



CLERK OF THE COURT

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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  
MONDAY, NOVEMBER 24, 2014

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

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

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

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

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

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

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

9 MS. ALLEN: He's supervising me.

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

12 MS. ALLEN: Oram.

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

14 MS. ALLEN: Yes, I am.

15 THE COURT: Okay. Is she here?

16 MS. ALLEN: She is.

17 THE COURT: Okay.

18 MS. ALLEN: We would call Kathleen Smith.

19 THE COURT: Is she outside?

20 MS. ALLEN: She is.

21 THE COURT: Okay.

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

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

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

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

2 MS. LUZAICH: She is.

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

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

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

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

14 **KATHLEEN SMITH**

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

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

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

18 **DIRECT EXAMINATION**

19 BY MS. ALLEN:

20 Q Good morning, Kathleen, how are you?

21 A Morning. Fine, thanks.

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

23 A Yes.

24 Q Okay. And you work downstairs?

25 A Yes.

1 Q And what do you do?

2 A I'm a office specialist.

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

4 A Yes, court information desk.

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

6 Nevada versus Frederick Harris, is that correct?

7 A Yes.

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

9 A Yes.

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

11 approximate month?

12 A April.

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

14 A Yes.

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

16 Harris' mom, is that correct?

17 A Yes.

18 Q Okay. Where did you see her?

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

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

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

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

23 A We both –

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

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

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

3 THE WITNESS: Yes.

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

6 THE WITNESS: Okay.

7 THE COURT: Did she testify?

8 THE WITNESS: No.

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

10 THE WITNESS: Yes.

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

13 THE WITNESS: No, no, no.

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

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

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

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

20 THE COURT: You could just tell that was –

21 THE WITNESS: Yes –

22 THE COURT: -- Defendant's mother?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

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

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

3 MS. ALLEN:

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

6 A I guess.

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

8 MS. ALLEN: Couple of times.

9 THE COURT: Okay. Well, see –

10 MS. ALLEN: I was trying to –

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

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

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

16 A That we spoke, yes.

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

20 A I can't remember.

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

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

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

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

2 A Yes, yes.

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

4 A Yes, yes.

5 Q Okay.

6 A Okay. I remember that.

7 Q Do you remember tall, tall man –

8 A Uh-huh.

9 Q -- his name was Harrison –

10 A Uh-huh.

11 Q -- identified himself as working for me?

12 A Yes.

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

14 what the reason was in which we contacted you?

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

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

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

18 juror had said during the course of deliberation?

19 A Yes.

20 Q Okay Do you remember which juror it was?

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

22 Q Can you describe her or him?

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

24 Q Okay. What color was her hair?

25 A Black.



1 Q Was she white, black, Hispanic?

2 A Hispanic.

3 Q She's Hispanic, okay. And did –

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

5 Q She looked Hispanic to you?

6 A Yes.

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

9 A No. As far as appearance, no.

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

12 MS. ALLEN: Yeah.

13 THE COURT: Okay.

14 MS. ALLEN:

15 Q Did you see her outside?

16 A Yes.

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

18 A Yes.

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

21 A Three, four.

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

23 A Yes.

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

1 A Yes. Well, along with everybody.

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

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

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

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

7 Q Okay. Did that change?

8 A Yes.

9 Q Okay. When did that change?

10 A Over a course of time.

11 Q If you remember?

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

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

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

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

18 A She was crying. She was upset.

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

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

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

23 A Yes.

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

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

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

3 A I can't recall.

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

5 A Yes.

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

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

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

11 A Yeah, I can't recall.

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

14 A Yes.

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

17 A Yes.

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

21 A I don't remember.

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

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

25 MS. ALLEN: Yeah.

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

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

3 THE COURT CLERK: Number 8.

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

5 THE COURT CLERK: Thank you.

6 MS. ALLEN:

7 Q Would you look at that [indicating].

8 A Okay.

9 Q Do you recall writing that?

10 A Oh, I remember writing this.

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

12 A [Reading]. Okay.

13 Q Do you remember that now?

14 A Yes.

15 Q You said you remembered writing that?

16 A Yes, I remember writing that.

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

18 talking about being sexually abused?

19 A So then if at that time --

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

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 THE WITNESS: Yes.

24 MS. ALLEN:

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

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

2 A Yes.

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

4 A No, no.

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

7 A Yes.

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

9 A Yes, I was.

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

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

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

15 A Yes.

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

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

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

20 A Yes.

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

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

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

1 women, black women?

2 MS. LUZAICH: Objection. Relevance and –

3 MS. ALLEN: Well –

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

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

8 THE COURT: Okay. Go ahead.

9 MS. ALLEN: Thank you.

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

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

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

15 MS. ALLEN: Right.

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

17 MS. ALLEN:

18 Q Do you identify as being African American?

19 A Yes.

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

21 A Yes –

22 Q Okay.

23 A -- um-huh.

24 Q And then your mother was?

25 A Mexican and Indian.

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

3 A Yes.

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

6 A No, I did not.

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

8 A Yes.

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

11 MS. LUZAICH: Objection –

12 THE COURT: Okay.

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

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

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

16 MS. LUZAICH: It doesn't –

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

20 MS. ALLEN: Okay.

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

23 MS. ALLEN: Okay.

24 Q Do you have a lot of black friends?

25 A Yes.

1 Q All right. Black women friends?

2 A Yes.

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

4 MS. LUZAICH: Objection.

5 THE COURT: Okay. Why is that relevant?

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

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

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

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

10 ments and where her opinions come from.

11 MS. ALLEN: Okay.

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

13 A Okay, which – which statement?

14 Q About not trusting light-skinned women?

15 A No, I did not make that statement.

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

17 A No.

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

19 A No.

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

21 correct?

22 A Yes.

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

24 correct?

25 A Yes.



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

3 A Yes.

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

5 A No.

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

8 A Yes.

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

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

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

15 A Yes.

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

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

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

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

22 THE COURT: You said it out loud?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

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

1 THE COURT: Okay.

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

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

5 A No.

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

9 A No.

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

12 A No.

13 Q Okay. Did you ever --

14 A Not that I was aware of.

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

17 A No. I don't recall.

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

20 A At one point I did.

21 Q Do you remember why?

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

24 Q Okay. So it --

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

1 overwhelming.

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

4 A I think I cried.

5 Q You think you cried?

6 A Yes.

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

8 A Yes.

9 Q -- is that correct.

10 A The responsibility.

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

13 A No, I just – it was overwhelming –

14 Q Okay.

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

16 Q Okay.

17 A Best of my knowledge.

18 Q In your handwritten statement to me –

19 A Yes.

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

23 A Yes.

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

1 A Not that I recall.

2 Q Okay. It was just Ms. Lewis?

3 A Yes.

4 Q Okay. Did she continue to come back that, the idea of physical or  
5 sexual abuse every time she spoke towards the end?

6 A Yes.

7 Q And she was very emotional, is that correct?

8 A Yes.

9 MS. ALLEN: Oh, I think I'd pass the witness at this time, Your Honor.

10 THE COURT: Okay.

11 MS. ALLEN: Does the State object, I guess, to admission of this?

12 MS. LUZAICH: Is that her handwritten –

13 MS. ALLEN: Yeah.

14 MS. LUZAICH: It's part of the record anyway so, no, I don't.

15 THE COURT: It's part of – it really is part of the record already, so it can be  
16 admitted.

17 MS. ALLEN: That's fine.

18 THE COURT: Cross-examination.

19 MS. LUZAICH: Thank you.

20 **CROSS-EXAMINATION**

21 BY MS. LUZAICH:

22 Q Isn't it true that the entire time you were back there you were telling the  
23 other jurors that you didn't want to be there. You didn't want to make a decision?

24 A Not that I recall, no.

25 Q Isn't it true that because you kept telling the jurors that, they actually

1 went or the foreman actually went to the marshal and told the marshal that you guys  
2 couldn't come up with a decision? And then the Judge went back and said you have  
3 to keep or, well, the Judge told the marshal go back and say you had to keep  
4 deliberating?

5 A No, that's not how it played out. It was on our first day of deliberation  
6 that's when I concluded with my decision. So it wasn't something that was being  
7 repetitive that kept on, kept on; no.

8 Q On the first day of deliberations didn't you spend the whole time that  
9 you were deliberating telling them that you didn't want to participate? You didn't  
10 want to deliberate?

11 A Not that I recall.

12 Q Okay. Isn't it true that you gave the jurors statistics on how many black  
13 men are in prison?

14 A No, I did not.

15 Q Isn't it true that you told the other jurors that –

16 A Not that I recall, no.

17 Q What?

18 A I said not that I recall. I didn't give –

19 Q Oh, now you don't recall. Okay. Thank you. Isn't it true that you told  
20 the jurors that you wouldn't be able to sleep at night or look yourself in the mirror if  
21 you sent another black juror (sic) to jail?

22 MS. ALLEN: Man.

23 THE COURT: You mean a black man? You said a black juror.

24 MS. ALLEN: Black man not a juror.

25 MS. LUZAICH: Oh, sorry. Man, man? Thank you.

1 THE WITNESS: Not that I recall.

2 MS. LUZAICH:

3 Q And are you saying that you did not say that you don't trust light-  
4 skinned women?

5 A No, I did not say that.

6 Q Are you saying that Yvonne Lewis, that juror that's sitting outside  
7 actually said that she was sexually abused?

8 A From what I recall.

9 Q Are you saying that she actually said that she was basing her verdict on  
10 the fact that she had been sexually abused and, therefore, she believed the victims?

11 A I didn't say that. I said it appeared. My perception was.

12 Q And you're saying that everybody was calm up until the third day, that it  
13 was the last day that this happened?

14 A Was saying everybody was calm?

15 Q Well, that's what you said at first.

16 A Oh.

17 Q How were the jurors? They were calm. Everybody was calm.

18 A So what is your question? I didn't understand the question.

19 Q Is that your position that everything was calm the first day and calm the  
20 second day and that things got heated the third day?

21 A From what I recall.

22 Q Were you trying to get a job with my office, the District Attorney's office?

23 A I have been, yes.

24 Q And is that why you refused to sign the affidavit that Ms. Allen gave  
25 you?

1 A No.

2 Q Then why wouldn't you sign it?

3 A I didn't feel comfortable at that time, I didn't –

4 Q 'Cause it wasn't true?

5 A No, I'm not saying that.

6 Q Then why didn't you sign it?

7 A I just didn't.

8 Q Why?

9 A I didn't.

10 Q Well, I understand. But why?

11 MS. ALLEN: Objection, Your Honor, asked and answered.

12 MS. LUZAICH: She's not answering it.

13 THE COURT: You need to answer why. 'Cause you had to have a reason

14 why you didn't sign the affidavit. I mean you're the one that initiated the

15 communication with the Defendant's mother.

16 THE WITNESS: I just – I just changed my mind about it; I just didn't sign it.

17 MS. LUZAICH: 'Cause it wasn't true?

18 THE WITNESS: I didn't say that.

19 MS. ALLEN: Objection, Your Honor, asked and answered.

20 THE COURT: Was the affidavit true that Ms. Allen gave to you to sign?

21 THE WITNESS: Yes, it was true but I didn't sign it.

22 THE COURT: Okay. It was true but you didn't want to sign it.

23 THE WITNESS: Right.

24 THE COURT: And why didn't you want to sign it?

25 THE WITNESS: 'Cause I just changed my mind about it that's all.

1 THE COURT: You changed your mind about what?  
2 THE WITNESS: About signing the affidavit.  
3 THE COURT: Oh, okay. So you told Ms. Allen you would sign an affidavit --  
4 THE WITNESS: Yeah, and then change --  
5 THE COURT: -- and then you changed your mind?  
6 THE WITNESS: Yes.  
7 THE COURT: You didn't change your mind about the information that was in  
8 there, though?  
9 THE WITNESS: No, no.  
10 THE COURT: Okay.  
11 MS. LUZAICH:  
12 Q You don't want to send a black man to jail, do you?  
13 A No, I'm not saying that.  
14 Q Would you consider yourself a light-skinned black woman?  
15 A I just consider myself a female, human being.  
16 MS. LUZAICH: I have nothing further.  
17 THE COURT: Any redirect.  
18 **REDIRECT EXAMINATION**  
19 Q Just -- I just want to clarify one point. I came in and spoke to you with  
20 my investigator, is that correct?  
21 A Yes.  
22 Q At some point?  
23 A Um-huh.  
24 Q You gave us information is that correct?  
25 A Yes.



1 Q And I did an affidavit, is that right?

2 A Yes.

3 Q And I believe I may have e-mailed it to you –

4 A No, no.

5 Q -- or maybe I gave it to you downstairs?

6 A Yes, uh-huh.

7 Q Okay. And you made the corrections. You wrote out those corrections  
8 for me, is that right?

9 A Yes, um-huh.

10 Q And gave it to me and then I made the corrections you requested, is  
11 that correct?

12 A Yes.

13 Q And then – and I may have talked to you on the phone once about  
14 some issue with some, with something on the affidavit; do you recall that?

15 A Vaguely, but yes.

16 Q Okay. And then I brought the affidavit, sort of a final draft of the  
17 affidavit to you and that's when you refused to sign it, is that right?

18 A Yes.

19 Q Okay. You don't remember telling me that you were trying to get a job  
20 with the county or you're trying to get some sort of job and you were concerned?

21 A No, I never said that to you.

22 Q You never said that? Okay.

23 A No.

24 Q Thank you. But – I apologize – one more question. When you refused  
25 to sign it it wasn't because you didn't agree with it anymore –

1 A No.

2 Q -- you just didn't want to sign it?

3 A Right.

4 MS. ALLEN: Okay. Thank you.

5 THE COURT: Any recross?

6 MS. LUZAICH: No.

7 THE COURT: Thank you very much for your testimony here today.

8 THE WITNESS: Thanks.

9 THE COURT: Can she be excused from her subpoena?

10 MS. ALLEN: Yes.

11 THE COURT: You may step down and you are excused from your subpoena.

12 THE WITNESS: Thanks.

13 THE COURT: Thank you for the testimony you provided to this Court.

14 You can call your next witness. Are you going to call Ms. Wilson?

15 MS. ALLEN: Lewis.

16 THE COURT: I'm sorry. Ms. Lewis. I'm sorry.

17 MS. ALLEN: Ms. Lewis.

18 MS. LUZAICH: I am.

19 MS. ALLEN: She is, the State is. It's just fine.

20 THE COURT: Okay. So you rest?

21 MS. ALLEN: Yes, that's fine.

22 THE COURT: Okay. State can call their first witness.

23 MS. LUZAICH: Yvonne Lewis.

24 MS. ALLEN: Can we approach, Your Honor?

25 THE COURT: Of course.

1 [Bench conference transcribed as follows:]  
2 MS. ALLEN: I'm sorry.  
3 THE COURT: Oh, this is more exciting than the trial.  
4 MS. ALLEN: I always let you have the [inaudible].  
5 THE COURT: Geez.  
6 MS. ALLEN: What's wrong?  
7 THE COURT: I'm sure glad we never know what goes on back there.  
8 MS. ALLEN: Oh, juries are crazy. So, just so you know depending on what  
9 she says – well, first of all let me address this, I'm needing my investigator to testify.  
10 I planned to have him here. He's at a funeral.  
11 THE COURT: Oh.  
12 MS. ALLEN: Some cop died –  
13 THE COURT: Okay.  
14 MS. ALLEN: -- Al Garris [phonetic] and he's at that funeral in Boulder City.  
15 So he couldn't be here today.  
16 THE COURT: Okay.  
17 MS. ALLEN: I wasn't going to ask him to miss a funeral. So depending –  
18 well, I may have – I may want to put him on the stand.  
19 THE COURT: Okay.  
20 MS. ALLEN: So what I'm saying is I may need to bifurcate.  
21 Additionally, based upon what she says, based upon the statement I  
22 got today, I have some conflicting things from two other jurors. And so I may –  
23 THE COURT: Did you talk to every single juror?  
24 MS. ALLEN: I've talked to a few, yeah.  
25 THE COURT: Okay.

1 MS. ALLEN: And they're not overly excited about being involved in this,  
2 which I don't blame them –

3 THE COURT: I don't either.

4 MS. ALLEN: -- and I wasn't going to try to stalk them and get them here  
5 today, but I just got her statement and –

6 THE COURT: This [indicating]?

7 MS. ALLEN: Yeah.

8 MS. LUZAICH: But, I mean it's not necessarily a statement. She wrote some  
9 stuff down and handed it to me this morning –

10 MS. ALLEN: Right. I'm just saying she wrote it down. But based upon –

11 THE COURT: Okay.

12 MS. LUZAICH: -- so I gave it to her.

13 MS. ALLEN: But based upon that I may need to rebuttal wise call them.

14 THE COURT: Okay.

15 MS. ALLEN: So we may have to bifurcate.

16 THE COURT: Okay.

17 MS. ALLEN: I'm sorry.

18 THE COURT: That's okay.

19 MS. ALLEN: The investigator couldn't be helped, that's –

20 THE COURT: No, I understand that.

21 MS. ALLEN: Yeah.

22 THE COURT: I would agree with that.

23 MS. ALLEN: I'm sorry about that. So that was it.

24 THE COURT: Okay.

25 [Bench conference concluded]

1 THE COURT: Thank you for being here. Will you please raise your right  
2 hand so you can be sworn in by the clerk.

3 THE COURT CLERK: Your Honor, could she set her things down there?

4 THE COURT: Just – if you can swear her in right now –

5 THE COURT CLERK: Okay.

6 THE COURT: -- then she can set her stuff down.

7 **YVONNE LEWIS**

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

9 THE COURT CLERK: And could you please state your name, spell it for the  
10 record.

11 THE WITNESS: My name is Yvonne Lewis, it's Y-v-o-n-n-e, L-e-w-i-s.

12 THE COURT CLERK: Thank you.

13 THE COURT: Thank you for being here.

14 MS. LUZAICH: May I?

15 THE COURT: [Nods]

16 MS. LUZAICH: Thank you.

17 **DIRECT EXAMINATION**

18 BY MS. LUZAICH.

19 Q Good morning, Ms. Lewis. How are you?

20 A Good. How are you doing?

21 Q Thank you. Fine, thank you. Were you a juror in the case the State of  
22 Nevada versus Frederick Harris?

23 A Yes, I was.

24 Q And would that be Mr. Harris sitting at the table to my left [indicating]?

25 A Yes, it is.

1 Q Did you also deliberate as one of the jurors in that case?

2 A Yes, I did.

3 Q Did you see the lady who left the courtroom a minute ago?

4 A Yes, I did.

5 Q Was she also one of the jurors?

6 A Yes, she was.

7 Q Do you happen to remember her name?

8 A Kathleen, I don't remember her last name.

9 Q Okay. During juror – or, sorry, during voir dire when we were

10 questioning jurors, do you remember being asked a question about whether you had

11 ever been the victim or anybody close to you had been the victim of a crime?

12 A Yes.

13 Q And what, if anything, did you tell us and the Court?

14 A I told the Court about the fact that I had police show up at my house

15 multiple times because my mother was –

16 THE COURT: Oh, I remember her testimony.

17 THE WITNESS: -- not a nice person; and, she would get in fights with my

18 father. And, she would attack him and hit him and scratch him and he'd have to

19 hold her down and I'd call police. And, you know, just multiple instances growing up

20 like that.

21 MS. LUZAICH:

22 Q Did you tell the Court or us that you were a victim of domestic violence?

23 That your mother used to beat you up a lot?

24 A She hit me, yes, in the past. That she would hit me, yeah.

25 Q Okay.

1           A       And my dad.

2           THE COURT: Did you tell us about that?

3           THE WITNESS: Yes.

4   MS. LUZAICH:

5           Q       When it came – did you ever tell us or the Court that you had been the  
6   victim of any kind of sexual abuse?

7           A       Never; no.

8           Q       Were you, and I'm sorry to ask you this, were you ever the victim of  
9   sexual abuse?

10          A       No, I have never been a victim of sexual abuse.

11          Q       While you were in the deliberation room did anything like that come up?  
12   Did you have any occasion to talk about any personal experience of your own?

13          A       Yes.

14          Q       Can you describe for me how that occurred?

15          A       Yes. The very first day when we got excused to go deliberate, since it  
16   was such an extensive case and we all had, you know, mixed feelings and just  
17   trying to absorb everything, the foreman suggested why don't we all go around the  
18   table and kind of just give ourself – and give each other an overview of what our  
19   thoughts are; what we're feeling; what we heard. So everybody did that.

20                 I – it was towards the end of the day, so I didn't get to go 'til the second  
21   day. And my – when I was talking about it, I – you know, said, okay, here are my  
22   thoughts and feelings on the case. And I did talk about the fact that I could relate to  
23   the oldest daughter's strife with her mother.

24                 When Ms. Allen was making such a big point about, you know, Victoria  
25   said she couldn't touch her mother and, yet, they gave a hug downstairs. And

1 people kind of questioned that. And I said, no, it was more of a metaphor when you  
2 have a mother, you know, that's supposed to love you unconditionally and your  
3 mother betrays your trust, you can't touch her in the way of, you know, she's never  
4 going to be that person to you again.

5 And I related to that because my one main experience that I did talk  
6 about and what I think Kathleen is referencing, but I think she heard it wrong or  
7 remembers it wrong; is the fact that my mother used to bring home men. And those  
8 men would sleep in the room with her. Her room was directly across the hallway,  
9 not more than ten steps from my room. And I was scared as a teenage girl, you  
10 know, that what if those men snuck out of her room and into my room at night? And  
11 what if one of them tried to get me?

12 So as young girl I would sleep with knives under my pillow. I would also  
13 sleep with the phone in my bed with me, so in case anybody were to ever try and  
14 get me, then I could protect myself. So I think maybe that is the instance she's  
15 thinking that she heard me say I was molested; that someone touched me, that  
16 someone did something to me. Nothing ever happened. No one ever came into my  
17 room growing up.

18 Q And did you ever say at any point during jury deliberations that you had  
19 been a sexual abuse victim?

20 A No.

21 Q In any way, shape or form?

22 A Never. Because I never have been.

23 Q Did the juror that just left the courtroom, Kathleen, did she participate in  
24 deliberations in the beginning?

25 A Yes. When we went around the table she participated.



1 Q Was there a problem?

2 A There was a big problem.

3 Q What was the problem?

4 A The big problem was that the first words out of Kathleen's mouth were:  
5 I cannot send a black man to prison. And she gave us statistics on how many black  
6 men were in prison. And she said that she couldn't live with herself. She couldn't  
7 look in the mirror. She couldn't sleep at night if she were to say that a black man  
8 was guilty and send him to prison.

9 We, a lot of us, most of us from what I could see around the room were  
10 shocked and just couldn't believe it. And several people, including myself  
11 questioned her and said: You know, well, fine. What if the Defendant wasn't a  
12 black man? What if he was Mexican? Her response to that was: Well, I'm half  
13 Mexican. And so, you know, there was a collective groan, going okay, fine. What if  
14 he was white? What if he was Asian? What if he was anything that you're not?  
15 Could you then say he was guilty? And she just went [gesturing], you know; she  
16 couldn't answer. She didn't want to answer it.

17 So that was the big problem. And at that point, luckily, it was getting  
18 kind of tense, you know; everybody was just disgusted, I was disgusted at least. I  
19 won't speak on everybody else, I guess, but I was disgusted at what I was hearing.  
20 And the foreman spoke up and he kind of went: okay, whoa, whoa, whoa.  
21 Kathleen, are you going to be able, given the facts, given the notes that you took,  
22 the case that you heard, the facts; are you going to be able when we read this list of  
23 charges, are you going to be able to say guilty or not guilty? And she said, no, she  
24 said she couldn't sentence a black man.

25 And so at that point he said, okay, do I need to go tell the Judge that

1 we're – or tell the bailiff that we're a hung jury? And she said, yes. So he got up  
2 and he left and talked to the bailiff. The bailiff left. I don't know what was said. I  
3 don't know what he said to the bailiff. But several minutes later, you know, ten  
4 minutes later or so, the bailiff came back and he told us that the Judge said keep  
5 deliberating, you know, and –

6 Q Which day was this?

7 A Which juror was?

8 Q First day? No, day; first day, second day, third day?

9 A Oh, that was the second day.

10 Q Okay. Did anybody pressure her – jurors – did any jurors pressure her  
11 to change her decision?

12 A No, never. We all worked really well as a team and said give us your  
13 thoughts. If you want to say not guilty, say not guilty, you know. There was never  
14 any pressure and, you know, on 45 counts we all had hard times saying guilty or not  
15 guilty. There was not a single count where everybody, I mean – well, there were a  
16 few where everybody easily said not guilty for the most part; or, at least said, okay,  
17 I'm going to abstain. And we all said as a group: okay, you know, let's skip it and  
18 we'll go back later, you know.

19 So there was – everybody had a hard time with this and everybody  
20 worked really well together in not pressuring each other and saying, you know, give  
21 us your true thoughts. If – here are the facts, here's what your note said; here's how  
22 you wrote it down. If two and two adds up to guilty or not guilty, say that, you know.

23 Q Did anyone ever tell her that she needed to come up with or change her  
24 verdict because they had other things to do and didn't want to be there anymore?

25 A No, absolutely not.

1 MS. LUZAICH: Thank you. I would pass the witness.

2 THE COURT: Cross.

3 **CROSS-EXAMINATION**

4 BY MS. ALLEN:

5 Q You – the State asked you about you disclosed this physical abuse  
6 during jury selection, is that right?

7 A Yes.

8 Q And you were honest about it, correct?

9 A Yes, yeah.

10 Q Okay. And you said that the first day – well, the first and second day  
11 people had gone around the table and just sort of I guess given ideas of what they  
12 thought initially of the case, is that right?

13 A Yes.

14 Q And you said you – that's when you brought up that you could relate to  
15 Victoria, because of the abuse from your mother, is that correct?

16 A Not the abuse, but just the sentiment, how she felt. How I perceived  
17 how she felt kind of betrayed by her mother, you know.

18 Q Was that the only instance – was that pretty much the only time that  
19 that issue came up about your mom?

20 A Yes.

21 Q Okay. So you never talked about your mom after that?

22 A No.

23 Q Okay. Did you get really emotional during deliberations?

24 A No, not during deliberations. I was – there was one day, the last day,  
25 but a friend of mine had been killed in a car accident –

1 Q Okay

2 A -- so I was emotional during that, but not related to the case.

3 Q Okay. So you were never emotional related to the case?

4 A No.

5 Q Do you remember crying during the trial?

6 A During the trial. Not deliberation. During deliberations I was never

7 emotional. During the trial I did get upset when Victoria broke down and was saying

8 I can't touch my mother, when she had that big breakdown.

9 Q Okay. So if Ms. Smith had said you were emotional during the course

10 of deliberations that would be incorrect?

11 A That's incorrect.

12 Q Okay. At any point during deliberations did you become so emotional

13 that there was concern whether or not you could continue?

14 A No. Other than my friend's death.

15 Q Okay. But it –

16 A And, no.

17 Q The only time the mom issue, your mom issue –

18 A Yeah.

19 Q -- came up was on the second day?

20 A That second day.

21 Q Never came up after that?

22 A No.

23 Q You said that – you wrote out a statement, is that correct?

24 A Not a statement, but –

25 Q Or not wrote it out but you typed up something?

1           A       -- yeah, I just typed up – once I found out what was happening, I just  
2 kind of typed up my thoughts to help me remember something that happened so  
3 many months ago.

4           Q       When was this typed up?

5           A       Friday.

6           Q       Okay. You just did it on Friday?

7           A       Yeah.

8           Q       Okay. So you said a minute ago that you did it or you – when you  
9 found out what was going on that you had wanted to write this down. Did you just  
10 find out Friday that this –

11          A       No, I was originally contacted months ago and I found out what  
12 Kathleen had said against me. But I didn't bother typing up anything or doing any-  
13 thing because I never heard back, you know. Nobody ever contacted me again, so I  
14 just thought it had resolved itself.

15          Q       Do you recall my investigator trying to get in touch with you?

16          A       Yes, I do.

17          Q       Okay. He called you once or maybe two times?

18          A       Once, I had one message.

19          Q       Okay. And he left you a message?

20          A       Yes.

21          Q       And you didn't return that call, did you?

22          A       No.

23          Q       Okay. You – did you express to the DA's office that you were upset he  
24 had called you?

25          A       For a certain reason, yes. It was not related to the case.

1           Q     You also said that – in this statement you typed up or this [indicating],  
2 it's a – I'm referring to it as a statement. That you were concerned about Kathleen's  
3 prejudices, is that correct?

4           A     Very much, yeah.

5           Q     And that's because she was concerned about the number of black men  
6 in prison?

7           A     Just her prejudice in general. Like my last little statement at the bottom  
8 just as a person, you know, it's hard to see someone that's going to be working,  
9 'cause she talked about how she's going to be working in the legal field; you know,  
10 she works here at the courthouse. She's going to school. And it's just, for me, sad  
11 to see someone who carries that kind of prejudice be involved in the legal field.

12          Q     When you refer in this typed statement to Rich are you referring to Rick  
13 McCreedy, Richard McCreedy?

14          A     One of the – I don't know his last name but, yeah, he was one of the  
15 jurors. He was one that spoke up and asked her.

16          Q     But you don't remember which one specifically?

17          A     No, I do. I remember Rich, I just don't remember his last name so if  
18 that's his last name then yes.

19          MS. ALLEN: Okay. All right. Okay. Thank you.

20                Your Honor, I'd pass the witness.

21          THE COURT: Any other redirect?

22          MS. LUZAICH: Well, just briefly.

23                               **REDIRECT EXAMINATION**

24          BY MS. LUZAICH:

25          Q     Since Ms. Allen asked you about the statement. In the statement did

1 you also write that Kathleen was upset to the point of welling up in tears and broke  
2 down when you started the guilty, not guilty process?

3 A Yes, I did.

4 Q And did you write that she said she didn't choose to or want to be there  
5 and didn't want to do this?

6 A Yes, she did say that and yes, I did write it.

7 Q When you had indicated that she gave statistics about how many black  
8 men are in prison, that she wouldn't be able to sleep at night or look at herself in the  
9 mirror if she sent another black man to jail, was that something that she spoke about  
10 one time or more than one time during the course of the deliberations?

11 A She – that was the main time that she spoke about it. But, yes, when  
12 we got to the guilty, not guilty process she did say it again when we kind of, you  
13 know, said, you know, are you going to – are you okay? You know, can you do  
14 this? And she says, yeah, I just – I don't want to do this and that's when the whole I  
15 don't want to be here. I didn't choose to be here. I didn't ask to be here and I spoke  
16 up and said, well, none of us did, but can you do your job.

17 Q And I'm sorry, so just that I'm clear, when you all went around the table  
18 and – initially, and gave your –

19 A Um-huh.

20 Q -- this is kind of what I think of the case –

21 A Yeah.

22 Q -- was the only thing she said about what I think of the case, I don't  
23 want to send a black man to jail or did she also talk about – without telling me what  
24 – did she also talk about other things to do with the case?

25 A She talked about other things. She talked about – that was her main

1 opening statement and then she talked about the case just like the rest of us did and  
2 her thoughts and her feelings.

3 MS. LUZAICH: Okay. Thanks.

4 THE COURT: Any recross?

5 MS. ALLEN: No, Your Honor.

6 THE COURT: Okay. Can this witness be excused?

7 MS. LUZAICH: Yes.

8 THE COURT: Thank you very much for your testimony. Thank you for being  
9 here. You may be excused from your subpoena.

10 THE WITNESS: Thank you very much.

11 THE COURT: Thank you.

12 MS. LUZAICH: I actually do have one more witness.

13 THE COURT: Okay. You can call your next witness.

14 MS. LUZAICH: A very quick one.

15 MS. ALLEN: I didn't know. Who is it?

16 MS. LUZAICH: Robert Bell. Robert Bell.

17 THE COURT: Is that another juror?

18 MS. LUZAICH: Yes.

19 THE COURT: Robert Bell.

20 Thanks for being here, Mr. Bell. Can you raise your right hand so you  
21 can be sworn in.

22 **ROBERT BELL**

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

24 THE COURT CLERK: Please state and spell your name for the record.

25 THE WITNESS: Robert D. Bell, R-o-b-e-r-t, D, B-e-l-l.



1 THE COURT: Go ahead.

2 MS. LUZAICH: Thank you.

3 **DIRECT EXAMINATION**

4 BY

5 Q Good morning, I think still, sir. Were you a juror in the case the State of  
6 Nevada versus Frederick Harris?

7 A Yes, I was.

8 Q Were you one of the jurors who heard evidence and deliberated?

9 A Yes.

10 Q And did you see two women leave the courtroom fairly recently?

11 A Yes.

12 Q Were both of them also women who deliberated that case?

13 A Yes.

14 Q The very last one that left, Yvonne Lewis, do you remember her?

15 A Yes.

16 Q And the one before that, do you remember her name?

17 A No, I don't.

18 Q Could it be Kathleen?

19 A Yes, Kathleen.

20 Q Okay. Was there any kind of issue with that first juror, Kathleen, when  
21 you guys started deliberating?

22 A Yes. When we first started deliberating we were immediately coming  
23 up to an impasse, because she was not participating. She didn't want to participate.  
24 She spoke about not wanting to put another black man in jail. To not want to  
25 participate in something that was going to add to the statistics of more black men

1 being put in jail. And we went for a couple hours without any progress.

2 Q Okay. And because of that, her attitude and the things that she was  
3 saying about that, did the jury as a whole do something?

4 A Yes. After a couple of hours of not being able to come to any  
5 conclusion on any of the charges, we spoke to the bailiff and –

6 THE COURT: Who's we?

7 THE WITNESS: I'm sorry, the – actually, I'm not sure who spoke to the bailiff  
8 but –

9 THE COURT: Could it have been the foreperson?

10 THE WITNESS: It could have been the floor person (sic). It wasn't me  
11 directly but as a consensus, as a whole the floor person (sic), I believe, spoke to the  
12 bailiff and said we're at an impasse. I don't know how to proceed. We don't know  
13 where to go from here and he went to you, to the Judge and came back and said,  
14 you know, not verbatim, said basically it hasn't been enough time. You guys sit, you  
15 deliberate, come to some conclusion; some consensus that you can work on.

16 MS. LUZAICH: Um --

17 THE WITNESS: And so we continued. And the next day –

18 THE COURT: Did he tell you anything other than continue deliberating?

19 THE WITNESS: I do not remember. I do not remember.

20 MS. LUZAICH:

21 Q When the foreperson went to the marshal, the bailiff, did he – as far as  
22 you now, just tell him that you were at an impasse as opposed to, hey, we have this  
23 one juror that's refusing to deliberate?

24 A We didn't – I don't believe we specifically mentioned Kathleen, but as  
25 far as – at least from my experience, I've never been on a jury before, so I didn't

1 know if that was a normal process. I mean that first day we came right out of the  
2 courtroom and into deliberations. So it was a little tense. And so I thought it – you  
3 know, it was frustrating but I thought it was a normal part of the process.

4 Q Okay. You guys were out for three days, would you agree with that?

5 A Yes.

6 Q Did it get better as time went on? Were you able to deliberate?

7 A Yes. The second day that we came in after sleeping on it, we kind of  
8 took a different approach and we gave an opportunity for everybody to speak and to  
9 say what they noticed. What they observed. The way that they feel about  
10 testimony, certain charges. It gave everybody an opportunity to speak specifically  
11 about why they feel a certain way and gave everybody, basically, a floor to not be  
12 interrupted, so they had an opportunity to speak about what they particularly felt.

13 Q Did you notice was that juror, Kathleen, did anybody pressure her to  
14 come up with a decision one way or another?

15 A No. Actually, I believe, even though it was not necessarily said, I think  
16 part of that, the sharing between all of us was to help her indirectly in terms of just  
17 knowing that we're all going through this. None of us want to be here, but we're  
18 doing the best that we can and we all have, you know, some issues. Some of us  
19 have different viewpoints on different things; it doesn't make it right or wrong, it's just  
20 this is where we are and this is what we have to do.

21 Q Did anybody at any time pressure her to change her mind about a  
22 decision that she might have made?

23 A No. She – I'm sorry. Go ahead.

24 Q Did anybody tell her, hey, you have to make up your mind faster 'cause  
25 we have places to go, people to see, things to do? Anything like that?

1 A No, not at all.

2 Q Did she bring you something – you, all of you something at the end?

3 A Yes.

4 Q Tell me about that.

5 A After the third day of deliberating, the second and third day went much  
6 smoother. After the third day she thanked us all for our patience and understanding  
7 and, you know, that it was a difficult process for her, as for everybody else. And she  
8 gave each one of us a plastic butterfly, which she said just basically represented our  
9 journey and our metamorphosis and the process by which we kind of grew and we  
10 were able to come together and get this completed.

11 Q Did she give it to every one of the jurors that were deliberating?

12 A Yes.

13 MS. LUZAICH: Thank you.

14 I'd pass the witness.

15 THE COURT: Cross.

16 **CROSS-EXAMINATION**

17 BY MS. ALLEN:

18 Q When was the first time that you were contacted by someone after the  
19 trial?

20 A It would have been sometime within a week.

21 Q Okay. Do you remember who contacted you?

22 A I do not know exactly. I got a phone call and I got a letter from some-  
23 body that was representing your name, Betsy Allen –

24 Q Okay.

25 A -- was in that letter as well.

1 Q Okay. When did you get that letter?

2 A I brought it. I don't remember when I received it. Probably, maybe just

3 prior to the phone call, a week and a half ago, maybe. I'm not sure.

4 Q Oh, okay. No, no. So let me – you got the phone call a week ago or a

5 week and a half ago, is that right?

6 A Approximately, I –

7 Q You said a week after. I'm confused.

8 A I didn't document it. I, I wasn't sure –

9 THE COURT: When did you get the phone call? You said you had a phone

10 call and a letter.

11 THE WITNESS: Approximately, approximately within a week ago.

12 THE COURT: Oh, a week of today?

13 MS. ALLEN: I thought he meant after the trial.

14 THE WITNESS: Something like that.

15 THE COURT: Okay. I thought you meant a week after the trial as well, so.

16 THE WITNESS: Oh, no, no, no, no. Just recently, like within a week or so.

17 THE COURT: Okay. So about a week ago you got a phone call –

18 THE WITNESS: Yeah.

19 THE COURT: -- and then you got a letter from Ms. Allen?

20 THE WITNESS: No, from attorneys working on Ms. Allen's case and for Mr.

21 Harris.

22 MR. ALLEN: So an investigator?

23 THE COURT: Okay. But somebody –

24 THE WITNESS: Yeah.

25 MS. ALLEN: Okay. Investigator, so.

1 THE COURT: And when was that letter?

2 THE WITNESS: Approximately the same time, maybe prior, a day or two

3 prior.

4 THE COURT: Okay. So all within a week of today?

5 THE WITNESS: Yes, something like that.

6 THE COURT: Okay. Thanks.

7 MS. ALLEN:

8 Q And was – the phone call wasn't from me, is that correct?

9 A No.

10 Q Okay. The phone call was from the DA's office?

11 A Yes.

12 Q Okay. And you called them back?

13 A Yes.

14 Q Okay. And the letter, did you ever respond to the letter?

15 A No.

16 Q Okay. You said that you were – you remember Ms. Smith making

17 comments that were of concern, is that correct; regarding race?

18 A Yes.

19 Q All right. Do you remember or let me ask you this, are you and Ms.

20 Lewis still friends? Do you still communicate?

21 A We're indirectly friends; we're friends of friends, so I know her but we

22 don't normally chat –

23 Q Okay.

24 A -- but.

25 Q When you say friends of friends, did you know – were you aware of that

1 before the trial?

2 A No. Actually, I was made aware of that sometime during the middle of  
3 the trial. I played music with a friend of mine and the drummer made mention of the  
4 fact that his friend also happened to be on the jury. And indirectly I kind of  
5 introduced myself while we were on the jury, but I'd never met her prior.

6 Q Okay. So you had mentioned to a friend of yours, who's a drummer,  
7 that you were on a criminal trial, is that correct?

8 A I, I – yes.

9 Q Okay.

10 A Um-huh.

11 Q And you told him it was Fred Harris –

12 A No.

13 Q -- right, you used the name?

14 A No.

15 Q Oh, okay. But the drummer knew that he had a friend that was also on  
16 that jury?

17 A Because I happened to take a photo of myself with my juror badge  
18 number and it happened – and he mentioned that it happened that the same day  
19 that she was a juror as well.

20 Q Um –

21 A And it just so happened that when, you know, once I spoke to him after  
22 a little bit of time, I'm like oh, yeah; yeah, I know who that girl is. That's all.

23 Q And this was all in the middle of trial?

24 A Yeah.

25 Q Okay. So you said you took a picture of yourself with your badge. Did

1 you post that to some Facebook or something?

2 A Yeah, I believe so.

3 Q Okay. So that had your department number on it?

4 A I don't know what it had on it.

5 THE COURT: You mean your jury summons or the blue badge you wore in  
6 here?

7 THE WITNESS: No, just the blue. Whatever – the thing that I had to wear,  
8 the blue badge I believe.

9 THE COURT: So after you were impaneled as juror you took a picture of  
10 yourself and put it on Facebook?

11 THE WITNESS: No, it was prior. It was prior.

12 THE COURT: Okay. You know, you didn't get those blue badges until you  
13 were impaneled as a juror, right?

14 THE WITNESS: Oh, okay.

15 THE COURT: You know what I'm talking about, the blue ones that say Juror  
16 Department XII?

17 THE WITNESS: Okay.

18 THE COURT: Okay. Did you take a picture with that on?

19 THE WITNESS: I think so.

20 THE COURT: Okay. Then that was after you were impaneled.

21 THE WITNESS: Okay.

22 THE COURT: So when I told you don't do anything on Facebook, you  
23 ignored that and posted a picture of yourself on Facebook?

24 THE WITNESS: Um –

25 THE COURT: I mean do you know in my admonition I specifically say don't



1 go on Facebook, right?

2 THE WITNESS: Yes.

3 THE COURT: And you put that on Facebook?

4 THE WITNESS: I don't, I don't – this was the very day and I don't remember  
5 going through the – I don't –

6 THE COURT: Okay. So the very first day I don't, like, go into that – well,  
7 yeah, I guess I kinda do, on the first day whenever you –

8 THE WITNESS: It was prior to me coming into the courtroom.

9 THE COURT: Oh, okay. It was prior to you coming into the courtroom?

10 THE WITNESS: Yeah, it was the very first day while we were sitting and  
11 waiting and everybody was lining up and doing all that process. It was before  
12 anything had ever started.

13 THE COURT: Okay. So all you did was have a picture of yourself down  
14 there.

15 THE WITNESS: I just posted a photo and just said, you know: Just doing my  
16 duty downtown, or whatever. I –

17 THE COURT: Okay. But it was nothing after you were in here?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 MS. ALLEN:

21 Q Do you have – do you have that on your phone? Did you take it on  
22 your phone?

23 A Probably.

24 Q Do you still have that on your phone?

25 A I don't know. Probably.

1 MS. ALLEN: Would the Court indulge me and allow –  
2 THE COURT: Go ahead.  
3 MS. LUZAICH: Well, objection, relevance.  
4 MS. ALLEN: Well, I mean he was pretty clear –  
5 THE COURT: Well, might have some.  
6 MS. ALLEN: -- blue badge at first –  
7 THE COURT: Yeah. Go ahead.  
8 MS. ALLEN: -- and then he's backtracked from that.  
9 THE COURT: Do you have your phone with you?  
10 THE WITNESS: [Reaching for phone].  
11 THE COURT: See if you have the picture. Can't you like go to your albums  
12 and go back to like the date? It was back in April of this year.  
13 THE WITNESS: I don't know how to use these. I don't know how to use  
14 phones, I'm sorry. I'm just –  
15 THE COURT: Okay.  
16 THE WITNESS: Let me see [scrolling through phone]. Yeah, it's right there  
17 [indicating].  
18 COURT MARSHAL: Do you want it, Judge?  
19 THE COURT: Yeah. Has a picture of himself with a blue badge, it identifies  
20 him as a Department XII Juror.  
21 MS. ALLEN: So –  
22 THE COURT: So it would have been after he was impaneled.  
23 MS. ALLEN: Impaneled.  
24 THE COURT: And after he had been admonished several times not to go on  
25 Facebook.

1 MS. ALLEN:

2 Q So you posted that picture to Facebook, is that correct?

3 A Yes.

4 Q And what did you caption it when you did post it to Facebook; or, do  
5 you still have a record of what you put on Facebook?

6 A Oh, I wouldn't know how to look that up. I just said doing my duty, civic  
7 duty, whatever.

8 Q Okay. So your friends, that was the drummer, and could I have a name  
9 just for the recorder?

10 A Clay.

11 Q Clay. Last name?

12 A Heximer –

13 Q Heximer.

14 A -- I don't know if that's his real last name or not. I don't know.

15 Q Could you – who does he play? How do you – who does he play for,  
16 you said he's –

17 A He plays in a band called the Mapes. He plays in a band called the  
18 Gentlemen of Four Outs. Just a local musician.

19 Q Okay. And so he saw the picture on Facebook and is that how you  
20 ended up talking to him about being in this case?

21 A Uh-huh.

22 Q Okay. Did – I'm sorry, you have to answer yes or no.

23 A Yes.

24 Q Okay. So did he make contact with you on Facebook or did he call  
25 you?

1 A No, I play with him.

2 Q Okay. You play guitar?

3 A Bass.

4 THE COURT: They play music.

5 MS. ALLEN: Pardon?

6 THE COURT: Remember he's a musician?

7 MS. ALLEN: I'm sorry, Your Honor.

8 THE WITNESS: Bass.

9 THE COURT: Okay.

10 MS. ALLEN:

11 Q So when you saw him next, he mentioned something about the picture?

12 A Um-huh.

13 Q Yes or no?

14 A Yes.

15 Q Okay. And then he brought up knowing Yvonne Lewis, is that right?

16 A Yes.

17 Q Okay. Are you – and just if you're aware, are you aware of how he

18 knew she was in this trial?

19 A No.

20 Q Okay. Did –

21 A This was probably, maybe a couple of weeks into it.

22 Q Okay. So –

23 A By the time that we had spoken or anything like that.

24 Q Do you mean you and Clay or you and Yvonne?

25 A Inc – both.

1 Q Okay.

2 A I had – you know, obviously, we sat in the same room together but I

3 didn't really introduce myself until after I knew that we had a mutual friend.

4 Q Okay. And you told her you knew Clay, is that correct?

5 A Yes.

6 Q Okay. Did she know before you introduced yourself, did she know that

7 you knew Clay? Had – I guess what I'm asking is do you know if Clay said any-

8 thing to her?

9 A No. We didn't know each other prior. We just had mutual friends.

10 Q Okay. Have you spoken with Ms. Lewis since the trial concluded?

11 A Yes.

12 Q Okay. And do you talk to her somewhat regularly?

13 A No.

14 Q Okay. Just a couple of times here and there?

15 A Yes.

16 Q When was the last time that you spoke with her prior to today?

17 A A couple of days prior.

18 Q To today?

19 A Yes.

20 Q Okay. And did you speak to her about having to come in here?

21 A Yes.

22 Q Okay. And did you discuss what was going on as far as the stuff that

23 had been filed?

24 A Yeah, I suppose. I suppose I have.

25 Q Okay. So she told you what had – the allegations that had been made

1 against her, is that right?

2 A Yes.

3 Q All right. Did she at any point in time ask you to come in and testify?

4 A No.

5 Q Okay. That was someone else?

6 A Now, actually I – yes, it was somebody else that asked her. I told her  
7 that I would be happy to if she needed me to.

8 Q Okay. To come in and explain?

9 A Yeah. She at no time asked me.

10 Q Okay. Do you recall during the deliberation process if Ms. Lewis  
11 became emotional?

12 A Yes.

13 Q Do you recall when?

14 A No. There's a – probably a couple of times where quite a few of the  
15 jurors got emotional. On the first day it was a little tense. On the second day when  
16 we shared, it got a little emotional.

17 Q Okay. You said the second day, is that when you recall Ms. Lewis  
18 maybe becoming emotional?

19 A Possibly, yeah.

20 Q Do you remember if she was emotional at any other point in time  
21 besides the second day?

22 A I think throughout at some point we all were, but I don't specifically  
23 remember.

24 Q Okay. Okay. Do you remember her talking about the abuse that she  
25 sustained when she was younger?

1           A       I remember her mentioning some abuse. I don't remember specifically  
2 towards her. If I remember correctly, I believe it was perceived or seen abuse of her  
3 mother by her father, but I'm not positive.

4                   I do know that when we were being vetted it was – I know I heard it but  
5 I don't remember if it was, you know, partially from the deliberation or from the  
6 vetting, when they were asking us questions about working with Child Protective  
7 Services and if we'd ever been raped or victims of what – all of that stuff. So I'm not  
8 sure where it all came out.

9           Q       Okay. So it all kind of jumbles together?

10          A       Yeah.

11          Q       Okay. Because it's been a little while, is that correct?

12          A       [Nods].

13          Q       Okay. You have to answer yes or no.

14          A       Yes.

15          Q       Sorry. We're making a record. So in your mind you can't remember  
16 any specific instances during deliberations where Yvonne Lewis talked about being  
17 abused or anything like that, is that correct?

18          A       I believe when she got a chance to speak, she spoke about witnessing,  
19 but I don't remember specifically geared towards her.

20          Q       Okay.

21          A       I don't remember.

22          Q       Just to go back really briefly to your friend, Clay –

23          A       Um-huh.

24          Q       -- Clay approached you about being on a trial, is that right, 'cause he  
25 saw the picture and mentioned, oh, I know you're doing – you're a juror, is that

1 correct?

2 A Yes.

3 Q Do you know – if you know, do you have any idea how he knew that  
4 Yvonne Lewis was on the same jury trial, the same panel as you?

5 A No, I don't.

6 Q Okay. But he seemed to know that, is that right?

7 A Yeah.

8 MS. ALLEN: Okay. Thank you.

9 I pass the witness.

10 THE COURT: Any redirect?

11 MS. LUZAICH: Just very briefly.

12 **REDIRECT EXAMINATION**

13 BY MS. LUZAICH:

14 Q Mr. Bell, when you say – Ms. Allen asked you did Ms. Lewis become  
15 emotional? What do you mean by emotional? What was she doing that caused you  
16 to believe that she was emotional?

17 A When she'd speak, she would have to – she was careful with her  
18 words, would get quiet, maybe tear up and stop for a moment.

19 Q She wasn't sobbing or anything?

20 A No.

21 Q And the time that you remembered her becoming emotional, tearing up  
22 or whatever, was that when she was sharing what you had described?

23 A Yes or her feelings towards what she viewed during this whole  
24 procedure. You know whether it was about her or about the trial itself, yeah.

25 MS. LUZAICH: Okay. Thank you.



1 THE COURT: Any recross?

2 MS. ALLEN: No.

3 THE COURT: Thank you very much for your testimony here today, Mr. Bell.  
4 You may step down. You are excused.

5 Does the State have any further witnesses?

6 MS. LUZAICH: I do not.

7 THE COURT: Does the defense have any further witnesses?

8 MS. ALLEN: Yes, Your Honor –

9 THE COURT: Okay.

10 MS. ALLEN: -- but I explained at the bench.

11 THE COURT: Are you going to ask to continue it?

12 MS. ALLEN: Yes, 'cause I believe that at this point just based upon some –  
13 now some of – definitely some of the things that were said, I think that I need to  
14 bring in a couple of the jurors that I spoke to.

15 THE COURT: So how long do you need? Is a week going to be enough  
16 time?

17 MS. ALLEN: Ooh, with Thanksgiving?

18 THE COURT: Two weeks?

19 MS. ALLEN: I don't know. Let me look. Just a minute.

20 THE COURT: Can you do it the same time on a Monday at 10:30?

21 MS. ALLEN: Yeah, oh yeah. I can. I'm just looking, could we maybe – let me  
22 try, we can try for the 8<sup>th</sup> or the 15<sup>th</sup>.

23 MS. LUZAICH: I have an evidentiary hearing with Mr. Oram on the 8<sup>th</sup> on a  
24 capital case that we did that I expect with Ms. Wildeveld will take maybe all day.

25 MS. ALLEN: Chris, the 15<sup>th</sup> okay?

1 MR. ORAM: [Gesturing].  
2 MS. ALLEN: 22<sup>nd</sup>?  
3 THE COURT: Of December –  
4 MR. ORAM: No.  
5 THE COURT: -- the week of Christmas? Are you kidding me?  
6 MS. LUZAICH: The chances of getting jurors here are going to be slim and  
7 none.  
8 MS. ALLEN: Oh, never mind. Never mind. Never mind. Friday –  
9 THE COURT: Getting past jurors to come. They're – maybe – can we  
10 choose another day besides Monday, would that help us get it earlier?  
11 MS. ALLEN: Wednesday, the 17<sup>th</sup>?  
12 THE COURT: Wednesday.  
13 MS. ALLEN: Wednesday, the 17<sup>th</sup>.  
14 THE COURT: Of December?  
15 MS. ALLEN: Yes.  
16 THE COURT CLERK: That's fine.  
17 MS. ALLEN: That'd be fine with me.  
18 MS. LUZAICH: And, I'm sorry, I didn't bring my trial calendar. And I'm trying  
19 to figure out how to work it in my phone. The 17<sup>th</sup> –  
20 THE COURT: Are we going to be in trial?  
21 THE COURT CLERK: No.  
22 THE COURT: Okay. So I can start it earlier. Do you want to start at nine  
23 o'clock?  
24 MS. ALLEN: I have one sentencing in front of Judge Smith. He starts at 8,  
25 which is 7:45, so I can be in and out of there in like ten minutes and it's a stipulated

1 sentence.

2 MS. LUZAICH: Without having my actual calendar with me, I'm pretty sure I  
3 can do the 17<sup>th</sup> at nine o'clock.

4 THE COURT: Okay.

5 MS. LUZAICH: If there's a problem I'll e-mail chambers and Ms. Allen.

6 THE COURT: You'll let us know. Okay.

7 MS. LUZAICH: Can we get an idea of who she's going to call?

8 MS. ALLEN: Um –

9 THE COURT: She's going to call her investigator.

10 MS. ALLEN: My investigator do you know him –

11 MS. LUZAICH: Well, right, which jurors I meant?

12 MS. ALLEN: -- Harrison. The name – he has the names. I can e-mail you  
13 the names.

14 MS. LUZAICH: I would appreciate it.

15 MS. ALLEN: 'Cause I don't remember their names –

16 MS. LUZICH: Okay.

17 MS. ALLEN: -- he was the one dealing with them. And then if you guys  
18 intend to call someone else, would you guys let me know? Because I didn't know  
19 about Bell.

20 MS. LUZAICH: As of now I don't. It depends on –

21 MS. ALLEN: I know. But I just – like I didn't know anything about Bell.

22 MS. LUZAICH: Yeah.

23 THE COURT CLERK: December 17<sup>th</sup>, nine o'clock.

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MS. ALLEN: But it worked out there, though.

MS. LUZAICH: Thank you.

[Proceedings concluded, 12:22 p.m.]

\* \* \* \* \*

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

  
DEBRA WINN, Court Transcriber

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4TH STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

FREDERICK HARRIS,

S.C. CASE NO. 69093

Appellant,

Electronically Filed  
Jun 17 2016 09:01 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

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 XXIII  
~~~~~

**ATTORNEY FOR APPELLANT**

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law  
Nevada Bar No. 004349  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 384-5563

**ATTORNEY FOR RESPONDENT**

STEVE WOLFSON  
District Attorney  
Nevada Bar No. 001565  
200 Lewis Avenue  
Las Vegas, Nevada 89101

ADAM PAUL LAXALT  
Nevada Attorney General  
Nevada Bar No. 0003926  
100 North Carson Street  
Carson City, Nevada 89701-4717

## IN THE SUPREME COURT OF NEVADA

FREDERICK HARRIS,

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Appellant,

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THE STATE OF NEVADA

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 17<sup>th</sup> day of June, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

STEVE OWENS  
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

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

CHRISTOPHER R. ORAM, LTD.  
520 SOUTH 4<sup>TH</sup> STREET | SECOND FLOOR  
LAS VEGAS, NEVADA 89101  
TEL. 702.384-5563 | FAX. 702.974-0623