

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

ORIGINAL

APR 11 2014

BY, 
SUSAN JOVANOVIK, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDERICK HAROLD HARRIS JR.,

Defendant.

CASE NO: C-13-291374-1

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

1
2 If, in these instructions, any rule, direction or idea is repeated or stated in different
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that
4 reason, you are not to single out any certain sentence or any individual point or instruction
5 and ignore the others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others.

7 The order in which the instructions are given has no significance as to their relative
8 importance.
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An amended information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an amended information that on or between December, 2004 and September 26, 2012, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, said Defendant

COUNT 1 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

did, on or between August, 2007 and September 26, 2012 willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: TAHARAH DUKE, being approximately 8 to 12 years of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said TAHARAH DUKE to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by repeatedly beating the said TAHARAH DUKE with a belt.

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

did on or between October 1, 2010 and September 26, 2012 then and there willfully, unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting his finger(s) into the genital opening of the said TAHARAH DUKE, against her will, or under conditions in which Defendant knew, or should have known, that the said TAHARAH DUKE was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

did on or between October 1, 2010 and September 26, 2012 then and there willfully, unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child under fourteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his

1 penis into the genital opening of the said TAHARAH DUKE, against her will, or under
2 conditions in which Defendant knew, or should have known, that the said TAHARAH
3 DUKE was mentally or physically incapable of resisting or understanding the nature of
4 Defendant's conduct.

5 COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

6 did, on or between October 1, 2010 and September 26, 2012 then and there willfully,
7 lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body,
8 or any part or member thereof, a child, to-wit: TAHARAH DUKE, said child being under
9 the age of fourteen years, by the said Defendant touching and/or rubbing the breast(s) of the
10 said TAHARAH DUKE, with the intent of arousing, appealing to, or gratifying the lust,
11 passions, or sexual desires of said Defendant, or said child.

12 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

13 did, on or between October 1, 2010 and September 26, 2012 then and there willfully,
14 lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body,
15 or any part or member thereof, a child, to-wit: TAHARAH DUKE, said child being under
16 the age of fourteen years, by the said Defendant directing and/or causing and/or encouraging
17 the said TAHARAH DUKE to place her hand on his penis and cause her hand to rub up and
18 down, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual
19 desires of said Defendant, or said child.

20 COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
21 AGE

22 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
23 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
24 under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting
25 his finger(s) into the genital opening of the said TAHARAH DUKE, against her will, or
26 under conditions in which Defendant knew, or should have known, that the said TAHARAH
27 DUKE was mentally or physically incapable of resisting or understanding the nature of
28 Defendant's conduct.

1 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did, on or between October 1, 2010 and September 26, 2012 then and there willfully,
3 lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body,
4 or any part or member thereof, a child, to-wit: TAHARAH DUKE, said child being under
5 the age of fourteen years, by the said Defendant touching and/or rubbing the breast(s) of the
6 said TAHARAH DUKE, with the intent of arousing, appealing to, or gratifying the lust,
7 passions, or sexual desires of said Defendant, or said child.

8 COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

10 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
11 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
12 under fourteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
13 penis into the genital opening of the said TAHARAH DUKE, against her will, or under
14 conditions in which Defendant knew, or should have known, that the said TAHARAH
15 DUKE was mentally or physically incapable of resisting or understanding the nature of
16 Defendant's conduct.

17 COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
18 AGE

19 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
20 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
21 under fourteen years of age, to sexual penetration, to-wit: fellatio, by placing his penis on or
22 in the mouth of the said TAHARAH DUKE, against her will, or under conditions in which
23 Defendant knew, or should have known, that the said TAHARAH DUKE was mentally or
24 physically incapable of resisting or understanding the nature of Defendant's conduct.

25 COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
26 AGE

27 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
28 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child

1 under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting
2 his finger(s) into the genital opening of the said TAHARAH DUKE, against her will, or
3 under conditions in which Defendant knew, or should have known, that the said TAHARAH
4 DUKE was mentally or physically incapable of resisting or understanding the nature of
5 Defendant's conduct.

6 COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
7 AGE

8 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
9 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
10 under fourteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
11 penis into the genital opening of the said TAHARAH DUKE, against her will, or under
12 conditions in which Defendant knew, or should have known, that the said TAHARAH
13 DUKE was mentally or physically incapable of resisting or understanding the nature of
14 Defendant's conduct.

15 COUNT 12 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 did, on or between October 1, 2010 and September 26, 2012 then and there willfully,
17 lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body,
18 or any part or member thereof, a child, to-wit: TAHARAH DUKE, said child being under
19 the age of fourteen years, by the said Defendant directing and/or causing and/or encouraging
20 the said TAHARAH DUKE to place her hand on his penis and cause her hand to rub up and
21 down, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual
22 desires of said Defendant, or said child.

23 COUNT 13 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
24 AGE

25 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
26 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
27 under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting
28 his finger(s) into the genital opening of the said TAHARAH DUKE, against her will, or

1 under conditions in which Defendant knew, or should have known, that the said TAHARAH
2 DUKE was mentally or physically incapable of resisting or understanding the nature of
3 Defendant's conduct.

4 COUNT 14 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
5 AGE

6 did on or between October 1, 2010 and September 26, 2012 then and there willfully,
7 unlawfully, and feloniously sexually assault and subject TAHARAH DUKE, a female child
8 under fourteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
9 penis into the genital opening of the said TAHARAH DUKE, against her will, or under
10 conditions in which Defendant knew, or should have known, that the said TAHARAH
11 DUKE was mentally or physically incapable of resisting or understanding the nature of
12 Defendant's conduct.

13 COUNT 15 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

14 did, on or between August, 2007 and September 26, 2012 willfully, unlawfully, and
15 feloniously cause a child under the age of 18 years, to-wit: TAQUANDA DUKE, being
16 approximately 7 to 11 years of age, to suffer unjustifiable physical pain or mental suffering
17 as a result of abuse or neglect, and/or cause the said TAQUANDA DUKE to be placed in a
18 situation where she might have suffered unjustifiable physical pain or mental suffering as a
19 result of abuse or neglect, by beating the said TAQUANDA DUKE with a belt and/or
20 threatening her with a knife.

21 COUNT 16 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

22 did, on or between August, 2007 and September 26, 2012 willfully, unlawfully, and
23 feloniously cause a child under the age of 18 years, to-wit: SHABAZZ DUKE, being
24 approximately 12 to 17 years of age, to suffer unjustifiable physical pain or mental suffering
25 as a result of abuse or neglect, and/or cause the said SHABAZZ DUKE to be placed in a
26 situation where he might have suffered unjustifiable physical pain or mental suffering as a
27 result of abuse or neglect, by repeatedly beating the said SHABAZZ DUKE with a belt
28 and/or repeatedly punching the said SHABAZZ DUKE.

1 COUNT 17 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

2 did, on or between August, 2007 and September 26, 2012 willfully, unlawfully, and
3 feloniously cause a child under the age of 18 years, to-wit: MAHLICA DUKE, being
4 approximately 9 to 15 years of age, to suffer unjustifiable physical pain or mental suffering
5 as a result of abuse or neglect, and/or cause the said MAHLICA DUKE to be placed in a
6 situation where she might have suffered unjustifiable physical pain or mental suffering as a
7 result of abuse or neglect, by repeatedly beating the said MAHLICA DUKE with a belt
8 and/or choking her.

9 COUNT 18 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

10 did, on or between January, 2005 and September 26, 2012 willfully, unlawfully, and
11 feloniously cause a child under the age of 18 years, to-wit: VICTORIA DUKE, being
12 approximately 15-18 years of age, to suffer unjustifiable physical pain or mental suffering as
13 a result of abuse or neglect, and/or cause the said VICTORIA DUKE to be placed in a
14 situation where she might have suffered unjustifiable physical pain or mental suffering as a
15 result of abuse or neglect, by repeatedly beating the said VICTORIA DUKE with a belt.

16 COUNT 19 - FIRST DEGREE KIDNAPPING

17 did, on or between December, 2004 and May, 2005, willfully, unlawfully,
18 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
19 conceal, kidnap, or carry away VICTORIA DUKE, a human being, with the intent to hold or
20 detain the said VICTORIA DUKE against her will, and without her consent, for the purpose
21 of committing sexual assault and/or lead, take, entice, or carry away or detain VICTORIA
22 DUKE, a minor, with the intent to keep, imprison, or confine said minor from her parent,
23 guardian, or any other person having lawful custody of the said minor and/or perpetrate upon
24 the person of said minor any unlawful act, to wit: sexual assault.

25 COUNT 20 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

26 did on or between December, 2004 and May, 2005 then and there willfully, lewdly,
27 unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any
28 part or member thereof, a child, to-wit: VICTORIA DUKE, said child being under the age

1 of fourteen years, by Defendant putting the hand of the said VICTORIA DUKE on his
2 genital area, with the intent of arousing, appealing to, or gratifying the lust, passions, or
3 sexual desires of said Defendant, or said child.

4 COUNT 21 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
5 AGE

6 did on or between December, 2004 and May, 2005 then and there willfully,
7 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
8 under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting
9 his finger(s) into the genital opening of the said VICTORIA DUKE, against her will, or
10 under conditions in which Defendant knew, or should have known, that the said VICTORIA
11 DUKE was mentally or physically incapable of resisting or understanding the nature of
12 Defendant's conduct.

13 COUNT 22 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
14 AGE

15 did on or between December, 2004 and May, 2005 then and there willfully,
16 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
17 under fourteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
18 penis into the genital opening of the said VICTORIA DUKE, against her will, or under
19 conditions in which Defendant knew, or should have known, that the said VICTORIA
20 DUKE was mentally or physically incapable of resisting or understanding the nature of
21 Defendant's conduct.

22 COUNT 23 - COERCION (SEXUALLY MOTIVATED)

23 did on or between December, 2004 and May, 2005 then and there, willfully,
24 unlawfully and feloniously use physical force, or the immediate threat of such force, against
25 VICTORIA DUKE, with intent to compel her to do, or abstain from doing, an act which she
26 had a right to do, or abstain from doing, by Defendant grabbing the arm of the said
27 VICTORIA DUKE and telling her not to tell anyone or he would beat her, one of the
28 purposes for which the Defendant committed the offense was Defendant's sexual

1 gratification.

2 COUNT 24 - ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A
3 CRIME

4 did on or between August 1, 2007 and August 31, 2007 then and there willfully,
5 unlawfully, feloniously, and knowingly administer to VICTORIA DUKE, a controlled
6 substance, anesthetic, or intoxicating agent, with the intent thereby to enable or assist himself
7 to commit a felony, to-wit: Sexual Assault with a Minor Under the Age of 16.

8 COUNT 25 - FIRST DEGREE KIDNAPPING

9 did, on or between August 1, 2007 and August 31, 2007, willfully, unlawfully,
10 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
11 conceal, kidnap, or carry away VICTORIA DUKE, a human being, with the intent to hold or
12 detain the said VICTORIA DUKE against her will, and without her consent, for the purpose
13 of committing sexual assault and/or lead, take, entice, or carry away or detain VICTORIA
14 DUKE, a minor, with the intent to keep, imprison, or confine said minor from her parent,
15 guardian, or any other person having lawful custody of the said minor and/or perpetrate upon
16 the person of said minor any unlawful act, to wit: sexual assault.

17 COUNT 26 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

18 did on or between August 1, 2007 and August 31, 2007 then and there willfully,
19 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
20 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
21 penis into the genital opening of the said VICTORIA DUKE, against her will, or under
22 conditions in which Defendant knew, or should have known, that the said VICTORIA
23 DUKE was mentally or physically incapable of resisting or understanding the nature of
24 Defendant's conduct.

25 COUNT 27 - ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A
26 CRIME

27 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
28 unlawfully, feloniously, and knowingly administer to VICTORIA DUKE, a controlled

1 substance, anesthetic, or intoxicating agent, with the intent thereby to enable or assist himself
2 to commit a felony, to-wit: Sexual Assault with a Minor Under the Age of 16.

3 COUNT 28 - FIRST DEGREE KIDNAPPING

4 did, on or between September 1, 2007 and July 30, 2008, willfully, unlawfully,
5 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
6 conceal, kidnap, or carry away VICTORIA DUKE, a human being, with the intent to hold or
7 detain the said VICTORIA DUKE against her will, and without her consent, for the purpose
8 of committing sexual assault and/or lead, take, entice, or carry away or detain VICTORIA
9 DUKE, a minor, with the intent to keep, imprison, or confine said minor from her parent,
10 guardian, or any other person having lawful custody of the said minor and/or perpetrate upon
11 the person of said minor any unlawful act, to wit: sexual assault.

12 COUNT 29 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

13 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
14 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
15 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
16 penis into the genital opening of the said VICTORIA DUKE, against her will, or under
17 conditions in which Defendant knew, or should have known, that the said VICTORIA
18 DUKE was mentally or physically incapable of resisting or understanding the nature of
19 Defendant's conduct.

20 COUNT 30 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

21 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
22 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
23 under sixteen years of age, to sexual penetration, to-wit: anal intercourse, by placing his
24 penis into the anal opening of the said VICTORIA DUKE, against her will, or under
25 conditions in which Defendant knew, or should have known, that the said VICTORIA
26 DUKE was mentally or physically incapable of resisting or understanding the nature of
27 Defendant's conduct.

28

1 COUNT 31 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

2 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
3 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
4 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing his
5 penis into the genital opening of the said VICTORIA DUKE, against her will, or under
6 conditions in which Defendant knew, or should have known, that the said VICTORIA
7 DUKE was mentally or physically incapable of resisting or understanding the nature of
8 Defendant's conduct.

9 COUNT 32 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

10 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
11 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
12 under sixteen years of age, to sexual penetration, to-wit: anal intercourse, by placing his
13 penis into the anal opening of the said VICTORIA DUKE, against her will, or under
14 conditions in which Defendant knew, or should have known, that the said VICTORIA
15 DUKE was mentally or physically incapable of resisting or understanding the nature of
16 Defendant's conduct.

17 COUNT 33 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

18 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
19 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
20 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by placing a
21 dildo and/or vibrator into the genital opening of the said VICTORIA DUKE, against her
22 will, or under conditions in which Defendant knew, or should have known, that the said
23 VICTORIA DUKE was mentally or physically incapable of resisting or understanding the
24 nature of Defendant's conduct.

25 COUNT 34 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

26 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
27 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
28 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by causing

1 TINA DUKE to place a dildo into the genital opening of the said VICTORIA DUKE, against
2 her will, or under conditions in which Defendant knew, or should have known, that the said
3 VICTORIA DUKE was mentally or physically incapable of resisting or understanding the nature
4 of Defendant's conduct.

5 COUNT 35 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

6 did on or between September 1, 2007 and July 30, 2008 then and there willfully,
7 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female child
8 under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by causing TINA
9 DUKE to place a dildo into the genital opening of the said VICTORIA DUKE, against her will,
10 or under conditions in which Defendant knew, or should have known, that the said VICTORIA
11 DUKE was mentally or physically incapable of resisting or understanding the nature of the
12 defendants conduct.

13 COUNT 36 - SEXUAL ASSAULT

14 did in May, 2009 then and there willfully, unlawfully, and feloniously sexually assault
15 and subject VICTORIA DUKE, a female person, to sexual penetration, to-wit: sexual
16 intercourse, by placing his penis into the genital opening of the said VICTORIA DUKE, against
17 her will, or under conditions in which Defendant knew, or should have known, that the said
18 VICTORIA DUKE was mentally or physically incapable of resisting or understanding the nature
19 of Defendant's conduct.

20 COUNT 37 - FIRST DEGREE KIDNAPPING

21 did, on or between August 2010 and August 2011 willfully, unlawfully, feloniously, and
22 without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry
23 away VICTORIA DUKE, a human being, with the intent to hold or detain the said VICTORIA
24 DUKE against her will, and without her consent, for the purpose of committing sexual assault.

25 COUNT 38 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

26 did, on or between August 2010 and August 2011, willfully, unlawfully and
27 feloniously use force or violence upon the person of another, to-wit: VICTORIA DUKE,
28 with the intent to commit sexual assault, by grabbing the wrist of the said VICTORIA

1 DUKE and holding it tight while attempting to cause her to perform fellatio on him.

2 COUNT 39 - SEXUAL ASSAULT

3 did on or between August 2010 and August 2011 then and there willfully,
4 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female
5 person, to sexual penetration, to-wit: sexual intercourse, by placing his penis into the genital
6 opening of the said VICTORIA DUKE, against her will, or under conditions in which
7 Defendant knew, or should have known, that the said VICTORIA DUKE was mentally or
8 physically incapable of resisting or understanding the nature of Defendant's conduct.

9 COUNT 40 - SEXUAL ASSAULT

10 did on or between August 2010 and August 2011 then and there willfully,
11 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female
12 person, to sexual penetration, to-wit: sexual intercourse, by placing his penis into the genital
13 opening of the said VICTORIA DUKE, against her will, or under conditions in which
14 Defendant knew, or should have known, that the said VICTORIA DUKE was mentally or
15 physically incapable of resisting or understanding the nature of Defendant's conduct.

16 COUNT 41 - SEXUAL ASSAULT

17 did on or between August 2011 and December 2011 then and there willfully,
18 unlawfully, and feloniously sexually assault and subject VICTORIA DUKE, a female
19 person, to sexual penetration, to-wit: sexual intercourse, by placing his penis into the genital
20 opening of the said VICTORIA DUKE, against her will, or under conditions in which
21 Defendant knew, or should have known, that the said VICTORIA DUKE was mentally or
22 physically incapable of resisting or understanding the nature of Defendant's conduct.

23 COUNT 42 - PANDERING

24 did on or between August, 2007 and December 17, 2011 then and there willfully,
25 unlawfully, and feloniously induce, persuade, encourage, inveigle, entice, or compel TINA
26 DUKE to become a prostitute, and/or to engage or continue to engage in prostitution,
27 Defendant using physical force or the threat of physical force.

28 COUNT 43 - SEXUAL ASSAULT

1 did on or between August 2007 and August 2008 then and there willfully,
2 unlawfully, and feloniously sexually assault and subject TINA DUKE, a female person, to
3 sexual penetration, to-wit: anal intercourse, by placing his penis into the anal opening of the
4 said TINA DUKE, against her will.

5 COUNT 44 - LIVING FROM THE EARNINGS OF A PROSTITUTE

6 did on or between August, 2007 and December 17, 2011 then and there willfully,
7 unlawfully, feloniously, and knowingly accept, receive, levy, or appropriate money, without
8 consideration, from TINA DUKE, the proceeds of prostitution activity.

9 COUNT 45 - BATTERY BY STRANGULATION

10 did on or between August, 2007 and December, 2011 then and there willfully,
11 unlawfully, and feloniously use force or violence upon the person of another, to-wit: TINA
12 DUKE, by strangulation.

13 It is the duty of the jury to apply the rules of law contained in these instructions to the
14 facts of the case and determine whether or not the Defendant is guilty of one or more of the
15 offenses charged.

16 Each charge and the evidence pertaining to it should be considered separately. The
17 fact you may find a defendant guilty or not guilty as to one of the offenses charged should
18 not control your verdict as to any other offense charged.

INSTRUCTION NO. 4

A person who willfully, unlawfully and feloniously causes a child under the age of 18 years to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as a result of abuse or neglect is guilty of child abuse.

As used in these instructions:

"Abuse or neglect" means physical or mental injury of a nonaccidental nature of a child under the age of 18 years.

"Physical injury" means:

(1) Permanent or temporary disfigurement; or

(2) Impairment of any bodily function or organ of the body.

A person who subjects another person to sexual penetration, against the victim's will, or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct, is guilty of sexual assault.

A person who subjects a minor under fourteen years to sexual penetration, against the minor's will, or under conditions in which the perpetrator knows or should know that the minor is mentally or physically incapable of resisting or understanding the nature or his/her conduct, is guilty of sexual assault with a minor under fourteen years of age.

A person who subjects a minor under sixteen years to sexual penetration, against the minor's will, or under conditions in which the perpetrator knows or should know that the minor is mentally or physically incapable of resisting or understanding the nature of his/her conduct, is guilty of sexual assault with a minor under sixteen year of age.

"Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. Evidence of ejaculation is not necessary.

Digital penetration is the placing of one or more fingers of the perpetrator into the genital or anal opening of another person.

Cunnilingus is a touching of the female sexual organ by the mouth or tongue of another person.

Fellatio is a touching of the penis by the mouth or tongue of another person.

Sexual intercourse is the intrusion, however slight, of the penis into the genital opening of another person.

Anal intercourse is the intrusion, however slight, of the penis into the anal opening of another person.

INSTRUCTION NO. 7

Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

INSTRUCTION NO. 8

A person is not required to do more than his/her age, strength, surrounding facts and attending circumstances make it reasonable for him/her to do to manifest opposition to a sexual assault.

INSTRUCTION NO. 9

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of circumstances to be considered by the jury.

INSTRUCTION NO. 10

If you find the state failed to prove beyond a reasonable doubt the defendant subjected another person to sexual penetration, against the victim's will or under conditions in which the perpetrator knew or should have known the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, then the defendant is entitled to a verdict of not guilty of sexual assault.

INSTRUCTION NO. 11

There is no requirement that the testimony of a victim of sexual assault be corroborated, and his/her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 12

Any person who willfully commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with any part of the body of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a minor.

INSTRUCTION NO. 13

The law does not require that the lust, passions or sexual desires of either of such persons actually be aroused, appealed to, or gratified.

INSTRUCTION NO. 14

To constitute a lewd or lascivious act it is not necessary that the bare skin be touched.
The touching may be through the clothing of the child.

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INSTRUCTION NO. 15

Lewdness with a child under the age of 14 years requires an act upon or with the body of a child under the age of 14 years, but does not require physical contact between the perpetrator and the victim.

Where a child has been the victim of sexual assault with a minor under the age of 14 and/or lewdness with a minor under the age of 14, and does not remember the exact date of the act, the State is not required to prove a specific date, but may prove a time frame within which the act took place.

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault/lewdness.

Where a defendant commits a specific type of act constituting sexual assault/lewdness he/she may be found guilty of more than one count of that specific type of act of sexual assault/lewdness if:

1. There is an interruption between the acts which are of the same specific type;
2. Where the acts of the same specific type are interrupted by a different specific type of sexual assault/lewdness; or
3. For each separate object manipulated or inserted into the genital or anal opening of another.

Only one sexual assault/lewdness occurs when a defendant's actions were of one specific type of sexual assault/lewdness and those acts were continuous and did not stop between the acts of that specific type.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person:

1. For ransom, or reward; or
2. For the purpose of committing sexual assault, extortion or robbery upon or from the person; or
3. For the purpose of killing the person or inflicting substantial bodily harm upon him; or
4. For exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person; or
5. A person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act, is guilty of Kidnapping in the First Degree.

The law does not require the person being kidnapped to be carried away for any minimal distance.

The term "inveigle" means to lead astray by trickery or deceitful persuasion.

If you find the state failed to prove beyond a reasonable doubt the defendant willfully seized, confined, inveigled, enticed, decoyed, abducted, concealed, kidnapped, or carried away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, any person:

1. For ransom, or reward; or
2. For the purpose of committing sexual assault, extortion or robbery upon or from the person; or
3. For the purpose of killing the person or inflicting substantial bodily harm upon him or her; or
4. To exact from relatives, friends, or any other person any money; or valuable thing for the return or disposition of the kidnapped person; or
5. A person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act.

Then the defendant is entitled to a verdict of not guilty of First Degree Kidnapping.

In order for you to find the Defendant guilty of both First Degree Kidnapping and an associated offense of sexual assault, you must also find beyond a reasonable doubt either:

1. That the movement of the victim was not incidental to the sexual assault; or
 2. That the incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the sexual assault, or
 3. That any incidental movement of the victim substantially exceeded that required to complete the sexual assault; or
 4. That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or
 5. The movement or restraint had an independent purpose or significance.
- "Physically restrained" includes but is not limited to tying, binding, or taping.

INSTRUCTION

21

Any person who, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to:

(A) Use violence or inflict injury upon the person or any of his family, or upon his property, or threaten such violence or injury;

(B) Deprive the person of any tool, implement or clothing, or hinder him in the use thereof; or

(C) Attempt to intimidate the person by threats or force, is guilty of Coercion.

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2 If you find the state failed to prove beyond a reasonable doubt the defendant used
3 violence upon another person or threatened violence or injury to another person with the
4 specific intent to compel another to do or abstain from doing an act which such other person
5 has a right to do or abstain from doing, then the defendant is entitled to a verdict of not guilty
6 of Coercion.
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Any person who administers to any other person any chloroform, ether, laudanum, or any controlled substance, anesthetic, or intoxicating or emetic agent, with the intent thereby to enable or assist himself to commit a felony, is guilty of Administration of a Drug to Aid in the Commission of a Felony.

INSTRUCTION NO. 24

Battery is defined as the willful and unlawful use of force or violence upon the person of another.

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INSTRUCTION NO. 25

Any person who commits a battery upon another with the specific intent to commit a Sexual Assault is guilty of the offense of Battery with Intent to Commit Sexual Assault.

A person who, with physical force or the immediate threat of physical force, induces an adult to unlawfully become a prostitute or to continue to engage in prostitution, or to enter any place within this state in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution is guilty of Pandering.

"Adult" means a person 18 years of age or older.

"Induce" means to persuade, encourage, inveigle or entice.

"Prostitute" means a male or female person who for a fee, monetary consideration or other thing of value engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

"Prostitution" means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.

"Sexual conduct" includes sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.

INSTRUCTION NO. 27

The consent of a victim of Pandering to an act of prostitution is not a defense to the crime of Pandering.

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INSTRUCTION NO. 28

A person who knowingly accepts, receives, levies or appropriates any money or other valuable thing, without consideration, from the proceeds of any prostitute, is guilty of Living from the Earnings of a Prostitute.

INSTRUCTION NO. 29

"Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

INSTRUCTION NO. 30

It is a defense to the charge of sexual assault that the Defendant entertained a reasonable and good faith belief that the alleged victim consented to engage in sexual intercourse. If you find such reasonable, good faith belief, even if mistaken, you must give the Defendant the benefit of the doubt and find him not guilty of sexual assault.

A belief that is based upon ambiguous conduct by the alleged victim that is the product of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person of another is not a reasonable and good faith belief.

To constitute the crimes charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case.
12 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation
13 as evidence and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

1
2 You are here to determine whether the State of Nevada has met its burden of proof
3 from the evidence in the case. You are not called upon to return a verdict as to any other
4 person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt
5 of the Defendant, you should so find, even though you may believe one or more persons are
6 also guilty.
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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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INSTRUCTION NO. 37

A prior inconsistent statement may be considered as substantive evidence that the facts described in the statement actually occurred.

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A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind such inferences should not
7 be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 40

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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to the Defendant.

1
2 When you retire to consider your verdict, you must first select one of your member to
3 act as foreperson who will preside over your deliberation, and will be your spokesperson in
4 court.

5 During your deliberation, you will have all the exhibits admitted into evidence, these
6 written instructions, and forms of verdict prepared for your convenience.

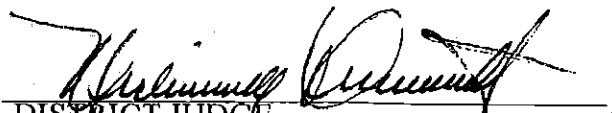
7 Your verdict must be unanimous. As soon as you agree upon a verdict, the
8 foreperson shall sign and date the verdict form and return with it to this room.

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INSTRUCTION NO. 42

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

1 VER

2 ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 15 2014 1:06pm

BY 
SUSAN JOVANOVIK, DEPUTY

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6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

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9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 FREDERICK HAROLD HARRIS JR.,

13 Defendant.

CASE NO: C-13-291374-1

DEPT NO: XII

14 VERDICT

15
16 We, the jury in the above entitled case, find the Defendant FREDERICK HAROLD
17 HARRIS JR., as follows:

18 COUNT 1 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

19 (please check the appropriate box, select only one)

20 ☐ Guilty of Child Abuse, Neglect or Endangerment

21 ☒ Not Guilty

22
23 COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
24 AGE

25 (please check the appropriate box, select only one)

26 ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age

27 ☐ Not Guilty

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

- ☒ Guilty of Lewdness With A Child Under The Age Of 14
☐ Not Guilty

COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

- ☒ Guilty of Lewdness With A Child Under The Age Of 14
☐ Not Guilty

COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

- ☒ Guilty of Lewdness With A Child Under The Age Of 14
☐ Not Guilty

COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 11 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
☐ Not Guilty

COUNT 12 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

- ☒ Guilty of Lewdness With A Child Under The Age Of 14
☐ Not Guilty

1 **COUNT 13** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

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

- 4 ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
5 ☐ Not Guilty

6
7 **COUNT 14** - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
8 AGE

9 *(please check the appropriate box, select only one)*

- 10 ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
11 ☐ Not Guilty

12
13 **COUNT 15** - CHILD ABUSE, NEGLECT OR ENDANGERMENT

14 *(please check the appropriate box, select only one)*

- 15 ☐ Guilty of Child Abuse, Neglect Or Endangerment
16 ☒ Not Guilty

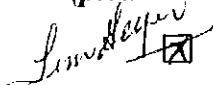
17
18 **COUNT 16** - CHILD ABUSE, NEGLECT OR ENDANGERMENT

19 *(please check the appropriate box, select only one)*

- 20 ☒ Guilty of Child Abuse, Neglect Or Endangerment
21 ☐ Not Guilty

22
23 **COUNT 17** - CHILD ABUSE, NEGLECT OR ENDANGERMENT

24 *(please check the appropriate box, select only one)*

- 25  ☒ Guilty of Child Abuse, Neglect Or Endangerment
26 ☒ Not Guilty

1 **COUNT 18 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

2 *(please check the appropriate box, select only one)*

- 3 ☐ Guilty of Child Abuse, Neglect Or Endangerment
4 ☒ Not Guilty

5
6 **COUNT 19 - FIRST DEGREE KIDNAPPING**

7 *(please check the appropriate box, select only one)*

- 8 ☒ Guilty of First Degree Kidnapping
9 ☐ Not Guilty

10
11 **COUNT 20 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of Lewdness With A Child Under The Age Of 14
14 ☐ Not Guilty

15
16 **COUNT 21 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF**
17 **AGE**

18 *(please check the appropriate box, select only one)*

- 19 ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
20 ☐ Not Guilty

21
22 **COUNT 22 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF**
23 **AGE**

24 *(please check the appropriate box, select only one)*

- 25 ☒ Guilty of Sexual Assault With A Minor Under Fourteen Years Of Age
26 ☐ Not Guilty

1 **COUNT 23** - COERCION (Sexually Motivated)

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Coercion (Sexually Motivated)

4 ☐ Not Guilty

5
6 **COUNT 24** - ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A
7 CRIME

8 *(please check the appropriate box, select only one)*

9 ☒ Guilty of Administration Of A Drug To Aid In The Commission Of A
10 Crime

11 ☐ Not Guilty

12
13 **COUNT 25** - FIRST DEGREE KIDNAPPING

14 *(please check the appropriate box, select only one)*

15 ☒ Guilty of First Degree Kidnapping

16 ☐ Not Guilty

17
18 **COUNT 26** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
19 AGE

20 *(please check the appropriate box, select only one)*

21 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age

22 ☐ Not Guilty

1 **COUNT 27** - ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A
2 CRIME

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

- 4 ☐ Guilty of Administration Of A Drug To Aid In The Commission Of A
5 Crime
6 ☒ Not Guilty

7
8 **COUNT 28** - FIRST DEGREE KIDNAPPING

9 *(please check the appropriate box, select only one)*

- 10 ☒ Guilty of First Degree Kidnapping
11 ☐ Not Guilty

12
13 **COUNT 29** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
14 AGE

15 *(please check the appropriate box, select only one)*

- 16 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
17 ☐ Not Guilty

18
19 **COUNT 30** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
20 AGE

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

- 22 ☐ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
23 ☒ Not Guilty

1 **COUNT 31** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
2 AGE

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

- 4 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
5 ☐ Not Guilty

6
7 **COUNT 32** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
8 AGE

9 *(please check the appropriate box, select only one)*

- 10 ☐ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
11 ☒ Not Guilty

12
13 **COUNT 33** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
14 AGE

15 *(please check the appropriate box, select only one)*

- 16 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
17 ☐ Not Guilty

18
19 **COUNT 34** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
20 AGE

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

- 22 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
23 ☐ Not Guilty

1 **COUNT 35** - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF
2 AGE

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

- 4 ☒ Guilty of Sexual Assault With A Minor Under Sixteen Years Of Age
5 ☐ Not Guilty

6
7 **COUNT 36** - SEXUAL ASSAULT

8 *(please check the appropriate box, select only one)*

- 9 ☒ Guilty of Sexual Assault
10 ☐ Not Guilty

11
12 **COUNT 37** - FIRST DEGREE KIDNAPPING

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

- 14 ☒ Guilty of First Degree Kidnapping
15 ☐ Not Guilty

16
17 **COUNT 38** - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

18 *(please check the appropriate box, select only one)*

- 19 ☒ Guilty of Battery With Intent To Commit Sexual Assault
20 ☐ Not Guilty

21 **COUNT 39** - SEXUAL ASSAULT

22 *(please check the appropriate box, select only one)*

- 23 ☒ Guilty of Sexual Assault
24 ☐ Not Guilty
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1 **COUNT 40 - SEXUAL ASSAULT**

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Sexual Assault

4 ☐ Not Guilty

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6 **COUNT 41 - SEXUAL ASSAULT**

7 *(please check the appropriate box, select only one)*

8 ☒ Guilty of Sexual Assault

9 ☐ Not Guilty

10
11 **COUNT 42 - PANDERING**

12 *(please check the appropriate box, select only one)*

13 ☒ Guilty of Pandering

14 ☐ Not Guilty

15
16 **COUNT 43 - SEXUAL ASSAULT**

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

18 ☐ Guilty of Sexual Assault

19 ☒ Not Guilty

20
21 **COUNT 44 - LIVING FROM THE EARNINGS OF A PROSTITUTE**

22 *(please check the appropriate box, select only one)*

23 ☒ Guilty of Living From The Earnings Of A Prostitute

24 ☐ Not Guilty

1 **COUNT 45 - BATTERY BY STRANGULATION**

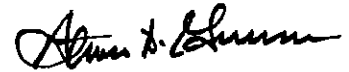
2 *(please check the appropriate box, select only one)*

3 ☐ Guilty of Battery By Strangulation

4 ☒ Not Guilty

5
6 DATED this 15th day of April, 2014

7
8 
9 FOREPERSON



CLERK OF THE COURT

1 **MOT**
2 **BETSY Allen, ESQ**
3 Nevada Bar No. 6878
4 P.O. Box 46991
5 Las Vegas, Nevada 89114
6 (702) 386-9700
7 Fax (702) 386-4723
8 betsyallenesq@yahoo.com
9 Attorney for Defendant
10 FREDRICK HARRIS

DISTRICT COURT
CLARK COUNTY, NEVADA

11	THE STATE OF NEVADA,)	Case No.: C-13-291374-1
12)	Dept. No. XII
13	Plaintiff,)	
14)	
15	vs.)	
16)	
17	FREDRICK HARRIS,)	
18)	
19	Defendant.)	
20)	

DEFENDANT'S MOTION FOR A NEW TRIAL

21 COMES NOW the Defendant, FREDRICK HARRIS, by and through his attorney,
22 BETSY ALLEN, ESQ., and hereby moves this Honorable Court to Grant a New Trial.

23 This Motion is based upon the pleading and papers on files herein, the following
24 Points and Authorities all as incorporated herein.

25 DATED this _28th_ day of April, 2014

26 /s/ Betsy Allen
27 Betsy Allen, Esq.
28 Nevada Bar No. 6878

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that counsel for the Defendant FREDRICK HARRIS has set this matter for hearing in Department XII on the 29 day of MAY, 2014 at the hour of 8:30A.

DATED THIS 28th day of April, 2014

BY: /s/ Betsy Allen
BETSY ALLEN, ESQ
Nevada Bar No. 6878
P.O. Box 46991
Las Vegas, Nevada, 89114

1 **POINTS AND AUTHORITIES**

2 **Factual Background**

3 In the instant case, the Defendant, FREDRICK HARRIS, was convicted of 36 out of
4 45 counts of various charges, including: Sexual Assault on a Minor under Fourteen, Sexual
5 Assault of a Minor under 16, and Lewdness with a Minor.

6 **Legal Argument**

7
8 NRS 176.515 provides in relevant part that:

- 9 1. The Court may grant a new trial to a defendant if required as a matter
10 of law or on the ground of newly discovered evidence.
11 2. If trial was by the Court without a jury, the Court may vacate the
12 judgment if entered, take additional testimony on direct the entry of a new
13 judgment.
14 3. Except as otherwise provided in NRS 176.0918, a motion for new trial
15 based on the ground of newly discovered evidence may be made only
16 within 2 years after the verdict or finding of guilt.
17 4. A motion for a new trial based on any other grounds must be made
18 within 7 days after the verdict or finding of guilt or within such further time
19 as the Court may fix during the 7-day period.¹

20 **A. The Court allowed portions of the statement of co-defendant**

21 **Lealer Ann Cooks without a finding of reliability**

22 NRS 51.035 states, in pertinent part, that hearsay is not admissible unless it falls
23 within an exception. One of these exceptions is a statement against interest. A statement
24 against interest, in order to be admissible, must, at the time it is made:

25 (a) Was so far contrary to the pecuniary or proprietary interests of
26 the declarant;

27 (b) So far tended to subject the declarant to civil or criminal
28 liability;

¹ Chief Deputy District Attorney Lisa Luzaich graciously granted the Defense until April 28, 2014 to file the
aforementioned Motion.

1 (c) So far tended to render invalid a claim by the declarant
2 against another; or

3 (d) So far tended to make the declarant an object of hatred,
4 ridicule or social disapproval, that a reasonable person in the
5 position of the declarant would not have made the statement
6 unless the declarant believed it to be true. NRS 51.345(1)

7 During the course of Harris' trial, the State opted to elicit particular statements from
8 Detective Madsen, made by co-defendant Lealer Cooks.² These statements were clearly
9 hearsay, as the State asserted that they were a statement against penal interest(an
10 exception to the hearsay rule).

11 However, contrary to defense's objections, the Court opted to allow these
12 statements to be elicited. There was no subsequent finding by this Court with regard to
13 whether the statement elicited was trustworthy under *Walker v. State*, 116 Nev. 670,
14 76(2000).

15 In the instant case, the statement was made to law enforcement after a lengthy
16 discussion, all of which was recorded. Ms. Cooks stated repeatedly throughout the
17 statement that she did not believe the Duke girls and their claims. Further, part of the
18 statute requires that the report of the abuse have some indicia of reliability and the person
19 must have some belief that the abuse is true.³

20 Lealer was very clear in her statement that she did not believe the victims in this
21 case. To simply characterize that one particular portion as a "statement against interest"
22

23
24
25 ² Lealer Ann Cooks was charged in case number C290726. She is a co-defendant as she is charged with a failure to
26 report the abuse(Child Abuse & Neglect) arising out of the same allegations levied against Mr. Harris.

27 ³ The Defense was not permitted to bring in information that Cooks was concerned about the Tahara Duke being
28 sexually active with some boy at her school, thus the reason for taking her to the doctor.

1 was patently incorrect. It was primarily taken out of context, in light of the entire statement,
2 and it was never subjected to a finding of reliability.

3 For this reason, Harris should received a new trial.

4 **B. Harris should receive a new trial because his statement was altered incorrectly**
5 **and the jury was precluded from hearing material facts.**

6 During the course of the trial, the State opted to play Harris' statement to the jury.
7 However, there were parts of the statement that were which should have been played and
8 were material to the defense.
9

10 During the course of Harris' statement to Henderson PD, he told the Detective that
11 Victoria had disclosed to him that she had had sex while she lived in Utah.⁴ The State
12 opted to take this portion out, claiming it was subject to rape shield.
13

14 NRS 50.090 provides, in pertinent part:

15 In any prosecution for sexual assault....., the accused may not
16 present evidence of any previous sexual conduct of the victim of
17 the crime to challenge the victim's credibility as a witness unless
18 the prosecutor has presented evidence or the victim has
19 testified concerning such conduct, or the absence of such
conduct, in which case the scope of the accused's cross-
examination of the victim or rebuttal must be limited to the
evidence presented by the prosecutor or the victim.

20 In the instant case, Victoria Duke was **VERY** clear that she was subjected to a
21 sexual assault almost immediately upon her return from Utah. And furthermore, this sexual
22 assault was her first time having sex.

23 In *Summit v. State*, 101 Nev. 159, 697 P.2d 1374(1985), the Nevada Supreme Court
24 addressed this issue. In *Summit*, like here, the defense sought to introduce evidence that
25 the victim had prior sexual experience, which would account for her knowledge of sex. The
26

27 _____
28 ⁴ Victoria claimed that upon her return from Utah, Harris had taken her virginity.

1 District Court denied the request. In analyzing the facts and NRS 50.090, the Court
2 decidedly agreed with the analysis of the Supreme Court of Washington, which held that
3 the trial court must undertake to balance the probative value of the evidence against its
4 prejudicial effect and that the inquiry should particularly focus upon "potential prejudice to
5 the truthfinding process itself," i.e., "whether the introduction of the victim's past sexual
6 conduct may confuse the issues, mislead the jury, or cause the jury to decide the case on
7 an improper or emotional basis." *Summit* at 1377, citing *State v. Hudlow*, 99 Wash.2d 1, 59
8 P.2d 514(1983)
9

10 In the instant case, there was no balancing at all. The Court simply precluded this
11 portion of the defendant's statement. Her claims of Harris taking her virginity were clearly
12 rebuttable through his own statement to police. The purpose of bringing in the statements
13 was not to attack her credibility but simply to show prior sexual knowledge, which would
14 account for her rendition of the acts itself.
15

16 The state further argued that it was self serving. However, if the court were to
17 accept this reasoning, then every statement a defendant makes would be subject to the
18 State's "eraser" with regard to anything they feel is "self serving." The defendant's
19 statement was put into evidence by the State. Portions were redacted regarding a
20 polygraph(which are inadmissible in this state). However, his statement to the police
21 regarding what Victoria had previously told him was certainly relevant. It did not violate
22 rape shield and should not have been subject to the state's "eraser" for reasons which do
23 not comport with his right to confront witnesses pursuant to the 6th Amendment.
24

25 **C. Victoria Duke made material misrepresentations of what she was doing in**
26 **California.**
27

28 During Victoria Duke's testimony, she testified that she was living in California and

1 going to school. However, after Harris' conviction, counsel for the defense became aware
2 of the fact that Ms. Duke was arrested on two occasions for prostitution. Counsel for Harris
3 confirmed this with the two court entities that are listed on the register of actions.

4 Certainly, information about Victoria Duke being a prostitute was exceptionally
5 important in this case. She alleged multiple instances of sexual abuse and then lied about
6 what she was doing in California. Certainly her criminal record would have been relevant to
7 this case.
8

9 **Conclusion**

10 Wherefore, The accused, FREDRICK HARRIS, respectfully requests this Honorable
11 Court to grant his Motion for a new trial. Alternatively, he requests the Court to hold a
12 hearing concerning the matters set forth herein.
13

14 DATED _28th_ day of April, 2014

15 BY: /s/ Betsy Allen, Esq.

16 BETSY ALLEN, ESQ

17 Nevada Bar No. 6878

18 P.O. Box 46991

19 Las Vegas, Nevada 89114

20 (702) 386-9700

21 **Certificate of Service**

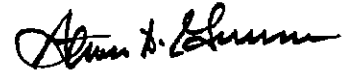
22 I hereby certify that I provided the Clark County District Attorney, specifically Lisa
23 Luzaich, a true and correct copy of the foregoing motion on the 28th day of April, 2014 via
24 email to:

25 lisa.luzaich@clarkcountydacountyda.com

26 DATED this 28th day of April, 2014

27 /s/Betsy Allen

28 Betsy Allen, Esq.



CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 LISA LUZAICH
6 Chief Deputy District Attorney
7 Nevada Bar #005056
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11
12 Plaintiff,

13 -vs-

14 FREDRICK HAROLD HARRIS JR.,
15 #0972945

16 Defendant.

CASE NO: C-13-291374-1

DEPT NO: XII

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL**

18 DATE OF HEARING: JUNE 19, 2014
19 TIME OF HEARING: 8:30 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in Opposition to Defendant's Motion for New
23 Trial.

24 This opposition is made and based upon all the papers and pleadings on file herein, the
25 attached points and authorities in support hereof, and oral argument at the time of hearing, if
26 deemed necessary by this Honorable Court.

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On April 15, 2014, after hearing twelve (12) days of evidence in this case, and after
4 approximately two (2) days of deliberation, the jury found Defendant Frederick Harris
5 ("Defendant") guilty of the following: eleven (11) counts of Sexual Assault With a Minor
6 Under Fourteen Years of Age; five (5) counts of Lewdness With a Child Under the Age of 14;
7 six (6) counts of Sexual Assault With a Minor Under Sixteen Years of Age; four (4) counts of
8 Sexual Assault; four (4) counts of First Degree Kidnapping; one (1) count of Administration
9 of a Drug to Aid in the Commission of a Crime; one (1) count of Coercion (Sexually
10 Motivated); one (1) count of Battery With Intent to Commit Sexual Assault; one (1) count of
11 Child Abuse, Neglect or Endangerment; one (1) count of Pandering; and one (1) count of
12 Living From the Earnings of a Prostitute.

13 The jury found Defendant not guilty of the following: two (2) counts of Sexual Assault
14 With a Minor Under Sixteen Years of Age; one (1) count of Sexual Assault; one (1) count of
15 Administration of a Drug to Aid in the Commission of a Crime; four (4) counts of Child Abuse,
16 Neglect or Endangerment; and one (1) count of Battery by Strangulation.

17 Defendant filed the instant Motion for a New Trial on April 28, 2014.

18 **ARGUMENT**

19 **I. DEFENDANT'S CLAIMS DO NOT MEET THE STANDARD REQUIRED TO**
20 **GRANT A NEW TRIAL**

21 In criminal cases, NRS 176.515 controls when a motion for new trial may be granted.
22 NRS 176.515 provides:

23 1. The court may grant a new trial to a defendant if required as a
24 matter or law or on the ground of newly discovered evidence.

25 2. If trial was by the court without a jury the court may vacate the
26 judgment if entered, take additional testimony and direct the entry
27 of a new judgment.

28 3. A motion for a new trial based on the ground of newly
discovered evidence may be made only within 2 years after the
verdict or finding of guilty.

1 4. A motion for a new trial based on any other grounds must be
2 made within 7 days after verdict or finding of guilt or within such
3 further time as the court may fix during the 7-day period.

4 The trial court has the discretion to grant or deny a motion for new
5 trial. *Rippo v. State*, 113 Nev. 1239, 946 P.2d 1017 (1997).

6 **a. LEALER COOKS' STATEMENT WAS PROPERLY ADMITTED AS A
7 STATEMENT AGAINST INTEREST**

8 Defendant argues that a new trial should be granted under NRS 176.515(4) on the
9 grounds that the Court improperly admitted limited portions of Lealer Cooks' ("Cooks")
10 statement to police as a statement against interest under NRS 51.345.

11 The admissibility of evidence is within the sound discretion of the trial court and will not be
12 overturned on appeal unless found to be manifestly wrong. See *Cipriano v. State*, 111 Nev.
13 534, 541, 894 P.2d 347, 352 (1995). NRS 51.345 states as follows:

- 14 1. A statement which at the time of its making:
- 15 (a) Was so far contrary to the pecuniary or proprietary interest
16 of the declarant;
- 17 (b) So far tended to subject the declarant to civil or criminal
18 liability;
- 19 (c) So far tended to render invalid a claim by the declarant
20 against another; or
- 21 (d) So far tended to make the declarant an object of hatred,
22 ridicule or social disapproval, that a reasonable person in
23 the position of the declarant would not have made the
24 statement unless the declarant believed it to be true is not
25 admissible under the hearsay rule if the declarant is
26 unavailable as a witness. A statement tending to expose the
27 declarant to criminal liability and offered to exculpate the
28 accused in a criminal case is not admissible unless
corroborating circumstances clearly indicate the
trustworthiness of the statement.

24 NRS 51.345 (emphasis added).

25 Defendant's main contention is that this Court erroneously made no finding of
26 reliability under NRS 51.345 and that "the statute requires that the report of the abuse have
27 some indicia of reliability and the person must have some belief that the abuse is true."
28 Defendant's Motion, p. 4. Defendant takes this portion of the statute above out of context and

1 the requirement of a finding of reliability does not apply to Cooks' statements against interest
2 elicited by the State during trial. It is clear from a thorough reading of NRS 51.345 that the
3 requirement that corroborating circumstances clearly indicate the trustworthiness of the
4 statement only applies to statements offered to exculpate the accused in a criminal case.

5 Here, the State elicited Cooks very narrow statements against her interest through
6 Detective Nick Madsen to show that Cooks was aware of Taharah's and Taquandah's
7 disclosure of Defendant's abuse, that Cooks took Taharah to a doctor, and that Cooks
8 ultimately did nothing about the abuse. In support of his argument, Defendant cites Walker v.
9 State, 116 Nev. 670, 6 P.3d 477 (2000). However, Walker specifically deals with statements
10 against interest of a co-defendant sought to be admitted to exculpate the accused. The evidence
11 admitted during the instant trial was in no way offered to exculpate the Defendant. Thus, the
12 Court was not required to make a finding of reliability in order to admit the statements. The
13 Court properly admitted these statements because they so far tended to subject Cooks to
14 criminal liability that a reasonable person in Cooks' position would not have made the
15 statements unless the person believed it to be true.

16 Indeed, while Cooks was not charged as Defendant's co-defendant, Cooks was
17 prosecuted with regard to the facts of the instant case. Moreover, Cooks and pled guilty
18 pursuant to North Carolina v. Alford to one (1) count of Child Abuse, Neglect or
19 Endangerment (Category B Felony), in C290726. Specifically, the allegations she pled to
20 were, in part, that she "[kept] Tahara Duke in the home with Frederick Harris after knowing
21 the said Taharah Duke was being molested by Frederick Harris, and her sister had previously
22 been molested by Frederick Harris, and promising but failing to move the said Tahara Duke
23 out of the home resulting in the continuing sexual abuse of Tahara Duke by Frederick Harris."
24 (See Amended Information, a copy of which is attached hereto as Exhibit "1"). Cooks was
25 ultimately adjudicated guilty of that offense.

26 Defendant also contends that Cooks' statement was "taken out of context" and that
27 Cooks was very clear in her statement to police that she did not believe the victims in this case.
28 On cross-examination, the Court allowed Defendant to ask Det. Madsen about Cooks initially

1 not believing the girls. Defendant further asked if Cooks gave specific instances to Det.
2 Madsen as to why she did not believe the girls. The Court properly excluded the specific
3 examples that Defendant purported to offer because these statements from Cooks were
4 inadmissible hearsay that did not fall within any hearsay exception. Cooks' statements were
5 not taken out of context and the Court allowed Defendant to follow up with regard to whether
6 Cooks did not initially believe Taharah and Taquandah. The statements were properly
7 admitted and this argument fails to show that Defendant is entitled to a new trial.

8 **b. DEFENDANT'S STATEMENT WAS PROPERLY REDACTED TO**
9 **EXCLUDE INADMISSIBLE HEARSAY**

10 Defendant argues that this Court improperly excluded Defendant's statements during
11 his December 18, 2011 interview with law enforcement. The statements that the State redacted
12 that Defendant sought to admit included the following:

13 Q [Detective Aguiar]: Had she [Victoria] ever had sex with
14 anyone before you?

15 A [Defendant]: Not that I know of. I don't know.

16 Q: So you're the first person she's ever had sex with?

17 A: I know she had sex before because when she came in from
18 Utah she had been having sex. She admitted it that she had been
having sex with girl and a friend that used to sneak around after
school with out in Utah.

19 Defendant's Transcribed Statement, p. 90, lns. 8-14. Defendant made these statements
20 after he admitted to having sex with Victoria and her mother, Tina Duke, on two (2) prior
21 occasions. Again, the admissibility of evidence is within the sound discretion of the trial court
22 and will not be overturned on appeal unless found to be manifestly wrong. Cipriano, 111 Nev.
23 at 541, 894 P.2d at 352. Defendant argues that the Court did not balance the probative value
24 of these statements against their prejudicial effect and simply precluded this portion of
25 Defendant's statement. Defendant's Motion, p. 6. This Court is very well aware of the law
26 surrounding NRS 50.090 and Summit v. State. These statements were properly excluded by
27 the Court, and as such provide no grounds to grant a motion for new trial.
28 NRS 50.090 states the following:

1 In any prosecution for sexual assault or statutory sexual seduction or for attempt to
2 commit or conspiracy to commit either crime, the accused may not present evidence of any
3 previous sexual conduct of the victim of the crime to challenge the victim's credibility as a
4 witness unless the prosecutor has presented evidence or the victim has testified concerning
5 such conduct, or the absence of such conduct, in which case the scope of the accused's cross-
6 examination of the victim or rebuttal must be limited to the evidence presented by the
7 prosecution or victim.

8 In *Summit v. State*, 101 Nev. 159, 697 P. 2d 1374 (1985), the Nevada Supreme Court
9 explained the rationale for the rape-shield law codified in NRS 50.090. The Court explained
10 that general use of a female's reputation for morality and chastity would be inadmissible to
11 infer consent or to attack credibility. The Court also explained that the law is designed to
12 protect rape victims from degrading and embarrassing disclosure of intimate details of their
13 private lives and to encourage rape victims to disclose crimes, while being free from
14 unnecessary indignities and needless probing into their sexual histories. Specifically, the Court
15 stated:

16 In 1977 Nevada joined forty-five states and the federal government in passing a "rape
17 shield" statute, limiting inquiry into the sexual history of a complaining witness in a rape or
18 sexual assault case. See J.A. Tanford and A.J. Bocchino, *Rape Victim Shield Laws and the*
19 *Sixth Amendment*, 128 U.Pa.L.Rev. 544, 544 (1980). Such laws have generally been designed
20 to reverse the common law rule applicable in rape cases, that use of evidence of a female
21 complainant's general reputation for morality and chastity was admissible to infer consent and
22 also to attack credibility generally. Thus, for example, it had been held: "It is a matter of
23 common knowledge that the bad character of a man for chastity does not even in the remotest
24 degree affect his character for truth, when based upon that alone, while it does that of a
25 woman." *State v. Sibley*, 131 Mo. 519, 132 Mo. 102, 33 S.W. 167, 171 (1895), quoted in *State*
26 *v. Brown*, 636 S.W.2d 929, 933 n. 3 (Mo.1982), cert. denied sub nom., *Brown v. Missouri*,
27 459 U.S. 1212, 103 S.Ct. 1207, 75 L.Ed.2d 448 (1983). Such statutes as Nevada's have been
28 described as "directed at the misuse of prior sexual conduct evidence based on this antiquated

1 and obviously illogical premise." *State v. Hudlow*, 99 Wash.2d 1, 659 P.2d 514, 519 (1983).
2 See also *People v. McKenna*, 196 Colo. 367, 585 P.2d 275, 278 (1978). An additional purpose
3 of such statutes is "'to protect rape victims from degrading and embarrassing disclosure of
4 intimate details about their private lives.'" 124 Cong.Rec. at H 11945 (1978), quoted in *Doe*
5 *v. United States*, 666 F.2d 43, 45 (4th Cir.1981). Finally, "[t]he restrictions placed on the
6 admissibility of certain evidence by the rape-shield laws will, it was hoped, encourage rape
7 victims to come forward and report the crimes and testify in court protected from unnecessary
8 indignities and needless probing into their respective sexual histories." *State v. Lemon*, 456
9 A.2d 261, 264 (R.I.1983). *Id.*

10 Defendant's own statements that he "knows" Victoria was having sex in Utah, and that
11 Victoria previously admitted to him that she had sex in Utah are clearly self-serving and there
12 is absolutely no indicia of reliability to these statements. Moreover, these statements are
13 protected under NRS 50.090. Defendant argues that the statements should have been admitted
14 to show that "the victim had prior sexual experience, which would account for her knowledge
15 of sex," and "simply to show prior sexual knowledge, which would account for her rendition
16 of the acts itself." Defendant's Motion, p. 5-6. Victoria Duke was twenty-one (21) years old
17 at the time she testified at trial in this case. The victim in *Summit* was six (6) years old, and
18 the victim in *State v. Howard*, 121 N.H. 52, 426 A.2d 457 (1981), referenced in *Summit*, was
19 twelve (12) years old. Defendant's statements are not specific evidence to challenge "the
20 young complaining witness's credibility, by showing that she had other experiences which
21 could explain the source of her knowledge of the sexual activity she described in her
22 testimony." *Summit*, 101 Nev. at 163, 697 P.2d at 1377. Victoria was an adult at the time she
23 testified, and on cross-examination of at least one of the State's witnesses, defense counsel
24 elicited the fact that Victoria now has a baby. Defendant's own statements that were sought to
25 be admitted at trial simply do not fall under the exception to rape-shield under *Summit* and the
26 Court properly excluded them. As such, this argument fails and provides no grounds to grant
27 a new trial.

28 //

1 c. **VICTORIA DUKE DID NOT MAKE ANY MATERIAL**
2 **MISREPRESENTATIONS AND DEFENDANT'S CLAIM**
3 **THAT SHE WAS ARRESTED FOR PROSTITUTION WOULD**
 NOT HAVE BEEN ADMISSIBLE HAD IT BEEN KNOWN TO
 EITHER DEFENSE COUNSEL OR THE STATE

4 Defendant states that "information about Victoria Duke being a prostitute was exceptionally
5 important to the case," and argues that a new trial should be granted because Victoria did not
6 testify that she had been arrested on two (2) occasions for prostitution since moving to
7 California in August 2013, two years after the last incident of sexual assault occurred with the
8 Defendant. Defendant's Motion, p. 7.

9 Defendant makes the unsupported allegation that Victoria "lied about what she was
10 doing in California." Id. During trial, Victoria testified that she moved to California in August
11 2013, that she was currently living with her "godmother," and that she was currently attending
12 school to become a medical clinical admissions assistant. Defendant has absolutely nothing
13 to support his claim that Victoria lied in any of these statements. In fact, the State's
14 investigator went to Victoria's school and spoke to an administrator. Additionally, he went to
15 Victoria's address and spoke to Victoria's "godmother."

16 At the time of trial, neither the State, nor the Defense, were aware that Victoria had
17 been arrested on two occasions for prostitution since Victoria had moved to California in
18 August 2013. The State did run Victoria in SCOPE, its local criminal history database, and
19 there were no arrests listed there. If the State had this information, it would have turned it
20 over to the Defense, but the State did not.

21 Assuming Defendant's representations are accurate, even if the State had this
22 information, Victoria's (2) prior arrests for prostitution would not have been admissible at
23 trial. The arrests are not relevant because they occurred two years after the last incident of
24 sexual assault occurred with the Defendant. The arrests have no bearing whatsoever with what
25 occurred with Victoria Duke and the Defendant during December 2004 through December
26 2011, which are the dates encompassed by all of the charges involving Victoria.

27 //

28 //

1 Moreover, Defendant does not even set forth a basis that he would have sought to admit
2 this evidence. The defense at trial was that the victims were making their testimony up; the
3 defense was not a consent defense. Victoria's two (2) prior arrests for prostitution are not
4 relevant to the defense set forth during trial. A prior arrest record for prostitution, if found to
5 be relevant, is still subject to considerations of confusion and prejudice under NRS 48.035 and
6 in the appropriate case, a district court could properly exercise its discretion by refusing to
7 admit such evidence. *Drake v. State*, 108 Nev. 523, 527, 836 P.2d 52, 55 (1992). Even had
8 this Court found Victoria's arrests to somehow be relevant, the evidence would have been
9 excluded because the probative value of the arrests would have been substantially outweighed
10 by the danger of unfair prejudice, and because of the danger the evidence posed of confusing
11 the issues in the case and misleading the jury. Again, Defendant fails to set forth what
12 probative value, if any, this evidence would have had at trial. This argument fails and is not a
13 basis to grant a new trial under NRS 176.515(4).

14 Insomuch as Defendant's argument is construed as a motion for new trial based upon a
15 claim of newly discovered evidence, NRS 176.515(1) provides that a new trial may be granted
16 on the ground of newly discovered evidence. The standard for a new trial based on newly
17 discovered evidence is that:

18 (1) the evidence must be newly discovered; (2) it must be material
19 to the defense; (3) it could not have been discovered and produced
20 even with the exercise of reasonable diligence; (4) it must not be
21 cumulative; (5) it must indicate that a different result is probable
on retrial; (6) it must not simply be an attempt to contradict or
discredit a former witness; and (7) it must be the best evidence
the case admits.

22 *Hennie v. State*, 114 Nev. 1285, 968 P.2d 761 (1998). See also, *Callier v. Warden*, 111 Nev.
23 976, 988, 901 P.2d 619, 626 (1995). In order to obtain a new trial based upon newly
24 discovered evidence, Defendant must present evidence that satisfies all seven prongs of the
25 test set forth in *Callier*. Defendant has failed to do so.

26 As argued above, Defendant fails to meet prong (2) because they have failed to show how this
27 evidence is material to the defense. Additionally, Defendant fails to meet prong (3) because
28 the evidence very clearly could have been produced through the exercise of reasonable

1 diligence evidenced by the fact that Defendant obtained this information days after the jury's
2 verdict was reached. Defendant also fails to meet prong (5) because the evidence most
3 certainly does not indicate that a different result is probable on retrial considering he has failed
4 to show that the evidence would have been admissible in the first place, and considering the
5 two (2) arrests took place two years after the last incident of sexual assault in this case. Lastly,
6 Defendant fails to show that this evidence is not simply an attempt to contradict or discredit
7 Victoria Duke as a witness, and thus fails to meet prong (6). Because Defendant has failed to
8 meet any of the requirements set forth in Hennie, and he is required to meet all seven (7)
9 requirements to obtain a new trial, he is not entitled to a new trial.

10 **II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

11 The Nevada Supreme Court has previously stated that requests for evidentiary hearings
12 in motions for new trial should be subject to the same rule as applied to post-conviction
13 petitions. See, Rippo, 113 Nev. at 1250, 946 P.2d at 1024. As applied to post-conviction
14 proceedings, "[a] petitioner for post-conviction relief is entitled to an evidentiary hearing only
15 if he supports his claims with specific factual allegations that if true would entitle him to relief.
16 The petitioner is not entitled to an evidentiary hearing if the factual allegations are belied or
17 repelled by the record. The petitioner has the burden of establishing the factual allegations in
18 support of his petition." Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004). Since
19 Defendant has failed to establish that any of his claims would require relief, an evidentiary
20 hearing is not warranted.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion for New Trial and his request for an evidentiary hearing be denied.

DATED this 13th day of June, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ LISA LUZAICH
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

CERTIFICATE OF E-SERVICE

I hereby certify that service of the above and foregoing was made this 13th day of JUNE 2014, to:

BETSY ALLEN, ESQ.
betsyallenesq@yahoo.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT “1”

ORIGINAL

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #5056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
OCT 29 2013

BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

Case No: C-13-290726-1
Dept No: XX

-vs-

LEALER ANN COOKS,
#0701381
Defendant.

AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That LEALER ANN COOKS, the Defendant(s) above named, having committed the crime of **CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508)**, on or between August 1, 2007 and September 30, 2012, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did ~~on or between August 1, 2007 and September 30, 2012~~ wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: VICTORIA DUKE, being approximately 15-18 year(s) of age and/or TAHARE DUKE, being approximately 7-12 year(s) of age and/or MAHLICA DUKE, being approximately 15-17 year(s) of age and/or TAQUANDAH DUKE, being approximately 7-11 year(s) of age and/or SHABAZZ DUKE, being approximately 12-15

AMENDED BY ORDER OF THE COURT
STEVEN D. GRIERSON, CLERK OF THE COURT
Linda Skinner, DEPUTY

OCT 29 2013

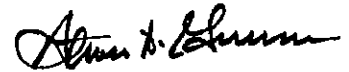
1 year(s) of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
2 neglect, and/or cause the said VICTORIA DUKE and/or TAHARE DUKE and/or
3 MAHLICA DUKE and/or TAQUANDAH DUKE and/or SHABAZZ DUKE to be placed in
4 a situation where they might have suffered unjustifiable physical pain or mental suffering as
5 a result of abuse or neglect, by Defendant being responsible for VICTORIA DUKE'S and/or
6 TAHARE DUKE'S and/or MAHLICA DUKE'S and/or TAQUANDAH DUKE'S and/or
7 SHABAZZ DUKE'S safety, failed to protect VICTORIA DUKE and/or TAHARE DUKE
8 and/or MAHLICA DUKE and/or TAQUANDAH DUKE and/or SHABAZZ DUKE from
9 Fredrick Harris and the physical batteries he committed on the said VICTORIA DUKE
10 and/or TAHARE DUKE and/or MAHLICA DUKE and/or TAQUANDAH DUKE and/or
11 SHABAZZ DUKE and/or by Defendant keeping TAHARE DUKE in the home with
12 Fredrick Harris after knowing the said TAHARE DUKE was being molested by Frederick
13 Harris, and her sister had previously been molested by Frederick Harris, and promising but
14 failing to move the said TAHARE DUKE out of the home resulting in the continuing sexual
15 abuse of TAHARE DUKE by Fredrick Harris.

16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 Nevada Bar #001565

19 BY

20 LISA LUZAICH
21 Chief Deputy District Attorney
22 Nevada Bar #5056
23
24
25
26

27 DA#13F03712X/jm/SVU
28 LVMPD EV#1209271444
(TK1)



CLERK OF THE COURT

RPLY

BETSY Allen, ESQ

Nevada Bar No. 6878

P.O. Box 46991

Las Vegas, Nevada 89114

(702) 386-9700

Fax (702) 386-4723

betsyallenesq@yahoo.com

Attorney for Defendant

FREDRICK HARRIS

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

FREDRICK HARRIS,

Defendant.

) Case No.: C-13-291374-1

) Dept. No. XII

)

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DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION FOR A NEW TRIAL AND

SUPPLEMENT TO DEFENDANT'S MOTION FOR A NEW TRIAL

COMES NOW the Defendant, FREDRICK HARRIS, by and through his attorney, BETSY ALLEN, ESQ., and hereby files this Reply to State's Response to Motion for New Trial and Supplements Defendant's Motion for a New Trial.

This Reply and Supplement is based upon the pleading and papers on files herein, the following Points and Authorities all as incorporated herein.

DATED this _9th_ day of July, 2014

/s/ Betsy Allen

Betsy Allen, Esq.

Nevada Bar No. 6878

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POINTS AND AUTHORITIES

Factual Background

In the instant case, the Defendant, FREDRICK HARRIS, was convicted of 36 out of 45 counts of various charges, including: Sexual Assault on a Minor under Fourteen, Sexual Assault of a Minor under 16, and Lewdness with a Minor.

I. REPLY TO STATE'S RESPONSE TO DEFENDANT'S MOTION FOR A NEW TRIAL

NRS 176.515 provides in relevant part that:

1. The Court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.
2. If trial was by the Court without a jury, the Court may vacate the judgment if entered, take additional testimony on direct the entry of a new judgment.
3. Except as otherwise provided in NRS 176.0918, a motion for new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.
4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the Court may fix during the 7-day period.¹

A. The Court allowed portions of the statement of co-defendant

Lealer Ann Cooks without a finding of reliability

During the trial, the State elicited statements from Lealer Cooks, ultimately choosing to admit them through a detective, not through Ms. Cooks.

Part of the State's argument that there is an indicia of reliability is that Lealer pled guilty to a count of Child Abuse and Neglect, pursuant to the **Alford** decision. The State glosses over the idea and thought process behind the **Alford** decision. This United State Supreme Court decision allows a defendant to plead guilty without admitting guilt, in order

¹ Chief Deputy District Attorney Lisa Luzaich graciously granted the Defense until April 28, 2014 to file the aforementioned Motion.

1 to avoid a harsher penalty.² This is not an admission of guilt, merely a way to avoid going
2 to trial. In fact, as this Court is well aware, during a plea canvas, the Defendant is NOT
3 asked to allocute but rather to agree that the State COULD prove the charges against
4 him/her.

5 Therefore, Cooks "indicia" of reliability relied on by the State simply does not exist.

6 **B. Harris should receive a new trial because his statement was altered incorrectly**
7 **and the jury was precluded from hearing material facts.**

8 During the course of the trial, the State opted to play Harris' statement to the jury.
9 However, there were parts of the statement that were which should have been played and
10 were material to the defense.

11 Victoria made clear claims that Fred was the first person she had ever had sexual
12 intercourse with. The State claims his statements that she had sex was somehow self-
13 serving, without really explaining how it helped him somehow.

14 While making this statement, Fred was not under arrest, was in his own home and
15 had just admitted to having sex with her. There was nothing self-serving about saying she
16 had had sex previous to him.

17 The State claims that Defendant is trying to somehow circumvent rape shield, NRS
18 50.090. This could not be farther from the truth. Rape shield was meant to protect victims
19 from a Defendant attacking based upon promiscuous conduct. However, when the alleged
20 victim claims that she never had sexual intercourse before, the Defendant is permitted to
21 rebuke that for very obvious reasons. Being able to relay specific actions related to sex
22 requires some indicia of knowledge.

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28 ²² See North Carolina v. Alford, 400 U.S. 25 (1970)

1 *Summit v. State*, 101 Nev. 159, 697 P.2d 1374(1985) addressed this issue. In
2 *Summit* the defense sought to introduce evidence that the victim had prior sexual
3 experience, which would account for her knowledge of sex. The District Court denied the
4 request. In analyzing the facts and NRS 50.090, the Court decidedly agreed with the
5 analysis of the Supreme Court of Washington, which held that the trial court must
6 undertake to balance the probative value of the evidence against its prejudicial effect and
7 that the inquiry should particularly focus upon "potential prejudice to the truthfinding
8 process itself," i.e., "whether the introduction of the victim's past sexual conduct may
9 confuse the issues, mislead the jury, or cause the jury to decide the case on an improper or
10 emotional basis." *Summit* at 1377, citing *State v. Hudlow*, 99 Wash.2d 1, 59 P.2d
11 514(1983)
12

13 This Court did no such balancing. This was not an open and shut case, with
14 confessions and undeniable evidence. There were hugely conflicting statements, a TON of
15 prior inconsistent statements and witnesses presented by the Defense which CLEARLY
16 contradicted the victims. The Court simply precluded this portion of the defendant's
17 statement. Her claims of Harris taking her virginity were clearly rebuttable through his own
18 statement to police. The purpose of bringing in the statements was not to attack her
19 credibility but simply to show prior sexual knowledge, which would account for her rendition
20 of the acts itself.
21

22
23 **C. Victoria Duke made material misrepresentations of what she was doing in**
24 **California.**

25 The Defense became aware that Victoria was arrested shortly before the trial, two
26 times, for soliciting prostitution. While she may have testified that she was in school and
27 living with her "godmother" there was no corroboration for this information.
28

1 In the State's Response, they supplement the record by stating their investigator
2 obtained information that she was in school and living with someone. However, this was
3 not testified to during the trial and should not be considered by this Court.

4 In interviews with juror #8, Kathleen Smith, she indicated that information regarding
5 arrests for prostitution would have made a difference in the verdict. (see attached affidavit,
6 Exhibit A) Victoria Duke materially misrepresented her activities in California. Her mother
7 testified that she was a prostitute during this trial and it was clear from Victoria's testimony
8 that she was disgusted by this behavior. To find out that she was **DOING THE SAME**
9 **THING**, and NOT because Fred was supposedly forcing to her do so, is a material issue
10 that should have been presented to the jury.
11

12 **II. SUPPLEMENT TO DEFENDANT'S MOTION FOR A NEW TRIAL.**

13 NRS 176.515 provides in relevant part that:
14

- 15 1. The Court may grant a new trial to a defendant if required as a matter
16 of law or on the ground of newly discovered evidence.

17 In the instant matter, it has been discovered that there was an extreme instance of
18 juror misconduct. In an interview with Juror #8, Kathleen Smith, it was discovered that
19 during deliberations, Juror # 7, Yvonne Lewis, was not truthful during voir dire.
20

21 This was a forty-six(46) count sexual abuse/assault case. And jurors were asked if
22 they were ever the victims of physical or sexual abuse during questioning during voir dire.
23 Juror #7 did NOT disclose sexual abuse, only disclosing during deliberations, while crying,
24 and calling for the conviction of the defendant. (see attached exhibit A).

25 This is on point with the facts in Canada v. State, 944 P.2d 781, 113 Nev.
26 938(1997). In Canada, the jury in this murder trial was tainted by a juror who failed to
27 disclose during voir dire that his own father was murdered. Other jurors stated that he
28

1 would have voted to convict no matter what and kept referring to his own father's murder.

2 Fred Harris' case was a contentious sexual abuse case. The jurors were picked
3 over meticulously and asked about abuse of all kinds. This particular juror talked about
4 physical abuse from her mother, but failed to disclose sexual abuse of ANY KIND.

5 However, during jury deliberation, she broke down crying and referred to sexual
6 abuse and knowing how it felt to be sexually abused. She also was pushing for Harris'
7 conviction and need to be punished. (See attached affidavit of Harrison Mayo Jr., and
8 notes from Kathleen Smith, including changes she asked for in original affidavit, attached
9 as Exhibit A, B and C).

11 In Lopez v. State, 105 Nev. 68, 769 P.2d 1276(1989) the Supreme Court held that
12 where a juror failed to reveal potentially prejudicial information during voir dire, the relevant
13 inquiry is whether the juror is guilty of intentional concealment. Id at 89, 1290. Lopez
14 states that is the trial court's discretion to determine this information.³ "A new trial must be
15 granted unless it appears, beyond a reasonable doubt, that no prejudice has resulted."
16 Lane v. State, 110 Nev. 1156, 1164, 881 P.2d 1358, 1364 (1994). This Court must
17 consider "whether the issue of guilt is close, the quantity and character of the error, and the
18 gravity of the crime charged." Rowbottom v. State, 105 Nev. 472, 486, 779 P.2d 934,
19 943(1989)
20

22 In the instant case, Harris was charged with 46 felony counts, most of which were
23 life sentence counts. There were days of jury deliberation, indicating people who were
24 holding out on guilt and finally, a juror who, after lying about sexual abuse, was calling for
25

26 ³ This court must remember the painstaking process both sides undertook to delve into this information. There was even
27 a juror who reveal sexual abuse for the very first time EVER at the bench. Counsel has done numerous sexual
28 abuse/trials and ALWAYS looks for people who previously have been victims for this exact reason.

1 the punishment of Harris during deliberation. Harris is entitled to an evidentiary hearing to
2 determine the facts and circumstances of this jurors misconduct.

3 **Conclusion**

4 Wherefore, The accused, FREDRICK HARRIS, is entitled to a hearing wherein Juror
5 # 7 and #8 must be called to testify regarding the information recently provided to Harris.

6 DATED _9th_ day of July, 2014

7
8 BY: /s/ Betsy Allen, Esq.
9 BETSY ALLEN, ESQ
10 Nevada Bar No. 6878
11 P.O. Box 46991
12 Las Vegas, Nevada 89114
13 (702) 386-9700

14 **Certificate of Service**

15 I hereby certify that I provided the Clark County District Attorney, specifically Lisa
16 Luzaich, a true and correct copy of the foregoing motion on the 1st day of July, 2014 via
17 email to:

18 lisa.luzach@clarkcountyda.com

19 DATED this 9th day of July, 2014

20 /s/Betsy Allen
21 Betsy Allen, Esq.
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A

AFFIDAVIT OF HARRISON MAYO, JR.

COUNTY OF CLARK }
STATE OF NEVADA } ss:

I, HARRISON MAYO, JR., being first duly sworn on oath, deposes and states as follows:

1. That I was appointed to work with Betsy Allen, Esq., on the case of Fredrick Harris, C291374-1 and the information contained herein is the truth to the best of my knowledge.

2. That I was asked by the attorney, Betsy Allen, to talk to a particular juror with regard to deliberations.

3. That I was asked to talk to this juror due to the fact that Dorothy Harris, Fredrick Harris' mother, was approached at Wal-Mart by this particular juror and discussed the case with her. Further, she apologized for the convictions.

4. That I came to find out that the this juror was named Kathleen Smith and she works in the Regional Justice Center at the Information booth on the first floor.

5. That Ms. Allen and I interviewed this juror, Ms. Smith, and she disclosed that during deliberations, another juror started talking about being sexually abused as a child. She described this juror as being juror number seven(7), Yvonne Lewis. Ms. Smith further said that Ms. Lewis became emotional during deliberations and began crying while she talked about her own experiences of sexual abuse.

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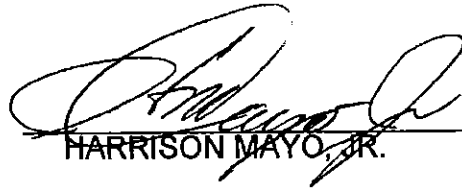
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6. That after she said she had been sexually abused, she began talking about the defendant, Fred Harris, needing to be punished for what he did.

7. That after Ms. Allen made changes to the affidavit as requested by Ms. Smith, she now does not want to get involved.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 9TH day of July, 2014.


HARRISON MAYO, JR.

B

I went with the consensus but I was not wholeheartedly in agreement with the guilty verdicts.

- Some of the ~~jurors~~ ^{jurors} were to me in a rush to judgement - Some had ^{some} vacation plans. Wanted to get back to lives it was pretty much cut & dry to them & they did not believe the testimony of the School officials, CPS & Harris-

Henderson P.D.
Investigation -

One of the jurors I recall put ^{strong} emphasis on a personal experience of being sexually abused & physically abused as a child so she sympathized with the victims wholeheartedly - She even came to tears ^{believe} when she spoke of this - She did not separate her personal experience from judging the case - making a ~~sound~~ sound decision on the ~~case~~ case.

C

AFFIDAVIT OF KATHLEEN SMITH

COUNTY OF CLARK
STATE OF NEVADA } ss:

I, KATHLEEN SMITH, being first duly sworn on oath, deposes and states as follows:

1. That I was a sworn juror in the State of Nevada v. Fredrick Harris and the information contained herein is the truth to the best of my knowledge.
2. That I participated in deliberations which resulted in the conviction of Harris on multiple counts of sexual assault.
3. That I was pressured into voting to convict Fredrick Harris by other jurors. I, along with another juror, held out for two days.
4. That I finally gave up because I did not want to be in deliberations forever.
5. That during deliberation, one juror became emotional and began crying. She then talked about her own experience with sexual abuse. This was juror #7, Yvonne Lewis. I recall she put strong emphasis on being sexually abused and physically abused as a child. She sympathized with the victims wholeheartedly and began crying when she spoke of this. I do not believe she separated her personal experience from this case. She was unable to make sound judgments on this case based upon the things she said about her own sexual abuse.

~~#3 - I was~~

#4 - That I ^{caved} finally ~~gave~~ gave in to the consensus

* Take out did not want 2 be in deliberations forever.

#5 - last line

I believe she was unable 2 MK sound judgments on this case

6. That after she said she had been sexually abused, she began talking about the defendant, Fred Harris, needing to be punished for what he did.

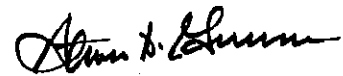
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this _____ day of July, 2014.

KATHLEEN SMITH

SUBSCRIBED and SWORN to me
this _____ day of July, 2014.

NOTARY PUBLIC in and for said
County and State.


CLERK OF THE COURT

1 **RTRAN**

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

FREDERICK HAROLD HARRIS, JR.,
aka FREDRICK HAROLD HARRIS JR.,

Defendant.

CASE NO. C291374-1

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 27, 2015

RECORDER'S TRANSCRIPT RE:
SENTENCING

APPEARANCES:

For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

KRISTINA A. RHOADES, ESQ.
Deputy District Attorney

For the Defendant:

BETSY ALLEN, ESQ.

Recorded by: KRISTINE CORNELIUS, COURT RECORDER

1 TUESDAY, OCTOBER 27, 2015; 10:39 A.M.

2
3 THE COURT: Okay. Mr. Harris today is the date and time set for entry of
4 judgment and imposition of sentencing. Is there any legal cause or reason why
5 judgment should not be pronounced against you at this time?

6 THE DEFENDANT: No.

7 THE COURT: By virtue of the verdicts returned in this case, I hereby
8 adjudicate you guilty of:

9 2, 3, 6, 8 through 11, sexual assault with a minor under 14; 13, 14, 21,
10 22, I guess those are the same.

11 Lewdness with a child under the age of 14, Counts 4, 5, 7, 12 and 20.

12 And 16, child abuse, neglect or endangerment;

13 First degree kidnapping, 19, 25, 28 and 37;

14 23, coercion sexually motivated;

15 24, administration of a drug to aid in the commission of a crime;

16 26, 29 and 31, sexual assault with a minor under 16 years of age;

17 33 through 35, sexual assault with a minor under 16 years of age;

18 36, 39 through 41, sexual assault;

19 38, battery with intent to commit sexual assault;

20 42, pandering;

21 44, living from the earnings of a prostitute.

22 Does the State wish to address the Court?

23 MS. LUZAICH: I do. And before I start arguing the PSI is incorrect when it
24 comes to what the potential sentences are for some of the offense. The Court, I am
25 sure is well aware, that in many of the legislatures the penalties changed. And P

1 and P's PSI did not take into account the legislature changing the penalties, so very
2 briefly regarding the sexual assault with a minor under 14 counts –

3 THE COURT: That's 35 to life now, right?

4 MS. LUZAICH: It is now, so counts 2, 3, 6, 8, 9, 10, 11, 13 and 14, the
5 penalty is correct, it's 35 to life.

6 THE COURT: Okay.

7 MS. LUZAICH: However, counts 21 and 22 that pertain to Victoria Duke,
8 those are the counts that were on or between December, 2004 and May of 2005,
9 during that timeframe sexual assault under 14 was punishable by 20 to life not 35.

10 THE COURT: Okay.

11 MS. LUZAICH: And then the sexual assault under 16 counts, Counts 26 and
12 29 –

13 THE COURT: Let me turn the page.

14 MS. LUZAICH: -- I think P and P has them as 25 to life, in fact –

15 THE COURT: Okay. 26 and 29 they have 25 to life, that's true.

16 MS. LUZAICH: Right. In fact it was 20 to life. Counts 26 and 29 were on or
17 between August 1, 2007 and August 31 of 2007.

18 THE COURT: So those two should be 20 to life?

19 MS. LUZAICH: Wait, I'm sorry.

20 MS. ALLEN: 31, 33, 34 and 35.

21 MS. LUZAICH: And then counts – yes, 20 to life for 26 and 29. And then for
22 Counts 31, 33, 34 and 35, I was explaining to Ms. Allen earlier, when I pled all the
23 way through this case, Victoria's counts spanned a whole significant amount of her
24 life. And the – there's sexual assault under 14, under 16 and just sexual assaults.
25 So I was pleading according to her age and I didn't take into account the changing

1 of the – legislature changing the penalties.

2 And in Counts 31, 33, 34 and 35, I pled those between September 1,
3 '07 and July 30, '08, because of her date of birth, her age.

4 THE COURT: Okay.

5 MS. LUZAICH: In October 1st of 2007, the legislature changed the sexual
6 assault under 16 from 20 to life to 25 to life, but because of the way I pled it, it also
7 encompasses the 20 to life timeframe. I think that the Supreme Court would say
8 that the Defendant is entitled to the benefit of the doubt –

9 THE COURT: Twenty to life.

10 MS. LUZAICH: And I would ask the Court on those counts to also sentence
11 him 20 to life. So all of it that say under 16; 26, 29, 31, 33, 34 and 35, I would ask
12 the Court to sentence 20 to life. And I just think that that's intellectually honest of
13 me to do that.

14 MS. ALLEN: And I appreciate that.

15 THE COURT: Okay.

16 MS. LUZAICH: And then, finally, Count 20, the lewdness with a minor.
17 During a short period of time lewdness with a minor was punishable by both 10 to
18 life or 2 to 20; so Count 20 is December, 2004 through May of 2005. During that
19 timeframe, the Court had the option of either 10 to life or 2 to 20. So I at least want
20 the Court to be aware of that.

21 THE COURT: Had the option of 10 to life or what?

22 MS. LUZAICH: Two to 20 years in prison. No probation, but 10 to life or 2 to
23 20 and that's only for Count 20. The lewdness with a minor counts, 4, 5, 7 and 12
24 are appropriate 10 to life.

25 THE COURT: Okay. Anything you want to add?

1 MS. LUZAICH: Okay. So that being said the Court heard the trial. The Court
2 heard evidentiary hearing. The Court heard a bunch of motions; so I'm not going to
3 reiterate all of the facts, just basically what the testimony at trial was the Defendant
4 had all of these individuals; Tina, the mom and her five children in his life. That
5 during different timeframes while they either lived with him in the house or he was
6 helping take care of them, he and his girlfriend, he abused all five of the – well,
7 according to the jury's verdict, three of the children and Tina Duke.

8 I would not lose any sleep if the Court ran every single count concurrent
9 or consecutive, sorry; I'm not going to do that. I recommend – I recognize that P
10 and P has said to run pretty much everything concurrent. And I think that based on
11 what happened in this case that that's absolutely inappropriate.

12 What I would ask the Court to do, Taharah was a young child. She had
13 been abused. She was afraid to report it when she was asked about it and,
14 therefore, was abused again. However, the Defendant had had contact with the
15 police. And, even after having contact with the police, abused Taharah afterwards.
16 So I would ask the Court to run two of Taharah's counts consecutive to each other.

17 THE COURT: Which one are they?

18 MS. LUZAICH: I'm sorry?

19 THE COURT: Which ones are they?

20 MS. LUZAICH: Counts 1 through –

21 MS. ALLEN: One was a not guilty.

22 MS. LUZAICH: I'm sorry.

23 THE COURT: No, 1 –

24 MS. LUZAICH: Oh, sorry, 2 –

25 THE COURT: Yeah.

1 MS. LUZAICH: I'm just – I was just – the time frame of – well, I guess it's all –
2 I would ask the Court to run a lewdness and a sexual assault consecutive to each
3 other. The Defendant abused Victoria over – and I'm sorry, Taharah's counts are 2
4 through 14. So I would ask the count – the Court to run counts – Count 4
5 consecutive to Count 2. And then the other Taharah counts concurrent to each
6 other.

7 Victoria was abused literally over the course of pretty much her entire
8 adult life by the Defendant. If the Court remembers before they went to Utah he
9 touched her. She wasn't believed by her family. I would ask the Court to run that
10 count – one of those counts consecutive to the others for a 10 to life.

11 When she got back things –

12 THE COURT: Which one are they? Which one of the counts involving
13 Victoria?

14 MS. LUZAICH: Count 20.

15 THE COURT: Okay.

16 MS. LUZAICH: Then they went to Utah. When they got back he abused her
17 continuously for an extended period of time. And I would ask the Court to run one of
18 those counts consecutive to 20 and 4 and 2, if the Court chooses anyone of those
19 29 – and that would be a 20 to life not a 35.

20 And then Tina was also abused by the Defendant. I would ask – she
21 has a 1 to 5 and a 1 to 4 for the last two counts. I would ask the Court to run one of
22 those, either Count 43 – or 44 or Count 42, consecutive to the others. And I would
23 submit it.

24 THE COURT: Do you want to say anything, Mr. Harris?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: You sure?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay.

4 MS. ALLEN: Thank you, Your Honor.

5 I mean I know the Court heard this trial. This was – this was one of
6 those trials that sort of changes, I think you as an attorney, because we had so
7 many people that we were bringing in, you know, obviously during the course of the
8 trial that talked – I mean these were upstanding people. These were teachers.
9 Good citizens. People who in the community are respected that testified that, you
10 know, this kind of stuff wasn't going on. That any of these girls hadn't disclosed it. It
11 was very difficult. Ultimately, the jury did come back finding Mr. Harris guilty and he
12 maintains his innocence and he absolutely has the right to do so.

13 Most horrifying part of this trial in my opinion is that if in fact any of this
14 was true is that the mother was allowed to walk off the stand and she wasn't
15 arrested. Because someone like that should never be allowed to have their children
16 back, if in fact she was even remotely being honest when she testified.

17 The facts that he is getting a sentence in this case of 35 to life, I just
18 want to put that in perspective for the Court. He's – according to the PSI, he's
19 currently close to 50 years old. That would put him at close to 90 years old before
20 he even steps out of prison and that's if the Court runs everything concurrent. If he
21 just gets one 35 to life and nothing else, he – it's 90 years old or close to that.

22 I'm requesting – and P and P saw, I guess, something in this to run
23 everything concurrent; that's their recommendation. I guess at some point it
24 becomes sort of ridiculous to give someone, you know, consecutive sentences when
25 they are so many counts, when he's facing so much time just from one count alone.

1 I'm requesting the Court run everything concurrent like P and P
2 recommended. That, again, puts him at close to 90 years old before he even is up
3 for parole. This – again, this was a very difficult case. I understand the Court's
4 concern but it's not as if he's getting probation. It's not as if he's walking out of this
5 courtroom or anywhere anytime soon. I would submit it with that. And there were
6 979 days credit.

7 THE COURT: In accordance with the laws of the state of Nevada, this Court
8 does now sentence you as follows: In addition, \$25 administrative assessment,
9 \$150 DNA fee, order that you submit to genetic marker testing. Impose a \$3 DNA
10 collection fee.

11 As to Count 2, the Court is going to sentence you to 35 years to life in
12 the Nevada Department of Corrections.

13 As to Count 3, 35 to life.

14 Count 6, 35 to life.

15 Count 8, 35 to life.

16 Count 9, 35 to life.

17 Ten, 35 to life.

18 Count 11, 35 to life.

19 Count 13, 35 to life.

20 Count 14, 35 to life.

21 Count 21, 20 years to life.

22 Count 22, 20 years to life to run consecutive to number 21, to Count 21.

23 Okay. The lewdness with the child charges, Count 4, 10 to life.

24 Count 5, 10 to life.

25 Count 7, 10 to life.

Count 12, 10 to life.

Count 20, 10 to life. And those will all be concurrent to each other.

Count 16, the child abuse and neglect, 28 to 72.

The first degree kidnapping, Count 19, 5 to life.

25, five to life.

28, five to life.

37, five to life.

The coercion, Count 23, he's going to be sentenced to 28 to 72 months.

Count 24, 24 to 60 months in the Nevada Department of Corrections.

As to Count 26, 20 to life.

Count 29, 20 to life.

Count 31, 20 to life.

Count 33, 20 to life.

Count 34, 20 to life.

Count 35, 20 to life to run consecutive to the other counts.

Count 36, 10 to life.

Count 39, 10 to life.

Count 40, 10 to life.

Count 41, 10 to life.

Count 38, 2 to life.

Count 42, 24 to 60.

Count 44, 18 to 48 to run consecutive to Count 42.

MS. ALLEN: Which one was consecutive? I'm sorry, the last one.

THE COURT: 44 consecutive to 42.

MS. ALLEN: You went so fast.

1 THE COURT: Let me see, did I do Count 20, I'm not sure I – the lewdness.

2 Oh, yeah, I did get Count 20; I just wanted to make sure I got all the counts.

3 MS. ALLEN: You went really fast.

4 THE COURT: I know. I had it all written out but I just wanted to make sure I
5 got all the counts.

6 MS. ALLEN: Your Honor at this time I would make representations that
7 Christopher Oram is substituting in –

8 THE COURT: Okay.

9 MS. ALLEN: -- for the purposes of appeal. He has a motion here that I'm
10 requesting be filed in Open Court today with regard to the transcripts in this case.
11 And I believe the State has no opposition to the transcripts being prepared at the
12 State's expense and he would submit an order as such.

13 THE COURT: That's fine.

14 MS. ALLEN: Okay.

15 THE COURT: That's fine.

16 What is it I'm signing today?

17 MS. ALLEN: Pardon?

18 THE COURT: What is it I'm signing?

19 MS. ALLEN: There's no order.

20 THE COURT: Oh.

21 MS. ALLEN: He's going to submit, that's just the motion, Your Honor.

22 THE COURT: Oh, okay.

23 MS. ALLEN: We would just ask it be filed in Open Court.

24 THE COURT: Okay. It'll be filed in Open Court.

25 MS. LUZAICH: Oh, no, the aggregate total –

1 THE COURT: Oh, that's right. I have to figure out what the aggregate total is.
2 MS. LUZAICH: Thirty-five, 55 –
3 THE COURT: Where did my notes go?
4 MS. LUZAICH: Sixty-five, oh and it's months too, shit.
5 [Court and counsel calculating time]
6 MS. ALLEN: I think it's 76.
7 MS. LUZAICH: No, it's got to be months.
8 MS. ALLEN: Oh.
9 MS. LUZAICH: [Calculating and conferring with co-counsel].
10 Nine hundred and eighteen months, yeah. And, again, I went to law
11 school 'cause I can't add.
12 MS. ALLEN: Yes, yes. Thirty-six – is that right?
13 MS. LUZAICH: I got 75 years, which is – but it's got to be in months –
14 MS. ALLEN: Right. No, no, no, I know –
15 MS. LUZAICH: -- which is 900 months –
16 MS. ALLEN: Right.
17 MS. LUZAICH: Seventy-five years is 900 plus she ran 18 to 48 consec, so.
18 MS. ALLEN: Okay.
19 MS. LUZAICH: So 918.
20 MS. ALLEN: Well, I had that as 12, but okay, maybe that's why I had it
21 wrong.
22 MS. LUZAICH: Judge, on Count 44 was it 18 to 48?
23 THE COURT: Yes, it was.
24 MS. LUZAICH: So I have 918 months to life. Anybody disagree?
25 CORRECTIONS OFFICER: Seventy-six point five years.

1 THE COURT: Well, what is the aggregate?
2 MS. ALLEN: Seventy-six point five years.
3 MS. LUZAICH: Yeah, but they do it in months. Seventy-six point five years.
4 THE COURT: What's the aggregate?
5 THE COURT CLERK: Seventy-six point five.
6 MS. LUZAICH: Seventy-six point five years or 918 months. When we did
7 the prison math class, we learned that they calculate it in months.
8 MS. ALLEN: I don't –
9 MS. LUZAICH: So either way 76.5 years or 918 months.
10 THE COURT: Thank you.
11 MS. LUZAICH: And, I'm sorry, how many credit, Ms. Allen?
12 MS. ALLEN: Nine seventy-nine.
13 MS. LUZAICH: Nine-seven-nine.
14 MS. ALLEN: Um-huh.
15 THE COURT: Yeah.
16 MS. LUZAICH: Thank you.
17 THE COURT: Thank you.

18 [Proceedings concluded at 10:57 a.m.]

19 * * * * *

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

22 
23 DEBRA WINN, Court Transcriber
24
25


CLERK OF THE COURT

1 RTRAN

2

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DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

THE STATE OF NEVADA,

7

Plaintiff,

8

vs.

9

FREDERICK HAROLD HARRIS, JR.,

10

Defendant.

11

12

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

13

TUESDAY, FEBRUARY 17, 2015

14

**RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING
DEFENDANT'S MOTION FOR A NEW TRIAL**

15

16

17

APPEARANCES:

18

For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

19

20

For the Defendant:

BETSY ALLEN, ESQ.

21

22

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24

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RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

1 TUESDAY, FEBRUARY 17, 2015; 9:05 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Frederick Harris, C291374. He's
4 present. He's in custody.

5 MS. ALLEN: Yes, Your Honor. This matter was set at 10:30. I had issued
6 subpoenas to Facebook based upon the discussions that we had last time –

7 THE COURT: Sure.

8 MS. ALLEN: – we were in court. I provided the letter that I received from
9 Facebook to Ms. Luzaich. I apologize. I meant to forward it to the Court. However,
10 basically Facebook told me no, didn't have jurisdiction, the court order, none of it.
11 Yeah. Anyhow and there was federal statute cited. What they did tell me I needed
12 to do was subpoena with court orders to the actual Facebook users.

13 THE COURT: Oh.

14 MS. ALLEN: So I'm here to advise the Court that I – the only way for me to
15 do it is actually go through the two individuals, the two individuals we previously
16 named.

17 THE COURT: Sure.

18 MS. ALLEN: They'd be the same two individuals. I was going to submit
19 orders to the Court indicating that they were to produce that information.

20 THE COURT: Okay.

21 MS. ALLEN: That's the only way I can do it according to Facebook. And I did
22 give that letter to her.

23 THE COURT: What if they don't have it? What if they've deleted it?

24 MS. ALLEN: I was given detailed instructions on how they are to – they can
25 retrieve it. Nothing ever gets erased from Facebook. That is the lovely part about

1 Facebook. It never goes away. That's why I don't have [indiscernible].

2 MS. LUZAICH: My only issue with that is: the if they don't have it thing. If the
3 Court issues an order to them to, you know, provide whatever they have, you know,
4 that's fine.

5 THE COURT: Sure.

6 MS. LUZAICH: But I don't know that the Court technically has authority to
7 order them to go out and retrieve things.

8 MS. ALLEN: Well, it's on their computer and so the – I'll provide them
9 detailed instructions on how to retrieve it. They don't have to go through some huge
10 process through Facebook. It's all basically what you would do on your computer
11 and I would – I respectfully disagree with Ms. Luzaich. I believe the Court does
12 have jurisdiction. They were jurors in this case. There's implications of misconduct.

13 MS. LUZAICH: Well, I mean I don't know what the instructions are, but if it's
14 just like click three buttons on your computer –

15 MS. ALLEN: Yeah.

16 MS. LUZAICH: – I don't have a problem with that.

17 THE COURT: I have to assume it's got to be easy like that; that it can't be,
18 you know – that you don't need a PhD in computer programming to do it.

19 MS. ALLEN: No. I think the instructions were in the letter or in the email that I
20 forwarded to you.

21 MS. LUZAICH: Oh, were they? I don't know.

22 MS. ALLEN: Yeah. The instructions were included.

23 THE COURT: Okay. How much time do you want?

24 MS. ALLEN: What do we do? Just another 30 days is fine.

25 THE COURT: Okay.

1 MS. ALLEN: And I'll get those orders over to you today or tomorrow.

2 THE COURT: Okay, thank you.

3 They'll be thrilled, I guess, when they get those.

4 MS. ALLEN: Uh-huh.

5 [Colloquy between the Court and clerk]

6 THE CLERK: That will be March 23, 8:30.

7 MS. ALLEN: Thank you.

8 And then I have one other matter.

9 MS. LUZAICH: Thank you.

10 THE CLERK: I'm sorry. I gave the wrong date, March 26th, 8:30.

11 MS. LUZAICH: March 26th?

12 THE COURT: Uh-huh.

13 THE CLERK: Yes. I'm sorry.

14 [Proceedings concluded at 9:08 a.m.]

15 * * * * *

16 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
17 proceedings in the above-entitled case to the best of my ability.

18 
19 KRISTINE CORNELIUS
20 Court Recorder
21
22
23
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CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 FREDERICK HAROLD HARRIS, JR.,)

10 Defendant.)

CASE NO. C291374

DEPT. XII

11
12 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

13 MONDAY, JANUARY 5, 2015

14 **RECORDER'S TRANSCRIPT RE:**
15 **EVIDENTIARY HEARING**
16 **DEFENDANT'S MOTION FOR A NEW TRIAL**

17 APPEARANCES:

18 For the State:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney

KRISTINA A. RHOADES, ESQ.
Deputy District Attorney

21 For the Defendant:

BETSY ALLEN, ESQ.

22
23
24
25 RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

1 MONDAY, JANUARY 5, 2015; 10:37 A.M.

2 * * * * *

3 THE COURT: State versus Harris, C291374. Mr. Harris is present and he's
4 in custody.

5 Good morning.

6 MS. ALLEN: Good morning, Your Honor. We were back here today for the
7 continued hearing on this matter. After we left last time, if you recall, Mr. Bell
8 testified about posting that picture on Facebook. Yeah. And I went back and I
9 pulled up his Facebook account. It's not private and I did print out the – what I found
10 on Facebook. I provided a copy to the State.

11 I had at that time sent Ms. Luzaich an email, and I think your law clerk
12 was cc'd on it. We had talked about, you know, the different dates that we wanted
13 to move it to, and I had asked Ms. Luzaich could you make sure those two jurors
14 come back, because after I read this I realized that not only was he posting on
15 Facebook about this but the Yvonne Lewis, she posted the same picture of herself
16 on Facebook with the juror badge. And you can see that in one of the comments
17 that's on his Facebook account. It's like the very first comment from a Clay
18 Heximer. And so I wanted – I had gone to Yvonne's Facebook account and I
19 couldn't find it. It's either private or she deleted it.

20 And so I really needed – I need to make a record with these two jurors
21 about what they were doing on Facebook with regard to posting pictures,
22 commenting on each other's Facebook pages, because she commented on his
23 Facebook post, as well on his picture. So I asked Ms. Luzaich if she would make
24 sure that those two jurors were back. Ms. Luzaich agreed. Because I said I can
25 subpoena them. I don't mind subpoenaing them. And she said: No, that's fine. I'll

1 make sure they're here. I texted her last week about whether or not they were
2 coming, and I didn't really get a response specifically with regard to them. And then
3 last night late I did get a text message where she said I'm – basically I'm not going
4 to do that. I want an offer of proof.

5 So I would've had them subpoenaed for today. I certainly would've sent
6 my PI out there. I don't care.

7 THE COURT: Okay.

8 MS. ALLEN: That doesn't bother me in the least. But I was under the
9 impression that Ms. Luzaich was doing that. She did agree to do it and then, I
10 guess, at the last minute decided not to. I, obviously, would've appreciated knowing
11 and I could've had them here, because this seems like a big waste for us to come in
12 and discuss this without having them here. Regardless of what happened between
13 Ms. Luzaich and I, these two individuals clearly defied the Court's order repeatedly.
14 I mean this Court repeatedly says things about not posting on Facebook or social
15 media. It turns out Yvonne Lewis was doing it as well because her page was made
16 private. I –

17 THE COURT: Why does it say Kerrigan?

18 MS. ALLEN: That's the name she has on her Facebook account.

19 THE COURT: Okay.

20 MS. ALLEN: But it is her. And I apologize. I would've printed it out so you
21 could see the picture. It is her though.

22 THE COURT: I can see her. It looks like her.

23 MS. ALLEN: And she says she's sitting right across from Robert, so it's
24 clearly her. There's also another post at the very bottom of the page, [indiscernible].
25 It says: Two people I know on one trial. I would've robbed a bank if I had known. I

1 mean, so there's clearly a – there's clearly interconnectivity here. I think that this
2 was a surprise to me, obviously, Mr. Bell saying about the picture and then posting it
3 on Facebook. I didn't know any of this until the – you know when we were here last.
4 I think everybody was surprised.

5 But either way, again, this – I really do think this needs to be fleshed
6 out. And while my investigator could come in and say that he printed this off, off Mr.
7 Bell's Facebook page, I think that Mr. Bell's the one who really does need to
8 authenticate it in order to have it admitted as an exhibit. And I think it – for purposes
9 of appeal in this case, if it goes that direction, this really does need to be made part
10 of the record. And we also – I also need to get Ms. Kerrigan slash Lewis's
11 Facebook information, because she clearly posted the same picture of herself with
12 the same badge.

13 THE COURT: Well, you have the right to make whatever you want part of the
14 record. I agree with that.

15 MS. ALLEN: Right. And but I – you know, again, I need – I do need to verify
16 some of that, which is why I needed them back. And Ms. Lewis, when I printed this
17 out – it was only when I printed it out after the last hearing that I realized that Ms.
18 Lewis was doing the same thing, which is clearly a concern to me.

19 THE COURT: Her Facebook is private.

20 MS. ALLEN: Well, you can – I'm not on Facebook, so I don't know any of that
21 stuff, but it's –

22 THE COURT: Okay.

23 MS. ALLEN: You can't pull up her pictures. So she's either deleted it, she
24 was smart and deleted it, or she made it private and no one has access to it.

25 THE COURT: Okay.

1 MS. ALLEN: Either way – and I was talking about this earlier. Even if she did
2 delete it, it's – I can get it. Facebook has this – as I said about 20 minutes ago, you
3 can die and your Facebook lives way past. So I can get these things from
4 Facebook, but I was under the impression she was going to be here today, per the
5 representations of Ms. Luzaich. And if she were here, I think I could question her
6 about it and I'm not sure I would have to go through Facebook. But now that we're
7 in the position we're in, I'm – I really do think that I need both those jurors back and I
8 do think I need – I'm going to have to go through Facebook to get this information,
9 because this – all of this needs to be made part of the record. I mean it clearly –

10 MS. LUZAICH: Can I respond first?

11 THE COURT: Sure.

12 MS. LUZAICH: First, the reason we're here today is because Ms. Allen
13 wanted her investigator to testify.

14 THE COURT: Right. I thought –

15 MS. LUZAICH: We continued it to today specifically because he was not here
16 last time because of the funeral.

17 THE COURT: Right.

18 MS. LUZAICH: I certainly wouldn't have objected to coming back another day
19 for him to testify because of the funeral. I get all that. Second, I have a copy of – a
20 better copy than Ms. Allen's – of Mr. Bell's Facebook posts. It's in color. You can
21 see. I agree that it was Ms. Lewis. And I will offer it into – I'll stipulate.

22 Can I approach?

23 THE COURT: Sure.

24 MS. LUZAICH: I'll stipulate that it come into evidence.

25 THE COURT: That's what I wondered if we could –

1 MS. LUZAICH: Because they did nothing wrong. I pulled the transcript. That
2 was – if you look at the Facebook posts, that is from March 27th of 2014.

3 THE COURT: Okay.

4 MS. LUZAICH: The transcript from March 26th, the day before, on the very
5 last page, day two, rough draft, page 240, you tell the jurors that they have been
6 impaneled and you say: Before you leave I want to give you some instructions. You
7 can't talk about this case with anyone, including your fellow jurors. You can tell your
8 family members and friends that you're a juror in a criminal trial, but you can't tell
9 them anything else. Wear the blue badges all the time when you're in the
10 courthouse, so you can identify yourself as a juror in Department 12, so anybody
11 associated knows they can't talk to you. Well, if you look at that photograph, it's a
12 picture of him in his juror badge that just says: a cup of coffee in the morning duty.
13 It says nothing about the case.

14 And then after the jury is impaneled the Court gives them a juror book –

15 THE COURT: Uh-huh.

16 MS. LUZAICH: – and reads them an admonishment every single time they
17 leave the courtroom, and what the admonishment says is: You can't talk with
18 yourself or anyone else about the trial or read anything about the trial. You say:
19 You are further admonished you may not communicate with anyone, including your
20 fellow jurors about this case –

21 THE COURT: Uh-huh.

22 MS. LUZAICH: – on your cell phone, BlackBerry, Facebook, blah, blah, blah.
23 You never tell jurors that they can't go on Facebook. These jurors did nothing
24 wrong. They didn't talk about the case. All they did was say I'm in a trial and posted
25 a picture. There's nothing inappropriate about that, nothing.

1 And I would ask that these be made part of the record. The trial
2 transcript hasn't been officially transcribed. Ms. Allen has a copy. It's the rough
3 draft. It's page 240 from day two. And this I got from your JEA. It's just the
4 admonishment that you read, but I would ask that it be made part of the record.

5 THE COURT: Sure.

6 MS. LUZAICH: And these could be marked as State's exhibits.

7 THE COURT: Do you want to accept the stipulation of – is it Mr. Bell's
8 Facebook page?

9 MS. ALLEN: Well, that's – Your Honor, I didn't actually see that copy, so I
10 don't know if it – does it contain all the posts?

11 MS. LUZAICH: Yes.

12 MS. ALLEN: Okay. If it contains all the posts, then I'm fine.

13 MS. LUZAICH: And they're in color.

14 MS. ALLEN: Which is fine. Which is fine with regard to Mr. Bell if they want
15 to –

16 MS. LUZAICH: I'm giving her an extra copy.

17 MS. ALLEN: If they want to stipulate to it that's fine. I have no issue with that.
18 But we're still in a position where Yvonne posted the same photo and apparently – I
19 mean there's obviously – well, I'm assuming there's comments on her page as well
20 and we don't have those. And, again, this is kind of why I had asked that these
21 jurors be brought back, because once I saw that this Yvonne Lewis was doing the
22 same thing, again, I think that needs to be made part of the record.

23 And, again, Your Honor, I didn't – I wasn't intentionally trying to waste
24 the Court's time. I would've had her subpoenaed to come back. That's – I have no
25 problem with that, but I was under the impression from the emails that we

1 exchanged that Ms. Luzaich was going to do that. Had she informed me earlier, I
2 would've certainly subpoenaed Ms. Lewis and brought her in and I wouldn't have
3 had a problem with that.

4 So I appreciate that she says well, they haven't done anything wrong,
5 but in reality we really don't know what Ms. Lewis has on her Facebook page, first of
6 all. Second of all, this was wrong. They're not supposed to go on social media and
7 discuss this, and there's clearly a discussion going on with his friends about, you
8 know, not guilty, hang him high, things like that. It was clearly inappropriate and it
9 was clearly juror misconduct and I – and while that may be the admonition that you
10 read the day before, I'm fairly certain the Court said before that at some point that
11 you're not really supposed to do this. You're not supposed to post on social media
12 what you're doing. It's okay to tell friends and family that you're in a trial, but this is,
13 you know – both of them were doing it. Then they're commenting back and forth
14 apparently on their pictures, their friends are.

15 THE COURT: I tell them –

16 MS. LUZAICH: The jurors aren't commenting back and forth, and they posted
17 one picture and other people made comments. It's nothing about the case. And this
18 Court never told them you can't go on Facebook. It says you cannot talk about this
19 case, and they haven't talked about the case. There's nothing wrong with what they
20 did. They're telling their friends that they're jurors – that's it – which is exactly what
21 you told them they can do. You can tell your friends and family that you're jurors in
22 a criminal case. They didn't even say in a criminal case. They just said that they're
23 jurors.

24 MS. ALLEN: Well, actually, Your Honor, we don't know what Ms. Kerrigan –

25 THE COURT: Well, it looks like I need to be more specific from now on.

1 MS. ALLEN: We didn't – we don't – I don't know what Ms. Lewis did.

2 THE COURT: Because this is exactly what I'm trying to avoid.

3 MS. ALLEN: Well, I don't know what Ms. Lewis did on her Facebook page,
4 Your Honor. That's the problem.

5 THE COURT: Okay. Well, you want to accept this stipulation and I can mark
6 this and make it part of the record?

7 MS. ALLEN: Please.

8 THE COURT: And the other documents can be marked and admitted as well.
9 But I guess what you're asking is a continuance to bring in Ms. Lewis?

10 MS. ALLEN: Yes, Your Honor, and I would actually ask – I'm not sure if I
11 need one at this point, but I would request in advance a court order for Facebook to
12 be able to get her, her – the – whatever picture it is, like that – I'm assuming it's like
13 the 26th, 27th, 28th of March, in that period, because whoever makes the comment,
14 this Clay Heximer says on the 27th, essentially, my friend Yvonne posted the exact
15 same photo. So I want to get that thread.

16 THE COURT: On the 26th?

17 MS. ALLEN: I don't know if it was the 26th, 27th or 28th – like I'm not sure
18 exactly when it was.

19 MS. LUZAICH: Well, it would have to be before the 27th –

20 THE COURT: Right.

21 MS. LUZAICH: – if he posted that on the 27th.

22 THE COURT: It would have to be.

23 MS. ALLEN: So it – yeah, so I need a court order. Well, I don't know if I need
24 a court order, but if I do, I'm requesting now at this point in time the Court give me a
25 court order to get her Facebook posts with regard to this picture and that thread and

1 what comments were made on that.

2 THE COURT: Any objection?

3 MS. LUZAICH: I don't have any objection to getting her Facebook posts for
4 that picture or Mr. Bell's picture for the 25th or 6th or 7th.

5 THE COURT: Okay. And when was the jury impaneled?

6 MS. ALLEN: Well, he's –

7 MS. LUZAICH: The 26th.

8 THE COURT: The 20 –

9 MS. LUZAICH: It was the 25th and 6th.

10 THE COURT: Okay.

11 MS. LUZAICH: And at the end of the day they were impaneled on the 26th.
12 What I read to you was from the 26th.

13 THE COURT: Okay. All right –

14 MS. ALLEN: Okay.

15 THE COURT: – so you can have it.

16 MS. ALLEN: Okay.

17 THE COURT: But then it's probably going to take you a while.

18 MS. ALLEN: I assume, yeah. I – my intent is to contact Facebook. Again,
19 Your Honor, I would've done all this sooner, but I thought she was going to be here,
20 and we would've alleviated a lot of that I think if she was here. But I – it's – I will
21 contact Facebook today and figure out what exactly they need. I may not need a
22 court order, and if I don't, I won't even submit the paperwork. Obviously, I'll just – a
23 lot of them just have a subpoena compliance and I can just submit a subpoena.

24 THE COURT: Okay.

25 MS. ALLEN: But if I do, I usually email it to your law clerk –

1 THE COURT: Sure.

2 MS. ALLEN: – if that's okay.

3 THE COURT: Sure, and she might give it to you.

4 MS. ALLEN: She won't. That's part of the reason why I asked Ms. Luzaich.
5 She was very unhappy that we contacted her. Apparently, she doesn't like the idea
6 that the defense attorney contact – excuse me – contacted her, which is why I asked
7 her to – Ms. Luzaich to see if she would bring her, so that I didn't have to bother this
8 woman with the idea that we knew where she lived and, you know, subpoena her.
9 My private investigator is that – just that. He's an investigator. Like he – he is
10 tasked with finding someone and he usually does. He's quite good at his job.
11 There's nothing untoward about it. It's just what he does for a living. However, Ms.
12 Lewis was uncomfortable with that, which is why I tried to go through the State. So
13 that's where we are.

14 THE COURT: Well, we know her address. We sent her a jury summons.

15 MS. ALLEN: I understand that. I mean I just – what I'm saying is, like, I tried
16 to make this as noncaustic for her as possible, you know, and go through Ms.
17 Luzaich. That clearly didn't work out, so I will make sure I subpoena her myself.

18 THE COURT: Okay. So you think 45 days is enough time?

19 MS. ALLEN: Forty-five days, and if there's an issue – I'll contact Facebook if
20 there's an issue. I'll immediately email Ms. Luzaich and your law clerk and let you
21 know if we need to move it. He's been great about moving –

22 THE COURT: But the investigator is not going to testify?

23 MS. ALLEN: No. I originally was going to have him testify, because I said
24 you need to figure – we need to figure this out, but I think it's – Mr. Bell is the one
25 who probably needs to – if I'm going to have – but now with the stipulation, I'm not

1 sure that I need to have him come back.

2 THE COURT: So just Ms. Lewis?

3 MS. ALLEN: I believe it's just going to be Ms. Lewis. And if there's any
4 change at all I will let everybody know.

5 THE COURT: Okay.

6 MS. LUZAICH: The State still objects to recalling Ms. Lewis. You know jurors
7 are here not because they choose to be here ever. She sat here for three-and-a-
8 half weeks as a juror. She was extremely distraught when she was asked to come
9 back last time and have to talk about it. So the fact that she has to come back yet
10 again, when I still believe that it is unnecessary, just for the record the State objects.

11 THE COURT: Okay. Well, I'm not sure whether it's necessary or not,
12 because I don't have what she posted is what I'm being told, correct?

13 MS. ALLEN: And I don't have it, Your Honor. I wasn't –

14 THE COURT: I think she posted something, but we don't know what it is.

15 MS. ALLEN: Right. And, clearly, it alludes to that in the comments under Mr.
16 Bell's Facebook page. I wasn't able to access that.

17 MS. LUZAICH: I assume she's private, which means the public can't access
18 it.

19 THE COURT: Okay. So we'll continue it for 45 days and you can – I guess if
20 you want to bring Ms. Lewis in you can. If you don't need to bring her in – maybe
21 you'll get her Facebook and you don't need to bring her in.

22 MS. ALLEN: Very well may be the case, Your Honor.

23 MS. LUZAICH: I would ask that we try to do it that way; that we –

24 THE COURT: That's what I think would be –

25 MS. LUZIACH: – get the Facebook and after the Facebook comes then the

1 Court can decide whether or not Ms. Lewis needs to actually come.

2 MS. ALLEN: Well, certainly if I get it and the State stipulates to its admission
3 and, you know, and all those things, then there may not be a cause to bring her
4 back.

5 MS. LUZAICH: Well, of course if it's hers –

6 THE COURT: I'm sure they're going to stipulate.

7 MS. LUZAICH: – I'm going to stipulate to its admission, just like I did with this.

8 THE COURT: Right. You know, is there any chance she'll give it to us
9 without doing this whole subpoena?

10 MS. ALLEN: My concern is you can go in and delete posts, so I'd actually
11 prefer at this point to get it from Facebook

12 THE COURT: Okay, that's fine.

13 MS. LUZAICH: Just for the record, you need to do a preservation letter for
14 Facebook. If there's a preservation – oh, well, that's what the police do. They do a
15 preservation letter, so that Facebook causes it not to be able to be deleted. I don't
16 know if I said that right. Causes it – well –

17 THE COURT: Okay. It sounds –

18 MS. ALLEN: Thank you, Your Honor.

19 THE COURT: It sounds right.

20 Okay, so 45 days.

21 THE CLERK: February 17, 10:30, Tuesday.

22 MS. ALLEN: A Tuesday?

23 THE CLERK: Yes.

24 MS. ALLEN: Thank you.

25 THE COURT: Is that okay with –

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MS. ALLEN: Yeah.

THE COURT: – both sides? Okay.

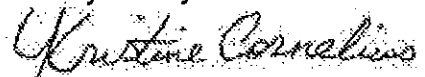
MS. LUZAICH: Yes.

THE COURT: Thank you.

[Proceedings concluded at 10:53 a.m.]

* * * * *

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



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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

FREDERICK HARRIS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 69093

Electronically Filed
Jun 16 2016 04:51 p.m.
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Clerk of Supreme Court

APPEAL FROM JUDGMENT OF CONVICTION
(JURY TRIAL)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE MICHELLE LEAVITT , PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME VIII  
~~~~~

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IN THE SUPREME COURT OF NEVADA

FREDERICK HARRIS,

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Appellant,

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Respondent.

OPENING BRIEF APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court 17th day of June, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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