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

3 DORIE HENLEY)

4 Appellant,)

5 vs.)

6 THE STATE OF NEVADA)

7 Respondent.)
8)
9)
10)

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Apr 20 2022 04:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
CASE NO.: 83546

11 **APPELLANT'S MOTION FOR LEAVE TO FILE A SEALED DOCUMENT**

12 Appellant, DORIE HENLEY by and through his attorney, LUCAS J. GAFFNEY,
13 ESQ., and pursuant to Howard v. State, 128 Nev. 736, 291 P.3d 137 (2012). Respectfully
14 requests leave to file a document under seal. This motion is based upon the following
15 Memorandum and all papers and pleadings on file herein.
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17 DATED this 20th day of April 2022.
18

19 Respectfully submitted,

20 /s/ Lucas Gaffney

21 LUCAS GAFFNEY, ESQ.

22 Nevada Bar No. 12373

23 Attorney for the Appellant
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I.**
4 **RELEVANT PROCEDURAL HISTORY**

5 On November 1, 2017, the State of Nevada charged the Appellant, Dorie Henley
6 (Henley), with Murder with Use of a Deadly Weapon, Conspiracy to Commit Murder,
7 Third Degree Arson, Conspiracy to Commit Third-Degree Arson, First-Degree
8 Kidnapping, Conspiracy to Commit Kidnapping, Robbery with Use of a Deadly
9 Weapon, Conspiracy to Commit Robbery, Grand Larceny Auto and Conspiracy to
10 Commit Grand Larceny. Henley's co-defendants, Andrew Henley (Andrew) and Jose
11 Melvin Franco (Franco), were also indicted at the same time and charged with the same
12 offenses.
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15 On March 16, 2020, Henley entered a plea of guilty to one count of Second-
16 Degree Murder with use of a Deadly Weapon. On August 25, 2020, Ms. Henley filed a
17 motion to withdraw from the plea agreement. Following briefing and an evidentiary
18 hearing, the district court issued an order denying Ms. Henley's motion to withdraw
19 plea agreement on May 28, 2021.
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22 On August 20, 2021, the district court sentenced Ms. Henley to LIFE with a
23 minimum parole eligibility of fifteen (15) years in the Nevada Department of
24 Corrections, with one thousand four hundred six days credit for time served.
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1 On September 21, 2021, Ms. Henley filed her Notice of Appeal. On February 10,
2 2022, Henley filed her Opening Brief and Appendix.
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4 **II.**
5 **ARGUMENT**

6 In Howard v. State, this Court set forward the process a party must follow to
7 file a document under seal.
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9 First, a party seeking to seal a document must file a written motion and
10 serve the motion on all parties involved in the action. Second, the
11 motion must identify the document or information the party seeks to
12 seal. Third, the motion must identify the grounds upon which sealing
13 the subject documents is justified and specify the duration of the sealing
14 order. Although not an exhaustive list, examples of court records in
15 criminal proceedings that may be sealed in this court include records
16 containing privileged attorney-client communications where the
17 privilege has not been waived, records containing information that is
18 permitted or required under federal or Nevada law to be sealed, and
19 records containing information the sealing of which is justified or
20 required by an identified significant competing interest. Fourth, the
21 motion must explain why less restrictive means will not adequately
22 protect the material. The records or documents that are the subject of
23 the motion may be submitted separately and will remain confidential
24 for a reasonable period of time pending this court's resolution of the
25 motion.
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27 Howard v. State, 128 Nev. 736, 746, 291 P.3d 137, 143 (2012).
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23 Here, Henley respectfully requests leave to file a document under seal. The
24 document contains a confidential interview of a defense witness that disclosed
25 admissions made by one of Henley's co-defendants regarding his involvement in the
26 criminal charges underlying the instant case. During the proceedings below, Henley
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1 argued the interview supported her claim she participated in the events leading to the
2 victim's death under duress which resulted from her co-defendant's threats. Henley also
3 argued that trial counsel rendered ineffective assistance by failing to provide a copy of
4 the interview to Henley prior to her change of plea, and that if she received the interview
5 in a timely manner she would have insisted on proceeding to trial.
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8 The district court reviewed the interview to determine if it provided a basis—a
9 fair and just reason—to allow Henley to withdraw from her plea agreement. The district
10 court admitted the interview into evidence as a sealed exhibit (Court Exhibit 1) during
11 an evidentiary hearing conducted on March 4, 2021. Additionally, the parties discussed
12 portions of the interview at the evidentiary hearing and oral argument related to
13 Henley's motion to withdraw from her plea agreement. Thus, the interview is necessary
14 for the adjudication of the instant appeal as it was considered by the district court below
15 when denying Henley's Motion to Withdraw Guilty Plea.
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19 Because the witness's interview contains sensitive information regarding the co-
20 defendant's participation in the robbery and murder of the victim in the instant case,
21 filing the interview under seal is necessary to protect witness's identity. Henley believes
22 in good faith that filing the interview under seal will prevent the witness from any
23 potential retaliation or intimidation that may result from the co-defendant, or others,
24 learning the witness's identity. See United States v. Wills, 88 F.3d 704, 711 (9th Cir.
25 1996) (Court finds disclosure of information compromising a witness's safety
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1 warranted withholding information from the public); *see also* Ochoa v. Superior Ct.,
2 199 Cal. App. 4th 1274, 1283, 132 Cal. Rptr. 3d 233, 240 (2011) (Court finds delaying
3 the disclosure of a witness's identity was warranted to protect witness from harm.).
4 Henley respectfully requests the interview remain under seal during the pendency of the
5 instant appeal.
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8 Henley has a competing interest against public disclosure of the interview in
9 order to protect her witness from harm. Specifically, in the event this Court determines
10 Henley is entitled to withdraw from her plea agreement and proceed to trial, it is crucial
11 the witness's identity remain confidential to ensure his/her safety until he/she testifies.
12 Especially given the violent nature of the co-defendants' conduct in the death of the
13 victim. Thus, the public's right of access to the witness's identity is outweighed by a
14 significant competing interest.
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17 Lastly, less restrictive means such as redacting the interview will not adequately
18 protect the witness's safety because the content and context of the interview will make
19 the identity of the witness apparent to the co-defendant, thereby compromising the
20 witness's safety.
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Therefore, based on the foregoing Henley respectfully requests leave to file a copy of the interview under seal for this Court's review.

Respectfully submitted, this 20th day of April 2022.

By: /s/ Lucas J. Gaffney
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STEVEN WOLFSON
Chief Deputy District Attorney

BY /s/ Lucas Gaffney
Employee of Gaffney Law

BY /s/ Lucas Gaffney
Employee of Gaffney Law