

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DRYDEN,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83233

RESPONDENT'S APPENDIX

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I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 4th day of May, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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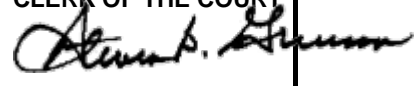
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Deputy District Attorney

/s/ J. Hall

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District Attorney's Office

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CLERK OF THE COURT



EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID
DISTRICT COURT

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.)	GJ Case No. 18AGJ051X
)	DC Case No. C334955
BRYAN WARREN DRYDEN, aka Bryan)	
Dryden,)	
)	
Defendant.)	

Taken at Las Vegas, Nevada
Tuesday, September 18, 2018
10:22 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Donna J. McCord, C.C.R. No. 337

1 GRAND JURORS PRESENT ON SEPTEMBER 18, 2018:

2
3 RUSSELL WALKER, Foreperson,

4 CAROLYN JORDAN, Deputy Foreperson

5 RACHEL TABRON, Secretary

6 MICHELE CRINE, Assistant Secretary

7 JOHN ASSELIN

8 KATHY COX

9 THERESA GAISSER

10 DAWN HERSHEY

11 MICHAEL HOLLINGSWORTH

12 ADRIANA IONESCU

13 CHRISTOPHER KERCEL

14 SHARON KLINCK

15 JAMES MCGREGOR

16 MARYLEE WHALEN

17
18
19
20
21 Also present at the request of the Grand Jury:

22 Jacob Villani
23 Chief Deputy District Attorney
24
25

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1 LAS VEGAS, NEVADA, SEPTEMBER 18, 2018

2 * * * * *

3
4 DONNA J. McCORD,

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. VILLANI: Good morning, ladies and
10 gentlemen of the Grand Jury. My name is Jake Villani
11 and I will be presenting Grand Jury case number
12 18AGJ051X, State of Nevada versus Bryan Warren Dryden.
13 The record will reflect that I've marked a copy of the
14 proposed Indictment as Exhibit Number 1 and that all
15 members of the Grand Jury have a copy of it.

16 The defendant in this case is charged with
17 the crime of sexual assault with use of a deadly weapon
18 committed at and within the County of Clark, State of
19 Nevada, on or about the 29th day of August, 2007.

20 I'm required by law to advise you of the
21 elements of this charge. I provided written
22 instructions to each of the Grand Jurors and marked a
23 copy of the instructions provided as Exhibit 2.

24 My first witness is Brianne Huseby.

25 THE FOREPERSON: Remain standing, please.

1 THE WITNESS: Oh, I'm sorry.

2 THE FOREPERSON: And raise your right hand.

3 You do solemnly swear that the testimony
4 that you're about to give upon the investigation now
5 pending before this Grand Jury shall be the truth, the
6 whole truth, and nothing but the truth, so help you God?

7 THE WITNESS: Yes, I do.

8 THE FOREPERSON: You may be seated.

9 You are advised you are here today to give
10 testimony in the investigation pertaining to the offense
11 of sexual assault with use of a deadly weapon involving
12 Bryan Warren Dryden.

13 Do you understand this advisement?

14 THE WITNESS: Yes, I do.

15 THE FOREPERSON: Please state your first
16 and last name and spell both for the record.

17 THE WITNESS: Brianne Huseby, B-R-I-A-N-N-E
18 H-U-S-E-B-Y.

19 MR. VILLANI: May I proceed,
20 Mr. Foreperson?

21 THE FOREPERSON: You may.

22 BRIANNE HUSEBY,
23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth
25 and nothing but the truth, testified as follows:

EXAMINATION

BY MR. VILLANI:

Q Ma'am, how are you employed?

A I'm a forensic scientist two in the biology DNA detail of the Las Vegas Metropolitan Police Department forensic laboratory.

Q How long have you been so employed?

A With the Metro Police Department for about four and a half years.

Q And how long as a DNA analyst?

A The same for Metro at that point.

Q And before that what did you do?

A I was a forensic scientist in the biology DNA detail of the Seattle Crime Laboratory for 11 years working for the Washington State Patrol.

Q As part of your employment did you do a DNA comparison between a reference standard from Bryan Dryden and a DNA profile developed by Bode Cellmark from a sexual assault kit impounded under, and I'm going to give you an event number, 070829-0466?

A Yes, I did.

Q What did that comparison entail?

A When I received the buccal swab from Bryan Dryden in the laboratory, it went through the normal DNA processing procedures and extracted DNA, developed a

1 profile and then I compared the profile to the profile
2 developed by Bode.

3 Q Do you often rely upon profiles developed
4 by Bode Cellmark?

5 A We do. It's our main outsourcing
6 laboratory.

7 Q And do you know why this particular kit was
8 outsourced to Bode instead of an in-house?

9 A It's part of a large project. We have a
10 large backlog of sexual assault kits. In fact, a lot of
11 cities do nationwide so we have opted to outsource to
12 Bode Cellmark.

13 Q And what checks does Bode Cellmark go
14 through in order to know that they're using the same
15 standards that the Metropolitan Police Department lab
16 uses?

17 A They're an accredited laboratory as well so
18 they go through an annual audit of their procedures.
19 Prior to us selecting them as our outsourcing lab, our
20 technical leader visited and ensured that their
21 procedures were up to our standards. All of their cases
22 that come back, all the positive cases where they get
23 profiles that are suitable for comparison, we do a
24 100 percent tech review, so we ensure that all of their
25 controls and everything that they've used in the testing

1 process worked appropriately. So it's a very controlled
2 system.

3 Q Now, does Metro, as a matter of course when
4 a profile is developed from a sexual assault kit by Bode
5 and they send you the data, I'm guessing we're talking
6 ones and zeros here as far as data's concerned, right?

7 A It's numbers, yes. The profile's put into
8 a table of numbers.

9 Q Generally does Metro then retest that kit
10 to make sure they come up with the same numbers?

11 A We don't retest it.

12 Q Okay. So the numbers are relied upon as
13 they come from Bode Cellmark when doing comparisons?

14 A That's correct.

15 Q Did you distribute a report regarding the
16 analysis you did with a comparison of Bryan Dryden
17 reference sample and the profile developed by Bode
18 Cellmark for the sexual assault kit under that event
19 number?

20 A Yes, I did.

21 Q And was that about June 13th, 2018?

22 A Yes, it was.

23 Q What were the results of that analysis?

24 A The results of the analysis were that the
25 reference, the profile obtained from the reference

1 sample matched the profile obtained from the sperm
2 fractions of the vaginal and the cervical swabs.

3 Q When you say they matched, what do you mean
4 by that?

5 A That all the numbers that were present in
6 the evidence sample matched all the numbers that were
7 present in the reference sample.

8 Q With regard to the vaginal swab, what is
9 the probability of randomly selecting an unrelated
10 individual from the general population having a DNA
11 profile that was consistent with the DNA profile
12 obtained from the evidence in this case?

13 A May I refer to my notes just to make sure
14 it's correct?

15 Q Sure.

16 A That probability is one in 50.4
17 quintillion.

18 Q Okay. With regard to the cervical swab,
19 what is the probability of randomly selecting an
20 unrelated individual from the general population having
21 a DNA profile that was consistent with the DNA profile
22 obtained in this case?

23 A That was also one in 50.4 quintillion.

24 MR. VILLANI: That concludes my questioning
25 of this witness. Are there any questions from the Grand

1 Jurors? Seeing no hands.

2 THE FOREPERSON: By law these proceedings
3 are secret and you are prohibited from disclosing to
4 anyone anything that transpired before us including any
5 evidence presented to the Grand Jury, any event
6 occurring or a statement made in the presence of the
7 Grand Jury or any information obtained by the Grand
8 Jury.

9 Failure to comply with this admonition is a
10 gross misdemeanor punishable up to 364 days in the Clark
11 County Detention Center and a \$2,000 fine. In addition
12 you may be held in contempt of court punishable by an
13 additional \$500 fine and 25 days in the Clark County
14 Detention Center.

15 Do you understand this admonition?

16 THE WITNESS: Yes, I do.

17 THE FOREPERSON: Thank you. You're
18 excused.

19 THE WITNESS: Thank you.

20 MR. VILLANI: Can we go off the record
21 briefly?

22 (Grand Jury was at ease.)

23 MR. VILLANI: My next witness is Detective
24 Detweiler.

25 THE FOREPERSON: Please raise your right

1 hand.

2 You do solemnly swear that the testimony
3 that you're about to give upon the investigation now
4 pending before this Grand Jury shall be the truth, the
5 whole truth, and nothing but the truth, so help you God?

6 THE WITNESS: So help me God.

7 THE FOREPERSON: Now you can be seated.

8 You are advised that you're here today to
9 give testimony in the investigation pertaining to the
10 offense of sexual assault with use of a deadly weapon
11 involving Bryan Warren Dryden.

12 Do you understand this advisement?

13 THE WITNESS: I do.

14 THE FOREPERSON: Please state your first
15 and last name and spell both for the record.

16 THE WITNESS: It's Walter Detweiler.

17 That's W-A-L-T-E-R D-E-T-W-E-I-L-E-R.

18 MR. VILLANI: May I proceed, sir?

19 THE FOREPERSON: You may.

20

21 WALTER DETWEILER,

22 having been first duly sworn by the Foreperson of the
23 Grand Jury to testify to the truth, the whole truth
24 and nothing but the truth, testified as follows:

25 ///

EXAMINATION

BY MR. VILLANI:

Q Sir, how are you employed?

A I'm employed as a detective with the Las Vegas Metropolitan Police Department.

Q How long have you been so employed?

A A little over 20 years.

Q What's your current assignment?

A I work sexual assault cold cases.

Q As part of your assignment, were you assigned to investigate a case involving Kala, and it's Blush or Kala Seamans based on a new forensic lead?

A Yes, sir.

Q During that investigation did you interview Bryan Warren Dryden concerning these allegations?

A I did.

Q Was that on April 18th, 2018?

A I would have to look at my statement but that seems about correct.

Q Okay. Do you have your statement with you?

A I do.

Q Can you go ahead and glance at that?

A Yes, sir.

Q April 18th, 2018 sound right?

A Yes.

1 Q Okay. Was Mr. Dryden read his Miranda
2 rights?

3 A He was.

4 Q Did he agree to talk with you?

5 A He did.

6 Q Did he deny any involvement in a rape
7 during the beginning part of your interview?

8 A Yes, he did.

9 Q Okay. What did he say about -- well, was
10 he informed that you had information that he had pulled
11 a gun on the girl that he raped?

12 A Yes, I informed him of that.

13 Q Okay. And what did he say with regard to
14 that?

15 A He adamantly denied ever having a gun.

16 Q Did you have a picture of the female
17 accuser with you when you went to see him?

18 A I did.

19 Q Did you show it to him?

20 A I did.

21 Q Do you recall what his response was when
22 you asked him if he had ever seen that girl before?

23 A He said he has never seen that girl before.

24 Q Did you have one or two photographs of her?

25 A I actually had two photos. I showed him

1 one but there was one inside of my folder that was
2 basically a new photo of her.

3 Q Okay. And were both visible to him?

4 A Yes.

5 Q Okay. Did he say he recognized either?

6 A The one of the victim that I actually
7 showed him, he said that he's never seen before. The
8 one that was in my folder, he says that he thought he
9 recognized her.

10 Q At some point during your interview did you
11 ask him if he knew what DNA was?

12 A I did.

13 Q And do you recall what his reply was to
14 that?

15 A He said he did. On another case he had his
16 DNA taken so he was aware of what DNA was.

17 Q Okay. Do you have his interview there with
18 you?

19 A I do.

20 Q Okay. I just want the exact quote here.
21 Could you turn to page 10 of that interview, please? So
22 safe to say that up to this point in the interview he's
23 completely denying allegations of rape, completely
24 denying that he knows the person that you're showing him
25 a photo of or that he's had sex with her, right?

1 A That is correct.

2 Q All right.

3 A I'm on page 10.

4 Q Okay. Now, go to your question where you
5 say do you know what DNA is. Do you see that?

6 A Yes.

7 Q Okay. What is his exact reply to that?

8 A "Yeah. They've got DNA on me?"

9 Q Okay. And that was said as a question,
10 right, "Yeah. They've got DNA on me", right?

11 A Yes.

12 Q Now, did you later inform him that his DNA
13 was found inside of her?

14 A Yes.

15 Q Okay. At that point -- and if you could
16 turn to page 14 of that interview.

17 A Okay.

18 Q Okay. Is it true that his reply to you
19 telling him that his DNA was inside of her was, quote,
20 "If I had sex with her, I didn't, it was consensual"?

21 A That is correct.

22 Q Okay. He continued to say he didn't
23 recognize the girl even after being informed of the DNA,
24 correct?

25 A That is correct.

1 Q Continued to deny having a gun; is that
2 correct?

3 A That is correct.

4 Q At some point during that interview do you
5 serve a search warrant on him and collect a buccal swab
6 on him?

7 A I did.

8 Q How did you go about that?

9 A As far as once the interview is pretty much
10 done I pull out the search warrant that I had signed by
11 the judge and I informed him that I would need a
12 comparison buccal swab to confirm that it was him, that
13 it was his DNA, and he understood and we got the buccal
14 swabs from him for comparison DNA.

15 Q After you took that DNA, did he then admit
16 to you that he had sex with a girl in a field off
17 Boulder Highway?

18 A That is correct.

19 Q Okay. And I'm asking you to turn to
20 page 21 of that interview.

21 A Okay.

22 Q Is his direct quote, "I didn't rape her, we
23 got drunk and we had sex in a field"?

24 A That is correct.

25 Q On page 23 of that interview if I could ask

1 you to turn there.

2 A Okay.

3 Q Is it true that he said he recognized her
4 in the photo and then kind of went back and the quote
5 is, "That don't look like her at all", referring to the
6 person he had sex with in the field?

7 A That is correct.

8 Q Okay. Once you collected that buccal swab
9 did you then impound it under this event number?

10 A I did.

11 Q And what is an event number if you can
12 briefly explain?

13 A It's basically our case number. That's how
14 we track our cases.

15 Q And there's a reason to it generally,
16 right? So the date is the first six numbers, then the
17 last four numbers are kind of the order the case came in
18 that day?

19 A Yes, sir.

20 Q Okay. The event number in this particular
21 case was 070829-0466; is that correct?

22 A Yes, that's correct.

23 Q Okay. So you impound the buccal swab for
24 him under the event number. How do you go about doing
25 that?

1 A Once I get the buccal swab I seal it, I
2 sign the back that it was sealed by myself and then I
3 take it down to the evidence vault. And once I get down
4 to the evidence vault, you log it in the evidence vault
5 and then you give it to the technicians and then they
6 enter it keeping track of it down at the evidence vault.

7 Q And then is it you that notifies the lab
8 that, hey, this buccal swab is ready for comparison?

9 A Not personally, no. What I do is once it's
10 logged into the system we have a, what's the word I'm
11 looking for, it's an Internet site through LVMPD, it's
12 called Property Connect, and it lists all the property
13 that is impounded under that event. And then we
14 actually have to, the detectives actually have to go in
15 there and we have to request the examination to get
16 compared to the DNA from the sexual assault kit at that
17 time.

18 Q Okay.

19 That concludes my questioning of this
20 witness. Any there any questions from the Grand Jurors?
21 Seeing no hands.

22 THE FOREPERSON: By law these proceedings
23 are secret and you are prohibited from disclosing to
24 anyone anything that transpired before us including any
25 evidence presented to the Grand Jury, any event

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2 Grand Jury or any information obtained by the Grand
3 Jury.

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6 County Detention Center and a \$2,000 fine. In addition
7 you may be held in contempt of court punishable by an
8 additional \$500 fine and 25 days in the Clark County
9 Detention Center.

10 Do you understand this admonition?

11 THE WITNESS: I do.

12 THE FOREPERSON: Thank you. You're
13 excused.

14 THE WITNESS: Thank you, sir.

15 MR. VILLANI: My next witness will be Kala
16 Seamans-Blush.

17 THE FOREPERSON: Please raise your right
18 hand.

19 You do solemnly swear that the testimony
20 that you're about to give upon the investigation now
21 pending before this Grand Jury shall be the truth, the
22 whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do. So help me God.

24 THE FOREPERSON: Please have a seat.

25 THE WITNESS: Thank you.

1 THE FOREPERSON: You are advised you are
2 here today to give testimony in the investigation
3 pertaining to the offense of sexual assault with use of
4 a deadly weapon involving Bryan Warren Dryden.

5 Do you understand this advisement?

6 THE WITNESS: Yes.

7 THE FOREPERSON: Please state your first
8 and last name and spell both for the record.

9 THE WITNESS: Kala Diane Blush, K-A-L-A
10 Diane, and Blush, B-L-U-S-H.

11 MR. VILLANI: May I proceed, sir?

12 THE FOREPERSON: Yes.

13
14 KALA DIANE BLUSH,
15 having been first duly sworn by the Foreperson of the
16 Grand Jury to testify to the truth, the whole truth
17 and nothing but the truth, testified as follows:

18
19 EXAMINATION

20 BY MR. VILLANI:

21 Q Ma'am, at one point were you known as Kala
22 Seamans?

23 A Yes.

24 Q Back in 2007?

25 A Oh, yes.

1 Q Okay. In August of 2007 where were you
2 living then?

3 A Sandy Valley.

4 Q On August 29th of 2007, did you find
5 yourself here in Las Vegas?

6 A Yes, I did.

7 Q And under what circumstances were you here?

8 A Me and my ex-boyfriend were partying and
9 getting high and drunk so we got a hotel room or suite,
10 whatever they're called.

11 Q And by getting high do you mean you were
12 using illegal narcotics?

13 A Yes.

14 Q Was that a problem for you at one point?

15 A Yes.

16 Q Is that still a problem for you?

17 A I'm recovered.

18 Q Are you on any drugs or alcohol as you sit
19 here today?

20 A No, sir.

21 Q On that date did there come a time where
22 you and your boyfriend had an argument?

23 A Yes.

24 Q What happened from that point forward that
25 you're able to tell us?

1 A So we got in an argument and we were at the
2 Budget Suites, I think they were the Budget Suites, and
3 I needed more alcohol and he wasn't capable of doing
4 that because he was too high and so I left.

5 Being homeless in the past I knew where I
6 could go and find, you know, drugs or homeless people to
7 get drunk with and so I headed out of there and I went
8 to Flamingo in the front of the building, in front of
9 Budget Suites, and went to the left. And there was the
10 older homeless people that were sitting there and so I
11 went up to them and I was invited to sit down or I
12 invited myself and sat and drank with them.

13 And then this guy walked up and sat down
14 and we started talking. And he was closer to my age
15 than the older people so I communicated with him more
16 than I did the homeless people. And somehow the
17 conversation turned to drugs, as usual, and I told him
18 that I needed to get some more drugs, meth specifically,
19 and that it would probably make my ex-boyfriend happy if
20 I brought something back. And he told me that he knew
21 where to get it, it was the best and he made it, he
22 knows, you know, it's good stuff. And so my addiction
23 once again took over and I left with a stranger.

24 I'm from here, I'm from Las Vegas, and so I
25 know from Flamingo to Tropicana, and he said that's

1 where it was. It wasn't far for me. And I remember it
2 being nightttime and I remember thinking that, you know,
3 if we just walked up Paradise or that road right there
4 Tropicana was right there. And so we did for a while on
5 the sidewalk so I was all right. And then there was a
6 fence around the desert area and he started to go
7 through it. And I had a little concern there, you know,
8 maybe this probably wasn't the best thing I've ever done
9 but I went with him walking through the desert. And it
10 was dark, I couldn't see anything. I could see
11 Tropicana, I could see the cars going by, I can hear the
12 cars going by, I can see the lights at the airport, I
13 could see a gas station on the right so I kind of felt
14 if I got myself in a bad situation that I was close to,
15 you know, I might have a chance of getting to people.

16 About, I think it was one third of the way
17 into the desert my legs were shaking, I was withdrawing,
18 I was just like when are we going to be there. We're
19 almost there. All right. So we kept walking. And I
20 remember I saw the outline of a hooch which, you know,
21 is what they called them back then so I thought that's
22 got to be where we're going. And so we walked to it and
23 I could just see the outline of it and I'm thinking to
24 myself it's got to be one of the fancier hooches out
25 here, you know, compared to the one I had, you know,

1 eight years prior when I was on the streets.

2 And we stuck our head in and there was a
3 guy sitting there, an older guy, on either a chair or
4 the floor. It was too long ago. I don't remember
5 exactly which. I remember this guy saying, he asked for
6 somebody, I don't know who it was, I don't know the
7 name, I'm sorry, that's a long time ago. But the older
8 man said he's not here, get out of here and take it
9 elsewhere.

10 And as I walked away I can hear somebody
11 say grab her. I got hit from behind and then I don't
12 know, I went to the ground. I think I hit my head on
13 something. That's just a blur to me right now. And I
14 wasn't there anymore emotionally. I've been abused as a
15 child and throughout my adult life so I have a tendency
16 to go elsewhere. I came to with him kicking me and
17 telling me to get dressed, get up. And somehow at that
18 point, because I knew he had already told me that he had
19 a gun, I don't know what kind of gun, I cannot tell you
20 the color of the gun, I could see the outline of the gun
21 before I went down and when I came to, I still felt like
22 I was going to die and I was -- I have to leave evidence
23 because I'm not going to be one of those people where my
24 murder would be unsolved, as unimportant as I felt at
25 that time, and I threw my underwear in the bushes. He

1 must have turned, I don't know, I can't speculate on
2 what he did, I just know I threw them in the bushes.

3 And somehow I got up and I don't know if I
4 pushed him but I ran for my life and I ran towards that
5 gas station. I -- sorry. I just felt he was going to
6 shoot me in the back, this is how I was going to die.
7 And I just kept running, I didn't look back. I heard
8 him. He was screaming, you know, he was going to kill
9 me, to stop. And then it was this wasn't what you
10 thought, it's okay, I'm not going to hurt you and then
11 back to he was going to shoot me.

12 And I got to the gas station and there was
13 two pay booths back then, phones, and I believe that I
14 called 911 but I can hear him and at that point see him,
15 he was getting close to me, and I drop the phone. I ran
16 into the store, the convenience store that was there,
17 and told them I had been raped and to call 911. I was
18 told to leave. I said again I'm not leaving, he's after
19 me, he's coming to the door, I need you to call 911,
20 I've been raped. I was again not so nice asked to
21 leave. And I wasn't going anywhere and I said so. I
22 walked to the doors. There was poker machines on the
23 right before you go out the door and I sat at the first
24 one. And he finally got to the door. I saw him. He
25 was screaming and he was yelling to come out, he was

1 going to kill me. Then he said he was going to kill
2 everybody in there and then get me. I couldn't hear him
3 no more. I could see the cards of the poker machine
4 just flipping and thinking this is it.

5 I don't, you know, it was so long ago I
6 don't remember talking to a detective going into detail
7 about it, I just don't remember that. This was a very
8 traumatic thing for me that I blocked after these things
9 happened. And I remember going to the hospital. I
10 don't remember the trip there. I remember being there
11 and some lady came in and asked me about being raped or
12 told me I had been raped, would I go through with a rape
13 kit and I said yes. I don't remember that event. I
14 remember somebody coming in, handing me a pill and I
15 didn't know what it was but they said it was an after
16 pill and I took it. I remember asking for my clothes
17 back, I want out of here, you know, I want to go and
18 they told me no, I couldn't have my clothes because it
19 was going to be held for evidence. But they did give me
20 sweatpants and a sweatshirt, you know.

21 I remember on the way there, I'm sorry to
22 go back in time, asking if there was anybody that they
23 wanted me to call. And I had an adopted dad that we
24 lived with in Sandy Valley at the time and then my
25 boyfriend, of course, and I remember, I do remember

1 being in a police car and then contacting them and
2 telling them I've been raped and they were taking me to
3 UMC. And so after, you know, the rape kit and getting
4 dressed and stuff they were there for me and, you know,
5 I got into the car and I never looked back and that was
6 it.

7 Q If I could just take you back for a couple
8 seconds to the moment where you were hit in the desert.
9 You mentioned a firearm, a gun.

10 A Uh-huh.

11 Q You said both before and after. Were you
12 aware that he had a firearm at the time that he hit you
13 in the desert?

14 A No, when he hit me in the desert I
15 remember -- I don't know what he hit me with. I don't
16 know, you know, the details of that but I do remember
17 him saying that he had a gun. I saw the outline of a
18 gun when I was on my back, yeah.

19 Q Do you believe this man had sexual
20 intercourse with you while you were on the ground?

21 A Yes, I do.

22 Q And what leads you to that conclusion?

23 A Because my uterus is set wrong. I don't
24 have sex because it will do a lot of deadly consequences
25 for me. And I felt it and I was in pain and I was

1 sticky and my chest was heavy and hurt like somebody had
2 put pressure, you know, on my chest. And, you know, I
3 just, you know, when you hurt somebody like that and it
4 wouldn't have been an issue to me but that's, you know,
5 I just don't have sex unless I'm with somebody that
6 knows how to do it properly because this causes me to
7 bleed, this causes me to hurt and that's what I felt.

8 Q So due to your experience with your own
9 body you were aware that you had had sex?

10 A Yes.

11 Q And you said you didn't remember getting
12 the sexual assault kit but you remember giving
13 permission to take the sexual assault kit?

14 A Yes.

15 Q Do you have any reason whatsoever to
16 believe a sexual assault kit was not done?

17 A No, I don't, no.

18 Q Okay. I'm going to show you a couple of
19 photos here and it will up on the screen here so the
20 Grand Jurors can see them as well. Grand Jury Exhibit
21 Number 3, this is a photograph that I showed you in my
22 office yesterday, right?

23 A Right.

24 Q You said you're not sure if that's the guy.
25 What were you saying was different about the guy that

1 did this to you?

2 A Because this guy looks clean cut. The guy
3 that attacked me, he had long hair and it was scraggly
4 and greasy. He was a homeless person, that's why I was
5 there with these people. I was comfortable with them.
6 But that's not who I remember.

7 Q Okay. Showing you Grand Jury Exhibit
8 Number 5, you have not seen this photograph before,
9 right?

10 A No.

11 Q Do you recognize that person?

12 A Yes, I do.

13 Q And who is that?

14 A That's the guy that raped me.

15 Q Okay.

16 For the record both photographs are of the
17 same person. The identifying information is Exhibit
18 Numbers 4 and 6.

19 Showing you a few more photographs and then
20 we'll finish up here. Do you recall going back with
21 detectives to the scene, taking them to where you
22 believe this happened?

23 A Yes, because I -- yes.

24 Q Okay. Showing you Grand Jury Exhibit
25 Number 7 up there on the screen, do you recognize that

1 person?

2 A Unfortunately, yes.

3 Q Who's that?

4 A Me.

5 Q Okay. Grand Jury Exhibit Number 8, is that
6 you again?

7 A Yes.

8 Q Do you recall holding a ruler to any of
9 these scars or anything?

10 A Briefly.

11 Q Grand Jury Exhibit Number 9, that looks
12 like your leg; is that fair?

13 A Yes.

14 Q Now, you described what you called a hooch.
15 What is a hooch?

16 A It's what homeless people build. You know,
17 you've seen them, pallets. It's bigger than, more
18 protective than a cardboard box idea.

19 Q So like a makeshift house?

20 A Yeah. And some will come out extravagant,
21 you know, all divided in different rooms, kitchens.
22 They're pretty -- they're homeless people but this was
23 big.

24 Q Okay. All right. I'm going to show you
25 Grand Jury Exhibit Number 10. This is a photograph you

1 viewed yesterday as well. Do you have any context for
2 what that is there or why that photograph was taken?

3 A It makes me believe when I see this picture
4 that when I was walking up with this guy that there was
5 people on this end, on the left side, like in the
6 shadows. And I don't remember what -- like I said, this
7 is a long time ago for me but it is familiar to me, I
8 don't know why. I can't go into detail.

9 Q You didn't take that photo, right?

10 A No.

11 Q So Grand Jury Exhibit 11 is just panning a
12 little to the left. You can see the cones here on the
13 left of Grand Jury Exhibit Number 10. Grand Jury
14 Exhibit Number 11 shows a little bit more of those cones
15 panning left. And then Grand Jury Exhibit Number 12 is
16 panning even further left. On that berm there you can
17 see the cones visible on the right side of that
18 photograph. Does this wall, this berm, mean anything to
19 you?

20 A No. I know there's a wall that was at the
21 gas station, that's how I could see him coming, but I
22 don't know if that's that. I can't tell you. I don't
23 know where that came from.

24 Q That's absolutely fine. All right. We're
25 going to jump forward a little bit here. Grand Jury

1 Exhibit Number 15, do you recognize those?

2 A Yes.

3 Q What are these?

4 A My underwear.

5 Q Those are the underwear you took off and
6 left behind?

7 A Yes.

8 Q Do you recall whether it was you that
9 directed the police to this area?

10 A Yes.

11 Q Okay. And then Grand Jury Exhibit
12 Number 14 is just panning out a little bit from that
13 area. Over here -- sorry, over here there's a nail
14 file, it looks like a key and I believe a lighter over
15 here that you saw a close-up of, right?

16 A Right.

17 Q Do you recall any of those items as
18 belonging to you?

19 A Yes, I do.

20 Q And then panning out a little further just
21 to kind of give us a frame of reference here, this is
22 Grand Jury Exhibit Number 13, and you can see here in
23 the center of the photograph is that same pipe that
24 we're looking at, right, kind of right over where your
25 panties were over here?

1 A Right.

2 Q After this happened to you what did you do
3 with regard to the case in general? So not that it's
4 your responsibility to follow up with police or
5 anything, but what was your understanding of what
6 happened to your case after you reported it?

7 A It was just like because of my past and
8 history and stuff I was nothing, it wasn't a case to
9 pursue.

10 Q Do you have any reason to make up
11 allegations against this person, do you have any prior
12 knowledge of Bryan Dryden or anybody involved?

13 A I've never seen him and now I'm thinking
14 I'm angry because why didn't anybody stop me if they
15 knew who he was and obviously none of us did. And I
16 have no reason to hold something against somebody.

17 Q Okay.

18 That concludes my questioning of this
19 witness. Are there any questions from the Grand Jurors?

20 BY A JUROR:

21 Q Do you know when these pictures were taken?
22 Were they taken in '07 or recently?

23 A I don't know. I have no idea.

24 Q Okay.

25 THE FOREPERSON: By law these proceedings

1 are secret and you are prohibited from disclosing to
2 anyone anything that transpired before us including any
3 evidence presented to the Grand Jury, any event
4 occurring or a statement made in the presence of the
5 Grand Jury or any information obtained by the Grand
6 Jury.

7 Failure to comply with this admonition is a
8 gross misdemeanor punishable up to 364 days in the Clark
9 County Detention Center and a \$2,000 fine. In addition
10 you may be held in contempt of court punishable by an
11 additional \$500 fine and 25 days in the Clark County
12 Detention Center.

13 Do you understand this admonition?

14 THE WITNESS: Yes, I do.

15 THE FOREPERSON: Thank you. You're
16 excused.

17 A JUROR: I just need to go on the record I
18 guess. I know Brianne Huseby, the forensic scientist
19 that testified, but my relationship, my knowing her will
20 have no bearing on my judgment.

21 MR. VILLANI: So your knowing Brianne
22 Huseby, does that have any effect one way or another on
23 how you would vote, whether to true bill or not true
24 bill in this case?

25 A JUROR: No.

1 MR. VILLANI: This concludes my
2 presentation of evidence. Do any of the Grand Jurors
3 have any questions regarding the evidence or elements of
4 the offenses charged? Seeing no hands this matter is
5 submitted for your deliberation.

6 (At this time, all persons, except the
7 members of the Grand Jury, exited the room at 10:59 and
8 returned at 11:03.)

9 THE FOREPERSON: Mr. District Attorney, by
10 a vote of 12 or more Grand Jurors a true bill has been
11 returned against defendant Bryan Warren Dryden charging
12 the crime of sexual assault with use of a deadly weapon
13 in Grand Jury case number 18AGJ051X.

14 We instruct you to prepare an Indictment in
15 conformance with the proposed Indictment previously
16 submitted to us.

17 MR. VILLANI: Okay. Thank you.

18 (Proceedings concluded.)

19 --oo0oo--
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25

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

Dated at Las Vegas, Nevada,
September 30, 2018.

RA037

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
TRANSCRIPT filed in GRAND JURY CASE NUMBER 18AGJ051X:

 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/DONNA J. MCCORD
Signature

September 30, 2018
Date

Donna J. McCord
Print Name

Official Court Reporter
Title

<p>A JUROR: [2] 35/16 35/24</p> <p>BY A JUROR: [1] 34/19</p> <p>BY MR. VILLANI: [3] 7/1 13/1 21/19</p> <p>MR. VILLANI: [11] 5/7 6/18 10/23 11/19 11/22 12/17 20/14 21/10 35/20 35/25 36/16</p> <p>THE FOREPERSON: [21] 5/24 6/1 6/7 6/14 6/20 11/1 11/16 11/24 12/6 12/13 12/18 19/21 20/11 20/16 20/23 20/25 21/6 21/11 34/24 35/14 36/8</p> <p>THE WITNESS: [16] 5/25 6/6 6/13 6/16 11/15 11/18 12/5 12/12 12/15 20/10 20/13 20/22 20/24 21/5 21/8 35/13</p> <p>\$</p> <p>\$2,000 [3] 11/11 20/6 35/9</p> <p>\$500 [3] 11/13 20/8 35/11</p> <p>'</p> <p>'07 [1] 34/22</p> <p>-</p> <p>--oo0oo [1] 36/19</p> <p>-OR [2] 38/10 38/14</p> <p>/</p> <p>/S/DONNA [2] 37/17 38/18</p> <p>0</p> <p>0466 [2] 7/20 18/21</p> <p>070829-0466 [2] 7/20 18/21</p> <p>1</p> <p>10 [5] 4/13 15/21 16/3 31/25 32/13</p> <p>100 percent [1] 8/24</p> <p>10:22 [1] 1/16</p> <p>10:59 [1] 36/7</p> <p>11 [4] 4/14 7/14 32/11 32/14</p> <p>11:03 [1] 36/8</p> <p>12 [3] 4/15 32/15 36/10</p> <p>13 [3] 3/4 4/16 33/22</p> <p>13th [1] 9/21</p> <p>14 [3] 4/17 16/16 33/12</p> <p>15 [2] 4/18 33/1</p> <p>18 [3] 1/15 2/1 5/1</p> <p>18AGJ051X [4] 1/9 5/12 36/13 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21/15</p> <p>system [2] 9/2 19/10</p> <p>T</p> <p>table [1] 9/8</p> <p>TABRON [1] 2/5</p>	<p>take [5] 19/3 25/8 28/7 29/13 32/9</p> <p>taken [5] 1/14 15/16 32/2 34/21 34/22</p> <p>taking [2] 28/2 30/21</p> <p>talk [1] 14/4</p> <p>talking [3] 9/5 23/14 27/6</p> <p>tech [1] 8/24</p> <p>technical [1] 8/20</p> <p>technicians [1] 19/5</p> <p>tell [3] 22/25 25/19 32/22</p> <p>telling [3] 16/19 25/17 28/2</p> <p>tendency [1] 25/15</p> <p>testified [4] 6/25 12/24 21/17 35/19</p> <p>testify [3] 6/24 12/23 21/16</p> <p>testimony [6] 6/3 6/10 12/2 12/9 20/19 21/2</p> <p>testing [1] 8/25</p> <p>than [4] 23/15 23/16 31/17 31/18</p> <p>Thank [7] 11/17 11/19 20/12 20/14 20/25 35/15 36/17</p> <p>that's [17] 9/14 12/17 18/13 18/22 23/25 24/21 25/7 25/13 29/4 29/7 29/24 30/4 30/6 30/14 32/21 32/22 32/24</p> <p>their [4] 8/18 8/20 8/21 8/24</p> <p>them [13] 8/19 23/11 23/12 24/21 26/2 26/17 28/1 28/1 28/2 29/20 30/5 30/21 31/17</p> <p>then [26] 8/1 9/9 17/15 18/4 18/9 18/16 19/2 19/5 19/5 19/7 19/13 22/2 23/13 24/5 24/21 25/11 26/9 26/10 26/13 27/1 27/2 27/24 30/19 32/15 33/11 33/20</p> <p>there [34] 10/25 15/1 15/17 18/1 19/15 19/20 22/21 23/7 23/9 23/10 24/3 24/4 24/5 24/7 24/18 24/19 25/2 25/3 25/14 26/12 26/16 26/22 27/2 27/10 27/10 27/21 27/22 28/4 30/5 30/25 32/2 32/4 32/16 34/19</p> <p>there's [3] 18/15 32/20 33/13</p> <p>thereafter [1] 37/9</p> <p>THERESA [1] 2/9</p> <p>these [9] 11/2 13/15 19/22 27/8 30/5 31/9 33/3 34/21 34/25</p> <p>they're [5] 8/14 8/17 22/10 31/22 31/22</p> <p>they've [3] 8/25 16/8 16/10</p>	<p>thing [2] 24/8 27/8</p> <p>things [1] 27/8</p> <p>think [3] 23/2 24/16 25/12</p> <p>thinking [4] 24/2 24/23 27/4 34/13</p> <p>third [1] 24/16</p> <p>those [5] 25/23 32/14 33/1 33/5 33/17</p> <p>thought [3] 15/8 24/21 26/10</p> <p>threw [2] 25/25 26/2</p> <p>through [7] 7/24 8/14 8/18 19/11 24/7 24/9 27/12</p> <p>throughout [1] 25/15</p> <p>time [10] 19/17 22/21 25/7 25/25 27/22 27/24 28/12 32/7 36/6 37/9</p> <p>Title [1] 38/22</p> <p>to-wit [1] 38/13</p> <p>today [4] 6/9 12/8 21/2 22/19</p> <p>told [7] 23/17 23/20 25/18 26/17 26/18 27/12 27/18</p> <p>too [2] 23/4 25/4</p> <p>took [5] 17/15 23/23 27/16 33/5 37/7</p> <p>towards [1] 26/4</p> <p>track [2] 18/14 19/6</p> <p>transcribe [1] 5/6</p> <p>transcribed [1] 37/10</p> <p>transcript [3] 1/20 37/11 38/5</p> <p>transpired [3] 11/4 19/24 35/2</p> <p>traumatic [1] 27/8</p> <p>trip [1] 27/10</p> <p>Tropicana [3] 23/25 24/4 24/11</p> <p>true [6] 16/18 18/3 35/23 35/23 36/10 37/12</p> <p>truth [18] 6/5 6/6 6/6 6/24 6/24 6/25 12/4 12/5 12/5 12/23 12/23 12/24 20/21 20/22 20/22 21/16 21/16 21/17</p> <p>Tuesday [1] 1/15</p> <p>turn [4] 15/21 16/16 17/19 18/1</p> <p>turned [2] 23/17 26/1</p> <p>two [4] 7/4 14/24 14/25 26/13</p> <p>U</p> <p>Uh [1] 28/10</p> <p>Uh-huh [1] 28/10</p> <p>UMC [1] 28/3</p> <p>under [7] 7/19 9/18 18/9 18/24 19/13 22/7 37/10</p> <p>undersigned [1] 38/4</p> <p>understand [6] 6/13 11/15 12/12 20/10 21/5 35/1</p>
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<p>U</p> <p>understanding [1] 34/5</p> <p>understood [1] 17/13</p> <p>underwear [3] 25/25 33/4 33/5</p> <p>Unfortunately [1] 31/2</p> <p>UNIDENTIFIED [2] 4/7 4/9</p> <p>unimportant [1] 25/24</p> <p>unless [1] 29/5</p> <p>unrelated [2] 10/9 10/20</p> <p>unsolved [1] 25/24</p> <p>up [18] 8/21 9/10 11/10 15/22 20/5 23/11 23/13 24/3 25/17 26/3 29/19 30/20 30/25 32/4 33/15 34/4 34/10 35/8</p> <p>upon [5] 6/4 8/3 9/12 12/3 20/20</p> <p>us [8] 8/19 11/4 19/24 22/25 33/21 34/15 35/2 36/16</p> <p>use [5] 5/17 6/11 12/10 21/3 36/12</p> <p>used [1] 8/25</p> <p>uses [1] 8/16</p> <p>using [2] 8/14 22/12</p> <p>usual [1] 23/17</p> <p>uterus [1] 28/23</p>	<p>34/8</p> <p>way [3] 24/16 27/21 35/22</p> <p>we'll [1] 30/20</p> <p>we're [5] 9/5 24/18 24/22 32/24 33/24</p> <p>weapon [5] 5/17 6/11 12/10 21/4 36/12</p> <p>well [4] 8/17 14/9 29/20 32/1</p> <p>went [9] 7/24 14/17 18/4 23/7 23/9 23/11 24/9 25/12 25/21</p> <p>were [27] 8/21 9/23 9/24 10/5 10/6 13/10 15/3 21/21 22/1 22/7 22/8 22/11 23/1 23/2 23/10 24/17 28/2 28/4 28/8 28/11 28/20 29/9 29/25 33/25 34/21 34/22 37/10</p> <p>WHALEN [1] 2/16</p> <p>what's [2] 13/8 19/10</p> <p>whatever [1] 22/10</p> <p>whatsoever [1] 29/15</p> <p>when [15] 7/23 9/3 9/13 10/3 14/17 14/21 24/18 25/1 25/21 28/14 28/18 29/3 32/3 32/4 34/21</p> <p>where [13] 8/22 16/4 22/1 22/21 23/5 23/21 24/1 24/22 25/23 28/8 30/21 32/23 33/24</p> <p>whether [2] 33/8 35/23</p> <p>which [2] 24/20 25/5</p> <p>while [2] 24/4 28/20</p> <p>who [4] 25/6 30/6 30/13 34/15</p> <p>Who's [1] 31/3</p> <p>whole [6] 6/6 6/24 12/5 12/23 20/22 21/16</p> <p>why [5] 8/7 30/4 32/2 32/8 34/14</p> <p>will [7] 5/11 5/13 20/15 28/24 29/19 31/20 35/19</p> <p>wit [1] 38/13</p> <p>withdrawing [1] 24/17</p> <p>within [1] 5/18</p> <p>witness [6] 5/24 10/25 11/23 19/20 20/15 34/19</p> <p>WITNESSES [1] 3/1</p> <p>word [1] 19/10</p> <p>work [1] 13/9</p> <p>worked [1] 9/1</p> <p>working [1] 7/15</p> <p>written [1] 5/21</p> <p>wrong [1] 28/23</p>	<p>yesterday [2] 29/22 32/1</p> <p>you [183]</p> <p>you're [10] 6/4 11/17 12/3 12/8 15/24 20/12 20/20 22/25 29/24 35/15</p> <p>you've [1] 31/17</p> <p>your [23] 6/2 6/15 7/16 11/25 12/14 13/8 13/10 13/20 14/7 15/10 16/4 20/17 21/7 22/22 29/8 29/8 31/12 33/24 34/4 34/5 34/6 35/21 36/5</p> <p>yourself [1] 22/5</p>		
<p>V</p> <p>vaginal [2] 10/2 10/8</p> <p>Valley [2] 22/3 27/24</p> <p>vault [4] 19/3 19/4 19/4 19/6</p> <p>Vegas [7] 1/14 5/1 7/5 13/5 22/5 23/24 37/14</p> <p>versus [1] 5/12</p> <p>very [2] 9/1 27/7</p> <p>victim [1] 15/6</p> <p>viewed [1] 32/1</p> <p>Villani [2] 2/22 5/10</p> <p>visible [2] 15/3 32/17</p> <p>visited [1] 8/20</p> <p>vote [2] 35/23 36/10</p>	<p>W</p> <p>W-A-L-T-E-R [1] 12/17</p> <p>walked [5] 23/13 24/3 24/22 25/10 26/22</p> <p>WALKER [1] 2/3</p> <p>walking [3] 24/9 24/19 32/4</p> <p>wall [2] 32/18 32/20</p> <p>WALTER [3] 3/4 12/16 12/21</p> <p>want [3] 15/20 27/17 27/17</p> <p>wanted [1] 27/23</p> <p>warrant [2] 17/5 17/10</p> <p>WARREN [7] 1/10 5/12 6/12 12/11 13/15 21/4 36/11</p> <p>Washington [1] 7/15</p> <p>wasn't [7] 23/3 24/1 24/8 25/14 26/9 26/21</p>	<p>Y</p> <p>yeah [4] 16/8 16/10 28/18 31/20</p> <p>years [4] 7/9 7/14 13/7 25/1</p> <p>yelling [1] 26/25</p> <p>yes [41]</p>	<p>Z</p> <p>zeros [1] 9/6</p>	<p>RA044</p>

ORIGINAL

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

NOV 05 2019

BY: Natalie Ortega
NATALIE ORTEGA, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GENEVIEVE CRAGGS
Chief Deputy District Attorney
Nevada Bar #013469
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BRYAN WARREN DRYDEN,
#2585083
Defendant.

CASE NO: C-18-334955-1
DEPT NO: XVIII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **ATTEMPT SEXUAL ASSAULT (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

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

The parties stipulate to a sentence of five (5) years to twenty (20) years in the Nevada Department of Corrections, to run concurrently with Case No. 09C258241.

I agree to the forfeiture of any and all electronic storage devices, computers, and/or related equipment and/or weapons or any interest in any electronic storage devices, computers and/or related equipment and/or weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

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C-18-334955-1
GPA
Guilty Plea Agreement
4874097



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RA045

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

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

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense to which I now plead as set forth in Exhibit "1".

15 I understand that as a consequence of my plea of guilty the Court must sentence me to
16 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
17 TWO (2) years and a maximum term of not more than TWENTY (20) years. The minimum
18 term of imprisonment may not exceed forty percent (40%) of the maximum term of
19 imprisonment.

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

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

25 I understand that pursuant to NRS 176.139 and my plea of guilty to a sexual offense for
26 which the suspension of sentence or the granting of probation is permitted, P&P shall arrange
27 for a psychosexual evaluation as part of the Division's Presentence Investigation (PSI) Report
28 to the court.

1 I understand that I am not eligible for probation pursuant to NRS 176A.110 unless the
2 psychosexual evaluation certifies that I do not represent a high risk to reoffend based upon a
3 currently accepted standard of assessment. I understand that, except as otherwise provided by
4 statute, the question of whether I receive probation is in the discretion of the sentencing judge.

5 I understand that, before I am eligible for parole a panel consisting of the Administrator
6 of the Mental Health and Developmental Services of the Department of Human Resources or
7 his designee; the Director of the Department of Corrections or his designee; and a psychologist
8 licensed to practice in this state or a psychiatrist licensed to practice medicine in this state
9 certifies that I was under observation while confined in an institution of the department of
10 corrections and that I do not represent a high risk to reoffend based upon a currently accepted
11 standard of assessment.

12 I understand that, pursuant to NRS 176.0931, the Court must include as part of my
13 sentence, in addition to any other penalties provided by law, a special sentence of lifetime
14 supervision commencing after any period of probation or any term of imprisonment and period
15 of release upon parole.

16 I understand that the Court will include as part of my sentence, in addition to any other
17 penalties provided by law, pursuant to NRS 179D.441 to 179D.550, inclusive, I must register
18 as a sex offender within forty-eight (48) hours of release from custody onto probation or parole.

19 I understand that I must submit to blood and/or saliva tests under the direction of P&P
20 to determine genetic markers and/or secretor status.

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

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

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

28 ///

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

3 I understand that if the State of Nevada has agreed to recommend or stipulate a
4 particular sentence or has agreed not to present argument regarding the sentence, or agreed not
5 to oppose a particular sentence, such agreement is contingent upon my appearance in court on
6 the initial sentencing date (and any subsequent dates if the sentencing is continued). I
7 understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal
8 offense prior to sentencing the State of Nevada would regain the full right to argue for any
9 lawful sentence.

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

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

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

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

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

1 agreed otherwise, then the District Attorney may also comment on this report.

2 WAIVER OF RIGHTS

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

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

19 VOLUNTARINESS OF PLEA

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

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

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

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

28 ///

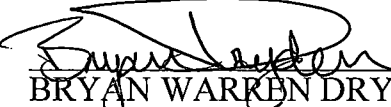
1 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
2 that a trial would be contrary to my best interest.

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

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

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

11 DATED this 5th day of November, 2019.

12
13 
14 BRYAN WARREN DRYDEN
Defendant

15 AGREED TO BY:

16 
17 GENEVIEVE CRAGGS
18 Chief Deputy District Attorney
Nevada Bar #013469

1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
- 12 a. The removal from the United States through deportation;
 - 13 b. An inability to reenter the United States;
 - 14 c. The inability to gain United States citizenship or legal residency;
 - 15 d. An inability to renew and/or retain any legal residency status; and/or
 - 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

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

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

Dated: This 5th day of November, 2019.


TONY ABBATANGELO, ESQ.

jg/SVU

1 **AIND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GENEVIEVE CRAGGS
6 Deputy District Attorney
7 Nevada Bar #13469
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 **BRYAN WARREN DRYDEN,**
13 **#2585083**

14 Defendant.

CASE NO. **C-18-334955-1**

DEPT NO. **XVIII**

13 **A M E N D E D**
14 **I N D I C T M E N T**

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

17 The Defendant above named, **BRYAN WARREN DRYDEN**, is accused by the Clark
18 County Grand Jury of the crime of **ATTEMPT SEXUAL ASSAULT (Category B Felony -**
19 **NRS 200.364, 200.366, 193.330 - NOC 50119)**, committed at and within the County of Clark,
20 State of Nevada, on or about the 29th day of August, 2007, as follows:

21 Defendant did then and there willfully, unlawfully, and feloniously attempt to sexually
22 assault and subject K.S., to sexual penetration, to wit: sexual intercourse, by attempting to
23 place his penis into the genital opening of K.S., against her will, or under conditions in which

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EXHIBIT 1

RA052

1 Defendant knew, or should have known, that K.S. was mentally or physically incapable of
2 resisting or understanding the nature of Defendant's conduct

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

6 BY


7 GENEVIEVE CRAGGS
8 Deputy District Attorney
9 Nevada Bar #13469
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28 LVMPD EV# 0708290466
(TK3)

ORIGINAL

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

NOV 05 2019

BY: Natalie Ortega
NATALIE ORTEGA, DEPUTY

1 **AIND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GENEVIEVE CRAGGS
6 Deputy District Attorney
7 Nevada Bar #13469
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -VS-

12 BRYAN WARREN DRYDEN,
13 #2585083

14 Defendant.

CASE NO. C-18-334955-1

DEPT NO. XVIII

AMENDED
INDICTMENT

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

17 The Defendant above named, **BRYAN WARREN DRYDEN**, is accused by the Clark
18 County Grand Jury of the crime of **ATTEMPT SEXUAL ASSAULT (Category B Felony -**
19 **NRS 200.364, 200.366, 193.330 - NOC 50119)**, committed at and within the County of Clark,
20 State of Nevada, on or about the 29th day of August, 2007, as follows:

21 Defendant did then and there willfully, unlawfully, and feloniously attempt to sexually
22 assault and subject K.S., to sexual penetration, to wit: sexual intercourse, by attempting to
23 place his penis into the genital opening of K.S., against her will, or under conditions in which

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C-18-334955-1
AIND
Amended Indictment
4874096




RA054

1 Defendant knew, or should have known, that K.S. was mentally or physically incapable of
2 resisting or understanding the nature of Defendant's conduct

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

6 BY


7 GENEVIEVE CRAGGS
8 Deputy District Attorney
9 Nevada Bar #13469
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THE STATE OF NEVADA,
Plaintiff,
vs.
BRYAN WARREN DRYDE
Defendant.

VS.

BRYAN WARREN DRYDEN,
Defendant.

**RECORDER'S TRANSCRIPT OF HEARING:
STATUS CHECK: NEGOTIATIONS/TRIAL SETTING**

For the State:

For the Defendant:

ANTHONY ABBATANGELO, ESQ.

RECORDED BY: YVETTE SISON, COURT RECORDER

RA056

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Las Vegas, Nevada, Tuesday, November 5, 2019

[Hearing began at 9:19 a.m.]

THE COURT CLERK: C334955, State of Nevada versus
Bryan Dryden.

THE COURT: Good Morning.

MR. ABBATANGELO: Good Morning, Your Honor, Tony
Abbatangelo for Mr. Dryden. We have this matter resolved. I just
turned in the amended indictment and GPA.

MS. CRAGGS: Good Morning, Your Honor, Genevieve
Craggs for the State.

THE COURT: Good Morning.

MR. ABBATANGELO: Can we approach briefly?

THE COURT: You can.

[Bench Conference]

MR. ABBATANGELO: Can you read the charge, or will
you just saying you're pleading guilty and that we're going to do it
as a sex assault?

MS. CRAGGS: What?

MR. ABBATANGELO: I just think that if you read the charge
out in front of everybody – just so that you can –

THE COURT: Generally. It's not a kid case so –

MS. CRAGGS: Yeah, I don't think --

MR. ABBATANGELO: -- because that's the other factor it's
not a kid case.

1 MS. CRAGGS: Yeah. That's right and I --

2 THE COURT: I'm sorry I made you guys come all this way

3 --

4 MS. CRAGGS: -- it protects you.

5 THE COURT: -- but I wanted to go to the Metro thing if

6 would've been --

7 MS. CRAGGS: Yeah, - no this is great, because now my
8 victim was supposed to get on a plane, and now we're going to get
9 it done before she has to get on a plane, so thank you. But, see
10 yeah Tony he has to be canvassed on the facts.

11 THE COURT: Yes.

12 MS. CRAGGS: Okay. Thank you.

13 THE COURT: We all good?

14 MS. CRAGGS: I think so. Thank you Judge.

15 THE COURT: All right.

16 [Bench Conference Concluded]

17 THE COURT: All right. My understanding this case is
18 negotiated. I have a guilty plea agreement here. What are the
19 negotiations?

20 MR. ABBATANGELO: Your Honor, at this time, we'll be
21 pleading to attempt sexual assault, stip to 5 to 20, run concurrent to
22 09C258241.

23 THE COURT: Is that your understanding of the
24 negotiations, Mr. Dryden?

25 THE DEFENDANT: Yes ma'am.

1 THE COURT: What's your full name?
2 THE DEFENDANT: Bryan O'Neal [phonetics] Dryden.
3 THE COURT: How old are you?
4 THE DEFENDANT: I'm 49 years old.
5 THE COURT: How far did you go in school?
6 THE DEFENDANT: I've got my GED.
7 THE COURT: So, do you read, write, and understand the
8 English language?
9 THE DEFENDANT: Yes ma'am.
10 THE COURT: Are you currently under the influence of any
11 drug, medication, or alcoholic beverage?
12 THE DEFENDANT: No ma'am.
13 THE COURT: Do you understand the proceedings that are
14 happening here today?
15 THE DEFENDANT: Yes ma'am.
16 THE COURT: Have you received a copy of the information
17 charging you with attempt sexual assault?
18 THE DEFENDANT: I have.
19 THE COURT: Have you – do you understand the charges
20 contained in the information and indictment?
21 THE DEFENDANT: Yes ma'am.
22 THE COURT: Have you discussed this case with your
23 attorney?
24 THE DEFENDANT: Yes ma'am.
25 THE COURT: As to the charge set forth in the indictment,

1 how do you plead guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Are you making this plea freely and
4 voluntarily?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: Has anyone forced or threatened you or
7 anyone close to you to get you to enter this plea?

8 THE DEFENDANT: No ma'am.

9 THE COURT: Has anyone made you promises other than
10 what's contained in the guilty plea agreement to get you to enter
11 this plea?

12 THE DEFENDANT: No ma'am.

13 THE COURT: I have before me the written plea
14 agreement; did you sign this?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Is this your signature on page 6?

17 THE DEFENDANT: Yes, it is.

18 THE COURT: Before you signed it, did you read it and
19 discuss it with your attorney?

20 THE DEFENDANT: Yes, we have gone over it.

21 THE COURT: Do you understand everything contained in
22 this agreement?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Do you understand the constitutional rights you're
25 giving up by entering this plea of guilty?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you understand the appellate rights that
3 you're giving up by entering this plea of guilty?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Do you understand that if you're not a
6 United States citizen that a plea of guilty may have immigration
7 consequences including deportation?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand the range of punishment
10 is 2 to 20 years in the Nevada Department of Corrections?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that while it's
13 probationable sentencing is up to me including whether the count
14 runs consecutive or concurrent to anything else?

15 THE DEFENDANT: Yes ma'am.

16 THE COURT: And no one can promise you probation,
17 leniency, or any special treatment; you understand that?

18 THE DEFENDANT: We just went over the – running it
19 concurrent with my current charge.

20 THE COURT: But there's no guarantees.

21 THE DEFENDANT: Right, it's up to you.

22 THE COURT: It's still going to be ultimately up to me.

23 THE DEFENDANT: Yes ma'am.

24 THE COURT: Okay. Are you pleading guilty because in
25 truth and in fact you did, on or about August 29, 2007, willfully,

1 unlawfully, and feloniously attempt to sexually assault K.S. with
2 sexual penetration, that being sexual intercourse by attempting to
3 place your penis into the genital opening of K.S. against her will
4 under circumstances in which you knew or should've known that
5 she was mentally or physically incapable of resisting or
6 understanding the nature of your conduct? Is that what you did?

7 THE DEFENDANT: Yes ma'am.

8 THE COURT: State, is that sufficient?

9 MS. CRAGGS: Yes it is, thank you Your Honor.

10 THE COURT: Do you have any questions you'd like to ask
11 me or your attorney before I accept your plea?

12 THE DEFENDANT: No ma'am.

13 THE COURT: The Court finds the Defendant's plea of
14 guilty is freely and voluntarily made, and the Defendant
15 understands the nature of his offenses, consequences of plea and
16 therefore, accepts his plea of guilty. The matter is referred to
17 Department of Parole and Probation for a pre-sentence
18 investigation report and set for sentencing on –

19 THE COURT CLERK: January 7th, 9 a.m.

20 THE COURT: -- trial date is vacated.

21 MS. CRAGGS: Thank you.

22 MR. ABBATANGELO: Thank you.

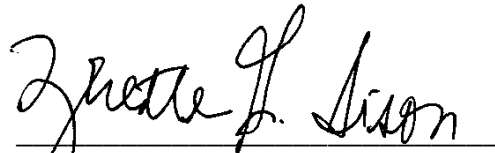
23 THE COURT: Thank you all.

24 [Hearing concluded at 9:23 a.m.]

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



Yvette G. Sison
Court Recorder/Transcriber

Felony/Gross Misdemeanor

COURT MINUTES

January 07, 2020

C-18-334955-1 State of Nevada
 vs
 Bryan Dryden

January 07, 2020 09:00 AM Sentencing

HEARD BY: Holthus, Mary Kay COURTROOM: RJC Courtroom 03F

COURT CLERK: Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Anthony L Abbatangelo Attorney for Defendant

Bryan Warren Dryden Defendant

Genevieve C. Craggs Attorney for Plaintiff

Marisa Border Attorney for Defendant

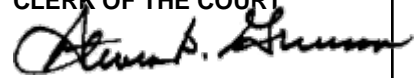
State of Nevada Plaintiff

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Abbatangelo indicated Deft. would like to withdraw his Guilty Plea Agreement; therefore, he would need a new attorney and a potential evidentiary hearing. COURT ORDERED, Marisa Border APPOINTED for the limited purpose of looking into a possible withdrawal of Guilty Plea Agreement. Colloquy between parties. Following colloquy, COURT ORDERED, matter SET for a status check in 30 days.

CUSTODY (COC-NDC)

2/4/20 9:00 AM STATUS CHECK: MOTION TO WITHDRAW GUILTY PLEA



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #013469
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-

**BRYAN WARREN DRYDEN,
#2585083**

Defendant.

CASE NO: **C-18-334955-1**

DEPT NO: **XVIII**

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA**

DATE OF HEARING: APRIL 14, 2020
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Guilty Plea.

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

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RA065

1 **POINTS AND AUTHORITIES**

2 **Statement of Facts**

3 On August 30, 2007, K.S. reported she was sexually assaulted by an unknown male.
4 K.S. told police officers that night that she and the male were walking together towards an
5 empty parking lot when K.S. fell to the ground and the male jumped on top of her and pulled
6 out a gun. He rolled her onto her back and placed his hands around her throat while hitting
7 K.S.'s head against the ground several times. He pulled off K.S.'s shorts, moved her
8 underwear to the side, and penetrated her vagina with his penis. When the assault was over,
9 K.S. threw her panties into a bush, so there would be evidence of the crime.

10 On October 31, 2017, LVMPD received a CODIS hit notification which indicated
11 foreign DNA obtained from K.S.'s vaginal swab matched to a DNA profile within CODIS to
12 Defendant. With this new information, the case was re-opened and a search warrant was
13 drafted for a comparison buccal swab with Defendant. Defendant was located at High Desert
14 State Prison and the search warrant was served and a buccal swab procured.

15 On April 18, 2018, Detectives interviewed Defendant at High Desert State Prison where
16 he denied having ever seen or knowing K.S. After being informed that his DNA was a match
17 from K.S.'s sexual assault kit, Defendant said he might have had sex with her if he was drunk
18 but he did not remember. After executing the search warrant for Defendant's DNA through a
19 buccal swab, Defendant then changed his story and said he did recognize one of the persons
20 in the pictures and he did have consensual sexual intercourse in the field.

21 On November 5, 2019, Dryden entered a plea of guilty to the charge of Attempt Sexual
22 Assault (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119). The parties
23 stipulated to a sentence of five (5) to twenty (20) years in Nevada Department of Corrections,
24 to run concurrently with Case No. 09C258241.

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ARGUMENT

A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel. Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985). In determining whether a guilty plea is knowingly and voluntarily entered, the court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court to personally address a defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Id.; State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas “do not require the articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973). It requires only “that the record affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

Entry of a guilty plea is a solemn act, not lightly accepted. United States v. Ensminger, 567 F.3d 587, 592-93 (9th Cir. 2009). Although a defendant may, prior to sentencing withdraw his plea for a substantial reason which is “fair and just,” Stevenson v. State, 131 Nev. 598, 601, 354 P.3d 1277, 1279 (2015), “[o]nce the plea is accepted, permitting withdrawal is, as it ought to be, the exception, not an automatic right.” Ensminger, 567 F.3d at 593. When determining whether a defendant has shown such a substantial reason that it is fair and just to allow the privilege of withdrawing the guilty plea, the District Court looks at the totality of the circumstances, including but not limited to whether the plea was entered knowingly and voluntarily. Stevenson, 131 Nev. at 602, 354 P.3d at 1279-80.

When a defendant has made a tactical decision to enter into a guilty plea, a change of mind or a determination that choosing to enter the plea was a bad choice is *not* sufficient to

1 allow withdrawal of the plea. Id. at 604-605, 354 P.3d at 1281-82. The purpose of focusing on
2 what is fair and just is “to allow a hastily entered plea made with unsure heart and confused
3 mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait
4 several weeks, and then obtain a withdrawal if he believes that he made a bad choice in
5 pleading guilty.” United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991) (internal
6 quotation marks omitted).

7 A defendant may not use the agreement as a placeholder until he determines a more
8 favorable course of action. Ensminger, 567 F.3d at 593. Even a good faith change of heart is
9 not a fair and just reason. Id. (“Our prior decisions make clear that a change of heart—even a
10 good faith change of heart—is not a fair and just reason that entitles Ensminger to withdraw
11 his plea, even where the government incurs no prejudice.”). Similarly, the Court must not
12 “allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and
13 meaningless formality reversible at the defendant's whim.’” Stevenson, 131 Nev. at 605, 354
14 P.3d at 1282, quoting Barker, 514 F.2d at 221.

15 The Nevada Supreme Court recently clarified that, before sentencing, a defendant may
16 withdraw his guilty plea for any reason that is fair and just. Id. In so analyzing, the district
17 court must consider the totality of the circumstances and is not confined to issues of whether
18 the plea is free and voluntary. Id. However, the Court’s reasoning in Stevenson does not give
19 a defendant carte blanche to withdraw his guilty plea before sentencing. In fact, the Stevenson
20 Court affirmed the lower court’s decision denying Stevenson’s motion to withdraw his plea,
21 despite claims that he was coerced into pleading guilty by the court’s unfavorable rulings,
22 misled by defense counsel about the availability of evidence, and left with very little time to
23 decide whether to enter his plea. Id. The Court was also unpersuaded by the defendant’s claims
24 that he was acting impulsively and made a split-second decision to enter his plea. Id. In
25 denying Stevenson’s myriad of claims, the Court reasoned that he had failed to present a
26 substantial reason to withdraw his plea and, “to withdraw his plea under the circumstances
27 would allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and
28

1 meaningless formality reversible at the defendant's whim.” Id. (quoting United States v.
2 Barker, 514 F.2d 208, 221 (D.C. Cir. 1975)).

3 **I. Defendant Has Not Presented a Fair and Just Reason to Permit Withdrawal of**
4 **His Plea**

5 Defendant argues he was not capable of making decisions due to lack of medication
6 while housed in the Clark County Detention Center.¹ However, Defendant put in his
7 opposition he was given medication two days prior to the entry of the guilty plea. Defendant
8 provides no evidence as to what these medications were or proof that they were “withheld.”
9 Defendant also argues he was coerced by his attorney to accept the plea deal and therefore it
10 was not freely and voluntarily made. Defendant stated he was coerced into accepting the plea
11 negotiations as allegedly his attorney promised him \$330.00 to buy a television and tennis
12 shoes if he accepted the deal. Finally, Defendant argues his attorney did not spend adequate
13 time with him discussing the plea deal prior to entering into the agreement.

14 Even if these reasons were taken at face value, which they should not be, they still do
15 not overbear the presumption that the guilty plea was knowingly and voluntarily entered into.
16 By signing the Guilty Plea Agreement in this case, Defendant acknowledged that:

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

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

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

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

I am not now under the influence of any intoxicating
liquor, a controlled substance or other drug which would in any

¹ At the time of the writing of this opposition, no transcript has been filed of Defendant’s plea canvass. However, it is the State’s recollection that the court thoroughly canvassed Defendant, including a discussion regarding whether he had received his medication.

1 manner impair my ability to comprehend or understand this
2 agreement or the proceedings surrounding my entry of this plea.

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

6 Guilty Plea Agreement, Nov. 5, 2019, pp. 5-6. Defendant further acknowledged his
7 understanding of the negotiations and consequences of his plea during a plea canvass by this
8 Court.

9 Defendant's claim of being denied medication for five days is not a fair and just reason
10 to withdraw his guilty plea. Defendant had been taking his medication for two days before he
11 agreed to plead guilty. In the Guilty Plea Agreement Defendant said he was not under the
12 influence of any medication that would impair his judgment. Defendant provides no
13 information as to what medications were allegedly withheld and how they would affect his
14 judgment. Additionally, he was canvassed thoroughly on this point by the Court.

15 Defendant also claims he was promised \$330.00 for a television and tennis shoes by
16 his attorney if he agreed to plead guilty. This claim is absurd and Defendant has not shown
17 any proof that anything like this occurred. However, even if we consider it to be true, it does
18 not overbear the presumption of his guilty plea. The Defendant said he was not being promised
19 anything to plead guilty and not under duress or coercion to plead guilty. To allow the
20 Defendant to withdraw his guilty plea based on these unsubstantiated allegations would be the
21 very issue the Stevenson decision was trying to avoid. "To withdraw his plea under the
22 circumstances would allow the solemn entry of a guilty plea to 'become a mere gesture, a
23 temporary and meaningless formality reversible at the defendant's whim.'" Stevenson, 131
24 Nev. at ___, 354 P.3d at 1282, quoting Barker, 514 F.2d at 221. The Defendant is trying to
25 abuse and game the system to his advantage. The decision in Stevenson is used to uphold the
26 integrity of the guilty plea system and it is clear this is the type of claim Stevenson is supposed
27 to prevent. Id.

28 Defendant knew what he was agreeing to when he entered into the guilty plea
agreement. The Defendant is not a novice to the criminal justice system as he is currently

1 serving a sentence at High Desert State Prison. The Defendant had a change of heart about
2 pleading guilty. However, that can never be a reason, even if made in good faith, to withdraw
3 a guilty plea. Defendant agreed to the guilty plea, was canvassed by the court, and found to
4 have entered the agreement freely and voluntarily. He agreed he was not under duress or
5 coercion, had adequately reviewed the materials of the guilty plea agreement with his attorney,
6 and he was not being promised anything by anyone to plead guilty. The Defendant has shown
7 no fair or just reason to withdraw his guilty plea.

8 **CONCLUSION**

9 The Defendant's motion to withdraw his guilty plea should be denied.

10 DATED this 31st day of March, 2020.

11 Respectfully submitted,

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

14
15 BY /s/ Genevieve Craggs
16 GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #013469

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19
20 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

21 I hereby certify that service of the above and foregoing was made this 31st day of
22 March, 2020, by electronic transmission to:

23 MARISSA BORDER, ESQ.
24 Email Address: mborderlaw@gmail.com

25 BY: /s/ Jennifer Georges
26 Secretary for the District Attorney's Office

27
28 GCC/jg/SVU



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

BRYAN DRYDEN,
Defendant.

CASE NO: C-18-334955-1
DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, OCTOBER 29, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
EVIDENTIARY HEARING; MOTION TO WITHDRAW PLEA - DAY 3**

APPEARANCES:

For the State:

GENEVIEVE CRAGGS, ESQ.,
BRYAN S. SCHWARTZ, ESQ.
Deputy District Attorneys
(via BlueJeans)

For the Defendant:

MARISA BORDER, ESQ.
Deputy Public Defender

RECORDED BY: ANGELICA MICHAUX, COURT RECORDER

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WITNESS INDEX

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Las Vegas, Nevada; Thursday, October 29, 2020

[Proceeding commenced at 1:32 p.m.]

THE MARSHAL: All rise, Department XVIII is back in session.
Honorable Judge Mary Kay Holthus now presiding. Please be seated,
come to order.

THE COURT CLERK: State of Nevada versus Bryan Dryden,
C334955.

THE COURT: Is the State here?

MS. BORDER: They're on BlueJeans, Your Honor.

THE COURT: Oh.

MR. SCHWARTZ: Hey, Your Honor. Bryan Schwartz and
Genevieve Craggs for the State.

THE COURT: Hello. All right, where were we? Anybody?

MS. BORDER: I believe I had just finished the direct of Mr.
Dryden and it was the State's cross.

THE COURT: Okay. Mr. Schwartz, Ms. Craggs?

MR. SCHWARTZ: Thank you, Your Honor, it's going to be me
for the cross. Bryan, can you hear me okay?

THE COURT: Mr. Dryden, can you hear us?

THE DEFENDANT: Bryan Schwartz, can you spell that?

MR. SCHWARTZ: Is that Mr. Dryden?

THE COURT: Yes.

MR. SCHWARTZ: Oh, okay.

THE COURT: Can you see him?

1 THE DEFENDANT: Yes. The State is cutting in and out, can
2 he spell his last name for me?

3 MR. SCHWARTZ: I guess I could. I guess my point is
4 though, can you hear me, Mr. Dryden?

5 THE DEFENDANT: I can hear you now. Before it was cutting
6 in and out.

7 MR. SCHWARTZ: Okay. Let me ask you a few questions
8 and your attorney can give you the spelling of my name, okay?

9 **BRYAN DRYDEN**

10 [having been recalled as a witness and being previously sworn, testified
11 as follows]

12 **CROSS-EXAMINATION**

13 BY MR. SCHWARTZ:

14 Q So, Mr. Dryden, I'm going to ask you a couple questions about
15 your entry of plea and your guilty plea agreement. I'm going to try to ask
16 pretty specific questions that you can agree with or disagree with. If you
17 want to answer different questions, you'll be able to answer different
18 questions on redirect, okay?

19 A Okay.

20 Q Okay, so the first thing I wanted to talk about is you had
21 mentioned when you discussed, I guess last time we were in court, that
22 there was -- you weren't necessarily getting your medicine; is that
23 correct? There was an issue with your medicine, and you were unable
24 to understand entry of plea?

25 A Yes, sir.

Q The documents you have in front of you, what documents do you have there?

A Everything here is case notes and I've got documents from this case, discovery, and also from my criminal case pertaining to the withdrawal of plea.

Q Okay. Do you have your guilty plea agreement from this case in front of you?

A I'll have to look for it.

Q That and the transcripts of the entry of plea are the two main things I want you to have there, okay?

A Okay. I was just trying to get everything situated.

[PAUSE]

MR. SCHWARTZ: And Your Honor, while he's looking for those, just for the record, I believe there's going to be a stipulation, but the State has 6 exhibits that we would be asking to move into evidence. The first one is the motion to withdraw the guilty plea on this case.

THE COURT: Okay.

MR. SCHWARTZ: I'm sorry, on the other case, C258241. There's Exhibit No. 2 is the minutes from February 7th, 2011, also pertaining to the other case.

[Colloquy between counsel]

MR. SCHWARTZ: Exhibit No. 3 would be the guilty plea agreement from the other case, as well. No. 4 is a judgment of conviction from the other case and then the minutes from the other case would be No. 5 from June 1st, 2011. And No. 6 is an order of affirmance

1 from the Supreme Court on the other case, as well.

2 Those are all emailed to Your Honor --

3 THE COURT: We have them.

4 MR. SCHWARTZ: -- so you should have those, as well.

5 THE COURT: We do. Ms. Border, are you stipulating to
6 those?

7 MS. BORDER: I am, Your Honor. And I did provide Mr.
8 Dryden whichever copies I had received from the State, so he should
9 have all of those.

10 THE COURT: Is that correct, Mr. Dryden, you have them all?

11 THE DEFENDANT: Yes, ma'am, I've got them all right here.

12 THE COURT: Okay.

13 **[EXHIBITS 1 THROUGH 6 ADMITTED]**

14 THE DEFENDANT: So, I've got the -- you said get the guilty
15 plea agreement?

16 MR. SCHWARTZ: The guilty plea --

17 THE DEFENDANT: Yeah, I've got it.

18 MR. SCHWARTZ: -- agreement for this case. Okay. Okay.

19 THE DEFENDANT: Yeah, I've read it.

20 **CROSS-EXAMINATION CONTINUED**

21 BY MR. SCHWARTZ:

22 Q Let me just ask you -- let me ask you a couple questions about
23 that. All right, so when you entered your plea in front of Judge Holthus
24 on this case, you didn't mention any issues with the medicine, correct?

25 A I don't have -- I don't believe I have the transcripts from the

1 guilty plea agreement. I don't remember. I've requested transcripts,
2 and I don't have them.

3 Q Okay. Let me just read to you from the transcripts. Tell me if
4 this sounds familiar. The Judge asked you: are you currently under the
5 influence of any drug, medication, or alcoholic beverage? You
6 answered: no, ma'am.

7 She then asked you: do you understand the proceedings that
8 are happening here today? You said: yes, ma'am.

9 Marisa, page 4.

10 MS. BORDER: Good correction.

11 BY MR. SCHWARTZ:

12 A If I said no ma'am that I'm not on any medication is -- would
13 be correct. That -- I was supposed to be on medication, but I wasn't.
14 So, answering no to that question, I thought I was answering correctly.

15 Q Oh, okay. And then she asked you if you understood the
16 proceedings happening here today, and you said yes, ma'am, okay? Do
17 you agree with me?

18 A I -- as far as I --

19 Q I'm just asking -- again, I'm just asking if that's what occurred.
20 I know that you have your position on what happened, but that's what
21 occurred when you talked to the Judge; is that correct?

22 A Well, to tell you the truth, being off my meds kind of had
23 stripped me of my border walls saying whatever I said. I felt -- I actually
24 felt like I was being tortured, to tell you the truth, into pleading guilty to
25 something that I --

1 Q Now, Mr. Dryden, this is an example of where you didn't
2 answer my question. I know you have a position on everything that
3 happened, and I appreciate that. But my only question was at court,
4 when you entered the plea, isn't it true that the Judge said do you
5 understand the proceedings that are happening here today, and you
6 said yes? That's really all I'm asking.

7 A And I was advised by Tony Abbatangelo when he came to
8 visit me and talked me into this plea agreement, I said through the plea
9 agreement, I will have to lie to the Judge. And he said, well, in order to
10 get this plea agreement that -- you've got to do what you've got to do to
11 avoid a ten to life sentence. He advised me to lie through the plea
12 canvas.

13 Q Okay. So, I don't remember hearing that last time when we
14 were in court, but it's --

15 A Well, there's a lot --

16 Q -- your testimony today --

17 A -- there's a lot of things you haven't heard --

18 Q -- hey, Mr. Dryden, give me a second to answer, and then you
19 can ask you a question and you can answer, okay? Let me just finish
20 my question.

21 A I --

22 Q Let me just finish my question.

23 A I don't even remember --

24 Q Let me just finish my question.

25 THE COURT: Mr. Dryden. Mr. Dryden.

1 BY MR. SCHWARTZ:

2 Q And you haven't said anything.

3 THE COURT: Mr. Dryden, he needs to be able to ask the
4 question otherwise we are just wasting time because we're not getting
5 anything down here, okay? So, one at a time.

6 THE DEFENDANT: Well, Your Honor, I don't even remember
7 seeing this guy Bryan Schwartz.

8 THE COURT: Okay, well that's --

9 THE DEFENDANT: This is the first time --

10 THE COURT: -- that's really --

11 THE DEFENDANT: -- I believe I've even seen him.

12 THE COURT: That's okay. There's probably lots of
13 prosecutors you haven't seen. Mr. Schwartz, go ahead with your
14 question. Mr. Dryden, wait for the question.

15 BY MR. SCHWARTZ:

16 Q Mr. Dryden, is it your testimony today that the entire time you
17 spoke to the Judge when you entered your plea on the record in court,
18 you were lying to her for every single question?

19 A I don't believe so. I don't believe I was lying, I was telling the -
20 - as much as I could to secure a plea deal that I was made to believe
21 was the best thing for me, which I found out was not the truth.

22 Q When you told the Judge you understood the proceeding that
23 day, was that true or was that a lie?

24 A I really don't remember. I was so whacked out off of my
25 medication, by the time I got back on my medication I realized I had

1 been hoodwinked into doing something I didn't want to do.

2 Q Okay. As far as the guilty plea agreement you signed, I want
3 to just ask you about what it says. Again, I know maybe you don't
4 remember or something, but let's just talk about what it says, okay?

5 A All right.

6 Q On page 6, lines 3 through 5, it says I am signing this
7 agreement voluntarily after consultation with my attorney, and I am not
8 acting under duress or coercion or by virtue of any promises of leniency,
9 except for those set forth in this agreement. Did I read that correctly?

10 A Yeah, but right here where it says --

11 Q Okay, that --

12 A -- Defendant Bryan Warren Dryden in capital, that's not me.

13 Q Okay. That's just --

14 A That's not my name.

15 Q -- once again -- your name's not Bryan Warren Dryden?

16 A Warren Dryden, it sure isn't.

17 Q Okay, the thing that was signed there where it says Bryan
18 Dryden, is that your name?

19 A That's my signature. But that's -- I didn't sign on my name.
20 That's not my name.

21 Q Mr. Dryden, this isn't a hard question. Is Bryan Dryden your
22 name that was signed there?

23 A It's not Bryan Warren Dryden.

24 Q Okay. Once again, I understand that you don't want to answer
25 any of the questions, but it's going to be a long day for everybody if

1 we're just going to answer different questions.

2 So, how about this? Let's look at lines 6 through 8, and I'm
3 going to read it, and tell me if this is correct, what you agreed to in --
4 when you signed it. I am not now under the influence of any intoxicating
5 liquor, a controlled substance, or other drug which would in any manner
6 impair my ability to comprehend or understand this agreement or the
7 proceedings surrounding my entry of this plea. I read that correctly,
8 right?

9 A Yes. But I did not understand that when I was off my meds.

10 Q Mr. Dryden, for the prior murder case that you have, you also
11 tried to withdraw your plea for a similar reason, didn't you?

12 A Yes, sir.

13 Q And you filed the motion --

14 A [Indiscernible] that case is -- what's that?

15 Q You filed a motion to withdraw your guilty plea based on
16 issues with your medication in Department XIV, correct?

17 A Actual innocence, coercion.

18 Q Okay, well --

19 A That case is --

20 Q -- back to my question, you filed a motion to withdraw based
21 on not having your medicine, just like you did here, correct?

22 A Coercion, actual innocence, and that case is being -- that case
23 is still being seen in the federal level right now. So, it's about to be
24 overturned.

25 Q So, I'll try this a third time, Mr. Dryden. You filed a motion to

1 withdraw your guilty plea in your murder case because one of the
2 reasons was you did not have your medication, correct?

3 A I was on and off of my meds and I -- and that was made very
4 clear in my petition to the Federal Court and that is being reviewed as
5 we speak.

6 Q So, wouldn't an easy answer to that be yes, Mr. Schwartz,
7 that's what -- that's correct, right?

8 A And that would be beneficial to you, yes.

9 THE COURT: Mr. Dryden?

10 MR. SCHWARTZ: If you answered the questions I asked?

11 THE COURT: Mr. Dryden, look, you need to answer the
12 question and just the question that's in front of you. Ms. Border will have
13 an opportunity to get back at you with other questions if need be. So, for
14 the moment, can you please just answer the question that Mr. Schwartz
15 asks?

16 THE DEFENDANT: Yes or no?

17 THE COURT: Mr. Schwartz?

18 BY MR. SCHWARTZ:

19 Q Okay, yes. Thank you, Your Honor.

20 Let's move on to another concern that you had in your motion
21 that it sounded like you said you were coerced into signing the guilty
22 plea, based -- and again, in part because Tony promised you money, a
23 TV, shoes, etcetera; is that fair to say?

24 A Yes, sir.

25 Q Now, when you entered your plea in front of Judge Holthus,

1 one of the things that is in the transcript is what I'm going to read you
2 and I want you to tell me if you recall saying this.

3 The Court asked: are you making this plea freely and
4 voluntarily? You said: yes, I am. The Judge said: has anyone forced or
5 threatened you or anyone close to you to get you to enter this plea?
6 You said: no, ma'am. Has anyone made you promises other than
7 what's contained in the guilty plea agreement to get you to enter the
8 plea? You said: no, ma'am.

9 That would be correct that I at least accurately read what you
10 have said and what the Judge has said, fair?

11 A Yes.

12 Q Okay. Thank you.

13 And then in the guilty plea agreement that we were looking at
14 just a second ago, on page 5, you would agree with me that it says: I
15 have discussed the elements of all of the charges -- original charges
16 against me with my attorney, and I understand the nature of the charges
17 against me. That would be lines 20 to 22. 24 to 27: I have discussed
18 with my attorney any possible defenses, defense strategies, and
19 circumstances which might be in my favor. All of the foregoing
20 elements, consequences, rights, and waiver of rights have been
21 thoroughly explained to me by my attorney. Fair?

22 A That's fair. Yeah.

23 Q One thing I didn't understand last time we were in court is that
24 you said you pled guilty because you wanted to later withdraw your plea.
25 Is that what you were saying last time?

1 A What I said was that I believe that being coerced into a plea
2 deal and lied to would be grounds for withdrawing my plea.

3 Q And that was the plan from the beginning, to go in there, plead
4 guilty, and then later withdraw it?

5 A If I felt it necessary, yes.

6 Q Okay.

7 A Especially after I was -- especially after I realized that it was --
8 a 5 to 20 doesn't clean up in 8 years without programming.

9 Q And that was -- that was actually the next thing I wanted to talk
10 to you about because at least in your written motion, there was a
11 concern that you brought up about being properly informed on the range
12 of punishment for the charge, fair?

13 A Yes, sir.

14 Q Now, one thing that was discussed when you entered the plea
15 in front of the Judge, and I'm going to again read from the transcript, the
16 Judge said: do you understand the range of punishment is 2 to 20 years
17 in the Nevada Department of Corrections. You said: yes. Fair?

18 A That's what I was signing to, a 5 to 20.

19 Q And that was what we agreed to in the guilty plea agreement,
20 right, the 5 to 20?

21 A Which I was told cleans up in 8 years --

22 Q Okay, let's --

23 A -- without programming.

24 Q -- okay, that's fair. So, the Court also said a few more things.
25 I just want to read that to you and have you tell me if that sounds

1 accurate.

2 So, the Court said: do you understand that while it's
3 probationable sentencing, it's up to me, including whether the count runs
4 consecutive or concurrent to anything else? You said: yes, ma'am. The
5 Court said: no one can promise you probation, leniency, or any special
6 treatment; you understand that? The -- you said: we just went over
7 running it concurrent with my current charge. The Judge says: but
8 there's no guarantees. You say: right, it's up to you. The Court says:
9 it's still going to be ultimately up to me. And you said: yes, ma'am.

10 All fair?

11 A To my best recollection, that's what I said through the plea
12 canvas. But I was really under the impression that I was being promised
13 this was going to be run concurrent and that I would be done with it by
14 the time my next parole date comes up in 2024. And Tony actually
15 reflected on that back in August at the first evidentiary hearing. He
16 made mention of how he had explained it to me that it would be run
17 concurrent and then I would get out and this would be done around the
18 same time my parole would hit on this first case.

19 And that was reflected back in August when he was
20 questioned about him saying that I did not sign to a 4 to 10. Border --
21 Counsel Border corrected him and told him this is a 5 to 20. And then
22 Tony expanded on that and said oh, I was getting it mixed up because
23 such and such, that we believe that Mr. Dryden would be getting finished
24 with this around the same time as his parole in 2024.

25 And so, that all lines up with what he -- what he -- what him

1 and Private Investigator Craig Becky was telling me. And we had been
2 going through this that -- because I was telling him that I believe this is
3 more than 8 years. And they kept on telling me on November 1st, on
4 Friday, the first day that they came to visit me, they said no, it -- you'll be
5 done with this by the time your next parole date comes up in 2024. And
6 I said, I really don't want to take this deal. I would rather go to trial.

7 Q Mr. Dryden, page 2 of the guilty plea --

8 A Yeah.

9 Q -- lines 15 to 19, you also agree, at least, with me that that
10 page says the same thing that was discussed by the Judge, that the
11 minimum would be 2 years and a maximum would be 20 years; is that
12 correct?

13 A I read it now but back then I really -- I don't know how any of
14 that works. I'm horrible at putting all that together. I've heard other
15 people talking about 40 off the front, 40 off the back, what -- all that stuff,
16 I don't understand. And you may think that I know that, but as a prisoner
17 with the life sentence that I'm trying to overturn that doesn't -- I don't
18 understand how any of that works, sir.

19 Q Okay. That's fine. I don't understand how it works half the
20 time either. I just want to make sure that we're reading the same page.

21 Let me ask you this. So, when you were -- another part of
22 your motion that was discussed was that Tony didn't spend adequate
23 time discussing the case with you and the plea; is that fair?

24 A Yes, he handed it to me, and he told me to go over it. And I
25 didn't have my glasses -- or I don't believe I had -- or no, I had my

1 glasses. There was some reason why I didn't -- I just didn't -- I just sat
2 there and I didn't go over it until I got back to isolation there at CCDC.
3 And then I read through it and the first thing that hit me was that this is
4 saying that I took advantage of a mentally retarded girl, basically. And I
5 was like man, I can't believe I signed to this. I should have read this
6 before I signed it and I felt like a real idiot for not reading through it.

7 And so, I did not go over it with -- and it might have been -- it
8 might have gone over my head. But to sign to this was something that I
9 shouldn't have done, and once I got back to High Desert and back on
10 my meds and going over this, I felt like a complete fool for signing to
11 this.

12 Q Now, when you met -- when you spoke with the Judge when
13 you entered your plea, she asked you before you signed your guilty plea
14 agreement, did you read it and discuss it with your attorney? You said:
15 yes, we have gone over it. She said: I have before me the written plea
16 agreement, did you sign this? You said: yes, I did. Is this your signature
17 on page 6? You said: yes, it is.

18 And then the Court said: do you understand everything
19 contained in the agreement? And you said: yes, I do. Fair? Did I at
20 least accurately portray what was said at the hearing?

21 A If you got the transcripts and that's what it says, then I guess
22 that's what it says. I guess that's what happened. It sounds like that's
23 what happened. Yeah, I've -- I -- that's probably what happened. It
24 sounds like that's what happened, yeah.

25 Q On page 4 of that transcript, I may have asked you this

1 already, but the Court says: have you discussed this case with your
2 attorney? And you say: yes, ma'am, I did. Again, you would agree that
3 if that's in the transcript, that's probably what you said, right?

4 A You know when somebody isn't off their meds, they'll agree to
5 anything, especially when a TV is waived in front of them like a dangling
6 carrot in front of a donkey. And at this time, when I signed this, I must
7 have been a real donkey.

8 Q But you got the TV, right?

9 A I actually had won a lawsuit in December for no yard here at
10 High Desert for three months. And I took a \$800 settlement out of court,
11 so I would have got the TV regardless of this money. But an extra 450
12 bucks promised by Tony to take this plea deal, I -- in the back of my
13 mind was this is coercion. If I need to withdraw this before sentencing,
14 then I'm going to do it. And if I would have said anything through this
15 plea agreement, then I wouldn't have got that money from Tony. That's
16 coercion. That's the reason why he should not be allowed to pay me to
17 take a deal.

18 Q You could have told the Judge at any point during your entry
19 of plea that there was a problem with your attorney, true? You could
20 have done that.

21 A I wish I would have done that now looking back. And now --

22 Q Okay.

23 A -- I'm on my meds. I did things wrong. I should have said
24 Your Honor, Tony has promised to give me the money for a TV if I take
25 this plea deal. I want to put in for a change of counsel right now. And

1 that's what I should have done.

2 Q On page 6 of your guilty plea agreement, again, I just want to
3 make sure that I'm reading it correctly. Lines 9 and 10: my attorney has
4 answered all my questions regarding this guilty plea agreement and its
5 consequences to my satisfaction. And I am satisfied with the services
6 provided by my attorney. That's right above the line where you signed,
7 correct?

8 A Right. Right.

9 Q Your Honor, just brief indulgence.

10 And you had -- Mr. Dryden, you had mentioned something
11 about how you pled guilty and you realize it was to a mentally incapable
12 person. So, I just want to read from the transcript what was said to
13 make sure that it's correctly portrayed on the record.

14 So, the Court said: are you pleading guilty because in truth
15 and in fact you did on or about August 29th, 2007 willfully, and unlawfully,
16 and feloniously attempt to sexually assault K.S. with sexual penetration,
17 that being sexual intercourse, by attempting to place your penis into the
18 genital opening of K.S. against her will under circumstances in which
19 you knew or should have known that she was mentally or physically
20 incapable of resisting or understanding the nature of your conduct? Is
21 that what you did? Your answer: yes, ma'am.

22 The Court then says: do you have any questions you'd like to
23 ask me or your attorney before I accept your plea? You said: no,
24 ma'am. Does that sound accurate?

25 A It sounds like I was hoodwinked into signing to something and

1 agreeing to something that I didn't do because Tony advised me to lie
2 through the -- through this plea canvas to -- in order to lock in this -- so --

3 Q Mr. Dryden, [indiscernible] said in court --

4 A -- deal, this 5 to 20.

5 THE COURT: Mr. Dryden, please --

6 MR. SCHWARTZ: Is that what was said in court though?

7 THE COURT: -- please answer the question, Mr. Dryden.

8 BY MR. SCHWARTZ:

9 A The question is did I admit to this?

10 Q Is that what you said in court is all I'm asking?

11 A Under duress, yes.

12 Q So, that would be a yes. Okay. Thank you.

13 Your Honor, thank you so much, we have no further
14 questions.

15 THE COURT: Ms. Border, anything further?

16 **REDIRECT EXAMINATION**

17 BY MS. BORDER:

18 Q Yes, thank you.

19 Mr. Dryden, when you came to court the morning you entered
20 your plea, were you given your medication?

21 A I -- that's the first time they gave me the medication. I -- or
22 was it? It might have been that night, I can't remember. Let me check
23 my notes real quick. That was Tuesday?

24 Q I believe it would have been November 5th.

25 A Tuesday, November 5th? I was not given the Elavils until that

1 night. And --

2 Q So, when you --

3 A -- they gave me -- they started giving me the -- according to
4 my notes, they started giving me the Zyprexa and the Vistaril, the night
5 before. But they didn't give me my morning meds. They did not give me
6 the morning meds on Tuesday, November 5th.

7 Q So, when you came to --

8 A Which I was supposed to get -- what's that?

9 Q -- when you came to court the morning of November 5th, you
10 had not taken your medications that morning, correct?

11 A They didn't give me my Vistaril. I'm supposed to get 50
12 milligrams of Vistaril in the morning; they didn't give it to me --

13 Q So, is it -- but --

14 A -- according to my notes. But I was given -- huh?

15 Q Go ahead.

16 A I was given partial medication the night before.

17 Q So, when the Judge asked you during the canvas at your
18 guilty plea if you were under the influence of any intoxicating liquor, or
19 controlled substance, or other drug that would impair your ability, you
20 answered truthfully to that, correct?

21 A I -- now that I look back, I don't know what I should have said.
22 Maybe I should have said something at that point that I'm not on my
23 meds. And so, I don't know if it's true or not. I should have said
24 something to Judge Holthus. I should have said something.

25 Q The point being that you didn't understand the proceedings,

1 this is my question, did you understand the proceedings because you
2 did not have the appropriate medication?

3 A I still don't understand the question. And through the plea
4 canvas that is pointed out to me right now, it's kind of hard for me to
5 understand.

6 Q Is it fair to say that because you were not given all your
7 medication that you didn't really understand the entire canvas that you
8 went through on November 5th?

9 A Yes.

10 Q So, when the District Attorney is asking and reading you
11 questions from the transcript and asking you if that's how you answered
12 at the time, does that accurately reflect your mental state? I guess that's
13 a poor question and it doesn't make a whole lot of sense. What I'm
14 asking is, even though you gave the answers read from the transcript,
15 were those answers given that you didn't really understand the
16 questions to?

17 A Well, yes, in my head, I believed I was answering them
18 correctly. But now that I look back, I wasn't. I should have said
19 something to the Judge right then and there that I'm not on my meds. I
20 should have said something.

21 Q What is your actual true legal name, Mr. Dryden?

22 A It's Bryan O'Neil Dryden.

23 Q Had Mr. Abbatangelo given you a copy of the guilty plea
24 agreement prior to coming to court on November 5th?

25 A I don't believe I had it until after the hearing because I don't -- I

1 didn't read it until after I got back to my cell, after I had taken the deal.
2 So, I might not have had it because I would have read it if I had it
3 because I was in isolation; I had nothing else to do. So, when I read it, I
4 read it for the first time after I took the deal on Tuesday, November 5th.

5 Q And you've been present over the video and listened to Mr.
6 Abbatangelo testify on previous dates. And is it your memory that he
7 actually testified that he handed you the guilty plea agreement while you
8 were in court that particular day and had not given it to you the day
9 before November 5th?

10 A I believe so. Yes. I remember seeing it, but we never went
11 over it. When he visited me on the 1st and the 4th, we never went
12 through it because I wasn't going to sign to it. And I told him repeatedly
13 I did not want to take the deal. And so, I never got it.

14 Q As to your prior testimony that you were advised by Mr.
15 Abbatangelo to lie during the guilty plea agreement, can you expand on
16 that?

17 A I told him on the 4th when I finally agreed to taking the deal
18 because he failed to get my -- secure a subpoena for my one
19 eyewitness, and he failed to get my job history as a reflection on my
20 person as a cab driver and a massage therapist -- for over five years I
21 did that job, 20 hours a day sometimes.

22 Anyways, I said, listen, if I take this deal, I want the money for
23 my shoes because they might not give me my shoes back. And if I have
24 to lie through this plea canvas -- because if I agree to this, I'll be lying.
25 And he says well, in order to avoid a ten to life, sometimes you got to do

1 what you got to do, basically, is what he -- it's not basically. That's what
2 he said.

3 He said if you want to avoid a ten to life because if you go in
4 front of a jury trial and they bring in this girl -- and then Craig actually
5 spoke up, the private investigator, he spoke up and he says yeah, we
6 don't want to -- what was his exact words? We don't want to disrupt
7 Mrs. Seaman's life and bring her down here and give her a free vacation
8 to Las Vegas if we don't have to. You go ahead and take the deal now
9 because -- and Tony says if she points you out, all she has to do is point
10 you out in front of a jury trial.

11 And he was saying this on the Friday before. And I told him I
12 don't care. If that's what happens, I -- and I'm found guilty because in
13 my head I'm thinking because you're not effective counsel, then I will -- I
14 told him, then I will appeal this. I've got plenty of time to appeal this, on
15 the Friday, November 1st.

16 So, on the 4th when he came, he tells me in order to lock in
17 this deal that is supposed to be so beautiful that they told me over and
18 over again, I would -- this would be done around the same time as my
19 parole in 2024 because I would have two to three years in to run
20 concurrent. And he said that they're going to -- the District Attorney has
21 agreed to run it concurrent, and you'll be out and have this done at the
22 latest 2025. And they told me that.

23 And it didn't sound right to me over the weekend before. I
24 asked an inmate in isolation, he was in the holding tank for the yard,
25 when I was looking at books, and he looked like he was a -- you know, a

1 convict type, had tattoos all over him.

2 I said hey, do you know anything about a 5 to 20? I said, does
3 that clean up in eight years; does that sound right? And he said yeah, a
4 5 to 20 cleans up in eight years. And I said, without programming? And
5 he said, yeah, yeah, without programming. And he said, I been down 25
6 years. And so, he was wrong too.

7 And so, I assumed this was a good deal to take to avoid going
8 to trial, and admit to something that I did not do, which was stupid. And I
9 -- now that I'm on my medication and back here at High Desert and I
10 read this when I got back to my cell there at CCDC, I was ready to jump
11 off the tier and do the swan dive onto a table I was so mad at myself.

12 Q Okay. Is there anything else, Mr. Dryden, that you would like
13 to tell the Court in regards to not receiving your medication and how that
14 impacted you at the time you entered your plea?

15 A Well, yes. There's a leading psychopharmacology expert,
16 Professor -- a professor of psychiatry at Cardiff University in Wales who
17 said, people who --

18 MR. SCHWARTZ: [Indiscernible] testimony.

19 THE DEFENDANT: What's that?

20 THE COURT: Was that an objection, Mr. Schwartz?

21 MR. SCHWARTZ: Yes, relevance.

22 THE COURT: Well --

23 THE DEFENDANT: Can I go on?

24 THE COURT: -- it's arguably objectionable on a number of
25 different levels. I'm not sure what -- what are we doing reading

1 pharmacological reports into evidence?

2 MR. SCHWARTZ: [Indiscernible].

3 THE COURT: Obviously, he's not a expert. I'm not even
4 sure.

5 BY MS. BORDER:

6 Q He's not, Your Honor.

7 I think -- Mr. Dryden, is it true that the report you're
8 referencing supports your claim that without the proper medication, it is
9 a form of psychological coercion and a war tactic, essentially, to get
10 somebody to do something that they wouldn't normally do?

11 A Yes.

12 Q And is that how you feel --

13 A And this --

14 Q -- this -- is that how you feel that this happened to you with Mr.
15 Abbatangelo and not receiving your medications?

16 A Yes, I feel like ---

17 MR. SCHWARTZ: Your Honor --

18 THE DEFENDANT: -- I was hoodwinked. I was led into
19 torture tactics through intake at CCDC, left off my medication, and
20 stripped of my borders, and just hoodwinked into something that I -- that
21 Tony Abbatangelo did not want to go to trial. And I want to point one
22 thing out, on November 1st, he had a outbreak on his lips of cold sores,
23 herpes bumps, and me and Craig Becky started clowning on Tony about
24 his breakout. And he -- and Tony says --

25 MR. SCHWARTZ: Your Honor --

1 THE DEFENDANT: -- every time I get nervous before trial --

2 MR. SCHWARTZ: I'm going to object.

3 THE DEFENDANT: -- I have a breakout over my --

4 MR. SCHWARTZ: Can anyone hear me?

5 THE DEFENDANT: -- lips.

6 THE COURT: I can hear you. All right, Mr. Dryden, I'm -- I
7 apologize. I've kind of lost the question at this moment. This was the
8 anything else you want to say question?

9 THE DEFENDANT: Well, the -- are you talking to me?

10 BY MS. BORDER:

11 Q Mr. Dryden, are you trying to make the point that Mr.
12 Abbantangelo is nervous to go to trial to the point of having an outbreak
13 of cold sores?

14 A Yes. And that is a form of ineffectiveness of counsel. He said
15 -- it was like --

16 MR. SCHWARTZ: Speculation [indiscernible].

17 THE DEFENDANT: -- he was nervous to go before a jury trial
18 and fight for me. He did not come over the weekend to get me ready for
19 trial, as he promised, as I was taken to CCDC. That was the whole
20 reason I was remanded to CCDC was for him to get me ready for trial.
21 He said, I will be here all through the weekend, and we will get you
22 ready for trial. He failed to come to get me ready for trial.

23 And then he came back on Monday night, the night before trial
24 was supposed to start picking out jury or whatever. And he says, look,
25 the District Attorney is saying that this plea agreement is still on the table

1 and we could get this taken care of right now, and Mrs. Seamans won't
2 be brought down here for a little vacation in Vegas. And Craig says, we
3 won't disrupt her life because I've been --

4 THE COURT: Okay. What --

5 THE DEFENDANT: -- watching her and following -- I've been
6 following her on Facebook. And I'm like wow, these guys ain't [sic] even
7 fighting for me.

8 So, in my mind I'm thinking okay, to -- are you still going to
9 give me the three -- the 450 bucks? Are you going to give me the
10 money for a TV? And he says, yeah, I'll still help you out. And I said,
11 make it another \$120 for these shoes that might be taken away from me,
12 and I'll go ahead and take this deal. And he says, okay, I'll get it on your
13 books. Before you get back to High Desert, it'll be on your books. It
14 took a month and a half of calling him every day to get him and his
15 secretary to finally give me \$330.

16 THE COURT: Anything else, Ms. Border?

17 MS. BORDER: No, thank you, Your Honor.

18 THE COURT: State, anything else?

19 MR. SCHWARTZ: No, Your Honor, thank you.

20 THE COURT: All right, thank you for your testimony, Mr.
21 Dryden. Do -- any other witnesses?

22 MS. BORDER: No, Your Honor, none from defense.

23 THE COURT: State, any other witnesses?

24 MS. CRAGGS: No, Your Honor.

25 THE COURT: All right, should we go ahead and just order up

1 a transcript, and do you want to do a briefing schedule on it? Anybody?

2 MS. CRAGGS: That's fine, Your Honor, or we can argue it
3 orally today or we can do a briefing schedule, [inaudible] the Court
4 would like to do.

5 THE COURT: I'd kind of like to see the transcript from
6 whenever we were here last, quite honestly. So, if the State would
7 prepare an order for transcript, we'll get a transcript done and then Ms.
8 Border, how long do you want for your opening brief?

9 MS. BORDER: Two weeks, please.

10 THE COURT: Well, it's kind of hard to do that. Let's do a
11 status check transcript first.

12 THE COURT CLERK: Okay.

13 THE COURT: Right?

14 [Colloquy between the Court and the Court Clerk]

15 THE COURT: How long was it last time we were here?

16 MS. BORDER: Well, we've been here three prior times. The
17 last --

18 THE COURT: Oh.

19 MS. BORDER: -- time we were October 11th or 13th. The last
20 time was October 13th, Your Honor.

21 THE COURT: Well, let's go -- well we can go ahead and set a
22 status check in two weeks. At least she can let us know how long she
23 anticipates it being for the transcript, and then we can set the briefing
24 schedule.

25 Mr. Dryden, are you okay if we just set the briefing schedule

1 without you in case something goes wrong?

2 THE DEFENDANT: What -- set it without me?

3 THE COURT: Right. I mean we'll try to set it up --

4 THE DEFENDANT: Well -- yeah.

5 THE COURT: -- but I don't --

6 THE DEFENDANT: Oh, to go back in forth in briefs? Yeah.

7 That's fine.

8 THE COURT: Okay. And then we'll bring you in for the

9 argument. Okay?

10 THE DEFENDANT: I appreciate it. Thank you for -- thank

11 you for listening to me Mrs. Holthus. I seen your commercial on TV last

12 night. Good luck.

13 THE COURT: Thank you.

14 THE DEFENDANT: Yep.

15 THE COURT: All right.

16 THE COURT CLERK: November 12th at 12:00 p.m.

17 THE COURT: And State, you'll get that order down?

18 MS. CRAGGS: Yes, Your Honor.

19 THE COURT: Thank you.

20 [Colloquy between the Court and the Court Clerk]

21 THE COURT: Yeah, status check transcript and set briefing

22 schedule.

23 THE COURT CLERK: Okay.

24 THE COURT: All right, everybody. Thank you.

25 MS. BORDER: Thank you.

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MS. CRAGGS: Thank you.


THE COURT: Happy Halloween.

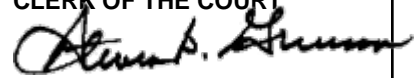
THE DEFENDANT: Happy Halloween. Thank you.

[Proceeding concluded at 2:21 p.m.]

* * * * *

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


Kaihla Berndt
Court Recorder/Transcriber



BREF

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Clark County District Attorney
Nevada Bar #001565
GENEVIEVE CRAGGS
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200 Lewis Avenue
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Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

**BRYAN DRYDEN,
#2585083**

Defendant.

CASE NO: **C-18-334955-1**

DEPT NO: **XVIII**

BRIEF IN SUPPORT OF STATE'S OPPOSITION TO DEFENDANT'S

MOTION TO WITHDRAW GUILTY PLEA

DATE OF HEARING: **JANUARY 18, 2021**
TIME OF HEARING: **9:00 AM**

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

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On August 30, 2007, K.S. reported she was sexually assaulted by an unknown male.
4 K.S. told police officers that night that she and the male were walking together towards an
5 empty parking lot when K.S. fell to the ground and the male jumped on top of her and pulled
6 out a gun. He rolled her on her back and placed his hands around her throat while hitting K.S.'s
7 head against the ground several times. He pulled off K.S.'s shorts, moved her underwear to
8 the side, and penetrated her vagina with his penis. When the assault was over, K.S. threw her
9 panties into a bush, so there would be evidence of the crime.

10 On October 31, 2017, LVMPD received a CODIS hit notification which indicated
11 foreign DNA obtained from K.S.'s vaginal swab matched to a DNA profile within CODIS to
12 Defendant. With this new information, the case was re-opened and a search warrant was
13 drafted for a comparison buccal swab with Defendant. Defendant was located at High Desert
14 State Prison and the search warrant was served and a buccal swab procured.

15 On April 18, 2018, Detectives interviewed Defendant at High Desert State Prison where
16 he denied having ever seen or knowing K.S. After being informed that his DNA was a match
17 from K.S.'s sexual assault kit, Defendant said he might have had sex with her if he was drunk
18 but he did not remember. After executing the search warrant for Defendant's DNA through a
19 buccal swab, Defendant then changed his story and said he did recognize one of the persons
20 in the pictures and he did have consensual sexual intercourse in the field.

21 On March, , 2020, Dryden entered a plea of guilty to the charge of Attempt Sexual
22 Assault (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119). The parties
23 stipulated to a sentence of five (5) to twenty (20) years in Nevada Department of Corrections,
24 to run concurrently with Case No. 09C258241.

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1 **ARGUMENT**

2 A plea of guilty is presumptively valid, particularly where it is entered into on the
3 advice of counsel. Jeziarski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The
4 defendant has the burden of proving that the plea was not entered knowingly or voluntarily.
5 Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673,
6 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985). In
7 determining whether a guilty plea is knowingly and voluntarily entered, the court will review
8 the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271,
9 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court to personally
10 address a defendant at the time he enters his plea in order to determine whether he understands
11 the nature of the charges to which he is pleading. Id.; State v. Freese, 116 Nev. 1097, 1105,
12 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas “do not require the
13 articulation of talismanic phrases.” Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403,
14 1404 (1973). It requires only “that the record affirmatively disclose that a defendant who
15 pleaded guilty entered his plea understandingly and voluntarily.” Brady v. United States, 397
16 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th
17 Cir. 1973).

18 Entry of a guilty plea is a solemn act, not lightly accepted. United States v. Ensminger,
19 567 F.3d 587, 592–93 (9th Cir. 2009). Although a defendant may, prior to sentencing withdraw
20 his plea for a substantial reason which is “fair and just,” Stevenson v. State, 131 Nev. ___,
21 ___, 354 P.3d 1277, 1279 (2015), “[o]nce the plea is accepted, permitting withdrawal is, as it
22 ought to be, the exception, not an automatic right.” Ensminger, 567 F.3d at 593. When
23 determining whether a defendant has shown such a substantial reason that it is fair and just to
24 allow the privilege of withdrawing the guilty plea, the District Court looks at the totality of
25 the circumstances, including but not limited to whether the plea was entered knowingly and
26 voluntarily. Stevenson, 131 Nev. at ___, 354 P.3d at 1279–80.

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1 When a defendant has made a tactical decision to enter into a guilty plea, a change of
2 mind or a determination that choosing to enter the plea was a bad choice is *not* sufficient to
3 allow withdrawal of the plea. Id. at ___, 354 P.3d at 1281–82. The purpose of focusing on
4 what is fair and just is “to allow a hastily entered plea made with unsure heart and confused
5 mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait
6 several weeks, and then obtain a withdrawal if he believes that he made a bad choice in
7 pleading guilty.” United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991) (internal
8 quotation marks omitted).

9 A defendant may not use the agreement as a placeholder until he determines a more
10 favorable course of action. Ensminger, 567 F.3d at 593. Even a good faith change of heart is
11 not a fair and just reason. Id. (“Our prior decisions make clear that a change of heart—even a
12 good faith change of heart—is not a fair and just reason that entitles Ensminger to withdraw
13 his plea, even where the government incurs no prejudice.”). Similarly, the Court must not
14 “allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and
15 meaningless formality reversible at the defendant's whim.” Stevenson, 131 Nev. at ___, 354
16 P.3d at 1282 quoting Barker, 514 F.2d at 221.

17 The Nevada Supreme Court recently clarified that, before sentencing, a defendant may
18 withdraw his guilty plea for any reason that is fair and just. Id. In so analyzing, the district
19 court must consider the totality of the circumstances and is not confined to issues of whether
20 the plea is free and voluntary. Id. However, the Court’s reasoning in Stevenson does not give
21 a defendant carte blanche to withdraw his guilty plea before sentencing. In fact, the Stevenson
22 Court affirmed the lower court’s decision denying Stevenson’s motion to withdraw his plea,
23 despite claims that he was coerced into pleading guilty by the court’s unfavorable rulings,
24 misled by defense counsel about the availability of evidence, and left with very little time to
25 decide whether to enter his plea. Id. The Court was also unpersuaded by the defendant’s claims
26 that he was acting impulsively and made a split-second decision to enter his plea. Id. In
27 denying Stevenson’s myriad of claims, the Court reasoned that he had failed to present a
28 substantial reason to withdraw his plea and, “to withdraw his plea under the circumstances

1 would allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and
2 meaningless formality reversible at the defendant's whim.’” Id. (quoting United States v.
3 Barker, 514 F.2d 208, 221 (D.C. Cir. 1975)).

4 **A. DEFENDANT HAS NOT PRESENTED A FAIR AND JUST REASON TO**
5 **PERMIT WITHDRAWAL OF HIS PLEA**

6 Defendant contends in his brief that he should be allowed to withdraw his plea because:
7 1) his attorney did not properly explain the sentencing structure to him; 2) that he was coerced
8 and bribed by his attorney to enter his plea; 3) that his attorney did not spend adequate time
9 with him prior to his entering into the guilty plea; 4) that he was unable to make a capable
10 decision because of the delay in his numerous psychiatric medications.

11 By Defendant’s own admissions he used this plea as a placeholder, which is not a fair
12 and just reason to withdraw his plea. Additionally, Defendant’s credibility regarding all of his
13 arguments is called into question as he made the *exact* arguments in his prior murder case.

14 **1. Defendant Used the Plea as a Place Holder**

15 Defendant specifically stated multiple times during the testimony that he used his guilty
16 plea as a placeholder. A defendant *may not use* the agreement as a placeholder until he
17 determines a more favorable course of action. Ensminger, 567 F.3d at 593. He discussed both
18 his physical and mental “anguish” at length, but then stated, “I was just sure that I would be
19 able to withdraw my plea and get new counsel by the fact that he was paying me and agreed
20 to pay me if I took this deal.” Recorder’s Transcript of Proceedings, Day 2 (RT2), October 13,
21 2020, p. 20. Defendant repeats himself again, stating:

22 A. My thoughts were just that I was going to have the plea
23 overturned. I was going to put in a withdrawal of plea to try to get
24 new counsel. I really wasn’t in the right frame of mind to take the
plea deal, no.

25 Q. Okay. And those were your thoughts on the actual day you entered
your plea on November 5th of 2019?

26 A. That was my – my thoughts were that I would be able to withdraw
27 my plea under grounds of coercion, regardless of what I was signing
28 to. I – especially if I was to get a financial statement with his name
and money on there, my thoughts were that nothing mattered except
for that. That’s all I could think of.

1 Id. at 21. Additionally, when asked by the State if he had lied to the judge when entering his
2 plea he stated, “I don’t believe so I don’t believe I was lying, I was telling the – as much as I
3 could to secure a plea deal that I was made to believe was the best thing for me, which I found
4 out was not the truth. Reporter’s Transcript of Proceedings, Day 3 (RT3), October 29, 2020,
5 p. 9. Defendant made his intentions even clearer in the following exchange:

6 Q. And that was the plan from the beginning, to go in there, plead
7 guilty, and then later withdraw it?

8 A. If I felt it necessary, yes.

9 Id. at 14.

10 Defendant clearly used his plea as a placeholder. He is arguing that on one hand he was
11 so muddled due to his lack of medication he couldn’t think clearly, but that on the other hand
12 he believed he was being coerced so he cleverly entered his plea knowing he would withdraw
13 it later. Defendant contradicts himself and his own state of mind throughout his testimony at
14 the evidentiary hearing.

15 **2. Defendant Made the Same Arguments to Withdraw his Plea in his 16 Prior Murder Case**

17 Through State’s Exhibits 1-6 entered at the evidentiary hearing, it is clear that
18 Defendant is employing the same arguments that he used to try and withdraw his prior plea.
19 Similar to the instant case, Defendant pleaded guilty on the day of trial. He also used the same
20 arguments regarding his medication and coercion by his attorney in order to attempt to
21 withdraw his plea. Defendant’s Motion to Withdraw Guilty Plea went in front of the Nevada
22 Supreme Court, where the Supreme court determined that there was no basis for his claims.
23 There is no basis for Defendant’s arguments in the instant case. The only evidence put forth
24 to support his allegations are his self-serving statements that he had a lack of understanding of
25 what was occurring, while in the next breath stating he was simply using the plea as a place
26 holder.

27 The State attempted to question Defendant about his prior Motion to Withdraw Guilty
28 Plea in the murder case. Defendant continually dodged the question until the court was forced
to step in and admonish him. Id. at 10-13. In 09C258241, Defendant argued that he was unable

1 to enter his plea voluntarily because he took too many of his medications and was coerced.

2 The Nevada Supreme Court Stated in the Order of Affirmance No. 58822:

3 We conclude that Dryden has failed to substantiate his coercion
4 claims. First, the district court canvassed Dryden on his
5 understanding of the proceedings, the nature of the charges, and the
6 possible penalties. Second, Dryden signed a plea agreement
7 memorializing the negotiations and attesting that this plea was not
8 coerced. Third, during the canvass, he admitted his guilt and claimed
9 to enter the plea voluntarily....Dryden also argues that his plea was
10 unknowing and involuntary because he was under the influence of
11 psychiatric medication. We disagree. Here, the district court was
12 aware of Dryden's medications. He was specifically canvassed on his
13 medication use. . . Further, Dryden signed a written plea agreement
14 attesting that he was not under the influence of any controlled
15 substance which would impair his comprehension or understanding of
16 the plea.

11 All of the above facts discussed by the Nevada Supreme Court in Defendant's prior case hold
12 true in this case. Defendant was canvassed thoroughly by the court. Based on his own
13 statements at the evidentiary hearing, he is attempting to game the system to his advantage,
14 entering a plea until he can later come up with arguments that he feels will allow him the
15 withdraw that very plea.

16 **B. DEFENDANT ENTERED HIS PLEA FREELY AND VOLUNTARILY**

17 Defendant argues that: 1) his attorney did not properly explain the sentencing structure
18 to him; 2) that he was coerced and bribed by his attorney to enter his plea; 3) that his attorney
19 did not spend adequate time with him prior to his entering into the guilty plea; and 4) that he
20 was unable to make a capable decision because of the delay in his numerous psychiatric
21 medications. Even if these reasons were taken at face value, which they should not be as no
22 evidence was presented which substantiates any of these alleged issues, they still do not
23 overbear the presumption that the guilty plea was knowingly and voluntarily entered into.

24 Firstly, the Defendant was thoroughly canvassed that he was not guaranteed any sort of
25 sentence. In fact, he asked the Court a question about the sentence, and the court clarified that
26 the sentence was ultimately up to her:

27 The Court : Do you understand the range of punishment is 2 to 20
28 years in the Nevada Department of Corrections?

The Defendant: Yes.

1 The Court: do you understand that while It's probationable sentencing
2 is up to me including whether the court runs consecutive or concurrent
to anything else?

3 The Defendant: Yes ma'am.

4 The Court: And no one can promise you probation, leniency, or any
5 special treatment; you understand that?

6 The Defendant: We just went over the- running it concurrent with my
current charge.

7 That Court: But there's no guarantees.

8 The Defendant: right, it's up to you.

9 The Court: It's still going to be ultimately up to me.

10 The Defendant: Yes ma'am.

11 Recorder's Transcript of Hearing, November 5, 2019, p. 6. The Defendant asked the Court a
12 question, and she again clarified that he was **not** guaranteed any sort of sentence.

13 Second, Mr. Abbatangelo testified that he did not coerce or bribe the Defendant, but
14 instead felt bad for him as he is serving a life sentence and offered to buy him a television.
15 Recorder's Transcript of Proceedings, Day 1 (RT1), p. 16-17. Thirdly, Mr. Abbatangelo also
16 testified that he went over the Guilty Plea Agreement with Defendant and spoke with him at
17 length about possible sentences. Id. at 16. The offer from the State was the same before the
18 weekend as the day of the trial, so Mr. Abbatangelo was able to speak with Defendant multiple
19 times about the same offer.

20 Finally, there is no evidence that the Defendant did not have an understanding because
21 he did not receive his medications. There is no evidence presented that he did not receive his
22 medications or what medications he was allegedly taking. In the instant case, the following
23 colloquy occurred with Defendant when he entered into his plea:

24 The Court: Are you currently under the influence of any drug,
25 medication, or alcoholic beverage?

26 The Defendant: No ma'am.

27 The Court: Do you understand the proceedings that are happening
here today?

28 The Defendant: Yes ma'am.

1 Recorder's Transcript of Hearing, November 5, 2019, p. 4. He further goes on to discuss how
2 he spoke with his attorney:

3 The Court: Have you discussed this case with your attorney?

4 The Defendant: Yes ma'am. . . .

5 The Court: Are you making this plea freely and voluntarily?

6 The Defendant: Yes, I am.

7 The Court: Has anyone forced or threatened you or anyone close to
8 you to get you to enter this plea?

9 The Defendant: No ma'am

10 The Court: Has anyone made you promises other than what's
contained in the guilty plea agreement to get you to enter this plea?

11 The Defendant: No ma'am

12 Id. at 4. During the evidentiary hearing, Mr. Abbatangelo testified about Defendant's state of
13 mind when entering the plea, stating:

14 He seemed to be understanding everything. He – I would say would
15 be a typical client right before jury trial for these types of charges
16 because they're – you know, if we lose, you're doing ten years
minimum. So, he – there were sometimes he seemed a little anxious
but he seemed to be understanding everything and very lucid.

17 RT1 at 18.

18 By signing the Guilty Plea Agreement in this case, Defendant acknowledged that:

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

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

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

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

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

//

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

3 Guilty Plea Agreement, Nov. 5, 2019, pp. 5-6.

4 To allow the Defendant to withdraw his guilty plea based on these unsubstantiated
5 allegations would be the very issue the Stevenson decision was trying to avoid.“ To withdraw
6 his plea under the circumstances would allow the solemn entry of a guilty plea to ‘become a
7 mere gesture, a temporary and meaningless formality reversible at the defendant's whim.”
8 Stevenson, 131 Nev. at ___, 354 P.3d at 1282 quoting Barker, 514 F.2d at 221. The Defendant
9 is trying to abuse and game the system to his advantage. The decision in Stevenson is used to
10 uphold the integrity of the guilty plea system and it is clear this is the type of claim Stevenson
11 is supposed to prevent. Id.

12 Defendant knew what he was agreeing to when he entered the guilty plea agreement.
13 The Defendant is not a novice to the criminal justice system as he is currently serving a
14 sentence for a Second Degree Murder conviction at High Desert State Prison. The Defendant
15 had a change of heart about pleading guilty. However, that can never be a reason, even if it
16 made in good faith, to withdraw a guilty plea. Defendant agreed to the guilty plea, was
17 canvassed by the court, and found to have entered the agreement freely and voluntarily. He
18 agreed he was not under duress or coercion, had adequately reviewed the materials of the
19 guilty plea agreement with his attorney, and he was not being promised anything by anyone
20 to plead guilty. The Defendant has shown no fair or just reason to withdraw his guilty plea.

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1 **CONCLUSION**

2 The Defendant's Motion to Withdraw Guilty Plea should be denied.

3 DATED this 30th day of December, 2020.

4 Respectfully submitted,

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

8 BY /s/ Genevieve Craggs
9 GENEVIEVE CRAGGS
10 Deputy District Attorney
11 Nevada Bar #013469
12
13
14
15

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that service of the above and foregoing was made this 30th day of
18 DECEMBER 2021, to:

19 MARISA BORDER, ESQ.
20 mborderlaw@gmail.com
21

22 BY /s/ Howard Conrad
23 Secretary for the District Attorney's Office
24 Special Victims Unit
25
26
27

28 hjc/SVU

Heather S. Smith

CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRYAN WARREN DRYDEN
#2585083

Defendant.

CASE NO. C-18-334955-1

DEPT. NO. XVIII

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT SEXUAL ASSAULT (Category B Felony) in violation of NRS 200.364, 200.366, 193.330; thereafter, on the 8th day of July, 2021, the Defendant was present in court, via Blue jeans, for sentencing with counsel ANTHONY L. ABBATANGELO, ESQ., via Blue jeans, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, \$967.00 Psychosexual Evaluation Fee, \$2,575.81 Restitution payable to Clark County Social Services and \$150.00 DNA Analysis Fee including

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1 testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is
2 sentenced as follows: a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
3 MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the Nevada Department of
4 Corrections (NDC), CONCURRENT with C258241; ZERO (0) DAYS credit for time served.
5

6 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is
7 imposed to commence upon release from any term of imprisonment, probation or parole. In
8 addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of
9 the Mental Health and Development Services of the Department of Human Resources or his
10 designee; the Director of the Department of corrections or his designee; and a psychologist
11 licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must
12 certify that the Defendant does not represent a high risk to re-offend based on current accepted
13 standards of assessment.
14

15 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in
16 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from
17 custody.
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21 Dated this 29th day of July, 2021

22 
23 _____

24 C6A 0D8 FB4B 25F1
25 Mary Kay Holthus
26 District Court Judge
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-18-334955-1

7 vs

DEPT. NO. Department 21

8 Bryan Dryden
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/29/2021

15 Stephen Wolfson

Motions@clarkcountyda.com

16 Tony Abbatangelo

Tony@thevegaslawyers.com

17 Marissa Border

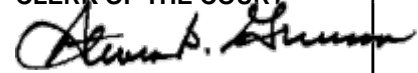
mborderlaw@gmail.com

18 Genevieve Craggs

genevieve.c.craggs@clarkcountyda.com

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20
21
22
23
24
25
26
27
28

RA116



1 MWCN
2 TONY L. ABBATANGELO, ESQ. (NV Bar #3897)
3 Email: Tony@thevegaslawyers.com
4 **THE VEGAS LAWYERS**
5 **BY PAUL PADDA LAW, PLLC**
6 4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
7 Tele: (702) 707-7000
8 Fax: (702) 366-1940

9 *Mailing Address:*
10 4030 S. Jones Boulevard, Unit 30370
11 Las Vegas, Nevada 89173
12 *Attorney for Defendant*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STATE OF NEVADA,

16 Plaintiff,

17 vs.

18 DRYDEN, BRYAN WARREN,

19 Defendant.

CASE NO.: C-18-334955-1

DEPT.: XVIII (18)

MOTION TO WITHDRAW AS
ATTORNEY OF RECORD FOR
DEFENDANT

[Hearing Requested]

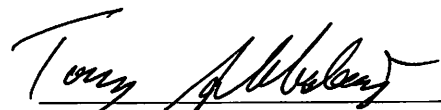
20 COMES NOW, Defendant, BRYAN WARREN DRYDEN, by through Tony L.
21 Abbatangelo, Esq. with the instant motion for an order withdrawing as attorney of record for
22 Defendant.

23 This Motion is made and based upon the following memorandum of Points and
24 Authorities, the Affidavit of Counsel, argument at the time of hearing and all pleadings and papers
25 on file herein.

26 DATED this 14th day of July, 2021.

Respectfully Submitted By:

By:



TONY L. ABBATANGELO, ESQ.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorney for Defendant

RA117

PAUL PADDA LAW, PLLC
4240 West Flamingo Road, Suite 220
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

POINTS & AUTHORITIES

I. Eighth Judicial District Court Rule 7.40 provides in pertinent part:

EDCR Rule 7.40 states, in pertinent part, as follows:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion therefore, and

1. If the application is made by the attorney, he must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and he must serve a copy of the application upon the client and all other parties to the action or their attorneys...
3. No application for withdrawal...may be granted if a delay of the trial or of the Hearing of any other matter in the case would result.

Attached hereto is an Affidavit of Tony L. Abbatangelo, Esq., setting forth the reasons for withdrawal from Defendant's representation. Defendant has stated in numerous occasion on and off the record that he does not want Counsel representing him. Due to the facts set forth in that affidavit, counsel, Tony L. Abbatangelo, Esq., respectfully requests that he be allowed to withdraw as attorney of record for Defendant in the above matter.

CONCLUSION


Based upon the above and foregoing, Affiant and this law firm respectfully requests an Order Granting the Motion to Withdraw as Attorney of Record for Jehu Abisaid Diaz.

Respectfully Submitted,

DATED this 14th day of July, 2021.

Respectfully Submitted By:

By:


TONY L. ABBATANGELO, ESQ.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorney for Defendant

2

Motion to Withdraw as Attorney of Record for Defendant
State of Nevada v. Bryan Warren Dryden
Case No.: C-18-334955-1, Dept. 18
PPL #201161-10-10

RA118

AFFIDAVIT OF TONY L. ABBATANGELO, ESQ.
IN SUPPORT OF MOTION TO WITHDRAW

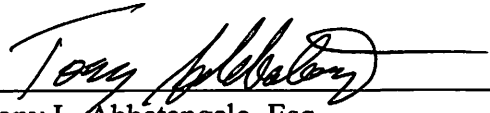
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Tony L. Abbatangelo, Esq., being first duly sworn under oath, subject to the penalty for perjury pursuant to Nevada law, and in conformity with N.R.S. 53.045, hereby deposes and says:

1. I am the attorney of record for the Defendant, BRYAN WARREN DRYDEN, in the above-entitled matter and I am an attorney duly licensed to practice before all courts in the State of Nevada;
2. I make this Affidavit based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true;
3. At the commencement of my representation of the Defendant, BRYAN WARREN DRYDEN, was appointed to Counsel to represent before this honorable Court;
4. On several occasions both on and off the record Defendant, BRYAN WARREN DRYDEN, has indicated his dissatisfaction with the representation of Counsel and objected to his representation in open court;
5. The Defendant's last known address is as follows:

Bryan Dryden, ID# 1070536
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

- 1 6. That the lines of communication have been severed such that I can no longer adequately
2 represent Defendant, BRYAN WARREN DRYDEN, in this matter.
3 7. If called upon to testify regarding any of the above, your Affiant could do so confidently;
4

5
6 
7 Tony L. Abbatangelo, Esq.

8 Signed in conformity with N.R.S. 53.045 this
9 14th day of July, 2021 in Las Vegas, Nevada

CERTIFICATE OF SERVICE

I HEREBY certify that service of the above and foregoing **MOTION TO WITHDRAW**
AS ATTORNEY OF RECORD was made this 14th day of July, 2021 to:

Office of the District Attorney
200 Lewis Avenue, Third Floor
Las Vegas, Nevada 89101
Motions@clarkcountynyda.com

By: 

An Employee of Paul Padda Law, PLLC

Steven D. Grierson

Bryan Dryden
Petitioner / In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT
CLARK COUNTY, NEVADA

Bryan Warren Dryden
Petitioner

vs.

State of Nevada
Respondant.

Case No. C-18-334955-1

Dept. No. XVIII

Docket _____

Notice to a Direct Appeal to withdraw
plea deal to the Nevada Supreme Court
from Judgment of Conviction (June 8, 2021)

COMES NOW, Petitioner, Bryan Dryden, herein above respectfully
moves this Honorable Court for an Appeal to the Nevada Supreme
Court to Withdraw Plea deal

DATED: this 1 day of August, 2021.

BY: Bryan Dryden
Bryan Dryden #1070536
Petitioner / In Propria Personam

Case No. C-18-334955-1

Dept. No. XVIII

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

Bryan Warren Dyden
Petitioner

vs.

State of Nevada
Respondant

Case No. C-18-334955-1

Dept No. XVIII

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Petitioner, Bryan Dyden

will come on for hearing before the above-entitled Court on the ____ day of _____, 20____
at the hour of ____ o'clock ____ M. In Department ____, of said Court.

CC:FILE

DATED: this 1 day of August, 2021.

BY: Bryan Dyden
Bryan Dyden #1070534
Petitioner /In Propria Personam

CERTIFICATE OF SERVICE BY MAILING

I, Bryan Dryden, hereby certify, pursuant to NRCP 5(b), that on this 1
day of August, 2021, I mailed a true and correct copy of the foregoing, "Motion to
Appeal Withdraw of Plea to the NV. S. Ct."
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Court Clerk
NV. Dist. Ct
700 Lewis Ave 3rd Fl
Las Vegas, NV. 89155-1160

District Attorney
Steven B. Wolfson
700 Lewis Ave
Las Vegas, NV. ~~89155-2242~~
89101

CC:FILE

DATED: this 1 day of August, 2021.

Bryan Dryden
Bryan Dryden # 1070536
Petitioner / In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

RA124

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to
Direct Appeal to Withdrawal Plea (N.V.S.Ct)
(Title of Document)

filed in District Court Case number C-18-334955-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

Bryan Dryden
Signature

8-1-21
Date

Bryan Dryden
Print Name

Petitioner/Defendant
Title

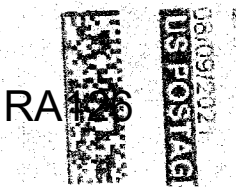
Bryan Dwyer 1070536
P.O. Box 650 (HDSR)
Indian Springs, NV.

89070

Brass Slip N^o
2495828
x3 parcels

Clerk of the Court
NV. District Court
200 Lewis Ave. 3rd Fl.
Las Vegas, NV.
89155-1160

3762



BP
BA
PD
1 Bryan Dryden
2 Petitioner In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED
AUG 13 2021

Sharon L. Johnson
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 September 7, 2021
9 1:30 PM

10 Bryan Warren Dryden
11 Petitioner

12 vs.

13 State of Nevada
14 Respondant.

Case No. C-18-334955-1

Dept. No. XVIII

Docket _____

15 Motion to Withdraw Counsel on record &
16 Appoint New Counsel to Appeal the Withdrawal
17 of Plea Deal from Judgment of Conviction (6-8-21)

18
19 COMES NOW, Petitioner Bryan Dryden, herein above respectfully
20 moves this Honorable Court for an Order granting him New Counsel in
21 the proceeding action to Direct Appeal the With-
22 drawal of Plea Deal to NV. S. Ct.

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.
24

25 DATED: this 1 day of August, 2021.

26 BY: Bryan Dryden
27 Bryan Dryden #1070536
28 Petitioner /In Propria Personam

1
2 **POINTS AND AUTHORITIES**

3 NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition;
4 response to dismiss.

5 "If the Court is satisfied that the allegation of indigency is true and the petition is not
6 dismissed summarily, the Court may appoint counsel to represent the petitioner."

7 NRS 171.188 Procedure for appointment of attorney for indigent defendant.

8 "Any defendant charged with a public offense who is an indigent may, be oral statement to the
9 District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to
10 represent him."

11 NRS 178.397 Assignment of counsel.

12 "Every defendant accused of a gross misdemeanor or felony who is financially unable
13 to obtain counsel is entitled to have counsel assigned to represent him at every stage of the
14 proceedings from his initial appearance before a magistrate or the court through appeal, unless he
15 waives such appointment."

16 WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to
17 allow him the assistance that is needed to insure that justice is served.

18 *Petitioner suffers from Dupuytren's contraction & is about*
to have hand surgery.

19 Dated this 1 day of August, 20 21

20
21 Respectfully submitted,

22 Bryan J. Ryden
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAILING

I, Bryan Dryden, hereby certify, pursuant to NRCP 5(b), that on this 1
day of Aug, 2021, I mailed a true and correct copy of the foregoing, "Motion to
Appeal Withdraw of Plea to NV. S. Ct"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows: ATTN: Court Clerk, please forward to
District Attorney Copies

Clerk of the Court
NV. Dist. Ct.
200 Lewis Ave., 3rd Fl
Las Vegas, NV. 89155-1160

CC:FILE

DATED: this 1 day of August, 2021.

Bryan Dryden
Bryan Dryden #107053/p
Petitioner /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

to Appeal Withdraw of Plea to NW.S.Ct
(Title of Document)

filed in District Court Case number C-18-334955-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

Bryan Dwyer
Signature

Aug. 1, 2021
Date

Bryan Dwyer
Print Name

Petitioner
Title

1 Bryan Dryden #1070536
2 /In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED
AUG 13 2021

John L. Blum
CLERK OF COURT

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE
6 STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

7 State of Nevada
8 Plaintiff

9 vs.

10 Bryan Warren Dryden
11 Defendant

Case No. C-18-334955-1

Dept. No. 18

Docket _____

14 MOTION TO WITHDRAW COUNSEL

15 Date of Hearing: _____

16 Time of Hearing: _____

September 7, 2021
1:30 PM

17 'ORAL ARGUMENT REQUESTED, Yes _____

18 COMES NOW, Defendant, Bryan Dryden, proceeding in proper person,

19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
20 of record in the proceeding action, namely,

21 Direct Appeal to Withdrawal plea to NV.S.Ct.

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached
24 Affidavit of Defendant.

25 DATED: this 1 day of August, 20 21

26 BY: Bryan Dryden

27 Bryan Dryden #1070536
28 Petitioner/Defendant
1

CLERK OF THE COURT

AUG 12 2021

RECEIVED

RA131

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items
5 of tangible personal property which belong to or were prepared for that client.
- 6 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its
7 order given under this section, the court may, after notice and fine or imprison him until the
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant
12 does not owe counsel any fees.

13 **WHEREFORE**, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 1 day of Aug, 2021.

18 Respectfully submitted,

19 BY: Bryan Dryden
20 Bryan Dryden # 1010536
21 Defendant In Propria Personam
22 Post Office Box 650 [HDSP]
23 Indian Springs, Nevada 89018
24
25
26
27
28

NAME: Bryan Dyden # 1070536
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

DATE: August 1, 2021

TO: Tony Abbataangelo
4560 S. Decatur Blvd #300
Las Vegas, NV. 89103

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-18-334955-1

DEPT. NO.: XVIII

CASE NAME: St. of NV. v. B.W. Dyden

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

Bryan Dyden

//////

//////

//////

RA133

CERTIFICATE OF SERVICE BY MAILING

I, Bryan Dryden, hereby certify, pursuant to NRCP 5(b), that on this 1
day of Aug., 2021, I mailed a true and correct copy of the foregoing, "Motion to
Withdraw Counsel"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
Nevada
District Court (State)
200 Lewis Ave 3rd Fl
Las Vegas, NV 89105-1160

CC:FILE

DATED: this 1 day of Aug, 2021.

Bryan Dryden
Bryan Dryden #1070536
Defendant -/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion
to Withdraw Counsel
(Title of Document)

filed in District Court Case number C-18-334955-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

Bryan Dryden
Signature

8-1-21
Date

Bryan Dryden
Print Name

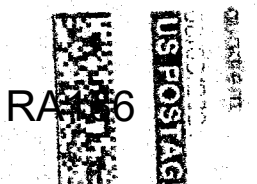
Defendant/Petitioner
Title

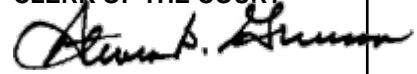
Bryan Dryden 1070536
P.O. Box 650 (HDSR)
Indian Springs, NV.
89070

Express Slip No
2495828
x3 parcels

Clerk of the Court
NV. District Court
200 Lewis Ave. 3rd Fl.
Las Vegas, NV.
89155-1160

3762





OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
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-

BRYAN WARREN DRYDEN,
#2585083

Defendant.

CASE NO: **C-18-334955-1**

DEPT NO: **XXI**

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO WITHDRAW COUNSEL
ON RECORD AND APPOINT NEW COUNSEL TO APPEAL THE WITHDRAW
OF PLEA DEAL FROM JUDGMENT OF CONVICTION (6-8-21)**

DATE OF HEARING: **OCTOBER 5, 2021**

TIME OF HEARING: **1:30 PM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in this State's Opposition to Defendant's Motion to Withdraw Counsel On Record and Appoint New Counsel To Appeal The Withdraw Of Plea Deal From Judgment of Conviction (6-8-21) ("Motion").

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.

//

//

RA137

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 19, 2018, Bryan Dryden (“Defendant”) was charged by way of
4 Indictment with one count of Sexual Assault With Use of a Deadly Weapon.

5 On November 5, 2019, Defendant pled guilty to the lesser charge of Attempt Sexual
6 Assault.

7 On March 2, 2020, Defendant filed a Motion to Withdraw Guilty Plea (Prior to
8 Sentencing.) The State filed an Opposition on March 31, 2020. After several hearings, a Brief
9 in Support of Motion to Withdraw Guilty Plea was filed on December 10, 2020. The State’s
10 Opposition to the supplemental brief was filed on December 30, 2020. This Court denied the
11 Motion to Withdraw Guilty Plea on January 28, 2021.

12 A Notice of Appeal was filed on July 14, 2021. Mr. Abbatangelo filed a Motion to
13 Withdraw as Attorney of Record for Defendant the same day. This Court granted Mr.
14 Abbatangelo’s Motion to Withdraw on July 28, 2021.

15 Defendant’s Judgment of Conviction was filed July 29, 2021. Another Notice of Appeal
16 was filed on August 13, 2021.

17 A Motion to Withdraw Counsel and the instant Motion were both filed on August 13,
18 2021. The State responds to the latter two motions herein.

19 **ARGUMENT**

20 **I. DEFENDANT’S MOTION TO WITHDRAW COUNSEL IS MOOT**

21 Defendant seeks to remove Mr. Abbatangelo as counsel. Motion to Withdraw Counsel
22 at 3.¹ This Court has already removed Mr. Abbatangelo as counsel. Order Granting Motion to
23 Withdraw as Attorney of Record for Defendant, July 28, 2021. However, on July 28, 2021,
24 Mr. Abbatangelo *also* filed a Motion to Withdraw As Counsel in the Nevada Supreme Court.
25 See Exhibit 1. The Nevada Supreme Court denied Mr. Abbatangelo’s Motion on August 6,
26 2021. See Exhibit 2.

27 //

28 _____
¹ The instant Motion does not say who Defendant wants to remove, but presumably it is Mr. Abbatangelo.

1 Because jurisdiction over the appeal is vested in the Nevada Supreme Court following
2 a timely Notice of Appeal, and because the Nevada Supreme Court has determined that Mr.
3 Abbatangelo must remain as appellate counsel, this Court cannot remove him as counsel. *See*
4 Foster v. Dingwall, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (“[W]hen an appeal is
5 perfected, the district court is divested of jurisdiction to revisit issues that are pending before
6 this court.”)

7 And, because Defendant already has appointed counsel, this Court cannot appoint new
8 counsel.

9 CONCLUSION

10 For the foregoing reasons, the State respectfully requests Defendant’s Motion be
11 DENIED.

12 DATED this 22nd day of September, 2021.

13 Respectfully submitted,

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

17 BY /s/ John Niman
18 JOHN NIMAN
19 Deputy District Attorney
20 Nevada Bar #014408
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 22nd day of
SEPTEMBER 2021, to:

BRYAN DRYDEN, BAC#1070536
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89108

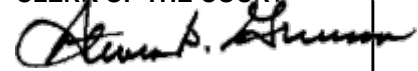
BY /s/ Howard Conrad
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT "1"

PAUL PADDA LAW, PLLC
4240 West Flamingo Road, Suite 220
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

Electronically Filed
7/14/2021 3:46 PM
Steven D. Grierson
CLERK OF THE COURT



MWCN
TONY L. ABBATANGELO, ESQ. (NV Bar #3897)
Email: Tony@thevegaslawyers.com
THE VEGAS LAWYERS
BY PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 707-7000
Fax: (702) 366-1940

Electronically Filed
Jul 28 2021 11:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Mailing Address:
4030 S. Jones Boulevard, Unit 30370
Las Vegas, Nevada 89173
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DRYDEN, BRYAN WARREN,

Defendant.

CASE NO.: C-18-334955-1

DEPT.: XVIII (18)

MOTION TO WITHDRAW AS
ATTORNEY OF RECORD FOR
DEFENDANT

[Hearing Requested]

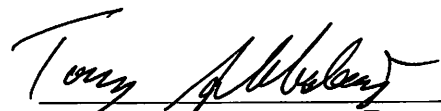
COMES NOW, Defendant, BRYAN WARREN DRYDEN, by through Tony L. Abbatangelo, Esq. with the instant motion for an order withdrawing as attorney of record for Defendant.

This Motion is made and based upon the following memorandum of Points and Authorities, the Affidavit of Counsel, argument at the time of hearing and all pleadings and papers on file herein.

DATED this 14th day of July, 2021.

Respectfully Submitted By:

By:



TONY L. ABBATANGELO, ESQ.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorney for Defendant

RA142

POINTS & AUTHORITIES

I. Eighth Judicial District Court Rule 7.40 provides in pertinent part:

EDCR Rule 7.40 states, in pertinent part, as follows:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion therefore, and

1. If the application is made by the attorney, he must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and he must serve a copy of the application upon the client and all other parties to the action or their attorneys...
3. No application for withdrawal...may be granted if a delay of the trial or of the Hearing of any other matter in the case would result.

Attached hereto is an Affidavit of Tony L. Abbatangelo, Esq., setting forth the reasons for withdrawal from Defendant's representation. Defendant has stated in numerous occasion on and off the record that he does not want Counsel representing him. Due to the facts set forth in that affidavit, counsel, Tony L. Abbatangelo, Esq., respectfully requests that he be allowed to withdraw as attorney of record for Defendant in the above matter.

CONCLUSION


Based upon the above and foregoing, Affiant and this law firm respectfully requests an Order Granting the Motion to Withdraw as Attorney of Record for Jehu Abisaid Diaz.

Respectfully Submitted,

DATED this 14th day of July, 2021.

Respectfully Submitted By:

By:


TONY L. ABBATANGELO, ESQ.
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Attorney for Defendant

2

Motion to Withdraw as Attorney of Record for Defendant
State of Nevada v. Bryan Warren Dryden
Case No.: C-18-334955-1, Dept. 18
PPL #201161-10-10

RA143

AFFIDAVIT OF TONY L. ABBATANGELO, ESQ.
IN SUPPORT OF MOTION TO WITHDRAW

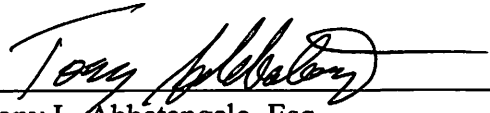
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Tony L. Abbatangelo, Esq., being first duly sworn under oath, subject to the penalty for perjury pursuant to Nevada law, and in conformity with N.R.S. 53.045, hereby deposes and says:

1. I am the attorney of record for the Defendant, BRYAN WARREN DRYDEN, in the above-entitled matter and I am an attorney duly licensed to practice before all courts in the State of Nevada;
2. I make this Affidavit based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true;
3. At the commencement of my representation of the Defendant, BRYAN WARREN DRYDEN, was appointed to Counsel to represent before this honorable Court;
4. On several occasions both on and off the record Defendant, BRYAN WARREN DRYDEN, has indicated his dissatisfaction with the representation of Counsel and objected to his representation in open court;
5. The Defendant's last known address is as follows:

Bryan Dryden, ID# 1070536
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

- 1 6. That the lines of communication have been severed such that I can no longer adequately
2 represent Defendant, BRYAN WARREN DRYDEN, in this matter.
3 7. If called upon to testify regarding any of the above, your Affiant could do so confidently;
4

5
6 
7 Tony L. Abbatangelo, Esq.

8 Signed in conformity with N.R.S. 53.045 this
9 14th day of July, 2021 in Las Vegas, Nevada

CERTIFICATE OF SERVICE

I HEREBY certify that service of the above and foregoing **MOTION TO WITHDRAW**
AS ATTORNEY OF RECORD was made this 14th day of July, 2021 to:

Office of the District Attorney
200 Lewis Avenue, Third Floor
Las Vegas, Nevada 89101
Motions@clarkcountynyda.com

By: 

An Employee of Paul Padda Law, PLLC

EXHIBIT "2"

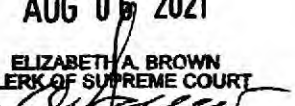
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN WARREN DRYDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83233

FILED

AUG 06 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING MOTION

This is a direct appeal from a judgment of conviction. Appointed attorney Tony Abbatangelo has filed a motion to withdraw as counsel for appellant. In support of the motion, Mr. Abbatangelo indicates that appellant has repeatedly expressed dissatisfaction with Mr. Abbatangelo, and that there has been a complete breakdown in communication between himself and appellant. As a result, Mr. Abbatangelo claims that he can no longer effectively represent appellant in this appeal.

The removal of appointed counsel on direct appeal is not warranted absent a showing of good cause. *See Thomas v. State*, 94 Nev. 605, 584 P.2d 674 (1978); *cf. Thomas v. Wainwright*, 767 F.2d 738, 742 (11th Cir. 1985) (appellant's general loss of confidence or trust in counsel alone is not adequate cause for appointment of new counsel). Although appellate counsel in a criminal case should communicate with the defendant as necessary, *see Nevada Indigent Defense Standards of Performance*, Standard 3-5, 9, the decision as to what issues to raise in an appeal rests within counsel's professional judgment. *Jones v. Barnes*, 463 U.S. 745, 751-54 (1983). Accordingly, this court concludes that Mr. Abbatangelo does not

demonstrate good cause warranting his withdrawal as counsel, and the motion is denied.

It is so ORDERED.

J. Sanders, C.J.

cc: Paul Padda Law, PLLC
Attorney General/Carson City
Clark County District Attorney

Felony/Gross Misdemeanor

COURT MINUTES

October 05, 2021

C-18-334955-1 State of Nevada
 vs
 Bryan Dryden

October 05, 2021 01:30 PM All Pending Motions

HEARD BY: Clark Newberry, Tara COURTROOM: RJC Courtroom 16C

COURT CLERK: Bracamontez-Munguia, Carina

RECORDER: Page, Robin

REPORTER:

PARTIES PRESENT:

Anthony L Abbatangelo Attorney for Defendant

Kristina A. Rhoades Attorney for Plaintiff

State of Nevada Plaintiff

JOURNAL ENTRIES

MOTION TO WITHDRAW COUNSEL...MOTION TO WITHDRAW COUNSEL OF RECORD
AND APPOINT NEW COUNSEL TO APPEAL THE WITHDRAWAL OF PLEA DEAL FROM
JUDGMENT OF CONVICTION

Court noted the Deft. was not present as he was in the Nevada Department of Corrections (NDC). Mr. Abbatangelo concurred and stated the Deft. was previously granted the Motion to Withdraw Counsel, however, the Nevada Supreme Court told him to do it. Court Clarified there had been a direct appeal and the Nevada Supreme Court had taken the position that he needed to seek leave from then and they denied the request. Mr. Abbatangelo requested his Motion to Withdraw be stricken. COURT ORDERED Motion's to Withdraw WITHDRAWN and taken OFF CALENDAR.

NDC

ORIGINAL

87

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

FILED

MAY 4 9 50 AM '11

Ann L. Quinn
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,)
10 v.)
11 BRYAN DRYDEN,)
12 Defendant.)

CASE NO. 09C258241
DEPT. NO. XIV
DATE: May 16, 2011
TIME: 9:00 am

MOTION TO WITHDRAW GUILTY PLEA

14 COMES NOW, the Defendant, BRYAN DRYDEN, by and through CHRISTY L.
15 CRAIG, Deputy Public Defender and hereby requests that this court grant his motion.

16 This Motion is made and based upon all the papers and pleadings on file herein, the
17 attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

18 DATED this 3 day of May, 2011.

19 PHILIP J. KOHN
20 CLARK COUNTY PUBLIC DEFENDER

21 By: *Christy L. Craig*
22 CHRISTY L. CRAIG, #6262
23 Deputy Public Defender

09C258241
MWPL
Motion to Withdraw Plea
1391812



24
25
26
27 RECEIVED
28 MAY 04 2011
CLERK OF THE COURT

RA151

16

1
2 **DECLARATION**

3 CHRISTY L. CRAIG makes the following declaration:

4 1. I am an attorney duly licensed to practice law in the State of Nevada; I am
5 the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the
6 Defendant has represented the following facts and circumstances of this case.

7 2. That Mr. Dryden has requested that a Motion To Withdraw Guilty Plea be
8 filed on his behalf. He intends to argue that his counsel at the Public Defender's office did not
9 provide him with adequate advice and representation at the time of plea.
10

11 3. That the court has refused to grant the defense request to provide Mr.
12 Dryden will need the assistance of independent counsel to review the facts to determine if grounds
13 exist for this motion.
14

15 4. That the appointment of alternative counsel is for the limited purpose of
16 reviewing the record and for filing a Motion To Withdraw Guilty Plea if adequate grounds exist.
17

18 5. That on Monday February 7, 2011 this court heard a number of defense pre-
19 trial Motions. Many of the defense motions were denied by the court after argument. The court
20 took a short break and after a short discussion Mr. Dryden elected to accept the state's earlier offer
21 which was still open.

22 6. The court enquired of Mr. Dryden. The court discussed Mr. Dryden
23 medications and if he felt competent to accept the state's offer and plead guilty.

24 7. That ultimately the court accepted Mr. Dryden's guilty plea.

25 8. That Mr. Dryden now alleges that he was intoxicated as the result of taking
26 to much of his psychiatric medications. His mental illness affected his ability to adequately
27 understand the guilty plea he was accepting on February 7, 2011. (See attached Motion filed by
28 Mr. Dryden).

9. That Mr. Dryden may have other information regarding council's advice, promises, and information provided that may support his argument that council is unable to share with the court.

10. That Mr. Dryden is requesting that this court grant his motion to withdraw his guilty plea and allow him to set a trial date.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 5 day of May, 2011

CHRISTY L. CRAIG

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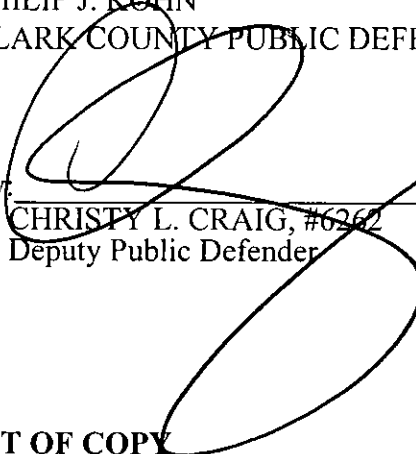
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
above and foregoing Motion on for hearing before the Court on the 14th day of May, 2011, at 9:00
am

DATED this 3 day of May, 2011.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
CHRISTY L. CRAIG, #6262
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this
4 day of May, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: 



**CLARK COUNTY COURTS
EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**



REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554
FAX (702) 474-2434

Edward A. Friedland
Clerk of the Court

Steven D. Grierson
Assistant Clerk of the Court

PUBLIC DEFENDER

Date: April 7, 2011
Case No: C258241

CLC - Martha

Attached are pleadings received by the Office of the District Court Clerk on:

April 7, 2011

Pleadings: MOTION TO WITHDRAW PLEA.

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Deputy Clerk of the Court

#DC

RA155

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

Bryan Dryden

Defendant

) Case No.:

C258241-1

) Dept. No.:

XIV

) Docket No.:

Motion to withdraw plea

Now comes Bryan Dryden, defendant, pro se, in the above captioned matter and moves this Court, pursuant to F.R.C.P. 3.170(F) to withdraw his plea of guilty previously entered with the assistance of counsel. Counsel's assistance has been waived and discharged by separate motion.

As grounds and "good cause," defendant alleges the following grounds for withdrawal of the plea in the numbered paragraphs below

- 1) Intoxication/withdrawal symptoms during plea
- 2) Incompetency/mental illness affecting plea colloquy
- 3) Defendant alleges he is innocent

RECEIVED

APR 07 2011

RA156

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16 DATED THIS 3 day of April, 2011.

17 I, Bryan Dryden, do

18 solemnly swear, under the penalty of perjury, that

19 the above good cause is accurate,

20 correct, and true to the best of my knowledge.

21 NRS 171.102 and NRS 208.165.

22 Respectfully submitted,

23 Bryan Dryden

24
25 Defendant

District Court
Clark County, Nevada

State of Nevada,

Plaintiff

Case No. _____

Dept No. _____

-VS-

Docket No. _____

Bryan Dryden

Defendant

Motion for Complete Rough Draft Transcript

Come now the defendant: Bryan Dryden, and moves
this Honorable Court to grant an order requiring complete transcript
of the plea hearing held on Feb 7, 2011

This motion for complete copy of the transcript is based upon all paper,
pleading and documents on file, factual statement set forth in the Points
and Authorities, contained therein.

I, Bryan Dryden do

Solemnly Swear, under the penalty of perjury, that

the above: afforementioned text of Motion for Complete Transcript

is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165

Respectfully Submitted

Bryan Dryden
Defendant.

RA158

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. C258241
)	Dept. XIV
BRYAN DRYDEN,)	
)	
Defendant.)	
<hr/>		

REPORTER'S TRANSCRIPT
OF
ENTRY OF PLEA

BEFORE THE HONORABLE DONALD M. MOSLEY
DISTRICT JUDGE

Taken on Monday, February 7, 2011

At 9:00 a.m.

APPEARANCES:

For the State:	VICTORIA VILLEGAS, ESQ. Chief Deputy District Attorney
For the Defendant:	CHRISTY L. CRAIG, ESQ. Deputy Public Defender

Reported by: Maureen Schorn, CCR No. 496, RPR

1 LAS VEGAS, NEVADA. MONDAY, FEBRUARY 7, 2011, 9:00 A.M.

2 * * * *

3
4 THE COURT: C258241, State versus Bryan
5 Dryden. The record will reflect the presence of the
6 defendant in custody. Ms. Craig is counsel, Ms. Villegas
7 is here for the State.

8 MS. CRAIG: Judge, may I approach?

9 THE COURT: Yes. I am told that there may
10 be a negotiation; is that correct?

11 MS. CRAIG: Yes, sir.

12 THE COURT: Do you wish to file a Second
13 Amended Information, Ms. Villegas?

14 MS. VILLEGAS: Yes, Judge.

15 THE COURT: Do you have any objection,
16 Ms. Craig?

17 MS. CRAIG: No, Judge.

18 THE COURT: The Court will receive the
19 document. Have you a copy, Ms. Craig?

20 MS. CRAIG: Yes, sir, I do.

21 THE COURT: Do you waive the formal reading
22 thereof, along with any list of witnesses that may be
23 attached thereto?

24 MS. CRAIG: Yes, sir.
25

1 THE COURT: The negotiations are, please?

2 MS. CRAIG: Mr. Dryden is going to be
3 pleading guilty today to second degree murder. The State
4 is recommending a sentence of ten to life.

5 MS. VILLEGAS: That's correct, Judge.

6 THE COURT: That's the extent of it?

7 MS. CRAIG: It is, Judge. If I could
8 approach? I have a copy that is signed of the Guilty Plea
9 Agreement.

10 THE COURT: Yes, you may. Mr. Dryden, do
11 you understand the negotiations the Ms. Craig announced?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions,
14 either of Ms. Craig or myself?

15 THE DEFENDANT: No, sir.

16 THE COURT: Now, sir, did you wish to
17 negotiate your case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, let me explain something to
20 you, sir. During our earlier discussion about these
21 various motions, pretrial motions, there was some
22 indication that you are on medications?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, are you currently taking
25 medications?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you feel that you're
3 competent and understand what's going on here?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any hesitancy in
6 that regard?

7 THE DEFENDANT: No, sir.

8 THE COURT: So you feel like you want to go
9 forward today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Craig, do you see any reason
12 here to delay the matter?

13 MS. CRAIG: I don't, Judge. And I've kept
14 very close tabs on his medication issues during the time
15 that he's been consistently taking his Respidol
16 (phonetic,) almost since the time he was arrested.

17 THE COURT: All right mr. Dryden, as I
18 understand it, you wish to withdraw your
19 previously-entered plea of not guilty to murder, open
20 murder I believe it is, and enter a plea of guilty to the
21 second degree murder charge set forth in the Second
22 Amended Information; is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What, in fact, is your plea to
25 murder of the second degree, a felony; guilty or not

1 guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Before the Court will accept
4 your plea of guilty, it must be satisfied that it's freely
5 and voluntarily given. Is it, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you sign the Guilty Plea
8 Agreement that I have here?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you read it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you believe you understand
13 it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Before I receive it into the
16 file, is there any question you'd care to ask about it?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand that the
19 matter of sentencing is entirely up to me?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you believe these
22 negotiations are in your best interest given all the facts
23 of the case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, what did do on or about the

1 22nd day of June of the year 2009 that caused you to enter
2 a plea of guilty to the charge of second degree murder?

3 THE DEFENDANT: Well, to tell you the truth,
4 I really can't remember what happened. All I remember is
5 dropping my knee into Patrick's head and thinking that he
6 was the one who attacked me. And I fought back in
7 self-defense, but the end result was Patrick was ended up
8 dead.

9 THE COURT: Ms. Craig, are the circumstances
10 such that it would not amount to the legal defense of
11 self-defense?

12 MS. CRAIG: Yes.

13 THE COURT: And, Mr. Dryden, you and this
14 Mr. Kelly got into a fight; is that correct?

15 THE DEFENDANT: I was attacked.

16 THE COURT: Sir, you got into a fight
17 though, you fought each other, right?

18 THE DEFENDANT: I don't remember actually
19 fighting Patrick because my vision was blacked out from
20 getting hit in the temple.

21 THE COURT: How do you remember you were
22 attacked, but you don't remember you were in a fight?

23 THE DEFENDANT: I know that I was attacked.

24 THE COURT: How do you know that if you
25 don't remember?

1 THE DEFENDANT: Well, I don't remember
2 exactly what happened before I was attacked.

3 THE COURT: Oh, so as soon as you were
4 attacked your memory failed you?

5 MS. CRAIG: If I could, Judge, it would be
6 fair to say that he remembers bits and pieces from that
7 night, and he does know that he did put his knee into the
8 head of Patrick Kelly and, in fact, that's what he told
9 the police when he was interviewed.

10 THE COURT: And that action along with some
11 others perhaps, he was responsible for the death of
12 Mr. Kelly? Is that correct, sir?

13 THE DEFENDANT: As far as I know, yes.
14 He was also strangled. I didn't have any -- I don't
15 believe I had anything to do with that.

16 THE COURT: Well, sir, what you're pleading
17 to is that you repeatedly punched Mr. Kelly in the face,
18 and/or stomped him in the face with your foot, and/or
19 dropping onto his face with your knee.

20 Is there any reason to believe that these things
21 are not what actually occurred?

22 THE DEFENDANT: I remember dropping my knee
23 into Patrick's head.

24 THE COURT: Is there any reason to believe
25 that these others things did not occur?

1 Do you recall one way or the other?

2 THE DEFENDANT: What's that?

3 THE COURT: Is there any reason to believe
4 that these actions you pled to did not occur?

5 THE DEFENDANT: No.

6 THE COURT: The Court finds the defendant's
7 plea of guilty is freely and voluntarily given, that the
8 defendant understands the nature of the offense and the
9 consequences of his plea. I, therefore, accept the plea
10 of guilty.

11 Sentencing will be had in approximately 60 days.
12 A Presentence Investigation Report will be ordered.

13 THE CLERK: April 13th, 9:00 a.m.

14 THE COURT: The trial date is vacated, as is
15 the hearing date.

16

17

18 ATTEST: Full, true and accurate transcript of
19 proceedings.

20

21

MAUREEN SCHORN, CCR NO. 496, RPR

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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DRYDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58822

FILED

MAY 10 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of second-degree murder. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Dryden argues that the district court abused its discretion by denying his proper person motion to withdraw his guilty plea without appointing alternative counsel where the motion was based on claims that counsel coerced the plea and he was intoxicated at the time of the plea. We disagree.

Guilty pleas are presumptively valid, especially when entered on advice of counsel, and a defendant has a heavy burden to show the district court that he did not enter his plea voluntarily. Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001); Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 476 (1999). "A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason' if it is 'fair and just.'" Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)). A district court must examine the totality of the circumstances to determine whether a defendant entered his plea voluntarily. Crawford, 117 Nev. at 721-22, 30 P.3d at 1125-26. "A

thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.” Id. at 722, 30 P.3d at 1126. “When reviewing a district court’s denial of a motion to withdraw a guilty plea, this court presumes that the district court properly assessed the plea’s validity, and we will not reverse the lower court’s determination absent abuse of discretion.” Id. at 721, 30 P.3d at 1125.

We conclude that Dryden has failed to substantiate his coercion claims. First, the district court canvassed Dryden on his understanding of the proceedings, the nature of the charges, and the possible penalties. Second, Dryden signed a plea agreement memorializing the negotiations and attesting that his plea was not coerced. Third, during the canvass, he admitted his guilt and claimed to enter the plea voluntarily. Fourth, while the court should have appointed Dryden counsel at the hearing to withdraw the guilty plea, we discern no error because Dryden’s explanations did not remotely demonstrate that his attorney was coercive.

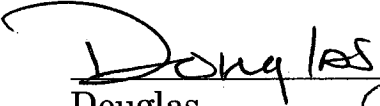
Here, Dryden admitted that he had discussed with his attorney the State’s evidence and the charges and elements the State would have to establish at trial. He claims that his attorney was coercive because she told him he “needed to take the plea because she didn’t believe that anybody would understand the truth of what had happened.” The district court later asked why Dryden had pleaded guilty. He replied, “Because I was afraid that I would get 20 to life in trial.” None of Dryden’s reasons for pleading guilty show coercion. Accordingly, Dryden has not demonstrated a substantial reason that is fair and just for granting his


motion to withdraw his guilty plea. Woods, 114 Nev. at 475, 958 P.2d at 95.

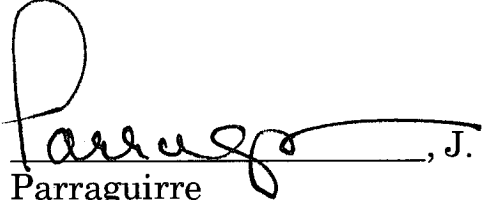
Dryden also argues that his plea was unknowing and involuntary because he was under the influence of psychiatric medication. We disagree. Here, the district court was aware of Dryden's medications. He was specifically canvassed on his medication use. During the canvass, Dryden claimed that he was taking his medication, but it was not affecting him. Dryden's counsel who had been monitoring Dryden's medication use for several years, also believed that her client was lucid enough to enter the plea. Further, Dryden signed a written plea agreement attesting that he was not under the influence of any controlled substance which would impair his comprehension or understanding of the plea. Accordingly, Dryden has failed to proffer a substantial reason that is fair and just for granting his motion to withdraw his guilty plea because of his medication. Id.

We therefore conclude that Dryden has failed to demonstrate the district court abused its discretion in denying the presentence motion to withdraw the guilty plea, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Chief Judge, The Eighth Judicial District Court
Eighth Judicial District Court Dept. 14
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk