

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CAMERON THOMAS, Petitioner

v.

THE STATE OF NEVADA, Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the State of Nevada

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court committed error when it failed to address Thomas' contention that his right to fundamental fairness was violated when the trial court fabricated a story to be told to the jury, when the truth was his intended theory of defense in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

LIST OF RELATED PROCEEDINGS

As far as Mr. Thomas is aware, there are no related proceedings to the instant case.

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I.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Cameron Thomas respectfully petitions for a Writ of Certiorari from the Supreme Court of Nevada from the Order Affirming in Part, Reversing in Part, and Remanding, in *Cameron Thomas v. State of Nevada*, No. 71044 (Nev. S. Ct. 01/04/2019).

II.

PARTIES TO THE PROCEEDING

All parties to the case are named in the caption.

III.

OPINIONS BELOW

The Nevada Supreme Court affirmed Mr. Thomas' conviction in part and reversed in part (affirming all but two counts). The Order Affirming in Part, Reversing in Part, and Remanding, is not published and is reproduced in the Appendix at App. A p. 1-11.

IV.

JURISDICTION

The Nevada Supreme Court entered its Order Affirming in Part, Reversing in Part, and Remanding, on January 4, 2019 (App. A p. 1-11). This Court has

jurisdiction pursuant to 28 U.S.C. § 1257(a).

V.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part:

No person shall . . . be deprived of life, liberty or property without due process of law. . .

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VI.

STATEMENT OF THE CASE

Mr. Thomas was charged with and pled not guilty to six counts of sexual assault with a minor under fourteen years of age; fifteen counts of lewdness with a child under the age of fourteen; and two counts of attempt lewdness with a child

under the age of fourteen.¹ Mr. Thomas' jury trial began on May 16, 2016 and on June 7, 2016, the jury returned with the following verdict: Guilty of counts 1, 5, and 11 (sexual assault with a minor under fourteen years of age); Guilty of counts 2, 6, 8, 12, 13, 16-18 (lewdness with a child under the age of fourteen); Guilty of counts 10, 15 (attempt lewdness with a child under the age of fourteen); and Not Guilty of counts 3-4, 7, 9, 14, 19-23).

Mr. Thomas was sentenced on August 5, 2016, to an aggregate sentence of a maximum of life with a minimum of forty years. The Judgment of Conviction was filed on August 12, 2016. A timely Notice of Appeal was filed August 10, 2016. The Order Affirming in Part, Reversing in Part and Remanding was filed on January 4, 2019 (App. A p. 1-11). A Petition for Rehearing was filed on January 28, 2019, and thereafter denied on February 20, 2019 (App. E p. 224-229). A Petition for En Banc Reconsideration was filed on March 14, 2019 (App. F p. 230-237). The Nevada Supreme Court directed the State to Answer the En Banc Petition on May 14, 2019 (App. F p. 238). After the State filed an Answer, the Petition was denied on June 13, 2019, with Justice Silver dissenting (App. F p. 239-246).

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¹ The allegations in this case surround four different victims: A.D., Z.F., S.M., and M.A.S. However, detailed facts are only provided as necessary to understand the context of the argument contained within the Petition.

VII.

STATEMENT OF THE FACTS

A. FACTS ADDUCED FROM THE NRS 51.385 EVIDENTIARY HEARING

On May 20, 2016, the district court held an evidentiary hearing pursuant to NRS 51.385 (admissibility of child testimony). April Reed is the mother of Z.F. (App. H p. 509-510). In December of 2010, April learned from Arizona authorities (Child Protective Services “CPS”) that Z.F. claimed to be the victim of sexual abuse (App. H p. 510-511). This was the first time April became aware of the allegations (App. H p. 511). April then contacted her fiancé (who Z.F. refers to as “Mommy Kay”) (App. H p. 512). Later that day, April had a conversation with Z.F. in her bedroom (App. H p. 515). Kay was also present during the conversation (App. H p. 516). April then asked Z.F. if Cameron had been touching her inappropriately (App. H p. 517). Z.F. began crying and affirmed the allegation (App. H p. 517). Z.F. told April that Cameron had touched her private area and that he had put his mouth on her vagina (App. H p. 517).

On December 9, 2010, Ms. Amanda Rand, an elementary school teacher, had a conversation with Z.F. at the school (App. K p. 1290). Z.F. relayed that she had been sexually abused by Cameron Thomas (App. K p. 1293). On cross-examination, defense counsel was advised not to violate the courts order by

questioning Ms. Rand about the real reason she was questioning Z.F. The real reason Ms. Rand was questioning Z.F. was because Z.F was suffering physical abuse at the hands of her mother, April. In fact, Ms. Rand talked to Z.F based upon another report, which the jury was never permitted to learn (App. K p. 1296). However, Z.F turned the allegations against Cameron Thomas (App. K p. 1297-1298).

Interestingly enough, Z.F claimed the reason why Cameron Thomas came up in the discussion with Ms. Rand was because Cameron Thomas was her godfather. The conversation about Cameron Thomas came up towards the end of the discussion (App. G p. 260-261). It was April Reed who was the target of the investigation due to her child abuse (App. G p.264). April had allegedly whipped Z.F. with an electrical cord (App. G p. 264). Ms. Rand explained that after she was finished questioning Z.F. about the physical abuse at the hands of her mother, Z.F. turned the conversation to Cameron Thomas (App. G p. 264).

Officer Sink traveled to Madison Rose Elementary School to interview Z.F (App. G p. 286). Officer Sink then described his conversation with Z.F where she disclosed the allegations against Cameron Thomas (App. G p. 288).

B. FACTS ADDUCED FROM TRIAL

At the time of trial, A.P. attended eleventh grade and was 17 years old (App.

H p. 660). A.P. was raised by her mother April and her mother's lesbian partner, Kay (App. H p. 661-662). At one point, A.P. began attending Kids "R" Kids when she was six or seven years old (App. H p. 670). When she began attending Kids "R" Kids, April, Kay and Cameron Thomas all worked at the day care (App. H p. 670).

When A.P. was six or seven years old, A.P. spent the night at the defendant's house (App. H p. 680). A.P. described sexual acts that allegedly occurred with Cameron Thomas (App. H p. 682-726). A.P. testified that there were multiple children on or around the bed at the time this occurred (App. H p. 689-690).

At one point, A.P. became aware that her mothers and Cameron had a dispute which caused them to move out of Cameron's house (this is before the disclosure occurred) (App. I p. 898).

A.P. admitted that she would get in trouble a lot and that she was fearful to make her mother angry (App. I p. 990).

At the time of her trial testimony, Z.F. was fifteen years old having been born May 17, 2001 (App. I p. 1011). Z.F. was approximately four or five years old when she began attending Kids "R" Kids (App. I p. 1013). Z.F. described several sexual acts allegedly performed by Cameron Thomas (App. I p. 1023-1053).

Z.F. was getting in trouble right at the time she first revealed the allegations to Ms. Halpern (App. J p. 1128-1129). Z.F. also admitted that she got in trouble for lying and stealing before she disclosed the allegations (App. J p. 1137). In fact, Z.F. described her conduct as “lying all the time ” (App. J p. 1138).

Z.F. testified that her mother April was very upset with the Thomas family during this time period (App. J p. 1131). Additionally, Z.F. explained that both April and Kay told her that she could not talk to Cameron (App. J p. 1132). They also told her that she would not be able to see Cameron anymore (App. J p. 1132).

April Reed is the mother of both A.P. and Z.F. (App. J p. 1162-1164). April’s significant other is Kay (Koshonda Williams) (App. J p. 1163). April was a teacher at Kids “R” Kids for approximately two years, between 2005 and 2007 (App. J p. 1166). Kay began working shortly thereafter (App. J p. 1166). Kay and Cameron were best friends during this time period (App. J p. 1169).

April, Kay and their children became very close with Mr. Thomas and his family (App. J p. 1170). The two families would socialize on a regular basis (App. J p. 1170). Cameron was considered the godfather of April’s daughter (App. J p. 1171). Cameron treated the girls very nicely (App. J p. 1172).

In order to assist April and Kay, Cameron was generous enough to obtain a loan so that April and Kay would have funds to relieve the financial distress (App.

J p. 1182). At Christmas time, Cameron and April were involved in a heated discussion; April speculated this was because of the loan (App. J p. 1185). April admitted she told her children that they would not be able to speak to or see the defendant (App. J p. 1186).

April admitted that at the time that she and Kay defaulted on the loan from Cameron, Kay had a gambling problem (App. J p. 1229-1232). Kay began to lie to April about the finances (App. J p. 1232). These lies impacted the family (App. J p. 1232).

During the argument with Cameron, he referred to April as an unfit mother (App. J p. 1237). Cameron also told her during the argument that he felt that she and her family had taken advantage of him (App. J p. 1237).

Cameron Thomas testified on his own behalf (App. M p. 1736-1737). Mr. Thomas was adamant that he had never inappropriately touched the children (App. M p. 1792-1794).

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VIII.

REASONS WHY THE WRIT SHOULD ISSUE

A. **THE NEVADA SUPREME COURT COMMITTED ERROR WHEN IT FAILED TO ADDRESS THOMAS' CONTENTION THAT HIS RIGHT TO FUNDAMENTAL FAIRNESS WAS VIOLATED WHEN HE WAS PROHIBITED FROM PRESENTING HIS THEORY OF DEFENSE IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

In this case, Mr. Thomas was subjected to a fundamentally unfair trial as a result of the district court repeatedly refusing to permit him to present his only valid theory of defense. Mr. Thomas' desired theory of defense was simply to let the truth unfold in front of the jury and argue that the truth proved the necessary bias to explain the non-spontaneous allegations by Z.F. Unfortunately for Mr. Thomas, the State and the district court created a scenario which gave the appearance that Z.F.'s revelations were spontaneous. Then, throughout the case and during closing argument, the State, with unbelievable repetition, used this scenario to continuously argue facts that are belied by the truth of the case.

1. **THE THEORY OF DEFENSE MR. THOMAS DESIRED TO PRESENT – THE TRUTH**

April Reed had been physically abusing her daughter Z.F. and the authorities became aware of this child abuse. The allegation against April was that

she had left marks on Z.F. as a result of physical abuse with an electrical cord (App. H p. 550). Defense counsel argued this was relevant in part to Z.F.'s state of mind and to the general theory of defense (App. H p. 551). The State conceded that the child abuse case against April Reed was substantiated (App. H p. 555). Yet, the district court still refused to permit the defense to introduce the truth of the matter (App. H p. 555). As a result of April's abuse, Z.F was being brought to the principal's office to be questioned by this same administrator. Officer Sink responded to the school to investigate April's child abuse of Z.F.

Unbelievably, the defense was precluded from mentioning any of this information. Mr. Thomas intended to argue that Z.F. deflected attention away from her mother's potential criminal liability and offered authorities another direction. Z.F. deflected in order to spare her mother. To a person of average intelligence, the defense could make a compelling argument that this is the motivation for Z.F.'s accusations. More importantly, it was simply the truth that the investigation into April's child abuse was occurring when Z.F. made the revelation.

2. THE STORY FABRICATED FOR THE JURY

Instead of the truth, the district court presented a sanitized story to the jury implying the allegation was completely spontaneous and followed by a full police investigation.

In fact, the district court stated, “you know what, I don’t know how to get out of the context where you get called to the principal’s office.” (App. K p. 1314). The answer to the question was simple, let Mr. Thomas tell the truth as that was his intended theory of defense. Instead, testimony was presented by April that there was no “animosity” at the time prior to Z.F.’s disclosure (App. M p. 1866). The prosecutor explained to the jury that the family was getting along and there had been no fights or disagreements when Z.F. was brought into the principal’s office (App. M p. 1866-1867). In fact, the State mocked the defense for their lack of viable motive for Z.F. to fabricate the story (App. M p. 1874, 1980). Throughout the trial and extensively in closing argument, the jury was hopelessly misled and Mr. Thomas was not allowed to present his theory of defense – the truth.

At trial, the court permitted, and the State took advantage of the opportunity to continuously explain to the jury that Z.F. spontaneously disclosed sexual abuse to this teacher/administrator. As can be expected, the State continuously seized on the lack of motivation for an eight year old to spontaneously reveal these allegations. However, this was patently false and misleading.

More importantly, the State continuously mocked the defendant’s lack of theory of defense for why Z.F. and A.P. would be motivated to disclose sexual

abuse at the hands of the defendant. Yet, the defendant's hands were completely shackled as a result of the court's ruling – thereby preventing his viable theory of defense and unable to combat the State's misleading theory at trial.

3. THIS COURT'S HOLDING IN *NEVADA V. JACKSON* ESTABLISHES MR. THOMAS' RIGHT TO PRESENT HIS THEORY OF DEFENSE.

Throughout the briefing before the Nevada Supreme Court, Mr. Thomas repeatedly cited to this Court's opinion in *Nevada v. Jackson*, 569 U.S. 505, 133 S. Ct. 1990 (2013), which addressed the right of the defendant to present a theory of defense. In that case, Jackson was charged with raping his ex-girlfriend. *Id.* at 506. Shortly before trial, the ex-girlfriend sent a letter to the judge recanting her testimony. *Id.* At trial, the theory of the defense was that the ex-girlfriend had fabricated the sexual assault charge. *Id.* To support the theory, the defense sought to introduce testimony of police reports showing that the ex-girlfriend had called the police on several prior occasions falsely claiming the defendant had raped her. *Id.* Ultimately, this Court noted that the trial court gave the defense wide latitude in cross examination of the ex-girlfriend regarding the prior reports but refused to admit the reports themselves. *Id.* This Court determined that the proffered evidence had little impeachment value because it merely showed that the victim's reports could not be corroborated and the defendant had been given wide latitude

to cross examine the ex-girlfriend.

Whereas here, Mr. Thomas was specifically precluded from ever mentioning April's substantiated physical abuse on Z.F. The district courts ruling is clearly an unreasonable application of clearly established United States Supreme Court law. In fact, the district court's decisions amounted to blatant abuse of discretion which permitted the State to present the facts that occurred surrounding Z.F.'s disclosure in the most disingenuous manner.

Pursuant to the fundamental principles of the United States Constitution as enunciated by this Court in *Jackson*, Mr. Thomas had a right to present a reasonable inference that April had manipulated her daughter's into fabricating these allegations in order to deflect punishment away from her physical abuse and directly onto Cameron Thomas. Mr. Thomas should have been given wide latitude for cross-examination concerning this issue, as it was part of his theory of defense.

4. BASIC NOTIONS OF FAIRNESS NECESSITATE THE INTENDED THEORY OF DEFENSE

This Court has noted,

Whether rooted directly in the due process clause of the Fourteenth Amendment, *Chambers v. Mississippi*, 410 U.S. 284 (1973), or in the compulsory process or confrontation clauses of the Sixth Amendment, *Washington v. Texas*, 388 U.S. 14, 23 (1967); *Davis v. Alaska*, 415 U.S. 308 (1974), the constitution guarantees defendants "a meaningful opportunity to present a complete defense." *California*

v. Trombetta, 467 U.S. at 485. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986).

This Court further explained, “we break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard.” *In re Oliver*, 333 U.S. 257, 237 (1948); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). “The opportunity would be an empty one if the state were permitted to exclude component, reliable evidence bearing on the credibility.” In *California v. Trombetta*, 467 U.S. 479 (1984), this Court explained, “under the due process clause of the fourteenth amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness.” We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the court has developed “what might loosely be called the area of constitutionally guaranteed access to evidence.” *See also, United States v. Vamezuela-Bernal*, 458 U.S. 858, 867 (1982).

In this case, the fact that April was abusing Z.F. was admissible because “extrinsic evidence relevant to prove a witness’s motive to testify in a certain way, i.e., bias, interest, corruption or prejudice, is never collateral to the controversy...” *See Lobato v. State*, 120 Nev. 512, 96 P. 3d 765 (2004).

It is important to remember that Z.F. and A.P. had a lengthy relationship with Cameron Thomas (i.e. their godfather). Thus, once the children disclosed the allegations, the defendant would have had no viable defense surrounding identity. Therefore, the only available defense to Mr. Thomas was the notion that the children were falsifying the allegations.

Obviously, the best defense would be that Z.F. and A.P. told authorities that Mr. Thomas was molesting them in order to deflect attention away from their mom's child abuse that was being investigated. Both Z.F. and A.P. admitted that they were frightened of their mother (this was the only fact that the defense was permitted to present).

During trial, the State then meticulously demonstrated the unbelievability of the defense that the children would make up these allegations based upon a loan between Mr. Thomas and the girls moms (April and Kay).

The following are excerpts from the trial which should conclusively establish the fundamental miscarriage of justice which occurred in this case. First, during the defendant's testimony, the defendant was asked about an angry phone conversation between himself and April (April had already testified about this conversation) (App. M p. 1779-1780). The defendant stated that during the conversation, he probably made April mad because he called her an "unfit mother"

(App. M p. 1780). Then, Mr. Thomas was asked why he referred to her as an “unfit mother” and the court sustained the objection. The defendant was not permitted to explain why he called April an “unfit mother” and ultimately made her mad. Interestingly enough, the defendant’s testimony occurred on the very last day of trial. The trial court would have been able to see almost all of the testimony at this point, yet still precluded the defendant from stating that April was an unfit mother. Surely, beating your child with an electrical cord gives rise to the defendant concluding that April was an unfit mother.

Comically, it did not go unnoticed that the district court was extraordinarily concerned about protecting April’s reputation in front of the jury. During a pretrial hearing addressing the issue of introduction of the child abuse by April, the district court stated,

I mean I will tell you this, I don’t want them to have to defend a case that’s not in front of this court, that’s not part of this trial, and that it is a major concern I have. I do not I do feel I don’t want them to have to defend mom on a child abuse case. I want you to have to defend you client, which you should, on the sexual assault. (App. L p. 1541).

Not only was the defendant not permitted to introduce evidence that April had abused her child, the State was actually permitted to question Mr. Thomas’ wife about unsubstantiated, implicit abuse. The following questions by the prosecutor occurred during examination of Cameron Thomas’ wife, Jennifer

Thomas.

Q: Does punishment in your home ever include corporal punishment?

A: Define corporal punishment.

Q: Spanking, hitting with a belt, any kind of physical hands on things, on a child. Does that ever include that.

A: We have had hands on.

Q: Do you have hands on with Dontae?

A: We have.

Q: Does your husband have hands on punishment with Dontae?

A: We have.

Q: Has it been excessive?

A: No.

Q: Never?

A: No.

Q: But he would never hurt a kid right?

A: Well, you're twisting that to be able to say that it was intended to p. cause harm and to hurt that wasn't an intention. (App. L p. 1668-1669).

...

Q: So you said he would never hurt anyone, so I'm asking you, was he, has he used excessive corporal punishment on Dontae.

A: I said no (App. L p. 1669).

Unbelievably, the defendant's wife was questioned about some vague notion of excessive corporal punishment at the hands of the defendant on his own child. The court found this perfectly acceptable. Yet, the district court bent over backwards to ensure that the substantiated child abuse of Z.F. at the hands of her mother was excluded. Again, the authorities were investigating April's abuse of Z.F. at the very moment in time she deflected to discuss allegations of sexual

abuse against Cameron Thomas. The court’s ruling and the prosecutor’s questioning of Ms. Thomas is shocking. On the one hand, unsubstantiated child abuse allegations against Mr. Thomas were permitted and substantiated abuse by April on Z.F. was precluded. The district court made clear that the defendant was at no time to violate the court’s order as to the real reason why Z.F. was brought to the principal and the police were beginning an investigation.

Abuse of discretion is synonymous with the “failure to exercise a sound, reasonable, and legal discretion.” (BLACK’S LAW DICTIONARY 1610 (6th ed. 1990). “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 746, 748, 121 P.3d 582, 585 (2005) (citing, *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)). A “district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or a clearly erroneous assessment of the evidence.” *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 405 (1990).

Here, the district court’s discretion was clearly abused when the defendant’s wife was subjected to this type of speculation regarding the defendant’s potential child abuse of his own child versus exclusion of the defendant’s desire to present April’s substantiated abuse of Z.F. This defies logic and reason. In essence, the

trial provided a flavor that the prosecution would be permitted carte blanche permission to attack the defendant regardless of the validity of the questions.

Whereas, the defendant was precluded from even presenting a viable defense.

a. COMMENTS FROM CLOSING ARGUMENT THAT DEMONSTRATE THE UNFAIRNESS.

During closing argument, numerous comments by the prosecution establish the manifest injustice that occurred and demonstrate the gravity of the error in failing to allow Mr. Thomas to present his theory of defense.

i. The prosecutor argued: “August 2010. Kay and April visit Vegas. Again, no bad feelings, this is prior to the disclosure of [Z.F.]. This is all months prior to [Z.F.’s] disclosure. So everyone is in a good place at this time. There is no revenge at this time. There is no animosity, if you will.” (App. M p. 1866).

This was a false statement. Clearly there was animosity and trouble based upon the fact that April was physically abusing Z.F. Again, the prosecutor could never make such a statement to the jury if the jury had been aware that April had been beating Z.F. with an electrical cord.

ii. The prosecutor explained, “on December 9 of 2010, notice four months and seven months after everyone has been getting together, that’s when

[Z.F.] discloses. Officer Sink, with his sergeant goes to Madison Elementary School down in Phoenix." (App. M p. 1866-1867).

The prosecutor's statement is true in part. It is true that Officer Sink and his sergeant went to the elementary school. Unfortunately, the defendant was not permitted to explain that Officer Sink and his sergeant went to the school to investigate the physical abuse that April was inflicting upon Z.F. Instead, the jury fully understood this to mean that the police were investigating Z.F.'s disclosure of sexual abuse at the hands of Cameron Thomas. This is actually a falsehood.

iii. The prosecutor further explained, "there's no testimony. There is no evidence in this case that there were any fights, any disagreements, any unresolved issues on December 9 of 2010." (App. M p. 1867).

Again, the prosecution is right, there is no evidence before the jury of any fights or disagreements. That is because the district court precluded the defense from presenting the only viable defense and that was that April was physically abusing Z.F.

Instead, the jury received a completely false picture of what was occurring on December 9, 2010. It is clear that the investigation of Ms. Rand and the police was targeting the child abuse by April. Yet, the jury would have undoubtedly all unanimously believed that the investigation involved the spontaneous disclosure

of sexual abuse by Z.F.

iv. The prosecution then continuously mocked the lack of motive for Z.F. and A.P. to accuse Mr. Thomas of sexual abuse. The prosecution stated,

Were there motives at eight and nine years old money and revenge? Were they greedy and vengeful eight - and nine year olds? I submit to you there is not one piece of evidence in this case to impute the motives and suggest motives, no evidentiary motives, but suggested motives of the mother to those kids. The innuendo that mothers were trying to get out of a 1,200 dollar bill, or, foresaw a 2014 lawsuit. (App. M p. 1874).

Alarmingly, the district court continued to observe this travesty of justice. This was compounded by the prosecution rubbing it in the defendant's face that he could establish no viable motive. The error continued.

v. The prosecution told the jury that it would be impossible for April to tell Z.F. what to say because she did not know that Z.F. would tell a teacher that day (App. M p. 1901). Well, if April was aware that she was being accused of child abuse, then she would know that the investigation was imminent. Therefore, the defendant wished to argue a reasonable inference that the mother advised her children to deflect away from her own abuse and to accuse Cameron Thomas. Again, it is not important whether or not the Court agrees with that inference. It is only important that the defendant had a fundamental right to present it and let the trier of fact make that determination.

vi. In rebuttal closing argument, the State continued to mock the defense and their lack of viable motive for the children to fabricate a story. The prosecutor argued, “so what is there motivation or what is the defense trying to say.” (App. M p. 1980).

The defense was trying to say that the children were motivated in an effort to deflect from their mother being punished for her “vile” conduct.²

vii. The prosecutor informed the jury that the only two possible defenses were intentional lying or false memory, “there’s only two options.” (App. M p. 1980).

The State was right, and the State was successful in preventing Mr. Thomas from presenting evidence that the children were intentionally lying in an effort to deflect punishment away from their mother.

viii. The prosecution further explained, “there is no motivation for revenge.” Then, the prosecution stated, “maybe that was genesis for April, this vile human being, to have her children make this story up.” (App. M p. 1982). This is completely improper argument. If the jury had been aware of the substantiated

² Mr. Thomas specifically refers to April’s conduct as “vile” because in rebuttal closing argument the prosecutor refers to April as a vile mother not because the prosecution was serious, but because they mocked the lack of motivation. Basically, informing the jury that April was a good mother.

abuse at the hands of April, undoubtedly the jury would have all agreed with the prosecutor's reference to April as vile. Yet, the prosecution used the word to describe April as a mockery to the defense (because there was no evidence presented that April was anything other than a loving, caring, and concerned mother). Again, this demonstrates a travesty of justice and a continuous abuse of discretion. The district court should have *sua sponte* warned the prosecutor that their arguments belied the truth of the situation.

ix. The prosecutor further argued,

So for you to find that April is making these girls lie, this is a pretty well thought out plan. So what would've happened was April would've had to tell the girls what to say, and then just by chance wait for a day that [Z.F.] gets called up to the office, and this eight year old girl is going to know this is my time. This is the time to - - the plan is now in motion, and I'm going to shout sexual abuse." (App. M p. 1983).

The answer to the question is simple, April would know that the authorities were probably going to investigate her for child abuse, which they in fact did.

x. Particularly disturbing, the prosecutor argued, "somehow there is this devious plan in the works and it always hinges on this eight year old going up to her teacher and saying that she was sexually abused. Does it make sense, ladies and gentleman? No." (App. M p. 1984).

The prosecutor is right, it makes no sense based upon the state of the

evidence presented to the jury. However, it would make reasonable sense and a viable defense if the jury had been aware that Z.F. did not just go up to her teacher and disclose sexual abuse allegations, spontaneously. In fact, Ms. Rand was questioning Z.F. about her abusive mother. By changing the entire truth of what occurred, the jury undoubtedly believed that Z.F. spontaneously disclosed based upon years of legitimate frustration and pain. Although defense counsel specifically requested permission to introduce this evidence in order to develop the argument that Z.F. disclosed to deflect, this fell on deaf ears.

xi. Again, the prosecution argues, “there was no master plan, it makes no sense. Mr. Mann points to April. She has to be this vile women to do this, right?” (App. M p. 1985). The prosecution further explained, “putting her girls up to be interviewed by police, by child protective services, being forensically interviewed, getting medical examinations.” (App. M p. 1985).

The prosecution was able to portray defense counsel as making a desperate attempt to vilify April when she had done nothing wrong. The prosecutor’s facetious reference to April as a “vile women” was correct in part. April’s abuse of her child was vile and the jury would have agreed had they known the truth and not been completely misled throughout the trial.

Next, the prosecution argues to the jury that what mother would put their

girls up to being interviewed by the police and child protective services. The prosecution's argument was successful in demonstrating that no good mother would want their child to endure those type of interviews. However, the reality and truth was that April's physical abuse of Z.F. was causing Officer Sink and his sergeant to go to Z.F.'s school to interview her and child protective services was undoubtedly involved. The truth is that April's "vile" abuse of Z.F. did result in the police, child protective services and school officials having to interview Z.F. In sum, the truth was so horribly twisted and the district court continued to permit this travesty.

xii. Again, the prosecution stated, "do you really think April Reed is going to put her children up to that? Absolutely not." (App. M p. 1985-1986).

Throughout the trial and extensively in closing argument, the jury was hopelessly misled.

**b. TESTIMONY ELICITED BY THE PROSECUTION
THAT FURTHER DEMONSTRATES THE
UNFAIRNESS.**

During the prosecutor's examination of A.P., the following exchange occurred:

Q: Are you scared if you say something wrong here today that Mommy April is going to be upset?
A: No.

Q: Are you saying these things because you think Mommy April is going to be upset with you?

A: No.

Q: When you spoke with the police back in 2010, did you say things because you were afraid of Mommy April?

A: At that point, I knew that I wasn't going to get in trouble that she had my back and she believed in me. (App. M p. 1003-1004).

Here, the prosecution was presenting evidence to relieve any suggestion that A.P. and Z.F. would fabricate a story based upon fear of their mother. Presumably, A.P. and Z.F. would be very fearful of Mommy April given the fact that she physically beats Z.F. The child abuse was so obviously admissible as a theory of defense that it seems unreasonable for Mr. Thomas to have to argue that the State opened the door to this during this exchange with A.P. However, surely, this would have opened the door to fair cross examination about whether A.P. was frightened of her mother based upon knowledge or observation that her mother was physically abusing Z.F.

In this case, basic notions of fairness dictate that Mr. Thomas had a right to present a reasonable inference that April had manipulated her daughter's into fabricating these allegations in order to deflect punishment away from her physical abuse and directly onto Cameron Thomas. The Nevada Supreme Court's failure to allow Mr. Thomas to present this theory of defense warrants reversal.

5. THE NEVADA SUPREME COURT'S FAILURE TO ADDRESS THE ISSUE WARRANTS REVERSAL.

Despite Mr. Thomas' concise and detailed citation to federal authority, the Nevada Supreme Court deliberately failed to address the instant issue. Mr. Thomas bitterly complained that he had been denied a fundamental constitutional right to present a valid theory of defense. More importantly, Mr. Thomas relied extensively on this Court's clearly established case law. Yet, the Nevada Supreme Court's decision in no way considers the issue or the rationale of this Court.

For Mr. Thomas to raise this issue in federal court, he must be able to demonstrate that a state court's decision is contrary to law clearly established by the Supreme Court only if it applies a rule that contradicts the governing law set forth in supreme court case law or if the decision confronts a set of facts that are materially indistinguishable from a Supreme Court decision but arrives at a different result. *See e.g. Mitchell v. Esparza*, 540 U.S. 12, 15–16 (2003).

A state court decision is not contrary to clearly established federal merely because it does not cite to Supreme Court decisions. *Id.* Indeed, the Supreme Court has held that a state court need not even be aware of its precedence so long as neither the reasoning nor the result of the decision contradicts them. *Id.* Moreover “a federal court may not overrule a state court for simply holding a view different

from its own when the precedent from the Supreme Court is at best, ambiguous.”

Id. at 16. A state court decision constitutes an “unreasonable application” of clearly established federal law only if it is demonstrated that the state court’s application of Supreme Court precedent to the facts of the case was not incorrect but “objectively unreasonable”. *Id.* at 18.

The Nevada Supreme Court’s decision is completely void of any decision or analysis on this issue. Mr. Thomas vehemently argued that the violations that occurred in his trial were more significant than the defendant in *Nevada v. Jackson*. Further, it is important to note that it is unusual that the Nevada Supreme Court will not address this issue given that the issue was addressed at oral argument.³ During oral argument, the prosecutor made an admission to the Nevada Supreme Court that portions of the evidence presented to the jury was false.

In dissenting to the Nevada Supreme Court’s Order denying En Banc Reconsideration, Justice Silver opined:

I believe that this case involves a substantial constitutional issue that our prior order should have addressed and analyzed. Specifically, this court overlooked and did not consider the district court’s continual

³ See [https://nvcourts.gov/Supreme/Arguments/Recordings/THOMAS_\(CAMERON\)_vs__STATE/](https://nvcourts.gov/Supreme/Arguments/Recordings/THOMAS_(CAMERON)_vs__STATE/). (Justice Cherry questioned the prosecutor as to why information in opposite to the truth was presented to the jury when the defense wanted to present the truth. Justice Cherry posed the following: “But it’s not true, she was called to the principal’s office because she alleged her mother beat her.” The prosecutor responded, “Correct.”) (Oral argument recording at 37:50).

refusal to allow appellant to present to the jury factual evidence of the mother's substantiated physical abuse. I believe this refusal may have prevented Thomas from proving his theory of defense and resulted in skewing the facts surrounding disclosure (App. C p. 14).

A review of the Nevada Supreme Court's decisions in this case make it clear that the Court is refusing to address, let alone analyze the constitutional issue or this Court's precedent.

Given that the issue is of great constitutional magnitude, requiring reversal, and the Nevada Supreme Court's complete failure to address the issue, Certiorari should be granted.

IX.

CONCLUSION

Based upon the above and foregoing, Mr. Thomas respectfully requests this Court grant Certiorari.

Dated this 10th day of September, 2019.

Respectfully submitted,

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