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Respondent.

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Mar 06 2015 10:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Docket 66816 Document 2015-07008

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1 called -- interactions like looking at a child, or reading to the child in their eyes and
2 talking with them and, you know, paying attention to what their cues are and what
3 they -- like leading by -- by the child, so --

4 Q And then in --

5 THE COURT: So what, somebody from Head Start or some other program
6 reported that Jonathan had said that his child was demanding. Where you getting
7 that from?

8 THE WITNESS: I'm sorry. So you're asking me --

9 THE COURT: Where you getting that information --

10 THE WITNESS: I'm sorry.

11 THE COURT: -- that Jonathan thought his child was demanding?

12 THE WITNESS: I believe it was stated in a previous report. And I believe
13 that was in a psychological evaluation by Kapiolani Child Protection Center.

14 THE COURT: Okay. So he didn't tell you that?

15 THE WITNESS: I read that.

16 THE COURT: Okay. Go on.

17 BY MS. JOBE:

18 Q And you relied on that information in working with the family?

19 A Yes.

20 Q Okay. Now --

21 A So copies -- I'm sorry to interject, but copies of the psychological
22 evaluation are provided to the therapist, as well as the service provider so that they
23 can address those concerns in their weekly contact with the parent.

24 Q And the reference to Khayden as being -- having trouble adjusting to
25 schedule and demanding attention be something that Jonathan indicated when

1 completing the evaluation; correct?

2 A Yes.

3 Q As far as the delay in reunifying the case and closing the case in 2011,
4 isn't it true that there was a lack of insight as to why Child Welfare Services was
5 involved with their family?

6 A Yes, there was.

7 Q And what do you mean by that?

8 A They didn't believe that Child Welfare Service -- that there was a
9 warrant for them to be involved. In regards to even when we addressed the delay in
10 medication attention and some of the child rearing. Even the scenario if perhaps
11 that the childcare provider had conducted these injuries or were identified. Being
12 also cautious of who they leave their child with was also addressed in the services.
13 Being a protective parent was one of the key issues in order to close the case. Both
14 parents had to identify what are the characteristics of a protective parent.

15 Q So identifying appropriate people to be around their children?

16 A Yes.

17 Q And also seeing cues from their children when their children have
18 injuries or need attention?

19 A Yes.

20 Q Okay. Ultimately -- sorry.

21 MS. JOBE: Court's indulgence.

22 BY MS. JOBE:

23 Q You also completed a report in January of 2011; correct?

24 A Yes.

25 Q And in that report that report there's a team assessment about the

1 safety of the home?

2 A Yes.

3 Q In January of 2011 was the -- what was the team assessment about the
4 safety of the home?

5 A I would have to -- I apologize. I would have to review that. We had, I
6 believe, four teams in regards to this case and throughout the case.

7 Q So --

8 A I don't have it in front of me.

9 Q Okay. You don't have the preliminary report date of 1-20-2011?

10 A I do not have that one in front of me. I apologize.

11 Q Oh, okay. And did you bring the -- the documents that were emailed to
12 you with the numbers on them?

13 A I had -- only had time -- I apologize. I had a trial earlier this morning
14 and then I came -- I did not -- I wasn't able to print out all of the attachments.

15 Q Okay. So, in order for a home to be assessed as being safe what does
16 that mean?

17 A So their -- they would have to be actively participating in services. And
18 I would get favorable reports from Enhanced Healthy Start and [indiscernible], as
19 well as their therapist. And then their home physically would have to be safe for the
20 child. So they would have to have safety gates. If there was a -- you know, had to
21 make sure that they were in a -- either a playpen or a crib and also checked the
22 home to see if there were -- if there was a rug near an area that they were crawling
23 or walking. So they have secured an area with a safety gate and had blocked in an
24 area for them to interact with their toys.

25 Q But more importantly in this case would they have -- would Jonathan

1 have need to convey his role as a parent to protect Khayden to ensure that he
2 doesn't have injuries, those kinds of things?

3 A Yes.

4 Q Okay.

5 THE COURT: Well, wait a minute. What -- that doesn't really tell me much.
6 What exactly did he have to say or write down or indicate that he understood in
7 order to be reunified and to have CPS close out the case?

8 THE WITNESS: So in the home based services, as well as Enhanced
9 Healthy Start, we discussed the characteristics again about a protective parent. We
10 went over at every session about medical attention, about --

11 THE COURT: Okay. What do you tell him -- specifically, what do you tell him
12 about medical attention?

13 THE WITNESS: So if a child is sick --we would do scenarios in regards to if
14 Khayden or Khaysen were sick. You know, what are the things that they are looking
15 out for.

16 THE COURT: Okay. What you tell him --

17 THE WITNESS: If --

18 THE COURT: -- to look for?

19 THE WITNESS: -- if he has a fever that's an indication that there's an
20 infection and that you should seek medical attention. If he had fallen down and you
21 notice that there's a bruise or a mark or if it's swollen that -- because the case is
22 opened with CPS that he was to -- that they were both to seek medical attention
23 immediately.

24 THE COURT: Okay. And do you tell him like what to do? Do you call the
25 pediatrician or drive him to the emergency room or do you just --

1 THE WITNESS: Pediatrician, emergency room --

2 THE COURT: -- say seek medical attention?

3 THE WITNESS: -- closest ER. At the time it was in Ebba Beach. There is
4 also -- which is, I would say, about five to six miles away. And then there was Pali
5 Momi, which was about the same miles away, but there was traffic going that way.

6 THE COURT: Okay. Let me ask you this.

7 THE WITNESS: Sure.

8 THE COURT: Do you give them a test or anything to make sure they were
9 paying attention and they learned something? I mean, how do you know that they're
10 not just sitting there daydreaming and they're really listening and, you know,
11 learning something?

12 THE WITNESS: So at the time we would -- when I would do it during our
13 home visits we would discussing -- I would, you know, talk with him and he would
14 have to articulate, you know, what he would do first and what he would do second.
15 The service providers also -- would also question them about those concerns. And
16 at court -- at our last court hearing they were asked by the Judge -- and they were --
17 they had to be able to articulate what their safety plan would be.

18 THE COURT: Okay.

19 THE WITNESS: What they would do and what characteristics identify as a
20 protective parent. That was something that the Judge had ordered in order for the
21 case to be closed.

22 THE COURT: Go on, Ms. --

23 BY MS. JOBE:

24 Q And you're using words that are familiar to people in Child Welfare
25 Services. But as far as safety plan, what's a safety plan?

1 A A safety plan is --

2 THE COURT: I mean -- if you're doing this for my benefit don't do it. If you're
3 doing it for the record that's fine.

4 MS. JOBE: I was just making a brief record, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: I'm sorry. Somebody had stepped in to bring in a chair. Can
7 you repeat that again?

8 THE COURT: What's a safety plan?

9 THE WITNESS: A safety plan is in case of emergencies a variety of different
10 scenarios. What would be their support that they would call. And they had identified
11 family members here in Hawaii and Las Vegas to help them with childcare, even if
12 they needed money or some support. Also for emergencies what it would be step-
13 by-step. So they would contact the PCP, inform them if the doctor had
14 recommended that they take the child to an emergency room that they would follow
15 up with the medical recommendation. So we had really reinforced that they needed
16 to make sure that -- to follow the medical recommendations from their doctor --
17 whether it's a doctor here or a specialist that they would follow through --
18 acknowledge first and then follow through with the appointments.

19 BY MS. JOBE:

20 Q And all these things were accomplished till the case closed in July of
21 2012; correct?

22 A Pardon? I'm sorry. I can't hear you.

23 Q All of these things were accomplished so the case closed in 2012?

24 A Yes. They actually did really well in following up and making sure that
25 the medical attention and their active participation in all of the services.

1 Q So at the time the case closed were you comfortable with closing the
2 case knowing Jonathan would know what to do in an emergency situation?

3 A Yes.

4 Q Okay. And when you closed the case and made that recommendation
5 to the Court were you comfortable that Jonathan knew what signs and symptoms to
6 look for if Khayden or Khaysen needed medical attention?

7 A Yes.

8 Q At the time that the case closed were you comfortable with how
9 Jonathan was parenting Khayden and Khaysen?

10 A Yes.

11 MS. JOBE: No further questions.

12 MS. LEMCKE: Your Honor, I'm going to need all the rest of the records, I
13 think, to have any effective cross-examination of this witness and they're in route.
14 So since it is five o'clock I'd ask that we adjourn and the prosecution be admonished
15 not to speak with the witness so that --

16 THE COURT: Can she be back tomorrow --

17 MS. LEMCKE: -- we can get those records.

18 THE COURT: -- at some point? I don't know where --

19 MR. STAUDAHER: I have no idea. We have -- I don't know what the arrange
20 -- we made an arrangement for a subsequent -- I don't know if that room's available
21 or what the situation?

22 THE COURT: Okay. Can I see counsel at the bench?

23 [Bench conference -- not transcribed]

24 THE COURT: Hello.

25 THE WITNESS: Hello.

1 THE COURT: Yes. I lost you on my screen.

2 About the -- hello.

3 THE WITNESS: I'm still here.

4 THE COURT: Okay. Fine.

5 THE WITNESS: I just can't -- I don't know what's going on with the video.

6 THE COURT: I don't either.

7 About the training that they received --

8 THE WITNESS: Yes.

9 THE COURT: -- how is it -- are you looking at records or how do you know
10 exactly what training they would have received as part of the CPS case plan -- or
11 CPW -- CW -- whatever?

12 THE WITNESS: The training -- are you specifically asking about the training?
13 I'm sorry.

14 THE COURT: Right. Exactly. That they would have gotten regarding how to
15 recognize, you know, if a child is ill, and when to call the pediatrician, and when to
16 call 9-1-1 and all of those things. Do you have any records there with you that tell
17 us what the training is or what they -- classes they went to or anything like that?

18 THE WITNESS: There are reports from the service providers that were
19 provided to myself that I submitted to Court. There's also --

20 THE COURT: You mean Court in Hawaii?

21 THE WITNESS: Yes, Family Court in Hawaii. So the records that requested
22 from my department to make copies of is in route to Las Vegas.

23 THE COURT: Okay.

24 THE WITNESS: The reports that I received, that's the basis of
25 recommendations, like for instance, for case closure and so forth and progress and

1 services. So there are independent reports that were done by service providers that
2 talk about specific things that they spoke about.

3 THE COURT: Okay. And those would have gone to the Family Court there in
4 Hawaii?

5 THE WITNESS: Yes. It was submitted as evidence as a basis for
6 recommendation of services, as well as for case closure.

7 THE COURT: Okay. Ms. Lemcke, we don't obviously have those records. I
8 mean, is there any cross-examination you could do with what information we have at
9 this point?

10 MS. LEMCKE: I'd feel a lot more comfortable if I had all the records because
11 I just don't -- I'll end up duplicating stuff and --

12 MR. STAUDAHER: With that respect, based on where we are right now, I
13 don't know that we're going to get those -- when and if those records are going to
14 come in and if they're going to be responsive to what she's talking about. We do
15 know that we did make a request for those records and apparently they are in --
16 they've been mailed or in route or whatever the way can do it, but --

17 THE COURT: How did you send those records?

18 THE WITNESS: I was -- I would have to -- it was sent via mail.

19 THE COURT: Regular mail?

20 THE WITNESS: Yes. It was -- I really -- I wasn't sure -- I apologize. I was in
21 another trial so I was not in the office.

22 THE COURT: Do you still have those records? Did you keep a copy for
23 yourself?

24 THE WITNESS: I kept -- I kept a copy of -- it's in my office.

25 THE COURT: Okay.

1 THE WITNESS: It's actually -- the TA supervisor has it.

2 THE COURT: It's only like two o'clock there. I'm wondering if we could have
3 it overnight expressed at the State of Nevada expense or the public defender --
4 somebody's expense other than your office.

5 MS. LEMCKE: Or I could ask this. Ma'am, are they -- are there a lot -- are
6 there so many records that you couldn't scan them. Could you scan them and email
7 them to us?

8 THE WITNESS: I was -- that was presented to myself. I don't have the okay
9 to scan the records. I believe somebody has spoken to my section administrator
10 and she had advised us that we were mailing the documents.

11 MS. LEMCKE: Okay. Overnight.

12 THE WITNESS: So the -- the okay I don't have. It's not in position to say if I
13 can.

14 THE COURT: When did you mail the documents?

15 THE WITNESS: The secretary had mailed it I believe last week, either
16 Wednesday or Thursday. I'm not -- I'm not sure because I was in another trial, so I
17 was not in the office at the time.

18 THE COURT: So they should be coming any day now. I mean, we could do
19 overnight express and then that would be here tomorrow.

20 MR. STAUDAHER: I don't know that they can make a copy --

21 THE WITNESS: Overnight express from Hawaii --

22 MR. STAUDAHER: -- of her record.

23 THE WITNESS: -- is actually still two days, I believe.

24 THE COURT: Right, because you have to cross the ocean.

25 THE WITNESS: Yeah.

1 THE COURT: All right. Here's what we're going to -- it's already late. Are you
2 available to --

3 THE WITNESS: I'm not avail --

4 THE COURT: Well, we have Wednesday --

5 THE WITNESS: Like I said, I have court --

6 THE COURT: -- as well, so --

7 THE WITNESS: -- and I have another trial. I'm not available until Thursday if
8 my testimony is needed.

9 THE COURT: Okay. Here's what I'm going to do. I'm going to let you go
10 now. And you said you're in trial -- well, you're not going to testify both tomorrow
11 and Wednesday are you in your trial there in Hawaii? Isn't it just going to be --

12 THE WITNESS: Yes, I have a three day trial.

13 THE COURT: Okay. But do you have to be there the whole trial or are you
14 just -- is it a Family Court trial?

15 THE WITNESS: It is a Family Court trial.

16 THE COURT: Okay. So do you like sit in the courtroom or are you just a
17 witness or how does that work?

18 THE WITNESS: I'm a witness.

19 THE COURT: Okay.

20 THE WITNESS: They took partially today. Tomorrow I do have the specialty
21 court that I'm involved in, which is the zero to three. We have -- I have ten cases
22 tomorrow.

23 THE COURT: Okay. And then the trial, are you going to testify again or is
24 that -- I mean, it doesn't seem like you'd be testifying for three full days in the trial.

25 THE WITNESS: The other part is for clarification and that would be on

1 Thursday. Wednesday is a holiday in Hawaii.

2 THE COURT: All right. I'm going to let her go and then we'll figure out
3 scheduling --

4 MS. LEMCKE: That's fine.

5 THE COURT: -- here and then Mr. Staudaher or Ms. Jobe you can get with
6 her later.

7 Okay. Thank you, ma'am. We're going to end this part of the
8 questioning for today.

9 THE WITNESS: Okay. I appreciate that.

10 THE COURT: Okay. Thanks. And then -- like I said, you're going to be
11 contacted at some point by one of the DAs and they'll tell you when we're going to
12 resume your testimony.

13 THE WITNESS: Okay. I appreciate that.

14 THE COURT: Okay. Thanks. Okay. Bye.

15 THE WITNESS: Thank you. I'm going to hang up. Thank you. Bye.

16 THE COURT: I think we have a lot of flexibility with her because the way I
17 would allow you to use the testimony I think both sides can open without really
18 referring to that for a ruling. So if we can't accommodate her this week, I think we
19 have more flexibility to squeeze her in some morning or something like that.
20 Whereas the other information you do need a ruling -- the other witnesses you do
21 need a ruling on because that might be referred to in the opening. Certainly on the
22 statement you're going to want to refer to it, State, probably in your opening
23 statement --

24 MR. STAUDAHER: Right.

25 THE COURT: -- so you're going to need to know. And then on the expert on

1 the defense may want to talk about him in their opening statements so they're going
2 to need to know.

3 So, what I would say then is let's take our break and we'll resume at
4 1:30 tomorrow with the testimony of Dr. Farley.

5 MR. STAUDAHER: Okay.

6 THE COURT: Okay. And then Wednesday is the day for the police, so
7 maybe she's -- could be available Wednesday, or if not, we can try to squeeze her in
8 like I said on some morning or whatever during the trial.

9 MR. STAUDAHER: Okay.

10 THE COURT: Okay. All right.

11 MS. LEMCKE: Thank you, Your Honor.

12 MR. REED: Thank you, Your Honor.

13 MS. LEMCKE: And, Your Honor, just for record. Would you admonish the
14 prosecutors they can't speak to the witness that was just on the stand in the interim
15 while we're getting all the documents?

16 ///

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1 THE COURT: Right. Only about scheduling matters --

2 MS. LEMCKE: Right. Just --

3 THE COURT: -- and the records and facilitating those kinds of things.

4 [Proceedings concluded at 5:08 p.m.]

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ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Patricia Slattery
PATRICIA SLATTERY
Court Transcriber

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Sandra A Pruchnic
SANDRA PRUCHNIC
Court Transcriber


CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JONATHAN QUISANO,

12 Defendant.
13

CASE NO. C-13-294266-1

DEPT. XXI

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

15 TUESDAY, OCTOBER 7, 2014

16 ROUGH DRAFT TRANSCRIPT

17 RECORDER'S TRANSCRIPT RE:

SENTENCING

18 APPEARANCES:

19 For the State:

MICHAEL STAUDAHER, ESQ.

MICHELLE JOBE, ESQ.

Deputy District Attorneys

20 For the Defendant:

NANCY LEMCKE, ESQ.

NORMAN REED, ESQ.

Deputy Public Defenders

22 Also Present:

23 DAVID FERRARA, Reporter

MICHAEL QUINE, Cameraman

24 Review Journal

25 RECORDED BY: JANIE L. OLSEN, COURT RECORDER

ROUGH DRAFT TRANSCRIPT

1 Las Vegas, Nevada, Tuesday, October 7, 2014 at 11:12 a.m.

2
3 THE COURT: All right, are we ready to proceed?

4 MR. REED: Yes, Your Honor.

5 MS. LEMCKE: Yes.

6 THE COURT: State versus Jonathan Quisano, who is present in custody and
7 we have Mr. Reed and Ms. Lemcke, and Mr. Staudaher, and Ms. –

8 MS. JOBE: Jobe.

9 THE COURT: -- Jobe for the State, and Mr. Reed, you approached the bench
10 and indicated before we proceeded with sentencing that you wanted to make a
11 motion, is that correct?

12 MR. REED: That is correct, Your Honor.

13 THE COURT: All right. Go ahead.

14 MR. REED: At this point, Your Honor, pursuant to the Supreme Court Rules,
15 we're moving to exclude the Review Journal from videotaping or engaging in still
16 photography, because they did not receive prior permission from this court nor serve
17 us in accordance to Supreme Court local rules.

18 THE COURT: All right. You're saying that the RJ – are you from the RJ?
19 Okay. Did not submit a media request. It must be signed 24 hours ahead of time.
20 Do you know – and can I have your name from the RJ?

21 MR. FERRARA (Reporter, Review Journal): I'm David Ferrara.

22 THE COURT: Okay. Do you know if there's a media request. We looked. I
23 assumed you were from Channel 5, because we checked, and that's the only one I
24 saw in our file, was Channel 5 had filed a media request. I think it was Fox News
25 some time ago. Do you know if the RJ has filed a media request for videotaping and

ROUGH DRAFT TRANSCRIPT

1 – obviously the reporter can stay in either way, you don't need a media request for
2 that?

3 MR. FERRARA (Reporter, Review Journal): I don't believe that we filed a
4 request for the camera, but I [indiscernible] –

5 THE COURT: Yeah, you're required to do that for the camera. Obviously,
6 reporter you can sit here and take notes or do whatever you want. You don't need a
7 request for that.

8 MR. FERRARA (Reporter, Review Journal): I was under the impression that
9 if a media request for a camera had been filed by one media outlet, that the Court
10 was open to allowing cameras in.

11 THE COURT: Yeah, I don't care. My own feeling is, you know, the more the
12 merrier. Everyone's welcome. The issue is the Defense is objecting because they
13 didn't have notice. Now typically what happens is if a number of outlets file a media
14 request, only one camera is allowed because of the logistics of the crowding, and
15 then they share the footage with all of the other media outlets, and we don't take
16 obviously a position on whether or not, you know, who's in here and who isn't.
17 That's typically how we do it.

18 MR. STAUDAHER: I believe there were media requests on 12/10/13 and
19 12/16/13. I don't know if both of those –

20 THE COURT: Those were the – there was a Fox News one and what was the
21 other one?

22 MR. STAUDAHER: I don't – I just have the dates.

23 THE COURT: Okay.

24 MR. STAUDAHER: From Odyssey, 12/10/13 and 12/16/13.

25 THE COURT: So, Mr. Ferrara, your belief is that the RJ typically doesn't file
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1 their own media requests, and you just rely on the media request of the other
2 outlets?

3 MR. FERRARA (Reporter, Review Journal): Not always. If – if –

4 THE COURT: That's good practice – I mean –

5 MR. FERRARA (Reporter, Review Journal): What I'm saying is, if other
6 media requests have been filed for cameras for television stations, I was under the
7 impression that we didn't necessarily need to file multiple –

8 THE COURT: Yeah, the rule doesn't frankly provide for that. You know, each
9 – like there's sharing of the footage and that's just done because we can't have on a
10 big case five cameras in the courtroom or whatever. The rules don't apply. I mean
11 we require each media outlet to file their own media request, and then as I said, how
12 they coordinate the sharing of footage or whatever is up to the media outlets. We
13 obviously don't take a position on that. We couldn't care less one way or the other.

14 But, Mr. Reed, you know, there have been other media requests. What
15 is the objection, you know, whether it's Fox News or Channel 3 or you know,
16 whatever – what difference does it make to the Defense, you know, whether it
17 happens to be the RJ or it happens to be a TV station, or you know, whatever?

18 MR. REED: The rules are in place for a reason, Your Honor. To provide
19 notice to the Defense and I think we're entitled to ask the Court to enforce that
20 notice. The fact that they rely on another media outlet doesn't cure the issue. The
21 statutes and the rules require that they place by those rules, and I'm going to ask
22 the Court to enforce it.

23 THE COURT: Well, let me ask you this. Let me get back to it. What is –
24 candidly, you know, anybody who submits a request unless it's, you know, like
25 really, you know, Bob from his garage wants to come in with his camera to post it on

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1 youtube or something like that, then we wouldn't sign it. Any legitimate news
2 organization including, frankly, computer news organizations, any legitimate news
3 organizations, I sign it, without reservation. I mean if they had submitted one. I
4 would've signed it. I sign them all. Like I said, the only time you wouldn't get one
5 signed, you know, if it's just some guy in the garage, and he wants to tweet it or -- I
6 don't even know how they would do it, but that would be the only time you wouldn't
7 get approval in here.

8 MR. REED: That's not the issue, I understand.

9 THE COURT: No, I know. So I mean it would've been signed --

10 MR. REED: But it wasn't.

11 THE COURT: -- and you would've had notice, so I guess my question to you
12 is what -- what prejudice is it to you or your client if the RJ, as opposed to Channel 3
13 or Channel 5, Channel 5 I know did submit one, is allowed to film the proceedings.

14 MR. REED: There isn't any. But the statute doesn't require that we show that
15 there's prejudice. The rules are in place to provide notice, and we didn't receive
16 notice. There isn't actual prejudice other than the fact that they shouldn't benefit
17 from not following the rules any more than we should, if we don't follow the rules.

18 THE COURT: Right. Well, all I'm saying is there was a media request filed,
19 and had they filed it, in a timely fashion, I certainly would've signed it like I sign them
20 all, and so, you know. There is one school of thought Mr. Reed that really the benefit
21 isn't to the RJ itself, the benefit is to the public because they're able to see the
22 proceedings and, you know, we obviously encourage you know, public oversight of
23 everything that occurs during the proceedings, and so in that way, there's a greater I
24 guess public good in allowing the RJ and any other media outlets to be here, at least
25 in theory. That's one school of thought. Like I said, it just increases public exposure

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1 of our court system, which I think we all believe is a laudable goal.

2 So, in view of that, I am gonna note your objection, like I said, if you
3 had some kind of actual prejudice, I would certainly grant your request to exclude
4 the RJ, but I don't really see a reason to do that. So, they're allowed to stay.

5 MR. FERRARA (Reporter, Review Journal): Thank you. And in the future
6 we'll –

7 THE COURT: Okay. Like I said, I mean the reporters, obviously you can
8 come and go as you please without any request, it's just the filming and the –

9 MR. QUINE (Cameraman, Review Journal): And I came prepared to be part
10 of the pool [indiscernible] –

11 THE COURT: And the cameras and – I mean it's partly a notice issue, it's
12 partly just a core logistics issue that we need to know and have our bailiff and
13 everything like that.

14 All right, having dispensed with that issue, are both sides ready to proceed
15 with the sentencing of Mr. Quisano?

16 MR. STAUDAHER: Yes, Your Honor.

17 THE COURT: All right. And we did receive a very lengthy – well the memo is
18 not that lengthy but along with the exhibits and everything, a lengthy submission
19 from the Defense, and I'm assuming the State got that as well and has had an
20 opportunity to review that.

21 MR. STAUDAHER: Yesterday afternoon, yes.

22 THE COURT: All right. State, you may proceed. You have the right to argue.

23 MR. STAUDAHER: Thank you, Your Honor. A couple things, and I would
24 acknowledge having read through Ms. Lemcke and Mr. Reed's sentencing
25 memorandum. There is an inaccuracy that I stated to the Court that they pointed

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1 out that I do want to clear up.

2 As far as the actual detection of blood in the splatter that was on the
3 floor, there was no blood detected. That information came in part from the
4 Defendant's own statements about what happened post the event that essentially
5 caused the death of the child in this particular case.

6 So, in that sense, the Defendant said that after the events, after the fall,
7 in his words, that the child began to cough and spit up and vomit up blood. His
8 words, not mine, not the detective's no one else's. Cough up blood.

9 I would note for the Court that the -- in addition to the material that was
10 part of the splatter area, that he claimed to have placed the child -- and why they
11 looked at it in the first place, because that's where this supposedly took place, and
12 the leucocrystal violet that showed the splattering or looked like an expectoration as
13 if someone coughed or sneezed, all of that biological material that was tested, was
14 tested for DNA, at least the splatter marks, and it came back to the child. So, it's the
15 child's DNA.

16 Whether it's actual blood or just something from his lungs or whatever, I
17 don't think is really the major issue, especially in light of the fact the Defendant said
18 that blood had come up from this child. He had no external injuries. None.

19 This child's injuries were all internal, so no source of blood so to speak,
20 yet the paper towels that were recovered from the scene including paper towels that
21 were in the kitchen, the bathroom, the living room, and the bedroom, four different
22 locations, multiple paper towels all contained, were presumptive for blood of the
23 Defendant, excuse me, of the child in this case, Khayden, and showed that this child
24 was bleeding at some point and -- from the fall that was at least described by the
25 Defendant, not really a source of blood that could've come up from anywhere other

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1 than what was termed to be lung contusions, hitting in the chest, something like that
2 that would've caused this, which was also corroborated by the fact that the medical
3 people at the hospital were able to see on the radiologic films evidence of lung
4 contusions that were pressing the child, separate and apart from the supposed head
5 injury that took place.

6 Also, another point of clarification, defense counsel indicates that the
7 detectives, not the detectives, but the medical people, we're talking about Dr.
8 Montes, and even the medical examiner, Dr. Gavin, who looked at things
9 afterwards, and the medical people who treated Khayden at the hospital, that
10 somehow or another that they testified that the injuries were consistent with a single
11 blow to the back of the head or side of the head or top of the head, however you
12 want to figure out that this occurred supposedly. That is absolutely not the case.
13 That's not what they testified to. That's not what they put in their records. They
14 both, and I'm talking about the medical people involved, not necessarily – we'll get
15 to Dr. Gavin in just a moment, indicated that there was at least a mechanism, a
16 couple of different impacts that took place to this child, not a single impact, and that
17 there was some form of rotational force associated with at least one of the impact
18 sides. So, that's the state of at least the records related to where there were some
19 dispute in regards to the sentencing memorandum.

20 Now, the State went through kind of a litany of what took place with this
21 child and why. In fact, this is a problem for the Defendant as far as his story is
22 concerned. We know that – that when he comes to the scene, or at least the first
23 responders come to the scene at the time, he just hands them the child. This limp
24 child who he's never called 911 for. He calls his wife instead. He doesn't even
25 relate to her the gravity of the situation. It's only in discussions with her on the

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1 phone that she then calls 911. Not him, but her.

2 When the 911 people get on the phone with him or with her rather,
3 they're confused because she's not the one that's where the child is, and they're not
4 even sure that based on what he's said through her, that they even need to respond
5 out to the scene; yet, they do respond out to the scene and that's when they find
6 that there is this catastrophic injury to this child.

7 They put the child down in the entry way to the living room. You cannot
8 see the couch where supposedly the child fell off of later on, you can only see two
9 recliners that are directly opposite the TV that he claims, at least in his PSI, or
10 maybe it was the psychological report that was done in this particular case, that he
11 would've been sitting in those chairs looking at the TV, which would've meant that
12 the child would've been directly next to him when this supposedly took place. Those
13 are the chairs that he actually points to. The only ones that were visible and says
14 that the child fell off of it. That was story one.

15 Story two to the medical responders who came on scene was that the
16 child fell off of a bar, not a chair, but a bar. When police respond later on, he has
17 yet another story that the child fell off of the couch, and he was very specific on how
18 the child fell off of the couch. The child slipped off of the couch, meaning that he
19 was kind of straddled over it, and he just went over the couch. That's what he said.
20 And that's what he demonstrated.

21 Now, in doing so, because of the child's length, the height of the couch,
22 sliding over, and getting to the point where you get the pivot point, where you start to
23 move, means part of your body has to be hanging over the couch. At the point
24 where that would've occurred based on his direct statements to the police and his
25 statements to the first responders, at least at some point, is that there was no

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1 jumping off the couch, there was no leaping off the couch, there was no standing on
2 the back of the couch, sitting on the back of the couch, anything like that which are
3 the only things that Dr. Farley ever really tests. He tests over and over again these
4 standing positions, landing on his head, and so forth. None of those things were
5 actually part of the mix.

6 The distance falling at that point from the back of the couch with the kid
7 straddled over, the height of Khayden would've been at best a foot and a half,
8 maybe two feet at the very maximum.

9 That scenario, the medical people including Dr. Gavin, the medical
10 examiner said there is no way that the injuries that this child sustained would've
11 been caused by that kind of a fall.

12 We also know that the lung contusions, the coughing up or spitting up
13 of blood that we know, at least there are four different locations in the home where
14 these rags with blood where the child's blood are found that clearly with no external
15 injuries, that there has to be an internal injury and the lungs are what the medical
16 people show.

17 Dr. Gavin is not able to see the lung contusions because of lividity and
18 so forth, post when she actually does her examination. She even says that she
19 wouldn't have seen necessarily that sort of an injury based on what the medical
20 people saw on presentation to the hospital.

21 So, we know that there's an issue there of something that Dr. Gavin
22 didn't see but couldn't see based on the state of the body at the time, but the
23 medical responders see yet a secondary injury.

24 As far as the complexity of the injury to the head itself is concerned,
25 we're talking about an injury that is, at least to the back of the head area, is a

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1 stellate fracture that courses across the skull but is primarily focused to the right of
2 midline. There's also a forward injury to the brain which is to the right of midline
3 also.

4 A contrecoup injury if it were there would've been to the left of midline,
5 front, if that had occurred. There was not an injury in that area.

6 There were multiple areas of hematoma that coursed over the whole
7 circum – the whole surface rather of the brain, and was clearly a very violent, very
8 sustained, very significant injury to this child.

9 I raise these issues because it's my belief based on the sentencing
10 memo that counsel and the Defendant are trying to obscure the situation and again
11 regain somehow the possibility or, in the Court's view, that this somehow was some
12 kind of an accident, and he only pled because he's trying to cut his losses.

13 He is trying to cut his losses because had he gone to trial, I believe that
14 at least based on the evidence that would've been presented to a jury that a
15 reasonable competent jury would have found him guilty of a higher charge. That's
16 why he pled Alford, and that's – we had a whole discussion about whether we were
17 going to allow him to do that or not, but I believe that based on the evidence that I've
18 represented to the Court that it's part of the record as it stands that there is clear
19 evidence of abuse in this case based on the medical people, the medical examiner,
20 the injuries, the multiple stories, all of the things that go into play.

21 That being said, we have a situation where the Defendant himself is
22 essentially perpetrating an injury to this child, which results in the child's death.
23 That's not the sole sort of part of this to look at; however, we do have to go back,
24 and I know the Court was aware of this because we litigated it during trial, that there
25 was a child who died supposedly of SIDS at some point, but because of that child's

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1 death, these parents were specifically schooled and instructed regarding the care of
2 children and what to watch out for and what not to wait for and to call immediately if
3 certain signs and symptoms occurred with a subsequent child. They had a
4 subsequent child, actually the very child that died in this particular case.

5 In Hawaii, they present to their doctor, they present to their doctor with
6 a child who has had the same signs and symptoms as the previous child who died,
7 supposedly of SIDS, and at that time, the doctor is concerned enough because
8 they've delayed again in treating or seeking medical attention that he sends the child
9 to the hospital.

10 At the hospital, they find evidence of multiple rib fractures, leg fracture.
11 There were issues related to this child, which were non-accidental trauma.

12 A subsequent CPS case is brought forth, and it is extended over and
13 above what would normally be the case for an intervention for abusive injuries to a
14 child. Because of what? Because of how Khayden, excuse me, how Jonathan and
15 Christina, his wife, how they responded and acted in relation to the investigation that
16 took place. Now eventually that investigation closes. They move here to Las
17 Vegas. And within a relatively short time, we have Khayden dead.

18 There's another child in the household. This other child is currently,
19 based on my belief of the Family Court proceedings, residing with the mother,
20 Christina. In the sense that there is even a remote possibility that this Court would
21 do something like grant probation, right now this man could be in the custody of
22 another child. That is a separate matter, but I want to make sure the Court's aware
23 of this.

24 With regard to his plea and what he ended up pleading to and what the
25 State said they would not argue above, I will not argue for greater than a 10-year

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1 bottom sentence.

2 THE COURT: Right, you agreed to limit the bottom to ten years.

3 MR. STAUDAHER: Correct. But, however, sometimes when we have
4 situations like that where there's sort of a cap, that the Court looks at the situation
5 and says; well gosh, you know, I'm not going to give him the maximum because of
6 whatever reason. I'll give him something less than what the State does.

7 This isn't one of those cases that I believe that the State, in arguing for
8 the max that I can argue for under the agreement, is an appropriate sentence.

9 We have this single child who died in this instance of clear abusive
10 injuries, having been subjected to abusive injuries in the past from the open CPS
11 investigation, and this Defendant was the one who was charged with the crime back
12 in this case, and he was also involved back in Hawaii with the same child in the
13 past. And he had a previous child who also died of SIDS, supposedly.

14 There's never been any issue of whether that's true or not true, but we
15 do know that he has a child that died at one year of age, and based on that, based
16 on the CPS investigation, there is no question that he was on notice from the very
17 onset that he should've at – even if there was an accident, sought medical attention,
18 gotten some help for this child, yet he didn't do that, and when he did seek out help
19 from his wife, however long it was after the events that took place, we know that he
20 minimized her even, the severity of what was taking place.

21 The reason I say that there – we don't know the time period in which –
22 from injury to actual reaching out to the wife occurred, we know that it couldn't have
23 been earlier than around 4 p.m. in the afternoon because that's when the child is
24 dropped off at the house. However, the fact that we have blood on multiple paper
25 towels in four different locations within the home shows that at least there was

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1 something going on in the home long before there was any call to first responders to
2 show up at the scene, and then multiple stories of what takes place, thereafter, and
3 never really coming forward and owning up to what he did. That is indicative and
4 deserving of the maximum sentence in this case that I'm allowed to ask for, which is
5 ten years on the bottom. I would ask that the Court provide that information, actually
6 provide that sentence to this individual.

7 Before I stop; however, there is one other item that I want to talk about,
8 and even in the PSI that's indicated, and I think they're recommendation in the PSI
9 was a 71 to 264 if the psychological report said that there was some sort of, you
10 know, increased risk to re-offend kind of thing. I find it remarkable that in this
11 psychological report, remarkable but when you look at what the reviewer, what the
12 person who analyzes this for risk to re-offend, what he had available and what he
13 looked at, there wasn't a single reference to any event involving the same child in
14 Hawaii, and a CPS investigation that lasted for a very long time in respect to the way
15 that they normally go. No mention of that at all, yet we're talking about risk to re-
16 offend, and in the same child we have re-offense occurring in the one child who
17 ends up dying, yet this report that comes back that miraculously didn't include that
18 little tidbit of information, got a bunch of other stuff, got letters, got information from
19 the Defendant himself, he never tells this psychological review that he had a CPS
20 case involving the same child in Hawaii in which there was a finding of essentially, a
21 substantiated finding of child abuse, rib fractures, in the life pertaining to the same
22 child. This isn't worth the paper it's printed on because of that. So I don't believe
23 that the Court can rely upon this in any way to support a low risk to re-offend.

24 The fact of the matter is, since he's perpetrated crimes in succession on
25 the same child, I would say that he is a high risk to re-offend.

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1 THE COURT: I mean, candidly, I thought this evaluation was quite brief
2 compared to other evaluations that we see, and I didn't find it very helpful one way
3 or the other. I'll just be candid.

4 MR. STAUDAHER: So with that, Your Honor, I will submit it. I would ask you
5 to depart from the recommendation.

6 THE COURT: Are you making a recommendation on the structure of the
7 sentence?

8 MR. STAUDAHER: Well I would ask --

9 THE COURT: You were arguing for --

10 MR. STAUDAHER: A collective ten years.

11 THE COURT: -- ten years on the bottom --

12 MR. STAUDAHER: Right. I would ask --

13 THE COURT: -- but you're not making a recommendation as to how the
14 Court structures that. Is that correct?

15 MR. STAUDAHER: With the exception of -- I would -- however the Court
16 would like to structure the ten years if the Court were to do that, that we do have
17 consecutive time between the two counts, so a certain -- well I guess it has to be
18 that way.

19 THE COURT: You'd have to because neither counts --

20 MR. STAUDAHER: Is enough.

21 THE COURT: -- neither count provides for a ten-year sentence on the bottom

22 --

23 MR. STAUDAHER: Right that I --

24 THE COURT: -- under the sentencing guidelines of the 40%.

25 MR. STAUDAHER: I agree with the Court

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1 THE COURT: Okay.

2 MR. STAUDAHER: -- so I would just ask the Court, at the Court's discretion to
3 structure however the Court wishes, but I'm -- I'm really looking for no -- I mean
4 obviously the ten years on the bottom.

5 THE COURT: All right. Ms. Lemcke would you like to speak first or would
6 you like your client to speak first or would you like your client to speak first.

7 MS. LEMCKE: I'll go ahead and address the Court first. May I just note that
8 for the record, there is a victim impact speaker, Christina Rodrigues, the mother of
9 the decedent.

10 THE COURT: Oh, okay. We didn't get notice of that. I don't --

11 MS. LEMCKE: I -- my understanding from reading the PSI is that they made
12 attempts to contact her, which were unsuccessful. I don't know, I think she did
13 change her phone number at some point is my understanding, but she would like to
14 address the Court, it's very brief.

15 THE COURT: Okay. That's fine. Pursuant to statute, she can speak last.

16 MR. STAUDAHER: Yeah, the State doesn't have an objection to that. We
17 didn't not receive notice either.

18 THE COURT: All right. Okay. And nor did the Court. But that's fine. She
19 can speak last, like I said pursuant to statute.

20 MS. LEMCKE: And Your Honor, with respect to the psychiatric evaluation
21 that was done in this particular case, I would urge Mr. Staudaher before he makes
22 representation as to what the clinician may or may not have had access to, to
23 actually call and speak to the clinician, because I'm going to represent to Your
24 Honor that I took every record that they gave me from CPS in Hawaii. I had them all
25 copied. I put them into an Xpando folder, quite frankly much nicer than what I

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1 provided to the Court yesterday in the sentencing memo, and I hand-delivered them
2 myself to the examining doctor because I felt as though it was imperative for him to
3 have access to all the information available to him about not only this case and the
4 facts of this case, and the facts that were in dispute here, but Mr. Quisano's
5 background as well.

6 So, for Mr. Staudaher to stand up and represent to this court now that there
7 was a half-hearted or misguided attempt by my – on my part or someone else's part
8 to mislead the examining clinician into avoiding pertinent and relevant, if not critical
9 material is just not true.

10 THE COURT: I don't think that was Mr. Staudaher's –

11 MR. STAUDAHER: It was not.

12 THE COURT: -- contention.

13 MR. STAUDAHER: I'm basing it off of the report.

14 THE COURT: I think what Mr. Staudaher is saying is it's curious that the
15 evaluator doesn't reference that. And like said, candidly, this seemed awfully brief to
16 me compared to other evaluations that the Court has been given in different various
17 unrelated matters, and I thought it was curious that that wasn't really addressed, and
18 I didn't think I had a comprehensive picture –

19 MR. STAUDAHER: Right.

20 THE COURT: -- of this Defendant –

21 MR. STAUDAHER: And again my –

22 THE COURT: -- and that was my separate assessment, just reading it
23 myself. And so I think that's what Mr. Staudaher meant, not to suggest that the –

24 MR. STAUDAHER: -- I specifically didn't say the Defense –

25 THE COURT: -- Defense did anything wrong.

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1 MR. STAUDAHER: -- did anything wrong. I'm saying that based on his own
2 report, he even lists the items that he -- that he actually reviewed. They may have
3 provided him more than this, obviously from what Ms. Lemcke is saying they did.
4 That's -- he either didn't review it or didn't think it was pertinent to an evaluation for a
5 risk to re-offend, so he had Hawaii CPS records and all the like, he doesn't mention
6 it here as something he was provided and certainly something that he didn't include
7 in his report because he never mentions it as something he either hadn't reviewed
8 or he that he took into consideration when he made his evaluation.

9 THE COURT: All right. Thank you. Ms. Lemcke.

10 MS. LEMCKE: Well, and if the Court -- to the extent that the Court is
11 concerned with the brevity of the evaluation, I'm more than happy -- if you wanted to
12 continue it, to get a more thorough evaluation done.

13 THE COURT: No I'm just staying I -- I mean, I just didn't feel that it was as
14 comprehensive as some of the evaluations we've seen in the past.

15 MS. LEMCKE: Well -- and again my offer stands if the Court would like a
16 more comprehensive evaluation. I'd be happy to do it. When we retained Dr.
17 Collosimo [phonetics] it was done so with the understanding that we actually paid
18 him beyond the typical rate that we pay clinicians to do risk to re-offend evaluations
19 so that we would get that comprehensive evaluation, and since I have not been back
20 on the murder team for a long time, I don't have a lot with which to compare it --

21 THE COURT: Right.

22 MS. LEMCKE: So, because I knew that we had asked for a more involved
23 eval, I assume that I got one. So, unfortunately, maybe that might be short
24 sidedness on my part to the extent that I didn't actually pull it and then compare it to
25 other evals that have been done for people on our team.

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1 That said, again, I'm happy to do another evaluation on a -- you know,
2 instructing the clinician to be more thorough, but that having been said, the statute
3 requires as a prerequisite to Your Honor considering probation, that we get the risk
4 to re-offend psych done, that it come back indicating that they're a low risk to re-
5 offend before Your Honor can consider probation, and that statutory requirement --

6 THE COURT: Has been met.

7 MS. LEMCKE: -- has been met. So -- now I wasn't really honestly gonna get
8 in -- back into the facts of the case because I kinda wanted to do that by way of the
9 sentencing memo to avoid talking into next week, but if I may just have a minute to
10 respond relative to the representations that Mr. Staudaher made, you know, the
11 interesting thing about the spatter evidence, it is kind of critical in a way because
12 during the plea canvas, Mr. Staudaher made it sound as though there was a
13 constellation of injuries, and I'm using his -- his phrasing there myself; and that those
14 constellation of injuries show that there was, you know, maybe more than one
15 trauma inflicted to this child to wit, you know, a blow to the chest that caused the
16 contusions to the chest and maybe more than one blow to the head or shaking in
17 conjunction with a skull fracture. And that's why the spatter evidence is critical.
18 Because what it reveals that is the purported spatter on the carpet, is not that there
19 was a blow to chest, as Mr. Staudaher had initially kind of suggested to the Court
20 during the plea canvas, it just reveals that there was some kind of DNA of unknown
21 origin on the carpet. It could've been epithelial DNA for all we know, because they
22 play. This was a great room where all the kids and the family played.

23 And I would point out that there wasn't just Khayden's DNA. There was a
24 mixture of his and somebody else's. So what that tells you about the nature of what
25 was found on that carpet I think is really not all that compelling.

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1 Mr. Quisano admitted from the minute that the officers and the first
2 responders came in that after Khayden sustained a head injury, that he began
3 vomiting. So obviously, there's gonna be, you know, some kind of either vomit or
4 blood. Mr. Quisano was very forthright in saying that the vomit had some blood in it.
5 He directed the first responders to the towels that had the blood on it. It wasn't like
6 there was some attempt to hide this.

7 But the contusions are important to the extent that the State represents
8 that there were contusions. It's important because they kind of use that to suggest
9 that there was another blow in addition to what we know was a blow to the head,
10 and there wasn't.

11 Number one, the only evidence of the contusions to the lung came from
12 the imaging that was taken at UMC. Their own expert that they hired, Dr. Montes
13 [phonetics] who is a pediatric radiologist, who reviewed their -- what they provided to
14 him said; no contusions to the lungs. What we have is a collapsed lung.

15 Dr. Gavin, the coroner who did the autopsy said; no evidence of
16 contusions to the lungs. Now, in fairness, she did also say that because of the
17 pulling that occurred at that point, by the time she receives the body for autopsy, it's
18 possible that there could've been some contusions but that they just simply weren't
19 visible. But, I think when you have their own expert saying; no I reviewed these
20 radiographs, there's no contusions to the lungs, they misread this and what they
21 were actually was a collapsed lung, not lung contusions, and when you have the
22 examining coroner who's actually examining the body itself saying no contusions,
23 there's fairly compelling evidence that there wasn't any contusions and; therefore,
24 no separate blow to the chest, as the prosecution would kind of suggest to this
25 court.

ROUGH DRAFT TRANSCRIPT

1 Additionally, Dr. Kasey [phonetics] who actually treated Khayden at the
2 hospital said that if there were contusions as the radiologist that UMC thought, that
3 those contusions could have been caused by CPR, and we know that before the
4 child was brought to the hospital, there was extensive CPR performed on him.

5 Ultimately what you have and this kind of gets back to what the State
6 represented about this constellation of injuries, is you've got a skull fracture. The
7 child was injured. You've got a single skull fracture from which all of this other stuff
8 emanates, all the bleeding on the brain, all the disrupting of the bridging veins, and
9 the hematomas, and all this stuff, that is all perfectly consistent with a single skull
10 fracture, and we know that not only because that's just basic biology; and had the
11 matter proceeded to trial, the jury would've learned that, but you get that from Dr.
12 Kasey when he testified at the preliminary hearing. He said; it's possible that the fall
13 that Mr. Quisano described would have generated the impact injury necessary to
14 cause the fracture, and then the secondary biochemical cascade of stuff that
15 happened as a result.

16 And then more importantly, you get the coroner. And keep in mind – I
17 learned recently from a criminalist at Metro that actually – and very – coroners, kind
18 of their protocol suggest that they are but only in a very few cases supposed to
19 declare a death undetermined, you know, with a manner of death undetermined,
20 and this is one of those cases in which the coroner did that.

21 Now, I understand that Mr. Staudaher represents to the Court that well
22 it had to have been more than a single impact injury, and it had to have been
23 something that was inconsistent with the Defendant's version of events, because Dr.
24 Gavin tells us that. Well that's not what Dr. Gavin said. She said it was possible. It
25 could've happened the way that Mr. Quisano described, and that that is why she

ROUGH DRAFT TRANSCRIPT

1 chose this case to be one of those very rare instances in which she did not find that
2 the death was due to non-accidental trauma and that the manner of death was
3 homicide.

4 So with that, Your Honor, it kind of brings us back to that single impact
5 injury that ultimately we all know that we all agree occurred in this particular case.

6 And let me say this, you know, to the extent that you believe that
7 Jonathan actually caused this injury to Khayden's head, you also have to believe
8 this, that not for one single secondary moment did he intend to actually hurt or
9 certainly kill his own child, but rather this is an issue of succumbing to at least, again
10 if you believe that he inflicted these injuries, it's an issue of succumbing to kind of a
11 single momentary lapse or loss of patience if anything else. And that's something
12 that tells you less about Jonathan as a person but more about kind of the frailties of
13 the human condition.

14 And I think that when you see that the legislature specifically made
15 voluntary manslaughter and child abuse and neglect probationable offenses, they
16 necessarily themselves considered the fact that the human condition is a frail one
17 and that there are situations in which probation or certainly a very low prison term
18 are appropriate. Because if you focus solely on the consequences you'd always
19 give somebody prison time, because voluntary manslaughter by definition involves
20 somebody who's died. Child abuse and neglect with substantial bodily injury, by
21 definition, always involves who's been significantly injured.

22 So, if we were focusing solely on the consequences, then you'd always
23 give prison, and the legislature said when then created the sentencing range for
24 these particular punishments, that there are gonna be those circumstances in which
25 probation or a very low prison sentence is appropriate.

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1 Now, I would relate to the Court that unfortunately Parole and Probation
2 does not kind of adopt this perception if you will, because I actually attended
3 Jonathan's interview, and I'll tell ya, I found it very informative. I've never actually
4 attended one. They're quite short, to be honest with you. The interview itself lasted
5 probably 10 or 15 minutes. But, when – in talking to the probation officer that did the
6 actual report, what he indicated to me was that they are basically instructed at
7 Parole and Probation that on these kind of offenses, they pretty much have to
8 recommend prison time unless there's something really wildly extenuating about the
9 circumstances that suggest to them that they should go to their superior and make a
10 pitch for a recommendation that's less than a significant amount of prison time.

11 The fact that Parole and Probation has that unstated protocol in place, I
12 think departs from the spirit of the statute, where you have a legislature who has
13 specifically said that because we recognize these frailties in the human condition
14 and because we recognized that there are acts that may result in catastrophic yet
15 unintended consequences, we want the Courts to be able to consider probation and
16 otherwise lower end prison sentences.

17 And this particular case, with this particular Defendant is one of those
18 cases where a Court, such as Your Honor, should consider a lower sentence or a
19 grant of probation.

20 You know, certainly, if nothing else, everybody here agrees that what
21 happened, in this particular instance, was not some preconceived plan on the part of
22 Mr. Quisano. It wasn't part of some systemic ongoing torture abuse. It was an
23 instantaneous action, if you believe that he actually perpetrated the harm in this
24 particular case.

25 Because otherwise, what you have here is you have an individual with

ROUGH DRAFT TRANSCRIPT

1 basically criminal history, one misdemeanor DUI. After high school graduation, he
2 entered a work force as a laborer. He became a productive law-abiding member of
3 society.

4 In 2006, he fell in love with Christina Rodrigues, and she's gonna speak
5 to Your Honor in just a minute. She's here in court along with his family and friends
6 who support him. They had children. He worked very hard to support and care for
7 his family. He spent much of his free time enjoying the company of his family and
8 friends and he maintained a stable residence and a stable employment, something
9 that continues to this day.

10 As Your Honor could see, by the letters – the reference letters that we
11 attached, he certainly has a place to live should he be granted some release at
12 some point either now or in the future, and he has people that are – I can represent
13 to the Court that he has people on the outside, at least one man in particular, who
14 has been involved in the automotive business for quite some time who's expressed
15 willingness to do whatever he can to help Jonathan find gainful employment upon
16 his release.

17 The letters that we submitted, of which there were several, by all
18 accounts reveal to you the fact that Jonathan is a kind, compassionate, thoughtful
19 individual who is both generous with his time and his talents; that he is the type of
20 person, and this is the type of case, and if I may approach, Your Honor, I'm going to
21 show you what's been marked as Defendant's Exhibit A –

22 MR. STAUDAHER: Yes.

23 MS. LEMCKE: -- that he is the type of person who is deserving of this Court's
24 consideration for a probationary sentence or at worst for a minimal prison term. And
25 if I may have the Court's indulgence while perusing that, I'd like to just read an

ROUGH DRAFT TRANSCRIPT

1 excerpt from a letter written by United States Marine Corps. Sergeant, Justin
2 Quisano, who is Mr. Quisano's brother, because I think it, gives you tremendous
3 insight into Mr. Quisano's character and the kind of person he was growing up.

4 Jonathan Scott Keoni Quisano is my older brother, and I've known him
5 all my life, 26 year. Jonathan and I weren't that close growing up. I played
6 numerous sports while Jonathan went home after school to take care of the house
7 and help our grandmother. We both took turns with the chores; however, my
8 brother did most of the labor around the house like cutting the grass, cleaning out
9 the interior and exterior of the house, and helping others that needed an extra hand.
10 No matter who – no matter who needed the help and what needed to be done, my
11 brother was there to take care of it. Even if he didn't know how to fix the problem,
12 he would find the way to figure it out and get the issue resolved.

13 It wasn't until high school where our brotherly bond grew tighter. We
14 spent all of our free time together on the beaches of Hawaii with our cousins, or at
15 the mall, movie theater. Growing up Jonathan showed that he was a warm hearted,
16 reliable, and caring person with tremendous integrity.

17 My brother is a kindhearted individual. His generosity extends beyond
18 family and friends. We have both prided ourselves on contributing to society, and I
19 feel that my service in the United States Marine Corps and Jonathan's generosity to
20 others is evidence of the fact that we continue to work toward that goal.

21 I urge you, Your Honor, this morning to let Jonathan move forward with
22 that goal and sentence him to a term of probation, at worst, a minimal prison
23 sentence.

24 THE COURT: All right. Thank you. Mr. Quisano what, if anything, would you
25 like to state to the Court before the Court pronounces sentence against you?

ROUGH DRAFT TRANSCRIPT

1 THE DEFENDANT: I want to say I'm sorry for whatever I did wrong. I'll do
2 everything – anything possible to get my life back on track, meaning if I have
3 probation, I'll take classes, counseling, whatever possible, Your Honor. That's it.

4 THE COURT: All right. Thank you. We'll hear from the speaker.
5

6 **** 11:57 a.m. – 12:09 p.m. has been previously transcribed ****

7 THE COURT: When the Court reviewed the preliminary hearing transcript
8 some months ago in this case, I was concerned about some of the conflicting
9 medical evidence, and that was the subject of, I believe the Defense's writ, at least
10 one of the subjects.

11 However, you know, the Defendant entered a plea of guilty to these
12 charges, whether it's by the Alford, pursuant to the Alford decision or otherwise. The
13 Court, when someone enters a plea of guilty, has to assume that that person is
14 guilty, number one; and number two, I think really the tipping point for the Court in
15 this case is the prior CPS involvement in the State of Hawaii, and the injuries that
16 the victim in this case sustained in Hawaii.

17 Like I said before at a prior hearing, you know, whether or not the first
18 child died of SIDS or not, the Court's willing to accept that that's the case that those
19 were natural causes.

20 However, for many reasons, you know, the fact that this child was
21 injured, you know, CPS was involved, I think, if nothing else, you know, put this
22 Defendant on notice as to what he should do, and if anything, he should've been
23 more careful with this child than he was, even accepting the Defense's version of
24 events, which as I said already, the Court is unwilling to accept.

25 Based on all of that, the Court's inclined to follow the negotiation and
ROUGH DRAFT TRANSCRIPT

1 the State's recommendation in this case.

2 So, Mr. Quisano, by virtue of your pleas of guilty, you are hereby
3 adjudged guilty of Count #1, Voluntary Manslaughter and Count 2, Child Abuse,
4 Neglect, or Endangerment with substantial bodily harm.

5 In addition to the \$25 administrative assessment, \$150 DNA analysis
6 fee, and the fact that you must submit to a test for genetic markers, on Count #1,
7 Voluntary Manslaughter, you're sentenced to a minimum term of 48 months in the
8 Nevada Department of Corrections and a maximum term of 120 months in the
9 Nevada Department of Corrections.

10 On Count #2, Child Abuse, Neglect, or Endangerment with substantial
11 bodily harm, you are sentenced to a minimum term of 72 months in the Nevada
12 Department of Corrections and a maximum term of 230 months in the Nevada
13 Department of Corrections; that is imposed consecutively with the time I gave you
14 on Count #1. You are entitled in this matter to – you were entitled to 458 days of
15 credit for time served. Has anyone done a current calculation?

16 MR. STAUDAHER: I came up with 486 through today, Your Honor.

17 MR. REED: Add 30 to the 458.

18 THE COURT: Okay. I'm sorry; 486 days of credit for time served – or –

19 MR. STAUDAHER: I had an additional 28 days, which was from –

20 MR. REED: its 20 –

21 THE COURT: Okay. And you're saying 488 days.

22 MR. REED: Yes.

23 THE COURT: All right. We'll give him the 488 days of credit for time served.

24 All right. Thank you.

25 [Bench Conference]
ROUGH DRAFT TRANSCRIPT

1 THE COURT: The Defense was concerned with what the Court said at the
2 time of sentencing. She was afraid my comment suggested that I thought the
3 Defense had stipulated to a minimum of 10 years. Obviously, that is not the case.
4 What the Court meant was the State agreed to cap the bottom exposure at 10 years
5 in a negotiation, and the State is following that in that I sentenced him to 10 years on
6 the bottom, imposing the maximum penalty allowable by law on the voluntary
7 manslaughter, which is 48 to 120 and imposing an additional six years on the
8 bottom on the child abuse and neglect, running that consecutively which then gives
9 him an exposure of 10 years on the bottom. He must of course serve 48 months
10 minimum before he's even eligible for parole on Count #1 and then if he makes
11 parole on Count #1, he begins serving his time on Count #2, and then in order to
12 see freedom, would have to make parole on Count #2. So that's the way that
13 sentence is structured, just to make that clear for the record. The negotiation was
14 the state would not seek more than 10 yours, so the Court is following the
15 negotiation in that regard.

16 MR. STAUDAHER: Thank you, Your Honor.

17 THE COURT: All right. Thank you. Imposing the 10 years that was
18 requested by the State in this case.

19 MR. STAUDAHER: Thank you.

20 THE COURT: All right. Hopefully that clarifies it for the record. All right.
21 thank you.

22 [Proceedings concluded at 12:14 p.m.]

23

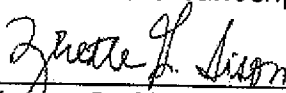
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ROUGH DRAFT TRANSCRIPT

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ATTEST: Pursuant to Ryle 3C (d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



Yvette G. Sison
Court Recorder/Transcriber

ROUGH DRAFT TRANSCRIPT

AFFIDAVIT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Christiane Wilson-Dunlap, hereby swear (or affirm) under penalty of perjury, that the following assertions are true of my own personal knowledge:

1. I am employed by the Clark County Department of Family Services and I was the permanency worker assigned to subject minor K.Q. in case J330866.
2. That on June 9, 2014, I requested case closure of the dependency case as to the parents because the natural mother, Christina Rodriguez, articulated protective capacity. Christina Rodriguez had come to recognize that K.Q.'s sibling died as a result of physical abuse by the natural father, Jonathan Quisano. Christina Rodriguez further expressed that Jonathan Quisano should be punished for his abuse of K.Q.'s sibling and that she believed Jonathan Quisano should go to prison.
3. That based on Christina Rodriguez' substantial completion of her case plan and articulation of the need to protect K.Q. from Jonathan Quisano, the dependency case was closed with an order giving sole physical custody to Christina Rodriguez and no contact between Jonathan Quisano and K.Q. until Jonathan Quisano petitioned the court for visitation and proof that he completed his case plan.

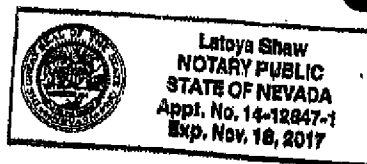
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Christiane Wilson-Dunlap
Christiane Wilson-Dunlap

SUBSCRIBED AND SWORN TO before me

this 4th day of September 2014.
by: Christiane Wilson-Dunlap

[Signature]
NOTARY PUBLIC in and for the said
County and State of Nevada.



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JONATHAN QUISANO,
Appellant,
vi.
THE STATE OF NEVADA,
Respondent.

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STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

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ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

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NORMAN REED
HOWARD S. BROOKS

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