

STATE OF NEW HAMPSHIRE
COOS COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE,) Superior Court Case No.
) 214-2005-CR-00202
Complainant,)
)
vs.)
) Lancaster, New Hampshire
GENEVIEVE KELLEY,) June 17, 2015
) 10:59 a.m.
Defendant.)
_____)

HEARING ON PENDING MOTIONS, PLEA AND SENTENCING
DESIGNATION OF RECORD - PLEA AND SENTINCING OF G. KELLEY ONLY
BEFORE THE HONORABLE PETER H. BORNSTEIN
JUDGE OF THE SUPERIOR COURT

APPEARANCES:

For the State: John McCormick, Esq.
Jason D. Moore, Esq.
COOS COUNTY ATTORNEY'S OFFICE
55 School Street
Suite 141
Lancaster, NH 03584

For the Defendant Alan D. Rosenfeld, Esq.
Genevieve Kelley: John R. McKinnon, Esq.
JOHN R. MCKINNON, PLLC
P.O. Box 1388
Campton, NH 03223

For the Defendant Martha A. Hornick, Esq.
Scott Kelley: NEW HAMPSHIRE PUBLIC DEFENDER'S
OFFICE
134 Main Street
Littleton, NH 03561

Audio Operator: Electronically Recorded
By Sara Beaulieu

TRANSCRIPTION COMPANY:

AVTranz
845 North 3rd Avenue
Phoenix, AZ 85003
(800) 257-0885
www.avtranz.com

Proceedings recorded by electronic sound recording; transcript
produced by court-approved transcription service.

AVTranz

www.avtranz.com · (800) 257-0885

I N D E X

<u>WITNESS (ES)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
---------------------	---------------	--------------	-----------------	----------------

FOR THE STATE:

None

FOR THE DEFENDANT/G. KELLEY:

Genevieve Kelley	93	--	--	--
------------------	----	----	----	----

MISCELLANEOUS

	<u>PAGE</u>
Court's Findings/Orders	94

1 (Designation of record begins at 10:59 a.m.)

2 THE BAILIFF: All rise. Coos County Superior Court
3 is now in session. The Honorable Peter H. Bornstein presiding.
4 Thank you. Please be seated.

5 THE COURT: This is a -- at least at this point, a
6 hearing on pending motions in the matter of State of New
7 Hampshire versus Genevieve Kelley and State of New Hampshire
8 versus Scott Kelley. The clerk had informed me that one or
9 both of the Defendants may have reached a plea agreement with
10 the State.

11 What is the status of that, Attorney Hornick? You're
12 on your feet so let me ask you?

13 MS. HORNICK: May I approach, Your Honor?

14 THE COURT: May you approach?

15 MS. HORNICK: Yes.

16 THE COURT: Just you?

17 MS. HORNICK: I suppose the State would want to come
18 as well.

19 MR. ROSENFELD: Can I come too?

20 THE COURT: Okay. With respect to Scott's case only?

21 MS. HORNICK: Yes.

22 THE COURT: Why don't all counsel approach. Unless
23 -- if it's with respect to Scott Kelley's case only, then you
24 and Mr. McCormick and the Prosecutors can approach. If it
25 involves Mrs. Kelley's case, then I think all counsel ought to

1 approach.

2 MR. ROSENFELD: Could we perhaps all talk in
3 chambers?

4 THE COURT: No. You can come up here to the bench
5 and I'll mute it, but we're on the record.

6 (Sidebar begins at 11:00 a.m.)

7 MS. HORNICK: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. MCCORMICK: Good morning.

10 MR. MCKINNON: Good morning.

11 MS. HORNICK: There -- your suggestion that we are
12 close to a potential plea is on the mark. There are one or two
13 provisions -- or there are about three issues that we were able
14 to resolve but there's one provision that remains outstanding
15 that is problematic as it relates to both my client and
16 Attorneys McKinnon and Rosenfeld's client. So I think that
17 that was one of the reasons why Attorney Rosenfeld suggested
18 that maybe we should discuss it in chambers. It has much to do
19 with the language that we talked about in court yesterday.
20 Attorney McCormick was a little bit more specific looking at
21 number --

22 MR. MCCORMICK: 6.

23 MS. HORNICK: -- 6.

24 THE COURT: Okay.

25 MS. HORNICK: Attorney McCormick added specific

1 family members' names including Dr. Nunes, and both -- I only
2 want to speak for Scott.

3 THE COURT: Right.

4 MS. HORNICK: He's very concerned that since -- that
5 -- he is very concerned that if Dr. Nunes writes a letter,
6 calls her up where she's living and says, "I'm coming to see
7 you, I want to see you, and if you don't see me, I will send
8 your father -- your stepfather and your mother to jail."
9 They're very concerned about him being able to do that and not
10 being able to fight back with his name specifically in there.
11 So they feel very strongly about protecting Mary from having
12 that specificity -- from having that specific name there as
13 part of the plea agreement. So the paternal family, yes. But
14 Mark Nunes specifically --

15 MR. MCCORMICK: With --

16 THE COURT: Well, let me ask you briefly. I was told
17 that there were four potential issues. I just want to confirm
18 that the others are resolved. One is a delayed reporting state
19 for Scott Kelley. I understand the Defendant wants to
20 report --

21 MS. HORNICK: Monday 9:00.

22 THE COURT: -- Monday, the 22nd --

23 MS. HORNICK: 2nd.

24 THE COURT: -- of June at --

25 MS. HORNICK: Yes.

1 THE COURT: -- 9 a.m. And the State is taking --

2 MR. MCCORMICK: Taking no position, Your Honor.

3 THE COURT: -- no position? Okay. So that may not
4 be -- that being -- I mean, I'm not suggesting that I'm
5 adamantly opposed to a delayed reporting date, but if I
6 conclude he shouldn't get a delayed reporting date, is that a
7 material term in the plea from his perspective if I say, no,
8 you're reporting today --

9 MS. HORNICK: Well --

10 THE COURT: -- or you're staying committed?

11 MS. HORNICK: -- in addition, if I may add something
12 else to that, in speaking about trying to resolve these last
13 minute details, you know, the bail conditions as the Court is
14 aware and as we're aware as attorneys in this state and in this
15 court stay into effect when someone pleads guilty but there is
16 a delayed reporting. So pursuant to the agreement here if
17 Scott Kelley reports, Genevieve Kelley would be out and still
18 on condition -- liable to -- subject to bail conditions until
19 she reports.

20 THE COURT: And that was the second issue. So when
21 would she report since Mr. Kelley's release date is a little
22 bit of a moving target --

23 MR. MCCORMICK: Eighty days.

24 THE COURT: -- depending on whether he qualifies for
25 early release or not? But you've got an agreement --

1 MR. MCCORMICK: We have that.

2 THE COURT: -- for a reporting date?

3 MR. MCCORMICK: We have an agreed --

4 THE COURT: Okay.

5 MR. MCCORMICK: -- reporting date.

6 THE COURT: So that's --

7 MR. MCCORMICK: Yeah.

8 MS. HORNICK: Yeah.

9 THE COURT: -- agreed. Okay.

10 MR. MCCORMICK: September 7th.

11 MS. HORNICK: So the other issue was contact. And in
12 speaking with Attorney McCormick and trying to figure out the
13 reporting date issue, Attorney McCormick agreed that he would
14 allow for the bail condition of no contact between Scott and
15 Gen Kelley to be amended --

16 MR. MCCORMICK: In the event that he doesn't stand
17 committed today.

18 MS. HORNICK: -- in the event that you agree to the
19 delayed reporting to Monday.

20 MR. MCCORMICK: And I cannot take a position.

21 MS. HORNICK: Attorney McCormick said he would agree
22 to allow a 24 hour period of contact on Father's Day from 9
23 a.m. Sunday morning until 9 a.m. Monday morning which is when
24 he would be due to report anyway at the Coos County House of
25 Corrections.

1 THE COURT: Between --

2 MS. HORNICK: Scott --

3 THE COURT: -- Mary and Scott?

4 MR. MCCORMICK: No. Scott and --

5 MS. HORNICK: -- Scott and Gen.

6 THE COURT: -- Genevieve and Scott?

7 MS. HORNICK: Yes.

8 MR. MCCORMICK: Yeah.

9 THE COURT: Okay.

10 MR. MCCORMICK: The State would like the other
11 conditions to remain in effect until --

12 THE COURT: Until he reports.

13 MR. MCCORMICK: Yeah.

14 THE COURT: And that's agreeable?

15 MS. HORNICK: Yes.

16 MR. MCCORMICK: And Gen --

17 MR. ROSENFELD: And then he tried to --

18 MR. MCCORMICK: -- Gen as well.

19 MR. ROSENFELD: -- contact with my client. So with
20 Genevieve also.

21 THE COURT: Yep.

22 MR. MCCORMICK: Yes. And --

23 THE COURT: Well, I'm about to ask you.

24 MR. MCKINNON: Yeah.

25 THE COURT: So that's the agreement?

1 MR. ROSENFELD: No. I haven't been in that -- I
2 wasn't in that conversation. And the last I heard was that
3 they -- that she wants no con -- again, speaking for my client
4 not for Scott Kelley, there are at least two issues. One is
5 she wants a no contact provision with her daughter to be
6 removed so -- removed until she reports and while she's in
7 jail. And number two, regarding what Ms. Hornick described as
8 a --

9 THE COURT: I'm sorry. Before you go on, so she
10 wants the no contact provision from her bail order removed. No
11 contact as it relates to Mary, Scott or both?

12 MR. ROSENFELD: Mary.

13 THE COURT: Just Mary.

14 MR. ROSENFELD: And she -- I -- she's willing to --
15 what she -- what they really wanted was the family to be
16 together all four of them until Scott reported, but they agreed
17 to only take the one day on Father's Day between her and Scott.
18 But in terms of Mary, she wants contact with -- she wants to be
19 allowed to be with her daughter until she reports. And --

20 THE COURT: Starting tomorrow?

21 MR. ROSENFELD: Yeah.

22 THE COURT: Okay.

23 MR. MCCORMICK: And the State objects to that, Your
24 Honor.

25 MS. HORNICK: With all due respect, I think, Attorney

1 Rosenfeld, that Ms. Kelley -- at least through -- told my
2 client that she would agree to the no contact with Mary until
3 she reports. She would agree to the other conditions of bail
4 remaining in effect until she reports in 80 days. But the only
5 contact that they're looking for -- I mean, they would love,
6 obviously, complete contact, but they understand that the
7 conditions of bail will remain in effect until they report.
8 And then the conditions of bail go away, but that she would
9 agree to --

10 THE COURT: Well, were you all in the same meeting?

11 Mr. McKinnon, what --

12 MR. ROSENFELD: Well, they met without me --

13 MS. HORNICK: Yes.

14 MR. ROSENFELD: -- for awhile.

15 THE COURT: What's that?

16 MR. ROSENFELD: They met without me for awhile. And,
17 apparently, going to --

18 THE COURT: Well, was Mr. McKinnon present?

19 MR. ROSENFELD: No. That last meeting that John and
20 Marcie had neither of us were in. We --

21 THE COURT: No. I'm talking about whatever agreed
22 discussion it was about Genevieve -- whatever Mrs. Kelley
23 expressed or agreed to about that how long her no contact
24 provision would last, what's her wishes, Mr. McKinnon?

25 MR. MCKINNON: Well, her wish is to have con --

1 THE COURT: Step up if you would because my mic needs
2 to pick you up.

3 MR. MCKINNON: Her wishes are to -- is to have
4 contact with Mary. She's willing to forego contact with Scott
5 while he's in jail. But they -- as Attorney Hornick said, they
6 want to be a family and get reunited. That's the whole purpose
7 I think.

8 THE COURT: Okay. So as of tomorrow, she wants to be
9 able to have contact with Mary but no contact with Scott other
10 than Father's Day?

11 MR. MCKINNON: Correct.

12 THE COURT: And the State agrees to the Father's Day
13 thing?

14 MR. MCCORMICK: Well, contact between the two of them
15 and how it was presented to me was there ten year old son would
16 need some -- I don't know -- reassurance on some things and
17 that that would be the purpose of that contact. So in terms of
18 that occurring, in the event that he reports on Monday if the
19 Court so decides, the State is okay with that alone. And I
20 think that that's the only thing that the -- really the State
21 agrees to in terms of --

22 MR. ROSENFELD: I mean, up until -- while we were
23 awaiting trial, I didn't agree, but I understood the argument
24 that, okay, you know, they're -- the State's accusing her of
25 having, you know, coached a potential witness so she can't talk

1 to the witness and that would interfere with a trial. But
2 right now, the only issue is, you know, this is her mother,
3 this little girl's mother. She's 19 years old and there is
4 absolutely no -- there's no moral or conscionable reason for
5 continuing to punish to her --

6 MR. MCCORMICK: Your Honor, the --

7 MR. ROSENFELD: -- other than the State --

8 THE COURT: Well, what -- apart from moral reasons,
9 what is the State's legal -- why do you want a no contact order
10 with -- between Genevieve and Mary to extend once the trial
11 process is concluded --

12 MR. MCCORMICK: Because I don't --

13 THE COURT: -- or once she pleads guilty?

14 MR. MCCORMICK: -- because I don't want any further
15 profiteering and press based on this entire thing where they've
16 been, you know, entirely exploitive of that process with the
17 press, the media. So I anticipate, Your Honor, unless those
18 provisions, we're going to have -- and the State actually -- I
19 mean, here's the thing. The State is trying to be -- give
20 certain concessions and the Defense seems to want to take more
21 and more and more. And the issue of reporting I said I'd take
22 no position. But the issue of lifting their no contact in the
23 bail order as I see it would permit -- just like what happened
24 in this court, Your Honor, when we did that for five minutes
25 for them to discuss, we get a picture in the Union Leader or

1 the People Magazine or whatever it was of them kissing outside
2 and with some headline that, you know, read whatever it was.
3 But the issue is the press, Your Honor, and I don't agree with
4 lifting --

5 THE COURT: Actually, live video feed on NUR, then
6 I'll get --

7 MR. MCCORMICK: Well, probably. So that's my --
8 well, my issue is -- and they keep talking about the family
9 wants to be reunited, the family wants to be reunited. You
10 know, from the State's perspective, Dr. Nunes has not -- never
11 had a reunification with Mary and even through this agreement
12 is not having that and I'm sure he's going to talk about that.
13 So to that extent, I mean, the State is -- recognizes this is a
14 difficult case on both ends and is agreeing to this plea. But
15 to keep nickeling and diming the plea and -- which is what's
16 happening by the Defense and what the State's been receiving
17 from them is problematic.

18 THE COURT: Then, hypothetically, you play this out.
19 I mean, if -- assuming you -- there was an agreement that the
20 no contact order would -- and I realize there isn't -- but if
21 it -- so if there was an agreement that the no contact
22 provision between Mary and Genevieve would last until Genevieve
23 reported in, what'd you say, 80 days?

24 MR. MCCORMICK: September 7th.

25 THE COURT: That's 9/7 and that's a negotiated agreed

1 date?

2 MR. MCCORMICK: Monday. Right.

3 THE COURT: So her -- if even this -- the no contact
4 order would -- it would then expire on September 7th.

5 MR. MCCORMICK: Right. Right.

6 THE COURT: And at that point, there's nothing to
7 prevent the profiteering and contact -- press contact about
8 what you're concerned, right?

9 MR. MCCORMICK: Well, at that point from the State's
10 perspective, there would be some dissipation from what's going
11 on today. I mean, to the extent that now they're going to, you
12 know, publicize this huge thing or whatever where they were all
13 reporting, I mean, that's the problem from the State's
14 perspective. And I did -- Attorney Hornick indicated --

15 THE COURT: Well, we've got --

16 MR. MCCORMICK: -- that they agreed to --

17 THE COURT: We've got TV cameras here. I think
18 word's going to get out that they are reporting on certain
19 dates if I take a plea that does that.

20 MR. MCCORMICK: But I'm not concerned with that, Your
21 Honor. I'm concerned with the -- Attorney Hornick indicated
22 that she has -- that they parties would agree -- or at least
23 the Defense would agree to a gag order. So, I mean, if that's
24 -- if they do agree to that pending reporting, then it's kind
25 of a moot point anyway. So --

1 MR. ROSENFELD: So I have to say two things. May I,
2 Your Honor?

3 THE COURT: You may.

4 MR. ROSENFELD: Thank you. Because it's both in
5 response to -- I mean, it's -- the semantics aside about who's
6 changing the terms and nickeling and diming, when Ms. Hornick
7 said that Mr. McCormick has just clarified the names, in terms
8 of my client and my conversations with Mr. McCormick, we were
9 very clear the agreement was going to be Mark -- that the not
10 interfering with the relationship between Mary and Mark's
11 relatives but not Mark. It was very clear. We -- it -- and we
12 actually said that in conversation. And then this morning all
13 of the sudden --

14 THE COURT: Well, I'm just curious, who prepared --

15 MR. MCCORMICK: Never agreed to that.

16 THE COURT: -- excuse me -- who prepared the addendum
17 and approved the -- I assume Attorney Rosenfeld -- and I'm
18 working an addendum. What I have here is an acknowledgment of
19 rights for Genevieve Kelley with hand writing on it. Whose
20 hand writing is that?

21 MR. ROSENFELD: That's probably mine.

22 THE COURT: That --

23 MR. ROSENFELD: Uh-huh.

24 THE COURT: -- that's yours --

25 MR. ROSENFELD: That's my writing.

1 THE COURT: -- Attorney Rosenfeld?

2 MR. ROSENFELD: I'm just double checking what -- yes.

3 THE COURT: Okay. With your hand writing on it. And
4 attached to it is -- and again, on page 2 of the
5 acknowledgment, it says, "See sentencing addendum." And then
6 attached -- the page -- third page of the acknowledgment is a
7 sentencing addendum, paragraphs 1 through 6. Paragraph 6 says,
8 "Genevieve Kelley agrees that she shall not interfere with or
9 impede with Mary Kelley having any contact with her paternal
10 family if she wishes to do so." So is that addendum including
11 that paragraph, does that reflect --

12 MR. ROSENFELD: That --

13 THE COURT: -- the parties' agreement?

14 MR. ROSENFELD: Yeah. And we -- and that's what
15 we're -- that's the problem there was that we -- that was the
16 language we agreed on with the understanding between Mr.
17 McCormick and I that I represented to my client that paternal
18 family meant Mark's relatives and not Mark. And this morning,
19 he's clarifying that, you know, it really meant Mark and that's
20 the area of disagreement this morning.

21 THE COURT: Well, I mean, I would observe that not
22 having -- the provision reads, "Genevieve Kelley agrees that
23 she shall not interfere with or impede with Mary Kelley having
24 any contact with her paternal family if she wishes to do so."
25 Paternal family at a minimum includes a paternals -- the

1 father. I mean, what -- you know, again, my question might be,
2 you know, how collaterally does it extend? Does this mean that
3 they can't interfere with her having contact with Mr. Mark
4 Nunes' second cousin? I mean, I think paternal family means
5 every darn collateral relative and lineal ascendant and lineal
6 descendant of Mark Nunes. So -- but it certainly at a minimum
7 paragraph 6 includes Mark Nunes, so.

8 MR. ROSENFELD: And that's the problem. That's the
9 problem with vague language as well as --

10 THE COURT: But that isn't vague.

11 MR. ROSENFELD: Well --

12 THE COURT: Paternal family means --

13 MR. ROSENFELD: Yeah. But when --

14 THE COURT: I mean --

15 MR. ROSENFELD: -- when the conversation between
16 lawyers is but we understand this doesn't mean Mark, this just
17 means his relatives, you know, but we're putting this language
18 in to make everyone happy.

19 THE COURT: What is Scott Kelley's understanding of
20 the paternal -- and in the exact same clause --

21 MS. HORNICK: Exact same thing, Your Honor.

22 THE COURT: -- about paternal family appears in Mark
23 (sic) Kelley's sentencing agreement?

24 MS. HORNICK: We reviewed it yesterday in my office
25 and --

1 THE COURT: You did.

2 MS. HORNICK: -- they agreed --

3 THE COURT: Does he understand it to apply that if
4 Mary wants to talk to Mark Nunes he won't interfere?

5 MS. HORNICK: Yes. Sure. They all -- they do
6 understand. It's just that Attorney McCormick added it
7 specifically and --

8 THE COURT: But Attorney Rosenfeld --

9 MR. ROSENFELD: But we --

10 THE COURT: -- is saying it doesn't include Mark.

11 MR. ROSENFELD: He didn't tell -- he didn't talk --

12 THE COURT: Paternal family doesn't mean paternal
13 family. It means paternal family except Mark Nunes.

14 MS. HORNICK: Well, there's no except Mark Nunes in
15 there. That's true.

16 MR. ROSENFELD: You didn't tell Scott last night that
17 it wasn't -- that the agreement wasn't -- it didn't refer to
18 Mark?

19 MS. HORNICK: Alan, you were the --

20 MR. ROSENFELD: Because Mark was shocked this
21 morning.

22 MS. HORNICK: -- you were -- okay.

23 MR. ROSENFELD: Mark was shocked -- I mean, Scott was
24 shocked this morning.

25 THE COURT: I would -- since, you know -- again, I'm

1 not going to negotiate this plea agreement here.

2 MS. HORNICK: Understood.

3 THE COURT: Either you have a plea agreement or you
4 don't.

5 MS. HORNICK: Right.

6 THE COURT: I would observe that -- again, I
7 understood when Scott Kelley's proposed plea agreement was
8 discussed yesterday with me -- and I think we specifically
9 mentioned Mark Nunes -- but even if we didn't, the term
10 paternal family in my view may -- is rather broad. And if
11 anything, I would've preferred to see language that relates to
12 specific relatives so that -- specific paternal family members
13 so that it isn't, you know -- if, you know, whether it implies
14 to third cousins once removed or not. But at a minimum,
15 paternal family means Mark Nunes. He's the father.

16 MS. HORNICK: Understood, Your Honor.

17 THE COURT: So if that isn't really Genevieve
18 Kelley's agreement, that is not what paragraph 6 says.

19 MR. ROSENFELD: And we -- I mean, I still -- we've
20 still been worrying about, you know -- and Ms. Hornick
21 reassured us no, no, no, no one's going to be unreasonable
22 about it. But what interferes with me is, you know, can she
23 continue to talk -- bring her to a therapist when her therapist
24 is saying, you know, is discouraging the contact, or is that
25 interfering with the relationship, you know?

1 THE COURT: Well, first of all, I mean, we'll have to
2 cross that bridge when we come to it. I can't speculate or
3 give advisory opinions about hypothetical situations other than
4 to observe that Mary's 19. The way this is worded and that if
5 she wants to have contact with her father or her father's
6 brother or her father's new wife, she can do that, and Scott
7 and Genevieve Kelley would not interfere with her or impede
8 with that --

9 MR. ROSENFELD: And they understand --

10 THE COURT: -- or her efforts to do so.

11 MR. ROSENFELD: -- they understand she's 19 and can
12 do whatever she wants. Again, I -- my advice was to not agree
13 to that clause at all because of the vagueness of doesn't
14 interfering mean, you know. We might, you know -- kind of
15 brining her -- she wants to get a restraining order. If they
16 say, sure, it's not a bad idea, is it -- you know, is that a
17 violation of the condition and they get another year imposed?
18 But that's, you know -- I mean, that's the problem we have.
19 But we also --

20 MS. HORNICK: Your Honor, the reason that I submitted
21 these forms was because everyone agreed to them last night at
22 the meeting in the office. And the only issues that are
23 remaining today are reporting dates, the contact issue, the
24 specificity of that as it's written there. I mean, the
25 vagueness of that is both protective and apparently scary, but

1 I also don't envision this Court trying to bring back my client
2 based on some second hand, third hand, fourth hand information
3 that a therapist recommended to Mary -- that he drove her to
4 that therapist recommended to Mary to not have contact with her
5 father. That's -- I mean, we're going way beyond the pail
6 (phonetic). The spirit of that is specific -- specifically
7 telling Mary not to have contact with her aunt, her uncle. And
8 again, I mean, it's possible the father will try to reach out
9 to her. Mary is supposedly capable of, you know, say through
10 her attorney, through a police department on her own that she
11 doesn't want to have contact with him. But Scott Kelley agrees
12 with that provision. And when we were in that meeting last,
13 Attorney Rosenfeld, your client also agreed to that provision.

14 MR. ROSENFELD: But was that -- was it -- the way
15 that provision is written she -- we agreed to it with --

16 THE COURT: But paternal family means Mark Nunes --

17 MS. HORNICK: Understood.

18 THE COURT: -- at a minimum.

19 MS. HORNICK: Understood.

20 MR. ROSENFELD: And, well, all I know is that this
21 morning when they were read that Mark Nunes' name was
22 specifically added in, both of them then said it must go to
23 trial because that wasn't the agreement.

24 THE COURT: Is that what Scott Kelley said?

25 MS. HORNICK: It was a tad -- it was too specific.

1 It was too much in their face to have his name on that. I
2 mean, Your Honor --

3 MR. ROSENFELD: They both thought it was -- it didn't
4 include him.

5 MS. HORNICK: As you can imagine, emotions are high.
6 There are issues that people want to get resolved or
7 emotions --

8 THE COURT: What about the people listed on your
9 proposed sentencing order? Mark Nunes and who else?

10 MR. MCCORMICK: Mary's half-siblings Madeline and
11 Gabrielle Nunes and --

12 THE COURT: These would be Mark Nunes' children --

13 MR. MCCORMICK: Right.

14 THE COURT: -- by his second wife?

15 MR. MCCORMICK: Yes.

16 THE COURT: And so --

17 MR. MCCORMICK: And Nancy Nunes, his wife --

18 THE COURT: His wife.

19 MR. MCCORMICK: -- and also --

20 THE COURT: So Mark Nunes, Nancy Nunes, their two
21 children --

22 MR. MCCORMICK: Right.

23 THE COURT: -- and who else?

24 MR. MCCORMICK: Aunts and uncles and godfather.

25 MS. HORNICK: You didn't list them out, though, all

1 of them, John.

2 MR. MCCORMICK: No I didn't. I just said aunts and
3 uncles, you know.

4 THE COURT: Aunts, uncles and godfather.

5 MR. MCCORMICK: Godparents I guess I should, you
6 know.

7 THE COURT: Well, what's the problem with having --
8 it seems to me that having the people listed -- I mean, the
9 Defendants are each not only constitutionally entitled to
10 certainty at sentencing, but it would be in everyone's
11 interest, the Defendants and the State, to have it clear to
12 whom the will not interfere with or impede provision of the
13 sentencing order applies to so that if it's, you know -- that
14 way, the Defendants don't have to worry that if the -- one of
15 the Defendants says, don't go see your fifth cousin once remove
16 -- three times removed from Mark Nunes, that it might violate
17 the order. I don't see what the problem is. I mean, is there
18 some -- I don't even see the in-your-face thing. Is there some
19 -- is it totally unexpected --

20 MR. ROSENFELD: Your Honor --

21 THE COURT: -- that -- again, paternal family means
22 Mark Nunes at a minimum.

23 MR. ROSENFELD: Unless there's a specific assurance
24 that was told to counsel and represented to clients that it did
25 not include Mark Nunes. It was -- if the name of Mark Nunes

1 was the only one that was in their face that they said, no, we
2 didn't agree to that, you told us it wasn't going to include
3 Mark.

4 THE COURT: Okay. Back to the no contact thing. So
5 basically what you want is a cooling off period?

6 MR. MCCORMICK: Right.

7 THE COURT: I mean, you know, once Genevieve reports
8 on September 7th, they can publicize and profiteer to their
9 hearts' content?

10 MR. MCCORMICK: Well, Your Honor --

11 THE COURT: At least to the --

12 MR. MCCORMICK: Well --

13 THE COURT: Their bale order won't prohibit them --

14 MR. MCCORMICK: -- well, there is --

15 THE COURT: -- from doing so.

16 MR. MCCORMICK: -- well, there is a term in there --

17 THE COURT: Right.

18 MR. MCCORMICK: -- regarding that. But, I mean --

19 THE COURT: Where the proceeds go --

20 MR. MCCORMICK: Yeah.

21 THE COURT: -- if you profiteer.

22 MR. MCCORMICK: But -- yeah. I -- essentially.

23 MR. ROSENFELD: And from our perspective, it's just
24 another -- you know, another pound of flesh of Mary. There's
25 no longer -- you know, I don't even know -- you know, again,

1 from my --

2 THE COURT: Was there any discussion at this meeting
3 about the continuation of the bail orders? I mean, basic --

4 MR. ROSENFELD: We had --

5 THE COURT: Let me --

6 MR. ROSENFELD: Sorry.

7 THE COURT: -- finish my question. I mean, any time
8 there's delayed reporting -- and again, until this morning, I
9 wasn't aware that Scott Kelley might be requesting a delayed
10 reporting date. But assuming without deciding because we don't
11 even have a plea agree -- you don't even have a plea agreement
12 yet, that I would allow Mark to -- Nune -- excuse me, Scott
13 Kelley to report on June 22nd, as a matter of course anytime
14 there's a delayed reporting date, the defendant's bail order
15 and bail conditions remain in effect unless -- until such time
16 as the person reports and one of the conditions of bail is the
17 no contact provision. So was there some discussion at this
18 meeting yesterday about whether the bail conditions order would
19 not continue?

20 MS. HORNICK: Yes. And I misinformed my client that
21 the bail conditions would go away upon his plea because I
22 didn't think ahead to the delayed reporting for both of them.
23 And so this morning as I was coming into court, I talked to
24 John about amending the bail conditions to allow contact. He
25 was not in agreement with that. And when Scott and Gen and

1 Gen's attorneys showed up, we went into a room and I said this
2 was my error and my miscommunication. Bail conditions stay in
3 effect until you report. As we then continued the back and
4 forth, that's why I went to Attorney McCormick about amending
5 the no contact for a 24 hour period to include the delayed
6 reporting. And that's when in the room that we were in before
7 I approached John McCormick just before the cases were called,
8 Genevieve said that she would be agreement -- in agreement with
9 the continued bail conditions until she reports. Plus, both
10 Scott -- Scott told me that he and his wife would agree to not
11 speak to the press until they report -- until they both report.

12 THE COURT: Well, I mean, either the Defendants have
13 agreed to these things or they haven't.

14 Mr. McKinnon, what have the Defendants agreed to on
15 this no contact issue and on the language of the -- well, let's
16 just stick with the no contact issue. What have they agreed
17 to? Did they agree to bail -- no contact provisions of the
18 bail order continue until they report other than the Father's
19 Day exception?

20 MR. MCKINNON: If the Court's not willing to modify
21 that, yes.

22 THE MONITOR: I can't hear you.

23 THE COURT: If the Court's not willing to modify
24 that, yes, they --

25 MR. MCKINNON: If the Court's not willing to modify

1 that condition, they are willing to go along with --

2 THE COURT: Well, I mean, in the terms of -- so they
3 are willing to. I mean, Genevieve is. That's who you
4 represent.

5 MR. MCKINNON: Yes.

6 THE COURT: And then Ms. -- Attorney Hornick's
7 already told me Scott's willing to. So then I understand at
8 least the Defendants -- what you're telling me, Mr. McKinnon,
9 is the Defendants -- again, the question is whether there's a
10 plea agreement or not. I'm not going to order anybody to agree
11 to a term of a plea. Either you have a fully negotiated plea
12 amongst yourselves or you don't. Whether I accept it is
13 another matter. But as I -- you know, I generally have no
14 reason to think I wouldn't. But I'm not going to order the --
15 I'm not going to modify the conditions of bail unless there's
16 an agreement that I do so. So the question is, is Genevieve
17 Kelley agreeable to pleading guilty on the terms that have been
18 discussed putting aside this paternal family clause about which
19 I'm going to ask you next?

20 MR. MCKINNON: I understand.

21 THE COURT: Is Genevieve Kelley prepared to plead
22 guilty and is she doing so knowingly, intelligently and
23 voluntarily with the understanding that her bail conditions
24 including her no contact provisions with her husband and her
25 daughter remain in effect until she reports which is

1 anticipated to occur on September 7th, but until whenever she
2 reports?

3 MR. MCKINNON: I believe she is, Your Honor.

4 MR. ROSENFELD: Can we go ask her now? Can we have a
5 minute? Can we --

6 THE COURT: That would be a good idea.

7 Attorney McKinnon, you, too. Go ask -- go talk. You
8 both need to confer with her.

9 (Counsel and client confer)

10 MS. HORNICK: I'll talk to my client.

11 THE COURT: Yes. That would be a good idea.

12 (Counsel and client confer)

13 THE COURT: Hold on. Wait until we get attorney
14 Hornick back up here.

15 Mr. McKinnon stepped in and --

16 MR. MCKINNON: Sure.

17 THE COURT: -- Mister -- Attorney Hornick can step in
18 as well.

19 Okay. So, Attorney Rosenfeld?

20 MR. ROSENFELD: She agrees to it with the -- with her
21 understanding that on the Father's Day exception includes Mary.

22 MR. MCCORMICK: No. I didn't --

23 MR. ROSENFELD: That's what she just said.

24 MR. MCCORMICK: -- agree to that.

25 MR. ROSENFELD: That's what she just said. She -- we

1 weren't negotiating. We're translating --

2 MR. MCCORMICK: Okay.

3 MR. ROSENFELD: -- to the judge --

4 MR. MCCORMICK: Right.

5 MR. ROSENFELD: -- what our client just said.

6 THE COURT: Okay. Was that the agree -- again, I
7 understood from Attorney Hornick earlier that the Father's Day
8 was just Genevieve and Scott together because I asked
9 specifically did that include Mary.

10 MS. HORNICK: That was all I understood it to be,
11 Your Honor, and that was all I conveyed to my client. So I --
12 if the Court is willing to include Mary, I'll tell them that,
13 but that wasn't the request. That wasn't how it was --

14 THE COURT: If there's an agreement, I'm willing to
15 include --

16 MS. HORNICK: Right.

17 THE COURT: -- what the parties agree to.

18 MS. HORNICK: Let me ask again.

19 THE COURT: -- Attorney McCormick.

20 MR. ROSENFELD: I don't agree with that.

21 MS. HORNICK: Okay. So he did --

22 MR. ROSENFELD: No, I don't.

23 THE COURT: What I'm going to do is this. Let me
24 just say tentatively -- and again, I'm not committing myself to
25 anything -- but either you have a fully negotiated plea

1 agreement or you don't. And again, it occurs to me that -- and
2 I realize that the Defendants being husband and wife are
3 intimately connected and their interests intimately connected,
4 but they can both plead, one of them can plead and the other
5 cannot plead, but there needs to be a fully negotiated plea
6 agreement. But I see no reason why I would not allow Scott to
7 report -- Scott Kelley to report on June 22nd. If the agreed
8 reporting date for Genevieve is September 7th, then I see no
9 reason why I wouldn't agree to that because everybody's agreed
10 to it. The -- you know, you need to come up with an agreement
11 on -- you need to reach a -- the parties being the State and
12 Scott Kelley and Genevieve Kelley need to reach a complete
13 agreement on whether and to what extent the no con -- the bail
14 order no contact provisions -- I mean, generally speaking --
15 not generally speaking -- the bail order will remain in effect
16 for each Defendant until he or she reports, whatever that is,
17 except as modified by agreement today if it is modified by
18 agreement. And whether that and what the scope of that
19 Father's Day exception modification is, you need to agree on
20 it. If you don't agree on it, again, I'm not going to get in
21 the middle of it.

22 MS. HORNICK: Understood.

23 THE COURT: And then you need to agree on this
24 paternal no con -- you know, not interfering with or impeding
25 contact with the paternal family. In my -- it seems to me that

1 clarity by specifying who the parties are that with whom Mary
2 -- with whom Mary may wish to have contact that the Defendants
3 will not interfere with or impede is better than the term
4 paternal family. But I also have no problem with the term --
5 but just so you understand, if some -- this comes before me for
6 a motion to impose a suspended sentence based on violation of
7 that provision, paternal family means every member of Mark
8 Nunes' -- Mark -- it means Mark Nunes and every member of his
9 family to the Nth degree of --

10 MS. HORNICK: Understood.

11 THE COURT: -- relationship.

12 MS. HORNICK: Understood.

13 THE COURT: Because that's what paternal family
14 means.

15 MS. HORNICK: Understood. Yes.

16 THE COURT: And I think it means his wife but it
17 certainly means his blood relatives. And again, whether it
18 means his wife, I haven't really thought about. But again, I
19 -- we're speculating about things that probably are never going
20 to come up.

21 MS. HORNICK: Exactly. Yes.

22 THE COURT: I understand that the parties want to
23 make -- be clear. And, you know, whether you want to make it
24 clear that she won't -- they will not interfere with or impede
25 her with having contact with the following persons, Mark Nunes,

1 Nancy Nunes, the two sibling -- stepchil -- you know, Mark
2 Nunes' two children, and Mary's aunts, uncles and godparents,
3 if you want to clarify that those are the paternal family
4 members to whom that provision applies if you can agree on
5 that, that's fine. If you can't -- if the agreement is
6 paternal family, it's paternal family. And then if there's a
7 disagreement at some point about what that means, we'll address
8 that in the concrete, crucible of litigation at that time.

9 MS. HORNICK: Understood, Your Honor.

10 THE COURT: I'm going to take a brief recess. I
11 mean, you need to --

12 MS. HORNICK: Can we --

13 THE COURT: Either you reach an agreement or you
14 don't. But --

15 MS. HORNICK: Yes.

16 THE COURT: -- we have a time limit here.

17 MS. HORNICK: Understood. May we have -- I'm going
18 to ask for as much as 15 minutes, Your Honor, to go and try to
19 final this. And it may be that we need less time. Because
20 we're --

21 THE COURT: Well, that was what I -- I mean, I'll
22 give you ten of 12. You got 15 minutes.

23 MS. HORNICK: Thank you.

24 THE COURT: And then we need to pull the plug and
25 start a motion hearing.

1 (Sidebar ends at 11:32 a.m.)

2 THE COURT: Okay. I'm going to take a 15-minute
3 recess, and I do mean 15 minutes. That's a cap 15 minutes to
4 allow the parties to confer further about the terms of a
5 possible fully negotiated plea. If the parties are able to
6 reach a fully negotiated plea, get the paperwork in to Mr.
7 Carlson, both the State's sentencing orders and the Defendants'
8 acknowledgments of rights. And those documents should be
9 exchanged and reviewed by each other beforehand so there's no
10 question about what is said, what is agreed to, and what is
11 understood by each party. And if there's not an agreement,
12 we'll have a motion hearing as soon as we can. We'll take a
13 recess.

14 THE BAILIFF: All rise.

15 (Recess at 11:33 a.m., recommencing at 12:08 p.m.)

16 THE BAILIFF: All rise. Coos County Superior Court
17 is again in session. The Honorable Peter H. Bornstein
18 presiding.

19 THE COURT: Good afternoon.

20 THE BAILIFF: Please be seated.

21 THE COURT: This is for the hearing in the matter of
22 State of New Hampshire versus Scott Kelley, and the State of
23 New Hampshire versus Genevieve Kelley. The -- I understand
24 based on the pleadings that the parties have submitted that the
25 parties have now -- both Defendants have now reached fully

1 negotiated plea agreements with the State.

2 MS. HORNICK: Yes, Your Honor.

3 THE COURT: Attorney Hornick, you're on your feet, so
4 is that the case?

5 MS. HORNICK: It is, Your Honor. Yes. I'm speaking
6 for Scott Kelley, but I understand that Attorneys McKinnon and
7 Attorneys Rosenfeld are of the same position.

8 THE COURT: Attorney Rosenfeld, has your client,
9 Genevieve Kelley, reached a fully negotiated plea agreement
10 with the State?

11 MR. ROSENFELD: Yes, Your Honor. And as you're
12 aware, it's against my advice. But, yes, Your Honor.

13 THE COURT: And the parties have among other things
14 -- both Defendants have signed acknowledgments of rights and
15 submitted those. The State has submitted sentencing orders on
16 each of the case on each of the charges on which -- to which
17 the Defendants would be pleading guilty.

18 Attorney Hornick, has -- have you and Mr. Kelley seen
19 the sentencing orders that apply to his case?

20 MS. HORNICK: Yes, Your Honor.

21 THE COURT: And is Mr. Kelley in agreement with all
22 the provisions in that sentencing order?

23 MS. HORNICK: He is.

24 THE COURT: And, Attorney Rosenfeld, has Mrs. Kelley
25 seen the sentencing orders that apply to her case?

1 MR. ROSENFELD: Yes, she has, Your Honor.

2 THE COURT: And is she in agreement with all the
3 provisions of the sentencing orders that apply to her case?

4 MR. ROSENFELD: Yes, Your Honor, with one
5 understanding that I just confirmed with Mr. McCormick that in
6 the phrase that says complete psychological evaluation that
7 what that means is she shall submit an affidavit from her
8 current therapist that she has been evaluated and is in
9 treatment. There's no other evaluation or therapy implied by
10 it other than that.

11 THE COURT: Attorney McCormick, is that the
12 understanding with respect to the provision of paragraph 2
13 regarding the Defendant completing a psychological evaluation
14 and completing follow-up treatment?

15 MR. MCCORMICK: Yes, Your Honor. I'm looking at
16 paragraph 5(d) on the sent -- proposed sentencing order. But,
17 yes.

18 THE COURT: Okay. It's also in 2. But is that --
19 it's -- the same provision appears twice but that's what it
20 means?

21 MR. MCCORMICK: Yes, Your Honor.

22 THE COURT: Both parties agree?

23 MR. MCCORMICK: Both, correct, Your Honor.

24 THE COURT: And, Attorney Hornick, is there any
25 uncertainty there on what that -- does that provision apply to

1 your client as well? I --

2 MS. HORNICK: It does not, Your Honor.

3 THE COURT: Okay. And, Attorney Hornick, there's
4 been a joint -- an assented to motion in both
5 Mr. and Mrs. Kelley's cases to amend the bail conditions to
6 allow -- and what it provides is that should the Court agree to
7 the reporting date of June 22nd on Mr. Kelley's case,
8 Mr. Kelley requests with the assent of Coos County Attorney
9 John McCormick that the no contact bail condition be amended
10 for the -- is that a 24 hour period?

11 MS. HORNICK: It is, Your Honor.

12 THE COURT: Beginning -- commencing at 9 a.m. on
13 Sunday June 21, 2018 (sic). This request applies only to the
14 no contact provision between Mr. Kelley and his wife Genevieve.
15 So the requested amendment to the bail condition is that
16 Genevieve Kelley and Scott Kelley could have contact for 24
17 hours beginning on 9 a.m. on Sunday the 21st.

18 MS. HORNICK: Yes, Your Honor. And if --

19 THE COURT: And, otherwise, all provisions of
20 Mr. Kelley's bail order including the no contact provisions
21 with respect to Mary Nunes and the no contact provision with
22 respect to Genevieve Kelley other than on June 21 remain in
23 full force and effect until he reports.

24 MS. HORNICK: Indeed, Your Honor. And if I may, with
25 all due respect, Your Honor, I believe you may have misread my

1 hand writing. You said 2018. It is 2015.

2 THE COURT: Yeah. Well, it would be and I may have
3 misread. I'm going to just make the -- that a five so it's
4 clear to me with your permission?

5 MS. HORNICK: Yes. Thank you.

6 THE COURT: Did you write this?

7 MS. HORNICK: Yes.

8 THE COURT: Since you said your hand writing -- and
9 again, I'm not one to be critical of anybody else's hand
10 writing but --

11 MS. HORNICK: Thank you, Your Honor.

12 THE COURT: -- I misread it.

13 Attorney Rosenfeld, is that Genevieve's Kelley's
14 understanding of the effect of the assented to a motion to
15 amend bail conditions?

16 MR. ROSENFELD: Yes, Your Honor. Again, as you know,
17 I consider that term to be unconscionable. But, yes, she
18 agrees to it.

19 THE COURT: Okay. Well -- but don't sit down yet. I
20 got a few more questions for you on that one. So the -- she
21 understands -- and I'll ask her these same questions myself
22 when I get to have a plea colloquy with her -- but Mrs. Kelley
23 understands that the no con -- that all of the provisions of
24 her current bail order will remain in full force and effect
25 until she reports to the House of Corrections pursuant to the

1 stand committed sentence that she'll be serving other than this
2 one amendment, correct?

3 MR. ROSENFELD: Yes, Your Honor.

4 THE COURT: And she understands that the no contact
5 provision other than allowing her to have contact on June 21
6 for 24 hours beginning at 9 a.m. prohibits her from having any
7 contact with either Scott Kelley or Mary Nunes until she
8 reports to the House of Corrections to begin serving her
9 sentence, correct?

10 MR. ROSENFELD: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. ROSENFELD: Just so, again, the record's clear, I
13 think the Court's already aware that Dr. Kelley's daughter has
14 legally changed her name to Mary Kelley. So the record should
15 be clear we're referring to who used to be known as Mary Nunes.
16 Formerly known as.

17 THE COURT: Okay. And I'm going to take your client
18 Ms. Genevieve Kelley's plea first. But let me ask a general
19 overarching question. Are you satisfied that Mrs. Kelley is
20 entering into this plea agreement knowingly, intelligently and
21 voluntarily, Attorney Rosenfeld?

22 MR. ROSENFELD: Absolutely knowingly and
23 intelligently. I believe she's been threatened and coerced
24 through false charge -- false and frivolous felony charges that
25 she's afraid of. And that's just -- I mean, I'm --

1 MR. MCKINNON: Your Honor, if I may?

2 THE COURT: Well, go ahead, Mr. McKinnon. Because if
3 the Defendant has been coerced into a plea agreement, I'm not
4 in a position to take a plea agreement because I have to make
5 determination and a finding on the record that the plea
6 agreement is being entered into knowingly, intelligently and
7 voluntarily among a host of other things. And if the --
8 Attorney Rosenfeld is telling me on the record that this is a
9 voluntary plea, there's no plea and I'm not going to accept it.
10 So what did you want to say, Mr. McKinnon? I've about had it
11 with this --

12 MS. HORNICK: Yes.

13 THE COURT: -- plea negotiation dance around the
14 circle here.

15 MR. MCKINNON: I apologize, Your Honor. I was the
16 one that actually went over the acknowledgments rights form
17 with my client Genevieve Kelley and I went over each and every
18 paragraph, all of the rights that she's giving up in the grey
19 area, and she told me that she was knowingly, voluntarily and
20 intelligently signing this acknowledgment form in absolutely no
21 uncertain terms.

22 THE COURT: Well, that's good. Again, the -- you
23 know, when I have this plea colloquy -- if I have this plea
24 colloquy with Mrs. Kelley and Attorney Rosenfeld and Attorney
25 McKinnon, I'm going to be -- again, as you may know, Mr.

1 McKinnon, and I know Attorney Hornick knows because I've had
2 numerous plea colloquies with her -- I have a host of questions
3 that I will ask Mrs. Kelley and that I will ask the two
4 attorneys. And again, the questions that I had asked and
5 addressed to the two attorneys I will expect and require
6 answers from both attorneys, not just one attorney or the other
7 attorney. And so I guess I do have some concern when the
8 attorney who is -- and I'm not -- no reflection on you -- but
9 the attorney who has taken the most active in Mrs. Kelley's
10 defense, Attorney Rosenfeld, states on the record that his
11 client has been coerced into a plea --

12 Mr. McCormick, do you have any thoughts that you'd
13 like to share on that aspect of Mr. Rosenfeld's comments? Are
14 you comfortable with -- well, go ahead. I don't --

15 MR. MCCORMICK: No, no, no. I can just say that the
16 State has brought charges it believes we can prove by -- beyond
17 a reasonable doubt in court and that's about all I have to say.

18 MR. ROSENFELD: Your Honor, may I? I offered --

19 THE COURT: Yes, Mr. Rosenfeld. If you --

20 MR. ROSENFELD: -- I offered this morning and I
21 indicated to Clerk Carlson that I would sit in the back and let
22 Mr. McKinnon handle this because -- but then I indicated that I
23 believe under Rule -- Professional Conduct Rule 3.3, I have an
24 obligation to advise you of my concerns. And I just -- I think
25 I just do and I know this is how pleas are taken every day all

1 around the country. So, you know, under 3.3, I think that a
2 fraud is being com -- will be committed when the parties agree
3 that there are facts to support two different misdemeanor
4 charges on the same claims. And, you know, everyone's going to
5 go along with it but I -- you know, I -- and I'm willing to sit
6 in the back and keep my mouth -- and not participate in -- but
7 I don't think there's any possibility of facts supporting two
8 different misdemeanor charges with different dates. And I also
9 am aware that my client is terrified --

10 THE DEFENDANT/G. KELLEY: Alan --

11 MR. ROSENFELD: -- of being convicted of the other
12 charges.

13 THE DEFENDANT/G. KELLEY: -- Alan, you're no longer
14 my attorney right now.

15 MR. ROSENFELD: I'm being asked to sit back and I'm
16 going to.

17 THE COURT: Well, look, again, if -- I understand,
18 Attorney Rosenfeld, that -- at least based on what you told me
19 earlier today that Mrs. Kelley has entered into a plea
20 agreement that you have not recommended that she do so. That
21 you perhaps have recommended that she not do so. And again, I
22 -- you know, I understand that, you know, what I expected but
23 I'm not getting was something to the effect that Mrs. Kelley is
24 entering into her plea from you knowingly, intelligently and
25 voluntarily against my advice. I understand.

1 Again, the client is ultimately the -- make -- the
2 decision-maker. It's up to her to decide whether she's going
3 to plead or not plead. And, you know -- but what I said to
4 Mr. Carlson when I was told you wanted to sit in the back is
5 I'm not going to take a plea from Mrs. Kelley without the
6 involvement of the attorney who has been actively representing
7 her throughout the proceedings. I mean, you know -- and that
8 -- and again, you know, if you as counsel of record and the
9 attorney who has been -- who has at least carried the ball -- I
10 don't know what's gone on behind the scenes as far as what work
11 Attorney McKinnon's done versus what work Attorney Rosenfeld
12 has done -- but I think all of the hearings and all -- every
13 hearing we've had Attorney Rosenfeld has represented
14 Mrs. Kelley and has made the arguments and the offers of proof
15 and litigated this case, basically. And Mr. McKinnon has been
16 present at all the hearings. But where you've been the
17 attorney who's been actively involved in the case, I wasn't
18 prepared to accept the plea from her without your involvement.

19 Now, again, if what your involvement is is she's
20 pleading guilty. You know, I don't think she should but she
21 wants to do so. It's against my advice but she's doing so
22 knowingly, intelligently and voluntarily, that's one thing.
23 But if counsel of record who knows this case and Mrs. Kelley
24 better than anybody -- at least better than me -- states on the
25 record as you just have that the -- she's pleading guilty to

1 charges of what she's not guilty, that the charges that are not
2 supported by the facts, charges that -- and that she's being
3 coerced and intimidated into pleading guilty, that creates a
4 problem for my being able to find that the Defendant is
5 pleading guilty voluntarily.

6 Now, Mrs. Kelley, if -- just stated to you for the --
7 on the record which you repeated that you -- something to the
8 effect that, Alan, you're no longer my attorney. Again, I'm
9 not getting involved in any attorney/client relationship who I
10 have bent over backwards to respect Mrs. Kelley's counsel
11 throughout these proceedings despite the State's fairly
12 assiduous efforts to have Attorney Rosenfeld denied admission
13 pro hac vice, I've allowed her to rep -- you to represent her
14 because, at least up until a moment ago, that's what she
15 wanted.

16 I'm not in a position to take a plea today, at least
17 from Mrs. Kelley. If -- and particularly with what appears to
18 be a non-insignificant breakdown of the attorney/client
19 relationship where the -- Mrs. Kelley is stating on the record
20 to her attorney that you're no longer her attorney.

21 MR. ROSENFELD: Your Honor, she wants this plea. She
22 wants it over with. She wants to get on with her life. And
23 there's no confusion and there's uncertainty. And I'm
24 willing --

25 THE COURT: Just coercion according to you. How do I

1 take a plea where you're -- where the counsel of record who
2 knows this case better than anybody I think -- her case better
3 than anybody tells me the Defendant is being coerced and
4 intimidated into taking a plea?

5 MR. ROSENFELD: It happens ever day in America.

6 THE COURT: Well, I --

7 MR. ROSENFELD: How -- but how --

8 THE COURT: -- appreciate your sanguine view of our
9 criminal justice system.

10 MR. ROSENFELD: How do I stand here quietly when my
11 belief and understanding is going to be an offer of proof of
12 two different misdemeanors on the same facts after we've been
13 told repeatedly there -- don't worry about it? Even if she's
14 convicted of two felony -- of two charges she'll only be
15 sentenced on one because there's only one crime. But now we
16 got to pretend that there's enough proof for a second
17 misdemeanor.

18 THE COURT: Well, I don't know that anybody's
19 pretending. The State has brought -- and again, you raise this
20 in your motion to dismiss, but the State has brought two
21 misdemeanor charges. One alleging that the Defendant committed
22 the crime of a mis -- Class A misdemeanor crime of interference
23 with custody during one discrete time period, and that she
24 committed that same crime during a second discrete time period
25 in which the two discrete time periods being discrete do not

1 overlap. And it's -- you know, it's analogous to two Class A
2 misdemeanor charges where the Defendant is alleged to have
3 committed simple assault on Monday and a second act of simple
4 assault on Tuesday. And, again, it may be over simplifying
5 things, but again, if counsel of record doesn't think there's
6 two crimes here, you know, when I get to the question about if,
7 you know, apart from the statement on the record that the
8 Defendant's been coerced, you know, "Is the Defendant pleading
9 guilty because she is guilty to both charges," you know, the
10 answer to that, in order for me to take a plea is supposed to
11 be yes from both the client and the attorney. And you're
12 basically telling me that she's not guilty of two charges. So
13 you wouldn't even say yes to that, correct?

14 MR. ROSENFELD: Correct, Your Honor.

15 THE COURT: Okay.

16 MR. ROSENFELD: But I'm more than happy to be
17 discharged and sit in the back.

18 THE COURT: Well, and again, at least Mrs. Kelley's
19 position is not in a -- I'm not in a position to take her plea
20 today.

21 I guess, the question is then, where do we proceed?
22 We have two options. One, this was scheduled for a motion
23 hearing, and I -- again, I'm ready to go, you know. I've got a
24 file this thick and I'm ready to go on motion hearings.

25 But if the Defendant is telling her attorney of

1 record, at least one of her attorneys of record, that he's no
2 longer attorney, I don't know that we're in a position to have
3 a hearing on the merits of a bunch of motions. The second
4 thing is, I, at least based on my history with Attorney Hornick
5 -- let me ask you, Attorney Hornick, at least until you heard
6 what you heard just now, are you satisfied that Scott Kelley is
7 entering into this plea agreement knowingly, intelligently and
8 voluntarily?

9 MS. HORNICK: Yes.

10 THE COURT: Okay. So if Mr. Kelley wants to plead
11 guilty today, I'm in a position to take his plea. I understand
12 that there may be -- although the two pleas are not explicitly
13 contingent on each other. I don't know if Mrs. Kelley's not
14 being able to go forward with a plea agreement today effects
15 his willing -- you know, is there still a plea agreement on
16 Mr. Kelley's part? Does he want me to take his plea today?

17 MS. HORNICK: I would ask the Court leave to let us
18 maybe step back, take a break, regroup and give our position to
19 the Court. I -- we -- let us see where we stand because as you
20 know, Your Honor, we filed a motion for joint trial because
21 Mr. Kelley believes that, and stands firmly upon the principle,
22 that they are in this together. And so I would like to see
23 where we stand at this point, but I can't do that right here at
24 the Counsel table --

25 THE COURT: No, I understand that.

1 MS. HORNICK: While you're here. So if we may have a
2 -- I hate to ask for another recess, but please let us have a
3 short recess.

4 THE COURT: We're going to recess, but this time it's
5 for lunch.

6 MS. HORNICK: I understand.

7 THE COURT: I mean, it's 12:26. We'll take a lunch
8 and recess. Determine where Mr. Kelley wants to go from here.
9 And then, Mrs. Kelley, again, at least at this point, I'm not
10 in a position -- I don't see how I can -- I mean, you can
11 approach me about it, but I'm inclined to think that I cannot
12 take any plea from Mrs. Kelley today where one counsel of
13 record has said on the record she's being coerced into a plea.
14 And, again, whether where you go from here you may all discuss
15 in the privacy of a conference room.

16 MR. ROSENFELD: Your Honor, may we approach?

17 THE COURT: Let me ask you this --

18 MR. ROSENFELD: May we approach?

19 THE COURT: Do you need an amendment to the bail? Do
20 you want to talk together or separately? Do you want to talk
21 -- does Mrs. Kelley want to talk to Mr. Kelley?

22 MS. HORNICK: Yes, Your Honor.

23 THE COURT: So you're going to need an amendment to
24 the bail conditions.

25 MS. HORNICK: We are.

1 THE COURT: To allow a meeting like you did -- had
2 yesterday.

3 MS. HORNICK: Yes, sir.

4 THE COURT: Okay. You may -- the bail conditions are
5 amended. Do you have any objection to that, Mr. McCormick?

6 MR. MCCORMICK: No, Your Honor. No.

7 THE COURT: To allow Mr. and Mrs. Kelley and all
8 three attorneys, Mr. McKinnon, Attorney Hornick and Attorney
9 Rosenfeld to meet together in a conference room in private.
10 And, again, the contact between Mr. and Mrs. Kelley needs to be
11 in the conference room.

12 MS. HORNICK: Yes, Your Honor.

13 THE COURT: And, again, that can continue until we
14 resume these proceedings after lunch. Is there anything else
15 that I need to address for the moment?

16 MR. ROSENFELD: May I ask a question?

17 THE COURT: You may.

18 MR. ROSENFELD: My understanding is we're in a bind
19 where if you don't accept the plea, Dr. Kelley wants me, as her
20 attorney to proceed. But she would like me and I'd be willing
21 to withdraw from the case, if you'd allow me to withdraw so
22 that Mr. McKinnon can handle the plea and I don't want to be a
23 monkey wrench in it.

24 THE COURT: Well, I mean, first of all, even if you
25 file an assented to a motion to withdraw, that can't happen

1 unless I grant it. And what -- again, I don't know whether --

2 MS. HORNICK: Your Honor, if we could just have a
3 break and we will then --

4 THE COURT: Figure it out.

5 MS. HORNICK: Thank you.

6 THE COURT: Again, I'm not -- I mean, the short
7 answer is I don't know that I'm in a position today to take --
8 even if I grant Attorney Rosenfeld, if there is a motion to
9 withdraw and I grant it, I don't know that I'm prepared to have
10 a plea agreement, again, with just, Mrs. Kelley and Attorney
11 McKinnon.

12 MS. HORNICK: Understood, but let us --

13 THE COURT: Where 50 percent of her attorneys have
14 said she's being coerced into a plea agreement. And, again,
15 whether she decides to obtain yet other Counsel in addition to
16 Mr. McKinnon, I'm not suggesting she has to or doesn't have to,
17 but I don't anticipate being able to take a plea from
18 Mrs. Kelley. But I am not making any hard and fast decisions.
19 I keep an open mind.

20 MS. HORNICK: Thank you. And we'll check back with
21 the Court once it's paged after lunch. Thank you, Your Honor.

22 THE COURT: Very good. We'll take a recess.

23 THE BAILIFF: All rise.

24 (Recess at 12:29 p.m., recommencing at 2:07 p.m.)

25 THE BAILIFF: All rise. Coos County Superior Court

1 is again in session. The Honorable Peter H. Bornstein
2 presiding.

3 THE COURT: Afternoon again.

4 MS. HORNICK: Good afternoon, Your Honor.

5 THE BAILIFF: Thank you. Please be seated.

6 THE COURT: Apologize for the relocation. As you may
7 have heard, there was a problem with computer in the courtroom
8 1, so here we are in smaller courtroom 2.

9 Before we continue with the proceeding on the merits,
10 I guess I wanted to alert -- and these remarks are addressed
11 mainly to Attorney Rosenfeld though everybody can benefit from
12 them. But after -- during the lunch break, I had some concerns
13 about whether Attorney Rosenfeld had violated one or more
14 provisions of the code of professional conduct. Again, under
15 Supreme Court Rule 38, Rule 2.15, if -- which provides that a
16 judge having knowledge that a lawyer's committed a violation of
17 the rules of professional conduct, it raises a substantial
18 question regarding the lawyer's honesty, trustworthiness, or
19 fitness as a lawyer and in other respects, shall inform the
20 appropriate authority. In other words, if I have knowledge
21 that that's occurred, I have an obligation to report it to the
22 professional conduct committee under Code Of Professional
23 Conduct Rule 8.5 which deals with the authority of different
24 disciplinary authorities, award -- admitted to practice in
25 another jurisdiction such as Attorney Rosenfeld, but not

1 admitted in this jurisdiction, is also subject to the
2 disciplinary of this jurisdiction if the lawyer provides or
3 offers to provide any legal services in this jurisdiction, and
4 again admit -- Attorney Rosenfeld has been admitted pro hac
5 vice so the code of New Hampshire Code of Professional Conduct
6 applies to him with respect to his pro hac vice representation
7 of Mrs. Kelley in this case.

8 Again, the concern I had as I -- during the luncheon
9 hour is that the acknowledgment of rights that was submitted on
10 behalf of Mrs. Kelley contains a paragraph where Defense
11 counsel sign which states that as counsel for the Defendant,
12 and again Attorney McKinnon and Attorney Rosenfeld signed this
13 portion. And again my comments relate only to Attorney
14 Rosenfeld. I believe the Defendant fully understands meaning
15 of this acknowledgement and waiver of rights and that she
16 knowingly, intelligently, and voluntarily waives all of her
17 rights set forth in this form.

18 I've skipped the parts that inapplicable. But again,
19 the concern I have -- and I haven't made a firm decision yet,
20 but the concern is that the way the chronology transpired is
21 that between the last -- prior to last hearing and after the
22 next to last hearing, that is, the parties discussed matters
23 further and reached what appeared to be a fully negotiated plea
24 agreement. And then sometime between approximately 11:45 and
25 12:08 when we began the last hearing, part of this one, the

1 acknowledgments of rights for both Mr. and Mrs. Kelley were
2 submitted. And again the acknowledgment of rights in Mrs.
3 Kelley's case was signed by both Mr. McKinnon and Attorney
4 Rosenfeld and contained that language. The concern I have is
5 that between 11:45 and 12:08, Mr. Rosenfeld signed a statement
6 on the acknowledgment of rights, the purpose of which was to
7 facilitate or process the plea agreement in which he stated he
8 believed that she was -- Mrs. Kelley was knowingly,
9 intelligently, and voluntarily waiving all her rights set forth
10 in the form.

11 When I asked Mr. Rosenfeld in court during the last
12 hearing that started at about 12:08 whether Mrs. Kelley was
13 knowingly, intelligently, and voluntarily waiving her rights in
14 entry of her plea of guilty, he indicated that she was -- I
15 think the words -- and I'm paraphrasing. The record will speak
16 for itself. But that she was absolutely doing so knowingly and
17 intelligently, but not voluntarily; that is, he expressed his
18 belief or opinion that the Defendant's plea was a product of
19 coercion and that she was not acting voluntarily.

20 So the concern is that I have that by submitting the
21 acknowledgment of rights in which on the one hand he stated and
22 represented to the Court his belief that Mrs. Kelley was
23 voluntarily waiving her rights set forth in this form, that he
24 was violating one or more provisions of the code of judicial
25 conduct which would include Rule 3.3 of the code of -- New

1 Hampshire code of professional conduct, candor toward the
2 tribunal which provides that 3.3(a)(1), a lawyer shall not
3 knowingly make a false statement or fact or law to the tribunal
4 or fail to correct a false statement or material fact while
5 previously made by the lawyer.

6 And then the other provision that may be implicated
7 is Rule for Professional Conduct 8.4 which provides -- 8.4(c)
8 to be specific -- that it is professional misconduct for a
9 lawyer to engage in conduct involving dishonesty, fraud, deceit
10 or misrepresentation. And, again, I'm not saying I've reached
11 any firm conclusions yet, but the concern I have at first
12 glance is that Attorney Rosenfeld, by submitting the
13 acknowledgment of rights in which he certified his belief that
14 the Defendant was acting voluntarily and then immediately --
15 almost immediately on the record directly contradicted that
16 statement by stating his belief that he -- that the Defendant
17 Mrs. Kelley was being coerced into a plea to charges that were
18 not supported on law or fact, that the -- Mr. Rosenfeld may
19 have violated on or more provisions of the code of professional
20 conduct that apply to him as in his pro hac vice capacity
21 specifically Rule 3.3(a)(1) and 8.4(c).

22 And I have not done an exhaustive search of the code
23 of professional conduct, but at least those two provisions
24 appear to be implicated. Whether there are others or not, I
25 don't know. I haven't looked that far. But I simply wanted to

1 get that out in the -- air that and get that on the record
2 because it may have some impact on how we proceed, and in
3 particular may have some impact on what Attorney Rosenfeld
4 wishes to say and do as we go forward.

5 So I'm stating that for the record. If anybody wants
6 to say anything about any of that, they are welcome to.
7 Otherwise, I'll hear where you're all at. Does anybody wish to
8 say anything in response to my observations I just made?

9 MR. ROSENFELD: Yes, Your Honor.

10 THE COURT: Attorney Rosenfeld, you are welcome to do
11 so.

12 THE MONITOR: Can you stand next to the --

13 THE COURT: Yeah. If you could --

14 THE MONITOR: -- microphone please?

15 THE COURT: -- step up next to the table so the
16 microphone will pick you up sir?

17 MR. ROSENFELD: First of all, Your Honor, I read --

18 THE COURT: Pardon me?

19 MR. ROSENFELD: First of all, Your Honor, I read 3.3
20 several times before feeling that it was my obligation under
21 3.3 to clarify the record so there wasn't any confusion and to
22 be candid with you. There is no doubt that Dr. Kelley is
23 absolutely finally competent and knowing what she is doing and
24 knowing the consequence of why she's doing it knowingly and
25 intelligently. And there is also no doubt -- and I don't want

1 there to be any confusion about this -- that there have been no
2 threats whatsoever other than the existence of the current
3 charges. And I don't want there to be any confusion. I
4 understand that there's always a possibility that someone gets
5 a phone call in the middle of the night threatening them with
6 something else other than charges. And that's, you know --
7 that -- and I believe the Court can very -- can -- I believe
8 the Court is well within its power to say, despite what I've
9 said after talking to Dr. Kelley that her choice is voluntary.
10 And her choice is no different from any other criminal
11 defendant who pleads guilty and accept her plea. And that is
12 absolutely what she wants to happen. And she's absolutely 100
13 percent competent. We've had full discussions. She has full
14 understanding of consequences of, you know, going to trial
15 versus accepting this plea. It's a very rational and
16 intelligent choice that she's making. And she --

17 I don't want to be interfering with or putting a
18 sandbag in front of this plea. Again, under rule -- well, it
19 was -- what I was trying to advise you and what I thought I had
20 advised the Clerk Carlson and my client that I was going to say
21 is that when we got to the point of the offer of proof to
22 support the two different misdemeanors, separate from the
23 motion to dismiss that's pending, is that my opinion is just my
24 opinion. I could be wrong on it, but my opinion remains that
25 there aren't facts to support, you know, more than one

1 misdemeanor. And again we've had this conversation with
2 counsel. If someone speeds at 100 miles an hour for 60
3 seconds, they didn't commit 60 different moving violations.
4 It's just one.

5 They can be charged, you know -- she can be charged
6 perhaps with the two misdemeanors, but my understanding is that
7 the assurance is all along is that even if she was convicted,
8 she'd only be sentenced for one. So in all -- in all candor, I
9 had to advise the Court that when we got to the point of the
10 offer of proof to support a plea to two misdemeanors, I wasn't
11 going to be able to say that there are -- there are facts
12 sufficient to prove those two misdemeanors.

13 In regard to the voluntariness of her plea, I've
14 carefully chose the words in the pleadings that I filed, what I
15 thought was going on. And that's what I believe to be going
16 on. And the Court can very well, and I would hope that you
17 would, make a finding that, you know, given all those facts as
18 I've -- you know, as I've put them in the pleadings and what
19 I've described, and what I'd like to talk to Dr. Kelley, that
20 it's still within the common course of criminal proceedings, a
21 knowing and voluntary and intelligent plea, and accept her
22 plea.

23 I'm -- I don't know what else to say. I've been
24 trying very carefully to be candid, Your Honor, and in full
25 awareness of my obligations.

1 THE COURT: Okay. Attorney Hornick -- well, first
2 let me stay on one Defendant. Attorney McKinnon, is there
3 anything you want to say about where the parties go from here?

4 MR. MCKINNON: Yes, please, Your Honor. The Court
5 expressed some concern about my involvement in the case. I'd
6 just like to inform the Court that I have actually been
7 involved in this case for over ten years. I've been involved
8 in the strategy, legal strategy, the communications, have been
9 closely in contact with my client and Attorney Rosenfeld
10 throughout, and with Attorney Hornick once she'd come on board.
11 I've received all of the discovery and reviewed it. And I
12 would estimate that I've handled over 500 plea colloquies
13 during my career. So I'd just like to bring that to the
14 Court's attention.

15 THE COURT: Okay. Appreciate that. So attorney --
16 so I take it Mrs. Kelley is hoping to go forward with a plea
17 today?

18 MR. MCKINNON: She is, Your Honor. And I'm hoping
19 that I have a chance to be able to the Court that I went over
20 the acknowledgment form very carefully with her and that I
21 believe she's knowingly, voluntarily, and intelligently
22 entering a plea.

23 THE COURT: And I'm just -- again I'm -- if you have
24 any initial thoughts. How do I deal with the fact that 50
25 percent of the Defense team, of Mrs. Kelley's Defense team, has

1 expressed on the record that her plea is the product of
2 coercion?

3 MR. MCKINNON: Well, I don't think that that's my
4 client's position. And whether Attorney Rosenfeld feels that
5 or not, my duty and loyalty is to assist my client in what
6 she's trying to accomplish which is entering into a plea. And
7 I believe I have the competence and the ability to do so.

8 THE COURT: And again the code specifically provides
9 that if you as the in-state attorney have a different opinion
10 about something than the out-of-state attorney, you have an
11 obligation to express that opinion and tell the client your
12 opinion differs from the out-of-state attorney which you
13 apparently have done so --

14 MR. MCKINNON: Yeah. We spent -- and with Attorney
15 Hornick, we've discussed the merits of the case, the
16 liabilities of the case, the downside of the case, the elements
17 of the crimes at length. So for that reason I also feel my
18 client's fully appraised [sic] of what's going on.

19 THE COURT: Attorney Hornick, you're on your feet so
20 what did you want to say?

21 MS. HORNICK: I just want to respond in case you're
22 going to direct the attention to Mr. Kelley and his thoughts on
23 this.

24 THE COURT: Yeah. You were next.

25 MS. HORNICK: Yes.

1 THE COURT: Go ahead.

2 MS. HORNICK: Well, I assume you're done with -- I
3 mean --

4 THE COURT: For now.

5 MS. HORNICK: -- it's all part and parcel to some
6 extent, Your Honor. And the express wish of Mr. Kelley is to
7 also go forward with the plea today. The paperwork was
8 submitted this morning. He submitted his paperwork in
9 conjunction with his wife. And the intention of him is to go
10 forward with this with his wife.

11 THE COURT: So just to be explicit. If I'm reluctant
12 at least today to accept Mrs. Kelley's plea or proceed with it,
13 is -- Mr. Kelley still wish to plea or not?

14 MS. HORNICK: The -- I'll -- the short answer would
15 be no.

16 THE COURT: Okay.

17 MS. HORNICK: And the brief explanation would simply
18 be that we had the opportunities based on the Court's granting
19 of the motions to discuss this issue together which they did a
20 couple of times in my office. And as Attorney McCormick --
21 McKinnon represents, discussing the pros and cons of going to
22 trial, discussing the -- just the case ins and outs in general,
23 all four corners of what's being presented to the Court.

24 They stand in solidarity which is the reason that
25 they motion to join the trials was submitted. They stand in

1 solidarity with their wish to go forward with the plea
2 together. So the hope is that the Court will go forward with
3 both pleas today.

4 THE COURT: Anything anybody wants to say further on
5 whether we go forward before I -- I may have a few questions
6 for -- well, Mrs. Kelley in particular, but anything anybody
7 else wants to say?

8 MR. MCKINNON: I'm fine with -- you know, I'd like
9 to go forward and take the pleas.

10 THE COURT: Well, Mr. McKinnon, I'm --I haven't
11 decided whether I'm going to go forward with Mrs. Kelley's plea
12 today, but why don't you swear her in, and then I may have some
13 -- also questions for her. And then what she'd tell me would
14 be under oath. So stand up if you would, Ms. Kelley and --

15 THE CLERK: Do you swear to tell the --

16 THE COURT: -- let's have a conversation.

17 GENEVIEVE KELLEY, DEFENDANT, SWORN

18 THE COURT: Mrs. Kelley, as I understand it, you want
19 to plead guilty to the two Class A misdemeanors, interference
20 with child custody charges, correct?

21 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

22 THE COURT: And then your understanding would be that
23 the -- if that goes forward and you plead guilty to those two
24 charges and the plea is accepted, then the other three felony
25 charges would be nolle prosequi or dropped. That your

1 understanding of the agreement as well?

2 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

3 THE COURT: And I'll have more questions for you, but
4 I guess I want to address specifically the issue of, again, one
5 of the sort of standard findings I have to make is that any
6 Defendant who enters a plea of guilty in this court is doing so
7 knowingly, intelligently and voluntarily. And both of your
8 attorneys have expressed their belief that you're doing so
9 knowingly and intelligently. Attorney McKinnon also expresses
10 an opinion that you're doing so voluntarily. Attorney
11 Rosenfeld expressed the opinion at the earlier hearing that you
12 were not acting voluntarily, but were being coerced into a plea
13 based on the charges being brought and the actions of the State
14 in -- with respect to bail conditions and the charges. And
15 again he didn't articulate everything, but he expressed the
16 belief that your plea was your product of coercion. You heard
17 all that?

18 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

19 THE COURT: Do you feel coerced?

20 THE DEFENDANT/G. KELLEY: No, sir, not in any way.
21 And I don't understand Attorney Rosenfeld's position on this.

22 THE COURT: Okay. And, again, in any -- I mean, part
23 of your knowing and intelligent plea, and voluntary, is that
24 you are evaluating the risks of going to trial versus pleading
25 guilty and so forth. But I mean one of the questions I'm going

1 to ask you is that I will ask you if you are -- and I will ask
2 your Attorney McKinnon that as well, if he's explained to you
3 the elements of the two offense to which you're pleading
4 guilty. Has he?

5 THE DEFENDANT/G. KELLEY: Yes, sir.

6 THE COURT: And Attorney McKinnon explained that to
7 you?

8 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

9 THE COURT: And did you understand those
10 explanations?

11 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

12 THE COURT: And then I'll ask you, are you pleading
13 guilty to those two crimes of Class A misdemeanor, interference
14 with custody because you are guilty of those two crimes as
15 charged in those two informations.

16 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

17 THE COURT: And the answer is yes?

18 THE DEFENDANT/G. KELLEY: Yes.

19 THE COURT: Okay. So you agree -- and again I'm
20 having this colloquy understanding that if for some reason this
21 plea deal falls apart, you're not going to be bound by this.
22 But -- or that I don't accept it, you know, go forward today.
23 But has the -- has anything, whether it be the circumstances of
24 the charges pending against you, the nature of the charges, the
25 conditions of bail, have any of these things -- is your plea

1 the product of any pressure or coercion or duress as a result
2 of any of those things or anything else?

3 THE DEFENDANT/G. KELLEY: No, Your Honor.

4 THE COURT: Okay. Okay. Well, let's start from the
5 beginning. And again, I'm going to have a plea colloquy with
6 you. When I'm done, I'll decide if I'm going to accept your
7 plea. And again I would -- if we can go forward with this
8 today, I would like to go forward. I understood before 12:08
9 that we were going forward with the plea, that there was a
10 fully negotiated plea with which both attorneys agreed you were
11 pleading to knowingly, intelligently, and voluntarily so
12 understand.

13 I'm not trying to throw a wrench in the works here,
14 but a wrench got thrown in the works, and I'm trying to address
15 it in a way that protects your rights and protects the
16 integrity of the criminal justice system.

17 Let me ask you one -- a few more questions before we
18 get to the actual plea colloquy itself about the motion to
19 amend the bail conditions. Your -- both of your attorneys and
20 you have signed assented to motion to amend your bail
21 conditions. And you've read and understood this, correct?

22 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

23 THE COURT: That your signature there?

24 THE DEFENDANT/G. KELLEY: Yes, sir.

25 THE COURT: And the motion indicates that Mr. Kelley,

1 if his plea is accepted today, would report -- the parties have
2 agreed in his case to a delayed reporting date of Monday, June
3 22nd. And should I accept that delayed reporting date, the
4 parties all agree that the no contact provision of your current
5 bail order and of his current bail order, that does not allow
6 contact between you and him, would be suspended for 24 hours on
7 June 21 beginning at 9 a.m. You understand that?

8 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

9 THE COURT: That's what you're requesting, I do and
10 approve?

11 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

12 THE COURT: And you understand that with that minor
13 June 21st exception that all the other terms and provisions and
14 conditions of your existing bail order will remain in full
15 force and effect until you report to being serving your
16 sentence. You understand that?

17 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

18 THE COURT: And again the no contact -- there's a
19 number of provisions in your bail order. But as it relates to
20 this no contact order, the no contact order as it relates to
21 both to Scott Kelley and your daughter, that will continue
22 until you report. You understand that?

23 THE DEFENDANT/G. KELLEY: Yes, sir.

24 THE COURT: So you won't be able to have -- the bail
25 order will prohibit you from having any contact with either

1 Scott Kelley other than on father's day for the 24 hours
2 beginning at 9 a.m. or with your daughter Mary at any time
3 before you report to begin serving your sentence. You
4 understand that?

5 THE DEFENDANT/G. KELLEY: I understand, Your Honor.

6 THE COURT: And that's what you want me to order for
7 an amendment to your bail --

8 THE DEFENDANT/G. KELLEY: Yes, sir.

9 THE COURT: -- conditions? Okay. Why don't you have
10 a seat for now, both you and Mr. McKinnon.

11 Attorney McCormick, you want to make an offer of
12 proof please with respect to the two charges to which the
13 Defendant would be pleading guilty?

14 MR. MCCORMICK: Certainly, Your Honor.

15 The State would show regarding 1066845C, Class A
16 misdemeanor, interference with custody charge, that on or about
17 -- between the first day of December 2004 and the 30th day of
18 September 2005, that the Defendant Ms. Kelley interfered with
19 the custodial rights of Mark Nunes and that their child
20 together, Mary Nunes, also known as Mary Kelley was taken from
21 the state. And she was concealed with the intent to keep her
22 from having contact and detaining her or concealing her from
23 Mark.

24 The State would also show that based on this set of
25 facts that occurred amid a visitation dispute and other

1 allegations that were swirling at the time in family law --
2 family court, that as a continuation on October 1st 2005 to
3 February 18th 2014 Ms. Kelley continued to detain or conceal
4 Mary from Mark who had lawful parental rights and
5 responsibilities described in RSA 461-A with a purpose to
6 detain or conceal her from Mark. And again the first charge
7 would allege that these -- this concealment and detainment
8 occurred while Mark again had lawful custodial rights described
9 in RSA 458-17:4 under the first charge.

10 So those are the two charges, Your Honor. The State
11 believes based on Dr. Kelley and Ms. Kelley's conduct that, in
12 fact, the -- we would be able to show these charges beyond a
13 reasonable doubt and that she did, in fact, conceal or detain
14 Mary Nunes or Mary Kelley from Mark Nunes, the child's father
15 for that very extended period of time. We ask the Court to so
16 find.

17 As a negotiated resolution to this matter, as Your
18 Honor has indicated, the State would be null proying the felony
19 tampering and interference charge. And we would recommend that
20 she plead guilty to these two charges and receive the following
21 sentence, Your Honor. Under 1066845C, she would be sentenced
22 to the -- plead guilty and be sentenced to the house of
23 corrections for a period of 12 months. That sentence would be
24 a stand committed commencing September 7th 2015. Two months of
25 the sentence would be suspended for good behavior and

1 compliance with all terms and conditions of the order. Any
2 suspended sentence may be imposed after a hearing brought by
3 the State within five years. So that suspended period of time
4 would be five years from release from this charge, Your Honor.

5 She would be entitled to 36 days of pretrial
6 confinement credit. She shall complete a psychological
7 evaluation, complete follow-up treatment as the Defense
8 Attorney Mr. Rosenfeld indicated. She has already undergone
9 the psychological evaluation, and the State is satisfied with
10 that. And she will continue to do that follow-up treatment
11 according to the order. Again 5D is a reiteration of that
12 term.

13 Under paragraph 9 she would be --

14 THE COURT: On that --

15 MR. MCCORMICK: -- ordered --

16 THE COURT: -- does -- have you got a report yet or
17 are you expecting --

18 MR. MCCORMICK: I don't. I don't have a report, Your
19 Honor. I was told that we were going to be provided with an
20 affidavit along those lines.

21 THE COURT: Okay. So you'll be provided with an
22 affidavit that the psychological evaluation has occurred?

23 MR. MCCORMICK: I would, yeah. And I -- Your Honor,
24 if we want to put a date -- I don't know if we agreed to a
25 30-day --

1 MR. MCKINNON: I think we offered 30 days.

2 MR. MCCORMICK: Thirty days would be acceptable to
3 the State, Your Honor. That's not indicated on the proposed
4 sentencing order, but that would be --

5 THE COURT: Okay. That's -- I'm not going add it to
6 the sentencing order assuming I do take the plea. But --

7 MR. MCCORMICK: Okay.

8 THE COURT: -- that's the agreement on the record.

9 MR. MCCORMICK: Thank you, Your Honor.

10 Paragraph 9(c) she would be ordered to participate
11 meaningfully and complete counseling, treatment and educational
12 programs as directed by the correction authority, probation or
13 parole.

14 Paragraph 9(h) she'd be ordered to be of good
15 conduct, comply with all terms and conditions of this sentence.

16 The last term, Your Honor, is that any and all
17 proceeds or royalties from publishing or movie rights derived
18 from this criminal transaction shall be placed in a trust for
19 Mary Nunes, a/k/a Mary Kelley. The Defendant agrees that she
20 shall not interfere with or impede Mary Nunes, a/k/a Mary
21 Kelley, from having contact with her parent -- parental family
22 including Madeline Nunes, Gabriel Nunes, Nancy Nunes, or Mark
23 Nunes if Mary wishes to have such contact with her paternal
24 family including aunts, uncles, and god parents.

25 The proposed sentence under 1066846(c), Your Honor,

1 the second interference with custody charge, again she would be
2 pleading guilty to that, receive a sentence of 12 months. All
3 that sentence would be suspended for a period of five years
4 upon release from the sentence I just read in 1066845C, again
5 the psychological evaluation, same term as in the first
6 sentence. She'd be placed on probation for a period of one
7 year upon release from the charge in 10066845C. I apologize
8 for not have including that. It wouldn't let me actually do
9 that in the system there.

10 Paragraph 7 and 8 would also apply. And under 9(c),
11 she would also be ordered to complete -- participate in
12 meaningful counseling, treatment, educational programs as
13 directed by the correction authority, probation, parole; be
14 ordered to be of good behavior and comply with all terms and
15 conditions of the sentence. And the exact term that I read on
16 the first -- on the -- regarding proceeds from royalties. I
17 can read it into the record if you'd like, Your Honor.

18 THE COURT: No. It's the same one as you read
19 before.

20 MR. MCCORMICK: Thank you.

21 THE COURT: Does the Defendant have any criminal
22 record?

23 MR. MCCORMICK: No, Your Honor.

24 THE COURT: Does the alleged victim have input into
25 the proposed plea?

1 MR. MCCORMICK: He has, Your Honor. He would like to
2 address the Court.

3 THE COURT: Okay. That would be Mark Nunes?

4 MR. MCCORMICK: Yes, sir.

5 MR. NUNES: So I'm Mark Eugene Nunes. I'm a
6 pediatrician and geneticist from California. And I'm Mary
7 Nunes' father. I would like to point out that the true victim
8 of this crime actually is Mary Nunes. And I understand the
9 difficulty with Mary having turned 18 with the Court being able
10 to address Mary's specific needs.

11 Divorce never ends for parents when they have
12 children involved in the case. And in this particular divorce,
13 this is the divorce from hell. It's been ongoing to this day
14 from 1998 when it was filed to the present day. Parents have
15 responsibilities particularly when they're parents -- when
16 they're divorced parents of a child. Responsibilities to
17 foster the relationship with the other parent.

18 You'll forgive high school, *primum non nocere* as my
19 college Latin would have corrected it. But these are the oath
20 that I swore as a physician. And I think Genevieve Kelley's
21 also swore as a physician as well. This is above all else, do
22 no harm. It's a good rule for a physician, and it's a good
23 rule for a parent as well.

24 In this divorce I was supposed to walk away.
25 Genevieve's father George San Martin had a daughter that was

1 kept secret from our marriage actually that is two years older
2 than Genevieve. And he walked away from her, paid child
3 support, and never came back. And that's what I was supposed
4 to do in this divorce proceeding. And instead I developed a
5 relationship with my daughter.

6 I was active duty military at the time. Once a month
7 I traveled up to New Hampshire for visits with Mary. In 1999 I
8 met my current wife Nancy, been married for 15 years happily,
9 and have two thriving children, 14 and 12. In 1999 Nancy
10 entered into Mary's life. In 2000 Nancy and I were married.
11 And one of the things that Nancy says that attracted her to me
12 was my relationship with Mary. And she couldn't believe after
13 everything that we'd gone through in the divorce that I never
14 spoke negatively about Genevieve in front of Mary. Above all
15 else, do no harm.

16 At the same time in the divorce proceeding, in the
17 divorce decree, there was speculation spurned on by Genevieve
18 Kelley that I somehow contributed to the premature birth of my
19 daughter. Mary was born by emergent C-section due to a true
20 knot in the umbilical cord. There's no way that anybody can
21 make that happen. Genevieve is a physician. She knew better,
22 but she was more than happy than have that go into the divorce
23 decree.

24 When I would have visits with Mary early on when she
25 was an infant, I would have Mary for the day. Mary would be

1 brought to the pediatrician the morning of the visit, and then
2 she'd be brought to the pediatrician the next day with a claim
3 made by Genevieve that Mary had lost weight during her eight to
4 ten hours with me. A physician should know better.

5 In 2002 during a visit in Biloxi, Mississippi at our
6 blue house on the water that Mary loved to visit with my
7 parents and with my wife Nancy present, Mary told us that
8 Genevieve told her than when she turned ten she could go to the
9 judge, and she wouldn't have to visit with me anymore.

10 September 11th changed things tremendously for our
11 nation, but it changed things tremendously for a father, active
12 duty military traveling by air to New Hampshire on a monthly
13 basis. We needed to look at visits again. We had a son
14 Gabriel who was born. As well, things needed to be looked at
15 again. Mary told us in talking about September 11th and
16 airplane travel that her dad, an active duty Air Force major,
17 was one of the bad guys. When we asked her who told her that,
18 she said her mom had told her that.

19 All during this time, this was a fantastic thriving
20 relationship. I truly love the north country. And Mary and I
21 hiked Franconia Notch and the White Mountains, swam, had a
22 fantastic relationship. She had a fantastic relationship with
23 her brother Gabriel. She had just met her sister Madeline who
24 was born with Down's syndrome who she was very concerned about,
25 but she was thrilled to have a younger sister.

1 And one of the last conversations that I had with
2 Mary was she talked about how someday she wanted to live in a
3 rainbow house. What was the rainbow house? We stayed at
4 Thayer's Inn, a white hotel, The house on Spencer Road where
5 they, Genevieve and Scott, lived in was a yellow house. The
6 house in Mississippi was a blue house. That was Mary's desire,
7 that she wanted to live in a rainbow house. She wanted to live
8 in a place where everybody was able to communicate and get
9 along. She loved our family. She loved Gabriel. She loved
10 Madeline. She loved Nancy as a maternal figure. She loved me.
11 She loved my father who died in 2007. She loved her aunts and
12 uncles. She spent time with them, quality time with them. She
13 enjoyed the time that she spent with them. To hear Attorney
14 Rosenfeld say that the only family Mary has ever know has been
15 the Kelley family during my attendance at prior hearings has
16 been an incredible slap in the face for the richness of the
17 life that Mary Nunes had with us.

18 My daughter needed surgery in 2003. We had three
19 visits, all out of the State of New Hampshire. We needed to
20 look at visits again. Everybody knew that. There was no way
21 out of the military that I'd be able to travel up as
22 frequently. We needed to look at that again. The physical
23 abuse card had been dropped and played many, many times. We
24 were waiting for the other shoe to drop, waiting for that
25 sexual abuse card to be played. Sure enough. Here was the

1 allegation as we heard it in court, the only thing that's ever
2 been said in court. This is the allegation on October 16th of
3 2003 as we heard it as it was relayed to us that Mary said this
4 statement, that daddy touched her poopsie without a washcloth.
5 That was the statement.

6 There are three things that are important about that
7 statement. Number one, in and of itself, it's not an
8 allegation of child sexual abuse, rape, or any other crime.
9 There are photographs of Genevieve bathing Mary as an infant,
10 and of me bathing Mary as an infant in an infant tub without a
11 washcloth. Mary saw those pictures many a time.

12 Point number two, Mary wasn't allowed to call me
13 daddy. Genevieve insisted that I be called Daddy Bluehouse
14 because I lived in the blue house, and that Scott Kelley be
15 called daddy. So on the surface the accusation seems to be
16 pointing in a different direction. And when you consider that,
17 it's very concerning and psychology is very concerning that
18 Mary would change her name to Mary Kelley.

19 The third thing about that allegation or that
20 statement that Mary is supposed to have made is poopsie. So
21 poopsie was the term that George San Martin, Genevieve's
22 father, had for Mary's genitals. I don't know how many
23 grandparents have nicknames for their grandchildren's genitals.

24 So what happened? The guardian ad litem at the time
25 was involved. She was a mandated reporter. DCYF initially

1 understanding the custody issues declined to investigate. And
2 then at Genevieve's insistence did. Above all else, do no
3 harm. Genevieve's a physician, she knows better. She
4 understood the importance of a quick, rapid evaluation. But
5 once DCYF were involved, the evaluation was stalled. Moreover,
6 Genevieve said in this court, actually in this courtroom, this
7 very courtroom, Genevieve stated that she must have 40 or 50
8 counselors, psychologists across the State of New Hampshire who
9 could treat Mary for her child sexual abuse based on the
10 statement that I just related to you. And she found one,
11 Kelley Smith. And by the end of October Mary was in treatment
12 with this psychologist before she had had a forensic interview
13 or evaluation by DCYF. Above all else do no harm. Genevieve
14 Kelley, physician, knew better.

15 In January of 2004 Scott and Genevieve were driving
16 with Mary down state. She had a panic attack in the car. They
17 went to Dartmouth Hitchcock Medical Center, and an MRI scan was
18 obtained of Mary. It showed that she had an arteriovenous
19 malformation. She did not disclose to the doctors at Dartmouth
20 Hitchcock Medical Center anything about the sexual abuse
21 allegations. And she did not disclose to any of the evaluators
22 at the Sperling Clinic or in Colorado that Mary had an
23 arteriovenous malformation, something that would affect
24 behavior. It'd affect cognition. Above all else, do no harm.
25 A physician should know better.

1 When she went to the Spurwink Clinic for her
2 evaluation kicking and screaming, she didn't want the Sperling
3 Clinic evaluator because, oh, by the way, she -- we had her
4 evaluated there secretly without telling anybody about it in
5 2000. So she goes back to the Sperling Clinic, and she does
6 not review to the Sperling Clinic anything about the
7 arteriovenous malformation. And at this point Mary apparently
8 is on mind-altering medications, Prozac. Doesn't reveal that
9 to the Sperling Clinic either. Doesn't reveal that to the
10 evaluators in Colorado.

11 In February of 2004 Genevieve and Scott and Mary all
12 got passports. Plan B was already in place. They already knew
13 what they were going to do. They delayed, put off evaluations,
14 put off significant evaluations time and time and time again.

15 And then in summer they produced a videotape. And if
16 you have any question or any doubt as to what's going on in
17 this case, what Mary's existence was like in 2003 or 2004, what
18 Mary's existence is like this very day, Your Honor I encourage
19 you to view this videotape.

20 Summer of 2004 they're going to change the
21 jurisdiction. They move out to Colorado. They settled on
22 Littleton, Colorado, no more than 40 miles as the crow flies
23 from Attorney Alan Rosenfeld's law offices. They get
24 evaluations without revealing the medical history. Every
25 physician knows how important it is to understand what

1 medication somebody's on, what medical conditions they have.
2 These were all withheld by Genevieve Kelley. A physician
3 should know better. Above all else, do no harm.

4 The videotape switched things. And the focus of me,
5 Mark Nunes, a potential perpetrator, switched to Genevieve as a
6 perpetrator of child abuse. And that's what DCYF was starting
7 to look into. That's what the Grafton county attorney was
8 starting to look into. That was the fled that they fled from
9 the United States for. Not to protect Mary because there was
10 no threat to Mary. I was asking that Mary be reunited with my
11 family, with me in a supervised manner, but I would have been
12 happy for Mary to have access to her brother and sister, her
13 stepmom, her godfather, her godmother, her aunts, uncles or
14 grandparents. That would have been perfectly fine and
15 acceptable. That wasn't going to happen. There was no danger
16 to Mary. There was only the threat of an independent
17 evaluation to get to the -- to get to the truth. Above all
18 else, do no harm. A Physician should know better.

19 If this was only Mary's story, it would be sad
20 enough. But there's a story of another child in this
21 circumstance, a child whose mother for her own gain reported to
22 the newspapers, to the Boston Globe, that her child had a
23 devastating diagnosis, cystic fibrosis. That child was lucky
24 that independent assessment happened for that child, to John
25 Kelley. Of course he doesn't have cystic fibrosis. There was

1 never a doubt whether he had cystic fibrosis or not. Above all
2 else, do no harm. Physicians should know better.

3 Genevieve, if it was your father that sexually abused
4 you -- sexually abused you in the past, as one of the
5 evaluators that you hired, Virginia Rockhill, suspected and as
6 DCYF suspected, I can forgive you for trying to remove Mary
7 from your mother and your father. Scott, if you molested Mary,
8 may the truth be a lion. However, if you left because
9 Genevieve was pregnant with your son, John, and you needed to
10 protect your son, I understand that and I forgive you.

11 However, what was done to Mary is unforgiveable.
12 Mary was kept isolated, away from family. The rich life that
13 she experienced in the Nunes family and extended family was
14 amputated. Mary Nunes has to disappear from the earth and be
15 replaced by Mary Kelley. She was kept isolated and away from
16 school. So her mother, a physician, could have worked as
17 missionary, could have done a lot of things to help people.

18 She was a high school teacher at a private school in
19 a well-to-do neighborhood in Costa Rica outside of San Jose,
20 Costa Rica. Mary did not have access to that school. Instead,
21 she was kept out of school and apparently home schooled. And
22 from what we read and learn, she's learning at a tenth grade
23 level. She has developmental delays. If you've seen the video
24 posted on people. Now, you can judge for yourself whether or
25 not Mary was capable of writing that she seems incapable of

1 reading.

2 No education. Kept away from people. Kept away from
3 her family. No medical care. Oh, except that she's apparently
4 on a medication, Trileptal, another mind-altering medication
5 and drug that's helping in her decision making as a 19 year old
6 now. We don't know how prescribed the Prozac that she was on
7 back in 2004. We don't have a record of that. We don't know
8 who prescribed the Trileptal that she's on now. But she's kept
9 on -- isolated right now to this day on mind-altering
10 medications and with lack of access to education.

11 So again, if you have any question about Mary's
12 status as a victim and what Mary has encountered during this
13 holocaust that has been visited on her life, Your Honor, I
14 encourage you to view this videotape. I've said all along --
15 my public statements have been who speaks for Mary. If at the
16 end of these proceedings Genevieve and Rosenfeld have succeeded
17 in turning Mary Nunes into Mary Kelley and erase Mary Nunes
18 from the face of the earth, that will be a gross miscarriage of
19 justice against Mary which you have presided over. And again,
20 I understand the limitations that are placed on you by Mary's
21 age.

22 The sincerity of this plea comes with complete
23 resistance on the part of Genevieve and Scott to acknowledge
24 the holocaust that they have visited on Mary's life. Are they
25 going to facilitate Mary's being reunited with her family? She

1 missed my father's funeral. She missed my brother's wedding.
2 She missed yearly family gatherings. She missed the richness
3 of a life because of the actions of these two people.

4 So my final plea is actually to Mike Kelley in this
5 courtroom. And that is that I can't do anything else to help
6 my daughter. I would love to help my daughter. The people
7 that can help my daughter, that can put things on the right
8 path, that can make amends, are sitting here with no intention
9 of doing so and no sincerity in their desire to do so.

10 So if Mary Nunes is to be erased from the face of the
11 earth and become Mary Kelley, Mike, you're the adult in the
12 room. You're the responsible one. You must take care of my
13 daughter and see that she becomes that self-actualized person,
14 that she becomes her own independent person, that she isn't --
15 spend the rest of her life believing that the sky is red or
16 that the sky is green and that there's a little glimmer that
17 she can someday recognize that the sky is blue.

18 That's what this is about. This is what's been done
19 to my daughter, a victim of the two people sitting in this
20 courtroom. A few months in jail is a small price to pay for
21 what they've done.

22 I don't know what's going to happen to my daughter.
23 My prayer is that she's able to become that self-actualized
24 person. Again, the parenting role: above all else do no harm.
25 If we've done a good job as parents, we see them at age 18 able

1 -- or at least after six years of college, we see them able to
2 go off and live their own lives independently. Mary, at 19, is
3 under-educated, has poor access to neutral non-biased
4 healthcare, and has a long road to become that self-actualizing
5 person. Thank you.

6 THE COURT: Thank you, sir.

7 MR. MCCORMICK: Thank you.

8 THE COURT: Anything further from the Prosecution at
9 this point, Attorney McCormick?

10 MR. MCCORMICK: No, Your Honor.

11 THE COURT: Attorney McKinnon?

12 MR. MCKINNON: Yes. We take --

13 THE COURT: Do --

14 MR. MCKINNON: -- no issue with the offer of proof
15 that's provided by the State. And we do understand the terms
16 and conditions of the sentencing agreement.

17 THE COURT: Okay. So has Mr. McCormick accurately
18 stated the terms and conditions of both sentences in
19 Mrs. Kelley's case?

20 MR. MCKINNON: Yes, Your Honor.

21 THE COURT: Okay. If you'd stand up again,
22 Mrs. Kelley? Is that your understanding of the terms of the --
23 and conditions of your sentences in each of these two charges?

24 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

25 THE COURT: And you agree that those would be the

1 terms and conditions that I impose for sentencing on each case?

2 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

3 THE COURT: Okay. Mrs. Kelley, have you read,
4 understood, and signed the acknowledgment of rights that I've
5 got here consisting of two -- the two full pages of the form
6 plus the one page sentencing addendum?

7 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

8 THE COURT: And did Attorney McKinnon explain all the
9 provisions in that form to you?

10 THE DEFENDANT/G. KELLEY: Yes, sir.

11 THE COURT: Did Attorney Rosenfeld explain -- go over
12 it with you as well, or only Attorney McKinnon?

13 THE DEFENDANT/G. KELLEY: Attorney McKinnon went over
14 it with me, sir.

15 THE COURT: Okay. So he explained to you each of the
16 rights that you're waiving and all the other provisions of the
17 form?

18 THE DEFENDANT/G. KELLEY: Yes, sir.

19 THE COURT: And you understood all of his
20 explanations?

21 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

22 THE COURT: Attorney McKinnon, did you in fact review
23 the acknowledgment of rights with your client and explain to
24 her all the provisions in it?

25 MR. MCKINNON: I did explain, Your Honor.

1 THE COURT: And you advised her of each of the rights
2 that she is waiving, the elements of each of the two offenses
3 to which she's pleading guilty, the State's burden of proof,
4 and any defenses she may have to the charges?

5 MR. MCKINNON: I did, Your Honor.

6 THE COURT: And you're satisfied she understood all
7 your explanations?

8 MR. MCKINNON: I am, Your Honor.

9 THE COURT: Ms. Kelley, you understand that by
10 pleading guilty you're giving up the following rights you'd
11 otherwise be entitled to? First of all, you'd have the white
12 -- right to a speedy and public trial by jury? You understand
13 that and are waiving that?

14 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

15 THE COURT: You understand you have the following
16 additional rights that you're giving up by pleading guilty?
17 You have the right to confront the witnesses and the evidence
18 against you. You have the right to question witnesses. You
19 have the right to present witnesses and other evidence in your
20 own defense. You have the right to testify on your own behalf.
21 You also have the right, if you choose, to remain silent and
22 not testify. You have the right to have me order into court
23 any evidence that may be favorable to you and the right to have
24 me exclude from court any evidence the State may have
25 unlawfully obtained. If you were to go to trial in this court

1 and be convicted, you have the right to appeal any conviction
2 and have the right to be represented by your attorneys at all
3 stages of these proceedings. Do you understand you have
4 all those rights and are giving each of them up by pleading
5 guilty?

6 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

7 THE COURT: You understand that you're presumed to be
8 innocent and have no obligation to prove that you're innocent?

9 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

10 THE COURT: You understand that it's the State that
11 has the burden of proving beyond a reasonable doubt that you're
12 guilty of these two crimes?

13 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

14 THE COURT: Has Attorney McKinnon explained to you
15 the elements of these offenses, that is each of the things that
16 the State would have to prove beyond a reasonable doubt in
17 order for a jury to find you guilty of the crime of
18 interference with custody between December 1, 2004, and
19 November -- excuse me, September 30, 2005, and of the crime of
20 interference with custody between October 1, 2005, and February
21 18, 2014 as alleged in these two charges?

22 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

23 THE COURT: And you understood those explanations as
24 well?

25 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

1 THE COURT: And you're pleading guilty to the crime
2 of interference with custody as alleged in charge ID 1066845C,
3 which alleges that between December 1, 2004, and September 30,
4 2005, at Whitefield that you, aided by or in concert with Scott
5 Kelley, knowingly detained or concealed a child under the age
6 of 18, Mary Elizabeth Nunes, whose date of birth is February
7 19, 1996, from Mark Nunes, the child's parent or the person
8 having lawful physical custody or physical custodial rights as
9 described in RSA 458:17-4 with a purpose or intent to detain or
10 conceal Mary from Mark? You understand those are the things
11 that the State has to prove beyond a reasonable doubt in order
12 to convict you of that crime?

13 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

14 THE COURT: And then the second charge alleges that
15 you committed a second crime of interference with custody
16 between October 1, 2005, and February 18, 2014, by committing
17 the same actions but in -- but by interfering -- again there
18 had been a change in the statute at the time governing parental
19 rights. That charge alleges that you committed that crime by
20 interfering with Mark Nunes' parental rights as described in
21 RSA 461-A. You understand the -- what the State would have to
22 prove beyond a reasonable doubt to find you -- for a jury to
23 find you guilty of that charge as well?

24 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

25 THE COURT: Are you pleading guilty to those two

1 charges of interference with custody as alleged in these two
2 informations because you are guilty of those two charges as
3 alleged in these two informations?

4 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

5 THE COURT: You understand that if you went to trial
6 you would not be required to testify?

7 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

8 THE COURT: And that if you went to trial and did not
9 testify, the jury would not be allowed to consider your failure
10 to testify as evidence of your guilt?

11 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

12 THE COURT: You understand that if you went to trial
13 you cannot be convicted unless all 12 jurors unanimously agreed
14 that you were in fact guilty?

15 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

16 THE COURT: Has your attorney advised you what I --
17 has Attorney McKinnon advised you of the maximum penalty
18 provided by law for the Class A misdemeanors to which you're
19 pleading guilty?

20 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

21 THE COURT: Can you tell me what that maximum penalty
22 is on each one?

23 THE DEFENDANT/G. KELLEY: For each misdemeanor it's
24 12 months.

25 THE COURT: Okay. Twelve months in the house of

1 corrections, a \$2,000 fine, and two years of probation, that's
2 the maximum that could be imposed.

3 THE DEFENDANT/G. KELLEY: Yes.

4 THE COURT: You understand that?

5 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

6 THE COURT: Are you satisfied with the representation
7 that you've received from Attorney Rosenfeld and Attorney
8 McKinnon to date? From Attorney Rosenfeld up until this
9 morning?

10 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

11 THE COURT: You're satisfied with the representation
12 Attorney Rosenfeld has furnished to you prior to noon today?

13 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

14 THE COURT: Okay. And you're satisfied with the
15 representation that Attorney McKinnon has rendered to you
16 throughout these proceedings?

17 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

18 THE COURT: And specifically you're satisfied with
19 his representation of you and his advice regarding your
20 decision as to whether to enter into a plea agreement as you're
21 doing -- you propose to do today?

22 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

23 THE COURT: Has anybody made any -- and this gets to
24 this coercion issue -- threats against you, your family, or
25 anybody close to you in order to persuade you to plead guilty?

1 THE DEFENDANT/G. KELLEY: No, Your Honor.

2 THE COURT: Have you been subjected to any coercive
3 influences whatsoever of any nature whatsoever, of any kind
4 whatsoever that have persuaded you to plead guilty?

5 THE DEFENDANT/G. KELLEY: No, Your Honor.

6 THE COURT: Other than the terms of the plea
7 agreement which the Prosecutor recited earlier and you
8 confirmed with the terms of the plea agreement, other than
9 those terms have any promises been made to you in order to
10 persuade or induce you to plead guilty?

11 THE DEFENDANT/G. KELLEY: No, Your Honor.

12 THE COURT: Are you presently under a doctor's care
13 for anything?

14 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

15 THE COURT: What would that be?

16 THE DEFENDANT/G. KELLEY: I see Dr. Carol Lidstrom.

17 THE COURT: For what?

18 THE DEFENDANT/G. KELLEY: For stress from -- I
19 started seeing Carol -- Dr. Lidstrom for stress from the abuse
20 that I suffered during my marriage and the problems I had with
21 my daughter not wanting to do visits, and now just
22 reacclimating myself to the United States and being in this
23 court battle.

24 THE COURT: Is that the doctor with whom you've
25 undergone the psychological evaluation that the sentence

1 contemplates?

2 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

3 THE COURT: Okay. Do you take any medications on a
4 regular basis --

5 MR. NUNES: It's her former --

6 THE COURT: -- whether prescribed by Dr. Lidstrom?

7 MR. NUNES: -- former medical partner. Carol
8 Lidstrom is Dr. San Martin's former medical partner.

9 THE DEFENDANT/G. KELLEY: No, she's not, Your Honor.

10 THE COURT: Hold on.

11 Mr. Nunes, you need to -- your -- if you have
12 something else you want to say, let attorney Moore or Attorney
13 McCormick know that. And then Mr. Moore -- McCormick can bring
14 it to my attention and we'll take it from there.

15 So do you take any medications on a regular basis
16 whether for -- prescribed by Dr. Lidstrom for this treatment or
17 for anything else?

18 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

19 THE COURT: What do you take?

20 THE DEFENDANT/G. KELLEY: I take Metoprolol 25
21 milligrams twice a day for my high blood pressure, which is
22 controlled. I take Loratadine, ten milligrams every night for
23 allergies. And I take Fluoxetine, which is Prozac, which is an
24 antidepressant, 20 milligrams every day.

25 THE COURT: Do any -- have you taken any of those

1 medications today?

2 THE DEFENDANT/G. KELLEY: I take all my medicine
3 every day.

4 THE COURT: In the morning, or?

5 THE DEFENDANT/G. KELLEY: Yes. I take the Fluoxetine
6 and the Metoprolol in the morning and the Metoprolol and
7 Loratadine at night.

8 THE COURT: Okay. Do any of those medications have a
9 negative effect on your thinking or your judgment in any way
10 whatsoever?

11 THE DEFENDANT/G. KELLEY: No, Your Honor.

12 THE COURT: Have you consumed any drug, alcohol, or
13 other substance today or in the last few days that might affect
14 your thinking or judgment?

15 THE DEFENDANT/G. KELLEY: No, Your Honor.

16 THE COURT: Attorney McKinnon, are you satisfied that
17 your client has not consumed any such substance?

18 MR. MCKINNON: I am.

19 THE COURT: Ms. Kelley, have you understand
20 everything that I've asked you and explained to you?

21 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

22 THE COURT: Has Attorney McKinnon answered to your
23 satisfaction all of your questions and addressed all of your
24 concerns relating to this proceeding in any way whatsoever?

25 THE DEFENDANT/G. KELLEY: He has answered all my

1 questions, Your Honor.

2 THE COURT: And has he done so to your satisfaction?

3 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

4 THE COURT: Okay. And before I take your plea, do
5 you have any questions for Attorney McKinnon about your rights,
6 your agreement with the State, or anything else?

7 THE DEFENDANT/G. KELLEY: No, Your Honor.

8 THE COURT: Anything else from the State before I
9 proceed?

10 MR. MCCORMICK: No, Your Honor. No. To the extent
11 that the doctor is a former law partner -- or, I mean, a
12 medical partner of Defendant's, the State wasn't aware of that.
13 If that's the case, the -- you know, the State is somewhat
14 concerned about the medical evaluation -- independent
15 psychological evaluation that --

16 THE DEFENDANT/G. KELLEY: She was never my medical
17 partner, Your Honor.

18 MR. MCCORMICK: Okay.

19 THE COURT: Meaning what? Do we not have a plea?

20 MR. MCCORMICK: No. I mean, that's the only issue,
21 Your Honor. I just wasn't aware that that was the case. Other
22 than that, I am --

23 THE DEFENDANT/G. KELLEY: It's not the case,
24 Mr. McCormick.

25 MR. MCCORMICK: Well, I would ask Your Honor to

1 explore that if the Court doesn't mind.

2 THE COURT: Well, if you wish to -- again, I -- if
3 you wish to inquire of Genevieve Kelley about that, you may do
4 so. She's under oath, so.

5 MR. MCCORMICK: Thank you, Your Honor.

6 THE COURT: Go right ahead to satisfy yourself about
7 any concerns you may have about Dr. Lidstrom's involvement in
8 this matter.

9 MR. MCCORMICK: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. MCCORMICK:

12 Q Ms. Kelley -- Dr. Kelley, is Dr. Lidstrom a former
13 partner of yours?

14 A No.

15 Q Is Dr. Lidstrom a former associate that you worked with
16 closely?

17 A No.

18 Q Has Dr. Lidstrom in any way associated with you
19 professional in the past?

20 A The only way she was ever associated is if someone had
21 referred her, one of my patients that I saw in concert with
22 another physician to her.

23 Q Okay.

24 A I worked in the VA and -- for the VA. And she has a
25 separate practice. I've only seen her as my councilor.

1 Q Okay. And do you -- and she -- and so she's
2 independent in your view of any bias that she might have? You
3 don't anticipate that she would be biased in any way based on
4 your professional relationship?

5 A No, not at all.

6 MR. MCCORMICK: I don't have any further questions,
7 Your Honor.

8 THE COURT: Okay. Are you prepared to proceed with
9 the plea, Attorney McCormick?

10 MR. MCCORMICK: Yes, Your Honor.

11 THE COURT: Okay.

12 Okay, Ms. Kelley. With respect to the first Class A
13 misdemeanor charge identified as charge ID 1066845C, which
14 alleges that on or between December 1, 2004, and the 30th of
15 September 2005 at Whitefield that you did commit the crime of
16 interference with custody, a Class A misdemeanor, in that aided
17 by or in concert with Scott Kelley you knowingly detained or
18 concealed a child under the age of 18, Mary Elizabeth Nunes,
19 date of birth 2/19/1996, from Mark Nunes, the child's parent or
20 other person having lawful physical custody or physical
21 custodial rights as described in RSA 458-17 subsection 4 with
22 the purpose or intent to detain or conceal Mary from Mark, how
23 do you plead to that charge, guilty or not guilty?

24 THE DEFENDANT/G. KELLEY: Guilty, Your Honor.

25 THE COURT: With respect to the second charge

1 identified as charge ID 1066846C, which alleges that between
2 October 1, 2005, and February 18, 2014, at Whitefield you did
3 commit the crime of interference with custody in that, aided by
4 or in concert with Scott Kelley, you knowingly detained or
5 concealed a child under the age of 18, Mary Elizabeth Nunes,
6 date of birth 2/19/1996, from Mark Nunes, the child's parent or
7 the person having lawful parental rights and responsibilities
8 as described in RSA 461-A with a purpose or intent to detain or
9 conceal Mark from Mary, how do you plead to that charge, guilty
10 or not guilty?

11 THE DEFENDANT/G. KELLEY: Guilty, Your Honor.

12 MR. MCCORMICK: Your Honor, just I believe it was
13 Mary from Mark, but it's neither here nor there, I think.

14 THE COURT: If I misspoke, the indictment says to
15 conceal Mary from Mark. If I said it backwards, that was my
16 reading mistake.

17 MR. MCCORMICK: Thank you, Your Honor.

18 THE COURT: Okay. The Court has questioned the
19 Defendant and her attorney, meaning Attorney McKinnon,
20 concerning the plea -- the offer of the plea of guilty. The
21 Court has been advised that the Defendant and Attorney McKinnon
22 have conferred concerning all aspects of the two charges and
23 the plea and concerning any defenses the Defendant may have to
24 those charges. The Court's observed the Defendant while she
25 was answering the Court's questions and has observed her

1 demeanor, manner, attitude, and apparent intelligence. The
2 Court also has observed that the Defendant does not appear to
3 be under the influence of any medication, drug, alcohol, or
4 other substance that might affect her judgment.

5 Accordingly, the Court finds that the offer of the
6 plea of guilty has a factual basis, that it's free of any
7 coercive influence of any kind, that it's competently and
8 voluntarily made with full knowledge of the charges and of the
9 consequences of the plea. The Court also finds that apart from
10 the terms of the plea agreement there have not been any
11 promises made to the Defendant in connection with the plea.
12 Accordingly, the Court finds that the Defendant's waiver of her
13 rights and her enter of her plea of guilty have been made
14 knowingly, intelligently, and voluntarily without any hint of
15 coercion or duress. And specifically I find that that Mrs.
16 Kelley is a bright, articulate woman who is self-possessed and
17 understands -- understood all the questions I asked her,
18 understood all the statements made by Attorney McCormick,
19 myself, and Attorney McKinnon, and that she is entering into
20 this plea agreement of her own free will and that the plea
21 agreement is indeed voluntary.

22 Accordingly, the Court orders that the Defendant's
23 plea of guilty be accepted and entered.

24 Attorney McCormick, do you want to approach and nolle
25 prose the three felony charges?

1 MR. MCCORMICK: Yes, Your Honor.

2 (Counsel confer)

3 THE COURT: Okay. The State has nolle prossed the
4 three felony charges based on your plea -- if you can stand up
5 again, Ms. Kelley --

6 THE DEFENDANT/G. KELLEY: Oh, sorry.

7 THE COURT: -- plea of guilty to the two Class A
8 misdemeanor charges. I made findings of guilty on those two
9 charges. With respect to the first one, charge ID 1066845C,
10 you are sentenced to the house of corrections for a period of
11 12 months. That sentence is to be served as follows: stand
12 committed commencing September 7, 2015, at 9 a.m. Two months
13 of that sentence is suspended during your good behavior and
14 compliance with all terms and conditions of this order. Any
15 suspended sentence may be imposed after a hearing brought at
16 the State's request. The suspended sentence begins today and
17 ends five years from your release on this charge, charge ID
18 1066845C. You are ordered to complete a psychological
19 evaluation and complete follow-up treatment. And the Court
20 recommends that you do so. You are entitled to 36 days of pre-
21 trial confinement credit.

22 Other conditions of this sentence are that you are
23 ordered to participate meaningfully and complete any
24 counseling, treatment, and educational programs as directed by
25 the correctional authority or probation officer. You are

1 ordered to be of good behavior and to comply with all terms of
2 this sentence. Any and all proceeds or royalties from
3 publishing or movie rights derived from this criminal
4 transaction shall be placed in a trust for Mary Nunes a/k/a
5 Mary Kelley. Finally, you agree that you shall not interfere
6 with or impede Mary Nunes, a/k/a/ Mary Kelley, from having
7 contact with her paternal family including Madeline Nunes,
8 Gabriel Nunes, Nancy Nunes, or Mark Nunes, if Mary wishes to
9 have such contact with her paternal family, including aunts and
10 uncles and godparents.

11 With respect to the second charge, charge ID
12 1066846C, you are sentenced to the house of corrections for a
13 period of 12 months. That sentence is to be served as follows.
14 All of that sentence is suspended during your good behavior and
15 compliance with all terms and conditions of this order. Any
16 suspended sentence may be imposed after a hearing brought at
17 the State's request. The suspended sentence begins today and
18 ends five years from your release on the other charge, charge
19 ID 1066845C. Again, you shall complete a psychological
20 evaluation and complete follow-up treatment. This sentence, if
21 it is imposed, is consecutive to the 12-month sentence that I
22 just imposed in charge ID 1066845C.

23 On this sentence you're placed on probation for a
24 period of one year on the usual terms in probation. And any
25 special terms of probation is determined by your probation

1 officer effective upon your release in charge ID 1066845C.
2 Subject to the provisions of RSA 504-A:4,III, your probation
3 officer is granted the authority to impose a jail sentence of
4 one to seven days in response to a violation of a condition of
5 probation not to exceed a total of 30 days during your
6 probationary period. Please note, a violation of probation or
7 any of the terms of this sentence may result in the revocation
8 of probation and the imposition of any sentence within the
9 legal limits of the underlying offense.

10 Other conditions of this sentence are that you are
11 ordered to participate meaningfully and complete any
12 counseling, treatment, and educational programs as directed by
13 the correctional authority or probation officer. You are
14 ordered to be of good behavior and to comply with all terms of
15 this sentence. Again, any and all proceeds or royalties from
16 publishing or movie rights derived from this criminal
17 transaction shall be placed in a trust for Mary Nunes, a/k/a
18 Mary Kelley. Finally, you agree that you shall not interfere
19 with or impede Mary Nunes, a/k/a/ Mary Kelley, from having
20 contact with her paternal family including Madeline Nunes,
21 Gabriel Nunes, Nancy Nunes, or Mark Nunes, if Mary wishes to
22 have such contact with her paternal family, including aunts,
23 uncles, and godparents.

24 Attorney McKinnon, anything else in this case --

25 MR. MCKINNON: No. Thank you, Your Honor.

1 THE COURT: -- before I move on to the next one?

2 Okay.

3 THE DEFENDANT/G. KELLEY: Thank you, Your Honor.

4 MR. ROSENFELD: Your Honor? Your Honor? The bail
5 conditions?

6 THE COURT: Oh, and before I forget. And I had a
7 note to myself to not forget and you can see how well that
8 worked. But your bail order -- again, you're not required to
9 report until September 7th at 9 a.m. All the terms and
10 conditions of your bail order remain in full force and effect
11 until you report and begin serving your sentence, including the
12 no-contact order other than as would be modified. And I
13 haven't actually granted the motion to amend the bail order
14 because I'm waiting to take Mr. Kelley's plea. And then again,
15 if I take it and he reports on June 22nd, then the motion would
16 be ripe for ruling and I will grant it. But again, you -- all
17 the conditions and terms of your bail order remain in full
18 force and effect, including the no-contact provision as it
19 relates to Scott Kelley other than the June 21 exception, and
20 as it relates to Mary Nunes, a/k/a Mark Kelley, in all
21 respects. You understand that?

22 THE DEFENDANT/G. KELLEY: Yes, sir. Yes, Your Honor.

23 THE COURT: Okay. And you understand all the other
24 provisions of your bail order stay in full force and effect?

25 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. MCCORMICK: Your Honor, I believe she has to
3 report to the Grafton County House of Corrections, too. I'm
4 not sure about that. But that's probably where she's going to
5 end up going on -- in terms of --

6 THE COURT: Yes.

7 MR. MCCORMICK: Yeah. Grafton.

8 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

9 THE COURT: Mr. McCormick and Mr. McKinnon coordinate
10 where you go. But that's where you go --

11 THE DEFENDANT/G. KELLEY: Yes, sir.

12 THE COURT: -- I expect.

13 MR. MCCORMICK: Yes, Your Honor.

14 MR. MCKINNON: With the Court's permission, may we be
15 excused?

16 THE COURT: Any objection, Attorney Hornick?

17 (Counsel confer)

18 THE COURT: Well, the -- well, you're excused from
19 the proceedings. If Mrs. Kelley wants to certainly sit in the
20 court room open to the public, she may. And does that get
21 you --

22 MR. MCKINNON: Okay.

23 THE COURT: -- get you where you want to go?

24 THE DEFENDANT/G. KELLEY: Yes, Your Honor.

25 THE COURT: Okay. So yeah, I mean --

1 MR. MCKINNON: Thank you.

2 THE COURT: -- you're excused as far as you're not
3 required to be here any longer. That doesn't mean you have to
4 leave the courtroom. It's a public courtroom. You're welcome
5 to be here like anybody else is.

6 (Designation of record ends at 3:20 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, Erin Perkins, CET**D-601, a court approved proofreader, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

TRANSCRIPTIONIST(S): Laura Hinton, AAERT Cert. No. 441
 Michelle Fowler, AAERT Cert. No. 680
 Nancy Dewitz, AAERT Cert. No. 719
 Liesl Springer, AAERT Cert. No. 685

ERIN PERKINS, CET**D-601
Proofreader

July 13, 2015