

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 83546

Electronically Filed
Feb 10 2022 04:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DORIE HENLEY

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Cristina Silva, District Court Judge
District Court Case No. C-17-327585-1

APPELLANT'S APPENDIX

VOLUME II

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 10, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN WOLFSON
Clark County District Attorney

By: /s/ Lucas Gaffney
An Employee of Gaffney Law

1 in the second degree with use of a deadly weapon because in truth and
2 in fact you are guilty?

3 DEFENDANT FRANCO: I am, ma'am.

4 THE COURT: All right. Before you signed the written plea of
5 guilty, did you read it?

6 DEFENDANT FRANCO: Yes.

7 THE COURT: Did you understand everything contained in the
8 written plea of guilty?

9 DEFENDANT FRANCO: Yes.

10 THE COURT: Did you also read the amended indictment
11 charging you with murder in the second degree with use of a deadly
12 weapon?

13 DEFENDANT FRANCO: Yes, ma'am.

14 THE COURT: And do you understand the charge to which
15 you're entering your plea of guilty?

16 DEFENDANT FRANCO: Yes, ma'am.

17 THE COURT: Did you have a full and ample opportunity to
18 discuss your plea of guilty as well as the charge to which you're pleading
19 guilty with your lawyer, Mr. Parris?

20 DEFENDANT FRANCO: Yes.

21 THE COURT: And did Mr. Parris answer all of your questions
22 to your satisfaction?

23 DEFENDANT FRANCO: He did, ma'am.

24 THE COURT: Do you feel like Mr. Parris has spent enough
25 time with you in this case going over everything, like the evidence and

1 the discovery and explaining everything to you?

2 DEFENDANT FRANCO: Yes, ma'am.

3 THE COURT: All right. And do you feel like anybody is
4 forcing you to plead guilty in this case, such as your lawyer Mr. Parris or
5 the Court or anybody else?

6 DEFENDANT FRANCO: No.

7 THE COURT: Are you pleading guilty today to murder in the
8 second degree with use of a deadly weapon of your own free will?

9 DEFENDANT FRANCO: Yes.

10 THE COURT: All right. Before we turn to your plea, do you
11 have any questions that you would like to ask me, the Court?

12 DEFENDANT FRANCO: No.

13 THE COURT: Tell me then in your own words what you did
14 on or about October 10, 2017, here in Clark County, Nevada, that
15 causes you to plead guilty to murder in the second degree.

16 MR. PARRIS: Your Honor, we will stipulate to the facts
17 contained in the amended indictment.

18 THE COURT: All right.

19 Do you acknowledge that you and the individuals named on
20 lines 21 and 22 stabbed a human being by the name of Jose Juan
21 Garcia-Hernandez?

22 DEFENDANT FRANCO: Yeah.

23 THE COURT: Yes?

24 DEFENDANT FRANCO: Yes.

25 THE COURT: And do you acknowledge that as a result of

1 those stab wounds, Mr. Garcia-Hernandez died?

2 DEFENDANT FRANCO: Yes.

3 THE COURT: And do you acknowledge that he was stabbed
4 with a deadly weapon being in this case, a knife; is that true?

5 DEFENDANT FRANCO: Yes.

6 THE COURT: And you acknowledge that you acted willfully,
7 unlawfully, feloniously, and with malice aforethought?

8 DEFENDANT FRANCO: Yes.

9 THE COURT: Is that acceptable, State?

10 MR. HAMNER: Yes, it is, Your Honor.

11 THE COURT: All right. The amended indictment original is
12 not dated, so the Court will interlineate today's date.

13 MR. PARRIS: No objection, Your Honor.

14 THE COURT: All right.

15 MR. HAMNER: No objection.

16 THE COURT: Or the Court Clerk.

17 And the Court finds that Mr. Franco's plea of guilty has been
18 freely and voluntarily given. His plea is hereby accepted and the matter
19 if referred to the Department of Parole and Probation and we'll set it over
20 for presentence investigation and in custody sentencing date on --

21 THE CLERK: That's going to be April 4th at 9:30.

22 MR. HAMNER: Thank you, your Honor.

23 MR. PARRIS: Thank you, Your Honor.

24 THE COURT: All right. Thank you.

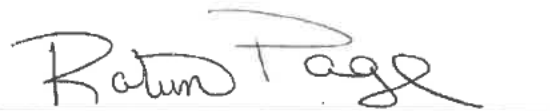
25 MR. HAMNER: Have a good day, Your Honor.

1 THE COURT: Thank you.

2 [Proceeding concluded at 10:44 a.m.]

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

24 

25 Robin Page
Court Recorder/Transcriber

EXHIBIT 8



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 DORIE REGINA HENLEY,
12 ANDREW BRANDON HENLEY,
13 Defendant.

CASE NO: C-17-327585-1
CASE NO: C-17-327585-2

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, MAY 23, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **DEFENDANT DORIE HENLEY'S MOTION TO SEVER DEFENDANTS;**
STATUS CHECK: STATEMENTS OF DEFENDANTS

18 APPEARANCES:

19 For the State: CHRISTOPHER S. HAMNER, ESQ.
20 Chief Deputy District Attorney

21 For Defendant Dorie Henley: MARY DAGGETT BROWN, ESQ.

22
23 For Defendant Andrew Henley: ANDREA L. LUEM, ESQ.

24
25 RECORDED BY: ROBIN PAGE, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, May 23, 2019**

2 * * * * *

3 [Proceeding commenced at 9:36 a.m.]

4 THE COURT: State versus Andrew Henley and Dorie Henley.
5 All right. I'm sorry. We have to trail this for Dorie Henley.

6 MR. HAMNER: Understood.

7 MS. BROWN: Okay.

8 THE COURT: I guess they must be short staffed. They're
9 short staffed and they couldn't bring up all the inmates.

10 MR. HAMNER: Okay.

11 [Matter trailed]

12 [Matter recalled at 9:54 a.m.]

13 THE COURT: State versus Dorie Henley, that's page 13.
14 She's present in custody with Ms. Brown.

15 MS. BROWN: Good morning, Your Honor.

16 THE COURT: All right. And then the next one is Andrew
17 Henley, who's present in custody with Ms. Luem.

18 MS.LUEM: Yes.

19 THE COURT: All right. This is continuation relating to the
20 motions to sever and just general status check. So when we passed this
21 over before, counsel was going to review the statements and see what
22 redactions could be agreed upon. And hopefully the redactions could be
23 agreed upon, but if not, I was going to make the decision.

24 So where are we on that?

25 MS. BROWN: I send over the information that I thought was --

1 that I would like to admit. I spoke with Ms. Luem briefly this morning,
2 she can speak for herself.

3 MS. LUEM: Judge, I'm not objecting to Ms. Henley's
4 statement coming in in its entirety. Frankly, the only things that I think
5 I'm objecting to are the things that would be inadmissible, otherwise,
6 404(b) type stuff, bad acts evidence concerning Mr. Henley's prior felony
7 conviction and prior prison sentence, but other than that, I don't see any
8 need for redaction and I --

9 THE COURT: Okay.

10 MS. LUEM: -- I don't think that there's a need for severance.

11 MS. BROWN: And --

12 THE COURT: That should be redacted anyway.

13 MS. LUEM: Right.

14 MS. BROWN: Unless it becomes relevant as to the
15 reasonableness of his -- her fear of him.

16 MS. LUEM: I'm not sure how that's relevant because he's the
17 co-defendant not the victim, but I mean that's something we can address
18 I suppose at a later time.

19 THE COURT: Well, is -- what I'm assuming then, Ms. Brown,
20 is the defense is going to be something like she didn't want to participate
21 in this, but she felt coerced by Mr. Henley and that was reasonable
22 based on what she knew about his prior history. Is that it in a nutshell?

23 MS. BROWN: In a nutshell.

24 THE COURT: But that could only probably come out if
25 Ms. Henley herself were to testify.

1 In which case, Ms. Luem, there really isn't a problem because
2 you would have an opportunity at that point to cross examine, unless
3 somehow the prior would come in there and your client wasn't testifying.

4 MS. LUEM: Right.

5 THE COURT: So that could be an issue potentially. Mr. --

6 MS. LUEM: Well, it could be, but --

7 THE COURT: I'm sorry.

8 MS. LUEM: It could be, but I don't anticipate that it will be, so.

9 THE COURT: Okay. All right. That -- like I said, obviously, if
10 your client testifies, it's all going to come out anyway and there's no
11 issue at all about the prior. Mr. -- but of course we won't know that until
12 -- at the end of the trial or very close to the end.

13 Mr. Hamner, do you want to weigh in on this?

14 MR. HAMNER: I mean, we'll submit on our briefs. I think that,
15 you know, we kind of echo, I think a little -- we kind of echo what Andrew
16 -- Andrew's counsel's kind of stating at this point. I mean if they don't
17 have an issue with it, I don't know that severance is appropriate at this
18 point.

19 THE COURT: All right.

20 MR. HAMNER: So we're just going to rest on our brief.

21 THE COURT: All right. It sounds to me then like the issue is
22 essentially resolved.

23 So in terms of other trial preparation, where are we
24 Ms. Brown? And we need to set a trial date.

25 MS. BROWN: Yeah, I think we're ready -- ready to set the

1 trial date.

2 THE COURT: Okay.

3 MS. BROWN: I don't have any other issues.

4 THE COURT: What else remains to be done from your
5 preparation in terms of how long is this going to take? And I know the
6 other issue will be your schedule.

7 MS. BROWN: Yeah, I think it's going to be a calendaring
8 issue, more than it's going to be a my time for preparation issue.

9 THE COURT: Okay.

10 MS. BROWN: Because I know Ms. Luem has a very crowded
11 calendar which will allow me the time I need.

12 THE COURT: Ms. Luem.

13 MS. LUEM: That's all true. I start a trial in this department
14 with Mr. Acosta next month and then I am moving into a three to four
15 month federal murder trial, so I may be tied up until December possibly.

16 THE COURT: Until when?

17 MS. LUEM: December.

18 THE COURT: And Mr. Hamner.

19 MR. HAMNER: My summer is pretty busy. September got
20 four that are set, October there's another four that are set; November
21 there's another three that are set. I don't have any objection if she
22 wants to move into next year, that's fine.

23 THE COURT: Okay.

24 MR. HAMNER: But I, you know, I can obviously put
25 something a little bit earlier, whether it's sometime after September.

1 THE COURT: How long do we anticipate for trial with the two
2 together?

3 MR. HAMNER: I think it's two weeks probably.

4 THE COURT: All right. It would either be the first week of
5 December or into the New Year, so we'll see what we can.

6 [Colloquy between the Court and Law Clerk]

7 THE LAW CLERK: January 13th, 2020, at 9:00 a.m. for the
8 trial; calendar call is January 9th, 2020, at 9:30.

9 MS. LUEM: I have one set that date. I'm hoping it won't go
10 forward, but it's, I think, the third trial setting.

11 THE COURT: That's where.

12 MS. LUEM: That is in front of Judge Miley.

13 THE COURT: Okay. So it's not a murder case.

14 MS. LUEM: It's a sexual -- multi count sexual assault on --
15 case, so.

16 THE COURT: What that's January 20th you said.

17 MS. LUEM: January 13.

18 THE COURT: Oh.

19 MS. LUEM: I mean, I can double set it and try to --

20 THE COURT: This would take priority over that one just
21 because these murder cases are supposed to take priority.

22 MS. LUEM: Even though that one's been continued by the
23 State three -- two or three times.

24 THE COURT: It's still the --

25 MS. LUEM: Okay.

1 THE COURT: That's what I've been told by the powers that
2 be.

3 MS. LUEM: I'm happy to double set it on that date.

4 THE COURT: Otherwise, we're going into February.

5 MS. LUEM: And, yeah, I have a death penalty case in
6 February and another one in March, so.

7 THE COURT: All right. Refresh my memory, has there been
8 any discussion regarding a possible resolution in this case or was
9 everybody waiting to see what happened on the motion or?

10 MR. HAMNER: Well, I mean, there's been a long standing
11 offer that's been out to both of them and I've been trying my darndest to
12 try to get it resolved.

13 With respect to Ms. Henley, there's been some new evidence
14 that's come to light and I've now pulled the offer in light of the evidence
15 that I've kind of had. I provided it to both sides. So I need to speak with
16 Ms. Brown again to see if we can reevaluate what the offer is going to
17 be, but there's still an offer out for Mr. Henley at this point and I'm
18 willing to kind of work, so.

19 THE COURT: All right. So let's go ahead and give you the
20 new trial date.

21 THE LAW CLERK: January 13th, 2020, at 9:00 a.m. for the
22 trial; January 9th, 2020, at 9:30 for the calendar call.

23 THE COURT: All right. We'll come back for a continued
24 status check in 60 days.

25 MR. HAMNER: Thank you so much.

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THE CLERK: July 25th at 9:30 a.m.

MS. LUEM: Thank you.

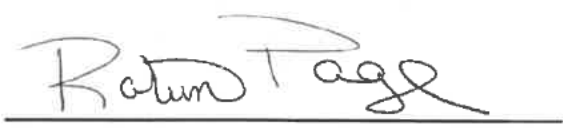
MS. BROWN: Thank you, Your Honor.

THE COURT: All right. Thank you.

[Proceeding concluded at 10:01 a.m.]

* * * * *

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



Robin Page
Court Recorder/Transcriber

EXHIBIT 9



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 DORIE REGINA HENLEY,
12 ANDREW BRANDON HENLEY,
13 Defendant.

CASE NO: C-17-327585-1
CASE NO: C-17-327585-2

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, JULY 25, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **STATUS CHECK: TRIAL READINESS**

18 APPEARANCES:

19 For the State: CHRISTOPHER S. HAMNER, ESQ.
20 Chief Deputy District Attorney

21 For Defendant Dorie Henley: MARY DAGGETT BROWN, ESQ.
22 PHIL H. BROWN, ESQ.

23 For Defendant Andrew Henley: ANDREA L. LUEM, ESQ.

24
25 RECORDED BY: ROBIN PAGE, COURT RECORDER

AA 0265

1 **Las Vegas, Nevada; Thursday, July 25, 2019**

2 * * * * *

3 [Proceeding commenced at 10:20 a.m.]

4 THE COURT: State versus Dorie Henley, who's present in
5 custody with Ms. Brown and Mr. Brown. You're not here on that, you're
6 just standing around.

7 MR. BROWN: Well, I sort of am, Judge.

8 MS. BROWN: He's visiting.

9 MR. BROWN: Visiting.

10 THE COURT: All right, so just Ms. Brown. And then we have
11 Andrew Henley, who's in custody and present with Ms. Luem,
12 Mr. Hamner for the State. This is on for status check, trial readiness.

13 Who wants to start?

14 MS. BROWN: I anticipate being ready in January.

15 THE COURT: Okay.

16 Ms. Luem.

17 MS. BROWN: I'm hopeful -- I'm still hopeful the case will
18 resolve.

19 THE COURT: Have there been any offers or meaningful
20 discussions regarding negotiations?

21 MS. BROWN: There's been offers and I have talked to
22 Mr. Hamner about the meaningful negotiation part and we're hoping to
23 do that in the next two weeks.

24 MR. HAMNER: I mean, there's been offers since the outset of
25 the case since I've been on it.

1 THE COURT: Is it the same offer or does the offer get --

2 MR. HAMNER: Her offer did go up.

3 THE COURT: -- better, worse, or.

4 MR. HAMNER: Her offer got worse in light of something that
5 they discovered in the jail that she wrote, so that made it more
6 problematic for --

7 THE COURT: And that's as to Ms. Henley.

8 MR. HAMNER: That is correct.

9 THE COURT: And then as to Mr. Henley.

10 MR. HAMNER: There is an offer out to him and I'm working
11 my darndest to try to get that resolved, but there is an offer out to him as
12 well.

13 THE COURT: Okay. And is it a global -- I mean, do both
14 defendants have to accept the offers or is it okay if just one defendant
15 accepts the offer?

16 MR. HAMNER: If -- the way this one works is her offer is
17 contingent, his is not.

18 THE COURT: All right. And then in terms of other trial
19 preparation, where are we?

20 MR. HAMNER: We're basically ready to go. I think the one
21 outstanding thing that I don't think we fully kind of fleshed out was
22 definitively all the redactions. I know we kind of talked about it at the last
23 motion and I know Ms. Luem kind of indicated she wanted everything
24 coming in from a potential statement, you know, in terms of the *Bruton*
25 issues or what not. So, I mean, that's more of a fine tuning -- a fine

1 tuning thing. Everything else has been provided, we've done file
2 reviews. We're ready to go.

3 MS. LUEM: That's true, Judge. With respect to the
4 redactions, I think that's something we can work out at the -- the issues I
5 clearly have are the 404(b) issues, not the *Bruton* issues because I've
6 chosen not to file a motion to sever, so. But I think between the three of
7 us, we can resolve that.

8 I am supposed to start a 12 to 16 week trial on Monday in
9 federal court. We have a trial calendar through November right now.

10 THE COURT: Okay.

11 MS. LUEM: It's possible I -- that it could go longer based on
12 the number of witnesses on both sides, so.

13 THE COURT: Okay. This -- I don't know if you were in the
14 courtroom, but somebody else has that same issue, I mean.

15 MS. LUEM: It is what it is.

16 THE COURT: Right.

17 MS. LUEM: I mean if we're still in trial in January, then I'll
18 obviously have to continue this case.

19 THE COURT: Right. Well, let's come back for a continued
20 status check. Maybe 60 days.

21 THE CLERK: September 26th at 9:30.

22 MS. BROWN: I do have one other item, Your Honor.

23 THE COURT: Okay.

24 MS. LUEM: And just with respect to that 26th date, I will be in
25 trial, so I will probably have to have somebody stand in for me that day if

1 that's okay with the Court.

2 THE COURT: Okay. Do -- I mean, what time do they start in
3 federal court?

4 MS. LUEM: We're starting at 9 o'clock.

5 THE COURT: Every day?

6 MS. LUEM: Ever day. Well, Monday through Thursday 9 to 3
7 and then we're dark on Friday.

8 THE COURT: Okay.

9 [Colloquy between counsel]

10 MS. BROWN: I filed a motion for eyeglasses at State's -- at
11 State's expense. I did file it with hearing requested, but they never set it
12 for hearing.

13 THE COURT: Okay.

14 MS. BROWN: Basically, they're saying that they're going to --

15 THE COURT: So there's a written motion on file, but there is
16 no hearing set?

17 MS. BROWN: Correct.

18 THE COURT: Okay. We didn't see that, but.

19 MS. BROWN: Can I approach?

20 THE COURT: Sure.

21 And, Mr. Hamner, you were served with that?

22 MR. HAMNER: We're not taking a position. Yeah, I have
23 been.

24 THE COURT: Okay.

25 MR. HAMNER: And we're not taking a position on it.

1 THE COURT: All right. So she needs glasses.

2 MR. HAMNER: Yes.

3 MS. BROWN: She does and she's requested them and they
4 said that she has to pay for them.

5 THE COURT: So these are just readers, right?

6 MS. BROWN: Correct.

7 THE COURT: That's all she needs.

8 MS. BROWN: I think she needs an eye exam to determine. I
9 mean, I don't want to represent she needs one thing or the other.

10 THE COURT: Seems like that's -- I don't know, is it standard
11 to require them to pay for glasses?

12 MR. HAMNER: I have no idea.

13 MS. LUEM: Your Honor, in the past what -- what's happened
14 with my clients is that I have the Court sign an order and have them
15 transported to the eye doctor, then I pay for it, the eye exam and glasses
16 and then the office of appointed counsel reimburses me when I provide
17 the receipt, so.

18 THE COURT: It seems like a cheaper way to do this would be
19 -- I don't know if you can do this. Most people just get readers at the
20 drugstore and they don't go for an eye exam. I mean, I think that's pretty
21 typical. You know, they just get them, right. So I mean --

22 Counsel approach.

23 I don't know why she should have an eye exam when most
24 people -- you know, it's not distance where you need an eye exam if it's
25 just readers.

1 [Bench conference held - not recorded]

2 THE COURT: So, Ms. Henley, you have trouble reading the
3 police reports and the things like that in the discovery; is that right?

4 DEFENDANT DORIE HENLEY: Yes, and I have trouble
5 seeing as well.

6 THE COURT: So seeing like what --

7 DEFENDANT DORIE HENLEY: Distant-wise.

8 THE COURT: -- do you have trouble -- like, as you stand in
9 court, do you have trouble seeing your lawyer, Ms. Brown?

10 DEFENDANT DORIE HENLEY: Mm-hmm.

11 THE COURT: You do?

12 DEFENDANT DORIE HENLEY: Yeah.

13 THE COURT: Can you -- and like do you have trouble seeing
14 the Court and the Bailiff and the staff?

15 DEFENDANT DORIE HENLEY: Yeah, everything's blurry.

16 THE COURT: Okay. Then she needs a regular eye exam.
17 So I'll go ahead, based on those representations, and order that she
18 have an eye exam and it sounds like she may need -- she has various
19 issues, so go ahead and order that.

20 MS. BROWN: And we'll do the transport and all that.

21 THE COURT: Yeah. I mean in the interim if you want to try
22 bringing her some readers, that's fine.

23 MS. BROWN: In the short term. Sure.

24 THE COURT: And you can, you know, bill Mr. Christensen's
25 office for that, you know, just add that to the bill, but based on what she's

1 telling me, it sounds like an eye exam would be in order.

2 MS. BROWN: All right. Thank you.

3 THE COURT: All right. Did we give a new date?

4 THE CLERK: September 26th at 9:30.

5 THE COURT: All right. Thank you.

6 Is that it for all of you?

7 MS. BROWN: Yes.

8 THE COURT: All right. Thank you.

9 MS. LUEM: Thank you.

10 [Proceeding concluded at 10:28 a.m.]

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25 Robin Page
Court Recorder/Transcriber

EXHIBIT 10



1 **RTRAN**

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

7
8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

CASE NO: C-17-327585-1
CASE NO: C-17-327585-2

10 **vs.**

DEPT. XXI

11 **DORIE REGINA HENLEY,**
12 **ANDREW BRANDON HENLEY,**
13 **Defendant.**

14 **BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE**
15 **THURSDAY, SEPTEMBER 26, 2019**

16 ***RECORDER'S TRANSCRIPT OF HEARING RE:***
17 ***STATUS CHECK: TRIAL READINESS***

18 **APPEARANCES:**

19
20 **For the State:** **TINA MORALES, ESQ.**
Deputy District Attorney

21 **For Defendant Andrew Henley:** **MARY DAGGETT BROWN, ESQ.**

22
23 **For Defendant Dorie Henley:** **MARY DAGGETT BROWN, ESQ.**
24 **[Standing in for Ms. Luem]**

25 **RECORDED BY: ROBIN PAGE, COURT RECORDER**

AA 0274

1 Las Vegas, Nevada; Thursday, September 26, 2019

2 * * * * *

3 [Proceeding commenced at 10:15 a.m.]

4 THE COURT: State versus Dorie Henley and Andrew
5 Henley.

6 And you said, Ms. Brown, you're standing in for Ms. Luem.

7 MS. BROWN: I am, Your Honor.

8 THE COURT: Was she just not available today?

9 MS. BROWN: She's in that federal 12 week trial.

10 THE COURT: Okay.

11 MS. BROWN: And so the only day off she has --

12 THE COURT: Is Friday.

13 MS. BROWN: --is Fridays.

14 THE COURT: Yeah, we have that issue with several other
15 lawyers.

16 MS. BROWN: Yeah.

17 THE COURT: All right. So this is on for status check, trial
18 readiness. Last time we were here, we discussed whether or not the
19 case would be resolving. And I believe Mr. Henley could take the deal
20 regardless of whether Ms. Henley took it, but Ms. Henley's deal was
21 contingent on Mr. Henley taking the deal; is that right?

22 MS. BROWN: That's correct. And since then, there's been
23 some discussion about possibly doing a settlement conference.

24 THE COURT: Okay.

25 MS. BROWN: You know, if the Court were inclined, we

1 thought that that might be beneficial. It's a case that realistically should
2 negotiate.

3 THE COURT: Okay.

4 MS. BROWN: We're just a little stuck.

5 THE COURT: You have a little bit of time, as you know,
6 because it's not until January. So I would suggest -- I know Mr. Hamner
7 is a fan of the settlement conferences, so you three lawyers need to
8 coordinate and get this to the -- Judge Bell prior -- way before the
9 calendar call.

10 MS. BROWN: Okay.

11 THE COURT: Okay. And then the last time we were here, it
12 was also a discussion on the redactions.

13 MS. BROWN: We haven't discussed that in a while. Actually,
14 the last time we were here, we were talking about her glasses.

15 THE COURT: Oh, okay.

16 MS. BROWN: And the redactions, I think, are an issue.
17 Ms. Luem does not.

18 THE COURT: Okay. Well, --

19 MS. BROWN: It would be difficult for me to have that
20 conversation without her here because we don't agree.

21 THE COURT: Okay. Well, we need to get that going if it's not
22 going to resolve.

23 MS. BROWN: I understand.

24 THE COURT: Okay. So let's come back for another status
25 check in 30 days.

1 THE CLERK: October 24th at 9:30.

2 MS. BROWN: Would it be possible to -- actually that's fine.
3 October 24th at 9:30?

4 THE COURT: Right.

5 MS. BROWN: Okay. And just so the Court's aware, we did
6 submit the order for my client to be transported to get glasses the --

7 THE COURT: Okay.

8 MS. BROWN: -- the jail said, great news, we're going to do it
9 in house and we don't have to transport her.

10 THE COURT: Okay.

11 MS. BROWN: They haven't transported her and they haven't
12 given her her glasses. And so I guess -- I emailed over there, they said
13 that the clinic is today --

14 THE COURT: Okay.

15 MS. BROWN: -- until noon.

16 THE COURT: Oh.

17 MS. BROWN: And so she's not going to make it back and so
18 they said the next day is October 10th.

19 THE COURT: Okay. Well, that's before the status check.

20 MS. BROWN: It is.

21 THE COURT: So Ms. Henley ought to have her glasses then
22 by the next time she comes to court.

23 MS. BROWN: She should.

24 THE COURT: Right. Okay.

25 MS. BROWN: So just to keep the Court up to date.

1 THE COURT: Right. So that should go in the minutes and
2 we'll make sure she has her glasses by the next status check.

3 MS. BROWN: Thank you, Your Honor.

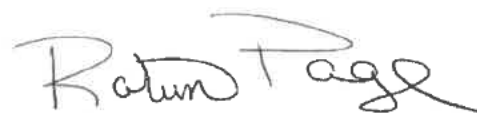
4 THE COURT: All right. Thank you.

5 MS. MORALES: Thank you.

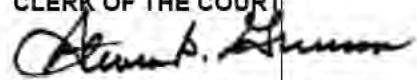
6 [Proceeding concluded at 10:19 a.m.]

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

24 
25

Robin Page
Court Recorder/Transcriber



RPLY

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

DORIE REGINA HENLEY

Defendant.

CASE NO.: C-17-327585-1

DEPT NO.: IX

Date of Hearing: 1/15/2021

Time of Hearing: 1:30 p.m.

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

COMES NOW, Defendant DORIE HENLEY, by and through her attorney, LUCAS J. GAFFNEY, ESQ., and hereby moves this Honorable Court for an order allowing Defendant to withdraw her guilty plea in this matter. This reply brief is made and based on the following Memorandum of Points and Authorities, the attached exhibits, all papers and pleadings on file herein, and any oral argument that may be entertained in this matter.

Dated this 12th day of January, 2021.

RESPECTFULLY SUBMITTED BY:

/s/ Lucas Gaffney
LUCAS J. GAFFNEY, ESQ.
Nevada Bar No. 12373

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MEMORANDUM OF POINTS AND AUTHORITIES

I.
ARGUMENT

In the State's Opposition to Defendant's Motion to Withdraw Guilty Plea (Opposition), the State of Nevada (State) argued that Defendant, Dorie Henley (Henley) should not be allowed to withdraw her guilty plea for the following reasons:

1) The written plea agreement demonstrates Henley "was fully aware of the [terms of the] plea agreement..." (Opposition at 11-12).

2) Counsel executed a Certificate of Counsel affirming she explained to Henley the allegations she pleaded guilty to, she advised Henley of the penalties she faced, she discussed potential defenses with Henley, she believed that pleading guilty was in Henley's best interest, and that Henley was competent to plead guilty (Opposition 12-13).

3) The Court's plea canvass was extensive and thorough (Opposition at 13-19).

4) Counsel conveyed the proposed plea offer of 11-to-LIFE (Opposition at 19).

5) A letter written by Henley demonstrates she would not have accepted an offer of 11-to-LIFE at the time it had been extended (Opposition at 20).

6) That Henley had sufficient information to properly assess the evidentiary value of a jailhouse informant's statement prior to entering her guilty plea (Opposition at 21-22).

7) Henley had over a year to consider the State's offer of 11-to-LIFE (Opposition at 22-23).

Here, the State included a variety of exhibits in its Opposition (Exhibits 1-4) that appear to have little, if any, value to resolving the instant inquiry. When determining whether a fair

1 reason exists to allow Henley to withdraw her plea, this court should not generally consider
2 Henley's guilt or innocence. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984)
3 (The question of an accused's guilt or innocence is generally not at issue in a motion to withdraw
4 a guilty plea). Thus, this Court should not give the alleged, inculpatory information contained in
5 Exhibits 1-4 and the State's rendition of facts more weight than necessary when determining if a
6 fair and just reason exists to allow Henley to withdraw her plea agreement. (*See* Opposition at 2-
7 9). Indeed, the State's references to Henley's statement, the statements of Henley's co-
8 defendants, Henley's purported text messages to Raphael Cordoso, and the "CCDC letter,"
9 should only be considered as a backdrop to the instant litigation, not as evidence that weighs for
10 or against the Court's consideration of whether a fair and just reason exists to allow Henley to
11 withdraw her plea agreement.
12

13 In its Opposition, the State argued that the written plea agreement and plea canvass
14 demonstrate that Henley fully understood the terms of the negotiation. Opposition at 11-19.
15 However, this Court cannot rely solely on the written plea agreement and the plea canvass to
16 determine that Henley entered into her plea agreement knowingly and voluntarily, or to determine
17 a fair reason does not exist to allow her to withdraw from the plea agreement.¹ Such reliance is
18 in direct contravention to *Rubio v. State*, 124 Nev. 1032, 1038 (2008) where the Nevada Supreme
19 Court held that "[t]o determine the validity of the guilty plea, we require the district court to look
20 beyond the plea canvass to the entire record and the totality of the circumstances." *Id.*; *also see*
21 *Little v. Warden*, 117 Nev. 845, 851, 34 P.3d 540, 544 (2001) (a court cannot be constrained to
22 look only to the technical sufficiency of a plea canvass to determine whether a plea is invalid.)
23 As such, the written plea agreement including the Certificate of Counsel, and the court's plea
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27 ¹ The affirmations contained in the Certificate of Counsel are part of the written plea
28 agreement.

1 canvass cannot provide the sole basis for this Court to find that Henley was “fully aware of the
2 [terms of the] plea agreement” as suggested by the State (Opposition at 11-12).

3 Even if Henley fully understood the terms of the plea agreement the Court’s inquiry
4 should not focus exclusively on whether Henley’s plea was knowingly, voluntarily, and
5 intelligently entered, but whether a fair and just reason exists to support the withdraw of her plea
6 agreement. Stevenson v. State, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). Indeed, a legal
7 basis for withdrawing a pre-sentence guilty plea can be, literally, any reason this Court considers
8 fair and just. Id. Thus, the plea withdraw analysis turns entirely on what this Court, as an impartial
9 arbiter, believes is “fair and just,” or, for simplicity’s sake, what is “fair” under the totality of the
10 circumstances. Id. Henley has previously submitted multiple reasons why it would be fair to
11 allow her to withdraw her plea agreement.
12

13 In its Opposition, the State indicated it informed Henley’s counsel that it would
14 consider—within the sentencing structure of Second-Degree Murder—an 11-to-LIFE offer.
15 Opposition at 19. And that Henley rejected the 11-to-LIFE offer because she would not accept
16 an offer that contained a maximum sentence of LIFE. Id. However, it remains unclear when the
17 State extended the specific offer of 11-to-LIFE and whether counsel conveyed the specific offer
18 to Henley. It is also unclear how Henley rejected an offer she did not receive. Obviously, Henley
19 ultimately accepted an offer that contained a maximum sentence of LIFE. Thus, assuming
20 arguendo the State’s assertions are true—that at some point Henley adopted a position she would
21 not accept a LIFE tail—the timing of when Henley changed her mind is crucial to the instant
22 inquiry. The State appears to contend the 11-to-LIFE offer was available to Henley for over a
23 year. Opposition at 22-23. But the record is silent as to when the 11-to-LIFE offer was extended,
24 and when Henley’s position regarding the LIFE-tail changed. That information cannot be
25 ascertained from the current record. The State is correct that counsel made a record of the general
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1 status of negotiations during several hearings, but the record is devoid of counsel discussing, or
2 Henley rejecting, a specific offer of 11-to-LIFE.² Henley maintains that Counsel never conveyed
3 the 11-to-LIFE offer, and that she did not become aware of the offer until after it had been
4 revoked.

5 The State asserted that Henley's letter (Opposition, Exhibit 4) fully rejected the notion
6 that Henley was ever willing to accept an offer of 11-to-LIFE. Opposition at 20.³ However,
7 Henley's letter merely indicates her desire to obtain an offer of eight (8) to twenty (20) years. *See*
8 Exhibit A, bates number 5. Henley's aspiration of receiving a better offer does not constitute
9 definitive proof—and certainty does not qualify as an express statement—that Henley would
10 never have accepted an offer of 11-to-LIFE.

12 The State also argued that Henley had sufficient information regarding the general
13 substance of the witness' statement to determine its evidentiary value prior to entering into her
14 plea agreement. Opposition at 21. However, Henley's limited knowledge of the statement cannot
15 act as a substitute for a firm understanding of how the statement could be utilized to bolster her
16 defense at trial. Although Henley became aware that an interview between the witness and her
17 investigator took place, she was not privy to the specific contents of the interview. Indeed, Henley
18 and counsel discussed potential defenses, but those discussions did not include a detailed
19 recounting of the contents of the statement. And even though Henley's investigator gave her a
20 brief oral summary of the statement, the investigator and counsel refused to provide Henley a
21 copy of the statement to protect the safety of the informant. When Henley finally obtained the
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26 ² See transcripts and court minutes referenced in State's Opposition, Exhibits 6-10.

27 ³ Henley's letter has been attached hereto as Exhibit A because portions of Opposition Exhibit
28 4 are difficult to read.

1 statement—after pleading guilty—she learned a significant portion of it mirrored what Henley
2 told LVMPD Detectives (Opposition, Exhibit 1), thereby bolstering her defense of duress.

3 The State questioned why Henley would enter into a plea agreement if she knew the
4 witness' statement existed. Opposition at 21. The answer is simple, Henley followed counsel's
5 advice to accept the State's offer.

6 To assist this Court in understanding the totality of the circumstances, Henley respectfully
7 requests an evidentiary hearing to expand the record regarding the timing of when the State
8 extended the 11-to-LIFE offer, when counsel supposedly conveyed the offer to Henley, and the
9 substance of the subsequent conversations between counsel and Henley that lead to Henley's
10 purported rejection of the offer.⁴ The Court's current record regarding these issues consists
11 primarily of the written plea agreement and plea canvass, neither of which contain the
12 aforementioned information which is crucial to understanding the totality of the circumstances
13 under which Henley entered into her plea agreement. Additionally, an evidentiary hearing is
14 warranted to determine how Henley's limited understanding of the witness' statement affected
15 her willingness to enter into a plea agreement.
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26 ⁴ See Commonwealth v. Tigue, 459 S.W.3d 372, 386 (Ky. 2015) (because determining whether
27 a plea was voluntarily entered requires "[e]valuating the totality of the circumstances surrounding
28 the guilty plea [which] is an inherently factual inquiry," Bronk v. Commonwealth, 58 S.W.3d
482, 487 (Ky.2001), the defendant is generally entitled to an evidentiary hearing when it is
alleged that the plea was entered involuntarily).

1 II.

2 **CONCLUSION**

3 Based on the totality of the circumstances, it is evident at least one fair and just reason
4 exists to allow Henley to withdraw her plea agreement. Accordingly, Henley respectfully
5 requests an order allowing her to withdraw her guilty plea and proceed to trial. In the alternative,
6 Henley requests an evidentiary hearing in order to develop the facts as alleged herein.

7
8 Dated this 12th day of January, 2021.

9 GAFFNEY LAW

10 /s/ Lucas Gaffney
11 LUCAS J. GAFFNEY, ESQ.
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13 1050 Indigo Drive, Suite 120
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15 Telephone: (702) 742-2055
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2021, I served a true and correct copy of the foregoing Reply to State's Opposition to Defendant's Motion to Withdraw Guilty Plea on the following:

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Las Vegas, Nevada 89101
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/s/ Lucas Gaffney
An employee of GAFFNEY LAW

EXHIBIT A

1-14-71



© H
SAYS HI
from ABOVE

(Person
receiving) →

Rafael Cardoso
3117 Haddock Ave
Las Vegas, NV 89030

TIME



1826387

Rack -

Dorie Henley #2826387
330 S. Casino Center Blvd
Las Vegas, Nevada
89101 (C.C.D.C.)
(Person sending)

Official
mail
from
Dorie
Henley
#2826387

Hurry Up; Hurry Up; There's No More Waiting
Will Still Worth Saving; Feel The Light
Shining From The Darkness Night.....



THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

© USPS 2018

AA 0082

My Love;

Some things are left unsaid at this point knowing we both made mistakes in life, but if you remember we all will be in heaven one day as brothers and sisters together so lets be patient and remain calm OK 😊 Thank you for those pictures (UGH) our God is good to us, I was blessed when you walked in my life, I cant be mad or upset for doing the right thing so please understand you are forgiven in every way possible, My resentment is what I pray over cause its not right I should be able to forgive anyone "Just as God forgave us".

I love you so much baby, its going to be a minute before we can touch again, before we can hold ~~me~~ each other, in do time this will all be over dont beat yourself up over it, you must understand that we cant go back now its all about moving forward so dont grief over it anymore. you make me happy in my memories and when I talk to you its all better for me.

TBH I need you to write me a letter saying I told you I was force that Andrew threatened me that he was going to shoot up your house and burn it down with the kids inside, I need you to say you change ~~the~~ your statement around because you were mad at me, we had a conversation in person were I told you andrew force me; that he wouldnt leave me alone, when you would pick up the kids andrew was there bugging me but you didnt know what for ' And I looked Scared everytime he was around me please it could help my case start the letter with Im Sorry I shouldve told the true about

It could help
me get a lower
deal.
please.

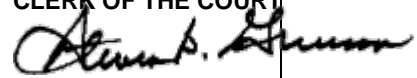
What you told me I know your mental state isn't all good!
You were scared, crying on your knees when I seen
you crying, I couldn't help but cry to but I was mad
thinking you were sleeping with someone else.

I pushed you to say what you said in those text
messages knowing you weren't all there at the
time my ~~the~~ Love I could've changed everything if I
would've stayed trueful when they asked me!

I wish I would've never lied out of anger cause
now they've got the wrong idea about you!
I'm sorry baby I wasn't thinking straight
when I told them shit all I could think of
was how was I going to get you in
trouble with the stuff you told me I got
most of it from the newspaper and the news
you never told me anything else other
then Andrew force you to set him up
or he would kill me and the kids, your
right he is smart, he planned it all I wish
you would've come to me, I could've
protected you my love I am in love
with you, I remember when you said you
push him behind you to stop them I should've
said that to them, he had no right to
use you in that way why would he do
that to you, Andrew and Jose were hanging
out ever since Andrew got out I've seen

hem together all the time and the reason why you were down there at Jose's house was because you had to watch danielle kids cause she didnt trust Jose and cause he worked in the morning time till 5, I remember because I would be over there with you sometimes and she would come and go, you had the babies cause I would help watch them damn baby I dont know!

please help me it could help me with my case and they might through out your statement and the screen shot messages to! please do this not for us, for the kids and for us I could get a 8-20 if you do it cause my lawyer will tell the da like dude he didnt even know what he was saying or anything they will have to through it all out! I need it for court or my vish.



1 **RTRAN**

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

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8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

10 **vs.**

11 **DORIE REGINA HENLEY,**
12 **Defendant.**

)
)
) **CASE#: C-17-327585-1**
) **DEPT. IX**
)
)
)

13
14 **BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE**
15 **THURSDAY, MARCH 4, 2021**

16 ***RECORDER'S TRANSCRIPT OF HEARING:***
17 ***EVIDENTIARY HEARING***

18
19 **APPEARANCES:**

20 **For the State:**

CHRISTOPHER S. HAMNER, ESQ.
Chief Deputy District Attorney
MICHAEL J. SCARBOROUGH, ESQ.
Deputy District Attorney

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22
23 **For the Defendant:**

LUCAS J. GAFFNEY, ESQ.

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25 **RECORDED BY: GINA VILLANI, COURT RECORDER**

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1 Las Vegas, Nevada, Thursday, March 4, 2021

2
3 [Hearing commenced at 1:44 p.m.]

4 THE COURT: All right. While we're trying to get that video
5 issue resolved.

6 [Colloquy between the Court and the Court Recorder]

7 THE COURT: We're going to go ahead and get started with
8 just getting some, kind of, scheduling questions I have out of the way.

9 So let me call the case, this is C-17-327585-1, State of Nevada
10 versus Dorie Henley. I see Mr. Hamner is present on behalf of the State,
11 Mr. Gaffney is present on behalf of the defendant, and Ms. Henley is
12 present in custody.

13 And good afternoon to you, Ms. Henley, how are you?

14 THE DEFENDANT: Good afternoon. I'm okay. How are you?

15 THE COURT: I'm doing well, thank you.

16 So I'll let all the parties know if there's a moment in time where
17 Mr. Gaffney needs to speak to his client, what we can do is I'll step off the
18 bench, we'll stop recording, Mr. Hamner will disconnect, and I'll give a
19 timeframe, let's reconvene in five minutes, ten minutes, whatever it is,
20 we'll all leave the courtroom that way you all will have an opportunity to
21 speak and then we can go that route. So know that's an option.

22 MR. GAFFNEY: Okay.

23 THE COURT: And then second, I guess, I want to just confirm
24 who we're going to be calling as a witnesses, I know Ms. Brown is
25 present and she's a witness, are we going to be calling any other

1 witnesses this afternoon?

2 MR. GAFFNEY: Yes, Your Honor, probably -- most likely
3 Ms. Henley as well.

4 THE COURT: Ms. Henley; okay.

5 MR. GAFFNEY: But that would be the entirety of the defense
6 witnesses.

7 THE COURT: Understood.

8 And, Mr. Hamner, does the State intend on calling any
9 witnesses?

10 MR. HAMNER: No, Your Honor.

11 THE COURT: Okay. All right.

12 All right. So, just for the record, so we're all on the same page,
13 and I know everyone was present but sometimes it's easier when we are
14 in smaller numbers then on a BlueJeans with a ton of people, we are
15 here today for a limited evidentiary hearing. I want to know when and
16 how offers were conveyed to the defendant and if and when those offers
17 were rejected. I also want to know how and why the informant would
18 have changed the defendant's mind in regard to whether or not she
19 would have taken the plea.

20 And with that we'll get started here in a moment as soon as we
21 can hopefully resolve some of this tech issue.

22 So, Ms. Henley, you're welcome to take a seat.

23 Or, Officer, if she could bring a chair over and perhaps sit right
24 in front of the video that way it's easier for her, I'd appreciate that.

25 Thank you. There we go. That way she's comfortable.

1 Thank you so much. I appreciate that.

2 And is there any other preliminary matters we need to address
3 before we take a quick recess to try and resolve the tech issues.

4 MR. GAFFNEY: Yes, Your Honor, I --

5 MR. HAMNER: No, Your Honor.

6 MR. GAFFNEY: -- because I can't have Ms. Henley sitting
7 right next to me, I had asked Ms. Henley that if she did need to speak
8 with me to raise her hand.

9 THE COURT: Okay.

10 MR. GAFFNEY: So I know to get on the phone and talk to her.
11 So if you see her raise her hand on the video, I think that's a signal for
12 me to converse with her.

13 THE COURT: All right. And I appreciate that.

14 And, Ms. Henley, let me ask you this question, do you have
15 any paper -- are you allowed to have a paper and pen in there or no?

16 THE DEFENDANT: I'm not sure. I'll ask the officer.

17 THE CORRECTIONS OFFICER: Yeah.

18 THE DEFENDANT: She said yeah.

19 THE COURT: Okay. If she can, I would appreciate it if she
20 could have access to a writing device that way she can write down what
21 she wants to talk to her attorney about. I don't want time to go by and
22 then she forgets. So I will ask for her to have that opportunity.

23 Okay. And anything else, Mr. Gaffney?

24 MR. GAFFNEY: When you get a moment, if I can get the
25 phone number for the room that she's in.

1 THE COURT: Do you have it?

2 THE MARSHAL: We're trying to determine if it's 5651.

3 Can we ask the -- let me ask --

4 THE COURT: All right. Officer, can you tell us what the phone

5 number is in the room that Ms. Henley's in.

6 THE CORRECTIONS OFFICER: 5652.

7 THE COURT: 5652; all right. So it's going to be 671-5652.

8 [Colloquy between the Court and the Court Recorder]

9 THE COURT: All right. So we're going to be in recess for a

10 moment while we're trying to resolve these tech issues. So everyone just

11 sit tight.

12 [Colloquy between the Court and the Court Recorder]

13 THE COURT: So we're going to disconnect for a moment so

14 we can try and get this resolved. Again, don't disconnect, we're going to

15 disconnect and reconnect shortly.

16 [Pause in proceedings]

17 THE COURT: All right. It looks like perhaps that has been

18 resolved. I can see myself now. So I anticipate that -- Ms. Henley, can

19 you see me now?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. All right. So I think then we're ready to

22 go ahead and get started.

23 Mr. Gaffney, this is your motion and so I'll let you begin when

24 you're ready.

25 MR. GAFFNEY: Okay. Thank you, Your Honor.

1 We'd like to call Mary Brown as our first witness.

2 THE COURT: All right. Let's go ahead and call Ms. Brown.

3 And good afternoon to you. We're going to swear you in. My
4 courtroom clerk is on BlueJeans as well and so if you could raise your
5 right hand.

6 **MARY BROWN**

7 [having been called as a witness and being first duly sworn, testified as
8 follows:]

9 THE CLERK: Thank you.

10 If you could state and spell your name for the record, please.

11 THE WITNESS: Mary Brown, M-A-R-Y, B-R-O-W-N.

12 THE COURT: Thank you, madam clerk.

13 And thank you, Ms. Brown.

14 Mr. Gaffney, when you're ready.

15 MR. GAFFNEY: Thank you.

16 **DIRECT EXAMINATION**

17 BY MR. GAFFNEY:

18 Q Ms. Brown, how are you currently employed?

19 A I'm an attorney.

20 Q And do you practice criminal defense?

21 A I do.

22 Q And how long have you practiced criminal defense in Clark
23 County?

24 A Since 2012.

25 Q And have you worked as an attorney in any other capacity?

1 A Before that I was a deputy district attorney.

2 Q And can you give us a rough estimate of how many criminal
3 cases you handled as a criminal defense attorney here in Clark County
4 up until March of 2020?

5 A Oh, I couldn't say, I'm a track attorney so.

6 Q Hundreds? Thousands?

7 A Tons.

8 Q I'm sorry?

9 A At least hundreds, if not thousands.

10 Q And were many of those cases resolved by way of plea
11 agreement?

12 A Yes.

13 Q And did you represent Ms. Henley in this case?

14 A I did.

15 Q Were you appointed or retained?

16 A Appointed.

17 Q And do you recall when you were appointed?

18 A I do not.

19 Q If I told you it was October 18th, 2017, would you have any
20 reason to dispute that?

21 A No.

22 Q And have you been Ms. Henley's primary attorney from her
23 initial appearance up until the Court appointed me to represent her?

24 A Yes.

25 Q And has Ms. Henley been in custody since her arrest in

1 October of 2017?

2 A She has.

3 Q And how would you typically communicate with Ms. Henley
4 about her case?

5 A I talked to her in court, I would talk to her on the phone, or I
6 would go and see her at the jail.

7 Q Now, at some point did you begin negotiating with the State in
8 an attempt to resolve Ms. Henley's case by way of plea agreement?

9 A Yes.

10 Q And is it fair to say that over time you received multiple offers
11 to resolve the case?

12 A Yes.

13 Q At some point did you have discussions with the State that
14 contemplated a stipulated sentence in a plea agreement?

15 A Yes.

16 Q Among those offers do you recall receiving an offer that
17 contemplated a 11 to life sentence?

18 A Yes.

19 Q Do you recall when you received that offer?

20 A No.

21 Q Would it have been --

22 A It would have been the first offer, so it would have been shortly
23 after Mr. Hamner came on the case 'cause there was no offer with
24 Mr. Stanton.

25 Q Would you say maybe sometime in 2018? 2019? 2020?

1 A I believe it was 2018. Because, like I said, it was shortly after
2 Mr. Hamner came on the case because Mr. Stanton did not make an
3 offer.

4 Q Was the 11 to life -- well, the 11 to life sentence was that the
5 first offer you had received?

6 A I believe so. We went back and forth a little bit.

7 Q Did you discuss that offer with Ms. Henley?

8 A I did.

9 Q Do you recall where that discussion with Ms. Henley took
10 place?

11 A I believe the 11 to life was at the jail with Mr. Karstedt.

12 Q And who's Mr. Karstedt?

13 A Michael Karstedt was the investigator on the case.

14 Q And has he since passed away or recently passed away?

15 A He has.

16 Q Would that have been in January of this year?

17 A Yes.

18 Q After you presented the 11 to life offer to Ms. Henley, what was
19 her position on the offer?

20 A Her position was it was just too high. She wanted, you know, a
21 voluntary, and she did not want a life tail, period. And she indicated that
22 she might consider a 10 but certainly nothing over a 10.

23 Q 10 years on the bottom, 10 years minimum?

24 A Yes.

25 Q Okay. Do you recall receiving an offer that contemplated a 13

1 to life sentence?

2 A I do.

3 Q Do you remember when that offer was presented to you?

4 A I do not. It was after the 11 to life.

5 Q Did you discuss that offer with Ms. Henley?

6 A I did.

7 Q And do you recall where that discussion took place?

8 A I do not. I don't know whether it was over the phone or in
9 person.

10 THE COURT: I'm sorry, I missed that. What was the second
11 offer?

12 MR. GAFFNEY: 13 to life.

13 THE COURT: 13 to life. Thank you.

14 BY MR. GAFFNEY:

15 Q So after you had presented the 13 to life offer to Ms. Henley,
16 what was Ms. Henley's position on that offer?

17 A She thought it was too high and she was upset that the offers
18 were going up instead of down.

19 Q And even though, if I recall, you just mentioned that Ms. Henley
20 told you she did not want to take a sentence that included life as a
21 maximum, would you still convey offers to her even if they had a life tail
22 to them?

23 A Absolutely. I conveyed every offer that was given to me.

24 Q And would you agree that as Ms. Henley's attorney you have
25 an affirmative duty to convey each and every offer you receive from the

1 State?

2 A Absolutely.

3 Q Now, at some point the State revoked all the offers it had
4 extended because it found a letter that was written by Ms. Henley to a
5 potential witness; is that fair?

6 A Correct.

7 Q And if I told you that happened sometime in May of 2019,
8 would you have any reason to doubt that?

9 A No.

10 Q So other than the two offers we discussed, the 11 to life and
11 the 13 to life, up until that point had the State extended any other offers?

12 A Between the 13 to life and the revocation of all offers?

13 Q Before the revocation of all offers, other than the two offers
14 we've already discussed, were there any other offers extended to
15 Ms. Henley?

16 A Yes, there was a second, right to argue -- second with use,
17 right to argue extended that she also rejected.

18 Q And do you recall when that offer was made?

19 A It was made at the same time as Franco's offer. Because he
20 took the offer and she rejected it.

21 Q Franco being the co-defendant in this case?

22 A Yes.

23 Q Even after the State had revoked all of the offers, did you
24 continue to try to resolve the case by way of plea agreement?

25 A I did.

1 Q And eventually did you and Ms. Henley participate in a
2 settlement conference?

3 A We did, yes.

4 Q And as far as you're aware, are those settlement conferences
5 recorded for the Court's record?

6 A No, I don't believe so. In fact, I think they're supposed to be
7 confidential.

8 Q Did the State extend any offers after the letter was discovered
9 but prior to the settlement conference?

10 A Yes.

11 Q Do you recall what those offers were?

12 A 16 to life. Actually he was -- at first he was offering a first, no
13 use and we weren't going to take that. I eventually talked him down to a
14 16 to life.

15 Q So going into the -- I'm sorry, were you finished?

16 A Yeah, I'm finished.

17 Q So going into the settlement conference the last offer you had
18 received was a 16 to life sentence; is that fair?

19 A Yes.

20 THE COURT: I'm sorry, Mr. Gaffney, I apologize, I -- because
21 you're in front of me I'm realizing that you're not actually popping up on
22 the video either. I think we need to move you over.

23 Ms. Brown, can you see Mr. Gaffney or you're just hearing
24 him?

25 THE WITNESS: I'm just hearing him.

1 THE COURT: I apologize. I'm taking for granted that he's
2 standing in front of me and you don't get to see him.

3 Hold on here.

4 THE WITNESS: No, I'm fine.

5 THE COURT: My apologies. Let's -- let's see here. I think
6 you should be able to see him there, hopefully.

7 Let's see, Mr. Gaffney. Well, we can see your head.

8 MR. GAFFNEY: I'm not tall enough for you to see me.

9 THE COURT: Start talking, the camera might move or not.

10 MR. GAFFNEY: Well, if I --

11 THE COURT: Well, at least -- I just feel bad that -- I feel --

12 MR. HAMNER: We can --

13 THE COURT: I apologize that you didn't see that.

14 MR. HAMNER: Your Honor, we can -- I'm sorry to interrupt.
15 We can see him now when he stands at the podium and talks. It does
16 cut over to him. So you are able -- or at least I was able to see him when
17 he was just talking.

18 THE COURT: Oh, okay, so the camera does adjust. Okay,
19 perfect.

20 All right. So I, and again, I apologize for interrupting you.

21 MR. GAFFNEY: No problem.

22 THE COURT: I just realized that.

23 BY MR. GAFFNEY:

24 Q Ms. Brown, so going into the settlement conference do you
25 recall telling Ms. Henley that the settlement conference represented her

1 last opportunity to accept a plea agreement before having to proceed to
2 trial?

3 A I told her it was likely the last offer the DA was going to make.
4 And she asked can he make an offer after this, and I said he can but I
5 don't think he will.

6 Q And at the settlement conference did the topic of previous
7 offers the State made come up?

8 A It did, yeah.

9 Q And do you recall Ms. Henley indicating that she had never
10 received an offer contemplating an 11 to life sentence?

11 A That's not at all what she said. She said she didn't remember
12 the 13 to life being offered. She said she did have a specific memory of
13 the 11 to life being offered.

14 Q And when she said that she didn't recall the 13 to life being
15 offered, did that surprise you?

16 A It did.

17 Q So eventually, during the settlement conference, did the State
18 extend an offer of 15 to life?

19 A They did, yes.

20 Q And was that the first time the State had extended that
21 particular offer?

22 A Yes.

23 Q And what was your advice to Ms. Henley in regard to either
24 accepting or rejecting that offer?

25 A Before we even went into the settlement conference I told her I

1 was not hopeful, particularly hopeful that Mr. Hamner was going to
2 change the offer 'cause the offer at that point was 16 to life going in. And
3 I told her that if he came down at all that I would recommend that she
4 take it.

5 Q So your advice for her would be to take that 15 to life offer
6 once it was extended?

7 A Yes.

8 Q After the offer was extended, during the settlement conference,
9 did Ms. Henley express any reluctance to accept that offer?

10 A She did. I believe she expressed some reluctance on the
11 record at the time of her plea.

12 Q And did she express any reluctance during the settlement
13 conference?

14 A She wasn't sure. She still felt like the offer was too high but
15 ultimately she decided that it was better to take it then risk going to trial.

16 Q And while you were discussing that 15 to life offer, did you
17 remind Ms. Henley that she may not have another opportunity to accept
18 an offer from the State?

19 A I don't -- if she had asked, I would have. But I wouldn't have
20 pressured her. But if she had asked, you know, can I get another offer?
21 I would have told her this is the best it's going to get and it's unlikely
22 Mr. Hamner would make another offer.

23 Q And --

24 A Because that was my view.

25 Q -- how much time did Ms. Henley have to accept that 15 to life

1 offer from the moment it was extended until the State went to start
2 preparing the paperwork?

3 A I don't -- I don't know exactly in minutes. But I do know that
4 Mr. Brown and I were there, we were at the table, we talked to her, and
5 she said she wanted the offer.

6 Q Is there any way you could take a guess at how long of a
7 period of time that was, two minutes, three minutes, five minutes?

8 A I would say it was under 15 for sure.

9 Q And after Ms. Henley entered her plea, do you recall the first
10 time she'd indicated to you that she wanted to withdraw that plea?

11 A I don't. I remember her calling me and I remember having the
12 conversation that she wanted to withdraw her plea and I told her I would
13 have to put it on for new counsel to be appointed. And I did that
14 immediately.

15 Q But you don't recall the exact length of time between the entry
16 of plea and when she asked to -- or indicated to you she wanted to
17 withdraw the plea?

18 A I don't.

19 Q Do you keep any notes or documentation in your case file that
20 would -- in regard to when you talk to clients about offers and their
21 responses?

22 A Sometimes yes; sometimes no.

23 Q Did you keep any notes in this case?

24 A I did keep notes. I don't know, like, I kept notes of when I
25 would go to the jail. But I don't know that I would write down "and this

1 offer was conveyed.”

2 Q At some point did you determine that Ms. Henley’s best
3 defense to the charges she was facing would be that she participated in
4 the robbery under duress?

5 A That was -- yes, that was her position from the very first time
6 that I met her was that her brother and the other co-defendant had
7 substantial records and that she had been compelled to participate.

8 Q And did you come to that conclusion as well, looking at the
9 evidence in the case and after speaking with Ms. Henley?

10 A Yes.

11 Q And the investigator that you had appointed the case, you
12 mentioned his name was Michael Karstedt; right?

13 A Yes.

14 Q Did you direct Mr. Karstedt to visit Ms. Henley at CCDC to
15 discuss her case?

16 A Many times.

17 Q And at some point did you become aware that there was an
18 individual incarcerated at CCDC that had information about Ms. Henley’s
19 case?

20 A I did.

21 Q And how did you learn about this person?

22 A Ms. Henley told me.

23 Q Did you direct Mr. Karstedt to interview this person?

24 A I did.

25 Q And did he interview the person?

1 A Yes.

2 Q And did that interview take place on December 7th of 2017?

3 A That sounds about right, yeah.

4 Q And so that would have been a couple of months after

5 Ms. Henley had been arrested; is that fair to say?

6 A Yeah.

7 Q Did Mr. Karstedt record his conversation with the witness?

8 A Yes.

9 Q And did he reduce that recording of the interview into a
10 transcript?

11 A Yes.

12 Q Are you familiar with the contents of that interview?

13 A I was at the time.

14 Q Is it fair to say that the information provided by the witness
15 afforded a defense that the co-defendant, Andrew Henley, had forced
16 Ms. Henley to participate in the robbery that led to the death of the
17 victim?

18 A Absolutely. It was all based on Andrew's statements in the jail
19 accepting responsibility for the offense.

20 Q And so the information this witness had came directly from
21 Andrew Henley, as far as you know?

22 A As far as I know.

23 Q Did you speak to Ms. Henley about the contents of the
24 witness's interview?

25 A I did.

1 Q Can you recall what you told her about the contents of the
2 interview?

3 A I can't tell you word for word what I told her but I can tell you
4 that both Mr. Karstedt and I talked to her about it multiple times, detailing
5 what the witness said, and, you know, what he supported in terms of
6 Andrew saying that Dorie was compelled to engage in these acts.

7 Q And do you remember when that conversation took place?

8 A It would have been December/January because that's when
9 we were having the whole discussion in that regard.

10 Q December/January of 2017 and 2018?

11 A Yeah, I think it was '17 to '18 'cause the information was
12 available very early on in the process and it was a topic of conversation
13 throughout my representation.

14 Q Did you ever convey to Ms. Henley that the interview had been
15 reduced to a transcript?

16 A I don't recall.

17 Q Do you recall -- did you ever play the interview for Ms. Henley?

18 A No, I don't believe I was asked.

19 Q And you were -- and the investigator, Michael Karstedt, he
20 would have visited Ms. Henley on his own as well as with you; correct?

21 A Correct.

22 Q And when he would go and talk to Ms. Henley would he report
23 back to you and say here is what took place during our discussion?

24 A Yes.

25 Q And did Mr. Karstedt ever convey to you that he told

1 Ms. Henley a transcript existed of the interview?

2 A I don't recall him saying that. I do recall him saying that he had
3 discussed the contents of the interview with Ms. Henley. So whether he
4 disclosed that there was a transcript or not, I don't know.

5 Q Do you know if Mr. Karstedt ever played the audio from the
6 interview for Ms. Henley?

7 A I do not know.

8 Q And did Ms. Henley give a statement to Metro detectives who
9 were investigating this case?

10 A She did.

11 Q And are you -- do you have some familiarity with the contents
12 of that statement?

13 A I do.

14 Q Is it fair to say that, among other things, one of the things
15 Ms. Henley told detectives was that her brother, the co-defendant,
16 Andrew Henley, had forced her to participate in the robbery?

17 A Among other things, yes.

18 Q Would you agree that there was a lot of information that the
19 witness disclosed during his interview with Mr. Karstedt that was
20 consistent with what Ms. Henley told the detectives in her statement?

21 A Yes.

22 Q And do you recall if Ms. Henley asked you for a copy of the
23 transcript directly?

24 A She did not.

25 Q Do you know if Ms. Henley asked Mr. Karstedt for a copy of the

1 transcript -- well, a copy of this transcript or to hear the audio from the
2 interview?

3 A I assumed not because Mike would ask me every single time
4 and I would tell him yay or nay. And I don't recall him asking me.

5 Q But do you have a specific recollection of that or is that your
6 best guess?

7 A I have a specific recollection that every time that Mike would go
8 to the jail he would call me and update me as to what was going on and
9 either ask me to follow-up or to ask if he should follow-up on requests
10 from Ms. Henley.

11 THE COURT: And just to be clear Mike is Mr. Karstedt; is that
12 correct?

13 THE WITNESS: Yes, I apologize.

14 THE COURT: All right. That's okay. Just want to make -- for
15 purposes of the record. Thank you. And I apologize for interrupting.

16 BY MR. GAFFNEY:

17 Q So if -- just during custom -- I guess, the custom of practice, if
18 Ms. Henley were to ask Mr. Karstedt for discovery, would Mr. Karstedt
19 then go to you and say, hey, can I provide this to her or would he just
20 provide it to her?

21 A He would call me and say Ms. Henley wants X, Y, and Z. And I
22 would tell him go ahead and provide it. I mean, I would never say she
23 couldn't have her discovery. In fact, she had most everything in her cell
24 and actually asked us to come pick it up because it was too much.

25 Q Is it your practice to provide your clients, defendants, with all of

1 the discovery in the case without them asking or do you typically wait to
2 see if they have a specific request and then give them the discovery that
3 they requested?

4 A I explain to them that they're entitled to all discovery in their
5 case. In Ms. Henley's case I advised her that I did not think she should
6 have the discovery in her cell, because, you know, people will take a look
7 at your discovery and then make allegation. And -- but she insisted on
8 having items and we gave them to her.

9 MR. GAFFNEY: I'll pass the witness, Judge.

10 THE COURT: Thank you, Mr. Gaffney.

11 Mr. Hamner, cross-examination when you're ready.

12 MR. HAMNER: Okay. Thank you very much, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. HAMNER:

15 Q Ms. Brown, can you hear me?

16 A I can.

17 Q Okay. So I want to cover a couple things, isn't it true that in
18 November of 2018 I took over the case from Mr. Stanton from the DA's
19 Office?

20 A I'll accept your representation that that was the date that you
21 took over.

22 Q Okay. There were questions on direct examination, a lot of
23 questions about timings of offers and things of that nature, isn't it true
24 when I took over the first initial offer that the State extended to not just
25 Ms. Henley but also to Mr. Franco and Mr. Henley was a second degree

1 murder with use of deadly weapon, right to argue.

2 Does that sound about right?

3 A It could have been. As I said, when Mr. Gaffney was
4 questioning, there was some back and forth during that time.

5 Q Right.

6 A And so the original right to argue I think I came back to you a
7 couple of times so that what the bottom line was was the 11 to life.

8 Q Right. And we'll -- and we're going to get -- we'll get to that in a
9 second.

10 But do you recall part of the reason for a global across the
11 board second degree murder with the use of a deadly weapon, right to
12 argue for all three defendants, the State's position was, hey, listen, each
13 one of you can go argue to the judge what your level of culpability is and
14 then she can kind of decide.

15 A Yes.

16 Q Do you remember there being discussions like that?

17 A Yes.

18 Q Okay. But as you had stated before, there then started
19 becoming specific back and forths between your office and me and the
20 DA about what the offer should be and at one point an 11 to life was
21 proposed but that was rejected. Is that correct?

22 A That's correct.

23 Q Because she felt that it was simply just too high; is that
24 correct?

25 A That's correct. She said she did not want an offer with a life

1 tail.

2 Q Okay. And, additionally, even the bottom number of 11 was
3 high because she was looking for a voluntary with use; isn't that correct?

4 A That's correct. In my discussions with her I think that we had
5 discussed possibly taking a 10 to life or a 10 to term of years. But she
6 did not want 11.

7 Q Okay. And the State wasn't willing to go down, take a deadly
8 weapon off the case; correct?

9 A Correct.

10 Q So there was the 13 to life that was extended that she, again,
11 rejected for all of those reasons; isn't that correct, those same reasons; is
12 that right?

13 A Yes.

14 Q You would agree that from November of 2018 to March of
15 2020, when she ultimately accepted the offer, there was a lot of back and
16 forth between the State and yourself and your office about trying to reach
17 a resolution in this case; correct?

18 A Correct. And when I wasn't getting anywhere my husband
19 tried and when my husband wasn't getting any --

20 Q Okay.

21 THE COURT: So, sorry, just, Mr. Hamner --

22 BY MR. HAMNER:

23 Q Let me -- let me ask you about this so --

24 THE COURT: Oh, Mr. Hamner, sorry, really quickly,
25 Ms. Brown cut out there for a minute so I just want to be clear.

1 And, Ms. Brown, correct me if I'm wrong, you said you were
2 trying to convey offers and when you weren't getting anywhere your
3 husband would go in and then when he wasn't getting anywhere you
4 would go in; is that fair to say?

5 THE WITNESS: When I'm talking about going in I'm talking
6 about going at Mr. Hamner, not going into see Ms. Henley, like we were
7 trying to alternate going at Mr. Hamner to see if we could get him to come
8 down more.

9 THE COURT: Understood. And so thank you.

10 For some reason you cut out and that actually clarified even
11 more. So thank you.

12 Go ahead, Mr. Hamner, I apologize for interrupting.

13 MR. HAMNER: No, it's okay. And thank you. She did fade
14 out for me to so it was hard to hear what the rest of the answer was.

15 BY MR. HAMNER:

16 Q So that back and forth, a lot of that back and forth happens
17 throughout 2019 as well; correct, not just November of 2018, but it goes
18 into 2019 as well trying to find some sort of offer that was amendable to
19 the State as well as Ms. Henley; is that correct?

20 A Correct.

21 Q Okay. I believe around -- and I don't want to misspeak so I'm
22 just trying to check my notes here. In March of 2019, there is a *Jackson*
23 *v Denno* evidentiary hearing; correct?

24 A Correct.

25 Q And around that time is when the State obtains this letter

1 authored by Ms. Henley; is that correct?

2 A Yes.

3 Q I couldn't hear anything if you answered.

4 A Yes; correct.

5 Q Okay. And after locating that letter, the State then revoked
6 anything in the range of a second degree with use; correct?

7 A Yes. I believe you said all offers were revoked for -- for quite a
8 time.

9 Q That's correct.

10 Ultimately the State then, post-March of 2019, comes back and
11 extends initially a first degree murder offer; isn't that correct, where we
12 drop the deadly weapon?

13 A Yes.

14 Q She did not want that offer; is that correct?

15 A Correct.

16 Q Is that because she felt the offer was too high, much like all the
17 prior offers?

18 A Yes.

19 Q Now, you had mentioned previously that, you know, I would
20 take a run at you and if that didn't work my husband did. Fair to say after
21 you got the 20 to life you and your husband both tried to take runs at the
22 State again trying to get me to come down from the first degree murder;
23 correct?

24 A Correct.

25 Q Isn't it true you got the State to come down to an 18 and then a

1 17 and ultimately a 16; isn't that right?

2 A Correct. Over the course of several months we would try and
3 chisel away.

4 Q Yes.

5 And ultimately we reach a settlement conference in March of
6 2020; is that right?

7 A Yes.

8 Q So between March of 2019, when the letter is located, and
9 March of 2020 there is essentially a back and forth of approximately of a
10 year where you were trying to get the State to come down from first
11 degree murder; is that correct?

12 A Correct.

13 Q And at the time of the second degree murder with use of a
14 deadly weapon 16 to life offer, was it your impression that that was --
15 going into the settlement conference really the State's drop dead offer
16 because I was just at that point not willing to budge any further?

17 A Well, in fact, there was some discussion for a couple of months
18 about whether we would even have a settlement conference because the
19 DA's position was that he wasn't going to go in in order to be leaned on
20 by the defense and the judge. That he was going to go in to try and
21 explain why he was making the offer he was to the defendant. And -- so
22 the State wasn't even willing to agree to go into a settlement conference.
23 So we said, yes, we would abide by that. But we went in there and we
24 leaned on you anyway.

25 Q Right.

1 Okay. So and let's -- let me just touch on a couple of things,
2 with respect to kind of -- the underlying facts of the case, there was a
3 voluntary statement that Ms. Henley gives where she makes a litany of
4 confessions about a -- of some pretty important facts. Would that be fair?

5 A Yes.

6 Q There was a text message that she had sent the father of her
7 children that admitted her culpability in this; is that correct?

8 A Correct.

9 Q There was a voluntary statement from that same individual, the
10 father of the children, who discussed confessions that she had made to
11 him; is that correct?

12 A Yes.

13 Q And then on top of that you then had this letter that she wrote
14 from CCDC to that very same man where she was saying things along
15 the lines of, to be honest, I need you to write me a letter saying I told you
16 I was forced, that Andrew threatened me, and he was going to shoot up
17 your house and burn it down with the kids, it could help me get a lower
18 deal, please. And that was some of the language that was contained in
19 this letter; correct?

20 A Correct. And she made admissions to several other people as
21 well prior to her arrest.

22 Q And in your opinion when you were looking at all of that
23 evidence, did you think that she had a very strong defense in this case, in
24 light of all of that -- in light of all that evidence?

25 A No.

1 Q Okay.

2 A It wasn't a case that I thought was best served going to a jury.

3 Q Did you communicate --

4 A You know, but we talked about it and there were times that she
5 felt like she wanted to take it to a jury, like. And so we would start
6 gearing up for trial again.

7 Q And just to be clear, you did communicate those concerns
8 about what you were seeing with the evidence that would have been
9 presented at trial; is that correct?

10 A I did. But I also made it clear that ultimately it was her
11 decision. And if she wanted to go to trial, we were going to trial and we
12 were going to be ready.

13 Q Understood. I was just trying to at least establish that there
14 were some discussions between you and Ms. Henley just about the
15 merits of the case and whether it would be wise to go to trial versus the
16 benefits of taking an offer.

17 A Mm-hmm.

18 Q Now, let's talk about the settlement conference, the offer going
19 into the settlement conference was a 16 to life; isn't that correct?

20 A That's correct.

21 Q After the settlement conference the State once again came
22 down from that and offered a 15 to life; is that right?

23 A Yes.

24 Q Now, I know that there --

25 A I can't hear you.

1 Q [audio distortion] about 15 minutes, I think you had mentioned
2 there was maybe about 15 minutes during the settlement conference
3 where she was mulling taking the offer, I think you said that on direct
4 examination; is that correct?

5 A I said that I thought that that was the maximum from the time
6 that you made the offer to the time that you went and got the paperwork.
7 But there were discussions -- I mean the settlement conference was
8 extremely long.

9 Q Right.
10 And it went for several hours; isn't that correct?

11 A Yes.

12 Q And in that conference it wasn't just a meeting where I'm in the
13 room the entire time, there were large amounts, hours, where you sat
14 with a judge, with not me in the room, where you guys discussed the
15 merits or the values of potentially settling the case; is that correct?

16 A Correct.

17 Q And then I came back into the room and I was asked to bring
18 down the offer, which the State did; is that correct?

19 A Yes.

20 Q And then after some talking she ultimately decided to take that
21 offer; is that correct?

22 A Yeah, because -- I had wanted 14 because I thought she
23 should get less than Jose Franco.

24 Q Right.

25 A But you weren't willing to do less but you did come down to 15.

1 Q But to be clear -- actually to be clear, Jose Franco actually got
2 16 to life.

3 A Okay.

4 Q She did get an offer that was one year less than Mr. Franco.
5 But in addition to that, after her acceptance of --

6 THE COURT: Mr. Hamner, --

7 BY MR. HAMNER:

8 Q -- the offer, or at least verbally --

9 THE COURT: -- Mr. Hamner, I'm sorry to interrupt you.

10 MR. HAMNER: Yes.

11 THE COURT: Was that a question?

12 MR. HAMNER: I'll phrase it as a question.

13 BY MR. HAMNER:

14 Q Isn't it true Mr. Franco received a 16 to life in this case?

15 A I don't recall. But I -- I do remember there was a discussion
16 between you, me, and Ms. Henley about the fact that she wanted less
17 than Franco because Franco was the stabber and Franco had a history.
18 So that was the negotiation mark we were working from. What he
19 actually got, I, you know, I'll leave to the --

20 Q Well, --

21 A -- Court to look at their record.

22 MR. HAMNER: Court's indulgence.

23 THE COURT: Sure.

24 MR. HAMNER: I would -- Court's indulgence, one second.

25 I would -- okay. I'm trying to remember. Well, we'll come back

1 to that.

2 BY MR. HAMNER:

3 Q Once she agreed -- once she agreed to accept the offer, there
4 then was a period of time that elapsed where a judge to accept the plea
5 -- there was time where we had to procure getting a judge to take the
6 plea; is that correct?

7 A That's true, yeah.

8 Q How long do you remember sitting around waiting before we
9 even had a judge to even take the plea?

10 A Well, you had to go and get the paperwork and then we had to
11 come back and they had to schedule the judge, so it was at least a half
12 an hour, if not longer.

13 Q Okay. And during that time did she ask you for, hey, listen, I
14 don't want to take this deal until I've, you know, read the snitches
15 transcript. Did she say anything like that?

16 A No. She did, you know, kind of, you know, I'm not sure, I'm,
17 you know. And, you know, ultimately we told her, look, this is up to you,
18 take it or leave it. You know, we're, you know, we'll go to trial if you want
19 to go to trial. And she said -- ultimately she said, no, she wanted the
20 negotiation.

21 Q Did she explain to you why?

22 A She didn't want to risk going to trial and getting a much higher
23 sentence.

24 Q Okay. So there was an additional -- there were -- there was
25 time that elapsed even after the verbal acceptance before she formally

1 entered her plea; is that correct?

2 A Correct.

3 Q And you did communicate to her that you would be willing to try
4 the case if that is what she wished to do; is that right?

5 A Absolutely, at all times.

6 Q But the defendant ultimately decided, no, I want to accept this
7 offer because I didn't want to -- she did not want to take the risk of going
8 to trial and losing and facing the higher penalty; is that correct?

9 A Correct. And when she told me she wanted to withdraw her
10 plea she told me -- and I told her that there was a risk that she would get
11 a higher sentence. And she indicated she wanted something to do while
12 she was in prison by filing appeals and writs.

13 Q Okay. Something that she wouldn't be able to do with an
14 accepted plea; is that correct?

15 A Correct.

16 Q Let me ask you a little bit about this transcript of this interview
17 of this other inmate who had information regarding the case. So the
18 source of -- the identity of this person actually is Dorie Henley; correct?

19 A Correct. She indicated that her -- that they would yell through
20 the vents and that she could yell up from her vent up to the male floors
21 and that they would talk.

22 Q So this isn't even a -- this isn't even a situation where you
23 brought this new information to Ms. Henley, she's actually bringing you
24 the meat and potatoes of the information to you initially; correct, she's the
25 one who discovers it?

1 A Correct.

2 Q So based off of the information she provides you, Mr. Karstedt
3 follows up and interviews her; is that correct?

4 A Him, yeah.

5 Q Okay. And then, I think, as you testified on direct examination,
6 you and Mr. Karstedt on multiple occasions relayed to her the substance
7 of what was being relayed by this individual in CCDC; is that correct?

8 A [No audible response.]

9 Q If you said yes, I just didn't hear you.

10 A Yes.

11 Q Okay. At any time during these multiple conversations, either
12 you or Mr. Karstedt had, did Ms. Henley say, listen, I don't feel
13 comfortable accepting any sort of negotiation unless I physically read
14 what was -- want the content of the interview was. Did she ever say
15 anything like that?

16 A No.

17 Q Did she ever ask for a transcript of the interview?

18 A No

19 Q Did she ever ask to listen to the interview?

20 A No.

21 Q And just to be clear, this information is discovered at the --
22 essentially the beginning of the case, as you said on direct examination,
23 December of 2017, January of 2018; is that right?

24 A That's right.

25 Q So she enters her plea in March of 2020; correct?

1 A [No audible response.]

2 Q If you said yes, I'm sorry, I didn't hear you.

3 A Yes; correct.

4 Q Okay. So over two years go by and she never asks you to
5 listen to the audio of the interview or read a transcript of the interview; is
6 that correct?

7 A That's correct.

8 Q But she's been aware of it for over two and a half years
9 because she's the one who actually brings it to your attention; is that
10 correct?

11 A Over two years, yes.

12 Q Based on your recollection did you hold anything back in terms
13 of the substance of what this individual said?

14 A No, we told her exactly what he said.

15 Q Did she express any sort of confusion as to the substance of
16 what this individual relayed in his interview?

17 A No.

18 Q Were you left with the impression that she understood what
19 was discussed in this interview?

20 A Yes.

21 Q There was some questions on direct examination about how
22 the statement made by the individual she located through the vents was
23 that she was forced into doing it; is that correct?

24 A Yes.

25 Q All right. Isn't it also true the letter that she wrote to the father

1 of her children, Mr. Cardoso, was asking him to write a letter saying that
2 she had been forced into it by Andrew as well?

3 A Yes.

4 Q Okay. So Ms. Henley finds someone through the vents that
5 she's able to talk to freely and then that person tells you he heard
6 information from Andrew that she was forced; is that correct?

7 A I don't know. I can't speculate how -- I don't know which
8 direction the information was going. I just know Ms. Henley brought the
9 information to me.

10 Q Exactly.

11 She told you she talked to this person through the vents; is that
12 correct?

13 A Yes.

14 Q Okay. You then went and interviewed this person; correct?

15 A Yes. And I don't know that, just to be clear, I don't know that
16 she talked to this person through the vent but she got the information by
17 talking to somebody through the vent.

18 Q Okay. So she's talking to someone through the vents; correct?

19 A Yes.

20 Q She gives you the name of someone to speak through -- speak
21 to that she learned of through the vents; correct?

22 A Yes.

23 Q This person then relays information saying that she was forced
24 into doing it by Andrew; is that right?

25 A Yes.

1 Q And then -- and that's in kind of the early, late 2017, early
2 2018, and then in March of 2019 there's a letter that she is writing to
3 Mr. Cardoso; correct?

4 A Yes.

5 Q There's a letter that's -- right.

6 And that letter is -- in that letter she's asking Mr. Cardoso to
7 also write a letter and say that she was forced into this by Andrew; is that
8 correct?

9 A Yes.

10 Q And the letter indicates that if you write this letter, it can help
11 get me a lower deal; isn't that correct?

12 A Yes.

13 Q And specifically she mentions the time range on that deal as
14 being 8 to 20 years; is that right?

15 A Yes.

16 Q Which would not be a second -- it would not be 11 to life, would
17 it?

18 A No.

19 Q And it certainly wouldn't be a second to life in any part of the
20 range, would it?

21 A No.

22 MR. HAMNER: I have no further questions for this witness.

23 THE COURT: All right. Thank you, Mr. Hamner.

24 Mr. Gaffney, any redirect examination?

25 MR. GAFFNEY: Yes, please.

1 **REDIRECT EXAMINATION**

2 BY MR. GAFFNEY:

3 Q Ms. Brown, on cross there was questions about Ms. Henley's
4 contact with this informant in CCDC and it was -- the exchange between
5 them was characterized as Ms. Henley got this information and brought it
6 to you. Is -- did she --

7 A Correct.

8 Q -- did she -- other than the telling you who this person was you
9 needed to talk to, did she tell you specifically, here's what information this
10 person has?

11 A No. She told me that she had been contacted and that this
12 person had information that was beneficial to us and she wanted us to go
13 and interview him.

14 Q Okay. So Ms. Henley never told you, hey, go talk to this guy,
15 he's going to tell you Andrew forced me to do this robbery?

16 A No, I don't believe so.

17 Q So when you said she gave you the information would that be
18 limited to the informant's identity and nothing else?

19 A And that he would have information beneficial to her case.

20 Q Okay. But she didn't tell you what that information was; is that
21 fair to say?

22 A She didn't give me specifics but she did say it was somebody
23 on the floor with Andrew and that it had to do with statements that
24 Andrew made.

25 Q Okay. When you had discussions with Ms. Henley about the

1 informant's statement, you had indicated you told her everything that the
2 informant or the witness had said, the witness's statement is 22 pages
3 long, did you sit there and read passages from the statement or were you
4 just telling her a summary of what was in it?

5 A It was a summary.

6 Q So you didn't have a copy of the transcript that you were
7 reading quotes from to her?

8 A No.

9 Q And same as to the audio, you never had, say, audio that you
10 were listening to and then directly conveying to Ms. Henley what the
11 witness has said in the interview?

12 A True.

13 Q And the general substance of that interview was -- well, one of
14 the things that was evident by reading the interview was the witness was
15 saying Andrew Henley forced Dorie Henley to participate in the robbery,
16 but weren't there also a lot of other details about what happened that the
17 witness had?

18 A I would need you to be more specific.

19 Q Did -- okay. So, for instance, didn't he, the witness, say that it
20 was Andrew who identify who the victim would be because of his interest
21 in Dorie Henley and also because the victim had money?

22 A Yes.

23 Q And didn't the witness also say that the purpose of the robbery
24 was to obtain money to pay Franco's rent?

25 A I don't recall that detail, but I'll, you know, if you say it's in

1 there, I believe you.

2 Q And he also had knowledge about Mr. and Mrs. Henley's sort
3 of sibling rivalry, if you will?

4 A Yes.

5 Q And he also mentioned that going into the robbery the plan was
6 just to rough up the victim, not to stab him?

7 A Yes.

8 Q He also -- did he also know that Andrew was in communication
9 with Ms. Henley by text message when she was with the victim?

10 A I don't recall but I'll accept your representation that that was in
11 it.

12 Q Did he also know that after the incident happened Andrew
13 Henley and Mr. Franco essentially held Ms. Henley hostage to make sure
14 she didn't talk to the police?

15 A Yes.

16 Q Okay. And that --

17 THE WITNESS: Can I take a ten second break?

18 THE COURT: Sure. We'll take a quick recess. No problem.

19 THE WITNESS: I've got an animal issue I just have to take
20 care of real quick.

21 THE COURT: Oh, no problem. We'll be in recess for -- until
22 you return.

23 [Pause in proceedings]

24 THE WITNESS: Sorry about that.

25 THE COURT: No, that's all right. It's one of the challenges of

1 court during the time of Corona.

2 When -- and we're ready, you can resume questioning.

3 MR. GAFFNEY: Thank you, Judge.

4 BY MR. GAFFNEY:

5 Q Just continuing on with the content of the statement, did the
6 witness also know or say that Andrew had threatened to kill Raphael
7 Cardoso because he believed -- well, as a threat to Ms. Henley so she
8 wouldn't testify against him?

9 A Yes, I believe so.

10 Q And also that it was Andrew Henley that had masterminded the
11 entire robbery and the incident?

12 A Yes.

13 Q Okay. So fair to say that there's more to the contents of his
14 interview than just Andrew has forced Ms. Henley into the robbery; is that
15 fair to say?

16 A Yes.

17 Q You had mentioned that your husband had played a role in this
18 case in some capacity, can you tell us who that is and what role he
19 played?

20 A My husband is Phil Brown, he's also an attorney and my
21 business partner, and he was co-counsel, he went and talked to Dorie at
22 the jail a couple of times, he appeared in court for me a couple of times,
23 and if we went to trial, he was going to be my second chair.

24 Q And do you --

25 A And -- but just -- can I clarify something about the conversation

1 with Dorie?

2 Q Sure. Yes, please.

3 A 'Cause Mike and I went in there after Mike -- or Mr. Karstedt
4 interviewed the witness and we went over in great detail what the witness
5 said.

6 Q During cross-examination when you were discussing the plea
7 offers, I believe I heard you say that at one point there was a discussion
8 about a 10 to life offer, was a 10 to life offer ever extended to
9 Ms. Henley?

10 A No, I thought that there was a possibility that Ms. Henley might
11 accept a 10 to life offer. We were originally hoping to get, you know, a
12 voluntary. Ms. Henley even was hoping for an involuntary based on the
13 fact that she had no record but that was not something that was even
14 within the framework of anything the DA would consider. So I was trying
15 to see if maybe I could get a 10 to life and I thought that's something she
16 might find palatable and so that's kind of where my head was at. That
17 was never an offer.

18 Q Okay. I understand.

19 On cross-examination you had indicated that the time from
20 which the offer was extended in the settlement conference of 15 to life,
21 until Ms. Henley said, okay, I will accept that offer, was 15 minutes
22 maximum. Could it have been two minutes from your recollection?

23 A No.

24 Q Five minutes?

25 A No.

1 Q Okay. But --

2 A Because we -- 'cause Phil and I, you know, took some time
3 alone to talk to Ms. Henley about it, you know, we were huddled at the
4 table and we talked about it.

5 Q But it could have been less than 15 minutes as well?

6 A Yes.

7 Q Okay.

8 A Mm-hmm, absolutely.

9 MR. GAFFNEY: I will pass the witness, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Hamner, any recross-examination?

12 MR. HAMNER: Just some -- just some brief, brief recross.

13 THE COURT: All right. When you're ready.

14 **RECROSS-EXAMINATION**

15 BY MR. HAMNER:

16 Q On redirect you were asked something to the effect of about
17 how she had inquired the information from this individual and she had
18 said -- you had relayed an answer something to the effect of she had told
19 me the person had information that is beneficial to the case; is that
20 correct?

21 A Yes.

22 Q Okay.

23 A I believe --

24 Q But let's be clear about one thing -- go ahead.

25 A -- I believe --

1 Q No, go ahead.

2 A -- I believe what she said was that this person was in the same
3 unit with Andrew but didn't like Andrew and therefore was willing to say
4 bad things about Andrew. She also specifically said this is not a person
5 she knew or ever met.

6 Q Okay. Did she -- did she say she communicated with this
7 person through the vents or was it through a second person that she
8 communicated?

9 A My memory is I think it was through a second person. But I
10 can't say 100 percent.

11 Q One of the things to be clear on is you were never a party to
12 any conversations that were going through the vents? I know that seems
13 like a silly question but.

14 A No.

15 Q Correct; you weren't a party to any of those; right?

16 A No.

17 Q And no one in your office was; correct?

18 A Correct.

19 Q Okay. So essentially we -- we have to essentially take the
20 word of Ms. Henley; is that correct?

21 A True.

22 Q The way she's relaying it is accurate; correct?

23 A Yes.

24 Q You were asked on redirect about a number of information that
25 this person was aware of, so one of the things that was brought up was

1 Andrew identified the victim of this case because of his, you know, his
2 infatuation with Dorie and also that he had some money. That was one
3 of the facts that this person in CCDC was aware of; correct?

4 A Correct.

5 Q That was also stuff that Ms. Henley was aware of; isn't that
6 correct?

7 A Yes.

8 Q Okay. And, in fact, that's stuff that's in her voluntary statement
9 to the police as well, that she even admitted that that's one of the
10 reasons why they targeted him is because they knew how much he liked
11 her and they believed he had money on him; correct?

12 A Correct.

13 Q The individual that you interviewed had stated that, you know,
14 one of the motivating reasons for doing this is that Franco needed to do
15 this because he needed to pay off his rent.

16 Do you remember relaying that information?

17 A I don't remember specifically stating that to her, but I do
18 know --

19 Q I meant -- let me rephrase, you had said that on redirect
20 examination --

21 A Yes.

22 Q -- you were -- okay.

23 Isn't it also true that there were text messages from Dorie to
24 Mr. Cardoso where she's indicating there were monetary reasons why
25 she was doing it and she even mentioned something to the effect of she

1 needed money for diapers.

2 Do you remember text messages like that?

3 A I do. But I also remember Ms. Henley saying that, you know,
4 that the victim would have given her anything she wanted.

5 Q Okay. But nevertheless there's still a monetary motive for
6 Ms. Henley as well that she had put in a text message; correct?

7 A Yes.

8 Q There was -- on redirect one of the facts elicited by this
9 individual in CCDC was the intention was never to kill this guy, it's simply
10 to rough him up.

11 Do you remember relaying that?

12 A Yes.

13 Q Okay. But that's also something that Dorie had said to the
14 police as well that the intention was never to kill this person it just kind of
15 got out of hand and this guy got stabbed as a result?

16 A Yeah, Franco kind of snapped.

17 MR. HAMNER: Okay. Let me just see. I don't have any
18 further questions.

19 THE COURT: All right. Thank you, Mr. Hamner.

20 I think this is a natural -- well, let me -- actually first confirm,
21 can we release Ms. Brown?

22 MR. GAFFNEY: Actually I just had maybe three more
23 questions for her.

24 THE COURT: Three more questions, all right, briefly.

25 THE WITNESS: You're killing me.

1 **FURTHER REDIRECT EXAMINATION**

2 BY MR. GAFFNEY:

3 Q Ms. Brown, did -- in the informant's statement, did he indicate
4 that he had ever talked to Ms. Henley?

5 A I don't recall.

6 Q Did he --

7 A But Ms. Henley made it clear that he did not know this person,
8 she had never, you know, she had never seen this person.

9 Q And --

10 A So she --

11 Q So she had represented to you that she had never
12 communicated with this person; is that fair?

13 A I believe her statements could have been interpreted that way,
14 yes. And I have no reason to doubt her in that regard.

15 Q And, obvious, this might seem like an obvious question, but
16 you were not a party to the conversations that Mr. Karstedt had alone
17 with Ms. Dorie at CCDC; right?

18 A No. But Mr. Karstedt and I went and had some extensive
19 conversations with her especially regarding the contents of that
20 statement.

21 Q But when he would speak to her alone, obviously you're not
22 there to hear exactly what's being said?

23 A Correct.

24 MR. GAFFNEY: Okay. That's it, Judge.

25 THE COURT: All right. Thank you very much.

1 Can we release Ms. Brown at this time?

2 MR. GAFFNEY: Yes.

3 THE COURT: All right. Thank you so much, Ms. Brown, you
4 are released.

5 I think this is a natural --

6 THE WITNESS: If I --

7 THE COURT: Yes.

8 THE WITNESS: -- if I choose to, can I stay and listen or do I
9 have to sign off?

10 THE COURT: Does either party object to her continuing to
11 listen?

12 MR. GAFFNEY: No, that's fine.

13 THE COURT: Mr. Hamner?

14 MR. HAMNER: No, Your Honor.

15 THE COURT: Okay. All right. Then you're welcome to join.
16 This is a public proceeding and so she has been released as a witness.

17 It is 2:52; I think this is a natural breaking time.

18 So, Mr. Gaffney, would you like some time to talk to your client
19 before we, I assume you're going to call her as your next witness; is that
20 correct?

21 MR. GAFFNEY: Right. Yeah, I'd like to talk to her, if I could.

22 THE COURT: All right. So what I'm going to do, Ms. Brown,
23 you're welcome to rejoin us, but I'm going to ask the State, Ms. Brown,
24 and anyone else who is connected via BlueJeans to disconnect. My
25 inclination is to resume at 3:15, that would give you about 20 minutes, a

1 little less than 20 minutes.

2 Are you okay with that?

3 MR. GAFFNEY: Yes.

4 THE COURT: All right. So I will exit the courtroom and we will
5 see everyone back on BlueJeans at 3:15 p.m.

6 MR. GAFFNEY: Okay. Thank you.

7 THE COURT: Thank you.

8 MR. HAMNER: Thank you, Your Honor.

9 [Recess taken at 2:53 p.m.]

10 [Hearing resumed at 3:16 p.m.]

11 THE COURT: Good afternoon. We're back on the record in
12 Case Number C-17-327585-1, State of Nevada versus Dorie Henley.

13 This is the continuation of an evidentiary hearing -- or limited
14 evidentiary hearing on defendant's motion to withdraw guilty plea. We
15 are back from a recess.

16 And, just for the record, Mr. Gaffney, did you have sufficient
17 time to discuss or to meet with your client before we continue here
18 today?

19 MR. GAFFNEY: Yes, Your Honor. Thank you.

20 THE COURT: All right. So with that then we'll proceed with
21 the evidentiary hearing.

22 Mr. Hamner, are you ready to go forward?

23 MR. HAMNER: I am, Your Honor.

24 THE COURT: All right. So, Mr. Gaffney, when you're ready
25 you may call your next witness and we'll have to swear her in.

1 MR. GAFFNEY: And that would be Dorie Henley.

2 THE COURT: All right. Good afternoon again, Ms. Henley.
3 Go ahead and stand up and just raise your right hand and we'll swear
4 you in.

5 **DORIE HENLEY**

6 [having been called as a witness and being first duly sworn, testified as
7 follows:]

8 THE CLERK: Thank you.

9 If you could state and spell your name for the record, please.

10 THE DEFENDANT: Dorie Henley, D-O-R-I-E; H-E-N-L-E-Y.

11 THE COURT: All right. Thank you, Ms. Henley.

12 Now, you're welcome to sit 'cause I don't want you standing
13 the entire time. I just want to make sure that we're able to hear you. So
14 why don't you go ahead and have a seat and then let's see if we can
15 hear you. Yeah, we should be able to, you're close enough. And if
16 there's an issue, we'll have you stand or get closer.

17 So, Mr. Gaffney, when you're ready you may begin your
18 examination.

19 MR. GAFFNEY: Thank you.

20 **DIRECT EXAMINATION**

21 BY MR. GAFFNEY:

22 Q Ms. Henley, when were you arrested in this case?

23 A October 17th of 2007 -- 2017.

24 Q And soon after your arrest, did the Court appoint an attorney to
25 represent you?

1 A Yes.

2 Q And was that Mary Brown?

3 A Yes.

4 Q And have you been in custody at CCDC since your arrest?

5 A Yes, sir.

6 Q While you're in custody, how would you typically communicate
7 with Ms. Brown?

8 A Through contact visits, video visits, and her phone.

9 Q Now, ultimately on March 16th, 2020, you entered into a plea
10 agreement after participating in a settlement conference, so do you recall
11 when the discussions began about the possibility of resolving your case
12 by way of plea agreement?

13 A Probably like -- what are you saying, when I took my plea?

14 Q Well, if you could remember, say, the month and year that the
15 first offer -- of the first offer you received?

16 A Honestly, I -- I can't -- probably in 2018.

17 Q Okay. But over time Ms. Brown was conveying offers that the
18 State had extended to resolve your case; is that fair to say?

19 A Yeah.

20 Q And do you recall Ms. Brown ever conveying to you an offer
21 from the State that consisted of a sentencing range of 11 to life?

22 A No, I don't.

23 Q When was the first time you learned that the State had
24 extended that offer?

25 A At the settlement conference when Hamner had told Mary

1 Brown.

2 Q Okay. So the first time you learned about the 11 to life offer
3 was the settlement conference?

4 A Yes, sir.

5 Q And did Ms. Brown ever convey to you an offer from the State
6 that consisted of a sentencing range of 13 to life?

7 A No, sir.

8 Q And when was the first time you learned that the State had
9 extended that 13 to life offer?

10 A When you became my attorney.

11 Q When I became your attorney?

12 A Yep.

13 Q I see. Okay.

14 And you heard Ms. Brown testify that the State extended that
15 11 to life offer, I believe it was early -- after Mr. Hamner came on the
16 case in 2018, had Ms. Brown conveyed that offer to you would you have
17 accepted it at the time the State had extended it?

18 A Before I got any offers I told Mrs. Brown that I didn't want any
19 life tail.

20 Q Okay. So if she had come to you with the 11 to life offer in
21 2018, is that an offer you would have accepted?

22 A No.

23 Q What about the 13 to life offer?

24 A No.

25 Q Did there come a time where you would have accepted either

1 one of those offers prior to when the State found this letter written by you
2 to Raphael Cardoso?

3 A Wait, can you repeat that, please.

4 Q Is there -- would you -- is there -- in between -- well, prior to the
5 State find the letter you wrote to Raphael, would you have accepted that
6 11 to life or 13 to life offer?

7 A Possibly if that was the only -- if those were the only offers,
8 yes, I would have choose that -- either one.

9 Q So if Mary Brown had brought either one of those offers to you
10 and discussed them with you, there's a possibility you would have
11 accepted them?

12 A Yes, sir.

13 Q And you may not have accepted them early on in 2018 or
14 potentially later but before the letter was found; is that accurate?

15 A Yes.

16 Q Okay. Now, the plea agreement you entered into that was due
17 to the -- well, the result of your participation in a settlement conference;
18 right?

19 A Yes.

20 Q And it was during the settlement conference that the State
21 presented the 15 to life offer; is that fair?

22 A Yes.

23 Q Had you been presented with that 15 to life offer prior to the
24 settlement conference?

25 A No.

1 Q Did Ms. Brown's warning to you that you may not have another
2 opportunity to accept a plea agreement, did that affect your decision
3 whether to accept that 15 to life offer?

4 A I let her know that I was unsure but I still accept the offer
5 because she said it was my last chance.

6 Q And by her telling you that was your last chance, did that have
7 any effect on your decision to accept the offer?

8 A Kinda, but I still proceeded with my plea.

9 Q When you say, kinda, what do you mean by that? How would
10 that have affected your decision?

11 A What do you mean, to take my plea?

12 Q No, how would Mary Brown telling you this may be your last
13 chance to accept the State's offer have affected your decision to accept
14 that 15 to life offer?

15 A I don't know.

16 Q Okay. I'll move on.

17 A Yeah.

18 Q Once that 15 to life offer was extended how long did you have
19 to make a decision whether to accept that offer?

20 A Well, we were discussing, and it was 16 to life, and then that's
21 when Hamner just said that if I wanted 15. And right after speaking with
22 Mary Brown I felt like I had no choice, so I said, yeah, I would take it.
23 That was like during a conversation two minutes after he said it, if I
24 wanted it. I told him I wanted it.

25 Q And why did you feel like you had no other choice?

1 A Because before I had -- before I came into the settlement
2 conference I had a brief conversation with Mary Brown and she said that
3 he probably wasn't going to give me another deal and that he was going
4 to take it to trial.

5 Q Okay. And did you feel like you had enough time to think about
6 the offer and give it meaningful consideration?

7 A No.

8 Q And did I hear you correctly when you said that you felt like you
9 had about two minutes to think about the offer before you accepted it?

10 A Yeah, that was after he said did I want 15 to life, and it was two
11 minutes, and then I said yeah.

12 Q If you were given more time to think about the offer, what
13 would you have done with that time?

14 A I would have talked to -- I would have talked to my family and
15 friends that supported me throughout this whole time and seen if what
16 their options were, like, how -- like their perspective on the deal.

17 Q Okay. So you would have wanted to confer, discuss the offer
18 with some -- other people; is that fair?

19 A My family, yes.

20 Q Okay. And after you entered your plea, did you have an
21 opportunity to talk to those people?

22 A No, I didn't.

23 Q At any point did you have an opportunity to talk to friends and
24 family about the plea agreement after you had entered it?

25 A No, sir.

1 Q Had you been given more time to think about it and discuss it
2 with your family, would you still have accepted the offer?

3 A Depending on what our discussions were, I'm not sure of that.

4 Q Okay. During the settlement conference when you learned that
5 an 11 to life offer had been extended by the State, did you give any
6 response to Ms. Brown, the State, or the Court about, oh, I never knew
7 that that offer had been extended?

8 A No, I was actually confused.

9 Q Why were you confused?

10 A Because I didn't -- I haven't heard of the offer before.

11 Q Okay. But -- oh, so, your lack of response was due to your
12 confusion; is that what you're saying?

13 A Yes, so Mary Brown responded and said she did.

14 Q Okay. During your discussions with Mary Brown about your
15 case, did you talk to her about using a defense of duress at trial?

16 A Yes.

17 Q And when I say, defense, I think sometimes it's also referred to
18 as a coercion defense. Is it fair to say that the -- that defense, either
19 duress or coercion, would have included trying to demonstrate to a jury
20 that your brother, the co-defendant, Andrew Henley, had forced you to
21 participate in a robbery?

22 A Yes, sir.

23 Q And did you explain to Ms. Brown how Mr. Henley had forced
24 you to participate in the robbery?

25 A Yes, I did.

1 Q And do you recall the -- Ms. Brown having an investigator
2 named Michael Karstedt?

3 A Yes, sir.

4 Q And did you have discussions with him about your case?

5 A Yes.

6 Q And how would you typically communicate with Mr. Karstedt?

7 A I would call him.

8 Q You would call him on the phone?

9 A Mm-hmm, to his office.

10 Q Okay. Did he also come to visit you in CCDC?

11 A Yes.

12 Q At some point did you learn that there was an individual in
13 CCDC that had information about your case?

14 A Yes.

15 Q And how did you learn about that individual?

16 A Through someone -- through someone -- through someone on
17 tier.

18 Q And would that be a male? A female?

19 A A female, a female.

20 Q Somebody who's in the same unit that you're housed in in
21 CCDC?

22 A Yes, sir.

23 Q And other than the identity of the person, what did you learn
24 about the information they had about your case?

25 A I know that they just told me that this person said he had

1 information on the case that would benefit me, and he was in the same
2 unit as my brother, to give his information to my lawyer and that's exactly
3 what I did.

4 Q Did they -- did you learn about any of the details of the
5 information this person had?

6 A No, I have no idea what he said, but I just got the message and
7 gave it to my investigator.

8 Q And so to be clear you learned through another female inmate
9 in your unit there was this individual that had information about your
10 case; is that fair to say?

11 A Yes.

12 Q Did you ever speak to that individual in anyway?

13 A No.

14 Q Did you talk to him through the vents at CCDC?

15 A No, never.

16 Q Did you talk to anyone at CCDC about your case?

17 A No.

18 Q So at some point did you learn that Mr. Karstedt had
19 interviewed that person?

20 A Yes.

21 Q And based on -- and did you have subsequent discussions with
22 either Mr. Karstedt or Mary Brown about what that person had said?

23 A A brief summary, yes, sir, yes.

24 Q And so based on what you were told, what was your
25 understanding of what the witness said?

1 A That he had a lot of information and I -- I mean, I don't know.

2 Q Were you aware that he was saying that your brother forced
3 you to participate in the robbery?

4 A Yes.

5 Q Did they give you other details about what the person said?

6 A No, just on how he said that just about me being a pawn and
7 that we really didn't have a good relationship and how I used to mistreat
8 him when he was a kid. That was pretty much it.

9 Q Can you recall how long of a conversation you had with
10 Ms. Brown or Mr. Karstedt about the substance of that interview?

11 A I'd say about like a good 20 minutes.

12 Q And were you aware that that interview had been recorded?

13 A Yes, I was.

14 Q Were you aware that the interview had been reduced to a
15 transcript?

16 A Yes.

17 Q And when did you become aware that the interview was
18 recorded?

19 A Probably like two weeks after it was done because Michael
20 came to see me.

21 Q And when did you become aware that a transcript existed?

22 A Probably like maybe a few months after that.

23 Q And did you ask Ms. Brown for a copy of the witness's
24 statement?

25 A No.

1 Q Did you ask Mr. Karstedt for a copy of the statement?

2 A Yes, I did.

3 Q And did you ever receive a copy?

4 A No, he said due to the safety of that inmate that it would be
5 best for me not to have that paperwork.

6 Q And how many times do you think you asked Mr. Karstedt for a
7 copy of the statement?

8 A I asked him one time.

9 Q When you eventually received a copy of the statement -- well,
10 did you eventually receive a copy of the statement?

11 A Yes.

12 Q And who did you receive that from?

13 A You.

14 Q And did that statement contain more information about your
15 participation in the robbery then what you learned from either Mr. Brown
16 or mister -- sorry, Ms. Brown or Mr. Karstedt?

17 A Yes.

18 Q So what new information did that statement contain that you
19 didn't know of previously?

20 A That he knew my other brother. He actually was incarcerated
21 with one of my brothers. That he had talked about my brother-in-law with
22 my brother. That he knew exactly what happened -- well, not to the
23 extent of what happened but a little bit of what happened. He knew
24 where it was. He knew who all was involved.

25 Q And were there any other details you learned by reading the

1 statement that you didn't know before?

2 A A lot of 'em.

3 Q A lot of details?

4 A Yes. All I knew was that he didn't know who I was. That
5 whatever my brother said about us not being -- not getting along or
6 whatever. And then what he said about, I guess, not liking my brother
7 or -- being in the same pod or whatever. That was pretty much all I
8 knew.

9 Q Did you give a statement to detectives after you were arrested?

10 A Yes.

11 Q Was there -- did you see consistencies between what you said
12 in your statement and what was in that witness interview?

13 A Somewhat, yes.

14 Q And is it fair to say that the statement provided more support
15 for your defense then you were led to believe?

16 A Yes.

17 Q And had you received a copy of that statement prior to the
18 settlement conference would you still have accepted a plea or would you
19 have insisted on going to trial?

20 A I would have not accepted my plea. I would have gone to trial.

21 THE COURT: I'm sorry, I -- could you speak up again.

22 THE DEFENDANT: I said I would not have accepted the plea,
23 that I would have went to trial.

24 THE COURT: I gotcha. Thank you.

25 THE DEFENDANT: You're welcome.

1 MR. GAFFNEY: Okay. I'll pass the witness, Judge.

2 THE COURT: Thank you very much.

3 All right. Mr. Hamner, cross-examination when you're ready.

4 MR. HAMNER: Thank you very much.

5 **CROSS-EXAMINATION**

6 BY MR. HAMNER:

7 Q Ms. Henley, can you hear me okay?

8 A Yes, I can, sir.

9 Q Okay. You had said on direct examination that the first time
10 you had ever heard of the 11 to life and the 13 to life was -- well, the 11
11 to life first time you said you heard it was at the settlement conference;
12 correct?

13 A Yes.

14 Q And the first time you heard of the 13 to life was through
15 Mr. Gaffney; correct?

16 A Correct.

17 Q Okay. You were asked on direct examination initially about
18 whether or not you would ever take an offer involving a life tail and you
19 told Mr. Gaffney about two minutes ago, no, you wouldn't have done that;
20 isn't that correct?

21 A Yes.

22 Q Okay. Why was that?

23 A 'Cause I felt like that I should at least get a back number
24 somewhere.

25 Q Okay. So you feel pretty strongly about that?

1 A Now no.

2 Q Not now but back then, in 2018, did you feel that way?

3 A Yes, I did.

4 Q Did you feel like that throughout 2018?

5 A Yes.

6 Q Did you feel that way in 2019?

7 A Yes, that's until the letter.

8 Q Okay. Until the letter.

9 So just so we're clear, just chronology-wise, from the time the
10 case started, until the time your letter that you wrote to Mr. Cardoso was
11 discovered, you felt that a life tail was too much time; correct?

12 A Yes.

13 Q Okay. And you were not going to accept an offer from 2018 --
14 or 2017 when the case started, leading up to the discovery of the letter,
15 you wouldn't have taken any offer that included a life tail; correct?

16 A Yes.

17 Q Okay. And you made that pretty clear to Ms. Brown; fair?

18 A Yes.

19 Q Did you also make that clear to Mr. Brown?

20 A Yes.

21 Q Did you make that clear to Mr. Karstedt?

22 A Yes.

23 Q Okay. And so there's no doubt from that time window, 2017
24 leading up to March of 2019, when that letter is discovered, you made
25 clear to all of your defense attorneys and investigators that you would not

1 take anything involving a life tail; is that correct?

2 A Yes, sir.

3 Q Okay. So even if a life tail was conveyed to you, you weren't
4 going to take it; correct?

5 A Correct.

6 Q And I think that's -- that kind of mirrors exactly with what
7 Ms. Brown had said, which was you really kind of focused on something
8 less than that, more like a voluntary, maybe like an 8 to 20. Would that
9 be accurate?

10 A Yes.

11 Q So in 2017 leading up to March of 2019, if something like that
12 was extended to you, you would have accepted that offer but you
13 wouldn't have taken a life tail; correct?

14 A Correct.

15 Q Okay. Then the letter is discovered and isn't it true at that
16 point, myself, I pull all offers; isn't that right?

17 A Yes.

18 Q Okay. So we're not even talking about second with use at that
19 point because the State said, forget it, we're done here until I decide
20 something higher to offer; isn't that correct?

21 A Yeah.

22 Q Okay. And then the next offer you get back from the State is a
23 first degree murder, no use; isn't that right?

24 A To my knowledge, it was two -- it was two deals that were
25 offered and it was a first degree, 20 to 50; second degree, 18 to life, with

1 a weapon enhancement. That was the --

2 Q Okay. And you -- that -- that's your memory of it; correct, those
3 are the -- it was like a -- you have the life tail with an 18 or no life tail but
4 make it a 20 to 50; is that correct?

5 A Yes, that's what I was told.

6 Q Right.

7 And you didn't want to take those two offers at that time; isn't
8 that correct?

9 A Yes.

10 Q And then the offer starts to come down and eventually it's
11 down to a second -- second with use, 16 to life; isn't that correct?

12 A Yes.

13 Q And isn't it true Mary Brown kind of made it clear to you that,
14 you know, I wasn't really willing to budge any more than the 16 to life at
15 that point?

16 A Yes.

17 Q And I was pretty adamant that I was more than happy to go to
18 trial if you weren't going to take the 16 to life?

19 A Yes.

20 Q Okay. And that's kind of how the stage is set right before we
21 go into the settlement conference; right?

22 A Mm-hmm, yes.

23 Q Okay. Then we get into the settlement conference and -- isn't
24 it true when you were in the settlement conference, at least initially, I'm
25 not willing, the State's not willing to come down to a second -- anything

1 lower than a 16 to life; isn't that right?

2 A What you told me was that somebody had to go down for life,
3 had to get a first degree because of this victim lost his life. That's what
4 you told me --

5 [Simultaneous speaking]

6 Q Okay.

7 THE COURT: All right. So, really quickly, Mr. Hamner --

8 BY MR. HAMNER:

9 Q But my offer never went up to a first degree --

10 THE COURT: -- Mr. Hamner, I'm sorry to interrupt you.

11 MR. HAMNER: Yes.

12 THE COURT: But we are diving at this point into the specifics
13 of the conversations that took place during the settlement conference.

14 MR. HAMNER: Okay.

15 THE COURT: So I want to --

16 MR. HAMNER: We can --

17 THE COURT: -- be clear for the record that for purposes of
18 this hearing, Mr. Gaffney and Ms. Henley are waiving their right to
19 confidentiality regarding what occurred during the settlement conference;
20 right? We've talked about it generally but now there's specific
21 conversations that are being brought out.

22 Are you willing to waive that for purposes of this hearing in
23 order for me to consider the pending motion?

24 MR. GAFFNEY: Yes, Your Honor. And I apologize, I should
25 have addressed this at the very beginning of the hearing, I spoke to

1 mister -- Ms. Henley about this yesterday, she understands that she's
2 waiving the attorney-client privilege by filing this kind of motion and
3 would, you can canvass her on, would waive the privilege so Mr. Hamner
4 can continue his questions.

5 THE COURT: All right. And I appreciate that.

6 So we've kind of danced around it and certainly Ms. Brown
7 testified and that was at the request of an evidentiary hearing. So to that
8 extent I felt that it had been tacitly waived, if not explicitly.

9 So, Ms. Henley, I understand that your attorney has discussed
10 with you the fact that based on this pending motion you have waived your
11 right to attorney-client privilege in regards to the conversations you had
12 with Ms. Brown; is that correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. And so that is one part of this motion.
15 Now, we're moving and discussing what happened during the settlement
16 conference, which is also a confidential -- or a confidential proceeding.
17 So while it would include those conversations you had with Ms. Brown,
18 it's now expanding and including conversations that you had with the
19 State. Now, you don't have a privilege between you and the State but
20 those proceedings are still confidential.

21 So in order for me to fully consider what's being raised before
22 me here today, I would need you to waive your right to confidentiality
23 regarding negotiations during and conversations during that settlement
24 conference.

25 Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And are you willing to do that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand and do you feel that you've
5 had sufficient time to discuss what you're waiving with your attorney?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And do you have any questions for me
8 or for your attorney before we continue with cross-examination here
9 today?

10 THE DEFENDANT: No, ma'am. Thank you.

11 THE COURT: All right. And so just to be clear, would you
12 agree that your waiver of both the attorney-client privilege, as well as the
13 privileged -- or confidential conversations, excuse me, with the State
14 during -- or any other party during the settlement conference, that you're
15 waiving that knowingly, willingly, and voluntarily?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And thank you.

18 And, again, I apologize both to you and Mr. Hamner for
19 interrupting. And when you're ready, Mr. Hamner, you can continue.

20 MR. HAMNER: Thank you.

21 BY MR. HAMNER:

22 Q And I'm not really going to delve too much into it but just for
23 some clarification.

24 And let me just backtrack for a second, on direct examination
25 you were asked a question about how Ms. Brown had said to you, hey,

1 listen, going into this settlement conference this might be the last chance
2 to get, kind of, an offer and if Mr. Hamner lowers the 16 to life, you may
3 want to take it.

4 Do you remember her saying something like that prior to the
5 settlement conference?

6 A Yes.

7 Q And you were asked on direct examination what effect did that
8 comment have on you and I think you said it kind of had an effect on me
9 but I still went ahead with my plea.

10 Do you remember saying that on direct examination?

11 A Yes.

12 Q So it's not that wasn't kind of the main factor, was the risk
13 about potentially being found guilty at trial of first degree murder a factor
14 for you to take the plea?

15 A No.

16 Q Okay. So why did you go ahead with it then?

17 A Because I was told that you weren't going to give me another
18 offer and --

19 Q Okay.

20 A -- that's what Ms. Brown told to me in the settlement
21 conference.

22 Q Okay. So let's talk about that, it is true though you did have
23 another choice, which was to go to trial; isn't that right?

24 A Yes.

25 Q I mean, that's always your right; isn't that true?

1 A Yes.

2 Q And that's been made clear to you not just by your attorneys
3 but by the Court when you entered your plea; isn't that correct?

4 A Yes, sir.

5 Q It was made clear to you by the settlement judge as well that
6 you were free to go to trial; isn't that correct?

7 A Yes.

8 Q But you would agree with me there were benefits to taking that
9 plea deal versus the risk of going to trial; isn't that right?

10 A I don't agree.

11 Q Okay. So there was absolutely no benefit of taking a deal
12 versus going to trial but you still went ahead and decided not to go to
13 trial; is that your testimony today?

14 A Yes.

15 Q Okay. So you knew you had a choice that you could have
16 gone to trial; correct?

17 A Yes.

18 Q It was made clear to you by your attorneys as well as every
19 judge you've talked to in this case; correct?

20 A Yes.

21 Q And you didn't exercise that choice and you took a negotiation;
22 is that correct?

23 A Yes.

24 Q Okay. I mean, no one was holding a gun to your head when
25 you elected to take the plea; correct?

1 A Based on my perspective of that letter, that I handwritten to
2 Raphael, you told me how you felt about it and I decided that it was better
3 to take the deal instead of going to trial because that was going to be
4 your final decision.

5 Q Right.

6 Because isn't it true that letter is a pretty damaging letter;
7 correct?

8 A Yes.

9 Q Okay. Because if your defense is -- and if your defense is, I'm
10 being forced into this by Andrew and you're caught writing a letter telling
11 another witness in the case to say that very same thing, that could be
12 very damaging for the defense that you were going to take to trial;
13 correct?

14 A Right.

15 Q Okay. And that was a factor that you thought about when you
16 decided to enter your plea; correct?

17 A Correct.

18 Q Because the State did have this evidence in the form of this
19 letter that directly attacked the very defense you wanted to use at trial;
20 isn't that right?

21 A Yes, sir.

22 Q Okay. And that's one of the things you thought about when
23 weighing should I risk going to trial; isn't that correct?

24 A Yes.

25 Q Okay. You were -- you talked about that you hadn't had a

1 chance to talk to your family or friends before entering in your -- enter
2 your plea; is that correct?

3 A Yes, sir.

4 Q Let's just be clear, you never asked Mary Brown for a chance
5 to get on the phone and call a family member before entering your plea;
6 did you?

7 A I didn't think I had a choice.

8 Q Okay. But my question -- that's not my question. My question
9 is, you did not ask Mary Brown, or Phil who was present, for the chance
10 to call a family member before accepting the plea; is that correct?

11 A That is correct.

12 Q Okay. And the plea that you entered, when you actually
13 entered it, I mean, about 20, 30 minutes go by where we're waiting for a
14 judge to take the plea; isn't that correct?

15 A Yes.

16 Q Okay. So it wasn't a situation where you had to say yes and
17 you immediately signed on the dotted line and the judge entered your
18 plea, there was about a half hour of waiting before you actually had to
19 stand before a judge and enter your plea; correct?

20 A Yes.

21 Q And at that point you never asked either the settlement judge
22 or Ms. Brown or Mr. Brown for a chance to speak to anyone else about
23 whether or not you wanted to take it; is that correct?

24 A Yes.

25 Q And when you stood before the sentencing judge -- or not the

1 sentencing judge, the judge who took your plea, isn't it true you were
2 asked, Is anyone forcing you to do this.

3 Do you remember being asking that question?

4 A Yes, I do.

5 Q Okay. And you answered, no, no one was forcing me; isn't that
6 correct?

7 A Yes.

8 Q You didn't lie to the Court when you said that, did you?

9 A Of course not.

10 Q Okay. So when you said to the Court, no one's forcing me to
11 do this, you were telling the truth; is that right?

12 A Yes.

13 Q And you were also asked questions along the lines of, Have all
14 of your questions been answered. Do you remember being asking
15 something to that affect?

16 A Yes.

17 Q And you indicated to the Court, before you entered your plea,
18 that, yes, the questions that you had -- any questions that you had were
19 answered; isn't that right?

20 A Yes, sir.

21 Q Okay. And so you weren't lying to the Court at that time, you
22 were being honest about that fact; is that correct?

23 A Yes, sir.

24 Q So let's talk then a little bit about the statement from the
25 informant in CCDC for a minute; okay. You were aware of the existence

1 of this person very early on in the case, probably as early as December
2 of 2017; is that correct?

3 A Yes.

4 Q And you entered your plea on March of 2020; isn't that right?

5 A Yes, sir.

6 Q So that is a little over two years you had known about the
7 existence of the informant; isn't that correct?

8 A Correct.

9 Q It's over two years that you knew that a recording existed of
10 that interview; correct?

11 A Yes.

12 Q And I know you said on direct examination a few months after
13 Michael Karstedt did the interview with the informant you became aware
14 that there was a transcript; correct?

15 A Yes.

16 Q So you've probably known that a transcript existed probably
17 about at least a year and a half before you entered your plea; would that
18 be fair?

19 A Yes.

20 Q Okay. So isn't it true you never asked Mary or Michael or
21 Mr. Brown, Phil, to play you the recording; isn't that correct?

22 A Yes.

23 Q Okay. So even though you had over two years you never
24 asked to have the recording played; is that right?

25 A Yes.

1 Q Did you get the impression that Mr. Brown, Ms. Brown, or
2 Mr. Karstedt wouldn't have played the audio for you if you had asked?
3 Like, based on your interactions with them and your relationship, do you
4 think they would have refused to do that or do you think they would have
5 if they could have?

6 A No, they would played it if I --

7 Q No -- I'm sorry, say that again.

8 A They would have played it if I would ask.

9 Q Okay. But you didn't ask.

10 And then when you did ask at least for the transcript
11 Mr. Karstedt had said to you, hey, look, you know, for safety reasons it
12 may not be a good idea; is that correct?

13 A Yes.

14 Q Just to be clear for the record, you didn't ask Mary Brown or
15 Mr. Brown after that fact, hey, is there any way I can possibly get a copy
16 of that transcript?

17 A No.

18 Q Okay. So there is no way for Mary Brown or Phil Brown to
19 know that you may have wanted to read that transcript 'cause you didn't
20 specifically ask them; would that be fair?

21 A Yes.

22 Q I mean, other than -- okay.

23 But did you feel satisfied at the time that that Mr. Karstedt and
24 Ms. Brown or Mr. Brown had filled you in at least on what generally the
25 informant was talking about in his interview?

1 A Somewhat, yes.

2 Q Okay. 'Cause wasn't the main -- when you had a chance to
3 finally review the transcript isn't the most important thing that he is talking
4 about in there the fact that Andrew had forced you into doing this?

5 A No.

6 Q Okay. What's the most important fact that the informant relays
7 in your mind?

8 A That he doesn't even know me.

9 Q Okay. But as far as it goes to your defense, I understand that's
10 an important point, what is the information that he knows about that's so
11 important?

12 A Details of the case.

13 Q Okay. And what's the most important detail in your mind, is it
14 that you were forced?

15 A No, that I had no idea my brother has so much hatred towards
16 me.

17 Q Okay. So that for you is the most important detail.

18 Isn't it true that Michael Karstedt and Ms. Brown relayed to you
19 that the informant knew that your brother didn't care for you?

20 A Most definitely.

21 Q Okay. So that wasn't -- the thing that you thought was most
22 important was actually relayed to you by Mr. Karstedt and Ms. Brown; is
23 that correct?

24 A Yes.

25 Q Okay. And they also relayed to you that the informant had said

1 that Andrew Franco had admitted to forcing you into doing this as well;
2 isn't that correct?

3 A He said nothing about Franco. He said only about Andrew.

4 Q I apologize, I misspoke, I meant Andrew Henley, I'm sorry
5 about that. That Andrew Henley had admitted that he had forced you into
6 doing it; correct?

7 A Yes.

8 Q And that was really, I think you had admitted on direct, really
9 the main thrust of what your defense was going to be in the case anyway;
10 is that correct?

11 A Yes, sir.

12 Q And that was relayed to you by Ms. Brown and Mr. Karstedt
13 over the two years that you knew about the informant; isn't that right?

14 A Yes.

15 Q And just to be clear when you did your -- when you were in the
16 settlement conference you never said to either the settlement judge or
17 Mr. or Mrs. Brown that, listen, you know, I don't feel comfortable about
18 taking this plea until I have a chance to read the transcript.

19 You never said anything like that; correct?

20 A No, I didn't.

21 Q Okay. And when you were entering your guilty plea and you
22 were asked if, you know, if you had any other questions or was there
23 anything else that, you know, you needed, you never said anything to the
24 effect of, you know, I really want to be able to listen to that interview of
25 the informant or read the transcript before I take the plea.

1 You never said anything like that to the judge, did you?

2 A No.

3 Q Okay.

4 MR. HAMNER: I have no further questions at this time.

5 THE COURT: All right. Thank you, Mr. Hamner.

6 Mr. Gaffney, redirect examination when you're ready.

7 MR. GAFFNEY: Thank you, Judge.

8 **REDIRECT EXAMINATION**

9 BY MR. GAFFNEY:

10 Q Ms. Henley, sticking with the statement did all of the knowledge
11 you had about the contents of the statement come from either Ms. Brown
12 or Mr. Karstedt?

13 A Not all.

14 Q Where else did you learn about what was in the statement?

15 A Physically reading it.

16 Q No, I'm sorry, I mean -- let me backup.

17 Back in 2018 and 2019 when it first came to light that this
18 person existed and you started having conversations with Ms. Brown and
19 Mr. Karstedt about the contents of the interview, did all of the information
20 you have about the contents of that interview come from either
21 Ms. Brown or Mr. Karstedt?

22 A Yes.

23 Q And did you have any reason to believe that what they told you
24 would be any different than what you would hear in a recording of that
25 statement?

1 A No.

2 Q Did you have any reason to believe that what they told you
3 would be different than what you would see in a transcript of that
4 statement?

5 A No.

6 Q And when you finally got a copy of the statement and read it for
7 yourself were you surprised by the contents that you read?

8 A Yes.

9 Q And is that because it contained information that was not
10 conveyed to you, either by Mary Brown or Mr. Karstedt?

11 A Yes.

12 Q Okay. So is it fair to say one of the reasons you didn't ask to
13 hear a recording is because you thought you already knew the contents
14 of the interview?

15 A Yes.

16 Q And same for the transcript, is it fair to say you didn't ask for a
17 copy of the transcript, at least not from Ms. Brown, because you already
18 thought -- you thought you already knew what was in it?

19 A Yes.

20 Q And just to be very clear for the record, did you ask
21 Mr. Karstedt for a copy of the transcript?

22 A Yes, I did.

23 Q And he refused to give it to you because he was trying to
24 protect the informant; is that fair?

25 A I don't think he refused to give it to me. He just verbally said

1 that out of the safety for this inmate it would be best for me not to give it
2 to you and I agreed with him.

3 Q Okay. And part of the reason -- is part of the reason that you
4 didn't continue to ask him for a copy of that statement is because you
5 thought you already knew what was in it?

6 A Correct.

7 Q Going back to the offers that were extended to you in 2018 and
8 2019, on cross-examination, and direct examination too, I think you had
9 indicated that you did not want to take a life sentence between 2018 and
10 2019; is that fair?

11 A Yes.

12 Q Does that mean you would not have considered taking a life
13 sentence had Ms. Brown conveyed that 11 to life offer or a 13 to life
14 offer?

15 A Repeat that for me, please.

16 Q Because -- even though you had told her I'm not going to
17 accept a life tail on any offer would you still have considered that 11 to
18 life offer or 13 to life offer if it was conveyed to you?

19 A Yes.

20 Q Okay. So even though you had given a blanket, kind of,
21 recommendation that you didn't want anything with a life tail you still
22 would have considered an offer that had a life tail?

23 A Yes.

24 Q And to be clear, Ms. Brown -- well, nobody on the defense
25 team conveyed to you between 2018 and 2019 that the State had

1 extended an offer of 11 to life; is that accurate?

2 A Yes.

3 Q And is that also accurate as to the 13 to life sentence?

4 A Yes, sir.

5 Q Okay. During the settlement conference -- well, you had
6 testified on cross-examination, during the settlement conference you
7 didn't think you had the option to call a family member to ask them about
8 the plea agreement; is that fair?

9 A Yes, sir, yes.

10 Q And is that why you didn't ask to talk to a family member?

11 A Yes.

12 MR. GAFFNEY: Okay. I'll pass the witness, Your Honor.

13 THE COURT: All right. Thank you.

14 Mr. Hamner, any recross-examination?

15 MR. HAMNER: Yes, it's pretty limited.

16 **RECROSS-EXAMINATION**

17 BY MR. HAMNER:

18 Q You were asked on redirect examination that you might have,
19 quote/unquote, considered taking an 11 to life or a 13 to life; is that
20 correct?

21 A Yes.

22 Q Okay. But let's be clear about something, you said
23 unequivocally that from early on in the case, from December of 2017 to --
24 leading up to the time of the letter, you never would have taken a life tail
25 because that was too much; correct?

1 A Yes.

2 Q Okay. So I think what you had said, just to get -- so we can be
3 clear about it, if I remember your testimony correctly, what you said was
4 after March of '19, after the letter, you would have considered an 11 to
5 life or a 13 to life; correct?

6 A Yes.

7 Q And when I say, letter, I'm talking about the letter that you
8 wrote to Mr. Cardoso that was discovered in March of 2019; correct?

9 A Yes.

10 Q But prior to the discovery of that letter under no circumstances
11 would you have accepted any offer that had a life tail; correct, prior to the
12 discovery of the letter; isn't that correct?

13 A I would have considered it if it were brought to my attention.

14 Q Okay. That's not your -- that was not your testimony on
15 cross-examination, was it?

16 A No.

17 Q Okay. And it wasn't your testimony actually at the very
18 beginning of recross here, was it?

19 A No.

20 Q Okay. But now you've changed your answer; okay.

21 I'm going to --

22 MR. HAMNER: I have no further questions.

23 THE COURT: All right. Thank you.

24 Any follow-up, Mr. Gaffney?

25 MR. GAFFNEY: No, Your Honor.

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EXAMINATION BY THE COURT

THE COURT: I do have one question, Ms. Henley, and that is in regards to talking to your family or friends. What impact, if any, would have discussing the offer with your family and friends have made on your decision to take the offer that was conveyed during the settlement conference?

THE DEFENDANT: A very lot because they're very supportive. And I also do have five children. So it makes a lot difference if I would have spoken to my family and my two older sons.

THE COURT: And when you say it would have make a lot -- a big difference, and I changed your word, so I apologize for that, in what way would it have made a difference?

THE DEFENDANT: The time. Taking a 15 to life I don't see no benefit in taking -- I don't see the benefits of taking that, Your Honor, honestly, when you have five children.

THE COURT: So, okay, but that also is a little bit inconsistent with what you said during your examination in that one of the reasons you took it was because it was -- you thought it was beneficial and not worth the risk of going to trial.

So was it that you didn't want to risk what would happen if you were convicted or was it that you wanted to benefit from -- or you want to just -- I mean, I understand you wanted more time to talk to your family. Explain that to me.

THE DEFENDANT: If I would have went to trial, which I was already told that if I went to trial I would have got life. So taking the deal I

1 thought it was a good idea and for the best from what my lawyer said.
2 Because honestly I don't have no experience in -- in criminal, you know,
3 so.

4 THE COURT: Sure.

5 THE DEFENDANT: I thought that --

6 THE COURT: Sure.

7 THE DEFENDANT: -- I thought it was best what my lawyer
8 said, ma'am.

9 THE COURT: Okay. All right. So you -- at the time you were
10 trusting that the risk of a life sentence, with a period at the end, versus a
11 15 to life it made sense to do the 15 to life; is that fair to say?

12 THE DEFENDANT: Correct. And they also let Mary Brown
13 know that I was unsure of what I was doing and she even verified that as
14 well.

15 THE COURT: And when you say you're unsure what you were
16 doing, do you mean that you were hesitant to take the plea or that you
17 didn't understand what was happening?

18 THE DEFENDANT: I honestly really didn't understand what
19 was happening. I was pretty much indecisive.

20 THE COURT: Okay. So those are two different questions
21 though, being indecisive, I understand, because that's a big deal to take
22 an offer but not understanding is something else and we're not here to
23 address whether or not you understood what was happening. There was
24 a whole exchange, do you understand what's happening here today, how
25 old are you, you know, how far did in school.

1 Do you remember all those questions that were asked of you?

2 THE DEFENDANT: Yes

3 THE COURT: Okay.

4 THE DEFENDANT: But it was my first time ever taking a
5 plea --

6 THE COURT: Sure.

7 THE DEFENDANT: -- in my life

8 THE COURT: And that's reasonable.

9 Okay. So I don't want to -- I don't want to put words in your
10 mouth and I don't want to misstate what your testimony is here today, is it
11 fair to say that what you're saying is you were hesitant because it was
12 such a big sentence, the 15 to life?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay.

15 All right. And I asked a number of questions, so I'll start with
16 Mr. Gaffney, any follow-up you would like in light of the question I posed?

17 MR. GAFFNEY: Just a couple, Your Honor.

18 THE COURT: Sure, please do.

19 **FOLLOW-UP EXAMINATION**

20 BY MR. GAFFNEY:

21 Q Just to be clear, Ms. Henley, after you entered your plea, did
22 you have an opportunity to speak to anybody in your family or any of your
23 friends about whether you made the right decision to enter into that plea
24 agreement?

25 A No.

1 Q Okay.

2 MR. GAFFNEY: Okay. That's all, my only question, Judge.

3 Thank you.

4 THE COURT: Thank you.

5 And, Mr. Hamner, any follow-up based on my questioning?

6 MR. HAMNER: No, Your Honor.

7 THE COURT: All right. All right. Well, thank you and thank
8 you, Ms. Henley.

9 Mr. Gaffney, do you have any additional witnesses to call?

10 MR. GAFFNEY: No, Your Honor.

11 THE COURT: All right. Mr. Hamner, are you going to be
12 calling any witnesses this afternoon?

13 MR. HAMNER: No, Your Honor.

14 THE COURT: Okay. All right. Well, thank you both for the
15 presentation of evidence this afternoon. I'm going to take this under
16 advisement and you will get a minute order with my decision.

17 Let's see here, I'm going to issue that minute order on or
18 before April 1st of 2021, which is a Thursday. It will come out off my
19 chambers calendar. So there won't be a hearing but you'll get a decision.
20 And then certainly depending on what happens from there there could be
21 further instructions.

22 MR. GAFFNEY: And, Your Honor --

23 MR. HAMNER: So --

24 THE COURT: Let me start with Mr. Gaffney.

25 MR. HAMNER: Go ahead, sir.

1 MR. GAFFNEY: Your Honor, can we make the recorded
2 statement from the informant a part of the Court's record under seal.

3 THE COURT: Mr. Hamner, do you have any objection to that?

4 MR. HAMNER: No.

5 THE COURT: And you want the recording or the transcript?

6 MR. GAFFNEY: The transcript, I think.

7 THE COURT: All right. So the transcript is filed under seal
8 already in Odyssey. We'll make that Court's Exhibit Number 1. That was
9 filed -- and do you want to keep that sealed?

10 MR. GAFFNEY: Yes, please.

11 THE COURT: We will keep it sealed. Just for the record, for
12 my clerk, December 3rd of 2020, that -- that will remain sealed. It will
13 become Court Exhibit 1 for purposes of this evidentiary hearing.

14 MR. GAFFNEY: And --

15 MR. HAMNER: And --

16 MR. GAFFNEY: -- one last thing, I'm sorry.

17 MR. HAMNER: Sorry, go ahead, Mr. Gaffney.

18 THE COURT: Sure.

19 MR. GAFFNEY: The investigator, Michael Karstedt, I just
20 wanted to make it a part of this record that he did pass away. I would
21 have loved to have called him as a witness, but obviously he was
22 unavailable.

23 I brought a copy of his obituary from the Las Vegas Review
24 Journal, if the Court wants to make that a part of the record or just wants
25 to take judicial notice. He was unavailable as a witness.

1 THE COURT: I'll take notice that he was unavailable.

2 MR. GAFFNEY: Okay.

3 THE COURT: And I'm certainly am sorry to hear of his
4 passing. You're an officer of the court, I trust you, I trust Ms. Brown;
5 certainly I understand that you would have wanted to call him as a
6 witness. And so I note that.

7 Thank you.

8 MR. GAFFNEY: Thank you, Judge.

9 THE COURT: Mr. Hamner, anything you would like to add?

10 MR. HAMNER: I was just wondering if the Court was going to
11 take argument from the parties based on the testimony that came out at
12 the evidentiary hearing or --

13 THE COURT: I mean, I don't think I need --

14 MR. HAMNER: -- that was -- that was the only thing.

15 THE COURT: -- I don't think I need argument.

16 MR. HAMNER: Okay.

17 THE COURT: But I'm happy --

18 MR. HAMNER: Okay.

19 THE COURT: -- I'm happy to hear argument so long as it's
20 brief because I know CCDC has to transport Ms. Henley.

21 So if we -- or the alternative is that I set up a separate hearing
22 for oral argument.

23 MR. HAMNER: Well, I mean, it -- whatever Mr. Gaffney's
24 preference is.

25 MR. GAFFNEY: Well, I think if we were going to have a

1 separate argument, I'd like to get a copy of the transcript of this hearing
2 as opposed to doing it today 'cause there's a lot of information that came
3 out --

4 THE COURT: Sure.

5 MR. GAFFNEY: -- between Ms. Brown --

6 THE COURT: Yeah, we were here for about three hours, fair
7 enough.

8 So do you want -- so, let me ask, Mr. Gaffney, would you like
9 oral argument?

10 MR. GAFFNEY: Yes, please.

11 THE COURT: All right. Mr. Hamner, would you like oral
12 argument?

13 MR. HAMNER: I mean, I'll submit it to the Court. I would
14 just --

15 THE COURT: All right. Well, based on mister -- and that's
16 fair -- fair inquiry, Mr. Hamner.

17 Based on Mr. Gaffney's request, then we -- strike my previous
18 pronouncement in terms of putting this on my chambers calendar. We'll
19 hear argument. We'll have to do it in another special setting though;
20 okay, because I can't do it at the end of my calendars with -- we have a
21 time limitation.

22 MR. GAFFNEY: Well, if -- I'm sorry, if Mr. Hamner's going to
23 submit it to the Court, I'll submit it to the Court as well. I was just saying
24 that if we are going to have oral argument, I'd like to have a copy of the
25 transcript.

1 THE COURT: In the alternative you both could do written
2 closing remarks, and, you know, I would request that it be limited to ten
3 pages. I think if you get the transcript ahead of that; right, and then I can
4 consider argument on paper as an alternative.

5 MR. HAMNER: I mean, honestly, Your Honor, I am fine with
6 submitting it. I just wanted to make -- my only concern is I try to look
7 things a little bit further down the road and I was only concerned about if
8 both parties weren't fine with the chance to argue, then that might be
9 somehow looked with some criticisms like going down the road.

10 But if Mr. Gaffney's fine with submitting it, I'm fine with
11 submitting it.

12 THE COURT: I'm very flexible. I'm open to what the parties,
13 you know, would like. So, Mr. Gaffney.

14 MR. GAFFNEY: Why don't we have oral argument. I think
15 Mr. Hamner is making a very wise --

16 THE COURT: Observation?

17 MR. GAFFNEY: -- observation.

18 THE COURT: Sure.

19 MR. GAFFNEY: And we should do it and protect the record.

20 THE COURT: Fair enough.

21 So then I am going to set this for status on Wednesday,
22 March 24th at 11 o'clock in the morning and that is so we can make sure
23 we don't -- it doesn't fall through the cracks and we get that oral
24 argument set. So between now and the 24th, please reach out to
25 chambers so we can get the oral argument date set, we can let

1 Ms. Henley know that that date has been set up, and we can go from
2 there.

3 MR. GAFFNEY: Okay.

4 THE COURT: All right.

5 MR. HAMNER: Thank you, Your Honor.

6 THE COURT: I thank you both very much.

7 MR. GAFFNEY: Thank you.

8 THE COURT: And, Ms. Henley, you take care of yourself.

9 We'll see you in a couple of weeks.

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you.

12 THE CORRECTIONS OFFICER: Thanks.

13 THE COURT: Thank you.

14 MR. GAFFNEY: Thank you.

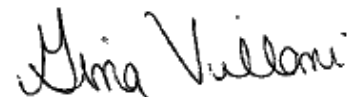
15 THE COURT: Thanks, guys.

16 MR. HAMNER: Thank you, Your Honor.

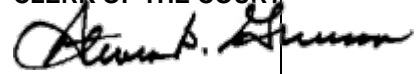
17
18 [Hearing concluded at 4:12 p.m.]

19 * * * * *

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

23 

24 Gina Villani
25 Court Recorder/Transcriber
District Court Dept. IX



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DORIE REGINA HENLEY,
Defendant.

CASE#: C-17-327585-1
DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE
FRIDAY, APRIL 16, 2021

**RECORDER'S TRANSCRIPT OF HEARING:
STATUS CHECK: SUPPLEMENTAL BRIEFING
RE: EVIDENTIARY HEARING**

APPEARANCES VIA VIDEOCONFERENCE:

For the State: CHRISTOPHER S. HAMNER, ESQ.
Chief Deputy District Attorney

For the Defendant: LUCAS J. GAFFNEY, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

1 Las Vegas, Nevada, Friday, April 16, 2021

2
3 [Hearing commenced at 1:48 p.m.]

4 THE COURT: All right. We're going to call our last matter,
5 that's Case C327585, State of Nevada versus Dorie Henley.

6 MR. GAFFNEY: Good afternoon, Your Honor, Lucas Gaffney
7 on behalf of Ms. Henley, who is present at CCDC by videoconference.

8 THE COURT: All right. And good afternoon to you.

9 And good afternoon, Ms. Henley.

10 MR. HAMNER: And --

11 THE DEFENDANT: Good afternoon.

12 THE COURT: Mr. Hamner, are you here on behalf of the
13 State?

14 MR. HAMNER: I am.

15 THE COURT: All right. And good afternoon to you as well.

16 All right. So we are here for a status check. And, Counsel, I'm
17 a little -- well, perhaps I just need some clarity. I had asked the parties to
18 file a supplemental brief, not to exceed ten pages, and then I didn't see
19 that either side filed and so perhaps there was some confusion or maybe
20 there was an anticipated request today.

21 So let me start with the State, what's the State's position
22 regarding what we're -- we're moving forward -- or what we're doing with
23 this case today?

24 MR. HAMNER: I honestly was left with the impression that we
25 weren't doing any briefing; that we could respond orally. I don't know if

1 Mr. Gaffney had the same feeling on that but that's why I didn't submit a
2 brief. I just figured we were going to have a chance to at least get the
3 transcript and then we can make our arguments based off of our
4 recollection from our notes and what was in the transcript.

5 So I apologize for not filing something but that was -- that was
6 my perspective on the instructions at the end of the evidentiary hearing.

7 THE COURT: Okay. Fair. I did discuss alternatively
8 submitting written briefing. And so perhaps that's where the confusion
9 lies.

10 Let me hear from Mr. Gaffney.

11 Thank you, Mr. Hamner.

12 MR. GAFFNEY: Your Honor, that was my understanding as
13 well. I know that -- I saw in the court minutes just today that there was an
14 indication that the Court was expecting briefing, but then I also looked at
15 the end of the transcript from the evidentiary hearing and I think it was
16 the parties understanding that we were just going to deliver our
17 arguments today orally rather than through writing.

18 THE COURT: Okay. All right. And that's fine.

19 So let me then turn back -- let me just confirm with both parties,
20 you're prepared to give closing argument today; is that correct,
21 Mr. Hamner?

22 MR. HAMNER: Yes, Your Honor.

23 THE COURT: And Mr. Gaffney?

24 MR. GAFFNEY: Yes, Your Honor.

25 THE COURT: All right. Then let's get started. We're going to

1 start with Mr. Gaffney as this is your motion. I will allow the State to offer
2 any opposition, closing argument, and Mr. Gaffney you will then be able
3 to provide any related rebuttal.

4 So when you're ready.

5 MR. GAFFNEY: Thank you, Your Honor.

6 So the motion that we put forward, the motion to withdraw
7 Ms. Henley's plea agreement, I believe that the governing authority that
8 the Court needs to make its decision under is *Stevenson v State* and that
9 is essentially asking whether or not there's a fair and just reason to allow
10 Ms. Henley to withdraw her plea. And the Court has wide latitude to
11 decide what constitutes a fair and just reason.

12 And in our motion we have put forward three issues for the
13 Court to consider. The first issue was in regard to an early offer that it
14 was our position that the offer wasn't conveyed.

15 And one of the things I wanted to clear up is that in my initial
16 motion I'd only indicated that there was an offer of 11 to life that wasn't
17 conveyed. I think testimony at the evidentiary hearing actually supports
18 that there were two offers that were at least -- are the subject of this
19 issue. There is an 11 to life offer and a 13 to life offer. And so I would
20 ask the Court to expand our claim to consider not only that 11 to life offer
21 but also the 13 to life offer.

22 And as the Court knows, counsel always has a duty to convey
23 any formal offers that the State conveys that are favorable to the
24 defendant and obviously the 11 to life offer and the 13 to life offer would
25 be more favorable than the 15 to life offer that Ms. Henley ultimately

1 accepted. And if counsel allows these offers to expire without advising
2 the defendant that they exist, that constitutes ineffective assistance under
3 *Missouri v Frye*. And so as the defense we need to demonstrate that
4 there was a reasonable probability that these offers would have been
5 accepted had effective assistance been rendered.

6 And there's also two other factors considered under that
7 analysis and that's whether the plea would have been entered without the
8 State cancelling it and whether the Court would have accepted it. I'm
9 only going to address the first factor. I would submit the second factors
10 on the arguments that are already in my motion.

11 And so as the Court knows, during the evidentiary hearing
12 previous counsel, Mary Brown, had indicated that she recalled getting
13 both of the 11 to life offer and the 13 to life offer. She recalled conveying
14 both of those offers and she recalled that Ms. Henley had rejected those
15 offers because the amount of time being contemplated by those offers
16 was too high for Ms. Henley.

17 And if the Court recalls, Ms. Henley had testified that neither
18 one of those offers had been conveyed to her and she didn't learn of
19 them until after the offers had expired. She learned that one during the
20 settlement -- she learned about one at the settlement conference and
21 then apparently learned about the 13 to life offer after the settlement
22 conference and well after she had already entered into a plea agreement.

23 As far as demonstrating a reasonable probability that these
24 offers would have been accepted, I would direct the Court's attention to
25 Ms. Henley's testimony on page 54 of the evidentiary hearing transcript

1 where she indicates it was possible she would have accepted the offers
2 before they were revoked if she had believed that those were the only
3 offers available. And at the time those were the only offers available and
4 from that point forward in the case the offers only -- well, the amount of
5 time being contemplated by the offer she received only increased.

6 And Ms. Henley also testified that she still would have
7 considered these offers even though she'd indicated to counsel that she
8 didn't want an offer that contained a life tail. That's found on page 81 of
9 the evidentiary hearing transcript.

10 And so I certainly understand that there is testimony to the
11 effect that Ms. Henley wouldn't have accepted the offers prior to them
12 being revoked. But based on her testimony that she would have
13 considered and possibly accepted the offers, I would submit there's a
14 reasonable probability she would have accepted them had they been
15 properly conveyed to her.

16 The second issue that we had addressed in our motion was
17 that counsel had failed to provide Ms. Henley with information from this
18 interview with the informant that bolstered her defense of duress. And if
19 you recall, Mary Brown had testified that the duress defense was the best
20 defense Ms. Henley had. And that we believe it was a defense that
21 would have been a complete defense to all the charges that she was
22 facing.

23 Ms. Henley testified that she was aware there was an audio
24 recording of the interview with the informant. She was ultimately made
25 aware that there was a transcript of the interview with the informant. She

1 had asked for a copy of the transcript and was told by the investigator, "I
2 don't think it's a good idea to give that to you because we want to protect
3 our informant." And so she never received it. She asked for a copy but
4 she never received it. She didn't make additional requests because she
5 believed that she already knew what the contents of that interview was
6 based on conversations that she had with the investigator, Mr. Michael
7 Karstedt, and then also with Mary Brown, her counsel. But then when
8 she obtained a copy of the interview through me, after her plea had
9 already been entered, she learned that it contained a lot more information
10 that supported her duress defense than what she was initially led to
11 believe.

12 THE COURT: So, Mr. Gaffney --

13 MR. GAFFNEY: And some of the things that --

14 THE COURT: -- I'm sorry to interrupt you, but I do have some
15 questions about that.

16 MR. GAFFNEY: Go ahead.

17 THE COURT: Because if I recall correctly the testimony that
18 was adduced at the evidentiary hearing, in terms of this transcript and the
19 contents thereof and its interplay with the defense duress, if I recall
20 correctly, the testimony was something that the most important part of the
21 transcript was not that she was forced but essentially the complete denial
22 of even knowing her. And so I'm a little confused as to how that would
23 support a defense of duress.

24 So could you shed some light on that for me? Or am I
25 misinterpreting that --

1 MR. GAFFNEY: Well, I think --

2 THE COURT: -- and if that's the case, correct me.

3 MR. GAFFNEY: -- well, I think that she did say that that was
4 important. But one of the things that she also indicated was that it
5 contained information regarding her strained relationship with her
6 brother, --

7 THE COURT: Mm-hmm.

8 MR. GAFFNEY: -- and essentially what her brother's
9 motivation was for kind of coercing her into this robbery. And if you read
10 the transcript of the informant's interview, and then you also take a look
11 at Ms. Henley's statement, there's nuances that are not -- that I'm
12 submitting to the Court in this argument -- that were not captured when
13 defense counsel and the interviewer -- or sorry, the investigator gave her
14 a summary of the interview.

15 So even though that was -- I remember the testimony where
16 Ms. Henley said, yeah, this is the most important factor.

17 THE COURT: Mm-hmm.

18 MR. GAFFNEY: There were also other things that she came to
19 learn about the interview that were important and effected whether or not
20 she would have actually entered into the plea. There was a lot of
21 information in that interview that was consistent with the statement that
22 she had given to the police.

23 And so had she known prior to entering her plea that not only --
24 I mean, she knew that there was a high likelihood her statement was
25 going to be used at trial and so potentially this interview would have

1 bolstered that statement. So it's not just coming from her in a sort of a
2 self-serving statement but then she has this independent witness also
3 coming forward and saying a lot of the things that she had said to the
4 police during that initial statement are true.

5 And so not only was it that -- did it have to do -- was it
6 important to Ms. Henley about her relationship with her brother, and the
7 point that the Court pointed out, but there was also all these other factors
8 that Ms. Henley was able to -- well, that she read in the transcript of this
9 interview after she had entered her plea and she realized, oh, I wish I
10 would have known all of this stuff prior to entering the plea.

11 And so the bottom line is that had she been given a copy of the
12 transcript, or even just received more information from the investigator
13 and her counsel more than sort of a general summary, had she known
14 how closely that interview aligned with the statement she gave she would
15 have insisted on going to trial rather than entering a plea. And it's really
16 a matter of whether she was able to make an informed decision between
17 trial and entering the plea.

18 And so our argument to the Court is without being able to know
19 the details of that interview, and the nuances of the interview, that she
20 wasn't able to make an informed decision and therefore we're saying
21 that's a fair and just reason to allow her to withdraw her plea.

22 THE COURT: I'm going to drill down a little bit on that, in terms
23 of the nuances. How the nuances made a difference and that -- because
24 that's a pretty broad stroke and so I need a little bit more information.

25 MR. GAFFNEY: So, well, the -- what I would argue is that

1 the -- there's nuances in regard to their relationship.

2 THE COURT: Okay.

3 MR. GAFFNEY: If you look at Ms. Henley's -- and, I mean, the
4 relationship between her and her brother. If you look at Ms. Henley's
5 testimony, essentially -- let me see if I can find it -- what she said was --
6 what she said in terms of what she was told about the interview is pretty
7 narrow. And I'm looking at -- I think it's on page 62. And one of the
8 things that she said was that there were details about her relationship
9 with her brother and essentially that goes to his motivation as to why he
10 was trying to coerce her into the robbery. So that was something that
11 was a little bit more nuance than just, oh, I had a bad relationship with my
12 brother. Because the interview goes into -- more into Andrew Henley's
13 motivations for why he was doing what he was doing.

14 And then -- there's not much else that she was told about what
15 was contained in the interview, other than it does support your duress
16 defense that he's the one that was coercing you into doing these kinds of
17 things.

18 Excuse me, sorry, I just need to pull out a copy of my outline.

19 THE COURT: No problem.

20 MR. GAFFNEY: And so there were -- sorry. There was
21 additional information contained in the interview so -- I'm sorry, Judge,
22 just give me a second.

23 THE COURT: No, that's all right. Take your time.

24 MR. GAFFNEY: Okay. So there was additional things, such
25 as it was Andrew who helped to identify the victim and it was because of

1 his interest, his love interest essentially in Dorie Henley and also because
2 the victim had money, that wasn't something that was conveyed to
3 Ms. Henley during the summary from the investigator and from counsel.
4 That the purpose of the robbery was to obtain money to pay the
5 co-defendant Franco's rent. And that's information that also wasn't
6 conveyed in the summary.

7 The, I guess, extent of the sibling rivalry between Ms. Henley
8 and Mr. Henley, and that's what I mean by sort of the nuances is it's one
9 thing to say, yeah, we had a bad relationship but it's another thing to
10 know how that relationship effected Mr. Henley's motivation.

11 Also the interview mentions that the plan going into the robbery
12 was just to rough up the victim and try to take his property, not to
13 ultimately stab him and kill him. And also that Mr. Henley was in
14 communication with Ms. Henley as this event was folding by -- unfolding
15 by text message and that Ms. Henley was held hostage essentially by
16 Mr. Henley and Mr. Franco after the event had occurred because they
17 wanted to make sure she didn't talk to the police.

18 So these are all things that were not conveyed to Ms. Henley
19 during the summary that she received from counsel and from the
20 interviewer -- or I'm sorry, the investigator. And those are the kinds of
21 things that she would have wanted to know prior to entering her plea
22 because it would have changed her perspective on how viable her
23 defense of duress would be.

24 And I think that's -- I think though that's all I have as to that
25 issue.

1 THE COURT: All right.

2 MR. GAFFNEY: Unless the Court has additional questions
3 about that information.

4 THE COURT: I don't think so. Not at this time.

5 And then I know there was part three. So I know you haven't
6 touched on that yet. So when you're ready.

7 MR. GAFFNEY: Sure.

8 So the third claim was that Ms. Henley didn't have enough time
9 to consider the offer. And as with all of these issues, there's competing
10 testimony between what Mary Brown had said and what Ms. Henley had
11 said. Mary Brown testified that there was maybe a 15 minute ceiling,
12 maximum, on the amount of time Ms. Henley had to make a decision
13 from when the offer was put on the table to when she accepted it.
14 Ms. Henley said, no, that was more like two minutes. It seems like both
15 witnesses agreed that there was like a 30 minute window of time while
16 the State was preparing the paperwork for the plea agreement and also
17 trying to procure a judge to take the plea.

18 And during that time Ms. Henley would have wanted to speak
19 to her family and try to see what their perspective was on the plea
20 agreement. She didn't know she had that option. So it wasn't, as far as
21 she knew, it wasn't available to her.

22 And then I think through the testimony that we adduced at the
23 evidentiary hearing there was some additional circumstances that would
24 have imposed some physiological pressure, if you will, on Ms. Henley,
25 such as Ms. Brown indicating was likely going to be her last chance to

1 take a plea agreement. And she was advising her she should take the
2 plea agreement, because if she goes to trial there's a very high likelihood
3 you're going to get convicted and serve a larger sentence.

4 Ms. Henley also has a lack of -- well, a relative lack of criminal
5 history. This is the first real plea agreement that she's ever entered into.
6 So this is the first time she's been through this process before.

7 And then there was also testimony from both Ms. Brown and
8 Ms. Henley that Ms. Henley was -- even after receiving the offer -- was
9 reluctant to accept it. And so with all of this information swirling around
10 Ms. Henley's head she felt as if she didn't have enough time to give that
11 offer meaningful consideration before she accepted it.

12 And so, Your Honor, taking all of these issues in accumulation,
13 not just individually, but all in accumulation, I believe that we've
14 presented three fair and just reasons to allow her to withdraw her plea.

15 THE COURT: All right. And I have a question in regards to the
16 third part, understanding that it's information that is often not -- an
17 individual doesn't want to receive, and I understand why, is it fair to say
18 that Ms. Brown was doing her job by conveying the information that
19 potentially this will be the last time, there would be no other offers, and
20 that if she were to go to trial she in fact could face a higher sentence.

21 Those are both two true statements; correct?

22 MR. GAFFNEY: Yeah, absolutely.

23 THE COURT: All right.

24 MR. GAFFNEY: But I think that it had the effect on Ms. Henley
25 of putting her in a position, or at least a mental state, where she felt like

1 she didn't have a choice, that it was basically rather than a choice
2 between a plea agreement and trial, there's a choice between a lesser
3 sentence and a greater sentence.

4 THE COURT: Okay. All right. All right. I think that's my only
5 questions.

6 MR. GAFFNEY: Without the possibility I suppose of an
7 acquittal.

8 THE COURT: Gotcha.

9 Of course that would assume that Ms. Brown would think there
10 was a chance of an acquittal and we don't have any information -- or at
11 least I don't have any information of that before me at this time.

12 MR. GAFFNEY: I believe she testified though --

13 THE COURT: Okay. But I understand your --

14 MR. GAFFNEY: -- she believed there was --

15 THE COURT: -- your argument is essentially --

16 MR. GAFFNEY: -- a high likelihood.

17 THE COURT: I'm sorry.

18 MR. GAFFNEY: I believe Ms. Brown had testified that she
19 believed there was a high likelihood that Ms. Henley would be convicted
20 at trial.

21 THE COURT: Yeah, yeah.

22 And I don't want to put words in your mouth, but is it fair to say
23 that you're essentially arguing that it had a chilling effect on her
24 decision-making; is that fair to say?

25 MR. GAFFNEY: In addition to the other factors; yes, Your

1 Honor.

2 THE COURT: Okay. All right.

3 All right. Thank you, Mr. Gaffney. I appreciate that.

4 Let me turn to Mr. Hamner, when you're ready.

5 MR. HAMNER: So I'll kind of address them in order. You
6 know, the law's pretty clear, it's a -- you're evaluating the totality of the
7 circumstances, you're evaluating not only the arguments put forth by
8 counsel, the manner in which Ms. Henley testified about these facts,
9 you're comparing it to her lawyer and what she had to say, and when you
10 look at the totality of the circumstances none of these claims being raised
11 by the defense warrant that she should be able to withdraw her plea.

12 Let's kind of go through them one at a time. So with respect to
13 the claim that offers weren't relayed to her, the testimony at the
14 evidentiary hearing is contrary on that fact. Ms. Brown relayed on direct
15 examination with defense counsel, at pages 10 and 11, that both offers --
16 the 11 to life offer and the 13 to life offer -- were relayed to Ms. Henley
17 and she rejected them. That's what -- that's what she said on direct
18 examination.

19 And here's the interesting thing, Ms. Henley had the benefit,
20 since she's the defendant in this case, of actually hearing Ms. Henley --
21 or Mr. Brown relay that fact. And I bring that up because it's really
22 interesting when you get to her direct examination what she ends up
23 saying. So she hears from her counsel that, no, both those offers were
24 relayed and she didn't want them. She didn't want them because she
25 didn't want anything with a life tail. So I relayed them and she rejected

1 them both. So you can look at pages 10 and 11 of Ms. Brown's record;
2 she said she only wanted an 8 to 20.

3 Why is that significant? Because when Ms. Henley then gets
4 on direct examination counsel starts the exact same way essentially that
5 he started with Ms. Brown, You weren't aware of these 11 to life offers,
6 the 11 to life, the 13 to life?

7 No, I wasn't.

8 He then asks her, Would you have accepted those offers?

9 And what she says on page 53 is no. Unequivocally she says
10 no.

11 And he follows it, Well, how about the 13 to life, would you
12 have taken that?

13 No.

14 I was shocked when I heard that. But it matches up exactly
15 with what Ms. Brown said. And so defense counsel then tries to kind of
16 repair the damage and kind of asked her again, Well, you know, would
17 you?

18 And what she ends up saying is, she says, Well, I guess it's
19 possible. I guess I could have considered it.

20 She's not even equivocal about it -- or unequivocal about it.
21 She's like it's possible I could have taken those.

22 And so what's interesting is I get up on cross-examination -- I
23 turn the Court's attention to pages 63, 64, and 65 -- and so I kind of delve
24 right back into that, I said, Hey, do you remember on direct you flat out
25 saying you wouldn't have accepted those offers if you had known about

1 them?

2 And she said, Yeah, I remember saying that to defense
3 counsel.

4 And so I asked her, Why was it?

5 And what did she say? On page 64 she says, I wouldn't have
6 accepted those offers because they had life tails. It was too much time.

7 And on page 65, I asked her, So what you were really looking
8 for was something more along the lines of a voluntary, an 8 to 20?

9 And what did she say? Yes.

10 That is powerful testimony that eviscerates this claim that she
11 wouldn't have accepted those offers. Why? Because that's the exact
12 same testimony that Ms. Brown gave on direct examination. She was
13 focused on no life tail and an 8 to 20.

14 And when asked on direct she just flat out said, No, I wouldn't
15 have taken those deals back then.

16 And I, on cross, started to quantify the time window, I said, So
17 did you feel that way about a no life tail, wanting the 8 to 20 in 2018?

18 Yes.

19 Did you feel that way in 2019?

20 And then I said, What -- When does your mind change about
21 an 11 to life or a 13 to life?

22 And what she said was, she said, The moment it changed for
23 me -- and it's on page 64 -- is when I got caught writing the letter to the
24 father of my children. Where she is coaching him to change his
25 testimony and recant and say I was forced into it by my brother.

1 That is the moment that she acknowledged on her own,
2 voluntarily, before this Court, that that is the moment she would have
3 accepted an 11 to life and the 13 to life.

4 And I followed it up, I go, But at that point in time, when I
5 discovered the letter, I yanked those offers; right? I yanked any offers.
6 And then at that point in time you were looking at a first, which is 20 to
7 50; right?

8 And she says, Yes, you pulled those offers.

9 So the moment she actually wants an 11 to life and the 13 to
10 life is at a time that she, by her own admissions, admits there was never
11 an offer on the table of that sort.

12 So when you look at her credibility on this topic it doesn't hold
13 water when she says maybe she -- honestly maybe she forgot. But when
14 she sits here and tells us on direct, I wouldn't have taken those offers,
15 unless she's prompted multiple times. And then she then fully admits,
16 Yeah, back in the day I wouldn't have taken those offers because I
17 wanted the 8 to 20. And that's exactly what her counsel says on direct.

18 The State submits they have not met their burden in showing
19 that this is a credible claim. It is belied by the evidence. So that claim
20 fails.

21 Let's move to the discussion about the interview with the
22 individual in jail who had information that she believed to be beneficial to
23 her defense. This is really interesting because one of the things that's
24 glossed over by defense counsel that I found to be -- the State found to
25 be very interesting and powerful, is the person who knew about this, you

1 know, the informant, the defense got that information from Ms. Henley
2 herself. This is not a situation where you have a defendant who accepts
3 a deal who really doesn't know that there's this informant in play, doesn't
4 really know that there's some key information out there; right? This is not
5 a situation where defense counsel is hiding this information from
6 Ms. Henley. Ms. Henley is the one who brings it to Ms. Brown's attention
7 that there's an informant out there that could help my defense. She is the
8 genesis of this.

9 And that is significant. Why is it significant? Because if she
10 truly wanted to listen to the audio of the transcript, or read a transcript,
11 this is not information that was hidden from her, and she had all day,
12 months, and weeks to ask Ms. Brown, Mr. Brown, Mr. Karstedt to provide
13 that information.

14 And that's one of the things I wanted to get to the root to. And
15 what did Ms. Brown say, she said, She's the one that brought the
16 information to me, we then interviewed the person, we then provided all
17 the sum and substance of what was said. And at no point did she ever
18 ask her lawyers or the investigator, Hey, give me the transcript. Hey,
19 play the audio for me.

20 I know there was a request at one point that he made of -- she
21 made of Mr. Karstedt to provide a physical copy of it and he said, you
22 know, for your own safety we probably shouldn't have the discovery in
23 the jail. But she could have asked to have the audio played.

24 And she even admitted on cross-examination, I asked her, I'm
25 like, Do you really think that Mr. Karstedt or Phil Brown or Mary Brown

1 wouldn't have played you the audio? So if they're concerned about your
2 safety about having papers, do you really think they wouldn't have let you
3 listen to the audio if you wanted to listen to it?

4 And she was like, No, they would have done that if I'd ask
5 them.

6 And that's exactly what Ms. Brown said.

7 And why is that significant? Because what they're claiming
8 now is one of the reasons that is -- supposedly fair and just is, Hey, I just
9 didn't know enough details about what the informant said. But that could
10 have been accomplished by simply asking, Could you please play me the
11 recording.

12 And we know that this informant had existed from essentially
13 the inception of the case. The informant had been around for essentially
14 a couple of years and they knew about it and she never asked for that.

15 And that is really important because the presumption in these
16 cases is that these pleas are presumptively valid. The Court, the parties
17 go through a lot of time and attention to secure these negotiations and try
18 to make sure that these things are knowing and voluntary. And there are
19 direct questions that she's being asked on a plea canvass, saying, Hey,
20 look, are all your questions answered? Is everything that you want
21 answered for you to your satisfaction before taking the plea?

22 And she is telling the Court under oath absolutely, yes.

23 And then she's admitting at an evidentiary hearing, I never
24 bothered to ask anyone -- for someone to play the audio for me.

25 It is unfair. It is not just. And it is unfair to unwind this

1 negotiation because after the fact she decided, you know what, I'd like to
2 listen to the audio. She had an opportunity to do that.

3 This was a big deal. This is a big sentence that she's signing
4 up for. And so it defies commonsense that if the substance of the audio
5 was so important to her, and she really worried about the substance of it,
6 she would have asked but she didn't. And therefore this is not a fair and
7 just reason to unwind her presumptively valid guilty plea.

8 Now, I'd like to turn to the last issue, which is the timing and
9 the acceptance of the offer. You know, what's very clear in this law --
10 when we're evaluating whether or not to withdraw a plea -- is the totality
11 of the circumstances. And the totality of the circumstances is the first
12 time offers are being discussed is not at the settlement conference. This
13 was a multi-year negotiation, a back and forth that Ms. Henley and
14 Ms. Brown freely admitted, because the State worked its darndest to try
15 to reach a negotiation for years with Ms. Henley, trying to find something
16 that would work.

17 So the idea that she was rushed into anything defies
18 commonsense. It defies the timeline of this case. It defies her own
19 admissions on direct examination, which was, Yeah, there were a lot of
20 offers going back and forth. And that's exactly what Ms. Brown said,
21 There were a lot of offers going back and forth.

22 So the idea and the notion about time, and how much time to
23 take, is simply not true. She didn't have, you know, two minutes to
24 decide. She's had years to decide.

25 But when you start to narrow down where we are at at the time

1 of the settlement conference what did Ms. Henley tell us? Ms. Brown
2 said similar things, but let's just focus on Ms. Henley. I asked her, I said,
3 So after the letter is found, all offers were pulled?

4 She admits, Yes, that's true.

5 And then you get new offers and what were they?

6 It's a 20 to 50, a first degree murder, or it's an 18 to life, second
7 degree murder with use of a deadly weapon; correct?

8 Yes.

9 And your understanding was that I wasn't budging from that;
10 correct?

11 Yes.

12 And then your lawyers try to whittle me down and do kind of
13 whittle me down to like a 17; right?

14 She's like, Yes, I'm aware of that.

15 So she knows the offer has now moved off of a first. It's
16 moved off of a max. It's now down to a 17 to life. And then she admits
17 that, like, we are at a 16 to life when we enter into the settlement
18 conference.

19 So this idea that she never had an opportunity to consult with
20 family about the range here -- because ultimately what she settles on is a
21 15 to life. It is not credible because we are absolutely in that ballpark
22 when we're talking 18, 17, 16 to life. And then when we go into the
23 meeting with that.

24 And I think the Court hit the nail on the head, there's nothing --
25 there's nothing inappropriate of Ms. Brown saying, Hey, listen, if we can

1 get him down any further, you should probably take it because that's
2 probably the last offer you're going to get. That's not coercive. That's
3 the truth.

4 And it's her job as an attorney to advise her client of the
5 realities of the situation, which was I wasn't -- I didn't -- I went into that
6 not even thinking I would do that. So credit to Ms. Brown to kind of
7 waring me down to even do a 15. Because the State felt pretty strongly
8 that given her role in this, that she was the linchpin to get this guy to even
9 go on a date, this guy wouldn't be dead but for Ms. Henley agreeing to
10 kind of meet him for a date and set him up. And the State has always
11 been bothered by that.

12 And so you have this situation where there is a back and forth
13 where she's asking for less time, so all that is happening. And so, yeah,
14 ultimately a 15 to life is conveyed at the settlement offer. But she's not
15 forced to sign on the dotted line in two minutes. We have to take a break
16 and that comes out in the evidentiary hearing. And they have to call up a
17 totally different judge and a GPA had to be prepared because one was
18 not prepared at that point.

19 And Ms. Brown testified -- and there's no dispute in the
20 record -- that they went over this Guilty Plea Agreement. And that takes,
21 you know, I think the testimony was like at least another 30 minutes
22 before a plea actually went down; then that includes the canvass itself.
23 And the Court is asking, Look, is anyone forcing you to do this?

24 And she's telling the Court, No, no one is forcing me.

25 At some point we should be able to take Ms. Henley at her

1 word. Because the reality is that she wasn't forced, this negotiation was
2 several years coming, they successfully walked into a settlement with the
3 ground being -- the territory of the offer being a 16 to life, they got it down
4 to a 15 to life. So, yeah, it makes a whole heck of a lot of sense that
5 Ms. Brown would say you probably should take this. That is not coercive.

6 But let's get to the key reason. There was this talk that she
7 said, Oh, I wouldn't have taken the deal if I had known about -- known
8 more about the substance.

9 What she admitted on cross-examination -- I know I'm going
10 back to the second issue but I still want to address this. She had said on
11 cross-examination that she admitted that the most important key thing
12 that came out of that informant's testimony was that her brother was kind
13 of forcing her to do this. And she admitted to me on cross-examination
14 that is precisely the same stuff that she knew with her lawyers when they
15 talked about the sum and substance of the informant investigation.

16 But let's talk about why she accepted the deal. She actually
17 tells us during the evidentiary hearing, and it is on page 72, and what she
18 said -- so I flat out asked her, I said, You know, why did you do this?

19 And I said, you know, because no -- I said, on page 71, I mean,
20 no one was holding a gun to your head when you elected to take the
21 plea; correct?

22 And this is her answer, Based on my perspective of that letter
23 that I had handwritten to Raphael, you told me how you felt about it and I
24 decided it was better to take the deal instead of going to trial because
25 that was going to be your final decision.

1 And I said, Right. Because isn't it true the letter is a pretty
2 damaging letter; correct?

3 And her answer was, Yes.

4 And I followed up, Okay. But if your defense is -- and if your
5 defense is that I'm being forced into this by Andrew -- that being her
6 brother -- and you're caught writing a letter telling another witness in this
7 case to say the very same thing, that could be very damaging for the
8 defense that you were going to take to trial; correct?

9 Yes.

10 And, okay, that was a factor that you thought about when you
11 decided to enter your plea; correct?

12 Correct.

13 And I kind of follow-up, I go, because this evidence directly
14 attacks the very defense that the informant is providing, which is Andrew
15 forced me. This was nothing new. She said it at another evidentiary
16 hearing in this case.

17 So the linchpin for her taking the deal is the letter she is writing,
18 telling another material witness in this case to lie and say Andrew forced
19 you, is the very thing that the informant would provide.

20 The State would submit it doesn't matter if she had listened to
21 the audio or not or had a transcript of it or not. When going into that
22 settlement conference she knew the informant could give her that
23 particular defense. But she also knows she got caught writing a letter
24 telling the father of her children, who had given text messages showing
25 she admitted to committing the murder, and given a statement saying

1 that she admitted to the murder. She was writing a letter saying you
2 need to change your story completely and say you were forced into this
3 by Andrew.

4 The bottom line is the letter destroyed that defense that the
5 informant was providing. And the State would submit she would have
6 never, even if she had heard the audio, would have changed her mind on
7 the 15 to life because the defense was exactly the same and the letter
8 was just that damaging to her defense.

9 So for all of those reasons, Your Honor, the State believes that
10 Ms. Brown effectively conveyed all offers, that she had more than enough
11 time in the last couple of years to accept the offer. And that this simply
12 listening to an audio, where she knew about the sum and substance of it,
13 and it was a defense she was already raising already in the case, would
14 have made no difference. She knowingly, voluntarily accepted this plea
15 deal because she knew how damaging the letter she got caught writing
16 was.

17 And for those reasons that we respectfully ask that this motion
18 be denied.

19 THE COURT: Thank you, Mr. Hamner.

20 Let me go back to Mr. Gaffney, anything you would like to
21 argue in rebuttal to the State's presentation?

22 MR. GAFFNEY: Just briefly, Your Honor.

23 I mean, obviously there is competing versions of events as to
24 all three of these issues, as to whether the offers were conveyed, the
25 interview, and also the timing of it. And so obviously the Court's going to

1 have to make -- or determine, you know, who is more credible, either
2 Mary Brown or Ms. Henley. But it's our position that these offers were
3 not conveyed. And even though you do have the testimony that
4 Mr. Hamner pointed out about whether or not Ms. Henley would have
5 accepted the offers, I would direct the Court to look at pages 54 and 81
6 from the evidentiary hearing transcript where Ms. Henley says, Yes, it's
7 possible I would have considered these offers, even though I'd given a
8 blanket statement to my attorney that I didn't want a plea agreement that
9 contemplated a life tail, I still would have considered them had they been
10 conveyed to me.

11 And then in regard to the interview, I thought that it was pretty
12 clear that Ms. Henley was not the source of the information or that she
13 had no previous knowledge of what the informant was going to tell the
14 investigator and Ms. Brown. She knew who the person was and she
15 knew kind of generally that he had information that was going to be
16 beneficial to her case and so she directed Ms. Brown and the investigator
17 to go and speak to him. She didn't have a preview or a forecast of
18 exactly what he was going to say. I mean, she admitted that she had
19 never talked to the informant and didn't know the specifics about the
20 information that she had.

21 And I also wanted to make it clear that even though this
22 information came out toward the beginning of the case, I believe she was
23 arrested in October, and then in December they started to discover this
24 informant was available. Once Ms. Brown and the investigator gave
25 Ms. Henley a summary of what was supposedly in that interview, she

1 didn't have a reason to go back and ask them, Hey, -- and say, Hey, I
2 want to hear this interview or I want to see this transcript. And it wasn't
3 until after she entered her plea, and she got to read the transcript, that it
4 became even more significant.

5 Mr. Hamner said that, you know, the linchpin of this was that
6 she was worried about how damaging the letter she wrote was. Well, this
7 interview could have helped to in, so to speak, neutralize the damage
8 that that letter may have caused. Because then you've got her statement
9 to the police and then you have another witness saying essentially the
10 same thing.

11 And so the timing of when -- what she knew and when is
12 important. She didn't know all of the details of this interview until after
13 she entered her plea and that's when it became more significant to her
14 afterward, not before, not -- it was still significant at the time she entered
15 her plea but it became much more significant after she had a chance to
16 see what was in that interview.

17 And then as to the timing, I would just submit to the Court that
18 even though there were offers being made leading up to the settlement
19 conference the first time she had to consider this specific offer of 15 to
20 life was at the settlement conference when that was offered to her.

21 And with that, Your Honor, I'd submit it.

22 THE COURT: All right. Thank you for that, Mr. Gaffney.

23 I want to thank the parties for the briefing that was submitted
24 and the presentation during the evidentiary hearing, as well as the
25 arguments presented here today.

1 I am going to take this under advisement and you will get a
2 decision or written decision from me in the next two weeks. I'm going to
3 place this on my chambers -- actually I'm going to give myself three -- I
4 may need to leave town for a few days due to a family situation. So I'm
5 going to set this for my chambers calendar on May 6th and you'll get a
6 written decision on or before that date.

7 Any questions or any concerns, from either party, before we
8 conclude today's hearing?

9 MR. HAMNER: No, Your Honor. Thank you.

10 THE COURT: All right.

11 Mr. Gaffney.

12 MR. GAFFNEY: No, Your Honor.

13 THE COURT: All right. Well, thank you-all very much.

14 Take care, Ms. Henley.

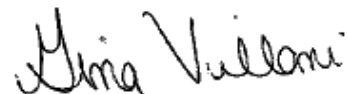
15 Thank you all.

16 MR. GAFFNEY: Thank you, Judge.

17 [Hearing concluded at 2:31 p.m.]

18 * * * * *

19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my ability.

22 

23 Gina Villani
24 Court Recorder/Transcriber
25 District Court Dept. IX

1 DECN
Judge Cristina D. Silva
2 Eighth Judicial District Court
Department IX
3 Regional Justice Center
200 Lewis Avenue
4 Las Vegas, Nevada 89155

5 EIGHTH JUDICIAL DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO: C-17-327585-1

10 DORIE REGINA HENLEY,
11 #2826387

DEPT NO: IX

12 Defendant.
13

14 DECISION: MOTION TO WITHDRAW PLEA

15 For the reasons set forth herein, the Court hereby DENIES Defendant's Motion to Withdraw
16 Guilty Plea.

17 I. Summary of Facts and Procedural History

18 On November 1, 2017, Defendant Dorie Henley was charged by way of indictment with Murder
19 with Use of a Deadly Weapon, Conspiracy to Commit Murder, Third Degree Arson, Conspiracy to
20 Commit Third Degree Arson, First Degree Kidnapping, Conspiracy to Commit Kidnapping, Robbery
21 with Use of a Deadly Weapon, Conspiracy to Commit Robbery, Grand Larceny Auto and Conspiracy
22 to Commit Grand Larceny. Her co-defendants, Andrew Henley and Jose Melvin Franco, were also
23 indicted at the same time and charged with the same offenses.

24 Initially, this case was assigned to Chief Deputy District Attorney David Stanton.
25 Approximately 10 months into litigation, Chief Deputy District Attorney Chris Hamner was assigned

1 to prosecute the case. Prior to CDDA Hamner's assignment, there had not been any formal offers
2 extended to Ms. Henley or her co-defendants.¹ Court minutes reveal that discussions regarding
3 potential negotiations began after Mr. Hamner was assigned to the case.² A review of relevant court
4 minutes reveal that negotiations were on-going, and in February of 2019, counsel for Defendant, Mary
5 Brown, advised the parties were "close to the bottom line."³

6 Thereafter, counsel for defendant filed a motion to sever defendants,⁴ which was denied May
7 23, 2019.⁵

8 During the May 23, 2019 hearing, the State formally revoked any offer previously extended to
9 Dorie Henley.⁶ The State revoked all offers after they received a copy of a letter penned by the
10 Defendant wherein, in short, she asks the father of her children to either fabricate evidence or change
11 his testimony in support of a defense she wanted to advance⁷ (hereinafter "the CCDC letter").
12 Specifically, that letter stated:

13 "TBH I need you to write me a letter saying I told you I was forced that
14 Andrew threatened me that he was going to shoot up your house and burn
it down with the kids...It could help me get a lower deal! Please."⁸

15 Ms. Henley's letter stated she "needed" what she was asking for and expressly noted she wanted an
16 "8-20," referring to a sentencing structure of 8 to 20 years.⁹ Upon discovery of the letter, the State
17 revoked all offers.¹⁰

18 The discovery of the letter, and its impact on the case and negotiations, was discussed on the
19 record during the May 23, 2019 hearing.¹¹ While the State initially revoked all offers, they later
20

21 ¹ See State's Opposition at 7-8.

22 ² See generally January 10, 2019 Court Minutes

23 ³ See Transcript, February 12, 2019 hearing.

24 ⁴ See Motion to Sever Defendants filed October 31, 2018

25 ⁵ See generally May 23, 2019 Court Minutes

⁶ Id.

⁷ See State's Opposition at Exhibit 4.

⁸ Id.

⁹ Id. at 5.

¹⁰ See generally, May 23, 2019 Court Minutes

¹¹ See Transcript, May 23, 2019 hearing at 7.

1 renewed negotiations. Four months later, during a status check regarding trial readiness, counsel for
2 the State and for Ms. Henley advised they were actively trying to resolve the case and that there was
3 a settlement conference in the works.¹² On March 16, 2020, a settlement conference took place during
4 which the case was settled. The Defendant agreed to plead guilty to one count of Second-Degree
5 Murder with Use of a Deadly Weapon, with a stipulated sentence of 15-years-to-Life in the Nevada
6 Department of Corrections.¹³ The Defendant changed her plea following the settlement and
7 sentencing was set for May 7, 2020.

8 At the request of Ms. Henley's counsel, sentencing was moved to July 16, 2020 in the hopes
9 the courthouse would be open and her family could attend sentencing. On June 22, 2020 Henley's
10 counsel filed a motion for appointment of independent counsel to determine if there was a basis to
11 withdraw her previously entered guilty plea, and a hearing on the motion was held on July 2, 2020,
12 during which the motion was granted. The instant motion was filed on August 25, 2020.

13 Two witnesses testified at the evidentiary hearing on Defendant's Motion to Withdraw: (1)
14 Ms. Henley's former attorney, Mary Brown, Esq.; and (2) the Defendant, Dorie Henley.

15 A. Summary of Mary Brown's Testimony

16 Ms. Brown testified that she represented Ms. Henley from October 2017 until current counsel
17 was appointed.¹⁴ During the course of her representation, Ms. Brown testified that she attempted to
18 resolve the case and received multiple offers from the State.¹⁵ While she could not specifically recall
19 when she received the offer, she did recall receiving an early offer from the State, specifically from
20 Chief DDA Hamner,¹⁶ that contemplated a sentence of 11-years-to-Life.¹⁷ Ms. Brown testified that she
21

22 ¹² See Transcript September 26 2019 at 3.

23 ¹³ See Guilty Plea Agreement filed March 16, 2020

24 ¹⁴ T., May 23, 2019 at 8.

25 ¹⁵ *Id.* at 9; see also T. at 26-28.

¹⁶ Ms. Brown noted that any offer would have come after Mr. Hamner took over the case because prior to that there were no offers extended by the State. *Id.* at 9-10.

¹⁷ *Id.* at 9.

1 and her investigator, Mr. Karstedt,¹⁸ conveyed the 11-to-Life offer to Ms. Henley at the jail. Ms.
2 Henley's position regarding that offer was it was too high and that she *might* consider an offer that
3 contemplated 10 years, but nothing more.¹⁹

4 Ms. Brown also testified that an offer of 13-years-to-Life was also extended and conveyed to
5 Ms. Henley.²⁰ She could not recall specifically when that offer was extended or where it was
6 conveyed, but does recall that Ms. Henley maintained the offer was too high and, further, that she was
7 upset the offer went up instead of down.²¹ Ms. Brown also testified that Ms. Henley maintained she
8 did not want an offer that included a Life tail.²² Ms. Brown testified there was one offer extended in
9 between the 11-to-Life, and the 13-to-Life, which contemplated a "second with use..."²³ that was also
10 rejected.²⁴

11 Ms. Brown testified that negotiations continued up until the settlement conference, during
12 which she was able to get the State to extend an offer of 16-to-Life.²⁵ Prior to participating in the
13 settlement conference, Ms. Brown advised Ms. Henley that it would likely be the final opportunity to
14 resolve the case short of trial.²⁶

15 The settlement conference took place March 16, 2020. Ms. Brown testified that the topic of
16 prior offers from the State came up during the conference. During that conversation, Ms. Henley
17 advised that she did not have a specific memory of the 13-to-Life offer, but *did* have a specific memory
18 of the 11-to-Life offer.²⁷

21 ¹⁸ Ms. Brown also testified that Mr. Kartstedt recently passed away and therefore was unavailable to testify during the
evidentiary hearing. *Id.* at 10. The Court took judicial notice of this fact with no objection from the State. *Id.* at 88-89.

22 ¹⁹ *Id.*; see also T. at 25 ("...she did not want 11.")

23 ²⁰ *Id.* at 11.

24 ²¹ *Id.* at 11; T. at 25.

25 ²² *Id.* 11-12.

²³ The Court knows this is shorter way of stating second degree murder with use of a deadly weapon.

²⁴ T. at 12.

²⁵ T. at 13.

²⁶ See generally T. at 14-15

²⁷ T. at 15.

1 Ultimately, the parties were able to settle the case with a negotiation of 15-to-Life. Ms. Brown
2 was pleased with the resolution because she did not anticipate the State offering anything lower than
3 the previously-extended 16-to-Life offer.²⁸ Ms. Brown testified that Ms. Henley did express some
4 reluctance to accepting the offer during the settlement conference, again expressing her opinion that
5 the offer was too high,²⁹ but nonetheless accepted the offer because she did want to risk going to
6 trial.³⁰ Ms. Brown testified that from the time the offer of 15-to-Life was reached, to the time she got
7 the written guilty plea agreement was less than 15 minutes.³¹ She later testified it was approximately
8 half an hour or longer for the State to put the guilty plea agreement together and to secure a judge to
9 take the plea.³²

10 There was no testimony regarding how much time Ms. Brown spent explaining the written
11 guilty plea agreement to Ms. Henley, but Ms. Brown did testify that the settlement conference lasted
12 several hours.³³ Ms. Brown also testified she explained to Ms. Henley the decision to take the plea
13 was Ms. Henley's alone and that she would try the case if Ms. Henley wanted her to do so.³⁴

14 Ms. Brown also testified Ms. Henley's potential defense for trial, would have been the defense
15 of duress.³⁵ Ms. Brown provided testimony that there was an individual incarcerated at the Clark
16 County Detention Center that had information about Ms. Henley's case.³⁶ This witness's testimony
17 is intertwined with the potential duress defense, because if the matter went to trial the witness would
18 potentially testify that co-defendant Andrew Henley forced Ms. Henley to participate in the robbery,
19 which resulted in the death of the victim in this case.³⁷ Ms. Brown testified that both she and Mr.

20
21 ²⁸ *See generally* T. at 15-16.

22 ²⁹ Ms. Brown testified that the Defendant felt she should get a more favorable sentence that co-Defendant Jose Franco.
23 T. at 31.

24 ³⁰ T. at 16; 33.

25 ³¹ *Id.* at 16-17.

³² *Id.* at 33.

³³ *Id.* at 31.

³⁴ *Id.* at 34.

³⁵ *See generally, Id.* at 17-18.

³⁶ *Id.* at 18; 17-18

³⁷ *Id.* at 18.

1 Karstedt discussed the contents of the potential witness's statement, noting with detail what the
2 witness would provide as testimony in support of a duress defense.³⁸ Ms. Brown was unaware if Ms.
3 Henley ever heard a copy of the recording of the witness's statement, or if she received a copy.³⁹
4 According to Ms. Brown's testimony, the information the potential witness would have provided was
5 consistent with a statement Ms. Henley herself gave to Las Vegas Metropolitan Police Department
6 Detectives.⁴⁰ Further, Ms. Brown testified she has no specific recollection of Ms. Henley asking for a
7 copy of the transcript, but she believed she would recall if she had asked her or Mr. Kartstedt because
8 she would approve requests for production from clients.⁴¹

9 Ms. Brown testified as to the source of the potential witness, that was Ms. Henley herself.⁴²
10 Ms. Henley told Ms. Brown she learned about the witness through inmates on other floors yelling
11 information through air vents at the Clark County Detention Center.⁴³ As the source of the potential
12 witness, Ms. Henley was aware that the witness could assist with her duress defense for
13 approximately 2 to 2 ½ years before the settlement conference.⁴⁴ Moreover, the witness would
14 potentially testify to other facts, such as that Andrew Henley was the mastermind behind the
15 crimes.⁴⁵

16 During cross-examination, Ms. Brown confirmed the fact that she and her husband (who is
17 also an attorney) had engaged in numerous attempts to resolve the case throughout her
18 representation of Ms. Henley. Ms. Brown also testified that there were some evidentiary challenges
19 for the case against the Defendant, namely that she made several admissions and confessions that
20 were in the possession of the State.⁴⁶ One piece of particular concern was a letter written by Ms.

21 ³⁸ *Id.* at 19-20; 48

22 ³⁹ *Id.* at 20-21.

23 ⁴⁰ *Id.*

24 ⁴¹ *See generally, id.*; 35.

25 ⁴² *See generally* T. at 34-36.

⁴³ *Id.* at 34.; *see also* T. at 37.

⁴⁴ *Id.* at 36.

⁴⁵ *Id.* at 42.

⁴⁶ *Id.* at 28-30.

1 Henley wherein she asks the father of her children to write a letter and say she was “forced” to commit
2 the crime by her co-defendant (Andrew Henley) and that the letter was needed to get a better deal.⁴⁷
3 As a result, Ms. Brown felt this case was suited for a pre-trial resolution, and she expressed these
4 concerns to Ms. Henley.⁴⁸

5 B. Summary of Defendant Dorie Henley’s Testimony

6 Defendant Dorie Henley testified that the first time she recalls hearing about an offer from the
7 State was probably in 2018.⁴⁹ During direct examination, Ms. Henley advised she did not recall Ms.
8 Brown ever conveying an 11-to-Life offer, and recalls first hearing about that offer at the time of the
9 settlement conference.⁵⁰ Ms. Henley further testified the first time she heard of the 13-years-to-Life
10 offer was from her current attorney, Mr. Gaffney, stating she has no recollection of ever discussing
11 the 13-to-Life offer with Ms. Brown.⁵¹ When asked if she would have accepted either the 11-to-Life or
12 the 13-to-Life offer, Ms. Henley stated should would not have and that she had specifically advised
13 Ms. Brown she did not want any offer that involved a Life tail.⁵² Her position on accepting an offer
14 with a Life tail changed after the State discovered the letter she wrote to the father of her children
15 asking for his assistance.⁵³

16 Ms. Henley affirmed that the first time the State extended the offer of 15-to-Life was at the
17 settlement conference.⁵⁴ She further stated she did convey her hesitancy about taking the plea to Ms.
18 Brown, and noted that Ms. Brown’s advisement that the 15-to-Life offer was likely the best and final
19 offer ultimately influenced her decision to accept it.⁵⁵ Ms. Henley testified she felt like she “had no
20 choice” and that during the conversation with the State about the offer, she accepted it after about
21

22 ⁴⁷ *Id.* at 38.

⁴⁸ *Id.* at 29 (“It wasn’t a case that I thought was best served going to a jury.”)

⁴⁹ *T.* at 52.

⁵⁰ *Id.* at 52-53.

⁵¹ *Id.* at 53.

⁵² *Id.* at 53-54.

⁵³ *Id.* at 54.

⁵⁴ *Id.*

⁵⁵ *Id.* at 54-55.

1 two minutes.⁵⁶ Ms. Henley testified if she had been given more time to think about the 15-to-Life offer,
2 she would have spoken to her family and friends about it.⁵⁷ Ms. Henley said she was uncertain if those
3 discussions would have changed her mind about accepting the offer.⁵⁸

4 Ms. Henley testified that she had conversations with Ms. Brown and Mr. Kartstedt about her
5 case, her potential defense, and the witness with additional information about her case.⁵⁹ Ms. Henley
6 stated she learned about the witness through another female inmate at the Clark County Detention
7 Center, not through the vents at the detention center.⁶⁰ Ms. Henley testified she received a summary
8 of what the witness would have testified to, and that one aspect of the witness's testimony would
9 have been that her brother/co-defendant, Andrew Henley, forced her to participate in the instant
10 offense.⁶¹ This is information she knew before the settlement conference. Ms. Henley was aware that
11 the interview with the witness was recorded and transcribed.⁶² She never asked for a copy of the
12 recording, but did ask for a copy of the transcript.⁶³ According to Ms. Henley, Mr. Kartstedt did not
13 provide her a copy because he did not think it was safe for her to have a copy with her while she was
14 in custody.⁶⁴ She eventually received a copy of the transcript from Mr. Gaffney.⁶⁵ Upon receipt and
15 review of the statement, Ms. Henley learned the witness knew a lot of details about the crime, that
16 the witness also knew her other brother, along with other information.⁶⁶ Ms. Henley admitted that
17 the witness's statement was consistent with information she had provided to law enforcement.⁶⁷ Ms.

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20 ⁵⁶ *Id.* at 55-56.

21 ⁵⁷ *Id.* at 56.

22 ⁵⁸ *Id.* at 57,

23 ⁵⁹ *See generally* *Id.* at 57-59.

24 ⁶⁰ *Id.* at 59.

25 ⁶¹ *Id.* at 59-60.

⁶² *Id.* at 60; 75 (Henley stated she knew about the informant for over two years, and the existence of the transcript for a year and a half, before the settlement conference).

⁶³ *Id.*; *see also* *Id.* at 75-76.

⁶⁴ *Id.* at 61; 80-81.

⁶⁵ *Id.*

⁶⁶ *Id.* at 61-62.

⁶⁷ *Id.*

1 Henley stated that if she had a copy of the transcript before the settlement conference, she would not
2 have accepted the State's offer.⁶⁸

3 During cross-examination, Ms. Henley reaffirmed that she would not have accepted any offer
4 that involved a Life tail,⁶⁹ and she felt that way up until the State discovered the letter she wrote to
5 the father of her children.⁷⁰ Ms. Henley testified regarding the offers she recalled learning about and
6 rejected; one was a 20-50 year sentence, and another was an 18 years-to-Life offer.⁷¹ Ms. Henley also
7 testified about not wanting to accept, and ultimately rejecting, a 16-to-Life sentence that was
8 extended to her just before the settlement conference.⁷²

9 Also during cross-examination, Ms. Henley confirmed that the letter she wrote to the father
10 of her children was damaging to her case and consequently, that played a role in her decision to accept
11 the 15-to-Life offer.⁷³

12 Ms. Henley further testified that she did not ask to make a phone call to any family or friends
13 during the settlement conference, or while waiting for the judge to come take the plea; because she
14 did not think it was an option.⁷⁴ She later stated she would have liked to have talked to them, because
15 she has five children who would have helped her make a decision.⁷⁵

16 According to Ms. Henley, they waited approximately 20-30 minutes before a judge was
17 available to take the change of plea.⁷⁶ Ms. Henley also stated she did not lie to the Court during the
18 change of plea, and that she was honest, had all of her questions answered, and that that no one forced
19 her to into the plea.⁷⁷

21 ⁶⁸ *Id.*

22 ⁶⁹ *Id.* at 63-65; 83.

23 ⁷⁰ *Id.* at 64.

24 ⁷¹ *Id.* at 65-66.

25 ⁷² *Id.* at 66.

⁷³ *Id.* at 71.

⁷⁴ *Id.* at 73.

⁷⁵ *See generally id.* at 84-87.

⁷⁶ *Id.*

⁷⁷ *Id.* at 74.

1 In regards to the information involving the potential defense witness, Ms. Henley stated
2 during cross-examination that the most important information in the transcript was that her brother,
3 Andrew, had so much hatred towards her and that he (Andrew) admitted to forcing her into
4 committing the crimes.⁷⁸ She again acknowledged she knew the witness would testify about her
5 being forced to commit the crimes for approximately two years before the settlement conference.⁷⁹

6 II. Applicable Law

7 A. Motions to Withdraw a Guilty Plea

8 Pursuant to NRS 176.165, a defendant may move to withdraw a guilty plea before sentencing.
9 A district court may grant a defendant's motion to withdraw a guilty plea before sentencing *for any*
10 *reason* where permitting withdrawal would be fair and just. *Stevenson v. State*, 131 Nev. 598, 604, 354
11 P.3d 1277, 1281 (2015) (emphasis added). The Court must consider whether, given the totality of the
12 circumstances, withdrawing a guilty plea before sentencing would be fair and just. *Id.* at 603.
13 Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *See Id.* A
14 defendant is entitled to an evidentiary hearing on a claim of ineffective assistance of counsel only if he
15 asserts specific factual allegations that are not belied or repelled by the record and, if true, would
16 entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

17 The Ninth Circuit has long applied the 'fair and just' standard for allowing a defendant to
18 withdraw a guilty plea. *See United States v. Showalter*, 569 F.3d 1150, 1154 (9th Cir. 2009) (discussing
19 standard to withdrawal of guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(B), finding a defendant
20 "should be freely allowed" to withdraw a guilty plea before sentencing if he "can show a fair and just
21 reason for requesting the withdrawal."); *United States v. Read*, 778 F.2d 1437, 1440 (9th Cir. 1985), cert.
22 denied, 479 U.S. 835, 107 S.Ct. 131, 93 L.Ed.2d 75 (1986) (establishing that a defendant bears the
23

24
25 ⁷⁸ *Id.* at 77-78.

⁷⁹ *Id.* at 78.

1 burden of showing a fair and just reason for withdrawal of a guilty plea); and *United States v. Castello*,
2 724 F.2d 813, 814 (9th Cir.), cert. denied, 467 U.S. 1254, 104 S.Ct. 3540, 82 L.Ed.2d 844 (1984) (same).
3 A “fair and just reason” involves a plea that is “unfairly obtained or given through ignorance, fear or
4 inadvertence.” *Kercheval v. United States*, 274 U.S. 220, 224, 47 S.Ct. 582, 71 L.Ed. 1009 (1927) (cited in
5 *United States v. Rubalcaba*, 811 F.2d 491, 492 (9th Cir. 1987)).

6 A defendant’s change of heart about pleading guilty are insufficient grounds to grant a motion
7 to withdraw plea. *See United States v. Rios-Ortiz*, 830 F.2d 1069-1070; *see also U.S. v. Ensminger*, 567 F.3d 587
8 (9th Cir. 2009)(A “change of heart - even a good faith change of heart – is not a fair and just reason”
9 that entitles a defendant to withdraw their guilty plea, even where the government incurs no
10 prejudice”); *U.S. v. Hogan*, 453 Fed.Appx. 247, 248-249 (3rd Cir. 2011)(“A shift in defense tactics, a
11 change of mind, or the fear of punishment are not adequate reasons to impose on the government the
12 expense, difficulty, and risk of trying a defendant who has already acknowledged his guilt by pleading
13 guilty.” [quoting *United States v. Brown*, 250 F.3d 811, 815 (3rd Cir. 2011)]).

14 B. Claims of Ineffective Assistance of Counsel

15 Defendants are entitled to effective assistance of counsel when deciding whether to accept or
16 reject a plea bargain. *See Larson v. State*, 104 Nev. 691, 693 n. 6, 766 P.2d 261, 262 n. 6 (1988) (citing
17 *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)). When a conviction is the
18 result of a guilty plea, the second, otherwise known as the “prejudice” requirement, focuses on
19 whether counsel's constitutionally ineffective performance affected the outcome of the plea process.
20 In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is
21 a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would
22 have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985);
23 *see also State v. Langarica*, 107 Nev. 932, 933, 822 P.2d 1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct.
24 346, 121 L.Ed.2d 261 (1992).

1 To prove ineffective assistance of counsel, a defendant must demonstrate that counsel's
2 performance was deficient in that it (1) fell below an objective standard of reasonableness, and (2)
3 resulted in prejudice such that there is a reasonable probability that, but for counsel's errors, the
4 outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687–88,
5 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Warden v. Lyons*, 100 Nev. 430, 432–33, 683 P.2d 504, 505 (1984)
6 (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S.
7 at 697, and a defendant must demonstrate the underlying facts by a preponderance of the evidence.
8 *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

9 “Deficient” assistance of counsel is representation that falls below an objective standard of
10 reasonableness. *Dawson v. State*, 108 Nev. 112, 115, 825 P.2d 593, 595. “A fair assessment of attorney
11 performance requires that every effort be made to eliminate the distorting effects of hindsight, to
12 reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from
13 counsel's perspective at the time.” *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065; *accord Dawson*, 108 Nev.
14 at 115, 825 P.2d at 595.

15 III. Summary of the Defendant’s Motion to Withdraw Guilty Plea and the State’s 16 Opposition

17 Defendant filed a Motion to Withdraw Guilty Plea. The motion advances three arguments in
18 support thereof. First, Henley argues her prior counsel, Mary Brown, Esq., failed to convey a more
19 favorable offer of 11-years-to-Life. Second, she argues Ms. Brown failed to provide her with
20 information she believes is relevant to her defense and if disclosed prior to the settlement conference
21 would have convinced her *not* to accept the 15-years-to-Life plea agreement that forms the basis of
22 this Motion. Last, Ms. Henley argues she had insufficient time to contemplate the plea offer before
23 accepting it during the settlement conference.
24
25

1 The State opposes the Motion in its entirety. The State argues Ms. Henley knowingly and
2 voluntarily entered into the plea agreement and that she had sufficient time to consider its terms.
3 Further, Ms. Henley repeatedly rejected prior offers, thereby belying the assertion she would have
4 accepted an offer of 11 or 13-to-Life. The State also refutes that giving Ms. Henley access to the
5 transcript from a potential defense witness would have changed her decision to accept the 15-to-Life
6 offer because she was aware of the general sum and substance of the witness's potential testimony. In
7 sum, the State argues there are no fair or just reasons to grant the Motion.

8 IV. Analysis

9 Ms. Henley's motion, and the arguments and evidence presented in support thereof, do not
10 provide sufficient evidence to establish a fair and just reason to grant her motion. As explained further
11 herein, there is insufficient evidence to support Ms. Henley's claim that counsel was ineffective or
12 that she did not have enough time to make a decision regarding accepting or rejecting the guilty plea.
13 Finally, the Court does not find there is any other reason for her to withdraw her plea.

14 Ms. Henley asserts her prior counsel, Ms. Brown, was ineffective. To support this claim, she
15 makes a number of claims, including but not limited to:

- 16 (1) She was not informed by her previous attorney of an 11-to-Life and/or 13-to-Life plea offer
17 from the State;
- 18 (2) She was not fully advised of her evidence related to a defense of coercion by not having access
19 to the transcript and audio recording of the prison-informant; and⁸⁰
- 20 (3) She had insufficient time to consider the 15-to-Life offer extended and accepted during the
21 settlement conference.

22 A. The Record Supports That Ms. Brown Conveyed All Offers to Ms. Henley

23 As a threshold matter, the Court finds Mary Brown's testimony to be credible. Here, the record
24 supports that Ms. Brown advised Ms. Henley each of the offers conveyed by the State and that Ms.
25 Henley rejected them. While Ms. Henley claims that they were not conveyed, and she did not learned

⁸⁰ Defendant's Motion at 5-9.

1 about the 11-to-Life offer until the settlement conference, the Court finds Ms. Brown's testimony
2 regarding what occurred more credible. This is in part because per Ms. Henley's own testimony
3 during the evidentiary hearing, she would not have accepted *any* offer that included a Life tail until
4 after the State discovered the damaging CCDC letter she wrote to the father of her children.⁸¹ It is
5 inconsistent that prior to the discovery of the CCDC letter, Ms. Henley emphatically rejected *any* offer
6 involving a Life tail if Ms. Henley was unaware of offers involving a Life tail. Further, even assuming
7 arguendo, Ms. Brown did not convey the 11-to-Life and 13-to-Life offers; it would not have resulted in
8 prejudice to Ms. Henley because she would have rejected the offers, and any offer that included a Life
9 tail until the time of the settlement conference. Thus, there is insufficient evidence to grant this
10 Motion based on the argument that Ms. Brown did not convey either the 11-to-Life or the 13-to-Life
11 offers.

12 **B. There is Insufficient Evidence To Support a Review of the Transcript and/or Review**
13 **of an Audio Recording of a Defense Witness's Statement Would Have Convinced Ms.**
14 **Henley to Reject State's Offer at the Settlement Conference**

15 Ms. Henley further alleges that she received ineffective assistance of counsel due to Ms.
16 Brown's failure to provide a transcript or audio recording of the informant's interview which could
17 have bolstered her duress defense.⁸² Henley asserts that had she been provided with the transcript of
18 the informant's statements prior to the settlement conference, she would not have accepted the 15-
19 to-Life offer but insisted on proceeding to trial.⁸³ Ms. Henley claims that upon reading the transcript
20 she uncovered new information that Ms. Brown did not previously disclose to her.⁸⁴

21 Contrary to Ms. Henley's argument, the information contained in the transcript was not new
22 and it remains unclear how any of the additional detail provided in the transcript would have: (1)
23 furthered her potential duress defense; and (2) how it would have impacted her decision to accept

24 ⁸¹ *Id.* at 8

25 ⁸² *Id.* at 9.

⁸³ *Id.*

⁸⁴ T. at 61, 14-17.

1 the 15-to-Life offer she accepted at the settlement conference. Long before the settlement conference,
2 Ms. Henley knew (1) that this witness existed; (2) that if she chose to go to trial, the witness would
3 have provided testimony that supported Ms. Henley's position that she was forced to participate in
4 the crimes for which she was charged with committing; and (3) that she and her co-
5 defendant/brother, Andrew, did not have a good relationship. Moreover, Ms. Henley agrees there is
6 no significant difference between (1) what she was informed; (2) what was stated by the witness; and
7 (3) the summary of the statement that was provided to her by her attorney. Specifically, and for almost
8 two years, Ms. Henley knew the informant's statements were about her brother saying he forced her
9 to participate in the robbery. Ms. Henley focused on information in the transcript that revealed the
10 extent of her brother's dislike of her. But neither Ms. Henley nor her attorney could explain *how* that
11 strengthened or changed her potential duress defense, or would have influenced her decision to accept
12 the plea.

13 The evidence demonstrates that Ms. Henley opted to pursue a settlement conference and not
14 proceed to trial because the CCDC letter was damaging to her coercion defense. That letter reveals
15 Ms. Henley attempted to coach a witness to testify that Andrew forced her to participate in the
16 robbery. During cross-examination, Ms. Henley admitted to the State, after he explained the impact
17 of that letter on her defense, that it was better to take the deal, stating:

18 **Ms. Henley:** Based on my perspective of that letter, that I handwritten to Raphael... I
19 decided that it was better to take the deal instead of going to trial because that was
going to be your final decision.

20 **State:** Right. Because isn't it true that letter is a pretty damaging letter; correct?

21 **Ms. Henley:** Yes.

22 **State:** Okay. Because if your defense is-- and if your defense is, I'm being forced into
23 this by Andrew and you're caught writing a letter telling another witness in the case
24 to say that very same thing, that could be very damaging for the defense that you were
going to take to trial; correct?

25 **Ms. Henley:** Correct.

1 **State:** Because the State did have this evidence in the form of this letter that directly
2 attacked the very defense you wanted to use at trial; isn't that right?

3 **Ms. Henley:** Yes, sir.

4 **State:** Okay. And that's one of the things you thought about when weighing should I
5 risk going to trial; isn't that correct?

6 **Ms. Henley:** Yes.

7 *See* Transcript at 72; 1-24.

8 Ms. Henley was aware of the informant's statements since 2018 and decided it was in her best
9 interest not to pursue trial. It further demonstrates her attorney informed Ms. Henley of the most
10 important details of the informant's statements. Thus, Ms. Henley is again not prejudiced by her
11 attorney's purported ineffective assistance of counsel.

12 **A. Ms. Henley Had Sufficient Time to Decide Whether to Accept the Plea Agreement**

13 Ms. Henley alleges that she had insufficient time to make a decision whether to accept the
14 plea agreement during the settlement conference. In her motion, she alleges that she felt she only had
15 approximately two minutes to make a decision for a plea and had she been given adequate time she
16 would have opted to proceed to trial.⁸⁵ At the evidentiary hearing, she initially testified she only had
17 two minutes, but later admitted there was additional time while the parties were waiting for a judge
18 to arrive to do the change of plea.⁸⁶ Moreover, while Ms. Henley had limited time to contemplate the
19 15-to-Life offer, she had been made aware of a Life tail sentence since the inception of negotiations in
20 her case. Accepting Ms. Brown's testimony and memory as correct, Ms. Henley was offered an 11-to-
21 Life and 13-to-Life offer in or around January 2018.⁸⁷ Those offers were presented prior to the discovery
22 of the CCDC letter in March 2019. At a minimum Ms. Henley admitted she was aware of and rejected

24 ⁸⁵ Defendant's Motion at 10-11.

25 ⁸⁶ *Compare* T. at 55-56 with T. at 84-87.

⁸⁷ T. at 10, 1-3.

1 the 13-to-Life offer.⁸⁸ Stated otherwise, Ms. Henley was well aware that the State was offering a Life
2 tail, even before the discovery of the CCDC letter.

3 Ms. Henley provided no other evidence to support argument that her plea was not knowingly
4 and voluntarily entered. Instead, even during the course of the evidentiary hearing, she equivocated
5 about whether or not she would have accepted the 15-to-Life offer even if she had spoken to her
6 friends and family. Specifically, Ms. Henley testified that she would have liked to confer with family
7 to see “their perspective on the deal” and would or would not have accepted the offer depending on
8 their discussion.⁸⁹ But when asked by the Court how talking to her family would have impacted her
9 decision to accept the offer, she stated the time (referring to the offer) was a big issue because she did
10 not see a benefit in taking the 15-to-Life offer.⁹⁰ That contradicted Ms. Henley’s prior testimony that
11 she decided to accept a plea rather than go to trial because her outcome would have been worse.⁹¹

12 It is understandable that Ms. Henley was hesitant in accepting the plea offer because it is a
13 significant decision. But there is insufficient evidence to support Ms. Henley did not have enough
14 time to consider the State’s offer, especially given the on-going and lengthy negotiations (almost all
15 of which involved a Life tail) leading up to the settlement conference. There is no evidence that, even
16 if given more time, or given the opportunity to talk to her family and friends, would have changed Ms.
17 Henley’s decision to enter into a plea agreement instead of going to trial.

18 V. Conclusions of Law

19 The Court finds that Defendant Dorie Henley has failed to demonstrate a fair and just reason
20 or reasons to grant her motion to withdraw her guilty plea. Ms. Henley did not demonstrate that Ms.
21 Brown’s representation of her fell below an objective standard of reasonableness, or that it resulted in
22

23 ⁸⁸ See Generally T. at 64 -66; 67, 1-4;

24 ⁸⁹ T. at 56, 14-16; 57, 1-3.

⁹⁰ T. at 84, 13-15.

25 ⁹¹ See generally T. at 72, 1-5; 84-85, 24, 25, 1.

prejudice to her. See *Strickland v. Washington*, 466 U.S. at 687–88, 104. Because there is insufficient evidence to show error on the part of Ms. Brown, Ms. Henley cannot show a reasonable probability that, but for the alleged errors, she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. at 59; *State v. Langarica*, 107 Nev. at 933. Rather, the evidence and Ms. Henley’s testimony shows that prior to the discovery of the CCDC letter, she would not have accepted any plea offer with a Life tail.

The evidence also shows Ms. Henley did have sufficient time to accept or reject the offer at the settlement conference, especially in light of the on-going negotiations with the State that took place all the way up to the settlement conference. The Court believes Ms. Henley's statement that, like certainly most Defendants do, she would have liked more time and the possibility to talk to her family and friends. But that does not axiomatically equate to insufficient time to consider the offer. Further, there is no evidence that Ms. Henley would have *not* accepted the 15-to-Life offer even if she had had more time to discuss the offer with her family and friends.

Consequently, given the totality of the circumstances, the Court does not find a fair and just reason to withdraw her plea at this time. Accordingly, Defendant's Motion is DENIED.

Dated this 28th day of May, 2021

FAB E7C EE93 2AC3
Cristina D. Silva
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-17-327585-1

7 vs

DEPT. NO. Department 9

8 Dorie Henley
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/28/2021

15 Andrea Luem

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17 Mary Brown

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18 Lucas Gaffney, Esq.

Lucas@GaffneylawLV.com

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20 Stephanie Johnson

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Heather S. Smith

CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DORIE REGINA HENLEY
#2826387

Defendant.

CASE NO. C-17-327585-1

DEPT. NO. IX

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 MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030.2, 193.165; thereafter, on the 20th day of August, 2021, the Defendant was present in court for sentencing with counsel LUCAS J. GAFFNEY, ESQ., and good cause appearing,

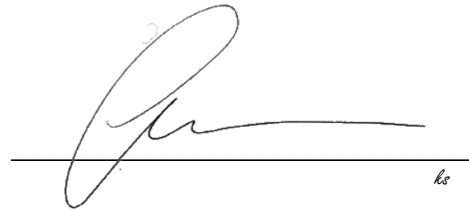
THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00

AA 0433

1 DNA Collection Fee, the Defendant is sentenced as follows: LIFE with a MINIMUM parole
2 eligibility of FIFTEEN (15) YEARS in the Nevada Department of Corrections (NDC); with
3 ONE THOUSAND FOUR HUNDRED SIX (1,406) DAYS credit for time served. COURT
4 RECOMMENDS Defendant for any substance abuse and mental health treatment while
5 incarcerated; and once the Defendant approaches their parole date, the Defendant be evaluation
6 for any re-entry program.
7

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9
10 Dated this 24th day of August, 2021

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A handwritten signature in black ink, appearing to read 'Cristina D. Silva', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke at the end. The initials 'ks' are written in the bottom right corner of the signature area.

BA9 B80 ECC6 6530
Cristina D. Silva
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-17-327585-1

7 vs

DEPT. NO. Department 9

8 Dorie Henley
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: 8/24/2021

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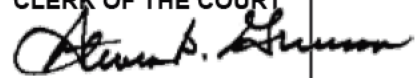
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Attorney for Appellant

DISTRICT COURT
CLARK COUNTY, NEVADA

DORIE REGINA HENLEY ,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO. C-17-327585-1

DEPT. NO. IX

NOTICE OF APPEAL

NOTICE is hereby given that DORIE HENLEY, Appellant above named, hereby appeals to the Nevada Supreme Court from District Court's decision rendered in this action, the 24th day of August, 2021.

DATED this 21st day of September 2021.

GAFFNEY LAW

/s/ Lucas J. Gaffney, Esq.

LUCAS J. GAFFNEY, ESQ.
Nevada Bar No. 12373
1050 Indigo Drive, Suite 120
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Attorney for Appellant

1 **CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with the Nevada State
3 District Court in Clark County, Nevada on September 21, 2021. Electronic service of the foregoing
4 document shall be made in accordance with the Master Service List as follows:
5

6 STEVEN WOLFSON,
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Respondent

11 AARON D. FORD
12 Nevada Attorney General
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Carson City, Nevada 89701-4714

14
15 By: /s/ Lucas Gaffney
16 An employee of GAFFNEY LAW.
17
18
19
20
21
22
23
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25
26
27
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