

1 The State did not present any evidence regarding his specialized knowledge regarding the use of
2 accelerants in fire setting or the behavior of fire when fed or deprived of oxygen.

3 Despite any lack of foundation or basis for an expert qualification, the State elicited the
4 following testimony from Det. McCarthy: "It appears to me through my training and experience
5 that they used some type of accelerant to put inside the car, lit it on fire and the doors were closed,
6 and the windows were found to be up. When that happens obviously there is no oxygen inside the
7 car, it puts the fire out." GJT, pp. 23-24. Testimony of the behavior of chemicals and accelerants
8 as well as the behavior of fire in the presence and absence of oxygen are plainly areas reserved
9 for expert testimony. The State contaminated the grand jury proceeding when it elicited this
10 "expert" opinion without basis or foundation.

11 The prosecutor further compounded the problem when he then vouched for the witness –
12 in an apparent attempt to cure the original problem. The prosecutor then testified: "And in fact
13 you and I have worked several homicide cases where that exact scenario occurs where people
14 attempt to burn something and when you shut the car door you in essence in a short period of time
15 turn out the flames?" The witness complied: "Yes."

16 It is absolutely improper for a prosecuting attorney to use the prestige of the District
17 Attorney's Office to vouch for a witness. Rowland v. State, 188 Nev. 31, 39 (2002). That is
18 exactly what the prosecutor did in this case. He used the force of his office to bestow credibility
19 on the witness, who was clearly testifying outside any area of expertise. This is impermissible.

20 Either the admission of the improper expert testimony or the impermissible vouching,
21 standing alone, would be grounds to dismiss the arson charge. Together, the compounded
22 prejudicial errors absolutely mandate that the arson charge be dismissed.

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V.

**THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUPPORT ANY
OF THE CONSPIRACY COUNTS**

It is a fundamental principle of criminal law that the prosecution must establish the corpus delicti of an offense prior to admission of a defendant's statement or admission. Hooker v. Sheriff, 89 Nev. 89 (1973). "To sustain a conviction of conspiracy there must be *independent* proof of an agreement among two or more persons." Myatt v. State, 101 Nev. 761, 763, 710 P.2d 720, 722 (1985), citing United States v. Todd, 657 F.2d 212, 216 (8th Cir. 1981).

Here, the State has alleged five (5) counts of Conspiracy, including Conspiracy to Commit Murder, Conspiracy to Commit Arson, Conspiracy to Commit Kidnapping, Conspiracy to Commit Robbery, and Conspiracy to Commit Larceny. Aside from confessions of the accused, the State presented absolutely NO evidence of any form of agreement between two or more people. Without such evidence, the five Conspiracy counts cannot stand. Therefore, Counts 2, 4, 6, 8 and 10 should be dismissed.

VI.

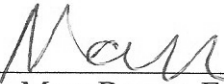
**THE CUMULATIVE ERROR IN THIS CASE COMPELS
DISMISSAL OF THE INDICTMENT**

The errors committed in this grand jury presentment were numerous and serious. They were prejudicial in effect and affected Ms. Henley's substantial rights. The admission of improper "expert" testimony on numerous occasions, the prosecutor's improper vouching for a witness, along with the other listed errors completely tainted the grand jury proceedings. Ms. Henley was deprived of her constitutional right to due process of law. Therefore, the entire Indictment must be dismissed.

1 CONCLUSION

2 For the foregoing reasons the writ must be granted, and the Indictment against
3 Ms. Henley should be dismissed without having to undertake the burden of trial.

4 DATED this 28 day of November, 2016.

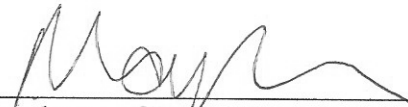
5 
6 _____
7 Mary Brown, Esq.
8 200 Hoover Ave., Suite 130
9 Las Vegas, Nevada 89101
10 (702) 405-0505
11 Attorney for Defendant
12
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CERTIFICATE OF ELECTRONIC SERVICE

I HEREBY CERTIFY THAT on the 28 day of November, 2017, a true and correct copy of the above this Writ of Habeas Corpus was electronically served on the Clark County District Attorney's Offices, at the following address:

Motions@clarkcountyda.com

BROWN LAW OFFICES


Employee of Brown Law Offices

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EXHIBIT 1

STATE'S NOTICE OF INTENT TO SEEK INDICTMENT

TO: DORE R. HENLEY; ANDREW B. HENLEY & JOSE FRANCO
AND/OR YOUR LEGAL COUNSEL: MARY BROWN; ANDREA LUEM & JOHN PARRIS

YOU ARE HEREBY NOTIFIED THAT THE DISTRICT ATTORNEY MAY SEEK AN INDICTMENT AGAINST YOU FOR THE CRIMES OF:

MURDER W/ DEADLY WEAPON; ROBBERY W/ DEADLY WEAPON; CONSPIRACY TO COMMIT ROBBERY; 1ST DEGREE ARSON; 1ST DEGREE KIDNAPPING W/ DEADLY WEAPON; CONSPIRACY TO COMMIT KIDNAPPING; AND SUBSTANTIAL BODILY HARM; GRAND LARCENY AUTO; AND/OR ANY OTHER CHARGES ARISING OUT OF THE INCIDENTS OCCURRING ON OR ABOUT OCTOBER 10, 2017; AGENCY EVENT NUMBERS: LVMPD 17F18527 A/B/C.

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, but who has not been subpoenaed to appear before the Grand Jury, may testify before the Grand Jury if he requests to do so and executes a valid waiver in writing of his constitutional privilege against self-incrimination. Nev. Rev. Stat. 172.241.

You are advised that you may testify before the Grand Jury only if you submit a written request to the District Attorney and include an address where the District Attorney may send a notice of the date, time and place of the scheduled proceeding of the Grand Jury. Nev. Rev. Stat. 172.241.

You are additionally notified that, since the State is seeking to initiate a charge of open or first degree murder against you by indictment, you may request that the court appoint defense counsel for you prior to the commencement of the grand jury proceedings. Upon your request, the district court shall appoint one attorney to serve as defense counsel prior to and during the grand jury proceedings. That attorney would have to possess the qualifications specified in subsection 2(b) of Rule 250.

You have already been appointed counsel in connection with this matter, and a copy of the NOTICE is being served on your counsel as well. You should consult with your counsel to insure that one of your two attorneys possesses the required qualifications.

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, may be accompanied by legal counsel during any appearance before the Grand Jury. The legal counsel who accompanies a person may advise his client, but shall not address directly the members of the Grand Jury, speak in such a manner as to be heard by members of the Grand Jury, or in any other way participate in the proceedings of the Grand Jury. The court or the foreperson of the Grand Jury may have the legal counsel removed if he violates any of these provisions or in any other way disrupts the proceedings of the Grand Jury. Nev. Rev. Stat. 172.239

If you are aware of any evidence which tends to explain away the above crimes, and it is your desire that this evidence be presented to the Grand Jury, then you or your attorney must furnish such evidence to the office of the District Attorney immediately. Responses to testify or present evidence must be addressed to:

DAVID L. STANTON: Clark County District Attorney, 301 CLARK PLACE, 10TH FLOOR Las Vegas, NV89155-2211. TELEPHONE (702) 671-2826/ 671-2830.

THIS IS THE ONLY NOTICE YOU WILL RECEIVE. It is your duty to respond as set forth above. Any response inconsistent with the above directions will be disregarded.

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 23rd day of October, 2017, by David L. Stanton to:

MARY BROWN; ANDREA LUEM & JOHN PARRIS
VIA EMAIL & FAX

By: DAVID L. STANTON
District Attorney's Office

I certify that I received the above State's Notice of Intent To Seek Indictment

EXHIBIT 2

Mary@thelasvegasdefender.com

From: Mary@thelasvegasdefender.com
Sent: Wednesday, October 25, 2017 4:03 PM
To: David Stanton
Cc: michael.karstedt@yahoo.com; jparris@johnparrislaw.com; andrea@luemlaw.com
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

Dear Mr. Stanton,

The Marcum Notice was not served until Monday, October 23, 2017. Pursuant to NRS 172.241, my client has five (5) judicial days to submit a request to testify. According to EJD Rule 1.14, the day of service and court holidays do not count as judicial days. Therefore, my client has until the end of the day on October 31, 2017 to submit a request to testify and to submit exculpatory evidence.

My client has yet to decide whether to testify. We will need every minute of this time, particularly in light of the scant discovery currently provided by the State. If the State attempts to indict my client before that time has run or fails to provide evidence timely submitted by my client, we will seek appropriate remedies through the Court for intentional deprivation of my client's due process rights.

I will contact you shortly with a request for specific discovery. I will need this discovery immediately, so that I can properly advise my client whether to testify before the Grand Jury.

Mary Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130
Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

From: David Stanton <David.Stanton@clarkcountyda.com>
Sent: Wednesday, October 25, 2017 1:53 PM
To: Mary@thelasvegasdefender.com
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

If you are talking about next Wednesday, this case will be presented to the grand jury before that date. If you have any exclamatory evidence you need to provide it to me within the next 48 hours.

From: Mary@thelasvegasdefender.com <mary@thelasvegasdefender.com>
Sent: Wednesday, October 25, 2017 8:51:49 PM
To: David Stanton
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

Thank you. Can I have until Wed to provide exculpatory evidence?

Mary Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130

Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

Las Vegas Criminal Defense Attorney |
Brown Law Offices



www.thelasvegasdefender.com

If you are facing criminal charges, contact our Las Vegas criminal defense lawyers at Brown Law Offices to get the experience of a former Chief Prosecutor on your side.

From: David Stanton <David.Stanton@clarkcounttyda.com>
Sent: Wednesday, October 25, 2017 1:48:54 PM
To: Mary@thelasvegasdefender.com
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

Presentation will be very shortly

From: Mary@thelasvegasdefender.com <mary@thelasvegasdefender.com>
Sent: Wednesday, October 25, 2017 12:39:34 PM
To: John Parris; David Stanton; Andrea Luem
Cc: Stephanie Johnson
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

Thank you. Did we receive a date yet? I will have items that I will request be presented. I will be in touch shortly with specific requests.

Mary D. Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130
Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

Las Vegas Criminal Defense Attorney |
Brown Law Offices



www.thelasvegasdefender.com

If you are facing criminal charges, contact our Las Vegas criminal defense lawyers at Brown Law Offices to get the experience of a former Chief Prosecutor on your side.

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From: John Parris [<mailto:john@kihuenandparris.com>]
Sent: Monday, October 23, 2017 11:25 AM
To: David Stanton <David.Stanton@clarkcountyda.com>; Mary@thelasvegasdefender.com; Andrea Luem <andrea@luemlaw.com>
Cc: Stephanie Johnson <Stephanie.Johnson@clarkcountyda.com>
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

Dave,
Marcum received. We were only given the bare bones of the discovery in Court last week so anything additional would be greatly appreciated. Also, do you have GJ scheduled yet?
Thanks,
John.

From: David Stanton [<mailto:David.Stanton@clarkcountyda.com>]
Sent: Monday, October 23, 2017 10:45 AM
To: mary@thelasvegasdefender.com; Andrea Luem <andrea@luemlaw.com>; John Parris <jparris@johnparrislaw.com>
Cc: Stephanie Johnson <Stephanie.Johnson@clarkcountyda.com>
Subject: Henley, Henley & Franco - 17F18527 A/B/C

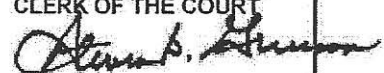
Attached is Marcum notice re: this case. Please reply, via email, of this notice. I will coordinate discovery via this email address as well.

Thank you.

David L. Stanton
Chief Deputy District Attorney

Major Violators Unit
Clark County D.A.s Office
Las Vegas, Nevada 89101
Office: (702) 671-2826
Fax: (702) 477-2974
david.stanton@clarkcountyda.com

EXHIBIT 3



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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DORIE REGINA HENLEY, ANDREW)
BRANDON HENLEY, JOSE MELVIN)
FRANCO,)
)
Defendants.)

GJ No. 17AGJ113A-C
DC No. C327585

Taken at Las Vegas, Nevada
Tuesday, October 31, 2017
1:59 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON OCTOBER 31, 2017
2
3 MORGAN DEVLIN, Foreperson
4 SANDRA MOORE, Deputy Foreperson
12:00 5 RAELYNN CASTANEDA, Secretary
6 JANIS ROGERS, Assistant Secretary
7 MARY ANDERSON
8 DOMINIQUE CARDENAS
9 IVAN CAYLOR
12:00 10 JERRY DIVINCENZO
11 MICHELLE FENDELANDER
12 BOBBI FLORIAN
13 AMY KNUDSON
14 GREGORY KORNILOFF
12:00 15 PATRICIA PRATHER
16 LATANIS WATTS
17 GUSTAVO ZAVALA
18
19 Also present at the request of the Grand Jury:
12:00 20 John Giordani, Chief Deputy District Attorney
21 Jory Scarborough, Deputy District Attorney
22
23
24
25

12:00

1

LAS VEGAS, NEVADA, OCTOBER 31, 2017

2

* * * * *

3

4

DANETTE L. ANTONACCI,

12:00

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MR. GIORDANI: Good afternoon ladies and

01:59

10

gentlemen of the Grand Jury. John Giordani here on

11

behalf of the State of Nevada, also Michael Jory

12

Scarborough. We're here for the continued presentation

13

on the case of State of Nevada versus Dorie Henley,

14

Andrew Henry and Jose Franco, Grand Jury case number

01:59

15

17AGJ113A-C. Are there any members of the Grand Jury

16

who were not present at the last presentation on this

17

case? I'm seeing no hands.

18

With that we will ask you to deliberate at

19

this time. As always if you require any further

01:59

20

instruction on the law prior to returning your bill

21

please let us know. Thank you.

22

(At this time, all persons, other than

23

members of the Grand Jury, exit the room at 1:59 p.m.

24

and return at 2:03 p.m.)

02:03

25

THE FOREPERSON: Mr. District Attorney, by

02:03 1 a voted of 12 or more grand jurors a true bill has been
2 returned against defendants Dorie Henley, Andrew Henley
3 and Jose Franco charging the crimes of murder with use
4 of a deadly weapon, conspiracy to commit murder, third
02:03 5 degree arson, conspiracy to commit third degree arson,
6 first degree kidnapping, conspiracy to commit
7 kidnapping, robbery with use of a deadly weapon,
8 conspiracy to commit robbery, grand larceny auto, and
9 conspiracy to commit larceny, in Grand Jury case number
02:03 10 17AGJ113A-C. We instruct you to prepare an Indictment
11 in conformance with the proposed Indictment previously
12 submitted to us.

13 MR. GIORDANI: Will do. Thank you very
14 much.

02:04 15 (Proceedings concluded.)

16 --oo0oo--
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02:04

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

02:04

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

02:04

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

02:04

15

November 2, 2017.

16

17

/s/ Danette L. Antonacci

18

Danette L. Antonacci, C.C.R. 222

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02:04

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 17AGJ113A-C:

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: NRS 656.250.

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

/s/ Danette L. Antonacci

Signature

11-2-17

Date

Danette L. Antonacci

Print Name

Official Court Reporter

Title

EXHIBIT 4

Dorie Henley - 17F18527A - Notice of Intent to Testify

Mary@thelasvegasdefender.com

Tue 10/31/2017 2:47 PM

To: David Stanton <David.Stanton@clarkcountyda.com>;

Bcc: the-brown-law-offices-ukrVu87rx8@mycasemail.com <the-brown-law-offices-ukrVu87rx8@mycasemail.com>;

Dear Mr. Stanton,

Please allow this to serve as a response to the Notice of Intent to Seek Indictment that was served on my client on or about October 23, 2017. I am hereby putting you on formal notice that in the event you elect to take this case to the Grand Jury my client Dorie Henley is requesting that she be permitted to testify at the grand jury proceedings herein. You may send notice of the date, time and place of that scheduled proceeding to me at this email address.

Your time and attention are greatly appreciated. Please do not hesitate to call with any further questions or comments.

Sincerely,

Mary D. Brown, Esq.

Brown Law Offices

200 Hoover Ave., Suite 130

Las Vegas, NV 89101

(702) 405-0505

www.thelasvegasdefender.com

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EXHIBIT 5

Dorie Henley - 17F18527A - Exculpatory Evidence

Mary@thelasvegasdefender.com

Tue 10/31/2017 3:06 PM

To: David Stanton <David.Stanton@clarkcountyda.com>;

Cc: Andrea Luem <andrea@luemlaw.com>; John Parris <john@kihuenandparris.com>; Michael T Karstedt <michael.karstedt@yahoo.com>;

Bcc: the-brown-law-offices-ukrVu87rx8@mycasemail.com <the-brown-law-offices-ukrVu87rx8@mycasemail.com>;

Dear Mr. Stanton,

I am requesting that the following exculpatory evidence be presented to the Grand Jury:

Evidence of Andrew Henley's felony conviction under District Court case no. C277813

Evidence of any felony convictions for source #1 referenced in the second paragraph of page 2 of the arrest report, who claimed to have spoken to Dorie Henley on October 12, 2017.

Evidence of any felony convictions for source #2 referenced in the third paragraph of page 2 of the arrest report, who claimed to have spoken to Dorie Henley on October 11, 2017.

I would further note that the preliminary hearing is scheduled for tomorrow and no discovery beyond the arrest report has been provided. You previously served a Marcum notice and indicated that you would be going to the grand jury very soon. Therefore, I have to assume that there is substantial discovery in your possession that has not been provided – at least some of which is exculpatory. My client and I are requesting that all discovery in your possession be provided prior to the Grand Jury presentment so my client can exercise her legal rights.

We still stand ready to proceed to preliminary hearing tomorrow.

Mary D. Brown, Esq.

Brown Law Offices

200 Hoover Ave., Suite 130

Las Vegas, NV 89101

(702) 405-0505

www.thelasvegasdefender.com

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EXHIBIT 6

Re: Dorie Henley - 17F18527A - Notice of Intent to Testify

David Stanton <David.Stanton@clarkcountyda.com>

Tue 10/31/2017 2:49 PM

To: Mary@thelastvegasdefender.com <mary@thelastvegasdefender.com>;

She will need to endorse the written waiver of rights per the statute.

From: Mary@thelastvegasdefender.com <mary@thelastvegasdefender.com>

Sent: Tuesday, October 31, 2017 2:46:54 PM

To: David Stanton

Subject: Dorie Henley - 17F18527A - Notice of Intent to Testify

Dear Mr. Stanton,

Please allow this to serve as a response to the Notice of Intent to Seek Indictment that was served on my client on or about October 23, 2017. I am hereby putting you on formal notice that in the event you elect to take this case to the Grand Jury my client Dorie Henley is requesting that she be permitted to testify at the grand jury proceedings herein. You may send notice of the date, time and place of that scheduled proceeding to me at this email address.

Your time and attention are greatly appreciated. Please do not hesitate to call with any further questions or comments.

Sincerely,

Mary D. Brown, Esq.

Brown Law Offices

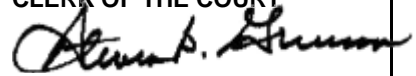
200 Hoover Ave., Suite 130

Las Vegas, NV 89101

(702) 405-0505

www.thelastvegasdefender.com

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1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DAVID STANTON
6 Chief Deputy District Attorney
7 Nevada Bar #003202
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DORIE REGINA HENLEY, #2826387
13 ANDREW BRANDON HENLEY,
14 #2836044
15 JOSE MELVIN FRANCO, #2780519

16 Defendants.

CASE NO: C-17-327585-1

DEPT NO: XXI

17 **STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
18 CORPUS**

19 DATE OF HEARING: 12/12/2017
20 TIME OF HEARING: 9:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through DAVID STANTON, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in Opposition to Defendant's Petition For Writ Of
24 Habeas Corpus.

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

28 ///

///

1 **POINTS AND AUTHORITIES**

2 The “Statement of Facts” by Petitioner is incomplete, out of context and frequently flat
3 wrong. They will be detailed in the arguments set forth below. The Petition is devoid of ANY
4 legal authority to support the unusual claims contained therein.

5 “This court need not consider assignments of error that re not supported by relevant
6 legal authority.” Id. at 498. See also, Cunningham v. State, 94 Nev. 128, 130 (1978)(“we
7 decline to consider appellant’s constitutional challenge to N.R.S. 175.031 because he has
8 failed to cite any relevant authority in support of that argument.”); McKinney v. Sheriff, 93
9 Nev. 70 (1977); Williams v. State, 88 Nev. 164 (1972).

10 “A party filing a motion must also serve and file with it a memorandum of points and
11 authorities in support of each thereof. The absence of such memorandum may be construed
12 either as an admission that the motion is not meritorious and, as cause for its denial or as a
13 waiver of all grounds not so supported.” EJDRCR 3.20(b).

14 Here, for example the Petition proclaims: “Here, the State failed to present any legal
15 evidence regarding cause or manner of death. It is axiomatic that testimony regarding cause
16 and manner of death is the exclusive purview of expert testimony.” Petition, page 11, lns. 6-
17 8. There is no legal authority that supports such a unusual assertion. Cause or manner of death
18 are not elements of a murder offense. Further, the cause and manner of death are not within
19 the “exclusive purview of expert testimony” as will be deiscussed further *infra*.

20 1. RIGHT TO TESTIFY

21 *Marcum* notice can only have meaning if the interpretation contemplates all predicate
22 criteria have been met. This, the State, pursuant to the *Marcum* decision has a minimum
23 number of days prior to obtaining an Indictment. No other logical interpretation of *Marcum*
24 could be had. Thus, the claim that “notice” to the State that Petitioner wanted to testify is
25 insufficient to actually exercise that right. To hold otherwise, would violate the central
26 premise of the *Marcum* decision itself. Thus, the mandatory written waiver of rights must be
27 presented to the State in within the *Marcum* framework. It is uncontroverted that the
28

1 mandatory written waiver was not presented to the State within the *Marcum* timeframe. In
2 fact, it has never been presented to the State.

3 Compounding the error regarding *Marcum* and what constitutes proper “notice,” is
4 Petitioner’s incorrect analysis of the “remedy.” The sole authority relied upon is *Solis-*
5 *Ramirez v. Eighth Judicial District Court*, 112 Nev. 344, 347 (1996) claiming the remedy is
6 “dismissal of the Indictment.” Petition, page 10, lns. 7-8. While the result in that case was
7 dismissal it was based upon the remedy sought in that particular defendant’s motion before
8 the trial court.

9 Understanding that is relief requested instantly, it does equate to the remedy being
10 proper. Relief, to be proper and meaningful, is to afford Petitioner the relief that they are
11 actually complaining of: to wit, the time to testify before the Grand Jury.

12 If notice required to be served upon a person pursuant to subsection 2 is not
13 adequate, the person must be given the opportunity to testify before the grand
14 jury. If the person testifies pursuant to this subsection, the grand jury must be
instructed to deliberate again on all the charges contained in the indictment
following such testimony.

15 N.R.S. 172.241(5).

16 The instant Petition fails to mention, cite to or analyze the prayer for relief in light of
17 the 2015 statutory change after the *Solis* decision.

18 2. SUFFICIENT EVIDENCE OF MURDER

19 Once again without citation to any legal authority, Petitioner complains that the State
20 did not present “any lawful evidence of cause or manner of death.” Petition, page 10, 21-24.
21 Compounding the error further, the Petition incorrectly asserts that Detective McCarthy could
22 not testify to the cause and manner of death.

23 Medical/legal cause and manner of death is not an element of murder. Thus, the
24 complaint that failure to produce competent evidence of same is unavailing. Detective
25 McCarthy, an experienced homicide detective, observed the victim deceased at the scene. He
26 observed multiple injuries that, in his experience, were both fatal and non-fatal in nature.
27 Detective McCarthy’s testimony in this regard was admissible. Petitioner’s argument seem
28 targeted upon the weight one would attach to such an opinion. The complaint that this was

1 “expert medical” testimony is incorrect. Detective McCarthy was not testifying to expert
2 medical opinions, but to his percipient observations as a highly trained homicide detective.
3 This, coupled with the photographs admitted before the grand jury of the injuries to the victim,
4 compromise the competent and admissible evidence establishing the actual elements of murder
5 that a person died by the criminal agency of another.

6 Once again Petitioner complains that: “the State failed to present any medical testimony
7 whatsoever.” The State is unaware of any legal authority that would mandate the presentation
8 of medical testimony under these circumstances, let alone at a jury trial. The testimony was
9 based upon the direct observations of an experienced homicide detective and the
10 corresponding photographs (Grand Jury exhibits 2-21 that are part of the court record in this
11 case) corroborating each and every observation by Detective McCarthy.

12 3. SUFFICIENT EVIDENCE OF KIDNAPING

13 Petitioner’s argument fails to understand the prima facie elements of kidnapping and
14 the applicable law interpreting the offense of kidnaping. Here, the conduct of Petitioner in
15 luring the victim to an isolated area to then, in a coordinated attack, beat, rob and kill him falls
16 within the definition of the plain meaning of the statutory terms of kidnaping. N.R.S.
17 200.310.

18 If that were not enough, the Nevada Supreme Court has, frequently, defined the scope
19 of kidnaping in Nevada. Quoting from a recent decision:

20 Jermaine argues that the State did not present sufficient evidence to convict him
21 of kidnaping. The Due Process Clause of the United States Constitution
22 requires each element that constitutes a crime be proven beyond a reasonable
23 doubt. When reviewing a criminal conviction for sufficiency of the evidence,
24 this court determines whether any rational trier of fact could have found the
25 essential elements of the crime beyond a reasonable doubt when viewing the
26 evidence in the light most favorable to the prosecution. The jury's verdict will
27 not be disturbed on appeal when there is substantial evidence supporting it.

28 ///

1 Under NRS 200.310(1), a person is guilty of first-degree kidnapping if that
2 person willfully "inveigles, [or] entices . . . a person by any means whatsoever .
3 . . . for the purpose of killing the person or inflicting substantial bodily harm upon
4 the person" Here, the record reflects that Ronnie arrived at the home of
5 Ernest and Katrinna and an argument ensued between Ronnie and Ernest. The
6 argument escalated and Ernest eventually walked out the front door of his house.
7 Thereafter, Ronnie allegedly signaled to an unidentified man who shot Ernest.
8 Evidence was presented that this unidentified man was Jermaine. This evidence
9 viewed in the light most favorable to the State suggests that there was a specific
10 plan to lure Ernest outside of the house for Jermaine to have a clear shot at him.
11 Therefore, a rational jury could find that Jermaine had willfully enticed Ernest
12 to leave his house for the purpose of killing him. Jermaine's insufficiency-of-
13 evidence argument has no merit.

14 *Brass v. State*, 128 Nev. 748, 754-55, 291 P.3d 145, 149-50 (2012) (internal citations omitted).

15 4. SUFFICIENT EVIDENCE OF ARSON

16 Once again, Petitioner complains that Detective McCarthy is not an "arson expert."
17 Whether he is or is not is not relevant. He was permitted to testify to his direct observations
18 of the victim's vehicle after it was stolen by Petitioner and the co-defendants in this case and
19 set afire. This was evidenced by the plain and simple facts observable in the photographs
20 before the grand jury that accompanied Detective McCarthy's testimony in this regard.

21 Petitioner asserts, once again without any citation to legal authority: "Testimony of the
22 behavior of chemicals and accelerants as well as the behavior of fire in the presence and
23 absence of oxygen are plainly areas reserved for expert testimony." Petition, page 14, Ins. 7-
24 9.

25 Here, Petitioner cites to (incorrectly cited in Petition as volume 188 of the Nevada
26 Reports) *Rowland v. State*, 118 Nev. 31, 39 (2002). *Rowland* found the State's vouching for
27 material witnesses in their closing arguments to be improper. Comparison to the presentation
28 of Detective McCarthy's case to *Rowland* is patently absurd. No vouching for Detective
29 McCarthy occurred. In fact, the dialogue spoke directly to the foundational aspect of the
30 Detective's experience in fires intentionally set to destroy evidence in a murder investigation.
31 A fact that was described as part of McCarthy's extensive resume as a homicide detective.

32 5. EVIDENCE OF CONSPIRACY

33 Petitioner misstates the law regarding evidence outside the confession of this particular
34 Petitioner. Once the confession was admitted, other evidence corroborating that is admissible

1 to establish the reliability of the confession. Commonly referred to as the outdated and
2 unnecessary “corpus delicti” doctrine. Petitioner cites to *Myatt* to support this portion of her
3 argument.

4 The critical part of that decision is as follows:

5 It is well settled in Nevada that there must be sufficient evidence to establish the
6 *corpus delicti* independent of a defendant's own confessions and admissions. Corroborative evidence need not be sufficient, independent of the statements, to
7 establish the corpus delicti [but must] tend to establish the trustworthiness of the
8 statement . . . and provide substantial independent evidence that the offense has
9 been committed." *United States v. Todd*, 657 F.2d 212, 216 (8th Cir. 1981),
10 quoting *Opper v. United States*, 348 U.S. 84 (1954) and *Smith v. United States*,
348 U.S. 147 (1954). Accordingly, to sustain a conviction of conspiracy there
must be *independent* proof of an agreement among two or more persons. *United*
States v. Todd, at 216.

11 *Myatt v. State*, 101 Nev. 761, 763, 710 P.2d 720, 722 (1985).

12 The corroboration is from the physical evidence at the scene, to include, the photograph
13 of the victim’s pants evidencing the false narrative told to him by Petitioner to lure him to his
14 fatal demise.

15 CONCLUSION

16 The Petition is unsupported by legal authority to support its claims and relief requested.
17 As such, the Petition should be denied in its entirety.

18
19 DATED this _____ 6th _____ day of December, 2017.

20 Respectfully submitted,

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

24 BY /s/ David Stanton
25 DAVID STANTON
26 Chief Deputy District Attorney
27 Nevada Bar #003202
28

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CERTIFICATE OF ELECTRONIC FILING

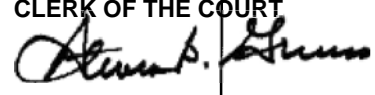
I hereby certify that service of State’s Opposition to Defendant’s Petition For Writ Of Habeas Corpus, was made this 6th day of December, 2017, by Electronic Filing to:

MARY D. BROWN, ESQ.
Mary@TheLasVegasDefender.com

ANDREA LUEM, ESQ.
Andrea@luemlaw.com

BY: /s/ Stephanie Johnson
Employee of the District Attorney’s Office

17F18527A-C/DS/saj/MVU



1 MOT
2 MARY D. BROWN, ESQ.
3 Nevada Bar No. 6947
4 BROWN LAW OFFICES
5 200 Hoover Ave., Suite #130
6 Las Vegas, NV 89101
7 Telephone (702) 405-0505
8 Facsimile (866) 215-8145
9 Mary@TheLasVegasDefender.com
10 *Attorney for Defendant*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 DORIE HENLEY,
14 Defendant.

CASE NO.: C-17-327585-1
DEPT. NO.: XXI

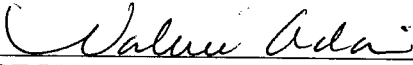
**ORDER ON MOTION TO DISMISS INDICTMENT
OR, IN THE ALTERNATIVE, FOR OWN RECOGNIZANCE RELEASE PENDING
WRIT DUE TO THE STATE'S KNOWING AND INTENTIONAL DEPRIVATION
OF DEFENDANT'S RIGHTS**

19 This matter having come before the Court on November 30, 2017 and December 12, 2017,
20 the Court finds that the Defendant was not provided with an opportunity to testify before the grand
21 jury as required by Marcum v. Sheriff, 105 Nev. 824 (1989) and NRS 172.241(2)(a). The Court
22 finds that the appropriate remedy is for the Defendant to be provided with time to testify before
23 the same grand jury panel as returned the original indictment.
24

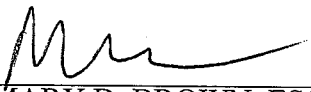
25 Accordingly, IT IS HEREBY ORDERED that the Motion to Dismiss be denied as long as
26 the District Attorney's Office provides Ms. Henley an opportunity to testify before the grand jury
27 *++ at the next scheduled Grand Jury hearing or not*

1 ~~jury~~ on January 2, 2018, which date was agreed upon by the parties. Defendant is to remain in
2 custody on the original indictment until that date.

3
4 DATED this 20 day of December, 2017.

5
6 
7 JUDGE VALERIE ADAIR

8 Submitted by:

9 By 
10 MARY D. BROWN, ESQ.
11 BROWN LAW OFFICES
12 Nevada Bar No. 6947

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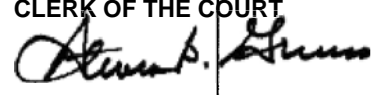
CERTIFICATE OF ELECTRONIC SERVICE

I HEREBY CERTIFY THAT on the 20th day of December, 2017, a true and correct copy of the above this MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE, FOR OWN RECOGNIZANCE RELEASE PENDING WRIT DUE TO STATE’S KNOWING AND INTENTIONAL DEPRIVATION OF DEFENDANT’S RIGHTS was electronically served on the Clark County District Attorney’s Offices and the other parties, at the following address:

Motions@clarkcountyda.com
Andrea@luemlaw.com
John@khuenandparris.com

BROWN LAW OFFICES

/s/ Mary D. Brown
Employee of Brown Law Offices



1 MOT
2 MARY D. BROWN, ESQ.
3 Nevada Bar No. 6947
4 BROWN LAW OFFICES
5 200 Hoover Ave., Suite #130
6 Las Vegas, NV 89101
7 Telephone (702) 405-0505
8 Facsimile (866) 215-8145
9 Mary@TheLasVegasDefender.com
10 Attorney for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

9)
10 THE STATE OF NEVADA,) CASE NO.: C-17-327585-1
11 Plaintiff,)
12 vs.) DEPT. NO.: XXI
13 DORIE HENLEY,)
14 Defendant.)
15)

**ORDER DENYING MOTION TO STAY PROCEEDINGS PENDING WRIT TO
SUPREME COURT ON ORDER ON MOTION TO DISMISS INDICTMENT
OR, IN THE ALTERNATIVE, FOR OWN RECOGNIZANCE RELEASE PENDING
WRIT DUE TO THE STATE'S KNOWING AND INTENTIONAL DEPRIVATION
OF DEFENDANT'S RIGHTS**

20 This matter having come before the Court on November 30, 2017, December 12, 2017, and
21 December 19, 2017, the Court finds that the Defendant does not have a likelihood of prevailing on

22 ///
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28 ///


1 the merits at the Nevada Supreme Court. Therefore,

2 IT IS HEREBY ORDERED that Dorie Henley's oral Motion to Stay is denied.

3
4 DATED this 20 day of December, 2017.

5
6 
7 _____
8 JUDGE VALERIE ADAIR

9 Submitted by:

10 By 
11 _____
12 MARY D. BROWN, ESQ.
13 BROWN LAW OFFICES
14 Nevada Bar No. 6947

1
2 **CERTIFICATE OF ELECTRONIC SERVICE**
3

4 I HEREBY CERTIFY THAT on the 20th day of December, 2017, a true and correct copy
5 of the above this MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE, FOR
6 OWN RECOGNIZANCE RELEASE PENDING WRIT DUE TO STATE'S KNOWING AND
7 INTENTIONAL DEPRIVATION OF DEFENDANT'S RIGHTS was electronically served on the
8 Clark County District Attorney's Offices and the other parties, at the following address:

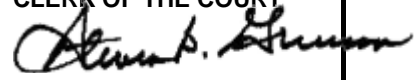
9 Motions@clarkcountyda.com

10 Andrea@luemlaw.com

11 John@khuenandparris.com
12

13 BROWN LAW OFFICES
14

15 /s/ Mary D. Brown
16 Employee of Brown Law Offices
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

12:00 1

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12:00 5

THE STATE OF NEVADA,)

6

Plaintiff,)

7

vs.)

GJ No. 17AGJ113A-C

DC No. C327585

8

DORIE REGINA HENLEY, ANDREW)

BRANDON HENLEY, JOSE MELVIN)

9

FRANCO,)

12:00 10

Defendants.)

11

12

13

Taken at Las Vegas, Nevada

14

Tuesday, October 24, 2017

12:00 15

1:02 p.m.

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19

REPORTER'S TRANSCRIPT OF PROCEEDINGS

12:00 20

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VOLUME 1

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12:00 25

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON OCTOBER 24, 2017

2

3 MORGAN DEVLIN, Foreperson

4 SANDRA MOORE, Deputy Foreperson

12:00 5 RAELYNN CASTANEDA, Secretary

6 JANIS ROGERS, Assistant Secretary

7 MARY ANDERSON

8 DOMINIQUE CARDENAS

9 IVAN CAYLOR

12:00 10 JERRY DIVINCENZO

11 MICHELLE FENDELANDER

12 BOBBI FLORIAN

13 AMY KNUDSON

14 GREGORY KORNILOFF

12:00 15 PATRICIA PRATHER

16 LATANIS WATTS

17 GUSTAVO ZAVALA

18

19 Also present at the request of the Grand Jury:

12:00 20 David Stanton, Chief Deputy District Attorney

21 Jory Scarborough, Deputy District Attorney

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23

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12:00

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INDEX OF WITNESSES

Examined

JASON MCCARTHY

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INDEX OF EXHIBITS

Grand Jury Exhibits Identified

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18 - PHOTOGRAPH	30
19 - PHOTOGRAPH	28
20 - PHOTOGRAPH	24
21 - PHOTOGRAPH	16

12:00

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LAS VEGAS, NEVADA, OCTOBER 24, 2017

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4

DANETTE L. ANTONACCI,

12:00

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MR. STANTON: Good afternoon ladies and

01:02

10

gentlemen. My name is David Stanton and I also have

11

with me -- if you could introduce yourself on the

12

record, Jory.

13

MR. SCARBOROUGH: Jory Scarborough.

14

MR. STANTON: Jory is a deputy district

01:02

15

attorney who is my co-counsel on this case.

16

Ladies and gentlemen, we are going to

17

present to you today a proposed Indictment on three

18

defendants. We are for timing purposes not going to ask

19

you to deliberate today but we'll ask you to deliberate

01:02

20

one week from today so we'd appreciate all of you folks

21

coming back to give us your vote next week.

22

The proposed Indictment against the three

23

defendants are Dorie Henley, Andrew Henley and Jose

24

Franco. They're charged with a number of felony

01:02

25

offenses. Count 1, page 2, murder. That the defendants

01:03 1 willfully, unlawfully and with malice aforethought, kill
2 Jose Juan Garcia-Hernandez, a human being, with a deadly
3 weapon, to-wit: a knife, by stabbing at or into the body
4 of said Jose Juan Garcia-Hernandez.

01:03 5 As a matter of fact, ladies and gentlemen,
6 instead of a knife on line 8, let's use a implement
7 because I'm not sure what the evidence is going to speak
8 as to the weapon. So just note that for now and then
9 we'll see about the testimony.

01:03 10 Said killing having been, and then these
11 are the theories of murder: Number 1, willful,
12 deliberate and premeditated, and then committed as a,
13 during the course of an inherently dangerous felony of
14 which there are two. Item number 2, line 10, during the
01:03 15 commission of a robbery; and line 11, item number 3,
16 committed during the commission of a kidnapping.

17 That the defendants are liable under one of
18 the following principles of criminal liability.
19 Number 1, that they directly committed the crime;
01:04 20 number 2, they aided or abetted in the commission of the
21 crime with the intent that the crime be committed, by
22 counseling, encouraging, hiring, commanding, inducing or
23 otherwise procuring the other to commit the crime;
24 and/or 3, pursuant to a conspiracy to commit this crime
01:04 25 with the intent that this crime be committed, defendants

01:04 1 aiding or abetting and/or conspiring by the defendants
2 acting in concert throughout.

3 You'll see a number of counts in here of
4 conspiracy. The elements are all the same except for
01:04 5 the conspiracy to commit and then kind of a blank spot,
6 fill in the blank of a particular crime. So Count 2 is
7 conspiracy to commit murder. The elements of that
8 offense are that the defendants willfully, unlawfully
9 and feloniously conspired with each other to commit
01:04 10 murder, by the defendants committing the acts as set
11 forth in Count 1.

12 Count 3 is third degree arson. That the
13 defendants willfully, unlawfully, maliciously and
14 feloniously set fire to, burn, or cause to be burned,
01:05 15 unoccupied personal property, to-wit: a 2004 Pontiac
16 Grand Prix -- Grand is misspelled, I apologize for
17 that -- bearing license 870B17, belonging to Jose Juan
18 Garcia-Hernandez, and that was in Clark County, vehicle
19 had a value in excess of \$25, by use of open flame and
01:05 20 flammable and/or combustible materials, and/or by manner
21 or means unknown.

22 Count 4, conspiracy to commit third degree
23 arson. That the defendants willfully, unlawfully and
24 feloniously conspire with each other to commit, that
01:05 25 should be third degree arson on line 2, not first

01:05 1 degree, the defendants committing the acts as set forth
2 in Count 3.

3 Count 5, first degree kidnapping. That the
4 defendants did willfully, unlawfully and feloniously
01:05 5 confine, inveigle, entice or decoy Jose Juan
6 Garcia-Hernandez, a human being, with the intent to hold
7 or detain Jose Juan Garcia-Hernandez against his will,
8 and without his consent, for the purpose of committing
9 murder, robbery, arson and grand larceny auto.

01:06 10 At this point I'm going to have Jory stand
11 up and read to you the legal definition of inveigle
12 which is an element or a part of the element of
13 kidnapping.

14 Jory.

01:06 15 MR. SCARBOROUGH: Okay. Inveigle means to
16 persuade, entice, seduce or to lure a person to do
17 something by means of deception or flattery.

18 MR. STANTON: Once again that's Grand Jury
19 Exhibit Number 2 for your reference.

01:06 20 Count 6, conspiracy to commit kidnapping.
21 Once again it's the same elements before as the other
22 acts of conspiracy, willfully, unlawfully conspiring
23 with each other to commit kidnapping as set forth in
24 Count 5.

01:07 25 Count 7 is a straightforward robbery with

01:07 1 use of a deadly weapon. Willfully, unlawfully and
2 feloniously take personal property, to-wit: a wallet
3 and/or cellular telephone from the person of Jose Juan
4 Garcia-Hernandez -- I'm going to also add in there the
01:07 5 vehicle -- by means of force or violence, or fear of
6 injury to, and without the consent and against the will
7 of Jose Juan Garcia-Hernandez, with use of a deadly
8 weapon. Once again it says a knife on page 3, line 19.
9 I think we should use the word implement at this
01:07 10 juncture. Defendants criminally liable under the theory
11 of robbery by directly committing the crime, number 1,
12 by aiding/abetting, number 2, or number 3, by acting in
13 a conspiracy with one another.

14 Count 8 is the conspiracy to commit
01:07 15 robbery. Same elements as conspiracy and the elements
16 of robbery as set forth in Count 7.

17 And finally grand larceny auto. Willfully,
18 unlawfully, feloniously and intentionally, with the
19 intent to deprive the owner permanently thereof, steal,
01:08 20 take and carry away, drive away or otherwise remove a
21 motor vehicle owned by another person, in this case Jose
22 Juan Garcia-Hernandez, a 2004 Pontiac Grand Prix,
23 bearing Nevada license 870B17, and that they committed
24 this act directly, aiding and abetting one another, or
01:08 25 conspiring.

01:08 1 And finally Count 10, conspiracy to commit
2 larceny. Same elements of conspiracy and the elements
3 of larceny set out in Count 9.

4 As to Count 9 we are going to ask to add
01:08 5 some personal items that are reflected in the robbery
6 and that is a cell phone and a wallet.

7 With that, is there any questions about the
8 elements of the Indictment and the slight modification
9 of some of the verbiage contained therein.

01:09 10 For the record there being no questions,
11 Madame Foreperson, I'm prepared to call my first
12 witness.

13 Detective.

14 THE FOREPERSON: Please raise your right
01:09 15 hand.

16 You do solemnly swear the testimony you are
17 about to give upon the investigation now pending before
18 this Grand Jury shall be the truth, the whole truth, and
19 nothing but the truth, so help you God?

01:09 20 THE WITNESS: I do.

21 THE FOREPERSON: Please be seated.

22 You are advised that you are here today to
23 give testimony in the investigation pertaining to the
24 offenses of murder with use of a deadly weapon,
01:09 25 conspiracy to commit murder, third degree arson,

01:09 1 conspiracy to commit third degree arson, first degree
2 kidnapping, conspiracy to commit kidnapping, robbery
3 with use of a deadly weapon, conspiracy to commit
4 robbery, grand larceny auto, and conspiracy to commit
01:09 5 larceny, involving Dorie Henley, Andrew Henley and Jose
6 Franco.

7 Do you understand this advisement?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please state your first
01:10 10 and last name and spell both for the record.

11 THE WITNESS: First name is Jason,
12 J-A-S-O-N, last name is McCarthy, M-C-C-A-R-T-H-Y.

13 MR. STANTON: May I proceed?

14 THE FOREPERSON: You may.

01:10 15 JASON MCCARTHY,
16 having been first duly sworn by the Foreperson of the
17 Grand Jury to testify to the truth, the whole truth,
18 and nothing but the truth, testified as follows:

01:10 20 EXAMINATION

21
22 BY MR. STANTON:

23 Q. How are you employed?

24 A. I'm employed with the Las Vegas
01:10 25 Metropolitan Police Department currently assigned to the

01:10 1 homicide section, have been employed with the department
2 for 24 years, been in homicide 10.

3 Q. And during the course of 24 years in law
4 enforcement, how many violent death scenes do you think
01:10 5 you've been involved in, in investigating either as the
6 primary homicide detective or in some sort of capacity
7 as a law enforcement official?

8 A. Thousands.

9 Q. And did a significant portion of them
01:10 10 involve injuries dealing with blunt force trauma,
11 beatings either with an implement or not, and to include
12 knives or some sort of sharp cutting instrument?

13 A. Yes, they do.

14 Q. I would like to direct your attention to
01:10 15 the 10th day of October of this year. Did you have
16 occasion on that date to be what's referred in the
17 homicide division as the up team?

18 A. Yes, I was.

19 Q. Does that up team reference that you are
01:11 20 the next team to be called out if a homicide or a
21 suspected homicide occurred?

22 A. That's correct.

23 Q. Did you get called out on that day?

24 A. Yes, I did.

01:11 25 Q. Where did you go?

01:11 1 A. Myself and my partner Detective Gillis, we
2 were called by our supervisor to respond to the area of
3 Cory Street and Soprano. It's in the, off of West
4 Charleston in between Decatur and Jones, a neighborhood
01:11 5 just to the north of there behind a 7-Eleven.

6 Q. Showing you Grand Jury Exhibit Number 17.
7 Do you recognize the physical area depicted in that
8 photograph?

9 A. Yes, I do.

01:11 10 Q. Where are we looking at in this photograph?

11 A. From where that photo was taken you'd be
12 looking north down Soprano. The street that would run
13 to your right as you look at the photo would be Cory
14 Street. There's a block wall just to the left of the
01:11 15 sidewalk. That block wall borders Tiffany apartment
16 complex.

17 Q. And there was a deceased person that's in
18 the foreground of this photograph, although it's a
19 little difficult to see with the lights in the
01:12 20 photograph; is that correct?

21 A. That's correct. In that particular
22 photograph there's an ambulance that's there with their
23 lights on and the, was later to be the victim is behind
24 the ambulance.

01:12 25 Q. And showing you Grand Jury Exhibit

01:12 1 Number 16. Is that kind of how the body appeared when
2 you first arrived at the scene?

3 A. Yes. And this photo is looking to the
4 south on Soprano and it's kind of a cul-de-sac which
01:12 5 leads to the left which would be Cory Street. And this
6 photograph is obviously taken after the ambulance had
7 left.

8 Q. And this is all in Clark County?

9 A. Yes.

01:12 10 Q. Now as you arrive, were you advised that
11 some other personnel, first responders, had been to the
12 scene prior to your arrival?

13 A. That's correct.

14 Q. What had you been advised as far as other
01:12 15 first responders got there before you did?

16 A. We were advised that it initially came out
17 as a medical call. One of our witnesses was going to
18 work, discovered --

19 Q. Just the agencies that responded. So
01:13 20 medical came?

21 A. Medical was first.

22 Q. Who came after medical?

23 A. Medical then notified Metro patrol. Patrol
24 showed up to the scene and then we were notified.

01:13 25 Q. And that sheet that's over the body, were

01:13 1 you advised that someone had put that sheet on top of
2 the body?

3 A. Yes, medical personnel did that.

4 Q. Now what are we looking at in Grand Jury
01:13 5 Exhibit Number 15?

6 A. The victim without the sheet over him.

7 Q. And when you went to the scene, did you
8 notice any obvious injuries to his person?

9 A. I did.

01:13 10 Q. Where anatomically generally were those
11 injuries that you could observe?

12 A. The injuries that I observed, and this is
13 after they removed the sheet, there were some abrasions
14 to his face, his hands, arms, and there was two
01:13 15 significant abrasions to the front of his abdomen.

16 Q. And the abrasions or the injuries to the
17 face appear to be, based upon your training and
18 experience, consistent with blunt force trauma?

19 A. That's correct.

01:14 20 Q. And then there's other injuries that appear
21 to be some sort of stabbing or penetrating wounds with
22 either a knife or some other sharp implement?

23 A. That's correct. And those were the two on
24 the front of his abdomen.

01:14 25 Q. And the abdomen and then later on you were

01:14 1 able to, when the body is moved, see other injuries
2 associated with the implement being used to penetrate
3 the torso area?

4 A. Yes.

01:14 5 Q. We'll get to those in just one second.
6 Were you able during the course of your
7 investigation to determine the identity of the person we
8 see in that previous photograph?

9 A. Yes, we were.

01:14 10 Q. And is that who's now in front of the Grand
11 Jury now in Exhibit 21?

12 A. Yes, it is.

13 Q. What is the victim's name in this case?

14 A. It's Jose Juan Garcia-Hernandez.

01:14 15 Q. And this was a photograph that you were
16 able to obtain and was consistent with the deceased
17 person that you saw at the scene?

18 A. Yes.

01:15 19 Q. Now let me show you Exhibit 14. That's a
20 different angle of the victim?

21 A. Yes, it is.

01:15 22 Q. And it appears that there was some blood
23 letting injuries around his face and also some
24 significant blood off to his left arm area in this
25 photograph?

01:15 1 A. Yes.

2 Q. And his belt is undone?

3 A. Yes.

4 Q. Now there's an item on the right hip, this

01:15 5 white circle. Have you seen that item before?

6 A. Yes.

7 Q. What do you regularly associate that white

8 circle with?

9 A. Those are for medical intervention. When

01:15 10 medical arrives they'll typically pull up the shirt,

11 hook their medical devices to the body to see if there

12 is any signs of life.

13 Q. And now Grand Jury Exhibit 13, we see the

14 right hip a little closer, one of those white patches

01:15 15 you just described, and then a closer area of his belt;

16 is that correct?

17 A. Yes.

18 Q. Now was any wallet, cell phone or other

19 personal effects found on his person?

01:16 20 A. No.

21 Q. Not on it, not around it?

22 A. No.

23 Q. Not in the immediate vicinity?

24 A. No.

01:16 25 Q. Did you ever find a vehicle associated as a

01:16 1 registered owner near him in that parking lot?

2 A. No, we did not.

3 Q. That condition of his belt becomes relevant
4 a little later on in your investigation when you
01:16 5 conducted some interviews; is that correct?

6 A. That is correct.

7 Q. Now I'd like to go to the torso portion and
8 start with Grand Jury Exhibit Number 12. Kind of tell
9 us where we are looking on the victim's body and what
01:16 10 we're looking at based upon your training and
11 experience.

12 A. We're looking at some small abrasions to
13 the middle of the torso in the front of the body and to
14 the left of his torso which we later found out that
01:16 15 those were not penetrating into the abdomen.

16 Q. These two were not the fatal injuries?

17 A. That's correct.

18 Q. Now near the body, Grand Jury Exhibit
19 Number 10, what are we looking at there?

01:17 20 A. This is just to the west of the body. It's
21 a, the sidewalk he was located, Jose was located just
22 off that sidewalk and it's a rock landscaping which
23 appeared to me to be freshly disturbed as if something
24 had happened in that area and the rocks were kicked
01:17 25 around.

01:17 1 Q. And once again ultimately in the interviews
2 of the three suspects in this case, what they told you
3 about what had occurred, this photograph is kind of
4 corroborative of some of that evidence?

01:17 5 A. Yes, it is.

6 Q. And once again could you estimate the
7 distance that that disturbed gravel was from the body of
8 the victim?

9 A. Within three feet.

01:17 10 Q. Now Exhibit 9. It's self-evident
11 anatomically where we're looking at, but what did it
12 mean to you as a homicide detective of 10 plus years, 24
13 years as a law enforcement officer?

14 A. This is very consistent with blunt force
01:18 15 trauma, being in a fistfight or any kind of a fight,
16 being hit in the mouth or in the face area. You'll see
17 that injury a lot with the cut underneath inside the
18 mouth.

19 Q. And then the bruising around the inside of
01:18 20 the lip. And once again you said punching. It also
21 could be kicking or some sort of force applied to the
22 face?

23 A. Yes.

24 Q. And let's go to Exhibit Number 7. I
01:18 25 believe that's the right shoulder. What are we looking

01:18 1 at there?

2 A. Looking at another abrasion caused by a
3 object and it appears to be the same as the abrasions
4 that he has on the front of his torso but that is his
01:18 5 right shoulder.

6 Q. Now let's go to his back and Grand Jury
7 Exhibit Number 6. Were those the fatal injuries?

8 A. Yes, they were.

9 Q. And what internal organs made those
01:18 10 injuries fatal?

11 A. Those went through his abdomen and
12 penetrated his aorta.

13 Q. His aorta?

14 A. Yeah.

01:19 15 Q. And made significant damage to his aorta?

16 A. Yes, which caused a lot of internal
17 bleeding.

18 Q. And once again closeup, Grand Jury
19 Exhibit 8, of those same two injuries?

01:19 20 A. Same injuries.

21 Q. Now these injuries are penetrating
22 injuries; correct?

23 A. Yes.

24 Q. And they're different from incised injuries
01:19 25 where there is a sharp item that runs across the skin.

01:19 1 These are a stabbing or penetrating injury.

2 A. That is correct.

3 Q. Can you tell based upon your training and
4 experience or anything immediately attendant to the
01:19 5 scene what kind of object could have caused that?

6 A. Screwdriver could cause that. Ice pick can
7 cause that.

8 Q. So not necessarily a knife, but it could be
9 an object that, used as a knife that has enough force
01:19 10 and by its design could penetrate a body and cause
11 internal injuries?

12 A. Yes.

13 Q. As you testify here today, do you have any
14 specific facts that would determine with certainty what
01:20 15 implement was used to kill the victim?

16 A. Based --

17 Q. You don't know what the murder weapon is as
18 you testify today, right?

19 A. Just what was told to me in some of the
01:20 20 interviews.

21 Q. Right. But I mean generally speaking from
22 your perspective looking at the injuries and what you
23 were able to glean, there's no knife that was found next
24 to his body or anything like that?

01:20 25 A. No weapon was found next to the body, no.

01:20 1 Q. And Grand Jury Exhibit, I think this is 5,
2 can you tell me what we're looking at there and where
3 that item was found?

4 A. That is the victim's Pontiac.

01:20 5 Q. Where was it found?

6 A. Bruce and Flowmaster, Foremaster I think it
7 is.

8 Q. Is that once again in Clark County?

9 A. In Clark County in the downtown area, yeah.

01:20 10 Q. And how as the crow flies, how far away
11 from the victim's body was this vehicle located?

12 A. I don't know the exact --

13 Q. Approximately.

14 A. It's significant. It's more than I would
01:21 15 say two or three miles away. More on the east side of
16 town.

17 Q. Was the victim the registered owner of that
18 vehicle?

19 A. Yes, he is.

01:21 20 Q. And did it have a license plate of Nevada
21 870B17?

22 A. Yes.

23 Q. And by its appearance, at least before it
24 was damaged as you observed it, did it in your opinion
01:21 25 have a value in excess of \$25?

01:21 1 A. Yes.

2 Q. What was the interior and the exterior as
3 far as what appeared to be recent damage to the vehicle?
4 Can you describe that?

01:21 5 A. On the exterior?

6 Q. Both the exterior and the interior. Just
7 generally as you observed it.

8 A. I know that he had a bumper that was
9 replaced and that was told to us by his roommates.

01:21 10 Q. But how about the obvious damage to the
11 car?

12 A. When we found it?

13 Q. Yes.

14 A. The inside had been burnt or at least there
01:21 15 was an attempt to burn it.

16 Q. And what we see here in Grand Jury
17 Exhibit 4 is the interior passenger compartment?

18 A. Yes.

19 Q. And you said there was an attempt to burn

01:22 20 it. Can you describe, based upon your experience, what
21 it appeared to you to be as far as an attempt to burn it
22 and why it was not fully engulfed in flames?

23 A. It appears to me through my training and
24 experience that they used some type of accelerant to put
01:22 25 inside the car, lit it on fire and the doors were closed

01:22 1 and the windows were found to be up. When that happens
2 obviously there is no oxygen inside the car, it puts the
3 fire out.

4 Q. And in fact you and I have worked several
01:22 5 homicide cases where that exact scenario occurs where
6 people attempt to burn something and when you shut the
7 car door you in essence in a short period of time turn
8 out the flames?

9 A. Yes.

01:22 10 Q. If the vehicle doors had been left open or
11 the windows had been open you would have a much more
12 significant charring and burning effect?

13 A. Yes.

14 Q. Ultimately in this case did you come into
01:23 15 contact with three individuals, the first of which I'm
16 showing you is Grand Jury Exhibit Number 20. Do you
17 recognize who is depicted in that photograph?

18 A. I do.

19 Q. And what is her name?

01:23 20 A. Her name is Dorie Henley.

21 Q. Did you interview Miss Henley for purposes
22 of whether or not she knew anything about this homicide?

23 A. Yes.

24 Q. And did you advise her of her Miranda
01:23 25 warnings prior to the interview?

01:23 1 A. Yes, I did.

2 Q. Did she agree to speak with you?

3 A. Yes, she agreed to speak with me.

4 Q. Can you tell us -- and ladies and

01:23 5 gentlemen, you're going to hear over the next several

6 minutes testimony from Detective McCarthy about the

7 interview of each of the three targets of this

8 Indictment. As a matter of law, and I know you've all

9 been advised of this in other cases but so the record is

01:23 10 clear and that you all once again are reminded. The

11 evidence that you're about to hear from each of three

12 interviews can only be used against the person who is

13 being interviewed. So you cannot use the contents of

14 that interview as we're about to get into the interview

01:24 15 of Miss Henley, you cannot use the contents of what she

16 told Detective McCarthy as tangible evidence for any

17 other suspect other than Miss Henley. Does every member

18 of the Grand Jury understand that legal requirement that

19 we have involving interviews of multiple defendants?

01:24 20 For the record, all members of the Grand

21 Jury are nodding in the affirmative.

22 Once again, Detective, let me pick up with

23 my question. What did Miss Henley tell you about her

24 knowledge, if any, of these events?

01:24 25 A. Miss Henley stated to me that she had known

01:24 1 the victim for a little over a year, probably within two
2 years. She had come up with a plan to meet with the
3 victim the night of the 10th. He wanted, the victim
4 Jose told her that he wanted to go to dinner and
01:24 5 dancing. She met up with him and she took him over to
6 that area because it was close to Dexter Park and she
7 had come up with a plan with others to rob him, take his
8 money cause she knew that he had some money.

9 Q. And what did the victim do for a living?

01:25 10 A. The victim was a construction worker,
11 worked in a construction job and also did side
12 construction jobs as well.

13 Q. And the area that she, Miss Henley
14 described as meeting him, is the exact area where his
01:25 15 body was found?

16 A. That is correct.

17 Q. And then the park is fairly close to that
18 parking lot that we saw where his body was found?

19 A. Yeah, down Soprano Street. Dexter Park is
01:25 20 located there. It just happened to be under
21 construction at the time.

22 Q. So she meets with the victim at the parking
23 lot?

24 A. She meets with him and she tells him to go
01:25 25 over to that area in there in his car which is the white

01:25 1 Pontiac. She states that she's drinking beer with him,
2 being very flirtatious with him, and then notifies
3 others of her location where she and the victim are at.

4 Q. And at some point she's describing to you
01:26 5 that when other people show up she's doing something
6 physical or close to it with the victim at the time
7 inside the car?

8 A. Yeah, she's got her hands in his pockets
9 and being very flirtatious, trying to get his wallet.

01:26 10 Q. Maybe consistent with his belt being
11 undone, something, is that kind of consistent with what
12 she was describing?

13 A. That would be very consistent with that.

14 Q. What does she say, and once again, pursuant
01:26 15 to the rule of Bruton, not to describe any other actors,
16 but what does she describe she observes when other
17 people arrive?

18 A. She says that when other people arrive the
19 victim Jose is confronted and beaten, kicked to the
01:26 20 ground.

21 Q. Did she see anything taken from his person?

22 A. She does not observe any of that.

23 Q. And how does she, Miss Henley, describe
24 leaving the area?

01:26 25 A. She states that she had ran northbound and

01:26 1 was picked up by someone else.

2 Q. And did she describe the vehicle?

3 A. She did.

4 Q. What kind of vehicle did she get picked up
01:27 5 in?

6 A. A red pickup truck.

7 Q. Grand Jury Exhibit Number 3. That red
8 pickup truck, who is the registered owner of that truck?

9 A. That is going to be a female who is
01:27 10 associated as being Andrew Henley's wife.

11 Q. And so Miss Henley describes running from
12 the scene and then being picked up in that red pickup
13 truck?

14 A. That is correct.

01:27 15 Q. Now showing you Grand Jury Exhibit 19. Who
16 is that?

17 A. That is Andrew Henley.

18 Q. What relationship if any does Andrew have
19 with Miss Henley?

01:27 20 A. They are brother and sister.

21 Q. Did you interview him as part of your
22 investigation in this case?

23 A. I did.

24 Q. And after giving him a Miranda admonition
01:27 25 did he agree to speak with you?

01:27 1 A. Yes, he did.

2 Q. What was Mr. Henley's version of events?

3 A. He says he and another person or other
4 people had planned to rob the victim. He was notified
01:28 5 of the victim's location. Him and someone else drove
6 his red truck, parked it on the opposite side of that
7 Tiffany apartment complex and Andrew and someone else
8 walked through the apartment complex, jumped over the
9 wall onto Soprano Street, they then walked down Soprano,
01:28 10 confronted the victim and others. He, other people were
11 involved in beating the victim. He also claims that he
12 was --

13 Q. He describes to you he's observing this
14 beating?

01:28 15 A. Observing it and also he alludes to the
16 fact that he may have participated in that.

17 Q. In the beating?

18 A. In the beating.

19 Q. He's not sure but he may have?

01:28 20 A. That's correct. He observes somebody else
21 remove a wallet and cell phone from the victim, also
22 claims that he observed somebody take his car. He
23 then --

24 Q. This is the victim's white Pontiac?

01:29 25 A. White Pontiac.

01:29 1 Q. Okay.

2 A. He then says that he walks back, jumps back
3 over the wall into the apartment complex where he then
4 gets in his truck.

01:29 5 Q. And once against that's the red pickup
6 truck?

7 A. The red pickup truck.

8 Q. Okay. And finally Grand Jury Exhibit
9 Number 18. Who is this guy?

01:29 10 A. That is Jose Franco.

11 Q. And did you have occasion to interview him
12 as part of the investigation in this case?

13 A. Yes, I did.

14 Q. And did you advise him of his Miranda
01:29 15 warnings prior to the interview?

16 A. Yes, I did.

17 Q. And what was his version of events as he
18 described to you, if any, about his involvement?

19 A. He says that he was down the street with
01:29 20 somebody else near Dexter Park, observed the victim and
21 another person, that he had been drinking, taking Xanax,
22 doesn't remember too much about what the plan was but
23 that there was a plan, and then ultimately says that he
24 and somebody else went down there and they were just
01:30 25 supposed to kick, quote, the victim's ass, unquote, and

01:30 1 that's what happened. He also claims that he was
2 involved in the fighting of the victim.

3 Q. And how did he get away from the scene?

4 A. He says that he just left.

01:30 5 Q. Did any of the three people that you
6 mentioned give any indication to you that they were
7 involved in setting the victim's car on fire?

8 A. Dorie had told us where the vehicle was
9 located.

01:30 10 Q. But no comment that she was involved in
11 actually setting the vehicle on fire?

12 A. No.

13 Q. And the interviews of all three of these
14 individuals, did they occur on the same day?

01:30 15 A. Yes.

16 Q. Do you remember what day that was of their
17 interviews?

18 A. The 15th of October.

19 Q. And as far as Mr. Jose Juan

01:31 20 Garcia-Hernandez, his wallet was never found; correct?

21 A. That's correct.

22 Q. His cell phone was not found?

23 A. That is correct.

24 Q. And his vehicle, while ultimately found,

01:31 25 had no tools or any other trade items that he did with

01:31 1 his employment?

2 A. No.

3 Q. Were you able to find some tools that were
4 associated to the victim?

01:31 5 A. Yes, we were.

6 Q. And how long after the discovery of his
7 body did that come approximately?

8 A. This was all on the 15th, 16th.

9 Q. Of October?

01:31 10 A. Of October, yeah.

11 Q. And where did you physically find the
12 victim's tools?

13 A. It was in an abandoned apartment right next
14 door to Jose Franco's residence.

01:31 15 MR. STANTON: Ladies and gentlemen, I have
16 no further questions of Detective McCarthy and ask if
17 any member of the Grand Jury has any questions?

18 There being no questions, please listen to
19 the admonishment, Detective.

01:31 20 THE FOREPERSON: By law, these proceedings
21 are secret and you are prohibited from disclosing to
22 anyone anything that has transpired before us, including
23 evidence and statements presented to the Grand Jury, any
24 event occurring or statement made in the presence of the
01:31 25 Grand Jury, and information obtained by the Grand Jury.

01:31 1 Failure to comply with this admonition is a
2 gross misdemeanor punishable up to 364 days in the Clark
3 County Detention Center and a \$2,000 fine. In addition,
4 you may be held in contempt of court punishable by an
01:31 5 additional \$500 fine and 25 days in the Clark County
6 Detention Center.

7 Do you understand this admonition?

8 THE WITNESS: Yes, I do.

9 THE FOREPERSON: Thank you. You're
01:32 10 excused.

11 THE WITNESS: Thank you, ladies and
12 gentlemen, for your time.

13 A JUROR: Thank you.

14 MR. STANTON: So ladies and gentlemen, that
01:32 15 will conclude my factual and evidentiary presentation to
16 you. I will be back on the 31st, one week from today,
17 to ask you formally to deliberate on the matter. I
18 appreciate your time and attention and I'll see you next
19 Tuesday. Thank you.

01:32 20 (Proceedings adjourned, to reconvene on
21 Tuesday, October 31, 2017.)

22 --oo0oo--

23

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01:32

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REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

01:32

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

01:32

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

01:32

15

October 30, 2017.

16

17

/s/ Danette L. Antonacci

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19

Danette L. Antonacci, C.C.R. 222

01:32

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01:32

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AFFIRMATION

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Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
17AGJ113A-C:

01:32

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8

X Does not contain the social security number of any
person,

9

01:32

10

-OR-

11

 Contains the social security number of a person as
required by:

12

13

A. A specific state or federal law, to-
wit: NRS 656.250.

14

-OR-

01:32

15

16

B. For the administration of a public program
or for an application for a federal or
state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

10-30-17

Date

01:32

20

21

Danette L. Antonacci

Print Name

22

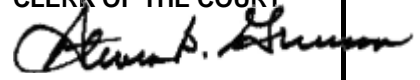
23

Official Court Reporter

Title

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25



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

12:00 1

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12:00 5

THE STATE OF NEVADA,)

6

Plaintiff,)

7

vs.)

GJ No. 17AGJ113A-C

DC No. C327585

8

DORIE REGINA HENLEY, ANDREW)

BRANDON HENLEY, JOSE MELVIN)

9

FRANCO,)

12:00 10

Defendants.)

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Taken at Las Vegas, Nevada

14

Tuesday, October 31, 2017

12:00 15

1:59 p.m.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

12:00 20

21

VOLUME 2

22

23

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12:00 25

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON OCTOBER 31, 2017

2

3 MORGAN DEVLIN, Foreperson

4 SANDRA MOORE, Deputy Foreperson

12:00 5 RAELYNN CASTANEDA, Secretary

6 JANIS ROGERS, Assistant Secretary

7 MARY ANDERSON

8 DOMINIQUE CARDENAS

9 IVAN CAYLOR

12:00 10 JERRY DIVINCENZO

11 MICHELLE FENDELANDER

12 BOBBI FLORIAN

13 AMY KNUDSON

14 GREGORY KORNILOFF

12:00 15 PATRICIA PRATHER

16 LATANIS WATTS

17 GUSTAVO ZAVALA

18

19 Also present at the request of the Grand Jury:

12:00 20 John Giordani, Chief Deputy District Attorney

21 Jory Scarborough, Deputy District Attorney

22

23

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12:00 1 LAS VEGAS, NEVADA, OCTOBER 31, 2017

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4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully

6 and accurately transcribe the following

7 proceedings to the best of her ability.

8

9 MR. GIORDANI: Good afternoon ladies and

01:59 10 gentlemen of the Grand Jury. John Giordani here on

11 behalf of the State of Nevada, also Michael Jory

12 Scarborough. We're here for the continued presentation

13 on the case of State of Nevada versus Dorie Henley,

14 Andrew Henry and Jose Franco, Grand Jury case number

01:59 15 17AGJ113A-C. Are there any members of the Grand Jury

16 who were not present at the last presentation on this

17 case? I'm seeing no hands.

18 With that we will ask you to deliberate at

19 this time. As always if you require any further

01:59 20 instruction on the law prior to returning your bill

21 please let us know. Thank you.

22 (At this time, all persons, other than

23 members of the Grand Jury, exit the room at 1:59 p.m.

24 and return at 2:03 p.m.)

02:03 25 THE FOREPERSON: Mr. District Attorney, by

02:03 1 a voted of 12 or more grand jurors a true bill has been
2 returned against defendants Dorie Henley, Andrew Henley
3 and Jose Franco charging the crimes of murder with use
4 of a deadly weapon, conspiracy to commit murder, third
02:03 5 degree arson, conspiracy to commit third degree arson,
6 first degree kidnapping, conspiracy to commit
7 kidnapping, robbery with use of a deadly weapon,
8 conspiracy to commit robbery, grand larceny auto, and
9 conspiracy to commit larceny, in Grand Jury case number
02:03 10 17AGJ113A-C. We instruct you to prepare an Indictment
11 in conformance with the proposed Indictment previously
12 submitted to us.

13 MR. GIORDANI: Will do. Thank you very
14 much.

02:04 15 (Proceedings concluded.)

16 --oo0oo--

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)

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COUNTY OF CLARK)

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I, Danette L. Antonacci, C.C.R. 222, do

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Dated at Las Vegas, Nevada,

02:04

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November 2, 2017.

16

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/s/ Danette L. Antonacci

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Danette L. Antonacci, C.C.R. 222

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 17AGJ113A-C:

X 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: NRS 656.250.

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

/s/ Danette L. Antonacci

11-2-17

Signature

Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

1 **POINTS AND AUTHORITIES**

2 The instant motion fails to address the simple and clear statutory language that
3 addresses this issue. The legislative use of the conjunctive “and” clearly establishes that the
4 instant Motion is without merit and should be denied in its entirety. N.R.S. 172.241(2)(a-b).

5 2. A district attorney or a peace officer shall serve reasonable notice upon a
6 person whose indictment is being considered by a grand jury unless the court
7 determines that adequate cause exists to withhold notice. The notice is adequate
8 if it:

9 (a) Is given to the person, the person’s attorney of record or an
10 attorney who claims to represent the person and gives the person
11 not less than 5 judicial days to submit a request to testify to the
12 district attorney; and

13 (b) Advises the person that the person may testify before the grand
14 jury only if the person submits a written request to the district
15 attorney and includes an address where the district attorney may
16 send a notice of the date, time and place of the scheduled
17 proceeding of the grand jury.

18 Nev. Rev. Stat. Ann. § 172.241.

19 Counsel cannot seek to extend the time *Marcum* requires. The exercise of one’s rights
20 to testify before the Grand Jury mandates certain important procedural requirements.
21 Petitioner failed to satisfy those requirements.

22 The Nevada Supreme Court held:

23 In conclusion, we are unwilling to expand the rights of grand jury targets
24 beyond those expressly provided by statute. Although appellants assert they seek
25 only “notice,” what they truly seek is limited pre-indictment discovery. The
26 conduct in which appellants are alleged to have engaged, although occurring at
27 different times and locations, is virtually identical. Appellants have been notified
28 of the crimes for which they are being investigated, the manner in which it is
alleged those crimes were perpetrated, and of the several locations and the
general time frame in which the crimes allegedly took place. We conclude that
this is all that “notice” requires in this context. We are not unsympathetic to
grand jury targets who are faced with numerous charges and who cannot obtain
exact and specific information of the sort which appellants seek here. This
dilemma, however, only surfaces because the Nevada legislature has chosen to
extend the right to testify to grand jury targets, a grant of grace that it was not
constitutionally required to make. Finally, the exceptions to the notice
requirement set forth in Nevada's statute and in the ABA Model Grand Jury Act
provide strong evidence that the right to testify is a conditional and limited right.
See NRS 172.241(2) and (3); American Bar Association, *ABA Model Grand
Jury Act*, § 102, cmt. at 22-23 (1982).

Gordon v. Ponticello, 110 Nev. 1015, 1020-1021, 879 P.2d 741, 744 - 745 (1994).

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CONCLUSION

Based upon the foregoing points and authorities, the State respectfully requests that this Court DENY Defendant’s motion.

DATED this 16th day of November, 2017.

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

BY /s/ David Stanton
DAVID STANTON
Chief Deputy District Attorney
Nevada Bar #003202

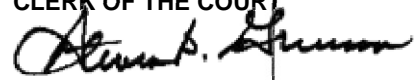
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State’s Opposition to Defendant’s Motion For Own Recognizance Release/Setting Reasonable Bail, was made this 16th day of November, 2017, by Electronic Filing to:

MARY D. BROWN, ESQ.
Mary@TheLasVegasDefender.com

BY: /s/ Stephanie Johnson
Employee of the District Attorney’s Office

17F18527A/saj/MVU



1 **WRIT**
MARY D. BROWN, ESQ.
2 Nevada Bar No. 6947
BROWN LAW OFFICES
3 200 Hoover Ave., Suite 130
Las Vegas, Nevada 89101
4 Telephone: (702) 405-0505
Facsimile: (866) 215-8145
5 Mary@TheLasVegasDefender.com
Attorney for Petitioner

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 In the Matter of the Application of,)
9)
10 DORIE HENLEY) CASE NO.: C-17-327585-1
11 for a Writ of Habeas Corpus.) DEPT. NO.: XXI
12)

13 **PETITION FOR WRIT OF HABEAS CORPUS**

14 TO: The Honorable Judge Valerie Adair of the Eighth Judicial District Court of
15 The State of Nevada, in and for the County of Clark

16 The Petition of DORIE HENLEY submitted by MARY D. BROWN, as attorney for the
17 above-captioned individual, respectfully affirms:

- 18 1. That she is a duly qualified, practicing and licensed attorney in the City of Las
19 Vegas, County of Clark, State of Nevada.
- 20 2. That Petitioner makes application for a Writ of Habeas Corpus; that the place
21 where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his
22 liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and
restrained is Joe Lombardo, Sheriff.
- 23 3. That the imprisonment and restraint of said Petitioner is unlawful in that the State
24 failed to prove that Ms. Henley committed the offenses of Murder with use of a Deadly Weapon,
Conspiracy to Commit Murder, Third Degree Arson, Conspiracy to Commit Arson, First Degree

1 Kidnapping, Conspiracy to Commit Kidnapping, Robbery with Use of a Deadly Weapon,
2 Conspiracy to Commit Robbery, Grand Larceny Auto and Conspiracy to Commit Larceny –
3 Counts One through Ten.

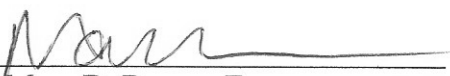
4 4. That Petitioner waives his right to be brought to trial within 60 days, but only to
5 the extent necessary to accommodate a hearing and decision on the instant writ.

6 5. That Petitioner consents that if Petition is not decided within 15 days before the
7 date set for trial, the Court may, without notice of hearing, continue the trial to a date designated
8 by the Court.

9 6. That Petitioner personally authorized his aforementioned attorney to commence
10 this action.

11 WHEREFORE, Petitioner prays that this Honorable Court make an order directing
12 the County of Clark to issue a Writ of Habeas Corpus directed to the said Joe Lombardo, Sheriff,
13 commanding him to bring the Petitioner before your Honor, and return the cause of his
14 imprisonment.

15 DATED this 28 day of November, 2017.

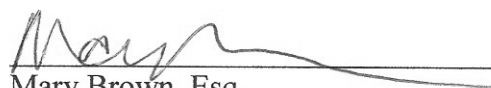
16 By: 
17 Mary D. Brown, Esq.
18 200 Hoover Ave., Suite 130
19 Las Vegas, Nevada 89101
20 (702) 405-0505
21 Attorney for Defendant
22
23
24

1 NOTICE OF HEARING

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on the 12 day of Dec., 2017, at 09:30 am a.m. in
5 Department No. XXI, Eighth Judicial District Court.

6 DATED this 28 day of November, 2017.

7
8 
9 Mary Brown, Esq.
10 200 Hoover Ave., Suite 130
11 Las Vegas, Nevada 89101
12 (702) 405-0505
13 Attorney for Defendant
14
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1 DECLARATION


2
3 MARY D. BROWN makes the following declaration:

4 1. I am an attorney duly licensed to practice law in the State of Nevada; I have
5 been appointed to represent the Defendant in the instant matter, and I am familiar with the facts
6 and circumstances of this case.

7 2. That I am the attorney of record for Petitioner in the above matter; that I
8 have read the foregoing Petition, know the contents thereof, and that the same is true of my own
9 knowledge, except for those matters therein stated on information and belief, and as to those
10 matters, I believe them to be true; that Petitioner, DORIE HENLEY, personally authorizes me to
11 commence this Writ of Habeas Corpus action.

12 I declare under penalty of perjury that the foregoing is true and correct to the best
13 of my information and belief. (NRS 53.045).

14 EXECUTED this 28 day of November, 2017.

15
16 By: 
17 Mary D. Brown, Esq.
18 200 Hoover Ave., Suite 130
19 Las Vegas, Nevada 89101
20 (702) 405-0505
21 Attorney for Defendant
22
23
24

1 Exhibit 3. Less than an hour later, on October 31, 2017 at 2:47 p.m., defense counsel timely
2 provided formal notice to the State that Ms. Henley intended to testify. Exhibit 4. Ms. Henley
3 also submitted specific requests that certain exculpatory information be provided to the Grand
4 Jury. Exhibit 5. At 2:59, after the grand jury already returned its True Bill, the prosecutor
5 coyly responded: "She will need to endorse the written waiver of rights per the statute." Exhibit
6 6. Counsel for Ms. Henley (who had not been advised that the True Bill had already been
7 returned) responded that she would timely provide a waiver.

8 Ms. Henley was not provided an opportunity to testify. The requested exculpatory
9 evidence was not presented. Instead, the indictment was returned on November 1, 2017. At the
10 time of the return, Counsel requested that the indictment be dismissed and/or that a summons
11 issue and/or that Ms. Henley be granted an OR release. Judge Gonzalez indicated that any such
12 request should be placed in writing. A written motion was filed in front of Judge Douglas
13 Herndon, who deferred its decision to the trial court.

14 Defendant was arraigned on November 7, 2017. A not guilty plea was entered, and the
15 matter was transferred to this court for trial setting. This writ follows.

16 STATEMENT OF FACTS

17 A grand jury proceeding was held on October 24, 2017, at which one witness testified.
18 That witness was Detective Jason McCarthy. The relevant evidence adduced at the grand jury
19 proceeding is as follows:

20 Jason McCarthy is a homicide detective with the Las Vegas Metropolitan Police
21 Department. He has been employed with Metro for twenty-four (24) years and has been a
22 homicide detective for ten (10) years. Det. McCarthy claimed to have involved in "thousands"
23 of violent death scenes, a significant portion of which involved blunt force trauma. Grand Jury
24 Transcript, p. 12:1-13.

1 On October 10, 2017, Det. McCarthy and his partner Det. Gillis were called out to the
2 area of Cory St. and Soprano. GJT, 13:1-3. There, they observed a deceased person who was
3 subsequently identified as Jose Juan Garcia-Hernandez. Det. McCarthy observed abrasions to
4 Garcia-Hernandez's face, arms, hands, and abdomen. GJT, p. 15:13-15. Det. McCarthy
5 testified that the two injuries to the abdomen were "stabbing or penetrating" injuries. GJT, p.
6 15:20-24. Det. McCarthy later contradicted himself stating that the two abrasions to the
7 abdomen were not penetrating wounds. He also testified, without foundation or support, that
8 these injuries were not the fatal injuries. GJT, p. 18:12-17. Notably, Det. McCarthy did not at
9 any time testify to examining the wounds or being present when a coroner examined the
10 wounds. He also never testified to having any medical training whatsoever.

11 Despite a complete lack of evidence or testimony regarding any medical knowledge,
12 training or experience, Det. McCarthy blithely testified that a photo admitted by the State as
13 being of "the fatal injuries." Det. McCarthy testified that the "injury" purportedly went through
14 the abdomen and penetrated the aorta. Det. McCarthy went on to testify that the injury caused
15 "significant damage" to the aorta and "caused a lot of internal bleeding." GJT, p. 20:7-17. Not
16 to be constrained, Det. McCarthy went further to testify - without qualification or explanation -
17 that the wounds depicted were "stabbing or penetrating injury" and that they were different
18 from incised injuries. GJT, pp. 20:21-21:2. Det. McCarthy additionally speculated (without
19 foundation) that a screwdriver or ice pick could have caused the injury. GJT, p. 21:3-7.

20 Garcia-Hernandez's vehicle was subsequently found at the intersection of Bruce and
21 Foremaster Ln., which was two or three miles from where Garcia-Hernandez was found. It
22 appeared that someone tried to burn the interior of the vehicle. GJT, pg. 23:14-15. Despite not
23 presenting any evidence whatsoever related to fire investigation, Det. McCarthy then testified
24 that "through [his] training and experience that they used some type of accelerant to put inside

1 the car, lit it on fire and the doors were closed and the windows were found to be up. When that
2 happens obviously there is no oxygen inside the car, it puts the fire out.” GJT, pp. 23:23-24:3.

3 The prosecutor, apparently aware of the dearth of testimony regarding expertise, then
4 interjected and began testifying himself and vouching for the witness: “And in fact you and I
5 have worked several homicide cases where that exact scenario occurs where people attempt to
6 burn something and when you shut the car door you in essence in a short period of time turn out
7 the flames?” The witness responded “Yes.” GJT, p. 24:4-9.

8 The State also introduced the purported statement of Ms. Henley. According to Det.
9 McCarthy, Ms. Henley told him that she knew Garcia-Hernandez. Ms. Henley reportedly
10 planned with others to rob Garcia-Hernandez and subsequently agreed to meet up with him.
11 Det. McCarthy testified that Ms. Henley admitted being very flirtatious with Garcia-Hernandez.
12 She tried to get his wallet. At that point, other people arrived and beat and kicked him to the
13 ground. Ms. Henley ran and was unaware of what happened after she fled. GJT, p. 25:1-27:25.
14 Ms. Henley later told Detectives where to find Garcia-Hernandez’s car. GJT, p. 31:8-9.

15 ARGUMENT

16 To establish probable cause to bind a defendant over for trial, the State must demonstrate
17 that (1) a crime has been committed and (2) the defendant committed the crime. NRS § 171.206;
18 *Jones v. Sheriff*, 93 Nev. 297, 565 P.2d 325 (1977). The standard of review for a pretrial habeas
19 challenge to the sufficiency of the evidence is that the State has the burden of showing “slight or
20 marginal” evidence that a crime has been committed and that the defendant committed the crime.
21 *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 179 (1980). A writ of habeas corpus will not
22 be denied if there is a showing of a lack of probable cause that a crime was committed and that
23 the defendant committed the crime. *In re Rowland*, 74 Nev. 215, 218, 326 P.2d 1102, 1103
24 (1958).

I.

THE INDICTMENT MUST BE DISMISSED BECAUSE THE STATE WILFULLY AND INTENTIONALLY VIOLATED PETITIONER'S DUE PROCESS RIGHTS

The prosecutor in this case knowingly and intentionally violated Ms. Henley's right to Marcum notice. Therefore, the Indictment must be dismissed. Pursuant to NRS 172.241(2), a prosecutor is required to provide reasonable notice to persons against whom he or she seeks and indictment. See also, Marcum v. Sheriff, 105 Nev. 824 (1989). The purpose of the notice requirement is to ensure that the defendant has an opportunity to testify before the grand jury. Id. Notice is considered "adequate" if it "gives the person not less than 5 judicial days to submit a request to testify to the district attorney ..." NRS 172.241(2)(a). "Without proper notice, the right to testify would be meaningless." Solis-Ramirez v. Eighth Judicial District Court, 112 Nev. 344, 347 (1996).

Pursuant to Eighth Judicial District Court Rule 1.14, the day upon which notice is served does not count as a judicial day. Also, since the time frame was less than eleven (11) days, intermediate Saturdays, Sundays and court holidays cannot be included as judicial days.

Here, the Notice of Intent to Seek Indictment was served on October 23, 2017. October 27, 2017 was a court holiday, October 28, 2017 was a Saturday and October 29, 2017 was a Sunday. Therefore, the time to provide notice of an intent to testify or to present exculpatory evidence did not run until October 31, 2017.

Counsel for Defendant Dorie Henley gave the State notice well in advance that she may exercise her right to testify and request that exculpatory information be presented. Counsel further informed the State that she needed all the available time to make that determination. Despite being placed on notice, the prosecutor in this case returned the indictment before Defendant's time had run for Defendant to serve her notice of intent to testify or request the presentation of exculpatory evidence. Defense counsel subsequently timely notified the State

1 that she intended to testify at the Grand Jury. At the same time, she requested that items of
2 exculpatory evidence be presented to the grand jury. Neither request was honored. In fact, the
3 prosecutor in this case – apparently viewing the exercise of a defendant’s due process rights as a
4 mere game – coyly emailed to counsel that he was waiting on Petitioner’s waiver of rights when
5 in fact he had already returned the true bill.

6 As discussed above, the entire purpose of the notice requirement is to allow the
7 defendant an opportunity to testify before the grand jury. A right must have a remedy. In this
8 case, the remedy is a dismissal of the Indictment. See, Solis-Ramirez, supra. Ms. Henley is
9 being illegally detained. Based on the foregoing, counsel respectfully requests that the
10 indictment be immediately dismissed.

11 **II.**

12 **THE STATE FAILED TO PRESENT SUFFICIENT LEGAL EVIDENCE**
13 **THAT PETITIONER COMMITTED THE OFFENSE OF MURDER**
14 **WITH USE OF A DEADLY WEAPON**

15 The State failed to present sufficient evidence that Petitioner committed the offense of
16 Murder with a Deadly Weapon. Murder is defined as: “Murder is the unlawful killing of a human
17 being ... [w]ith malice aforethought, either express or implied.” NRS 200.010. NRS 200.0.20
18 defines malice as: “Express malice is that deliberate intention unlawfully to take away the life of
19 a fellow creature, which is manifested by external circumstances capable of proof. ... Malice shall
20 be implied when no considerable provocation appears, or when all the circumstances of the killing
21 show an abandoned and malignant heart.”

22 Here, the State did not present any lawful evidence of cause or manner of death of Garcia-
23 Hernandez. The State did not call the coroner to testify. The State did not present a certified
24 death certificate. The State did not lay a foundation from which Detective McCarthy could give
expert medical testimony regarding cause or manner of death.

1 “The grand jury can receive none but legal evidence, and the best evidence in degree, to
2 the exclusion of hearsay or secondary evidence.” NRS 172.135. If scientific, technical or other
3 specialized knowledge will assist the trier of fact to understand the evidence or to determine a
4 fact in issue, **a witness qualified as an expert** by special knowledge, skill, experience, training
5 or education may testify **to matters within the scope of such knowledge**. NRS 50.275.

6 Here, the State failed to present any legal evidence regarding cause or manner of death. It
7 is axiomatic that testimony regarding cause and manner of death is the exclusive purview of expert
8 testimony. However, the State failed to present any medical testimony whatsoever. The
9 prosecutor in this case simply attempted to bootstrap Det. McCarthy’s generic and unexplained
10 experience as a homicide investigator into an unsubstantiated expert medical opinion.

11 The only foundation laid at all regarding Det. McCarthy’s experience was that he
12 reportedly investigated “thousands” of violent death scenes and that a “significant portion” of
13 those deaths involved blunt force trauma. GJT, p. 12. Det. McCarthy did not testify regarding
14 any medical experience; nor did he testify to any experience whatsoever in determination of fatal
15 vs. non-fatal wounds. The witness did not testify to examining the wound himself or being present
16 at the time the wound was examined. Therefore, he was not qualified to give an expert opinion
17 regarding cause or manner of death.

18 Nevertheless, Det. McCarthy then went on to identify wounds as “penetrating” and “non-
19 penetrating.” He also characterized wounds as “lethal” and “non-lethal.” GJT 18. Without any
20 foundation whatsoever, Det. McCarthy even opined that one of these “fatal injuries” went through
21 his abdomen and penetrated the aorta, causing “a lot of internal bleeding.” GJT, p. 20. Det.
22 McCarthy’s testimony was the functional equivalent of a “trust me, I’m an expert” - with a wink
23 and a nod - but no showing whatsoever of any expertise in the field at issue. This is exactly the
24 type of misleading improper expert testimony which is barred.

1 Here, the State failed to properly establish the cause or manner of death. Instead, they
2 infected the grand jury proceedings with improper expert testimony, which was unlawful and
3 unduly prejudicial. Because the State failed to present lawful evidence necessary to support the
4 charge Murder with use of a Deadly Weapon, Count I must be dismissed.

5 **III.**

6 **THE STATE FAILED TO PRESENT SUFFICIENT LAWFUL EVIDENCE TO**
7 **SUPPORT THE CHARGE OF FIRST-DEGREE KIDNAPPING WITH USE OF A**
8 **DEADLY WEAPON**

9 The State failed to present sufficient evidence to support a charge of First-Degree
10 Kidnapping. Kidnapping is defined under Nevada law as follows:

11 A person who willfully seizes, confines, inveigles, entices, decoys, abducts,
12 conceals, kidnaps or carries away a person by any means whatsoever with the
13 intent to hold or detain, or who holds or detains, the person for ransom, or reward,
14 or for the purpose of committing sexual assault, extortion or robbery upon or
15 from the person, or for the purpose of killing the person or inflicting substantial
bodily harm upon the person, or to exact from relatives, friends, or any other
person any money or valuable thing for the return or disposition of the kidnapped
person ... is guilty of kidnapping in the first degree which is a category A
felony.”

16 NRS 200.310. Count 5 of the Indictment in this case alleges that the Petitioner “did
17 willfully, unlawfully and feloniously, confine, inveigle, entice or decoy Jose Juan
18 Garcia-Hernandez, a human being, **with the intent to hold or detain** Jose Juan Garcia-
19 Hernandez **against his will**, and **without his consent**, for the purpose of committing
20 Murder, Arson, and Grand Larceny.” (Emphasis added).

21 The State failed to present any evidence at all to establish that Petitioner held or
22 detained Garcia-Hernandez or that she intended to do so. The evidence, even viewed in
23 the light most favorable to the State, could only support a finding that Garcia-Hernandez
24 acted of his own free will and that he engaged in a mutually flirtatious encounter with

1 Petitioner. Garcia-Hernandez voluntarily went with Petitioner. There was no element
2 of compelling or forcible asportation. Further, there was no evidence that Petitioner
3 intended to hold or detain Garcia-Hernandez. In fact, quite the contrary. The State failed
4 to present evidence to support the elements of Kidnapping. Therefore, the charge must
5 be dismissed.

6 IV.

7 **THE STATE FAILED TO PRESENT SUFFICIENT LAWFUL EVIDENCE TO**
8 **SUPPORT THE CHARGE OF ARSON**

9 The State failed to present sufficient legal evidence to support the charge of Arson. NRS
10 205.020(1) defines Arson as “A person who willfully and maliciously sets fire to or burns or
11 causes to be burned, or who aids, counsels or procures the burning of ... [a]ny unoccupied
12 personal property of another which has the value of \$25 or more ...” The indictment in this case
13 charges Petitioner: “did willfully, unlawfully, maliciously and feloniously set fire to, burn, and/or
14 cause to be burned, unoccupied personal property, ... having a value of \$25.00 or more by use of
15 open flame and flammable and/or combustible materials, and/or by manner and means unknown.”

16 As discussed above, “the grand jury can receive none but legal evidence, and the best
17 evidence in degree, to the exclusion of hearsay or secondary evidence.” NRS 172.135. If
18 scientific, technical or other specialized knowledge will assist the trier of fact to understand the
19 evidence or to determine a fact in issue, **a witness qualified as an expert** by special knowledge,
20 skill, experience, training or education may testify **to matters within the scope of such**
21 **knowledge**. NRS 50.275.

22 Here, the State again sought to admit improper expert opinion without proper foundation.
23 The State did not qualify Det. McCarthy as an expert in arson investigations. They did not present
24 evidence of any specialized knowledge, training and experience possessed by Det. McCarthy.

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 DORIE REGINA HENLEY,

4 Petitioner,

5 v.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, COUNTY OF CLARK,
9 THE HONORABLE VALERIE
10 ADAIR, DISTRICT COURT JUDGE,

11 Respondents,

12 THE STATE OF NEVADA,
13 Real Party in Interest.

Supreme Court No. _____

District Court No: C-17-92738-0

Electronically Filed
Dec 27 2017 09:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

14 **APPELLANT'S APPENDIX**

15 MARY D. BROWN, ESQ
16 BROWN LAW OFFICES, CHTD.
17 Nevada Bar No. 6240
18 200 Hoover Ave., Suite 130
19 Las Vegas, Nevada 89101
20 Telephone: (702) 405-0505
21 Facsimile: (866) 215-8145
22 Mary@thelasvegasdefender.com

23 Attorney for Petitioner,
24 DORIE REGINA HENLEY

ADAM P. LAXALT
NEVADA ATTORNEY GENERAL
Nevada Bar No. 12426
100 North Carson Street
Carson City, Nevada 89701-4717
(775)

Counsel for Respondents

APPELLANT’S APPENDIX

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PLEADING **PAGE NO.**

Information.....001-005

Motion to Dismiss Indictment or, in the Alternative, for Own
Recognizance Release Pending Writ Due to the State’s Knowing
and Intentional Deprivation of Defendant’s Rights006-029

State’s Opposition to Defendant’s Motion for Own
Recognizance Release/Setting Reasonable Bail030-032

Petition for Writ of Habeas Corpus033-069

State’s Opposition to Defendant’s Petition for Writ of Habeas Corpus.....070-076

Order on Motion to Dismiss Indictment or, in the Alternative,
for Own Recognizance Release Pending Writ Due to the State’s
Knowing and Intentional Deprivation of Defendant’s Rights077-079

Order Denying Motion to Stay Proceedings Pending Writ to
Supreme Court on Order on Motion to Dismiss Indictment
or, in the Alternative, for Own Recognizance Release Pending
Writ Due to the State’s Knowing and Intentional Deprivation
of Defendant’s Rights080-082

TRANSCRIPT

Reporter’s Transcript of Proceedings, October 24, 2017083-117

Reporter’s Transcript of Proceedings, October 31, 2017 118-23

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true copy of this Petition for Appellant’s Appendix
3 was served on Steven B. Wolfson, Real Party in Interest, through his deputy David
4 L. Stanton, this 26th day of December 2017.
5

6 I further certify that a true and correct copy of this Appellant’s Appendix
7 was served on Respondent, the Honorable Valerie Adair, District Court Judge, on
8 this 26th day of December 2017.

9 I further certify that that a true and correct copy of this Appellant’s
10 Appendix was filed electronically with the Nevada Supreme Court on December
11 26, 2017. Electronic Service of the foregoing document shall be made in
12 accordance with the Master Service List as follows:
13

14 ADAM P. LAXALT
15 Nevada Attorney General

16 DAVID L. STANTON
17 Chief Deputy District Attorney

18 MARY D. BROWN
19 Counsel for Petitioner

20 By: /s/ Mary D. Brown
21 An employee of Brown Law Offices, Chtd.
22
23
24

ORIGINAL

1 IND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DAVID STANTON
6 Chief Deputy District Attorney
7 Nevada Bar #003202
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

NOV 01 2017

BY 
DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-327585-1

11 -vs-

DEPT NO: III

12 DORIE REGINA HENLEY,
13 #2826387
14 ANDREW BRANDON HENLEY,
15 #2836044
16 JOSE MELVIN FRANCO, #2780519

INDICTMENT

15 Defendant(s).

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

18 The Defendant(s) above named, DORIE REGINA HENLEY, ANDREW BRANDON
19 HENLEY and JOSE MELVIN FRANCO, accused by the Clark County Grand Jury of the
20 crime(s) of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS
21 200.010, 200.030, 193.165 - NOC 50001); CONSPIRACY TO COMMIT MURDER
22 (Category B Felony - NRS 200.010, 200.030, 199.480 - NOC 50038); THIRD DEGREE
23 ARSON (Category D Felony - NRS 205.020 - NOC 50416); CONSPIRACY TO COMMIT
24 THIRD DEGREE ARSON (Gross Misdemeanor - NRS 205.020, 199.480 - NOC 50422);
25 FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50051);
26 CONSPIRACY TO COMMIT KIDNAPPING (Category B Felony - NRS 200.310, 200.320,
27 199.480 - NOC 50087); ROBBERY WITH USE OF A DEADLY WEAPON (Category B
28 Felony - NRS 200.380, 193.165 - NOC 50138); CONSPIRACY TO COMMIT ROBBERY

C-17-327585-1
IND
Indictment
4694461



1 (Category B Felony - NRS 200.380, 199.480 - NOC 50147); GRAND LARCENY AUTO
2 (Category C Felony - NRS 205.228.2 - NOC 56011) and CONSPIRACY TO COMMIT
3 LARCENY (Gross Misdemeanor - NRS 205.220, 199.480 - NOC 55982), committed at and
4 within the County of Clark, State of Nevada, on or about the 10th day of October, 2017, as
5 follows:

6 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

7 did willfully, unlawfully, feloniously and with malice aforethought, kill JOSE JUAN
8 GARCIA-HERNANDEZ, a human being, with use of a deadly weapon, to wit: a knife, by
9 stabbing at or into the body of the said JOSE JUAN GARCIA-HERNANDEZ, the said killing
10 having been; (1) willful, deliberate and premeditated; (2) committed during the commission
11 of Robbery; and (3) committed during the commission of Kidnapping; the Defendant(s) being
12 criminally liable under one or more of the following principles of criminal liability, to wit: (1)
13 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
14 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
15 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)
16 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
17 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

18 COUNT 2 - CONSPIRACY TO COMMIT MURDER

19 did willfully, unlawfully, and feloniously conspire with each other to commit murder,
20 by the defendants committing the acts as set forth in Count 1, said acts being incorporated by
21 this reference as though fully set forth herein.

22 COUNT 3 - THIRD DEGREE ARSON

23 did willfully, unlawfully, maliciously, and feloniously set fire to, burn, and/or cause to
24 be burned, unoccupied personal property, to wit: a certain 2004 Pontiac Gradn Prix, bearing
25 Nevada License No. 870B17, belonging to JOSE JUAN GARCIA-HERNANDEZ, located in,
26 Clark County Nevada, having a value of \$25.00 or more, by use of open flame and flammable
27 and/or combustible materials, and/or by manner and means unknown.

28 ///

1 COUNT 4 - CONSPIRACY TO COMMIT THIRD DEGREE ARSON

2 did willfully, unlawfully, and feloniously conspire with each other to commit first
3 degree arson, by the defendants committing the acts as set forth in Count 3, said acts being
4 incorporated by this reference as though fully set forth herein.

5 COUNT 5 - FIRST DEGREE KIDNAPPING

6 did willfully, unlawfully, and feloniously, confine, inveigle, entice or decoy JOSE
7 JUAN GARCIA-HERNANDEZ, a human being, with the intent to hold or detain JOSE JUAN
8 GARCIA-HERNANDEZ against his will, and without his consent, for the purpose of
9 committing Murder, Robbery, Arson and Grand Larceny Auto.

10 COUNT 6 - CONSPIRACY TO COMMIT KIDNAPPING

11 did then and willfully, unlawfully, and feloniously conspire with each other to commit
12 a kidnapping, by the defendant's committing the acts as set forth in Count 5, said acts being
13 incorporated by this reference as though fully set forth herein.

14 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

15 did willfully, unlawfully, and feloniously take personal property, to wit: a wallet and/or
16 a cellular telephone, from the person of JOSE JUAN GARCIA-HERNANDEZ, or in his
17 presence, by means of force or violence, or fear of injury to, and without the consent and
18 against the will of JOSE JUAN GARCIA-HERNANDEZ, with use of a deadly weapon, to
19 wit: a knife; the Defendant(s) being criminally liable under one or more of the following
20 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
21 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
22 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
23 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
24 intent that this crime be committed, Defendants aiding or abetting and/or conspiring by
25 Defendants acting in concert throughout.

26 ///

27 ///

28 ///

1 COUNT 8 - CONSPIRACY TO COMMIT ROBBERY

2 did willfully, unlawfully, and feloniously conspire with each other to commit a
3 robbery, by the Defendants committing the acts as set forth in Count 7, said acts being
4 incorporated by this reference as though fully set forth herein.

5 COUNT 9 - GRAND LARCENY AUTO

6 did then and there willfully, unlawfully, feloniously, and intentionally, with intent to
7 deprive the owner permanently thereof, steal, take and carry away, drive away or otherwise
8 remove a motor vehicle owned by another person, in the possession of JOSE JUAN GARCIA-
9 HERNANDEZ, to wit: a 2004 Pontiac Grand Prix, bearing Nevada License No. 870B17; the
10 Defendant(s) being criminally liable under one or more of the following principles of criminal
11 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
12 commission of this crime, with the intent that this crime be committed, by counseling,
13 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
14 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
15 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in
16 concert throughout.

17 COUNT 10 - CONSPIRACY TO COMMIT LARCENY

18 did willfully and unlawfully conspire with each other to commit larceny, by the
19 Defendants committing the acts as set forth in Count 9, said acts being incorporated by this
20 reference as though fully set forth herein.


21 DATED this 15th day of November, 2017.

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

24 BY

 10193 For
25 DAVID STANTON
26 Chief Deputy District Attorney
Nevada Bar #003202

27 ENDORSEMENT: A True Bill

28 
Foreperson, Clark County Grand Jury

1 Names of Witnesses and testifying before the Grand Jury:

2 MCCARTHY, JASON, LVMPD #4715

3
4 Additional Witnesses known to the District Attorney at time of filing the Indictment:

5 CORDOSO, RALPHY, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

6 CUSTODIAN OF RECORDS, CCDC

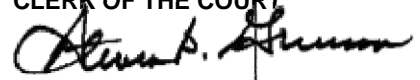
7 CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

8 CUSTODIAN OF RECORDS, LVMPD RECORDS

9 GILLIS, MATTHEW, LVMPD #6432

10 MORENO, JUAN, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

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27 17AGJ113A-C/17F18527A-C/mc/GJ
28 LVMPD #1710103981
(TK1)



1 MOT
2 MARY D. BROWN, ESQ.
3 Nevada Bar No. 6947
4 BROWN LAW OFFICES
5 200 Hoover Ave., Suite #130
6 Las Vegas, NV 89101
7 Telephone (702) 405-0505
8 Facsimile (866) 215-8145
9 Mary@TheLasVegasDefender.com
10 *Attorney for Defendant*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 THE STATE OF NEVADA,
14 Plaintiff,
15 vs.
16 DORIE HENLEY,
17 Defendant.

18)
19 CASE NO.: C-17-327585-1
20)
21 DEPT. NO.: III
22)
23)
24)
25)
26)
27)
28)

29 **MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE, FOR OWN**
30 **RECOGNIZANCE RELEASE PENDING WRIT DUE TO THE STATE'S KNOWING**
31 **AND INTENTIONAL DEPRIVATION OF DEFENDANT'S RIGHTS**

32 Upon the application of MARY D. BROWN, ESQ., attorney of record in the above
33 captioned case, it is hereby requested that the above captioned matter be placed on calendar for the
34 purposes of dismissal of indictment and/or for OR Release and/or for setting of reasonable bail.
35 The prosecutor in this case *knowingly and intentionally deprived Defendant Dorie Henley of her*
36 *right to testify before the Grand Jury.* The prosecutor was specifically informed well in advance
37 that Ms. Henley was considering testifying. Defendant timely notified the State of Ms. Henley's
38 intent to testify. Nevertheless, the State knowingly and intentionally allowed the Grand Jury to
39 deliberate without providing Ms. Henley the opportunity to testify. This motion is made and based

40 ///

1 upon NRS 178.484 et seq., NRS 178.4851, NRS 178.4853, the points and authorities cited herein
2 as well as the arguments of counsel at the time of the hearing in this matter.

3 DATED this 2nd day of November, 2017.

6 By: /s/ Mary D. Brown
7 MARY D. BROWN, Esq.
8 Nevada Bar No. 6947
9 200 Hoover Ave., Suite 130
10 Las Vegas, Nevada 89101
11 *Attorney for Defendant*

11 **NOTICE OF MOTION**

12 TO: Steven B. Wolfson, District Attorney, Clark County, Nevada;
13 Andrea Leum, Esq., Attorney for Andrew Henley
14 John Parris, Esq., Attorney for Jose Franco

15 Defendant's MOTION TO DISMISS INDICTMENT OR, IN THE ALTERNATIVE,
16 FOR OWN RECOGNIZANCE RELEASE PENDING WRIT DUE TO KNOWING AND
17 INTENTIONAL DEPRIVATION OF DEFENDANT'S RIGHTS

18 will be heard on the **7th** day of November, 2017 at the hour of **9:00** A.M. in
19 Department **III**
20 _____.

21 DATED this 2nd day of November, 2017.

23 By: /s/ Mary D. Brown
24 MARY D. BROWN, Esq.
25 Nevada Bar No. 6240
26 200 Hoover Ave., Suite 130
27 Las Vegas, Nevada 89101
28 *Attorney for Defendant*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **RELEVANT FACTUAL AND PROCEDURAL HISTORY**

3 On October 15, 2017, Defendant Dorie Henley was arrested on the instant charges. On
4 October 18, 2017, the undersigned counsel was appointed to represent Ms. Henley and a
5 preliminary hearing was set for November 1, 2017. On October 23, 2017, the District Attorney's
6 Office served a Notice of Intent to Seek Indictment on defense counsel by fax. See, Exhibit 1.
7 On October 25, 2017, defense counsel specifically informed counsel that Ms. Henley was
8 considering whether to testify and was also in the process of identifying exculpatory evidence to
9 be presented. Defense counsel specifically noted that the time to provide notice and present
10 evidence did not run until the end of the day October 31, 2017 due to the court holiday on
11 October 27, 2017. See, Exhibit 2, Email exchange.
12

13
14 In an apparent hurry to avoid a preliminary hearing in this matter, at 1:59 p.m. on
15 October 31, 2017, the State allowed the Grand Jury to deliberate on the instant indictment.
16 Exhibit 3. Less than an hour later, on October 31, 2017 at 2:47 p.m., defense counsel timely
17 provided formal notice to the State that Ms. Henley intended to testify. Exhibit 4. Ms. Henley
18 also submitted specific requests that certain exculpatory information be provided to the Grand
19 Jury. Exhibit 5.
20

21 Ms. Henley was not provided an opportunity to testify. The requested exculpatory
22 evidence was not presented. Instead, the indictment was returned on November 1, 2017. At the
23 time of the return, Counsel requested that the indictment be dismissed and/or that a summons
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1 issue and/or that Ms. Henley be granted an OR release. Judge Gonzalez indicated that any such
2 request should be placed in writing. This motion follows.

3 **ARGUMENT**

4 The prosecutor in this case knowingly and intentionally violated Ms. Henley's right to
5 Marcum notice. Therefore, the Indictment must be dismissed. Pursuant to NRS 172.241(2), a
6 prosecutor is required to provide reasonable notice to persons against whom he or she seeks and
7 indictment. See also, Marcum v. Sheriff, 105 Nev. 824 (1989). The purpose of the notice
8 requirement is to ensure that the defendant has an opportunity to testify before the grand jury.
9 Id. Notice is considered "adequate" if it "gives the person not less than 5 judicial days to submit
10 a request to testify to the district attorney ..." NRS 172.241(2)(a). "Without proper notice, the
11 right to testify would be meaningless." Solis-Ramirez v. Eighth Judicial District Court, 112 Nev.
12 344, 347 (1996).

13 Pursuant to Eighth Judicial District Court Rule 1.14, the day upon which notice is served
14 does not count as a judicial day. Also, since the time frame was less than eleven (11) days,
15 intermediate Saturdays, Sundays and court holidays cannot be included as judicial days.

16 Here, the Notice of Intent to Seek Indictment was served on October 23, 2017. October
17 27, 2017 was a court holiday, October 28, 2017 was a Saturday and October 29, 2017 was a
18 Sunday. Therefore, the time to provide notice of an intent to testify or to present exculpatory
19 evidence did not run until October 31, 2017.

20 Counsel for Defendant Dorie Henley gave the State notice well in advance that she may
21 exercise her right to testify and request that exculpatory information be presented. Counsel
22 further informed the State that she needed all the available time to make that determination.
23 Despite being placed on notice, the prosecutor in this case returned the indictment before
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1 Defendant's time had run for Defendant to serve her notice of intent to testify or request the
2 presentation of exculpatory evidence. Defense counsel subsequently timely notified the State
3 that she intended to testify at the Grand Jury. At the same time, she requested that items of
4 exculpatory evidence be presented to the grand jury. Neither request was honored.
5

6 As discussed above, the entire purpose of the notice requirement is to allow the defendant
7 an opportunity to testify before the grand jury. A right must have a remedy. In this case, the
8 remedy is a dismissal of the Indictment. See, Solis-Ramirez, supra. Ms. Henley is being
9 illegally detained. Based on the foregoing, counsel respectfully requests that the indictment be
10 immediately dismissed. In the event that the Court believes that the further litigation of this
11 issue is necessary, Ms. Henley respectfully requests that she be granted an own recognizance
12 release pending the litigation of this motion.
13

14 CONCLUSION

15 For the foregoing reasons, Defendant respectfully requests that the Court grant her motion
16 to dismiss the indictment and/or for an own recognizance release and/or for reasonable bail.
17

18
19 DATED this 2nd day of November, 2017
20

21 By: /s/ Mary D. Brown
22 MARY D. BROWN, Esq.
23 Nevada Bar No. 6240
24 200 Hoover Ave., Suite 130
25 Las Vegas, Nevada 89101
26 *Attorney for Defendant*
27
28

EXHIBIT 1

STATE'S NOTICE OF INTENT TO SEEK INDICTMENT

**TO: DORE R. HENLEY; ANDREW B. HENLEY & JOSE FRANCO
AND/OR YOUR LEGAL COUNSEL: MARY BROWN; ANDREA LUEM & JOHN PARRIS**

YOU ARE HEREBY NOTIFIED THAT THE DISTRICT ATTORNEY MAY SEEK AN INDICTMENT AGAINST YOU FOR THE CRIMES OF:

MURDER W/ DEADLY WEAPON; ROBBERY W/ DEADLY WEAPON; CONSPIRACY TO COMMIT ROBBERY; 1ST DEGREE ARSON; 1ST DEGREE KIDNAPPING W/ DEADLY WEAPON; CONSPIRACY TO COMMIT KIDNAPPING; AND SUBSTANTIAL BODILY HARM; GRAND LARCENY AUTO; AND/OR ANY OTHER CHARGES ARISING OUT OF THE INCIDENTS OCCURRING ON OR ABOUT OCTOBER 10, 2017; AGENCY EVENT NUMBERS: LVMPD 17F18527 A/B/C.

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, but who has not been subpoenaed to appear before the Grand Jury, may testify before the Grand Jury if he requests to do so and executes a valid waiver in writing of his constitutional privilege against self-incrimination. Nev. Rev. Stat. 172.241.

You are advised that you may testify before the Grand Jury only if you submit a written request to the District Attorney and include an address where the District Attorney may send a notice of the date, time and place of the scheduled proceeding of the Grand Jury. Nev. Rev. Stat. 172.241.

You are additionally notified that, since the State is seeking to initiate a charge of open or first degree murder against you by indictment, you may request that the court appoint defense counsel for you prior to the commencement of the grand jury proceedings. Upon your request, the district court shall appoint one attorney to serve as defense counsel prior to and during the grand jury proceedings. That attorney would have to possess the qualifications specified in subsection 2(b) of Rule 250.

You have already been appointed counsel in connection with this matter, and a copy of the NOTICE is being served on your counsel as well. You should consult with your counsel to insure that one of your two attorneys possesses the required qualifications.

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, may be accompanied by legal counsel during any appearance before the Grand Jury. The legal counsel who accompanies a person may advise his client, but shall not address directly the members of the Grand Jury, speak in such a manner as to be heard by members of the Grand Jury, or in any other way participate in the proceedings of the Grand Jury. The court or the foreperson of the Grand Jury may have the legal counsel removed if he violates any of these provisions or in any other way disrupts the proceedings of the Grand Jury. Nev. Rev. Stat. 172.239

If you are aware of any evidence which tends to explain away the above crimes, and it is your desire that this evidence be presented to the Grand Jury, then you or your attorney must furnish such evidence to the office of the District Attorney immediately. Responses to testify or present evidence must be addressed to:

DAVID L. STANTON: Clark County District Attorney, 301 CLARK PLACE, 10TH FLOOR Las Vegas, NV89155-2211. TELEPHONE (702) 671-2826/ 671-2830.

THIS IS THE ONLY NOTICE YOU WILL RECEIVE. It is your duty to respond as set forth above. Any response inconsistent with the above directions will be disregarded.

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 23rd day of October, 2017, by David L. Stanton to:

**MARY BROWN; ANDREA LUEM & JOHN PARRIS
VIA EMAIL & FAX**

By: DAVID L. STANTON
District Attorney's Office

I certify that I received the above State's Notice of Intent To Seek Indictment

EXHIBIT 2

From: Mary@thelasvegasdefender.com
Sent: Wednesday, October 25, 2017 4:03 PM
To: David Stanton
Cc: michael.karstedt@yahoo.com; jparris@johnparrislaw.com; andrea@luemlaw.com
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

Dear Mr. Stanton,

The Marcum Notice was not served until Monday, October 23, 2017. Pursuant to NRS 172.241, my client has five (5) judicial days to submit a request to testify. According to EJDRC Rule 1.14, the day of service and court holidays do not count as judicial days. Therefore, my client has until the end of the day on October 31, 2017 to submit a request to testify and to submit exculpatory evidence.

My client has yet to decide whether to testify. We will need every minute of this time, particularly in light of the scant discovery currently provided by the State. If the State attempts to indict my client before that time has run or fails to provide evidence timely submitted by my client, we will seek appropriate remedies through the Court for intentional deprivation of my client's due process rights.

I will contact you shortly with a request for specific discovery. I will need this discovery immediately, so that I can properly advise my client whether to testify before the Grand Jury.

Mary Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130
Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

From: David Stanton <David.Stanton@clarkcountyda.com>
Sent: Wednesday, October 25, 2017 1:53 PM
To: Mary@thelasvegasdefender.com
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

If you are talking about next Wednesday, this case will be presented to the grand jury before that date. If you have any exculpatory evidence you need to provide it to me within the next 48 hours.

From: Mary@thelasvegasdefender.com <mary@thelasvegasdefender.com>
Sent: Wednesday, October 25, 2017 8:51:49 PM
To: David Stanton
Subject: Re: Henley, Henley & Franco - 17F18527 A/B/C

Thank you. Can I have until Wed to provide exculpatory evidence?

Mary Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130

Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

Las Vegas Criminal Defense Attorney |
Brown Law Offices



www.thelasvegasdefender.com

If you are facing criminal charges, contact our Las Vegas criminal defense lawyers at Brown Law Offices to get the experience of a former Chief Prosecutor on your side.

From: David Stanton <David.Stanton@clarkcountyda.com>
Sent: Wednesday, October 25, 2017 1:48:54 PM
To: Mary@thelasvegasdefender.com
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

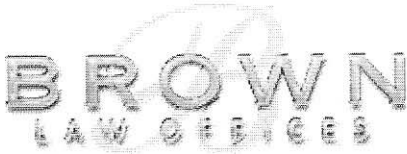
Presentation will be very shortly

From: Mary@thelasvegasdefender.com <mary@thelasvegasdefender.com>
Sent: Wednesday, October 25, 2017 12:39:34 PM
To: John Parris; David Stanton; Andrea Luem
Cc: Stephanie Johnson
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

Thank you. Did we receive a date yet? I will have items that I will request be presented. I will be in touch shortly with specific requests.

Mary D. Brown, Esq.
Brown Law Offices
200 Hoover Ave., Suite 130
Las Vegas, NV 89101
(702) 405-0505
www.thelasvegasdefender.com

Las Vegas Criminal Defense Attorney |
Brown Law Offices



www.thelasvegasdefender.com

If you are facing criminal charges, contact our Las Vegas criminal defense lawyers at Brown Law Offices to get the experience of a former Chief Prosecutor on your side.

**** This electronic transmission is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email or call (702) 405-0505 and destroy all copies of the originals - Brown Law Offices, Chtd.

From: John Parris [mailto:john@kihuenandparris.com]
Sent: Monday, October 23, 2017 11:25 AM
To: David Stanton <David.Stanton@clarkcountyda.com>; Mary@thelasvegasdefender.com; Andrea Luem <andrea@luemlaw.com>
Cc: Stephanie Johnson <Stephanie.Johnson@clarkcountyda.com>
Subject: RE: Henley, Henley & Franco - 17F18527 A/B/C

Dave,
Marcum received. We were only given the bare bones of the discovery in Court last week so anything additional would be greatly appreciated. Also, do you have GJ scheduled yet?
Thanks,
John.

From: David Stanton [mailto:David.Stanton@clarkcountyda.com]
Sent: Monday, October 23, 2017 10:45 AM
To: mary@thelasvegasdefender.com; Andrea Luem <andrea@luemlaw.com>; John Parris <jparris@johnparrislaw.com>
Cc: Stephanie Johnson <Stephanie.Johnson@clarkcountyda.com>
Subject: Henley, Henley & Franco - 17F18527 A/B/C

Attached is Marcum notice re: this case. Please reply, via email, of this notice. I will coordinate discovery via this email address as well.

Thank you.

David L. Stanton
Chief Deputy District Attorney

Major Violators Unit
Clark County D.A.s Office
Las Vegas, Nevada 89101
Office: (702) 671-2826
Fax: (702) 477-2974
david.stanton@clarkcountyda.com

EXHIBIT 3



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

12:00

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12:00

5

THE STATE OF NEVADA,)

6

Plaintiff,)

7

vs.)

GJ No. 17AGJ113A-C

8

DORIE REGINA HENLEY, ANDREW)

BRANDON HENLEY, JOSE MELVIN)

9

FRANCO,)

DC No. C327585

12:00

10

Defendants.)

11

12

13

Taken at Las Vegas, Nevada

14

Tuesday, October 31, 2017

12:00

15

1:59 p.m.

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19

REPORTER'S TRANSCRIPT OF PROCEEDINGS

12:00

20

21

VOLUME 2

22

23

24

12:00

25

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON OCTOBER 31, 2017
2
3 MORGAN DEVLIN, Foreperson
4 SANDRA MOORE, Deputy Foreperson
12:00 5 RAELYNN CASTANEDA, Secretary
6 JANIS ROGERS, Assistant Secretary
7 MARY ANDERSON
8 DOMINIQUE CARDENAS
9 IVAN CAYLOR
12:00 10 JERRY DIVINCENZO
11 MICHELLE FENDELANDER
12 BOBBI FLORIAN
13 AMY KNUDSON
14 GREGORY KORNILOFF
12:00 15 PATRICIA PRATHER
16 LATANIS WATTS
17 GUSTAVO ZAVALA
18
19 Also present at the request of the Grand Jury:
12:00 20 John Giordani, Chief Deputy District Attorney
21 Jory Scarborough, Deputy District Attorney
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12:00
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01:59
02:03

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LAS VEGAS, NEVADA, OCTOBER 31, 2017

* * * * *

DANETTE L. ANTONACCI,

having been first duly sworn to faithfully
and accurately transcribe the following
proceedings to the best of her ability.

MR. GIORDANI: Good afternoon ladies and gentlemen of the Grand Jury. John Giordani here on behalf of the State of Nevada, also Michael Jory Scarborough. We're here for the continued presentation on the case of State of Nevada versus Dorie Henley, Andrew Henry and Jose Franco, Grand Jury case number 17AGJ113A-C. Are there any members of the Grand Jury who were not present at the last presentation on this case? I'm seeing no hands.

With that we will ask you to deliberate at this time. As always if you require any further instruction on the law prior to returning your bill please let us know. Thank you.

(At this time, all persons, other than members of the Grand Jury, exit the room at 1:59 p.m. and return at 2:03 p.m.)

THE FOREPERSON: Mr. District Attorney, by

02:03 1 a voted of 12 or more grand jurors a true bill has been
2 returned against defendants Dorie Henley, Andrew Henley
3 and Jose Franco charging the crimes of murder with use
4 of a deadly weapon, conspiracy to commit murder, third
02:03 5 degree arson, conspiracy to commit third degree arson,
6 first degree kidnapping, conspiracy to commit
7 kidnapping, robbery with use of a deadly weapon,
8 conspiracy to commit robbery, grand larceny auto, and
9 conspiracy to commit larceny, in Grand Jury case number
02:03 10 17AGJ113A-C. We instruct you to prepare an Indictment
11 in conformance with the proposed Indictment previously
12 submitted to us.

13 MR. GIORDANI: Will do. Thank you very
14 much.

02:04 15 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada,
November 2, 2017.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

02:04 1

AFFIRMATION

2

Pursuant to NRS 239B.030

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The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 17AGJ113A-C:

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X Does not contain the social security number of any person,

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02:04 10

-OR-

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 Contains the social security number of a person as required by:

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A. A specific state or federal law, to-wit: NRS 656.250.

14

-OR-

02:04 15

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B. For the administration of a public program or for an application for a federal or state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

11-2-17

Date

02:04 20

21

Danette L. Antonacci

Print Name

22

23

Official Court Reporter

Title

24

25

EXHIBIT 4

Dorie Henley - 17F18527A - Notice of Intent to Testify

Mary@thelasvegasdefender.com

Tue 10/31/2017 2:47 PM

To: David Stanton <David.Stanton@clarkcountyda.com>;

Bcc: the-brown-law-offices-ukrVu87rx8@mycasemail.com <the-brown-law-offices-ukrVu87rx8@mycasemail.com>;

Dear Mr. Stanton,

Please allow this to serve as a response to the Notice of Intent to Seek Indictment that was served on my client on or about October 23, 2017. I am hereby putting you on formal notice that in the event you elect to take this case to the Grand Jury my client Dorie Henley is requesting that she be permitted to testify at the grand jury proceedings herein. You may send notice of the date, time and place of that scheduled proceeding to me at this email address.

Your time and attention are greatly appreciated. Please do not hesitate to call with any further questions or comments.

Sincerely,

Mary D. Brown, Esq.

Brown Law Offices

200 Hoover Ave., Suite 130

Las Vegas, NV 89101

(702) 405-0505

www.thelasvegasdefender.com

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EXHIBIT 5

Dorie Henley - 17F18527A - Exculpatory Evidence

Mary@thelasvegasdefender.com

Tue 10/31/2017 3:06 PM

To: David Stanton <David.Stanton@clarkcountyda.com>;

Cc: Andrea Luem <andrea@luemlaw.com>; John Parris <john@kihuenandparris.com>; Michael T Karstedt <michael.karstedt@yahoo.com>;

Bcc: the-brown-law-offices-ukrVu87rx8@mycasemail.com <the-brown-law-offices-ukrVu87rx8@mycasemail.com>;

Dear Mr. Stanton,

I am requesting that the following exculpatory evidence be presented to the Grand Jury:

Evidence of Andrew Henley's felony conviction under District Court case no. C277813

Evidence of any felony convictions for source #1 referenced in the second paragraph of page 2 of the arrest report, who claimed to have spoken to Dorie Henley on October 12, 2017.

Evidence of any felony convictions for source #2 referenced in the third paragraph of page 2 of the arrest report, who claimed to have spoken to Dorie Henley on October 11, 2017.

I would further note that the preliminary hearing is scheduled for tomorrow and no discovery beyond the arrest report has been provided. You previously served a Marcum notice and indicated that you would be going to the grand jury very soon. Therefore, I have to assume that there is substantial discovery in your possession that has not been provided – at least some of which is exculpatory. My client and I are requesting that all discovery in your possession be provided prior to the Grand Jury presentment so my client can exercise her legal rights.

We still stand ready to proceed to preliminary hearing tomorrow.

Mary D. Brown, Esq.

Brown Law Offices

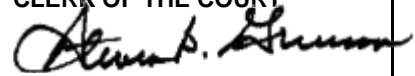
200 Hoover Ave., Suite 130

Las Vegas, NV 89101

(702) 405-0505

www.thelasvegasdefender.com

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OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DAVID STANTON
Chief Deputy District Attorney
Nevada Bar #003202
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-

DORIE REGINA HENLEY,
#2826387

Defendant.

CASE NO: C-17-327585-1

DEPT NO: III

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN
RECOGNIZANCE RELEASE/SETTING REASONABLE BAIL**

DATE OF HEARING: 11/21/2017
TIME OF HEARING: 9:00 AM.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DAVID STANTON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Own Recognizance Release/Setting Reasonable Bail.

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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