

Case No. C353999

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IN THE NEVADA SUPREME COURT

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GLORA ESTELLA,  
Appellant

vs.

THE STATE OF NEVADA,  
Defendant

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Appeal from the Judgment of the Eighth Judicial District Court  
Clark County, Nevada  
Hon. Cristina Silva

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APPELLANT'S OPENING BRIEF

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Mueller & Associates, Inc.

District Attorney Office

DATED this 17<sup>th</sup> day of June 2021.

**MUELLER & ASSOCIATES, INC.**

*/s/ Craig A. Mueller*

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## **TABLE OF CONTENTS**

NRAP 26.1 DISCLOSURE.....	i
TABLE OF CONTENT.....	ii
TABLE OF AUTHORITIES.....	iii
I. STATEMENT OF JURISDICTION.....	1
II. ROUNTING STATEMENT.....	1
III. ISSUE ON APPEAL.....	1
IV. STATEMENT OF FACTS.....	1-2
V. STANDARD OF REVIEW.....	2
VI. ARGUEMENT.....	2-4
VII. CONCLUSION.....	4-5
CERTIFICATE OF COMPLIANCE.....	6-7
CERTIFICATE OF SERVICE.....	8

## **TABLE OF AUTHORITIES**

### **CASES**

<i>Berry v. State</i> , 2016 Nev. App. 211, 132 Nev. 946.....	2
<i>Crawford v. State</i> , 117 Nev. 718, 30 P.3d 1123 (2001).....	2
<i>Stevenson v. State</i> , 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015).....	2-3
<i>United States v. Alexander</i> , 948 F.2d 1002, 1004 (6th Cir. 1991).....	4
<i>United States v. Ensminger</i> , 567 F.3d 587, 593 (9th Cir. 2009).....	4

### **STATUTES**

NRAP 17(b)(3).....	1
NRS 177.015(3).....	1
NRS 176.165.....	2

## **STATEMENT OF JURISDICTION**

This is a direct appeal from a final judgment of conviction in a criminal case that was entered via guilty verdict in the Eighth Judicial District Court of Nevada. The Judgment Of Conviction was entered on November 17, 2021. A Notice Of Appeal was timely filed on December 13, 2021. This Court has jurisdiction over this appeal pursuant to NRS 177.015(3).

## **ROUTING STATEMENT**

This case should be routed to the Nevada Supreme Court pursuant to NRAP 17(b)(3).

## **ISSUE ON APPEAL**

Whether the lower court abused its discretion in denying Appellant's motion to Withdraw her Plea of Guilty.

## **STATEMENT OF FACTS**

Appellant/Defendant GLORA ESTELLA (Appellant) was charged by way of an Indictment<sup>1</sup> with one felony count of Driving Under the Influence Resulting in Death, one felony count of Driving Under the Influence Resulting in Substantial Bodily Harm, and one count of felony Reckless Driving.

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<sup>1</sup> Indictment- ESTELLA- 000001-000006

She entered a plea of guilty to one count of Driving Under the Influence Resulting in Death on September 8, 2022<sup>2</sup>. Thereafter, prior to sentencing, Appellant obtained a different attorney and sought to withdraw her plea by filing a formal Motion<sup>3</sup>. After briefing by both the State and defense and argument, the Court denied the request to withdraw the plea<sup>4</sup>. Appellant was sentenced to a maximum of eight (8) years with a minimum of three (3) years in the Nevada Department of Prisons<sup>5</sup>.

### **STANDARD OF REVIEW**

The standard of review is whether the lower court abused its discretion in denying the Motion to Withdraw the Guilty Plea. *Trujillo v. State*, 129 Nev. Adv. Op. 75, 4 (2013).

### **ARGUMENT**

#### **THE LOWER COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO WITHDRAW HER GUILTY PLEA**

The standard of review is whether the district court abused its discretion in denying a presentence motion to withdraw a plea of guilty. *Berry v. State*, 2016 Nev. App. 211, 132 Nev. 946.

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<sup>2</sup> Guilty Plea Agreement- ESTELLA- 000007-000015

<sup>3</sup> Motion to Withdraw Plea- ESTELLA- 000026-000031

<sup>4</sup> Minute Order on Denying Motion to Withdraw Plea- ESTELLA- 000181-000182

<sup>5</sup> Judgment of Conviction- ESTELLA- 000183-000185

Pursuant to NRS 176.165, a defendant may move to withdraw a guilty plea at any time before sentencing. The district court may grant such a request for any reason that is fair and just. *Stevenson v. State*, 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015). This is an explicit rejection of the prior standard set forth in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001). That inquiry focused exclusively on whether the plea was knowing, voluntarily, and intelligently made and required the district court to consider the totality of the circumstances in determining whether permitting withdrawal of a guilty plea before sentencing would be fair and just." *Stevenson*, 131 Nev. at 603, 354 P.3d at 1281.

In this case, Appellant alleged that she is a non-English speaker. She did not understand the negotiations, specifically that in taking the deal, she did not understand she was agreeing to a set amount of jail time. She believed that the agreed-to sentence was a range of punishment, not a sentence she was specifically accepting as punishment. Further, Ms. Estella is expected to testify that she did not review any defenses to the crime with defense counsel so that she could make an informed choice about proceeding to trial. Notably, Ms. Estella waived her preliminary hearing, so she did not have the benefit of hearing any evidence in that forum.

Finally, Ms. Estella did not sign the Guilty Plea Agreement. It states that her name was signed by defense counsel at Ms. Estella's direction<sup>6</sup>. The execution of a plea agreement is another factor a court should consider in determining whether to allow a defendant to withdraw a plea. Mitchell, *supra*.

Appellant asked the lower court to allow her to testify to the substance of her conversations with defense counsel about the evidence, her defenses at trial, and what defense counsel specifically explained to her regarding the plea. Appellant also asked to call defense counsel as a witness to testify about the same circumstances. It was error for the lower court to deny Appellant's request for a hearing. Unlike in *Berry*, *supra*, and *Stevenson*, *supra*, where the lower courts held evidentiary hearings and allowed evidence and testimony, Appellant's lower court refused to hold an evidentiary hearing and summarily denied her Motion to Withdraw the Guilty Plea.

Further, this case is factually distinguishable from *Stevenson*, *supra*. There, this Court upheld the lower court's decision to denying withdraw of the guilty plea. This Court noted that the defendant in that case waited several months to attempt to withdraw his guilty plea. In that opinion, this Court cited *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) and explained that one of the goals of the fair and just analysis is to allow a defendant who hastily entered a plea

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<sup>6</sup> Guilty Plea Agreement- ESTELLA- 000007-000015



without contemplation and thoughtfulness to be allowed to withdraw said guilty plea. The purpose behind the fair and just analysis is not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then seek to withdraw the plea because he has second thoughts and believes that he made a bad choice. This Court also cited *United States v. Ensminger*, 567 F.3d 587, 593 (9th Cir. 2009) to show that a guilty pleas is not a placeholder that reserves a defendant the right to the many incentives of the criminal system for acceptance of responsibility unless or until a preferable alternative later arises.

### **CONCLUSION**

Appellant respectfully submits that this Court find that the lower court abused its discretion in denying the Motion, order Appellant's plea withdrawn, and remand the case for further proceedings, or that the case be remanded with instructions to hold an evidentiary hearing on Appellant's claims listed herein.

DATED this 17<sup>th</sup> day of June, 2022.

**MUELLER & ASSOCIATES, INC.**

*/s/ Craig A. Mueller*

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements

of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point font Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 28.1(e)(1)–(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 1615 words; or

[X] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 17<sup>th</sup> day of June 2022.

**MUELLER & ASSOCIATES, INC.**

*/s/ Craig A. Mueller*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of June, 2022, I served a true and correct copy of the foregoing OPENING BRIEF, upon each of the parties by electronic service through E-Flex rules of service as follows:

CRAIG A. MUELLER, ESQ.  
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Chief Deputy District Attorney  
Counsel for Respondent

By: */s/ Rosa Ramos*

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An employee of MUELLER & ASSOCIATES, INC.