

IN THE SUPREME COURT OF THE STATE OF NEVADA

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FREDERICK HARRIS  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
S.C. CASE NO. 13-0013  
Sep 13 2017 11:37 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION FOR REVIEW BY THE SUPREME COURT**

Comes now Appellant FREDERICK HARRIS, by and through his counsel Christopher Oram, and respectfully requests review by the Supreme Court, pursuant to NRAP 40B.

This petition is based on the following memorandum of points and authorities and all papers and pleadings filed herein.

DATED this 12<sup>th</sup> day of September, 2017.

Respectfully submitted by:

/s/ Christopher R. Oram, Esq.  
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## I. JURISDICTION

A Petition for Review of a decision of the Court of Appeals must be filed within 18 days after the filing of the Court of Appeals' Decision under Rule 36, or its decision on rehearing under Rule 40. NRAP 40B(c) Factors that will be considered in the exercise of the Court's discretion to hear a Petition for Review are:

- 1) Whether the question presented is one of first impression of general statewide significance;
- 2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or
- 3) Whether the case involves fundamental issues of statewide public importance. NRAP 40B(a).

The Court of Appeals filed an Order Denying Rehearing on August 25, 2017. This Court has jurisdiction to hear this Petition for Review as it is timely filed.

## II. ARGUMENT

In this case, the Court of Appeals' opinion held that the district court improperly allowed the State to present testimonial hearsay at trial (Order of Affirmance, p. 3). The Court of Appeals found that the district court erred by allowing a detective to testify regarding a statement made by Harris' girlfriend during a 2012 investigation (Order of Affirmance, p. 3-4).<sup>1</sup> Further, the Court of Appeals properly determined the statement to be testimonial and noted the State probably introduced the statement to prove that two children disclosed sexual abuse to Harris' girlfriend (Order of Affirmance, p. 4). Despite this, citing *Medina*

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<sup>1</sup>The questioning of Ms. Cooks was as follows:

Prosecution:	And ultimately what did she admit that she knew from the girls?
Defense Counsel:	Judge, objection. Hearsay.
The Court:	Overruled.
The Detective:	She eventually admitted that hte girls had claimed that they - - that [Tah. D] had - - I believe the word they used were molested by Fred Harris. (A.A. Vol. 8 p. 2902).

1 v. *State*, 122 Nev. 346, 355, 143 P.3d 471, 476-77 (2006), the Court of Appeals  
2 found the statement to be harmless because other witnesses testified to the  
3 statement (Order of Affirmance, p. 4).

4 Citing *Medina*, the Court of Appeal's opinion provides that Confrontation  
5 Clause errors can be harmless if the court concludes "beyond a reasonable doubt  
6 that the error complained of did not contribute to the verdict obtained..." (Order of  
7 Affirmance, p. 4). In *Medina*, this Court, citing *Delaware v. Van Arsdall*, 475 U.S.  
8 673, 684, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986), identified numerous factors to  
9 be considered when determining whether a Confrontation Clause error is harmless.  
10 *Medina*, 122 Nev. at 354. These factors include: 1) the importance of the witness'  
11 testimony in the prosecution's case; 2) whether the testimony was cumulative; 3)  
12 the presence or absence of evidence corroborating or contradicting the testimony of  
13 the witness on material points; and 4) the overall strength of the prosecution's case.  
14 *Id.*

15 This case presents an important issue for the Supreme Court to decide in  
16 order to clarify and impart certainty as to the law. The theory upon which the Court  
17 of Appeal's holding rests is fundamentally at odds with the constitutional due  
18 process protections provided for in *Crawford v. Washington*, 541 U.S. 36, 124 S.  
19 Ct. 1354, 158 L. Ed. 2d 177 (2004).

20 In this case, over defense counsel's vehement objection, the district court  
21 permitted the State to introduce portions of Ms. Cooks (Mr. Harris' girlfriend)  
22 statement made to the police in violation of the Confrontation Clause. Of particular  
23 importance in this case is that Mr. Cooks' is a co-offender and pled guilty to child  
24 abuse, neglect or endangerment as a result of the allegations surrounding the  
25 instant case. Thus, under the Court of Appeals opinion, the State can present the  
26 testimonial hearsay statements of a non-testifying co-offender if a separate witness  
27 testifies to similar information.

28 In the Court of Appeals analysis, the Court found the statement harmless

1 because “by the time the detective testified towards the end of the State’s case-in-  
2 chief, three witnesses had already testified to the same statement.” (Order of  
3 Affirmance, p. 4). Cumulative testimony is just one factor cited by this Court in  
4 *Medina* for determining whether a Confrontation error is harmless. Importantly, the  
5 Court of Appeals did not cite any other factors in support of the finding of harmless  
6 error. Of significance to the flawed analysis by the Court of Appeals is that Ms.  
7 Cooks was a co-offender. It should be noted that neither *Medina* nor *Van*  
8 *Arsdall* concerned the testimonial hearsay statement of a non-testifying co-  
9 offender. There is a distinct difference between a witness who is an accuser and a  
10 co-offender. It is one thing for a jury to hear testimony from an accuser. It is far  
11 more damaging for a jury to hear testimony concerning a statement made by a co-  
12 offender, who is a loved one of the defendant.

13 Moreover, the fourth factor of *Medina*, the overall strength of the  
14 prosecution’s case, also leans against a finding of harmless error. The facts  
15 adduced at trial in this case were particularly unusual. Of note, the jury rejected the  
16 accusers allegations of physical abuse, finding Mr. Harris not guilty of those  
17 counts, demonstrating substantial credibility issues among the accusers.

18 Numerous facts demonstrate the evidence against Mr. Harris was far from  
19 overwhelming. During trial, evidence was elicited that proved that the children’s  
20 grades remarkably improved when they were under the guidance of Mr. Harris.  
21 Once the children were removed from Mr. Harris’ presence, the children’s grades  
22 would plummet. Additionally, when Henderson officials initially investigated  
23 allegations of sexual abuse, Tah. D. And Taq. D. Vehemently denied abuse was  
24 occurring stating that they thought the world of Mr. Harris and praised Mr. Harris.  
25 After conducting an investigation, Henderson officials did not press charges,  
26 thereby rejecting the allegations of sexual abuse. Importantly, numerous witnesses  
27 referred to the accusers as liars throughout the trial, V.D. was referred to as a  
28 habitual liar, and S.D. brutally assaulted a disabled child in a bathroom and was

1 expelled from school. Lastly, the Duke children admitted they had a hatred for Mr.  
2 Harris. This information demonstrates the credibility of the accusers was not strong  
3 and the evidence in the case was not overwhelming. As such, the Court of Appeals  
4 holding is in opposite to the rational of *Medina* and the structure and purpose of  
5 *Crawford*.

6 The right to confrontation is a cornerstone of jury trials in the United States.  
7 The Court of Appeals opinion ignores this and instead finds a co-offenders's  
8 testimonial hearsay statement harmless because a separate witness testified to a  
9 similar statement. As explained above, a statement from a co-offender is extremely  
10 damaging to a defendant and much different than the testimony of an accuser.

11 The Court of Appeals opinion, if allowed to stand, will have far reaching  
12 effects in allowing the State to present the testimonial hearsay statements of non-  
13 testifying co-defendants if another witness testifies to similar information. This  
14 Court should not allow such a holding to stand.

### 15 CONCLUSION

16 For the foregoing reasons, Mr. Harris respectfully requests this Court grant  
17 this Petition for Review and find this Confrontation Clause violation not harmless,  
18 resulting in reversal of Mr. Harris' convictions.

19 DATED this 12<sup>th</sup> day of September, 2017.

20 Respectfully submitted by:

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word Perfect Times New Roman 14 font.

I further certify that this brief complies with the page limitations of NRAP 40(a)(d) because it does not exceed ten (10) pages, to wit, five (5) pages.

Dated this 12<sup>th</sup> day of September, 2017.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 12, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Folkestad  
An Employee of Christopher R. Oram, Esq.