

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 65193

MICHAEL J. SCHOFIELD,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

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APPEAL

From the Eighth Judicial District Court, Clark County
District Court Case No. C-13-287009-1

APPELLANT'S APPENDIX – VOLUME VII

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EXHIBIT 14

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INSTRUCTION NO. 11

It is the fact, not the distance, of forcible movement of the victim that constitutes kidnapping.

EXHIBIT 15

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

EXHIBIT 16

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 31, 2014, 9:16 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Department 6 is now in session. The
4 Honorable Judge Elissa Cadish, presiding. Please be seated,
5 come to order.

6 THE COURT: Okay. Yes, Mr. Schofield?

7 THE DEFENDANT: Yes, in going through jury
8 instructions --

9 THE COURT: Uh-huh.

10 THE DEFENDANT: -- there is a major flaw in the
11 kidnapping -- definition of kidnapping.

12 THE COURT: Okay. Let me take a look at that.

13 MR. PARRIS: And I'm sorry, Your Honor, I'm trying
14 to find it in the jury packet that I was just -- jury
15 instruction packet that --

16 THE COURT: The definition is instruction number
17 10.

18 MR. PARRIS: No, no, no, it's right here. These
19 are the official kidnapping -- excuse me, these are the
20 official instructions for --

21 THE COURT: This is the current version.

22 MR. PARRIS: -- the jury instructions for this
23 case. So refer to instruction 10, then.

24 THE DEFENDANT: Oh, okay.

25 MR. PARRIS: Okay?

1 THE DEFENDANT: Great. Okay. It says, "Every
2 person who takes, leads, entices or carries away --

3 THE COURT: Right.

4 THE DEFENDANT: -- or detains any minor with the
5 intent to keep, imprison or confine the minor from his
6 parents --

7 THE COURT: Right.

8 THE DEFENDANT: -- guardians or any other person
9 having lawful custody of the minor is guilty of -- in the
10 first degree." The Count IV first degree kidnapping says,
11 "Did willfully, unlawfully, feloniously and without authority
12 of law."

13 THE COURT: Yes.

14 THE DEFENDANT: That is the major flaw because if
15 you have the authority of law, which would be the parent,
16 permission to take the child, then that -- it says every
17 person and it does not mention that in this jury instruction.

18 THE COURT: The jury instruction correctly reflects
19 Nevada law.

20 THE DEFENDANT: It does? It doesn't state the
21 authority of law.

22 THE COURT: Okay, I've ruled. What's your next
23 issue?

24 THE DEFENDANT: This is --

25 THE COURT: I'm not having an argument with it.

EXHIBIT 17

1 MR. PARRIS: Thank you, Your Honor.

2 BY MS. LAVELL:

3 Q Okay.

4 MR. PARRIS: I'm sorry, Ms. Lavell.

5 BY MS. LAVELL:

6 Q So at some point, do you become aware that there is
7 a problem between the Defendant and your grandson?

8 A There became a problem. Michael and his son --
9 Michael's -- how do you want me to say it? Big and little?

10 Q Whatever you're comfortable with.

11 A Michael and Michael, both, came in the house. I let
12 them in the house. He came in to tell me that he would like
13 Michael to go to the store with him, because he left his food
14 stamp card there, and he want today go and pick it up. I
15 said, Michael, you can go to the store with your dad, it
16 won't hurt you. Again, he doesn't like to go to the store.
17 So, he didn't want to go. I said, Michael, go to the store
18 with your dad. It's not going to hurt you. You know, it's
19 the right thing to do.

20 Taking that out of my hands now that he's his
21 father and I've already told him with my authority he could
22 go, Michael said, "I'm still your father, you should go to
23 the store with me," and --

24 Q All right, so I'm just going to stop you. Now, you
25 just said --

1 A Oh, my God.

2 Q -- that you told him with your authority, meaning
3 your authority as the guardian?

4 A As the parent.

5 Q That --

6 A I consider myself as parent.

7 Q -- that he could go to the store with your son?

8 A Right.

9 Q You didn't --

10 A Actually, I told him he should. Not that he could.

11 Q Okay. That he should go? All right. Did you ever
12 give your son permission to take him to the store?

13 A Well, it would seem if they were both standing there
14 and I --

15 Q No, no, no --

16 A Yes. Then the answer --

17 Q -- no. I'm asking you a question.

18 A -- would have to be, yes, in my opinion.

19 Q So you specifically spoke to your son?

20 A Well, they were both standing --

21 Q I understand that. But you just told -- you just
22 said you told Michael he should go with his father.

23 A Michael Joshua, right.

24 Q My question -- I -- my question to you is, did you
25 ever tell Michael John, the Defendant, that he could take him

1 to the store?

2 A And if you want me to remember exactly whether I
3 said yes, Michael, you can take him when I said Michael, you
4 should go with him, I would, in my assumption, say that is
5 the same as saying yes, you can take him to the store. I
6 don't know if those were the exact words that came out of my
7 mouth.

8 Q Why is it that you used the word authority when you
9 just testified --

10 A You know, why did I use the word authority --

11 Q Let me finish --

12 A Oops.

13 Q -- my question. Okay? Why did you use the word
14 authority when you just said that I said -- I used my
15 authority and said Michael, you can go with your father? Why
16 did you choose that word?

17 A I think I chose that word because -- and I'm not
18 supposed to bring this up, that when we talked Saturday, you
19 acted like it's -- that Michael didn't have the authority,
20 and so therefore that word stuck kind of in my head.

21 Q So you got that word from me?

22 A Sort of.

23 Q Okay.

24 A And that's a guess, too.

25 Q That's a guess. All right. Now, you said that you

EXHIBIT 18

1 Michael was crying, and that's what I believe.

2 THE COURT: Who was crying?

3 THE WITNESS: The young Michael.

4 THE COURT: Thank you. And who was shoving and
5 pushing?

6 THE WITNESS: Big Michael.

7 BY MS. LAVELL:

8 Q And what are you saying, if anything, when you're
9 observing them?

10 A I am on the phone calling 911 ,and very uptight
11 because, as I say, I never call them before, and they were
12 not responding. They're asking me the dumbest, in my
13 opinion, dumbest questions I have ever heard, and I'm
14 standing there trying to get them to come so there is no
15 commotion, and I am saying things, and they're responding
16 crazy. And so that added to my confusion.

17 Q All right. So what about what you saw caused you to
18 call 911?

19 A Nothing that I saw caused me to call 911. The fact
20 that I didn't want the commotion in the house is what caused
21 me to call 911. I called 911 right away. And, you know, if
22 you could --

23 Q Well, hold on, hold on.

24 A I wasn't done with the answer.

25 Q I know, but you answered the question.

EXHIBIT 19

1 Q That didn't happen? Okay. Let's talk about, you're
2 saying that your grandson did not run in with the Defendant
3 chasing him. That, the Defendant, you gave him -- or you
4 opened the door, invited him in a second time, and then you
5 gave him your authority to go to the store with his father.
6 At some --

7 A Gave him his permission, not his authority.

8 Q You used your authority --

9 A My authority.

10 Q -- I'm sorry, to give him permission? Okay, thank
11 you. At some point after all of that, do you become aware of
12 something happening between Michael Joshua and Michael John?

13 A Yes.

14 Q What is that?

15 A They were -- when Michael -- when I told Michael to
16 go to the store with his dad, and he said he didn't want to,
17 and Michael Joshua took off. The arrows don't go far enough
18 around here. I think this way or that way, I don't know.
19 And anyway, he went -- Michael went off there, he came and
20 said he wasn't going to go, and Michael followed after him.
21 And they got as far as the kitchen, and there was a lot of
22 yelling. I still had the phone in my hand, and I yelled to
23 them, you guys stop or I'm going to call 911. And I believe,
24 and I'm not actually sure, they ran around -- I think they
25 ran around more than once, and I have, I'm sorry to say, kind

1 of -- and they were in my dining room, all I could see was my
2 dining room being smashed and stuff broken, and I kept
3 saying, you guys get outside.

4 I figured if they got outside, there would be
5 neighbors there, they'd all stop their commotion. But in the
6 meantime, I called 911, because I just happen -- and I've
7 never called 911 in my life, and I probably did it because I
8 had the phone in my hand and I forgot --

9 Q All right, I'm going to stop you.

10 A You're stopping me?

11 Q I'm stopping you.

12 A Okay.

13 Q We're going to back up. All right, so you said that
14 they ended up somehow in your living room and --

15 A Actually, the dining room.

16 Q The dining room, okay. I think you and Michael -- I
17 mean, yeah, Michael Joshua may refer to these rooms
18 differently. So let me pull out a picture. Okay, this is
19 State's 9. Is this what you're referring to? Is this your
20 dining room table right here on the bottom left?

21 A Right.

22 Q Okay.

23 A But back here is --

24 Q Back where is what?

25 A Well, back here is my curio cabinet and my --

EXHIBIT 20

1 dining room combination. As you can see the pillars -- the
2 pillars -- the pillars there that separate it.

3 THE COURT: Uh-huh.

4 BY MS. LAVELL:

5 Q Okay, Pat, I think --

6 A Over --

7 Q -- we're close enough, actually. We got to --

8 A Just when I was getting to it.

9 Q Getting right there, yeah. I think we're kind of
10 close enough. Now, you said you heard a commotion. Where
11 were you? Were you actually in --

12 A I was --

13 Q Well, hold on. Were you actually in a situation
14 where you were able to observe your son and your grandson
15 when you heard the commotion?

16 A No.

17 Q All right. So you simply heard the commotion?

18 A Yeah, not even in this area.

19 Q All right. And what -- if you can't see the
20 commotion, what makes you think they're by your curio
21 cabinet?

22 A Well, because I was by -- do you remember where the
23 front door was?

24 Q I do.

25 A Okay. So when you're at the door, that's right to

1 the left, it -- you're in the area, and I know that they were
2 running through there. And we do not use this area of our
3 house very often.

4 Q Okay.

5 A This area, I'm pointing to this whole thing.

6 Q So --

7 A We don't use this area. So when they're over in
8 there, I'm very nervous because I don't want everything
9 broken.

10 Q Okay. So you hear a commotion and you say you've
11 never called 911 before, but there was something about this
12 commotion, and you indicated it's because they were by your
13 curio cabinet that caused you to want to call 911?

14 A Right. I really wanted them to get outside and not
15 have anymore commotion in the house. I just wanted to go
16 out.

17 Q And what were you hearing? What kind of commotion
18 were you hearing?

19 A I don't know how to describe commotion.

20 Q All right, well, was it yelling? Was it --

21 A Well, I think --

22 Q -- struggling?

23 A -- it -- I think -- I think a chair was knocked
24 over. I think that the dog was barking like crazy. You
25 know, I mean, I don't know how to describe commotion.

EXHIBIT 21

1 A Oh.

2 Q So I know you want to say a whole lot of stuff, and
3 I appreciate that, but I --

4 A Okay.

5 Q -- need to kind of stay on track. So it was the
6 commotion that had you call 911. You called 911 right away.
7 Do you mean that you called 911 when you first heard the
8 commotion in your -- let me finish the question. When you
9 first heard the commotion in the dining room or when you saw
10 your grandson being pushed out by your son?

11 A I'm going to back up and think that I called before,
12 because I already had the phone. So I'm going to assume I
13 had done talking to one of my kids because that's all I do
14 anyway, in my hand, and I think that it's possible that I may
15 have called -- and I'm -- and now I'm going to look like a
16 jackass, excuse me, but because I'm going to say I may have
17 called even before the commotion because they were going
18 around, but I don't know that for sure.

19 Q All right. But it's your testimony that you've
20 never called 911 before?

21 A I have never.

22 Q All right.

23 A Never will again.

24 Q I'm trying -- I guess, I'm trying to understand in
25 regards to this commotion because you think you may have

1 called the commotion or you may have called when they were
2 exiting the house?

3 A When -- no, I called before that.

4 Q Before that. Okay, so I guess I'm trying to find
5 out, I mean, you said you raised six kids. You've never
6 called 911 before. So I'm trying to find out what is it
7 about this commotion in the dining room that you cannot see
8 that is so concerning to you that you called 911?

9 A Okay, I started to tell you that before, and you
10 said it wasn't relevant, so.

11 THE COURT: Go ahead and answer, ma'am.

12 THE WITNESS: But it's a long story. I was
13 starting to say it was right after Christmas, we have -- we
14 do a lot of decorating for Christmas. In fact, Michael had
15 just been over and put our Christmas tree up overhead in our
16 loft.

17 BY MS. LAVELL:

18 Q Ma'am --

19 A We --

20 Q -- I'm going to stop you.

21 A We're tired.

22 Q I'm going to stop you.

23 A Okay.

24 Q You know, was there something precious that you
25 thought they were going to break? Was there -- I mean, what

1 -- I don't need the whole Christmas thing and how Michael
2 came up and set things up for you, isn't the question. The
3 question is, what about this particular commotion caused you,
4 after raising six kids, to call 911? What was special about
5 this commotion? What was -- what got you upset? What caused
6 you to dial 911?

7 A Do you think people dial 911 automatically just
8 because they have six kids?

9 THE COURT: Why did you dial 911? That's the
10 question.

11 THE WITNESS: Because -- I don't know why this
12 time, because I happened to have the phone in my hand and
13 because it seemed like there was go to be a commotion, and it
14 seemed like I didn't want to put up with it, and so I
15 thought, I will say I'm going to call 911. Everybody's going
16 to stop and everything's going to stand still, but it didn't.

17 BY MS. LAVELL:

18 Q All right. Did you ever become concerned for your
19 grandson's safety or Norman's safety? Were you ever
20 concerned on this day --

21 A On this day?

22 Q -- before you called 911, for your grandson's
23 physical safety or your husband's physical safety?

24 A I was concerned about a commotion, yes. Commotion.
25 You don't like the word commotion.

1 Q Well, I -- I love the word commotion. I think it's
2 a great word. What I'm trying -- I still don't -- am not 100
3 percent clear what you mean by commotion, but my question is,
4 did you become concerned about your grandson's physical
5 safety with his father, or Norman's physical safety with his
6 father?

7 A I don't believe I was concerned about their physical
8 safety. I just did not want anything to escalate. I did not
9 want anything to escalate into a problem. That's it.

10 Q Okay. Now, you said that --

11 THE COURT: Sorry, come on up.

12 (Bench conference began)

13 THE COURT: Do we have the 911 call?

14 MS. LAVELL: Yes.

15 THE COURT: Well, can't we just listen to the 911
16 call and see what she was concerned about because whatever
17 she said is what she was concerned about?

18 MS. LAVELL: Not yet, Your Honor.

19 THE COURT: Huh? Well, okay. It's getting
20 repetitive. So I'm going to need you to move forward. I
21 understand that you -- and it's legitimate to push her on
22 what she remembers, and that it's clear she called 911. I
23 think you've made your point about why she called it and
24 whether she was concerned about more than her curio cabinet,
25 but I think we need to move forward.

EXHIBIT 22

1 Q What is he saying? And you -- I know it may be
2 uncomfortable, but you can say it out loud.

3 A Well, he was saying, "You fucking little bitch.
4 You're going to do what I fucking tell you and getting in that
5 fucking car because I'm your fucking father, and you'll do
6 what I tell you to do."

7 Q What's little Michael doing at this point?

8 A Michael is gasping for air at this point.

9 Q What are you saying at this point or doing at this
10 point? What are you doing or saying at this point?

11 A First I screamed at Michael to stop, and of course,
12 he didn't stop. I --

13 Q Why did you want him to stop?

14 A Because I felt he was hurting little Michael.

15 Q Okay.

16 A I went up to him, and as you could see when I walked
17 in here, I'm five foot six at a stretch, and I am very small
18 in compared to -- in comparison to big Michael and I'm very
19 weakened in comparison to big Michael. However, I felt I had
20 to do something. And I hit him in the ear twice with the back
21 of my hand.

22 Q So for the record, what you're doing is you're
23 showing that you basically hit him with the palm of your hand
24 in his ear?

25 A Right.

1 Q With an open hand?

2 A Yes.

3 Q All right. Did that have any effect on big Michael?

4 A None whatsoever.

5 Q What happened next?

6 A He kind of shrugged me off. I mean, he didn't touch
7 me, didn't hit me, didn't do anything. He just kept going
8 with little Michael, and he's --

9 Q And what do you --

10 A -- moving him toward the door by forcing little
11 Michael's legs with his own legs.

12 Q Okay. So when you first caught up to them, you
13 indicated that you caught up to them near the pillars.

14 A I'm sorry, say --

15 Q I'm sorry. When you first caught up to them --

16 A Yes.

17 Q -- you said that you caught up to them near the
18 pillars, right?

19 A Yes, yes.

20 Q Near the two pillars?

21 A Yes. Yeah.

22 Q All right. While he was choking Michael, little
23 Michael --

24 A Yeah.

25 Q -- while the Defendant was choking little Michael,

1 was he moving in the direction of the table and then towards
2 the front door?

3 A Yes.

4 Q Okay. So he's choking him. At some point while
5 still in the will you having room, does anything happen in
6 regards to his grip on little Michael?

7 A Little Michael was doing his best to breathe, okay?
8 Little Michael had put his hand up under his father's arm and
9 was trying to get enough room so he could gasp for breath,
10 yes.

11 Q And after you struck him -- and was he able to
12 actually break the grip? Were you aware of whether he broke
13 the grip?

14 A When they went out the front door, the grip was
15 broken.

16 Q Okay. Backing up to where you indicated that you
17 hit him twice in the ear with the palm of your hand and you
18 indicated he kind of is this rugged you off, did you do
19 anything else physical while still in the house to attempt to
20 get him to release your grandson?

21 A I just screamed at him, Michael, you know, you're
22 going to kill the kid.

23 Q Did he have any reaction when you --

24 A None whatsoever.

25 Q -- screamed that? And were you concerned that he

1 might kill the child?

2 A Anything is possible, of course.

3 Q Now, where is Pat when all of this is going on.

4 A I don't know.

5 Q Is it kind of tunnel vision at that point?

6 A I was being distracted by our Chihuahua dog --

7 Q Okay.

8 A -- who was barking fiercely, I mean, for a little
9 four-and-a-half pound dog, and he is barking, and the -- you
10 know, all of our feet, the six of them, are trotting toward
11 the door, and I was afraid we were going to trample the little
12 dog truthfully.

13 Q All right. So you indicated that before they got
14 outside, little Michael was able to break his father's grip.

15 A Right.

16 Q And you indicated that after he broke the grip, he
17 was moving him outside still. Can you describe a little bit
18 more, in more detail, how he was actually moving your
19 grandson, and "he" being the Defendant, moving your grandson
20 out the door.

21 A I'm not sure.

22 Q Okay. But he was physically making him exit?

23 A Yes.

24 Q Okay. You just don't know what --

25 A No.

1 Q -- what the hold was?

2 A No.

3 Q Okay. But he wasn't choking him anymore?

4 A Correct.

5 Q Okay. So at some point, do you observe him take
6 your grandson out the door?

7 A Yes. As we got very close to the door -- in fact,
8 you have to --

9 Q And let me get you another picture that might be
10 helpful.

11 A There's a step up.

12 Q Oops. Well, I don't know if -- yeah, this may show
13 the step up. This is State's 7.

14 A Yeah, you can see a tile.

15 Q Can you just draw a line right there where the step
16 up is.

17 A Right here.

18 Q Okay. So what about the step up?

19 A As he went up to the step up, the hold was released
20 at that point. I scooped up the dog. As you can see, the
21 first door, which I told you was the laundry room earlier --

22 Q Okay.

23 A -- which I have just put a little mark on.

24 Q Okay, I'm going to show you State's 10. Is this
25 inside that laundry room?

1 A Yes, yes.

2 Q Okay.

3 A Yes.

4 Q And is this where you put the --

5 A That's where I put the dog. I scooped the dog up
6 with one hand, went over, put him in his cage, locked the
7 cage.

8 Q Okay. And what's the next thing you did?

9 A I picked up a wrench.

10 Q Okay. And why did you pick up the wrench?

11 A Stupid.

12 Q Well --

13 A I don't -- I'm not sure. I don't know -- I'm sure I
14 wasn't going to go after Michael with it. I think I wanted
15 the wrench for security.

16 Q Okay. And so you and the wrench went outside?

17 A Yes.

18 Q What is the first thing that you saw when you got
19 outside?

20 A I saw -- we're talking about a Montana mini van.
21 There are -- the front door --

22 Q State's Exhibit 5.

23 A The van is parked in front of this garage door that
24 you can see --

25 Q Okay.

1 A -- here. Okay? As I came out the front door and
2 down the side of the garage, there's a lot of hollering and
3 screaming going on.

4 Q Who's hollering and screaming, if you know?

5 A I think big Michael is screaming. I think little
6 Michael is crying. I think Pat is on the phone with the
7 police, this kind of thing. It was chaos, okay? I came out
8 the front door, down the side of the garage, and I see Pat
9 holding the door back and getting little Michael out of the
10 seat.

11 Q Okay.

12 A Okay? At that time, I assume Michael had been near
13 that door -- big Michael had been near that door --

14 MR. PARRIS: Well, Your Honor, I'm going to object.

15 THE WITNESS: -- but he went --

16 THE COURT: Hold on, hold on. You can only say what
17 you actually saw, not what you --

18 THE WITNESS: Okay.

19 THE COURT: -- assume.

20 THE WITNESS: Okay. What I saw next was big Michael
21 was coming up the side of the van on the driver's side --

22 BY MS. LAVELL:

23 Q Okay.

24 A -- toward the garage door.

25 Q Okay. Were your neighbors out there yet?

1 A No.

2 Q Okay. What is big Michael saying at that point?

3 A I stepped in between the car and the -- and I'm
4 still holding the wrench, but I'm holding it close to me. I'm
5 not threatening anybody with it.

6 Q That's okay.

7 A I stepped between the door and the front bumper of
8 the van, and I said, "Michael, do you understand what you're
9 doing to your son? You should be ashamed of yourself."

10 Q And what was his response?

11 A Same kind of response that he's been giving me all
12 along.

13 Q Which was what?

14 A "Fuck you, old man, I'll do whatever I want. I'm
15 his fucking father, and I don't give a shit about that piece
16 of paper that you have that says you're the guardian."

17 Q Did you ever give him permission to force his son in
18 a van or to take his son anywhere on that particular day?

19 A No, I didn't even know there was an issue until I
20 heard little Michael say, "I don't want to go," and then
21 the --

22 MR. PARRIS: Your Honor, I'll object at this point
23 in time, Your Honor --

24 THE WITNESS: -- he --

25 MR. PARRIS: -- as to hearsay what little Michael

EXHIBIT 23

1 THE COURT RECORDER: Jess.

2 MS. LAVELL: Oh, we're okay?

3 THE COURT: Okay.

4 MR. PARRIS: Your Honor, if we may --

5 THE COURT: Yep.

6 MR. PARRIS: -- we do have some item -- one item to
7 place on the record --

8 THE COURT: Yep.

9 MR. PARRIS: -- outside the presence of the jury,
10 if we may.

11 THE COURT: Yep.

12 MR. PARRIS: And judging by the Court's reaction,
13 the Court knows where we're going with this.

14 THE COURT: Yes.

15 MR. PARRIS: I had represented Ms. Lavell on two
16 separate traffic ticket matters both out of the City of
17 Henderson, both resulted in facts adjudications. On neither
18 ticket did I actually make an actual court appearance. We
19 simply faxed the citation over to the municipal court in
20 Henderson, they faxed back an offer that's accepted, and
21 that's the sum total of my interaction with the municipal
22 court regarding those citations.

23 THE COURT: When?

24 MR. PARRIS: One was, I would say, two to three
25 years ago. The more recently one was probably eight to 12

1 months ago. I'm not positive of the exact date.

2 MS. LAVELL: Nor am I, but that sounds correct.

3 MR. PARRIS: On neither instance did Ms. Lavell --
4 it wasn't noted on the citations that Ms. Lavell -- or
5 employment was not noted. She received the same negotiation
6 that anyone in her -- or any citizen would receive under the
7 same or similar circumstances. And on neither instance did I
8 charge Ms. Lavell. I hand handled it strictly as a favor for
9 her on both those occasions.

10 She is aware of that fact. Obviously, I --

11 THE COURT: How long have you been on this case?

12 MR. PARRIS: I have been on this case for, I would
13 say, approximately six months, I would say. I think --

14 THE COURT: I ask because the underlying events
15 looks like they happened a year ago.

16 MR. PARRIS: Correct, correct. I was not on this
17 case -- I had substituted in for the public defender in, I
18 believe, in August of last year, if I'm not mistaken.

19 THE DEFENDANT: July.

20 MR. PARRIS: Was it August?

21 THE DEFENDANT: July.

22 MR. PARRIS: It was July? It was July. And I
23 believe that was after I had represented Ms. Lavell on the
24 second or most recent -- more recent of those two citations.

25 THE COURT: Okay.

1 MR. PARRIS: So it did not occur -- that
2 representation did not occur during the pendency of this
3 particular case at all.

4 THE COURT: Okay. And -- right, so it was
5 completely resolved by the process, as you described it, and
6 no representation of her during this case?

7 MR. PARRIS: None whatsoever, Your Honor.

8 THE COURT: And, Ms. Lavell, do you agree with his
9 description of those transactions?

10 MS. LAVELL: I do agree, Your Honor. And the offer
11 in this particular case, although, that's not at issue right
12 now, was extended prior to and never adjusted.

13 THE COURT: Okay.

14 MS. LAVELL: Everything stayed -- has remained
15 status quo.

16 THE COURT: Okay.

17 MR. PARRIS: And that offer was placed on the
18 record at the time of the -- not only -- I believe at the
19 time of the calendar call, but definitely at the time we were
20 before Judge Villani at overflow. The State had indicated
21 that the offer was withdrawn as of overflow. The State had
22 contacted me this weekend and agreed to reextend it at least
23 until we had a jury impaneled.

24 THE COURT: Um-h'm.

25 MR. PARRIS: Mr. Schofield is not inclined to

1 accept that offer at this point in time. We're happy to
2 place negotiations on the record if the Court wants, but we
3 just for purposes of (indiscernible) want to make it
4 abundantly clear that the same offer that was extended
5 previously, which has never changed, is not being accepted at
6 this point in time.

7 MS. ANTHONY: And Your Honor, if I could just -- I
8 was the deputy who did the preliminary hearing. I did the
9 preliminary hearing against Daniel Jenkins of the Public
10 Defender's Office, and the offer was placed on the record. I
11 believe at that time it was rejected, and it hasn't changed.
12 So -- and that was against the public defender at the time of
13 the preliminary hearing, just for the record.

14 THE COURT: And Mr. Parris, were you appointed to
15 replace them or were you retained?

16 MR. PARRIS: Retained, Your Honor.

17 THE COURT: Okay.

18 MR. PARRIS: At the time of my retention, I was not
19 aware that Ms. Lavell was on the case. I don't -- I don't
20 even think I knew who was on the case, quite candidly. And
21 to be honest, that's probably -- the fault lies with me. I
22 should have made mention of this to Judge Adair, the
23 originating court where this was, ahead of time. It slipped
24 my mind.

25 However, in my interactions with Ms. Lavell this

1 weekend, I said -- it just came to me whenever during
2 preparations for this. And just to make everything as above
3 board as possible, I just wanted to inform the Court of that.
4 I did discuss it with Mr. Schofield this afternoon. He had
5 indicated he had -- and I'd be happy if he would put that on
6 the record as well.

7 THE COURT: Uh-huh.

8 MR. PARRIS: He indicated he had no issues with
9 respect to any conflicts which may exist because of those
10 traffic citation representations.

11 MS. LAVELL: And just because what we're speaking
12 about right now, our interactions over the weekend were via
13 the telephone in regards to this particular case. So I don't
14 want any misunderstandings.

15 THE COURT: No, okay.

16 MS. LAVELL: In addition --

17 THE COURT: But I understood.

18 MS. LAVELL: Okay. In addition to that, had
19 Mr. Parris not made mention of these traffic tickets, it
20 would never in a million years have dawned on me to, so I
21 appreciate that he did that. But it was so non --

22 THE COURT: And just -- sorry.

23 MS. LAVELL: -- inconsequential --

24 THE COURT: Um-h'm.

25 MS. LAVELL: -- in some degree.

1 THE COURT: Um-h'm.

2 MS. LAVELL: But I know it's proper to make the
3 Court and the Defendant aware.

4 THE COURT: So just to have a clear record, other
5 than those two traffic tickets, you haven't represented her
6 on any other legal matters?

7 MR. PARRIS: None whatsoever, Your Honor. Same
8 thing with Ms. Anthony.

9 THE COURT: Okay. And outside of professional
10 communications as counsel on cases, you don't have another
11 relationship between you?

12 MR. PARRIS: No, Your Honor. Strictly
13 professional.

14 MS. LAVELL: Yes, absolutely.

15 THE COURT: Thank you. Okay. So with that being
16 said, Mr. Schofield, did -- Mr. Parris, I believe, just spoke
17 to you before you came into court about this matter, and
18 you've obviously been sitting here during the discussion we
19 just had about it. Are you prepared to waive any conflict
20 that may exist as a result of Mr. Parris's prior
21 representation of Ms. Lavell on those traffic ticket matters?

22 THE DEFENDANT: Yes.

23 THE COURT: Yes?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. So you want to move forward with

1 Mr. Parris at your counsel; is that correct?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. All right, have a seat. Thank
4 you. Anything else before we -- well, I suppose I should go
5 through the process. I heard my clerk properly explaining
6 the process to you before I came in. The jury selection
7 process, that is. But just to quickly go through it.

8 We would go ahead and pick 14 jurors to sit on the
9 case, which will include two extras, obviously. We
10 generally, do not select the alternates until the end of
11 trial after closings before the jury goes and deliberates.
12 We use the bingo balls to randomly select two of them to be
13 the alternates. So nobody -- not the jurors, not any of us,
14 know who the alternates are going to be until that point in
15 the case.

16 So with this case having potential a life tail on
17 the kidnapping charge, you each get a total of nine preempts,
18 then. And because we're not identifying who the alternates
19 are, you'll be able to use the nine preempts for anywhere in
20 the panel. We'll be passing 32 potential jurors for cause.
21 You'll each get nine preempts. That takes it down to the 14
22 who will try it.

23 So we will be bringing the jurors in. I'll have
24 general questions for the whole panel, and then I start with
25 number one in the back left asking some individual questions.

EXHIBIT 24

1 ticket and show that same proof to the presiding judge on
2 that -- I believe it happened to be Judge Hampton who was
3 sitting, but whomever, to the presiding judge handling the
4 traffic matters. So those were the two citations. I'll be
5 honest, I did not do any additional research at my office to
6 try and track down when the faxes occurred or check my notes
7 to my staff. I want to say it was sometime early last year.
8 So at least two to three, if not longer, months prior to
9 substituting in on this case back in August-ish. So I think
10 it was at springtime at the latest is when that had occurred,
11 that most recent citation.

12 Again, the other one was two-ish years ago, maybe
13 more. I'm not positive.

14 MS. LAVELL: And I'll just say that it was probably
15 a little longer than two years because the reason my vehicle
16 wasn't registered was because I had moved, and I didn't get
17 the mail notification. So when I realized, I took care of
18 it.

19 THE COURT: Okay. So there's no indication that
20 Ms. Lavell would have gained certainly any -- well, number
21 one, Mr. Parris wasn't yet representing Mr. Schofield when
22 those interactions happened. There's been no apparent
23 benefit or detriment to either side in this case as a result
24 of that interaction. It is a finite representation on a
25 matter like that. It's not like there's continuing legal

1 matters on which there is a continuing attorney/client
2 relationship.

3 The fact that they have, you know, run into each
4 other in the courthouse, as many of the attorneys who work on
5 criminal matters do, certainly alone isn't a conflict. And
6 so to the extent that Mr. Schofield is asking me based on
7 this matter to disqualify Ms. Lavell from the case, I'm going
8 to deny that. I do not see that a conflict exists now or
9 that it has existed during the course of this case. So I'm
10 not going to do that. I don't see a basis for doing so
11 legally.

12 I did feel it was a matter that ought to be
13 disclosed. I always think more information is better than
14 less information. But given the relief that was requested by
15 Mr. Schofield and now that I've actually gone through in my
16 mind the legal analysis, I don't see that there is a legal
17 conflict which would warrant a disqualification order. So
18 I'm going to deny that request.

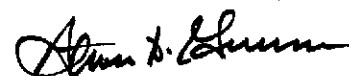
19 MS. LAVELL: Thank you, Your Honor.

20 THE COURT: With that being said, are do you want
21 to proceed? Well, not -- I guess, we need to proceed.

22 MS. LAVELL: Well, I guess, based on that, does he
23 want to take the offer?

24 THE COURT: It's re-extended?

25 MS. LAVELL: I mean, if that's --



CLERK OF THE COURT

1 MICHAEL J. SCHOFIELD DISTRICT COURT
2 INMATE NO. 1679195 CLARK COUNTY
3 330 S CASINO CENTER NEVADA
4 LAS VEGAS NEVADA 89101

5 CASE NO. C-13-287009-1
6 STATE OF NEVADA DEPT NO. 6
7 PLAINTIFF DOCKET NO.

8 V.S.

9 MICHAEL J. SCHOFIELD
10 DEFENDANT
11

12 DEFENDANT'S REPLY TO STATE'S OPPOSITION TO
13 DEFENDANT'S MOTION TO VACATE VERDICT
14 COMES NOW DEFENDANT, MICHAEL J.
15 SCHOFIELD, IN PROPER PERSON, AND HEREBY
16 SUBMITS THE DEFENDANT'S REPLY TO STATE'S
17 OPPOSITION TO DEFENDANT'S MOTION TO VACATE VERDICT
18 THIS REPLY IS BASED ON ALL RECORDS AND FILES AS
19 WELL AS POINTS AND AUTHORITIES IN THE MOTION TO VACATE
20 VERDICT, THE PAPERS AND PLEADINGS ON FILE HEREIN, AND ANY
21 ORAL ARGUMENT AT THE TIME OF THE HEARING. THE
22 DEFENDANT DISAGREES WITH THE STATE'S OPPOSITION TO
23 DEFENDANT'S MOTION TO VACATE VERDICT.

24 MICHAEL J. SCHOFIELD
25 MICHAEL J. SCHOFIELD
26 DEFENDANT IN PROPER PERSON

CLERK OF THE COURT

JUL 02 2014

RECEIVED

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JUL 03 2014

CLERK OF THE COURT 1

AA 1545

ARGUMENT

I. THE STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO VACATE VERDICT IS UNTIMELY AND
THEREFORE SHOULD BE DENIED.

THE STATE FILED AN OPPOSITION TO DEFENDANT'S
MOTION TO VACATE VERDICT ON JUNE 19, 2014. THE
DEFENDANT FILED THE DEFENDANT'S MOTION TO
VACATE VERDICT ON MAY 30, 2014. BEING THAT THE
STATE HAD FOURTEEN (14) DAYS TO REPLY TO THE
DEFENDANT'S MOTION TO VACATE VERDICT AND THAT
THE STATE TOOK TWENTY (20) DAYS TO REPLY TO THE
DEFENDANT'S MOTION TO VACATE VERDICT, ANY
ARGUMENT THAT THE STATE PRESENTS IN THE
STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
VACATE VERDICT SHOULD BE DENIED AS AN
UNTIMELY REPLY.

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1 II ERROR BY THE CLERK OF COURT MADE IT
2 IMPOSSIBLE FOR THE DEFENDANT TO FILE MOTION
3 TO VACATE VERDICT IN A TIMELY MANNER.

4 IN THE STATE'S OPPOSITION TO DEFENDANT'S
5 MOTION TO VACATE VERDICT, THE STATE USES ONE (1)
6 ARGUMENT TO OPPOSE THE DEFENDANT'S MOTION TO
7 VACATE VERDICT. WHICH IS THAT THE DEFENDANT'S
8 MOTION TO VACATE VERDICT WAS NOT TIMELY. THE
9 DEFENDANT WILL SHOW THAT THERE WAS CIRCUMSTANCES,
10 WHICH THE COURT IS ALREADY AWARE OF, THAT PREVENTED
11 THE DEFENDANT FROM FILING A TIMELY MOTION TO
12 VACATE VERDICT. THE CLERK OF COURT DID NOT
13 RECOGNIZE THE DEFENDANT AS REPRESENTING
14 HIMSELF AND INSTEAD HAD ATTORNEY JOHN PARRIS
15 ON FILE AS COUNSEL OF RECORD IN
16 CASE NUMBER C-13-287009-1, IN SEPT NUMBER 6.
17 THE INFORMATION THAT THE DEFENDANT WAS NO
18 LONGER REPRESENTED BY ATTORNEY JOHN PARRIS
19 WAS NOT COMMUNICATED^{TO} OR RECEIVED BY THE
20 CLERK OF COURT.

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1 III THE STATE USING THE DEFENDANT'S MOTION
2 TO VACATE VERDICT AS AN EXHIBIT. IN THE STATE'S
3 OPPOSITION TO DEFENDANT'S MOTION TO VACATE VERDICT,
4 THE STATE USES ONE EXHIBIT, WHICH IS THE DEFENDANT'S
5 MOTION TO VACATE VERDICT. THE DEFENDANT IN THIS
6 REPLY TO THE STATE'S OPPOSITION TO THE DEFENDANT'S
7 MOTION TO VACATE VERDICT, WILL MORE CLEARLY SHOW THAT
8 THE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING
9 SHOULD BE VACATED, PARTICULARLY IN THE INSUFFICIENT
10 EVIDENCE.

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1 INSUFFICIENT EVIDENCE. THE STATE DID NOT
2 PROVE EVERY ELEMENT OF FIRST DEGREE KIDNAPPING.
3 EVIDENCE PRESENTED DURING THE TRIAL THAT SHOWS
4 THAT THE DEFENDANT DID NOT COMMIT THE CRIME OF
5 FIRST DEGREE KIDNAPPING. WHICH IN THIS CASE THE
6 STATE WAS ALLOWED TO NARROW DOWN N.R.S. 200-310(1)
7 TO, TAKE ANY MINOR WITH THE INTENT TO KEEP THE MINOR.
8 IN THE STATES OPENING STATEMENT, COURT TRANSCRIPTS,
9 WEDNESDAY JANUARY 29, 2014 PAGE 14. LINE 16-19.
10 MS. LAVELL: "SOME 15 MINUTES LATER, HE (DEFENDANT)
11 SHOWS UP AT THE HOUSE AND THAT'S WHEN HE (DEFENDANT)
12 WANTED TO PLAY BALL WITH HIS SON (MICHAEL (JOSHUA)). AT
13 SOME POINT, HE (DEFENDANT) TELL HIS MOM (PATRICIA) HE
14 WANTS TO TAKE HIS SON WITH HIM TO THE STORE." THEN
15 FURTHER DOWN ON THE SAME PAGE 14 (LINE 22-25) MS LAVELL:
16 "THE DEFENDANT GOES OUTSIDE WITH MICHAEL (JOSHUA), AND
17 JUST BEFORE THEY GET OUT THE FRONT DOOR, THE DEFENDANT
18 TELLS MICHAEL (JOSHUA), I WANT YOU TO GO TO THE STORE
19 WITH ME."

20 IN THE DIRECT EXAMINATION OF STATE WITNESS MICHAEL
21 (JOSHUA SCHOFIELD), THE VICTIM, IN COURT TRANSCRIPTS,
22 WEDNESDAY JANUARY 29, 2014, PAGE 33 (LINE 11-12),
23 MS LAVELL: "AND WHAT WAS THAT QUESTION"?
24 MICHAEL (JOSHUA): "I LEFT MY FOOD STAMP AT THE STORE,
25 COME WITH ME".
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1 IN THE DIRECT EXAMINATION OF PATRICIA DUPLISSIE, A
2 STATE WITNESS, AND LEGAL GUARDIAN (ONE OF TWO LEGAL
3 GUARDIANS), WEDNESDAY, JANUARY 29, 2014, PAGES 130-137
4 IS THE WITNESS BEING ASKED ABOUT THE EVENTS THAT TOOK
5 PLACE ON JANUARY 6TH 2013. PAGE 130 (LINE 7-22)

6 MS LAVELL: "ALL RIGHT. PRIOR TO THEIR LEAVING TO GO OUT AND
7 PLAY CATCH, DID THE DEFENDANT ASK YOU OR EXCUSE ME, LET ME
8 SAY THAT DIFFERENTLY. DID THE DEFENDANT ASK MICHAEL (JOHN)
9 IN FRONT OF YOU TO GO WITH HIM IN THE CAR?"

10 PATRICIA DUPLISSIE: "I BELIEVE THEY HAD GONE OUT TO PLAY
11 FIRST AND THEN MICHAEL (JOHN) -- AND I'M GOING TO HAVE
12 TO SAY WHAT HE REALIZED. HE REALIZED THAT HE --."

13 MS LAVELL: "WELL I DON'T WANT YOU TO TELL ME WHAT HE
14 REALIZES BECAUSE --"

15 PATRICIA DUPLISSIE: "OKAY, WELL, THEN -- THEN THEY HAD GONE
16 OUT TO PLAY."

17 MS LAVELL: "OKAY."

18 PATRICIA DUPLISSIE: "AND THEN MICHAEL AND HIS SON CAME
19 BACK IN THE HOUSE BECAUSE MICHAEL (DEFENDANT) --
20 I DON'T KNOW IF THEY TOLD ME BEFORE OR AFTER THAT
21 HE (DEFENDANT) WANTED TO GO TO THE STORE, AND I'M A
22 LITTLE CONFUSED. IT WAS EITHER BEFORE OR AFTER, BUT I
23 KNEW HE WANTED TO GO BACK TO THE STORE."

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1 IN THE CROSS EXAMINATION OF PATRICIA DUPLISSIE ON
2 THURSDAY, JANUARY 30, 2014 IN COURT TRANSCRIPTS PAGE 12-14,
3 ON THE DEFENDANT'S INTENT. STARTING ON LINE 9 OF PAGE 12.
4 MR. PARRIS: "OKAY. AND YOU HAD OVERHEARD A CONVERSATION
5 BETWEEN YOUR SON AND YOUR GRANDSON (MICHAEL JOHN AND MICHAEL
6 JOSHUA) ABOUT GOING TO THE STORE OR NEEDING TO GO TO THE
7 STORE, WORDS OF THAT EFFECT. IS THAT FAIR?"
8 PATRICIA DUPLISSIE: "ALL RIGHT. YOU KNOW, BECAUSE ITS
9 BEEN AWHILE, I'M NOT SURE IF THAT CONVERSATION TOOK
10 PLACE BEFORE THEY WENT OUT TO PLAY OR AFTER."
11 THE COURT: "YOU WEREN'T ASKED THAT, MA'AM.
12 LISTEN TO THE QUESTION."
13 MR. PARRIS: "OKAY."
14 PATRICIA DUPLISSIE: "REPEAT THE QUESTION PLEASE."
15 MR. PARRIS: "WELL, IT WAS JUST THAT THEY HAD A
16 CONVERSATION ABOUT THE STORE, BUT AGAIN, YOU HAD
17 JUST TESTIFIED YOU'RE NOT SURE IF IT WAS BEFORE OR
18 AFTER THEY PLAYED CATCH."
19 PATRICIA DUPLISSIE: "RIGHT."
20 MR. PARRIS: "OKAY. FOR HOWEVER LONG THEY WERE OUT
21 THERE. NOW AT SOME POINT IN TIME, THE TWO OF THEM
22 RETURNED INSIDE THE HOME."
23 PATRICIA DUPLISSIE: "YES."
24 MR. PARRIS: "FROM PLAYING CATCH?"
25 PATRICIA DUPLISSIE: "YES."
26 MR. PARRIS: "OKAY. AND I BELIEVE IT WAS YOUR TESTIMONY
27 THAT EVERYTHING AT THAT POINT IN TIME WAS STILL MORE

1 LESS FINE BETWEEN THE TWO OF THEM?

2 PATRICIA DUPLISSIE: "YES".

3 MR. PARRIS: "OKAY. NOW, AFTER THEY HAD RETURNED

4 INSIDE, YOU HAD TESTIFIED THAT THERE WAS FURTHER

5 DISCUSSIONS ABOUT GOING TO THE STORE AND WHETHER YOUR

6 GRANDSON WANTED TO GO OR NOT?

7 PATRICIA DUPLISSIE: "YES".

8 MR. PARRIS: ~~OKAY~~ "OKAY CORRECT ME IF I'M WRONG,

9 I BELIEVE YOU HAD AT FIRST -- YESTERDAY, YOU HAD

10 TESTIFIED THAT AT FIRST YOU SAID YOU DID NOT REALLY

11 WANT YOUR GRANDSON GOING TO THE STORE WITH YOUR SON?"

12 PATRICIA DUPLISSIE: "RIGHT. I TOLD HIM HE DIDN'T HAVE TO GO.

13 MR. PARRIS: "AND THEN AT SOME POINT IN TIME, YOU CHANGED

14 YOUR TUNE?"

15 PATRICIA DUPLISSIE: "YES, I DID."

16 MR. PARRIS: "OKAY. NOW, YOU HAD SAID THAT YOUR SON

17 WAS MORE OR LESS SAYING WORDS TO THE EFFECT, 'NO,

18 YOU'RE GONNA GO TO THE STORE WITH ME,' IS THAT A FAIR

19 ASSESSMENT?"

20 PATRICIA DUPLISSIE: "INITIALLY, HE DIDN'T SAY, 'YOU'RE

21 GOING TO GO'. HE SAID HE WANTED HIM TO GO."

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1 IN THE DIRECT EXAMINATION OF NORMAN DUPLISSIE,
2 A STATE WITNESS, AND LEGAL GUARDIAN OF MICHAEL
3 JOSHUA SCHOFIELD, THERE WAS NO TESTIMONY ABOUT
4 WHERE THE DEFENDANT WANTED TO TAKE MICHAEL
5 JOSHUA. NORMAN DID TESTIFY THAT HE DID NOT GIVE
6 THE DEFENDANT PERMISSION TO TAKE MICHAEL, BUT
7 HE DID NOT TESTIFY THAT HE DENIED THE DEFENDANT
8 PERMISSION TO TAKE MICHAEL. NORMAN DID TESTIFY
9 THAT MICHAEL JOSHUA HAD EXPLAINED TO NORMAN, ON
10 THE DAY BEFORE THE INCIDENT ON JANUARY 6TH 2013, THAT
11 MICHAEL JOSHUA DID NOT WANT TO GO TO THE DEFENDANT'S
12 HOUSE OR RESIDENCE, AND WATCH FOOTBALL, AS THE
13 TWO MICHAEL'S USUALLY DID ON SUNDAYS. SINCE
14 THE TWO MICHAELS NORMALLY SPEND SUNDAYS
15 TOGETHER IT WOULD BE SAFE TO ASSUME OR PRESUME
16 THAT NORMAN WOULD NOT HAVE PREVENTED MICHAEL
17 JOSHUA FROM GOING TO HIS FATHER'S RESIDENCE THAT DAY.
18 SINCE NORMAN DID NOT DENY THE DEFENDANT
19 PERMISSION IT SHOULD BE CONSIDERED IMPLIED
20 CONSENT. EVEN AFTER NORMAN WAS UNDER THE
21 IMPRESSION THAT THE DEFENDANT MAY HAVE BEEN
22 IMPAIRED, NORMAN STILL DID NOT DENY THE DEFENDANT
23 PERMISSION, BUT INSTEAD RELAYED HIS OPINION OF THE
24 DEFENDANT'S CONDITION TO PATRICIA, FOR HER TO CONSIDER
25 THIS INFORMATION.

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1 IN THE STATES FIRST OF THEIR TWO CLOSING ARGUMENTS,
2 ON THE COUNT OF FIRST DEGREE KIDNAPPING. THE D.A.
3 MS. ANTHONY ATTEMPTS TO PROVE THE TWO MAIN ELEMENTS OF
4 FIRST DEGREE KIDNAPPING, WHICH IN THIS CASE ACCORDING TO THE
5 STATE AND THE COURT IS TO TAKE WITH THE INTENT TO
6 KEEP. MS ANTHONY GOES ABOUT THIS BY FIRST ADDRESSING
7 THE ELEMENT TO TAKE. IN COURT TRANSCRIPTS, FRIDAY
8 (JANUARY 31, 2014 PAGES 200-201, STARTING ON LINE 20 OF PG. 200,
9 MS. ANTHONY "AND FINALLY, OUR LAST COUNT IS FIRST DEGREE
10 KIDNAPPING. YOU HAVE JURY INSTRUCTION NUMBER 10. FIRST
11 DEGREE KIDNAPPING IS, EVERY PERSON WHO LEADS, TAKES,
12 ENTICES, OR CARRIES AWAY OR DETAINS ANY MINOR WITH THE
13 INTENT TO KEEP, IMPRISON OR CONFINES THE MINOR FROM HIS
14 PARENTS OR GUARDIANS OR ANY OTHER PERSON HAVING LAWFUL
15 CUSTODY OF THE MINOR IS GUILTY OF KIDNAPPING IN THE
16 FIRST DEGREE. AND A KIDNAPPING DOES NOT REQUIRE FORCE.

17 THIS IS A VERY IMPORTANT INSTRUCTION.

18 THIS JURY INSTRUCTION GOES THROUGH ALL THE ELEMENTS,
19 AND I'M GOING TO GO THROUGH THEM WITH YOU, ABOUT
20 KIDNAPPING. FROM THE TIME THAT MICHAEL (JOSHUA) WAS IN
21 THE FOYER OF THAT HOME, AND HE WAS CARRIED AWAY, HE WAS LEAD
22 AWAY, THE DEFENDANT HAD POSSESSION OF MICHAEL (JOSHUA), AND HE
23 WAS TAKING HIM OUT OF THAT HOME AND DRAGGING HIM ALL THE WAY
24 TO THE VAN, THAT IS KIDNAPPING. AND THAT IS WHERE KIDNAPPING STARTS,
25 AND IT WAS ALL THE WAY THROUGH TO WHERE THE DEFENDANT PUSHED HIS OWN
26 SON INTO THAT CAR AND WAS TRYING TO CLOSE THE DOOR. THAT IS WHERE WE HAVE
27 CHARGED KIDNAPPING, AND THAT'S WHERE THE KIDNAPPING IS IN THIS CASE." AA 1554

1 THAT IS THE STATE ADDRESSING THE FIRST ELEMENT OF FIRST DEGREE
2 KIDNAPPING, WHICH IS TO TAKE OR CARRY AWAY. NEXT THE D.A. MS.
3 ANTHONY ADDRESSES THE SECOND ELEMENT OF FIRST DEGREE
4 KIDNAPPING IN THIS CASE WHICH IS ~~TO~~ ~~WITH~~ WITH THE INTENT TO
5 KEEP. YET BECAUSE THERE IS NO EVIDENCE PRODUCED IN TRIAL
6 THAT THE DEFENDANT'S INTENT WAS TO KEEP MICHAEL JOSHUA,
7 THE D.A. MUST DISMANTLE JURY INSTRUCTION NUMBER 10 AND
8 NRS 200.301(1) BY REPLACING INTENT TO KEEP WITH INTENT
9 TO TAKE. IN COURT TRANSCRIPTS, FRIDAY JANUARY 31, 2014,
10 PAGE 201 STARTING LINE 15, ENDING PAGE 202, LINE 20.
11 MS ANTHONY: "SO HOW DO YOU KNOW WHAT HE INTENDED TO?
12 WAIT, LET ME GO BACK FOR A MOMENT, WHERE HE, WITH THE
13 INTENT TO KEEP, IMPRISON, OR CONFINED THE MINOR FROM HIS
14 PARENTS OR GUARDIANS. RIGHT NORMAN AND PATRICIA. THAT'S
15 WHO HE WAS TAKING AWAY OR INTENDING TO KEEP AWAY,
16 FROM HIS PARENTS OR GUARDIANS. SO IN THIS CASE, IT'S NORMAN
17 AND PATRICIA. BECAUSE REMEMBER, THE DEFENDANT IS
18 MICHAEL JOSHUA'S BIOLOGICAL FATHER, BUT HE DOES NOT HAVE
19 CUSTODY OF THAT CHILD. SO IT'S NORMAN AND PATRICIA THAT
20 THE DEFENDANT IS TAKING MICHAEL JOSHUA FROM.
21 SO HOW DO YOU KNOW THAT HE WAS INTENDING TO
22 TAKE THAT CHILD FROM NORMAN AND PATRICIA? WELL,
23 HE SAID IT HIMSELF, I'M FUCKING TAKING HIM. YOU WILL
24 GO WITH ME BECAUSE I'M YOUR FATHER. AND HE SAYS --
25 WELL, AND ACTS ARE THAT HE'S TAKING MICHAEL JOSHUA
26 FROM THE HOME AND THAT'S WHERE NORMAN AND PATRICIA
27 ARE. HE'S PHYSICALLY TAKING HIM FROM THE SAFETY

1 OF THAT HOME AND HE'S PLOTTING THEM (INTO A VEHICLE.
2 WHY? SO HE CAN TAKE HIM AWAY, AND THERE'S NO
3 SAFETY, NO NORMAN, NO PATRICIA.

4 AND THEY'RE ALL TRYING TO STOP HIM. THINK ABOUT
5 HOW MANY PEOPLE WERE TRYING TO STOP THE DEFENDANT
6 FROM TAKING LITTLE MICHAEL. LITTLE MICHAEL TRIED TO
7 STOP IT. NORMAN TRIED TO STOP IT, PATRICIA CALLED 911,
8 SHE TRIED TO STOP IT. LIZA FROM NEXT DOOR CAME, AND
9 SO DID WON. FIVE DIFFERENT PEOPLE ARE TRYING TO STOP
10 THE DEFENDANT FROM TAKING MICHAEL & JOSHUA.

11 INSTRUCTION NUMBER ELEVEN, IT'S THE FACT, NOT THE
12 DISTANCE, OF FORCIBLE MOVEMENT OF THE VICTIM THAT
13 CONSTITUTES KIDNAPPING. IT'S THE FORCE. THERE'S NOT
14 A PARTICULAR AMOUNT OF DISTANCE THAT HAD -- THAT
15 LITTLE MICHAEL HAD TO HAVE BEEN TAKEN. IT'S THE
16 ACTUAL FORCE THAT WAS USED TO TAKE HIM."

17 THE DISTRICT ATTORNEY MS. ANTHONY IN ADDRESSING
18 INTENT TO KEEP, ASKS THE JURY 'SO HOW DO YOU KNOW
19 THAT HE WAS INTENDING TO TAKE?' THEN SAYS 'WELL HE
20 SAID IT HIMSELF I'M F*CKING TAKING HIM. BESIDES USING
21 THE WORD KEEP IN READING THE JURY INSTRUCTION, THE
22 D.A. MS ANTHONY DOES NOT USE THE WORD KEEP IN
23 DESCRIBING THE CRIME THAT THE DEFENDANT COMMITTED
24 OR IS ACCUSED OF COMMITTING. EXCEPT ONCE TO TRANSFER
25 THE TERM TO TAKE.

26 ///

27 ///

1 IN THE STATE'S SECOND OF TWO CLOSING ARGUMENTS,
2 ON THE COUNT OF FIRST DEGREE KIDNAPPING. IN
3 COURT TRANSCRIPTS FRIDAY JANUARY 31, 2014,
4 PAGE 234 LINE 2-7. MS LAVELL:

5 "KIDNAPPING, AS ITS CHARGED IN THIS INFORMATION
6 AND SPECIFIC TO THIS COUNT, IS TAKING THIS KID AWAY
7 WITHOUT THE PERMISSION OF HIS LEGAL GUARDIAN.
8 THERE'S NOTHING IN THAT STATUE, AND I'M GOING TO
9 ASK YOU READ IT WHETHER YOU GO BACK, THAT SAYS
10 HE HAS TO PERMANETLY KEEP THE CHILD, HAVE THE
11 INTENTION OF PERMANETLY KEEPING THE CHILD."

12 THIS IS COMPLETELY CHANGING THE DEFINITION OF
13 FIRST DEGREE KIDNAPPING. THEN IN THE SAME STATEMENT
14 ABOUT FIRST DEGREE KIDNAPPING IN THE SECOND OF TWO
15 CLOSING ARGUMENTS, IN COURT TRANSCRIPTS FRIDAY
16 JANUARY 31, 2014. PAGE 235, LINE 13-20. MS. LAVELL:

17 "YOU'LL HAVE A JURY INSTRUCTION THAT SAYS
18 DISTANCE IS IRRELEVANT. AND NOTHING IN THE STATUE
19 SAYS THAT HE HAD TO PERMANETLY KEEP HIM. IF HE
20 HAD TAKEN HIM TO THE STORE AND BROUGHT HIM BACK,
21 GUESS WHAT? HE STILL KIDNAPPED THAT KID. I ASK
22 YOU TO FOLLOW THE LAW AS IT PERTAINS TO THE KIDNAPPING."

23 FROM THE OPENING STATEMENT TO THE CLOSING STATEMENT
24 AND ANYWHERE MENTIONED IN BETWEEN, THE DEFENDANT'S
25 INTENT HAS BEEN EXPRESSED AS TO TAKE HIM TO THE STORE
26 AND RETURN. THE ELEMENT OF INTENT TO KEEP AFTER
27 TAKING HAS NOT BEEN PROVED BEYOND A REASONABLE DOUBT

1 THE INFORMATION IN THIS DEFENDANT'S REPLY TO THE STATE'S
2 OPPOSITION TO THE DEFENDANT'S MOTION TO VACATE, SHOULD BE
3 CONSIDERED TO BE ADDED TO THE DEFENDANT'S MOTION TO VACATE
4 VERDICT, AS WELL AS TO DENY THE STATE'S OPPOSITION TO THE
5 DEFENDANT'S MOTION TO VACATE VERDICT. THE STATE DID NOT
6 PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF
7 FIRST DEGREE KIDNAPPING. THE VERDICT OF GUILTY OF FIRST
8 DEGREE KIDNAPPING WAS CONTRARY TO LAW, THIS MEANS THAT
9 THE EVIDENCE PRESENTED WAS INSUFFICIENT AS A MATTER OF
10 LAW, TO SUSTAIN A VERDICT OF GUILTY. THE TRIAL COURT
11 MAY DECIDE WHEN THERE IS UNCONTROVERTED EVIDENCE -
12 THE DEFENDANT'S INTENT TO TAKE MICHAEL JOSHUA TO THE
13 STORE AND RETURN - MAY DECIDE WHETHER SUCH EVIDENCE,
14 AS A MATTER OF LAW, DOES OR DOES NOT SHOW THE COMMISSION
15 OF THE CRIME OF FIRST DEGREE KIDNAPPING. IN THIS
16 INSTANCE, THE PROCESS OF WEIGHING EVIDENCE AND
17 RESOLVING QUESTIONS OF FACT IS NOT INVOLVED. THAT THE
18 DEFENDANT'S INTENT TO TAKE HIS SON TO THE STORE AND
19 RETURN HAS NOT BEEN DISPUTED. BEING THAT FIRST DEGREE
20 KIDNAPPING IS TO TAKE WITH THE INTENT TO KEEP. IT IS NOT
21 ENOUGH IN PROVING FIRST DEGREE KIDNAPPING TO PROVE THAT
22 THE DEFENDANT DID TAKE OR CARRY AWAY HIS SON. IN
23 PROVING FIRST DEGREE KIDNAPPING IT MUST BE PROVED THAT
24 THE DEFENDANT DID TAKE OR CARRY AWAY HIS SON
25 COMBINED WITH THE INTENT TO KEEP HIS SON. THIS NOT
26 BEING PROVED THE HONORABLE COURT SHOULD VACATE THE
27 VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING AA 1558

1 IT SHOULD BE MENTIONED THAT ALL CASE LAW THAT WAS
2 USED IN THE MOTION TO VACATE VERDICT ALSO APPLYS IN THIS
3 DEFENDANT'S REPLY TO THE STATE'S OPPOSITION TO THE DEFENDANT'S
4 MOTION TO VACATE, BEING THAT THE DEFENDANT IS INCARCERATED
5 AT C.C.D.C. AND ANY ADDITIONAL CASE LAW THAT THE DEFENDANT
6 REQUESTED FOR THIS REPLY WOULD NOT BE RECIEVED IN TIME
7 FOR THE REPLY TO BE FILED IN A TIMELY MANNER. HOPEFULLY
8 IT WILL BE RECIEVED BY THE DEFENDANT PRIOR TO THIS
9 MOTION BEING HEARD BEFORE THE HONORABLE JUDGE.
10
11

12 DATED THIS 30 TH DAY OF JUNE, 2014.

13 I MICHAEL J SCHOFIELD, DO SOLEMNLY SWEAR,
14 UNDER THE PENALTY OF PERJURY, THAT THE ABOVE
15 MOTION IS ACCURATE, CORRECT, AND TRUE TO THE
16 BEST OF MY KNOWLEDGE.
17

18 RESPECTFULLY SUBMITTED

19 Michael J Schofield

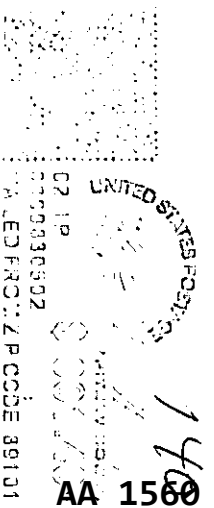
20 MICHAEL J. SCHOFIELD

21 DEFENDANT IN PROPER PERSON
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MICHAEL SCHEFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101

CLARK County Clerk of Court
Regional Justice Center
200 Lewis Ave, 3rd Floor
Las Vegas Nevada 89101

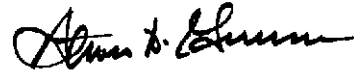
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SENT FROM CCDC

JOC



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO C287009-1

DEPT. NO. VI

MICHAEL JOHN SCHOFIELD
#1679195

Defendant.

JUDGMENT OF CONVICTION
(JURY TRIAL)

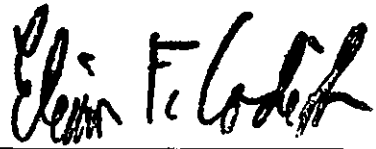
The Defendant previously entered a plea of not guilty to the crimes of
COUNT 1 – BURGLARY (Category B Felony) in violation of NRS 205.060; COUNT 2 –
BATTERY CONSTITUTING DOMESTIC VIOLENCE – STRANGULATION (Category C
Felony) in violation of NRS 200.481, 200.485, 33.018; COUNT 3 – CHILD ABUSE,
NEGLECT OR ENDANGERMENT (Category B Felony) in violation of NRS 200.508(1);
and COUNT 4 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of
NRS 200.310; 200.320; and the matter having been tried before a jury and the
Defendant having been found guilty of the crimes of COUNT 3 – CHILD ABUSE,

//

1 NEGLECT OR ENDANGERMENT (Category B Felony) in violation of NRS 200.508(1);
2 and COUNT 4 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of
3 NRS 200.310, 200.320; thereafter, on the 21ST day of July, 2014, the Defendant,
4 representing himself, was present in court for sentencing and good cause appearing,
5

6 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
7 addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee
8 including testing to determine genetic markers, the Defendant is SENTENCED to the
9 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 3 - to a
10 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of THIRTEEN
11 (13) MONTHS; and AS TO COUNT 4 - to a MAXIMUM of FIFTEEN (15) YEARS with
12 the possibility of parole after a MINIMUM of FIVE (5) YEARS have been served with
13 FIVE HUNDRED SIXTY-ONE (561) DAYS credit for time served. COUNTS 1 & 2 –
14 NOT GUILTY.
15
16

17
18 DATED this 25 day of July, 2014.

19
20
21 
22 ELISSA F. CADISH *re*
23 DISTRICT JUDGE
24
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26
27
28


CLERK OF THE COURT

1 **ANOT**
Karen K. Wong
2 Nevada Bar No. 13284
Wong Appellate Law
3 9484 S. Eastern Ave., #408
Las Vegas, NV 89012
4 (702) 830-6080
karen.wong@wongappellatelaw.com
5 Attorney for Defendant

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **STATE OF NEVADA**

10 **Plaintiff,**

11 **vs.**

12 **MICHAEL J. SCHOFIELD,**

13 **Defendant.**

Case No. C-13-287009-1

Department V

15 **AMENDED NOTICE OF APPEAL**

16 Notice is hereby given that Michael J. Schofield, Defendant above named, hereby appeals
17 to the Supreme Court of Nevada from the judgment of conviction entered in this action on the
18 28th day of July, 2014, and the denial of Defendant's motion for new trial on July 14, 2014.
19 This Notice amends the prior Notice of Appeal filed on March 6, 2014.

20 Dated this 26th day of August, 2014.

21 /s/ Karen K. Wong
22 Karen K. Wong (NV Bar No. 13284)
9484 S. Eastern Ave., #408
23 Las Vegas, NV 89012
(702) 830-6080
24 Attorney for Defendant

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Michael J. Schofield (#76068)
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

/s/ Karen K. Wong
Karen K. Wong