

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

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7
8 vs.

9 **THE STATE OF NEVADA,**

10 Respondent.

11
12 **Appeal from the Postconviction Denial of Relief for Writ of Habeas**
13 **Corpus - Eighth Judicial District Court, Clark County**
14 **The Honorable Judge Bita Yeager 8th Judicial District Court Judge**
15 **Department 1, Presiding, Findings of Fact, Conclusions of Law and**
16 **Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

17
18 **APPELLANT'S APPENDIX VOLUME XVIII**

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| Transcript Jury Trial Day 5 (tr. cont. p. 199-215) | 5AA001001-1017 |
| Transcript Jury Trial Day 6 9/19/16 (tr. p. 1-121)..... | 5AA001018-1138 |
| Transcript Jury Trial Day 7 (tr p. 1-112 of 176) | 2016 5AA001139-1250 |
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Dated September 2, 2021
BY /s/ DIANE C. LOWE
 DIANE C. LOWE, ESQ
 Nevada Bar #14573

JURY TRIAL SUMMARY

| Writ Case Number | Prior Criminal Case Number | Appeal Case Number | Date of Birth | DOC Number | NEW Judge | Facility of Inmate | Length of Sentence | Review of Jury Trial |
|----------------------------------------------|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------|----------------------------------------------------------------|-------------------------------|---------------------------------|----------------------------------------------------------------------------------------------------------------------|
| A-19-804157-W Jorge Mendoza v. Warden | C-15-303991-1 State of Nevada v. Jorge Mendoza | Current appeal number 82740 Jorge Mendoza v. State of Nevada <u>eFiling</u> Sup Ct 72056 Denied 10-20-18 10-17-18 <u>Oral argument</u> | 9/3/1982 (37) | 1169537 | Bitu Yeager Dept 1 Previously: Carolyn Ellsworth Dept V | High Desert State Prison HDSP | Life with Parole after 23 Years | 19-day Jury Trial 9/12/16-10/7/16 and Appeal Sentencing Date 12/12/2016 Judgment of Conviction 12/2/16 |

| Count | Crime | N.R.S. | Classification | Date of Occurrence | File Date | Jury Trial | Date of Conviction |
|--------------|---------------------------------|---------------|-----------------------|---------------------------|------------------|-------------------|----------------------------------------|
| 1 | Conspiracy to Commit Robbery | 200.380 | Felony B | 9/21/2014 | 1/30/15 | 9/12/16-10/7/16 | Sentencing 11/28/16 JOC: 12/02/2016 |
| 2 | Burglary while in Possess of | 205.060.4 | Felony B | 9/21/2014 | 1/30/15 | | 12/02/2016 |
| 3 | Home Invasion, While in Poss | 205.067.4 | Felony B | 9/21/2014 | 1/30/15 | | 12/02/2016 |
| 4 | Attempt Robbery with a Deadly W | 200.380 | Felony B | 9/21/2014 | 1/30/15 | | 12/02/2016 |
| 5 | Attempt Robbery with a Deadly W | 200.380 | Felony B | 9/21/2014 | 1/30/15 | | 12/02/2016 |
| 6 | Murder with Use of a Deadly W | 200.030.1 | Felony A | 9/21/2014 | 1/30/15 | | 12/02/2016 |
| 7 | Attempt Murder with a Deadly W | 200.010 | Felony B | 9/21/2014 | 1/30/15 | | 12/02/2016 |

| | Mendoza C-15-303991-1 | Laguna C-15-303991-5 | Murphy C-15-303991-4 |
|-------------------------------------------------------|----------------------------------------|----------------------------------------|-------------------------------------|
| Ct 1 Conspiracy to commit robbery | same | 28-72 months | same |
| Ct 2 Burglary while In possession of dangerous weapon | 48 to 180 months concurrent to count 1 | 48-150 months Concurrent to count 1 | 48 to 180 months concurrent to ct 1 |
| Ct 3 Home invasion while in poss of a deadly | 48 to 180 months concurrent to count 2 | 66 to 180 months Concurrent to count 2 | same |

| | | | |
|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Count 4 Attempt Robbery with use of a deadly weapon | 36 to 120 months with consecutive weapon enhancement 36 to 120 months concurrent to count 3 | 48 to 120 months with consecutive weapon enhancement 48 to 120 months concurrent to count 3 | 48 to 120 months consecutive weapons enhancement 36 to 120 months concurrent to count 3 |
| Count 5 Attempt Robbery with use of a deadly weapon | 36 to 120 months with consecutive weapons enhancement 36 to 120 months concurrent to count 4 | 48 to 120 months consecutive weapon enhancement 48 to 120 months concurrent to count 4 | 48 to 120 months consecutive weapons enhancement 36 to 120 months concurrent to count 4 |
| Count 6 Murder with use of a deadly weapon | 1 st Life with possibility of parole after 20 years consecutive weapons enhancement 48 to 240 months concurrent to count 5 | 2 nd degree Life with poss of parole after 20 years Consecutive weapons enhancement 36 to 240 months Concurrent to count 5 | 2 nd degree same |
| Count 7 attempt murder with use of a deadly weapon | 48 to 240 months consecutive weapons enhancement 36 to 240 months concurrent to charge 6 800 days credit | 84 to 240 months Consecutive weapon enhancement 84 to 240 months consecutive to count 6 Credit for 655 days served | 84 to 240 months consecutive weapon enhancement 36 to 240 months consecutive to count 6 719 days credit |
| | 23 years to life | 27 years to life | 23 years to life |

Jorge Mendoza was convicted of First-Degree Murder with use of a deadly weapon and 6 Felony B crimes after a 19-day jury trial which resulted, for him, in an aggregate sentence of 23 years to Life imprisonment on December 12, 2016, the Honorable Judge Carolyn Ellsworth presiding throughout. XIII:3013-6. The three co-defendants - Jorge Mendoza, Joseph Larson and David Murphy were tried together, despite efforts to sever the cases. XI:2569-86. Joseph Laguna was convicted of Second-Degree Murder and 6 Felony B Counts. His aggregate sentence was 27 years to life. XIII:3007-8. He appealed his conviction and Order denying the Petition for Writ of Habeas Corpus Pro Per and judgment was reversed and remanded May 11, 2020, in Nevada Supreme Court case 78866. Case A-18-785267-

W shows the next hearing on this case is April 18, 2022, per a July 6, 2021, Stipulation and Order to Continue Briefing Schedule.

David Murphy was convicted of Second-Degree Murder and 6 Felony B Counts. His aggregate sentence was 23 years to life. XIII:3008-9. He appealed his conviction, and his judgment was affirmed November 12, 2019, in Nevada Supreme Court case 77828.

The 19-day jury trial commenced September 12, 2016. I:60. Throughout the entirety the lawyers and Judge were:

Judge Carolyn Ellsworth

For the State Marc DiGiacomo, Agnes M. Lexis

For Defendant Mendoza: William L Wolfbrandt

For Defendant Murphy Casey A. Landis

For Defendant Laguna Monique A McNeill I:60.

Voir dire lasted 4 days. Jury Trial Day 1: I:60-202. Jury Trial Day 2 I:203-50, II:251-377. Jury Trial Day 3: II:378-500, III:501-605. Jury Trial Day 4 III:606-750, IV:751-802. The State presented 22 witnesses and rested their case on September 30, 2016, the fourteenth day of a nineteen-day jury trial. (tr. p. 74) X:2382. State's witnesses in front of and or outside the presence of the jury:

Brown - David Brown Esq testimony outside the presence of the jury Jury Trial Day 14 (tr. p. 109-128) X:2417-36.

Brown-Jennifer Brown forensic scientist in DNA section of Las Vegas Metropolitan Police Department forensic laboratory Jury Trial Day 9 (tr. p. 2, 88- 113) VI:1449, VII:1535-60.

Cattoir – Aaron Cattoir pawn shop record verification of pawn witness Jury Trial Day 6 (tr. p. 74-82) V:1091-99.

Day- Roger Day on September 21st, 2014, he was living near the murder site 10025 Long Cattle in Las Vegas called 911 Jury Trial Day 8 (tr. p. 86-114) VI:1316, VI:1400-28.

Dutra-Dr. Timothy Dutra Medical Examiner at Clark County Office of the Coroner Jury Trial Day 8 (tr. p. 4-21) VI:1316-35.

Estavillo – Michelle Estavillo- Jorge Mendoza's mother-in-law Jury Trial Day 7 (tr. p. 2, 95-140) V:1140, V:1233-50, VI:1251-78.

Felabom – Adam Felabom, Crime Scene Analyst CSA Jury Trial Day 5 (tr. p. 2, 129-213) IV:804, IV:930-1000, V:1001-15.

Figueroa – Robert Figueroa, Defendant who took plea deal in exchange for testimony Jury Trial Day 10, 11, 12 - Jury Trial Day 10 (tr. p. 2, 207-249) VII:1599, VII:1804-46; Jury Trial Day 11 (tr. p. 2, 5-143) VII:1850, VIII:1853-1991; Jury Trial Day 12 (tr. p. 2, 30-58) VIII:1995, IX:2023-51.

Gandy-Officer Christopher Gandy Police Officer with Las Vegas Metropolitan Police Department Jury Trial Day 10 (tr. p.2, 63-203) VII:1660-1750, VII:1751-1800.

Gutierrez – Xavier Gutierrez Employed by AT&T assistant store manager at retail location – he was asked by AT&T to come to jury trial and authenticate some records from AT&T as well as Cricket Jury Trial Day 8 (tr. p.2, 76-86) VI:1316, VI:1390-1400.

Jensen-Detective Barry Jensen Las Vegas Police Detective Jury Trial Day 12, 13, 14 Jury Trial Day 12 (tr. p. 91-147) VIII:1995, IX:2084-140; Jury Trial Day 13 (tr.

p. 2, p. 9-155) IX:2145, IX:2152-250, X:2251-98; Jury Trial Day 14 (tr. p. 2, 51) X:2310, X:2359-81.

Kovacich – Officer Matthew Kovacich Patrol Officer called to scene Jury Trial Day 5 (tr. p. 2, 94) IV:804, IV:896-930.

Larsen-Steven Larsen Father of Joey Larsen name on lease of scene of crime and called house to give heads up and also came to scene after learning of shooting Jury Trial Day 9 (tr. p. 2, 6-86) VI:1449, VI:1453-1500, VII:1501-33.

Larsen- Summer Larsen estranged wife of Joey Larsen, roommate of murder victim Jury Trial Day 6 (tr. p. 92-119), Jury Trial Day 6: V:1109, V:1099-V:1136, Jury Trial Day 7 (tr. p. 92-139) V:1140-1250, VI:1251-77.

Lester-Anya Lester employed as a forensic scientist with the Las Vegas Metropolitan Police Department forensic laboratory in the firearms and tool marks analyst unit Jury Trial Day 7 (tr. p. 142-172) V:1140, VI:1278-310.

McPhail-Randy McPhail State's Rebuttal Witnesses Jury Trial Day 16 (tr. p. 87-124) XI:2721-58.

Selgado-Renee Salgado lived near the murder site and also called 911 when she looked out the window and saw what was going on - Jury Trial Day 8 (tr. p. 114 - 132) VI:1316, VI:1400-46.

Sierra-Joseph Sierra employed with T-Mobile US custodian of records provided extensive testimony on cell phone towers and information gathering and potential scenarios Jury Trial Day 8 (tr. p. 21-74) VI:1316, VI:1335-88.

Szukiewicz – Joseph Szukiewicz Crime Scene Analyst Jury Trial Day 6 (tr. p. 2, 20-33) V:1019-50.

Theobald – Officer Ronald Theobald Jury Trial Day 6 (tr. p. 2, 34-74) V:1051-90.

Walker - Gene Walker neighbor of house where murder was Jury Trial Day 5 (tr. p. 2, 66-94) IV:804, IV:868-96.

Williams – Tod Williams Detective with the Las Vegas Metropolitan Police Department Interviewed Mr. Mendoza at the Hospital – Recording played to the Jury

he authenticates them, and they are played to the jury on Jury Trial Day 16. Additional Testimony: Jury Trial Day 9 (tr. p. 113-149) VII:1560-97; Jury Trial Day 10 (tr. p. 5), VII:1599, VII:1603-45; Jury Trial Day 16 (tr. p. 126) XI:2636, XI:2760, XII:2761-63. Jury Trial Day 17 (tr. p. 2, 3-23) XII:2776, XII:2777-97.

Exhibit 334 Transcript of 2 hospital Mendoza interviews admitted XII:2762; Exhibit 334A Recordings admitted and First Hospital Interview Played to Jury XII:2763. Jury Trial Day 17 State's rebuttal Witness Tod Williams XII:2776
2nd Hospital Interview of Mendoza played to Jury XII:2778-97.

Jorge Mendoza testified directly after the State rested, thinking based on his attorney's advice he had legal grounds for asserting self-defense including jury instructions on self-defense but after he testified his attorney presented the request to the court and the request was denied. Jury Trial Day 18. (tr. p. 4-18) XII:2809-24. XV:3454-7.

Mendoza-Jorge Mendoza -Defendant and Petitioner for this Action Jury Trial Day 14 (tr. p. 2, 78-205, 206-231) X:2310, X:2386-500, XI:2501-13, XI:2514-39.

Other Defense Witnesses:

Michalsky-Dan Michalsky defense witness of Joseph Laguna – lived near crime scene called 911 Jury Trial Day 15 (tr. p. 2, 21-41) XI:2568, XI:2587-2607.

Hall-Ashley Hall- friend of Summer Larsen XI:2568 Defense Witness of David Murphy Jury Trial Day 15 (tr. p.2, 45-66) XI:2568, XI:2611-32.

Sotelo-Gabriel Sotelo testifies re with North Las Vegas Police detective and gave information he had heard regarding this crime Defense Witness of David Murph Jury Trial Day 16 (tr. p. 2,16-58, 5883) XI:2636, Outside Presence of Jury: XI:2650-92; In presence of jury: XI:2692-717.

Jury Trial Outline:

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| IV:856 | 54-57 | 5 | Laguna's Opening Statement |
| IV:859 | 57-65 | 5 | Murphy's Opening Statement |
| IV:869 | 67 | 5 | State Witness Gene Walker Neighbor of Crime Site |
| IV:896-930 | 94 | 5 | Officer Matthew Kovacich Patrol called to scene |
| IV:931-1000 | 129 | 5 | Adam Felabom, CSA Crime Scene analyst |
| V:1037-1050 | 20 | 6 | Joseph Szukiewicz, CSA Crime Scene Analyst |
| V:1051-90 | 34 | 6 | Officer Ronald Theobald |
| V:1091-9 | 74 | 6 | Aaron Cattoir pawn shop record verification of pawn ticket witness |
| V:1109-36 | 92 | 6 | Summer Larsen estranged wife of roommate of murder victim |
| V:1140-232 | 3 | 7 | Summer Larsen – estranged wife of Joey Larsen continues testimony |
| V:1233-50 VI:1251-78 | 95 | 7 | Michelle Estavillo – Jorge Mendoza's mother-in-law |
| VI:1278-310 | 142 | 7 | Employed as a forensic scientist with the Las Vegas Metropolitan Police Department forensic laboratory in the firearms and tool marks analyst unit |
| VI:1316-335 | 4 | 8 | Medical Examiner at Clark County Office of the Coroner |
| VI:1335-88 | 21 | 8 | Joseph Sierra Employed with T-Mobile US custodian of records provided extensive testimony on cell phone towers and information gathering and potential scenarios |
| VI:1390-400 | 76 | 8 | Xavier Gutierrez Employed by AT&T assistant store manager at a retail location – he was asked by AT&T to come to jury trial and authenticate some records from AT&T as well as Cricket |
| VI:1400-28 | 86 | 8 | Roger Day page 86 On September 21 ST 2014 he was living near the murder site 10025 Long Cattle in Las Vegas in a house called 911 |

| | | | |
|--------------------------------|----------------|----|----------------------------------------------------------------------------------------------------------------------------|
| VI:1428-46 | 114 | 8 | Renee Salgado lived near the murder site and also called 911 when she saw out the window what was going on |
| VII:453-500 VII:1501-33 | | 9 | Steven Larsen page 6 Father of Joey Larsen and name on lease for house he lived in |
| VII:1535-60 | 88 | 9 | Jennifer Brown forensic scientist in DNA section of Las Vegas Metropolitan Police Department forensic laboratory |
| VII:1560-97 | 113 | 9 | Detective Tod Williams Detective with the Las Vegas Metropolitan Police Department Interviewed Mr. Mendoza at the Hospital |
| VII:1602-45 | 5 | 10 | Detective Tod Williams |
| VII:1660-750 VIII:1751-1800 | 63 | 10 | Officer Christopher Gandy |
| VIII:1804-46 | 207 | 10 | Robert Figueroa testifying as part of plea bargain |
| VIII:1853-991 | 5 | 11 | Robert Figueroa |
| IX:2023-51 | 30 | 12 | Robert Figueroa |
| IX:2084-140 | 91 | 12 | Detective Barry Jensen |
| IX:2152-250 X:2251-298 | 9 | 13 | Detective Barry Jensen |
| X:2359-381 | 51 | 14 | Detective Barry Jensen |
| X:2382 | | 14 | State Rests |
| X:2386-414 | 78-106 | 14 | Jorge Mendoza |
| X:2417-36 | 109-128 | 14 | David Brown Esq former attorney for Robert Figueroa testimony outside the presence of the jury |
| X:2445-2500 | 137 | 14 | Jorge Mendoza |
| XI:2501-2539 | | 15 | Jorge Mendoza |
| XI:2569-86 | 3-20 | 15 | Argument on Motion to Sever |
| XI:2587-607 | 21-41 | 15 | Defense McNeill / Laguna Witness: Dan Michalsky lived near crime site called 911 |
| XI:2607 | 41 line 20 | 15 | Laguna Defense team rests |
| XI:2611-32 | | 15 | Defense Atty Landis/ Murphy Witness: Ashley Hall page 45-66 friend of Summer Larsen |
| XI:2650-78 XI:2690-1 | 16-44 56-57 | 16 | Defendant Murphy's Witness Gabriel Sotelo Outside the presence of the jury |

| | | | |
|-----------------------|--------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| XI:2692-717 | | | |
| XI:2721-58 | 87-124 | 16 | Randy McPhail State's Rebuttal Witness |
| XI:2760 XII:2761-3 | 126-9 | 16 | Detective Tod Williams-Interviewed Mr. Mendoza at the Hospital – Recording played to the Jury he authenticates them, and they are played to the jury. |
| XII:2777-97 | 3-23 | 17 | Detective Tod Williams |
| XII:2810-22 | 4-16 | 18 | Self-Defense Jury Instructions requested by Attorney Wolfbrandt for Mr. Mendoza. Argument and Request denied. |
| XII:2833-71 | 27-65 | 18 | State's Closing Argument |
| XII:2873-87 | 72-73 | 18 | Mendoza's Closing Argument |
| XII:2887-906 | 81-100 | 18 | Laguna's Closing Argument |
| XII:2906-28 | 100-22 | 18 | Murphy's Closing Argument |
| XII:2940-91 | 7-58 | 19 | State's Rebuttal Closing Argument -DiGiacomo |
| XII:3005-6 | 72-73 | 19 | Verdict re Jorge Mendoza |
| XII:3006-8 | 73-75 | 19 | Verdict re Joseph Laguna |
| XII:3008-9 | 75-76 | 19 | Verdict re David Murphy |

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 28, 2016

C-15-303991-1 State of Nevada
vs
Jorge Mendoza

November 28, 2016 09:00 AM Sentencing

HEARD BY: Ellsworth, Carolyn COURTROOM: RJC Courtroom 16D

COURT CLERK: Trujillo, Denise

RECORDER: Corcoran, Lara

REPORTER:

PARTIES PRESENT:

| | |
|-----------------------------------|-------------------------------|
| Agnes Lexis | Attorney for Plaintiff |
| Jorge Mendoza | Defendant |
| Marc P. Di Giacomo | Attorney for Plaintiff |
| State of Nevada | Plaintiff |
| William L. Wolfbrandt, ESQ | Attorney for Defendant |

JOURNAL ENTRIES

SENTENCING

Deft. present in custody. DEFT. MENDOZA ADJUDGED GUILTY OF CT 1 - CONSPIRACY TO COMMIT ROBBERY (F); CT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F); CT 3 - HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (F); CT 4 & CT 5 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F); CT 6 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F); and CT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F).

Statements by counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee including testing to determine genetic markers, \$3.00 DNA Collection fee, and JUDGMENT of RESTITUTION of \$5,500.00 PAYABLE to State of Nevada, Victim of Crimes, jointly and severally with co-Deft.'s, Deft. SENTENCED to:

CT 1 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC);

CT 2 - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM of FORTY EIGHT (48) MONTHS in the NDC to run CONCURRENT with CT 1;

CT 3 - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM of FORTY EIGHT (48) MONTHS in the NDC to run CONCURRENT with CT 2;

CT 4 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM of THIRTY SIX (36) MONTHS in the NDC with a CONSECUTIVE MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM of THIRTY SIX (36) MONTHS for weapons enhancement, to run CONCURRENT with CT 3;

CT 5 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM of THIRTY SIX (36) MONTHS in the NDC with a CONSECUTIVE MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM of THIRTY SIX (36) MONTHS for weapons enhancement, to run CONCURRENT with CT 4;

CT 6 - a MAXIMUM of LIFE and a MINIMUM of TWENTY (20) YEARS in the NDC with a CONSECUTIVE MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM of FORTY EIGHT (48) MONTHS for weapons enhancement, in the NDC, to run CONCURRENT with CT 5;

Printed Date: 2/27/2019

Page 1 of 2

Minutes Date:

November 28, 2016

Prepared by: Andrea Natali

CT 7 - a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM of FORTY EIGHT (48) and a CONSECUTIVE MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM of THIRTY SIX (36) MONTHS for weapons enhancement, to run CONCURRENT with CT 6, for an AGGREGATE TOTAL of a MAXIMUM of LIFE, and MINIMUM of TWENTY THREE (23) YEARS with 800 DAYS CREDIT for time served. Mr. Wolfbrandt moved to withdraw and have Ms. Amanda Gregory appointed as appellant counsel. Ms. Gregory advised she was contacted by Mr. Christensen's office. COURT ORDERED, Motion GRANTED.

NDC

CLERK'S NOTE: COURT ORDERED, the foregoing minutes updated to add "FIRST DEGREE" to the adjudication of CT 6, by virtue of the verdict reached by the Jury (2/26/19 amn).



1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JORGE MENDOZA,
11 SUMMER LARSEN,
12 DAVID MURPHY,
13 JOSEPH LAGUNA,

14 Defendant.

CASE NO. C-15-303991-1
C-15-303991-3
C-15-303991-4
C-15-303991-5

DEPT. V

15 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

16 MONDAY, NOVEMBER 28, 2016

17 **TRANSCRIPT OF PROCEEDINGS RE:**

18 **SENTENCING**
19

20 APPEARANCES:

21 (See next page)
22
23
24

25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1 APPEARANCES:

2 For the State:

MARC DiGIACOMO, ESQ.,
AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorneys

4 For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.,
AMANDA S. GREGORY, ESQ.,

6 For the Defendant, Larsen:

GREGORY E. COYER, ESQ.,

8 For the Defendant, Murphy:

DANIEL R. GILLIAM, ESQ.,

9 For the Defendant, Laguna:

MONIQUE A. McNEILL, ESQ.,

1 **LAS VEGAS, NEVADA; MON7DAY, NOVEMBER 28, 2016**

2 [Proceeding commenced at 10:43 a.m.]

3
4 THE COURT: All right. Case number C303991, State of Nevada versus
5 Jorge Mendoza, David Murphy, Joseph and Summer Larsen. Unless you have a
6 preference, I was going to just take these in the order that they appear on the
7 calendar. Do you have a preference?

8 MR. GILLIAM: I don't, Judge.

9 MR. DiGIACOMO: No. I think my argument except for Ms. Larsen would be
10 the same as it relates to the three that went to trial.

11 THE COURT: Okay. And so we'll begin with Mr. Mendoza. And this is the
12 time set for sentencing; are you ready to proceed?

13 MR. WOLFBRANDT: Yes.

14 THE COURT: State?

15 MR. DiGIACOMO: Yes, Judge. As it relates to Mr. Mendoza, and just so
16 you're aware of many of -- or several of the family members are present. Some
17 were noticed as speakers. They all just want to be present and they want you to
18 know that their present, but they don't actually want to speak here today.

19 As it relates to -- to Mr. Mendoza, I'll be honest with you, his criminal
20 history, the reason he's present at this house and everything else that occurred as it
21 relates to this homicide, I recognize that he is the person who pulled the trigger. But
22 other than that, that does not distinguish him.

23 That the verdict in and of itself, and I've talked to the family about this,
24 that he's not eligible for life without. The verdict itself was going to give him at the
25 very least 21 years from the verdict. And so you know the facts of this case and I'm

1 going to leave it up to your discretion as what you believe is -- is an appropriate
2 sentence for Mr. Mendoza. I will have more argument as it relates to the -- Mr.
3 Murphy and Mr. Laguna.

4 THE COURT: Mr. Mendoza, would you like to address the Court?

5 DEFENDANT, MENDOZA: No, I don't.

6 THE COURT: Counsel?

7 MR. WOLFBRANDT: Judge, obviously you're very familiar with the
8 circumstances of this case. I've got to know Jorge and his family for a bit. I mean
9 this is something that was just -- it was tragic on many different levels. For the
10 Gibson family as well as the Mendoza family.

11 I thought the recommendation by Parole and Probation was pretty
12 accurate. The only thing that I would request is when it comes to the weapon
13 enhancement, rather than the 36 to whatever months it recommended, I was going
14 to ask you to do 12 to 30 months. It's all still going to be -- those are going to be
15 consecutive, but ask you to run all the other counts concurrent to the life sentence
16 that's come with the murder case.

17 THE COURT: All right. So by virtue of the jury's verdict in this case of -- on
18 Count 1, conspiracy to commit robbery, Count 2, burglary while in possession of a
19 deadly, Count 3, home invasion while in possession of a deadly weapon, attempt
20 robbery with a deadly weapon on Count 4, Count 5, attempt robbery with a deadly
21 weapon, Count 6, murder with use of a deadly weapon and Count 7, attempt murder
22 with use of a deadly weapon, I hereby adjudge you guilty of those offenses.

23 And as to Count 1, conspiracy to commit robbery, I hereby sentence
24 you to a minimum term of 24 months, the maximum term of 72 months in the
25 Nevada Department of Corrections.

1 As to Count 2, burglary while in possession of a deadly weapon, a
2 minimum term of 48 months, a maximum term of 180 months in Nevada Department
3 of Corrections. That will run concurrently with Count 1.

4 Count 3, home invasion while in possession of a deadly weapon, a
5 minimum term of 48 months, a maximum term of 180 months. That will run
6 concurrently with Count 2.

7 Count 4, attempt robbery with use of a deadly weapon, a minimum term
8 of 36 months, a maximum term of 120 months which will run concurrently with Count
9 3.

10 Count 5, attempt robbery with use of a deadly weapon, a minimum term
11 of 36 months, a maximum term of 120 months. There is a consecutive minimum
12 enhancement for use of the deadly weapon, a minimum of 36 months, a maximum
13 of 120 months. That count, Count 5, will run concurrently with Count 4.

14 As to --

15 THE CLERK: I'm sorry. Does Count 4 have that same enhancement? You
16 didn't say that.

17 THE COURT: Oh yes. I'm sorry. I did my -- thank you for pointing that out,
18 Madam Clerk. So there's a minimum term of 36, maximum term of 120 as the
19 enhancement for Count 4 which was robbery with use of a deadly weapon. And still
20 that runs concurrently to Count 3.

21 Count 5 runs concurrent to Count 4.

22 Count 6, murder with use of a deadly weapon, the term is life
23 imprisonment with the possibility of parole after 21 -- 20 years has been served.
24 And a consecutive minimum term of 36 months, maximum of 240 months for the
25 deadly weapon enhancement. And that runs concurrent with Count 5.

1 And Count 7, attempt murder with use of a deadly weapon is a
2 minimum term of 48 months, a maximum term of 240 months with an enhancement
3 for use of a deadly weapon of -- which is consecutive to the underlying sentence of
4 36 to 240. But Count 7 also runs concurrently with Count 6.

5 So, how do I do the aggregate? Let's see. So there's an aggregate I
6 guess sentence of a minimum of 23 and a maximum of life.

7 MR. DiGIACOMO: Correct.

8 THE CLERK: Twenty-three years?

9 THE COURT: Yes, 23 years, a maximum of life. And credit for time served
10 which is through today is 800 days credit for time served. Do you believe that to be
11 inaccurate?

12 MR. WOLFBRANDT: No.

13 THE COURT: Okay. Eight hundred days.

14 And the next is David Murphy.

15 MR. GILLIAM: Good morning, Judge, Dan Gilliam standing in for Mr. Landis.
16 I think the Court's aware of his situation which is why I'm here. Mr. Murphy's been
17 made aware of it.

18 THE COURT: And that is he's moved from the jurisdiction?

19 MR. GILLIAM: Correct.

20 THE COURT: Well, I'm sad to see him go.

21 MR. GILLIAM: We all were, Judge. But, Judge, if I may, did Mr. Landis -- he
22 told me that he filed a sentencing memorandum; is that accurate?

23 THE COURT: I do have that and I read it.

24 MR. GILLIAM: Thank you, judge.

25 THE COURT: And State.

1 MR. DiGIACOMO: Thank you, Judge. As it relates to Mr. Murphy and Mr.
2 Laguna, when I read the recommendation of P and P it looks like from the formula
3 that they had that they somehow wound up two years less than Mr. Mendoza. So it
4 looks like that the aggregate is 21 to life as opposed to 23 to life which is what they
5 recommend on Mr. Mendoza.

6 And I believe that formula came out that way because of the verdict for
7 second degree murder instead of first degree murder which you know from the facts
8 of this case is sort of a legal fiction in the sense that the jury found that they both
9 had the intent to kill as well as it had conspired. But more importantly is why this
10 crime occurred. And there's no question in anybody's mind that but for Mr. Murphy
11 this crime doesn't occur ever.

12 And I know we can talk about what Summer Larsen said on the stand
13 and, you know, whether the Court believes it or doesn't believe it. I know there's no
14 evidence that directly contradicts it. And so that maybe 100 percent the truth of
15 what came out of Ms. Larsen's mouth. But certainly Mr. Murphy armed his cousin
16 with a weapon, went over to do an act that was completely foreign to Mr. Mendoza,
17 and was breaking into a home that he had to believe was occupied 'cause it made
18 no sense otherwise. Otherwise, the marijuana wouldn't have been there.

19 He brought along with him Mr. Laguna who you can see from his record
20 is a very hardcore violent felon and the result of that was the death of an innocent
21 roommate who was actually in the process of moving out of that particular
22 residence.

23 I recognize that they recommended that the attempt robbery run
24 consecutive, or the murder run consecutive, to the attempt robbery. I'm going to
25 suggest to the Court that you follow the recommendation, but you run the attempt

1 murder from the murder count to consecutive and that would run the sentence
2 ultimately to something significantly higher I believe than Mr. Mendoza. And I also
3 think it'd be more commensurate of their responsibility combined with their criminal
4 history.

5 And so I would request the Court to run the final two counts consecutive
6 as opposed to the first two counts or as opposed to the attempt robbery and the
7 murder counts consecutive. And I will submit it to the -- on that.

8 THE COURT: All right. And Mr. Murphy, would you like to address the
9 Court?

10 DEFENDANT, MURPHY: No, I would not.

11 MR. GILLIAM: Judge, I'd just like to submit on Mr. Landis' sentencing
12 memorandum please.

13 THE COURT: All right. And the Court has read that. I guess I disagree in
14 that basically he says that he's -- his culpability is less than the shooter and he
15 never intended for a murder to occur. I think it's pretty clear that maybe no one
16 intended for a murder to occur. Certainly -- maybe they weren't expecting the
17 people to be armed when they arrived at the house and that they're -- one of the
18 victims to be waiting with a loaded gun into -- you know, so when they reached the
19 door that there would a fire fight. But when you go, especially in Nevada where
20 people are very fond of their guns to a house armed with weapons, you ought to
21 maybe expect a fire fight to happen.

22 So yes I see that Mr. Murphy's prior convictions have to do with stealing
23 cars which, you know, he likes to do. But I have to agree with the State here that
24 really without him deciding that they were going to go to this second house -- I
25 mean, they went to the first house and I think the evidence of that was very

1 convincing. Not only did we have witness -- a witness who testified about that and --
2 actually two witnesses who testified about going to the first house, but we have the
3 cellphone records that show that.

4 And it's only after they decide to abort that robbery attempt as being too
5 risky that the decision is made solely through Mr. Murphy to go and commit the
6 robbery at the second location. And then all these bad things happen which is what
7 one might expect.

8 And so in addition to the administrative assessment of \$25, the \$150
9 DNA testing fee, the \$3 DNA collection fee, there's also an order and judgment of
10 restitution in the amount of \$5,500. And who is -- do we know who that's to be
11 payable to? I think it's Nevada Victims of Crimes. Let me just double check.

12 MR. DiGIACOMO: I'm not positive. I'm looking right now in this.

13 THE COURT: Yeah.

14 MR. DiGIACOMO: I would assume --

15 MS. LEXIS: Victims of Crimes.

16 THE COURT: It's the --

17 MR. DiGIACOMO: -- it's the Victims of Crime.

18 THE COURT: -- the State of Nevada, the count being the Nevada Victims of
19 Crime account, so the restitution is ordered payable to the State for reimbursement
20 to the victims -- Nevada Victims of Crime account.

21 THE CLERK: Is that joint and several?

22 THE COURT: Yes. Joint and several liability with Jorge Mendoza and
23 Joseph Laguna.

24 And by the way that's also going -- that restitution order as well as the
25 same administrative assessment fees need to also be ordered for Mr. Mendoza as

1 well.

2 As to Count 1, conspiracy to commit robbery, there will be a minimum
3 term of 28 months, a maximum term of 72 months in the Nevada Department of
4 Corrections.

5 Count 2, burglary while in possession of a deadly weapon, a minimum
6 term of 48 months, a maximum term of 180 months.

7 Count 3, home invasion while in possession, a minimum term -- oh --
8 Count 2 runs concurrently with Count 1. Count 3, home invasion is 66 months
9 minimum, maximum 180 months in Nevada Department of Corrections concurrent
10 with Count 2.

11 Count 4, attempt robbery with use of a deadly weapon, a minimum term
12 of 48 months, a maximum term of 120 months with a consecutive enhancement for
13 use of the deadly weapon, a minimum of 36 months and a maximum of 120 months.

14 As to --

15 THE CLERK: Is that concurrent or consecutive?

16 THE COURT: Concurrent with Count 3.

17 Count 5, attempt robbery with a deadly weapon, a minimum term of 48
18 months, a maximum term of 120 months with a consecutive enhancement penalty of
19 36 months minimum, maximum 120 months. That runs concurrent to Count 4.

20 Count 6, second degree murder with use of a deadly weapon is life with
21 possibility of parole after 10 years has been served and there is an enhancement for
22 use of the deadly weapon of 36 -- minimum 36, maximum of 240.

23 And then as to Count 7, attempt murder with use of a deadly weapon, a
24 minimum -- oh -- Count 6 is concurrent to Count 4. Count 7, attempt murder with
25 use of a deadly weapon, a minimum term of 84 months, a maximum term of 240

1 months with a consecutive minimum term for use of the deadly weapon of 84
2 months and a maximum of 240 months. Actually no. I'm changing that. A minimum
3 is 36 months and a maximum of 240 months for the -- that runs consecutively with
4 the life or, excuse me, with -- that runs consecutively to Count 6 -- that to Count,
5 yes, 6.

6 So the enhancement then is -- let's see -- or aggregate is maximum of
7 life and a minimum of --

8 MR. DiGIACOMO: I believe it comes out to 23 as well.

9 THE COURT: -- 23.

10 And let's see. I will also want to indicate that the Court in deciding the -
11 - the enhancement penalties took into consideration the underlying facts of the case,
12 the prior history of the Defendant in this case as well as the arguments of counsel,
13 everything indicated in the presentence investigation report as well. And that is the
14 same for Mr. Mendoza. The Court took that into account as well. All right.

15 THE CLERK: So the credit for time served?

16 THE COURT: Credit for time served I think is --

17 MS. LEXIS: Seven hundred nineteen.

18 MR. GILLIAM: My understanding as well, Judge.

19 THE COURT: Seven hundred nineteen?

20 MR. GILLIAM: Yes, ma'am.

21 THE COURT: Seven hundred nineteen days credit for time served.

22 [Colloquy between the Court and the Clerk]

23 THE CLERK: Okay. What was the credit? I'm sorry.

24 MR. GILLIAM: Seven, nineteen.

25 THE COURT: Seven hundred ten.

1 MR. GILLIAM: One, nine. Seven, one, nine.

2 THE COURT: One, nine. Seven, nineteen.

3 All right. Joseph Laguna. Oh and before we get off of Mr. Murphy, I
4 make sure I adjudged him guilty of all those offenses. He's adjudged guilty.

5 And as for Mr. Laguna, you're as well adjudged guilty by reason of the
6 verdict of the jury to Count 1, conspiracy to commit robbery, Count 2, burglary while
7 in possession of a deadly weapon, Count 3, home invasion while in possession of a
8 deadly weapon, Counts 4 and 5, attempt robbery with use of a deadly weapon and
9 Count 6, second degree murder with use of a deadly weapon, and Count 7, attempt
10 murder with use of a deadly weapon. State?

11 MR. DiGIACOMO: Thank you, Judge. As it relates to well practically I guess
12 Mr. Murphy, but more likely as it relates to -- to Mr. Laguna, he was dangerously
13 close to being a mandatory habitual criminal. And if nobody had died, he could get
14 a sentence of that you gave the other Co-defendants in this case based upon that
15 criminal history. He has acts of violence. He's on either probation or parole at the
16 time of the offense for an act of violence against the Federal officer. And he is a
17 continuing danger to our society.

18 I would once again urge the Court, at the very least, to give him the 23
19 to life, but I believe that he -- that he has earned the 27 to life if you would have run
20 the attempt murder counts consecutive in full as recommended by P and P and I
21 would submit it.

22 THE COURT: Counsel.

23 MS. McNEILL: And, Your Honor, just for the record, I don't believe Mr.
24 Laguna --

25 THE COURT: Mr. Laguna, do you want to say anything?

1 DEFENDANT, LAGUNA: No, Your Honor.

2 THE COURT: All right.

3 MS. McNEILL: Thank you, Your Honor. I advised Mr. Laguna that because
4 of the pending appeal, it is best for him just to remain silent. I think he's going to do
5 that. I'm not going to talk about the facts. Your Honor sat here for four weeks. It's a
6 jury verdict. There's nothing I could do about that.

7 I would like Your Honor to consider the fact that I think clearly the jury
8 felt that Mr. Laguna was not as culpable as Mr. Mendoza by their verdict. I think
9 that's the only explanation for their verdict is that I think that they didn't feel that he
10 should be standing in the same position as Mr. Mendoza.

11 I understand Mr. Laguna's record. He understands his record. It does
12 not look favorable for Your Honor on a case where he's charged with crimes of
13 violence. But I would like Your Honor to consider is -- is the following things about
14 Mr. Laguna.

15 Mr. Laguna, he lost a parent to the prison system because that parent
16 committed a murder; that was his father. He grew up with a lot of CPS involvement
17 in his life. He was in special education classes. He hasn't had the easiest road
18 ahead of him. It's certainly no excuse, but I think it does explain a lot of how Your
19 Honor sees a lot of people come into the criminal justice system.

20 And what I would like you to know about Joey is that before he was
21 arrested in this case, he had met his wife who is here in the courtroom in support of
22 him. And he was doing everything that he could to stop the life that he was living so
23 that he could be the husband that she needed to be. Unfortunately, when you grow
24 up a product of the system, and you enter into the prison system, you tend to be
25 surrounded by people who are not productive outstanding members of the

1 community themselves. And I think we found certainly by the facts that were
2 presented to the Court the result of having those types of relationships in your life.

3 His wife indicates that he is a loving, hard-working man who has been
4 trying his best to extricate himself from the life in which he's found himself. And I
5 can say the same as his lawyer. He is a very passionate person, but he is also very
6 kind, very generous.

7 And I would ask Your Honor to consider not giving him the sentence
8 that P and P recommends. I understand that Your Honor had sentenced Mr.
9 Murphy. I assume that sentences between Mr. Laguna and Mr. Murphy it was
10 probably your intent that they be similar.

11 Mr. Laguna is -- is almost 40 years old and while that's certainly not old,
12 he's not going to make any type of first parole based on his record, based on the
13 ties that the allegations of gang affiliations. And he knew that going into this which
14 is one of the reasons why he was very frank with me about not taking a deal from
15 the State was that he knew he would not make his first parole and he knew that he
16 would be ending up serving a fairly lengthy sentence that would have him in the
17 Nevada Department of Corrections until he was in his 60's. Which again is not old,
18 but when you consider the fact that you're in a system where you're not getting
19 preventative care. You're not getting healthcare. He is going blind. He has had
20 corneal transplants that are failing him. That is a very rough living in the Nevada
21 Department of Corrections that he faces.

22 I think the term of years on the second degree murder ends up
23 punishing him just as much as a life tail would do based on the life that he has
24 ahead of him in the prison system. And I would submit it on that, Your Honor.

25 THE COURT: All right. Thank you.

1 So in addition to the \$25 administrative assessment fee, I'm waiving the
2 DNA analysis fee as that was previously taken in 2009, there's a \$3 DNA collection
3 fee.

4 And on Count 1, there is a minimum term -- that's conspiracy to commit
5 robbery -- minimum of 28 years -- 28 years -- 28 months, excuse me, a maximum of
6 72 months in the Nevada Department of Corrections. There's also an order and
7 judgment of restitution in the amount of \$5,500 and that's payable to in favor of the
8 State of Nevada Victim -- Nevada Victims of Crimes fund.

9 Count 2 -- and that's joint and several liability with the Co-offenders, Mr.
10 Mendoza and Mr. Murphy -- Count 2, a minimum term of 48 months, a maximum
11 term of 150 months in the Nevada Department of Corrections, but runs concurrent to
12 Count 1.

13 Count 3, home invasion is a minimum term of 66 months, maximum
14 term of 180 months that runs concurrently with Count 2.

15 Count 4 is a minimum term of 48 months, a maximum term of 120
16 months with a consecutive minimum enhancement of 48 months on the minimum,
17 and 120 months as the maximum. That runs concurrent with Count 3.

18 Count 5, attempt robbery with use of a deadly weapon is a minimum
19 term of 48 months, a maximum of 120 months and a consecutive for use of the
20 deadly weapon enhancement of a minimum of 48 months, maximum of 120 months.
21 That runs concurrent with Count 4.

22 Count 6, second degree murder, the sentence is life with the possibility
23 of parole after 10 years has been served, and a consecutive minimum term as in the
24 enhancement for use of a deadly weapon of a minimum of 36 months, the maximum
25 of 240 months. That runs consecutive -- that is the consecutive enhancement.

1 Count 6 -- yeah, consecutive to -- I'm sorry -- that's concurrent with Count 5.

2 Count 6 [sic], attempt murder is a minimum term of 84 months, the
3 maximum term of 240 months with a consecutive minimum enhancement term of 84
4 months, the maximum of 240 months for the deadly weapon enhancement. And
5 that runs consecutive to Count 6. Okay.

6 And so the aggregate is -- who's been keeping track?

7 MR. DiGIACOMO: That's 27 I believe.

8 THE COURT: Twenty-seven and the --

9 MR. DiGIACOMO: Life.

10 THE COURT: -- to life.

11 THE CLERK: Credit time served?

12 MS. McNEILL: Six hundred sixty -- I'm sorry -- six hundred fifty five days.

13 THE COURT: Six hundred fifty five days credit for time served.

14 And as well as in considering the enhancements, the State -- the Court
15 did in fact consider his extensive criminal record which is largely violent crimes and
16 as well the facts of this case. But I also -- I did take into account in the entire
17 sentence, of course, his -- the -- his background that counsel referred to in this case.
18 Thank you.

19 And lastly we have Summer Larsen. And, Ms. Larsen, by virtue of your
20 plea of guilty to Count 1, conspiracy to commit robbery, a felony, and Count 2,
21 attempt robbery, a felony, I hereby adjudge you guilty of those offenses. And
22 State's retained the right to argue.

23 MR. DiGIACOMO: That's correct, Judge. I can say that this is probably one
24 of the more unique situations that I've been involved in my career in the sense that
25 I've charged a lot of people with murder and I've heard a lot of stories in my time

1 about why it is they are not guilty.

2 This story that was told was I'm not guilty of the crime you are charged
3 me with because I'm guilty of something else. Now that happens and that happens
4 after they've had a chance to review discovery and I hear that story. But this maybe
5 the first time that when I go down into the minute details of this case, I can't find
6 anything that disputes the version of events.

7 Ashley Hall's connection to Mr. Murphy is indicative of why it is the story
8 came out the way the story came out. Ms. Larsen's version of events as it applies to
9 the phone numbers we had associated with her in connections with Mr. Murphy and
10 from connections we had with Ashley hall or the other woman who reports, none of
11 them dispute her version of events.

12 And I'm a Prosecutor and I have to rely upon reasonable doubt and I
13 certainly said that to the jury. We give a Defendant the benefit of the doubt. And
14 thus from perspective, I'm here arguing a conspiracy to commit robbery that as far
15 as it's not attenuated is an attempt robbery that occurs at that first location. And that
16 from as a matter of law, she is probably not liable for the crimes that occurred later
17 that day if they're sufficiently attenuated.

18 And that was the reason for the negotiation and essentially she pled
19 straight up. And this is her first criminal offense, so I am going to submit to your
20 discretion what you believe the appropriate sentence should be. You know as much
21 as I know from sitting through this trial and you can make a decision that's
22 appropriate in this case.

23 THE COURT: All right. And, Ms. Larsen, would you like to address the
24 Court?

25 DEFENDANT, LARSEN: I wrote you a letter, but I do want to say something.

1 My intentions in this was not for this to happen. My intentions were to rob the first
2 house. I had a conversation with my Co-defendant and we had an argument. He
3 went without my acknowledgment out of our agreement. Do you know what I
4 mean? I didn't even know that he had done it. And then they went to my husband's
5 house. If I was guilty, I'd be right along with them.

6 Ms. Ellsworth, I had nothing to do with that second house. And I'm
7 asking you for a chance -- like I don't have a horrible background, but I am asking
8 you for a chance like of drug rehabilitation, anything. I'm asking the mercy of you to
9 please help me. Do you know what I mean? I had a drug problem and I relapsed.
10 And it spiraled out of control and this happened.

11 I was put here for a reason. You know what I mean? To stop what I
12 was doing because I was a Good Samaritan. I just really want a chance. I have two
13 years in. If could give me a chance probation or consecutive -- can I address the
14 family?

15 THE COURT: Yes. And -- and this letter --

16 DEFENDANT, LARSEN: Yes, ma'am.

17 THE COURT: -- I did not get this until just before I took the bench.

18 DEFENDANT, LARSEN: I know because --

19 THE COURT: So I haven't been able to -- if you want to read it to me, you
20 can.

21 DEFENDANT, LARSEN: Okay. I wrote it 'cause last time I rambled.

22 Your Honor, I'm writing this letter to you and this Court today to formally
23 take responsibility for my actions. I'm humbly pleading for the mercy of the Court as
24 well as requesting a chance to prove myself by granting the opportunity to be on
25 probation. I will like to eliminate any fear that the Court may have of me potentially

1 being a repeat offender.

2 To accomplish this, I'm going to explain how my offenses are
3 regrettable once in a lifetime mistake. Never again to be repeated and how I've
4 everything to gain by being open and cooperative with in all assistance and
5 guidance to this Court offers towards my rehabilitation and reentrance in society.

6 I was an addict who's life spiraled out of control after a shock and
7 traumatic separation from my husband, a battle with methamphetamine addiction in
8 the past. And when me and my husband got together I started recovery. I was able
9 to maintain a sobriety for seven years. I was working as a store manager. I was
10 doing good. My husband and I had a house. I thought my life was great. Then I
11 came home one day and found my husband had packed up and left, and I was
12 devastated. We hadn't even had an argument. I never even saw it coming.

13 A few weeks later I discovered that he had left me for another woman.
14 A woman who ended up pregnant and as a result my husband then wanted the
15 house back. He offered me the apartment that he and his new girlfriend shared. I
16 accepted it at first, but then I couldn't -- I couldn't keep -- it was unbearable for me --
17 unbearable for me to be there knowing that they lived there as a couple, so I moved
18 in with a friend.

19 However, at this point in my depression was about to reach a peak.
20 Within a couple of weeks I lost my job with the combination of losing my husband,
21 my house, my dog, my job. I began to fully embark on the path of self-destruction.
22 After seven years of hard earned sobriety, I relapsed. I was so distraught over the
23 tragedy that had become my life. I stopped thinking clearly and I started to lash out.

24 I started casually spending time with my Co-defendant, Mr. Murphy.
25 This was my revenge on my husband for his affair. I also had another man I would

1 sleep with occasionally too. My time with these men was spent getting high and
2 having sex, attempting to fill the void that of all that I had lost.

3 After a few months of this routine, I discussed an idea with Mr. Murphy
4 of robbing a friend of my husband's. Mr. Murphy and I had an agreed plan before
5 we even took place in this action. Later we had a fight. Later I discovered that Mr.
6 Murphy, as a result of being mad at me, had decided to act out without me.

7 Instead he enlisted the help of three of his friends that I didn't even
8 know. Except somehow his -- except somehow his plan changed from robbing my
9 husband's friends to robbing my husband, which resulted in the death of a mutual
10 friend, and my husband -- was robbed -- my husband -- and resulted in a mutual
11 friend. I was horrified and shocked. None of that was supposed to happen. This
12 was not the plan of Mr. Murphy and I had discussed. He didn't even tell me that this
13 had happened. I had to hear about it from somebody else.

14 Now, it's been two years later and the story that I thought was going to
15 be happily ever after has warped into a grizzly nightmare coming to a close. The
16 experience has been depressing, terrifying and enlightening. I can't even begin to
17 express how glad I will be when this is all behind me. I never want to look back. I
18 never want to repeat the same mistakes. I want to start to build -- I want to start to
19 build a new life.

20 So now the ending is in your hands. I begin -- I beg for the Court's
21 mercy. I seek the Court's guidance and assistance and ask for an opportunity to
22 have probation. I'm more than willing to cooperate with any additional restrictions in
23 counts that the Court deems necessary. Thank you for listening.

24 THE COURT: Mr. Coyer.

25 MR. COYER: Good morning, Your Honor. Thank you. I apologize that the

1 letters did come to me this morning. I provided them to the Court.

2 THE COURT: I read the letter from grandmother, step grandfather and I
3 assume the mother. It's not signed, but it says she's pleading for leniency on her
4 daughter's behalf. So I assume it's mom.

5 MR. COYER: It is mom and she's here today, Your Honor.

6 DEFENDANT: Yeah. I'm sorry.

7 MR. COYER: So thank you for reviewing those. Sorry they came in late,
8 Your Honor.

9 We talked a little bit about some of the things that Ms. Larsen's done
10 since she's been incarcerated at the motion hearing a couple of weeks ago. I'll just
11 touch on them briefly.

12 She did provide me today her high school equivalency certificate that
13 she did get that while she's been in jail. Not an easy feat, but certainly she has
14 applied herself and done that. And that's here if the Court would like to see it.

15 She has, of course, maintained her sobriety while she's in jail, but she
16 also still continues to work the program of -- the anonymous program. She goes to
17 those classes and does daily deal with this and consider what it's going to be like
18 when she's out 'cause it's probably going to be tougher when she's out. And she
19 knows that. And she's prepared for that, Your Honor.

20 She's managed to become a worker in jail which is someone as Your
21 Honor well knows that the jail trusts with a large degree of privileges, much greater
22 freedoms. And she has responsibilities including, you know, food service, cleaning,
23 linens. And it is a significant achievement to accomplish in the jail.

24 It's difficult for me, Your Honor, to think really what more we could
25 expect from someone during their incarceration. I do think that in the two year she's

1 been in, she has really shown that she wants to apply herself and do positive good
2 things. And it's difficult to demonstrate that from inside, but I think to the extent that
3 one can, I think she's done that.

4 The facts of this case Your Honor knows very well. I won't belabor
5 them, but I do think it's important to reemphasize as the Court already knows that
6 Ms. Larsen's involvement in this is so tangential that she was in a conspiracy with
7 related -- with regard to that first house. There's no doubt about that.

8 Her engagement in that conspiracy was not just to get Mr. Murphy off of
9 her back. It truly was to redirect his attention away from 1661 Broadmere in the
10 hopes that there wouldn't be any more problems at that address. And it's in this
11 unfortunate twist that that's where Mr. Murphy and his crew end up going back after
12 not being able to achieve their goal at the first house. But that was in many ways
13 exactly one of the results that Ms. Larsen had hoped to achieve is to avoid any
14 violence coming to that address. And it's so that that's exactly what happened after
15 they changed the plan.

16 And I agree a hundred percent with Mr. DiGiacomo, it is a very strange
17 set of facts, a very strange and unique set of circumstances. But in a very real way
18 Ms. Larsen really did plea straight up to the full extent of her involvement in this
19 case. And we could have gone to trial and tried to explain that to the jury and make
20 these very particular precise legal arguments while facing extremely serious
21 charges. The risks of that were not desirable for obvious reasons.

22 But she certainly didn't have to go to the next step which is to actually
23 stand up and have the courage to take part in and assist in the administration of
24 justice with respect to Mr. Murphy and his Co-defendants, Your Honor. And I do
25 think that some consideration should be given to her for that. I think justice has

1 been served with respect to Summer for the time she's been in. And I think the
2 Court should consider that she has also assisted in the administration of justice with
3 the other Defendants, Judge.

4 I do know that you heard a lot of bad things about Ms. Larsen
5 throughout the course of these proceedings and certainly at trial. I would submit to
6 you that the defense lawyers in this case had a difficult position when she finally
7 decided to testify. When a skilled trial lawyer makes it their mission to paint
8 someone in a negative light to try to damage their credibility, to try to help their
9 client, you're going to hear bad things. Those are to be expected.

10 And even though Ms. Larsen was the target of these attacks during
11 trial, it really wasn't all that bad. You heard bad things about her relationships and
12 about her people she keeps company with, but you didn't hear that she was a multi -
13 - multiple time violent felon or any of these horrible things you've heard about some
14 of the other people. She really doesn't have much criminal history at all and the PSI
15 bears that out.

16 For what she has done, she has been incarcerated for two years, Your
17 Honor. I think she's demonstrated to this Court that she has the potential to be a
18 good a probationer and to be a productive citizen. And we are asking this Court to
19 suspend her sentence, whatever that may be, Your Honor, and grant her probation
20 today.

21 THE COURT: All right. So I agree with you that there is a lot of bad things
22 that came about out with Mr. -- Ms. Larsen at trial. Most of those things came from
23 her own mouth. I mean, she didn't try and paint a better picture of herself. It
24 seemed to me after I've heard all of the facts that her testimony was truthful. You
25 know, Mr. Figueroa also testified at the trial and his testimony seemed to be

1 consistent with what she was saying as far as what he knew about what had
2 occurred 'cause he was sort of recruited into the whole thing.

3 Her step grandfather in the letter to me said she's got nowhere to go,
4 but up. And that's probably true. You know you've certainly bottomed out here.

5 I guess the thing -- the recommendation of the Division, of course, is a
6 total in aggregate sentence that would be a 28 month sentence on the bottom.
7 She's already done actually ten days more than two years in prison. And so frankly
8 I think it would be better to place her on probation to further supervise her and give
9 her the chance to have continued follow up for what was a raging methamphetamine
10 addiction that pretty much led to, you know, all of this bad behavior and
11 associations.

12 Obviously, you have to reach back further to determine what caused
13 her to use these things and to say -- to blame it on any single one thing is probably
14 naïve. You will need to do a lot of work on your part to -- to make sure you don't go
15 back to that.

16 DEFENDANT, LARSEN: Yes, ma'am.

17 THE COURT: Because otherwise what you're going to find yourself is, you
18 know --

19 DEFENDANT, LARSEN: Yeah.

20 THE COURT: -- if you go back to using meth is, you know, a middle aged
21 woman who looks like a senior citizen with no teeth, no prospects and a very bad
22 life. And so it's going to be up to you. As I say, you've already done what's 730
23 days I think it is -- 740 days, excuse me in prison.

24 So in addition to the \$25 administrative assessment fee, the \$150 DNA
25 testing fee, and the \$3 DNA collection fee, as to Count 1, conspiracy to commit

1 robbery, I hereby sentence you to a minimum term of 12 months, a maximum term
2 of 48 months. I'm not going to order the restitution in -- in this case because I don't
3 think that was related to the crimes that she --

4 MR. DiGIACOMO: It's not.

5 THE COURT: And so I don't think it's appropriate.

6 As to Count 2, attempt robbery, a minimum term of 16 months, a
7 maximum term of 72 months. That will run consecutive to Count 1. So the
8 aggregate is one -- 28 to 120. I'm going to suspend those sentences and place you
9 on probation for an indeterminate period not to exceed five years.

10 Special conditions of probation will be in addition to the standard
11 conditions of probation which I'm going to hand you today. I want you to read those
12 before -- right now -- before you leave the courtroom. And you'll notice on number
13 3, intoxicants, that I've lined through the words in parenthesis to excess, as well as
14 the last sentence, that's because while you're on probation you're not to consume
15 alcoholic beverages whatsoever. You have a sobriety issue and any substance is
16 going to impact that and if you want to stay sober and off meth, you need to not
17 drink too because those things are all tied in with each other.

18 Special conditions of probation are that you're not to have any use,
19 possession or control of alcohol or marijuana while you're on probation. You are
20 within the first 30 days after your meeting, your initial intake with Parole and
21 Probation, you are to undergo a substance abuse evaluation and follow through with
22 any recommendation for treatment or counseling on the recommended schedule.

23 You are to provide the Division of Parole and with a complete financial
24 disclosure at any time they request it and that's for the purpose of determining
25 legitimate source of income.

1 You are to -- to complete 16 hours of community service each month
2 unless you are employed at least 40 hours per week of each and every week of the
3 month that you are on probation.

4 And if you have a cellphone, you, of course, may have a cellphone
5 when you get out. You can get a cellphone, but you're not to let anyone else use
6 your cellphone, and you are to submit to a search of your cellphone at any time the
7 Division of Parole and Probation asks for it. And if its password protected, you are
8 to give the Officer requesting to search your phone with that password. And you're
9 not to let anyone else use your personal cellphone. Anything that's on your
10 cellphone is yours and so don't be telling me that somebody else used your phone
11 because that would be a violation of your probation.

12 Okay. And credit for time served is 740 days through today's date.

13 MR. COYER: Thank you very much, Your Honor.

14 MR. DIGIACOMO: Thank you, Judge.

15 MR. GILLIAM: Thank you.

16 MR. WOLFBRANDT: Judge, one last thing for Mr. Mendoza.

17 THE COURT: Yes.

18 MR. WOLFBRANDT: I just want to ask you to be allowed to withdraw at this
19 point since the sentencing is over. I've got Amanda Gregory here willing to pursue
20 the appeal. She would be willing to confirm today --

21 MS. GREGORY: Mr. Christensen's office did contact me to be appointed to
22 do the appeal on this case.

23 THE COURT: Okay. All right. I'll appoint you and allow Mr. Wolfbrandt to
24 withdraw.

25 MS. GREGORY: Okay. Thank you, Your Honor.

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MR. WOLFBRANDT: Thank you.

THE COURT: Thank you.

[Proceeding concluded at 11:32 a.m.]

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



Christine Erickson,
Court Recorder/Transcriber