



CLERK OF THE COURT

1 **RTRAN**

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
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8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

11 **FREDERICK HAROLD HARRIS, JR.**
12 **aka, FREDRICK HAROLD HARRIS, JR.**

13 **Defendant.**

) **CASE NO. C291374-1**

) **DEPT. XII**

14
15 **BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE**
16 **MONDAY, NOVEMBER 24, 2014**

17 ***RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:***
18 **EVIDENTIARY HEARING**
19 **DEFENDANT'S MOTION FOR A NEW TRIAL**

20 **APPEARANCES:**

21 **For the State:**

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

KRISTINA A. RHOADES, ESQ.
Deputy District Attorney

23 **For the Defendant:**

BETSY ALLEN, ESQ.

24
25 **RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER**

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15
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17
18
19
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22
23
24
25

INDEX OF WITNESSES

DEFENSE’S WITNESS:

KATHLEEN SMITH

Direct examination by Ms. Allen	4
Cross-examination by Ms. Luzaich	20
Redirect examination by Ms. Allen	24

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STATE’S WITNESSES:

YVONNE LEWIS

Direct examination by Ms. Luzaich	29
Cross-examination by Ms. Allen	35
Redirect examination by Ms. Luzaich	38

ROBERT BELL

Direct examination by Ms. Luzaich	40
Cross-examination by Ms. Allen	44
Redirect examination by Ms. Luzaich	56

1 MONDAY, NOVEMBER 24, 2014; 11:14 A.M.

2
3 THE COURT: State versus Frederick Harris, Case C291374. Mr. Harris is
4 present. He's in custody. Will the parties state their appearances?

5 MS. LUZAICH: Good morning, Judge. Lisa Luzaich and Kristina Rhoades for
6 the State.

7 MS. ALLEN: Your Honor, Betsy Allen on behalf of Mr. Frederick Harris.

8 THE COURT: Mr. Oram in the back is not going to sit with you?

9 MS. ALLEN: He's supervising me.

10 THE COURT: Okay. He always makes me nervous when he's in here sitting
11 in the back.

12 MS. ALLEN: Oram.

13 THE COURT: Are you going to call a witness?

14 MS. ALLEN: Yes, I am.

15 THE COURT: Okay. Is she here?

16 MS. ALLEN: She is.

17 THE COURT: Okay.

18 MS. ALLEN: We would call Kathleen Smith.

19 THE COURT: Is she outside?

20 MS. ALLEN: She is.

21 THE COURT: Okay.

22 MS. ALLEN: Or should be, I hope so.

23 MS. LUZAICH: You know, Mrs. Harris is technically a potential witness.
24 She's the one who brought all the witness – yeah.

25 MS. ALLEN: I'm not calling her.

1 THE COURT: Is Mrs. Harris in the courtroom?

2 MS. LUZAICH: She is.

3 MS. ALLEN: Well, I have no intention of calling her.

4 MS. LUZAICH: It's my understanding that this person approached Mrs. Harris
5 and Mrs. Harris therefore approached –

6 THE COURT: Okay. If you want her excluded from the courtroom. Ms.
7 Harris, you're going to be asked to leave the courtroom because you may be a
8 potential witness. Don't talk about the facts and testimony in this case or any
9 testimony you'll be asked to be given to this Court. Okay. So if you'll just sit out in
10 the hallway we'll let you know when you can come in Ms. Harris and thank you very
11 much. If this goes any further, Ms. Harris could potentially be a witness.

12 Thank you for being here. Please raise your hand, your right hand, so
13 you can be sworn by the clerk.

14 **KATHLEEN SMITH**

15 [called as a witness, duly sworn, testified as follows:]

16 THE COURT CLERK: And please state and spell your name for the record.

17 THE WITNESS: Kathleen Smith, K-a-t-h-l-e-e-n, S-m-i-t-h.

18 **DIRECT EXAMINATION**

19 BY MS. ALLEN:

20 Q Good morning, Kathleen, how are you?

21 A Morning. Fine, thanks.

22 Q You're currently employed by the county, is that correct?

23 A Yes.

24 Q Okay. And you work downstairs?

25 A Yes.

1 Q And what do you do?

2 A I'm a office specialist.

3 Q Okay. And you work at the information desk?

4 A Yes, court information desk.

5 Q Okay. And you were selected as one of the jurors on the State of

6 Nevada versus Frederick Harris, is that correct?

7 A Yes.

8 Q And you sat as a juror in deliberations, deliberated, is that correct?

9 A Yes.

10 Q Okay. Do you remember approximately when this was? Just the

11 approximate month?

12 A April.

13 Q Okay. So it was quite some time ago, is that correct?

14 A Yes.

15 Q All right. At some point after the verdict you approached or you saw Mr.

16 Harris' mom, is that correct?

17 A Yes.

18 Q Okay. Where did you see her?

19 A At the store, Walmart on Craig and Clayton.

20 Q Okay. Did you approach her or did she approach you?

21 A We kind of like seen each other and I, you know, said hello to her.

22 Q Okay. Did you initiate a conversation with her?

23 A We both –

24 THE COURT: How did you know who she was?

25 THE WITNESS: I remember seeing her from the courtroom.

1 THE COURT: You just remember seeing her in the courtroom and you knew
2 she was Defendant's mother?

3 THE WITNESS: Yes.

4 THE COURT: Was there any evidence to that affect or you just figured that
5 out on your own? I'm over here [indicating].

6 THE WITNESS: Okay.

7 THE COURT: Did she testify?

8 THE WITNESS: No.

9 THE COURT: Okay. You just assumed it was the Defendant's mother?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And so you went up to her in Walmart and said are you
12 the Defendant's mother?

13 THE WITNESS: No, no, no.

14 THE COURT: You just thought she was Defendant's mother?

15 THE WITNESS: No, 'cause I saw her in the court – I saw her in the
16 courtroom every day.

17 THE COURT: Okay. That doesn't mean she's the defendant's mother.

18 THE WITNESS: Yeah, but I mean I – I could just tell that she was his mother
19 and then I – they look alike and –

20 THE COURT: You could just tell that was –

21 THE WITNESS: Yes –

22 THE COURT: -- Defendant's mother?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 MS. ALLEN: Do you recall if during the course –

1 THE WITNESS: We weren't in the store. We were outside the store, before
2 entering the store.

3 MS. ALLEN:

4 Q Do you recall if during course of the trial his mom was identified by a
5 couple of the witnesses?

6 A I guess.

7 THE COURT: Okay. She was. All right.

8 MS. ALLEN: Couple of times.

9 THE COURT: Okay. Well, see –

10 MS. ALLEN: I was trying to –

11 THE COURT: -- it was a long time for me too.

12 MS. ALLEN: I was trying to interject, but I didn't want to interrupt the Court,
13 so.

14 Q Okay. So – and nonetheless, skipping forward then, do you recall
15 initiating the conversation with Ms. Harris?

16 A That we spoke, yes.

17 Q Okay. Do you remember what the substance of the conversation was?
18 Or, what did you – did you begin by talking about the trial? Do you remember if you
19 brought it up?

20 A I can't remember.

21 Q Okay. Do you remember any of the things that you said to her that day
22 specifically?

23 A Just one thing, you know, I apologized about her son.

24 Q Okay. As a result of – well, let me ask you this at some point in time did
25 I make contact with you? After you had the conversation with Mary Harris did I – or,

1 I'm sorry, Dorothy Harris. Did I make contact with you?

2 A Yes, yes.

3 Q Okay. My investigator, do you remember him coming to talk to you?

4 A Yes, yes.

5 Q Okay.

6 A Okay. I remember that.

7 Q Do you remember tall, tall man –

8 A Uh-huh.

9 Q -- his name was Harrison –

10 A Uh-huh.

11 Q -- identified himself as working for me?

12 A Yes.

13 Q Okay. Do you remember why we contacted you or do you remember

14 what the reason was in which we contacted you?

15 A I think to find out what – if there was anything that went on during the

16 jury deliberation that may have been of any type of substance.

17 Q Okay. At some point did you tell one of us about things that another

18 juror had said during the course of deliberation?

19 A Yes.

20 Q Okay Do you remember which juror it was?

21 A Just the juror that was sitting across from me.

22 Q Can you describe her or him?

23 A Was a female. She wore a flower all the time in her hair.

24 Q Okay. What color was her hair?

25 A Black.

1 Q Was she white, black, Hispanic?

2 A Hispanic.

3 Q She's Hispanic, okay. And did –

4 A Well, that's what, you know, she looks I mean I don't know.

5 Q She looked Hispanic to you?

6 A Yes.

7 Q Okay. Was there anything else about her that stood out to you as far
8 as her appearance?

9 A No. As far as appearance, no.

10 THE COURT: Besides a flower in her hair every day was that what you were
11 getting at?

12 MS. ALLEN: Yeah.

13 THE COURT: Okay.

14 MS. ALLEN:

15 Q Did you see her outside?

16 A Yes.

17 Q Okay. So that's the same juror?

18 A Yes.

19 Q All right. Do you remember – how long did you deliberate? How long
20 was the jury out, do you remember how many days?

21 A Three, four.

22 Q And you said you sat right across from her, is that correct?

23 A Yes.

24 Q Did you have an opportunity then to observe her a good part of the time
25 that you were deliberating?

1 A Yes. Well, along with everybody.

2 Q Right. What would you say her demeanor was?

3 A As far as what; I mean just throughout the deliberation or –

4 Q Throughout the deliberations. Let's say when it started. What was her
5 demeanor when it first started?

6 A Everybody was pretty calm. I mean she was calm.

7 Q Okay. Did that change?

8 A Yes.

9 Q Okay. When did that change?

10 A Over a course of time.

11 Q If you remember?

12 A I'd say like maybe on the third day.

13 Q All right. And when you say changed, what happened?

14 A Because then she started speaking a lot about things that had
15 happened to her in the past.

16 Q Okay. When I ask you about her demeanor was she happy? Was she
17 crying? Was she angry?

18 A She was crying. She was upset.

19 Q Okay. When you say she was crying, was it just for like a limited
20 instance in which she would speak about it or was it crying nonstop?

21 A When she would speak about being beat up by her mom.

22 Q Okay. Did she talk about that a lot?

23 A Yes.

24 Q All right. And you said that happened around the third day?

25 A Yeah, from what I can recall. I think it was the third day.

1 Q At a point – do you recall a point in time when she got so emotional that
2 it seemed as if maybe she couldn't continue?

3 A I can't recall.

4 Q You said that she talked about her mom beating on her?

5 A Yes.

6 Q Did she disclose that she had been sexually abused as well?

7 A From what I – I think she may have; I can't really recall that vividly but I
8 do recall her talking more so about the beatings.

9 Q Do you remember telling Harrison, my investigator, that you recalled
10 specifically that it was sexual abuse? She talked about being sexually abused?

11 A Yeah, I can't recall.

12 Q Do you recall writing something out for me [indicating] back when I first
13 made contact with you?

14 A Yes.

15 Q Okay. You remember it – you wrote it in – it wasn't typed, it was
16 handwritten?

17 A Yes.

18 Q Okay. And do you remember talking or writing in here that one of the
19 jurors put strong emphasis on a personal experience of being sexually abused? Do
20 you remember writing that?

21 A I don't remember.

22 MS. ALLEN: May I approach, Your Honor?

23 THE COURT: You may. You want to have it marked? It needs to be
24 marked –

25 MS. ALLEN: Yeah.

1 THE COURT: -- as Defendant's exhibit.

2 MS. ALLEN: And for the record this is part of -- that was in my motion as well.

3 THE COURT CLERK: Number 8.

4 THE COURT: Okay. Oh, that's [indicating] probably part of the record.

5 THE COURT CLERK: Thank you.

6 MS. ALLEN:

7 Q Would you look at that [indicating].

8 A Okay.

9 Q Do you recall writing that?

10 A Oh, I remember writing this.

11 Q Okay. So go ahead and take a look at that.

12 A [Reading]. Okay.

13 Q Do you remember that now?

14 A Yes.

15 Q You said you remembered writing that?

16 A Yes, I remember writing that.

17 Q And so do you recall putting in, in your own writing, that a juror being --

18 talking about being sexually abused?

19 A So then if at that time --

20 THE COURT: Do you remember that? Do you remember writing that?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 THE WITNESS: Yes.

24 MS. ALLEN:

25 Q Okay. And when you wrote this you were attempting to correct an

1 affidavit that I had already drafted for your signature, is that right?

2 A Yes.

3 Q Okay. So you – I didn't tell you to write this?

4 A No, no.

5 Q You composed this at home and brought it and gave it to me, is that
6 correct?

7 A Yes.

8 Q Okay. And were you being honest when you wrote this out?

9 A Yes, I was.

10 Q Okay. During deliberations did you make comments about the race of
11 Mr. Harris and things having to do with skin color?

12 A The race of Mr. Harris, I don't understand.

13 Q Well, the skin color of Tina Duke, the light skin of Tina Duke and how
14 there would be issues?

15 A Yes.

16 Q Okay. You made comments about that during deliberations?

17 A I may have. I can't remember, but I probably did.

18 Q Okay. Did you talk about the – a lot of black men being in prison and
19 how it was of concern to you?

20 A Yes.

21 Q Okay. At any point in time did you say that you couldn't convict
22 because he was black?

23 A No. No. I've never said that.

24 Q Okay. Is there a, trying to think of how to put this delicately. Is there a
25 pervasive sort of attitude in the African American community about light-skinned

1 women, black women?

2 MS. LUZAICH: Objection. Relevance and –

3 MS. ALLEN: Well –

4 THE COURT: Well, the problem is she talked about it during jury deliberation,
5 so maybe you can ask her what statements she made and where that came from.

6 MS. ALLEN: Right. It's also contained in a statement made by the State's
7 witness Yvonne Lewis about this, Your Honor.

8 THE COURT: Okay. Go ahead.

9 MS. ALLEN: Thank you.

10 Q Is there a certain attitude in the black community, in African American
11 community about light-skinned women?

12 MS. LUZAICH: Well, objection, it's not relevant.

13 THE COURT: Well, I said you could ask about what she said and where
14 those, I guess, where they came from. If it was a cultural background –

15 MS. ALLEN: Right.

16 THE COURT: If it's what she learned in her home; I don't know.

17 MS. ALLEN:

18 Q Do you identify as being African American?

19 A Yes.

20 Q Your father, I believe, was African American?

21 A Yes –

22 Q Okay.

23 A -- um-huh.

24 Q And then your mother was?

25 A Mexican and Indian.

1 Q Okay. And so you identify somewhat, at least somewhat identify with
2 the black community, is that correct?

3 A Yes.

4 Q Are you aware of – well, let me ask you this, during deliberations did
5 you say that you don't trust light-skinned women?

6 A No, I did not.

7 Q Okay. Do you know of black women who have that attitude?

8 A Yes.

9 Q Okay. Is it a pervasive attitude that you're aware of, of friends that you
10 have?

11 MS. LUZAICH: Objection –

12 THE COURT: Okay.

13 MS. LUZAICH: -- anybody outside of her doesn't matter.

14 THE COURT: Right. She can talk about her.

15 MS. ALLEN: I just asked if she knew anybody, Your Honor.

16 MS. LUZAICH: It doesn't –

17 THE COURT: Well, I don't know that that matters. I guess you can ask what
18 her opinions are based on. I don't think you can ask her about pervasive attitudes
19 and opinions in an entire community.

20 MS. ALLEN: Okay.

21 THE COURT: Unless you can lay a community – unless you can lay a
22 foundation that she can be a spokesperson for that community.

23 MS. ALLEN: Okay.

24 Q Do you have a lot of black friends?

25 A Yes.

1 Q All right. Black women friends?

2 A Yes.

3 Q Okay. Do the women friends that you have have that sort of mentality?

4 MS. LUZAICH: Objection.

5 THE COURT: Okay. Why is that relevant?

6 MS. ALLEN: Well, I believe Yvonne Lewis makes a big deal out of it in her

7 statement. Talks about her being racist. I was just handed this today, so I'm just

8 going off of what I was given, Your Honor.

9 THE COURT: Okay. Well, I think you can ask her if she made those state-

10 ments and where her opinions come from.

11 MS. ALLEN: Okay.

12 Q So you make – you didn't make that statement, is that correct?

13 A Okay, which – which statement?

14 Q About not trusting light-skinned women?

15 A No, I did not make that statement.

16 Q Okay. Would you have ever made that statement?

17 A No.

18 Q Okay. Have you ever made that statement to anybody?

19 A No.

20 Q Okay. But you do know people who maintain that sort of feeling, is that

21 correct?

22 A Yes.

23 Q Okay. At some point the jury came back with a guilty verdict, is that

24 correct?

25 A Yes.

1 Q Okay. You wrote something out that you handed to me today, is that
2 correct?

3 A Yes.

4 Q Okay. I hadn't seen this before today, is that right?

5 A No.

6 Q All right. You indicated in here that you sort of felt, I guess, pressured
7 to vote guilty, is that correct?

8 A Yes.

9 Q Okay. What made you feel pressure? Like why did you feel that?

10 A 'Cause the other jurors were getting kind of like restless and uneasy
11 with me saying not guilty and kind of like, okay, so we got to do the roundtable all
12 over again. We got to keep on with the roundtable.

13 Q Okay. And did you – you went around to each person and each person
14 said guilty or not guilty, is that right?

15 A Yes.

16 MS. LUZAICH: Well, objection, she can't go into the – the process.

17 MS. ALLEN: I'm not asking who said guilty or not guilty. And I'm not –

18 THE COURT: Okay. Did you have to do it publically or privately? When you
19 took your votes, did you do them publically or privately? Did you write it down on a
20 piece of paper?

21 THE WITNESS: Oh, no, we said it out loud.

22 THE COURT: You said it out loud?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 MS. ALLEN: And I'm not asking for who said guilty or not guilty –

1 THE COURT: Okay.

2 MS. ALLEN: -- that's not what I'm asking.

3 Q When your decision changed did -- were you asked if you were
4 comfortable with that?

5 A No.

6 Q Okay. You weren't repeatedly asked by a number of the other jurors if
7 you were comfortable with that decision that you made when you changed your --
8 from not guilty to guilty?

9 A No.

10 Q Okay. Did you and Ms. Lewis have -- or Yvonne, the juror outside, did
11 you have any personality issues during the course of deliberation?

12 A No.

13 Q Okay. Did you ever --

14 A Not that I was aware of.

15 Q Did you ever feel like she put you in your place or said something to
16 you that was offensive?

17 A No. I don't recall.

18 Q Do you recall getting emotional during deliberations at all, crying at any
19 point?

20 A At one point I did.

21 Q Do you remember why?

22 A 'Cause I -- I just started feeling like I don't want to have to make a
23 decision, but I know that I have to, so that was -- it was just overwhelming.

24 Q Okay. So it --

25 A Yeah, I never been in a position like this before, so it was

1 overwhelming.

2 Q Okay. Do you feel like you ever emotionally, like you had – did you
3 breakdown crying or was it just your eyes welled up with tears?

4 A I think I cried.

5 Q You think you cried?

6 A Yes.

7 Q And it was just the overwhelming feeling that you had doing this –

8 A Yes.

9 Q -- is that correct.

10 A The responsibility.

11 Q Okay. Did it have anything to do with the idea of having or you felt like
12 you were sending a black man to prison?

13 A No, I just – it was overwhelming –

14 Q Okay.

15 A -- it was overwhelming from what I recall.

16 Q Okay.

17 A Best of my knowledge.

18 Q In your handwritten statement to me –

19 A Yes.

20 Q -- the one that you had given me some months ago, when you spoke
21 about the juror who put a strong emphasis on the personal experience of sexual and
22 physical abuse, were you referring the juror who's sitting outside?

23 A Yes.

24 Q Okay. There wasn't another juror who talked about sexual abuse, is
25 that correct?

