a criminal prosecution or could lead to other evidence that could be used in that manner.

So how many children do you have absolutely does not -- Your Honor, and I don't -- I mean, I don't even know why we're arguing this except that I know it's going to come up again. I don't care. I mean, if she doesn't want to answer how many kids she has because she thinks that might implicate her criminally, okay --

MR. GOWDEY: Yeah, well, we're -- we're --

MS. HANRAHAN: -- I'll ask for the negative inference.

MR. GOWDEY: And according to Malloy v. Hogan, a United States Supreme Court case, the privilege afforded not only extends to incriminating answers but to questions that would afford a link in the chain of evidence needed to prosecute. So what Ms. Hanrahan says is not true. It is not only answers that in themselves are incriminating, but answers that can afford a link into a chain whereby somebody could be prosecuted.

MS. HANRAHAN: Right. And when we were here before, Your Honor, Judge Becker absolutely denied that that -- that was an -- and again, Judge Becker from this Nevada Supreme Court found answering what your name is or how many kids you have has nothing to do with criminal --

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any sort of criminal implication --

MR. GOWDEY: Perhaps --

MS. HANRAHAN: -- and therefore --

THE COURT: What would the link be between her telling us how many kids she has --

MR. GOWDEY: Well --

THE COURT: -- and her criminal implication?

MR. GOWDEY: -- a question that might be innocuous by itself, but the link is and one of your children is Samantha Lawrence; is she not. And then from there Samantha Lawrence has been harmed while in your care. You have --

MS. HANRAHAN: And that would be a question I would think would appropriate for taking the Fifth given the --

MR. GOWDEY: But according to the --

MS. HONODEL: -- charges that are pending.

MR. GOWDEY: So you -- so you agree there is a causal link there.

MS. HANRAHAN: No. No.

MS. DORMAN: I think what we need to focus on, Your Honor, is what Mr. Gowdey said before you left the bench, was there are plenty of cases that hold if she answers one thing she's waiving her right against self-

incrimination in her criminal case. He said in his own words there were plenty of cases that held that. You then gave him an opportunity to present those plenty of cases. He then did a search to find a case that didn't say that, that said something else. And what Malloy v. Hogan says is it quotes another Supreme Court case which is -- which is Hoffman v. United States and it says that there might -- the question has to be dangerous because an injurious disclosure would result.

So the first thing that he said to you was that if she waives it on this, she's going to waive it altogether in the criminal case. We don't have any case law that says that, even though he said there are plenty of cases that say this.

MR. GOWDEY: Actually, that's --

MS. DORMAN: You get --

MR. GOWDEY: -- not the Google --

MS. DORMAN: Please don't --

MR. GOWDEY: -- search --

MS. DORMAN: -- interrupt me.

MR. GOWDEY: -- that I've just --

THE COURT: Let's --

MS. DORMAN: Please don't interrupt me.

THE COURT: One part -- one -- one attorney at a

time.

MS. DORMAN: So even though he said that there were plenty of cases that held that before you left, there aren't any cases that hold that. What he found was a case that if there's a causal link then she doesn't have to answer. There is case law that says that but there's no causal link here.

THE COURT: So, yeah, that's my question, is the link. So what would be the link of her asking. And I agree, a lot of the questions that they're going to ask are going to be -- I'm -- I'm understanding that you're going to advise your client to invoke her Fifth Amendment right, and I get that, but getting back to the only question that's presented so far is how many children you have, what would be the link that could in the future cause her to have -- that answering that question will cause problems in her criminal case?

MR. GOWDEY: I believe that --

THE COURT: I don't see any.

MR. GOWDEY: Okay. I believe that I've just answered to what -- how many children do you have. Next question is one of your children, Samantha --

THE COURT: So let me do this -- but that question hasn't been asked yet. So I'm going to deny the

objection. I don't see a link in that -- in that question. And just -- just I think we all need to say if you have paper there, you can't have it there. So I don't know who told you can keep paper there. You can't --

MR. GOWDEY: That is my -- that's my handwritten note --

THE COURT: Okay. But she can't have anything there.

MR. GOWDEY: -- with respect to --

THE COURT: She can't read off anything.

MR. GOWDEY: -- assertion of the privilege.

THE COURT: She's either going to have to memorize it or remember how it goes. You can't have any -- any paper up in the -- in the witness box.

THE COURT: Okay. So with that being said, you have to answer that question.

BY MS. HANRAHAN:

Q How many children do you have, ma'am?

A Five.

Q Who are your children?

A I plead the Fifth.

THE COURT: Okay. I'm going to -- okay, do you want --

MS. HANRAHAN: Your Honor, and I'm going to make

the same argument that naming her children is not going to in any way implicate her in the criminal matter. The fact --

MR. GOWDEY: It is --

MS. HANRAHAN: -- that she's the mother of the children is established by other evidence very clearly. She has appeared as the mother to the children in this case on a regular basis and the criminal charges are not that she's the mother of the children. That's not what she's charged with criminally and it doesn't implicate her criminally.

MR. GOWDEY: Whether it is capable of being proven extrinsically is not the issue with respect to whether my client -- that is a question that affords -- afford a link in the chain of evidence needed to prosecute. She has no obligation to answer under that circumstance. She has the right to assert the privilege.

THE COURT: Okay. So I believe that the rat -- rationale for invoking a Fifth Amendment right is to not have anything under oath on record that would affect the issue that she's being tried for in the criminal case. Hence in this case, she's being tried for abuse. Asking how many children you have and -- the question was --

MS. HANRAHAN: Who -- who are your children.

THE COURT: Who are your children, there's no surprise to this Court the names of four of them. And I'm assuming there's no surprise to the criminal court the names of at least four, if not five. So I don't know how that -- there's a link between answering that question and prejudice to this -- your client regarding her criminal case.

MR. GOWDEY: The issue is not whether -- the issue is whether she has any obligation to incriminate herself by answering questions which either directly would tend to incriminate her or which would cause a link in the chain of incrimination.

THE COURT: So why don't you specifically tell me again, since you popped up with that -- that case law just now, by answering the question, I don't see her incriminating herself by answering the names of the children that she has. As far as the causal connection, why don't you explain to me what that holding states exactly again.

MR. GOWDEY: That holding states that the privilege afforded not only extends to answers which directly incriminate, but to questions that would afford a link in the chain of evidence needed to prosecute. It is not only the ultimate question that is at -- that is at --

subject to incrimination. It is not subject to the privilege against self-incrimination. It is not only the question did you murder so-and-so. It is the questions that lead up to the ultimate question which are also covered by this Supreme Court case.

THE COURT: And I agree that there are questions that could be asked that lead up to incriminating evidence. I can't off the top of my head give you a scenario, but I can tell you that I do not believe that naming their children, who are already parties to this action as far as they're the children involved in this case, and they are -- stem from the litigation in the criminal case because this is -- she's not being tried for something not having to do with their children. But that by giving the names of those five children, there is no causal link that would allow anything to damage her case in the criminal courts by answering that question.

MR. GOWDEY: Okay. I am going to object to the Court's ruling, obviously to --

THE COURT: Okay.

MR. GOWDEY: -- preserve it for -- preserve the record, if the Court is ordering her to answer that question.

THE COURT: Yeah, just for the record, I do not

believe naming the children are a link in the chain of evidence. That's specific for my findings to the Supreme Court, then that's -- that's my -- my finding.

All right. So with that being said, I'll have you answer that so you can move on with this case. And by the way, just -- it's obviously common sense, the way we're going, he will look for more days and I will have to get a senior judge for my other cases because I don't want this to continue out. So when we finish -- or maybe tomorrow, that way tonight you can look -- we're going to do days as consecutively as possible, because it's not going to -- if -- if we're going at this rate, it's not going to be -- won't finish on time. Then just for everyone, before we leave, look at your calendar between now and tomorrow night -- or tomorrow morning.

So let's continue.

BY MS. HANRAHAN:

Q Who are your children, ma'am, all five of them.

A David, Samantha, Nikki, Heidi, and Wyatt.

Q Is David your biological son?

A No, but I've raised him most of his life. He's my son.

Q And what are their ages?

A 24, 18, 12, and 7.

Q And Donald Brown is the father to Heidi, Nikki and Wyatt?

A Yes.

Q Who is the father to Samantha?

A I don't know.

Q When was the last time you had contact with him?

A I don't know.

Q Where does he live?

A I don't know.

Q Does he know about Samantha?

A I plead the Fifth.

MS. HANRAHAN: And, Your Honor, I'm going to -- the same argument. Whether Samantha's father knows about her existence has absolutely no relationship to the criminal charges that Ms. Lawrence is facing.

MR. GOWDEY: Again, I'm going to object and -- and instruct my client to plead the Fifth.

THE COURT: Okay. I'm going to overrule your objection. I have a father that hasn't been part of this case or is not charged in that.

MR. GOWDEY: She's already answered that she doesn't know who the father is, Your Honor.

THE COURT: That wasn't the question that she a -- the last question -- that wasn't the last question she

asked. It was the last time she spoke to him.

MS. HANRAHAN: I asked if he knew about Samantha.

THE COURT: If he knew about Samantha.

MR. GOWDEY: All right. I'm going to -- I'm going to object asked and answered. If she doesn't know who the father is, then how can he possibly know about. So I'm going to --

MS. HANRAHAN: She didn't answer --

MR. GOWDEY: -- it as --

MS. HANRAHAN: -- the question.

MR. GOWDEY: -- asked and answered. By virtue -- by virtue of her having -- her having stated that she doesn't know who the father is, all these other questions inquiring as to who the father is or what he knows have already been asked and answered.

MS. HANRAHAN: Well, then she can answer it, I guess. It should be easy. Why did she take the Fifth? I mean, she answered the all the rest of them.

MR. GOWDEY: Oh, you see now -- now here it is. Oh, you answered all the rest of them, so why are you taking the Fifth. Again, what -- what sort of --

MS. HANRAHAN: Well, that's what I --

MR. GOWDEY: -- comment is that --

MS. HANRAHAN: -- that's the point.

MR. GOWDEY: -- from the DA in this case? I'm arguing about whether it's appropriate for her to take the Fifth and now she's saying, oh, well, you've answered other questions, so why would you take the Fifth.

MS. HANRAHAN: She answered questions related to this. All she has to do is answer this one. It's not a big deal either way. I mean, I -- I'll withdraw it for that matter.

THE COURT: Okay. Go ahead.

MS. HANRAHAN: All right. Let's move on.

BY MS. HANRAHAN:

Q Now, ma'am, do you recall having regular conversations with Donald Brown at some point when he was incarcerated at CCDC during the pendency of this case?

A I plead the Fifth.

MS. HANRAHAN: Your Honor, again, conversations, jail conversations, whether she had them or not, have nothing to do with the charges that she's facing in criminal court.

MR. GOWDEY: There were -- there was an original allegation of coercion, which is part of -- at least circumstantially part of the case that is going to move forward in criminal court. This relates -- this could

relate directly to that. I'm going to instruct my client not to answer.

THE COURT: I'll sustain that objection.

MS. HANRAHAN: And, Your Honor, I'll request the negative inference.

THE COURT: Okay. So based on the negative inference. You can request a negative inference and I'm going to reserve my negative inference on every single question that she's asking until the end of this -- my ruling until the end of this -- I guess this last -- your last witness based on the fact that there has to be some type of corroborated evidence as to what she's testing (sic) -- what's neg -- neg -- which -- what I would be negatively inferring based on her response of she's pleading the Fifth.

MS. HANRAHAN: That's fine, Your Honor. I will go ahead and request it with every question as I believe --

THE COURT: And I will --

MS. HANRAHAN: -- I have to do --

THE COURT: -- defer it to the --

MS. HANRAHAN: -- just as she has to assert the privilege, so.

THE COURT: You can. You can make a record of

it and I will -- I'll defer it to the end and determine it for its negative inference that I -- that will be drawn from that.

Do you want to say something, Ms. Calvert?

MS. CALVERT: Yes. Thank you, Your Honor. I would just, you know, posit that there's a couple different aspects to that under the tests that we have from the United States Supreme Court and from the -- from the US Supreme Court and the Nevada Supreme Court, sorry. And there are -- there is a -- a pretty well-outlined three-factor test, and one of those is -- is the, you know, facts sought could be elicited from another source.

THE COURT: Independent evidence, right.

MS. CALVERT: Right. And if the prejudice to essentially the other side not being able to get the information is weighed and balanced against, you know, what is a real and significant threat of harm --

THE COURT: Uh-huh.

MS. CALVERT: -- to the person invoking the Fifth --

THE COURT: Uh-huh.

MS. CALVERT: -- I -- I would just say it's not -- not just a -- a flat-out we get the negative inference there is for each question, looking at several different

factors.

MS. HANRAHAN: Which is why she's waiting to take it in, till all the evidence is presented.

THE COURT: Okay. So, right. And like I stated, that an adverse inference in a civil case rather than a criminal case, that privilege against self-incrimination may be drawn only when independent evidence exists as to what the party refuses to answer. And so in this case, I will, like I stated, defer until I can make a decision whether to draw that negative inference based on the test that Ms. Calvert had stated.

MS. HANRAHAN: That's fine, Your Honor.

THE COURT: Okay.

MS. HANRAHAN: I understand that.

THE COURT: All right.

MS. HANRAHAN: So I just wanted you to know I'll be requesting because I have to ask with each question in -- in my understanding.

THE COURT: Okay.

MS. HANRAHAN: So --

THE COURT: Okay. Fair enough.

BY MS. HANRAHAN:

Q And so do you recall, ma'am, a conversation with Donald Brown on May 30th, 2014 in which you told him that

even Samantha's own father, quote, don't want nothing to do with her?

A I plead the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

THE COURT: Okay. And that will be deferred.

MS. CALVERT: Same objection.

THE COURT: Okay. Thank you.

BY MS. HANRAHAN:

Q And if you did --

MS. HANRAHAN: Wait, what objection?

MS. CALVERT: Same objection as I did before, that you have to take into account the three-part factoring test on whether or not to enter the inference.

MS. HANRAHAN: I -- I think that's just information. I'm not even --

MS. CALVERT: I think I have to object --

MS. HANRAHAN: I don't think it's a --

MS. CALVERT: -- to your --

MS. DORMAN: An objection.

MS. CALVERT: No, but you are asking for the inference on each question, then I think I need to object to each request you make. I don't want to have a long, drawn-out speech, I'm just saying the same objection.

THE COURT: She just has a --

MS. HANRAHAN: It's not a objection --

THE COURT: -- standing --

MS. HANRAHAN: -- it's a statement of -- and -- and I absolutely stipulate, a negative inference may be taken only if there is independent evidence of the fact upon which the Defendant is silent.

MR. GOWDEY: But that is not the only test involved in taking a negative inference.

MS. HANRAHAN: I'm sure the Judge is well-aware of them and that is why she's waiting until the end to make that inference or not. I am simply asking for it. It's not being granted or not granted. You can't object to me asking for it every time. I can ask for it, just as she can assert the privilege. There's no objection to me asking for it.

MR. GOWDEY: There is if she makes an objection --

MS. HANRAHAN: If she takes --

MR. GOWDEY: -- to you asking for it.

MS. HANRAHAN: If she takes --

THE COURT: Well, it has to be --

MS. HANRAHAN: -- the Fifth --

THE COURT: -- a legal objection.

MS. HANRAHAN: -- I have --

THE COURT: So what's the legal --

MS. HANRAHAN: Yes.

THE COURT: -- objection?

MS. HANRAHAN: If she takes the Fifth, I have the absolute right in a civil matter to ask the Court to make a negative inference.

MS. CALVERT: And I'm okay with at the end of it making, you know, the kind of objection on why I don't think each and every question should be afforded the negative inference. I'd rather not take up the Court's time, but to the extent that I need to preserve my ability to say, hey, this question here doesn't really meet the test because of X,Y,Z, there's a less-burdensome source to elicit this from, I don't want to bog it down. I'm -- I'm trying to make it as clean as possible. Whatever that is, I'm happy to stipulate to, but if we're going to be having, hey, I want to ask for a negative inference on each one, and then at the end it's like, well, you didn't oppose that and state why, well, it's because we're waiting till the end but I want to preserve --

THE COURT: Okay.

MS. CALVERT: -- that right. That's all.

THE COURT: Okay. So you have the right to ask

the questions, they have the right to object. And we're making --

MS. HANRAHAN: Object to me exercising my right to ask the question? Okay.

MS. CALVERT: Not to ask the question, to ask for the inference.

MS. HANRAHAN: That's the question. Okay.

BY MS. HANRAHAN:

Q So, if you did make such a statement that her own -- Samantha's own father, quote, don't want nothing to do with her, if you did make that statement, wouldn't you agree that it implies you know who the father is and knew that he had a daughter?

MR. DRASKOVICH: Objection.

MS. CALVERT: Objection.

MR. DRASKOVICH: Argumentative.

MS. CALVERT: Leading.

MR. GOWDEY: I instruct you to plead the Fifth on that.

THE WITNESS: I take --

MS. HANRAHAN: Okay.

THE WITNESS: -- the Fifth.

MS. HANRAHAN: So --

THE COURT: Let's go over -- the first objection

was -- someone said leading.

MS. CALVERT: I was leading, he was argumentative. His was first actually.

MS. HANRAHAN: All right. Argumentative. I'm asking for her opinion on that statement.

THE COURT: So I -- okay, so I don't think it's argumentative, it's more of a clarification question because she -- you weren't able to get the answer that you wanted. And so you're asking it to try to most likely present to the Court that there's an inconsistent statement or something. As far as leading, it's leading, so --

MS. HANRAHAN: Your Honor, yeah --

THE COURT: -- I'll sustain that.

MS. HANRAHAN: -- it is leading and she is an adverse party and I'm allowed to lead an adverse party pursuant to NRS 50.115, except that the prosecution may not call the accused in a criminal case, a party is entitled to call (a) an adverse party, (b) a witness identified with an adverse party, and interrogate by leading questions. The attorney for the adverse party may employ leading questions in cross examining the party or the witness so called only to the extent permissible if the attorney had called that person on direct examination.

What it does in a civil case is flip. I can call an adverse party and I can ask leading questions and they cannot. It's the same rule, it's just we put the witness on first as opposed to in their case.

MS. CALVERT: You're leading on direct.

MS. HANRAHAN: Yes.

MS. CALVERT: Whether it's adverse or not.

MS. DORMAN: That's what the rule --

MS. HANRAHAN: That's what --

MS. DORMAN: -- allows for.

MS. HANRAHAN: -- the rule I just read --

THE COURT: I had this case -- I had the same issue with another DA, and so I agree with Ms. Hanrahan on this, is that based on this witness being an adverse witness in this civil case, she can ask that question. And whether that answer will be, I'm not sure, but do you need to have that repeated, Ms. -- okay.

THE WITNESS: No, I plead the Fifth.

BY MS. HANRAHAN:

Q All right. Are you married to Donald Brown?

A I plead the Fifth.

MS. HANRAHAN: And again, Your Honor, I don't see any -- any way that that information is going to

implicate her in the criminal matter.

MR. GOWDEY: It affects the invocation potentially of -- of a marital privilege, so there are -- there are issues that are collateral to the issue of whether it's inculpatory that quite possibly -- and quite frankly, we don't know all the prior statements that have been made under oath, which may lead to the possibility that there could -- there could be a charge of perjury along -- something along those lines. I don't know. I would instruct my client to take -- take the Fifth.

THE COURT: Okay.

MS. HANRAHAN: I mean, if she's going to assume a spousal privilege, they have to be married, and I don't -- again, it doesn't -- none of that implicates her, whether she is or she isn't when the case opened, whether they were married, whether they are now. It doesn't implicate anything. It does implicate some of the information in a termination of parental rights hearing. Who's the parent? Is he a legal father? Is he putative father? Is he not a father at all? Is he a possible father and there are others out there? That's one of the things that we need to establish, either by marriage, by affidavit somehow. How is he the father?

THE COURT: Well, we would know that if he's on

the birth certificate, so I don't know if that's even -- by now someone should have figured out if he's on the birth certificate. If he's -- if he's not, then -- well, that's a whole other story. But as far as the -- whether or not he's mar -- they're married, in most cases that's an easy question to answer; in this case, maybe not based on the fact that there's a criminal case.

And I don't know anything about this criminal case. I don't know anything that's been said on the record or what the DA in that case and the judge knows in that case, but if it could present an issue in the criminal case based on the spousal privilege, then I would say -- I would sustain your objection. I don't know the answer to that, and that's something that could possibly cause problems in that case, which we don't want to happen.

And I don't believe that it's necessary for me to know to make a decision whether to term -- whether termination is clear and convincing if they're married. I mean, we'd like to know just because we like to know who else is parties to this case, are there John Does out there, but at this point in time, it's not extremely relevant. It's more prejudicial to the criminal case than it would be beneficial for me knowing if they're married.

MS. HANRAHAN: So, Your Honor, I will ask the Court to take the negative inference.

MR. GOWDEY: Same -- same objection that Ms. Calvary has previously --

THE COURT: Okay.

MR. GOWDEY: -- stated.

THE COURT: All right.

BY MS. HANRAHAN:

Q And at the time this case opened, was Mr. Brown married to someone else?

A I take the Fifth.

MS. HANRAHAN: And again, Your Honor, the same -- same argument. Doesn't implicate her in any fashion whatsoever in the criminal matter and the fact of him, whether he was married to someone else, has nothing to do with the criminal matter. It could have something to do with the -- the kids and paternity.

THE COURT: Okay.

MR. GOWDEY: Considering that it could potentially expose any criminal defendant to a charge of bigamy, which is clearly a criminal charge if they were married to somebody who is already married, I would instruct my client to assert their Fifth Amendment privilege.

MS. HANRAHAN: Well, there's no -- none -- no charge of bigamy facing them.

MR. GOWDEY: It doesn't --

MS. HANRAHAN: Your Honor --

MR. GOWDEY: -- it doesn't matter if there's --

MS. HANRAHAN: -- there's a standard --

MR. GOWDEY: -- a current charge. It's the potential for charges to be brought as a result of incriminating --

MS. HANRAHAN: And just asking --

MR. GOWDEY: -- answers.

MS. HONODEL: -- if somebody was married to somebody doesn't implicate that there might be bigamy. I mean, just asking a question about anything could be construed that way. You know, but -- you know, what if he was married to two people, what -- I didn't ask that.

THE COURT: Okay. That I get. All right. I don't think asking if you were married at the time this case -- to somebody else at the time this case began -- is that what the question was, at the time the case was --

MS. HANRAHAN: If he was married to someone else.

MR. GOWDEY: I'm going to object on grounds of relevance as well. How is that relevant?

THE COURT: Okay.

MR. DRASKOVICH: And I'll join in that objection.

THE COURT: Okay. Let's hear -- I mean, that's -- that's fair.

MS. HANRAHAN: And if he was married to someone else, Your Honor, there could be implications as far as paternity to these children -- maternity.

MR. GOWDEY: There's -- there's no evidence whatsoever offered in any way, shape or form that she's anything but the mother of these children.

THE COURT: Okay.

MR. GOWDEY: That's -- that's completely out of left field and that's much further -- that's a much further leap than my assertion that potentially acknowledging that you may have been married to somebody else could expose somebody to a charge of bigamy.

THE COURT: I'm going to sustain that -- sustain that objection at this point. I mean, I want to get to the -- I really want to get to what the Court has to find in a -- in a trial such as this. I know there's a lot of foundational questions, I get that, but I think we need to use our time as wisely as possible in order to find out the meat and potatoes of what I have to determine is -- is

important for me to make a decision.

While these questions are not completely irrelevant, I get that, you know, we're dealing with families, at this point in time a lot of those questions are not going to help me make a decision as to what I have to make a decision for.

MS. HANRAHAN: All right.

BY MS. HANRAHAN:

Q So, ma'am, how long have you been together with Donald Brown?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

MR. GOWDEY: Same objection.

MS. CALVERT: Same.

THE COURT: Those objections are noted.

BY MS. HANRAHAN:

Q How old was Samantha when the two of you met?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Same.

BY MS. HANRAHAN:

Q And then how long after you met did you move in with Donald Brown?

A I assert the Fifth.

Q At some point in your relationship with Mr. Brown, did you become aware that he has served time in prison for causing the death of his seven month old daughter?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MR. DRASKOVICH: I'm going to object.

THE COURT: Okay. Noted.

BY MS. HANRAHAN:

Q When did you become of his conviction?

MS. CALVERT: Objection. Assumes facts not in evidence.

MS. HANRAHAN: Well, actually, Your Honor, he pled no contest to a petition that says he's convicted of voluntary manslaughter and --

MR. GOWDEY: That has nothing --

MS. CALVERT: That's not evidence.

MS. HANRAHAN: -- corporal --

MR. GOWDEY: -- to do with her awareness.

MS. HANRAHAN: -- punishment of a child.

MS. CALVERT: That's not evidence.

MR. GOWDEY: And the question was when -- when did you become aware of that. It assumes facts not in evidence.

MS. CALVERT: Assumes there was a conviction.

MS. HANRAHAN: I mean, it -- it was --

MR. GOWDEY: And it assumes --

MS. HANRAHAN: -- in a document --

MR. GOWDEY: -- she's aware of it.

MS. HANRAHAN: -- filed in this case, so of course she's aware of it. She got a copy of the petition.

MR. GOWDEY: You are assuming she's aware of it.

MS. HANRAHAN: She got a copy of the petition that say so.

MR. GOWDEY: I'm instructing my client to -- to assert the Fifth --

THE COURT: Okay.

MR. GOWDEY: -- under the circumstances.

THE WITNESS: I assert the Fifth.

MS. HANRAHAN: And I will ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Same objection.

THE COURT: Okay.

BY MS. HANRAHAN:

Q When you became aware of the Donald Brown's conviction, did that cause you any concern for Samantha's safety?

MR. GOWDEY: Objection. Asserts fa -- assumes facts not in evidence and I would instruct my client to take the Fifth Amendment.

THE WITNESS: I assert --

MS. HANRAHAN: And, Your Honor --

THE WITNESS: -- the Fifth.

MS. HANRAHAN: I'm going to -- if you instruct the witness not to answer as he's objecting and I get to answer and --

THE COURT: So ask the question --

MS. HANRAHAN: -- we go from there. So he's objecting --

MR. GOWDEY: That it assumes facts not --

MS. HANRAHAN: -- assumes facts not in evidence, and my assertion is that obviously she's aware that he was convicted because he pled no contest to a petition that she has a copy of, that presumably she read, because she also pled to it. And it's obvious that's she's aware.

MR. DRASKOVICH: And I would make an objection on behalf of Mr. Brown in that the petition is not evidence. It can't be used as evidence. It's merely a charging document. So to claim that she's aware of something because it's contained within the petition, it's almost relying on the petition to be evidence and it's inappropriate.

MR. GOWDEY: And not to mention that -- the fact --

MS. HANRAHAN: Can I answer one before I get hit with another one? Your Honor, a petition, sure, is a charging document. He pled no contest, as did Ms. Lawrence, to that petition, to the facts asserted in that petition and was told in a -- the regular questioning after that, that the petition would be treated as true during the pendency of this case. So the time to object to that was a long time ago.

MR. GOWDEY: As to my objection, in -- in her own response, words like it's presumed and it's obvious do not constitute --

MS. HANRAHAN: I don't know what you're referring to.

MR. GOWDEY: -- proof that -- that it's in evidence. It assumes facts that are not in evidence.

Those facts are not in evidence. She can presume and things can be obvious to Ms. Hanrahan all she'd like, it does not mean those facts are in evidence.

MS. HANRAHAN: Your Honor, at this time I would like to admit the certified copy of the petition that was filed in this matter. Since we're going to be admitting piecemeal, I'm going to ask to admit the certified copy of the third amended petition, electronically filed August 12th, 2014 in the J-case in this -- that arose out of the same facts and circumstances as this matter.

MR. DRASKOVICH: And, Your Honor, I believe you already made a ruling previously that you were not going to rely upon any finding in that other case in order to make a determination in this case.

MS. HANRAHAN: Well, that has -- I'm not asking you to rely on findings in any other case for something substantive, I'm asking to admit this as evidence that a petition that they pled no contest to. And I will also ask to admit the minutes that indicate that they pled no contest, contains an allegation that Mr. Brown was convicted of voluntary manslaughter and corporal punishment of a child in relation to the death of his infant child.

THE COURT: This is a petition -- our petition

on this case?

MS. HANRAHAN: It's a petition in the J-case.

THE COURT: Okay. Okay. So I want to make sure. There's a lot of cases going on here.

MS. HANRAHAN: Yes.

THE COURT: All right.

MS. HANRAHAN: And I will also ask for admission of the minutes indicating that both parents pled no contest. As a matter of fact, I'm going to ask for the admission of the certified copy of all the minutes. I don't know what objection there would be to that.

MR. GOWDEY: Well --

MS. HANRAHAN: We normally --

MR. GOWDEY: -- we don't know -- I would -- I would raise a relevance objection to the pe -- to the blanket admission -- admissibility of all of the minutes in the case.

THE COURT: Okay.

MS. HANRAHAN: Your Honor, we routinely admit these as part of the -- the TPR case to show that there was an ongoing case that lasted from this time to that time and that the Court made certain findings in another case. And --

MR. GOWDEY: I -- I --

MS. HANRAHAN: -- the Court did make certain findings, and those are relevant to this case. This case was filed specifically out of the J-case because of what happened in the J-case. What happened in the J-case is therefore relevant.

MR. GOWDEY: The findings in this ca -- the -- the decision in this case should rise and fall on what occurs in this case, not what's occurred in the J-case. This is a -- this is a completely different proceeding. I understand that Ms. Hanrahan routinely enters into evidence things that may not be objected to and so therefore she thinks she's entitled under any circumstance to simple ask the Court to enter everything in --

THE COURT: And that's --

MR. GOWDEY: -- not expecting --

THE COURT: And that's why --

MR. GOWDEY: -- objection.

THE COURT: -- I didn't blanket the whole entire J-case because there's a lot -- I hear this all the time, believe it or not, from both sides. Mostly from your side. Is that some of the stuff is hearsay, based on reports that the person's not here. But that's -- that's a petition that the Court adopted and filed, so that is not hearsay, that petition. That is something that was

agreed to, pled to, negotiated to, and substantiated to. So that -- that -- those petitions always come in.

As far as the minutes to the -- the court, those minutes per se should be, we hope, exactly what happened in court, depending on how the -- how it's written by the court clerk. So those minutes come in in a TPR case because they have been adopted, so to speak, by the same court that you're in right now, just in the J-case. If you have specific issues or a problem with the minutes themselves, you can bring that up, but they are -- they are accurate to the point of someone telling me that they're not accurate. So those are routinely admitted in -- in a TPR case. They're -- they're the meat and potatoes, again, of -- of the J-case that's completely relevant to the termination case.

Just -- just so we're all clear, there's exhibits that sometimes are -- come out of left field and there's nobody to authenticate them. These are all authenticated by the court, especially the petition, as it was substantiated and adjudicated by I guess it was Judge Becker at the time. But those come in routinely and should be a part of -- of this trial, if they're offered to be. In this case she's offering the petition and the minutes, so I will allow those to come in.

(STATE'S EXHIBITS 12 AND 13 ADMITTED)

MS. HANRAHAN: I'm going to ask have the minutes marked as Exhibit 12 and the petition as State's Exhibit 13.

(COUNSEL AND CLERK CONFER BRIEFLY)

MS. HANRAHAN: So I'm going to just repeat that last question because theoretically we didn't get an answer.

BY MS. HANRAHAN:

Q So to the extent you had information about Mr. Brown's prior conviction for voluntary manslaughter and corporal punishment of a child in the death of his biological daughter, did that information cause you any concern for Samantha's safety?

A I assert the Fifth.

Q And after you became aware that multiple people were -- I mean, you heard Ms. Parlade's testimony that there were multiple reports to the hotline. After you became aware that those reports were being made to the hotline, did that cause you any concern?

A I assert the Fifth.

MR. GOWDEY: I'm going to object. Assumes facts not in evidence, that she became aware of multiple reports to the hotline.

THE COURT: Okay.

MS. HANRAHAN: Okay. Let's get --

MR. GOWDEY: And --

MS. HANRAHAN: -- some foundation in there then.

BY MS. HANRAHAN:

Q Ma'am, at some point did you become aware that people were calling CPS with regard to your family?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Same.

BY MS. HANRAHAN:

Q And isn't it true that CPS came to your home on multiple occasions to talk to you about these reports to CPS?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

THE COURT: Okay.

BY MS. HANRAHAN:

Q And did that -- the information, the fact that

CPS was coming to your home on multiple occasions cause you any concern for Samantha's safety?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same -- same objection.

THE COURT: Okay.

MS. CALVERT: Same objection.

BY MS. HANRAHAN:

Q What did Mr. Brown tell you about how his infant daughter died?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

THE COURT: Okay.

BY MS. HANRAHAN:

Q And now this case opened in December 2013, correct?

A I assert the Fifth.

MS. HANRAHAN: Your Honor, really? I mean, the fact that this case opened in --

THE COURT: You have --

MS. HANRAHAN: -- December --

THE COURT: Ms. -- Ms. --

MS. HANRAHAN: -- of 2013 --

THE COURT: Ms. --

MS. HANRAHAN: -- it's a date.

THE COURT: -- Lawrence, there's certain questions that you have to answer, and I'll -- I'll rule on those individually. But when she asked you if this case opened, that's -- it's -- the judge will know when this case opened most likely in criminal court, it's not a surprise around the time a case opens. It's nothing that's going to incriminate you as to when this case opened --

MR. GOWDEY: I -- I --

THE COURT: -- case opens.

MR. GOWDEY: I apologize. I didn't hear the question.

THE COURT: Okay.

MR. GOWDEY: I was conferring with Mr. Draskovich. Could you repeat the question, please?

BY MS. HANRAHAN:

Q This case opened in December 2013, correct?

A Yes, ma'am.

Q And fair to say that it started when Samantha

went to school with a black eye and somebody called CPS?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q How old was Samantha at that time?

A I assert the Fifth.

MS. HANRAHAN: And, Your Honor, I'll make the same objection. I don't think --

THE COURT: I mean, you could --

MS. HANRAHAN: -- Samantha's age at the time this --

MR. GOWDEY: You --

MS. HANRAHAN: -- case opened has anything to do --

MR. GOWDEY: You can answer that.

MS. HANRAHAN: -- with the criminal charges.

MR. GOWDEY: Go ahead.

THE WITNESS: Can you repeat the question again?

BY MS. HANRAHAN:

Q How old was Samantha at that time?

A This -- this last one?

Q When the case opened.

A Thi -- this last case?

Q In December 2013, yes.

A She was 15.

Q And so she was in high school?

A Yes.

Q What school did she go to?

MR. GOWDEY: I'm going to instruct my client to -- to assert her Fifth Amendment on that.

A I assert the Fifth.

MS. HANRAHAN: And, Your Honor, I don't know how that's any more criminally -- makes her any more criminally liable than answering that she was in high school what school she went to. What does that have to do with anything critical?

MR. GOWDEY: There is a -- there is an allegation that she was -- that she missed school at some point, number one.

THE COURT: Uh-huh.

MR. GOWDEY: And that seems to be a part and parcel of their case.

THE COURT: Right. Which in this case --

MS. HANRAHAN: Has nothing to do with --

THE COURT: -- you can't --

MS. HANRAHAN: -- what school.

THE COURT: -- assert the Fifth Amendment for this case as far as it's a criminal case that's pending. So if there's an issue regarding a criminal -- in the criminal case why she shouldn't -- why she shouldn't -- why she shouldn't tell who -- what school the child to, then that's one thing, but as far as this case, if there was not criminal case, she'd be answering every one of these questions.

MR. GOWDEY: Correct.

THE COURT: The question is how does that relate to a criminal case or criminal issue and -- and future problems with that case if she --

MR. GOWDEY: She was --

THE COURT: -- tells us what school she went to?

MR. GOWDEY: She was charged with neglect.

THE COURT: Criminally?

MR. GOWDEY: In the criminal case.

THE COURT: Okay.

MR. GOWDEY: Yes. And -- and --

MS. HANRAHAN: And so what school she went to --

MR. GOWDEY: That's not the question.

MS. DORMAN: That was --

MS. HANRAHAN: That was the question.

MS. DORMAN: -- the question.

MS. HANRAHAN: What school did she go to.

MR. GOWDEY: That's -- that's the question. Again, it relates to potential allegations that she may have held her child out of school or her child wasn't attending school, which could theoretically lead to criminal -- to inculpating herself.

MS. HANRAHAN: I asked what school she went to. That doesn't answer whether she went to school or didn't go to school and it has nothing to do with criminal charges.

THE COURT: And I just --

MS. HANRAHAN: She already answered that --

THE COURT: I don't see the --

MS. HANRAHAN: -- she was in high school.

THE COURT: -- link between the name of the school -- she's not asking specifically did you keep your child home from school. It's just the name of the school. I'll have you answer that question.

THE WITNESS: Silverado.

BY MS. HANRAHAN:

Q Silverado High School?

A Yes, ma'am.

Q Can you -- at the time that the case opened,

which we agreed was December 2013, Samantha had some injuries at that time?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q And where were those injuries located on Samantha?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

MS. HANRAHAN: Your Honor, I'm going to ask to approach the witness with State's previously admitted Exhibits 1, 2, 3, 4 and 5.

THE COURT: Okay.

BY MS. HANRAHAN:

Q I'm going to ask you to take a look at those photograph, ma'am, and tell me if you recognize what those are.

MR. GOWDEY: I want you to take the Fifth

Amendment.

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

THE COURT: Okay.

BY MS. HANRAHAN:

Q Is that your daughter Samantha?

A Yes.

Q And how would you describe those injuries?

A I assert --

Q I'm sorry, the injuries depicted in the last three photographs.

A I assert the Fifth.

Q Would you agree that these photographs display severe abrasions, loop marks and linear marks to Samantha's back?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

MR. GOWDEY: Object.

MS. CALVERT: Join.

MR. GOWDEY: Same objection.

THE COURT: All right.

BY MS. HANRAHAN:

Q And -- but that is your daughter Samantha?

A Yes.

Q So what is your explanation for the injuries to her back that are depicted in State's Exhibits 3, 4 and 5, ma'am?

A I assert the --

Q I'm sorry, that would be -- before you answer -- that would be these photos of her back.

MR. GOWDEY: Objection. Compound.

MS. HANRAHAN: I'm asking --

MR. GOWDEY: Asking for multiple.

BY MS. HANRAHAN:

Q What is your explanation for these injuries to Samantha's back?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

THE COURT: Okay.

BY MS. HANRAHAN:

Q And what is your explanation for the injury to Samantha depicted in State's Exhibit Number 2, ma'am?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q Had you ever seen injuries like these on Samantha's back before that time in December 2013?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q And you had seen her though with multiple black eyes prior to this one, correct?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q Now, ma'am, you heard Samantha's testimony when we were here in June, correct?

A Yes.

Q And you recall that she testified that Mr. Brown caused all of the injuries depicted in these photos?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

THE COURT: Okay.

BY MS. HANRAHAN:

Q And do you recall that she testified that he did that sort of thing regularly to her?

A I assert the Fifth.

MS. HANRAHAN: Your Honor, I'll just object because Samantha's testimony is Samantha's testimony and it's on the record. Whether she knows what Samantha's said or not, again, doesn't implicate her criminally in any fashion whatsoever.

MS. CALVERT: Objection that it misstates prior testimony. It's an inaccurate summary. It's not a direct quote of her testimony, it's a summary of it. It's inaccurate as surmised.

MS. HANRAHAN: Inaccurate in what way?

MS. CALVERT: Inaccurate in it doesn't -- it's an inaccurate summary. There were other parts to the

testimony. Incomplete.

MR. GOWDEY: Can you repeat the question?

MS. HANRAHAN: She testified that Mr. Brown caused all of the injuries depicted in these photos, including the black eye. That was the first question. And the second question is -- was that -- and that he did that sort of thing on a regular basis.

MR. GOWDEY: Again, that -- that misstates --

MS. HANRAHAN: That was Samantha's --

MR. GOWDEY: -- the testimony.

MS. HANRAHAN: -- testimony.

MR. GOWDEY: I don't believe that she said he did that sort of thing on a regular basis. They went over specific instances of conduct. I don't -- clearly that was not the testimony.

THE COURT: Okay.

MS. HANRAHAN: Those words?

MS. CALVERT: Correct.

MR. GOWDEY: Yes. Those words.

MS. HANRAHAN: Samantha testified as to multiple instances where he hit her with objects on her back, causing injury.

MR. GOWDEY: A regular basis means it's some sort of regular interval.

MS. HANRAHAN: Right.

MR. GOWDEY: Clearly she -- she did testify that he had caused prior injury. She didn't testify that he did it on a regular basis.

THE COURT: So based on that I'll sustain your objection as --

MS. HANRAHAN: All right. And -- and I'll --

THE COURT: -- that question is --

MR. GOWDEY: I hate to be parsing all the words like this, Judge, but --

MS. HANRAHAN: Well --

MR. GOWDEY: -- it is what it is.

MS. HANRAHAN: -- I do too, and -- and especially when she said that it was almost daily. I mean, that's regular to me, but that's fine. She's not going to answer anyway. So, that's fine.

BY MS. HANRAHAN:

Q So when Samantha talked about the injuries that she received from Mr. Brown, did you believe her when she said that?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

MR. GOWDEY: Same objection.

THE COURT: All right.

MS. CALVERT: Join.

BY MS. HANRAHAN:

Q And if your other children were to state that Samantha was indeed physically abused on a regular basis by Mr. Brown, would you characterize your other children as liars?

MR. GOWDEY: Objection.

MS. CALVERT: Objection.

MR. GOWDEY: Calls for speculation.

MS. CALVERT: Join.

MS. HANRAHAN: I asked --

MR. GOWDEY: There's no evidence that that's -- that that's what the other children are going to say. It's purely speculative.

MS. HANRAHAN: I'm -- I'm just presenting a hypothetical, Your Honor.

MR. DRASKOVICH: Objection. Hypothetical.

MR. GOWDEY: Then it's objection --

MS. CALVERT: Objection.

MR. GOWDEY: -- hypothetical.

MS. CALVERT: Hypothetical.

MR. GOWDEY: I mean --

THE COURT: Sustained.

MR. GOWDEY: -- she's not an expert witness, she can clearly --

THE COURT: Sustained.

MR. GOWDEY: -- present a hypothetical to an expert witness, not --

MR. DRASKOVICH: She sustained.

MS. CALVERT: She sustained.

MR. GOWDEY: I'm sorry.

BY MS. HANRAHAN:

Q And, ma'am, you were made aware early in this case, were you not, that a physician who specializes in child abuse characterized these injuries as abusive in nature?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative inference, Your Honor.

MR. GOWDEY: Same objection.

MS. CALVERT: Join.

THE COURT: Okay. And again --

BY MS. HANRAHAN:

Q And is it true that you choose to believe Donald Brown over that doctor's opinion?

A I assert the Fifth.

MS. HANRAHAN: And I'll ask for the negative

Q But you wanted something to be different, is that right?

A Yes.

Q And what was that?

A No hitting.

Q Okay. For everyone.

A Yes.

MS. DORMAN: Okay. Thank you.

THE COURT: Okay. Anyone else so we can let Ms. Heidi go?

MR. DRASKOVICH: I have no further questions for her.

THE COURT: All right.

MR. DRASKOVICH: Thank you.

THE COURT: Thank you. You're done.

MS. HANRAHAN: Yes. I -- Ms. Tallent's going to take her back.

THE COURT: Okay.

MS. HANRAHAN: You'll go with Maryte. She'll take you back to Ms. Jackie. And we offered Nikki candy, so do you want some candy? We don't want to be --

THE WITNESS: No.

MS. CALVERT: You --

MS. HANRAHAN: All right.

MS. CALVERT: -- can go for the chocolate.

MS. HANRAHAN: She didn't eat it?

MS. CALVERT: Chocolate? Come on.

THE COURT: All right then. Thank you, Heidi.

(WITNESS EXCUSED)

THE COURT: All right. So do you have the one -- are you calling the little boy?

MS. DORMAN: No.

MS. HANRAHAN: No.

THE COURT: Oh, okay. Oh, okay.

MS. HANRAHAN: He -- he's off the witness list.

THE COURT: Oh, okay. Okay. I didn't know. So as far as today goes?

MS. HANRAHAN: Out of -- yeah, we're done for --

THE COURT: Okay.

MS. HANRAHAN: -- today, Your Honor.

THE COURT: I just want to make sure.

MS. HANRAHAN: For today, yeah.

THE COURT: So with that being said, we'll conclude for today. We're set to begin again on Monday at 10:00 o'clock. So we shall start at 10:00. The only thing I have is my PPH is at 9:00 which won't affect -- I mean, they'll be done by then. So I'm not -- I'm not worried about that. So 10:00 o'clock and then you guys can talk

amongst yourself as far as any issues that come up that -- that need to be addressed and then anything I have to deal with, we'll talk about on Monday.

MR. GOWDEY: And Monday, the -- what day is Monday, the 23rd?

THE CLERK: Yes.

MR. GOWDEY: Okay.

THE COURT: No, it's the 22nd.

THE CLERK: Or I'm sorry, it's the 22nd.

MR. GOWDEY: 22nd. I believe Monday morning I have a sentencing at 9:00 o'clock. I will go in there and tell the -- tell the Court that I've got to be here at 10:00 o'clock.

THE COURT: Okay.

MR. GOWDEY: If I'm a couple of minutes late, it's because I'm stuck there. But I am in front of Jesse Walsh (ph). If this Court wants to know where I am if I'm not here, I will be there.

THE COURT: All right.

MR. GOWDEY: Okay.

THE COURT: Sounds good.

MR. GOWDEY: So I'll --

THE COURT: All right. Thank you.

MR. GOWDEY: -- I'll endeavor to get --

THE COURT: All right.

MR. GOWDEY: -- first on --

THE COURT: Thank you.

MR. GOWDEY: -- calendar.

(PROCEEDINGS CONCLUDED AT 04:07:14)

* * * * * *

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

Adrian Medrano

Adrian N. Medrano

TRANS

FILED
FEB 2 1 2017
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of the Parental Rights of: SAMANTHA LAWRENCE, DOB 07/06/98; HEIDI BROWN, DOB 01/04/04; NIKKI BROWN, DOB 01/04/04; WYATT BROWN, DOB 07/15/09; Minors.	CASE NO. D-15-510944-R DEPT. E/K

BEFORE THE HONORABLE CYNTHIA N. GIULIANI
DISTRICT COURT JUDGE

TRANSCRIPT RE: TERMINATION OF PARENTAL RIGHTS

THURSDAY, AUGUST 18, 2016

APPEARANCES:

For the State of Nevada:	JANNE HANRAHAN, ESQ. AMITY DORMAN, ESQ. 601 North Pecos Las Vegas, Nevada 89101 (702) 455-3794
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The Mother: For the Mother:	MELISSA LAWRENCE MICHAEL GOWDEY, ESQ. 815 S. Casino Center Blvd. Las Vegas, Nevada 89101 (702) 471-0321
For Samantha Lawrence:	AMY HONODEL, ESQ. 725 E. Charleston Blvd. Las Vegas, Nevada 89104 (702) 386-1492
For Nikki, Heidi and Wyatt Brown:	LAUREN CALVERT, ESQ. 716 South Jones Blvd. Las Vegas, Nevada 89107 (702) 507-0092
Also present:	MARYTE TALLENT, DFS

INDEX OF WITNESSES

STATE'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
MARI PARLADE	33	69/74	80	83
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* * * * *

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LAS VEGAS, NEVADA THURSDAY, AUGUST 18, 2016

PROCEEDINGS

(PROCEEDINGS BEGAN AT 10:49:21)

THE COURT: All right. We'll go on the record. This is case D-510944, In the Matter of Melissa Lawrence and Donald Brown. I'll have everyone state their appearances for the record today.

MR. DRASKOVICH: Good morning. Robert Draskovich on behalf of Donald Brown, who is present.

THE COURT: Thank you.

MS. CALVERT: Lauren -- sorry, Lauren Calvert, CAP attorney for Nikki, Heidi and Wyatt Brown.

THE COURT: Thank you.

MR. GOWDEY: Michael Gowdey on behalf of Ms. Lawrence, who is present as well.

THE COURT: Terrific.

MS. HONODEL: Good morning. Your Honor. Amy Honodel, bar number 7755. I'm the CAP attorney for Samantha Lawrence and I apologize, I was dealing with a status check problem.

THE COURT: No, that's okay, that's all right. Thank you.

MS. TALLENT: Maryte Tallent, Department of

Family Services.

MS. DORMAN: Good morning, Your Honor. Amity Dorman, Chief Deputy District Attorney, bar number 9316.

THE COURT: Perfect.

MS. HANRAHAN: And Janne Hanrahan for the District Attorney's Office.

THE COURT: All right, great. So we're set, this is technically day two of our trial. I was -- I don't know who knows what, but the reason I wasn't here on Monday, I was -- my flight was canceled and no flights were going out until the next night, and I made it in, but a day late. So nobody cared that we had a trial. They wouldn't -- they're -- they couldn't find me a plane ticket on, so I apologize.

So we are here. I guess last time, if I'm not mistaken, Samantha testified. I don't believe we did any opening statements. So at this point we're kind of starting with that, whoever chooses to do that, that's how it works. And then we will continue with you calling your second witness.

MS. HANRAHAN: And, Your Honor, just as a preliminary matter, I would ask that the entire J-file be admitted as State's Exhibit 12, I think we're on now. I don't believe there's any objection.

(COUNSEL CONFER BRIEFLY)

MS. CALVERT: I'm going to object to the extent that there are records in there containing the counseling records of my clients. They are going to invoke their counselor-client privilege.

THE COURT: Okay.

MS. HANRAHAN: Your Honor, those have already been admitted. They're part of the court record in the J-case. And in fact at this point they're public record. If -- I mean, the therapists are going to be here to testify as to what's in those documents, and again, they've already been admitted.

MS. CALVERT: I don't believe they're public records.

MR. GOWDEY: As far as I'm aware, counseling records are not public records, number one. Number two, the issue -- the issues that arise in the J-case may not coincide with the issues in the trial to terminate parental rights. I'm going to join in Ms. Calvert's objection for that reason. I think if the state wants to enter documents from the J-case, they -- we should take it on a document by document basis to determine whether they're relevant, not covered by any privilege, and therefore admissible.

MS. HANRAHAN: And, Your Honor, I'll just remind the Court of 128.090, I believe it is, that states that reports made pursuant to 432B, the cases that are required by the Court, are not -- cannot be kept out of the proceedings by any -- the invocation of any privilege.

MS. CALVERT: Your Honor, looked over that, actually looked at the legislative history on some of these late last night in a weird, frantic mode. I believe that's just as to the report itself and its contents, it's not going to be as to the other -- you know, it doesn't encompass everything. It's the report itself and those contents. I think the statute's pretty specific on that.

MS. HANRAHAN: And, Your Honor, there was no objection ever made during the course of the J-case. The kids, as well as the parents, were represented by attorneys at every step of the proceedings. There was never an objection to having them entered into the record. And this Court in fact could consider -- could take judicial notice of the entire J-case under the case -- the Supreme Court case where the Supreme Court said that when two cases are very intricately related and arise from the same facts and circumstances, the Court can take judicial notice of what happened in one case. And I will get the cite to that.

MS. CALVERT: Your Honor, I believe it's that they can only take judicial notice of the orders. There's going to be all kinds of motions and different pleadings in those that allege all sorts of things. Those don't establish facts. Very limited, what they can take for a case that's related to it and take judicial notice thereof.

MS. HANRAHAN: And, Your Honor, I'm not asking you to take judicial notice. I'm just talking about the legislature's concern, their -- or the Supreme Court's interest in -- recognizing the interest that the Court has in -- in looking at the same facts and circumstances in another case.

THE COURT: So what we'll do is this -- I don't want to waste too much time on this, otherwise we'll never get through our witnesses in the case it itself -- is that I'm -- can't -- I'm not going to admit the entire J-file carte blanche. At this point we need to do it --

MS. HANRAHAN: Piece by piece. Okay.

THE COURT: All -- and all --

MS. HONODEL: It will take longer.

THE COURT: -- of the reports itself, some of them contain hearsay and we -- we know -- not even the attachments or the exhibits, but you can bring those up as

needed. In general, the orders made by the Courts -- the Court, the case plans, those are admitted per se because they have been admitted and not objected to through the J-case. If they have been objected to through the J-case, we would have made a ruling on a case plan, whether it's grant -- adopted by the Court or not. But in general I don't want to just -- you know, by itself admit the entire J-case. I think you have a basis to -- to run through it and see what is possible hearsay, what's not hearsay. It might take longer, but it's the cleanest way to do it as far as a case with as much information as possible.

And then as far as invoking -- the children's therapist to come in, we're -- we'll -- we'll deal -- cross that bridge when it comes, unless that person's the first witness, I don't know if that's the first witness.

MS. CALVERT: I don't know. I haven't received copies of subpoenas. I received the last -- my -- one for the -- my clients, which I have some issues with, but we can deal with that, I guess.

THE COURT: Okay.

MS. HANRAHAN: Well, I'd like to know what the issues are. I mean, we met last week --

THE COURT: All I heard was --

MS. HONODEL: -- and I didn't --

THE COURT: -- that -- something about --

MS. HONODEL: -- hear about any issues.

THE COURT: -- the children's therapist and you're invoking something, so that's --

MS. HANRAHAN: I mean, the issues with the subpoenas for the kids. I don't -- if that's going to be an issue, let's deal with it.

THE COURT: Who -- are the chil -- okay, so --

MS. HANRAHAN: I hadn't heard about any issues with subpoenas for the kids.

MS. CALVERT: I received the subpoenas last night. I had not received a copy of them, didn't -- I actually kind of thought maybe they hadn't been served and I was going to be able to tell them to stay home, but I received them from Maryte, who -- is the first I had seen them. I -- a couple different issues, maybe not necessarily just with that, the subpoenas, but I would have liked to have had the opportunity to move to quash because I'm going to invoke the parental-child privilege as to a large extent of what I believe the line of questioning will be.

THE COURT: Okay. So the children, there's ways of -- okay, so I'm not making a ruling, because I'm not -- I don't hear a specific -- specific issue. The children

testi -- our us -- our -- in cases like this testify, just as Samantha. We do it in a way -- there could an alternate means. I think that was requested. If I'm not mistaken, there's going to be a little room outside and set up so you can watch the proceedings, the parents. So if you're asking -- you're saying the children don't want to testify?

MS. CALVERT: They absolutely do not want to testify and, you know, it may -- I think there are topics that may be appropriate for them to testify. So, I don't know, maybe if moving to quash the subpoena, as I was going through the options last night, is the best, cleanest way to go, because there certainly are things that they can testify to that don't implicate what I believe would be privileged communications with their parents that are protected. So I think there are lines of -- of questioning that could be appropriate, but I will be -- will be invoking that.

MR. GOWDEY: To the extent that the parents --

MS. HANRAHAN: Your Honor --

MR. GOWDEY: I'm sorry. Go ahead, please.

MS. HONODEL: I haven't had a chance to answer. But I'd first like to know what -- what specific statute we're talking about with regard to parental privilege.

MS. CALVERT: It's going to In Re Augusto (ph), which is a Nevada case arising in the federal court. Realize it's not binding on this Court, but I don't have one on point. But to the extent the United States District Court for the District of Nevada comprehensively reviewed privilege, and especially privilege as it applies to children and parents, I think is very, very persuasive. There are statutes in other states that specifically deal with it; we do not. But we do have the types of privileges in NRS 49 that support the analysis that was done by our federal counterpart.

MS. HANRAHAN: Your Honor, Ms. Calvert's been on notice for a year, or however long she's been on this case, that the children would be called as witnesses. This issue should have briefed if she was going to argue it. She sat in my office last week while I pretrialed the kids and said not a word about subpoenas, not a word about I'm going to tell my clients not to come. And I think that would be a mistake, because they were properly subpoenaed, and so was their caretaker, who has custody of them.

That she didn't get a subpoena, copies of the subpoena, honestly, I don't know why. I normally send them to CAP attorneys, but fairly recently, a few months

ago, I got an angry phone call from a CAP attorney that said I don't want these subpoenas, I'm not bringing the kids to Court, don't send them to me.

So I -- I don't know -- there's no rule about that. I normally do send courtesy copies but she knew they were subpoenaed. I mean, she sat in my office, as I said, while we pretrialed them, so she knew --

THE COURT: Well, there's -- those are --

MS. HANRAHAN: -- what day and time we were --

THE COURT: -- they're different issues.

MS. HANRAHAN: -- going to have them here.

THE COURT: I mean, so who -- are the children set to be called for today, is that --

MS. HANRAHAN: No --

THE COURT: Oh, okay.

MS. HANRAHAN: -- not for today.

THE COURT: Okay.

MS. CALVERT: Tomorrow.

THE COURT: Okay.

MS. HANRAHAN: And so I -- I would like to get this issue taken care of now. And, again, yeah, it should have been briefed. It should have been brought up before the day of trial.

MS. DORMAN: Especially when there's an

admission that there's nothing on point.

MS. HANRAHAN: Yeah. And the other thing is, if you're going to ask parents who are specifically criminally accused of witness tampering and coercing witnesses to be the ones who decide whether their kids testify, that's absurd.

MR. GOWDEY: First of all, if I might respond to that. There is no allegation of coercion. There's no charge of coercion that is pending in the criminal trial at this point in time, number one. Number two, to the extent that a privilege exists on behalf of Ms. Lawrence, I am going to be asserting that privilege, and of course it will be up to the Court to decide whether the Federal District Court decision controls here.

As for the issue of whether Ms. Calvert or this office or Mr. Draskovich has any obligation to bring up the issue -- the prospective issue of the children testifying before we receive the subpoena, and know that they've actually been called to testify, I think that is ridiculous. We -- you can huff and puff and threaten to call everybody. In fact, I think there were 35 people on the original witness list and it's been whittled down to 23, and we're supposed to prospectively decide how they're going to proceed with their case and anticipate having

some issue? We, speaking for Mr. Draskovich and myself, haven't received copies of any subpoenas to this point in time. I don't know who is --

MS. HANRAHAN: Nor have we.

MR. GOWDEY: I don't know -- yes, but -- but you're required to put on a case and we're not. Okay. So -- so from the standpoint of whether you need to send us copies of subpoenas of witnesses so we can prepare for their testimony, I would say that's different than whether we prospectively are going to put on a case ourselves. We have no obligation to do so, and the DA's office has every obligation to do so.

MS. HANRAHAN: They -- they had our witness list, filed with the Court. I did Mr. Gowdey the courtesy of telling him some of the witnesses that I had decided not to call in the interest of making this thing move a little faster. It's also the reason I wanted to put the whole J-file in at once. I don't care if we admit it --

THE COURT: Were the children --

MS. HANRAHAN: -- piece by piece.

THE COURT: -- on the witness list?

MS. HANRAHAN: I can be here for the next three months.

THE COURT: No, no, no.

MS. HANRAHAN: But -- so I'm just -- I mean, I did tell him -- I did take some of my witnesses and -- and I told him I wouldn't be calling them.

THE COURT: I just have a question. Are the children --

MS. HANRAHAN: That's what I get --

THE COURT: -- are the three children --

MS. HANRAHAN: -- for being courteous.

THE COURT: -- on the witness list?

MS. HANRAHAN: Yes, and have been from --

THE COURT: So --

MS. HANRAHAN: -- day one.

THE COURT: -- there would have been a motion to -- a motion in limine to exclude them and we would have heard it prior to probably -- well, I don't -- at some point prior to today's hearing.

MS. DORMAN: Especially when they're -- again, you heard Mr. Gowdey say to the extent there is a privilege. We don't even know that there is one. This certainly should have been a motion in limine, especially when you had everyone here gathered together in June and made specific findings that unless you're dead, we are going forward with this trial.

MR. GOWDEY: Once again --

THE COURT: Or in the hospital.

MR. GOWDEY: -- no subpoena was received.

THE COURT: Okay.

MR. GOWDEY: You're not concretely on notice. Their witness list has changed, including excluding witnesses, so we can't rely on their witness list, their -- the original witness list as to determine who may or may not actually be called.

And with respect to Ms. Hanrahan's discussion of what is courtesy and what is not, I sent her an email last week that she has acknowledged receiving, asking her specifically who do you intend to call the first couple of days so we can sort of get a handle on the first couple of days, and never got any sort of response. So to the extent that courtesy is somehow tied into this, I would say it wasn't exactly courteous not to respond to my email.

MS. HANRAHAN: Your Honor, I don't have an obligation to tell him what witness order I'm -- I'm using.

THE COURT: As far as --

MS. HANRAHAN: And it all went out the window anyway when the first day got canceled, so it wouldn't have mattered if I had answered him. And you see where it

gets me when I do, so.

THE COURT: All right. Well, I don't -- that's -- I think at this point what we need to do is this. Whoever is supposed to testify today will testify. And I don't know that that's the children tomorrow, the children testifying. Right now the children will be testifying and we have the alternative means set up for them.

I don't think we have the time to -- to backtrack on this case because of the length of this case and us being a day behind, possibly two days behind. And that's assuming that you don't need any more time. I think someone had asked for more time afterwards as far as days go. So I really need to hear this case because I think it's -- it's been hanging on way too long as far as timing goes. So I don't want to -- you have the right to bring up anything and everything that you want to bring up as far as issues that you're stating, but I don't want to lose track of the fact that today is the day of trial. I want to go in order of opening statements, call the witness and -- and I'm afraid if we just let everything go on the record, we'll never start the trial.

So you have the right to bring things up as they go on. Any housekeeping matters, I think that if they have to do with the opening statements and the first

witness, then we should bring it up now. If not, we need to call -- start the trial.

MS. CALVERT: Who is the first witness?

MR. DRASKOVICH: Oh, I don't know.

MS. CALVERT: Who's the first witness?

THE COURT: I have no idea.

MS. CALVERT: Okay.

THE COURT: But let's do opening statements, if we're going to do that, and we'll find out, because I don't know. I have no idea either. So are we doing opening statements?

MS. HANRAHAN: Yes, Your Honor.

THE COURT: Okay. So let's start with that and on a case by case basis we'll refer to the J-case itself in part, as -- as it comes up. So we'll let Ms. Hanrahan begin.

MS. HANRAHAN: Your Honor, over the next few weeks the State will be presenting clear and convincing evidence of two things. First, that there was a pervasive culture of secrecy and violence in the Lawrence-Brown house that resulted in the systematic, extreme, and repetitious, and ongoing abuse of Samantha Lawrence throughout most of her childhood.

Second, that nothing in the intervening two

years has changed such that the children are safe to go home.

With regard to the abuse of Samantha, Your Honor generally, as you I think mentioned, at TPR we don't focus as much on the events that brought the family to the attention of the Court in the first place because of course we have a petition with allegations that have already been sustained by the Court. In this case, I think it's warranted to do so because still, two and a half years later, both parents are denying that anything bad happened in their home to Samantha or to any of their children.

Obviously one piece of evidence will be that petition, to which they both pled no contest. A petition that states that Mr. Brown physically, mentally and emotionally abused Samantha, and that Ms. Lawrence failed to protect her from that abuse and mentally abused her by failing to obtain help or counseling for her to deal with the abuse.

The petition, again, to which they both pled no contest, also states this isn't the first time that Mr. Brown has seriously abused a child. He was convicted of voluntary manslaughter and corporal punishment of a child in the death of his own biological daughter. But aside

from the petition, Your Honor, you'll hear evidence in the form of testimony from the children, Samantha and her sisters, that will show that Sam was abused physically, mentally and emotionally, and still bears the scars of that abuse.

The children's testimony will know (sic) that -- will show that everyone in the house knew of the abuse, knew that Donald Brown was perpetrating the abuse, and knew that Samantha was the victim. As well that all of the children were coerced by Donald and Melissa into lying about the abuse to authorities.

Samantha herself has already testified that Donald Brown terrorized her for years with physical abuse. Beat her with whatever object was at hand, threw things at her, shot her in the hand at close range with a BB gun, stood on her chest at least once until she passed out, and ostracized her from the family to the point where she would have to go sit in the backyard, sometimes literally in the dog house.

You'll hear how one night he made Sam get up from the dinner table and go to the garage to get something for him to beat her with. And when he -- when she brought back a pipe, the other kids upstairs could hear her screaming downstairs while he beat her.

You'll hear from the younger girls how Sam was treated differently above and beyond the physical abuse. She didn't get dessert. She ate different food. She was made to do -- clean the house every day and do chores the other kids didn't have to do. Things that in and of themselves aren't abusive, but that taken together reinforced that concept that Sam was not a real member of the family.

And the testimony of the younger girls will mirror that already given by their sister, that their mother, Melissa Lawrence, had full knowledge of and complicity in the abuse.

You'll hear from the custodian of records for the Department of Family Services that the family was reported to the hotline 13 times in the years between the time Sam was nine years old and 15 years old. And each of those reports was either taken as information only or unsubstantiated after investigation because Samantha herself would deny that the abuse occurred and the whole family would tell the same story about what happened to Samantha.

And you're going to hear from the CPS investigator who got that call number 13 to the hotline, and who despite being new to the job and unfamiliar with

physical abuse, had the presence of mind to ask Sam to lift up her shirt. And when she did, discovered that Sam's back was criss-crossed with a network of patterned injuries to include loop marks, linear marks, bruises and abrasions.

Dr. Sandra Cetl, pediatrician specializing in child abuse will be here to testify that she was asked to review the photographs of Samantha and -- in the most recent case -- and her opinion to a reasonable degree of medical certainty is that those injuries are abusive in nature.

The children's therapist will testify as to the damage that was done to all the children as a result of that culture of secrecy and physical and emotional violence. They'll tell you all the children are di -- have been diagnosed with PTSD, and that those diagnoses result in part, yes, from the trauma of being placed with strangers, removed from what's familiar, but that the other cause and equal cause is the things that happened in their home that necessitated the removal.

And you'll hear from the Department of Family Services Supervisor Heather Richardson (ph) and Case Manager Maryte Tallent that both parents were provided with case plans for reunification. And that while they

did sit through some classes and some assessments and individual therapy that was related to their own anxiety over this case and the corresponding criminal case downtown, they have never once acknowledged that there was any physical or emotional violence in their home. The case plan itself will be submitted to show that acknowledging the abuse is one of the requirements for the children to be returned to their care.

And finally, Your Honor, you'll hear from the foster mother to the children that she and her husband love the children and are willing to adopt them and raise them to adulthood in a home free from violence and coercion.

The younger girls themselves, Your Honor, will tell you that while they're happy living with Ms. Jackie (ph) and would be okay with being adopted by her, their ultimate preference would be to go home with their parents, but only, only on the condition that things would be different, that things would be safe. And, Your Honor, isn't that the hope of every child in every case that comes before you? That two-pronged hope: I want to go home; I want to be in my house with my parents, my blood, my family, but I want it to be safe and I want it to be different.

Unfortunately, Your Honor, we're here today because nothing is different with Melissa Lawrence and Donald Brown. Nothing has changed. They continue to blame everyone but themselves. CPS, DFS, the DA, the police, the court system, their lawyers, but most of all, Your Honor, they continue to blame that scared little girl who they will tell you -- you'll hear their own voices tell you -- manipulated them into the situation they find themselves in today. And for those reasons the State will be respectfully requesting termination of their parental rights.

THE COURT: Thank you. All right. Ms. Honodel.

MS. HONODEL: Good morning, Your Honor. At this time Samantha is going to waive her opening statement, but for purposes of going forward today, she joins the Department's and the District Attorney's position with regard to the request made by this board, the outcome of this case, and the legal and evidentiary reasons therefore.

THE COURT: Okay. Thank you, Ms. Honodel. Mr. Gowdey.

MR. GOWDEY: Your Honor, on behalf of Ms. Lawrence, I'm going to reserve opening until such time as we are able play (sic) -- present our case-in-chief.

THE COURT: Okay. And I'm going to enjoy (sic) -- actually join in that request on behalf of Mr. Brown.

THE COURT: Okay.

MS. CALVERT: I am also joining in the request.

THE COURT: All right, then. Thank you. All right. So now that opening statements are concluded as far as this period of time, I will let Ms. Honodel (sic) and -- oh, I'm sorry, Ms. -- Ms. Hanrahan call her first witness. Or her second witness.

MS. HANRAHAN: I'm sorry, Your Honor. Court -- Court's indulgence. Your Honor, the State's first witness is Mari Parlade.

THE COURT: Okay. If you'd mind, just ask if she's out there. Just shout her name, Mari Parlade. Not there?

MS. HANRAHAN: I told her probably 11:15 we're be on.

THE COURT: Do you know how long she's going to be? If it's just a little bit, we can --

MS. HANRAHAN: I'm sure -- I told her -- I told her 11:15. It's 11:13 --

THE COURT: Okay.

MS. HANRAHAN: -- so I'm sorry. I -- I thought --

THE COURT: That's fine.

MS. HANRAHAN: -- with your status checks and openings that it would --

THE COURT: That I'd be later than I was. We're pretty much on time. So let's -- well, let's do this. While we're waiting for her, let's plan out -- how many witnesses do you plan on calling today, just so we can kind of figure out our day?

MS. HANRAHAN: I have Ms. Parlade. I'm not sure if we'll finish her before lunch. I'm -- I'm just not sure.

THE COURT: Okay.

MS. HANRAHAN: And then Melissa Lawrence.

MR. GOWDEY: Well, I -- I can tell you that Ms. Lawrence will not be taking the stand.

MS. HANRAHAN: Why?

THE COURT: Based on?

MR. GOWDEY: She has a right -- a privilege against self-incrimination. We have an active criminal case at this point in time and she has no obligation to take the stand and risk jeopardizing her rights with respect to the criminal case.

MS. HANRAHAN: Well, actually, she has an obligation to take the stand. If she -- and she can claim

that privilege for each question that might implicate her criminal case. She can't claim it just in general. She has to answer questions that do not implicate the criminal case. So she can get up on the stand and I will go through every single question and she can take the Fifth on whatever questions she feels might im -- or her attorney feels might implicate her Fifth Amendment privilege, but she's not allowed to just not take the stand.

MR. GOWDEY: Well, I think she's allowed to just not take the stand and I -- I will submit to the Court's discretion on this.

MS. HANRAHAN: Your Honor, we went through this at -- in the beginning when we had the trial initially on the initial petition.

THE COURT: Oh, yeah. That's right.

MS. HANRAHAN: I think Judge Becker was here and --

THE COURT: I vaguely remember that.

MS. HANRAHAN: -- that's exactly what Mr. --

THE COURT: I mean, the DA has -- it's their responsibility for putting on this case. It's their burden to prove clear and convincing and best interest, so we would have to have her come up here and you -- she can

invoke whatever rule that she wants to. But to just bypass her testimony, that -- that's not a clear record of anything.

MR. GOWDEY: She -- if she answers some questions, she's not waiving her right of self-incrimination to refuse to answer other questions?

THE COURT: Well, you would have to -- you're her counsel, you'd have to speak to her about how to testify.

MR. GOWDEY: Okay.

MS. HANRAHAN: And, Your Honor, also, just for the record, if she does invoke the Fifth Amendment privilege, I will be asking the Court to take the negative inference that it's entitled to take in civil cases when the Fifth Amendment is invoked. And the rules are clear that it's a question by question assertion and the -- the Defendant isn't entitled to take the Fifth on questions that don't implicate criminal charges.

MR. GOWDEY: Can I have the -- the statutory authority for that?

MS. HANRAHAN: The case is Glanzer v. Glanzer, G-l-a-n-z-e-r, v. Glanzer, United States Court of Appeals, Ninth Circuit. I mean, we do these routinely down here. We talked about this a year ago. I mean --

MR. GOWDEY: I'm sorry, is that comment directed to me or the Court?

MS. HANRAHAN: It's directed to -- for -- just for the record. We did talk about this --

MR. GOWDEY: We --

MS. HANRAHAN: -- and --

MR. GOWDEY: We talked about what? The issue of whether my client would --

MS. HANRAHAN: Yes.

MR. GOWDEY: -- testify or not? I don't recall that conversation ever occurring. My client is involved in a criminal case at this point where her liberty could be at stake. Clearly she has a right not to testify with respect to anything that might incriminate her. And --

MS. HANRAHAN: And that's fine.

MR. GOWDEY: -- whether the Court can take a negative inference to that, I -- of course I'm going to be asking the Court to take into consideration that she does have a criminal case and that no negative inference should be taken from her wanting to prefer (sic) -- preserve her constitutional rights.

MS. HANRAHAN: Well, that's the Court's -- the -- the Court can take a negative inference. That's exactly what happened in the trial when we started out

this case. It happens regularly in our cases down here and it's -- that's clearly the rule, that this Court is allowed to make a negative inference in a civil case where the Defendant invokes the Fifth Amendment privilege. I mean, that -- I'm sure the Court's familiar with it. We do civil cases every day and that's the rule, and always has been.

And it was Judge Becker who sat on the Nevada Supreme Court, presided at the initial hearing in this case on the original petition, and Mr. Brown invoked his Fifth Amendment privilege and she took the negative inference on each of those invocations.

MR. GOWDEY: Again, that was a trial -- a trial setting to determine whether the -- the petition -- the allegation of abuse was going to be sustained and it's not the same issue in -- in this trial. And whether by regular course of business the DA is able to run over defense attorneys in these settings should have no bearing on what occurs in this particular setting.

MS. CALVERT: I think it may be more appropriate for a -- you -- as they arise base --

THE COURT: I was going to say that, yeah. I agree. MS. CALVERT: -- because I think to the extent that a negative inference is sought, where the

evidence or information can be obtained from another source, it's not appropriate to invoke the inference only where the sole source is the person invoking the Fifth. That's my understanding.

THE COURT: What I'm going to is this. I think right now we're waiting for Ms. Parlade, and I don't necessarily think -- what would should do is, I mean, maybe take a recess. Because we're all looking at each other and we don't have a witness. So until she gets here, why don't we just take a break. You guys can think about what you want to argue and how you want to argue it and as soon as she comes in they can call me and we'll go. Because otherwise we're just -- we'll be here all day.

MR. GOWDEY: We're going to keep squabbling.

THE COURT: You squabble out -- you can squabble outside.

MR. GOWDEY: That's probably what's going to happen.

THE COURT: All right. And then I'll just --

(COURT RECESSED AT 11:23 AND RESUMED AT 11:46)

THE COURT: All right. You're going to call Ms. Parlade.

MS. HANRAHAN: Yes, Your Honor.

THE COURT: All right. If you would just come

to the stand.

THE WITNESS: Good morning, Your Honor.

THE COURT: Good morning. We'll have you sworn in.

THE CLERK: You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

MARI PARLADE

having been called as a witness by the State and being first duly sworn, testified as follows:

DIRECT EXAMINATION

THE CLERK: State your name for the record.

A Mari Parlade. M-a-r-I P-a-r-l-a-d-e.

THE COURT: Thank you.

THE WITNESS: Thank you.

BY MS. HANRAHAN:

Q Good morning, Ms. Parlade.

A Good morning.

Q You're here as the custodian of records for the Department of Family Services.

A I am.

Q How long have you been employed by the

Department of Family Services -- actually, what is your job title?

A I'm the Strategic Initiatives Manager of Clark County Family Services, which is over the legal division as well as strategic initiative dealing with stakeholders.

Q And as the Strategic Initiatives Manager, you're the custodian of records for the Department of Family Services?

A Yes, I am.

Q What did you do before that?

A Prior to coming to DFS I actually served as one of the alternate hearing masters for juvenile abuse and neglect, truancy and delinquency for about three and a half years. Prior to that I had my own law practice and was a pro bono CAP attorney.

Q Thank you. And so you're familiar with the record keeping practices at the Department of Family Services.

A I am.

Q And you know how the agency receives reports of abuse and neglect?

A I do.

Q And do you know how these are documented?

A Yes.

Q And do you know how they're updated?

A I do.

Q And you know how to find information on the sometimes confusing reports --

A Yes, I do.

Q -- that DFS issues. Are you here today pursuant to a subpoena?

A I am.

Q Were you asked to bring certain DFS records with you?

A Yes.

Q And did you bring those records with you today?

A I did.

MS. HANRAHAN: If I may approach the witness, Your Honor.

THE COURT: Okay.

THE WITNESS: Yes.

BY MS. HANRAHAN:

Q The records that you brought are the intake reports --

A Yes.

Q -- for the years 2008 to 2013 --

A Yes.

Q -- for the Lawrence-Brown family?

A Yes.

MS. HANRAHAN: You guys have these, I believe.

MR. DRASKOVICH: My stack is bigger than yours. Yeah, we got --

MR. GOWDEY: Much bigger.

(COUNSEL CONFER BRIEFLY)

MR. GOWDEY: Are you seeking to -- to admit the bucket --

MS. HANRAHAN: I am.

MR. GOWDEY: -- or just those.

MS. HANRAHAN: I'm admitting -- asking to admit these.

MR. DRASKOVICH: And I'll be objecting to their admission.

MR. GOWDEY: And we'll be joining the objection.

MR. DRASKOVICH: My objection is based on hearsay. Additionally they're attempting to circumvent the right to cross examine and to confront a witness. We have these notes that are referring to a confidential source, and they're apparently now going to try and admit -- seek the admission of these records and then they can argue substantively what's contained within these reports. And I would submit that's wholly inappropriate. We have hearsay contained within hearsay and anonymous sources of

this hearsay.

MS. HANRAHAN: And, Your Honor, I'm not asking to have them admitted for the truth of anything that's been reported in these reports. The purpose of the admission is simply to establish the number of reports that were received and the fact that they were all from different sources and that -- that their -- their very existence, the fact that there were so many reports is relevant to the determination here today to decide whether the family was on notice that something was off-kilter. So it's honestly just the number of reports of similar incidences and nothing -- I'm not asking to offer for the truth of any of the allegations in there.

MS. CALVERT: I believe she can ask how many reports are -- are there without seeking to admit them and that testimony can be -- can be elicited. How many, you know, records do you have, rather than admitting the records themselves.

MR. GOWDEY: Further, the establish -- the establishment of CPS investigations can be accomplished through different means, and therefore running the risk of admitting the reports and allowing this -- this Court to consider what's in the reports lends contrary to our -- to our right to cross examine the witnesses. I would join in

the objection.

MS. HANRAHAN: And, Your Honor, again, these are public records. They're prepared pursuant to (indiscernible) imposed by law. They're kept on a regular basis and they are, again, being admitted cir -- simply for the purpose of showing the number of reports to the hotline. Not all of those resulted in investigation, and she'll testify to that. In fact, only one of all of them has been substantiated and she'll testify to that. It's -- it's simply, again, the number of reports, the fact that they were all to the same child, and the fact that they were within this period of time.

And, Your Honor, public records is an exception to the hearsay rule. The Court is allowed to consider reports that are made pursuant to a duty imposed by law, which clearly these reports are prepared under that aegis. It's also relevant to show, again, that the family knew something was unusual, and we'll have the management of the Department of Family Services here to testify as to why just the simple number of reports itself is (indiscernible).

MS. CALVERT: And I believe this is addressed in NRS 51.155, and it's public records and reports. The reports and records, statements, data compilations, in any

form, of public officials or agencies are not inadmissible under the hearsay rule if they set forth three things. So there's -- there's three things that, you know, can come in. They're exceptions to the hearsay rule. One is the activities of the official or agency. Two, matters observed pursuant to duty imposed by law. Civil cases and against the State in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law.

So there's very -- there's, you know, three parts that come into that. To the extent that it's -- you know, it can be what the agency itself -- excuse me --

MR. DRASKOVICH: Observed.

MS. CALVERT: -- observed or the activities it conducted, but it can't be these kind of secondhand statements or whatever they received that aren't --

MS. HANRAHAN: It -- it's -- and again, it's not being admitted for the truth of those statements. It's being admitted for the fact that the agency received these reports, numerous reports in a period of time, in this five year period, on the same child, the same family.

MR. GOWDEY: That could be accomplished by questioning the custodian of records without admitting the reports. There is no need to admit the reports given the

very limited scope for which they've been offered by Ms. Hanrahan.

THE COURT: Would you like me to make my ruling?

MR. DRASKOVICH: Yes.

THE COURT: I'm not going to allow the reports in. You have the custodian of records who can testify as to not the subject matter, which is -- is hearsay, but the amount of times and you can question her till -- left and right as far as this Court's concerned regarding what you want to know. And the fact is, is that it is more prejudi -- prejudicial than probative if you're asking the Court to take notice of the 13 times between 2008 and 2013. You have the best person here as the custodian of records to do that. Anything else would be obviously substantive stuff that you can't have cross examined because those investigators and reporters of that report are not here to be questioned or cross examined.

So you can feel free to ask Ms. Parlade anything regarding those records as far as what she's able to testify to.

BY MS. HANRAHAN:

Q All right. So I'm going to return these to you. All right. So do you -- what are those documents, just for the record, now that we've all discussed them ad

naseum.

A They're child protective services report summaries, also known as intake reports. They're documentation deriving from the phone -- the initial call that was made to the hotline. The hotline workers, as they received the call, they're -- it's incumbent on them to prepare a report number. Each report number corresponds to the call that's made to document certain things -- well, to document the dialogue and the conversation and the assessments that are made on the phone.

Q Okay. And what kinds of information are contained on every intake report?

A Typically on the first page it has the case number. If this is the first call, it would be assigned a very first case number. If it's a second, third, fourth, fifth call, it would still have the same case number. Each report or each call would manifest its own report number. It would list demographic information as to the subject matter, you know, the alleged child victim and anyone in the household, including their name, birth date, date of birth, social security number, address. It would also list the source. There's two versions of the report. There's the internal report that does list the source, and

then there's the report that's submitted pursuant to a public records request, such as in this case, where that information would be redacted pursuant to law.

And then they would get to the substance of the matter which would deal with the questions that are asked. There are standard questions that are asked by the intake callers, any caller that comes in, as to the nature and circumstances of maltreatment or suspected maltreatment. The child functioning, the parent functioning, general practices and disciplinary practices in the home and the interaction between child and parent. A lot of attention is typically given to the first two questions, which is the nature of the circumstances and the alleged maltreatment.

Q All right. Thank you. So each -- so you have two numbers on each one. You have a case number, which is essentially the family's number--

A Yes.

Q -- and that stays the same, and then the report number is each call is assigned a separate report number.

A Yes.

Q Is that -- was that your testimony?

A Yes.

Q All right. So -- and these reports are kept in

a database for DFS?

A Yes. It's in a statewide database also known as UNITY and that's managed by the Department of Child and Family Services for the State of Nevada.

Q And who is it that enters the information on an intake report?

A The intake caller would be the one that's entering the information. Con -- ideally as contemporaneously as the call is coming in. And after the call is done, the intake caller continues to enter the information and staffs the decision as far as the response and the disposition with a supervisor. Wherein the supervisor and intake caller make a determination while typically the call is on hold as to whether a priority response is needed, whether this has to be dispatched out for investigation with a Priority Response 1, meaning it must be responded within 48 (sic) hours; Priority Response 2, meaning must be responded within 48 hours; Priority Response 3, which requires a 72 hour response; or whether it's going to be referred out to Differential Response, which is an agency with the State; or whether it's going to be categorized as information only.

Q Okay. So the people who answer the phone are not just phone answerers then, they have some sort of

training in evaluating the information that they receive.

A Absolutely. They were the first to be trained by our safety intervention permanency model, which is a statewide safety practice model that has a very intense practice of assessing not just the incident of maltreatment or alleged maltreatment, but also again trying to understand the whole dynamic in the home.

Q All right. So when the information is entered, is it entered as they're speaking to the person who has called in the report, or is that later, or how is that done?

A I'm -- it's ideally -- it's as they're speaking, however as well as subsequent. As they're speaking, they're trying to enter information but sometimes the -- the dialogue is so rich that they're trying to grasp the information. So there's there contemporaneously as they're speaking and there's also continued -- the report if finalized after the call as they're speaking to the supervisor.

Q Okay. And then is the information that's taken at that time every updated or changed?

A Yes. Well, the disposition is updated. The information that they receive on the call, that is based solely on the information that they receive at intake.

This report not only has the intake information that they receive during the call, but it also has a category where there's -- disposition can be updated.

For example, maybe at the time when the call was made, it's dispatched out to investigation, but following the investigation it's determined that it's unsubstantiated, and so it is updated to reflect that the disposition is unsubstantiated. It's also updated should additional calls come in that pertain to the same common nucleus of facts and is very close in time. It could also be updated there on that same report if it's the same day, for example.

Q Okay. So if -- if one incident, two different people call, the one report might still have two report numbers but they might reference each other or --

A It could very well. There's oftentimes where -- because the nature of our intake callers are constantly on the phone and creating reports as they're receiving reports, so if a call -- if two calls come in to two intake callers regarding the same similar nucleus, but the two intake workers are not corresponding, it could generate two different reports, which later we would come to find that they are made -- the same common nucleus, so it would just cross-reference to one another.

Q And then these records are made for every single phone call?

A Yes.

Q And maintained even if no investigation is referred out?

A Yes. Every report on -- on a case -- same case number would list the history of that case, so even if it just came in as info only dating back several years, it would be listed on the -- on the -- on every intake report.

Q All right. Now, so with regard to these specific reports, what were you asked to bring here today?

A The child -- the intake report summaries dating from March -- well, actually, the intake report summaries for this family, for the -- I believe it was referenced here on my subpoena as In the Matter of Samantha J. Lawrence, Nikki Rae Brown, Heidi Renee Brown, and Wyatt Carl Brown. And so my records team went ahead and did a search with the UNITY case number 1345085 -- that's based on the subpoena -- and pulled these reports as a result.

Q All right. And then how far back did you find records of hotline calls on this family?

A The first report dated back to March 5th, 2008.

Q And what was the date of the re -- most recent

report made to the hotline?

A The most recent report was, if I may --

Q Yes.

A -- look at the report number. December 10, I believe. December 10, 2013.

Q Okay. So -- so five years essentially, from March 2008 to December of 2013?

A Correct.

Q Does that sound right? How many intake reports did you find for this family during that time period?

A Fourteen intake reports.

Q And so that was 14 calls to the hotline?

A Yes.

Q And were those all regarding different -- 14 different incidents or did you have some of those like you discussed earlier that sort of -- two calls on one incident?

A The last one on December, December 10, 2013, I received two intake reports for the same incident. So we have two report numbers because two calls came in.

Q All right. And --

A With the exception of that one, they're all different ones.

Q So when -- and just -- just for the record, are

there certain people who are mandated by law to make reports of suspected child abuse?

A Yes, mandated. NRS 432B delineates the mandate of reporters including teachers, any school personnel, anyone working with -- in a school such as the nurses, principals, teachers, counselors, law enforcement, mental health providers.

Q Lawyers.

A Lawyers. Except for CAP attorneys. They have a special section carved out.

Q All right. So would the -- would the indi -- intake reports that you have on the Lawrence-Brown family contained in the UNITY database indicate whether the caller was a mandated reporter?

A Yes. I have the unredacted version, so it lists the source and the source's name, as well as the source's agency.

Q Right. But then when the agency provides those records to anyone outside the agency, certain information abou the re -- the source has to be redacted?

A Yes, that's pursuant to 432B.

Q So -- so if there's information redacted from the copies that Mr. Gowdey and Mr. Draskovich received, for example, that would have been redacted?

A Yes.

Q Starting with the first report you said was received in March 2008, could you state the date of the report and just the nature of the report.

A March 2008 report came in from a mandated reporter, and that one was received with allegations concerning abuse and bruising to the face and bruising that were recognized by a mandated reporter. That call came in and that one was actually dispatched out for investigation. The disposition was ultimately unsubstantiated; however, the --

Q All right.

A -- information received was as to the subject minor of this case.

Q Okay. And -- and what was the nature of the bruising, you said to the face?

A Yes, the call that came in was regarding subject minor --

MR. GOWDEY: I'm going to object as to hearsay as to the nature of the call.

MS. HANRAHAN: And, again, Your Honor, it's not offered for the truth but for the number of similar calls over time.

MR. GOWDEY: The fact that a call was made is

enough, let alone the -- without admitting the subjective reason as asserted by the caller. We should certainly be allowed to cross examine the caller as to what the nature of the call was about.

MS. HANRAHAN: Well, I -- and I think the Court is able to distinguish between what is hearsay and what's not. Your Honor, the -- the issue is how many times similar types of reports came in on this family. And she's --

MR. GOWDEY: To the --

MS. HANRAHAN: -- testifying to the disposition, that it was unsubstantiated, so.

MR. GOWDEY: To the extent that all of the reports document allegations of abuse, the similarity is in the fact that the reports were made to this agency. The date of the report, the fact the report was made, is all that's necessary to establish that.

THE COURT: Okay.

MS. CALVERT: I think it's more as to the person recording the call. That person isn't here. I think that we have our custodian of records who can say, yes, here's what was put into the UNITY system, but as to the person who took that call, transcribed it -- you know, contemporaneously with that phone call, that person is not

here. I'm not worried so much about, you know, the caller for me, it's that the person who actually took that call in on behalf is not present, we have someone here -- here who can say, yes, this is what we have in our database and we take these in a certain manner here, the fields they fill in. But that actual person isn't here to discuss --

MS. HANRAHAN: And, Your Honor, again, I'm not asking what it is, I'm asking what was recorded in the UNITY database. I'm asking what is reflected in the report that's a public record that the agency is required to keep. So the reliability is established by the fact that it's a public record that the agency is required by law to keep. They're required to enter whatever information comes in. I am saying I'm not offering any of this for the truth of the matter asserted in the phone call, simply that this was the phone call the agency received.

THE COURT: Okay.

MS. HANRAHAN: That's it.

MS. CALVERT: She didn't receive that phone call though.

MS. HANRAHAN: It doesn't matter. She's the -- it was kept in the agency records as public record pursuant to a requirement of law and she's the custodian

of records. That's why I wanted to admit the records. Those are actually documents of what was entered at the time. And if you're going to challenge the reliability on the basis that, well, the person answering the phone is probably making stuff up, I mean, that's not a legitimate argument here because, again, it's a public record, the reliability lies in the fact that -- that the person taking these reports has no motive to fabricate or make up stories about someone they don't even know. They're an agency required by law to take this information and enter it into a database. And that's all I'm asking, that this information be admitted.

THE COURT: Mr. Gowdey.

MR. GOWDEY: I'll be very brief. With respect to Ms. Hanrahan's reliance upon the assertion that this is a public record, I have a feeling that this is something that we're going to hear a long time. Just because some -- for a long time in this case. Just because something is a public record doesn't automatically make it admissible. It is still subject to the rules of evidence. It is still subject to the determination of whether -- whether it's -- the prejudicial effect is -- is -- overrides the probative value, and all other rules of evidence. So while I'm sure she would love to have every

public record admitted, we are still going to challenge the admissibility under the rules of evidence. And again, we -- we object to the admissibility of -- of the issue of what the reason for the call was.

MS. HANRAHAN: Well, in the --

MR. GOWDEY: If she says that she's speaking only to the fact that a call was made, then that's all that needs to be established.

MS. HANRAHAN: It's not -- and it's the fact as well that the -- every report was regarding Samantha and regarding -- almost every report regarding physical abuse of Samantha.

THE COURT: Okay.

MS. HANRAHAN: And that is relevant to this inquiry by the Court. The Court can make the determination that the information is admissible. It's not about admissibility. It could to go the weight that you give to it, obviously.

THE COURT: So like I stated before, the report itself, there's a lot of information besides the allegation itself of -- of a bruise, so to speak. There's a -- there's a whole intake form, there's a lot of material that there's nobody here that has firsthand knowledge of that report. So that's why I'm not letting

that in. And also because you -- you stated that it was just for the -- the amount of times, which I don't think anyone's disputing, at least at this point, that was 14.

As far as the allegation of what the caller alleged happened, which was I think in this case it started -- you just stated it was a bruise on the face, and they're asking that that not be admitted because the person, the intake person is not here to testify if that's true or not. That is correct. But it is a public record as far as what they put in, and I believe that by itself is admissible. And I do not take that for the truth of the matter asserted because that intake person is not here. But it is to show the pattern of -- of why these -- the 13 or 14 calls -- calls were made.

So if you're going to ask more questions besides the fact that you stated, that it was for a bruise on the face, that is not admissible, anything after that, because there's nobody here to testify as to anything, any conversation beside that. But as far as why -- what the in-taker put down as the report itself, why they called, it is a public record and I do take that for -- for a weight issue, not for that it's a hundred percent true that that's what she put down.

MS. HANRAHAN: And that's all I'm asking.

THE COURT: Go ahead.

MR. GOWDEY: In the interest of -- of saving this Court time, on behalf of Ms. Lawrence, I am prepared to stipulate that there were 14 calls to CPS.

THE COURT: Okay.

MR. DRASKOVICH: I'll stipulate on behalf of Mr. Brown as well. And it's actually a six-year period.

THE COURT: Okay.

MS. HANRAHAN: And, Your Honor, I -- I -- that's fine, but I want to go through the reports. And I want to put this --

MR. GOWDEY: We're going to have the same arguments. Maybe not exactly the same arguments, but -- but a number of arguments with respect to that --

THE COURT: --

MR. GOWDEY: -- as well.

THE COURT: So, again, just so the findings are clear, the reason everything that you're asking Ms. Parlade is a safe line of questioning, anything after the report itself and what that intake person wrote down, that by itself is hearsay because they're not there --

MS. HANRAHAN: Yeah.

THE COURT: -- to question. So I don't want to spend too much time on too many objections. The Court

will allow the fact that Ms. Parlade is just reading as to why the call came in for that specific reason, not that that's truly what happened.

MS. HANRAHAN: Right.

THE COURT: Because we don't know.

MS. HANRAHAN: And even if we had the intake people here, it would be hearsay because the intake people are still just hearing it. So it's not --

THE COURT: But you can go through as much --

MS. HANRAHAN: But --

THE COURT: -- as it's going to take time to go through the whole -- each --

MS. HANRAHAN: I just want to --

THE COURT: -- you -- you can do that.

MS. HANRAHAN: Okay.

THE COURT: Unless you agree to stipulate with them that you're just stopping after 14, but it sounds like you're not. And that's okay. This is your case, you have to put it on, I get that.

BY MS. HANRAHAN:

Q So -- so the first report from March 5th, 2008, the injury, I think I asked you about what specifically was the injury that was reported.

A The mandated reporter called because they were

concerned about bruises on her -- on Samantha's face under both of eyes at least two inches wide. And it appears that it was not the first time that the mandated reporter had seen bruises, which is why they placed the call.

Q All right. So --

A Which is why the record reflects --

MR. GOWDEY: Well --

A -- they placed the call.

MR. GOWDEY: -- again, we're getting into an issue where she's now editorializing about more than what the Court said she was report -- she could report, and that is that the reason for the call was bruising, not that there were multiple instances, and that's what caused the report -- the reporting party to -- to --

MS. HANRAHAN: That's what it --

MR. GOWDEY: -- make the call.

MS. HANRAHAN: -- says in the report, Your Honor.

MR. GOWDEY: It may say that, but again, we get into hearsay and we get into the right to -- to cross examine allegations, and we can't do that here, so it shouldn't be admitted.

THE COURT: I -- I agree. Again, it would be someone that can testify that they actually saw that, not

that it was reported to them. That wouldn't be hearsay if that person can physically say that they saw what they saw, but it wasn't Ms. Parlade that -- that saw anything, and it wasn't the intake person, because she was on the phone. It would have to be the person that reported, which I don't expect that --

MS. HANRAHAN: Right.

THE COURT: -- person to be here because it's a mandated reporter.

MS. HANRAHAN: And the person on --

THE COURT: So I think, like I stated, the fact that there was -- the reason the call was made, that there was bruising, if you're going to establish a pattern, that's about as far as you can go without stepping onto the hearsay.

MS. HANRAHAN: And so I'm assuming they'll object to me asking if there was any explanation provided for the entry.

MR. GOWDEY: We -- we will object to that, yes.

MS. HANRAHAN: Okay.

BY MS. HANRAHAN:

Q So was the report done, you said was unsubstantiated after an investigation?

A Yes, it was -- disposition was for it to have --

sent out for a CPS investigation with a Priority 3 response time. It was investigated and it was ultimately unsubstantiated.

Q All right. And so what -- what is the next report that you have after March 5th, 2008?

A Two months later, May 5th, 2008, also by a mandated reporter.

Q And what was the nature of the report?

A The nature of the report was a mandated reporter calling about -- calling concerned because Samantha had showed up to school with a 1.5 inch diameter purple bruise on her left cheek. And again, concern about the multi -- this is the third time noted in the report --

Q And did that --

A -- that this has been witnessed.

Q Did that report result in an investigation?

A No, this report resulted in information only. Meaning the information is kept in the database of DFS, of UNITY.

Q And the next report?

A November 7, 2008, also from a mandated reporter. The same mandated reporter that called on May 5th, 2008.

Q And what was the nature of that report?

A The nature again reflects that the -- Samantha

is coming to school with bruises on her face. Again, on a vulnerable -- Samantha's right eye was black, is where --

Q And was that -- and were there other injuries as well documented in that report?

A It also documents that she had bruises on her, and that she is quick to be defensive. And it documents that in September and October of 2008 she came to school with a bruise and a chipped tooth.

Q And was that report referred for investigation by the Department?

A That report was not. It was taken as information only.

Q And the next report after November 7th, 2008?

A Was November 24th, 2008, again by the same mandated reporter that called on May 8th and November 8th of 2008.

Q And what was the nature of the report in that instance?

A This report was sent out for investigation with a Priority 2 response. The nature was that subject minor came to school with makeup on her face, with a black eye on the left side of her face. And it also reflects in the report that the source is concerned about incidents of subject minor showing up at school with marks and bruises.

Again, referring back to May 8th --

MR. GOWDEY: Again, we're getting into the -- the same objection.

BY MS. HANRAHAN:

Q So and you said that one was referred for investigation?

A It was.

Q And was that report substantiated after investigation or unsubstantiated?

A It was unsubstantiated. I -- I must also reflect though that there was another call that came in that this report was cross-linked to. Same instance, same -- same concerns. That call came in from -- also a mandated reporter who also expressed the same concerns about bruising to the child's face and makeup to cover up the bruise.

Q Thank you. And then -- so you had two reports in November of 2008.

A Yes.

Q Both for black eyes?

A Yes. The -- the second report from the nurse also reflected concern about subject minor not allowing to check for bruising on her back and abdomen and concern regarding her vision having been 20/20 in the past and now

20/32. And then -- from this resource.

Q The next report after November 24th, 2008.

A December 1st, 2009.

Q December 1st?

A Yes. 12/1/09. After November 24, 2008. Wait, you know what -- yes.

Q Okay.

A 12/01.

Q Okay.

A That's what the report says.

Q Yeah, that's --

A Okay.

Q And what was the nature of the December 1st, 2009 report?

A That one was referred out for investigation. The nature of the circumstances were that the mandated reporter, the source, called in and was -- had concern about Samantha's disclosure regarding Father throwing a butter knife at her and there were cuts on her wrist.

Q And was that case -- you said it was referred for investigation?

A Yes.

Q And then was it substantiated or unsubstantiated?

A It was unsubstantiated.

Q And the next report after December 10th, 2009?

A February 22, 2010.

Q And what is the nature of that report?

A It's also from a mandated reporter who reported that subject minor Samantha came to school with a black eye and stitches in her left eyebrow.

Q And was that report referred for investigation and open for services to the family?

A It was. It was given Priority Response 2, open for services and subsequently unsubstantiated.

Q After February 22nd, 2010, did you have another report?

A I did. That's on December 6th, 2010, also from a mandated reporter.

Q And what was the nature of that report?

A A source reported that Samantha came to school with a black eye, which was black and green in color. That the whole bruise covered her whole eyelid and to the corner of her eye, near her brow, which was substantial. It's also reported about the history of, again, the child coming to school with bruises.

Q All right. And was that report referred for an investigation?

A That report was not. It was documented as information only.

Q And the next report?

A The next report was on January 27, 2011, from the same mandated reporter that called on December 6th, 2010.

Q And what was the nature of that report?

A Source reported that Samantha had bruising over both of her eyes, below her eyebrows, about an inch on each side, one more bruised than the other. Horizontal marks on the crease of her eyelid.

Q And was that report referred for investigation?

A It was not. It did document the prior history of unsubstantiated reports and calls that came in, but this was left as information only.

Q And the next call after January 27th, 2011.

A The following day, January 28, 2011, by the same I believe mandated reporter that called the day prior.

Q And what was the nature of that report?

A That was sent out for investigation. It was ultimately unsubstantiated. The source reported that Samantha came in Monday very down. Her demeanor was different and that she had a bruise four to five inches round, like purple, on her abdomen, on her ribs, and she

was complaining of bruising on her ribs in addition to the bruising under her eyes.

Q And you said that report was the same reporter as the person that called in on the 27th?

A I'm the sorry, the same institution.

Q But a different person?

A Yes, from the same institution.

Q The next report after January 28th, 2011?

A Was March 1st, 2011.

Q And what was the nature of that report?

A This was given by a mandated reporter. This mandated reporter expressed concern that Samantha came to school with the underneath portion of her left eye red, puffy, and scratched. She came to school with bruising and injuries consistent of her black eyes and scratches. It also reflects this reporter's concern regarding the same pattern of what this reporter had seen in December, coming to school with bruises in her -- in her eye -- under her eye or in her vulnerable -- in her face.

Q All right. And then the next report after March 1st, 2000 -- I'm sorry, did I ask you was that referred out for investigation or --

A It was not. It was taken as information only.

Q All right. So the next report after March 1st,

2011?

A Was December 9, 2011.

Q And what was the nature of that report?

A This report -- source reflects that there's a history of suspicious behavior and marks and bruises on subject minor Samantha, and that the parents had come to withdraw her, and that she had not been enrolled in school.

Q So that was a -- an educational neglect report?

A Yes, it was.

Q And was that referred for investigation?

A It was taken as information only. It was not.

Q So after December 9th, 2011, what -- what is the next date of the next report, if you have one?

A January 19, 2012. The same source from December 9, expressing the same concerns of educational neglect. At that time Samantha had missed 27 consecutive days of school and there were concerns regarding the prior reports of abuse to the child -- or marks to the child's face.

Q And then was that referred for investigation?

A That was referred to Differential Response, which is our state agency that handles these types of concerns.

Q And then is there another report after that?

A Yes. December 10, the following day. I'm sorry, December 10, 2013.

Q And what was the nature of that report?

A We received two calls on this day as to the same common nucleus of facts. On the first report that came, it was also by a mandated reporter at the -- who indi -- who expressed concern that Samantha had a bruise on both of her eyes from separate incidents. And also a disclosure from Samantha's friend as to what Samantha had disclosed what happened to her.

Q And you said two different reports?

A Yes.

Q Were those from separate sources?

A Yes. Both mandated reporters. The first report was concern as to her face, the bruises on her face and the disclosure by her friend as to what happened. The -- and it also lists all of the history of the prior cases and calls that came in and the reports that came in. The second report on that same day was also from a mandated reporter reflecting source -- source reporting that Samantha had a bump and mark near her left eye. Also reflecting that a student had made a disclosure as to what Samantha said as to who hit her.

MR. GOWDEY: Objection. Hearsay. Again, we're

getting into the -- past what -- reporting and getting into the substance of the allegations.

MS. HANRAHAN: And, again, not being offered for the truth, simply for what the report says.

MR. GOWDEY: It doesn't escape the fact that it's prejudicial and we have a right to cross examine on such things, assuming that -- that a witness actually did make that.

THE COURT: Okay. So I'll sustain that objection. It's just that there was a mark near her left eye.

BY MS. HANRAHAN:

Q And do you have other reports after that one on December 10, 2013?

A I do not. The December 10th, 2013 call did result in an investigation, which is the current case.

Q Thank you. And now I think you've already answered this question as you went along, but just to make sure in case we missed one, without revealing -- you have you said an unredacted copy --

A I do. --

Q -- that you can take a look at, and so you are able to see the source of each of these calls.

A Yes.

Q And how many of those calls that were received -- and I believe you said 14 calls -- were from mandated reporters?

A All of them.

Q And were all of those mandated reporters the same person or different people?

A Different people. There were two or three reports that had the same person. Of those 14 calls, there were three that were mandated reporters that had called at least two or three -- at least two times.

MS. HANRAHAN: Okay. Thank you. I have nothing further.

CROSS EXAMINATION

BY MR. DRASKOVICH:

Q Ms. Parlade, you've been called to testify concerning reports that occurred from March of 2008 through December of 2013, correct?

A Yes.

Q Do you agree that's just three months shy of six years?

A If I do the math, yes.

Q If I told you it was three months shy of six years, do have any reason --

A I'll believe you there.

Q -- to disagree with me?

A Yes.

Q So we're looking at a fairly consistent two calls or two injuries a year, correct?

A I haven't looked -- I haven't assessed it that way, though probably.

Q Six years.

A Uh-huh (affirmative).

Q Fourteen calls. We're two more than two times a year, but it's -- it's fairly consistent.

A Yeah.

Q We have had testimony in this proceeding from Samantha herself, who is the subject of these calls. And do you have any reports concerning her hospitalization of September 16th, 2014?

A I do not.

Q If I were to represent to you that she was hospitalized for a concussion, blurred vision, you would sub --

MS. HANRAHAN: Your Honor, I'm going to object because I asked Ms. Parlade to bring reports that had been made on this family. Samantha wasn't even living with them at the time, so --

MR. DRASKOVICH: And -- and my pos --

MS. HANRAHAN: -- it's irrelevant and it's not something she would have looked at.

MR. DRASKOVICH: The basis for eliciting all this testimony was to show the reliability. Well, she -- Samantha has suffered two more severe injuries than she ever has during these six years while out of this family's custody.

MS. HANRAHAN: Your Honor, he's testifying.

THE COURT: Okay.

MR. DRASKOVICH: And that's based --

MS. HANRAHAN: Samantha testified --

MR. DRASKOVICH: -- upon what I elicited from her testimony. So in order to go to the reliability of this DFS system, she had more severe injuries that occurred following her being taken from the family's home and there's no records concerning that.

THE COURT: Okay.

MS. HANRAHAN: Whether they --

MR. DRASKOVICH: And that go to the objectivity --

MS. HANRAHAN: -- were reported or not --

THE COURT: Okay.

MS. HANRAHAN: -- is not something for this witness. I mean, that's for another witness entirely. If

he wants to say that they should have been called in when --

THE COURT: Okay.

MR. DRASKOVICH: The lack of reports is clearly relevant and goes to the objectivity of the very records that were kept and the judgments being made in reference to the prosecution of this case.

MS. HANRAHAN: Your Honor, absolutely --

THE COURT: So I get -- I get what's going on here. So ask the question, object to it. And again, she may not -- this may not be the witness that knows about that information. I remember the J-case, what you're talking about. I think it's -- this is a bike thing or something, if I remember --

MR. DRASKOVICH: That was a subsequent --

THE COURT: Okay.

MR. DRASKOVICH: -- hospitalization.

THE COURT: So but what I'm -- what my point is, is this. Is that she's here for I believe CPS part of this case so, so long as, you know, she can answer the questions, she has a right -- she has an obligation to answer what she knows. But I don't want it to -- so I don't want it to end up where I'm getting a lot of information from you because she doesn't know the answer.

It has to be from here. That's the information that I need to get, is from the witness. So ask the question. If you know the answer, great. If you don't, it should be yes or no questions at this point as far as that line of questioning. Without giving me the factual part of it.

BY MR. DRASKOVICH:

Q Are there any reports in the CPS files concerning a hospitalization of Samantha on September 16th of 2014?

A The CPS files don't -- that I have here do not reflect that.

Q Are there any CPS files concerning a hospitalization of Samantha that occurred on September 27th of 2014?

A The files that I have are only CPS intake calls that come into the hotlines, so I do not have them.

Q And you'd agree with me that in the event -- I want you to assume that there were two times that she had been hospitalized in September of 2014 -- it would be consistent with this two times a year that she's allegedly receiving injuries?

A If you look at it from there.

MR. DRASKOVICH: Thank you. I'll pass the witness.

THE COURT: Thank you.

MR. GOWDEY: If you don't mind.

CROSS EXAMINATION

BY MR. GOWDEY:

Q I'm showing you what's been provided to me and is marked UNITY All Programs Areas, Clark County Department of Family Services, Child Protective Services Report Summary. Do you recognize this?

MS. HANRAHAN: What is this? I need to look at what --

MR. GOWDEY: Sure. My apologies.

MS. HANRAHAN: That's a report that you've objected to, so this is --

MR. GOWDEY: That -- that has been --

MS. HANRAHAN: -- an information only report.

(COUNSEL CONFER BRIEFLY)

MS. HANRAHAN: March 5th, 2008. So the first report you're objecting to.

MS. DORMAN: He's objecting to it, so --

(COUNSEL CONFER BRIEFLY)

MR. GOWDEY: I -- I am not offering the report, I am simply going to ask her questions about --

MS. HANRAHAN: Go for it.

MR. GOWDEY: -- the report she's testified to.

BY MR. GOWDEY:

Q Can you please go over with me each incident that has been reported? The date of each incident that's been reported, starting with the March 2008 incident.

A March 5, 2008?

Q What's the next one?

A May 5, 2008.

Q Okay. I want you to stop right there. Well, I clearly see a March 5 date listed on here. A separate page. Is anywhere on there the May 5th date listed?

A No.

MS. HANRAHAN: The document --

A I don't know this --

MS. HANRAHAN: -- that he's showing her is from March 5th -- or -- yeah, March 5th --

MR. GOWDEY: It's --

MS. HANRAHAN: -- so it wouldn't have that.

MR. GOWDEY: I'm sorry, it's dated 3/7/2014. Can we agree on that? It is -- it is purported to be a summary of all reports that were made. The calls that were made. So can we agree that's --

MS. HANRAHAN: These are --

MR. GOWDEY: -- 3/7/2014?

MS. HANRAHAN: These are -- this is a previous

history of investigations and assessments.

MR. GOWDEY: Which is exactly what you've just gone over, is that -- is that about right?

MS. HANRAHAN: No, that's not right. She testified that that one was information only. And I believe you have a copy of it, sir.

MR. GOWDEY: Is there objection? I don't know because I lost track.

MS. HANRAHAN: Yes, I'm -- I mean, go ahead. I mean, if we're going to talk about each report --

BY MR. GOWDEY:

Q Is it -- I just want to know whether that reporting is listed on this summary.

A Under the heading previous history of reports, investigations, assessments, it does not list May 5, 2008.

Q Okay. And which --

A Which this would only list inve -- things that were referred out for investigation. Many of these reports, as I mentioned in my testimony, were not referred out for investigation but were simply categorized as information only, therefore they would not reflect on this report.

Q Yet the --

A (Indiscernible).

Q -- this 11/7/2008 that you've testified to, you have said was taken as information only and it is listed on this report; is that correct?

A Maybe -- yes; that's correct.

Q So your prior testimony (indiscernible) --

A Yeah.

Q -- not be accurate; is that right?

A I'm basing it only on the information that I have in front of me here.

Q Okay. Can we go -- after 11/7 -- oh, I'm sorry, you testified May 5th and I just said that, 11/7. Was there anything between May 5th and 11/7?

A Yes. No, no. May 5th, 2008 was info only.

Q Which --

A 11/7/2008.

Q Okay. Can you proceed with the next one, please?

A 11/24/08.

Q Okay. After that?

A 12/1/09.

Q After that?

A 2/22/10.

Q After that?

A 12/6/10.

Q And do you see that listed on this summary?
A No. That is an info only.
Q After that?
A 1/27/11.
Q Do you see that listed -- and again, that's where the question would be.
A No, that also was info only.
Q Go ahead. After that, 1/28?
A 1/28/11.
Q After that?
A 3/1/11.
Q Do you see that listed on this?
A No, another info only.
Q After that?
A 12/9/11.
Q Do you see that listed on here?
A Also an info only. So there's one here on 12/9/11. No.
Q Can --
A Next one?
Q Can you -- okay, please go ahead with the next one.
A Okay. 1/19/12.
Q Okay.

A 12/10/13.

Q Okay. Are you -- are you familiar with this summary document?

A I have not seen that before.

Q Okay. Have you seen the formatting?

A I have, yes.

Q Is it -- to your understanding, being the custodian of records, is it that these are only those things that are listed out for investigation, that are sent out for investigation that are listed here?

A Based upon the heading that says previous history investigation assessment, yes.

Q And why would this -- do you know why the one -- 11/7/2008 would be listed on there if it's information only?

A I do not.

Q And again, you have no personal knowledge as to the truth or falsity of any of the allegations that were made in this case; is that right?

A I'm here to simply authenticate the records.

MR. GOWDEY: Thank you. I have no further questions.

THE COURT: We have Ms. Calvert, we have Ms. Honodel.

MS. CALVERT: I -- I think they got all mine.

THE COURT: Okay.

MS. HONODEL: Yeah, I have no questions, Your Honor.

THE COURT: Okay. Any redirect questions for Ms. Paralade?

MS. HANRAHAN: I have just one.

THE COURT: Okay. One.

REDIRECT EXAMINATION

BY MS. HANRAHAN:

Q Ms. Paralade, in general if he hotline receives a call about a child who is in foster care and being cared for by foster parents and somebody's alleging that she received abusive injuries, would that call then be placed as a report as to the caretakers of that child?

A Yes, it would --

Q Or the person causing the injury?

A It would be placed under the name of that foster parent or caretaker and be handled by the licensing unit.

Q And so it wouldn't --

A A different matter.

Q -- have -- it wouldn't appear under the Lawrence-Brown case number, correct?

A No, it would not, because the Lawrence-Brown

case number is as to the parents of Samantha and Samantha was not in the care -- in that hypothetical, Samantha is not in the care of her parents, therefore any injuries she sustained while not in the care of her parents would not reflect under their case or records.

Q Okay. And then does the hotline typically receive calls about every injury to a child or only injuries that someone thinks are abusive?

MR. GOWDEY: Objection. Calls for speculation. There's -- I don't see that a person can answer that, no. How is there a typical call only with respect to -- to what she stated. That's --

MS. HANRAHAN: Okay. That -- let me rephrase it then.

BY MS. HANRAHAN:

Q Does the hotline typically receive calls about -- every time a child is treated for an injury at a hospital?

MR. GOWDEY: Again --

A It should be law, as mandated reporters, however, no, it does not always receive the calls.

Q I mean, for accidental injuries, does the hotline get calls all the time?

A No.

MR. GOWDEY: Objection. Calls for speculation.

THE COURT: No, she would -- I mean, she would know if she's -- if she's the person on -- the custodian of records for the hotline where these calls are coming from. If they're coming from hospitals, and as to --

MR. GOWDEY: How could she possibly know what wasn't called, what --

BY MS. HANRAHAN:

Q Do hospitals routinely call in accidental injuries to children?

A Yes. If the -- if the injur -- if the accidental injury -- if the pa -- if the explanation of the parent does not line up with the injury the child sustains then it -- it is called in.

Q But I'm -- I'm talking about a hospital treats a kid for, you know, a broken arm that fell out of a tree, do they typically call the hotline about something like that?

A No, unless --

Q Just a -- an accidental injury.

A No, they have to suspect abuse or neglect.

MS. HANRAHAN: Thank you. I have nothing further.

A It's not enough.

THE COURT: Any questions? Follow-up?

RECROSS EXAMINATION

BY MR. DRASKOVICH:

Q In reference to the nature of these previous call from 2008 through 2013, they were fairly minor injuries, correct?

A That would be a --

MS. HANRAHAN: Your Honor --

Q We're talking about bruise --

MS. HANRAHAN: -- now --

Q -- bruising and --

MS. HANRAHAN: -- we were very limited in what could be discussed about those injuries, so if we're going to go back, I would like to go back and have each injury described in more detail, because we do have more detail.

A Because my answer would be no, they're not fairly minor, they're actually substantial injuries.

Q You'd agree with me a concussion is a severe injury or a substantial injury.

A Yeah. Yes.

Q You'd agree with me that a golf size --

MS. HANRAHAN: Your Honor --

Q -- a golf ball sized contusion --

MS. HANRAHAN: -- this is --

Q -- to the inner labia --

MS. HANRAHAN: I have objected, first of all, and secondly --

THE COURT: Okay.

MS. HANRAHAN: -- he's way outside --

MR. DRASKOVICH: I'll --

MS. HANRAHAN: -- the scope of my direct --

THE COURT: Okay. So --

MS. HANRAHAN: -- and my redirect.

MR. DRASKOVICH: I'll withdraw my questions. I'm going to be here all day.

THE COURT: All right. The question will be withdrawn. All right. Any other questions for this witness? All right. Thank you, Ms. Parlade.

THE WITNESS: Thank you, Your Honor.

MS. HANRAHAN: Your Honor, I don't know what your plans are for breaking for lunch, but Ms. Tallent has to be in Judge Sullivan's courtroom at one o'clock for some other hearings. And we can start if she hasn't quite finished. I don't know if you thought this would be a good time to take a break.

MR. DRASKOVICH: I think it would be --

MR. GOWDEY: I'm all for --

MR. DRASKOVICH: -- a great time.

MR. GOWDEY: -- a lunch break.

THE COURT: I think it's a great time to take a break, yeah. So how long do we need? I mean --

MR. GOWDEY: Well, it's 12:40 now.

THE COURT: Okay.

MR. GOWDEY: I --

THE COURT: Let me just state this. If you say all I need is 20 minutes because you want to rush this, it's -- we have -- we have a lot of days. It's not one of those cases where anything is going to end today, so I'd rather have -- I'd rather everyone be on top of things and have the time they need.

MR. GOWDEY: My suggestion is 1:45. Back --

THE COURT: So an --

MR. GOWDEY: -- at 1:45.

THE COURT: So an hour.

MR. GOWDEY: That's an hour.

THE COURT: An hour.

MR. GOWDEY: And, Judge, I want to -- I want to -- I coach youth football. I know -- I know that's not really the Court's concern, but we practice at six o'clock. I'd like to -- to ask the Court if we can finish by 4:30 --

THE COURT: Okay.

MR. GOWDEY: -- on -- on these days. At least -- there's only one day that conflicts, and that's Thursday. Monday and Friday I -- I do not have practice, but Thursday I do have practice and I am the head coach of this team, so it's an obligation I've got. But I'd like to the Court to accommodate at least on Thursday.

THE COURT: Okay. So -- so today is Thursday.

MR. GOWDEY: Like today is Thursday.

THE COURT: Okay. So what I was going to say is this, these are not -- this case is not going to -- we're not going to sit here till seven, eight o'clock at night every day of the -- of the trial, because there's just -- there's just only so much time in the day. I have other cases that I hear on the days I don't have you in my court, so I need preparation time and whatnot. So let's just state this. Does anyone have any objection to stopping today at 4:30?

IN UNISON: No.

THE COURT: Okay. So that is fine.

MR. GOWDEY: Thank you.

THE COURT: But for the future too, you know, I plan on wrapping up, if not before, no later than approximately 5:00 because I have these guys I have to consider too. If it's -- you know, someone's coming from

out of state and we don't want to continue another day, I get that, stay a little bit longer, but we have a lot of days set for this trial.

So with that being said, we'll stop by 4:30 and you'll be able to come back at a quarter to 1:00 (sic).

MR. GOWDEY: Thank you. Quarter to 2:00. Quarter to 2:00.

THE COURT: Quarter to 2:00. Sorry.

MR. DRASKOVICH: Thank you.

MR. GOWDEY: Thank you very much.

MS. CALVERT: All right. Thank you, Your Honor.

THE COURT: We'll see you then. Thank you.

(COURT RECESSED AT 12:43 AND RESUMED AT 02:00)

THE COURT: We'll go back on the record and I will let Ms. Hanrahan call her third witness.

MS. HANRAHAN: The State calls Melissa Lawrence.

THE COURT: Okay.

THE CLERK: Please raise your right hand. You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yeah.

MELISSA LAWRENCE

called as a witness on behalf of the Defendant and being

first duly sworn, testified as follows on:

DIRECT EXAMINATION

THE CLERK: State your name for the record.

THE WITNESS: Melissa Lawrence.

THE CLERK: You may have a seat.

BY MS. HANRAHAN:

Q Ms. Lawrence, how many children do you have?

A I respectfully refuse to answer that question, assorting my -- or asserting my Fifth Amendment privilege against self-incrimination. While this particular question may or may not elicit any incriminating answer, to answer may be construed to waive the asserted privilege and I hereby decline to answer.

MS. HANRAHAN: So, Your Honor, the ability to take -- assert the Fifth Amendment privilege is based on the possibility of criminal charges arising out of the answer to the question. The answer to the question how many children do you have is hardly something that she can be held criminally liable for.

MR. GOWDEY: Here's the problem that I have. There -- there are plenty of holdings that say if you answer any questions, any substantive questions, at that point you will have waived the privilege moving forward in a criminal context.

THE COURT: Well, you all will have to give me some case law. This is getting -- this is to a point where -- you have to come in prepared for -- for what's going to happen. These are -- these are ques -- you -- there has to be some order to this -- this trial here. So with that, I am happy to break if you want to give me case law. I agree. A lot of these questions that she's going to be asked she's going to plead no contest based on her criminal trial not occurring yet. But I need to know why she can't answer how many children she has. It's a -- it's a -- it's a number question. It's not a if she -- so if you're saying that there's something out there that -- that can hold her liable for any question that she answers, then I need that information.

MR. GOWDEY: Right. My --

MS. HANRAHAN: And there's nothing. Your Honor, the rule is clear, it's a question by question basis. She has to assert the privilege and there has to be the possibility of criminal charges resulting from the answer to that question.

MR. GOWDEY: The rule is clear in fam -- in the family law context. The rule is not at all clear in the criminal law context.

MS. HANRAHAN: We're not in -- under criminal

law here. This is civil law.

THE COURT: This is a civil case.

MR. GOWDEY: I understand, but I have my client's criminal case to protect her from as well.

THE COURT: Okay.

MS. HANRAHAN: And that's why that privilege exists. They're able to assert the privilege if the question that's asked, the answer to the question may implicate --

THE COURT: Correct.

MS. HANRAHAN: -- criminal --

THE COURT: Correct. --

MS. HANRAHAN: -- charges.

MR. GOWDEY: Again, my pro --

MS. HANRAHAN: And there is no case law that --

THE COURT: Well, that's what I'm asking.

MS. HANRAHAN: -- Your Honor's going to find.

THE COURT: You have to show me something that states that she can't answer how many kids she has --

MR. GOWDEY: I -- I --

MS. HANRAHAN: In fact the case --

THE COURT: -- that will affect her criminal case. It will not affect her civil case if she tells me she has four children or she tells me she has six

children. If there's something in criminal crime (sic), happy -- I -- I don't want to have her penalized in criminal court if that's the case. So I know that some of these questions she's going to invoke her Fifth Amendment right, and I understand that, but as far as this specific question of how many children you have, you need to give me something so I can make a ruling on whether she needs to answer that.

MR. GOWDEY: Okay.

MS. HANRAHAN: And the case law is clear that the privilege can't be invoked in a blanket fashion. It has to be question by question and it has to be based on whether the evidence is incriminating.

MR. GOWDEY: Are you citing to a criminal case?

MS. HANRAHAN: Glanzer v. Glanzer, if you want --

MR. GOWDEY: You're citing to a civil case --

MS. HANRAHAN: We're in a civil case --

MR. GOWDEY: -- in family court.

MS. DORMAN: We're in a civil case.

MS. HANRAHAN: -- here, sir. Criminal law doesn't apply. Civil law applies.

MR. GOWDEY: As much as I appreciate that civil law applies, I have to -- but my concern is that if my

client answers certain questions of any substantive nature, whether she will be construed in a criminal context of has having waived her privilege.

THE COURT: Well, there has to be some --

MR. GOWDEY: In a criminal context.

THE COURT: -- case law or some statute that says that if she as -- answers how many quest -- how many kids she has that that opens up the door for all her --

MR. GOWDEY: I understand.

THE COURT: -- questions. I don't have that --

MR. GOWDEY: I understand the Court's -- the Court's ruling and I would ask for a break to research.

THE COURT: I mean, I'm going to do this right because I'm not going to have this get appealed on -- on a question of how many children you have. So that's a pretty straightforward question, but I -- I respect that you have a concern for your client and that's your job, but let's -- let's get some answers and so we -- we can go forward with this. So I'll give you a break. How long do you think you need? I'm not -- you know, I don't know where you're going to -- I mean, you'll -- you'll find it I guess somewhere, but are we talking 10 minutes, are we talking 30 minutes?

MS. HANRAHAN: I think it's going to take a long

time because I don't think they're going to find it.

MR. DRASKOVICH: We're looking for it --

MS. HANRAHAN: And this is --

MR. DRASKOVICH: -- right now.

MS. HANRAHAN: -- a 128 proceeding, Your Honor.

THE COURT: I know. For the question that you ask, I don't -- I don't know that as a fact, so I'm giving him the opportunity if he's bringing up this objection to give me -- to, you know, provide me with an answer.

MS. DORMAN: And I hate to compound this, Your Honor, but it begs the question if every time there's a question that is clearly not incriminating, are we going to then take a 30 minute break for them to find case law on that question too?

THE COURT: No, it would be whether or not questions --

MR. GOWDEY: This is not a question specific answer that I'm looking for. This is not an answer to can she acknowledge how many children she has.

THE COURT: Right. So, no, it would be an an -- the answer would be to any questions that are generic in nature.

MR. GOWDEY: Correct.

THE COURT: So, I mean, I'm -- I have plenty of

things to do upstairs that will keep me busy for a few minutes, so if you want, we can take a break and you can do that.

MR. GOWDEY: Fifteen minutes?

THE COURT: Yeah, that's fine. I'll come back.

(COURT RECESSED AT 02:07 AND RESUMED AT 02:24)

MR. GOWDEY: Your Honor, for my proposition that for her to answer any questions I cite SEC v. Banc de Binary, which is a Neva -- District of Nevada case, 2:13-CV-993, I believe to be the cite, and they cite Malloy v. Hogan, which is a US -- a US Supreme Court case. The holding -- and I'll give you the cite for that in just one moment.

(COUNSEL CONFER BRIEFLY)

MR. GOWDEY: 341 US -- what is that right there? Okay. 370 US 1.

(COUNSEL CONFER BRIEFLY)

MR. GOWDEY: 1964. Now the -- the SEC v. Banc de Binary, the Nevada case, is obviously a civil case. It is an SEC case that is brought. And of course the issues there are that testimony in SEC proceedings can lead to criminal charges as well. The -- the cite -- the relevant language says the privilege afforded -- and they're talking about the Fifth Amendment privilege against self-

incrimination -- afforded not only extends to answers but to questions that would afford -- that would afford a link in the chain of evidence needed to prosecute.

So, foundational questions that are needed to establish, for example in this case, do you have children and one of those children is the subject of the criminal case, is a foundational question which poses -- which provides a link in the chain of evidence needed to prosecute. If the witness, upon interpreting this claim, were required to prove the hazard, he would be compelled to surrender the very protection which to -- what's the rest of the citation there?

(COUNSEL CONFER BRIEFLY)

MR. GOWDEY: Would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a re -- that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because of injurious disclosure could result.

So they say even foundational questions, even questions that are -- that provide a causal link, need not be answered and the privilege may be asserted. This --

and this question provides a direct causal link, how many children do you have, to one of your children has been harmed; hasn't she. And you and your hu -- and -- and your co-defendant are responsible for that.

So my assertion is that she is entitled to take -- to rely on the Fifth Amendment privilege based on SEC v. Banc de Binary, et al. And they cite Malloy v. Hogan, the US Supreme Court case. And that is a Nevada District Court case citing a United States Supreme Court case with respect to the issue of you can assert the privilege.

(COUNSEL CONFER BRIEFLY)

MS. HANRAHAN: All right. So, Your Honor, first off I would like a time to read what they came up with, but I think part of what Mr. Gowdey said is -- is exactly what other Courts have found. It has to be -- the answer has to be an injurious disclosure. It has to be something that implicates criminal liability. And the question how many children do you have, I mean, if that implicates criminal liability there's bigger problems here than what we're talking about.

But I would, again, Glanzer v. Glanzer states that the invocation of the privilege is limited to circumstances in which the person invoking the privilege reasonably believes that his disclosures could be used in

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 71873/71889

Electronically Filed
May 30 2017 04:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE MATTER OF THE PARENTAL RIGHTS AS TO S.L; N.R.B; H.R.B. AND W.C.B

DONALD BROWN,
Appellant,
vs.

STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES; S.L.; N.R.B.; H.R.B.; AND W.C.B., MINORS
Respondents.

IN THE MATTER OF THE PARENTAL RIGHTS AS TO S.L; N.R.B; H.R.B. AND W.C.B

MELISSA LAWRENCE,
Appellant,
vs.

STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES; S.L.; N.R.B.; H.R.B.; AND W.C.B., MINORS
Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEF
VOLUME II

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THE COURT: All right. Thank you, Ms. Lawrence. You can go back and -- and sit with your attorney.

(WITNESS EXCUSED)

THE COURT: All right then.

MS. HANRAHAN: Your Honor, our next witnesses will be the children.

THE COURT: Okay.

MS. HANRAHAN: The next witness is Nikki Brown and we're going to have the children come down.

THE COURT: Okay.

MS. HANRAHAN: We'll text the foster mother to bring them down now to the front office. We would ask that the parents wait in the backroom. We've had the motion to have them testify by alternative means and it was granted.

THE COURT: Okay.

MS. HANRAHAN: Nobody objected to it, so --

THE COURT: Right. That was in front of me though, was it? I forget. I was it in front of the -- Hearing --

MS. CALVERT: Yeah.

THE COURT: -- Master Royce?

MS. CALVERT: It was in front of Bryan (ph).

THE COURT: Okay. Okay.

MS. HANRAHAN: I mean, everybody is situated.

THE COURT: So with that being said, how it works is this. It was -- it's -- it's not common, but it -- it -- there are times when children testify. They have to be in here and have -- they have to be recorded. So how it works is this. The parents in this case go into the room. There should be a TV setup monitor where you can see everything. And then how it works usually is that you take a break, your -- you ask, you attorney goes back there and speaks to you. Any questions that you have, you have the right to talk to your attorneys if he was sitting here. It takes a little bit longer, but that -- don't worry about that. I don't want -- care about the time. However long it takes, we'll make it work for you. Okay? All right.

So are you -- so do we have a little bit of time? I mean, are they -- do we have five minutes, 10 minutes.

MS. HANRAHAN: Five minutes, tops.

THE COURT: Okay.

MS. HANRAHAN: Tops.

THE COURT: Okay.

MS. HANRAHAN: So --

THE COURT: All right. I won't go anywhere. I'll stay put.

MS. HANRAHAN: Yeah. She should be over really quick.

(COURT RECESSED AT 1:44 AND RESUMED AT 1:44)

THE COURT: So how we really should do it for the children, because at this point I got to make it for the children, is I would ask Bernard to bring them this way and then the parents go that way just for the purpose of -- of this hearing. It's very hard for children to --

MS. TALLENT: Your Honor, will it be okay if we bring them to the back?

THE COURT: I'm fine with whatever.

(COUNSEL CONFER BRIEFLY)

THE COURT: Yeah, that's fine.

MS. HANRAHAN: Well -- well, that's what we talked -- if it --

THE COURT: Yeah, for that hallway. It doesn't matter what hallway.

MS. HANRAHAN: No, it -- it -- the -- the Marshals sometimes have a problem with -- you have to --

MS. TALLENT: I know.

MS. HANRAHAN: -- get that cleared by Judge Hoskin and I told him just -- they can come in the front if the parents are -- I mean, in the front door of the courthouse, but then we can --

THE COURT: Right.

MS. HANRAHAN: -- come around back.

THE COURT: Right. There's a door there. Just come around there and that way they go there.

MS. HANRAHAN: Okay. And -- and --

THE COURT: Did you need to take a break? Okay. Okay. We can go off the record. No one's here.

(COURT RECESSED AT 1:45 AND RESUMED AT 2:00)

THE COURT: You're Nikki.

THE WITNESS: I'm Nikki.

THE COURT: Nikki, do you want to just come over here? Because guess what? We have a little chair for you over here. We're on the record. And what we're going to do is this. See that little black box there? That's the microphone. That's where I can hear you, because the way they have me positioned, it's hard to hear. So talk into the microphone. Okay? If you need -- you want some water? You're good? Okay.

So my Court Clerk has to swear you in and ask you some questions and then we'll -- we'll go forward, okay? And if you don't understand something, then you'll -- you'll let us know, okay? All right. Okay. All right. We're on the record.

THE CLERK: Please raise your right hand.

THE WITNESS: Okay. Sorry.

THE CLERK: You do solemnly swear the testimony

you're about to give in this action shall be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yeah.

THE COURT: That was a yes and you can sit down and just talk loudly into that little box, okay, just so I can hear you.

THE CLERK: State your name for the record.

THE WITNESS: Nikki.

THE COURT: Do you want to state your last name?

THE WITNESS: Brown.

THE COURT: Great. Okay. Nikki Brown. All right. You can have a seat. Okay. You're good.

NIKKI BROWN

called as a witness on behalf of the State, have been first duly sworn, did testify upon her oath as follows on:

DIRECT EXAMINATION

BY MS. DORMAN:

Q Hi, Nikki. Remember, we talked about -- remember, my name's Amity.

A Uh-huh (affirmative).

Q Do you remember that? Do you remember we talked about saying yes or no and not saying uh-huh or unh-unh because nobody knows what that means?

A Yeah.

Q Yeah. Okay. So if you could just say year or no or whatever instead of making a sound, okay?

A Okay.

Q All right. How old are you, Nikki?

A 12.

Q When's your birthday?

A January.

Q What day on January?

A 4th.

Q And what year were you born?

A 2004.

Q Okay. And what is your Mom's name, Nikki?

A Melissa.

Q What's her whole name?

A Lawrence.

Q Okay. And what is your dad's name?

A Donald.

Q And what's his full name?

A Brown.

Q Okay. And do you currently live with Ms. Jackie?

A Yes.

Q And before you lived with Ms. Jackie, did you live with your mom -- well, before you lived with everybody in foster care, did you live with Mom and Dad?

A Yeah.

Q Okay. And do you have siblings?

A Yes.

Q Okay. Who are your siblings?

A Heidi, Wyatt and Sam.

Q Okay. And how old is Heidi?

A 12.

Q Okay. And how old is Wyatt?

A Seven.

Q And how old is Sam?

A 18.

Q Okay. And do you live with them too?

A Yes.

Q And when you lived with your mom and dad, did they live with your mom and dad?

A Yes.

Q Okay.

THE COURT: Mr. Dorman, I'm going to have Nikki to speak up a little bit louder, okay? Does that sound okay?

THE WITNESS: Yeah.

THE COURT: Thank you.

Q You can also -- if you want, I can't see you, but if you want, you can just a little closer, would that help?

Oh, yeah. There you go. There you go. Just scoot your -- there you go.

MS. CALVERT: There you go. Put your feet up for a second.

THE COURT: Perfect. Thank you, Nikki.

MS. DORMAN: Because maybe if you're -- if you're closer to this, then they'll hear you.

THE COURT: All right.

Q Okay. So what did I ask you? Oh, when you lived with Mom and Dad, did you siblings live there too?

A Yes.

Q Okay. And were there -- were there rules in your house when you lived with your mom and dad?

MS. CALVERT: I'm going to object on the parent-child privilege.

MS. DORMAN: I --

THE COURT: What's the parent --

MS. DORMAN: -- would hope that this up before we had a child on the stand because I have several issues with regard to her doing that.

THE COURT: Okay. What parent-child issue? What -- what specifically are you -- are you -- what is the objection?

MS. CALVERT: Compelled to provide testimony that

would intend to incriminate the parents or that would be harmful to the parent-child relationship.

MS. DORMAN: Can we -- can we have the child step outside?

THE COURT: Sure.

MS. CALVERT: Yeah, we can have her step out.

THE COURT: Nikki, you want to go out there?

MS. HANRAHAN: Maryte --

THE COURT: Yeah.

MS. HANRAHAN: Ms. Tallent --

THE COURT: Ms. Tallent --

MS. HANRAHAN: -- can go --

THE COURT: -- do you mind --

MS. HANRAHAN: -- sit with her in the -- in the --

THE COURT: There's chair out there.

MS. HANRAHAN: -- back so she doesn't --

THE COURT: Thank you.

MS. HANRAHAN: -- have to listen to the arguing.

MS. DORMAN: Yeah.

(WITNESS EXCUSED)

THE COURT: Okay. So a couple things. First is -- there was no -- she's going to testify and there was -- I think it was your motion for her to testify by

alternative means which means she's going to testify, just not in front of her parents.

MS. DORMAN: I have a copy of that. It was filed --

MS. CALVERT: And --

MS. DORMAN: -- on October 13th of 2015, nearly 10 months ago when this could have been brought up. I want to talk about the case that she brought up in this court yesterday to this Court to this tribunal. She specifically talked about a case called In Re: Augusto. She did not give a cite. I want to give the Court the cite. It is CIVLV 829 HEC 553 Federal Supplement 1298.

In that case specifically which has negative history, first of all, it's a U.S. District Court case which is not binding on us. But in that case, the person filed a protective motion in limine to get a get a subpoena quash so that he didn't have to testify against his father in a criminal proceeding.

In that case, the mo -- the motion for a protective order was filed well in advance. It had witnesses, rabbis, Catholic priests. It had a psychological evaluation attached to it. She did none of those things. In fact, she brought it up for the first time yesterday when as you noted she filed her motion to

testify outside the presence on October 13th of 2015, nearly 10 months ago.

Now we have a duty to bring cases to this Court that have a negative inference on the cases we're citing even if they don't stand for our position. And I just want to bring to the attention of this Court a case that is in the Ninth Circuit called Alva v. United States, and that is 1993 U.S. Ap. Lexus 31984. It specifically says the -- all this reliance on Augusto is unpersuasive. The holding in Augusto is contrary to our decision in pen and contrary to the overwhelming weight of case law from other circuits that also reject the concept of a family privilege. And I would just like this Court to pen which is 647 Federal 2D 876 which specifically recognizes in the Ninth Circuit that even very young children can testify against their parents.

So what we have in this case is a case that she cited to that is in no way binding on this Court that there was a motion for a protective order well ahead of the child actually being on the stand. We have negative treatment of that case by the Ninth Circuit which she failed to mention yesterday and we have an overwhelming body of authority that rejects a family privilege.

And I will just refer this Court to the Fourth Circuit who rejects a family privilege, the Fifth Circuit

who rejects a family privilege, the Sixth Circuit, the Seventh Circuit, the Ninth Circuit, the Tenth Circuit, and the Eleventh Circuit all of whom reject a family privilege.

What I think is most offensive and which -- would should be more offensive to this Court is the case in the Nevada Supreme Court as to the rights of J.R.S. which specifically found it was irrelevant for Counsel to bring a motion in limine the night before a TPR trial. She didn't even bring it the night before. She brought it on day two of the trial.

THE COURT: Thank you. Would you like to respond?

MS. CALVERT: The Ninth Circuit opinion she cited is unpublished and therefore citation to is not proper unless she provides a copy of the order whatever she's citing to. You can't cite unpublished opinions. They're unpublished for a reason.

But I clearly disclosed yesterday it was a District of Nevada case which is our federal counterpoint had done a pretty comprehensive review of privilege.

THE COURT: Let me ask you this, because I wasn't -- there was action motions done in front of I believe Hearing Master Royce.

MS. CALVERT: Sure.

THE COURT: Was there ever a protective order filed and granted?

MS. CALVERT: There was not a protective order filed and when I got a copy of the subpoena, it was the night before -- it was on the 17th. So I had not seen a subpoena to move to quash. And I don't know that I would have anyway when I sat down and thought about it, because I think there are topics that it's appropriate for her to testify to. It's why I didn't object when she first started talking, waited until we started getting into the topics that are appropriate to as we've done throughout this whole proceeding alleged privilege to.

It's a -- there's a testimonial privilege component to it, not just a -- I mean, a cart blanche privilege. And so to the extent that it's a testimonial privilege, I'm asserting it now.

When I tried raising it on the first day, you know, there was not resolution, but obviously the Court was made aware of it and they've come prepared today. I still -- you know, still assert we have a district of Nevada case. Yeah, that's -- that's not binding. I'll -- I said that yesterday.

To the extent that that District of Nevada case relies on U.S. Supreme Court precedent in making it -- you

know, the foundation and basis of it finding the privilege, I -- I believe it's very applicable.

There are pending criminal proceedings. That was part of it in that District of Nevada case. And yes, in here, we have other considerations that are going to be very parallel such as the children's medical records.

THE COURT: But about the --

MS. DORMAN: I think --

THE COURT: What about --

MS. DORMAN: -- what's even more troubling is if she's asserting that she's allowed to assert a family privilege on a question by question basis, the one case she has to rely on which is not even binding does not say that. It says that the protective order was granted. There was no question by question basis.

THE COURT: Okay.

MS. CALVERT: And I'm not saying a question by question basis. I --

MS. DORMAN: That's exactly what she just argued.

MS. CALVERT: I'm sorry.

THE COURT: Let me tell --

MS. CALVERT: I'm still talking.

THE COURT: -- you how it usually works. Usually what works in cases like this is that we don't -- we don't

have to have children testify. We -- we try not to because we understand that they're kids. In a lot of cases, they don't testify. But A, I don't have a protective order, and B, I don't have a motion in limine for anything before the -- the -- today's date. And thirdly is -- I mean, the kids testify at the criminal trials.

MS. DORMAN: As they did in this case --

THE COURT: Correct.

MS. DORMAN: -- at the prelim.

THE COURT: So she would be testifying as to the crux of this case. So it's not that it's -- I mean, they're -- I didn't call her. The -- the State called her. So they're -- they're -- that's their case.

MR. GOWDEY: I would note that -- that -- I'm sorry, I didn't mean to interrupt. I would note that the -- the testimony in -- at the criminal trial was exculpatory.

THE COURT: I'm sorry, say that again?

MS. HANRAHAN: Well, then they --

MR. GOWDEY: Preliminary.

MS. HANRAHAN: -- should be happy.

MR. GOWDEY: The test -- the testimony --

MS. DORMAN: What does that have to do with the argument?

MS. CALVERT: It's the -- when the privilege is invoked to -- pretty much you can't compel a child to provide the testimony that will be the basis for, you know, a harmful decision. It -- it wrecks what has been recognized by the supreme court, the Ninth Circuit, State of Nevada in a lot of its decisions about the sanctity of the family and the relationship between the child and parent and that that weighs very heavy. The same way there's a spousal privilege is not the child parent privilege even -- even greater than the spousal privilege --

MS. DORMAN: In what -- what --

MS. CALVERT: -- certainly.

MS. DORMAN: -- cases is she referencing? She's only brought In Re: Augusto, and in that case, there was not an invocation question by question. There was a motion for a protective order. That's the only case she's cited. And because she waited until the beginning of trial, I did the research last night.

MR. GOWDEY: The children weren't subpoenaed until the night before.

MS. DORMAN: She filed a --

MS. HANRAHAN: No.

MS. DORMAN: -- motion for them --

MS. HANRAHAN: The children are subpoenaed.

MS. DORMAN: -- to testify in --

MS. CALVERT: But I --

MS. DORMAN: -- the alternative 10 months ago. They were first listed on the witness list for this Court in January of 2016. That is eight months ago. And she waited til the day of the trial to bring one case to this Court's attention.

MS. CALVERT: Not just one case and the other part of this is yes, I brought that motion 10 months ago. I'm not saying that it's inappropriate for them to not testify at all. That's why I didn't object during the first, I don't know, half dozen questions. But the motion for testifying by alternative means is certainly a safety net.

The other part of it is at that point I don't -- you know, I can't say what was discussed between me and my clients obviously, but the understanding of whether or not the testimony was going to be sought to incriminate or support the State's case at the preliminary hearing, obviously it was -- you know, what they testified to would not necessarily in this -- in the State's favor. The fact they're now calling them as their witness I think gives an idea as to what they're intending they'll testify as to.

MS. DORMAN: That's a --

MS. CALVERT: It's changed.

MS. DORMAN: That's a fairly dangerous argument, because she was present last Friday in Jan's office when I asked Nikki every single question that I'm going to ask her today.

MS. CALVERT: That's --

MS. DORMAN: So at a minimum, she was on notice last Friday and since court was cancelled this Monday, she could have written a motion in which she references these numerous cases that I still have yet to hear a single citation to a case other than In Re: Augusto and not waited until the child spoke.

Again, In Re: Augusto contemplated a protective order. If we're even going to entertain it, it contemplated a protective order, not an assertion on a question by question basis.

MS. HANRAHAN: And Your Honor, you can't ask to have a witness not testify because they're going to be adverse to the people you've identified with. I mean, it -- it's -- that just negates every premise of --

MR. GOWDEY: It's the basis --

MS. CALVERT: Is there --

MS. HANRAHAN: -- the justice --

MR. GOWDEY: -- of the spousal --

MS. HANRAHAN: -- system.

MR. GOWDEY: -- privilege.

MS. CALVERT: It's a -- they've --

MS. HANRAHAN: The spousal privilege exists. The parental privilege does not.

THE COURT: But that -- well, that's my quest --

MS. HANRAHAN: There's no law --

THE COURT: That's -- that's -- well, that's what I'm asking is --

MS. HANRAHAN: And it doesn't exist --

THE COURT: -- what --

MS. HANRAHAN: -- in domestic --

THE COURT: -- privilege --

MS. HANRAHAN: -- violence.

THE COURT: This is -- this is not a case of -- of spousal. It's not a spouse testifying against a spouse. So --

MR. GOWDEY: But the assertion that --

MS. HANRAHAN: And --

MR. GOWDEY: -- Ms. Hanrahan had just made was that you cannot have -- you cannot ask somebody not to testify because it's going to be adverse and there are -- there are privileges which apply clearly.

THE COURT: But what --

MS. HANRAHAN: There are none that apply here.

THE COURT: In this case. That's what I'm talking -- I don't care about any other case. I -- I just care about this case and the children.

MR. GOWDEY: And I would note with respect to -- whether Ms. Calvert was able to file a protective order why it was listed on the witness list and it was determined at the -- a fairly last moment that he wasn't going to testify. So until you actually receive the subpoenas, you don't know whether they actually intend to put somebody on the stand.

MS. DORMAN: Except that she was present at the pretrial.

MS. CALVERT: I was. I didn't have a notice of the subpoena then and quite frankly, this is the first time I learned a lot of things.

MS. HANRAHAN: I think that's --

MS. DORMAN: It's frankly --

MS. HANRAHAN: -- a little --

MS. DORMAN: -- disingenuous.

MS. HANRAHAN: -- disingenuous.

MS. DORMAN: Very --

MS. HANRAHAN: Very --

MS. DORMAN: -- disingenuous to argue that she didn't know her clients were going to testify when she filed a motion for them to testify --

THE COURT: Okay.

MS. DORMAN: -- outside the presence 10 months ago.

THE COURT: So as much as we don't want children to testify if they don't have to, I don't have any -- I don't have any rule -- I don't have any authority not to have them testify.

MS. CALVERT: And I don't think it's not to have them testify. I think it's as to again the conversations or either those -- it's the -- the communications that are protected, the same way they are in any attorney-client privilege, penning it --

THE COURT: But -- but there is an attorney-client privilege --

MS. DORMAN: Well, and that's --

THE COURT: -- and there is a spouse.

MS. DORMAN: -- the thing, Your Honor.

THE COURT: But -- so I just --

MS. DORMAN: If she was going to --

THE COURT: -- need to know what the privilege is.

MS. DORMAN: Yeah, if she was going to ask you to extend a privilege that's been recognized by one district court, it should have been done well before today because we might have to write the issue. I mean, what did she think, that you were going to make up a privilege based on one district court --

THE COURT: No, I'm not --

MS. DORMAN: -- case?

THE COURT: -- making up a privilege. So that's what I'm asking, what -- what -- to figure out if there is a privilege, because we need to have a -- we need to have a record. So if there is a privilege that makes the child not have to testify regarding communications with a parents -- you know, unfortunately this case is all about what happened in the house and what happened in -- in their lives.

So I'm assuming that's the questions that you're going to be asking because you're not going to ask her about, you know, what she did 15 years -- oh, she's 12. What she did, you know, as a baby. It's something going to be related to this case. That's why we're here arguing about this -- or that both parties are arguing.

So that communication is talking -- that -- that observation you can ask about. I don't see that that has

-- any privilege asking about her -- her life. Have -- as -- as long as it's relevant to this case, obviously.

So I don't think there is -- I don't have a privilege in front of me that prevents the children from -- from testifying as much as they may not want to testify. They have nothing to say from a doctor or anything else that they shouldn't testify. That would be in a motion in limine that we haven't heard yet and not -- you know, I don't have anything even pending if that's the case.

So as much as -- again, it's -- we don't want children to have to testify, so far it appears that she's relevant to this case.

MS. CALVERT: And I agree she's -- she's relevant. And just I -- you know, I -- I respect whatever this Court orders, absolutely. I think I still, you know, unfortunately have to make my record on this. I --

THE COURT: Okay. I understand.

MS. CALVERT: Things -- things change when you have a child client. I don't appreciate being called disingenuous. I've been nothing but polite to you all and I -- I take exception to that.

I would say that the supreme court cases relied upon within that Nevada district court are the authority that I would rely on. Should this need to, you know, at

some point be reviewed by another court which I --

MS. DORMAN: Well, I think that's the exact problem, Your Honor. And, you know, it's one thing to say that -- well, setting aside any personal attacks, the problem with her saying is everything I'm arguing is in that case. She never brought that before the Court --

THE COURT: I get it.

MS. DORMAN: -- prior to today.

THE COURT: And there was no motion before to not have the children testify and there was no protective order that was in front of myself or Hearing Master Royce. So -- so at this point, I -- I don't have any other choice but to have the child come in and, you know, obviously -- you know, it's hard for any child to be here for whatever reason. It's a horrible court to be in as far as the subject matter. So I trust that everyone will be appropriate to this little girl and make it as easy as possible without, you know, obviously not hindering either side's case.

So I mean, that's -- you know, and I'm there to make sure that she is okay and that the questions are appropriate and are not -- you know, they're -- they're done in -- in the right manner which I don't doubt that they will be on either side.

MR. DRASKOVICH: I have an -- an additional request. I think now might be an appropriate time to -- to bring it. Obviously, this proceeding is different than a number of proceedings we generally practice in.

THE COURT: Right.

MR. DRASKOVICH: I don't want to cross this child with inconsistent prior statements under oath. And I -- I don't think that would be detrimental. It's -- I'm going to ask would the parties agree that on September -- or I'm sorry, on July 18th, 2014 both girls said that they had not witnessed any abuse and now their story is -- it -- it's different. And I -- I -- I don't want to get into that. I -- I don't want to be --

MS. DORMAN: Is that the prelim?

MR. DRASKOVICH: Yes.

MS. DORMAN: Why don't we just --

MS. CALVERT: Do the transcript.

MR. GOWDEY: Just admit the preliminary hearing transcripts testimony --

MR. DRASKOVICH: Because I --

MR. GOWDEY: -- both --

MS. CALVERT: And then we can --

MR. GOWDEY: -- child witnesses.

MS. CALVERT: -- use it in our closing --

MS. HANRAHAN: That would be fine --

MS. CALVERT: -- to reference --

MS. HANRAHAN: -- because I would --

MR. DRASKOVICH: I --

MS. HANRAHAN: -- disagree with that characterization in general, but there --

MR. DRASKOVICH: There's been --

MS. HANRAHAN: -- certainly there was some things. We don't even know what they're going to say yet --

MR. DRASKOVICH: Yeah.

MS. HANRAHAN: -- honestly.

MR. DRASKOVICH: And -- and I really don't --

MS. HANRAHAN: They're kids.

MR. DRASKOVICH: -- want to --

MS. CALVERT: That's true.

MS. HANRAHAN: Who knows --

MR. DRASKOVICH: I mean, this isn't --

MS. HANRAHAN: -- what they're going to say.

MR. DRASKOVICH: -- a criminal case where my client's --

MR. GOWDEY: Right.

MR. DRASKOVICH: -- freedom and I mean, I go statement by statement and show the Court how the -- and I

don't want to do that with --

THE COURT: Okay.

MS. HANRAHAN: Great.

MR. DRASKOVICH: -- under the circumstances of this type of a proceeding I --

THE COURT: So does it --

MR. DRASKOVICH: -- don't want to do that.

THE COURT: -- sound like you're agreeing to that? Because I don't know anything --

MS. HANRAHAN: Yes.

THE COURT: -- about the prelim.

MS. HANRAHAN: If -- if we can --

THE COURT: I wasn't there.

MS. DORMAN: I don't have a --

MS. HANRAHAN: -- just admit that --

MS. DORMAN: I don't have a --

MS. HANRAHAN: -- preliminary hearing transcript --

MS. DORMAN: -- clean copy.

MS. HANRAHAN: -- of -- of each kid.

MR. GOWDEY: We'll -- we'll bring --

MR. DRASKOVICH: Okay.

MR. GOWDEY: -- copies.

MR. DRASKOVICH: I'll bring --

MR. GOWDEY: I'm not sure if they --

MR. DRASKOVICH: -- clean copies --

MR. GOWDEY: -- have a clean --

MR. DRASKOVICH: -- for everybody.

MR. GOWDEY: -- copy of not, but I'm sure --

MS. HANRAHAN: I have one --

MR. GOWDEY: -- we can obtain them.

MS. HANRAHAN: -- I think.

MR. DRASKOVICH: Okay. Because that's going to substantially cut down the amount of time that your client needs to be testifying and I --

THE COURT: Okay.

MR. DRASKOVICH: So --

THE COURT: He said that will cut down a lot of time that the child would have to testify.

MR. GOWDEY: At least from our perspective.

MS. HANRAHAN: Do we have to have it today or we just --

MR. DRASKOVICH: No.

MS. HANRAHAN: -- agree that it --

MR. DRASKOVICH: We'll -- we'll agree if it -- we'll --

MS. CALVERT: We'll stipulate.

MR. DRASKOVICH: -- we'll stipulate.

MR. GOWDEY: We can provide it on Monday or -- or at --

MS. HANRAHAN: Okay.

MR. GOWDEY: -- sometime next week will be fine.

MS. HANRAHAN: That's fine.

THE COURT: So you agree. That's very nice. Okay. So with that being said -- that's a good thing. That's a -- that's a plus.

MS. HANRAHAN: Progress.

THE COURT: So we'll bring her back in and we'll make her feel comfortable. And I just have to make sure her voice is being picked up though.

(WITNESS SUMMONED)

THE COURT: All right. Thank you. All right. You're back. You're still -- you're still -- they still swore you in, so you're good.

BY MS. DORMAN:

Q Do you know what that means, that you're still sworn in? It just means you still have to tell the truth, right?

A Yeah.

Q Okay. Okay. So I think, and help me, but I think the last question I asked you was are there rules at your house when you lived with Mom and Dad?

A Yeah.
Q That was the last question I asked you?
A Yeah.
Q Okay. Are there rules at your house when --
A Yes.
Q -- you lived with Mom and Dad?
A Yes.
Q Okay. What kind of rules would you have?
A Like -- I don't remember any specific --
Q I'm sorry, you don't remember --
A Yeah.
Q -- specific rules. Okay. But you remember there were rules.
A Yes.
Q Okay. And were there punishments for breaking the rules?
A Yes.
Q Okay. What kinds of punishments would there be for breaking the rules?
A You have to stand in a corner. You get as spanking.
Q Okay. So let me see if I have this right. You said you have to stand in the corner, is that right?
A Yeah.

Q And you might get a spanking --

A Yeah.

Q -- is that right? Okay. Did you ever get sent to your room?

A Yes.

Q Okay. Was that a punishment?

A Yeah.

Q Okay. And you said you. Were these punishments for you or for all the siblings?

A All of us.

Q Okay. And when you said you might get a spanking, who would spank you?

A My dad.

Q Okay. And what would he use to spank you? What part of his body or something else?

A His hand.

Q Okay. And what part of your body would he spank?

A The bottom.

Q Okay. And would -- did you ever see Heidi get a punishment like that?

A Yes.

Q Okay. Did you ever see Wyatt get a punishment like that?

A Yes.

Q Okay. Did you ever see anyone of your siblings get a different punishment than that?

A Yes.

Q Who is that?

A Sam.

Q Okay. And what different punishment would she get?

A With the belt.

Q Okay. Now you said with the belt, is that right, Nikki?

A Yeah.

Q Okay. Now what would happen with the belt?

A She gets spanking.

Q Spankings, is that right?

A Yes.

Q Okay. And who would give her the spankings with the belt?

A Dad.

Q Okay. And where would the spankings with the belt be on her body?

A Her bottom.

Q Bottom, is that right?

A Yes.

Q Okay. Do you remember what the belt looked like?

A No.

Q Okay. Was it in the house?

A Yes.

Q Do you remember how many times that happened?

A No.

Q Okay. Do you think it was more than one time or just one time?

A More than one time.

Q Okay. Did you ever see Sam get a different punishment than that?

A No, I don't remember any different ones.

Q You don't remember different ones?

A No.

Q Okay. Do you -- is there any reason you don't remember different ones?

A I have tried blocking out my past, the bad.

Q The bad?

A Yeah.

Q Okay. So you've tried blocking out your past, is that what you said?

A Yeah.

Q Okay. And you characterized it as bad, is that right, the bad?

A Yeah.

Q Okay. Now did you ever see Sam have any marks from the -- that different punishment with the belt?

A Yes.

Q Okay. Where would the marks be?

A Her bottom.

Q Okay. And do you remember that happening one time or more than one time?

A More than one time.

Q Okay. Did your mom ever know that Samantha would receive the punishment with the belt?

A I -- I don't think so. I don't know.

Q Okay. So you said -- if I'm right, Nikki, you said you think so, but you don't know, is that right?

A I don't know.

Q You don't know. Okay. Do you ever remember a time that somebody from Child Protective Services ever came to your house?

A Yes.

Q Okay. Do you remember who that was?

A No.

Q Okay. Do you remember when that was?

A Like before Christmas.

Q Okay. Before Christmas. Do you remember what year, how old you were, anything like that?

A No.

Q No? Okay. Would you ever speak to anyone from Child Protective Services?

A I don't know.

Q Okay. You don't remember talking to anyone from Child Protective Services?

A No.

Q Okay. Would anyone in your family have a discussion about what to say to Child Protective Services?

A No.

Q No? Okay. Did you ever see your mom and dad get into a fight with each other?

A Yes.

Q Can you tell me about that?

A Like what do you mean?

Q What would happen when they got into a fight with each other?

A They would yell.

Q Okay. And what would you do, Nikki?

A I would be in my room.

Q Okay. How come?

A I get sent there.

Q By who?

A One of them.

Q Okay. And do you know what alcohol is?

A Yes.

Q Okay. And do you know what alcohol is?

A Yes.

Q Okay. Would anyone in your family drink alcohol?

A Yes.

Q Who was that?

A My parents.

Q Okay. And did you notice anything different when they would drink alcohol?

A My mom's voice would get higher.

Q Okay. Was that when they were yelling at each other or just anytime?

A Like -- just like a normal.

Q Okay. So anytime?

A Yeah.

Q Okay. Now did you ever notice anyone in your house besides we talked about the belt, that Sam got hit with a belt and the rest of the kids didn't. Did you ever notice anyone else in your house treating Sam differently?

A What do you mean?

Q Did you notice that she would get treated different than the rest of your kids, like you and Heidi and Wyatt?

A Yes.

Q Can you tell me about that?

A Like sometimes she get less presents on Christmas.

Q Okay. She would get less presents on Christmas, is that -- do I have that right?

A Yes.

Q Okay. Anything else that you notice, Nikki?

A I don't remember anything else.

Q Okay. Do -- were you allowed to express -- do you love your siblings?

A Yes.

Q Okay. Do you express that you love them?

A I don't say like I love you, but --

Q Okay.

A -- I know they -- they know I love them.

Q Oh, they know you do.

A Yeah.

Q Okay. Were you ever not allowed to express love towards Samantha?

A Yeah.

Q Okay. Can you tell me about that?

A Like sometimes we weren't allowed to like talk to her sometimes.

Q Okay. And who wouldn't let you talk to her?

A My dad.

Q Okay. Anything else?

A No.

Q Okay. Do you also have an older brother named David?

A Yes.

Q And did he know what was going on with Samantha with the different punishment?

A I don't know.

Q Okay. Now at -- after you came into foster care, at some point did you and Heidi and Wyatt go and visit your grandfather?

A Yes.

Q Was that in a different state?

A Yes.

Q Okay. And do you know whose dad that is? Like is it your mom's dad or your dad's dad?

A My mom's dad.

Q Okay. And do you remember how long you were there?

A I think it was a week.

Q Okay. Did anything happen while you were there that you remember?

A What do you mean?

Q Did anything bad happen while you were there?

A Wyatt got a spanking.

Q Okay. Tell me about that.

A My grandpa spanked him.

Q Okay. And how did that make you feel?

A I left into the room. I was -- I -- I tried to ignore it.

Q Okay. So first you tried to ignore it. Is -- do I have that right?

A Yeah.

Q Okay. And then what?

A And then I walk -- and then I went on my Nook.

Q Okay. Did you say you had -- you left the room that you were in?

A No, I went to the room that I was like staying in.

Q Oh, okay. So you went to your room. Is --

A Yeah.

Q Do I have that right? Okay. And you went on your Nook you said.

A Yeah.

Q Okay. Why did you leave the room?

A Because I didn't want to see that.

Q Is there any reason why you didn't want to see that?

A Because I -- I don't like the hitting.

Q Okay. All right. Nikki, you want to live with your mom and dad, is that right?

A Yes.

Q Okay. And if you live with your mom and dad, would you like anything to be different?

A Yes.

Q Can you please tell me about that?

A Like no hitting.

Q Okay. Okay. No hitting. Who -- who should that rule apply to?

A Everybody.

Q Okay. So all the kids, is that right?

A Yeah.

Q And should it apply to your mom and dad?

A Yeah.

Q Okay. Now when you lived with your mom and dad, do you remember living in one house or more than one house?

A One.

Q Okay. You just remember one house?

A Yeah.

Q Now was it a house or an apartment or something

else?

A A house.

Q Okay. Can you tell me what the floors were like in that house?

A Where?

Q Anywhere. All that you can remember.

A The kitchen had tiles.

Q The kitchen had tiles. Okay. Good. Anywhere else you can remember?

A The living room had like the wooden.

Q Okay. living room had wooden.

A Yeah.

Q Okay. Do you remember anything else?

A And the upstairs carpet.

Q Upstairs has carpet. Do I have that right?

A Yeah.

Q Okay. Do you remember a time when Sam fell off her back at the ranch?

A Yes.

Q Were you there or no? Were you there when she fell off the bike?

A Are you talking about when we went on the railroad -- like the trail?

Q Uh-huh (affirmative). Yeah. At St. Jude, right?

A Yeah.

Q When you were at St. Jude. Were you there? I can't -- I just can't remember if it was you --

A Yeah.

Q -- or Heidi. You were there.

A She -- yeah, I was.

Q Okay. Do you remember what happened?

A She went off the trail and she flipped over the rocks and landed like behind the bush.

Q Okay. And did you see that?

A Yeah, she was --

Q Okay.

A -- in front of me.

Q Oh, okay. How did you feel when she fell?

A I don't know. It was like kind of shock -- it was kind of like a shock.

Q Yeah. Okay. Do you ever -- did you ever have chores at your house?

A Yes.

Q Okay. What kinds of chores would you have?

A Cleaning.

Q Okay. Did all the kids have chores or just you?

A All of us.

Q Okay. Did anyone have more chores than anyone

else?

A Yes.

Q Who was that?

A Sam

Q Okay. And what chores did she have?

A She had more cleaning than what we did.

Q Okay. Now you talked about Sam getting hit with a belt, do you remember that?

A Yes.

Q And you said that sometimes there was a mark. Do you remember that?

A Yeah.

Q Okay. Do you remember what would -- what Sam would do when she got hit?

A Cry.

Q Okay. Did you ever get bruises from getting a spanking or --

A No.

Q -- marks?

A No.

Q I'm sorry.

A No.

Q Okay. Do you remember when you lived with your mom and dad and your siblings in the house with the tile in

the kitchen and the wood floor and the carpet upstairs, do you remember if Mom and Dad worked? Like did they go to work?

A My Mom went to work.

Q Okay. And do you remember what hours of the day she worked?

A Like during that afternoon, she would leave in the morning and they would come back at like 9:00.

Q Is that 9:00 at nighttime?

A Yes.

Q Okay. So who cooked you dinner?

A My dad.

Q Okay. And did all the kids eat the same food?

A Some of us.

Q Okay. Who -- who ate the same food?

A The three of us and then Sam got leftovers.

Q Okay. Sam got leftovers?

A Yeah.

Q Do I have that right? Okay. Do you ever remember Sam having an injury about her teeth?

A No.

Q No?

MS. DORMAN: I'll pass the witness.

THE COURT: Okay.

CROSS EXAMINATION

BY MR. DRASKOVICH:

Q Nikki, my name is Robert. And I'm just going to sit here and I'm just going to ask you some questions, okay? Is that okay?

A Yeah.

Q You were asked a lot of questions about back when you lived in your mom and dad's house. Do you remember those questions?

A Yeah, some of them.

Q It's kind of hard to remember what went on in your mom and dad's house, isn't it?

A Yeah.

Q It's been a long time.

A Yeah.

Q Do you remember how old you were when you left your mom and dad's house?

A 10 --

Q Okay.

A -- I think.

Q You think it might have been even nine?

A In -- yeah

Q But it's -- I mean -- but as you sit here today, it's -- it was a long time ago that you lived at home, is

that right?

A Yeah.

Q You were asked some questions about Sam and how Sam got a spanking with the belt.

A Yeah.

Q Do you remember that?

A Yeah.

Q Now do you remember hearing this happen or actually seen this happen?

A Both.

Q Both. Okay. You've been going to counseling this whole time that you've been away from your mom and dad, is that right?

A Counseling?

Q Have you -- have you been seeing a counselor or a therapist?

A Yeah.

Q Healthy Minds?

A Yeah.

Q And there's been a lot of talk over all this time about what was happening or not happening at your mom and dad's house, is that fair to say?

A Yeah.

Q And is it fair to say that you've met with more

than one counselor to talk about these things?

A Yeah.

Q Would you agree with me that these counselors have helped you remember things that you may have forgotten?

MS. HANRAHAN: Your Honor, I'm going to object. The -- I mean, he's implying that the therapists are --

MR. DRASKOVICH: If -- if we can have this in -- out -- out of the presence of the witness. Thank you.

THE COURT: Okay. All right. Do you want us to go in the back? Maybe it's easier. I don't -- so --

MR. DRASKOVICH: Sure.

THE COURT: -- you want to sit here?

THE WITNESS: I don't care.

THE COURT: Is Ms. -- Ms. Tallent, she'll just stay with you, sound good?

THE WITNESS: Yeah.

THE COURT: Do you want candy?

THE WITNESS: No.

THE COURT: Okay.

MR. GOWDEY: Oh, I want candy. Can I have some candy?

(COURT RECESSED AT 2:42 AND RESUMED AT 2:59)

THE COURT: All right. We're back on the record.

I don't even know where we left off. I think it was an objection from Ms. Han -- Hanrahan, but I'll let her -- I'll let Mr. Draskovich ask that question and then if there's still an objection, we'll deal with it at that time.

BY MR. DRASKOVICH:

Q Nikki, we were talking about -- you've -- you've been -- you've spoken to a lot of therapists, is that fair to say?

A Yes.

Q You've gone to a lot of counseling.

A Yeah.

Q You've talked a lot about what may or may not have happened at your house with your mom and dad, is that right?

A Not anymore. Do you want to talk about that?

Q Okay. You want to go home.

A Yes.

Q You love your mom.

A Yes.

Q You love your dad.

A Yes.

Q Were you ever scared for yourself when you were home?

A No.

Q No. Your dad was a good to you?

A Yes.

Q And your mom was a good mom to you?

A Yes.

Q Has the last few years been hard on you? Has it been hard to be away from Mom and Dad?

A I'm getting used to it.

Q Okay. But you want to go home.

A Yeah.

Q During the time that you've been away from your mom and dad, you've written them letters.

A I think.

Q Okay. You think you've written them letters? Is -- is my question a bad question?

A I don't know then.

Q Okay. They're -- you've communicated with them in writing. I'm talking about your mom and your dad.

MS. HANRAHAN: There may be a time frame?

MR. DRASKOVICH: Yeah, it might be. Yeah.

Q Do you -- do you remember writing any letters to your mom and dad?

A No.

MR. DRASKOVICH: Okay. Have you reviewed those?

You know, I'm going to show you something to --

MS. HANRAHAN: I haven't seen all of these --

MS. DORMAN: Well, yeah.

MS. HANRAHAN: -- yet --

MS. DORMAN: That's the problem.

MS. HANRAHAN: -- and --

MS. DORMAN: We haven't seen these. I was trying to get a handle on which ones were sent to DFS to forward on, because there were some letters that when they were with Alicia (ph) were sent directly to Alicia and DFS never saw them. So the fact that we haven't seen these before today, I mean, I could have parsed out which ones we have possession of and which ones we sent directly to Alicia.

THE COURT: Okay. Who's Alicia, the --

MS. DORMAN: She was the first placement.

MS. HANRAHAN: But she's --

MR. DRASKOVICH: She's David's wife.

MS. DORMAN: Same as --

MS. CALVERT: Her half --

MS. DORMAN: David's wife.

MS. HANRAHAN: -- the same as --

MS. CALVERT: -- brother's --

MS. HANRAHAN: David's --

THE COURT: Right.

MS. CALVERT: -- wife.

THE COURT: Okay. I was going to say, because that sounds familiar.

MS. HANRAHAN: That one I haven't seen.

THE COURT: But that was the first placement. Okay. MS. HANRAHAN: Are you asking to admit these? Because they were not a witness -- I mean, on an -- an exhibit list.

MS. CALVERT: You heard this when Alicia stayed at your house with you. Did Alicia stay at the house with you and --

THE WITNESS: Yeah.

MS. CALVERT: -- Mom and Dad went somewhere else?

THE WITNESS: Yeah.

MS. CALVERT: Do you remember? That was a while back. It's when they're -- was coming --

MR. DRASKOVICH: If we can just have --

MS. CALVERT: -- they were talking about.

MR. DRASKOVICH: -- be on --

THE COURT: Yeah.

MR. DRASKOVICH: -- short recess or --

THE COURT: Sure. And let her look it over. That's fine.

MR. DRASKOVICH: Thanks.

(COURT RECESSED AT 3:02 AND RESUMED AT 3:11)

THE COURT: Go ahead.

BY MR. DRASKOVICH:

Q Nikki, I just got a couple of quick questions for you and then we're done, all right? In reference to the house that you used to live in with your mom and dad, did -- was there a doghouse in the backyard?

A I don't know.

Q You don't -- do you not remember there being one or you just don't remember?

A I don't remember there being one.

Q Okay. And in reference to Samantha, you had testified a little bit about the different foods or she would eat at a different time than you and your other siblings?

A Uh-huh (affirmative).

Q Was there a period of time that Samantha had braces?

A Yeah.

Q And was it during the time that she had braces that she would eat at a different time, eat different food?

A Can you say that again?

Q I know you probably haven't thought about this in a long, long time, huh? But there was a period of time

when you were living at home with your mom and dad that Samantha had braces.

A Yeah.

Q And do you remember what she ate if anything while she had the braces? Did she have to eat different foods because of her braces?

A Sometimes.

Q Okay. Like mashed potatoes when the rest of you would eat something else?

A I don't know.

Q Okay. And don't worry, this isn't a test. If you don't remember, you can say you don't remember.

MR. DRASKOVICH: All right. Thank you. I have no further questions.

THE COURT: All right.

MR. GOWDEY: As much as I would like to ask Nikki some questions, I think I'll pass the witness.

THE COURT: Okay. Ms. Calvert, what about yourself?

MS. CALVERT: Maybe just a couple. I think Mr. Draskovich got most of them.

THE COURT: You're doing great, Nikki.

THE WITNESS: Huh?

MS. CALVERT: She is.

THE COURT: You're doing great.

MS. CALVERT: She's a superstar. Okay. Hold on. I do have one.

CROSS EXAMINATION

BY MS. CALVERT:

Q I think you talked a little bit about sometime -- or there were a few times CPS or Family Services came to your house when you were living with Mom and Dad. Do you remember that?

A Yeah.

Q Did your dad ever tell you what you were supposed to say to them?

A I don't know.

Q Do you not know or don't remember?

A I don't remember.

Q Okay. And I think -- I know you've answered, but you do want to go back home with Mom and Dad, is that right?

A Yeah.

Q And -- if you can't go home with Mom and Dad, what do you want -- where would you like to stay?

A Ms. Jackie (ph).

Q And Mr. Bryan too?

A Yeah.

Q Okay. And do you want to be adopted or do you want something different?

A Just to stay with them. I don't want to be adopted.

Q Is there a reason why?

A No, I just don't want to be adopted.

Q Okay. I think that's all I have for you. Good job.

MS. DORMAN: Just one briefly.

THE COURT: All right. You're almost done --

REDIRECT EXAMINATION

BY MS. DORMAN:

Q Nikki, you --

THE COURT: -- Nikki.

Q -- said that thing -- you said you do want to go home with Mom and Dad, right?

A Yeah.

Q And that thing you want to be different is no hitting, is that right?

A Yeah.

Q And you said you wanted that rule to apply to everyone in the house.

A Yeah.

MS. DORMAN: Okay. I don't have anything

further.

MR. DRASKOVICH: No further questions.

THE COURT: All right.

MR. GOWDEY: Nothing further.

THE COURT: Nikki, you're done.

THE WITNESS: Okay.

THE COURT: Thank you for coming today.

THE WITNESS: You're welcome.

MS. HANRAHAN: I'm going to --

THE COURT: Have a good day in school next week.

THE WITNESS: Huh?

THE COURT: A good first day next week, right? Do you start --

MS. DORMAN: The week after.

THE COURT: The week after. Sorry, sorry.

MS. HANRAHAN: Yeah.

MS. CALVERT: The 29th you --

MS. HANRAHAN: They got another --

MS. CALVERT: -- start school?

MS. HANRAHAN: -- whole week.

THE COURT: The 29th.

THE WITNESS: Yeah.

MS. HANRAHAN: I'll just take her back to my office --

THE COURT: Yeah.

MS. HANRAHAN: -- and get --

THE COURT: That's fine.

MS. HANRAHAN: -- get --

THE COURT: Yeah.

MS. HANRAHAN: -- Ms. Jackie's family.

THE COURT: Okay.

(WITNESS EXCUSED)

(COURT RECESSED AT 3:16 AND RESUMED AT 3:23)

THE COURT: We're back on the record. Ms. Han -- Ms. -- do you want to just tell us who your witness is?

MS. DORMAN: Yeah, this is Heidi.

THE COURT: Okay. Hi, Heidi.

THE WITNESS: Hi.

THE COURT: Welcome. I'm going to have my court Clerk swear you in, okay, and he's going to ask you to state your name. And then afterwards, you can sit down in that chair, make yourself comfortable. That little microphone, that black box there, is a microphone. So all I need from you is just to speak up so I can hear you, okay?

THE WITNESS: Okay.

THE COURT: All right. If you have any questions, just ask.

THE WITNESS: Okay.

THE COURT: All right.

THE CLERK: Please raise your right hand. You do solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes.

THE COURT: Yes?

THE WITNESS: Yes.

THE COURT: Is that a yes? Okay. Got a yes. All right. Thank you.

THE CLERK: State your name for the record.

THE WITNESS: Heidi.

THE CLERK: You may have a seat.

THE COURT: All right.

HEIDI BROWN

called as a witness on behalf of the State, have been first duly sworn, did testify upon her oath as follows on:

DIRECT EXAMINATION

BY MS. DORMAN:

Q What's your whole name Heidi, just so we have it?

A Heidi Renee Brown.

Q Okay. Do you have gum in your mouth?

A No.

Q No? Okay. All right. Just checking. How old are you, Heidi?

A 12.

Q And when's your birthday?

A January 4th.

Q Of what year?

A 2004.

Q Okay. And so Nikki is your twin?

A Yes.

Q And who's your mom?

A Melissa Dawn Lawrence.

Q And who is your dad?

A Donald Edward Brown.

Q And do you currently live with Ms. Jackie in foster care?

A Yes.

Q And before you lived in foster care, like the whole time you lived in foster care, did you live with your mom and your dad?

A Yes.

Q And do you have siblings?

A Yes.

Q Who are they?

A Nikki, Samantha and Wyatt.

Q Okay. And you said Nikki was your twin, is that right?

A Yes.

Q And how is Sam?

A 18.

Q And how old is Wyatt?

A Seven.

Q Okay. And you live with them too, right?

A Yes.

Q Okay. And when you lived with your mom and your dad, did you also live with them?

A Yes.

Q And do you remember living in one house or more than one house with your mom and dad?

A Two houses.

Q Okay. And were they both houses, apartments, or something else?

A I think they're both houses.

Q Okay. Do you remember how old you were when you moved out of the first one?

A No.

Q I'm sorry?

A No.

Q Okay. Do you remember it well?

A A little bit.

Q Okay. Do you remember the second one?

A Yes.

Q Okay. And it was a house?

A Yes.

Q Okay. Now when you lived with your mom and your dad and your siblings that you told me about, did you have rules in the house?

A Yes.

Q Can you remember what any of the rules were?

A Like don't do bad stuff.

Q Okay.

A You get in trouble.

Q Okay. So if I have this right, a rule was don't do bad stuff or you could get in trouble. Is --

A Yeah.

Q -- that right?

A Yes.

Q Okay. And what kinds of things would happen when you got in trouble?

A If it wasn't that bad, you stand in a corner and -- or like you get spanked.

Q But you would get spanked?

A Yes.

Q Okay. So if I have this right, you had to stand in the corner if it wasn't that bad or you could get spanked.

A Yes.

Q Is that right?

A Yes.

Q Okay. And who would spank you?

A My dad.

Q Okay. And what would he use to spank you?

A His hand.

Q And what part of his body would he spank you on?

A My butt.

Q Did you ever see Heidi get that kind of -- no, you're Heidi. Sorry. Did you ever see Nikki get that kind of punishment?

A Yes.

Q Okay. Did you ever see Wyatt get that kind of punishment?

A Yes.

Q Okay. Did you ever see anyone else get -- well, let me ask you one more question. Did you ever have to exercise to a videotape?

A Yes.

Q Can you tell me about that?

A I would exercise with my mom.

Q Okay. To -- is that -- was that fun?

A Sometimes, but sometimes I wouldn't be in the mood for it.

Q You weren't in the mood?

A Yes.

Q Okay. Why did you do it?

A My mom thought I was getting a little bit big.

Q Okay.

A I guess.

Q Okay. Now you talked about standing in the corner and spanking -- spanking -- did you ever see anyone else in your house get a different punishment than that?

A Yes.

Q Who is that?

A Sam.

Q Okay. And tell me what kind of punishment Sam would get.

A She would get hit with the belt.

Q Okay. Let's talk about that for just a second. Who would hit her with the belt?

A My dad.

Q Okay. And do you remember what the belt was like?

A No.

Q Okay. And do you remember what part of her body she would get hit on?

A Her butt and her back.

Q Okay. Do you remember how many times that happened, Heidi?

A No.

Q Okay. Would you say it was one time or more than one time?

A More than one time.

Q Okay. Did you ever see any marks on Sam?

A Yes.

Q Okay. Where -- what kind of marks would you see?

A Bruises.

Q Where would you see those?

A Like on her back.

Q Do you ever remember Sam getting hit with anything besides a belt?

A Yes.

Q Can you tell me about that?

A With a spatula on her hands.

Q Okay. A spatula on her hands?

A Yes.

Q Do you remember what that was for?

A Just like her getting in trouble.

Q Okay. Who did that?

A My dad.

Q Okay. Do you ever remember her getting hit with anything else?

A A pipe.

Q Can you tell me about that?

A My dad, he asked Sam to go out in the garage and tell -- tell her to get something he can hit her with and he brought back -- and she brought back a pipe.

Q Okay. And what happened when she brought back the pipe?

A She got hit with it.

Q Okay. And when Samantha would get hit, what was her -- what was her response?

A Tried to like move away and like screaming, crying.

Q Okay. So if I have that right, she would try to move away and she was screaming and crying, is that right?

A Yes.

Q Did your -- did your mom ever see Samantha get hit with a belt by Dad?

A I don't remember if she did or not.

Q Okay. You don't remember if she did or not? Did

she ever see her get hit with the spatula on the hands?

A No.

Q No? How about the pipe?

A No.

Q Okay. When you lived with your mom and your dad and your siblings, do you remember what hours Mom worked?

A Yes.

Q What was -- what was that?

A 2:00 p.m. in the afternoon to 9:00 at night. And if she did gro -- groceries, it would be to 11:00.

Q Okay. 11:00 at night?

A Yes.

Q Okay. I want to talk to you a little bit about Sam's teeth. Do you ever remember anything happening with her teeth?

A Yes.

Q Can you tell me about that?

A I don't remember what exactly happened on the first time, but a second time my mom and dad and Sam were in the laundry room and my dad got mad at her for something and you could hear like the banging on the wall and then her teeth broke. Then my mom started yelling at my dad.

Q What was she yelling?

A Like Donald, like why did you do that and I don't

know, going crazy.

Q Okay. And you said this was the second time --

A Yes.

Q -- that something happened to her teeth?

A Yes.

Q But you can't remember the first time.

A No.

Q Okay. But you said Mom was in the laundry room with Dad and Samantha, is that right?

A Yes.

Q Did you ever see Mom hit Sam with like her hand or anything else?

A One time she tried to hit her with a chair, but I'm not sure if she did or not.

Q Can you tell me about that?

A I don't remember what happened, but she was like telling Sam to get out like at the house and like hitting -- like had the chair like she was going to hit her. She didn't get out of the house. And one time she cut her hair.

Q Okay. Can you tell me about that?

A She got in trouble and she like cut a chunk out of her hair.

Q Okay. So she got in trouble meaning Sam got in

trouble?

A Yes.

Q And who cut a chunk out of her hair?

A My mom did.

Q Okay. Now you said you had to stand in the corner and get a spanking, is that right?

A Yes.

Q Okay. And it was your dad who did the spanking or mom too?

A My dad.

Q Okay. Did you ever get hit with anything else?

A No.

Q Did you ever get marks when you got hit?

A No.

Q Now besides you said that you saw -- would see marks on Sam, besides Sam, did you see marks on the other kids?

A No.

Q Okay. Do you ever remember a time when CPS visited your home?

A Yes.

Q Okay. And would you -- did you speak to CPS?

A Yes.

Q Okay. And what did you tell CPS?

A Like when they asked the questions?
Q Right.
A Like -- like what -- like nothing happened.
Q Okay. You told them nothing happened?
A Not like exactly, but like saying like nothing was really going on in the house --
Q Okay.
A -- like beating or anything like that.
Q Okay. But was something going on in the house?
A Yes.
Q And who told you to say nothing was going --
MR. DRASKOVICH: Objection, assume --
Q -- it didn't --
MR. DRASKOVICH: Oh.
BY MS. DORMAN:
Q Did -- did anyone tell you to say nothing was going on in the house?
A Yes.
Q Who was that?
A My dad.
Q Okay. And what did he say?
A He said that -- said like don't say anything to CPS because he would get locked away.
Q Okay. And what did that mean to you he would get

locked away?

A Like I wouldn't see him again.

Q Okay.

A Like he would be in jail.

Q Okay. And was that upsetting to you, scary to you?

A Upsetting.

Q Okay. Were there other times that he told you what to tell to CPS?

A Yes.

Q Okay. Can you tell me about that?

A Like if Sam got hit and like they would like ask about like what happened, like we would say something else, like other -- what -- than what happened.

Q Okay. If I have this right, you said if Sam got hit, then you would say something else other than what happened?

A Yes.

Q Okay. And did someone tell you to say something else other than what happened?

A Yes.

Q And who was that?

A My dad.

Q And how many times do you think that happened?

A I don't know. It was like the CPS came to our house a lot.

Q A -- you think it happened a lot?

A Yes.

Q Okay. How did you feel about having to tell the CPS either that nothing happened or something different?

A A little nervous.

Q Nervous, is that right?

A Yes.

Q Okay. Now have you ever seen your mom and dad get in a fight with each other?

A Like they didn't get in a fight with each other, but they got in a fight about something else.

Q Okay. Can you tell me about that?

A Well, my brother, David, he's getting married with Alicia and my mom didn't want him to.

Q What happened then?

A She started pulling out plates and throwing them on the floor, pulling out cabinets, then the cops came.

Q Okay. I'm sorry. You said the cops came?

A Yes.

Q Okay. So that night the police came to the house?

A Yes.

Q Okay.

A I'm guessing that one of the neighbors probably called them.

Q Okay. Now what were you thinking when she was pulling out the plates? How did you feel?

A That something was happening, like something bad was happening.

Q Okay. Something bad was happening, do I have that right?

A Yes.

Q Okay. Did you clean up after that happened?

A Yes.

Q Can you tell me about that?

A Like cleaning up like the shards of like plates on the floor.

Q Oh, okay. So the plates were broken on the floor?

A Yes.

Q And you cleaned -- you helped clean them up?

A Yes.

Q Do you know what alcohol is?

A Yes.

Q Did anyone in your house drink alcohol?

A Yes.

Q Who is that?

A My mom and dad.

Q Would anything different happen when they drank alcohol?

A They would become like droopy, I guess.

Q What does that mean, droopy?

A Like weren't acting normal.

Q Not acting normal?

A Yeah.

Q Okay. Now Heidi, do you love your siblings?

A Yes.

Q Okay. Do you tell them you love them?

A Not all the time.

Q Okay. Sometime. Do you sometimes?

A Yes.

Q Okay. Were you ever prevented from expressing love towards Samantha?

A Yes.

Q Can you tell me about that?

A Like we would go on vacations I get -- like with family. And like Sam wouldn't get to go and like we were kind of like separated.

Q Okay. Who -- okay, so you said you would go on vacations with family, is that right?

A Yes.

Q Okay. So who would go on the vacation?

A Me, Nikki, Wyatt and my parents.

Q Okay. And was it like a vacation where you took an airplane or a car or something else?

A A car.

Q Okay. And Sam wouldn't get to go?

A Yes.

Q Okay. Do you know who decided that Sam wouldn't get to go?

A My dad.

Q Okay.

A And sometimes my mom.

Q And do you remember if that happened one time or more than one time?

A More than one time.

Q More than one time?

A Yes.

Q Okay. Was there anything else that prevented you from loving Samantha or anyone tell you not to be able to love Samantha?

A They never like -- my parents never told us not to, but it was obvious that we weren't supposed to.

Q How is it obvious?

A Like -- like when I like stand up for Sam or something like that or like --

Q What would happen?

A You would get in trouble.

Q By who?

A My dad.

Q Okay. Was there a specific time that you stood up for Sam?

A No.

Q Okay. Did you have chores at your house?

A Yes.

Q Okay. What kinds of chores would you have?

A My room and sometimes the dishes and the trash and like -- when I pick up like dog poop and stuff like that.

Q Okay. So you had -- you said my room. Do you mean you had to keep it clean?

A Yes.

Q Okay. And dishes, cleaning them?

A Yes.

Q And trash, taking it out?

A Yes.

Q Okay. And picking up dog poop, is that right?

A Yes.

Q Did you -- did the other kids have chores?

A Yes.

Q Did any kid have more chores than any other kid?

A Yes.

Q Who was that?

A Sam.

Q And tell me about that.

A Like she would clean up the whole house like all the time.

Q Do you have a brother named David also?

A Yes.

Q Okay. Now did he know that Sam was getting a different punishment than the rest of you kids?

MR. DRASKOVICH: Objection, calls for speculation.

MS. DORMAN: Let me rephrase.

THE COURT: Okay.

BY MS. DORMAN:

Q Did he -- was David ever present when Sam would get the different punishments?

A Sometimes.

Q Okay. Can you tell me about that?

A Like when Sam would get in trouble, he would just sometimes be there, like visiting from California.

Q Okay. And when she would get in trouble and get a punishment?

A Yes.

Q Okay. Like one of the ones you described today?

A Yes.

Q Now did you ever -- you talked about Sam having marks on her back and on her -- I don't want to use the wrong word. Did you say butt?

A Yes.

Q Okay. From the belt, is that right?

A Yes.

Q Did you ever see marks anywhere else on her body?

A On her eyes.

Q Okay. Can you tell me about that?

A She would have bruises on her eyes from my dad.

Q Okay. What would your dad do?

A I'm not sure what he exactly did, but he -- but it was from my dad though.

Q The marks on her eyes?

A Yes.

Q Okay. Now did you and your sister Nikki and your brother Wyatt after you went into foster care, did you go and visit your grandpa?

A Yes.

Q Okay. And that was in another state?

A Yes.

Q Okay. And was that your mom's dad or your dad's dad or something else?

A My mom's dad.

Q Okay. And did anything bad happened while you were there?

A Wyatt got hit, yeah.

Q Okay. Wyatt got hit by who?

A My grandpa.

Q Okay. And how did that make you feel?

A Upset.

Q Why -- why were you upset?

A Because I didn't like that.

Q You didn't like what?

A Like him hitting him.

Q Okay. How come?

A Because like the stuff that has happened in my house.

Q Okay. Now you would like to live with your mom and dad and your siblings, is that right?

A Yes.

Q Okay. Would you like anything to be different if you live with them?

A Yes.

Q Can you tell me about that?

A To not like hit people.

Q Okay. So you don't anyone -- or sorry. You don't want people to hit people, is that right?

A Yes.

Q Okay. And what -- who do you want that rule to apply to?

A Everybody.

Q Everybody in the house?

A Yes.

Q The kids?

A Yes.

Q And the mom and dad?

A Yes.

Q Okay. Do you remember a time when Sam fell off her bike at the ranch?

A Yes.

Q Okay. Were you there?

A No.

Q Okay. Now besides the night you told me about where David and Alicia were going to get married and your mom got upset and threw dishes, did you ever see your house in that state any other time, like messy with thrown things

or anything?

A Yes.

Q Can you tell me about that?

A Well, all of us were upstairs like when that time happened. I don't know like how like they hit each other. I'm not sure if they hit each other, but like we were just upstairs. You could hear like screaming and yelling.

Q Okay. Was that the David time or a different time?

A A different time.

Q Okay. And what did you see when you went downstairs?

A Like the house was like trashed.

Q What does trashed mean?

A Like stuff out of its place.

Q Okay.

MS. DORMAN: All right, Heidi. Thank you very much. Thanks, Heidi.

THE COURT: All right. Counsel?

MR. GOWDEY: I think I will start off with young Heidi.

THE COURT: Okay.

CROSS EXAMINATION

BY MR. GOWDEY:

Q Hello, Heidi. My name is Michael. I'm going to ask you a few questions if that's okay.

A Okay.

Q First off, are you nervous?

A Yes.

Q Okay. Because you're doing a great job, so you don't have any reason to be nervous. I have a -- a son about your age and I imagine he would be nervous as well. Just relax, okay? Just give us your best answers. So you want -- you love your mom, is that --

A Yes.

Q -- right? Do you love your dad?

A Yes.

Q Do you want to go back and live with them?

A Yes.

Q Okay. I want to ask you some questions about some of the things that you -- that you've said that the -- occurred in the house. You said that you saw -- or -- or that Sam got hit with a spatula on the hands, is that right?

A Yes.

Q And that was by your dad?

A Yes.

Q Did you see that?

A Yes.

Q Where did that happen?

A In my kitchen.

Q And -- and what caused that, do you remember?

A No.

Q Did Sam get in trouble for something?

A Yes.

Q As far as you know, did Sam get in trouble for telling lies to your parents?

A Yes.

Q Okay. Did she get in trouble for stealing stuff from your parents?

A I'm not sure if she actually stole stuff.

Q Okay.

A So yes.

Q You said you saw that -- that Sam got hit with a belt, correct?

A Yes.

Q And that was by your dad?

A Yes.

Q You don't remember what that belt looks like?

A No.

Q Did you ever actually see the belt?

A Yes.

Q Did you see -- actually see Sam get hit or did you just hear it?

A I saw Sam get hit sometimes.

Q How many times is that?

A More than once.

Q Okay. What stuff would have happened that -- to cause Sam to get hit by a belt?

A Not doing what she's told.

Q Now Sam is older than you, right?

A Yes.

Q How much older is she than you?

A About six years.

Q About six years?

A Yes.

Q And she's bigger. She was bigger -- she has been bigger than you the entire time that you can recall, is that right?

A Yes.

Q You said that Sam had more chores, isn't that right?

A Yes.

Q Would that be because she's older and capable of doing more?

MS. DORMAN: Objection, specula -- calls -- calls

for speculation.

THE COURT: Sustained.

BY MR. GOWDEY:

Q Since you've been in foster care, have you written your parents any letters?

A Yes.

Q Okay. Can I show you these letters and ask if you recognize them? Do you recognize this letter? You can -- you can grab it. You can look at it.

A Yes.

Q Is that -- is that a letter that you wrote to your parents?

A Yes.

Q Okay. I'll take it back. And how about this letter? Is that -- is that a letter that you wrote to your parents as well? You can grab that too if you want to.

A Yes.

Q As long as you promise to give it back to me. Do you recognize that?

A Yes.

Q Okay. Can I have it back? And how about that? That's -- is that another letter? Go ahead and grab it.

A Yes.

Q And you wrote that letter? You recognize it?

A Yes.

Q Okay. Give it back to me. And last, certainly not least -- oh, actually, I'm sorry, this one here. Do you recognize that? Is that your handwriting?

A Yes.

Q Okay. And then I think this one is a little bit of a longer letter. It looks to be two, three pages. Go ahead and grab it. Do you recognize that?

A Yes.

Q And is that a letter that you wrote to your parents?

A Yes.

Q Okay. And all these letters you wrote while you were -- after you had been removed from the house, is that right?

A Yes.

MR. GOWDEY: Okay. I'll make a motion to admit.

THE COURT: Any objection to this?

MS. DORMAN: I just have one question about the timeline -- the time frame of when they were written.

THE COURT: Okay.

MS. DORMAN: If we could establish a time frame.

MR. GOWDEY: Oh.

BY MR. GOWDEY:

Q Do you recall the first time that you wrote a letter to your -- to your parents after you were removed from the house?

A When I went with Alicia.

Q Okay. And so that would be -- that would be the -- the immediate -- the first immediate person that you stayed with would be your sister-in-law Alicia, correct?

A Yes.

Q And that was sometime after December 2013, right?

A Yes.

Q Isn't that when you were removed December 2013 -- or January. It was January, wasn't it, 2014?

A Yes.

MR. GOWDEY: Okay. So --

MS. HANRAHAN: Actually, I think that misstates -- I think it was February for them, but it --

MR. GOWDEY: Okay.

MS. HANRAHAN: -- doesn't matter. It was --

MR. GOWDEY: All right.

MS. HANRAHAN: -- early 20 --

MR. GOWDEY: Well, let -- let's call it February just -- just to be on the safe side.

BY MR. GOWDEY:

Q So the first letter that you wrote was sometime

after that. And do you recall when the last letter you wrote was? Was it in February of this year?

A I'm not sure.

Q If I showed you a letter that had a date of 2/17/16, would that -- would that refresh your recollection?

A Yes.

Q Okay. So you think you wrote that on February 17th of this year?

A Yes.

MR. GOWDEY: Okay. Is that okay for the time?

MS. HANRAHAN: I --

MR. GOWDEY: At this time, I would like to offer it.

MS. HANRAHAN: I -- I'm -- would just request some clarification as to where the letters came from.

MR. GOWDEY: These letters I believe were --

MR. DRASKOVICH: And ask her who she gave them to after she wrote them.

MR. GOWDEY: Yeah.

BY MR. GOWDEY:

Q Who -- who did you give these letters to? Did you give them to a CPS worker or to your -- to your sister-in-law?

A To my CPS worker.

Q So you gave these letters to your CPS worker.

A My caseworker?

Q Your caseworker, is that right?

A Yes.

Q Okay.

(COUNSEL CONFER BRIEFLY)

MS. HANRAHAN: I'm just going to -- I -- I just make a record that if there was a letter that was sent in February of 2016, it was in violation of no contact order, but not -- not by Heidi. Don't worry.

MR. GOWDEY: Well, I would -- I -- I would offer that. There's no evidence that my client has had contact with Heidi but rather that Heidi wrote a letter to my client.

MS. CALVERT: She's had the same letters.

MS. HANRAHAN: And other than that, we have no objection --

THE COURT: Okay.

MS. HANRAHAN: -- to the admission.

THE COURT: All right. Those will be admitted.

(RESPONDENT'S EXHIBIT ADMITTED)

MS. CALVERT: Thank you.

MR. GOWDEY: Thank you.

BY MR. GOWDEY:

Q Jim (sic), was there -- I'm -- I'm sorry, Heidi?

A Yes.

Q You testified about a -- sometimes that Sam got black eyes. Was there ever a time where Sam got a black eye because of an interaction between the two of you? And don't worry, you're not in trouble in any way. Was there a time when you threw a remote control at Sam while you guys were arguing about something?

A Yes.

Q And what -- and what happened that time? Why don't you tell us about it.

A Sam was changing the channel off of Hannah Montana and she -- and I threw the remote at her face.

Q And what happened? Did -- did she get a bruise as a result?

A I think she got stitches.

Q She got stitches. So that was a -- a pretty serious injury even if the argument wasn't all that serious, isn't that right?

A Yes.

Q Okay. And did -- was it your parents that took her to get stitches?

A Yes.

MR. GOWDEY: Okay. I don't have any other further questions. Thank you. Thank you very much, Heidi.

CROSS EXAMINATION

BY MR. DRASKOVICH:

Q Heidi, my name is Robert and I just have a few questions for you, okay?

A Okay.

Q About the chores thing, you had testified that you had chores, you and your sister, your twin sister?

A Yes.

Q Did Wyatt have any chores?

A I don't remember his chores.

Q Okay. If he did, he probably didn't have very many.

A Yes.

Q And how -- how much older are you than Wyatt?

A About five.

Q About five years? And there's about a six years difference between you and Samantha, correct?

A Yes.

Q And it's your testimony that she had more chores than you.

A Yes.

Q Was there a period of time where Sam had braces?

A Yes.

Q And when she had braces, did she sometimes have to eat different foods than you and your other siblings?

A What do you mean?

Q Like let's say you guys were having, I don't know, tortilla chips or something and she would get mashed potatoes.

A Yes.

Q Did her braces really bother her --

A Yes.

Q -- sometimes?

A Yes.

Q And it affected the way she could eat?

A Yes.

Q In reference to the punishments that you had talked about, now was standing in the corner and getting a spanking two different punishments?

A Yes.

Q And did these two addi -- different punishments, are they based upon maybe how bad something was?

A Yes.

Q And you had testified concerning Sam getting spanked with a belt, is --

A Yes.

Q -- that correct? In reference to the black eyes, you never actually saw your father hit her in the face, did you?

A No.

Q You said your dad caused those black eyes, correct?

A Yes.

Q That's not based upon anything that you actually saw.

A Yes.

Q You've been told by other people that your dad gave her black eyes, correct?

A Yes.

Q And who were those other people that have told you that?

A Sam.

Q Sam. Anybody else?

A No.

Q You said you lived in two different houses while you were living with your mom and dad.

A Yes.

Q Did either of those houses have a doghouse that you can recall?

A No.

Q No. So neither house had a doghouse, correct?
A Yes.
Q In reference to the spatula on the hound -- on the hands, you said that occurred in the kitchen?
A Yes.
Q And where were you at?
A In the kitchen.
Q Okay. And who else besides you and Sam and your dad were in the house, if anybody?
A Nikki and Wyatt.
Q Okay. And do you remember where Nikki and Wyatt were at?
A No.
Q You said that you love your mom and dad.
A Yes.
Q And you want to go and live with them again.
A Yes.
Q There were some bad things that happened sometimes in the house, correct?
A Yes.
Q But most the time were things pretty good?
A Yes.
MR. DRASKOVICH: I'll pass the witness.
THE COURT: Okay.

CROSS EXAMINATION

BY MS. CALVERT:

Q Hi, how are you doing, Heidi?

A Good.

Q Good. Let me see here. Okay. Do you go to Healthy Minds every week?

A Yes.

Q You've been going to Healthy Minds every week for a long time.

A Yes.

Q Do you like going to Healthy Minds every week?

A No.

Q Why not?

A I don't like therapy.

Q Why don't you like therapy?

A Because I don't think it's really anybody's business, I guess, like what's going on in my life.

Q You think they're too -- too nosey?

A Yeah.

Q How many -- how many therapists or counselors have you had at Healthy Minds?

A Four.

Q Four? Okay. And the questions that we've all been asking you today, have you been asked these questions

before?

A Yes.

Q Where were you asked these questions before?

A At the D.A.

Q Okay. How many times?

A Once.

Q Once? And were you asked these same kinds of questions at the pretrial hearing?

A I don't know.

Q Yeah, probably too long ago to remember. We'll pass that one. How many vacations did you guys go on where Sam didn't go? Was it -- I know you said more than one. Was it more than two?

A Yes.

Q More than three?

A I don't remember. The exact amount.

Q Okay. Yeah. Okay. I'm going to ask you a little more questions today. What -- you -- and you said that your -- your first choice at the end of all of this is to go back home with Mom and Dad, is that right?

A Yes.

Q And if you don't get to go home with Mom and Dad, who do you want to stay with?

A Ms. Jackie.

Q And Mr. Bryan?

A Yes.

Q Cool. Do you want to be adopted or just stay with them?

A It depends.

Q What does it depend on?

A Like how they feel about it.

Q How -- how Ms. Jackie and Bryan feel about it?

A Yeah, and like everybody else in the house.

Q And make it a group decision?

A Yes.

Q Okay. And what grade are you starting?

A Seventh grade.

Q Are you excited?

A No.

Q Why not?

A I don't like school.

Q Why don't you like school?

A I don't know.

Q And what do you want to be when you grow up?

A An actor.

MS. CALVERT: Okay. That's all I have.

MR. DRASKOVICH: I don't have any follow up.

MS. DORMAN: Oh, I'm sorry. Is she -- is she

done?

THE COURT: You're -- you're done?

MS. CALVERT: Yeah. Oh, yeah.

THE COURT: Okay.

MS. CALVERT: I'm done.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. DORMAN:

Q Heidi, I just have a couple of follow up questions, okay? Lauren asked you about a time you met with me. Was she there when you met with me?

A Yes.

Q Okay. Now Mr. Gowdey asked you a question about what kinds of things Sam would get in trouble for and he asked you if Sam would get in trouble for stealing. Do you remember that?

A Yes.

Q And you -- do you remember saying you weren't sure if she actually stole stuff? Do you remember that?

A Yes.

Q Okay. What kinds of things would Sam get accused of stealing?

A Food in the house.

Q Food in the house, do I have that right?

A Yes.

Q Okay. And was there a time that you stood up for her and said she didn't steal food?

A Yes.

Q What happened to you?

A I don't remember.

Q Okay. Now you talked about Dad giving Sam black eyes and then you told Mr. Gowdey you didn't see him actually do that, right?

A Yes.

Q Okay. Did you see him actually spank Sam with the belt?

A Yes.

Q Okay. And you saw -- did you see the marks on her back and her butt that you testified about earlier?

A Well, I didn't see them like on her butt, but like --

Q Sorry.

A -- it got --

Q On her back?

A Yeah.

Q Okay. Got you. And you said you do want to go home, is that right?

A Yes.