

IN THE SUPREME COURT OF THE STATE OF NEVADA

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FREDERICK H. HARRIS, JR.,	)	Electronically Filed
# 1149356,	)	Oct 29 2020 12:07 p.m.
	)	Elizabeth A. Brown
Appellant,	)	Clerk of Supreme Court
	)	CASE NO.: 81257-01255
	)	<b>E-FILE</b>
	)	D.C. Case No.: A-18-784704-W
vs.	)	<b>C-13-291374-1</b>
	)	
	)	Dept.: XII
STATE OF NEVADA,	)	
	)	
Respondent.	)	
	)	

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**APPELLANT'S APPENDIX VOLUME X**

Appeal from a Denial of Post Conviction Relief  
Eighth Judicial District Court, Clark County, Nevada

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## CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esquire, am a person competent to serve papers and not a party to the above-entitled action and on the 29th day of October, 2020, I served copy of the foregoing: Appellant, Frederick H. Harris', Opening Brief as well as Volumes I through XI of the Appendix, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and to the Nevada Attorney General by U.S. mail with first class postage affixed to the Petitioner/Appellant as follows:

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By: /s/ Ila C. Wills  
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1 THE COURT: Really?

2 MS. ALLEN: I think so with witness, instructions,  
3 State's close. I think it may put us close to 1:00.

4 THE COURT: I try not to interrupt your close.

5 MS. ALLEN: I would love that.

6 MS. LUZAICH: Ms. Rhoades is closing. I'm doing  
7 rebuttal. So she's guessing 45 minutes --

8 MS. RHOADES: Hopefully.

9 MS. LUZAICH: -- maybe more. Who -- there's a lot  
10 of counts.

11 THE COURT: Okay. So we'll probably break after  
12 that.

13 MS. ALLEN: And then the other question we had was  
14 -- and I think the staff kind of answered that, but how late  
15 -- how late would you keep the jury? I mean, is it -- I'm  
16 just wondering. And my kids are -- my kids are okay. I just  
17 wonder for the purposes of where we're going after this.

18 THE COURT: I'm going to tell you I'm hopeful for a  
19 verdict today --

20 MS. ALLEN: Okay.

21 THE COURT: -- because of my other obligations.

22 MS. ALLEN: Right.

23 THE COURT: Okay? But --

24 MS. LUZAICH: I guess at 5:00 o'clock if they're --

25 THE COURT: We're on the record, so there's --

1 MS. LUZAICH: No. If they're not close at 5:00  
2 o'clock, are you going to give them the option to stay or to  
3 come back, or are you going to make the decision?

4 THE COURT: I'll give them the option to stay.

5 MS. ALLEN: Okay.

6 THE COURT: Sometimes they'll say, we don't want to  
7 go. If they say, we don't want to go, then to me that means  
8 we're close, you know, let them stay. We can stay another  
9 hour or so and --

10 MS. ALLEN: Okay.

11 THE COURT: But if they say, you know, we need more  
12 time, then I give them more time.

13 MS. ALLEN: It's just a question on my part. So  
14 okay.

15 THE COURT: It's not going to be a --

16 MS. ALLEN: All-nighter.

17 THE COURT: There you go. You said it.

18 MS. ALLEN: I said it. Betsy said it. She said it.  
19 Ms. Allen said it. Put it out there.

20 THE COURT: I'm getting too old for those.

21 (Court recessed at 10:35 a.m., until 10:38 a.m.)

22 (Jury reconvened at 10:38 a.m.)

23 THE COURT: Do the parties stipulate to the presence  
24 of our jury panel?

25 MS. ALLEN: Yes, Your Honor.

1 MS. LUZAICH: Yes, Your Honor.  
2 THE COURT: Does the State stipulate?  
3 (Pause in the proceedings)  
4 THE COURT: You can ask me. You guys can approach  
5 if you want to ask me something.  
6 (Bench conference)  
7 THE COURT: It's okay.  
8 MS. LUZAICH: Yesterday she had asked if I cared if  
9 Sha'karia stayed in the courtroom after she testified. I  
10 said, I don't care. After she testified I said, no freakin'  
11 way. So she didn't stay yesterday, and then she walked in  
12 today. So I told her she needs to get out.  
13 THE COURT: Yeah. And I told her it was okay to  
14 come back today.  
15 MS. LUZAICH: Well, she can watch closing, because  
16 that's --  
17 MR. MacARTHUR: Why can't she -- she's already  
18 testified. Why --  
19 THE COURT: Well, because the State has the right to  
20 call, you know, rebuttal witnesses.  
21 MR. MacARTHUR: Oh. Are you calling any?  
22 MS. LUZAICH: No. But just if --  
23 MR. MacARTHUR: If you're not calling her, then what  
24 difference does it make?  
25 MS. LUZAICH: Because she was such a bitch. I'm

1 honest. That's why.  
2 MR. MacARTHUR: I do appreciate the honesty.  
3 MS. LUZAICH: Sorry. Sorry.  
4 MS. RHOADES: That was on the record, Lisa.  
5 MS. ALLEN: I would ask she be allowed to stay. I  
6 did tell her --  
7 MR. MacARTHUR: That was Kristina Rhoades.  
8 THE COURT: You don't plan on calling anybody in  
9 rebuttal?  
10 MS. LUZAICH: No, Your Honor.  
11 THE COURT: Okay.  
12 MS. ALLEN: I would just ask -- and the only reason  
13 I say that is [unintelligible] I said, yeah, it's fine for you  
14 to come back tomorrow. I knew she had said that.  
15 THE COURT: Is she going to behave?  
16 MS. ALLEN: Yes, she'll behave. In her house  
17 slippers she will behave.  
18 THE COURT: She has her house slippers on today? As  
19 long as they're not foot flops.  
20 MS. LUZAICH: Can I read the record of --  
21 MS. ALLEN: No. I just --  
22 THE COURT: All right. Thank you.  
23 (End of bench conference)  
24 THE COURT: Okay. At this time the defense can call  
25 their next witness.

1 MS. ALLEN: Thank you, Your Honor. Ms. Kenyoni  
2 House.  
3 KENYONI HOUSE, DEFENDANT'S WITNESS, SWORN  
4 THE CLERK: Thank you. Please be seated. Could you  
5 please state your full name, spelling your first and last name  
6 for the record.  
7 THE WITNESS: Kenyoni, K-E-N-Y-O-N-I, House,  
8 H-O-U-S-E.  
9 THE CLERK: Thank you. You may proceed.  
10 DIRECT EXAMINATION  
11 BY MS. ALLEN:  
12 Q Good morning, Ms. House. How are you?  
13 A Good morning. Well --  
14 Q I appreciate you coming here today. I apologize for  
15 the inconvenience.  
16 Where are you currently employed?  
17 A H.P. Fitzgerald Elementary School.  
18 Q Are you sick?  
19 A No. I have a chronic illness which affects my  
20 voice.  
21 Q Oh. I'm so sorry. There's water up there if it  
22 that helps at all.  
23 How long have you been --  
24 THE COURT: Do you need water?  
25 THE WITNESS: No. I'm good.

1 THE COURT: Okay.

2 BY MS. ALLEN:

3 Q How long have you been at H.P. Fitzgerald?

4 A Eight years.

5 Q Okay. And what do you do there?

6 A School counselor.

7 Q Have you been in that capacity the entire time?

8 A Yes.

9 Q All right. Do you know -- well, let me ask you  
10 this. Do you know what a mandatory reporter is?

11 A Yes.

12 Q Okay. And can you explain to the jury what that is.

13 A Any person in the capacity of school counselor,  
14 teacher, anyone who works with children has to report any  
15 abuse or neglect if brought to them or if they suspect it.

16 Q Okay. And there's consequences if you fail to  
17 report; is that correct?

18 A Yes.

19 Q Okay. Do you know what those consequences are?

20 A You can lose your license.

21 Q And your education -- could you just briefly state  
22 what your educational background is.

23 A I have a Bachelors degree in social work. I am a  
24 licensed social worker. I have a license, a professional  
25 license with the State Board of Education to be a school



1 counselor, and I just also submitted for a license for  
2 marriage and family therapist.

3 Q Okay. Are you -- are you aware of two individuals  
4 by the name of Taharah and Taquanda Duke?

5 A Yes, I am.

6 Q Okay. And how do you know them?

7 A They were students at my school two or three years  
8 ago. One -- I can't remember -- I get them mixed up. But one  
9 was older. I think that was Taharah, and then the other one  
10 was younger, which I think was Taquanda.

11 Q Okay. You didn't actually teach them, did you?

12 A No.

13 Q Okay. You just -- you were their counselor?

14 A I'm just -- yes.

15 Q Okay. And so would they come to you with questions  
16 about school?

17 A They would come to me, because I'm in that capacity.  
18 I don't really remember them coming to me about questions of  
19 that.

20 Q Okay. Do you remember them coming to you about  
21 really anything?

22 A Yes. One occasion there was another parent of a  
23 student who said that both girls were following --

24 MS. LUZAICH: Objection. Hearsay.

25 THE COURT: Sustained.

1 BY MS. ALLEN:

2 Q Without telling me what they said, they came to you  
3 about something that was going on in school; is that correct?

4 A When they -- no, it really -- well, it involved  
5 another student, so yes.

6 Q It involved another student.

7 A Yes.

8 Q Okay. Did they ever come to you -- or specifically  
9 did Taquanda ever come to you with anything really into her  
10 home life?

11 A No.

12 Q Okay. Did she ever say anything to you about  
13 anybody holding a knife to her neck at home?

14 A No.

15 Q Okay. Did she ever come to you and talk about  
16 instances of abuse either with her or her siblings at home?

17 A No.

18 Q Okay. What would you have done if Taquanda had come  
19 to you with that kind of information?

20 A I would have immediately investigated. I would have  
21 held her and called CPS at that moment and gotten  
22 instructions. If she would have said a knife or any type of  
23 abuse, I would have immediately called CPS and informed my  
24 administrators of doing so.

25 Q Okay. Part of it is -- part of your reporting is if

1 a student comes to you and says, yes, I'm being abused you  
2 have to report.

3 A Yes.

4 Q Okay. The other part of it is if you suspect it; is  
5 that correct?

6 A Yes.

7 Q Did you ever suspect abuse with either girl?

8 A No.

9 Q Okay. So if you'd seen bruises on their face or  
10 anything like that, that would have led you to make those  
11 calls?

12 A Yes.

13 MS. ALLEN: Okay. Court's indulgence.

14 (Pause in the proceedings)

15 MS. ALLEN: Thank you, Your Honor. I'd pass the  
16 witness.

17 THE COURT: Cross-examination?

18 MS. LUZAICH: Thank you.

19 CROSS-EXAMINATION

20 BY MS. LUZAICH:

21 Q Ms. House, as the school counselor are you the  
22 counselor for the entire school, or for a particular grade?  
23 How does it work?

24 A For the entire school.

25 Q You're the only counselor?

1           A     Yes.

2           Q     How many students do you counsel at a given time?

3           A     We have a student population -- it varies through  
4 each school year, but between 420 and 500 students. It's not  
5 like a caseload. I do monthly school guidance lessons, and I  
6 have several programs like small group counseling, and I refer  
7 to, you know, any type of medical services or 504s, IEPs, that  
8 sort of thing.

9           Q     Did you deal with Taharah in an IEP?

10          A     No.

11          Q     Do kids have to seek you out if they have a problem,  
12 issue, or do you wander the school and say, hey, do you have a  
13 problem, do you have a problem, do you have a problem?

14          A     Sometimes it's teacher referral. Sometimes students  
15 come up to me.

16          Q     But they come to you, you don't go to them  
17 necessarily?

18          A     No.

19          Q     And if you did know something and didn't report it  
20 you mentioned you could lose your license. That would be a  
21 terrible thing for you, would it not?

22          A     Absolutely.

23          Q     You could also be prosecuted because it's a crime to  
24 not report if a mandatory reporter?

25          A     Absolutely.

1 MS. LUZAICH: Thank you. I have nothing further.  
2 THE COURT: Any redirect?  
3 MS. ALLEN: No, Your Honor. Thank you.  
4 THE COURT: Thank you very much for your testimony  
5 here today. Oh. It looks like we have one question. If  
6 you'll just -- if you don't mind waiting around till I can get  
7 that question from the juror.  
8 This will be marked as 13, Court's Exhibit 13.  
9 Will you just state your first name.  
10 THE WITNESS: Yes. Kenyoni, K-E-N-Y-O-N-I.  
11 THE COURT: Thank you.  
12 And if the attorneys can meet me in the hallway.  
13 (Hallway bench conference)  
14 THE COURT: Do I have a stipulation to the presence  
15 of the jury panel?  
16 MS. LUZAICH: Yes, Your Honor.  
17 MS. ALLEN: Yes.  
18 THE COURT: Okay. Ma'am, I just have one question  
19 for you. What is the protocol at H.P. Fitzgerald when a  
20 teacher believes they observed any type of abuse?  
21 THE WITNESS: They are to report it themselves to  
22 CPS, call CPS.  
23 THE COURT: Okay. Any followup by Ms. Allen?  
24 MS. ALLEN: No. I would just -- I don't know if the  
25 jury heard it, so I would just ask you to repeat it to the

1 jury, that's all.

2 THE WITNESS: Oh. They are to report it, call CPS.

3 THE COURT: Any followup by the State?

4 MS. LUZAICH: No.

5 THE COURT: Okay. Thank you very much for your  
6 testimony here today. You may step down. You are excused.

7 Does the defense have any further witnesses they  
8 intend to call?

9 MS. ALLEN: No, Your Honor. Defense rests.

10 THE COURT: Okay. Does the State have any rebuttal?

11 MS. LUZAICH: The State does not.

12 THE COURT: Okay. At this time we're going to hand  
13 out the jury instructions. It's now my duty as the judge to  
14 instruct you on the law that applies to this case. Each of  
15 you will be given a copy of the jury instructions. They're  
16 quite lengthy. I am required by law to read them to you. You  
17 will be able to take these instructions with you when you go  
18 back to deliver upon your verdict, so don't be concerned if  
19 you don't catch every word that I say, because you'll have an  
20 opportunity to review them collectively, individually as many  
21 times you want to.

22 (Jury instructions read - not transcribed)

23 THE COURT: The State of Nevada may open and close  
24 the arguments.

25 MS. RHOADES: Thank you, Your Honor.

1 STATE'S CLOSING ARGUMENT

2 MS. RHOADES: And thank you, all of you, for your  
3 time and for your attention in this very long, three-week,  
4 what was going to be a very long two-week trial. We know that  
5 this is not easy stuff to sit through every day, day in and  
6 day out, for three weeks, and we know that you sacrifice a lot  
7 of your daily lives to come here. And I just want to thank  
8 you for that.

9 Also I have to apologize. My allergies are getting  
10 the best of me, so I'm a little stuffed up.

11 During Mr. MacArthur's opening he told you that  
12 Victoria is mad at her mother and that Victoria is mad at the  
13 defendant, Fred Harris, Victoria's mad at them -- Victoria's  
14 mad at the defendant for breaking up her family, for turning  
15 Tina, her mom, against her. The defense will have you believe  
16 that Victoria Duke concocted this very lengthy scheme and she  
17 enlisted her mother, she enlisted her siblings, mainly Taharah  
18 and Taquanda Duke, in making up stories and allegations  
19 against this defendant because the defendant broke up her  
20 family. And it has all come to this perfect fruition where  
21 they all get to come here and be subject to hours of  
22 examination in front of a courtroom full of people.

23 You observed Victoria on the stand. You observed  
24 her demeanor. You observed how she was. You heard the facts  
25 that she testified to. Does Victoria seem like the mastermind

1 behind a seven-year scheme to get back at the defendant for  
2 breaking up her family? I will leave that question to you.

3           Moreover, this was not some happy family that the  
4 defendant came in and broke up. Victoria had a rough  
5 childhood. All of them had a rough childhood growing up.  
6 This isn't some happy home and the defendant came in and broke  
7 it all up. The defendant took advantage of the situation, he  
8 took advantage of this family, he took advantage of Tina Duke,  
9 he took advantage of all five of her children.

10           In every criminal case the State of Nevada, the  
11 state everywhere, must prove two things, first that crimes  
12 were committed and, second, that it was the defendant that  
13 committed those crimes. Here you heard testimony. Everybody  
14 that -- pretty much everyone that got up on that witness stand  
15 pointed to this defendant. This defendant is the one that did  
16 these things to them. Identity is not an issue. This is not  
17 a case of whodunit. This is a case about the crimes, what  
18 crimes were committed, when were they committed.

19           I first want to outline kind of the life that the  
20 Dukes led here in Las Vegas. This timeline will help with the  
21 counts. Each of your counts lists basically a time frame.  
22 And if you find that the crime was committed within that time  
23 frame, the timeline will help, because you can go back and see  
24 where were they living, where were the crimes committed, did  
25 it happen within that particular time frame.



1           So we start off December of 2004. Tina Duke and her  
2 kids are living in Louisiana. Tina meets the defendant. Tina  
3 comes to Las Vegas to visit the defendant in December 2004.  
4 The defendant's brother goes to Louisiana, picks up the kids,  
5 and takes them to Las Vegas, and they're all living together  
6 at Trish Lane. Trish Lane is Miss Ann's house. The defendant  
7 is living in a separate apartment on Nellis. He is not living  
8 there at that time. They stay at this Trish Lane address from  
9 December 2004 to May of 2005.

10           January 2005, that's Victoria's first disclosure,  
11 when she's 12 years old. And we'll talk about that more in a  
12 little bit.

13           May of 2005 to August 2007 they go to Utah. And  
14 this is not to scale. I couldn't fit it all to scale. They  
15 go to Utah. Tina is still coming out to Las Vegas and  
16 visiting the defendant while she's in Utah.

17           August 2007 is when, after CPS took the kids away  
18 from Tina and Tina worked the case plan to get the kids back,  
19 August 2007 she had them back for some time. She and the  
20 defendant basically put all five of the kids in the  
21 defendant's car in the middle of the night and drive them to  
22 Las Vegas. When they drive them to Las Vegas some of the kids  
23 go -- well, four of the kids, except for Victoria, go to the  
24 Blankenship house. Mom and Victoria go to Miss Dorothy's  
25 house. Taharah, Taquanda, Shabazz, and Mahlica are all in the

1 Blankenship house at this time. They're separated. The kids  
2 are surprised that they're separated.

3 August 24th, 2007, that's the incident that Victoria  
4 described to you in the car on top of the mountain where she  
5 could see all of Las Vegas, the lights of Las Vegas. That  
6 happened while Victoria was living at Miss Dorothy's with her  
7 mom.

8 September 2007 to October 2007 they go from --  
9 Victoria and mom go from Miss Dorothy's house to an  
10 efficiency, budget-type Siegel Suites motel, if you will. All  
11 the kids, they're still at Blankenship, except for Victoria.

12 Then from October 2007 to July 2008 Victoria and mom  
13 move into the Walnut, the two-bedroom Walnut apartment, where  
14 Victoria and mom each have their own room.

15 Then from July 2008 to August 2010 everybody's in  
16 Blankenship. Victoria and mom move into Blankenship. They're  
17 there with the four other kids and the defendant and Miss Ann.

18 From August 2010 to August 2011 the older kids go  
19 with mom to the apartment on St. Andrews. Tina moves out.  
20 She takes with her Victoria, Mahlica, and Shabazz, leaving  
21 Taharah and Taquanda in the Blankenship house with the  
22 defendant and Miss Ann.

23 October 9th, 2010, right after mom and the older  
24 kids move out, Taharah turns 11. She's living in the  
25 Blankenship house when she turns 11.

1           From August 2011 to now they are living in the  
2 Henderson apartments. August 2011 to September 2012 mom's  
3 living there with the older kids, Victoria, Shabazz, and  
4 Mahlica. Taharah and Taquanda just recently moved back with  
5 her last year, October 2013. That's not even on the time  
6 frame, so that has nothing to do with any of the charges in  
7 your amended information.

8           December 2011 we have Victoria's second disclosure,  
9 when she's 19 years old. This disclosure happens at the  
10 behest of Miss Rose after Victoria tells Miss Rose promise --  
11 makes her promise not to tell anybody.

12           Taharah's first disclosure, May 2012. This is the  
13 incident in the laundry room that Taquanda saw that Taquanda  
14 went to Miss Ann about, and then Miss Ann asked Taharah about  
15 it, and Taharah disclosed to her. That happened in May of  
16 2012 while Taharah and Taquanda were living at the Blankenship  
17 house.

18           June 27th, 2012, Miss Ann takes Taharah to the  
19 doctor, Dr. Gony. Dr. Gony tells her she has a sexually  
20 transmitted disease, high risk HPV.

21           After that, September 26th, 2012, is Taharah's  
22 interview with Michelle Fisher when she discloses to CPS and  
23 to Metro the things that the defendant did to her.

24           So kind of using this as a background we're going to  
25 go through the crimes that the defendant is charged with. And

1 there are a lot of them, there 45. There are five counts of  
2 sexual assault, there are eleven counts of sexual assault with  
3 a minor under 14, eight counts of sexual assault with a minor  
4 under 16, five counts of lewdness with a child under 14, four  
5 counts of first degree kidnapping, one count of battery with  
6 intent to commit sexual assault, two counts of administration  
7 of a drug to aid in the commission of a crime, one count of  
8 sexually motivated coercion, there are five counts of child  
9 abuse, neglect or endangerment, one for each of the Duke  
10 children. There's one count battery by strangulation, one  
11 count of pandering, and one count of living from the earnings  
12 of a prostitute.

13 Now, I'm not going to go in the order which the  
14 crimes are listed on your amended information. I'm going to  
15 start with Victoria first, and we're going to start with the  
16 crime of sexual assault. You are instructed -- okay. Sexual  
17 assault is when a person subjects someone else to sexual  
18 penetration against the victim's will or under conditions in  
19 which the perpetrator knows or should know that the victim is  
20 mentally or physically incapable of resisting or understanding  
21 the nature of his or her conduct. Okay. So it's penetration,  
22 it's without consent, and at times the age of the victim will  
23 be considered. So this is sexual assault. You also have an  
24 instruction that tells you specifically when a person subjects  
25 a minor under 14 years to sexual penetration they're guilty of

1 an under 14 crime, and then when a person subjects a minor  
2 under 16 years to sexual penetration they're guilty of the  
3 under 16 crime of sex assault.

4           What is without consent? You are instructed that  
5 submission is not consent. Just because someone gives in does  
6 not mean that that is consent. The person is not required to  
7 do more than her age, her strength, the surrounding facts and  
8 circumstances of that case reasonably allows. And the  
9 circumstances surrounding this relationship, the surrounding  
10 facts, you look at the relationship between the parties, the  
11 position in the home. You're also told that physical force is  
12 not necessary. You don't need to force -- physically force  
13 someone to have sex for there to be no consent.

14           There's no consent where a person is induced to  
15 submit to the sexual act through fear of death or serious  
16 bodily injury. So when someone threatens you and tells you  
17 that they're going to beat you, that they're going to beat  
18 your sibling, that they're going to beat your mom, that  
19 they're going to put you in Child Haven, that they're going to  
20 injure you in any way, that is not -- that is not consent if  
21 someone gives that person what they want.

22           You're also specifically instructed on penetration.  
23 Sexual penetration is fellatio or any intrusion, however  
24 slight, of any part of a person's body or any object  
25 manipulated or inserted by a person into the genital or anal

1 openings of the body of another. Digital penetration is  
2 placing one or more fingers of the perpetrator into the  
3 genital or anal opening of another person. Fellatio is  
4 touching of the penis by the mouth or tongue of another  
5 person. So while it's not -- doesn't always have to be  
6 necessarily inserting anything, it's [inaudible] penetration.  
7 You're told up here that sexual penetration is fellatio. Also  
8 what's important is, however slight -- sexual penetration is  
9 the intrusion however slight of the penis into the genital  
10 opening of another person.

11           So I'm going to start with Counts 21 and 22, sexual  
12 assault with a minor under 14. We're talking about Victoria  
13 at this time. So what are your elements? Minor under 14,  
14 penetration without consent. The time frame with which these  
15 are charged is December 2004 through May of 2005. Victoria  
16 testified that her date of birth, July 31st, 1992. This is  
17 for the crimes that occurred at the defendant's apartment on  
18 Nellis when he was living separately from Miss Ann while Miss  
19 Ann was living at Trish Lane with the Duke kids. So this is  
20 what we're talking about right here.

21           Victoria's 12 years old at this time. Victoria and  
22 the -- and her sisters and her brother were at the Trish Lane  
23 house. Her mom -- defendant picked them up, he took Tina to  
24 work, he took the kids to his house, to his apartment, rather.  
25 So mom's gone the five kids are in the defendant's house. All

1 the kids are sick. Victoria told you that. All the kids were  
2 sick this day. They were all sleeping in the defendant's  
3 room. I believe she testified most of them were on the bed.  
4 They had taken some cold medicine. Victoria wakes up alone in  
5 the defendant's bed. She wakes up alone in the defendant's  
6 bed and asks where her sisters and her brother are, and  
7 they're at the park. Defendant tells her that they all went  
8 to the park. So they're all out of the house. Defendant has  
9 Victoria in his room alone. He grabs her hands -- and  
10 Victoria told you all this on the stand. Defendant grabbed  
11 her hand and forced it to touch his penis. The defendant then  
12 proceeded to pull her pants down and put his finger in her  
13 vagina. She told you that. She told you that it hurt.

14           The defendant also tried to force his penis in her  
15 vagina. And she did tell you that the penis passed through  
16 the lips of her vagina. He was forcing this, and then he  
17 eventually stopped. There's evidence of penetration, there's  
18 no doubt about that. Is there consent? There's evidence of  
19 digital penetration and sexual penetration. So was there  
20 consent? Did 12-year-old Victoria consent to this? No.  
21 Defendant told her that if she told anyone he would beat her.  
22 She told you that it felt terrible. She told you that she did  
23 not want this to happen.

24           So what are the circumstances surrounding, you know,  
25 what happened in the defendant's bedroom in January 2005?

1 Well, this is mom's boyfriend that she knows. It's an  
2 authority figure in the house. Her siblings are living with,  
3 you know, his other girlfriend, essentially, in the Trish Lane  
4 house. He has a position of authority over Victoria. He told  
5 her that he would beat her, and he did this to her in his  
6 bedroom.

7           What else happened? What other crimes happened in  
8 that bedroom in January 2005? We have lewdness with a child  
9 under 14. So there's essentially three elements to lewdness  
10 with a child under 14. Any person who wilfully commits any  
11 lewd or lascivious act upon or with any part of the body of a  
12 child under the age of 14 with the intent of arousing,  
13 appealing to the passions of sexual desires of either the  
14 person or the child is guilty of lewdness with a minor.

15           You also have other instructions on this crime that  
16 tell you the law does not require that the lust, sexual  
17 passions be aroused. And you also have instructions that the  
18 touching may be through clothing. So Count 20, lewdness with  
19 a child under 14. Still talking about Victoria, still talking  
20 about January 2005. She's 12 years old. The defendant  
21 grabbed Victoria's hand and forced it to touch his penis. She  
22 told you that. His penis was out of his pants. It was bare  
23 skin. Her hand was touching his penis. The defendant caused  
24 her hand to move up down on his penis. This was immediately  
25 before the defendant tried to force his penis inside her



1 12-year-old vagina. So from that circumstance you can -- you  
2 can kind of gather his intent. We can't get into his head.  
3 He didn't write down, my intent today when I was forcing  
4 Victoria to do this is. We know by the circumstances what his  
5 intent was. This is a lewd act upon Victoria's hand, a minor,  
6 with the intent to arouse the defendant. Defendant is guilty  
7 of Count 20, lewdness with a child under 14.

8           The next crime that happened in that bedroom,  
9 coercion sexually motivated. Coercion is when a person, with  
10 the intent to compel another from doing something or  
11 abstaining from doing something uses violence or inflicts  
12 injury or attempts to intimidate the person by threats or  
13 force. So they stop them or they make them do something.  
14 That's the intent, they want to make them or stop them from  
15 doing something. And they can either use violence or inflict  
16 injury, or they can attempt to intimidate that person by  
17 threat or force.

18           Count 23, coercion sexually motivated. Again this  
19 is in the room, January 2005. The defendant grabbed and  
20 bruised Victoria's arm. The defendant told her that he would  
21 beat her if she told anyone. So he's trying to make her not  
22 do something, he's trying to make her abstain from doing  
23 something. He did use violence. He grabbed and bruised her  
24 arm. And he also threatened that he would beat her if she  
25 told anybody. So he used violence, and he attempted to

1 intimidate by threats or force. His intent again, don't tell  
2 anybody, don't tell anybody what happens. And he's guilty of  
3 Count 23.

4           The next thing that happened in that bedroom, the  
5 next crime, first degree kidnapping. You have two very long  
6 instructions on first degree kidnapping. "Every person who  
7 wilfully seizes, confines, inveigles, entices, decoys,  
8 abducts, conceals, kidnaps or carry away any person by any  
9 means whatsoever with the intent to hold or detain for the  
10 purpose of committing sexual assault is guilty of first degree  
11 kidnapping."

12           Another way to get to first degree kidnapping is  
13 when a person leaves or takes away or detains any minor with  
14 the intent to hold the minor for unlawful acts, to commit  
15 unlawful acts. That's also guilty of first degree kidnapping.  
16 So it can be either one of those two things, and you don't  
17 have to agree as a whole how you get to first degree  
18 kidnapping, whether you think it was for the purpose of  
19 committing sexual assault or you think it was the minor -- he  
20 was holding the minor for unlawful acts.

21           The second really long instruction about first  
22 degree kidnapping tells you that to find the defendant guilty  
23 of both first degree kidnapping and a sexual assault for the  
24 same kind of event you have to find that it was either one of  
25 these five things: that it was not incidental to the sexual

1 assault, the movement of the victim was not incidental to the  
2 sexual assault; if it was incidental movement, that movement  
3 substantially increased the risk of harm to the victim; third,  
4 if it was incidental movement, the movement substantially  
5 exceeded that required to complete the sexual assault; fourth,  
6 that the victim was physically restrained; or, fifth, that the  
7 movement had some kind of independent significance or purpose.  
8 You don't have to find all five. You just need one. The  
9 "or," you see that "or" behind each of the end of the  
10 sentence. And also you don't have to agree on which theory  
11 you think he was holding her for -- or which theory you think  
12 that it was not incidental.

13 Count 19 is first degree kidnapping for what  
14 happened in that bedroom. The defendant seized and confined  
15 12-year-old Victoria in his bedroom. She is a minor. He  
16 would not let her leave. She tried to leave. She told you  
17 that. She wanted to leave, she tried to leave, he was  
18 grabbing her arm, and he would not let her leave.

19 Well, how do we know that his purpose -- how do we  
20 know his purpose? He committed the sexual assault on  
21 Victoria. He stuck his finger in her vagina. He tried to  
22 stick his penis in her vagina, and he didn't get all the way  
23 through. But he got through. He passed through the lips. We  
24 talked about that was a sexual assault. We know that his  
25 purpose was to commit sexual assault when he was holding her

1 in that room.

2 Also you have she's a minor, he held her in that  
3 room with the intent to perpetrate upon her unlawful acts. He  
4 did other things in that room. He committed coercion sexually  
5 motivated, he committed lewdness with a child under 14. He  
6 did other unlawful acts on her in that room. He wouldn't let  
7 her leave.

8 Her siblings were out of the house, and the  
9 defendant had her alone in his room. Everybody else was gone.  
10 There was nobody else. He wouldn't let her out of that room.  
11 That is increased likelihood of harm to Victoria. And he's  
12 guilty of Count 19, first degree kidnapping.

13 There are some instructions about credibility that I  
14 want you to pay attention to when you are assessing Victoria's  
15 credibility on the stand and really everybody's credibility on  
16 the stand. The credibility or believability should be  
17 determined by the manner upon the stand, the relationship to  
18 the parties, fears, motives, interests, or feelings, and also  
19 the strengths or weaknesses of their recollections.

20 Another important instruction is that there is  
21 absolutely no requirement that the testimony of the victim of  
22 sexual assault be corroborated, and her testimony standing  
23 alone, if believed by you, is enough to find him guilty of  
24 sexual assault.

25 Victoria has been consistent throughout. She's been

1 consistent in her statements. She discloses first -- well,  
2 this is what we're talking about now, the first disclosure of  
3 January 2005. But on the stand she's been consistent.  
4 Detective Aguiar and Detective Madsen told you that in both of  
5 her statements she was consistent, that she testified to very  
6 vivid facts, she vividly described a lot of the incidents on  
7 the stand, remembering specific details.

8 Another thing that Mr. MacArthur told you in opening  
9 was that all these disclosures have been when the family's  
10 separated, when the defendant takes Tina away from the kids or  
11 the defendant takes Victoria away from her brothers and  
12 sisters. Well, this January 2005, this first disclosure that  
13 Victoria made, that happened when the whole family was living  
14 together at Trish Lane. Nobody was living at the defendant's  
15 apartment, there wasn't some kids living the Blankenship and  
16 some not. The whole family was living together at Trish Lane.

17 The testimony of Victoria was also corroborated  
18 through other evidence. The defendant's apartment on Nellis.  
19 Tina testified that he lived at this apartment on Nellis, all  
20 the kids testified that. The defendant did not live with Miss  
21 Ann during this time frame when they were in Las Vegas that  
22 first time.

23 The defendant himself, he told you in his interview  
24 with Detective Aguiar that he was alone with the kids in his  
25 apartment when he was a bachelor. He was a bachelor here, he

1 was not living with Miss Ann, he was alone with those kids in  
2 his house. The kids also testified that they would go to the  
3 defendant's apartment. They remembered going here when they  
4 were here when they were younger.

5 Before Utah, after the January 2005, incident  
6 Victoria did tell Mahlica. Mahlica told you that, and  
7 Victoria told you that. Victoria also disclosed to Miss Ann  
8 before Utah. Defendant's interview with Detective Aguiar he  
9 confirmed that 2005 disclosure. He knew that this happened.  
10 He knew about these allegations. What was the result of  
11 Victoria's disclosure to Miss Ann when she was looking for  
12 help? Well, she told Miss Ann, Miss Ann told the defendant's  
13 mom, Miss Dorothy, they get Tina involved, and they all kind  
14 of get Victoria in a room and basically tell her that they  
15 don't believe her, that they don't think it happened. Oh.  
16 They also talked to the defendant about it, and he says it  
17 didn't happen, so they go ahead and believe the defendant and  
18 completely disregard anything that Victoria tells them.

19 CPS is not called, the police are not called,  
20 nothing is investigated. They call -- all of the adults call  
21 Victoria a liar. They tell her that she's crazy and that she  
22 shouldn't be around her family. That was the result of her  
23 disclosure when she sought help in January 2005.

24 Moving on to Count 26, sexual assault with a minor  
25 under 16 -- and all that credibility stuff needs to be taken

1 into account when you consider her testimony for all of the  
2 counts that I'm going to talk about with her.

3 Minor under 16. These are your elements. Sexual  
4 penetration without consent. The time frame for Count 26 is  
5 August 1st, 2007, through August 31st, 2007. So August 2007.  
6 This is for the incident on the top of the mountain where  
7 Victoria could see all the lights of Las Vegas in the backseat  
8 of that car. Again, penetration without consent and age. So  
9 this is going to be while Mom and Victoria are living at Miss  
10 Dorothy's and the rest of the kids are living at Blankenship.

11 Victoria told you the exact date that this happened.  
12 She knew the exact date that this happened because the  
13 defendant told her that he was going to take her virginity and  
14 that she needed to pick a day that it was going to happen. He  
15 told her that she [sic] was going to take her virginity in  
16 that conversation that she had. Her mom was right there. He  
17 told her that if, you know, he couldn't have her there was  
18 going to be problems, he was going to beat her, he was going  
19 to beat her siblings.

20 The car was vividly described by Victoria. It was a  
21 dark car, it was a small car. It was the same car that  
22 defendant picked them up in when he picked them up from Utah  
23 and drove them back to Las Vegas. Defendant is driving, Mom  
24 is in the passenger seat, and Victoria's in the backseat.  
25 They're driving around for quite some time. Defendant stops

1 at the liquor store to get liquor. They're drinking, they go  
2 to a park, and they end up on this mountain that overlooks all  
3 of Las Vegas. Victoria can see the lights. She remembers the  
4 shards of glass on the ground, she remembers the cars around  
5 her that are rocking.

6           What does the defendant do while on top of this  
7 mountain? He climbs in the backseat of the car and hovers  
8 over her. She testified that she was drinking a lot. She's  
9 15 at this time, so she's drinking a lot, trying to hurt  
10 herself, basically, so that she won't have to be there and  
11 subject herself to what's going on. She recalls the defendant  
12 hovering over her. She remembers that he pulls her pants  
13 down, the defendant pulls her underwear down. She testified  
14 that she felt pressure on her vagina. The next morning her  
15 vagina was sore, it was bleeding. This is evidence of  
16 penetration.

17           What other evidence of penetration do we have, what  
18 happened that in that car? The defendant told her that they  
19 had sex and that it was going to happen again and that it was  
20 going to happen a lot. Tina tells you -- because, remember,  
21 Tina's in the front passenger seat while this happens and does  
22 absolutely nothing to stop it. Tina tells you the details of  
23 what happened in this car. Tina tells you the defendant put  
24 his penis in Victoria's vagina. Victoria did not want this to  
25 happen. She -- the position that she's in in that car, I --



1 her mom's right there, the person that she should be able to  
2 go to help. She doesn't do anything about it. Her disclosure  
3 in 2005, nobody did anything about it. She is basically  
4 helpless at this point. She told you that she didn't want it  
5 to happen, as well. She's 15 years old at this time, and the  
6 defendant is still in this fatherly position of authority  
7 because he's Mom's boyfriend. He's guilty of Count 26, sexual  
8 assault with a minor under 16.

9           How else do we know that there was no consent?  
10 Threats. He induced her to submit to these actions through  
11 fear of serious bodily injury. He told her that he was going  
12 to beat her if she didn't have sex with him in that  
13 conversation in the car previously.

14           What else? What other crimes happened August 24th,  
15 2007, in that car, Count 25, first degree kidnapping. You  
16 were instructed on that. Carried away and confined her to a  
17 remote location, okay. On top of a mountain in the middle of  
18 Las Vegas where you could see all the lights. What was his  
19 purpose? Well, he got in the backseat of the car and forced  
20 his penis inside her, so his purpose, I think you can infer  
21 from his actions, was to commit sexual assault. And keep in  
22 mind you still have that other option. She is still a minor.  
23 So you can find that first degree kidnapping, too. She's a  
24 minor with intent to perpetrate any unlawful act on her.

25           The defendant took 15-year-old Victoria to the top

1 of a mountain in the middle of Las Vegas where other cars were  
2 around, and they were clearly -- it appeared that the other  
3 cars, people were in there having sex. There was broken  
4 glass. He drove her around for quite some time. It was far  
5 away from where she was living at the time at Miss Dorothy's.  
6 I'm going to say that that's an increased likelihood of harm.  
7 That movement from Miss Dorothy's to that top of the mountain,  
8 that's an increased likelihood of harm to Victoria. And he's  
9 guilty of Count 25, first degree kidnapping.

10 Administration of a drug to aid in the commission of  
11 a felony. That's another crime that occurred in that car on  
12 that day. And your instruction tells you that any person  
13 who administers to anyone else any intoxicating agent with the  
14 intent to enable or assist himself in the commission of a  
15 felony is guilty of administration of a drug to aid in the  
16 commission of a felony. Count 24. The defendant drove to the  
17 store, purchased alcohol, he purchased a lot of alcohol. He  
18 gave it to Mom, he gave it to Victoria. She's 15 years old at  
19 the time. This is an intoxicating agent. Victoria drank it.  
20 She drank a lot because she wanted to forget what was  
21 happening. And what did he do thereafter? Well, he committed  
22 a felony. He committed sexual assault on a minor under the  
23 age of 16. So he's guilty of Count 24.

24 Moving on to Counts 29 through 35, sexual assault  
25 with a minor under 16. The time frame is September 1st, 2007,

1 to July 30th, 2008. Victoria's 15 years old during this whole  
2 time. This is for -- these charges are for what happened at  
3 the efficiency Siegel Suites and for what happened at the  
4 Walnut apartment.

5           Going back to our elements, penetration without  
6 consent and age. We have her age. She's under the age of 16,  
7 so that element is met. So this is going to be happening in  
8 the Siegel Suites or the Walnut apartment before Tina and  
9 Victoria move into Blankenship.

10           So Counts 29 through 35. Counts 29 and 31, sexual  
11 intercourse, penis in vagina. Counts 30 and 32, anal  
12 intercourse. Count 33, dildo or a vibrator that the defendant  
13 inserted into Victoria's genital opening. And Counts 34 and  
14 35 are for the defendant causing Tina to place a dildo inside  
15 of Victoria's genital opening.

16           So what do we know happened at Siegel Suites? They  
17 were living there from September 27th to October -- I'm sorry,  
18 September 2007 to October 2007. The defendant would come over  
19 a lot. Victoria told you that. Also, Tina told you that  
20 defendant would come over a lot at this time. Victoria told  
21 you that when the defendant would come over these things would  
22 happen very often, basically every time he came over this kind  
23 of stuff would happen. He would put his penis in her vagina,  
24 he would put his finger in her vagina, he would touch her  
25 breasts and her vagina with her hands. She said this happened

1 multiple times while at the Siegel Suites. The defendant  
2 would bring a purple vibrator with a black top over to the  
3 Siegel Suites. She described that in detail. He would also  
4 bring a double-sided blackish-brown dildo. She described that  
5 in detail. Defendant would bring that to the Siegel Suites  
6 apartment, I guess you could call it, although it was a one-  
7 bedroom apartment, just one room basically, a bathroom and a  
8 kitchen that's all connected.

9           The first time that the defendant force Victoria to  
10 have sex with her mom was in the Siegel Suites apartment.  
11 Victoria told you that. The defendant demanded that Tina use  
12 the vibrator on Victoria's clitoris. Victoria told you that.  
13 Defendant demanded that Tina stick the vibrator in Victoria's  
14 vagina. Tina testified to these facts, as well. Then the  
15 defendant tells them to use the dildo together. This happens  
16 at the Siegel Suites. Victoria also told you that when the  
17 defendant would bring these toys he would often use them alone  
18 with her, that he would insert the dildo in her genital  
19 opening, that he would insert the vibrator in her genital  
20 opening, that he would use the vibrator on her clitoris. So  
21 it wasn't just Mom and Victoria that were using the toys  
22 together; the defendant would use those toys on her, as well.

23           They're living at the apartment on Walnut from  
24 October 2007 to September 2008. Defendant came over a lot  
25 again at this apartment, at least three times a week.

1 Victoria told you that. He left these toys at Walnut. He  
2 would bring the toys over to Walnut, and he left them there.  
3 Victoria told you that the defendant would put his penis in  
4 her vagina often. This would occur in her room. The Walnut  
5 apartment is a two-bedroom apartment, not just a one-bedroom,  
6 so it would occur in her room, it would occur in Mom's room,  
7 it would occur in the living room. And she further told you  
8 that the defendant would shove the dildo in and out of her  
9 vagina.

10           Anal intercourse. She testified -- Victoria  
11 testified on cross-examination that the anal intercourse did  
12 occur once at the apartment on Walnut, that the defendant put  
13 his penis in the anal opening of her. She previously stated  
14 -- which she was confronted with this on cross-examination.  
15 She previously stated that this had happened more than one  
16 time. Now, you have an instruction that tells you that a  
17 prior inconsistent statement can be considered by you as  
18 substantive evidence in the case. So you can consider it.  
19 There are two counts of anal intercourse in this section that  
20 we were talking about before. While those might not be the  
21 strongest counts compared to the others, that is not to have  
22 any bearing on the evidence in your consideration of the other  
23 cases -- of the other counts, the sexual intercourse, the  
24 penis in the vagina, the dildo, the vibrator, all of that.  
25 But there is evidence that the anal intercourse happened more

1 than one time at the apartment on Walnut.

2 Victoria told you that she did not want any of this  
3 to happen. She's 15 years old at this time. Again, remember,  
4 submission is not consent. He has been doing this to her  
5 since January 2005, the first time that she came to Vegas, the  
6 first time that she spent any amount of time with him he has  
7 been doing this to her. He is still Mom's boyfriend. Mom's  
8 participating in this with the defendant. Victoria has  
9 nowhere to turn. Again, Tina corroborates what Victoria told  
10 you.

11 Oh. You also heard about the two-sided dildo from  
12 the defendant himself. He told you that Tina has a two-sided  
13 dildo at her house. He told you that in his interview with  
14 Detective Aguiar. So all of those counts at -- all of those  
15 counts of sexual assault on Victoria that occurred at the  
16 Siegel Suites and the apartment on Walnut, he's guilty of  
17 every single one of those counts by far.

18 Count 28, first degree kidnapping. Again this is  
19 for the room at Walnut. Defendant confined Victoria to a room  
20 with her mom when he forced them to have sex with each other.  
21 His purpose was to commit sexual assault, because, you know,  
22 that's what he did. And Victoria told you that she did not  
23 want to be there.

24 He would bring alcohol. She told you that she would  
25 drink so much that she wanted to die, she was trying to get

1 away from there. He's guilty of Count 28, first degree  
2 kidnapping.

3 Count 27, administration of a drug. Again, Victoria  
4 told you that the defendant would often bring alcohol to both  
5 the Siegel Suites and the Walnut apartment. She would drink  
6 it, she would drink it to make herself sick, she would drink  
7 it because he brought it over there for her to drink. She  
8 attempting to hurt herself. And thereafter the defendant  
9 committed crimes of sexual assault, the crimes we just talked  
10 about before. He's guilty of Count 27, administration of a  
11 drug.

12 Count 36, sexual assault. There's no age here. So  
13 we have penetration without consent. May 2009, Victoria's 16  
14 years old at this time. This occurred at the Blankenship  
15 house, 966 Blankenship. Victoria and Mom lived there with  
16 their -- with Victoria's other siblings July 2008 through  
17 August 2010. No one else was home. Victoria told you about  
18 this incident when no one else was home and the defendant  
19 called her from the garage into the defendant's room. She  
20 thought that she was in trouble by the way defendant called  
21 her into the room. Once Victoria got into the room he grabbed  
22 her, there was a struggle, she tried to leave, and the  
23 defendant pulled her to the bed. Once the defendant pulled  
24 her to the bed he pulled her pants down, he forced his penis  
25 in her vagina, and his penis moved back and forth. Victoria

1 testified to that. This happened in May 2009 in the  
2 Blankenship house. And he's guilty of Count 36.

3 In Counts 37 through 40, these are for the crimes  
4 that occurred while they were living at the St. Andrews  
5 apartment. So Mom and Tina -- I'm sorry, Mom and Victoria and  
6 Shabazz and Mahlica all moved out of the Blankenship house,  
7 and they're living at the St. Andrews apartment. Your time  
8 period here, August 2010 to October 2011. Victoria's 18 years  
9 old. She told you that there are less visits than before.  
10 Remember, keep in mind August 2010, and then Taharah turns 11  
11 in October of 2010. So he's coming over to the St. Andrews  
12 apartment less. She testified that the defendant put his  
13 penis in her vagina at the St. Andrews apartment. She  
14 testified that she did not want this to happen. She testified  
15 that it happened multiple times. He is guilty of Counts 39  
16 through 40, sexual assault. The penetration and without  
17 consent, they have both been established.

18 And what else happened at the St. Andrews apartment?  
19 Count 37, first degree kidnapping. There's not a  
20 corresponding sexual assault charge for this first degree  
21 kidnapping, so that incidental instruction, you don't have to  
22 use that with this count, with Count 37. This is the Welfare  
23 office appointment story that Victoria so detail-orientedly  
24 described for us on the stand. She was at the apartment at  
25 St. Andrews, Mom was there, the defendant came over there, he



1 was going to take her to an appointment that she had at the  
2 Welfare office. He wasn't taking her and he was late, so she  
3 knocked on Mom's door, to find Mom giving oral sex to the  
4 defendant. When she knocked on the door defendant opened the  
5 door, he grabbed her, he seized her, he held and detained her.  
6 This was in Mom's room at the St. Andrews apartment. He said  
7 to her, you're mine, you can go when I say you can go. She  
8 struggled with him, and she was eventually able to get away.

9           The defendant was demanding oral sex from Victoria.  
10 He told her, you need to do what your mom is doing. The  
11 purpose for detaining her in the mom's room was to commit  
12 sexual assault. It doesn't matter that the sexual assault  
13 didn't occur. He was demanding oral sex from Victoria.

14           Count 38, battery with intent to commit sex assault.  
15 You have the instruction on this, on this PowerPoint, anyway.  
16 Any person who commits a battery upon another with the  
17 specific intent to commit a sexual assault is guilty of the  
18 offense battery with intent to commit sexual assault. Battery  
19 is the wilful and unlawful use of force or violence upon the  
20 person of another.

21           So in this struggle the defendant grabbed Victoria's  
22 wrists and would not let her go. This is a wilful and  
23 unlawful use of force. So how do we know again that his  
24 intent was to commit sexual assault? Mom was giving oral sex  
25 to the defendant when Victoria walked in. The defendant told

1 her -- Victoria testified to this. The defendant told her to  
2 get down on her knees with her mom and put her mouth on his  
3 penis. There's your intent. He's guilty of Count 38, battery  
4 with intent to commit sex assault.

5 Count 41, sexual assault, penetration without  
6 consent. There's no age here. August 2011 to December 2011.  
7 Victoria's 19 years old at this time. This is for the  
8 Henderson apartment at Center Street that they moved to. The  
9 defendant came over even less often. It was farther away than  
10 the St. Andrews apartment. She testified that the last time  
11 she had sex with the defendant was at this -- at the Henderson  
12 Center Street apartment. She told you that she didn't want  
13 any of this to happen. Defendant is guilty of Count 41,  
14 sexual assault.

15 Moving on, we're going to move on to when Taharah  
16 turns 11, October 2010 to September 2012. We're moving on to  
17 Taharah. We've established all the counts against Victoria.  
18 So with Taharah we have Counts 2 through 14, sexual assault  
19 and lewdness with a minor under 14. The time period is the  
20 same for all those counts, October 1st, 2010, to September  
21 26th, 2012. August 2010, again remember that's when everybody  
22 moves out of the Blankenship house except for Taharah and  
23 Taquanda. Taharah told you that the first time that anything  
24 happened with the defendant was after everyone moved out,  
25 after Mom and her older siblings moved out. She turns 11

1 October 9th, 2010, and then she turns 12 years old September  
2 26th, 2012, when she's taken out of the home. So the entire  
3 time period the age has been established. She's 12 years old,  
4 she's under 14.

5 Counts 2, 6, 10, and 13 are sexual assault of a  
6 minor under 14. This is for digital penetration. Again,  
7 penetration without consent, age, the age has been  
8 established. Taharah told you about the incident in the  
9 laundry room where the defendant put two fingers in her  
10 private. She told you that it hurt, and she further told you  
11 that the defendant said, shh, don't tell. So the age, 12  
12 years old, the defendant is a father figure to Taharah. He is  
13 -- you know, it's him and Miss Ann and Taharah and Taquanda  
14 for the most part living in the Blankenship house for the  
15 majority of the time that Taharah and Taquanda are there.

16 What other surrounding facts do we have? Well, we  
17 know that Taharah was aware that Victoria disclosed back in  
18 2005 and nobody did anything about it. So she's got that  
19 going in her mind, she's got it in the back of her mind when  
20 this consent issue is going through her head. She's 12 years  
21 old -- 11 years old. She told you that this digital  
22 penetration happened multiple times. There's evidence of  
23 penetration. There was no consent. And he's guilty of 2, 6,  
24 10, and 13. That's the digital penetration involving Taharah.

25 Moving on to Counts 3, 8, 11, and 14, this is the

1 sexual assault under -- victim under 14, sexual penetration  
2 for Taharah. Taharah told you that the defendant put his  
3 private part in her private part. He put his penis in her  
4 vagina. Those are my words. Those weren't Taharah's words.  
5 This happened in Fred's bathroom. She told where it happened  
6 in the house at Blankenship. It happened in Fred's bathroom  
7 more than one time. It happened in the old bedroom that she  
8 used to sleep in more than one time. She was standing up one  
9 time when it happened and he came behind her and put his penis  
10 in her vagina. In the garage. She told that it happened more  
11 than one time in the garage. She told you one time she was  
12 bent over the pool table in the garage.

13 Count's 3, 8, 11, and 14 have been established. The  
14 penetration without consent. If you will tell -- if you tell,  
15 I will get in a lot of trouble. So he puts this guilt on 11-,  
16 12-year-old Taharah that she can't tell because he's going to  
17 get in trouble. There's no consent, and he's guilty of all of  
18 those counts.

19 Counts 9, sexual assault with a minor under 14.  
20 This is for fellatio. And fellatio, again, is sexual  
21 penetration, is the touching of the penis by the mouth or  
22 tongue of another. Taharah told you that the defendant forced  
23 his private part in her mouth. She told you that this  
24 happened more than one time. She said that it happened in the  
25 garage and it happened in her old room. She described how it

1 would happen. He forced her on her knees. Taharah told you  
2 she did not want any of this to happen. There's penetration,  
3 it was without consent, and he's guilty of  
4 Count 9.

5 Counts 4, 5, 7, and 12, lewdness with a child under  
6 the age of 14. Going back to the lewdness instruction that we  
7 had with Victoria, you need a lewd or lascivious act upon or  
8 with any part of a child's body with the intent to arouse. So  
9 you need those three elements. Here Taharah told you that the  
10 defendant's hands rubbed her breasts, there was skin-on-skin  
11 contact. This would happen, she said, immediately before he  
12 penetrated her, and it happened immediately before fellatio.  
13 That's Counts 4 and 7, his hands rubbing on her breasts, that  
14 lewd act upon the body of Taharah with the intent to arouse.  
15 How do we know the intent was to arouse? Well, he did it  
16 immediately before he penetrated her, whether it was putting  
17 his penis in her vagina, his finger in his vagina, or his  
18 penis in her mouth. Taharah also told you that the defendant  
19 forced and caused her hand to be placed on his private part  
20 and he forced it to rub up and down. Again, she said this  
21 would occur before penetration. So we have the lewd act, lewd  
22 or lascivious act upon Taharah's body with the intent to  
23 arouse, because he did it right before he sexually assaulted  
24 her. And he's guilty of Counts 5 and 12.

25 Let's talk about Taharah's credibility. Remember

1 you have the instruction there is no corroboration necessary.  
2 If you believe the victim's testimony, that is enough to find  
3 the defendant guilty of sexual assault charges. Also we need  
4 to look at her manner on the stand, how she testified to, her  
5 demeanor. She knew facts. She couldn't remember specific  
6 dates, but she gave you what happened inside that Blankenship  
7 house, she described what rooms it happened in, she described  
8 how it happened.

9           So we have two interviews with Taharah, we have the  
10 December 2011 Henderson interview and the September 2012 CPS  
11 medical interview. When you're evaluating these interviews I  
12 want you to take into consideration where these interviews  
13 happened, who did the interviews. The December 2011 interview  
14 was done by three male Henderson police detectives in the  
15 Blankenship home in the middle of the night, at 3:00 a.m.,  
16 when the defendant was in the very next room while Taharah was  
17 talking to Detective Melchert. Her interview in September --  
18 and remember, September 2012 isn't the first time that Taharah  
19 disclosed. Taharah discloses in May of 2012 to Ann after  
20 Taquanda confronts about what happened, after Taquanda tells  
21 Ann about what happened. Nonetheless, the September 2012  
22 interview, it's Taharah alone in a room with Michelle Fisher,  
23 that forensic interviewer. Detective Madsen testified that  
24 these rooms are set up for kids. This was in a completely  
25 separate building then. The defendant was nowhere near her.

1 She disclosed more in September 2012 because of all this. She  
2 felt more comfortable with what was going on. I mean, if you  
3 can just picture how the different interviews were occurring  
4 in your heads, I think you can imagine why Taharah didn't tell  
5 the Henderson Police detective anything in December of 2011.

6 Also take into account that Taharah knew what  
7 happened to Victoria. She knew that Victoria was essentially  
8 shunned by all the adults. They called her a liar, they  
9 wouldn't let her live in the Blankenship home, and she knew  
10 that Victoria had disclosed in 2005.

11 There was a lot of talk about how Detective Aguiar  
12 told Taharah that they were there to make her feel safe. In  
13 Utah CPS removed the kids from the home, but that's only  
14 because Tina was nowhere to be found. She was in Nevada. She  
15 wasn't in Utah. She wasn't in the same state. So CPS had no  
16 choice but to remove them from the home. Taharah doesn't know  
17 what's going to happen if she discloses anything in that  
18 December 2011 interview. She doesn't know what's going to  
19 happen, if they're going to remove her from the home or what.  
20 And she's also got what happened with Victoria a few years  
21 back in the back of her mind.

22 Taquanda's credibility. Taquanda's manner on the  
23 stand. She was different than Taharah. Taquanda was more  
24 matter of fact about things. She had more confidence. The  
25 detectives that interviewed her also told you that she just

1 exuded more confidence than Taharah. Taquanda, remember, in  
2 her December 2011 interview she does tell Detective Aguiar  
3 about physical abuse. What else does she tell Detective  
4 Aguiar that he testified to? I'm afraid if Fred finds out I  
5 told. I'm afraid because Fred is outside. She said these  
6 things to the detective. Taquanda told the detective about  
7 the physical abuse with Shabazz and the physical abuse with  
8 Taharah. Detective Aguiar told you that she was basically  
9 sobbing when she was talking about how afraid she was.

10           While we don't need any corroboration and while  
11 Taharah's testimony is enough, we do have corroboration. May  
12 2012 Taquanda sees it happening. She walks by the laundry  
13 room, she sees through that mirror that she was looking at in  
14 her bedroom that the defendant came and got Taharah. She  
15 followed them. She saw the hands in the laundry room. She  
16 described to you where the hands were. She said that the  
17 defendant's hand was over Taharah's hand.

18           Taharah doesn't tell Miss Ann. Taharah has been  
19 told over and over again by this defendant that if she tells  
20 he's going to get in trouble, if she tells he's going to beat  
21 her, if she tells he's going to beat her family. Taquanda  
22 tells Miss Ann. Taquanda actually sees it happening, and  
23 Taquanda is the one that goes to Miss Ann. And then Miss Ann  
24 confronts Taharah about it. When Miss Ann confronts Taharah  
25 about it, Taharah tells Miss Ann what's going on. So Miss Ann



1 takes these 12- and 11-year-old girls to an OB-GYN. The  
2 examination is conducted. This happens in June 2012. Dr.  
3 Gondy testified June 27, 2012. And Taharah has high-risk HPV,  
4 a sexually transmitted disease. Twelve-year-old Taharah has  
5 high-risk HPV. That is also corroboration. Dr. Gondy told  
6 you that Miss Ann told her that Taharah was sexually abused.  
7 Miss Ann knew about this. Miss Ann told Detective Madsen  
8 exactly what the girls told you, that they went to Miss Ann in  
9 May, that they told her what happened, that Miss Ann said she  
10 was going to do something about it, she said she was going to  
11 move them out of the apartment, out and away from the  
12 defendant. And it never happened. Ultimately she never did  
13 anything. So you've got that corroboration there, as well.

14           After the visit to Ms. Gondy is when the girls visit  
15 Mom and their siblings in the Henderson apartment. It wasn't  
16 before. It wasn't before Taharah tested positive for HPV, it  
17 was after. Again, when they come back, they come back from  
18 being with their mom in the summer, they come back hoping to  
19 start the school year, hoping that Miss Ann is going to keep  
20 up on her promise that she's going to move the girls away from  
21 the defendant into an apartment. September 26th, 2012 --  
22 school starts in August of 2012, so Taquanda waits for  
23 something to happen, and finally she realizes that nothing is  
24 going to happen. And that's when she calls CPS and reports.  
25 These -- all of these things I want you to take into account

1 when you're assessing Taharah and Taquanda's credibility.

2           Child abuse, neglect, or endangerment. There's five  
3 counts of that, one for each of the Duke kids. You're  
4 instructed that a person who wilfully, unlawfully, feloniously  
5 causes a child under 18 to suffer unjustifiable physical pain  
6 as a result of abuse or neglect or to be placed in a situation  
7 where the child may suffer physical pain is guilty of child  
8 abuse. Abuse or neglect means physical or mental injury of a  
9 non-accidental nature. Physical injury means permanent or  
10 temporary disfigurement, impairment of any bodily function or  
11 organ of the body, any bodily function whatsoever. Counts 1  
12 and 15 through 18 are your child abuse counts. They are for  
13 the most part all August 27 through September 26th, 2012,  
14 except for Victoria's. Victoria's starts January 2005 to  
15 September 26, 2012. All the other kids have the first time  
16 frame.

17           This is all for when the kids were living at  
18 Blankenship. They're all under 18 while they're living at  
19 Blankenship. Beatings with a belt. Every single one of the  
20 Duke kids that testified on the stand said that the defendant  
21 beat them with the belt. Taquanda told you that it would  
22 leave welts. So, you know, sometimes they would get in  
23 trouble and that's why he beat them with a belt. What did  
24 they get in trouble for? So they got in trouble for not doing  
25 the pushups right, and that warranted a beating with the belt.

1 They got in trouble from drinking juice from the fridge, and  
2 that warranted beating them with a belt. He would beat them  
3 for no reason at all. All the kids testified to that.

4 Physical injuries of a non-accidental nature. They  
5 have physical injuries. Taharah is Count 1. She testified to  
6 a time that she could remember when she was on the bed with  
7 Mahlica and he was just basically hitting both of them with a  
8 belt while the two girls were on the bed. Taquanda said that  
9 she saw Taharah hit with a belt, as well.

10 Taquanda is Count 15. Again, she told you that it  
11 caused welts. She said that it happened multiple times, that  
12 the defendant would beat her with a belt.

13 Shabazz is Count 16. Shabazz was punching or  
14 beating with a belt. We know that Shabazz was beat with a  
15 belt. He testified to that. All the Duke kids besides  
16 Shabazz testified that they saw the defendant beat Shabazz  
17 with a belt. We also have this incident in the garage when  
18 the defendant essentially beat Shabazz up and gave him a  
19 broken blood vessel in his eye. Taquanda described that for  
20 you. Shabazz described that for you.

21 Mahlica is Count 17 for beating her repeatedly with  
22 a belt and choking her. Mahlica testified that she was beaten  
23 with a belt. Mahlica testified that the defendant choked her.  
24 Taquanda testified that he saw the defendant -- that she saw  
25 the defendant choking Mahlica.

1           And Victoria's Count 18. Victoria told you that the  
2 defendant would beat her with a belt. The defendant's  
3 admissions during his interview with Detective Aguiar  
4 regarding 2005, that's why Victoria's starts in 2005. The  
5 defendant told her -- told Detective Aguiar that Victoria made  
6 all this stuff up because he held her down and whupped on her  
7 butt. He's guilty of all the child abuse counts for what he  
8 did to those kids in the Blankenship home.

9           Moving on to the counts with Tina, Count 42,  
10 pandering. Pandering is when someone uses physical force or  
11 the immediately threat of physical force to induce an adult to  
12 unlawfully become a prostitute. Your time frame, August 2007  
13 through December 17th, 2011. Tina told you that the defendant  
14 put her in the streets while she was living at Siegel Suites.  
15 The defendant told her how to prostitute, what to do, where to  
16 go, how to look, look like you're getting a drink, just sit  
17 there, make eye contact. She described for you what the  
18 defendant told her to do. He would also take her to different  
19 places for her to prostitute. Tina told you that the  
20 defendant would threaten her, he would threaten her family  
21 with beatings. Her kids were living with him at the  
22 Blankenship house. He used immediate threats of physical  
23 force or physical force, and he's guilty of Count 42.

24           Count 43 is a sexual assault count for Tina, August  
25 2007 through August 2008. This occurred at the Walnut

1 apartment. She didn't have enough money from her night of  
2 prostituting, so the defendant got really angry at her, yelled  
3 at her, beat her, and sodomized her. She told you, he fucked  
4 me in the ass. She told you that while defendant was doing  
5 this he called her a stupid bitch. She did not want this to  
6 happen. While Tina did have consensual sex with defendant on  
7 other occasions, that has no bearing to her consent with this  
8 occasion, and she did not provide consent and there was  
9 penetration, and he's guilty of Count 43.

10 Contact 44, living from the earnings of a prostitute  
11 is when someone knowingly accepts, receives, or appropriates  
12 any money from the earnings of a prostitute. Your time frame  
13 August 2007, December 17th, 2011, same as the pandering  
14 charge. The defendant knew she was prostituting because he  
15 put her on the streets himself and he got the money from her.  
16 So it was knowingly. He was knowingly accepting money from a  
17 prostitute. Tina told you that she would give the money over  
18 to the defendant and when she didn't have enough he would beat  
19 her. He's guilty of Count 44.

20 Count 45, battery by strangulation. You're already  
21 instructed on battery. It's the wilful and unlawful use of  
22 force or violence. Strangulation is intentionally impeding  
23 the normal breathing or circulation of the blood by applying  
24 pressure on the throat or neck. Your time frame, she was  
25 living at the Blankenship house. This is the incident that

1 she described to you when they were at the Blankenship house  
2 and the defendant was sick and defendant's in the room with  
3 Miss Ann. Tina goes and get him some medicine, brings it to  
4 him, gives him a kiss, and defendant flips out on her. He  
5 starts beating her, he gets really angry, why did she kiss him  
6 in front of Miss Ann. He grabs a thick extension cord and he  
7 wraps it around her neck, and she told you that he was choking  
8 her. This is evidence. Count 45, battery by strangulation.

9           Let's talk about Tina's credibility. You don't have  
10 to like her. You don't have to like her to believe her. More  
11 importantly, a lot of the things that Tina testified to is --  
12 they were corroborated by other witnesses' transmit. So we  
13 have Victoria. Victoria was living with Mom separately than  
14 her other brothers and sisters. They -- Victoria told you  
15 that Mom was never at home at night. She wasn't home. She  
16 was working at Bally's and she was working somewhere else.  
17 Where else was she working? Where else was she working at all  
18 hours of the night when she was never home? Taquanda told you  
19 that she heard -- overheard the defendant and her mom argue  
20 about money.

21           And just remember these counts with Tina, it does  
22 not affect your evaluation, your determination of any of the  
23 other counts in this case whatsoever. And when you go back  
24 into the jury room and when you evaluate the other counts in  
25 this case and you make your determination taking into

1 consideration everything that was testified to on that stand,  
2 there's no choice but to find the defendant guilty of every  
3 single one of the counts with which he is charged. Thank you.

4 THE COURT: Thank you.

5 At this time we're going to recess for lunch.  
6 During this recess you're admonished not to talk or converse  
7 amongst yourselves or with anyone else on any subject  
8 connected with this trial, or read, watch, or listen to any  
9 report of or commentary on the trial or any person connected  
10 with this trial by any medium of information, including,  
11 without limitation, newspapers, television, the Internet, or  
12 radio, or form or express any opinion on any subject connected  
13 with this trial until the case is finally submitted to you.

14 And we'll start again at 2:00 o'clock. Thank you.

15 (Jury recessed at 12:41 p.m.)

16 THE COURT: I just have one little thing outside the  
17 presence. Okay. Let the record reflect that this hearing is  
18 taking place outside the presence of the jury panel.

19 While I was reading I noticed a couple of errors on  
20 the jury instructions. Count 35 -- although I read what I  
21 knew it was supposed to say, Count 35 stops with "of resisting  
22 or understanding," and it should say, "nature of the  
23 defendant's conduct." I've already had Pam fix that.

24 And then also Instruction Number 10 on line 4 should  
25 say, "know [sic] or should have known."

1 MS. ALLEN: I apologize, Your Honor. Where was it?

2 THE COURT: Instruction Number 10, line 4. It  
3 should say, "the perpetrator knew or should have known."

4 MS. ALLEN: Okay.

5 THE COURT: So she's already fixed them. And what  
6 I'm going to have her do is just take apart the instructions  
7 and insert the new ones. And she'll give you new copies of  
8 the instructions, as well.

9 MS. LUZAICH: Thank you, Your Honor.

10 THE COURT: Did you notice anything else? Usually I  
11 notice them because I read them.

12 MS. LUZAICH: I hate to say I wasn't reading them.

13 THE COURT: So I read it because I knew what it was  
14 supposed to say, but it wasn't there. So Pam's already fixed  
15 them, and during the break she'll change them.

16 MS. ALLEN: What time are we coming back?

17 MS. LUZAICH: 2:00 o'clock.

18 MS. ALLEN: 2:00 o'clock. Okay.

19 THE COURT: 2:00 o'clock.

20 MS. ALLEN: Thank you.

21 THE COURT: Thank you.

22 (Court recessed at 12:44 p.m., until 2:10 p.m.)

23 (Jury is present)

24 THE COURT: Do the parties stipulate to the presence  
25 of the jury panel?



1 MS. ALLEN: Yes.

2 MS. RHOADES: Yes, Your Honor.

3 THE COURT: Defense may begin their closing  
4 argument.

5 MS. ALLEN: Thank you, Your Honor.

6 DEFENDANT'S CLOSING ARGUMENT

7 MS. ALLEN: Good afternoon, everyone. Thank you  
8 again for your patience. I know Ms. Rhoades thanked you, but  
9 honestly I think on behalf of both sides we have to thank you  
10 for your patience. We understand how long this has gone.

11 So at the beginning of this case Ms. Luzaich in her  
12 opening argument quoted Mark Twain in that truth is stranger  
13 than fiction. I'm willing to bet that Mark Twain never met  
14 the Duke family. I'm willing to bet he never met anybody even  
15 close to the Duke family. And why the State used this quote  
16 from Mark Twain, it makes sense. Of course, when you have  
17 this many counts and you have this many people and you have  
18 this great of a story, I mean, who could make this up? Well,  
19 I'm here to argue to you or tell you that Victoria could.  
20 Victoria could make this up. And in fact I would submit after  
21 all of this that you could see that she did.

22 I'm going to refer as I go through my closing to two  
23 separate -- not events, but two separate interviews. One is  
24 Henderson, one is Metro. I think all of you realize that  
25 there were two separate interviews done in this case. One was

1 in 2011, one was in 2012. So when I say Henderson  
2 investigation I'm talking about that. When I say the Metro's  
3 investigation I'm talking about that. I just want to be clear  
4 as I go into this, because sometimes I forget to go back and  
5 explain myself.

6 But essentially this case starts with Victoria Duke,  
7 and it ends with her; right? Everything starts with Victoria,  
8 everything ends with her. When you go back to Louisiana and  
9 you hear about their life in Louisiana it's probably less than  
10 ideal, probably less than ideal for pretty much everybody  
11 that's even been into this room aside from the Dukes; right?  
12 They live probably in some poverty. There's very little that  
13 they have. And what they do have is Victoria, because Mom  
14 appears to be nonexistent; right? At one point she ups and  
15 leaves Louisiana for Fred, to come see Fred, sometime in  
16 December of 2004. But I'm willing to submit to you that she  
17 probably has done similar things before.

18 MS. LUZAICH: Objection.

19 THE COURT: Sustained.

20 MS. ALLEN: She leaves Louisiana, she leaves her  
21 kids, and, while CPS does not get them, they're hot on their  
22 tracks. You recall there were some questions about Tina,  
23 about whether or not CPS was involved with them here in 2005.  
24 She admits that they were, that someone had made some  
25 allegations back in Louisiana. They did get out of Louisiana

1 before -- they did get out of Louisiana before CPS got them.  
2 But, nonetheless, there were clearly indications there were  
3 problems with this family.

4           So everybody's testimony is pretty much the same  
5 when they talk about coming out here. Mom's gone for weeks,  
6 Victoria's in charge. She tells you she's sort of the one  
7 who's in charge of feeding them, clothing, making sure if  
8 they're going to school they're getting to school. I think  
9 she may have mentioned something about lunches at school. And  
10 suddenly some guy shows up and takes them to Las Vegas.  
11 That's my client's brother. And you heard in his statement he  
12 said, this lady shows up out of nowhere, I met her once in  
13 Louisiana, she comes to Las Vegas after we talked on the phone  
14 a couple of times, and I knew she had kids, and I'm like,  
15 lady, where are your kids; I left them back there. So he's  
16 like, you really shouldn't have done that, let's bring them  
17 out here, my brother can get them.

18           So he arranges for John to bring the kids, you know,  
19 to Las Vegas. And I think most of the Dukes acknowledge that  
20 it was sometime late December. They may have arrived before  
21 the first of the year, it may have been right after the first  
22 of the year. And this is when Victoria steps in.

23           Now, do you remember Detective Madsen saying, this  
24 kind of stuff is the kind of stuff that happens behind closed  
25 doors; right? You don't generally have disclosures -- or

1 sometimes we don't have disclosures because it happens behind  
2 closed doors or it's secret, they're told to be quiet about  
3 it. But what Victoria said was, I show up and within a couple  
4 of weeks Fred's doing this to me, like there's no like  
5 gratuitous groping beforehand, there's nothing, he just takes  
6 her into a room, scoots everybody else, and tries to have sex  
7 with her. Okay. And the State says it's credible because she  
8 provides details, my brothers and sister were out on the  
9 playground, Mahlica was sick, we didn't generally go over to  
10 Fred's house.

11           When did Victoria first relay the story? And the  
12 State wants you to think it was back in 2005; right? The only  
13 indicia that this story was relayed back in 2005 was in fact  
14 to -- or was in fact -- it came from Tina. Tina said, yeah,  
15 Victoria said something. And this was her testimony when she  
16 sat up here in front of you. Victoria said something about  
17 Fred touching her, but she was also angry with him about  
18 getting on her about something. She added that. That wasn't  
19 a question that we asked, that was an additional that Tina  
20 thought was important to tell you.

21           So Victoria comes out, this immediately happens to  
22 her; right? It happens immediately. Remember the beatings  
23 happen immediately. Tina says the prostitution happens  
24 immediately, all of this stuff happens within a few -- within  
25 a few weeks, according to their testimony. So they've come

1 out to Vegas, the man was nice enough to bring them out, and  
2 all of a sudden he's turning Tina out, he's raping Victoria,  
3 he's beating everybody. I mean, within a matter of weeks.

4           And they're lucky enough to get away; right?  
5 They're lucky enough to go to Utah, they're lucky enough to  
6 get some money, get to Utah, get a place. And what is the  
7 next thing that happens? Tina comes right back. She gets on  
8 a bus or however she -- and she comes right back. The man  
9 who's beating her kids, sexually molesting her kid, oh, and  
10 turning her out as a prostitute. She comes right back. Less  
11 than six months later she comes right back. What does that  
12 tell you? Does it tell you that maybe the story is just --  
13 it's full of it. How can you possibly think -- now, granted,  
14 Tina's not the smartest person in the world. I'm not giving  
15 her credit for being Einstein. But, really, do you think  
16 she's smart enough to go to Utah and stay there? Not only is  
17 she not smart enough apparently to stay away, but then she  
18 loses her children. Like she actually loses her children.  
19 And this will become important in a few minutes.

20           So Victoria makes up this story about Fred molesting  
21 her, and she says no one believes her and she's treated as an  
22 outcast, and they eventually end up leaving, okay. Mind you,  
23 the story's never relayed in any sort of detail until 2011.  
24 2011 is the first time you have any detail on this. So 2005,  
25 2006, 2007, 2008, 2009, 2010, 2011. Seven years. Seven

1 years. Do you think seven years is enough time to maybe put a  
2 couple of details together for something like that? I'm  
3 thinking -- I would submit to you it is. Seven years. So the  
4 fact that she's able to recall details of a story -- and, mind  
5 you, her recall of details is not that great. But the fact  
6 that she's able to recall certainties of a story nearly seven  
7 years later, I mean, really? None of those details came out  
8 in 2005, so what do you have to compare it to? What exactly  
9 do you as a jury have to compare 2005 to? Anything? You have  
10 nothing. You have nothing to compare it to. And the State  
11 will say, well, if you believe her testimony beyond a  
12 reasonable doubt, there's no corroboration necessary, there's  
13 nothing needed beyond that. Well, that's a jury instruction,  
14 and it certainly is an important one. But I would submit to  
15 you that she can't even believe what she said to you about  
16 that, that her statement of what happened in 2005 is not  
17 believable beyond a reasonable doubt.

18           We then move to 2007. And I apologize. Court's  
19 indulgence. We then move to 2007, and Tina has lost her  
20 children in Utah and eventually gotten them back, and she  
21 apparently contacts Fred at some point and says, come get me,  
22 I hate it here. So Fred drives down -- or drives up, I should  
23 say, to Utah, grabs -- you know, he tries to get what he can  
24 of the kids. I think all of the kids told you that only Mom's  
25 stuff was packed; right? She only got her stuff. Generally I

1 think you can see throughout the course of this case that Mom  
2 doesn't really about much of anything but herself. Like her  
3 interests and needs are put first, and everybody else kind of  
4 comes second. So she packs up, she doesn't tell any of the  
5 kids, and they move back to Las Vegas.

6 And what is one of the first things that happens per  
7 all their testimony? He gets her a job at Bally's. Remember,  
8 he get her a job at Bally's. And she's not making \$30 an  
9 hour, she's not an executive, but she's making I think  
10 starting at \$13 an hour. And she said she's extra board, I  
11 think is what she used, which is almost full time. She was  
12 almost getting 40 hours a week. And when Mr. MacArthur asked  
13 her, so you're making -- at some point during all this you're  
14 making about \$30,000 a year. \$30,000 a year. She's making  
15 almost \$30,000 a year. What's interesting is that do you  
16 remember Tina remember every single penny she ever made at  
17 Bally's? She remembered that. She remembered every raise,  
18 she remembered it went 2 cents a month the longer you were  
19 there. She remembered the money she made. But she couldn't  
20 remember what she had said the police in 2011. So she  
21 remembers the kind of money she made at Bally's but she has no  
22 recollection of when she talked to the police in 2011.

23 So he gets her a job and she starts working. And  
24 because something -- there was some indication that Victoria  
25 was unhappy with him in 2005, he doesn't want Victoria in the

1 house. So he says, you know what, you need to stay somewhere  
2 else, you need to stay somewhere else. And at the beginning  
3 of all of this the State said you're going to see there's -- I  
4 don't think this is the word they used, but alienation, like  
5 every time the kids would visit Mom Fred and Ann would stay,  
6 they would never leave them alone. Throughout this entire  
7 case Mr. MacArthur and I were careful to ask every witness,  
8 every time you went to your Mom's house did you go for  
9 weekends; yes. Did Fred and Ann leave you there; yes.  
10 There's no alienation here. These kids are back and forth  
11 between Mom's house. Sha'karia said that, I think Fred said  
12 in his statement to the police. Even Victoria admitted that.  
13 All these kids, you know, they're back and forth with Mom.  
14 They're certainly not being supervised every moment that  
15 they're there.

16           Nonetheless, Victoria and Mom move into the  
17 efficiency. They move into the efficiency apartment, and  
18 she's got to get the money together to get into Walnut. So  
19 she gets apartment on Walnut eventually, and Victoria ends up  
20 in school. Grades are going to be important. Look at their  
21 grades. Every kid admitted that while they were with Fred  
22 their grades with the best that they'd ever been, they had  
23 never had better grades in school. All of them. I would  
24 submit to you if you're attempting to secret away people, if  
25 you're attempting to continue to abuse them, if you're going



1 to make them into, you know, for lack of a better word, you  
2 know, kind of like a slave to you, if you want to keep them in  
3 that position, do you educate them? Do you send them to  
4 school? Do you insist that they go every single day? Do you  
5 then insist that they get good grades? Every kid said an  
6 education was exceptionally important to Fred, he insisted  
7 they go to school, he wanted them to get good grades. So do  
8 you do that to someone that you're looking to abuse for years  
9 on end? I mean, is that what you do? And then you look at  
10 the grades when they end up back at their mom's house, because  
11 they just literally went to straight Fs. And you heard the  
12 girls -- the two young girls say that when they went back to  
13 their mom's house 30 absences within -- from November to  
14 present. So 30 absences already.

15           So he gets all the kids in school, and they're doing  
16 well. The kids are doing reasonably well. Shabazz is in  
17 ROTC, the kids are getting decent grades, they're getting in  
18 trouble at school, and Fred's exercising a policy that I  
19 believe most parents exercise, if you get in trouble the home  
20 -- or at school, you get in trouble at home. So the State --  
21 Ms. Rhoades said, okay, well, he's beating her because -- he's  
22 beating them because -- and I wrote this down, apologize --  
23 oh, because they're taking juice from the fridge or doing  
24 pushups wrong. Like that's why he's beating them. And, mind  
25 you, "beating" is a word they came up with. It's not the word

1 -- it's disciplining them.

2           How about beating up a disabled kid at school for  
3 taking your juice? How about stealing a diabetic girl's  
4 bracelet? How about getting RPC-ed and constantly getting in  
5 trouble at school? How about constantly lying? How about all  
6 those things? Is that enough to be disciplined? If you beat  
7 up a kid in the bathroom for stealing your juice, a disabled  
8 kid, do you think that's enough to be punished at home? I  
9 would submit to you that it is. It's not stealing juice from  
10 the fridge.

11           When you talk about child abuse the jury instruction  
12 is pretty clear. It talks about permanent or temporary  
13 disfigurement, impairment of any bodily function or organ. We  
14 know that there's no permanent disfigurement; right? Did  
15 anybody come in unable to walk anymore? Did anybody come in  
16 here unable to see or hear or use their hands? No. There's  
17 no impairment of any bodily function or organ. There's no  
18 testimony to that. So what you have to look at was it  
19 temporary disfigurement. So I was careful to ask -- and this  
20 was save and except for Victoria. I was careful to ask each  
21 one of them, and so was Mr. MacArthur, could you sit  
22 afterwards, could you walk out, did you have any problems  
23 later, did you -- you know, were you like bruised the next  
24 day. Most of them said, no, I don't remember anything like  
25 that. In fact, I think universally they said, we had welts.

1 So then you look at the idea that it left a welt. So if you  
2 use your hand and you smack your child's bottom and it leaves  
3 a welt, is that any different than a belt?

4 I want you for one moment to think of this from a  
5 child's perspective. Think of it from the Dukes' perspective.  
6 Up until the time they moved in with Fred they had never  
7 experienced discipline. In fact, they really didn't  
8 experience having a mother. What they had was Victoria.  
9 Victoria raised these kids. Does it strike you as odd that  
10 Victoria was not disciplining these children? They move into  
11 this home with Fred, and Fred is very strict. He expects a  
12 certain thing. He and Ann expect that the little girls aren't  
13 going to act like they're older, he expects that they're not  
14 going to -- they're not going to lie, he expects they're going  
15 to go to school, and he expects they're going to get good  
16 grades. When they don't do those things, save and except for  
17 Victoria, universally what happened? They got something taken  
18 away, then it went to pushups, and if things got bad, then  
19 they got what they called a whuppin.

20 Victoria said, oh, no, no, he was beating everybody  
21 all the time, 24 hours a day, seven days a week, it was going  
22 on like crazy, the only thing that stopped it was if I gave  
23 myself to him. It's like a Lifetime movie; right? I mean,  
24 that's the only thing that stopped Fred. What they don't  
25 account for, what Victoria didn't realize, what Taquanda

1 clearly didn't realize is that they have something called  
2 mandatory reporters; right? That's another thing that Ms.  
3 Rhoades didn't want to talk about. She didn't want to talk  
4 about Coach Cooper, she didn't want to talk about Ms.  
5 Bywaters, she didn't want to talk about Ms. House, she didn't  
6 want to talk about the psychiatrist that Victoria saw.  
7 Remember, Victoria said she disclosed -- she disclosed some of  
8 this to the psychiatrist. I mean, it's admitted. You can  
9 look at it. She saw a psychiatrist. She says she told the  
10 psychiatrist all of these things. She says she told everybody  
11 in Utah all this stuff, she says she made a few phone calls to  
12 CPS. I mean, if in fact you were to believe Victoria's  
13 account of events, you would also have to believe that the  
14 system failed every single time, I mean, in a multitude of  
15 ways. You have to believe that three separate teachers just  
16 ignored them, you have to believe that a psychiatrist ignored  
17 them, you have to believe that Gondy ignored them. And in  
18 fact -- I'll get to that in a minute. But you have to believe  
19 everybody along the way, all the people in Utah ignored them.  
20 I mean, how many people do we have to go through? How many  
21 people have to come in and say, yeah, they never told me  
22 anything? And it's not even that they didn't tell them  
23 anything; I never even saw anything on her; right? No  
24 bruises, I never saw marks, I never -- Shabazz says, oh, Coach  
25 Cooper asked me about it. Coach Cooper came in, what, 10

1 minutes after that and said, I never saw anything like that.  
2 These are people -- Coach Cooper particularly, this is a guy  
3 that takes care of people when the law doesn't even require  
4 him to do it; right? He takes care of the pregnant teens, he  
5 takes care of the people at his school that don't have enough,  
6 he gives them diapers, he gives them food and formula. So  
7 he's not even required by law to do that and he does it. Do  
8 you really think he dropped the ball on this one? Do you  
9 really think he didn't notice if these three kids were coming  
10 to school with all these horrible marks all over them? It  
11 defies logic. It defies rational thought process.

12           If you think of this from a child's point of view,  
13 you realize that if you've never had discipline, discipline in  
14 the way that Fred did it is going to seem like a beating. But  
15 if you think of it from Shrday's perspective or you think of  
16 it from Sha'karia's perspective, they said, we got in trouble,  
17 this is what happened when we got in trouble, it started off  
18 as X and it eventually moved to that if I didn't -- if I  
19 couldn't figure it out. And Sha'karia even said, it happened  
20 to me once, because I was smart enough to figure out not to do  
21 it again.

22           I would submit to you that the child abuse counts,  
23 1, 15, 16, and 17 -- I'll get to Victoria in a minute -- but  
24 they defy the testimony. Truth is stranger than fiction. I  
25 can't imagine a greater fiction. There is no substantiation

1 to this at all. None. There's no pictures of bruising,  
2 there's no teachers that can come in and -- there's nothing.  
3 There is nothing. And even the State's allegation of  
4 corroboration is -- think about it. Taquanda's like, oh, I  
5 see, you know, Taharah choked out. Taharah says, I'm home by  
6 myself. They can't even get that part of their story  
7 straight.

8 I would submit the child abuse counts with regard to  
9 Taharah, Taquanda, Shabazz, and Mahlica are in effect not --  
10 those are -- you must find Fred not guilty. There's no  
11 evidence that Fred inflicted any sort of temporary -- because  
12 that's all that's left is temporary disfigurement. He  
13 inflicted no temporary disfigurement on any of those children.  
14 What he did was he disciplined them.

15 Now I want to talk about Tina a little bit. And so  
16 at the start of the case Ms. Luzaich said that Tina was going  
17 to make your skin crawl. I think she said it a couple of  
18 times. She said, this is a mother who's going to make your  
19 skin crawl. I'd like to remind that's their witness, and I'd  
20 like to remind you that they want you to use her to  
21 corroborate Victoria. So they want you to use their witness,  
22 who Ms. Luzaich referred to as someone who'd make your skin  
23 crawl, and they want you to corroborate what Victoria said  
24 about the car or about what happened at the efficiency or what  
25 happened at Walnut. And I would submit to you that that just

1 isn't possible. This woman left her kids on at least two  
2 occasions; right? She left in Louisiana and then she left  
3 once again in -- when she came here from Utah. She's -- I  
4 said this before. She says that he put her in the streets in  
5 2005, but she really just couldn't wait to get back to him.  
6 She had every opportunity in the world to stay in Utah, but  
7 she just didn't want to do it. It doesn't really sound like  
8 that kind of an abusive situation that she described when all  
9 she wants to do is come back. The only thing she can think to  
10 do is come back. She's making this money at Bally's. But  
11 then she tells you, I'm working 24 hours a day. Remember  
12 that? She says, I'm working 24 hours a day, I work at Bally's  
13 and then he makes me go out and prostitute myself and I'm  
14 working 24 hours a day. Does that really make any sense to  
15 anybody here? I guess if she is putting cocaine up her nose  
16 every night -- and she said she was using cocaine. I guess if  
17 she's putting cocaine up her nose every single night it might  
18 make sense for two or three days. But eventually everybody  
19 has to stop. According to her, it never stopped. It stopped  
20 finally when she got arrested.

21           Now, this is a woman who has experience with CPS;  
22 right? When she comes back and she's arrested by Metro her  
23 children have already been taken away from her one time;  
24 right? They've already been put in foster care. She already  
25 knows the power of the State, doesn't she? It took her months

1 to get her children back. So when she's picked up by Metro  
2 she says, I'm afraid to tell them because Fred has the kids.  
3 Does that make any sense? No. She understands that telling  
4 Metro at that point in time, that's going to get her kids out.  
5 She knows. She left them in the care of a neighbor, and the  
6 State stepped in. But suddenly if she tells them that Fred's  
7 raping her daughter and beating the kids and beating her and  
8 forcing her to be a prostitute, they're going to ignore her at  
9 that point. So she already knows the power of the State and  
10 so, according to her, she doesn't say anything because Fred  
11 has her kids. Remember, go back to the idea of what the State  
12 said. They only dropped them off and they supervised them.  
13 That's not true. Those kids were in and out of their house.  
14 Those kids were in and out of Tina's house. And if you  
15 remember, Sha'karia said when the two little girls would go  
16 over there for a weekend they would come back and what'd  
17 they have, bad attitudes. They came back wearing makeup, they  
18 came back acting like they needed to be older than they were.

19           You remember her Henderson interview? She said  
20 nothing happened, nothing is wrong, Ann's a good person, she  
21 helps me out, Fred's a good person, never seen him touch the  
22 kids in a way that's wrong. Taken by surprise, it seems like.  
23 I mean, they have to hunt her down, and then when they  
24 eventually find her nothing's going on, she's never -- she  
25 never indicates anything is wrong. She talks about a



1 situation where the last time she was with Fred Victoria  
2 pushed her way in and sort of insisted on having sex but  
3 that's really about it; right? And Henderson picks up on  
4 this, and I'll get to that in a few minutes.

5 But realize that once Fred's interviewed by  
6 Detective Aguiar he's now on notice that Victoria's -- she's  
7 crazy; right? According to her mom, she looks -- Fred looks  
8 uncomfortable when Victoria pushes her way in; right? And it  
9 doesn't make sense for him to be uncomfortable at this point,  
10 does it? Because, according to Victoria, they've been having  
11 sex for years and they've been having sex with Mom for years.  
12 So why would Fred get uncomfortable with the situation? But  
13 Tina says he looked -- you know, he looked uncomfortable, I  
14 left the room and I was angry and that was sort of the end of  
15 it.

16 This is the last time Fred sees Tina; right? He  
17 doesn't go back. He's done. Like the whole family's crazy  
18 and he's done with it. And he says so in his interview. At  
19 what point do you think Tina realized Fred was done with her?  
20 At what point do you think Tina thought, oh, he's not coming  
21 back, he doesn't love me and, wow, he actually did pick Ann  
22 over me? At what point do you think that sort of hit her?  
23 And do you think maybe it coincided with the girls being home  
24 for the summer? So what you have is Tina realizing Fred's  
25 done. And there's a saying that I'm sure you've all heard.

1 Hell hath no fury like a woman scorned. And essentially  
2 that's what you have here with Tina. She's angry, Fred is  
3 done with her, he doesn't want anything else to do with her.

4 But in essence you have all of these interviews that  
5 happened in December of 2011. The only person who's saying  
6 anything that happened that was untoward is Victoria. You  
7 have Taharah calling Fred a good man and saying that she's not  
8 scared to live there. Maybe it was in relation to the dogs,  
9 but she's the one who volunteered the information. You have  
10 Taquanda talking to Detective Aguiar, and the State said,  
11 well, they weren't really that comfortable because Fred's  
12 there and they didn't feel good about it. Okay. Well,  
13 dismiss Detective Aguiar's interview. Go ahead, throw it out  
14 the window. I don't care.

15 Because then I would ask you, and this is other  
16 thing that she didn't talk about, about what about Bobbie  
17 Tibbs. Anybody remember Bobbie Tibbs? Not my witness. That  
18 was the State's witness. She's from CPS. What did Bobbie  
19 Tibbs say? She said the girls reiterated exactly what they  
20 said to Detective Aguiar, that they felt totally safe in the  
21 house. What two things did she add to this? One, neither one  
22 of them believed Victoria. So they thought Victoria was  
23 lying; right? And, number two, when is Fred coming back. So  
24 even if, even if for just a second you believe that Taquanda  
25 was scared somehow when she was talking to Detective Aguiar,

1 why did she say that to Bobbie Tibbs? Why did she ask Bobbie  
2 Tibbs, when is Fred -- the girls. It was the girls said, when  
3 is Fred coming back. They wanted Fred back in the house.

4 So if you want to throw out Detective Aguiar's  
5 interview because it's early in the morning or because maybe  
6 he's not a good interviewer, maybe he really just sucks at  
7 interviewing kids; right? So if you want to throw that out,  
8 what are you left with? You're left with Bobbie Tibbs,  
9 someone totally separate, someone who is really truly trained  
10 to talk to children and seemed very sincere on the stand.

11 I'd like to talk now about the counts that relate to  
12 Taharah, okay. Her first -- her first interview with  
13 Henderson is in 2011, and she's actually just turned 12;  
14 right? She just turned 12, because she turned 11 in October  
15 of 2010. So she's already 12 when the Henderson interview  
16 takes place, and she says nothing's happened; right? She's  
17 very clear that nothing happened, never has been touched  
18 inappropriately, nothing is -- you know, has ever happened.  
19 Bobbie comes along and interviews her again. No disclosure.  
20 According to -- according to the State's theory, she goes and  
21 she tells Miss Ann -- and that information comes from two  
22 sources; right? Essentially it comes from Taquanda, and it  
23 comes from Taharah, who say, oh, yeah, I told the other one, I  
24 told this one, and then we went and told Miss Ann. I think  
25 you heard -- I believe you heard testimony that Miss Ann just

1 didn't believe them. And there's some history here that  
2 there's lying involved; right? The kids lie, the kids have  
3 lied in the past, they've gotten trouble for it, they've  
4 gotten in trouble at school for it, lying and stealing. And  
5 so Miss Ann doesn't believe them. When they're taken for an  
6 exam in Dr. Gondy's office apparently Taharah has HPV,  
7 sexually transmitted disease. And while the State hasn't come  
8 out and said it, their theory is that my client gave it to  
9 them. What other theory could you have; right? Who else  
10 would have given it to her? She's being raped, being raped by  
11 my client. How else would she have gotten HPV; right? I  
12 asked Detective Madsen if that was his theory, and he -- it  
13 was more defensive than I expected. He said, that is not my  
14 theory. Okay. Sorry.

15 MS. LUZAICH: Well, no. Objection. That's not  
16 what he said. He said, that's not what I'm saying.

17 MS. ALLEN: No. He said, that's not my theory.

18 THE COURT: And the jury will determine what the  
19 facts were.

20 MS. ALLEN: So did any of you wonder if Victoria had  
21 HPV, all the years of sex?

22 MS. LUZAICH: Objection.

23 THE COURT: Sustained.

24 MS. ALLEN: Well, it's a -- Your Honor, it's a --  
25 that's a reasonable doubt. That's something the State did not

1 address in their case.

2 MS. LUZAICH: I didn't speculate.

3 THE COURT: And that's back to my point exactly.  
4 It's not in evidence.

5 MS. ALLEN: Well -- can we approach?

6 THE COURT: Sure.

7 (Bench conference)

8 MS. ALLEN: It's a permissible inference. Supposing  
9 my client's sleeping with Lealer, Victoria, and Tina, no  
10 evidence of any of them having HPV submitted by the State.

11 MS. LUZAICH: Because nobody was tested for it. You  
12 have to be specifically tested for it. But you can't ask them  
13 to speculate. Because that's exactly what you're doing.

14 THE COURT: You're asking them to speculate --

15 MS. ALLEN: I'm not asking them to speculate.

16 THE COURT: -- on something that there's no evidence  
17 on.

18 MS. ALLEN: No, I'm not asking them to speculate.  
19 It's a permissible inference. If my client was having sex  
20 with Taharah and gave her an STD, there's a permissible  
21 inference that he gave it to other people, the other people he  
22 was having sex with.

23 THE COURT: You said, haven't you guys wondered if  
24 the other ones have HPV. You did ask them to wonder.

25 MS. ALLEN: Okay. Well, then I'll ask -- I'll say

1 differently, then.

2 MS. LUZAICH: I don't think that that's a --

3 THE COURT: The objection is sustained. There was  
4 no evidence of it. You can move on.

5 MS. ALLEN: Well, wait. Hold on, Your Honor, for  
6 one -- so I'm not even allowed to say, did you -- there's been  
7 no evidence presented that Lealer Cooks, Tina Duke, or  
8 Victoria Duke had HPV, the State hasn't presented any evidence  
9 about it.

10 MR. MacARTHUR: That's [inaudible].

11 THE COURT: I think that would be permissible.

12 MS. ALLEN: Okay.

13 (End of bench conference)

14 MS. ALLEN: I don't think -- well, let me start off  
15 with it's pretty clear there was no evidence presented, right,  
16 that Tina or Victoria or Lealer had HPV. So apparently  
17 Taharah was the most unlucky one of the four, because she's  
18 the only one who got it. I would submit that the fact that  
19 three of them didn't come in here and testify to that is --  
20 that in itself is reasonable doubt.

21 MS. LUZAICH: Well, objection. That is not  
22 appropriate.

23 THE COURT: Sustained.

24 MS. LUZAICH: Move to strike.

25 THE COURT: Granted.

1 MS. ALLEN: Now, Taharah is slow. That's what  
2 everybody came in here and testified to. She's slow. But she  
3 was able to talk about some of the things, you know, living in  
4 Blankenship, going to school. She was able to articulate at  
5 least basic events in her life. And if you recall and  
6 skipping to Sholeh and Bobbie Tibbs and Detective Madsen and  
7 even Dr. Mehta I asked very specific questions about forensic  
8 interviews. Do you recall those questions about leading  
9 versus open-ended questions and why you didn't want to suggest  
10 the answer to a child because, you know, if you suggest an  
11 answer, children tend to want to please, and so they're going  
12 to sort of repeat back what you just said.

13 Okay. So recall when Taharah was being questioned  
14 by the State. It required leading. It required leading  
15 questions. And recall I objected to those questions. It  
16 required suggestions about what happened. This is the hard  
17 part; right? This is the really hard part for me, standing up  
18 here and saying, remember what she said about sex. Do you  
19 remember what Taharah said? She said, I went into -- you  
20 know, I got drug into the bathroom, I got drug into a bedroom,  
21 I got -- wherever it was and he stuck his private in me. He  
22 stuck his private in me; right? So asking you to call upon  
23 common sense and experience, does this sound like a  
24 description of sex? When I asked her about talking to CPS and  
25 they asked -- they asked her, what was Fred's body doing at

1 the time, do you remember her response? It was dark. So  
2 we're to believe that Taharah, slow as she is, can't describe  
3 what someone's doing to her, having sex, in the dark. It  
4 really defies logic. He stuck it in me. That's all she said.  
5 That's it. No other descriptions. I hate to be so stark  
6 about it, but really that's just the way it was. That's the  
7 way she said it when she talked to CPS, that's the way she  
8 said it when she testified at the prelim, that's the way she  
9 said it here, and each and every -- well, take that back -- at  
10 least here in front of you led into the answers, because she  
11 couldn't articulate it on her own. Could be in part, too,  
12 being nervous. She kept smiling. A lot of her answers were,  
13 I guess. But really this is a defining moment in her life,  
14 presumably. She uses the words "raped" with CPS. She says to  
15 CPS -- and this is, by the way, in 2012, and I asked her about  
16 it. When they asked her what was going on, she goes, well, we  
17 get in trouble for the littlest things and, like, I'm not  
18 happy, oh, and, yeah, there's the rape thing. That's what  
19 she says. It's an afterthought, oh, the rape thing.

20 Now Victoria. And I talked a little bit about  
21 Victoria earlier, in 2005. Her rendition of 2005 doesn't come  
22 until 2011, okay. So let's talk about all the other things  
23 that she talked about. Her description of the beatings are  
24 not founded in reality at all. There's no reality in anything  
25 she described with the beatings. They don't even comport with



1 the other four kids that are there. Like they don't comport  
2 with anything. It literally is like right out of a movie, he  
3 was just beating us all day every day and it only stopped when  
4 I gave him what he wanted, which was me.

5           She talks about losing her virginity to Fred. And  
6 this is eerily similar, right, to the first time that all this  
7 happened with him. They're not even in town for a month;  
8 right? She testifies, her mom testifies, everybody says, we  
9 come back like August of 2007. She says the date's August  
10 24th of 2007. So they're not even back a month, probably not  
11 even three weeks, and Fred's supposedly telling her, you know,  
12 it's time, time, we're going to do this, pick a date. I mean,  
13 wouldn't -- why not just send a certified letter at that  
14 point; right? This is -- hey, this is what's going to happen.  
15 It doesn't make any sense. First of all, she's been gone for  
16 two years, so whatever happened two years ago, even if you  
17 believe that, suddenly you're just going to come back and do  
18 this. It doesn't make any sense. It doesn't make any sense  
19 to have Mom involved, it doesn't make any sense that you're on  
20 some mountain with rocking back and forth. All of the details  
21 in this are sort of hastily put together, if you think about  
22 it. So the cars are rocking back and forth. She says they  
23 want to a park and she was allowed to walk around. So if you  
24 are in the process of beginning to -- you know, you're going  
25 to start the process of raping someone, do you generally take

1   them somewhere where they can run away? I mean, if you're  
2   going to put someone -- you're going to hold someone hostage,  
3   right, you should probably hold them hostage. You probably  
4   shouldn't give them an opportunity to get away. But he takes  
5   her to a park and lets her walk around. And then he takes her  
6   to an area where there's tons of other people. That makes  
7   perfect sense. When you're going to rape a kid take 'em  
8   somewhere where everybody else in the world's going to see it  
9   and make sure Mom's there so she can tell you about it later.  
10  None of it makes any sense. And, once again, how long did it  
11  take her to recount the details? Years; right? No one knows  
12  the story. No one knows the story from 2007. Tina denies it.  
13  I mean, she -- at least to Henderson she denies it. She has  
14  marginal memory when it comes to talking about it on the stand  
15  in front of you. But Victoria for the first time recounts  
16  this in 2011.

17           Remember Detective Aguiar -- Detective Madsen said  
18  the two of them wrote out statements, they wrote out dates and  
19  events and -- I don't know if you recall that, but he did. He  
20  said, and Tina brought them in; right? Tina brought in her  
21  handwritten statement about what had been going on, and  
22  Victoria's had been with dates and times and all these things.  
23  You wonder why maybe you didn't see those? Well --

24           MS. LUZAICH: Objection.

25           MS. ALLEN: They testified to it, Your Honor.

1 Detective Madsen testified to it.

2 THE COURT: Go ahead.

3 MS. LUZAICH: Well, can we approach?

4 THE COURT: Sure.

5 (Bench conference)

6 MS. LUZAICH: She can talk about it all she wants,  
7 but you can't say, wonder why she didn't -- you didn't see  
8 them.

9 THE COURT: Yeah.

10 MS. LUZAICH: That's hearsay.

11 MS. ALLEN: No. You could have brought it in  
12 through the witnesses, through Victoria and then Tina.

13 MS. LUZAICH: They're hearsay. You would have  
14 objected. That's why they didn't come in.

15 MR. MacARTHUR: [Inaudible]. It's only hearsay  
16 because it's somebody else's statement. But they didn't come  
17 into evidence, and the fact that you didn't bring them or even  
18 ask --

19 MS. ALLEN: You didn't even ask about them.

20 MR. MacARTHUR: -- about it is something that she  
21 can comment on.

22 MS. LUZAICH: No. They're hearsay. They're not  
23 admissible. They're statements.

24 THE COURT: No. That statements to the police are  
25 hearsay.

1 MS. ALLEN: No. These were handwritten --

2 MS. LUZAICH: It's the same thing, which is why.

3 MS. ALLEN: Which is fine. But they're never -- do  
4 you ever wonder why -- okay. Hear about them. That's what  
5 I'll say, hear about them.

6 THE COURT: Okay.

7 MS. LUZAICH: That's fine. Okay.

8 THE COURT: Thank you.

9 (End of bench conference)

10 MS. ALLEN: So do you ever wonder why you didn't  
11 hear about these statements, why Victoria didn't testify about  
12 them, why Tina didn't testify about them? Remember Detective  
13 Aguiar talking about it's important to separate people when  
14 you're having a discussion because you don't want one to bleed  
15 into the other and you don't want the bleeding back and forth,  
16 okay. Victoria and Tina -- Tina brings it in for her. So do  
17 you think they say down and maybe wrote them out together? I  
18 mean, really that's sort of the inference here. Tina brings  
19 them in for both of them. You can't rely on what they wrote  
20 out in a statement. That's why you didn't hear about them,  
21 because there's not even an indicia of reliability at that  
22 point. Who knows what condition the two of them like sat and  
23 wrote those out? So Detective Madsen refers to the  
24 handwritten statements. And you wonder if the details there,  
25 it's like a diary or whatever it is, I think Taquanda even

1 talked about it, you have to wonder why you haven't heard  
2 about those things.

3 By the time 2011 rolls around Victoria has probably  
4 realized that her mother is not going to leave Fred; right?  
5 Fred talks about Tina in his statement in such a way that's  
6 probably offensive to some of you. He -- and I'm not  
7 belittling that by any stretch of the imagination. What he  
8 says could be taken as offensive. He talks about her ability  
9 to perform oral sex, he makes it pretty clear that she's kind  
10 of a side thing, Lealer's his main focus in life, Tina's just  
11 a side thing, he goes over there essentially just for sex,  
12 none of which is illegal. It calls maybe into question his  
13 thought as a rational man having two women around that  
14 essentially, you know, could do this. But, I mean,  
15 essentially it's not illegal; right? He can go over to Tina  
16 and he can do -- he can do that. And as long as she's  
17 consenting, which by all accounts she was in 2011, it's really  
18 not that big of a deal.

19 So Victoria realizes that there's no end in sight,  
20 Fred's not going anywhere, and no one has paid attention to  
21 her; right? She tried to get Taharah back in 2007 to make  
22 something up, if you recall the testimony of Sha'karia, she  
23 heard Victoria telling -- she heard Victoria telling Taharah,  
24 hey, go say, you know, Fred touched you. It was kind of  
25 another attempt of hers to get out of the house and get away

1 -- or get her mom away from Fred. And it just wasn't working.  
2 Remember -- remember Victoria's statements about her mom.  
3 It's kind of sad; right? She can't change her mom. She said  
4 that. It's my mom, I can't change her, I can't get rid of  
5 her, I can't make her realize bad decisions, I can't --  
6 there's nothing I can do about my mom, I can't do anything  
7 about her; right? That's her mom. So what is the option? If  
8 you want to get rid of the one factor in your life that's  
9 causing you grief -- well, there's two. There's her mom and  
10 Fred. But if you can't get rid of one them, what do you do?  
11 You get rid of Fred. So she has -- as Fred said in his  
12 statement, she has this habit of going and standing next to  
13 the door and listening or, you know, peeking in or getting  
14 involved when he's with Tina. And according to him in his  
15 statement, and Tina, both in her statement in 2011 and here  
16 when she testified, that was one thing she was consistent  
17 about. She said, yeah, Victoria busted in and just started  
18 having sex. And do you remember what she said about Fred? He  
19 was uncomfortable, this was uncomfortable for him. Which  
20 doesn't really make any sense if you believe Victoria; right?  
21 Because this has been going on for years. There's no reason  
22 to be uncomfortable at this point.

23           So remember what she does when she goes and tells  
24 the Henderson Police? Do you remember what she does when she  
25 brings them back to the apartment? There's one thing that you

1 haven't had in this whole case; right? There's one thing you  
2 haven't seen, and that was like a DNA report or a DNA expert;  
3 right? DNA didn't come and tell you, we found DNA on X. So I  
4 think Aguiar testified he collected the blanket or the towel  
5 or whatever it was and nothing was ever really done with it.  
6 So Victoria has -- she finally gets something that she thinks  
7 may incriminate him and goes nowhere. It really goes nowhere.  
8 So she does what she did before, and she tries to get Taharah.  
9 And remember these girls want to go back to their mom; right?  
10 Mom doesn't make them go to school, Mom lets them wear makeup,  
11 Mom lets them do their hair the way they want, Mom lets them  
12 act how they want. Don't want to go to school, don't want to  
13 learn anything, don't want to get an education, don't want to  
14 be disciplined, we want to go back to Mom.

15           The girls spend the summer with their Mom and  
16 Victoria, and Taquanda tells you that the plan -- she starts  
17 off and she says, the plan didn't work, and she then quickly  
18 says, to move out; right? The plan didn't work. I would  
19 submit to you the plan was not to move out, the plan was to  
20 get rid of Fred. They'd tried before, nothing came of it, and  
21 so all they were left with was Taharah. I know this is hard  
22 to believe. How could a kid come in here and make this up?  
23 Do you remember when we talked to you in voir dire about that?  
24 Access to sex. Remember that? What access do kids have to  
25 sex? Well, when Victoria makes her statement to Henderson

1 Police Department in December of 2011 she's actually pregnant,  
2 so she clearly has had sex at that point; right? She's  
3 pregnant. What about --

4 MS. LUZAICH: Objection.

5 MS. ALLEN: What? You brought that up.

6 MS. LUZAICH: Can we approach?

7 THE COURT: Sure.

8 (Bench conference)

9 MS. LUZAICH: I actually did not bring that up, and  
10 it was the 2012 statement that she was pregnant, not 2011.

11 MS. ALLEN: Okay. I'll correct it. That's fine.

12 THE COURT: Okay.

13 MS. ALLEN: That's fine.

14 THE COURT: Thank you.

15 (End of bench conference)

16 MS. LUZAICH: So objection. That misstates the  
17 evidence.

18 THE COURT: Sustained. And Ms. Allen indicated that  
19 she was going to correct it.

20 MS. ALLEN: Sorry, Your Honor.

21 THE COURT: It's okay.

22 MS. ALLEN: Okay. So she's -- well, I apologize.  
23 She's pregnant in the 2012 interview with Metro. So she's  
24 clearly had sex at that point. But let's just say for  
25 argument's sake that none of them knew what sex was



1 personally; right? They personally had no knowledge of it.  
2 How hard is it to get that on TV? How hard is it to get that  
3 on the Internet? How hard is it to get that in videos, like  
4 MTV videos? We had a whole long discussion in voir dire about  
5 that. Sex is pretty accessible. And even as accessible as it  
6 is the descriptions are still, he stuck it in me. That's the  
7 best -- really, that's the best you get. That is the best  
8 description that you get, he stuck it in me.

9           The State mentioned the Counts 30 and 32, which talk  
10 about anal sex. And you remember with Victoria. And if you  
11 remember, she didn't testify to that on direct. I brought  
12 that out on cross. And the reason I brought that out on cross  
13 is very simple. If you are sodomized against your will, I  
14 suspect that's something you would remember. I suspect that  
15 if you -- that happened to you on two occasions -- even on one  
16 occasion, you would be forthcoming if you were in court and  
17 discussing dildos, two-sided dildos and vibrators and all of  
18 the other things that go along with it. I suspect that's  
19 something that would be forthcoming to you, that you wouldn't  
20 have any problem talking about. She didn't remember that.  
21 She didn't remember that detail. It's very difficult to --  
22 when you do make something up and you make it -- you make it  
23 elaborate -- when you make up an elaborate story it's very  
24 hard to remember all the details of your elaborate story. If  
25 you just said, the light was green and the car went through

1 it, it's not hard to remember those facts. Those are simple  
2 facts. But if you make up that the light was green and the  
3 car went through it and there was a bird sitting over here in  
4 the tree and it was green and it was 5:00 o'clock and you give  
5 all these details, months later it's going to be pretty hard  
6 to recall those details. Years later it's going to be hard to  
7 recall those details. The fact that she couldn't recall that  
8 she'd been sodomized, that's a detail I suspect she would have  
9 remembered. That's a detail I suspect she would have  
10 testified to had it actually happened.

11           Detective Aguiar tells you he didn't have probable  
12 cause to arrest Fred. He doesn't do anything with the case.  
13 And not because he's incompetent. He tells Detective Madsen,  
14 there's a consent issue here, I have -- essentially there's  
15 two people saying there was consent and one saying there  
16 wasn't, I can't really do anything about that. So it's not  
17 until Taharah enters the picture that anything happens; right?  
18 It's not until Taharah says something that anything happens.  
19 And then, you know, Metro responds, we see Dr. Mehta, Sholeh  
20 Nourbakhsh shows up. I mean there's just this massive  
21 response. And I'd like to go through some of the things that  
22 are of significance with regard to some of those witnesses.

23           Dr. Mehta told you that probable abuse -- I hope I'm  
24 saying this right -- probable abuse with Taharah was  
25 essentially because Taharah was able to vocalize it, okay. So

1 I asked her questions like, so if a person you're examining  
2 can't vocalize or they can't articulate, can't speak, is it  
3 still probable abuse; well, it depends, you know, on the  
4 circumstance, like if there's a video then obviously that's  
5 different, but, no, if they can't articulate then, no, I don't  
6 check that. The difference in Dr. Mehta's report between no  
7 abuse and probable or possible abuse is essentially just  
8 someone saying it happened. She said that to you. So all you  
9 have to do is say it happened and now it becomes there's  
10 abuse. That's essentially what she said.

11 Detective Madsen pretty much told you the same  
12 thing, didn't he? He said, I did my own investigation and  
13 interviewed people, right, I interviewed the Dukes and I got  
14 Detective Aguiar's recordings and his transcriptions and I  
15 read those and I didn't even have Dr. Mehta's final report and  
16 I arrested Fred. That's what he told you. The statement of  
17 Victoria and the statement of Taharah and that was enough. He  
18 said they didn't have time to canvass the people in the house,  
19 talk to Sha'karia, Marcus. They didn't have time to go to the  
20 school even though he told you that disclosure tends to happen  
21 at a school because school counselors and teachers are really  
22 the closest with the children. If you think about it, kids  
23 spend the majority of their time at school. That age, they  
24 spend more time with counselors and teachers than they do with  
25 their own parents. And he said that's a great -- that's a

1 treasure trove of -- just going to use that word, but it's a  
2 treasure trove of disclosure, because they feel close to those  
3 people. He didn't talk to any of those people. And in fact  
4 when the girls testified that they did tell House and Bywaters  
5 and Cooper, no one ever talked to them, no one ever spoke to  
6 them. Cooper told you when he talked to Miss Rose that that  
7 was the first time he'd ever spoken to her. They didn't -- no  
8 one talked to them.

9           John testified -- my client's brother testified that  
10 he picked the kids up and that he had tried to sort of work  
11 with Victoria a little bit. Remember he said, I brought her  
12 over. And he's got some -- first to admit he's got some  
13 memory issues. He's got some -- he had a very bad accident, I  
14 think you heard. Overall seemed sincere that he brought  
15 Victoria over, he was trying to help her. He was trying to  
16 help all the kids. He would give them money for As, \$7, I  
17 think for As. Taquanda got the most, she worked the hardest.  
18 And come to find out that Victoria's stealing from him. She's  
19 taking his kids' school supplies, his money from his drawer  
20 and then whining about it. And when he confronts her she  
21 cries. But remember what he said. The crying wasn't real,  
22 like it was crying with no emotion.

23           Do you remember when she broke down on the witness  
24 stand on the State's question about the relationship she had  
25 with her mother, she couldn't bear to touch her anymore?

1 Remember those questions that were asked? And she broke down.  
2 You remember the next day, the day after that I was very  
3 careful to ask Taharah and Taquanda when they left if she  
4 hugged her mom. Do you remember that? She walked out the  
5 doors and she gave her mom a big hug. Her little sisters  
6 talked about that.

7           Then we had the investigator Harrison Mayo get on  
8 the stand, and he talked about interviewing Dr. Gondy. So Dr.  
9 Gondy sat up here and said, oh, I put possible sexual abuse --  
10 I think it had something to do with the HPV -- and talked  
11 about some guy being there. And then all of a sudden says  
12 something about having braids in his hair. I asked her two or  
13 three times, are you sure that's what you said. So you  
14 remember what Mr. Mayo said? No, she didn't describe that,  
15 she described a really dark-skinned guy, short hair, immature,  
16 wore glasses the whole time. She also said that she couldn't  
17 remember why she put possible sexual abuse. And she seemed  
18 confused. Her notes weren't good, she didn't remember. So  
19 how much -- I mean, how much credence do you give Dr. Gondy in  
20 that case? I mean, she comes to court, she says one thing.  
21 She clearly said something else out of court. This is a woman  
22 who couldn't remember why she put possible sexual abuse on her  
23 own medical forms. She was dealing with a kid. And I know  
24 that, you know, the State said they took her to an OB-GYN.  
25 Why would kids ever subject themselves to, you know, that kind

1 of intimate exams, why did you ever submit yourself to that  
2 when you're a kid, why did you ever say someone touched you  
3 and then you had to go through all this? I don't Taharah,  
4 Taquanda, I don't think any of these kids realized any of this  
5 would happen. I don't think they thought, oh, I'm going to  
6 have to go in and have an exam like a big girl. And I don't  
7 think that was ever part of the planning. You don't think  
8 about the consequences sometimes when you're a kid. Remember,  
9 you all agreed with that concept when we talked in jury  
10 selection.

11           So what is -- well, so you have the daunting task of  
12 deciding whether or not the Dukes were credible. And that is  
13 pretty much the crux of the case; right? You either believe  
14 them or you don't, period. It's all or nothing; right? You  
15 either believe that all of these things happened or they just  
16 didn't happen, they did not happen the way -- they didn't  
17 happen at all. And that's pretty much where you are.

18           You have reasonable doubt. This is why you have  
19 reasonable doubt. You have Victoria, who gets on the stand  
20 and tells you about these daily beatings and the horrible  
21 physical abuse everybody is going through; right? Horrible.  
22 No one agrees with her. You have her letter. You guys get  
23 the letter, it'll go back with you. And she says that, he  
24 forced me to write the letter, he actually -- like I was --  
25 you know, I think maybe even she conceded he may have beat her

1 to write it. I can't remember that. But, you know, she talks  
2 about letting Miss Ann and Fred and -- forced me to write  
3 that. And I asked her if he forced her to make the heart with  
4 the little things coming out of it. There's some detail in  
5 this letter. Do you force someone to do that, or is that  
6 something someone does? And it kind of goes along with what  
7 John said about Victoria said this was the best she'd ever had  
8 it. When you think about what she was living in Louisiana I'd  
9 submit to you that it was the best she'd ever had. She  
10 finally a decent roof over her head, consistent meals, I'm  
11 sure, school. She actually had friends.

12 So she talks about the beatings daily, she talks  
13 about telling her teachers, which we know is not true.  
14 There's no way she told those teachers. They came in here and  
15 told you that. They have no motivation to lie, they have no  
16 dog in this fight.

17 You have Tina, who made Voluntary Statement Number 1  
18 and Voluntary Statement Number 2. Number 1 is Henderson,  
19 Number 2 is Metro. What changed between those two statements?  
20 Fred. She knew Fred was done with her at that point, they  
21 were done, he was not coming back, he was not dealing with  
22 Victoria ever again.

23 You have the common-sense, real life experience of  
24 knowing that the description that Taharah gave of sex in this  
25 case is just not accurate. Understand how hard it is for me

1 to stand up here and say that. But just putting it in does  
2 not make sense. It just doesn't. That's not real life.  
3 That's a movie. That's a video. That's her sister telling  
4 her. That's not real life. And not knowing what Fred's  
5 body's doing because it's dark? No. That's not realistic at  
6 all.

7           This isn't a case of -- well, let me start off with  
8 this. There's a lot of counts in this case, and I know there  
9 were gasps and horrified looks when all the charges were read  
10 initially. There's a lot of them. And to say it's all or  
11 nothing, that's a lot. But there's a standard here, and the  
12 standard is the State having to prove to you beyond a  
13 reasonable doubt that Fred did this. It's not, well, I kinda  
14 felt like it might have happened or, you know, because there's  
15 so many charges we feel like something must have happened.  
16 That's not -- that's not a standard. That's not where we are.  
17 That's not what you can -- you cannot do that. Your standard  
18 is reasonable doubt, do you have a reasonable doubt that these  
19 events took place, do you have a reasonable doubt as to the  
20 credibility of the witnesses the State sent you.

21           Look at the exhibits. I ask you to look at the  
22 exhibits, the letters, pictures of the laundry room. You  
23 couldn't really see them when they were up on the thing.  
24 You'll get a chance to look at all these pictures. The school  
25 records. These are all defense exhibits. We went out and got



1 these. Mr. Mayo took the pictures, he did the diagram,  
2 subpoenaed school records, got the letters. These are all  
3 defense exhibits; right? We wanted you guys to see this. We  
4 wanted you to see Cooper, we wanted you to see Bywaters, we  
5 wanted you to see House. Because in the end is it reasonable  
6 that all of those people are lying, Cooper, Bywaters, House,  
7 or is it reasonable that the Dukes were lying?

8 At the end of the day it's all or nothing. At the  
9 end of the day credibility is an issue. And you're going to  
10 go back to credibility. That jury instruction, you're going  
11 to be sick of it, I expect, by the end of all of the  
12 deliberations. That is the instruction that you're going to  
13 go back to, is there any credibility of any of those  
14 witnesses. I submit to you there's not. Mr. Harris is not  
15 guilty, and I ask you to go back there and find him not  
16 guilty.

17 THE COURT: Thank you very much.

18 The State may begin their rebuttal.

19 STATE'S REBUTTAL

20 MS. LUZAICH: Victims are victims for a reason. And  
21 having met the Duke family, it is very easy to tell why each  
22 and every one of those Duke family members are victims here  
23 today and in 2012 and in 2011 and in 2010 and in 2009 and in  
24 2008 and in 2007 and in 2005. Ms. Allen just talked to you a  
25 lot about credibility and the fact that why would the teachers

1 and whatnot make it up versus why would the Dukes make it up.  
2 I will tell you exactly why the teachers might come in here  
3 and say, no, I never heard that. Because the Dukes fell  
4 through the cracks. Look at those grades for those kids. Ms.  
5 Bywaters, Coach Cooper, they talked to you about how they were  
6 special education teachers. And it's their job to get these  
7 kids who have special needs ready for the world and to make  
8 sure their academic needs are met. And what happened? They  
9 all failed. All -- well, Victoria and Shabazz and Mahlica  
10 failed all their classes, yet were permitted to graduate. So  
11 clearly the Clark County School District has failed those kids  
12 in that regard. But remember what Ms. House said today; if I  
13 knew about it and I didn't report it I could lose my license,  
14 I could get prosecuted. Coach Coop, as well, and Ms.  
15 Bywaters, as well. If they knew about it and didn't do  
16 anything about it, they could lose their license and get  
17 prosecuted. So the fact that they didn't come in here and  
18 say, oh, yeah, these kids told me that, doesn't mean they  
19 didn't actually tell them that.

20 But also think about the kids and the academic  
21 acuity, the lack of cognition, whatever you want to call it.  
22 And when they say, I told so-and-so what happened, what did  
23 they actually tell them? Did they give them detail, or did  
24 they say something fairly general that they thought was clear  
25 but the teacher did not? But, either way, victims are victims

1 for a reason, and it's very easy to see how that man could  
2 have taken advantage of all of them and in fact did.

3 Ms. Allen tells you that it's all or nothing. That  
4 is absolutely untrue, as the jury instructions specifically  
5 tell you. You must look at each and every count separately,  
6 and you must look at each and every victim separately. You  
7 can find guilty of one count and not guilty of forty-five, you  
8 can find guilty of twenty-two and not guilty of twenty-three.  
9 You can find anything. It is absolutely, positively not all  
10 or nothing.

11 First let me point out to you, very important,  
12 Instruction Number 35. I told you at the very beginning of  
13 this case that you were going to hate Tina Duke. I expect  
14 that you do. But Instruction Number 35 tells you that you are  
15 here to determine only whether or not the State of Nevada has  
16 met the burden of proof regarding that man, the defendant.  
17 You are not called upon to return a verdict as to any other  
18 person, the instruction tells you. So if the evidence in this  
19 case convinces you that the defendant did what he's charged  
20 with, you should find him guilty even if you believe somebody  
21 else is also guilty. Hate Tina, if you want. But today is  
22 not your day to decide whether or not Tina is guilty of  
23 anything.

24 Ms. Allen talked to you about the fact that Dr.  
25 Gondy said, possible sexual abuse, but doesn't know why.

1 Think back a little more to when she was on the stand and she  
2 actually told you that it was possible sexual abuse one month  
3 before, she told you that the guardian who had brought Taharah  
4 in told her that. And why is that important? Because on June  
5 27th of 2012, when Miss Ann took Taharah to Dr. Gondy, it was  
6 a month after Taharah and Taquanda told her that Fred was  
7 molesting Taharah. At the end of May, remember, Taquanda told  
8 you that's when we told Miss Ann, and it was one month later.  
9 So in the reports it specifically said, possible sexual abuse  
10 suspected one month prior. That's why she said it, because  
11 the guardian told her that. And why would she also suspect  
12 sexual abuse? Well, because she was positive -- a 12-year-old  
13 girl is positive for HPV. How do you get HPV? You get it by  
14 having sex. That's the only way to get it. Dr. Mehta told  
15 you that.

16 Now, the defense says, well, you didn't hear  
17 anything about Tina or Victoria or Lealer having HPV. Well,  
18 there's no evidence whatsoever that they were ever tested for  
19 it specifically. Remember, Dr. Mehta also told you the only  
20 way that you can find out if somebody has HPV is to do that  
21 specific vaginal pap smear kind of test. There's no evidence  
22 that Tina or Victoria or Lealer had that test. That's why you  
23 didn't hear whether or not they have HPV. Do they? Who  
24 knows?

25 The defense would also have you believe that the

1 girls want to go back to Mom and that's why all of this came  
2 about, Taharah and Taquanda, that they want to go back to Mom  
3 and that's why all of this came about. Well, don't you  
4 remember it was Ms. Allen who asked Bobbie Tibbs way back  
5 when, didn't the girls tell you that they don't want to go  
6 back to Mom, they love Mom but they don't want to live with  
7 her. So their -- the defense theory out the door.

8           Ms. Allen told you that the only indicia that the  
9 sexual abuse that Victoria told you about from 2005 was  
10 related in 2005 came from Tina. That is absolutely untrue.  
11 The indicia that it occurred in 2005 was related to you by  
12 first Victoria -- well, first Tina, because she testified  
13 first. So it was related to you by Tina. It was also related  
14 to you by Victoria. But it was also related to you by  
15 Mahlica, because Mahlica told you that Victoria told her back  
16 in 2005 before they went to Utah that Fred had touched her.  
17 Mahlica also told the detectives in Henderson in December of  
18 2011 when they interviewed her. Mahlica told the detectives  
19 in December 2011 that Vicky told her before they went to Utah  
20 that Fred had been touching her.

21           But you also heard it in Fred's statement. The  
22 defendant himself told you in his statement to the detectives  
23 that in 2005 Victoria accused him of touching her. So there  
24 is an abundant amount of other indicia that that information  
25 was related in 2005.

1           Now, why do you think Ann and the defendant didn't  
2 want Victoria to live in the house when they came back in  
3 2007? Because she had accused him of touching her in 2005.  
4 That's why Victoria was sent away from the Blankenship house  
5 at first. And she was alienated. She wasn't alienated  
6 completely, but she was not allowed to live with her siblings.  
7 Now, did her siblings go visit her? Eventually. Because,  
8 remember, none of them remembered that first they lived at --  
9 sorry. None of the siblings who lived at Blankenship in 2007  
10 remembered that Mom and Vicky had lived at Ms. Dorothy's first  
11 and then at an efficiency. They all remembered going to see  
12 them at Walnut. But, remember, they came back in early August  
13 of 2007, first they go to Miss Dorothy's for about a month,  
14 they go to the efficiency for about a month. It's not until  
15 October of 2007 that they go to the Walnut apartment. So when  
16 the kids come back it's two months before they see Mom or  
17 Victoria again. So Victoria is alienated for those two  
18 months, during which time Fred takes her up to the mountain  
19 and has sex with her while Mom is there.

20           And, you know, the defense say, oh, you know, that  
21 never happened, you can't believe anything, you can't believe  
22 Tina. I don't disagree with that. Should you believe  
23 everything Tina says? Absolutely not. What you should  
24 believe is things that are corroborated by other sources that  
25 Tina says. But what person comes in here and tells you that

1 they engaged in sex acts with their biological child who is at  
2 the time 15 years old unless it's true? Now, is Tina lying  
3 about some stuff? Possibly, probably, whatever. But you  
4 don't lie about that. You only tell 14, 13 strangers that you  
5 have engaged in sex acts with your 15-year-old biological  
6 child if that's true. That's how we know that that occurred.

7           You know, if anything, Victoria should be happy when  
8 Mom is with Fred, because then Victoria gets to be with her  
9 siblings and take care of her siblings, Mom is with Fred, and  
10 nobody's being beaten. So if the defense theory makes any  
11 sense, Victoria's not going to try and get him in trouble.  
12 Victoria's going to keep her mouth shut and let Mom be with  
13 him. So the defense's theory just makes no sense whatsoever.

14           You know, Ms. Allen also said that after the  
15 Henderson interviews in December of 2011 Tina realizes that  
16 she's done with Fred, she never is going to see him again.  
17 Well, that's not true. We heard from everybody that after  
18 December of 2011, while the rest of the family is living in  
19 the Henderson apartments, both Fred and Ann bring the kids to  
20 see Tina and the family in Henderson. So we never heard that,  
21 oh, my God, six months went by and we didn't see the whole  
22 family. They saw them regularly still. So Tina wasn't done  
23 with Fred, Fred wasn't done with Tina; they continued to see  
24 each other for the next six months up until the time that  
25 these crimes got reported in September of 2012.

1           When Ms. Allen was talking about Detective Madsen  
2 [inaudible] -- when she was talking to Detective Madsen and  
3 asked him, so are you saying that Fred gave Taharah HPV, he  
4 said, no, I'm not saying that. Think about it. He's a  
5 detective, he's not a doctor. He's not going to jump out on a  
6 limb and say Fred gave Taharah HPV. Was he thinking it? Of  
7 course he was. Just like all of you are. But he's not going  
8 to go out on a limb and say it, because he's not a doctor.  
9 That's why he said, no, that's not what I'm saying.

10           And then when she talked about Bobbie Tibbs and the  
11 investigation in December 2011, January of 2012, when the kids  
12 asked Bobbie why is -- or when is Fred coming back, okay, now  
13 there are two definitely different ways that you can look at  
14 that. Because think about it. In December of 2011 the kids  
15 make no disclosure to the detectives, they're woken up at 3:00  
16 o'clock in the morning, they -- they're tired, they're talking  
17 to male detectives, especially for Taharah. But think about  
18 it. Fred's right outside the room, right outside the room.  
19 And these kids don't know is Fred going to remain, are we  
20 going to have to live with him, and, oh, my God, he's beat us  
21 before, if we tell what he's been doing, Taharah specifically,  
22 is he going to beat me again, is he going to have sex with me  
23 again. They don't know if police could possibly take them out  
24 of the home. They probably think that, well, they're going to  
25 go to sleep and wake up and Fred's still going to be there.



1 But when Bobbie comes to the house and talks to them a few  
2 days later, Bobbie interviews them again, they don't disclose  
3 anything to Bobbie. Where's Fred? Right outside the room.  
4 He's still right there. Then in January the defendant's moved  
5 out of the house, and they ask the question, when is Fred  
6 coming back. Now, Ms. Allen would have you think that they  
7 asked the question with excitement, when is Fred coming back,  
8 we can't wait to see him. That's not what the testimony was.  
9 The testimony was just that the kids asked, when is Fred  
10 coming back.

11 MS. ALLEN: Judge, objection. That misstates  
12 testimony. I specifically asked Ms. Tibbs if the girls wanted  
13 Fred to come home, and she indicated yes.

14 THE COURT: Okay. And again it would be the jury  
15 that determines the ultimate facts.

16 MS. LUZAICH: And, you know, unless they -- there  
17 was no testimony that they said, I can't wait for Fred to come  
18 home. It was, when is Fred coming home. Are they trying to  
19 prepare themselves for the beatings to come back? Because  
20 while he's out of the house they're not seeing him, there's no  
21 beatings, there's no sex acts. Are they trying to prepare  
22 themselves for that to occur again?

23 What you have to do is look at this from the eyes of  
24 the people who described things to you. Today, this week,  
25 last week when Taharah was here she was 14. Clearly she's

1 cognitively delayed, she is not quite as up to speed as other  
2 14-year-olds. But think about way back when this was  
3 happening when she was 12. She was 12. She was in sixth  
4 grade when these things are happening. So the fact that she  
5 says, he stuck it in me, does that mean it didn't happen  
6 because she give more description when she was 12 or when she  
7 was here talking to you? Remember how we talked about in jury  
8 selection how embarrassing is it for anyone to have to come in  
9 here to a roomful of strangers and talk about intimate sexual  
10 details. Very embarrassing, okay. I've been doing this  
11 forever. I can get these words out like there's no tomorrow.  
12 But for a 14-year-old to walk into this courtroom and have to  
13 sit here and explain to you -- and remember, with him sitting  
14 right there -- explain these things to you it's embarrassing.  
15 So the fact that all she really said was, he stuck it in me,  
16 or whatever, it doesn't mean it didn't occur. It meant she  
17 was embarrassed. She is, as we said, slow or cognitively  
18 delayed. You have to look at everything from the eyes of the  
19 person telling you. And when she was talking to the  
20 detectives in December of 2011 she had barely turned 12.  
21 Barely.

22           Sha'karia. Let's talk about Sha'karia just a  
23 second. What was the first thing Sha'karia said? That's my  
24 pops, that's my pops. I expect everybody noticed that when  
25 Sha'karia spoke to Ms. Allen she was all happy and perky and

1 very helpful with her information, just like she was when the  
2 investigator Mr. Mayo went to the house. She was very  
3 helpful. And then I asked her questions. I suggest to you I  
4 was not nasty to her, I did not get in her face in any way,  
5 shape, or form, but you all saw how she responded to me. And  
6 when you think about it, the evidence that you heard, the bad  
7 things that you heard about Victoria and Taquanda, you heard  
8 them from Sha'karia. Sha'karia's the one who told either the  
9 defendant or her mom that Victoria took the juice from the  
10 refrigerator, and Victoria got whupped because she took the  
11 juice from the refrigerator. Did Sha'karia take the juice and  
12 say that Victoria did it? Did nobody take the juice and did  
13 Sha'karia make it up? When Ms. Allen asked Sha'karia, so did  
14 Taquanda do something that she got in trouble for; yes, she  
15 stole my pink vibrator. She was pretty excited to tell you  
16 that. But think about it. She said that she thought that  
17 Taquanda had taken the vibrator and she sent the girls up to  
18 the candy lady so she could search through Taquanda's drawer  
19 and she found the pink vibrator in Taquanda's drawer. Did  
20 Sha'karia put the pink vibrator in Taquanda's drawer to get  
21 her in trouble? What was the first thing she said to you  
22 about the Duke family; I was jealous of all them because I  
23 thought my mom was paying them more attention than she was me.  
24 And when I asked her about that on cross-examination she  
25 refused to admit that she was jealous. So who is the one

1 who's stirring the pot here? Sha'karia clearly doesn't want  
2 her pops to get in trouble. Sha'karia clearly does want the  
3 Duke kids to get in trouble. Look at everything you've heard  
4 from the eyes of the person telling you.

5           And the defendant's statement. You heard from his  
6 own mouth what kind of person he is. He told you through his  
7 interview with Detective Aguiar that he is the kind of person  
8 that will take sex any way he can, and he does. Remember,  
9 during the very, very beginning of the interview he talks  
10 about -- the detective, one of the very first questions, "Have  
11 you ever had sex with Victoria?" "No." The next thing he  
12 talks about is, "Well, five or six years ago when I first met  
13 them she made an allegation that something happened." When I  
14 first met them. So that would be January of 2005, just like  
15 Victoria said.

16           Detective Aguiar asks him again, "Did you ever have  
17 sex with Victoria when you were there two weeks ago?" This  
18 was in December of 2011. And he says, "No." But he says, "I  
19 have sex with her mother like every time I go there." So for  
20 the third time he denies. Detective Aguiar says, "But it was  
21 the mom you had sex with, not Victoria?" "No." So three  
22 denials of sex with Victoria. He also talks about the kids,  
23 the defendant. And he says, "If you see the kids, then you  
24 know they're not really like 100 percent." Victims are  
25 victims for a reason. And he talks about himself and Tina and

1 Lealer, and he talks about, "The three of us, lovers at one  
2 time. We all three lived together here, me the mom, and her."  
3 "what's her name?" "Her name is Lealer."

4 He talks in his interview about the three-warning  
5 system. "I tell them three times, and the third time I make  
6 the decision if it's warranted to spank your butt. But it's  
7 got to be serious," he says. Well, Victoria got whupped for  
8 drinking juice.

9 Detective Aguiar asks about -- while he's talking  
10 about the discipline Aguiar asks about Mahlica. And he says,  
11 "Mahlica. Did you ever hold her up by her neck against a  
12 wall?" So clearly Mahlica had told Detective Aguiar that the  
13 defendant had held her up against the wall by her neck just  
14 like she told you and just like Taquanda told you.

15 He does corroborate a lot of the things that the  
16 kids said, that he tells the detective his brother just  
17 happened to be passing through Louisiana, he swooped in there  
18 and picked up the kids, you know, because big, beneficial  
19 defendant, he's going to help the family. But then he says,  
20 "And I put her and her kids in an apartment for six months."  
21 Well, that's not true. Everyone said that they lived on Trish  
22 Lane. Even Sha'karia said that they lived on Trish Lane.

23 He talks about -- Detective Aguiar talks to the  
24 defendant about that time in 2005, asking him, "Did you ever  
25 watch the kids?" At first he says, "No, no." He goes, "Well,

1 I mean, it would --" the detective says, "I mean, would it  
2 ever be just you and kids while she, Tina, was out looking for  
3 work or something?" And then the defendant says, "Oh, wait.  
4 I think I had to watch them one Saturday when she first got a  
5 job." So he admits that he had the kids in his apartment  
6 alone one Saturday while Tina was out. But he tells him, "I  
7 was a bachelor, I wasn't going to let no woman just come in  
8 and change my routine with no five kids. So I was just  
9 helping her out, just getting a piece of ass on the side."

10 And Detective Aguiar asked him, "And when you  
11 watched them when Victoria was 11 years old did anything  
12 happen then?" He says, "No. That's the time I was telling  
13 you she tried to accuse me of something back when she was 11."  
14 So we know there really was an accusation back then that  
15 Victoria got yelled at, she got spoken to, she got treated  
16 differently. And this is what the kids see. Taharah,  
17 Taquanda, Mahlica, they see that when Victoria told that she  
18 had been touched this is what happened to Victoria, she wasn't  
19 believed, she was treated badly, and she was alienated. So  
20 why on earth would Taharah tell anyone that she was being  
21 touched?

22 He describes about how meeting Tina -- that he met  
23 her in Louisiana. "I say, you want to come out here and --"  
24 oh, sorry, Utah, when they go up to Utah, "You want to come  
25 out here and hang out for the weekend so you can come, just

1 hang out for the weekend. So that's what she did. She jumped  
2 on the bus." But then the defendant tells the detective that  
3 she was in Utah for three or four years. So clearly he's  
4 trying to get a story straight and just not quite getting  
5 there. But he does corroborate the fact -- he says, "The kids  
6 are asleep when I get there, so we get started picking them up  
7 one by one and putting them in the van." So when you heard  
8 from the kids that he kind of snuck up there in the middle of  
9 night and snuck us into the car and took us away, you kind of  
10 wondered about that, didn't you, at first. Well, even the  
11 defendant admits that that's how it happened.

12 Remember when Tina told you about how while she was  
13 at Bally's he had beaten her and while she was at Bally's the  
14 supervisor said something, encouraged her to call the police?  
15 Well, we heard from Officer Loving about that. And, you know,  
16 Officer Loving corroborated most of what Tina said. The  
17 defense would have you believe that, oh, it couldn't possibly  
18 have happened because Officer Loving didn't see any marks or  
19 bruises on her. But, remember, October 24th was when it was  
20 reported and Officer Loving went to Bally's, but in the report  
21 itself it said that the battery had occurred on the 20th,  
22 three and a half days earlier. Well, of course you're not  
23 going to expect to see any red marks or anything like that  
24 three days later. And Officer Loving said that, what we told  
25 her and we tell many domestic violence victims is if you have

1 to go back to the house go around the corner and call us so  
2 that we can be there when you get home. Which is exactly what  
3 Tina said happened. And in the defendant's statement when  
4 he's talking about that he says, "Instead of just calling us  
5 and saying she wants her stuff, she brought the police here."  
6 So the defendant is even corroborating some of what Tina is  
7 saying.

8           He talks about how Taharah and Taquanda stayed at  
9 the house when Mahlica and Shabazz and Victoria and Tina moved  
10 out, talked about the fact that they stayed, that Lealer has  
11 guardianship, not the defendant. Lealer has guardianship.  
12 And one more time the detective asked, "When you had sex with  
13 Tina a couple weeks ago was Victoria in the room?" For the  
14 sixth time the defendant lied and said, "No." He asked, "Did  
15 Victoria ever walk in on you and her mom doing anything with  
16 you, her mom giving oral sex to you or anything like that?"  
17 He says, "No." Now, clearly when Tina is talking about the  
18 things that occurred between herself and Victoria and the  
19 defendant is she minimizing? Absolutely. Absolutely. But  
20 the fact that she was talking about it demonstrates that it  
21 did occur. And yet one more time the detective says to the  
22 defendant, "If you've ever had consensual sex with Victoria, I  
23 don't care about that." The defendant says, "No, no, no."  
24 "Have you guys ever had consensual sex?" "No. The worst  
25 thing we ever did was hug and kiss each other. That's it. On



1 the cheek." Seven denials to the detective. And then he went  
2 on to say further, "Me and her, Tina, go off to ourselves, we  
3 lock the door, we make sure no one else is bothering us."

4 And then you remember hearing about the detective  
5 talking about DNA. He was like, oh, you know, towel, all the  
6 time gives me this dirty red towel until the detective starts  
7 talking about, no, we're going to look for DNA in Victoria's  
8 vagina. Ding, ding, ding, ding, ding, the light goes off in  
9 the defendant's head and he realizes, wow, now I'm busted, now  
10 I have to come clean. And what did you hear him say? "Let's  
11 do this, then," he says. "I'll tell you the truth, because  
12 there's no sense of me lying about what happened between me,  
13 her mom, and her. So, yeah, we all had consensual sex. We  
14 had consensual sex a week ago, Mom, Vicky, and we all set in  
15 the room and got high, smoked a joint, we took our clothes  
16 off, we all had sex. That's the last time I was over there.  
17 It had to be at least six, seven days ago or -- well, ain't it  
18 been longer than two weeks that I came over."

19 So now that he knows that he can't lie anymore, now  
20 that there's potentially high physical evidence, now he's got  
21 to admit. Well, Ms. Allen makes a big deal, well, you saw no  
22 DNA report, something about a towel, the towel was collected.  
23 Well, who cares? I mean, who cares what's on the towel? He  
24 had sex with Tina all the time. We expect his DNA to be on  
25 the towel. That would have nothing to do with him having sex

1 with Victoria. But when he is confronted with there being  
2 potentially actual proof of him having sex with Victoria,  
3 that's when he admits it, although, oh, wait, only when she  
4 was of age, I would never do it when she was young. So the  
5 detective asks, "Did you have sex with Vicky that night?" "We  
6 had sex. All three of us had sex." "How many other times  
7 have you guys had sex," he says, the detective. "That's the  
8 second time." "Well, what's the first time?" So seven times  
9 he says, no sex whatsoever. Then there's one sex. "Oh, wait.  
10 No, there's a second time. The first time we have sex is when  
11 they first moved into that place in Henderson." "And you had  
12 sex with Vicky then, too," the detective asks. "Oral." "They  
13 both gave you oral sex?" "Yes. Oral sex together." And what  
14 does he say, "I'm getting two for the price of one."

15           You know, interestingly, the defendant says to the  
16 detective something along the lines of, well, I would never go  
17 there unless it was just Vicky and mom together, you know, I  
18 could never go see Vicky by herself because somebody would  
19 know, there's always somebody there. Well, what did Mahlica  
20 tell you? Mahlica told you that while they were at the St.  
21 Andrews apartments there were times that the defendant would  
22 come and go see Vicky by herself. And Mahlica told you that  
23 there were times at the Center Street, the Henderson  
24 apartments that the defendant would go and see Victoria by  
25 herself. He said -- Mahlica said there were times that the

1 defendant would come to see Vicky and Mom in St. Andrews and  
2 there were times the defendant would come and see Vicky and  
3 Mom at Center Street. But he said, oh, I could never, because  
4 somebody would have seen. Well, somebody did see. She  
5 described it for you.

6           The detective asks the defendant, "How do you think  
7 that makes you look going over to sleep with the mom and the  
8 daughter?" And what does the defendant say? He says, "Well,  
9 shit. It makes me look like I got both of them where they'll  
10 do whatever I want." That sums the defendant up entirely. I  
11 got them where they'll do whatever I want. He knows that  
12 because that's what he had had since he brought them back in  
13 August of 2007. They did whatever he wanted, because that was  
14 their way of life. They didn't know anything different.  
15 Victoria didn't want to, she just didn't know anything  
16 different. Now, Tina may have wanted to many times, half the  
17 time, most of the time. We heard about one time that she  
18 didn't want to. But he had them where they would both do it  
19 whenever he wanted. He also corroborates the story -- he  
20 talks about the two-headed dildo.

21           And then, interestingly, at the very end of the  
22 interview he's talking about, oh, I can't understand why she  
23 would hate me, or something like that. The detective asks  
24 about Victoria. "If she hates you so much, why is she having  
25 sex with you?" And he doesn't answer. He doesn't answer

1 because he can't. Because she's having sex with him because  
2 she has no choice.

3           You heard from all of the Dukes. Do you really  
4 think that they could have concocted all of this, those people  
5 that you heard on the stand? There is no way. Ladies and  
6 gentlemen, the State of Nevada cannot hold the defendant  
7 accountable for his actions. Even the Court cannot hold the  
8 defendant accountable for his actions. Only you can. The  
9 evidence shows that the defendant is guilty of these charges,  
10 so please find him guilty. Thank you.

11           THE COURT: Thank you very much.

12           At this time the clerk will now swear the officers  
13 of the court who will take charge of the jury panel.

14           THE CLERK: Yes, Your Honor.

15                           (Officers sworn)

16           THE COURT: Okay. At this time, ladies and  
17 gentlemen --

18           Mr. Powell, you have been selected to be our  
19 alternate juror, so I'm not going to require you to stay at  
20 the courthouse. I'm going to ask you to see the clerk before  
21 you leave, provide her with all of your things, your badge,  
22 your notebook and all your notes and your phone number. And  
23 I'm also going to ask that you don't leave the jurisdiction  
24 until we give you notice that we've reached a verdict or that  
25 we need you back. Do you understand that?

1 JUROR NUMBER 14: I understand.

2 THE COURT: Okay. And you understand you're still  
3 under the same obligation not to discuss the case with anyone?

4 JUROR NUMBER 14: I understand.

5 THE COURT: Okay. Thank you very much.

6 And you are excused to deliberate upon your verdict.

7 And you can take everything with you now.

8 (Jury retired to deliberate at 3:49 p.m.)

9 THE COURT: And, Mr. Powell, if I do not see you  
10 again, thank you very much for your service.

11 JUROR NUMBER 14: My pleasure. Thank you.

12 THE COURT: Thank you.

13 MS. LUZAICH: So are you going to give them the  
14 option at 5:00 o'clock on whether they want to stay or go home  
15 or --

16 (Court recessed at 3:51 p.m., until the following  
17 Monday, April 14, 2014, when jury returned to deliberate)

18 \* \* \* \* \*

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<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DEFENDANT'S WITNESSES

Kenyon House	20	24		
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\* \* \*

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

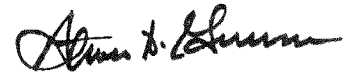
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**FLORENCE HOYT**  
**Las Vegas, Nevada 89146**

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

12/28/15

\_\_\_\_\_  
DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA

Plaintiff

vs.

FREDERICK HARRIS, JR.

Defendant  
. . . . .

CASE NO. C-291374

DEPT. NO. XII

**Transcript of  
Proceedings**

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 14**

TUESDAY, APRIL 15, 2014

APPEARANCES:

FOR THE STATE:

ELISSA LUZAICH  
KRISTINA A. RHOADES  
Deputy District Attorneys

FOR THE DEFENDANT:

BETSY ALLEN, ESQ.  
JONATHAN MacARTHUR, ESQ.

COURT RECORDER:

KRISTINE CORNELIUS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.



1 LAS VEGAS, NEVADA, TUESDAY, APRIL 15, 2014, 12:54 P.M.  
2 (Court was called to order)  
3 (Jury is not present)  
4 THE COURT: Ms. Allen, did you have enough  
5 opportunity to speak to Mr. Harris?  
6 MS. ALLEN: I did. Thank you.  
7 THE COURT: Okay. State of Nevada versus Harris.  
8 Mr. Harris is present. He's in custody.  
9 We do have a verdict. The jury's getting ready to  
10 come in. Before the jury comes in do you want to make your  
11 appearances.  
12 MS. LUZAICH: Lisa Luzaich and Kristina Rhoades for  
13 the State. Thank you, Judge.  
14 MS. ALLEN: Betsy Allen and Jonathan MacArthur for  
15 Mr. Harris.  
16 THE COURT: Okay.  
17 (Jury reconvened at 12:56 p.m.)  
18 THE COURT: Does the State stipulate to the presence  
19 of the jury panel?  
20 MS. LUZAICH: Yes.  
21 THE COURT: The defense?  
22 MS. ALLEN: Yes, Your Honor.  
23 THE COURT: Has the jury selected a foreperson?  
24 Mr. Geiger, you're the foreperson?  
25 JUROR NUMBER 2: Yes.

1 THE COURT: Has the jury reached a verdict?

2 JUROR NUMBER 2: Yeah.

3 THE COURT: Will you hand the verdict form to the  
4 court marshal.

5 On Count 17, Mr. Geiger, is that your -- is that  
6 your signature?

7 JUROR NUMBER 2: Yeah. I marked it incorrectly and  
8 changed it.

9 THE COURT: Okay. And that's your -- I just wanted  
10 to make sure that was your signature indicating that. Okay.

11 (Pause in the proceedings)

12 THE COURT: Okay. So the defendant and his  
13 attorneys will please stand for the reading of the verdict.

14 THE CLERK: "District Court, Clark County, Nevada,  
15 the State of Nevada, plaintiff, versus Frederick Harold  
16 Harris, Jr., defendant. Case Number C-13-291374-1, Department  
17 XII. Verdict.

18 "We, the jury in the above-entitled case, find the  
19 defendant, Frederick Harold Harris, Jr., as follows.

20 "Count 1, child abuse, neglect or endangerment. Not  
21 guilty.

22 "Count 2, sexual assault with a minor under 14 years  
23 of age. Guilty of sexual assault with a minor under 14 years  
24 of age.

25 "Count 3, sexual assault with a minor under 14 years

1 of age. Guilty of sexual assault with a minor under 14 years  
2 of age.

3 "Count 4, lewdness with a child under the age of 14.  
4 Guilty of lewdness with a child under the age of 14.

5 "Count 5, lewdness with a child under the age of 14.  
6 Guilty of lewdness with a child under the age of 14.

7 "Count 6, sexual assault with a minor under 14 years  
8 of age. Guilty of sexual assault with a minor under 14 years  
9 of age.

10 "Count 7, lewdness with a child under the age of 14.  
11 Guilty of lewdness with a child under the age of 14.

12 "Count 8, sexual assault with a minor under 14 years  
13 of age. Guilty of sexual assault with a minor under 14 years  
14 of age.

15 "Count 9, sexual assault with a minor under 14 years  
16 of age. Guilty of sexual assault with a minor under 14 years  
17 of age.

18 "Count 10, sexual assault with a minor under 14  
19 years of age. Guilty of sexual assault with a minor under 14  
20 years of age.

21 "Count 11, sexual assault with a minor under 14  
22 years of age. Guilty of sexual assault with a minor under 14  
23 years of age.

24 "Count 12, lewdness with a child under the age of  
25 14. Guilty of lewdness with a child under the age of 14.

1           "Count 13, sexual assault with a minor under 14  
2 years of age. Guilty of sexual assault with a minor under 14  
3 years of age.

4           "Count 14, sexual assault with a minor under 14  
5 years of age. Guilty of sexual assault with a minor under 14  
6 years of age.

7           "Count 15, child abuse, neglect, or endangerment.  
8 Not guilty.

9           "Count 15, child abuse, neglect, or endangerment.  
10 Guilty of child abuse, neglect, or endangerment.

11           "Count 17, child abuse, neglect, or endangerment."

12                   (Pause in the proceedings)

13           THE CLERK: I apologize. "Count 17, child abuse,  
14 neglect, or endangerment. Not guilty.

15           "Count 18, child abuse, neglect, or endangerment.  
16 Not guilty.

17           "Count 19, first degree kidnapping. Guilty of first  
18 degree kidnapping.

19           "Count 20, lewdness with a child under the age of  
20 14. Guilty of lewdness with a child under the age of 14.

21           "Count 21, sexual assault with a minor under 14  
22 years of age. Guilty of sexual assault with a minor under 14  
23 years of age.

24           "Count 22, sexual assault with a minor under 14  
25 years of age. Guilty of sexual assault with a minor under 14

1 years of age.

2 "Count 23, coercion sexually motivated. Guilty of  
3 coercion sexually motivated.

4 "Count 24, administration of a drug to aid in the  
5 commission of a crime. Guilty of administration of a drug to  
6 aid in the commission of a crime.

7 "Count 25, first degree kidnapping. Guilty of first  
8 degree kidnapping.

9 "Count 26, sexual assault with a minor under 16  
10 years of age. Guilty of sexual assault with a minor under 16  
11 years of age.

12 "Count 27, administration of a drug to aid in the  
13 commission of a crime. Not guilty.

14 "Count 28, first degree kidnapping. Guilty of first  
15 degree kidnapping.

16 "Count 29, sexual assault with a minor under 16  
17 years of age. Guilty of sexual assault with a minor under 16  
18 years of age.

19 "Count 30, sexual assault with a minor under 16  
20 years of age. Not guilty.

21 "Count 31, sexual assault with a minor under 16  
22 years of age. Guilty of sexual assault with a minor under 16  
23 years of age.

24 "Count 32, sexual assault with a minor under 16  
25 years of age. Not guilty.

1           "Count 33, sexual assault with a minor under 16  
2 years of age. Guilty of sexual assault with a minor under 16  
3 years of age.

4           "Count 34, sexual assault with a minor under 16  
5 years of age. Guilty of sexual assault with a minor under 16  
6 years of age.

7           "Count 35, sexual assault with a minor under 16  
8 years of age. Guilty of sexual assault with a minor under 16  
9 years of age.

10          "Count 36, sexual assault. Guilty of sexual  
11 assault.

12          "Count 37, first degree kidnapping. Guilty of first  
13 degree kidnapping.

14          "Count 38, battery with intent to commit sexual  
15 assault. Guilty of battery with intent to commit sexual  
16 assault.

17          "Count 39, sexual assault. Guilty of sexual  
18 assault.

19          "Count 40, sexual assault. Guilty of sexual  
20 assault.

21          "Count 41, sexual assault. Guilty of sexual  
22 assault.

23          "Count 42, pandering. Guilty of pandering.

24          "Count 43, sexual assault. Not guilty.

25          "Count 44, living from the earnings of a prostitute.

1 Guilty of living from the earnings of a prostitute.  
2 "Count 45, battery by strangulation. Not guilty.  
3 "Dated this 15th day of April 2014." Signed by  
4 Timothy Geiger, foreperson.  
5 Ladies and gentlemen of the jury, are these your  
6 verdicts as read, so say you one, so say you all?  
7 (Jurors responded in the affirmative)  
8 THE COURT: Does either side wish to have the jury  
9 panel polled?  
10 MS. LUZAICH: Not the State.  
11 MS. ALLEN: Yes, Your Honor.  
12 THE COURT: Okay. At this time, ladies and  
13 gentlemen, the clerk's going to ask you a question. If you'll  
14 just please respond yes or no.  
15 THE CLERK: Juror Number 1, are these your verdicts  
16 as read?  
17 JUROR NUMBER 1: Yes.  
18 THE CLERK: Juror Number 2, foreperson, are these  
19 your verdicts as read?  
20 JUROR NUMBER 2: Yes.  
21 THE CLERK: Juror Number 3, are these your verdicts  
22 as read?  
23 JUROR NUMBER 3: Yes.  
24 THE CLERK: Juror Number 4, are these your verdicts  
25 as read?

1 JUROR NUMBER 4: Yes.  
2 THE CLERK: Juror Number 5, are these your verdicts  
3 as read?  
4 JUROR NUMBER 5: Yes.  
5 THE CLERK: Juror Number 7, are these your verdicts  
6 as read?  
7 JUROR NUMBER 7: Yes.  
8 THE CLERK: Juror Number 8, are these your verdicts  
9 as read?  
10 JUROR NUMBER 8: Yes.  
11 THE CLERK: Juror Number 9, are these your verdicts  
12 as read?  
13 JUROR NUMBER 9: Yes.  
14 THE CLERK: Juror Number 10, are these your verdicts  
15 as read?  
16 JUROR NUMBER 10: Yes.  
17 THE CLERK: Juror Number 11, are these your verdicts  
18 as read?  
19 JUROR NUMBER 11: Yes.  
20 THE CLERK: Juror Number 12, are these your verdicts  
21 as read?  
22 JUROR NUMBER 12: Yes.  
23 THE COURT: And, Juror Number 13, are these your  
24 verdicts as read?  
25 JUROR NUMBER 13: Yes.



1           THE COURT: Okay. At this time the clerk will  
2 record the verdict in the official record of the court, and at  
3 this time, ladies and gentlemen, you are going to be  
4 discharged as jurors.

5           Don't look so excited.

6           Before I do discharge you I just want to give you a  
7 few instructions. You're no longer under the admonition not  
8 to discuss this case with anyone. You're free to discuss this  
9 case with anyone, but it's up to you whether you want to  
10 discuss it with anyone at all. I do always give the attorneys  
11 the opportunity to speak to a jury panel, but only if you want  
12 to speak to the attorneys or anybody else. I just want to  
13 make sure you understand you're no longer under that  
14 admonition.

15           Because I have another jury trial, we broke that  
16 trial so I could take this verdict. I probably will ask you  
17 to go to the third floor, at which time the attorneys can go  
18 there and speak to you if you want to speak to them. But  
19 before I do excuse you I do want to thank you very much. Your  
20 service to the Court and to the people of Clark County was  
21 above and beyond. You were here for three weeks. It was a  
22 tough case. You deliberated. Clearly you took the case very  
23 seriously. This was your second day of deliberations, and I  
24 just want to thank you very much for your service to the  
25 District Court.

1           And at this time you are discharged. You can go  
2 back to the jury deliberation room. Thank you very much for  
3 your service.

4                       (Jury discharged at 1:07 p.m.)

5           THE COURT: The record reflect that the hearing is  
6 taking place outside the presence of the jury panel.

7           The matter will be referred to Parole & Probation.  
8 It'll be set for sentencing --

9           THE CLERK: July 17th at 8:30.

10          MS. LUZAICH: Your Honor, at this time, because the  
11 defendant is facing multiple life sentences and a minimum of  
12 35 to life, I would ask the Court to revoke his bail and  
13 remand him without bail.

14          MS. ALLEN: Your Honor, Mr. Harris has not made bail  
15 up until this point. I don't understand -- I don't see the  
16 necessity in revoking his bail at this point. He's been in  
17 custody for the entirety of the year.

18          THE COURT: Okay. At this time his bail will be  
19 revoked. He'll be held without bail pending sentencing on  
20 July 17th at 8:30.

21          Anything else?

22          MS. ALLEN: No.

23          MS. LUZAICH: Judge, I don't think so. Thank you.

24          THE COURT: Thank you very much, the attorneys. It  
25 was a pleasure.

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MS. LUZAICH: Thank you, Your Honor.

MS. ALLEN: Thank you, Your Honor.

THE COURT: See you next time.

THE PROCEEDINGS CONCLUDED AT 1:09 P.M.

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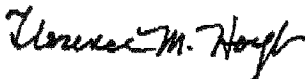
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AFFIRMATION

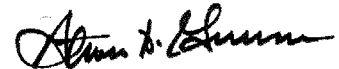
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FLORENCE HOYT  
Las Vegas, Nevada 89146

  
FLORENCE M. HOYT, TRANSCRIBER

12/28/15

\_\_\_\_\_  
DATE



CLERK OF THE COURT

1 **RTRAN**

2  
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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6  
7  
8 **THE STATE OF NEVADA,**  
9 **Plaintiff,**

**CASE NO. C291374-1**

**DEPT. XII**

10 **vs.**

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

13 **Defendant.**

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

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

20 **APPEARANCES:**

21 **For the State:**

**ELISSA LUZAICH, ESQ.**  
**Chief Deputy District Attorney**

**KRISTINA A. RHOADES, ESQ.**  
**Deputy District Attorney**

23 **For the Defendant:**

**BETSY ALLEN, ESQ.**

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

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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?

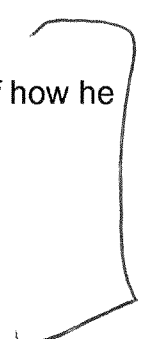
21 A Uh-huh.

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.

24 . . .

25 . .

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

MS. LUZAICH: Thank you.

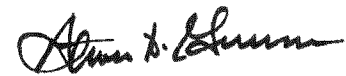
[Proceedings concluded, 12:22 p.m.]

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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





CLERK OF THE COURT

1 RTRAN

2  
3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA, )  
7 Plaintiff, ) CASE NO. C291374  
8 vs. ) DEPT. XII  
9 FREDERICK HAROLD HARRIS, JR., )  
10 Defendant. )

11  
12 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE  
13 TUESDAY, JUNE 30, 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

19 For the Defendant: BETSY ALLEN, ESQ.  
20  
21  
22  
23  
24

25 RECORDED BY: KRISTINE CORNELIUS, COURT RECORDER

1 TUESDAY, JUNE 30, 2015; 10:46 A.M.

2 \* \* \* \* \*

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

5 Good morning.

6 MS. ALLEN: Good morning, Your Honor.

7 THE DEFENDANT: Good morning.

8 MS. ALLEN: Betsy Allen on behalf of Mr. Harris, present in custody.

9 MS. LUZAICH: Lisa Luzaich for the State.

10 THE COURT: Okay.

11 MS. ALLEN: Your Honor, we – we're back her today. I believe it was a  
12 continued evidentiary hearing. Essentially what we're doing, or at least what I had  
13 planned on doing today was essentially arguing.

14 THE COURT: Okay.

15 MS. ALLEN: I'm not sure when I provided the Facebook stuff to you, but I  
16 knew I had provided it to you some time ago. We've had a couple continuances  
17 since then. I also provided them to the State. So essentially what we're –

18 THE COURT: Have they been made part of the record?

19 MS. ALLEN: Pardon?

20 THE COURT: Have they been made part of the record?

21 MS. ALLEN: I don't think that they have and I would request that copies of  
22 the Facebook posts be made part of the record for the purposes of appeal, if it goes  
23 that direction. I'm not sure if the Court wants my – I have two copies of it or I – I  
24 mean I have my copies, but the Court's welcome to have them. I do have them on  
25 my computer.

1 [Colloquy between the Court and clerk]  
2 THE COURT: Okay. We have State's Exhibit 3 –  
3 MS. ALLEN: Okay.  
4 THE COURT: – this one [indicating]. Do you want to have that one marked?  
5 MS. ALLEN: And this is just the one of Yvonne.  
6 MS. LUZAICH: No objection.  
7 MS. ALLEN: Okay.  
8 THE COURT: I couldn't read my copy very well, so yours looks better.  
9 MS. ALLEN: Does it? I don't know if it is or not. The Court's welcome to  
10 have – use that one.  
11 THE COURT: Yeah. I don't have –  
12 MS. ALLEN: It's really small.  
13 THE COURT: It's really hard –  
14 MS. ALLEN: Uh-huh.  
15 THE COURT: Okay.  
16 MS. ALLEN: Reading glasses may not even help.  
17 THE COURT: Yeah.  
18 MS. ALLEN: I don't know if you want to make a – do you want me to – or we  
19 can make a copy of it, whatever the Court wants to do.  
20 THE COURT: Okay. This is your only copy?  
21 MS. ALLEN: That's my – yes, Your Honor.  
22 THE COURT: Okay. Then we'll have Pam come in.  
23 MS. ALLEN: I thought I emailed those to the Court. Maybe I – did I –  
24 THE COURT: Right, but – well, I guess, I could make mine –  
25 MS. ALLEN: If mine's better –

1 THE COURT: I thought mine was a bad copy, so I'll go ahead and –  
2 MS. ALLEN: If mine is better, you can make a copy of mine. That's totally  
3 fine.  
4 THE COURT: Well, I just want to make sure it – you know what? I'm going to  
5 have yours made part of the record.  
6 MS. ALLEN: Okay.  
7 [Colloquy between the Court and clerk]  
8 THE COURT: Do you have copies, Ms. Luzaich?  
9 MS. LUZAICH: I do.  
10 THE COURT: So this will be which –  
11 THE CLERK: Defense A.  
12 THE COURT: Okay, Defense A.  
13 Can I just read these, because yours I can actually –  
14 MS. ALLEN: Of course.  
15 THE COURT: Do you mind if I –  
16 MS. ALLEN: Yes, of course. No, no, no.  
17 THE COURT: Okay.  
18 THE CLERK: I'm sorry. It will be Defendant's B.  
19 THE COURT: B?  
20 THE CLERK: Yes.  
21 THE COURT: Okay. Will you make a copy of that?  
22 JUDICIAL EXECUTIVE ASSISTANT: Just one copy?  
23 THE COURT: Yeah, just one. Okay.  
24 MS. ALLEN: Okay.  
25 THE COURT: I've had a chance to read them.

1 MS. ALLEN: Were you able to read them better?  
2 THE COURT: Right. Now did you send me this letter from the juror?  
3 MS. ALLEN: I did.  
4 THE COURT: Okay.  
5 MS. ALLEN: That was part of what she sent me, and so I provided it to both  
6 the State and to the Court.  
7 THE COURT: Has that been made part of the record?  
8 MS. ALLEN: We can.  
9 MS. LUZAICH: No. And I would ask that it be made part of the record.  
10 THE COURT: Okay. So the letter from Yvonne Lewis –  
11 MS. ALLEN: Correct.  
12 THE COURT: Does the –  
13 Okay. It will be marked as State's next in line.  
14 THE CLERK: That will be 4.  
15 THE COURT: Is there anything else either side wants made part of the  
16 record?  
17 MS. ALLEN: I don't think so. I think we've given – I think I've –  
18 MS. LUZAICH: Not for the State.  
19 MS. ALLEN: Everything's been handed over to both the Court and Ms.  
20 Luzaich.  
21 [Colloquy between the Court and clerk]  
22 THE COURT: Okay. And this is the other juror's Facebook, the multiple  
23 pages.  
24 MS. ALLEN: Oh, is that Mr. Bell?  
25 THE COURT: The selfie guy.

1 MS. ALLEN: Oh, yeah.

2 THE COURT: Uh-huh.

3 MS. ALLEN: Okay, yes.

4 THE COURT: But I don't know. It's multiple pages. I don't know if it's all  
5 relevant to this.

6 MS. LUZAICH: It's not. There's – I mean there's only one post that's relevant  
7 to this.

8 THE COURT: Right. It's the –

9 MS. LUZAICH: The defense had asked him for 30 days' worth of posts and  
10 he sent everything.

11 MS. ALLEN: Oh, he sent everything over. Okay.

12 THE COURT: Oh, okay, so it's 30 days' worth.

13 MS. ALLEN: I mean you can make it part of the record, if you want.

14 THE COURT: Okay.

15 MS. ALLEN: If not, the – this one [indicating], the original one that I'd given  
16 you in color, that one works as well.

17 THE COURT: Okay. That's in.

18 MS. ALLEN: We can make that one part of the record.

19 THE COURT: Okay. That's in.

20 MS. LUZAICH: That was already part of the record.

21 THE COURT: Okay.

22 MS. ALLEN: Yeah, that's right.

23 THE COURT: All right, go ahead.

24 MS. ALLEN: Your Honor, just briefly. I had briefed this twice, the initial  
25 motion for a new trial and then I did a reply and a supplement. Oddly enough, none

1 of the Facebook stuff was part of either of the original motions. That came up as the  
2 result of, honestly, Mr. Bell's testimony when we were here at the evidentiary  
3 hearing. If you recall, Mr. Bell said something about – I can't even remember the  
4 question I asked, but it leads to the idea that he knew Ms. Lewis –

5 THE COURT: Uh-huh.

6 MS. ALLEN: – and/or Kerrigan and he was, I felt – maybe the Court feels  
7 differently, but I felt he was somewhat dishonest when he was answering the  
8 question about posting on Facebook. And when I asked him to pull the picture up,  
9 it's very clear that this was after he was already sworn because he's got the blue  
10 badge, and we all know they don't get the blue badges until they're sworn. He tried  
11 to sort of pass it off as saying: No. I wasn't sworn yet. It was, you know, the first  
12 day.

13 So now what we have is Mr. Bell has posted on Facebook, and his  
14 page is open, completely open. I was able to just go onto – I have a Facebook  
15 account not in my name, because I don't do that, but anyways I went onto Facebook  
16 and I was able to access his account. It's very open. Ms. Lewis's is not. She –  
17 hers is a little different and that's why those records had to be subpoenaed from her.  
18 But what we have here is a situation, and the concern that we have is that this was  
19 directly in contrast with the Court's order.

20 The Court's order is essentially – and I could be wrong, and if I am, I'm  
21 sure the Court will correct me – but essentially the Court says that, you know, you're  
22 not supposed to volunteer information to anybody. If someone asks you can say  
23 that you're on a criminal trial, and I think that's the extent of what you're allowed to  
24 do. No one asked and they were posting on Facebook, again, in a very open form.  
25 So they have violated the Court's order. And I think coming in here today that – I

1 don't think I have to even argue to the Court that they've done something wrong.  
2 They did. They clearly did something wrong.

3           The next – so the next thing we have to look at, and it's difficult  
4 because I didn't really find a lot of cases that talked about this and probably I didn't  
5 because even though Facebook has been around for a couple of years it is  
6 somewhat new. The Facebook – Facebook, Snapchat, whatever, all those different  
7 tweet stuff is relatively new and this – I mean I know I've encountered jurors talking  
8 about things, but this – again, this was something a little new. A lot of times the  
9 courts address misconduct during deliberations, and this is not deliberations. We're  
10 clearly pre-deliberations in this, and this is right at the beginning of the case. In fact,  
11 I'm not sure if it's the exact day they were sworn in or if it was the next day. I can't  
12 remember, but this is really maybe the first day that we actually had testimony.

13           Had I been aware that this had happened on March 27<sup>th</sup> or March 28<sup>th</sup>  
14 and I found that two jurors were doing this, I have no doubt in my mind I would've  
15 asked for a mistrial. At a minimum I would've asked that they be replaced for  
16 violating the Court's order, but I probably would've asked for a mistrial. Because the  
17 problem with this is that if they are so free in their minds to do this the very first day  
18 of trial or the first couple of days, what else were they also free to do?

19           If you look at Mr. Bell's Facebook page, Yvonne Kerrigan actually  
20 comments on his Facebook post. So now they're talking on Facebook to each other  
21 about – and that's – I apologize. That's three pages in. They're actually talking to  
22 each other on Facebook. And I know the State's going to say this is innocuous.  
23 They weren't discussing the case, you know things like that, but it's not innocuous.  
24 These are two people who violated the Court's order and pretty early on in the case.  
25 Having myself been – sat on a jury before, and I didn't make it to deliberations, but I



1 think I've said this to the Court, I actually after two or three days of just jury  
2 selection I heard what other jurors were saying. They don't –

3 MS. LUZAICH: Well, objection. That is completely irrelevant and beyond the  
4 scope of anything that needs to be in this record.

5 MS. ALLEN: Well, this is argument and all I'm doing is I'm –

6 THE COURT: Are you talking about your own personal experience?

7 MS. ALLEN: Right. I'm just saying that I watched what jurors do and this is  
8 very indicative of that; that they're free – they think they're free to do these types of  
9 things.

10 So if we are looking pre-conviction on this case, if we were looking at  
11 two weeks into the case and we find out jurors are on Facebook commenting, I  
12 would've asked for a mistrial. I don't think at that point that these two should have  
13 been allowed to deliberate and they infected the deliberation process with this, with  
14 the idea that they felt it was appropriate to discuss this case or discuss the fact that  
15 they were jurors in a public form. But now we're post-conviction and I would argue  
16 to the Court that that doesn't necessarily change anything. I think this Court has  
17 broad discretion to vacate the judgment in this case and order a new trial.

18 I looked at cases, just some of the names, and I put these in my brief,  
19 *Canada*; I quoted *Chavez*. There's a new case out, *Vanda Carts* [phonetic], juror –  
20 general juror misconduct and, again, it doesn't speak directly to this issue, but it's  
21 the quality. You look at the quality and the quantity of the misconduct. And if you  
22 look at the comments, you look at some of the comments that some of these people  
23 make on the Facebook page, you know, Robert Bell's hang him high, you know  
24 another on –

25 MS. LUZAICH: Well, objection. Robert Bell did not say that.

1 MS. ALLEN: No. I said a –

2 MS. LUZAICH: Somebody else did.

3 MS. ALLEN: I said a comment on his Facebook page.

4 THE COURT: Right. What –

5 MS. ALLEN: I said a comment.

6 THE COURT: What I believe is I don't think that he necessarily commented.

7 MS. ALLEN: No.

8 THE COURT: But by posting that he elicited conversation about the case  
9 from other people.

10 MS. ALLEN: He did and that's wrong. That should've never happened. It  
11 violated my client's due process rights to a fair trial.

12 I'm not going to argue all of the other things that I put in the motion for a  
13 new trial, save and except for one thing, and that was the redacted statement with  
14 Mr. Harris. You know in the initial motion for a new trial I put something in there  
15 about the fact that his statement was redacted as a result of the State taking out –  
16 they took out a part that he talked about Victoria saying something about her having  
17 sex in Utah. I argued under *Summit* that was allowed in. The Court did not allow it  
18 in. I know the State says, well, it's self-serving. I think just if the Court would take a  
19 look at the totality of the circumstances. The statement wasn't self-serving.

20 First of all, you would have to assume that he knew anything about  
21 *Summit* and that he would have some predisposed indicia, I guess, or some indicia  
22 that he would be allowed to bring that in at trial. I'm thinking that's probably not the  
23 case. And if you look at the remainder of his statement, he actually admits to having  
24 sex with Victoria at some point. And so I would submit to the Court, at least with  
25 regard to that statement, that that should've been allowed in, that the comments he

1 made to the police about Victoria.

2           Regardless of that, the juror misconduct I think is the overarching issue  
3 here. And I would submit it with the right to rebut once the State argues.

4           THE COURT: Sure.

5           MS. LUZAICH: As far as the Defendant's statement, I'll just submit it on the  
6 paperwork that was generated by both sides. But as far as the juror misconduct, it  
7 was not misconduct. First of all, she comments about thinking Mr. Bell was being  
8 dishonest. The jurors don't understand the way we do the concept of all this stuff,  
9 sworn versus not sworn, you know the way in which trials progress. He wasn't  
10 being dishonest. He just didn't know any different.

11           But as far as misconduct, you specifically told this jury, just like you tell  
12 every other jury, you cannot talk about the case, the facts of the case. What you  
13 can do is tell your friends and family that you're a juror in a criminal case in  
14 Department 12, and that is all that these two jurors did. The fact that Yvonne Lewis  
15 actually commented on Mr. Bell's page that, oh, I didn't know it was you, it doesn't  
16 mean they had a conversation on Facebook. All she did was comment after her  
17 friend said that, hey, we have a friend in common, yeah, I'm there too. But there  
18 was nothing wrong with showing that they were a juror in a criminal case in  
19 Department 12, because that's exactly what you told them that they could do.

20           THE COURT: How do you reconcile that with me telling them 50 times a day  
21 you can't talk about this case on any social media?

22           MS. LUZAICH: But you told them that afterwards.

23           THE COURT: I tell them that almost immediately.

24           MS. LUZAICH: But they're not talking about the case. They're talking about  
25 the fact – and it was one post, one – they each posted one picture of their badge

1 just to show that they were a juror. It's got nothing to do with the case, the facts of  
2 the case, what they thought about the case. It's just this is what I'm doing today,  
3 just like 9,000 people every day – 900,000 probably – in Las Vegas post what  
4 they're doing every day. This is what I'm doing. That's all they did. And it was the  
5 very first day that they had been sworn, March 27<sup>th</sup>, and they never did it again after  
6 that. They're not talking about anything other than the fact that they were going to  
7 be a juror, and they didn't even talk about it. It was just a comment. I mean,  
8 literally, when you look at his, Mr. Bell's picture it's, you know, cup o' Joe and  
9 whatever and Yvonne Lewis's is just the picture of the badge. There's nothing  
10 wrong with that. How does that possibly prejudice the Defendant?

11 THE COURT: Well, that's the issue, whether it prejudiced the verdict, I think.

12 MS. LUZAICH: And it's not possible that they – okay, so assuming the Court  
13 does find it misconduct –

14 THE COURT: Right, assuming there was.

15 MS. LUZAICH: – which we'll agree to disagree about that, there's no possible  
16 way that that prejudiced the verdict, the fact that they posted a picture that they were  
17 jurors. There's – when you look at all of Mr. Bell's 30-some days' worth of  
18 Facebook, there's not one further comment by him. There's not one comment about  
19 even the – like what kind of case it is, just criminal. It doesn't say anything about  
20 sex versus property versus drugs, whatever, nothing whatsoever. In Ms. Lewis  
21 either, there's never a comment again after that first day. There's nothing.

22 So there is absolutely, positively no evidence whatsoever before this  
23 Court that there's any prejudice at all. And when you look at the way the trial  
24 progressed, the evidence progressed for three weeks. The jurors, then after the  
25 arguments, which also took pretty much a whole day – and they deliberated for

1 three days. It's not like they quick came in, said guilty to everything. They very  
2 carefully went through all the evidence, and they didn't convict him of everything.  
3 They went through carefully the charges. They found him guilty of some, not guilty  
4 of others. It's not like they found him guilty of every count for Victoria or every count  
5 for Tina. There were some not guilties for everything that was charged. So they  
6 very carefully went through the evidence, discussed things and came up with a  
7 verdict that was not only free of prejudice but that, I mean, kind of made sense. And  
8 I would submit it on that.

9 THE COURT: Thank you.

10 MS. ALLEN: Your Honor, if I may. I'd ask the Court to look at Ms. Lewis-  
11 Kerrigan, the – I stapled it wrong, but if you look at the second page – and I don't  
12 have it in front of me because I gave the Court my copy – if you look at the second  
13 page, I think at the top, that's her comment. That's just not being on a criminal trial.  
14 That's just not saying I'm on – Ms. Luzaich says, oh, look, she just posted a copy of  
15 her juror badge. That's not what she did. She was making specific comments about  
16 being on this trial.

17 And so the Court says, well, how does it prejudice the verdict? This is  
18 what I – this is what I posit to the Court. They shouldn't have been allowed to  
19 deliberate. They should not have been on this trial. Two jurors should not have  
20 been here because – excuse me – because of this. They violated the Court's order  
21 and they opened this up to discussion from other people.

22 So I would give this analogy. What if these jurors – and this is public. I  
23 mean, again, Mr. Bell's post is very public. What if these jurors went on Channel 8  
24 News and said: I'm on a criminal trial in Department 12. I'd like, you know – and  
25 opened it up to comment. Would the Court grant a new trial for that? Would you

1 declare a mistrial for something like that, if they went on the news and they started  
2 doing things like this? I suspect the Court would. There's no difference.

3           The prejudice to my client is they should not have been allowed to  
4 deliberate. He was denied a fair trial because they couldn't even stay away from  
5 Facebook posts. And then Ms. Kerrigan clearly did not say that she was just on a  
6 trial. She opened it up by saying she was praying and all of these things, inviting  
7 comments from all of her friends about what was going on. And it's clear, at least  
8 with regard to Ms. Kerrigan, she read it because she redacted it. When she sent it  
9 over to the Court she redacted certain things out of it, so it's very clear that she  
10 opened herself up to these comments from other people.

11           So that's what I would argue the prejudice is, is that these people  
12 shouldn't have been allowed to deliberate. And I would ask the Court to consider  
13 what the Court would've done pretrial. If you had found out that this was going on  
14 what – I mean what would the Court's solution be? Would it be, okay, we're just  
15 going to get rid of these two jurors and use our alternates, or would it have been a  
16 mistrial? I suspect it would've been a mistrial, because they're commenting on each  
17 other's Facebook posts. And I mean if we're doing this the very first day that we're  
18 sworn and we've been – I don't remember how many days jury selection was. I  
19 want to say three.

20           THE COURT: It was a few days.

21           MS. ALLEN: But I'm pretty sure the Court told them for those three days don't  
22 talk about it, let's not discuss this, please don't do this. You know, what else was  
23 going on when this started on day one? And I'd submit it to the Court with that.

24           THE COURT: Anything else?

25           MS. LUZAICH: I would just ask you to read her letter. She explained exactly

1 what she said, exactly what she meant, and it wouldn't have been a mistrial. The  
2 Court would've admonished them don't do that, and the Court would've just gone  
3 on.

4 THE COURT: Okay. Well, I can tell you I admonish them a lot better about  
5 Facebook and social media. I tell them don't go on it at all, and if you can't go on it  
6 or if you can't – and I specifically ask them, is there anyone who feels they can't  
7 control themselves for the next few days? And so far I haven't had anyone say they  
8 can't control themselves, but I am more specific with the whole social media thing.

9 But at this time I'm going to deny the motion for a new trial. I think that  
10 even if there were juror misconduct, the defense hasn't met their burden to show  
11 that it prejudiced or affected the verdict.

12 Does the State want to prepare the order?

13 MS. LUZAICH: Yes, Judge. Now as far as sentencing, P&P, once the Court  
14 vacated the sentencing date, won't accept my file, so I tried to get them to do a PSI  
15 anyway, but without a sentencing date they wouldn't. So can we get a 60-day date?

16 THE COURT: Sure.

17 THE CLERK: Sixty days will be September 1<sup>st</sup> at 8:30.

18 MS. LUZAICH: Thank you. Or I should say they sent it back to me.

19 MS. ALLEN: And I forgot. Last time we were here I meant to make this  
20 record. Some point during the last year the stuff about victim/witness came up.

21 I just am making a record of about the conversation we had.

22 The victim/witness came up. I asked Ms. Luzaich if she would check to  
23 see if the victims in this case were provided anything for – other than \$26, or  
24 whatever it is, to come down and testify.

25 THE COURT: Okay.

1 MS. ALLEN: I'm sure you've seen the news. They've been –

2 THE COURT: Yes, of course.

3 MS. ALLEN: Right. I asked Ms. Luzaich if she could check and see if they  
4 were given anything. She indicated to me no. So I just want to make sure that's  
5 part of the record.

6 MS. LUZAICH: I indicated that I checked and they were not, not that I  
7 wouldn't check.

8 MS. ALLEN: Right. You said no –

9 MS. LUZAICH: Yeah, right just –

10 MS. ALLEN: – that they weren't given anything.

11 MS. LUZAICH: Because in the future the record might sound like I indicated  
12 no, I wouldn't check.

13 MS. ALLEN: Oh. No, no. She said she would check and what – she said  
14 that they weren't given anything other than the standard subpoena fee.

15 THE COURT: The witness fee.

16 MS. ALLEN: Right.

17 MS. LUZAICH: Correct.

18 THE COURT: Okay. Thank you.

19 THE COURT: Did we give them a sentencing date?

20 THE CLERK: Yes.

21 THE COURT: Okay.

22 THE CLERK: September 1<sup>st</sup> at 8:30.

23 THE COURT: Okay.

24 MS. LUZAICH: Thank you.

25 [Colloquy between the Court and clerk]



1 MS. LUZAICH: Did you just say September 30<sup>th</sup> or 1<sup>st</sup>?

2 MS. ALLEN: First.

3 THE CLERK: September 1<sup>st</sup>. I'm sorry.

4 MS. LUZAICH: Oh, sorry, at 8:30. Got it.

5 [Colloquy between the Court and clerk]

6 MS. ALLEN: Your Honor, if I may.

7 THE COURT: Sure, of course.

8 MS. ALLEN: The one thing I would state, Mr. Harris is concerned that the  
9 juror, that Ms. Lewis only provided one day of this. I – in my subpoena it did request  
10 a bunch. She did only provide this day, so we're not sure if there were other  
11 comments. I'm not sure if Ms. Luzaich knows about that, if there were –

12 MS. LUZAICH: For the record, she didn't provide one day. She provided the  
13 time frame that the Court ordered. The Court – when we were arguing about  
14 ordering for Facebook –

15 THE COURT: Right.

16 MS. LUZAICH: – the Court ordered the posts from, for example, the 24<sup>th</sup> to –

17 MS. ALLEN: Right.

18 MS. LUZAICH: – the 27<sup>th</sup> or whatever, and that's what she provided, the  
19 dates –

20 MS. ALLEN: Correct.

21 MS. LUZAICH: – that the Court ordered, as opposed to the other 30 days that  
22 the defense requested.

23 MS. ALLEN: And he's concerned that the other three weeks we were in trial  
24 that there could've been other posts. And so he – that's a request that he would  
25 like, is that she provide if there was anything else in that three-week time frame.

1 THE COURT: Okay, but I've already ruled on the motion.  
2 MS. ALLEN: I understand, Your Honor.  
3 MS. LUZAICH: So I would object.  
4 THE COURT: Okay. I've already ruled on the motion.  
5 THE DEFENDANT: Yeah. I talked to her before you finished, but she never  
6 mentioned it to you and then you ruled on it. So I mentioned it to her again and  
7 that's why she's speaking now. So she should've said something to you before you  
8 ruled on it, because we had talked about it before you even came in the courtroom.  
9 So it was just overlooked. I don't know if it was on purpose or it –  
10 THE COURT: Well, you know, your attorney gets to determine the strategy  
11 on how to deal with issues before the Court –  
12 THE DEFENDANT: We agreed on that –  
13 THE COURT: – not you.  
14 THE DEFENDANT: – but it didn't happen.  
15 MS. ALLEN: Your Honor, our – well, when we came into this our concern was  
16 that it was – that the – I think it was a couple of day range.  
17 THE COURT: Right.  
18 MS. ALLEN: Because the two jurors were talking back and forth.  
19 THE COURT: Right. And so that's what we limited it to and she provided the  
20 Court with what I asked her to provide.  
21 THE DEFENDANT: Right. And I was telling her that since we have that –  
22 THE COURT: And I'm not going to continue to expand this. I mean, I –  
23 THE DEFENDANT: Since we had that, then it – she was the one talking and  
24 she was denying all the other allegations and we found out later that she was  
25 posting on Facebook right along with Robert, so that showed that she was a liar just

1 like he had been lying.

2 MS. LUZAICH: Well, you know, I would object.

3 THE COURT: All right, well –

4 I mean, Ms. Allen, what's your position?

5 MS. ALLEN: Your Honor, I mean, I –

6 THE COURT: It sounds like you were –

7 MS. ALLEN: I understand my – well, clearly I understand my client's position.

8 He –

9 THE COURT: Sure.

10 MS. ALLEN: I mean he's – I – frankly, I would have concerns too that  
11 possibly she was on there posting other things. This was the first day of trial. The  
12 Court limited me to those two days because I believe that's what Ms. Luzaich  
13 requested; that it would just be limited to those two days.

14 THE DEFENDANT: [Indiscernible].

15 MS. ALLEN: So that's why I did it. I mean for a clear record for the purposes  
16 of appeal, the Court may want to get that – get those records as a – to see if she  
17 posted anything further. That – that's an open question that could potentially lead to  
18 problems later on and I just – I know. I'm just telling the Court that could lead to  
19 problems later on.

20 MS. LUZAICH: We argued about this way back when.

21 MS. ALLEN: We did.

22 MS. LUZAICH: And after considering both arguments, the Court issued the  
23 order for those, whatever the dates were, and I just threw numbers out of my head  
24 right now, but whatever those dates were.

25 MS. ALLEN: The 26<sup>th</sup> and 27<sup>th</sup>.

1 MS. LUZAICH: And this whole hearing is just getting bigger and bigger and  
2 bigger because they just keep throwing stuff out there. What if, what if, what if?  
3 You can what if yourself to death.

4 THE COURT: Right.

5 THE DEFENDANT: No. They actually told on themselves when you brought  
6 them in here, so they –

7 MS. ALLEN: And we –

8 MS. LUZAICH: Right. So they were honest and they gave up –

9 MS. ALLEN: But we –

10 MS. LUZAICH: – the information.

11 THE COURT: Yeah. They were honest.

12 THE DEFENDANT: I think he slipped it out and then he tried to swallow it.

13 THE COURT: Okay. Well, Mr. Harris, that's why you have an attorney –

14 MS. ALLEN: I –

15 THE COURT: – so she can argue on your behalf.

16 MS. ALLEN: Nothing has to be delayed further if the Court was – you know  
17 issues an order to – Mr. Bell was completely open. You can – I accessed all that  
18 myself, so I wouldn't – you don't have to bother him with that. If the Court wants to  
19 make sure, I think you can do an in – if you want an in-camera review. I don't know.  
20 She may not have anything else. I have no idea. She provided what was  
21 requested. Those were two days. You know, if she posted other things, it could  
22 open – and it's found out later, obviously, it could open a huge can of worms.

23 THE COURT: Right, but we had these witnesses here. We had an  
24 opportunity to question them.

25 MS. ALLEN: I will –

1 THE COURT: Correct?

2 MS. ALLEN: Right, but I will say this. Mr. Bell testified after Ms. Kerrigan did.  
3 So she left the room. I only found – again, I only found out about this Facebook stuff  
4 completely by chance. I don't know if you recall the sum and substance of that  
5 hearing, but he said something about –

6 THE COURT: The mutual friend.

7 MS. ALLEN: Yeah.

8 THE COURT: That's how it came up.

9 MS. ALLEN: The mutual friend commented they were both on the same jury,  
10 and I said: How would he know? And he said something about Facebook and  
11 that's –

12 THE COURT: Right.

13 MS. ALLEN: And this is what led to all of this. You know, whether or not Ms.  
14 Kerrigan-Lewis – slash Lewis posted anything further, I have no idea. It's certainly –  
15 you know that's an open question.

16 THE COURT: Okay. Well, I'm going to let the record stand as it is and the  
17 State can prepare the order.

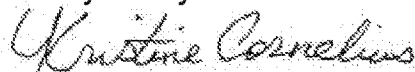
18 MS. LUZAICH: Thank you.

19 THE COURT: Thank you.

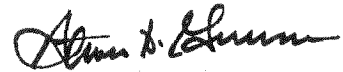
20 [Proceedings concluded at 11:14 a.m.]

21 \* \* \* \* \*

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

24 

25 KRISTINE CORNELIUS  
Court Recorder



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 1<sup>st</sup> 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.

1 Count 12, 10 to life.  
2 Count 20, 10 to life. And those will all be concurrent to each other.  
3 Count 16, the child abuse and neglect, 28 to 72.  
4 The first degree kidnapping, Count 19, 5 to life.  
5 25, five to life.  
6 28, five to life.  
7 37, five to life.  
8 The coercion, Count 23, he's going to be sentenced to 28 to 72 months.  
9 Count 24, 24 to 60 months in the Nevada Department of Corrections.  
10 As to Count 26, 20 to life.  
11 Count 29, 20 to life.  
12 Count 31, 20 to life.  
13 Count 33, 20 to life.  
14 Count 34, 20 to life.  
15 Count 35, 20 to life to run consecutive to the other counts.  
16 Count 36, 10 to life.  
17 Count 39, 10 to life.  
18 Count 40, 10 to life.  
19 Count 41, 10 to life.  
20 Count 38, 2 to life.  
21 Count 42, 24 to 60.  
22 Count 44, 18 to 48 to run consecutive to Count 42.  
23 MS. ALLEN: Which one was consecutive? I'm sorry, the last one.  
24 THE COURT: 44 consecutive to 42.  
25 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

JOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDERICK HAROLD HARRIS JR.  
aka Fredrick Harold Harris, Jr.  
#0972945

Defendant.

CASE NO. C291374-1

DEPT. NO. XII

AMENDED JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of  
COUNTS 1, 15, 16, 17 & 18 – CHILD ABUSE, NEGLECT OR ENDANGERMENT  
(Category B Felony) in violation of NRS 200.508; COUNTS 2, 3, 6, 8, 9, 10, 11, 13, 14,  
21 & 22 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE  
(Category A Felony) in violation of NRS 200.364, 200.366; COUNTS 4, 5, 7, 12 & 20 –  
LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation  
of NRS 201.230; COUNTS 19, 25, 28 & 37 – FIRST DEGREE KIDNAPPING

//

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1 (Category A Felony) in violation of NRS 200.310, 200.320; COUNT 23 – COERCION  
2 (SEXUALLY MOTIVATED) (Category B Felony) in violation of NRS 207.190; COUNTS  
3 24 & 27 – ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A  
4 CRIME (Category B Felony) in violation of NRS 200.405; COUNTS 26, 29, 30, 31, 32,  
5 33, 34 & 35 – SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE  
6 (Category A Felony) in violation of NRS 200.364, 200.366; COUNTS 36, 39, 40, 41 &  
7 43 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366;  
8 COUNT 38 – BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A  
9 Felony) in violation of NRS 200.400; COUNT 42 – PANDERING (Category C Felony) in  
10 violation of NRS 201.300; COUNT 44 – LIVING FROM THE EARNINGS OF A  
11 PROSTITUTE (Category D Felony) in violation of NRS 201.320; COUNT 45 –  
12 BATTERY BY STRANGULATION (Category C Felony) in violation of NRS 200.481, and  
13 the matter having been tried before a jury and the Defendant having been found guilty  
14 of the crimes of COUNTS 2, 3, 6, 8, 9, 10, 11, 13, 14, 21 & 22 – SEXUAL ASSAULT  
15 WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony) in  
16 violation of NRS 200.364, 200.366; COUNTS 4, 5, 7, 12 & 20 – LEWDNESS WITH A  
17 CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230;  
18 COUNT 16 – CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony) in  
19 violation of NRS 200.508); COUNTS 19, 25, 28 & 37 – FIRST DEGREE KIDNAPPING  
20 (Category A Felony) in violation of NRS 200.310, 200.320; COUNT 23 – COERCION  
21 (SEXUALLY MOTIVATED) (Category B Felony) in violation of NRS 207.190; COUNT  
22 24 – ADMINISTRATION OF A DRUG TO AID IN THE COMMISSION OF A CRIME  
23  
24  
25  
26  
27  
28 //

1 (Category B Felony) in violation of NRS 200.405; COUNTS 26, 29, 31, 33, 34 & 35 –  
2 SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (Category A  
3 Felony) in violation of NRS 200.364, 200.366; COUNTS 36, 39, 40 & 41 – SEXUAL  
4 ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; COUNT 38 –  
5 BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A Felony) in  
6 violation of NRS 200.400; COUNT 42 – PANDERING (Category C Felony) in violation  
7 of NRS 201.300, and COUNT 44 – LIVING FROM THE EARNINGS OF A  
8 PROSTITUTE (Category D Felony) in violation of NRS 201.320; thereafter, on the 27<sup>th</sup>  
9 day of October, 2015, the Defendant was present in court for sentencing with his  
10 counsel, BETSY ALLEN, ESQ., and good cause appearing,  
11

12 THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offense(s) and, in  
13 addition to the \$25.00 Administrative Assessment Fee, and a \$150.00 DNA Analysis  
14 Fee including testing to determine genetic markers, plus a \$3.00 DNA Collection Fee,  
15 the Defendant was sentenced to the Nevada Department of Corrections (NDC) as  
16 follows: AS TO **COUNT 2** - TO LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE  
17 (35) YEARS; AS TO **COUNT 3** - TO LIFE with a MINIMUM Parole Eligibility of THIRTY-  
18 FIVE (35) YEARS; AS TO **COUNT 4** - TO LIFE with a MINIMUM Parole Eligibility of  
19 TEN (10) YEARS; AS TO **COUNT 5** – TO LIFE with a MINIMUM Parole Eligibility of  
20 TEN (10) YEARS; AS TO **COUNT 6** - TO LIFE with a MINIMUM Parole Eligibility of  
21 THIRTY-FIVE (35) YEARS; AS TO **COUNT 7** - TO LIFE with a MINIMUM Parole  
22 Eligibility of TEN (10) YEARS; AS TO **COUNT 8** - TO LIFE with a MINIMUM Parole  
23 Eligibility of THIRTY-FIVE (35) YEARS; AS TO **COUNT 9** - TO LIFE with a MINIMUM  
24

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28

1 Parole Eligibility of THIRTY-FIVE (35) YEARS; AS TO **COUNT 10** – TO LIFE with a  
2 MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS; AS TO **COUNT 11** - TO LIFE  
3 with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS; AS TO **COUNT 12** –  
4 TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 13** –  
5 TO LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS; AS TO  
6 **COUNT 14** – TO LIFE with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) YEARS;  
7 AS TO **COUNT 16** – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a  
8 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, Count 16 to run  
9 CONCURRENT with all other counts; AS TO **COUNT 19** – TO LIFE with a MINIMUM  
10 Parole Eligibility of FIVE (5) YEARS; AS TO **COUNT 20** – TO LIFE with a MINIMUM  
11 Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 21** – TO LIFE with a MINIMUM  
12 Parole Eligibility of TWENTY (20) YEARS; AS TO **COUNT 22** – TO LIFE with a  
13 MINIMUM Parole Eligibility of TWENTY (20) YEARS, Count 22 to run CONSECUTIVE  
14 to Count 21; AS TO **COUNT 23** – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS  
15 with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, Count 23 to run  
16 CONCURRENT with all other counts; AS TO **COUNT 24** – TO A MAXIMUM of SIXTY  
17 (60) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS,  
18 Count 24 to run CONCURRENT with all other counts; AS TO **COUNT 25** – TO LIFE  
19 with a MINIMUM Parole Eligibility of FIVE (5) YEARS; AS TO **COUNT 26** – TO LIFE  
20 with a MINIMUM Parole Eligibility of TWENTY (20) YEARS; AS TO **COUNT 28** – TO  
21 LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS; AS TO **COUNT 29** – TO  
22 LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS; AS TO **COUNT**  
23 **31** – TO LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS; AS TO  
24  
25  
26  
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1 **COUNT 33** – TO LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS; AS  
2 TO **COUNT 34** – TO LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS;  
3 AS TO **COUNT 35** – TO LIFE with a MINIMUM Parole Eligibility of TWENTY (20)  
4 YEARS, Count 35 to run CONSECUTIVE to **ALL** other Counts; AS TO **COUNT 36** –  
5 TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 37** –  
6 TO LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS; AS TO **COUNT 38** –  
7 TO LIFE with a MINIMUM Parole Eligibility of TWO (2) YEARS; AS TO **COUNT 39** –  
8 TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 40** –  
9 TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 41** –  
10 TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; AS TO **COUNT 42** –  
11 TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of  
12 TWENTY-FOUR (24) MONTHS, Count 42 to run CONCURRENT with all other counts;  
13 and AS TO **COUNT 44** – TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a  
14 MINIMUM Parole Eligibility of EIGHTEEN (18) MONTHS, Count 44 to run  
15 CONSECUTIVE to Count 42; with NINE HUNDRED SEVENTY-NINE (979) DAYS credit  
16 for time served. ALL LIFE SENTENCES to run CONCURRENT with each other.  
17 Defendant was found **NOT GUILTY** on **COUNTS - 1, 15, 17, 18, 27, 30, 32, 43 and**  
18 **45**. COURT ORDERED, NOT GUILTY COUNTS are DISMISSED. Defendant's  
19 AGGREGATE TOTAL SENTENCE is LIFE with a MINIMUM sentence of NINE  
20 HUNDRED EIGHTEEN (918) MONTHS.

21  
22  
23  
24  
25 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
26 is imposed to commence upon release from any term of imprisonment, probation or  
27 parole. In addition, before the Defendant is eligible for parole, a panel consisting of the  
28

1 Administrator of the Mental Health and Development Services of the Department of  
2 Human Resources or his designee; the Director of the Department of Corrections or his  
3 designee; and a psychologist licensed to practice in this state; or a psychiatrist licensed  
4 to practice medicine in Nevada must certify that the Defendant does not represent a  
5 high risk to re-offend based on current accepted standards of assessment.  
6

7 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in  
8 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release  
9 from custody.  
10

11 THEREAFTER, on the 8<sup>th</sup> day of November, 2016, pursuant to a request from  
12 the Nevada Department of Corrections for clarification regarding required aggregate  
13 terms of imprisonment, COURT ORDERED, Defendant's AGGREGATE TOTAL  
14 SENTENCE is LIFE with a MINIMUM of SEVEN HUNDRED TWENTY (720) MONTHS.  
15  
16  
17

18 DATED this 9 day of November, 2016.

19  
20  
21   
22 MICHELLE LEAVITT  
23 DISTRICT JUDGE  
24  
25  
26  
27  
28

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 69093

**FILED**

MAY 24 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Frederick Harold Harris, Jr., appeals from a judgment of conviction, pursuant to a jury verdict, of 36 counts consisting of sexual assault with a minor under 14 years of age; lewdness with a child under the age of 14; child abuse, neglect, or endangerment; first degree kidnapping; coercion; administration of a drug to aid in the commission of a crime; sexual assault with a minor under 16 years of age; sexual assault; battery with intent to commit sexual assault; pandering; and living from the earnings of a prostitute. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Harris was convicted for physically and sexually abusing several children in the same family.<sup>1</sup> On appeal, Harris asserts (1) the district court improperly limited his cross-examination regarding a book authored by the mother of the children, (2) the district court improperly allowed the State to introduce testimonial hearsay statements into evidence, (3) the district court improperly prevented Harris from inquiring into one of the children's past sexual history, (4) Harris' kidnapping charges were incidental to other charges, (5) Harris is entitled to a new trial based on juror misconduct, (6) there is insufficient evidence to

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.





support Harris' convictions, and (7) cumulative error warrants reversal in this case.

After careful consideration, we conclude the majority of Harris' arguments lack merit.<sup>2</sup> We agree, however, the district court erred in two aspects, but we disagree that these errors warrant reversal.

First, we agree that the district court improperly limited Harris' ability to cross-examine the mother of the children regarding the title of a book she wrote.<sup>3</sup> Though the extent of cross-examination is generally within the sound discretion of the trial court, when the examiner seeks to show bias "[t]he only proper restriction should be those inquiries which are repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness." *Bushnell v. State*, 95 Nev. 570, 572-73, 599 P.2d 1038, 1039-40 (1979). Relevant evidence "means evidence having any tendency to make the existence of any fact that is of

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<sup>2</sup>NRS 50.090 prevented Harris from presenting evidence of the oldest victim's past sexual conduct unless the prosecutor presented evidence or the victim testified regarding such conduct, neither of which happened here. Further, while Harris generally asserts that the kidnapping charges are incidental to other charges against him, he fails to cogently argue this issue, and we therefore need not consider it. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The district court did not abuse its discretion by denying the motion for a new trial for juror misconduct, as any misconduct did not prejudice Harris. See *Meyer v. State*, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003) (setting forth the standard of review). And finally, as each victim testified about Harris' conduct, sufficient evidence supports the verdict. See *Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007) (the victim's testimony alone is sufficient to uphold a conviction).

<sup>3</sup>But, the district court did not err in its handling of the mother's unfinished book. Harris was permitted to ask her whether the book had any relation to the trial, and she responded that it did not.

consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015.

The mother of the children authored a book titled *Secret Revenge*. The book’s plot involves a rape victim who murders her rapist. The district court ruled that the book’s title was too prejudicial, but allowed questioning regarding its contents. We conclude that the district court erred in this regard as the title of the book is relevant and more probative than prejudicial in showing possible bias on the part of the witness under these facts. But, because Harris was allowed to cross-examine the mother regarding the book’s contents and the mother denied that the book had anything to do with Harris, the error was harmless. See *Lobato v. State*, 120 Nev. 512, 521, 96 P.3d 765, 772 (2004) (“[A]ny error that does not affect a defendant’s substantial rights shall be disregarded”).

We also agree with Harris that the district court improperly allowed the State to present testimonial hearsay at trial. Testimonial hearsay of a non-testifying witness is generally inadmissible unless the witness is unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). A statement is testimonial if it “would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Flores v. State*, 121 Nev. 706, 719, 120 P.3d 1170, 1178-79 (2005) (quoting *Crawford*, 541 U.S. at 52 (2004)). Hearsay is an out-of-court statement “offered in evidence to prove the truth of the matter asserted.” NRS 51.035.

Here, the district court erred by allowing a detective to testify regarding a statement made by Harris’ girlfriend during a 2012 police

investigation.<sup>4</sup> Harris' girlfriend's statement to the detective was clearly testimonial, as it was made in the course of a police investigation and could be expected to be used in trial, therefore its admission violated the Confrontation Clause. Furthermore, the State probably introduced the statement to prove the truth of the matter asserted—that two children disclosed sexual abuse to Harris' girlfriend. In fact, the State admitted that this testimony was hearsay, but argued that the statement was admissible because it was made against Harris' girlfriend's penal interest.

The hearsay exception against penal interest is inapplicable because Harris' girlfriend was available as a witness for trial, but she didn't testify. *See* NRS 51.345. But, by the time the detective testified towards the end of the State's case-in-chief, three witnesses had already testified to the same statement. Therefore, although the district court's error allowing the admission of testimonial hearsay violated the Confrontation Clause and is of constitutional dimension, we conclude "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," and, therefore, the error was harmless under these circumstances. *See Medina v. State*, 122 Nev. 346, 355, 143 P.3d 471,

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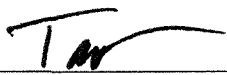
<sup>4</sup>But, the district court did not err by allowing a doctor to testify regarding the girlfriend's statements made during a medical examination of a minor child. Because the girlfriend, the minor child's guardian at the time, made the statement to obtain a medical diagnosis for the child and not as part of a police investigation, the statement was non-testimonial and fell under the hearsay exception in NRS 51.115. *See Chavez v. State*, 125 Nev. 328, 342-43, 213 P.3d 476, 486-87 (2009). *See also United States v. Yazzie*, 59 F.3d 807, 813 (9th Cir. 1995) ("In most circumstances, we believe that statements to a doctor by a parent of an injured child could easily qualify as a statement for the purpose of obtaining a proper medical diagnosis.").

476-77 (2006) (stating confrontation clause issues are subject to harmless error analysis and holding reversal is not required if the error is harmless beyond a reasonable doubt) (internal quotations and citation omitted).

In light of the overwhelming evidence against Harris and relatively minor errors by the district court, we are also not persuaded cumulative error applies. *See Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008) (in reviewing for cumulative error, we consider “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” (internal quotations and citation omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michelle Leavitt, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 69093  
District Court Case No. C291374

**FILED**

NOV 28 2017

*Elizabeth A. Brown*  
CLERK OF COURT

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 24th day of May, 2017.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing denied."

Judgment, as quoted above, entered this 25th day of August, 2017.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Review denied."

Judgment, as quoted above, entered this 23rd day of October, 2017.

C-13-291374-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4700398



IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
November 21, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll  
Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 69093  
District Court Case No. C291374

**FILED**

DEC 07 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: November 21, 2017

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll  
Chief Deputy Clerk

cc (without enclosures):

Hon. Michelle Leavitt, District Judge  
Christopher R. Oram  
Clark County District Attorney ✓  
Attorney General/Carson City

**RECEIPT FOR REMITTITUR**

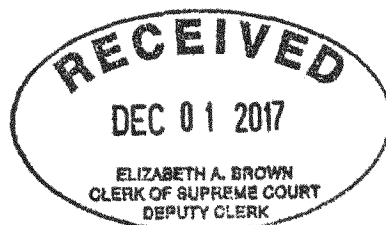
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on NOV 28 2017.

*[Signature: Heather Ingersoll]*  
Deputy District Court Clerk

RECEIVED  
APPEALS

NOV 28 2017

CLERK OF THE COURT



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

**Supreme Court No. 69093**  
District Court Case No. C291374

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 24th day of May, 2017.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing denied."

Judgment, as quoted above, entered this 25th day of August, 2017.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Review denied."

Judgment, as quoted above, entered this 23rd day of October, 2017.



IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
November 21, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll  
Chief Deputy Clerk



014  
CHRISTOPHER R. ORAM, ESQ.  
Nevada Bar #004349  
520 S. Fourth Street, 2nd Floor  
Las Vegas, Nevada 89101  
(702) 384-5563

Attorney for Petitioner  
FREDERICK HARRIS

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

FREDERICK HARRIS,  
Petitioner,

vs.

THE STATE OF NEVADA,  
Respondent.

CASE NO. A-18-784704-W  
DEPT. NO. 12

**PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)**

DATE OF HEARING:  
TIME OF HEARING:

1. Name of institution and county in which you are being presently imprisoned or here and how you are presently restrained of your liberty: Lovelock Correctional Center, Lovelock, Nevada.

2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County, Nevada.

3. Date of Judgment of Conviction: November 2, 2015

4. Case number: C-13-291374-1

(a) Length of sentence: (b) If sentence is death, state any date upon which execution is scheduled: Mr. Harris' total aggregate sentence is life with the possibility of parole after 918 months

6. Are you presently serving a sentence for a conviction other than the conviction

1 under attack in this motion?

2 Yes \_\_\_\_\_ No  X

3 If "yes" list crime, case number and sentence being served at this time:

4 7. Nature of offense involved in conviction being challenged: On April 15, 2014,  
5 Mr. Harris was found guilty of: Eleven counts of Sexual Assault with a Minor Under Fourteen  
6 Years of Age; five counts of Lewdness with a Child Under the Age of 14; six counts of Sexual  
7 Assault with a Minor Under Sixteen Years of Age; four counts of Sexual Assault; four counts of  
8 First Degree Kidnapping; one count of Administration of a Drug to Aid in the Commission of a  
9 Crime; one count of Coercion; one count of Battery with Intent to Commit Sexual Assault; one  
10 count of Child Abuse, Neglect, or Endangerment; one count of Pandering; and one count of  
11 Living from the Earnings of a Prostitute. Mr. Harris was found not guilty of two counts of Sexual  
12 Assault with a Minor Under Sixteen Years of Age; one count of Sexual Assault; one count of  
13 Administration of a Drug to Aid in the Commission of a Crime; four counts of Child Abuse,  
14 Neglect, or Endangerment; and one count of Battery by Strangulation.

15 8. What was your plea? (Check one)

16 (a) Not guilty  X

17 (b) Guilty \_\_\_\_\_

18 (c) Guilty but mentally ill \_\_\_\_\_

19 (d) Nolo contendere \_\_\_\_\_

20 9. If you entered a plea of guilty or guilty but mentally ill to one count of an  
21 indictment or information, and a plea of not guilty to another count of an indictment or  
22 information, or if a plea of guilty but mentally ill was negotiated, give details: N/A

23 10. If you were found guilty after a plea of not guilty was the finding made by:  
24 N/A

25 (check one)

26 (a) Jury  X

27 (b) Judge without a jury \_\_\_\_\_

28 11. Did you testify at the trial? Yes \_\_\_\_\_ No  X

- 1 12. Did you appeal from the judgment of conviction?  
2 Yes  X  No
- 3 13. If you did appeal, answer the following: N/A  
4 (a) Name of court: Nevada Supreme Court/Court of Appeals  
5 (b) Case number or citation: 69093  
6 (c) Result: Order of Affirmance  
7 (d) Date of result: May 24, 2017
- 8 14. If you did not appeal, explain briefly why you did not: N/A.
- 9 15. Other than a direct appeal from a judgment of conviction and sentence, have you  
10 previously filed any petitions, applications or motions with respect to this judgment in any court,  
11 state or federal? Yes   No  X
- 12 16. (a) (1) Name of court: N/A  
13 (2) Nature of proceedings:  
14 (3) Grounds raised:  
15 (4) Did you receive an evidentiary hearing on your petition, application or  
16 motion?  
17 (5) Result:  
18 (6) Date of result:  
19 (7) If known, citations of any written opinion or date of orders entered  
20 pursuant to such result:
- 21 (b) as to any second petition, application or motion, give the same information:  
22 (1) Name of court:    
23 (2) Nature of proceeding:    
24 (3) Grounds raised:    
25 (4) Did you receive an evidentiary hearing on your petition, application, or  
26 motion?  
27 (5) Result:    
28 (6) Date of Result:

1 (7) If known, citations of any written opinion or date of orders entered  
2 pursuant to such result:

3 (b) as to any second petition, application or motion, give the same  
4 information:

5 (1) Name of court: \_\_\_\_\_

6 (2) Nature of proceeding: \_\_\_\_\_

7 (3) Grounds raised: \_\_\_\_\_

8 (4) Did you receive an evidentiary hearing on your petition, application or  
9 motion? \_\_\_\_\_

10 (5) Result: \_\_\_\_\_

11 (6) Date of Result: \_\_\_\_\_

12 (7) If known, citations of any written opinion or date of orders entered  
13 pursuant to such result:

14 \_\_\_\_\_

15 (c) As to any third or subsequent additional applications or motions, give the  
16 same information above, list them on a separate sheet of paper and attach. N/A

17 (d) Did you appeal to the highest state or federal court having jurisdiction, the  
18 result or action taken on any petition, application or motion? N/A

19 (1) First petition, application or motion?

20 Yes \_\_\_\_\_ No \_\_\_\_\_

21 (2) Second petition, application or motion?

22 Yes \_\_\_\_\_ No \_\_\_\_\_

23 (3) Third or subsequent petitions, application or motions?

24 Yes \_\_\_\_\_ No \_\_\_\_\_

25 Citation or date of decision: \_\_\_\_\_

26 (e) If you did not appeal from the adverse action on any petition, application  
27 or motion, explain briefly why you did not. (You must relate specific facts in response to this  
28 question. Your response may be included on paper which is 8 ½ by 11 inches attached to the

1 petition. Your response may not exceed five handwritten or typewritten page in length.)  
2

3 17. Has any ground being raised in this petition been previously presented to this or  
4 any other court by way of petition for habeas corpus, motion, application or any other post-  
5 conviction proceeding? If so, identify: No

6 18. If any of the grounds listed in No. 23(a), (b), (c) and (d), or listed  
7 on any additional pages you have attached, were not previously presented in any other court, state  
8 or federal briefly what grounds were not so presented, and give your reasons for not presenting  
9 them. (You must relate specific facts in response to this question. Your response may be  
10 included in on paper which is 8 ½ by 11 inches attached to the petition. Your response may not  
11 exceed five typewritten pages in length.) N/A

12 19. Are you filing this petition more than 1 year following the filing of the judgement  
13 of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for delay.  
14 (You must relate specific facts in response to this question. Your response may be included on  
15 paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five  
16 handwritten or typewritten pages in length.) No. This Petition is timely filed.

17 20. Do you have any petition or appeal now pending in any court, either state or  
18 federal, as to the judgement under attack? Yes \_\_\_\_\_ No X

19 21. Give the name of each attorney who represented you in the proceeding resulting  
20 in your conviction and on direct appeal: At trial: Betsy Allen On Appeal: Christopher R. Oram

21 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
22 judgement under attack.

23 Yes \_\_\_\_\_ No X

24 If yes, specify where and when it is to be served, if you know:

25 23. State concisely every ground on which you claim that you are being held  
26 unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach  
27 pages stating additional grounds and facts supporting the same.

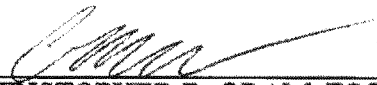
28 (a) This bare bones Petition has been filed for the purposes of stopping the one year

1 time limitation since issuance of the Judgment of Conviction. The Petition in this case is due  
2 November 20, 2018. Thus, Petitioner would respectfully raise issues as they become necessary.  
3 Mr. Harris contends he received ineffective assistance of trial counsel for failure to conduct an  
4 adequate investigation. Additionally, Petitioner would respectfully request this Court allow the  
5 undersigned to supplement this petition by setting a supplemental briefing schedule. See State of  
6 Nevada v. Kitrich Powell, 122 Nev. 751, 138 P.3d 453 (2006).

7 Wherefore, Petitioner prays that this Honorable Court allow the undersigned to  
8 Supplement this Petition as necessary.

9 DATED this 16 day of November, 2018.

10 Respectfully submitted

11   
12 CHRISTOPHER R. ORAM, ESQ.  
13 Nevada Bar #004349  
14 520 S. Fourth Street, 2nd Floor  
15 Las Vegas, Nevada 89101  
16 (702) 384-5563

17 Attorney for Petitioner  
18 FREDERICK HARRIS  
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**CERTIFICATE OF SERVICE**

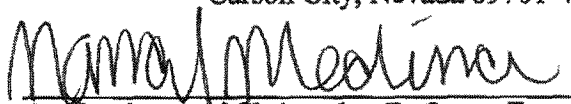
I hereby certify that on the 16 day of November 2018 I served a true and correct copy of the foregoing document entitled **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to the Clark County District Attorney's Office by sending a copy via electronic mail to:

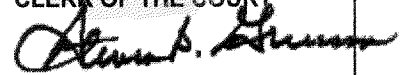
CLARK COUNTY DISTRICT ATTORNEY  
motions@clarkcountyda.com

I, an employee of the Law Office of Christopher R. Oram, Esq., hereby certify that on this 16 day of November, 2018, I did deposit in the United States Post Office at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the above and foregoing **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**, addressed to the following:

Warden, Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Adam Paul Laxalt  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4717

  
An Employee of Christopher R. Oram, Esq.



1 SPA  
2 TERRENCE M. JACKSON, ESQ.  
3 Nevada Bar No. 00854  
4 Law Office of Terrence M. Jackson  
5 624 South Ninth Street  
6 Las Vegas, NV 89101  
7 T: 702-386-0001 / F: 702-386-0085  
8 Terry.jackson.esq@gmail.com

9 *Counsel for Frederick H. Harris*

10  
11 IN THE EIGHTH JUDICIAL DISTRICT COURT  
12 CLARK COUNTY, NEVADA  
13  
14

15 FREDERICK H. HARRIS,  
16 ID# 1149356

17 Petitioner,

18 v.

19 STATE OF NEVADA,

20 Respondent.

) District Court Case No.: A-18-784704-W

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

) Dept. XII

21  
22 **SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF**  
23 **WRIT OF HABEAS CORPUS FOR POST CONVICTION RELIEF**  
24

25 COMES NOW the Petitioner/Defendant, FREDERICK H. HARRIS, by and through his  
26 attorney, TERRENCE M. JACKSON, ESQ., and moves this court to enter an Order granting his  
27 Petition and Supplemental Points and Authorities in support of Defendant's Petition for Post  
28 Conviction Relief on the grounds that both his trial and appellate counsel were ineffective and  
Defendant was prejudiced thereby.

Defendant alleges as grounds for this petition that his conviction was unlawful in the  
following respects:

...

...

- 1 **I. Defense counsel was ineffective pretrial because they did not do the necessary**  
2 **pretrial investigation or preparation;**
- 3 **II. Defense counsel was ineffective during the jury selection process;**  
4  
5 A. Counsel failed to file a necessary pretrial motion for sequestered individual voir dire;  
6 B. Counsel failed to retain a jury selection expert;
- 7 **III. Defense counsel failed to file necessary and meritorious pretrial motions;**  
8  
9 A. Defense counsel was ineffective for failing to file a motion for a defense psychiatric  
10 examination of the alleged victim(s);  
11 B. Defense counsel was ineffective for failing to file a Motion in Limine or Trial brief  
12 opposing the State's limitation of cross-examination of key witnesses for bias;
- 13 **IV. Defense counsel was an ineffective advocate during trial;**  
14  
15 A. Defense counsel was ineffective impeaching key witnesses with their priors inconsistent  
16 statements;  
17 B. Defense counsel was ineffective by not properly responding to improper prosecutorial  
18 misconduct;  
19 C. Defense counsel was ineffective in closing argument;
- 20  
21 **V. Defense counsel was an ineffective advocate at sentencing which resulted in a cruel and**  
22 **unusual sentence in violation of the Eighth Amendment;**
- 23 **VI. Defense counsel was an ineffective advocate preparing and arguing the Motion for New**  
24 **Trial;**
- 25  
26 **VII. Defense counsel was ineffective on Appeal;**
- 27 **VIII. The cumulative error by defense counsel requires reversal of this conviction.**  
28

1           Wherefore, Petitioner/Defendant prays this Honorable Court enter an Order directing the  
2 Clerk of the Court issue a Writ of Habeas Corpus directed at Renee Baker, Warden of Lovelock  
3 Correctional Center commanding Warden Baker to bring the above named Petitioner/Defendant  
4 before the court, and return cause of his imprisonment.  
5

6           DATED this 4th day of November, 2019.  
7

8                               Respectfully submitted,  
9

10                           /s/ Terrence M. Jackson

11                           TERRENCE M. JACKSON, ESQUIRE

12                           Nevada State Bar 000854

13                           624 South 9th Street

14                           Las Vegas, Nevada 89101

15                           T: (702) 386-0001 / F: (702) 386-0085

16                           Terry.jackson.esq@gmail.com

17                           Counsel for Petitioner/Defendant, *FREDERICK H. HARRIS*  
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