

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SEMAAN MAKDISSI,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Second District Court of Appeal**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345
FL Bar No. 114227
Email: fferman@ffermanlaw.com

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

Document	Page
1. May 24, 2023, Opinion of the Florida Second District Court of Appeal . . .	A-3
2. June 30, 2023, Order of the Florida Second District Court of Appeal	A-5
3. December 17, 2021, Judgment and Sentence of the Florida Sixth Judicial Circuit Court	A-6
4. Excerpt of Transcript of October 20, 2021, Trial	A-10

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SEMAAN MAKDISSI,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-3909

May 24, 2023

Appeal from the Circuit Court for Pinellas County; Nancy Moate Ley, Judge.

George E. Tragos, Peter A. Sartes, and Tyler A. Dixon of Targos, Sartes & Tragos, PLLC, Clearwater, for Appellant.

Ashley Moody, Attorney General, Tallahassee, Donna S. Koch, Assistant Attorney General, and Lydon W. Schultz, Assistant Attorney General, Tampa, (substituted as counsel of record), for Appellee.

PER CURIAM.

Affirmed.

LaROSE, LUCAS, and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

June 30, 2023

CASE NO.: 2D21-3909
L.T. No.: 18-11850-CF

SEMAAN MAKDISSI

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and issuance of a written opinion is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

mep

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



Served:

ATTORNEY GENERAL, TAMPA
LYDON W. SCHULTZ, A.A.G.
PETER A. SARTES, ESQ.
KEN BURKE, CLERK

GEORGE E. TRAGOS, ESQ.
MICHAEL ROBERT UFFERMAN, ESQ.
TYLER DIXON, ESQ.

I #: 2021413673 BK: 21861 PG: 333, 12/22/2021 at 09:41 AM, RECORDING 4 KEN
BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
clk105094

1

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY FLORIDA
DIVISION: FELONY

UCN: 522018CF011850000APC

REF No.: 18-11850-CF - A

OBTS NUMBER_____

STATE OF FLORIDA
VS.

SEMAAN MAKDISSI
Defendant

PID: 2375091
SS# [REDACTED]

JUDGMENT

The Defendant, SEMAAN MAKDISSI, being personally before this court represented by GEORGE E TRAGOS ESQ the attorney of record, and the state represented by AMELIA HUMMEL, Assistant State Attorney, and ELIZABETH ZUROWESTE, Assistant State Attorney, and having:

COUNT	CRIME	OFFENSE STATUTE NUMBER (S)	DEGREE OF CRIME
01	LEWD OR LASCIVIOUS BATTERY	800.04	2F

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED
THAT the Defendant is ADJUDICATED GUILTY of the above crime(s).

ICD: JDNT (34810036)
RETURN TO:
CRIMINAL COURT RECORDS

686

Filed, DEC 19, 2021, 8:03, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Defendant : SEMAAN MAKDISSI

UCN : 522018CF011850000APC
REF No. : 18-11850-CF - A

and good cause being shown; IT IS ORDERED THAT ADJUDICATION
OF GUILT BE WITHHELD as to Count(s) _____

Sentence Deferred
Until Later Date
(Check if Applicable)

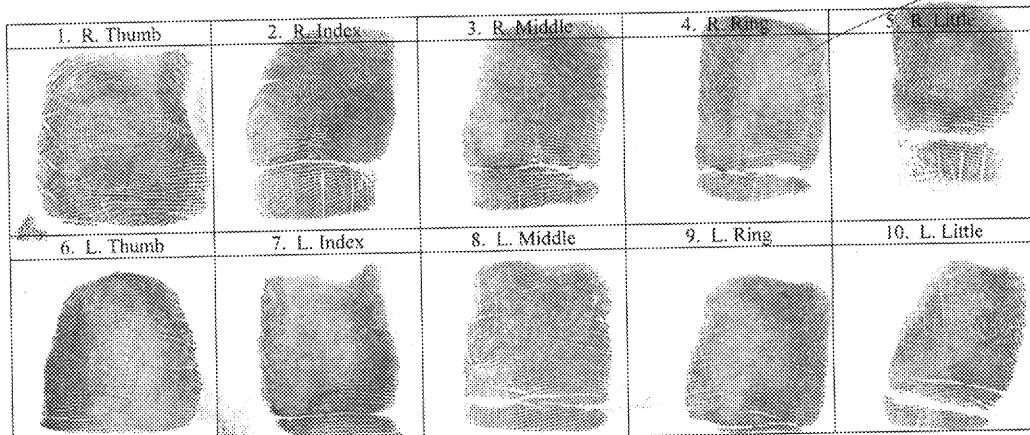
The Court hereby defers imposition of sentence until _____
(Date)

The Defendant in Open Court was advised of the right to appeal from this Judgment by filing notice of appeal with the Clerk of the Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in open court in Pinellas County, Florida on December 17, 2021.


Nancy Dooley
JUDGE

FINGERPRINTS OF THE DEFENDANT



Fingerprints taken by:


Blakemore BACKMAN Deputy
(Name and Title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, SEMAAN MAKDISSI, and that they were placed thereon by the defendant in my presence in open court this day.


Nancy Dooley
JUDGE

Defendant: SEMAAN MAKDISSI

UCN: 522018CF011850000APC
REF No.: 18-11850-CF - A

OBTS Number _____

SENTENCE

(as to Count 01)

The defendant, being personally before the court, accompanied by the defendant's attorney of record, **GEORGE E TRAGOS ESQ.**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **\$952.00**, inclusive of, **\$151.00** to the Rape Crisis Trust Fund, **\$100.00** as a Cost of Prosecution assessment, **\$151.00** Crimes Against Minors assessment pursuant to F.S. 938.10.

The Defendant is **committed to the custody of the Department of Corrections**.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **15 YEARS**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

No Contact Order

It is further ordered that the defendant is prohibited from having contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence.

Defendant: SEMAAN MAKDISSI

UCN: 522018CF011850000APC
REF No.: 18-11850-CF-A

OBTS Number

Other Provisions: (continued)

Jail Credit

It is further ordered that the defendant shall be allowed a total of 58 DAYS as credit for time incarcerated before imposition of this sentence.

Immigration Detainer

It is further ordered that, as per s. 908.104(3)(b), F.S., the secure correctional facility in which the defendant is to be confined shall reduce the defendant's sentence by a period of not more than 12 days on the facility's determination that the reduction in sentence will facilitate the seamless transfer of the defendant into federal custody.

It is further ordered that:

Restitution is not applicable in this case.

Restitution to State:

If applicable, you must make payment of any debt due and owing to the state under section 960.17 and 948.03(1)(h) Florida Statutes. The amount of such debt shall be determined by the Court at a later date upon final payment of the Crimes Compensation Trust Fund on behalf of the victim.

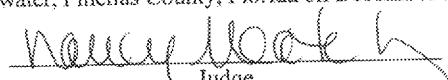
In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing a notice of appeal within 30 days from this date with the Clerk of the Court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing this sentence, the court further orders:

The defendant is sentenced as a sexual offender. The defendant shall pay a \$7.00 fee to the Pinellas County Sheriff's Office for DNA testing.

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida on December 17, 2021.



Nancy Cook
Judge

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

Case No. 18-11850-CF

vs.

SEMAAN MAKDISSI,

Defendant.

/

PROCEEDINGS: Jury Trial
Volume I

DATE: October 20, 2021

BEFORE: The Honorable Nancy Moate Ley
Circuit Court Judge

PLACE: Pinellas County Justice Center
14250 49th Street North
Clearwater, Florida 33762
(727) 464-8700

TRANSCRIBER: Cynthia R. Piett
Digital Transcriber

Administrative Office of the Courts
Digital Court Reporting Department
Pinellas County Justice Center
14250 49th Street North, Ste # 2000
Clearwater, Florida 33762
(727) 453-7474



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A P P E A R A N C E S

2 APPEARING ON BEHALF OF THE STATE OF FLORIDA:
3 Elizabeth Zuroweste, Assistant State Attorney
4 Amelia Hummel, Assistant State Attorney
5 Office of Bruce Bartlett, State Attorney
6 Sixth Judicial Circuit, Pinellas County
Pinellas County Justice Center
14250 49th Street North
Clearwater, Florida 33762

7 APPEARING ON BEHALF OF THE DEFENDANT:
8 George Tragos, Esquire
9 Law Offices of Tragos, Sartes, & Tragos
2363 Gulf to Bay Boulevard, Suite 100
Clearwater, Florida 33765

	<u>I N D E X</u>	
		<u>Page</u>
1		
2		
3	Jury Sworn.....	19
4	Preliminary Jury Instructions.....	19
5	Opening Statement - State.....	26
6	Opening Statement - Defense.....	42
7	Motion for Judgment of Acquittal.....	181
8		
9	WITNESSES CALLED BY THE STATE:	
10	[REDACTED] [REDACTED] [REDACTED]	
11	Direct Examination by Ms. Zuroweste.....	59
	Cross-Examination by Mr. Tragos.....	112
12	STATE EXHIBITS:	
13	1. Picture	93
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 A He never told me directly, but I think he had
2 told my uncle or he had shown discomfort of the thought of
3 me coming back home. I think his phrase was something
4 along the lines of I don't want a thief in my house.

5 Q Okay.

6 A He had even texted me, actually. So I don't
7 know if I end -- ended up having the chance to send those
8 text messages to the police report, but -- the detective,
9 but he had sent me asking me if I had been in his office
10 and if I had taken money from him.

11 MR. TRAGOS: That's the first point, Your Honor.

12 THE COURT: Okay. State?

13 MS. ZUROWESTE: Again, I would object. This is
14 entirely outside the charged time frame. Mr. [REDACTED]
15 again, just testified this is when he's 16. This has
16 nothing to do to impeach, what he's testifying to
17 about 13, 14, and 15.

18 THE COURT: Okay. Let's continue, Mr. Tragos.

19 MR. TRAGOS: All right.

20 Q (By Mr. Tragos) Next let's talk about the
21 day that you -- I think it was May --

22 MS. ZUROWESTE: 29th, 2017.

23 Q (By Mr. Tragos) May 29th, 2017, the day that
24 your stepfather went over to Mr. Makdissi's house?

25 A Uh-huh.

1 Q Remember that day?

2 A Yeah.

3 Q Okay.

4 A Labor Day, I think it was.

5 Q So you're at home that day, and you and your
6 father have a -- or stepfather have a disagreement about
7 your laziness. Do you remember that?

8 A Yeah. I had just gotten back from visiting my
9 friend [REDACTED] at St. Pete. I left for the weekend. I
10 came back. I was trying to get my permit, my driver's
11 license permit card, and I was getting SLDS online. My
12 mom was cleaning outside, and he was frustrated by the
13 fact that I wasn't out there mopping with her and told me,
14 why don't I stop being lazy and get up from being on the
15 computer and go help her.

16 Q All right. So what did he do; he came in and
17 called you lazy?

18 A No. He was like, you need to go help your mom
19 out. Like, get up from your bed, insinuating that all I
20 was doing was just, like, socializing online or something.

21 Q So did you go out?

22 A Yeah. I ended up going out there. I put my
23 computer away. I tried explaining it to him, but he said
24 that it was excuses, so I went outside, and I was helping
25 my mom, like, push the water out from the terrace or

1 something.

2 Q And did you have a conversation then with your
3 mother that you wanted to be Baker Acted?

4 A I -- I did tell her that I was very depressed,
5 and I didn't feel good and that there's -- that I needed
6 to go seek help.

7 Q Did you use the word Baker Act?

8 A Huh-uh.

9 Q And did she say, look, you can't get help unless
10 you tell me why?

11 A Yeah. She was like, I know what you're trying
12 to do, but that process is complicated, and so if you
13 explain to me what's going on with you, I can help, and
14 then at that point, I couldn't really tell her verbally
15 what it was. I grabbed her phone and typed in on Google
16 translate from English to Spanish: I was raped. And she
17 asked -- her eyes watered up. She asked me by who, and I
18 said Semaan, and then she said, okay, well, we have a
19 problem. And then she went over to where my stepfather
20 was, and she starts crying, telling me that -- telling my
21 stepfather, this is why our son is depressed and he's sad
22 and hasn't been feeling good for a long time, and it's
23 because this asshole abused him.

24 My stepdad said, why didn't you say anything before?
25 I tried saying, I tried, but he manipulated me not to, and

1 then me and my mom -- I just -- at that point, everything
2 blurred. I started crying frantically. I called friends,
3 and then he stormed off, which that's when that led to
4 that whole debacle of all the police officers and my
5 stepdad.

6 Q Okay. So he storms off, and at that point, do
7 you warn Mr. Makdissi?

8 A Yeah. Well, I -- a couple minutes went by. We
9 searched the room because we thought initially that he had
10 taken his registered weapon, and we thought that he was
11 going to go and shoot him, and so the fact that he hadn't
12 called -- or we were calling my stepdad, but he wasn't
13 really answering or taking serious our pleads of, hey, you
14 need to come back to the house. Like, you have a younger
15 child. You need to take care of him. You can't mess up
16 your life right now. He wasn't listening, and to prevent
17 my stepdad being incarcerated for killing that man, I
18 decided -- I still had Semaan's number, so I reached out
19 and said, hurry. Call the police. You need to leave your
20 house. Like, he has a gun, because I didn't know if my
21 stepdad had a weapon with him or not, and I didn't know
22 what my stepdad was capable of. So I -- just to avoid my
23 stepdad being incarcerated, it just wasn't worth it.

24 Q All right. So then you warned Mr. Makdissi to
25 get out --

1 A Uh-huh.

2 Q -- that your stepfather may have a gun?

3 A Right.

4 Q All right. So then what'd you do?

5 A I called some friends. I -- my mom called my

6 uncle. Well, she first called my grandmothers, my

7 great-grandmother and my grandmother, had told them what

8 happened. She called my uncle, and my uncle tried to

9 speak to me on the phone. I couldn't speak to anybody.

10 She was trying to talk to him. He was a mess, and then

11 she ended up calling my eldest uncle, Rodolfo (phonetic),

12 and he drove -- because we only had one car at the moment,

13 so we needed him to come over here and drop the car off.

14 We got in the car and then raced over to Mr. Makdissi's

15 house.

16 Q Okay. And when you got over to Makdissi's

17 house, what did you see?

18 A There was a bunch of police office -- police

19 trucks or, like, the big SUV ones all over the place, and

20 all we saw were my stepdad's shoes, and I thought at first

21 they had, like, either shot him or he ran off or whatnot,

22 but the officers asked me what was going on. I -- I don't

23 even think I had shoes on. I said, I'd like to speak to

24 an officer. I can explain why you guys are here. The man

25 in that house raped me for such-and-such years. My

1 stepdad, we just told him, and he got all flustered, and
2 then I think they realized that they were handling
3 something else, so then they told me to sit tight.

4 They released my stepdad. He came, gave me a hug,
5 gave my mom a hug, headed home, and then I think it was
6 the head chief or some officer there had asked me and my
7 mom if we were willing to go to the office, to the police
8 station and file a report and -- yeah.

9 But right before all of that happened, he's not here
10 anymore, but his friend who was sitting over there was the
11 first to come to me and my mom and ask us what happened,
12 and we said, like, well -- I had told him -- I was like,
13 that man raped me, and he was like, why didn't you say
14 anything, why did you keep going, and that is the only
15 conversation that I had with someone else other than the
16 police.

17 Q Why is it that you waited until then to tell
18 your parents that Mr. Makdissi had abused you?

19 A I felt like I've already answered this a couple
20 times, but just one more time. I was manipulated for
21 years. I -- this also the brain of a [REDACTED] that
22 can't ration or think of what's going to happen 5, 10, 20
23 years from now. All I could think about was that moment.
24 In my [REDACTED] brain, I believed that my uncle wasn't
25 going to believe me and thought that I was gold-digging or

1 trying to get that man's money, and that's not what
2 happened.

3 I was also told that my relationship with my mom, it
4 was going to ruin it forever and my other relationship
5 with my uncle, and furthermore, the victims that -- I'm
6 sure you have the list of the names of all the different
7 friends that I had told were also sexual assault
8 survivors, and their cases didn't go well. It was
9 overturned or the cops didn't believe them or their
10 parents, like, said, no, you're lying. You're trying to
11 take my husband. Only having that as the exposure to what
12 my hope could have been, also given that I'm a male, when
13 it's male-on-male action, it gets trickier than it was
14 with women. So I didn't have a lot of hope that people
15 were going to believe me, and I thought, okay, well, if
16 this what happens to me, I will withstand the suffering if
17 it meant that I could have peace at my house, and sure
18 enough, eventually the pressure cooker busted and shit
19 went everywhere. Forgive me.

20 THE COURT: It's okay. I hear a lot more than
21 that.

22 MR. TRAGOS: Your Honor, although we went off on
23 a tangent there, the -- the key part where we're
24 talking about here is he tells his mother. The
25 stepfather goes. He goes, tells the police, and

1 that's the first time that he tells the police or
2 reports it to the police, and the reason he does that
3 is to protect his stepfather from getting arrested
4 for being there. And -- and of course, he tells Mr.
5 Makdissi to run. Those are the -- those are the
6 issues here that I'm going to proffer.

7 THE COURT: I understand.

8 MR. TRAGOS: So --

9 THE COURT: Okay.

10 MR. TRAGOS: Go -- go to the next one?

11 THE COURT: Yep.

12 MR. TRAGOS: Okay.

13 Q (By Mr. Tragos) Were you seeking therapy during
14 the time that Mr. Makdissi was abusing you?

15 A I went to a therapist when I was, I believe, 14
16 or 15. Her name -- I'm sure I can look up in my contacts.
17 I never actually spoke to her about when the abuse
18 happened. I went to her about that trans phrase that I
19 was going through.

20 THE COURT: Hold on just a second.

21 THE WITNESS: Yeah.

22 THE COURT: Would you please tell the other
23 deputies, tell them they can have a break until 20
24 minutes to 3?

25 THE BAILIFF: Yes, Your Honor.

1 THE COURT: Okay. So if they want to go
2 downstairs and get something out of one of the
3 machines.

4 THE BAILIFF: Yes, Your Honor.

5 THE COURT: So --

6 THE BAILIFF: I'm just going to step right here
7 and let the deputy know.

8 THE COURT: Yeah. Thanks. 20 minutes to 3.

9 THE BAILIFF: 20 minutes. Yes, Your Honor.

10 THE COURT: Thank you.

11 Go ahead, Mr. Tragos.

12 MR. TRAGOS: Okay.

13 Q (By Mr. Tragos) Oh, okay. Is that Regina?

14 A Yes.

15 Q Okay.

16 A Regina.

17 Q Okay. All right. So you talked to her. How
18 many times did you meet with her?

19 A I met with her at -- in the beginning, it was
20 twice a week, and then it, I think, became once a month.
21 There weren't times that I could go in person, so we would
22 do, like, on-the-phone calls, like on-phone therapy. I
23 went to her for maybe --

24 THE COURT: Okay.

25 THE WITNESS: Yes.

1 THE COURT: Just answer the question process.

2 THE WITNESS: Yeah. Sorry. You're right.

3 THE COURT: I'm not -- I am trying to figure out
4 how what anybody said to their therapist would be
5 admissible, so I'm not thinking this one has to take
6 a long period of time unless the law has changed in
7 the 40-some-odd years that I've been doing in the
8 criminal justice system.

9 MR. TRAGOS: Actually, Your Honor, I'm asking
10 what he didn't tell his therapist.

11 THE COURT: Are you kidding me?

12 MR. TRAGOS: No, ma'am.

13 THE COURT: All right. Just answer each
14 question. Are you -- okay. Let me just ask this.
15 You know I'm going to let you proffer just about
16 anything. Do you have any law in the whole wide
17 world that says that you get to impeach a witness,
18 not to mention a formerly child -- formerly child
19 alleged victim of sexual abuse, for what as a kid
20 they didn't say to their therapist? Is this just
21 show, or do you have some law to support it?

22 MR. TRAGOS: Your Honor --

23 THE COURT: I'm being very patient, but my
24 goodness, that's a reach.

25 MR. TRAGOS: Your Honor, the law --

1 THE COURT: Just is there any law, yes --

2 MR. TRAGOS: I --

3 THE COURT: -- or no?

4 MR. TRAGOS: No. I do not have a case that says

5 that.

6 THE COURT: Okay. And so are you telling me

7 that what you're now going to proffer is what he did

8 not tell his therapist when he was 14 years old as

9 far as he can remember; is that correct?

10 MR. TRAGOS: Yes, ma'am.

11 THE COURT: Okay.

12 MR. TRAGOS: And it's really one question.

13 THE COURT: Okay. But you have no legal basis

14 for it other than Mr. Tragos thinks it's a grand

15 idea, and I'm --

16 MR. TRAGOS: And --

17 THE COURT: -- not trying to be cute. I'm

18 being --

19 MR. TRAGOS: And --

20 THE COURT: -- very serious here.

21 MR. TRAGOS: And because of the mandatory

22 reporting statute that would have required --

23 THE COURT: Oh. And so now we're going to

24 prosecute her through you because she didn't say

25 anything?

1 MR. TRAGOS: No, no.

2 THE COURT: Oh, my goodness. My goodness, my
3 goodness, my goodness, my goodness. Okay. I don't
4 remember ever stopping a proffer in my life, but I
5 cannot imagine. Are you serious? You got any law
6 that supports that, that we should bring in, in a
7 criminal case against a victim, the fact that he
8 supposedly didn't say something --

9 MR. TRAGOS: I --

10 THE COURT: -- that -- to a therapist or that
11 maybe he did it say it, and oh, my goodness, that
12 therapist decided not to go to the cops, and so
13 therefore, that's appropriate cross-examination of a
14 victim in -- or a defendant? I wouldn't allow it
15 there either, you know? I mean, if the State tried
16 to do that to Mr. Makdissi, should he take the stand,
17 they know they'd be peeling me off of the ceiling.
18 Anything else?

19 MR. TRAGOS: No. Can I ask the question?

20 MS. ZUROWESTE: He already answered it, that he
21 didn't tell his therapist, so --

22 MR. TRAGOS: I don't -- I -- I don't remember if
23 I heard that. Did he say that?

24 THE WITNESS: I can -- I can confirm.

25 MS. ZUROWESTE: He definitely answered that.

1 THE COURT: Do I get any control here over --

2 MR. TRAGOS: Okay.

3 THE COURT: -- this situation? You don't get to

4 decide.

5 THE WITNESS: Sorry.

6 THE COURT: And you don't get to decide. Okay.

7 Just ask that one question again.

8 MR. TRAGOS: Okay.

9 THE COURT: Answer it, and then leave it.

10 Q (By Mr. Tragos) Did you ever tell your therapist

11 that Mr. Makdissi was abusing you?

12 A No.

13 Q Okay.

14 MR. TRAGOS: That's it. I just need a moment to

15 see if there's any other proffers.

16 THE COURT: Well, that last one, I don't need

17 one half of one second about. Okay. All right.

18 State, who's going to handle this, Amelia or Ms.

19 Zuroweste? Ms. Zuroweste or Ms. Hummel, I should

20 say.

21 MS. ZUROWESTE: About why he didn't -- he

22 shouldn't be allowed to get into those things?

23 THE COURT: Yeah. Well, skip the therapist.

24 So --

25 MS. ZUROWESTE: All right.

1 THE COURT: So there's no law to support it. It
2 is -- takes the breath away to think that such an
3 experienced lawyer would think that that was
4 professional to raise that as an issue on -- on --
5 but I have accepted it. I have ruled on it. We'll
6 all live happily ever after. I was just a tad
7 surprised.

8 Okay. Now, let's talk about -- so no mention of
9 the therapist, period. No mention of what you did or
10 didn't tell her. There's no way that comes into
11 evidence.

12 All right. Now, let's see. Let's first deal
13 with, I would say, the second, the proffer was --
14 what was that, the May 29th, '17.

15 MS. ZUROWESTE: That's when everything is
16 revealed.

17 THE COURT: Right.

18 MS. ZUROWESTE: Correct.

19 THE COURT: Right.

20 MS. HUMMEL: The stepdad arrived --

21 THE COURT: Who's going to talk to me about that
22 from the State?

23 MS. HUMMEL: I can.

24 THE COURT: Okay.

25 MS. HUMMEL: So the State's position would be

1 that it's not relevant. It's also a
2 mischaracterization to say that [REDACTED] said these things
3 to unarrest his stepdad because his stepdad was never
4 going to be arrested in the first place. There's
5 it's certainly outside of the charged --

6 THE COURT: Okay.

7 MS. HUMMEL: -- time period.

8 THE COURT: How do we know his stepdad was never
9 going to be arrested in the first place?

10 MS. HUMMEL: Depositions. There was no probable
11 cause for a crime.

12 THE COURT: Okay. So there -- Mr. Tragos knows
13 that from the same depositions, I assume? Because of
14 course, I wasn't at the depositions.

15 MS. HUMMEL: I understand.

16 THE COURT: Thank the Lord. Okay.

17 MR. TRAGOS: But my question was, the reason he
18 said it was to help his stepdad. That's his --

19 THE COURT: And he said no.

20 MR. TRAGOS: Yeah.

21 THE COURT: He didn't say it -- well, I
22 understand. He's not making it up to help his
23 stepdad. He was revealing it because of the mess
24 that had been created by telling his mother, and then
25 his stepfather --

1 MR. TRAGOS: Right.

2 THE COURT: -- acted on it.

3 MR. TRAGOS: Right.

4 THE COURT: But he had already told his
5 stepmother (sic). Okay. All right. So here's what
6 we have: we have two things here on each of these
7 first two --

8 MS. HUMMEL: And Your Honor, just out of an
9 abundance of caution, should Mr. [REDACTED] not be on
10 the stand to hear this?

11 THE COURT: That's fine.

12 MS. HUMMEL: Okay.

13 THE COURT: All right. So just go in that
14 witness room, and if you are going to need a bathroom
15 break or something on this time, the bailiff can take
16 you back there and let you do that, but we'll give
17 you a break for that. We're going to have a short
18 break after this too.

19 THE BAILIFF: Okay. Yes, ma'am.

20 MS. HUMMEL: Don't talk to anyone about your
21 testimony.

22 THE WITNESS: Okay.

23 THE COURT: Yeah. And if anybody wants to give
24 him some water, he's been on here for a long time.

25 THE BAILIFF: Okay.

1 THE COURT: This water is probably old as the
2 hills. Okay.

3 All right, Ms. Hummel. So there's two parts:
4 one part is, if we let it in, where do we go; one
5 part is whether we should let it in.

6 MS. HUMMEL: Correct. I think to let it in
7 leads to an entirely potential mini trial on whether
8 [REDACTED] committed a crime, and it confuses the issue
9 with the State having to bring in additional
10 witnesses to talk about how Mr. Makdissi made all
11 these allegations about things that were happening,
12 but they never found a gun. There was no evidence he
13 came with a gun. He didn't do anything criminal at
14 the house, and it's a confusion of the issues in that
15 sense.

16 Additionally, it would open the door to the fact
17 that abuse continued beyond the charged time period
18 to explain why [REDACTED] withheld the information for as
19 long as he did.

20 THE COURT: Okay. Okay.

21 And Mr. Tragos, how do you get around those
22 things, sir, please?

23 MR. TRAGOS: I -- I don't what'd get around one
24 thing. I don't see -- I don't see the issue with
25 regards to him telling the police in that scenario.

1 Number one, he is warning the man who allegedly had
2 been abusing him for these years, and again, defense
3 perspective is that's not logical. Now they're going
4 to say he did it to protect his stepfather. I'm
5 going to say he did it protect Mr. Makdissi because
6 he lied.

7 THE COURT: And you know what I think after all
8 these years? I would think he did it and anybody
9 looking at a case like this case who's been involved
10 with these cases for decades would know he did it
11 because obviously he didn't want his stepdad to get
12 in trouble. Obviously, he felt bad about telling his
13 mother, and Mr. Makdissi hadn't been all bad to him.

14 He was not out to get Mr. Makdissi. He was
15 doing it to protect Mr. Makdissi because he didn't
16 want Mr. Makdissi to end up dead from his stepfather,
17 and you can say, well, goodness gracious, but I
18 understand your defense. You're imputing all sorts
19 of bad thoughts, feelings, these two young boys, and
20 I don't know if the jury's going to believe them or
21 not, not my business.

22 But you're imputing that they have -- and some
23 young people do, but this incredibly vicious intent
24 towards Mr. Makdissi -- and so it -- there's no way,
25 if I let you do this that I can trust, based on

1 what's been going on -- and maybe you can convince me
2 otherwise, that you won't make it an absolute feature
3 of the case, a trial within a trial. You will tell
4 this jury, and nobody will be able to tell them
5 otherwise, that this just means they were -- you
6 know, it just shows the kid must have been lying and
7 he must have made it up to manipulate his parents,
8 and he only could have called Mr. Makdissi because it
9 was all not the truth instead of what is -- you know,
10 it's just like we see all the time and hear victims
11 of -- grownups too, sexual or physical abuse.
12 Sometimes men on women, sometimes women on men, it
13 happens both ways.

14 What do we see over and over? We see the abuser
15 (sic) going back for more abuse, and for those of us
16 that aren't in that spot, we go like this. You know,
17 lots of judges can't understand why it even happens.
18 Well, it's sort of like somebody not being able to
19 have one drink and set down the glass. If people are
20 involved in these unhealthy situations, which, you
21 know, I've seen for 40 years, we all know that is
22 part of the process.

23 So the question for me is, is the probative
24 value of what you're asking to do outweighed by the
25 prejudice? And frankly, there's part of me that

1 would like to be able to let you do it, but I don't
2 think the law requires it; and number two, it will
3 all be mischaracterized, and if -- okay.

4 So I won't take this all. I won't analyze it
5 too many steps out, but so it would be a feature of
6 the case. It would be -- the trial would then be
7 about this alleged lying kid telling his mother
8 because he was supposedly depressed, heaven knows a
9 kid doesn't have a right to be depressed, and of
10 course the kid would be making it up, so then the
11 mother would tell the Latin father, who in a culture
12 in which it's not accepted -- which any of us that
13 work in this system also know that -- then that
14 person acts inappropriately out of anger -- boy, do
15 we see that every day -- and goes to get Mr.
16 Makdissi, allegedly.

17 The kid then says, holy cow, I don't want
18 anybody ending up dead. I don't want Mr. Makdissi
19 ending up dead, so the kid actually does a brave
20 thing, knowing he's going to be the one that looks
21 like an idiot.

22 And so the prejudicial value of that way
23 outweighs the probative. Now, as far as -- and it
24 outside the timeline, but if I think something needs
25 to come in for the defense, I may be flexible about

1 would like to be able to let you do it, but I don't
2 think the law requires it; and number two, it will
3 all be mischaracterized, and if -- okay.

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20 thing, knowing he's going to be the one that looks
21 like an idiot.

22 And so the prejudicial value of that way
23 outweighs the probative. Now, as far as -- and it
24 outside the timeline, but if I think something needs
25 to come in for the defense, I may be flexible about

1 the timeline, which I've also said. In our
2 20-some-odd hours of pretrial hearings, I've said it
3 over and over and over.

4 So if -- I don't want to let the State get into
5 things related to the crimes that are outside the
6 period, and I plan not to. If it turns out that Mr.
7 Tragos goes into something that opens the door about
8 that, then I've made clear to the defense, as they
9 always understand in a trial -- I sure did when that
10 was my job -- that they're trying to figure out what
11 doors get opened and which ones you don't want to
12 open.

13 Okay. Now, let's talk about the -- there was a
14 time he didn't want him to come over anymore. So
15 that would be when he was 16 or 17. So should -- and
16 let him ask that, and then he can talk about the
17 stupid hangers, and so I'm thinking about letting him
18 do that restrictedly, but do that, and then [REDACTED] gets
19 to answer, there were hangers that came from our
20 house. He shouldn't be saying even my uncle or
21 stepfather or whoever it is knows it. Now his uncle
22 or stepfather's testifying, that's a different case,
23 but I don't want him to do hearsay either.

24 So that's pretty much -- I'm trying to be fair,
25 and I don't want to say that he can't bring up -- and

1 I'll admit that it's similar to [REDACTED] case, which
2 may mean -- mean something one way or another.
3 That's one of those many things that can fall both
4 ways. So the State doesn't want me to let you do it.
5 If I let you do it, then it makes the [REDACTED] pattern
6 sound even more similar to the [REDACTED] pattern, but I
7 don't care.

8 So I'm -- Ms. Hummel, I'm not letting you talk,
9 and you're standing there ready to talk. Go ahead.

10 MS. HUMMEL: Okay. So one thing that hasn't
11 been mentioned about the 16, 17 hangers incident is
12 [REDACTED] would say that, during the time, his parents were
13 in Cuba --

14 THE COURT: Right.

15 MS. HUMMEL: -- for that one week --

16 THE COURT: Right.

17 MS. HUMMEL: -- he resisted the defendant's
18 abuse. So the defendant did not sexually abuse him
19 that week. On the heels of that is when Mr. Makdissi
20 came out with these allegation about stealing the
21 hangers.

22 THE COURT: Okay. So --

23 MS. HUMMEL: So --

24 THE COURT: -- if I let him do that, you get to
25 go. That --

1 MS. HUMMEL: Okay.

2 THE COURT: -- 177hat sounds fair. Okay.

3 MS. HUMMEL: And then it's obviously when he's

4 16, so --

5 THE COURT: I understand.

6 MS. HUMMEL: -- that opens the door to --

7 THE COURT: Well, but I'm letting -- okay. If

8 Mr. Tragos decides not to go there, nobody goes there

9 on any of that.

10 MS. ZUROWESTE: Understood.

11 THE COURT: If Mr. Tragos goes there for right

12 now, I'm always very careful about the door opening

13 jazz, is okay. If I let the door open just to that

14 and Cuba and that week, that's fine, but that doesn't

15 mean we suddenly flood the gates with 16, 17, other

16 years.

17 MR. TRAGOS: Just the text messages --

18 THE COURT: What's that?

19 MS. HUMMEL: Okay. That's fine. Text

20 messages --

21 MR. TRAGOS: Your Honor --

22 MS. HUMMEL: -- that [REDACTED] sent to Mr. Makdissi.

23 MR. TRAGOS: These are the text messages [REDACTED]

24 sent to Mr. Makdissi when he -- when his father was

25 going over there.

1 THE COURT: Okay.

2 MR. TRAGOS: And I'm just going to proffer, like
3 introduce those without objection.

4 THE COURT: Okay. So --

5 MR. TRAGOS: I'm just going to proffer them.

6 THE COURT: They're --

7 MS. HUMMEL: That's the May 29th, 2017.

8 THE COURT: No, I understand. Okay.

9 So Madam Clerk, these will be -- do you want
10 them to be Defendant Exhibit 1 for ID only?

11 MR. TRAGOS: Well, it's -- it's part of the --
12 the -- it's an exhibit for the proffer. I don't know
13 if that make as difference, ID or not, but I'm
14 introducing them --

15 THE COURT: Well --

16 MR. TRAGOS: -- for the proffer. I'm
17 introducing them --

18 THE COURT: Okay.

19 MR. TRAGOS: -- as part of the proffer.

20 THE COURT: So Madam Clerk, I will have to do
21 something seriously bad if these go back to the jury.

22 THE CLERK: Okay.

23 THE COURT: They're part of the proffer.

24 Christy (phonetic), I trust you. What do you think's
25 the best way to do it? I could make it Court's

1 Exhibit, but I don't catch it's admitted for proffer
2 only. How about we just write that on there,
3 "Admitted for proffer only, not to go back to the
4 jury," and then --

5 THE CLERK: Okay.

6 THE COURT: -- whenever, if I'm lucky enough to
7 still have you when the jury goes out, you just put
8 your body on them so nobody can take them back to the
9 jury.

10 THE CLERK: Okay.

11 THE COURT: Because I think Mr. Tragos is
12 absolutely entitled to have those in the record, and
13 I want to do that for him, but under no circumstances
14 should they go to the jury.

15 THE CLERK: I just need to call them something.
16 So if we're not wanting to do numbers because we
17 don't want to call attention to --

18 THE COURT: This says, "Exhibit 9." Was this
19 yours?

20 MR. TRAGOS: It's mine.

21 MS. ZUROWESTE: No.

22 THE CLERK: I haven't seen it. Maybe I'm just
23 going with Defense A, and then we'll have a name to
24 it and so I can tack it, but then it will be for ID,
25 and it won't go with any of the defense exhibits.

1 THE COURT: Okay. But here's the thing, yeah,
2 it is for ID, and it is considered in the proffer,
3 but it's not admitted as evidence to go back to the
4 jury.

5 THE CLERK: Yeah. I can --

6 THE COURT: Well, this looks suspiciously, not
7 exactly, like a tag that the clerk does. So I've
8 never had that before. So that's why I wondered if
9 the clerk had some kind of new kind of tag, Mr.
10 Tragos. Okay.

11 All right. So I'll give you back your little
12 tag. So we had already had these in our -- what was
13 the date of our hearing? What -- what month this
14 year that we had the really long, really long --

15 MS. ZUROWESTE: July 9th --

16 MR. TRAGOS: It was --

17 THE COURT: Okay.

18 MS. ZUROWESTE: -- 2021.

19 THE COURT: I knew it was one of the J months.
20 Okay. So we saw this then. We went through it then.
21 All right. So this -- I'm accepting this Defense --
22 what are we calling it -- A?

23 THE CLERK: I can do it Defense 1, and I'll just
24 do a separate list --

25 THE COURT: But then --

1 THE CLERK: -- for a motion of the proffers.

2 THE COURT: Okay. But wait a minute. Wait a
3 minute. Mr. Tragos, listen.

4 MR. TRAGOS: Yeah.

5 THE COURT: Okay. So here's my concern. If you
6 do a Defense 1, then it could be confuse -- I -- if
7 we do a Defense 2 as the number 1 in the trial, that
8 looks bad.

9 THE CLERK: Well, that's what I was worried
10 about, so --

11 THE COURT: Okay. So how about do Defense A?

12 THE CLERK: Okay. So we'll stay with that.

13 THE COURT: Yeah.

14 THE CLERK: Okay.

15 THE COURT: Okay. So just feel free to
16 volunteer your ideas. They're good.

17 THE CLERK: Okay.

18 THE COURT: Okay. So the texts are Defense A
19 for proffer only, not to go to the jury, and it says
20 all of that on the tag, in the minutes, every place,
21 okay?

22 MS. ZUROWESTE: Okay.

23 THE COURT: Write on the tag. Okay. We done?
24 Thank you.

25 MR. TRAGOS: No, we're not. Your Honor, at this