RESPECTFULLY SUBMITTED:



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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: JULY 16, 2003

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CERTIFICATE OF MAILING

I hereby certify that service of the Appellant's Reply Brief was made this 16 day of July, 2003, by depositing a copy in the U.S. Mail, postage prepaid, addressed to:

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