

IN THE SUPREME COURT OF THE STATE OF NEVADA

Barry Harris,
Appellant

vs.

The State of Nevada,
Respondent,

) Supreme Court Case No.: 76774

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APPELLANT'S APPENDIX INDEX

Vol. VI

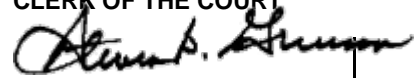
Pages 1147-1258

Appendix Index (Alphabetical)

<u>Document Name</u>	<u>Date</u>	<u>Bates No.</u>
Information	01/07/2018	0052-0055
Judgment of Conviction	08/16/2018	1254-1256
Jury Instructions	04/16/2018	1095-1146
Notice of Appeal	08/21/2018	1257-1258
Transcripts, Calendar Call	02/27/2018	0112-0120
Transcripts, Calendar Call	04/03/2018	0129-0132
Transcripts, Initial Arraignment	01/18/2018	0108-0111
Transcripts, Jury Trial Day 1	04/09/2018	0133-0455
Transcripts, Jury Trial Day 2	04/10/2018	0456-0701
Transcripts, Jury Trial Day 3	04/11/2018	0702-0999
Transcripts, Jury Trial Day 4	04/12/2018	1000-1094
Transcripts, Jury Trial Day 5	04/16/2018	1147-1223
Transcripts, Preliminary Hearing Vol. I	12/14/2017	0001-0051
Transcripts, Preliminary Hearing Vol. II	01/16/2018	0056-0107
Transcripts, Sentencing	06/07/2018	1228-1233
Transcripts, Sentencing	07/24/2018	1234-1238
Transcripts, Sentencing	08/14/2018	1239-1253
Transcripts, Status Check Trial Setting	03/27/2018	0121-0128
Verdict	04/16/2018	1224-1227

Appendix Index (Chronological)

<u>Document Name</u>	<u>Date</u>	<u>Bates No.</u>
Transcripts, Preliminary Hearing Vol. I	12/14/2017	0001-0051
Information	01/07/2018	0052-0055
Transcripts, Preliminary Hearing Vol. II	01/16/2018	0056-0107
Transcripts, Initial Arraignment	01/18/2018	0108-0111
Transcripts, Calendar Call	02/27/2018	0112-0120
Transcripts, Status Check Trial Setting	03/27/2018	0121-0128
Transcripts, Calendar Call	04/03/2018	0129-0132
Transcripts, Jury Trial Day 1	04/09/2018	0133-0455
Transcripts, Jury Trial Day 2	04/10/2018	0456-0701
Transcripts, Jury Trial Day 3	04/11/2018	0702-0999
Transcripts, Jury Trial Day 4	04/12/2018	1000-1094
Jury Instructions	04/16/2018	1095-1146
Transcripts, Jury Trial Day 5	04/16/2018	1147-1223
Verdict	04/16/2018	1224-1227
Transcripts, Sentencing	06/07/2018	1228-1233
Transcripts, Sentencing	07/24/2018	1234-1238
Transcripts, Sentencing	08/14/2018	1239-1253
Judgment of Conviction	08/16/2018	1254-1256
Notice of Appeal	08/21/2018	1257-1258



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-17-326569-1
)	
vs.)	DEPT NO. XX
)	
BARRY HARRIS,)	
)	
Defendant.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

MONDAY, APRIL 16, 2018

APPEARANCES:

FOR THE STATE:	MICHELLE L. SUDANO, ESQ.
	GENEVIEVE C. CRAGGS, ESQ.
	<i>Deputy District Attorneys</i>

FOR THE DEFENDANT:	DAMIAN R. SHEETS, ESQ.
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RECORDED BY: ANGIE CALVILLO, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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INDEX

DEFENDANT'S CLOSING ARGUMENT (CONTINUED) BY MR. SHEETS. . .	11
STATE'S REBUTTAL CLOSING ARGUMENT BY MS. SUDANO.. . . .	26

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
(No witnesses called)				

* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
(No exhibits admitted)	

1 LAS VEGAS, NEVADA, MONDAY, APRIL 16, 2018, 12:12 P.M.

2 (Outside the presence of the jury)

3 THE DEFENDANT: How are you doing today, Your Honor?

4 THE COURT: Good. How are you today?

5 THE DEFENDANT: I'm all right. I had --

6 THE COURT: Hold on we're not in session yet. Calling
7 State of Nevada versus Barry Harris, Case No. C326569. Counsel,
8 please make your formal appearances for the Court.

9 MS. SUDANO: Good morning, Your Honor. Michelle
10 Sudano and Genevieve Craggs for the State.

11 MR. SHEETS: Good morning, Your Honor. Damian Sheets
12 on behalf of Mr. Harris who is present in custody.

13 THE COURT: Okay. All right. Mr. Sheets, go ahead
14 and sit down.

15 MR. SHEETS: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. SHEETS: I had a heck of a night.

18 THE COURT: You think -- how are you -- and I'm not
19 expecting you to say that you're bushytailed and ready run, but
20 if we go slow and give you as much time as you need, do you
21 think that we can get you through your closing?

22 MR. SHEETS: I'm here. Let's do it. I'm here. So I
23 -- I -- obviously, I'm concerned I'm going to be a little
24 slower.

25 THE COURT: That's -- you know, you can take, and I

1 think the State has no issue, you can take whatever time you
2 need to make sure you go -- I know you -- I saw, you know, I
3 hadn't looked at any of them, but I saw you had extensive notes
4 and an outline of your closing. You can take whatever time you
5 need to make sure that you're hitting all the points that you
6 wanted to hit in your outline and getting those point across to
7 the jurors. I don't have a problem if you want to sit while you
8 give your closing. The marshal may not be thrilled, but I'll
9 volunteer the marshal's stool if you want to sit while you give
10 the closing.

11 MR. SHEETS: I'll -- I'll stand, Your Honor. I can --
12 since I took the Zafirin -- Zofran, I think that's what it's
13 called, I'm doing a lot better standing now.

14 THE COURT: Okay.

15 MR. SHEETS: That's supposed to address the nausea.

16 THE COURT: Would you like to have the chair there
17 with you in case you wanted to sit down at all?

18 MR. SHEETS: No, I think if I get to that point, I'm
19 probably going to walk over here and sit down. I'll just tell
20 the jury I'm under the weather.

21 THE COURT: Okay.

22 MR. SHEETS: And forgive me if I have to sit down and
23 if I've got to make a bolt for the --

24 THE COURT: If you have to make a bolt for the door,
25 I'll explain things to the jury. Do you want me to say anything

1 to them, or do you want to be the one to talk to them?

2 MR. SHEETS: It's probably a little better if you do
3 so that it doesn't sound like I'm trying to make an excuse. But
4 I'd like to think if they were paying attention to me on Friday,
5 they'll notice -- they may notice a little difference and
6 they'll know I'm not handing them a bunch of bull.

7 THE COURT: Okay. All right. Well, like I said, you
8 can have as much time as you need to get through all the points
9 that are on your -- your outline that you've -- you've got. I
10 thought you were doing a really good job on Friday, and so --

11 MR. SHEETS: We were rolling.

12 THE COURT: -- I'll let you take what time you need to
13 get done with your job today.

14 MR. SHEETS: And Your Honor doesn't mind if I take
15 this up there?

16 THE COURT: No. I appreciate that. When I came back
17 from my most recent travel, I chugged a lot of Gatorade up here
18 on the bench the following week, so I definitely appreciate what
19 you're -- what you're saying.

20 (Off-record colloquy)

21 THE COURT: Okay. Anything from the State?

22 MS. SUDANO: No. Thank you, Your Honor.

23 THE COURT: Okay. All right. Mr. Harris, real quick,
24 what's your issue?

25 THE DEFENDANT: How are you doing today, Your Honor?

1 THE COURT: Good.

2 THE DEFENDANT: My issue was like credibility. Who do
3 I talk to about credibility because I've got a picture that I
4 ain't seen presented to the jury yet.

5 THE COURT: Well, at this point in time the evidence
6 has been admitted, so --

7 THE DEFENDANT: How does it get admitted and we ain't
8 started deliberation yet?

9 THE COURT: Well, it can't be admitted at this point
10 in time. Both sides have closed.

11 THE DEFENDANT: So if I wanted to testify right now,
12 would you give me the right to testify?

13 THE COURT: No. And I explained that to you, and you
14 said that you understood that once your attorney said he -- you
15 had up until when your attorney said that the defense rests to
16 change your mind, and you --

17 THE DEFENDANT: I thought you said before
18 deliberation.

19 THE COURT: No, I didn't say that. I said before
20 defense rests, and you said you understood.

21 THE DEFENDANT: Okay. Then let's talk about this
22 60-day speedy trial.

23 THE COURT: I'm not going to talk about that. I've
24 already told you that we're not dealing with that issue now, and
25 that you may --

1 THE DEFENDANT: But a Supreme Court --

2 THE COURT: -- raise the -- I don't care.

3 THE DEFENDANT: -- say you got to show --

4 THE COURT: Let me tell you, Mr. Harris, I've told you
5 this over and over, you have an issue that you may be able to
6 raise on appeal. I'm not denying you the ability to raise that
7 issue on appeal if you are, by chance, convicted in this case.
8 And then if you aren't successful with it on appeal, you may be
9 able to raise it on habeas corpus, but I'm not going to deal
10 with it right now. And it may be something that your attorney
11 may feel is an appropriate post-trial motion that he can make
12 before sentencing in the case. That's up to him. But I'm not
13 talking about the 60-day thing now. I've told you this over and
14 over. I'm done with it.

15 Okay. Anything else by either side?

16 MS. SUDANO: No. Thank you, Your Honor.

17 THE COURT: All right. As soon as we get the jury
18 here, we'll get started. Do you need anything at all, water?

19 MR. SHEETS: Oh, no. I got this. Does Your Honor
20 mind if I set up?

21 THE COURT: No. Take whatever time you need.

22 MR. SHEETS: Thank you.

23 THE COURT: We'll get started when you are ready.

24 I want to remind the State again, I only give you
25 one-third of the time used by the defense in his closing.

1 MS. SUDANO: Yes, Your Honor.

2 THE COURT: Okay.

3 (Pause in the proceedings)

4 THE COURT: We do have now printed copies of the jury
5 instructions. We're in the middle of your close. Do you want
6 them handed out now?

7 MR. SHEETS: Are they --

8 THE COURT: Or do you want them to just wait until the
9 jury goes back to deliberate?

10 MR. SHEETS: Are they numbered the way that -- that we
11 had them numbered tentatively? That would be --

12 THE COURT: Well, I mean --

13 MR. SHEETS: -- my only thing.

14 THE COURT: -- I can show you how they're numbered.

15 MR. SHEETS: That's the only reason I would want to
16 check is I did -- I reference specific instruction numbers.

17 MS. SUDANO: And, you know, obviously if the parties
18 get them, that's fine. I would prefer that we not give them to
19 the jury right now just because they're not going to be reading
20 along with them as Your Honor reads them. They're just going
21 to --

22 THE COURT: I've already --

23 MS. SUDANO: -- be not listening --

24 THE COURT: -- read them.

25 MS. SUDANO: I know. They're just not going to be

1 listening to our arguments if you give them to them now.

2 THE COURT: All right. I mean --

3 MR. SHEETS: I'm fine either way.

4 THE COURT: Okay.

5 MR. SHEETS: I mean, I'm telling them instructions I
6 think are important.

7 THE COURT: We'll just give it to the jury, the
8 instructions, when they go back to deliberate.

9 MS. SUDANO: Thank you, Your Honor.

10 THE COURT: All right. Very good. All right.
11 Anything else we can do for you, Mr. Sheets, to -- to get ready?
12 Make sure he doesn't show that up while -- do not put that up at
13 all while --

14 THE DEFENDANT: Why wasn't it submitted?

15 THE COURT: It's not being submitted. Do not put that
16 up or we'll take away the paperwork from you. Do you
17 understand?

18 THE DEFENDANT: I just --

19 THE COURT: All right. I just want to make sure you
20 understand. You are not to show anything to the jury or hold it
21 up at all to the jury while they're here in the room or I'll
22 have the paperwork taken away from you. Do you understand that?
23 You saluted at me. I want to hear from you. Do you -- do
24 you --

25 THE DEFENDANT: Yes, sir.

1 THE COURT: -- understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Let's bring in the defense -- or
4 the jury.

5 (Inside the presence of the jury)

6 THE COURT: All right. Let the record reflect the
7 presence of the attorneys for both sides, the presence of the
8 defendant. Do the parties stipulate to the presence of the
9 jury?

10 MS. SUDANO: Yes, Your Honor.

11 MR. SHEETS: Yes, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, thank you for
13 getting back here today in a pretty timely fashion. We're
14 getting started better today. I do want to note just that Mr.
15 Sheets is a little bit under the weather, and I more or less
16 said we needed to try to push this trial, and he generously,
17 despite being under the weather, has gotten himself here and
18 psyched up and ready to go.

19 But he may be a step or two slower than what he was on
20 Friday and maybe a little bit needing some consideration from
21 you in terms of why is he a little bit slower or off or not as
22 quick today. But I'm sure he'll be just as articulate and as
23 informative as he was on Friday, but I did want to let you know
24 that he is a little bit under the weather.

25 All right. Whenever you're ready, Mr. Sheets, go

1 ahead.

2 DEFENSE CLOSING ARGUMENT (Continued)

3 MR. SHEETS: So, yes, as you heard, I apologize if my
4 voice is a bit hoarse today, and I appreciate you being here
5 today and -- and dealing with some of my slower speaking today.

6 Where we left off we were talking about strangulation.
7 We were talking about the burden of proof that the State has.
8 And that burden is theirs, and that my client has no obligation
9 to prove anything. And it -- and the importance that we listen
10 to the evidence that was presented, the testimony, we look at
11 the physical evidence, we look at the videos, and we, at that
12 point, decide whether or not the State has proven beyond a
13 reasonable doubt all of the charges that are before you.

14 Now, when we were talking about strangulation, we had
15 talked about the lack of physical evidence. We talked about how
16 the State's expert, Lisa Gavin, Dr. Lisa Gavin, had some to the
17 position that her results were inconclusive. And I had
18 presented to you, ladies and gentlemen of the jury, that
19 inconclusive is reasonable doubt as to whether it occurs.

20 And we had gone through all of the things that you
21 could have seen as a sign of strangulation, and how the only
22 possible one that was seen was incontinence, but we were unable
23 to -- the medical records were unable to distinguish whether
24 that's simply wet pants from the lemonade or not.

25 The one thing that I did not get an opportunity to

1 talk about because the time was coming to a close was the fact
2 that in her statement to the police that night, Ms. Dotson's
3 statement to police that night, she specifically stated that it
4 was pressure on the throat, that it was pressure on the throat
5 to the point that it made her unable to breathe.

6 And the reason that that's important, the reason
7 that's extremely important, is that Dr. Gavin sat up here and
8 testified that that requires 30 pounds of pressure. And when
9 she was talking about situations where there could be the marks,
10 she was generally talking about that in reference to the jugular
11 vein, which would require 4.4 pounds or the carotid artery which
12 would require 11 pounds.

13 But the specific allegation that was made that night
14 was of the throat, and I think it's important to present that to
15 you, ladies and gentlemen of the jury, because in addition to
16 the other lack of physical evidence that we have seen,
17 additionally there were no marks to that throat area and there
18 was no damage, and the medical record establish that. And for
19 that reason, I do not believe strangulation has been proven
20 beyond a reasonable doubt.

21 Now, the State said something interesting during their
22 closing argument that caught my attention. They indicated that
23 why does my client come here and say that he -- he punched her
24 and he scared her? Well, because all of the evidence shows that
25 that was the possible outcome, all the evidence shows that it

1 was real obvious that that occurred.

2 I pose to you something different. My client doesn't
3 deny it not because the State could prove it. And here's why
4 it's important to understand that my client was not -- the
5 testimony establishes that my client was not arrested for this
6 offense until August 29th. That is one week after the alleged
7 offense.

8 Now, the testimony also established that the moment
9 Ms. Dotson said my client committed an offense, they were going
10 to arrest him. They had decided that was enough. When
11 Detective Carey was asked on cross-examination, and he did not
12 want to admit it, if he had any reason to come into contact with
13 my client as part of his investigation while he had earlier
14 testified he tried to find my client, at preliminary hearing
15 when he was asked if he had any reason to contact my client, he
16 said no.

17 He had no intention on talking to my client. Use your
18 common sense. You have the testimony from the officers that the
19 moment she said it happened, he was going to go to jail. You
20 have the testimony from the detective at the preliminary hearing
21 that he had no reason to come into contact with my client.

22 And what that means is that the reason he was looking
23 for my client was to take him in. You heard them say when they
24 first met with him, at work I might add -- and the State makes a
25 big deal of flight. He -- they believe they've shown flight

1 because he -- he left his home. He went to work. Somebody
2 fleeing from a crime is not going to just go to work as
3 scheduled.

4 And the police officer blurted out criminal
5 apprehension team. That's what they sent to go talk to him when
6 they went to go to work. They don't get a statement from him
7 because they knew what they were going to charge him with right
8 from the get-go. My client, in that week, could have told the
9 police, you know what, she started it.

10 They already had her statement that she punched --
11 that she -- she thought he was cheating, that that was the
12 source of the argument. Already had that. He had more than
13 enough motive to say, you know what, she was hitting me first,
14 she had a drink in the bathroom, and when she hit me, I hit her
15 back and I just hit harder. He could have said that.

16 We talked a little bit about whether a man can act in
17 self-defense against a woman. But he didn't say that. And it
18 would have been incredibly difficult for the State to prove
19 beyond a reasonable doubt that he was responsible for any of it,
20 but he chose not to do that. He chose to deny that which he
21 didn't do, and to not deny that which he did do.

22 And I believe that that is a very important fact for
23 you to consider when the State makes the implication that he
24 admits to it because there's an injury there. An injury there
25 doesn't mean you're at fault for the injury. He could have

1 claimed to you that he did it in defense. He could have made
2 that claim because she had that motive, but he didn't. He chose
3 to -- to man up, for lack of a better term, and do not deny the
4 mistake that he made. But he does stand here and deny the
5 mistakes that he didn't make.

6 Now, the one thing I wanted to talk about a little bit
7 more that I didn't completely address was the kidnapping
8 instructions. The kidnapping instruction requires, if you take
9 a look at your instructions, it requires that seizing, that
10 inveigling for the purposes of causing substantial bodily harm.
11 And it says there's not a minimum movement requirement, that the
12 State has made it clear in their charging document that their
13 basis for the kidnapping count is that they forced her into the
14 bathroom, is that he forced her into the bathroom and prevented
15 her from leaving that restroom using a firearm.

16 MS. SUDANO: Your Honor, I'm going to object. That
17 misstates the charging document.

18 MR. SHEETS: To wit, by forcing --

19 THE COURT: Well, the jury has the -- the jury will
20 have the charging document, and the jury's reading of it will
21 control.

22 MR. SHEETS: To quote the State's language, by forcing
23 her into the bathroom and/or preventing her from leaving the
24 apartment and/or bathroom with use of a deadly weapon, to wit:
25 a firearm, resulting in substantial bodily harm to Nicole

1 Dotson. Exactly what I said is exactly what they're claiming.

2 Let's -- now we need to boil this case down to the
3 simplest things. What have you heard, what testimony, what
4 evidence exists at this trial that these offenses may have
5 occurred? She, Ms. Dotson, testifying, did not remember if
6 there was a firearm used. She couldn't -- she didn't think it
7 was a firearm. Absolutely didn't have a firearm put in her
8 mouth, according to her. Doesn't remember getting hit over the
9 top of the head. Doesn't remember strangulation. Never
10 intended to call the police. That's what she said.

11 Count 7 preventing or dissuading a witness requires
12 that he's preventing her from reporting a crime through fear.
13 And while we all heard every which way that she was in fear,
14 what we also heard from her was I did not plan to call the
15 police. And that's something that's consistent across all
16 stories.

17 She was leaving the apartment. She wasn't calling the
18 police. She ran into the police. She had no intention of
19 calling the police. And as much as we may not like what my
20 client did, that oath that we took, that you took as jurors,
21 requires you to look at what evidence is presented before you
22 and determine if that meets every element beyond a reasonable
23 doubt, regardless of that emotional attachment, that sympathy
24 for Ms. Dotson that we all have, and I mean all of us.

25 Now, let's take a look at the firearm, the deadly

1 weapon. The State is asking you to conclude beyond a reasonable
2 doubt that my client was in possession of a firearm during this
3 entire event because the night of the event Ms. Dotson told
4 police that there was a firearm. Absent that statement, there's
5 no other evidence that my client has a firearm. None
6 whatsoever.

7 Take a look at her testimony. Take a look at the
8 officers' testimonies. That night when asked if it was a real
9 gun, she said she didn't know, she hadn't seen a bunch of guns.
10 On the stand she said it didn't happen, no gun in her mouth.
11 Physically, no bright marks, no shiners, as they were, from
12 where a firearm would have smacked you across the face.

13 Count No. 4 requires shoving said firearm into the
14 mouth of the said Nicole Dotson and/or striking her with said
15 firearm. She told the police that night she was hit over the
16 head. No bump, no cuts, she was hit on the top. So you have
17 not heard any evidence. They did not find a firearm.

18 Now, the State would like you to make the leap that
19 ammunition is enough. But you have a vehicle that is occupied
20 by three people, used by three people during that week. While
21 she assumed her mother didn't own a firearm and her sister
22 didn't own a firearm on a leading question from the State, when
23 asked if she knew, if she searched or asked, she says I don't
24 know because she doesn't know.

25 The only ammunition they have in that car is in the

1 trunk, which is closed, in a bag, and you saw the general
2 overview, it was just clothes, and in a bag that, at least as
3 you look at the photograph in the car, looks like it's also
4 closed behind the passenger seat in the back of the vehicle in a
5 bag that says girl talk.

6 You heard Detective Carey say it would be important to
7 establish potential owners, yet he doesn't order prints, doesn't
8 search the apartment for -- the apartment for a gun or a
9 firearm after he had testified that that would be something
10 relevant. And now absent that investigation, it may very well
11 have set my client free on those charges. The State is still
12 asking you to convict when that investigation wasn't done.
13 That's a reasonable doubt.

14 Possession is an interesting thing. There are two
15 types of possession, actual possession. I have this pen in my
16 hand. But there's also a constructive possession. And I would
17 -- I would pose that constructive possession is when it may not
18 be in your hand, but it's around your person. You have the
19 ability to exercise a dominion and control over it. You have an
20 ability, an access, an immediate and exclusive access to that
21 item.

22 In this particular case, none of that exists. To
23 presume that that ammunition is my client's is to speculate that
24 it's his versus any of the others who had access to that vehicle
25 that was owned by somebody else, all females, by the way, in a

1 bag that says girl talk. I do not believe that the State has
2 shown any deadly weapons beyond a reasonable doubt.

3 Finally, substantial bodily harm. The State takes the
4 position that substantial bodily harm is present in this case
5 because she has to go back and she has to see a doctor.
6 However, let's read the instructions. Substantial bodily harm
7 means bodily injury which creates substantial risk of death or
8 which causes serious permanent disfigurement or a protracted
9 loss or impairment of the function of any bodily member or
10 organ. That's one.

11 Clearly, that's not met in this case. You've had --
12 you have the medical records. She wasn't dead, she wasn't
13 dying. The eye was swollen shut, she was treated, and she was
14 released. That does not mean that there's a risk of substantial
15 -- that does not mean that there's a substantial risk of death.
16 There's no permanent disfigurement. You heard Ms. Dotson
17 testify that it healed, she's fine. It needs to be checked up,
18 but it's fine.

19 So what's left? Prolonged physical pain. In a
20 battery, a wrongdoer is not liable for prolonged physical pain
21 for the touching itself. Prolonged physical pain necessarily
22 encompasses some physical suffering or injury that lasted longer
23 than the pain immediately resulting from the wrongful act. It
24 requires something longer than the pain immediately resulting.
25 You heard her testify, she's not in pain.

1 The medical records that you have are from that night,
2 and no other medical records into the future, nothing that says
3 she's still in pain. In fact, she testified it hurt for about a
4 week and a half, and then it really didn't hurt very much
5 anymore. I would pose that is the pain that lasts from the
6 contact from the swollen eye and it did not go beyond that, it
7 did not go longer than that. And absent medical records or
8 testimony, I believe there's reasonable doubt.

9 So when we sum this case up, what do we have? We have
10 the testimony of Ms. Dotson under oath at trial where she says I
11 don't remember a gun, don't remember getting hit on the head,
12 don't remember getting strangled, definitely didn't have a gun
13 shoved in my mouth, he lived there, he had a key, it was a calm
14 discussion and then it got worse as time went by. He did hit
15 me, but I walked into the bathroom because that's where I felt
16 safe, that's where she wanted to be.

17 Now, if, ladies and gentlemen of the jury, you feel
18 that first degree kidnapping has not been met beyond a
19 reasonable doubt, you've been instructed on a lesser included
20 offense of false imprisonment. False imprisonment is an
21 unlawful violation of the personal liberty of another and
22 consists in confinement or detention without sufficient legal
23 authority.

24 Now, I would pose that Ms. Dotson did not say he was
25 confining her. She said she was free to leave. Certainly her

1 personal liberty was violated. We know that. But it also
2 requires that confinement or detention. But I would argue,
3 based on her testimony, if you do feel that she was confined,
4 that false imprisonment is the correct charge to find my client
5 guilty of.

6 So we have the testimony of Ms. Dotson that we just
7 talked about on the stand under oath. We have the physical
8 evidence that supports her testimony on the stand as she
9 remembers it going down. And then we have what the state wants
10 you to rely on, the statements she gave officers.

11 Now, I would pose they play these tapes of my client
12 in order to create the impression that he's pressing her what to
13 say. Nowhere in that phone call does he tell her what to say.
14 Nowhere at all. What you have is you have a conversation
15 between two lovers trying to mend things. You have a situation
16 where she didn't want to go to court, and he's telling her go to
17 court and tell the truth. He says it over and over and over
18 again.

19 You have him feeling bad for what he did do in that
20 call. Talking about coming to himself, talking about getting
21 right with the Lord. He tells her to come to court and support
22 him. He never says lie, never says I need you to emphasize
23 this, never says if you say this, it's the icing on the cake,
24 never says if you say this it's the money maker.

25 In fact, when she says I'll do as you ask, thinking

1 he's asked something, he says don't do as I ask, do what's the
2 truth, that's all I ask. And in that same call he goes as long
3 as the truth comes out, tell the truth, all I ask is the truth
4 no matter what. Pardon me. No matter what, tell the truth.
5 That's what you hear him say.

6 So you have him going about his life. You have a
7 fight where he leaves the apartment they live in. There was a
8 picture that I didn't show you, ladies and gentlemen of the
9 jury, when we were going through whether he had a right to be
10 there. This one we already saw. It's the closet.

11 THE COURT: Counsel.

12 MR. SHEETS: There's linens there.

13 THE COURT: Counsel, I know you're in argument, but
14 could I get you to note what exhibits you're showing.

15 MR. SHEETS: No. 47. it's the closet. It's open. No.
16 46, open. No. 35, you have the cabinet open, you've got the
17 drawer with toiletries open. No. 34, a closet with clothes
18 open. 33, another picture of that closet with clothes open.
19 31, a picture on the mantel that I would pose to you is Ms.
20 Dotson and my client. No. 30, a bed with two sets of pillows on
21 it. And No. 29, a closet with bags and suitcases in it, open.
22 Testimony saying nothing has been modified.

23 You have a car with clothing in the trunk. The stuff
24 my client grabbed when he moved out. That's why he left,
25 because they had a fight, and he moved out of the home that he

1 lived in, the home that she says is home on the recording. And
2 we have him going about his daily life. That is not flight.
3 He's at work. I pose that the only statements that were
4 specifically solicited in this case were the statements the
5 night that Ms. Dotson talked to the police. You don't have
6 recordings of my client saying I need you to emphasize this.

7 Now, the officer tried to downplay it in his
8 testimony. He said, well, I wanted her to talk about the
9 emotions leading up to it and how the relationship led up to it.
10 Then you heard a tape. There was no discussion about that. He
11 said I need a statement, here's what you need to write, this,
12 this, this, this, and this, all things that are critical to what
13 you see in Instruction No. 3, the charging document.

14 Putting the gun in the mouth, Count 3. Forcing her
15 into the bathroom, Count 2. Hitting her with a gun, Count 4.
16 Strangling her, Count 5. Telling her she couldn't call the
17 police, Count 7. And talking about the firearm, Count 8. He
18 told her exactly what to say. And interestingly enough, she
19 writes exactly what he says. She then gives a recorded
20 interview. Almost exactly what he says, with the exception that
21 in the recorded interview she still says she doesn't realize --
22 she doesn't know if it was a gun.

23 And then she's arrested. She's brought to court in
24 handcuffs. And the State said for her safety, but they
25 presented no evidence as to why that would be necessary that she

1 come into court in handcuffs for her safety. You've heard the
2 recordings. Over the phone, she's not in fear. He wants her
3 here. It's because she didn't show up and she didn't want to.

4 So the State brings her in in handcuffs. And an
5 officer inside the jail says you need to stick to your original
6 story or you're going to do more jail time. And the first time
7 she gets on the stand without those threats, it's clear, and
8 it's consistent with all the other physical evidence you see.

9 At the end of this case, I'm going to ask you to find
10 my client guilty of battery domestic violence and assault. I'm
11 going to ask you to find that he - that the State did not prove
12 the use of a deadly weapon beyond a reasonable doubt, the State
13 did not prove first degree kidnapping beyond a reasonable doubt,
14 that the State did not prove substantial bodily harm beyond a
15 reasonable doubt. But if you believe based on her testimony
16 that she did experience substantial bodily harm, we'd ask you to
17 find the substantial bodily harm without a deadly weapon and
18 consider the false imprisonment.

19 The State is going to get up here and they're going to
20 have an opportunity to talk to you. All I ask is that you stay
21 focused on what you were instructed and what you're here to do.
22 They're going to remind you of how bad the swelling on her eye
23 shut was, and they're going to tell you about the fear that she
24 was in, and that's real.

25 But the instructions are clear and you must

1 compartmentalize because that's what we're sworn to do, that's
2 what our oath is. And an oath is the most important and
3 critical part of the jury system. Because when justice is
4 served, the crown always wins. If a man is set free and justice
5 is served, the crown wins. If a man is found guilty for what he
6 did because it's been proven beyond a reasonable doubt, the
7 crown always wins. You have done your duty.

8 I appreciate you taking the time to listen to me, and
9 I appreciate you taking the time to listen to all the evidence
10 and spending your weekend thinking about this when you all
11 wanted to probably be done with it, and it's been a privilege.
12 Thank you.

13 THE COURT: All right. Thank you, counsel.

14 All right. We'll have about 25 more minutes for the
15 State's rebuttal argument. Is everybody good to last out for
16 that 25 minutes? All right. We'll be pleased to hear the
17 rebuttal argument from the State. As I mentioned before, the
18 State goes first and it goes last because it has the burden of
19 proving each of the elements of the charges in the information
20 beyond a reasonable doubt.

21 MS. SUDANO: Thank you, Your Honor. Court's
22 indulgence.

23 THE COURT: Sure.

24 MS. SUDANO: May I proceed, Your Honor?

25 THE COURT: Go ahead.

1 STATE'S REBUTTAL CLOSING ARGUMENT

2 MS. SUDANO: Now, ladies and gentlemen, I want to
3 focus on Ms. Dotson. You heard a lot about Ms. Dotson. One of
4 the things that really struck me is her employment. Do you
5 remember what she told you she does? She's a memory specialist,
6 ladies and gentlemen.

7 Yet, when she came in and testified, she didn't have a
8 very good memory about a lot of the things that happened that
9 evening, or a lot of the things that she had told police in
10 those statements or the interviews. And I would submit to you
11 that if you go back and you think about what she remembered
12 clearly and what she didn't remember clearly, the things that
13 she has a crystal clear memory about happening or not happening
14 are all things that help the defendant. The things that she
15 can't remember or that she doesn't want to remember are the
16 things that hurt the defendant.

17 Now, you heard those jail calls. You heard Ms. Craggs
18 go through those last week in closing. And what you have in
19 those calls is the defendant making promises to Ms. Dotson,
20 right. Saying to Ms. Dotson, I need to know that you love me
21 the same way that I love you, and I need to know that you're
22 with me and that you're going to correct those things that were
23 uncorrected before. And you have him making promises that if
24 she does that and she says those things, that he'll do that
25 thing she's been asking for their entire seven years together,

1 right. He'll finally buy her that ring.

2 Now, Mr. Sheets was telling you that the State only
3 wants you to focus on that one statement, that one time that Ms.
4 Dotson talked to the police that evening. That's not actually
5 the case. He'd have you believe it's just one statement. What
6 it actually is is a number of different statements.

7 It's statements to Officer Ferron, it's a statement to
8 Officer Bianco, it's that handwritten voluntary, it's a
9 statement to Detective Carey, it's that recorded interview, it's
10 statements to the paramedics on scene, and then it's statements
11 at the hospital after the police are already gone that the
12 defendant had a firearm, put the firearm in her mouth, struck
13 her with that firearm, threatened to kill her.

14 She says those things to everyone that she talks to,
15 everyone that will listen to her because she is terrified of
16 this man right here. She's trying to get into a shelter, she's
17 trying to get away from him, she's trying to do anything that
18 she can to know she's safe. She's asking the officers to find
19 him that evening.

20 Now, one of the instructions that you have is an
21 instruction of the credibility of a witness. And I can't get my
22 clicker to work, so we're going to do it from over here. We're
23 going to get to that instruction in just a second, but I want
24 you to think about what Ms. Dotson said in this little clip of a
25 call here.

1 (Telephone call played)

2 MS. SUDANO: All right. So --

3 THE COURT: Counsel, just could you identify the
4 exhibit that you just played?

5 MS. SUDANO: And I apologize, Your Honor. I believe
6 that was 65 was the exhibit from that one.

7 And then this is your instruction on the credibility
8 of witnesses. Mr. Sheets was making a big deal that Ms. Dotson
9 came in here and she testified under pains of perjury that all
10 of those things were accurate. But this is your instruction on
11 the credibility of a witness, and it instructs you to look at
12 the motivation of a witness, the relationship to the parties,
13 their interest in the outcome.

14 All of those things tell you exactly what's going on
15 with Ms. Dotson in this case. She told you that she doesn't
16 want the defendant held accountable. She told you she doesn't
17 want him punished for what happened to her. She told you
18 they're still together, they're still in love, and that's very
19 much clear from those jail calls.

20 Now, Mr. Sheets was trying to posit all of these other
21 reasons why she was inaccurate that night or why the statement
22 was exaggerated, right, saying that the police make her
23 exaggerate this. And that, you know, that's a possibility. But
24 you heard from Ms. Dotson herself. She never felt pressured by
25 those police officers. She didn't feel like they were trying to

1 get her to exaggerate anything. They were just trying to help
2 her in her time of need.

3 Now, this whole argument that Officer Bianco told her
4 what to say in the voluntary, he explained that for you, ladies
5 and gentlemen of the jury. He explained what he was trying to
6 get her to do. She's already provided that statement to both
7 Officer Bianco and Officer Ferron. She's already told them
8 everything, and you've got the video.

9 You can see her providing that information, terrified,
10 telling them about the gun that the defendant had in her mouth.
11 All of that takes place before he's having her write the
12 voluntary statement. So he already knows that statement because
13 he's already heard it from Ms. Dotson. And the reason that he
14 wants her to emphasize those certain things is because he's
15 trying to figure out what crimes were committed and what
16 actually happened.

17 As he indicated, you know, sure, maybe there's a gun
18 in her mouth, but if it's part of, you know, a sexual fantasy or
19 something like that, it's not a crime, so he needs to know how
20 she's feeling, what she's thinking, what's going on. And that's
21 all that he's trying to do.

22 And then you see her repeating those statements to the
23 fire department. You see her repeating those statements to the
24 paramedics because she's terrified. Not because there's any
25 incentive for her to repeat those statements to any of those

1 people, not because the doctors at the hospital need to know
2 that in order to treat her. It's because that's what happened,
3 ladies and gentlemen.

4 Now, you also heard Mr. Sheets saying that Ms. Dotson
5 doesn't know much about guns, so how does she know that this was
6 a real gun in this case? Well, I'd submit, ladies and
7 gentlemen, it's because it was in her mouth. It's because she
8 was struck in the head with it. It's because the defendant put
9 it up against her head, racked the -- or racked it, and
10 threatened to kill her.

11 And you can actually see on the body cam. You can
12 watch that back in your deliberations the fact that she's
13 demonstrating that for the paramedics, right. She's crying and
14 she's saying he had the gun up to my head, and then she does
15 this and says that he threatened to kill her. You have that
16 evidence, ladies and gentlemen. That's how she knew it was a
17 gun, because she knows how it looks, because she knows how it
18 feels. And, heaven forbid, ladies and gentlemen, because of the
19 defendant, she knows how it tastes. She knows exactly what it
20 feels like to have that in her mouth.

21 Now, Mr. Sheets also says, you know, the only evidence
22 that there was a gun or any sort of a firearm is because of Ms.
23 Dotson's statements that night. That's not true. You heard
24 that the defendant was arrested at work a week later, that he
25 had that car with him, the same car that was leaving the scene

1 that evening that Officer Ferron saw and took a license plate
2 for, and in the back of that car, right where all that
3 ammunition was found, male clothing, shoes, all of those items.

4 And, ladies and gentlemen, why are you going to have
5 ammunition and magazines if you don't have a firearm? Why are
6 you just going to carry those things around in this vehicle? I
7 would submit, ladies and gentlemen, that it's because the
8 defendant knew that he had to get rid of that gun and he had a
9 week to do so, but he didn't get rid of the ammunition and the
10 magazine because that's not directly related to what he did to
11 Ms. Dotson in this case.

12 Now, Mr. Sheets would have you believe that the
13 clothing and the items that are in the trunk of that vehicle are
14 the items that Mr. Harris, the defendant in this case, moved out
15 of her apartment on August 22, 2017. Now, let's think about
16 that a little bit, ladies and gentlemen. You heard from Officer
17 Ferron that there were eight minutes, eight minutes between the
18 time that that call came out from that anonymous neighbor to the
19 time that Officer Ferron arrived.

20 You're telling me that the defendant lived in that
21 apartment, spent all of his time there, and he was able to
22 gather up every single item that he had in that apartment within
23 eight minutes, didn't miss a single thing? And Mr. Sheets
24 showed you those pictures; right? Sure, there's closet doors
25 open, but you also heard that the police went in to clear the

1 apartment and make sure that there was nobody else in there;
2 right?

3 And there's nothing thrown around outside of those
4 closets. There's nothing on the floor. There's nothing that in
5 any way indicates that somebody packed up every single item that
6 they had in that apartment and left within eight minutes.

7 Now, obviously, there's a picture of him in the house.
8 And Mr. Sheets says, oh, well, you know, obviously that tells
9 you that he lives there. They've been dating for seven years,
10 ladies and gentlemen. Are you telling me that you can't have a
11 picture of somebody that you're dating or even somebody that
12 you've been friends with for that long inside your apartment?
13 No. Use your common sense. That also doesn't mean that he's
14 living there; right?

15 She says that evening that he's not on the lease, he
16 doesn't get mail there, she told him not to be there that
17 evening, told him she didn't want to see him, didn't want him
18 over, and he came anyway. So that draws us back to a number of
19 the things that Ms. Dotson said. And I want you to think about
20 even the statement that she made here and whether or not those
21 statements actually make sense.

22 So you heard her say that she and the defendant were
23 arguing while she was at work, and that she comes home after
24 telling him I don't want to see you, I don't want you here, that
25 he's in the bed, gets up, comes out into the kitchen or the

1 dining room, they get into an argument there, and then they go
2 back into the bedroom. They get in an argument in the bedroom,
3 and then he begins to hit her in the bedroom. She goes to the
4 living room, and then voluntarily goes into the bathroom because
5 that's where she feels secure.

6 Now, let's take all of that into consideration.
7 First, does it make any sense that they're arguing over the
8 phone, that she doesn't want him there, and then they come in --
9 or she comes in and they have this very calm discussion in her
10 house even though he's there when he's not supposed to be there?

11 Does it makes any sense that he got up off of the bed
12 and went out into the kitchen and argued with her, and then in
13 the middle of this argument when she's telling him to get out,
14 telling him she doesn't want to see him, doesn't want to be with
15 him if he's going to be sleeping with anybody else, that he's
16 just going to go and lay right back in the bed where he was when
17 she came in? No. That doesn't make any sense.

18 What actually makes sense is what she told the
19 detectives, that she comes in, he's in the bed, and the argument
20 starts immediately. That when she's in that bedroom, he grabs
21 her, he strangles her, he starts punching her, and as she's able
22 to get up and get away. He comes back into that living room
23 with the firearm.

24 Now, her testimony that she went into the bathroom
25 because that's where she felt safe, does that make any sense?

1 She never locks the door or closes the door, does anything to
2 keep him away from her so that she can be safe in that room.
3 She testified that, you know, she could have gotten up and she
4 could have left, but that she was waiting for him to leave. Does
5 that make any sense?

6 What you actually know is that the second he was gone
7 and she actually believed that he was gone, she got up and she
8 left, too. She got up, gathered her things, and took off
9 because she was terrified and didn't want to be in that
10 apartment anymore.

11 Now, ladies and gentlemen, that tells you that the
12 version of events that she gave to the police that evening was
13 accurate. That's actually what happened. He was holding her in
14 that bathroom against her will, he was threatening to kill her
15 if she continued to make noise or if she tried to leave, and
16 that's why she was so terrified when she saw the police.

17 Now, Mr. Sheets has also kind of made the point of how
18 do you know what the defendant's intention was at the time that
19 he went into her apartment? Well, ladies and gentlemen, use
20 your common sense. If you've just gotten into an argument with
21 your girlfriend and she tells you not to come to her house and
22 that she doesn't want to see you, doesn't want to be with you,
23 and you still show up and you're waiting for her and you've got
24 a gun in your pocket, what else are you doing?

25 Your intention is to get into some argument, to

1 frighten her, to commit that assault and battery inside that
2 apartment. He's not going there just to work things out. If
3 you're going just to work things out, you don't show up
4 unannounced in the middle of the night. You don't show up with
5 a firearm. No, he went over there because he wanted this to
6 happen the way that it did.

7 Now, you've also heard a lot that, you know, hey, the
8 police never contacted the defendant that evening. Well, yeah,
9 it's really hard to contact somebody that sees the police
10 approaching the complex pulling in, and, you know, pauses for a
11 second and then takes off. It's really hard to interact with
12 that person. It's really hard to interact with a person when
13 you've got detectives going all over the valley looking for
14 them, but they can't find the defendant that night. That's why
15 they didn't find him. That's why they couldn't talk to him,
16 because he left.

17 Now, you also heard Mr. Sheets saying, well, you know,
18 obviously the defendant couldn't have dissuaded Ms. Dotson from
19 -- from calling the police because she said it was never her
20 intention to call the police. Well, think about what she
21 actually said.

22 She said that she had threatened to call the police
23 before things actually got violent, before the altercation
24 turned physical. He was being disrespectful, and she told him
25 that she was going to call the police at that point. And that's

1 actually what causes the defendant to turn physical is that
2 threat right there by Ms. Dotson to call the police. So, ladies
3 and gentlemen, you do have dissuading or preventing a witness
4 from reporting a crime.

5 Now, I want to talk a little bit also about this
6 substantial bodily harm. Mr. Sheets says, oh, well, you know,
7 there's no substantial bodily harm in this case because there
8 was no prolonged physical pain. Ms. Dotson, as we've already
9 indicated, doesn't want to get the defendant in trouble for
10 this. She's certainly not exaggerating her injuries. But she
11 told you that she had a month of pain.

12 It wasn't a week and a half. It was a month of pain.
13 So that certainly lasted longer than the incident itself. She
14 also said it was a four-month healing process. So even though
15 the pain subsided after the first month, it was four months
16 before her eye and her vision was back to normal. And she also
17 said that, you know, she had to undergo that procedure to have
18 the blood clots taken out of her eye, that, you know, there was
19 still pain while that was all going on, and that, you know, she
20 was under the impression that those blood clots weren't just
21 going to go away and weren't just going to get better, that they
22 actually had to be corrected by the doctor.

23 You know, she also told you that she's still going
24 back for treatment as it speaks -- or as she came in and
25 testified last week for you. So she's not done with this just

1 because her eye is starting to heal. She's still undergoing
2 those issues. So, ladies and gentlemen, you do have substantial
3 bodily harm.

4 You do have a weapon in this case. We know that the
5 defendant had that weapon as he was threatening Nicole,
6 threatening her life, threatening to kill her if she continued
7 to make those sounds. Ladies and gentlemen, what this case is
8 is Ms. Dotson, you know, just trying to be a girl in love,
9 right. You heard her say there's no consequences for me getting
10 up and testifying, I don't feel like there's anything that they
11 can take away or anything that they can do to me, my biggest
12 fear is losing you. Her biggest fear is losing the defendant in
13 this case.

14 Ladies and gentlemen, that's why she came in and she
15 testified the way that she did. It's not because these things
16 didn't happen. It's because she's trying to be that girl in
17 love. She's trying to get that ring that she's been after for
18 the last seven years, been after ever since she was a little
19 girl.

20 Now, ladies and gentlemen, when you go back into that
21 jury deliberation room, we're going to ask that you find the
22 defendant guilty of each and every one of those counts. You
23 find him guilty of the -- or, excuse me, the burglary in
24 possession of a firearm, that you find him guilty of that
25 kidnapping with use of a deadly weapon resulting in substantial

1 bodily harm, the assault with a deadly weapon, the battery by
2 strangulation constituting domestic violence, the battery deadly
3 weapon domestic violence, the battery domestic violence
4 substantial bodily harm, the preventing or dissuading a witness,
5 and the carrying concealed firearm.

6 Because although the defendant says that only him, Ms.
7 Dotson, and God know what happened, that's not true, ladies and
8 gentlemen. You all know exactly what happened in that apartment
9 that evening. We're asking that you hold him accountable for
10 those actions. Thank you.

11 THE COURT: All right. Thank you, counsel.

12 All right, ladies and gentlemen. It's been a process,
13 but essentially we are done with the trial except for your
14 deliberations. In a moment I'm going to have you go back to the
15 jury room and start the deliberations to determine whether the
16 defendant is guilty or not guilty of the charges that the State
17 has brought in this case.

18 When you go back into the jury room, you will have a
19 copy of the instructions that I gave in this case, along with a
20 verdict form which -- we have an official verdict form, but each
21 of you will have a copy of the verdict form as to your verdict
22 as to each of the charges in the case. You are free to mark in
23 any way you want to on your copies of the instructions. They're
24 yours for the purposes of deliberations. So feel free to do
25 whatever you want to in terms of assisting you with the

1 deliberative process.

2 Unfortunately, going back to the deliberations, two of
3 our members won't go back. In every trial we always pick a
4 couple of individuals to be alternate jurors. And the reason we
5 do that is during the course of a trial, it's possible that
6 somebody may become ill or some -- a family emergency or some
7 other type of emergency comes up, and in which case we can
8 insert one of the alternates into that position and not have to
9 start the trial all over again.

10 In this case Mr. Raymond and Mr. Pasco were our two
11 alternates in the case, and so you won't be going back with the
12 jurors. However, I am not excusing you at this point in time.
13 As has happened in the past, there are occasions where one of
14 the jurors, for whatever reason, an illness while they're back
15 there in the jury room or because of an unexpected emergency or
16 situation, can't continue with deliberations. And so I'm not
17 going to excuse you so that if that should happen we can bring
18 you back and start the deliberations over again from the
19 beginning and, again, avoid having to do a retrial of the case.

20 And so at this point I'm going to ask -- rather than
21 excuse you, I'm going to remind you one more time, until you
22 have been excused as jurors in this case, do not talk to each
23 other about the case or about anyone who has anything to do with
24 it until you have been excused by me. Do not talk with anyone
25 else about this case or about anyone who has anything to do with

1 it until the trial has ended and you've been discharged as
2 jurors.

3 Anyone else includes members of your family, your
4 employer, and your friends. You may tell them that you are a
5 juror in a criminal case, but don't tell them anything else
6 about it until after you've been discharged by me. Do not let
7 anyone talk to you about the case or about anyone who has
8 anything to do with it. If someone should try to talk to you,
9 please report it to me immediately by contacting the marshal.

10 Do not read any news stories or articles or listen to
11 any radio or television reports about the case or about anyone
12 who has anything to do with it. Do not visit the scene of any
13 events mentioned during the trial or undertake any
14 investigation, experimentation, or research on your own. This
15 includes use of social media to in any way discuss the case or
16 the use of the Internet or other reference materials to do any
17 investigation or research. And do not begin to form or express
18 any opinion on any subject connected with this case until you
19 have it excused by me.

20 I'll ask that the clerk swear in John to take the
21 alternates back.

22 (Law clerk sworn to take charge of the alternate jurors)

23 THE COURT: All right. Mr. Raymond, Mr. Pasco, John
24 is going to come around to the door by where the marshal is.
25 I'll ask that you step out with him before we have the other

1 jurors go out to deliberate. I want to thank you. I know that
2 this took up a lot of your time all last week, and then today.
3 And we're still going to keep you on the tab a little bit longer
4 with this case, but I do really want to thank you and tell you
5 how much I appreciate your work here, and I know the parties
6 appreciate the work.

7 And while you're not getting to go back with the
8 jurors, I do hope that you take something away from the
9 experience and how important our jury system is to our justice
10 system. So thank you. And if you'd go with John, who should be
11 hopefully right there. Okay.

12 (Alternate jurors recessed at 1:24 p.m.)

13 THE COURT: All right. I'll ask that the clerk swear
14 in our marshal to take the jury back to begin deliberations.

15 (Marshal sworn to take charge of the jury)

16 THE COURT: All right. Ladies and gentlemen, thank
17 you for your attentiveness today. I'll send you back and you
18 may begin your deliberations.

19 JUROR NO. 5: We all take our notepads; right?

20 THE COURT: Yes, you can take your notebooks back
21 there and use them however you feel is appropriate during your
22 deliberations.

23 (Jury excused for deliberations at 1:25 p.m.)

24 THE COURT: Mr. Craggs, can I get you to shut the
25 door?

1 MS. CRAGGS: Yeah, of course.

2 THE COURT: All right. Let's see. I thought my clerk
3 said that you guys had provided me with the felon in possession
4 jury instructions. Oh. I guess you have.

5 MR. SHEETS: Correct, Your Honor.

6 THE COURT: All right. Have you guys -- let's see, do
7 you guys have copies of these?

8 MR. SHEETS: I do. I did not print them out, Your
9 Honor. I was in a rush to get here.

10 THE COURT: That's all right. I've got a copy of the
11 State's proposed instructions and I've got a copy of yours.

12 MR. SHEETS: Thank you, Your Honor.

13 THE COURT: And I assume the State has both a copy of
14 theirs and a copy of the felon defense proposed instructions?

15 MS. SUDANO: Yes, Your Honor.

16 MR. SHEETS: Correct.

17 THE COURT: Okay. I have an extra set here if you
18 need it.

19 MR. SHEETS: I will note that my third instructions
20 was proposed where it says --

21 THE COURT: Hold on just a second. Let me just get --
22 okay. Let's -- I want to -- I want to go through these again at
23 this point in time. And you can sit down, Mr. Sheets.

24 MR. SHEETS: Yes, Your Honor.

25 THE COURT: Yeah. The prosecutors can sit down, too.

1 MR. SHEETS: My third instruction, I just -- there's
2 one modification I meant to make that I didn't get made. A
3 narcotic just substituting the word contraband.

4 THE COURT: Okay. So that's, you said, your third
5 instruction?

6 MR. SHEETS: Yes, Your Honor.

7 THE COURT: And that is two or more persons may have
8 joint possession of a narcotic if jointly and knowingly they
9 have its dominion and control?

10 MR. SHEETS: Yes.

11 THE COURT: You're saying that instead of narcotics
12 you want contraband?

13 MR. SHEETS: Instead of a narcotic it could be
14 contraband, it could be firearm if we need to make it more
15 specific to this case. I have used the term contraband just to
16 replace narcotic. Most possession cases are narcotics-based
17 cases, and I generally pull my language directly from those
18 cases, and I just forgot to make that switch.

19 THE COURT: Well, I'd say we'll just -- for the moment
20 we'll plan on firearm. I'm guessing -- I'm not sure if the
21 State is going to object to that or not. All right. Let's look
22 at Instruction No. 1. Again, I assume there's no issue by the
23 State?

24 MS. SUDANO: No, Your Honor.

25 THE COURT: Defense?

1 MR. SHEETS: No, Your Honor.

2 THE COURT: Instruction No. 2, if in these
3 instructions any rule, direction, or idea is repeated. I'm
4 assuming no objection from the State?

5 MS. SUDANO: No, Your Honor.

6 THE COURT: Defense?

7 MR. SHEETS: No, Your Honor.

8 THE COURT: All right. Instruction No. 3, a second
9 amended information is but a formal method of accusing a person
10 of a crime, etcetera. Any objection from the State?

11 MS. SUDANO: No, Your Honor.

12 THE COURT: Defense?

13 MR. SHEETS: No, Your Honor.

14 THE COURT: Okay. Instruction on page 4, a person who
15 has been convicted of a felony in this or any other state,
16 etcetera. Any objection to this, State?

17 MS. SUDANO: No, Your Honor.

18 MR. SHEETS: No, and just one brief thing, Your Honor.
19 If my client does decide to stipulate, Instruction No. 3
20 specifies the actual felony. I would probably not want that
21 included in the third instruction by the State --

22 THE COURT: All right.

23 MR. SHEETS: -- if he -- if he decides to stipulate.

24 THE COURT: Okay. Let's see. Oh, you mean, a page
25 before?

1 MR. SHEETS: Yes, Your Honor.

2 THE COURT: I'm sorry. I'm sitting here looking for
3 the what the felony is and I'm not seeing it. All right. Let's
4 hop back to page 3, then. A second amended information is but a
5 formal method of accusing a person of a crime, etcetera. So you
6 would -- if your client stipulates to being a felon, you want,
7 essentially, the defendant, let's see, did willfully,
8 unlawfully, and feloniously own or have in his possession and/or
9 under his custody or control a handgun, to wit: firearm,
10 defendant being a convicted felon.

11 MR. SHEETS: I would just strike been --

12 THE COURT: Strike the remainder.

13 MR. SHEETS: -- convicted of battery with a deadly
14 weapon resulting in substantial bodily harm, and that would
15 probably satisfy it.

16 THE COURT: Well, and you want essentially being --
17 having -- being a convicted felony, being convicted felony --
18 felon.

19 MR. SHEETS: Having in 2006 in Case No. C220524.

20 THE COURT: Okay. Being a convicted felon in 2006 in
21 Case No. C220524, a felony under the laws in the State of
22 Nevada?

23 MR. SHEETS: Yes, Your Honor.

24 THE COURT: Okay. So we would be striking after 2006.
25 Let's see, being a convicted felon in 2006 in Case No. -- all

1 right. So let's see if we're all on board with this. Did
2 willfully, unlawfully, and feloniously own or have in his
3 possession and/or under his control, custody or control, a
4 handgun, to wit: firearm, the defendant being a convicted felon
5 in 2006 in Case No. C220524, in the Eighth Judicial District
6 Court, Clark County, a felony under the laws of the State of
7 Nevada. Is that good with the State if he stipulates?

8 MS. SUDANO: Yes, Your Honor.

9 THE COURT: And defense?

10 MR. SHEETS: Yes, Your Honor.

11 THE COURT: Okay. All right. Anything else as to the
12 instruction on page 3, State?

13 MS. SUDANO: No, Your Honor.

14 THE COURT: Defense?

15 MR. SHEETS: No, Your Honor.

16 THE COURT: Okay. And as to the instruction on page
17 4, a person who has been convicted of a felony in this or any
18 other state, etcetera. Any objection, State?

19 MS. SUDANO: No, Your Honor.

20 THE COURT: Defense?

21 MR. SHEETS: No, Your Honor.

22 THE COURT: All right. 5, the parties stipulate the
23 defendant is a convicted felon having, in 2006, been convicted
24 of battery with -- okay. So I assume essentially the same
25 modifications here?

1 MR. SHEETS: Correct, Your Honor.

2 THE COURT: Okay. Assuming the defendant stipulates.
3 Defendant stipulates a convicted felon, having in 2006 been
4 convicted of a felony in Case No. C220524 in the Eighth Judicial
5 District Court, Clark County, a felony under the laws of the
6 State of Nevada. Does that -- assuming the defendant
7 stipulates, is that good for the State?

8 MS. SUDANO: Yes, Your Honor.

9 THE COURT: Defense?

10 MR. SHEETS: Yes, Your Honor.

11 THE COURT: Okay. Instruction on page 6, the law
12 recognizes two kinds of possession, actual possession and
13 constructive possession, etcetera. I'm guessing since I see
14 sort of a similar one over here by defense page 1, defense
15 proposed instruction, there's disagreement on this. So where do
16 we stand on this one?

17 MR. SHEETS: Yes, Your Honor. I would ask you to
18 consider the defense's alternative instruction. It draws
19 language directly from the case. It is verbatim language from
20 Gillespie versus Sheriff as it describes constructive
21 possession. It also talks -- it helps clarify it for the jury.
22 It's a much clearer instruction in that it indicates that the
23 accused has constructive possession only if he or she maintains
24 control or a right to control that contraband.

25 And then it gives an example, possession may be

1 imputed when the contraband is found in a location where it is
2 immediately and exclusively accessible to the accused and
3 subject to -- it says her dominion or control, but his or her,
4 even if the accused does not have exclusive control of the
5 hiding place, possession may be imputed if he or she has not
6 abandoned the contraband and no other person has obtained
7 possession. The accused is also deemed to have the same
8 possession as any person actually possessing the contraband
9 pursuant to his or her direction or permission where he or she
10 retains the right to exercise dominion and control over the
11 property.

12 I think that's a much more accurate instruction and I
13 think it's clear and it's a very nice description and it's
14 direct language.

15 THE COURT: State's response?

16 MS. SUDANO: Your Honor, I'll submit it.

17 THE COURT: Well, I sort of like the defense
18 instruction. The only thing I'm sort of concerned about is
19 whether the two principles at line 8 through 12 on the State's
20 is adequately included in the defense instruction.

21 MR. SHEETS: That would be my third instruction.

22 THE COURT: Oh. Okay. Hold on.

23 MR. SHEETS: That probably -- that was meant --
24 intended to address 8 through 9. And I actually don't have an
25 objection to lines 10 through 12 of the State's instruction.

1 THE COURT: I sort of like the way the State has
2 phrased 8 and 9 over the way you have phrased it in your third
3 instruction. Is there -- do you have a real issue with the way
4 the State has phrased it at line 8 and 9?

5 MR. SHEETS: Yes. I think it misstates the law. The
6 language, again, is taken directly from the case that I cite and
7 it requires that it must be jointly and knowingly. It indicates
8 in their instruction two or more people have the right or the
9 ability versus jointly and knowingly. I think there's a much
10 more real intent requirement as is specifically listed in
11 Mascali (phonetic). I think 8 and 9 in the State's instruction
12 tends to diminish the intent requirement.

13 THE COURT: Okay. Any thought back from the State?

14 MS. SUDANO: Your Honor, the only thing that I'm going
15 to point out is they're either going to find him in possession
16 of a firearm in these counts or not. I don't know that the
17 joint or exclusive or the actual are constructive is really
18 relevant because he's not charged with the ammunition or
19 anything that's in the vehicle.

20 THE COURT: Okay.

21 MS. SUDANO: I mean, other than that, not really.

22 THE COURT: All right. Well, we'll use the -- what
23 I'm going to do is we'll take the defense's third instruction
24 and insert that after the defense's instruction on page 1. And
25 then we'll put the State's lines 10 through 12 after that. All

1 right. Is the State okay with that?

2 MS. SUDANO: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. SHEETS: Yes, Your Honor.

5 THE COURT: Okay. Okay. All right. And then we've
6 got one more instruction from you. Is that something that comes
7 later, or is that something we need to deal with now?

8 MR. SHEETS: I think that it would come right now,
9 Your Honor. This is both, again, from Gillespie versus Sheriff.
10 I know we've talked about it in regards to the -- the ammunition
11 coming in. But, again, I think you're familiar with kind of the
12 facts of that case.

13 The basis for the Court ruling that that third
14 individual could not be found, that there could not be probable
15 cause to even stand trial on the -- on the possession issue is
16 because there was no conduct that was distinguishing the
17 activities of the charged defendant in that case. The first is
18 the other two individuals who were in that bathroom.

19 And so I think it's an important point to make to the
20 jury that when there is no conduct that distinguishes though as
21 activities, that there cannot be constructive possession because
22 Gillespie has specifically held, and if Your Honor reads the
23 case, that's -- of course we had to substitute language for
24 contraband and -- and -- but this is the ruling is that when
25 there is no distinguishing activity between them, there's not

1 even probable cause, there's nothing [indiscernible] evidence.

2 THE COURT: Okay. But in this case, he's being
3 charged with possessing the gun. I mean, there's no issue of --
4 I mean, either he has the gun or he doesn't have the gun in the
5 apartment. I mean --

6 MR. SHEETS: Well, yeah --

7 THE COURT: -- it's either --

8 MR. SHEETS: -- with the exception --

9 THE COURT: -- there or not there.

10 MR. SHEETS: With the exception, I think, that they're
11 trying to use the ammunition in the car as a basis to impute
12 that he had a firearm in that car, and since that car is
13 accessible to multiple people, I think that the jury can
14 consider that premise.

15 THE COURT: All right. State?

16 MS. SUDANO: And, Your Honor, I would object to this
17 instruction being given for the reason that Your Honor already
18 laid out. You know, either he had the gun in the apartment, or
19 he did not have the gun in the apartment. I think that this is
20 confusing and potentially misleading for the jury if we're going
21 to be trying to impute the ammunition to somebody else when
22 that's not actually what he's charged with.

23 I think obviously the presence of the ammunition is
24 circumstantial evidence, but it's not a crime that he's charged
25 with. It's not anything that -- that really speaks to what's

1 going on in this particular instruction, so I do think that it's
2 confusing.

3 THE COURT: Okay. I do sort of wonder the need to
4 have a constructive possession argument here because essentially
5 it's not alleged at being construction possession. It's alleged
6 to have held it in his hand and put it to her head.

7 MR. SHEETS: That's part of the allegation. Just part
8 of the evidence is constructive possession of ammunition. I
9 mean, that was -- that's their big -- their big thing. I mean,
10 that's why they wanted those pictures in.

11 THE COURT: Well, I mean, you know, it's -- it's
12 evidence that has probative value, arguably mixed with other
13 evidence. I don't think this is confusing, though, and I can
14 see what the defense may be wanting to do as far as a theory.
15 I'll go ahead and allow the instruction. Let's see, State's
16 instruction at 7, to constitute the crime charged there must
17 exist a union or joint operation, etcetera. Any objection,
18 State?

19 MS. SUDANO: No, Your Honor.

20 THE COURT: Defense?

21 MR. SHEETS: No, Your Honor.

22 THE COURT: State's 8, a defendant is presumed
23 innocent unless the contrary is presumed -- is proved, etcetera.
24 Any objection, State?

25 MS. SUDANO: No, Your Honor.

1 THE COURT: Defense?

2 MR. SHEETS: No, Your Honor.

3 THE COURT: 9, the evidence which you are to consider
4 in this case consists of the testimony of witnesses, the
5 exhibits, and any facts admitted or agreed to, etcetera. Any
6 objection, State?

7 MS. SUDANO: No, Your Honor.

8 THE COURT: Defense?

9 MR. SHEETS: No, Your Honor.

10 THE COURT: 10, this is the State's credibility
11 instruction. We'll insert the -- the Ninth Circuit instruction.

12 MS. SUDANO: Oh, that should already be the Ninth
13 Circuit. I'm sorry. Is it not?

14 THE COURT: No.

15 MS. SUDANO: No?

16 THE COURT: Is the one you had -- you presented
17 before.

18 MS. SUDANO: Oh. I apologize, Your Honor.

19 THE COURT: That okay. I mean, it doesn't hurt to
20 try.

21 MS. SUDANO: I actually have your instruction here, so
22 I'm concerned, then, that there might be other typos throughout
23 if the version that I sent was not the final version.

24 THE COURT: Well, we'll use the Ninth Circuit
25 instruction. I'll let you take a look at this before I have my

1 clerk do any final edits here.

2 MS. SUDANO: Thank you, Your Honor.

3 THE COURT: Then page 11, although you are to consider
4 only the evidence in the case in reaching a verdict, etcetera,
5 any objection, State?

6 MS. SUDANO: No, Your Honor.

7 THE COURT: Defense?

8 MR. SHEETS: No, Your Honor.

9 THE COURT: And then Instruction No. 12, in your
10 deliberations you may not discuss or consider subjects of
11 punishment, etcetera. Any objection, State?

12 MS. SUDANO: No, Your Honor.

13 THE COURT: Defense?

14 MR. SHEETS: No, Your Honor.

15 THE COURT: And then 13, it's a constitutional right
16 of a defendant in a criminal trial that he may not be compelled
17 to testify, etcetera. Any objection, State?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: Defense?

20 MR. SHEETS: No, Your Honor.

21 THE COURT: And, again, you're specifically requesting
22 this, Mr. Sheets?

23 MR. SHEETS: Yes, Your Honor.

24 THE COURT: Okay. And then 14, during the course of
25 this trial and your deliberations you're not to one, two, three,

1 four, etcetera. Any objection, State?

2 MS. SUDANO: No, Your Honor.

3 THE COURT: Defense?

4 MR. SHEETS: No, Your Honor.

5 THE COURT: And then No. 15, when you retire to
6 consider your verdict, you must select one of your members to
7 act as foreperson, etcetera. Any objection, State?

8 MS. SUDANO: No, Your Honor.

9 THE COURT: Defense?

10 MR. SHEETS: No, Your Honor.

11 THE COURT: And then 16, if during your deliberations
12 you should desire further information, etcetera. Any objection,
13 State?

14 MS. SUDANO: No, Your Honor. I just want to make a
15 note on what I did on this one. The first paragraph should be
16 your instruction, and then the last paragraph, the second
17 paragraph, is just the playbacks of testimony are time consuming
18 and are not encouraged.

19 THE COURT: Right.

20 MS. SUDANO: Okay.

21 MR. SHEETS: No objection.

22 THE COURT: Any objection, defense?

23 MR. SHEETS: None, Your Honor.

24 THE COURT: Okay. And then 17, you will now listen to
25 the arguments of counsel who will endeavor, etcetera. Any

1 objection, State?

2 MS. SUDANO: No, Your Honor.

3 THE COURT: Defense?

4 MR. SHEETS: No, Your Honor.

5 THE COURT: And then we've got a verdict form. Any --
6 I assume the State doesn't object?

7 MS. SUDANO: No, Your Honor.

8 THE COURT: Defense okay with it?

9 MR. SHEETS: Yes, Your Honor. We're okay. No
10 objection.

11 THE COURT: All right. Let me hand this packet, then,
12 to you, counsel and Mr. Sheets. And if you want to glance at it
13 real quick to make sure that this is what you -- we are all on
14 the same page as to the instructions in this case. Go ahead.

15 MS. SUDANO: Thank you, Your Honor.

16 THE COURT: All right. I'll let you take a few
17 minutes. Let me -- let my clerk know as soon as you've had a
18 chance to look through it.

19 MS. SUDANO: It should be okay, Your Honor. I think
20 that was my only one that I was confused about because I do
21 remember trying to put the right one in, but I got the wrong
22 one.

23 THE COURT: All right. Why don't you hand it to Mr.
24 Sheets and make sure he concurs.

25 MR. SHEETS: I concur, Your Honor.

1 THE COURT: Okay. If you'd hand that back to me.
2 Okay. Give that to John. All right. I don't know how long the
3 jury will go tonight. I'll see what they want to do. I don't
4 like to let them straggle on long, but we'll see what they want
5 to do at that point. I'll let you know if we get any notes or
6 anything like that. Where are you guys going to be? I'm
7 referring to the State.

8 MS. SUDANO: Somewhere close by. We may go grab food,
9 but we'll be in the area.

10 THE COURT: Okay. And, Mr. Sheets, what's your
11 situation going to be?

12 MR. SHEETS: I'll be sleeping on the couch at my
13 office.

14 THE COURT: And I apologize, where is your office?

15 MR. SHEETS: Casino Center and Gass, Your Honor.

16 THE COURT: Okay. You're not too far away.

17 MR. SHEETS: No, we're close.

18 THE COURT: Okay. Very good. Anything else at this
19 point in time until we hear further from the jury, State?

20 MS. SUDANO: No. Thank you, Your Honor.

21 THE COURT: Defense?

22 MR. SHEETS: I do not, Your Honor.

23 THE COURT: All right. And, quickly, Mr. Harris, you
24 have anything?

25 THE DEFENDANT: Yeah, like that they was pertaining to

1 letters and a phone call, I have letters that I've been trying
2 to present into evidence ever since I came to your courtroom. I
3 wasn't allowed to, and I asked you for permission.

4 THE COURT: No, at this point all the evidence that's
5 going to be available for the jury for their deliberations has
6 been admitted. The State -- the Court cannot supplement the
7 record.

8 MR. SHEETS: And just --

9 THE COURT: All right.

10 MR. SHEETS: And just so the record is clear, Your
11 Honor, it was a strategic decision for me to not introduce that
12 letter.

13 THE COURT: Okay.

14 THE DEFENDANT: But it could have been a key factor in
15 the --

16 THE COURT: Huh?

17 THE DEFENDANT: It could have been a key factor for
18 the jury.

19 THE COURT: All right. But your attorney is the one
20 who handles the trial strategy and makes the motion for
21 admission of evidence. And so he's indicated he made a
22 strategic decision not to introduce that information, and that's
23 within his purview. Anything else from the defense?

24 MR. SHEETS: No, Your Honor.

25 THE COURT: Okay. We'll see you all later.

1 MS. SUDANO: Thank you, Your Honor. Thank you.

2 (Court recessed at 1:49 p.m., until 3:00 p.m.)

3 (Outside the presence of the jury)

4 THE COURT: All right. Calling State of Nevada versus
5 Barry Harris, Case No. C326569. Let me confirm who I have here.
6 I have for the State?

7 MS. SUDANO: Michelle Sudano and Genevieve Craggs.

8 THE COURT: And do I have somebody on the line?

9 MR. SHEETS: Yes, Your Honor. Damian Sheets.

10 THE COURT: All right. Let the record reflect the
11 presence of the defendant. We got a note from the jury, and
12 here's the note. Would deadly weapon exclude the hands being
13 used as a deadly weapon, or does it only apply to the
14 information given on page 19? And below that it then says any
15 count number with a deadly weapon?

16 In looking at page 19 -- well, I don't have -- I
17 thought I had page 19. Let me go get a copy.

18 THE CLERK: Oh, I have -- I have the original
19 instructions here.

20 THE COURT: Oh, you do? All right. That makes it
21 even simpler. All right. Page 19 says -- is Instruction 17,
22 which is every person who willfully seizes, confines, inveigles,
23 entices, decoys, abducts, conceals, kidnaps, or carries away any
24 person by any means whatsoever with the intent to hold or detain
25 or who holds or detains a person -- and it goes through the five

1 possibilities -- and then is guilty of first degree kidnapping.
2 A law does not require the person being kidnapped to be carried
3 away for any minimal distance. I don't see anywhere here where
4 it talks about a deadly weapon.

5 MS. SUDANO: Your Honor, can we go to Instruction No.
6 19?

7 THE COURT: I'm guessing, yeah. Let's try Instruction
8 No. 19, that which is on page 21. Where a person is charged
9 with a crime of first degree kidnapping for the purpose of
10 instructing -- or inflicting substantial bodily harm or death,
11 the crime of first degree kidnapping is accomplished when the
12 kidnapping was done for the purpose of inflicting substantial
13 bodily harm or death, regardless of whether such -- such or
14 death actually occurs. Again, it doesn't refer to a deadly
15 weapon. I mean, at page -- well, page -- this is what the
16 jurors have?

17 THE CLERK: Yeah, if that's what --

18 THE COURT: Okay. And this is what the jurors have?

19 THE LAW CLERK: Yeah.

20 THE COURT: Okay. All right. And that at page 15.

21 THE LAW CLERK: You swapped out the --

22 THE CLERK: Yeah.

23 THE COURT: Okay. Page 15, as used in these
24 instructions, a deadly weapon means any instrument which is used
25 in any ordinary manner contemplated by its design and

1 construction will or likely cause substantial bodily harm or
2 death or any weapon, device, instrument, material, or substance
3 which under circumstances in which it is used, attempted to be
4 used, or threatened to be used is readily capable of causing
5 substantial bodily harm or death.

6 Okay. So I don't know quite what they're referring
7 to. Does State have any comments?

8 MS. SUDANO: Your Honor, I think that the answer is
9 essentially the same regardless of which instruction they're
10 referring to. We can refer them back to the instructions in
11 general, or the deadly weapon instruction specifically, but I
12 don't think that there's anything that we can do to supplement
13 or in any other way explain or answer their question.

14 THE COURT: I can either say read the instructions as
15 a whole, or I can make the specific reference to Instruction 13.
16 What's your preference, Mr. Sheets?

17 MR. SHEETS: I would refer them to the deadly weapon
18 instruction, but [indiscernible], Your Honor, hand are not a
19 deadly weapon.

20 THE COURT: Well, I would have to say I tend to agree.
21 I mean, hands are not a deadly weapon.

22 MS. SUDANO: But then that's us supplementing the
23 instructions.

24 THE COURT: Well, I can supplement the instructions as
25 long as I don't under -- I mean, the simple fact is, hands can't

1 be a deadly weapon. Does anybody disagree with that?

2 MS. SUDANO: I don't disagree, but I don't necessarily
3 want them to have that supplemental instruction. I would refer
4 them back to that instruction, but I don't think that we can at
5 this point just go about supplementing the instructions.

6 THE COURT: Then why do we have questions from the
7 jury?

8 MS. SUDANO: Well, I mean, aren't they instructed that
9 Your Honor is not at liberty to supplement the instructions?

10 THE COURT: I'm not at liberty to supplement the
11 evidence, but I am at liberty to supplement instructions, as
12 necessary and appropriate. And I do agree that -- I mean, does
13 anybody disagree that hands are not a deadly weapon under the
14 law?

15 MR. SHEETS: I concur.

16 THE COURT: I mean, do you disagree with that?

17 MS. SUDANO: No, I just don't want the instruction
18 supplemented in that way.

19 THE COURT: Okay. Well, what's your recommendation,
20 then?

21 MS. SUDANO: That we refer them back to -- I don't
22 know if it was Instruction 13 or whatever the deadly weapon
23 instruction is.

24 THE COURT: Well, I'm not going to take a risk that
25 somehow or another they conclude that that is a -- that hands

1 can be a deadly weapon when this is specific as to that. Let's
2 see. Please refer to the Court's instructions defining deadly
3 weapon at Instruction, what was it, 13, deadly -- all right.
4 Please refer to the Court's instruction defining deadly weapon
5 at Instruction 13. Deadly weapon does not include hands being
6 used as a deadly weapon.

7 All right. I've got the State's objection. Mr.
8 Sheets, do you want to respond at all?

9 MR. SHEETS: I have no objection to that
10 [indiscernible], Your Honor.

11 THE COURT: Okay. I'm not going to take a risk that
12 they somehow decide that hands are a deadly weapon if they're
13 asking that specific question. You know, if somebody wants to
14 argue -- no one's position -- if everyone's position is that
15 hands cannot be a deadly weapon under the statute, then I'm
16 going to make that clear.

17 Okay. So let's look at the question again. Would
18 deadly weapon exclude the hands being used as a deadly weapon,
19 or does it only apply to the information given on page 19? Any
20 count number with deadly weapon?

21 So anything else anyone wants me to add or -- or
22 instruct?

23 MS. SUDANO: No, Your Honor, not from the State.

24 THE COURT: Mr. Sheets?

25 MR. SHEETS: No, Your Honor.

1 THE COURT: Okay. All right. This is what I've read
2 and I'm going to send into them. Please refer to the Court's
3 instruction defining deadly weapon and Instruction 13. Deadly
4 weapon does not include hands being used as a deadly weapon.
5 Anything else at this time?

6 MR. SHEETS: No, Your Honor.

7 MS. SUDANO: No, Your Honor.

8 THE COURT: All right. I'll let you know when the
9 next question comes out.

10 MR. SHEETS: Thank you, Your Honor.

11 (Court recessed at 3:10 p.m., until 4:06 p.m.)

12 (Outside the presence of the jury)

13 THE COURT: All right. Calling State of Nevada versus
14 Barry Harris, Case No. C326569. I'm going to go ahead and have
15 counsel note their appearances.

16 MR. SHEETS: Damian Sheets on behalf of Mr. Harris who
17 is present in custody.

18 MS. SUDANO: Michelle Sudano and Genevieve Craggs for
19 the State.

20 THE COURT: Oh, I guess -- I guess she handled that
21 for you.

22 MS. CRAGGS: And Genevieve Craggs for the State.

23 THE COURT: All right. Okay. I've been informed that
24 the jury has reached a verdict. I'd like to move right into the
25 bifurcated portion of the case once the verdict is read. What

1 would be the State's intent as far as any additional evidence?

2 MS. SUDANO: The only additional evidence that we have
3 is the judgment of conviction or a stipulation.

4 THE COURT: So what are we going to do on the defense
5 side?

6 MR. SHEETS: My client will be stipulating that he's a
7 felon, Your Honor.

8 THE COURT: Is that correct, Mr. Harris? You've
9 talked with your attorney about stipulating to the fact that you
10 are a felon, that you were a felon on -- that you previously had
11 been convicted of a felony prior to August 22, 2017?

12 THE DEFENDANT: Huh?

13 THE COURT: You've talked with your attorney about
14 stipulating, that is agreeing, that you were previously
15 convicted of a felony on August -- before August 22, 2017?

16 THE DEFENDANT: Yes, I was, but I was a juvenile at
17 the same time, too.

18 THE COURT: All right. Well, you were --

19 THE DEFENDANT: And it happened in two-thousand --

20 THE COURT: -- convicted as an adult?

21 THE DEFENDANT: Yes, but it happened in 2006.

22 THE COURT: Yes, but it happened prior -- you were --
23 the point of it is as of August 22, 2017, you were a felon?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. And you are -- talked with your

1 attorney about stipulating to that; correct?

2 THE DEFENDANT: Correct.

3 THE COURT: Okay. And you do agree to stipulate that
4 you were a felon prior to -- on August 22, 2017?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Very good. All right. Let's get
7 down the exact language of the stipulation. Okay.

8 MS. SUDANO: Your Honor, may I approach your clerk to
9 file a second amended information that reflects --

10 THE COURT: Sure.

11 MS. SUDANO: -- Count 9, the ex-felon in possession
12 count.

13 (Pause in the proceedings)

14 MR. SHEETS: And then, Madam Clerk, I had discussed
15 with the State if we read this to the jury, we would leave the
16 language out stating the charge that he was convicted of, if
17 you're reading the second amended to the jury.

18 THE COURT: I'll mark out what you're not supposed to
19 read.

20 THE CLERK: Not on that one.

21 THE COURT: Oh, no? Do you have a blank -- do you
22 have another copy?

23 MS. SUDANO: Can we give -- I only had one.

24 MR. SHEETS: We can use my copy.

25 THE COURT: Why don't you all agree as to what to

1 block off.

2 MR. SHEETS: Just strike the same language.

3 THE COURT: Okay. All right. And you've got -- let's
4 see. Let me have this. Okay. This would be what I would
5 propose would be the stipulation between the parties as to the
6 defendant's felony conviction. Everybody listen.

7 The State of Nevada of Nevada and the defendant, Barry
8 Harris, stipulate and agree that on August 22, 2017, Defendant
9 Barry Harris had previously been convicted in 2006 of a felony
10 under the laws of the State of Nevada in Case No. C220524 in the
11 Eighth Judicial District Court, Clark County, Nevada.

12 Is that good for the State?

13 MS. SUDANO: Yes, Your Honor.

14 THE COURT: Is that good for defense?

15 MR. SHEETS: Yes, Your Honor.

16 THE COURT: Mr. Harris, did you hear me read that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you agree to that?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Thank you. And then I'm showing
21 the second amended information. And essentially the clerk will
22 read Count 9, ownership or possession of firearm by prohibited
23 person did willfully, unlawfully, and feloniously own or have in
24 his possession or under his control -- or custody or control a
25 handgun, to wit: a firearm, the defendant being a convicted

1 felon in Case No. C220524, in the Eighth Judicial District
2 Court, Clark County, a felony under the laws of the State of
3 Nevada.

4 Is that sufficient for the State?

5 MS. SUDANO: Yes, Your Honor.

6 THE COURT: Is that sufficient for defense?

7 MR. SHEETS: Yes, Your Honor.

8 THE COURT: All right. So just so I'm clear, the
9 State, when we -- are you going to want to do an opening
10 statement?

11 MS. SUDANO: I can, I mean --

12 THE COURT: I'm asking you.

13 MS. SUDANO: Yeah, we'll do one real briefly.

14 THE COURT: Do you want to do an opening statement?

15 MR. SHEETS: I think it just kind of depends on the
16 verdict.

17 THE COURT: Okay. Well, all right. But, I mean, I'll
18 -- I'll give both sides an opportunity to do an opening
19 statement, then I'll ask the State to what -- you know, to go
20 forward and present evidence. At that point, if you want to say
21 we've reached a stipulation, and I'll read the stipulation into
22 the record at that point. I'll ask if you have any other
23 evidence that you want to admit, and you'll say --

24 MS. SUDANO: No.

25 THE COURT: -- I assume, no, and the State closes.

1 I'll ask the defense if there's any evidence the defense wants
2 to present, and, you know, you can present anything you want or
3 -- or close. And at that point I'll read the jury instructions
4 and give you each an opportunity to do a closing argument to the
5 jury. Any questions from the State?

6 MS. SUDANO: No, Your Honor.

7 THE COURT: Any questions from the defense?

8 MR. SHEETS: No, Your Honor.

9 THE COURT: Okay. All right. Let's bring in the
10 jury.

11 (Inside the presence of the jury)

12 THE COURT: All right. Let the record reflect the
13 presence of the attorneys for both sides, the presence of the
14 defendant. Do the parties stipulate to the presence of the
15 jury?

16 MS. SUDANO: Yes, Your Honor.

17 MR. SHEETS: Yes, Your Honor.

18 THE COURT: Okay. All right. Good afternoon, ladies
19 and gentlemen. It's my understanding that you have selected Ms.
20 Miller as your foreperson; is that correct?

21 JUROR NO. 4: Yes, that's correct.

22 THE COURT: And it's my understanding, Ms. Miller,
23 that the jury has reached a verdict; is that correct?

24 JUROR NO. 4: Yes.

25 THE COURT: Have you filled out the verdict form?

1 JUROR NO. 4: Yes.

2 THE COURT: And have you signed and dated it?

3 JUROR NO. 4: Yes, I have.

4 THE COURT: All right. Would you give that to the
5 marshal, please.

6 JUROR NO. 4: Yes.

7 THE MARSHAL: Thank you.

8 THE COURT: All right. The clerk -- the clerk will
9 read the verdict. The defendant will please rise.

10 THE CLERK: District Court, Clark County, Nevada. The
11 State of Nevada, plaintiff, versus Barry Harris, defendant.
12 Case No. C326569, Department No. 20. Verdict.

13 We the jury in the above-entitled case find the
14 defendant, Barry Harris, as follows.

15 Count 1, burglary while in possession of a firearm,
16 not guilty.

17 Count 2, first degree kidnapping with use of a deadly
18 weapon resulting in substantial bodily harm. Guilty of first
19 degree kidnapping resulting in substantial bodily harm.

20 Count 3, assault with use of a deadly weapon. Guilty
21 of assault.

22 Count 4, battery with use of a deadly weapon
23 constituting domestic violence. Guilty of battery constituting
24 domestic violence.

25 Count 5, battery constituting domestic violence

1 strangulation, not guilty.

2 Count 6, battery resulting in substantial bodily harm
3 constituting domestic violence. Guilty of battery resulting in
4 substantial bodily harm constituting domestic violence.

5 Count 7, preventing or dissuading witness or victim
6 from reporting crime or commencing prosecution, not guilty.

7 County 8, carrying a concealed firearm or other deadly
8 weapon, not guilty.

9 Dated this 16th day of April, 2018. Eva Miller,
10 Foreperson.

11 Ladies and gentlemen of the jury, are these your
12 verdicts as read, so say you one, so say you all?

13 JURY PANEL: Yes.

14 THE COURT: Does either party wish to have the jury
15 polled? State?

16 MS. SUDANO: No, Your Honor.

17 THE COURT: Defense?

18 MR. SHEETS: No, Your Honor.

19 THE COURT: All right. Before -- can I see counsel at
20 sidebar quickly.

21 MS. SUDANO: Yes, Your Honor.

22 (Bench conference)

23 MS. SUDANO: At this time we will voluntarily be
24 dismissing Count 9.

25 THE COURT: Okay.

1 MR. SHEETS: No objection.

2 THE COURT: Good job, Mr. Sheets. All right. Thank
3 you. I will grant that.

4 MS. SUDANO: Thank you.

5 (End of bench conference)

6 THE COURT: All right. Ladies and gentlemen, that
7 concludes the trial. I want to thank you for your time these
8 last -- this last week, two weeks, and the effort that you put
9 in to reaching a verdict. I can tell that you went through all
10 the material and has some significant deliberations in view of
11 the verdict and how you reached different decisions on different
12 counts. That shows me that you gave this a lot of thought and
13 attention and I appreciate that, and I know both parties
14 appreciate that.

15 You now are excused from your service and have been
16 released. You're free to talk about his case now with anyone
17 you want. You can go on the Internet and type in whatever you
18 want. You can go on social media or whatever you want to do and
19 let anybody know whatever you want to about the case.

20 By that same token, you don't have to. If you don't
21 want to talk about the case and don't want to do anything with
22 it, that's totally up to you. It is not uncommon for the
23 attorneys for both sides to want to try to chat with you a
24 little bit after you leave the jury deliberation room to see
25 sort of how they did, what your impressions were of the case,

1 what you thought they did well or what they didn't do well. I
2 consider that sort of important as a learning experience for the
3 attorneys.

4 I think I mentioned to you when I was giving jury
5 orientation, you know, when I was a prosecutor I would always
6 try to speak to the jury after a case to see if I can learn from
7 it and to get their impression. So if they want to approach
8 you, there's nothing wrong with that. And if you want to talk
9 to them, both for the prosecution and the defense, there's
10 nothing wrong with that and I don't discourage that at all.

11 Again, if you don't want to, just tell them that you
12 don't want to speak to them and I'm sure that they'll honor
13 that. Again, I've done this for a long, long time. I've never
14 known anybody not to honor a juror's request not to speak to
15 them. But if, my chance, somebody doesn't, feel free to contact
16 my office and I'll take steps to make sure they don't bother you
17 anymore, but I don't foresee that in any way happening in this
18 case.

19 If you have a few minutes I would like to go back to
20 the jury room. I'd like to have a chance to come back and
21 personally thank you and get your impressions on the case and
22 anything we might be able to do better, but most importantly to
23 thank you for your service in this case. So if you have a
24 chance to do that, I would appreciate a few minute of your time.

25 If you don't and need to get out of here, I understand

1 that, too. I know you all probably want to get back to your
2 regular lives and jobs and family and everything like that. So
3 if you don't have time, I understand. But I want you to know
4 that we really do appreciate the time and effort you put in and
5 the process that you went through to reach the verdicts here.

6 As I've said many times, it's you who give our
7 community confidence in the decisions that come out of his
8 courtroom because it's you who all -- from all sectors of our
9 community with no stake in this case at all who listen to the
10 evidence and make a decision. And for that reason, it gives
11 confidence to our community. So if you have a chance to stay, I
12 would really appreciate it. If you'd go back with the marshal.
13 If you don't, have a great remainder of the spring and a great
14 summer and thank you again.

15 (Jury dismissed at 4:23 p.m.)

16 MS. CRAGGS: Do you want me to shut the door, Judge?

17 THE COURT: Will you shut the door?

18 MS. CRAGGS: Yes. Sure.

19 THE COURT: All right. Anything from the State before
20 set a sentencing date?

21 MS. SUDANO: No, Your Honor.

22 THE COURT: Anything from defense?

23 MR. SHEETS: No, Your Honor.

24 THE COURT: Okay. Let's go ahead and set a sentencing
25 date.

1 THE CLERK: June 7th at 9:00 a.m.

2 THE COURT: Is that a problem for either side?

3 MR. SHEETS: No, Your Honor.

4 MS. SUDANO: No, Your Honor.

5 THE COURT: Okay. Anything else at this point in
6 time?

7 MS. SUDANO: Your Honor, the State would ask that the
8 defendant be remanded into custody without bail in light of the
9 jury's verdict.

10 THE COURT: Defense position?

11 MR. SHEETS: Your Honor, I submit.

12 THE COURT: Okay. I'll go ahead and remand the
13 defendant without bail. Anything else from the State?

14 MS. SUDANO: I guess our only other question would not
15 be anything about the case. Just if we want to go talk to the
16 jury --

17 THE COURT: They -- meet them outside the center
18 doors.

19 MS. SUDANO: Thank you, Your Honor.

20 THE COURT: I think I told them that they can talk to
21 you if you want, you know, but I will mention that again when I
22 go back and -- and thank them. Anything else from the State?

23 MS. SUDANO: No. Thank you, Your Honor.

24 THE COURT: Defense?

25 MR. SHEETS: No, Your Honor.

1 THE COURT: All right. Thank you all for the case. I
2 really thought everybody did a really good job in terms of
3 presentation and I enjoyed handling it as the Judge.

4 MS. SUDANO: Thank you, Your Honor.

5 MS. CRAGGS: Thank you.

6 MR. SHEETS: Thank you, Your Honor.

7 THE DEFENDANT: Thank you, Your Honor.

8 (Proceedings concluded at 4:25 p.m.)

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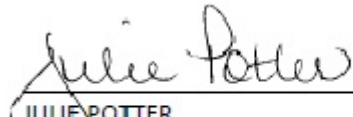
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**Julie Potter
Kingman, AZ 86402
(702) 635-0301**



JULIE POTTER
TRANSCRIBER

FILED IN OPEN COURT

STEVEN D. GRIERSON

CLERK OF THE COURT

APR 16 2018

BY Linda Skinner
LINDA SKINNER, DEPUTY 4:14 pm

1 VER

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5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 BARRY HARRIS,

11 Defendant.

CASE NO: C-17-326569-1

DEPT NO: XX

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
14 follows:

15 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM

16 (Please check the appropriate box, select only one)

17 ☐ Guilty of Burglary While in Possession of a Firearm

18 ☐ Guilty of Burglary

19 ☒ Not Guilty

20 ///

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27 ///

C-17-326569-1

VER

Verdict

4738349



1 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
2 follows:

3 **COUNT 2** – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
4 RESULTING IN SUBSTANTIAL BODILY HARM

5 *(Please check the appropriate box, select only one)*

- 6 ☐ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
7 Resulting in Substantial Bodily Harm
8 ☐ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
9 ☒ Guilty of First Degree Kidnapping Resulting in Substantial Bodily
10 Harm
11 ☐ Guilty of First Degree Kidnapping
12 ☐ Guilty of False Imprisonment
13 ☐ Not Guilty

14 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
15 follows:

16 **COUNT 3** – ASSAULT WITH USE OF A DEADLY WEAPON

17 *(Please check the appropriate box, select only one)*

- 18 ☐ Guilty of Assault with Use of a Deadly Weapon
19 ☒ Guilty of Assault
20 ☐ Not Guilty

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
2 follows:

3 **COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING**
4 **DOMESTIC VIOLENCE**

5 *(Please check the appropriate box, select only one)*

- 6 ☐ Guilty of Battery with Use of a Deadly Weapon Constituting Domestic
7 Violence
8 ☒ Guilty of Battery Constituting Domestic Violence
9 ☐ Not Guilty

10 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
11 follows:

12 **COUNT 5 - BATTERY CONSTITUTING DOMESTIC VIOLENCE-STRANGULATION**

13 *(Please check the appropriate box, select only one)*

- 14 ☐ Guilty of Battery Constituting Domestic Violence - Strangulation
15 ☒ Not Guilty
16

17 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
18 follows:

19 **COUNT 6 - BATTERY RESULTING IN SUBSTANTIAL BODILY HARM**
20 **CONSTITUTING DOMESTIC VIOLENCE**

21 *(Please check the appropriate box, select only one)*

- 22 ☒ Guilty of Battery Resulting in Substantial Bodily Harm Constituting
23 Domestic Violence
24 ☐ Guilty of Battery Constituting Domestic Violence
25 ☐ Not Guilty
26

27 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
28 follows:

1 **COUNT 7 - PREVENTING OR DISSUADING WITNESS OR VICTIM FROM**
2 **REPORTING CRIME OR COMMENCING PROSECUTION**

3 *(Please check the appropriate box, select only one)*

- 4 ☐ Guilty of Preventing or Dissuading Witness or Victim from Reporting
5 Crime or Commencing Prosecution
6 ☒ Not Guilty

7
8 We, the jury in the above entitled case, find the Defendant BARRY HARRIS, as
9 follows:

10 **COUNT 8 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON**

11 *(Please check the appropriate box, select only one)*

- 12 ☐ Guilty of Carrying Concealed Firearm or Other Deadly Weapon
13 ☒ Not Guilty

14
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16 DATED this 16th day of April, 2018

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18 
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FOREPERSON



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-326569-1
DEPT. XX

10 vs.

11 BARRY HARRIS aka
12 BARRY RASHAD HARRIS,
13 Defendant.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
15 THURSDAY, JUNE 07, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SENTENCING**

18
19 APPEARANCES:

20 For the State:

GENEVIEVE CRAGGS
Deputy District Attorney

21
22 For the Defendant:

DAMIAN R. SHEETS, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 Las Vegas, Nevada, Thursday, June 07, 2018, at 11:26 a.m.

2

3 THE COURT: State of Nevada versus Barry Harris, case
4 number C326569. Counsel, please note your appearances for the
5 record.

6 MR. SHEETS: Damian Sheets on behalf of Mr. Harris, Your
7 Honor.

8 MS. CRAGGS: Genevieve Craggs for the State, Your Honor.

9 THE COURT: Okay. I'm showing this is the time set for
10 sentencing on the jury verdict of April 16, 2016 [sic] to: Count 2, first
11 degree kidnapping resulting in substantial bodily harm; Count 3, assault;
12 Count 4, battery constituting domestic violence and Count 6, battery
13 resulting in substantial bodily harm constituting domestic violence.

14 Is that correct?

15 MR. SHEETS: That's correct, Your Honor.

16 MS. CRAGGS: Yes, Your Honor.

17 THE COURT: Okay. I'm looking at the presentence
18 investigation report, Mr. Sheets, have you had a chance to read that?

19 MR. SHEETS: Yes. And I will indicate that, for some reason,
20 I didn't get it until this morning. I did provide it to my client. He's been
21 reading through it. He and I talked. It's accurate. He's asking for more
22 time to review it. I do not see -- and based on my discussions with him,
23 there's no challenges to the accuracy of the information contained
24 therein.

25 I'm prepared, but my client wants to -- he keeps going

1 back and forth on whether he wants time to prepare or not. I inquired as
2 to him.

3 THE COURT: Mr. Harris, have you read your presentence
4 investigation report?

5 THE DEFENDANT: Well I just got it today, not too long ago.

6 THE COURT: I understand you just got it today. But, I mean,
7 have you read it?

8 THE DEFENDANT: I ain't finished reading through it. It's like
9 10 or 15 pages long.

10 THE COURT: It's actually -- essentially, for all practical
11 purposes, six pages long. What page are you on?

12 THE DEFENDANT: Right now, I'm still stuck on two. It's a lot
13 of NRS's I don't understand. It's --

14 THE COURT: I don't see any NRS's on two.

15 MR. SHEETS: He continues -- he keeps discussing what I
16 believe is appellate issues, Your Honor. I know that I -- I mean, I
17 witnessed him reading through it at this point. We were talking even
18 about the victim's statement on the back, so we had gotten that far. We
19 talked about the calculations this morning. We've even talked about the
20 two misdemeanor convictions and where they come from versus where
21 we thought they came from on the PSI.

22 So, I mean, there's been discussions regarding specific
23 information inside the PSI; I think he has appellate level concerns.

24 THE COURT: Yeah, because I'm not seeing any NRS's. So
25 where are you?

1 THE DEFENDANT: I think that was on page 2. It was page
2 1.

3 MR. SHEETS: I think he was talking specifically about the
4 kidnapping sentencing ranges.

5 THE COURT: Okay, yeah. I mean those are essentially page
6 1. That just gives the count that you were found guilty of, and the NRS
7 statute that the -- underlines that count, and then gives the Court the
8 potential sentences that are permissible for that count.

9 THE DEFENDANT: But there's a lot of stuff in here that I'm
10 not sure that I understand, and I want to make sure I ask my attorney
11 that I can understand. Like, some of this stuff I don't understand either.

12 MR. SHEETS: What?

13 THE COURT: All right.

14 MR. SHEETS: Because --

15 THE COURT: What do you don't -- tell me -- tell me or your
16 attorney what you don't understand.

17 THE DEFENDANT: I'm looking and I don't understand some
18 of these NRS's.

19 THE COURT: Well I've told you what the NRS's are; those
20 are the statutes you've been convicted of.

21 THE DEFENDANT: Then it's -- I don't know what page this is.
22 I --

23 MR. SHEETS: He's looking at the calculations, Your Honor,
24 which I discussed --

25 THE DEFENDANT: I don't know what this is.

1 MR. SHEETS: -- which are not binding upon the Court.
2 They're based on their internal system.

3 [Colloquy between Mr. Sheets and Defendant]

4 THE DEFENDANT: I just want at least another -- to
5 understand. Like, it's stuff that I don't understand right now.

6 THE COURT: All right. Well the defendant is facing a
7 potential life sentence in this case.

8 When's the next time this could be -- fit in conveniently
9 into the calendar?

10 THE CLERK: July 3rd.

11 THE COURT: It's the day before the Fourth of July. Will you
12 be in town, Mr. Sheets?

13 MR. SHEETS: I will. Our calendar is a little rough just
14 because I'll be flying solo that week. Maybe the week after?

15 THE COURT: No. We'll have to go to the --

16 THE CLERK: We'll have to go to the 24th.

17 MR. SHEETS: Okay.

18 THE CLERK: July 24th.

19 MR. SHEETS: All right.

20 THE DEFENDANT: Excuse me, Your Honor.

21 THE CLERK: Did you get that? July 24th.

22 MR. SHEETS: That'll work.

23 THE COURT: All right.

24 THE DEFENDANT: Could I get a copy of the -- of the jury
25 instructions too?

1 THE COURT: I'm not going to give you a copy of the jury
2 instructions today, that's not the purpose of this proceeding. The trial is
3 over.

4 THE DEFENDANT: Like some stuff I don't understand. I
5 don't -- I don't --

6 THE COURT: I understand. I'm going to give you a chance
7 to review that document. And if you see anything in there that you feel --
8 and, Mr. Sheets, I do want you to communicate with him before the next
9 sentencing date. And if there's anything in there that you feel is
10 incorrect or needs to be brought to my attention, I want you to let Mr.
11 Sheets know so that he can be prepared and we can all be prepared to
12 deal with whatever issues you feel you might have with the presentence
13 investigation report, okay?

14 THE DEFENDANT: Yes, sir.

15 MR. SHEETS: Yes, Your Honor.

16 THE COURT: All right.

17 THE OFFICER: July 24th?

18 THE CLERK: July 24th at 8:30.

19 [Hearing concluded at 11:32 a.m.]

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 

24 Angie Calvillo
25 Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-326569-1
DEPT. XX

10 vs.

11 BARRY HARRIS aka
12 BARRY RASHAD HARRIS,
13 Defendant.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
15 TUESDAY, JULY 24, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SENTENCING**

18
19 APPEARANCES:

20 For the State:

JOHN T. JONES, JR.
Chief Deputy District Attorney

21
22 For the Defendant:

DAMIAN R. SHEETS, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, July 24, 2018, at 10:21 a.m.

2

3 THE COURT: State of Nevada versus Barry Harris, case
4 number C326569. Counsel, please note your appearances for the
5 record.

6 MR. JONES: Your Honor, John Jones on behalf of the State;
7 covering this matter for Deputy DA Genevieve Craggs and Michelle
8 Sudano.

9 MR. SHEETS: Your Honor, Damian Sheets on behalf of Mr.
10 Harris. Your Honor, I'll level with the Court. I've had two staffing
11 changes in the last month and I have not gotten to see Mr. Harris. I did
12 talk to him. He has objections of the PSI that I don't think are valid
13 objections. I'm prepared to go forward, but I was going to ask for one
14 more week just so that I can placate him, actually, see him but I'd like to
15 do it via video. And if Your Honor wants to understand the reasons for
16 that, I --

17 THE COURT: You'd like to what?

18 MR. SHEETS: Do it via video visit versus in person. If Your
19 Honor wants the reasoning for that, I can approach.

20 THE COURT: I mean I don't care how you communicate with
21 him in that regard. Do you know -- just so that the State -- I don't know if
22 the State's going to want to make any response to any of the objections
23 to the presentence investigation report?

24 I mean, could we list those out here today?

25 MR. SHEETS: Yes, I think that I can. I don't -- I just don't

1 think they're valid.

2 THE COURT: Well I understand.

3 MR. SHEETS: He has --

4 THE COURT: But, I mean --

5 MR. SHEETS: He has an issue with the --

6 THE COURT: What I'm going to hear -- I'm going to give your
7 client a chance to note anything that he feels that is inaccurate in the
8 report. And so -- you know, I'm --

9 MR. SHEETS: He has an issue with the offense synopsis.

10 THE COURT: Okay.

11 MR. SHEETS: He has an issue with it indicating, with regards
12 to the Count 6 conviction, that it constitutes domestic violence. He has
13 an issue with the way the prior criminal history is written; where it says
14 the defendant was also convicted of Counts 3 and 4. Because he
15 believes that it implies that he was convicted of everything to the left of
16 it, that says warrant of arrest and I don't believe that that's the case.

17 And then his other issues are all issues that deal with a
18 notice of appeal and post-conviction remedies, and independent of the
19 presentence investigation report.

20 THE COURT: Okay. You don't think we can -- I mean, those
21 don't sound like anything that would be relevant as to sentencing.

22 MR. SHEETS: I agree.

23 THE COURT: But you haven't had a chance you feel to chat
24 with him sufficiently about this?

25 MR. SHEETS: I was chatting with him as Your Honor saw for

1 quite a while this morning. But he, at that point, he refused to talk to me.
2 He said he can't focus in here.

3 THE COURT: Okay. Well I need to get him sentenced. But, I
4 mean, when -- I have a feeling this sentencing is going to take a while.
5 So when can we --

6 THE CLERK: We can do it in three weeks.

7 THE COURT: Three weeks.

8 MR. SHEETS: One, two, three, it doesn't matter to me.

9 THE DEFENDANT: May I address the Court, Your Honor?

10 THE COURT: Three weeks you think, let's do it. We could
11 set it off in three weeks.

12 THE DEFENDANT: May I address the Court, Your Honor?

13 [Court and Clerk confer]

14 THE CLERK: August 14th at 8:30.

15 THE COURT: Okay.

16 THE DEFENDANT: May I speak, Your Honor?

17 THE COURT: No. We're going to continue your sentencing
18 for today.

19 MR. JONES: So 8/14 at 8:30?

20 THE CLERK: Correct.

21 THE COURT: All right.

22 THE DEFENDANT: That's violated my rights for him to come
23 see me on video instead of personal.

24 THE COURT: Well I don't --

25 THE DEFENDANT: That's confidential.

1 THE COURT: The video is a -- confidential between the two
2 of you, it's not use for any purpose --

3 THE DEFENDANT: He said he was going to see me. You
4 told him to send me my transcripts and copies of the jury instructions
5 that I never got, Your Honor.

6 MR. SHEETS: He got jury instructions during the trial.

7 THE DEFENDANT: I never got the ones that you signed,
8 Your Honor.

9 THE COURT: Well you got a copy of the jury instructions.

10 THE DEFENDANT: Never got a copy of any jury instructions.

11 THE COURT: Well we did give you jury instructions during
12 the trial.

13 THE DEFENDANT: The Marshal handed me --

14 THE COURT: I'm not going to talk to you anymore, all right?
15 Thank you.

16 THE DEFENDANT: I'll go -- I'll go -- I'll go through it today.

17 [Hearing concluded at 10:27 a.m.]

18
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio/video proceedings in the above-entitled case to the best of my ability.

21 

22 Angie Calvillo
23 Court Recorder/Transcriber
24
25



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-326569-1
DEPT. XX

10 vs.

11 BARRY HARRIS aka
12 BARRY RASHAD HARRIS,
13 Defendant.

14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
15 TUESDAY, AUGUST 14, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SENTENCING**

18
19 APPEARANCES:

20 For the State:

MICHELLE SUDANO
Deputy District Attorney

21
22 For the Defendant:

DAMIAN R. SHEETS, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, August 14, 2018, at 9:36 a.m.

2
3 THE COURT: State of Nevada versus Barry Harris, case
4 number C326569. Counsel, please note your appearances for the
5 record.

6 MS. SUDANO: Good morning, Your Honor. Michelle Sudano
7 for the State.

8 MR. SHEETS: Damian Sheets on behalf of Mr. Harris, who's
9 present in custody.

10 THE COURT: Okay. We're here on the jury verdict in Mr.
11 Harris's case to convicting him of first degree kidnapping resulting in
12 substantial bodily harm, Count 2; Count 3, assault; Count 4, battery
13 constituting domestic violence and Count 6, battery resulting in
14 substantial bodily harm constituting domestic violence.

15 Is that correct?

16 MS. SUDANO: Yes, Your Honor.

17 MR. SHEETS: Yes, Your Honor.

18 THE COURT: All right. We started off looking at the
19 presentence investigation report last time.

20 Mr. Sheets, you indicated you had read it. I can't
21 remember now if there was anything in there that you saw that needed
22 to be corrected or brought to my attention.

23 MR. SHEETS: I have no objections pursuant to *Stockmeier*,
24 Your Honor.

25 THE COURT: Okay.

1 Mr. Harris, have you read your presentence
2 investigation report?

3 THE DEFENDANT: Yes, I have read it. I disagree with it. It's
4 improper, harmful information in the contents.

5 THE COURT: Okay. Let me ask you, have you had a chance
6 to discuss your presentence investigation report with your attorney?

7 THE DEFENDANT: Last time I was in court, he stated that he
8 was supposed to come see me. But, I guess, it was conflict in between
9 that, that he come and see me. That's why he asked for more time, but I
10 disagree with the report, Your Honor.

11 THE COURT: Okay. Well let me ask you, what in the report
12 do you specifically have issue with?

13 THE DEFENDANT: Specifically, how the incident is read that
14 the PI -- the PSI lady wrote down, and then they excluded my statement.
15 It's not added in there.

16 THE COURT: Okay. All right. So other than the offense
17 synopsis, is there anything else in the -- and not -- and no statement, is
18 there anything else in there that you saw that needed to be corrected or
19 brought to my attention?

20 THE DEFENDANT: Did you say you got seven pages, Your
21 Honor?

22 THE COURT: Yes.

23 THE DEFENDANT: I have nine. Do you got additional
24 pages?

25 THE COURT: Well those -- that seven pages is the text of the

1 report.

2 THE DEFENDANT: On page 5, specifically, is the one I'm
3 talking about.

4 THE COURT: No, I understand what you're talking about, the
5 offense synopsis section.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And so I sat through the jury trial, so I'm well
8 aware of the offense in this case. And so I appreciate you take issue
9 with the description that's provided there.

10 So that's why I'm asking, anything else other than that
11 offense synopsis that you have issue with?

12 THE DEFENDANT: The other one was on page 1, I believe.

13 THE COURT: Okay.

14 THE DEFENDANT: I'm being charged with battery with
15 substantial bodily harm, correct?

16 THE COURT: Right.

17 THE DEFENDANT: And it constitutes domestic violence.

18 THE COURT: Right.

19 THE DEFENDANT: Because it's a domestic violence offense.

20 THE COURT: Okay. What's your issue?

21 THE DEFENDANT: My issue is that the first count is first
22 degree kidnapping with substantial bodily harm.

23 THE COURT: Right.

24 THE DEFENDANT: On the same person, which was
25 supposed to be under the guidelines of the statutory -- the statute

1 limitation of 330.118, domestic violence, compelling somebody -- false
2 imprisonment and all that because they're under the same element of
3 domestic violence.

4 THE COURT: Okay. All right. Well you were convicted of
5 both those crimes by the jury, so, I mean --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Anything else?

8 THE DEFENDANT: And I have family that was supposed to
9 be here. I was trying to get in contact with my lawyer. I couldn't have no
10 person to come bring my diploma, my college certificates, my job
11 certificates; all of that to show support, but I'm ready though.

12 THE COURT: You're ready though, okay. All right. Now, you
13 indicated something about a statement? Did you write a statement?

14 THE DEFENDANT: Did I write a statement?

15 THE COURT: Yeah.

16 THE DEFENDANT: I got one here. Would you like to hear it?

17 THE COURT: Well I am going to give you a chance to make
18 a statement. But I just wanted to -- I thought you said something about
19 your PSI was -- your presentence investigation report was missing your
20 statement.

21 THE DEFENDANT: Yes, I made a statement in there. But I
22 pretty much summed that up with what I just said.

23 THE COURT: Okay.

24 THE DEFENDANT: I should be treated fair as anybody else
25 that's being convicted for their first offense of domestic violence.

1 THE COURT: Okay.

2 THE DEFENDANT: And they excluded that from the
3 contents.

4 THE COURT: Okay. All right. Okay, so based upon your jury
5 verdict in your case, I do find you guilty of Count 2, first degree
6 kidnapping resulting in substantial bodily harm in violation of Nevada
7 Revised Statute 200.310, 200.320; Count 3, assault; Count 4, battery
8 constituting domestic violence and Count 6, battery resulting in
9 substantial bodily harm constituting domestic violence in violation of
10 Nevada Revised Statute 200.481, 200.485 and 33.018.

11 Does the State wish to make any statement?

12 MS. SUDANO: Yes. Thank you, Your Honor. Your
13 Honor's -- you know, obviously very aware of the facts and the
14 underlying circumstances behind this case because you've presided
15 over the trial and you've had it throughout all of the motion work, and Mr.
16 Harris's numerous appearances in front of Your Honor.

17 I think that it was abundantly apparent from the course
18 of the trial, and the jury agreed with that, that the defendant in this
19 case -- you know, inflicted these terrible injuries on Ms. Dotson. You
20 know, putting her in fear for her life. You saw the photos of her with the
21 big, kind of, gussy bruises. You saw her crying hysterically in the body
22 camera footage as she's explaining to the officers what happened. And
23 then you heard the jail calls, after the fact, where he was essentially
24 promising her that he would marry her and do right by her, was his kind
25 of phraseology, as long as she changed her story and explained things

1 the way that he wanted them explained.

2 So I think Your Honor has a very good understanding of
3 what was going on behind the scenes in this particular case. Now, it's
4 offensive to the State of Nevada that the defendant has indicated that
5 this is his first domestic violence conviction or anything along those
6 lines. Because if you look at the PSI for prior charges on page 4, he's
7 got a number of different charges that are domestic violence related and
8 a number of them are with that same victim Ms. Dotson: home invasion,
9 burglary, domestic battery by strangulation, child abuse or neglect,
10 domestic battery, conspiracy, robbery; a number of those are charges
11 that involved Ms. Dotson. But in those prior instances, he was able to
12 convince her to not come forward and not to proceed with the charges.

13 So the only thing that's different in this particular case is
14 that, there was enough corroborating evidence for the State to move
15 forward with the trial. Initially, at the time of the preliminary hearing, she
16 was in custody. He was there at the preliminary hearing while she was
17 on -- in custody on a material witness warrant making statements to her
18 along the lines of they can't make you say anything; you don't have to
19 do anything that you don't want to do, so that's been the entire course of
20 this trial where Mr. Harris subjected her to this domestic violence.

21 He -- you know, State still believes he put a gun in her
22 face, made her crawl across the apartment into the bathroom, wouldn't
23 let her leave, made threats on her life, threats if she called the police
24 that she'd be killed; things along those lines, then -- you know, dumped
25 juice or soda on her; prevented her from leaving. So what the State is

1 going to be asking for in this particular case is that, on Count 2, you
2 follow the recommendation of parole and probation; you impose a
3 sentence of 15 years to life.

4 The reason that I think that life tail is appropriate is Mr.
5 Harris does have one prior felony conviction from 2006, where he was
6 convicted of that battery with a deadly weapon resulting in substantial
7 bodily harm; that started out with -- as an attempt murder with use of a
8 deadly weapon. The charge that he was actually convicted of was
9 shooting into the face of another individual.

10 So he is somebody that's got a long history of violence
11 that's not even fully reflected in the PSI, I don't think. He's not
12 somebody that's going to reform; you've seen him throughout his
13 appearances in front of you; you've seen his temper and the way that he
14 acts in response to things. So he's somebody that the State adamantly
15 believes deserves a life tail so that we can have some sort of assurance
16 after he serves that 15 year minimum that there are consequences for
17 his future actions.

18 As to Count 3 and Count 4, the misdemeanor counts,
19 the State's going to be asking for a 6-month sentence in the Clark
20 County Detention Center on each of those, and then on Count 6 the
21 battery with use -- or, excuse me, the battery resulting in substantial
22 bodily harm domestic violence, the State's going to be asking for a 24 to
23 60 month sentence. He's got 351 days through today, I believe, Your
24 Honor.

25 THE COURT: Do you concur with that, Mr. Sheets?

1 MR. SHEETS: Yes, Your Honor.

2 THE COURT: Okay. Anything else?

3 MS. SUDANO: No. I'll submit it with that. Thank you.

4 THE COURT: Okay. All right, Mr. Sheets.

5 MR. SHEETS: Your Honor, you did sit through the trial. I get
6 a little bit peeved when the State sits here, and then again talks to Your
7 Honor about how he's calling the alleged victim and convincing her to
8 change her story and convincing her to testify a certain way when that
9 was -- that very tape was played for the jury and the jury came back and
10 they said not guilty on that particular charge.

11 So we had a jury who sat here and specifically
12 disagrees with the State's position on that, and then to use that during
13 sentencing, is somewhat disingenuous in that the jury specifically said
14 that, no, that wasn't proven beyond a reasonable doubt. Your Honor,
15 you heard the trial; you heard what the State's position was.

16 The State's position was that there was a burglary with
17 a firearm, there was a first degree kidnapping with a deadly weapon with
18 substantial bodily harm, there was an assault with a deadly weapon,
19 battery with a deadly weapon constituting domestic violence, battery
20 domestic violence strangulation, battery resulting in substantial bodily
21 harm constituting domestic violence, dissuading a witness, carrying
22 concealed firearm, and ownership of firearm by prohibited person.

23 Prohibited person was dismissed. The jury found not
24 guilty on the carrying concealed firearm. The jury found not guilty on the
25 preventing or dissuading a witness. The jury found not guilty on the

1 battery domestic violence strangulation. The jury found not guilty on the
2 burglary. The jury found guilty of the lesser without the deadly weapon
3 on the kidnapping; misdemeanor assault without the deadly weapon on
4 Count 3; battery constituting domestic violence without the deadly
5 weapon on Count 4, and then they found guilty on battery resulting on
6 substantial bodily harm.

7 I put that out there Your Honor because I believe that
8 the jury wanted Mr. Harris to be found guilty for what the jury believed he
9 actually did versus what the State's theory was. In this particular case,
10 we have a gentleman who has, according to the presentence
11 investigation report, one prior felony conviction. And based on the
12 conviction in this case, he will be doing substantial amount of time.

13 I do believe the victim is here. It appears to me that she
14 did walk in behind me; she may want to speak. Your Honor, I don't
15 know if the State's discussed that, maybe Your Honor could inquire
16 when I'm finished. However, I think --

17 THE COURT: I did receive a statement from her. Did you
18 receive that?

19 MR. SHEETS: I received a written statement as part of the
20 presentence investigation report --

21 THE COURT: Right.

22 MR. SHEETS: -- but I did not receive a notification of a victim
23 speaker. But kind of given how things are going, I mean, if she wants to
24 speak, then she has a right to. I wouldn't be objecting or asking for a
25 continuance to prepare for that, Your Honor. I can tell Your Honor I

1 haven't spoken with her. However, at the end of this trial, I think we
2 have to look at that, which is minimally necessary to basically achieve all
3 the ends of justice.

4 And in this particular case, is there really going to be a
5 difference in the administration of justice between a 15 to 40 and a 15 to
6 life? And I think at the end of the day the answer is, no. I think with one
7 prior felony; what we're going to see is, parole and probation is not going
8 to make him do life; not going to make him do 40 years. But I think the
9 life tail may delay his ability to make parole later on down the line.

10 And given that the jury had specifically found him not
11 guilty of certain things and they didn't find that the conduct was as
12 egregious as the State made it out to be at trial and/or as egregious as
13 they're saying that it happened today, this was -- of course, a very
14 serious situation. This was -- of course, a very serious offense and I
15 think 15 years before eligibility for parole is a very serious penalty.

16 And I think that that 15 to 40 will achieve several goals.
17 I think that it will deter him from committing this crime in the future. I
18 think it will send a strong message to the general public regarding
19 domestic violence cases. And I think it definitely -- 15 years in
20 incarceration promotes respect for the law. So I think when we put all
21 those things together, I just don't see going from 15 to 40 up to a 15 to
22 life. I just think that at some point that becomes excessive and is almost
23 a -- it meant almost as a trophy, I think, in some respects.

24 With regards to the other counts, Your Honor, I'd ask for
25 credit for time served on the two misdemeanors. He's already done

1 almost a year. I'd ask on the other count to give him 12 to 30 months;
2 run it concurrent and let him start serving the large sentence that he has
3 ahead of him, Your Honor, and I would submit.

4 THE COURT: All right. Does your client wish to make any
5 statement?

6 MR. SHEETS: I think he does.

7 THE DEFENDANT: Yes, I do. You ready?

8 THE COURT: Yeah.

9 THE DEFENDANT: Upon the information and the belief
10 throughout my whole proceeding and to the accordance of the
11 documents, I have a right to believe many errors treated, biases,
12 prejudices, and difference to mistakes of the prosecution -- prosecutors
13 and the judicial officers.

14 Upon information and belief, the State manipulated the
15 jury, and also I have my attorney inadequate representation for which
16 unfairly gave the jury their decision to prosecute.

17 THE COURT: Okay. Thank you. All right.

18 Well the Court has three options in terms of the
19 sentence for Count 2, first degree kidnapping resulting in substantial
20 bodily harm; one, the Court may sentence the defendant to life without
21 the possibility of parole; two, the Court may sentence the defendant to
22 life with the possibility of parole beginning at the minimum of 15 years
23 having been served; or third, the Court may sentence the defendant to a
24 definite term of 40 years with eligibility for parole beginning when a
25 minimum of 15 years has been served.

1 I've actually pondered this a lot and that, the jury's
2 verdict on a number of serious counts came back not guilty or had a
3 reduced lesser included offense. While I am concerned with the
4 defendant's arrest record, the defendant only has the one prior adult
5 conviction, although a very serious one. You say this involves shooting
6 into the face of somebody?

7 MS. SUDANO: Yes, he shot someone in the face, Your
8 Honor.

9 THE COURT: The arrest history and the fact that it all
10 involved the same victim tends to make me feel that the Court must take
11 into consideration deterrence of the defendant from this kind of conduct
12 in the future and try to figure out how to do that. It also causes me to
13 question the defendant's potential for rehabilitation. And the violent
14 history does suggest to me that the defendant represents a danger to
15 the community.

16 I'm balancing that with the nature of the offense, which
17 most instances does not relate -- results in a life tail sentence. And I'll --
18 I do have to be concerned with deterrence of the others. I've really
19 tossed between the issue of definite term of 40 years or the life term with
20 the possibility of parole. In view of what I've saw in terms of Mr. Harris's
21 conduct both during the trial and then in regard to the charge in this
22 case, I am -- in view of the serious nature of the prior violent crime
23 charge and juvenile history, I have decided to sentence the defendant
24 on Count 2 to life with the possibility of parole beginning when a
25 minimum of 15 years has been served.

1 I will -- as to Count 3, assault, I sentence the defendant
2 to six months to run concurrent with Count 2. As to Count 4, battery
3 constituting domestic violence, I sentence the defendant to six months to
4 run concurrent in the Clark County Detention Center; to run concurrent
5 with Count 3. As to Count 6, battery resulting in substantial bodily harm
6 constituting domestic violence, essentially I think that the kidnapping, the
7 first degree kidnapping, encompasses all of the defendant's conducts in
8 this case. And I'm going to sentence the defendant to 24 to 60 months
9 on that count to run concurrent with his sentence on Counts 2, 3 and 4,
10 for a total sentence of life with the possibility of parole beginning at 15
11 years.

12 I'll provide for the \$25 administrative assessment, the
13 \$3 DNA administrative assessment; defendant's DNA was taken in
14 2012. I also will provide for the \$35 domestic violence fee. The parties
15 have agreed on credit for time served of 351 days, so I'll provide that.

16 Is there anything else from the State?

17 MS. SUDANO: No. Thank you, Your Honor.

18 THE COURT: Mr. Sheets?

19 MR. SHEETS: No, Your Honor.

20 THE DEFENDANT: Could I have a appeal lawyer appointed
21 to me?

22 THE COURT: That's -- there's a whole process with that. If
23 you are entitled to an appeal, normally that is handled by your trial
24 attorney, so I'll let Mr. Sheets decide how to proceed with that.

25 MR. SHEETS: And I did convey that to him. And I indicated I

1 would file a notice of appeal once the judgment of conviction has been
2 filed.

3 THE COURT: Okay. All right.

4 THE DEFENDANT: Can I get all my transcripts, jury
5 instructions and everything.

6 THE COURT: Well you'll need to deal with that on the appeal,
7 and your appeal attorney will handle those matters.

8 THE DEFENDANT: Okay. Thank you, Your Honor.

9 THE COURT: All right. Thank you.

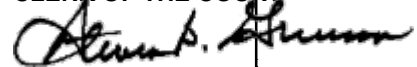
10 MS. SUDANO: Thank you, Your Honor.

11 [Hearing concluded at 9:57 a.m.]

12
13 ATTEST: I do hereby certify that I have truly and correctly transcribed the
14 audio/video proceedings in the above-entitled case to the best of my ability.

15 

16 Angie Calvillo
17 Court Recorder/Transcriber
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JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRY HARRIS, aka
Barry Rashad Harris
#1946231

Defendant.

CASE NO. C-17-326569-1

DEPT. NO. XX

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060; COUNT 2 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNT 3 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 4 – BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE (Category B

AA1254

1 Felony) in violation of NRS 200.481, 200.485, 33.018; COUNT 5 – BATTERY
2 CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C Felony) in
3 violation of NRS 200.481C 200.485, 33.018; COUNT 6 – BATTERY RESULTING IN
4 SUBSTANTIAL BODILY HARM CONSTITUTING DOMESTIC VIOLENCE (Category C
5 Felony) in violation of NRS 200.481, 200.485, 33.018; COUNT 7 – PREVENTING OR
6 DISSUADING WITNESS OR VICTIM FROM REPORTING CRIME OR COMMENCING
7 PROSECUTION (Category D Felony) in violation of NRS 199.305; and COUNT 8 –
8 CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C
9 Felony) in violation of NRS 202.350(1)(d)(3); and the matter having been **tried before a jury**
10 and the Defendant having been found guilty of the crimes of COUNT 2 – FIRST DEGREE
11 KIDNAPPING RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in
12 violation of NRS 200.320; COUNT 3 – ASSAULT (Misdemeanor) in violation of NRS
13 200.471; COUNT 4 – BATTERY CONSTITUTING DOMESTIC VIOLENCE (Misdemeanor)
14 in violation of NRS 200.485; and COUNT 6 – BATTERY RESULTING IN SUBSTANTIAL
15 BODILY HARM CONSTITUTING DOMESTIC VIOLENCE (Category C Felony) in violation
16 of NRS 200.481, 200.485, 33.018; thereafter, on the 14th day of August, 2018, the Defendant
17 was present in court for **sentencing** with counsel DAMIAN SHEETS, ESQ., and good cause
18 appearing,
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23 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
24 to the \$25.00 Administrative Assessment Fee, \$35.00 Domestic Violence Fee plus \$3.00 DNA
25 Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections
26 (NDC) as follows: **COUNT 2 - LIFE** with the eligibility of parole after serving a MINIMUM
27
28

1 of FIFTEEN (15) YEARS; **COUNT 3** – SIX (6) MONTHS in the Clark County Detention
2 Center (CCDC); CONCURRENT with COUNT 2; **COUNT 4** - SIX (6) MONTHS in the Clark
3 County Detention Center (CCDC); CONCURRENT with COUNT 3; and **COUNT 6** - a
4 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
5 FOUR (24) MONTHS, in the Nevada Department of Corrections (NDC); CONCURRENT with
6 COUNT 2; with THREE HUNDRED FIFTY-ONE (351) DAYS credit for time served. As the
7 \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and
8 Testing in the current case are WAIVED.
9

10 DATED this 15 day of August, 2018.

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15 ERIC JOHNSON
16 DISTRICT COURT JUDGE
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Steven D. Grier

DISTRICT COURT
CLARK COUNTY, NEVADA

1 THE STATE OF NEVADA

2 PLAINTIFF,

3 CASE NO: C-17-3265691

4 -VS-

5 DEPT NO: XX

6 BARRY R HARRIS #1946231,
7 DEFENDANT

DATE: 8/16/18

8
9
10 " NOTICE OF APPEAL "

11
12 MY NAME IS BARRY R. HARRIS #1946231 THE
13 ABOVE DEFENDANT IN CASE NO: C173265691
14 I WAS FOUND GUILTY 4/16/18 APRIL 16, 2018
15 AND I WAS SENTENCE ON 8/14/18 AUGUST 14, 2018
16 WHICH IS NOW WHY I'M SEEKING TO
17 APPEAL AND REQUEST FOR ALL DOCUMENTS AND
18 TRANSCRIPTS.
19
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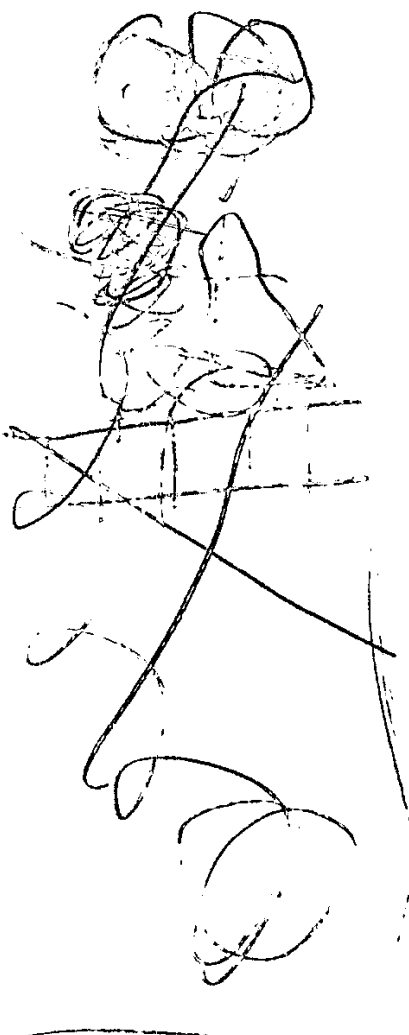
27 NOTICE OF APPEAL

(1) OF (1)

DATE: 8/16/18
AA1257

BARRY R HARRIS #1946251
330 S. CASINO CENTER
LAS VEGAS, NV 89101

UNITED STATES POSTAGE
02 1P
0000830502
MAILED FROM ZIP CODE 89101



SENT FROM CCDC

DATE: 8/16/18

ERIC JOHNSON
200 LEWIS AVENUE
LAS VEGAS, NV 89155