

EXHIBIT

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1 position.

2 Q Who put you in the position, yourself, when
3 you didn't want to bring your child through these
4 proceedings?

5 A No. Mrs. Lunt told me this was the only way
6 to go.

7 Q Come on now. You know that's not the only
8 way to go, right? You were told you could go to trial and
9 plead guilty. You knew you could have gone to trial.

10 A At the time I was under duress.

11 Q The duress you are referring to, is it only
12 from Miss Lunt saying you have got to sign the plea
13 agreement? Is that what you are talking about?

14 A Yes.

15 Q That's --

16 A I was under extreme duress all the way
17 through this.

18 Q Well, let's talk about that.
19 Extreme duress all the way through this,
20 meaning from the day you were arrested --

21 A Right.

22 Q -- to the day you pled -- you pleaded
23 guilty?

24 A Prior to that, I was under extreme duress at

1 home also. I was in a mental state of breakdown. I could
2 not handle the situation at home no more. Everything was
3 coming apart. I had three adults attacking me.

4 Q So that duress is part of the reason that
5 you pled guilty. Is that what you are saying?

6 A I came to court and it just felt like nobody
7 was representing me.

8 I just felt that the whole world was out to
9 get me. And this was the only way to go.

10 Q To get out from under the duress?

11 A Just to get the people to leave me alone.

12 Q Okay. So I am asking you, did you plead
13 guilty to get out from under all this duress that you are now
14 describing?

15 A I was told that it is the only way to go by
16 my public defender.

17 Q That's the only reason you pleaded guilty is
18 because Miss Lunt said that was the only way you had to go?

19 A Yes.

20 Q Now, did Miss Lunt go over the evidence that
21 the State had against you?

22 A I am sure she did.

23 Q She did, right. I mean, there were police
24 reports and statements from Gabriel describing what you had

1 done to her, right?

2 A That's all hearsay evidence.

3 Q What was hearsay?

4 A That's what I told Mrs. Lunt. I said,
5 "Look, this never happened. Why are these people doing this
6 to me? Why are they doing this"?

7 She goes, "Well that's the evidence."

8 I go, "I didn't do it. I want to go to
9 trial."

10 "You can't go to trial. You have no -- you
11 have no chance of winning. You are defeated."

12 Q And did you believe her advice that, if you
13 went to trial, you might be convicted by a jury?

14 A She was my public defender. I did what she
15 told me to do.

16 Q Because you thought she had some experience
17 and expertise. After all, she is a lawyer certified by the
18 Bar of the State of Nevada, right?

19 A I didn't feel I was being represented
20 properly.

21 Q I understand. But she went over all the
22 evidence that the state had against you with you, right?

23 A I don't remember.

24 Q You don't remember if you went over the

1 evidence against you?

2 A I was in a state of depression, because of
3 all this coming at me that wasn't true.

4 Q So I just want to make sure I understand.

5 Did you feel like you could trust her
6 professional judgment regarding the chances you had, if you
7 went to trial?

8 A I told her I didn't want to sign these
9 papers. I told her I did not want to admit to something I
10 didn't do.

11 Q I understand. But when she went over the
12 evidence with you, did it occur to you that you might be
13 convicted if you went to trial, given the evidence that the
14 state had?

15 A What evidence? All they had was hearsay
16 evidence.

17 Q Well, did you know what evidence was going
18 to come into trial against you?

19 A I told that to Mrs. Lunt; that it was
20 hearsay evidence.

21 Q Well -- I take it you never had any law
22 courses?

23 A No, I have not.

24 Q You haven't been to law school, right? You

1 are not a lawyer?

2 A No.

3 Q So you don't really know -- you are not in a
4 position to judge what evidence was going to come into trial
5 against you, right?

6 A All I know is I was under extreme duress. I
7 told Mrs. Lunt, I said, "I don't feel I should sign these
8 because I didn't do this."

9 She told me I had to sign the damn papers.

10 Q I understand that. But -- did you not form
11 any opinion about whether Miss Lunt was competent enough to
12 tell you that you might be convicted if you went to trial?

13 A Like I said, I am not a law -- I am not a
14 student of law. I just knew I did not want to sign those
15 papers. And she told me that was the only way to do it."

16 Q Did she tell you what would happen if you
17 didn't sign them?

18 A No. I don't remember.

19 Q So it was Gabriel not telling the truth when
20 you said you sexually assaulted her?

21 A That blew my mind. I never did that to her
22 and I don't know how Louise or Ray or her father got her to
23 say anything like that.

24 I didn't hear her say this personally. It's

1 just what was written down on paperwork. I still to this day
2 don't believe that she would say that.

3 Q That's all I have, your Honor.

4 MR. QUALLS: Nothing further, your Honor.

5 THE COURT: Mr. Haag, are you aware that there was --
6 do you remember you had a psychosexual evaluation?

7 THE DEFENDANT: Was it --

8 THE COURT: Before you were sentenced, with Doctor
9 Ing?

10 THE DEFENDANT: Before I was sentenced, after I pled
11 guilty, yes, I remember him coming in.

12 THE COURT: Do you remember that you admitted to him
13 that you had sexual relations with your daughter?

14 THE DEFENDANT: He made the scenario up. I just
15 answered to it. I was devastated because I have already
16 talked to Mrs. Lunt and she said, "Just answer his
17 questions. She is not going to take -- she is not going to
18 let you come back and withdraw your plea." I felt --

19 THE COURT: Well, why did you answer -- when he said,
20 "And how many times do you think she, your daughter, touched
21 your penis," why did you answer, "Four or five times"?

22 THE DEFENDANT: I told him I don't remember.

23 THE COURT: That's not what you said in the report.
24 You said, "Four or five times."

1 And when he asked you, "What did she give
2 you, a hand job," you said, "Yeah."

3 And when he asked you how your daughter felt
4 about it, you said she didn't mind it.

5 THE DEFENDANT: I don't remember. I was just answering
6 to him yes or no answers.

7 THE COURT: And did you also say when he said, "Is it
8 possible that she finished up touching you with her hand by
9 touching her mouth to your penis," you said, "Yes, she did.
10 Each time she finished up with her mouth on me."

11 THE DEFENDANT: I didn't say any of that. I was
12 answering --

13 THE COURT: So Doctor Ing is lying about all of that?

14 THE DEFENDANT: I was just answering yes or no
15 questions to Mr. Ing.

16 THE COURT: What about when he said, "Did you cum in
17 her mouth," and you said, "Oh, no. I wouldn't do that. I
18 pulled out and came on the bed or the floor or something,"
19 did you not make those statements to him?

20 THE DEFENDANT: I don't remember. I was completely
21 upset at the time that he was talking to me.

22 I was devastated.

23 THE COURT: Do my questions raise any issues for
24 either of you?

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MR. QUALLS: No, your Honor.

THE COURT: You may step down.

MR. QUALLS: We'll call Jennifer Lunt, your Honor.

THE COURT: Okay. Miss Lunt.

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JENNIFER LUNT

produced as a witness on behalf of
the Petitioner, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUALLS:

Q Please state your name and spell your last
name for the court reporter.

A Jennifer Lunt, L-U-N-T.

Q And what's your occupation, Miss Lunt?

A I am an attorney with the Washoe County
Public Defender's Office.

Q And did you represent Steven Haag in 2003 on
sex-related charges?

A Yes, I did.

Q Was there any investigation done on the
case?

A There was investigation in that I talked to

1 Steven. I reviewed the police reports. I reviewed all the
2 allegations of the priors, and I spoke to Steven's mom and
3 his dad on more than one occasion.

4 Q Were you aware of any of the information
5 that has come out in the court today, such as the
6 relationship between Louise Colburn and Ray Colburn, any of
7 the physical abuse, the fact that he was cleared of prior
8 charges through Social Services?

9 A I was aware that he had alleged his wife and
10 her brother were having an incestuous affair. He had told me
11 that. And he told me that Louise was not nice to his
12 daughter. And he told me that as well.

13 He had not told me that he had told her he
14 was leaving her. That was new information to me. I knew
15 that he had been investigated by Social Services for a sexual
16 misconduct with a neighbor child. And I knew that there had
17 been -- there was a previous allegation that he had sexually
18 assaulted his first daughter.

19 Q Did you investigate the incestuous -- or
20 have investigated -- the incestuous relationship between
21 Louise and Ray?

22 A I didn't. I discussed it with Steven.
23 Because of the way the allegations came out, I didn't think
24 that this was a case where I was going to be able to say the

1 mother had forced the daughter to make this up so she could
2 clear the way for a relationship with her brother.

3 The way the allegations had come up didn't
4 indicate that to me. And then what Gabby told the police
5 didn't indicate that to me either. I didn't think it was a
6 defense. I didn't think it would help Steven's case.

7 Q Did Mr. Haag ever express to you the desire
8 to go to trial in spite of these factors?

9 A The first time I -- I met with Steve
10 initially in Reno Justice Court for the preliminary hearing,
11 I didn't have the discovery at that point; so I had gone up
12 to the jail after I had the discovery and I believe after I
13 had provided a copy of the discovery to Mr. Haag as well.

14 When I first met with him in Reno Justice
15 Court before he reviewed the discovery, before I had all the
16 discovery, he told me he wanted to plead not guilty and go to
17 trial.

18 When I met with him, we went over the
19 discovery together. He told me he didn't want to put his
20 daughter on the stand and put her through that.

21 The day of the plea, he said he was
22 concerned about the fact he was exposing himself to forty
23 years. We did have additional discussion. But, no, other
24 than that very first time, he never said, "I want to go to

1 trial on these charges."

2 Q Do you feel like you forced him to sign the
3 plea agreement or do you agree with his statement that he
4 said you told him, "To sign the damn thing," quote?

5 A No. Actually I was reviewing my file and I
6 can read you the memo I wrote concerning the day of the
7 arraignment.

8 Q Please.

9 A "Steven was in court for his arraignment. He
10 told me he wasn't going to plead guilty because he could be
11 exposing himself to forty years. We talked a little bit.
12 And I pointed out that he was in fact exposing himself to
13 that much time. However, fighting the case would, in all
14 likelihood, get him in more trouble. And that there would
15 have been additional charges that he would have been facing.
16 And I thought, had he gone to trial, there was an increased
17 risk of consecutive as opposed to concurrent time.

18 "I pointed out that, if he went to trial, he
19 would be going to trial on all of the charges and that the
20 State did have a strong case against him. I told him I knew
21 that this was a very difficult decision to make, and I didn't
22 blame him for being upset. I assured him I thought the plea
23 was in his best interests."

24 And then I wrote, "After some hemming and

1 hawing he agreed. He made it through his plea without any
2 mishap and sentencing is as noted. Steven did tell me he
3 remains concerned about where he would be staying once he was
4 paroled. And I told him he would have a long time to worry
5 about that."

6 So I know that we talked about it. I know
7 he was hesitant. I know he was concerned about the forty
8 years.

9 I don't remember saying, "Sign the damn
10 papers." I don't think I would have done that. What I do is
11 tell my client, "If you want to fight this, we can fight
12 this. I think it is a mistake, but it's your choice. If you
13 want the deal, here you go."

14 If they have any other questions, then I'll
15 continue out the entry of plea so I can discuss it with them
16 further.

17 Q After he signed the plea agreement and
18 entered his plea in court, did he express reservations about
19 the plea and ask to withdraw the plea?

20 A At some point he called several times after
21 the entry of plea. He expressed a concern that the judge
22 could give him consecutive time. He told me on 9-11-03 that
23 he didn't think he could do twenty years. And I told him I
24 didn't see any grounds legally to withdraw his plea; that I

1 had looked at the arraignment transcript and there weren't
2 any grounds to withdraw the plea. It is discretionary with
3 the court. And, in the years I have practiced in front of
4 Judge Steinheimer, I have had one occasion where she has
5 allowed a withdrawal of a plea; and that's because the man
6 was over-medicated by the jail.

7 Q Nothing further at this time, your Honor.

8 THE COURT: Cross.

9
10 * CROSS EXAMINATION *

11 BY MR. PLATER:

12 Q Was the motion only based on the fact that
13 he didn't like the timing, consecutive time?

14 A He was concerned prior to sentencing that he
15 would be looking at potentially consecutive time.

16 Q But he wanted you to make a motion to
17 withdraw the plea because he didn't like the fact that he had
18 gotten consecutive time?

19 A This was before he had been sentenced.

20 Q I'm sorry?

21 A The motion to withdraw was made prior to
22 sentencing. He asked about the motion to withdraw. I told
23 him I didn't think there were grounds. He also was concerned
24 about the bail. So we did file a bail motion, and I argued a

1 bail motion between the plea and the sentencing.

2 Q And the bases of the motion before -- the
3 sentencing hearing was the fact that he was concerned about
4 the exposure?

5 A After he pled, he called me up and said,
6 "Can I withdraw my plea?" And I said, "There are no grounds
7 to withdraw your plea. It's a discretionary act with the
8 court. And this judge is not inclined to let people withdraw
9 their plea as long as the plea agreement, the arraignment
10 looks clean," and it did.

11 He then called and said, "Can I have a bail
12 reduction?" So I filed a motion for the bail reduction and
13 argued that before sentencing.

14 Q So he didn't give you any grounds for a
15 motion to withdraw the plea?

16 A He said he didn't want to have to do twenty
17 years.

18 Q He said he is innocent. "We have a defense.
19 I want to go to trial because of -- certain evidence or
20 argument I can make"?

21 A No.

22 Q You recommended the plea in this case?

23 A I did recommend the plea. Given --

24 Q What was that decision based on?

1 A It was based -- I can tell you specifically
2 what I discussed with him the first time we met and why I
3 thought that the plea was in his best interests.

4 I was concerned about the prior bad acts,
5 the allegation that he had previously had sex with his oldest
6 daughter.

7 I was concerned about the allegations with
8 the neighbor child as well. I was worried about, to some
9 extent, Louise. She was mentally retarded or had some mental
10 deficiencies. And -- that was one of the things that
11 concerned me about the way the allegations came up. Louise
12 didn't tell the police.

13 In fact when Gabby first made the revelation
14 to Louise, Louise told Gabby not to talk about it, not to
15 tell anybody that it happened.

16 Subsequent to that, Louise went to see her
17 counselor through Social Services. I believe it was a result
18 of the misdemeanor battery conviction she had. She was going
19 to counseling.

20 And she told the counselor, "I am really
21 stressed because my husband is making my daughter suck his
22 dick."

23 I didn't think Louise was smart enough to
24 recognize that the counselor would have had a mandatory duty

1 to report. Of course, the counselor did.

2 The counselor called the police. The
3 investigation started. When the police spoke to Gabby
4 separate from Louise, Gabby said, "Yeah, I told mommy this
5 happened and mommy told me not to talk about it."

6 So that was all consistent. So the way the
7 allegations came up, in my mind, gave them some credence.
8 The statements that Steven made when he was contacted by the
9 police, "I know I made a mistake, but don't worry. I got a
10 shot. I am impotent. It was one mistake. It happened one
11 time. It won't happen again."

12 When Louise had spoken to the police, she
13 said, "Well, I didn't call you guys because Steven told me he
14 got a shot and he was impotent."

15 And so those two correlating statements I
16 thought would add credence to what Louise was saying.

17 Steven also admitted to the officer that he
18 touched his daughter one time and he knew was wrong and
19 that's why he was drinking so much. He said he touched her
20 over the top of her clothing. So he didn't make any full
21 confessions or admissions. But what he did say to the police
22 I believed to be fairly damning.

23 I had spoken to Kelli Vilorio. Gabby was at
24 the preliminary hearing. And she said that Gabby was going

1 to be a good witness. And Kelli Vilorio has been doing this
2 a long time. Some prosecutors I don't trust. I didn't think
3 Kelli was going to tell me she was going to be a good witness
4 if Kelli had serious qualms.

5 After Kelli met with her, she wouldn't budge
6 off the offer. And that to me confirmed that Kelli thought
7 that Gabby would be a good witness.

8 She did open the negotiations to see what
9 the DNA test would show. When the DNA came back that there
10 was semen stains on the floor and on the bed spread of his
11 daughter's room, I thought that was going to be damning
12 evidence as well against Steven that would hurt him at trial.

13 Q The DNA came back to him?

14 A The DNA came back as his semen, yes. So
15 those were the factors I took into account when I told him I
16 thought taking the offer would probably be in his best
17 interests.

18 Q When you gave your advice, did you take into
19 account that Social Services had investigated this other
20 prior occasion?

21 A I did. But I know that under Petrocelli
22 there are different standards of what can come in. And there
23 was both the allegation that Geralyn, the little neighbor
24 girl, had made that Steven had touched her when she was in

1 the bathroom and then the allegations made by his oldest
2 daughter.

3 Q Did you take into account, when you gave
4 your opinion to him that it would be in his best interests to
5 plead guilty, that there has been some possible physical
6 abuse between Louise and Gabriel?

7 A I told him that was unfortunate, but I
8 didn't see how that could be a defense against the sexual
9 assault allegations.

10 Q That's all I have. Thank you.

11 THE COURT: Redirect.

12 MR. QUALLS: Just a couple, your Honor

13
14 * REDIRECT EXAMINATION *

15 BY MR. QUALLS:

16 Q When you presented Steven with the evidence
17 against him, did you ask him if he could explain away any of
18 this or if there was a defense to any of this?

19 A He told me that the semen in his daughter's
20 bedroom could have come about because he and his wife were
21 sexually active. And they went at it all the time. So he
22 did say that that could have been where the semen came from.

23 Q Did you see that as a credible explanation?

24 A No, because -- when his wife had talked to

1 the police, she said they had sex in the bedroom and he only
2 liked to have anal sex with his wife.

3 Q Did he explain to you anything about the
4 semen coming from his wife sitting on the floor perhaps?

5 A He told me he and his wife would -- because
6 they were young -- would go at it all the time. But he
7 didn't talk about leaking semen, no.

8 Q Did you consider that the incestuous
9 relationship between Louise and Ray could have been perceived
10 as a motive to lie in front of the jury?

11 A Yes. But, again, the way the allegations
12 came up, this wasn't a divorce. Steve hadn't told me that he
13 threatened to leave Louise, although I don't think that would
14 have made any difference. The fact that Louise didn't call
15 the police and say, "Come over right away. My husband is
16 abusing my child." That would have made me want to attack
17 her credibility.

18 But the fact that she told the counselor who
19 reported it to the police made me think that Louise's
20 motivation might have been something else, a desire to
21 protect her child. And the fact that Gabby said, "Yeah, I
22 told mommy and mommy told me not to say anything. Mommy told
23 me not to talk about it," and that to me added credibility to
24 the statement and made it less likely that Louise was making

1 it up so she could live happily every after with her brother.

2 I also looked through the file and I was
3 aware that Louise's father was living with them at the time.
4 I wasn't aware that her brother was still there.

5 There is nothing in my file to indicate -- I
6 knew the brother had lived there, but the indications from my
7 client is the brother had moved out and the father had moved
8 in. So that is another thing I took into account; that,
9 according to the information, the brother was no longer
10 living in the trailer.

11 Q But there was never an investigator sent
12 over to the house to investigate -- to talk to neighbors or
13 anything of this nature?

14 A No, because Steven told me he didn't want to
15 put his daughter on the stand and have her go through that.
16 Once he indicated he had a willingness to plea, I spent a lot
17 of time with him. And I didn't think this would add to his
18 defense that his wife, his mentally retarded wife, had made
19 out with her brother.

20 Q And were you aware that someone else was
21 charged and convicted relating to the prior Social Services
22 investigation?

23 A I knew that the child had said she had been
24 a victim before and that there was somebody else who had also

1 molested the child.

2 And I think it was during the course of that
3 investigation when she said, "Well, you know, so and so
4 Steven touched me, too. Gabby's dad, he wanted me to touch
5 his penis when I was in the bath tub." So I knew that the
6 child had been a victim of another sexual assault. I didn't
7 know that that man was ultimately convicted. I knew that
8 they were investigating that.

9 Q But you knew that Steven was cleared of
10 those charges?

11 A I knew that they decided not to pursue that.

12 Q Okay. Nothing further, your Honor.

13 MR. PLATER: I have nothing else.

14 THE COURT: You may step down.

15 THE COURT: Any other witnesses?

16 MR. QUALLS: That's all, your Honor. We would rest.

17 MR. PLATER: We have nothing.

18 THE COURT: Argue.

19 MR. QUALLS: Your Honor, the one claim that remains is
20 the claim for failure to properly investigate and/or present
21 any available defenses. The testimony here today was that
22 the origin of these allegations coming through Louise
23 Colburn, Louise Colburn was having an incestuous affair with
24 her brother. It was witnessed by several other people,

1 including the defendant.

2 There were many problems in the home.

3 Definitely Louise would have had a motive to
4 lie, fabricate in order to stay with the brother.

5 Additionally, there was plenty of evidence
6 that Louise in fact had little disregard for her daughter in
7 the sense that she was very physically rough with her and had
8 a tendency to be violent herself, which could have also been
9 an attack on her character in front of the jury.

10 She again was in trouble for hitting another
11 child on the playground, separate from the witnessing of her
12 physically abusing her own child.

13 And we have testimony from the defendant
14 himself, the petitioner now, himself, saying that he wanted
15 to go to trial. He wanted to withdraw his plea. And he was
16 essentially coerced into an admission and was not allowed to
17 withdraw his plea afterwards. I think all of this amounts to
18 a situation in which he was not afforded his 6th Amendment
19 Right to effective assistance of counsel and/or his due
20 process rights.

21 So that is the essence of this claim. We
22 believe sufficient testimony has been presented today in
23 order to carry that forward and we'll rest.

24 THE COURT: Counsel?

1 MR. PLATER: Your Honor, the State's position is that
2 Miss Lunt's opinion or advice to Mr. Haag to plead guilty was
3 reasonable. She viewed the evidence that she received from
4 the State. She talked with her client. She determined with
5 the prosecutor that the victim was credible.

6 Mr. Haag had made certain admissions to the
7 police. His DNA was found apparently on the victim's bed or
8 near it. He had prior misconduct that the State could have
9 used of a small child who would have testified before the
10 jury.

11 It seems from what we have heard today he
12 had a huge hill to climb; that he couldn't have expected any
13 jury to acquit him in this case.

14 So the advice to plead was sound. The plea
15 itself also was voluntary.

16 Essentially, if you look at Mr. Haag's
17 testimony today, it is that, "Well, I pled guilty because I
18 didn't want my daughter to go through the Social Services
19 process."

20 Well, that may be a concern. But it is not
21 such a concern that would invalidate a plea. It doesn't make
22 it involuntary, unknowing, unintelligent and so forth. The
23 plea was voluntary.

24 But you also have the testimony of Miss Lunt

1 where she said, you know, basically he didn't want his
2 daughter to take the stand and testify. And that's a
3 reasonable explanation.

4 She also credibly explained that, although
5 it was difficult for him, she also had her notes that
6 verified that, while it was difficult for him and he had some
7 distress in making a decision, he ultimately decided it was
8 in his best interests not to go to trial.

9 There were no valid defenses that we heard
10 today. I would agree, there is some evidence out there; and
11 Miss Lunt did consider it.

12 There was possible evidence to show a
13 possible motive why perhaps Mr. Haag's wife wanted -- and
14 other relatives may have wanted to get Mr. Haag out of the
15 picture, to take the law enforcement's concern away, for her
16 to get him out of the picture so that she might pursue some
17 other incestuous relationship and so on.

18 These are possibilities.

19 But, you know, on balance, when you weigh
20 everything against the real hard physical evidence, the
21 admissions that he made, evidence that the State had, he had
22 no reasonable chance of being acquitted at trial.

23 I would suggest that, based on his
24 statements that he made at sentencing after he was convicted,

1 we now know that the sentences were proper. This is a man
2 that's in denial. This is a man that needs to be in prison
3 for consecutive sentences.

4 And the best thing he could do for himself
5 is to start to get out of denial, start to face these things
6 and get some treatment for himself.

7 One other comment about the motion to
8 withdraw the plea. There is a recent decision that came out
9 from the Nevada Supreme Court that said the defendant is the
10 sole person who can decide whether to enter a plea.

11 It, therefore, follows that, if he tell his
12 lawyer he wants to withdraw the plea, the lawyer has an
13 obligation to file the motion. And apparently he did make
14 that request to Miss Lunt and she decided there were no
15 grounds.

16 So I am not sure if it was -- it may have
17 been deficient conduct, per se, not to file the motion.

18 But the problem is there is no prejudice.
19 Even if you found that she should have done that, according
20 to our most recent Supreme Court decision, although I am not
21 sure that decision is retroactive, there certainly is no
22 prejudice because there has never been any ground
23 identified -- or that was identified to her, according to her
24 testimony, to withdraw the plea.

1 Although, as I think about it, I'm not so
2 sure if -- you have -- I am not so sure if it's deficient
3 conduct to fail to move to withdraw the plea if there is no
4 grounds given.

5 I mean, even if -- even if it's the
6 defendant's right to decide whether to enter a plea or not
7 and it is his right to move to withdraw it, it seems to me
8 there has to be a legal argument to do it. So I guess that's
9 an issue that I am not sure about. It's up in the air. But
10 this is certainly no prejudice from the fact that she failed
11 to do it.

12 So we would ask you to deny the petition.

13 MR. QUALLS: Your Honor, the sentencing, from
14 Miss Lunt's testimony, is that the State's evidence was
15 certainly given more weight and credibility in Miss Lunt's
16 mind than following up on some of these leads for her own
17 client. And I think the obligation is under *Sanborn v. State*
18 for her to go ahead and perform that pre-trial investigation
19 and then make the decision as opposed to making the decision
20 that she didn't think that would lead somewhere.

21 Often times it is a Domino effect in these
22 situations in which the Louise-and-Ray thing is a pretty big
23 red flag to me. And following up on that investigation,
24 following up where that might have led I think -- I think she

1 has an obligation to do that and to follow up more
2 extensively on the prior Social Services investigations.

3 As to the recent Nevada Supreme Court case,
4 I think, if there are grounds upon -- which I presented here
5 today -- upon which a plea withdrawal could have been made,
6 there is not a requirement as to how weighty those grounds
7 have to be or a prejudging of whether that would have
8 outweighed the grounds to go ahead and do the plea
9 agreement.

10 But, if there are grounds, which exist here,
11 and they are legitimate, then I think the obligation is
12 there, again, to file the motion and then we weigh out
13 whether those grounds are weighty enough.

14 And certainly the court has the discretion
15 to do that. So I would say certainly her failure to file the
16 motion to withdraw is a per se violation. And I don't think
17 we can fall back on -- certainly it is not a situation where
18 we have no grounds here to talk about. There were grounds to
19 talk about. I think the petition should be granted.

20 THE COURT: I'll take the matter under submission.
21 Court is in recess.

22
23 (At this time the foregoing proceedings were concluded.)
24

1 State OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4 I, JOAN MARIE DOTSON, a Certified Shorthand
5 Reporter for the Second Judicial District Court of the State
6 of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

7 That I was present in Department No. 4 of
8 the court on Friday, October 7th, 2005 and took verbatim
9 stenotype notes of the proceedings and thereafter transcribed
10 them into typewriting as herein appears;

11 That the foregoing transcript is a full,
12 true and correct transcription of my said stenotype notes and
13 is a full, true and correct record of the proceedings had and
14 the testimony given in the above-entitled action to the best
15 of my knowledge, skill and ability.

16
17
18 DATED: This 27th day of December, 2006.

19
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21 
22 _____
23 JOAN MARIE DOTSON, CSR #102
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