

NO. 73607-8- I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JASON HARRIS,

Appellant,

v.

LEANNE HARRIS,

Respondent.

BRIEF OF APPELLANT

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COURT OF APPEALS
DIVISION I
EVERETT
JAN 12 2011

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SUMMARY OF THE CASE

This appeal is brought concerning the decisions of the King County Superior Court to affirm the Commissioner's decision to enter a one-year domestic violence protection order ("DVPO") against Jason Harris, the Appellant.

Appellant asserts that the court erred in failing to admit exculpatory evidence of sufficient weight to render as not credible the claims of Respondent in regard to an accusation of non-consensual marital intercourse, which is the sole basis for the conclusion that a domestic violence protection order should be entered.

Appellant asserts that Respondent at all times was engaged in a scheme to secure legal status in the United States by means of first, attempting to secure marital status for immigrant entry pursuant to 8 USC § 1101(a)(15)(K), and when that failed, in an attempt to obtain a "U" Visa, pursuant to 8 USC § 1101(a)(15)(U)(i)(I).¹ Respondent was motivated

¹ 8 USC § 1101(a)(15)(U)(i)(I)

(i) . . . an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

under this federal statute to make false representations to the court in respect of non-consensual marital sex, because an allegation of a felony was required by the statute.

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;

The court refused to consider evidence of admissions made by Respondent that the sex was consensual, and evidence that Respondent was still married to her first husband, having never secured a divorce, and therefore was in the country unlawfully, operating under a false name, and in the commission of the crime of bigamy at the time of her petition for a DVPO.

Given the totality of the evidence which the court should have considered, the court abused its discretion in entering the DVPO and the Surrender of Weapons Order initially, and erred in sustaining the entry of the temporary orders for one year.

Appellant further raises the issue that ER 1101 as applied in this case violates rights guaranteed under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 7 and 22 of the Washington State Constitution.

ISSUES ON APPEAL

Whether the lower court erred in failing to consider exculpatory documentation (admissions of Respondent) in the hearing of November 19, 2014;

Whether the court abused its discretion in refusing to allow Appellant to testify concerning Respondent's marriage, her acts of bigamy,

prior history of marrying to avoid immigration laws, and evidence of her motive in bringing the claims against Appellant at the April 13, 2015 hearing.

Whether the court abused its discretion in admitting and failing to admit relevant testimony and rendering its decision.

STATEMENT OF APPLICABLE FACTS

Procedural History

This case began with an ex parte petition for a protection order filed on October 15, 2014 by Leanne Harris, a woman claiming to be, prior to her marriage to Appellant Jason Harris, Leanne Gohse (hereafter “Gohse”).

Gohse was, at that time, in the United States under an expired Visa, and a passport not under her real name. Jason Harris (hereafter, “Harris”) denied the allegations entirely, and raised the claim that Gohse used the domestic violence protection order (hereafter, “DVPO”) process in order to obtain rights to remain in the United States without a lawful visa. CP 593. As a result of the allegations made by Gohse, a temporary order for protection entered, and an order to surrender weapon was entered on October 15, 2014.

Harris appeared on October 28, 2014, and he sought a motion to continue. CP 25-30 On October 29, 2014, the court reissued the Temporary Order, setting the matter for hearing on November 19, 2014. CP 225-226.

At the hearing on November 19, 2014, the court cited ER 1106 [sic – meaning ER 1101] and admitted late declarations on behalf of Respondent, and denied the entry of verbatim transcripts which were exculpatory as to the claims made by Gohse against Harris. Tran. A, pages 4-6.

The court, at this hearing, reserved a decision to enter a permanent order pending a criminal investigation. CP 615. The court then went on to reissue the temporary order and the order regarding firearms. CP 615.

The court scheduled the next hearing on the Temporary Order on a date approximately 90 days later. CP 616.

The hearing was again postponed and eventually heard on April 14, 2015.

Harris filed a CR 59 motion for reconsideration on April 23, 2014, (CP 559-583) and reconsideration was denied on May 20, 2015. CP 597-598. This appeal, filed on June 17, 2015, followed.

///

Factual Background

Respondent Leanne Harris, a/k/a Lai Shong, a/k/a Leanne Gohse (hereafter, “Gohse”) and Appellant Jason Harris (hereafter, “Harris”) were married on October 1, 2014 in Seattle, King County, Washington. CP 62-135.

On October 15, 2014, Leanne Harris filed a petition for a protection order, CP 1-7, alleging non-consensual sex between her and Harris. As part of her allegation, Gohse alleged that she “had been celibate for many years.” CP 5.

The court entered an ex parte temporary domestic violence protection order, pending a hearing. On November 19, 2014, a hearing was had on the merits, and Harris attempted to enter transcripts which were of recordings he had made of conversations between Harris and Gohse following the incident of which Gohse complained. These recordings contained one or more admissions by Gohse that the sex was in fact consensual.

The court, on Gohse’s objection, struck the transcripts. Addendum A, Transcript of November 19, 2014 hearing (hereafter, “Tran.A”), pg. 4, lines 5-16. The court relied on Washington’s Privacy Act, RCW 9.73.050, which allows non-consensual recordings where a crime might jeopardize

national security. Harris is a federal employee with a high security clearance, and crimes committed against him jeopardize to some degree national security.

The court, however, continued the temporary order several times until a police report could be obtained. See Procedural History, above. Finally, on April 19, 2015, the court had a final hearing.

At this hearing, Harris attempted to provide the court with evidence that Gohse was at that time – and had been throughout the course of prior marriage, married to another man named Gianluca Usai. The court made inquiry concerning testimony from Harris. CP 592, line 3. The court did not allow Harris to testify. CP 592, line 14-17.

Harris would have testified that Gohse was still married to Usai; CP 593; he would have testified that her marriage to Usai was in order to obtain immigrant status in the UK; CP 593; he would have testified that Gohse had committed bigamy when she married Franco Gohse; CP 593; he would have testified that she entered the US on a 90 day visa; CP 593; he would have testified that it was his belief that Gohse had married him for purposes of securing legal status; CP 593; he would have testified that Gohse was using the court to obtain a “U” visa by alleging domestic violence; CP 593.

Instead, the court wrongfully denied this testimony, and ruled against Harris. CP 595.

ARGUMENT

The Court reviews a trial court's decisions as to the admissibility of evidence under an abuse of discretion standard. *State v. Pirtle*, 127 Wash.2d 628, 648, 904 P.2d 245 (1995), *cert. denied*, ___ U.S. ___, 116 S.Ct. 2568, 135 L.Ed.2d 1084 (1996); *State v. Powell*, 126 Wash.2d 244, 258, 893 P.2d 615 (1995) (the court will not disturb a trial court's rulings on a motion *in limine* or the admissibility of evidence absent an abuse of the court's discretion); *State v. Swan*, 114 Wash.2d 613, 658, 790 P.2d 610 (1990) (the admission and exclusion of relevant evidence is within the sound discretion of the trial court and the court's decision will not be reversed absent a manifest abuse of discretion). When a trial court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons, an abuse of discretion exists. *Powell*, 126 Wash.2d at 258, 893 P.2d 615.

The admission of evidence in a domestic violence protection order case is governed by Washington Evidence Rule 1101, which provides in operative part as follows:

(a) Courts Generally. Except as otherwise provided in section (c), these rules [of evidence] apply to all actions and proceedings in the courts of the state of Washington. The terms “judge” and “court” in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412) **need not be applied** in the following situations:

(4) Applications for Protection Orders. Protection order proceedings under RCW 7.90, 7.92, 10.14, 26.50 and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and, take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

E. R. 1101 [Originally effective April 2, 1979. Amended effective January 1, 1980; August 27, 1980; September 1, 1989; September 1, 1992;

September 21, 1999; January 2, 2008; September 1, 2008, September 1, 2010; December 10, 2013; May 27, 2014; December 8, 2015.]

As a general proposition, the Rules of Evidence govern the admissibility of evidence and supersede conflicting statutory and judicially created law. ER 101; ER 1101; *State v. Brush*, 32 Wn. App. 445, 450, 648 P.2d 897 (1982), *citing* Orland & Tegland, *The Federal Rules of Evidence: Washington Follows the Federal Model*, 15 Gonz. L. Rev. 277, 282 (1980) (hereinafter cited as Orland & Tegland).

“ER 1101 states that the rules of evidence need not be applied in protection order proceedings. *Blackmon v. Blackmon*, 230 P. 3d 233, 236 (Wash App, 2nd Div. 2010), *citing* *Gourley v. Gourley*, 158 Wash.2d 460, 467, 145 P.3d 1185 (2006) (citing ER 1101(c)(4)[3]); *Hecker v. Cortinas*, 110 Wash. App. 865, 870, 43 P.3d 50 (2002) (“the rules of evidence, including the hearsay rule, need not be applied in protection order proceedings under chapter 26.50 RCW”). Consequently, competent evidence sufficient to support the trial court's decision to grant or deny a petition for a domestic violence protection order may contain hearsay or be wholly documentary. *Blackmon v. Blackmon*, 230 P. 3d 233, 236 (Wash App, 2nd Div. 2010), *citing* *Gourley*, 158 Wash.2d at 467, 145 P.3d 1185; *Hecker*, 110 Wash.App. at 870, 43 P.3d 50.

Moreover, the Domestic Violence Prevention Act does not create a right for petitioners and respondents to subpoena or cross-examine witnesses. *Blackmon v. Blackmon*, 230 P. 3d 233, 236-37 (Wash App, 2nd Div. 2010), *citing Gourley, op. cit.*, 158 Wash.2d at 469-70, 145 P.3d 1185. The primary role of a jury—to observe the demeanor of these witnesses, determine witness credibility, and accord weight to witness testimony—is ***not essential*** [bold and italics added] to a legitimate decision to grant a petitioner's motion for a domestic violence protection order under RCW 26.50.060. *See also Morse v. Antonellis*, 149 Wash.2d 572, 574, 70 P.3d 125 (2003) (credibility determinations are reserved solely for the trier of fact).

As a consequence, ER 1101(c)(4) as applied in domestic violence protection orders directly contravenes due process protections enshrined in the Sixth Amendment (the right to confront witnesses, and to have compulsory process for obtaining witnesses; right to a jury); the Fourteenth Amendment of the United States Constitution (the right to due process and equal protection of the laws); Article I, Section 3 of Washington's Constitution (due process); and Article I, Section 22 (the right to confront witnesses and to have compulsory process).

As a general proposition, the Rules of Evidence govern the admissibility of evidence and *supersede conflicting statutory and judicially created law*. [Bold and italics added]. *State v. Brush*, 32 Wn. App. 445, 450, 648 P.2d 897 (1982), *citing* ER 101; ER 1101; Orland & Tegland, *The Federal Rules of Evidence: Washington Follows the Federal Model*, 15 Gonz. L. Rev. 277, 282 (1980) (hereinafter cited as Orland & Tegland).[4] The “open door” policy of *State v. Renneberg* is not in conflict with the Rules of Evidence. In fact, ER 404(a)(1) has incorporated the *Renneberg* policy.

Rule 404(a)(1) allows evidence of a pertinent character trait of the accused to be admitted when offered by the accused.

Additionally the prosecution may offer character evidence of the accused to rebut such evidence introduced by the accused. The rule embodies traditional doctrine. [Footnote *citing Michelson v. United States, supra*.] The defendant does not open the door to rebuttal character evidence simply by taking the stand. To open the door, the defendant, or a witness brought forward by the defendant, *must first testify to a trait of character* [italics added].

State v. Brush, supra, at 450, *citing* Orland & Tegland, *supra* at 308.

The distinction between rebuttal character evidence admitted under the “open door” policy and character evidence generally is discussed in E. Cleary, McCormick on Evidence § 191 (2d ed. Supp. 1978):

Ordinarily, when courts speak of an accused's putting his character in issue, it is assumed that the means by which he does so is introducing witnesses who testify to his good character in terms of reputation, or, more currently, opinion. Note should be taken, however, that by relating a personal history supportive of good character, defendant may be opening the door to rebuttal evidence along the same line.

State v. Brush, supra, at 450-451, *citing United States ex rel.*

Johnson v. Johnson, 531 F.2d 169, 175-76 (3d Cir.1976); see generally *People v. Ogg*, 258 Cal. App.2d 841, 66 Cal. Rptr. 289 (1968); *State v. Hale*, 21 Ohio App.2d 207, 256 N.E.2d 239, 244-45 (1969).

The rationale underlying this “open door” policy was expressed in *Michelson v. United States*, 335 U.S. 469, 479, 93 L.Ed. 168, 69 S.Ct. 213, 220 (1948):

The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has

kept closed for his benefit and to make himself vulnerable where the law otherwise shields him.

Besides being relevant and necessary to purposes other than proving character or propensity, a trial court must also determine on the record whether the danger of undue prejudice substantially outweighs the probative value of such evidence, in view of the other means of proof and other factors. ER 403; ER 404(b) *see also Dennison*, at 628. When evidence is likely to stimulate an emotional response rather than a rational decision, a danger of unfair prejudice exists. *State v. Rice*, 48 Wn. App. 7, 13, 737 P.2d 726 (1987). The prejudicial nature of ER 404(b) evidence must be balanced by the court on the record. *Dennison*, at 628.

The Commissioner disregarded the evidence of Respondent's admission that the sex was consensual. Courts have repeatedly recognized:

Out-of-court admissions by a party, although hearsay, may be admissible against the party if they are relevant. *State v. Haga*, 8 Wash.App. 481, 495, 507 P.2d 159 (1973) (citation omitted); *State v. Fullen*, 7 Wash.App. 369, 381, 499 P.2d 893 (1972); *State v. Huff*, 3 Wash.App. 632, 636, 477 P.2d 22 (1970); *see also State v. King*, 71 Wash.2d 573, 577, 429 P.2d 914 (1967); *State v. Johnson*, 60 Wash.2d 21,

31, 371 P.2d 611 (1962). Even if hearsay, there is no exclusion of hearsay under ER 1101(c)(4).

Finally, the court refused to take testimony from Harris in regard to Gohse's existing marital status – that she was still married to a man named Usai; that she was using the court system in an attempt to obtain a “U” Visa; and that there was additional testimony that she did not maintain seven years of celibacy.

As a result of ER 1101(c)(4), Harris has qualified under the Brady Act being disqualified from buying or selling firearms, and has had his constitutional rights seriously deprived.

Pursuant to 18 U.S.C. § 922 (d), it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

Therefore, by application of a process which explicitly denies rights protected under the Second Amendment to the United States Constitution, ER 1101 acts to deprive these rights, including the right to a jury trial on the issues before the court.

The Commissioner erred in not admitting competent evidence which challenged the credibility of Gohse's testimony, including her admission against interest (admitting the sex was consensual); including evidence that she was still married to someone else; that she had married her first husband to manipulate the immigration laws in the UK, and that she was in the US under a false name.

“Impeachment evidence ... as well as exculpatory evidence, falls within the *Brady* rule.” *United States v. Bagley*, 473 U.S. 667, 676, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985), (citing *Giglio v. United States*, 405 U.S. 150, 154, 31 L.Ed.2d 104, 92 S.Ct. 763 (1972)). The *Bagley* opinion provides the following additional guidance:

The suppression of evidence amounts to a constitutional violation if it deprives the defendant of a fair trial. A constitutional error occurs if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial. *Bagley*, *supra*, at 678, *citing United States v. Agurs*, 427 U.S. 97, 112, 49 L.Ed.2d 342, 96 S.Ct. 2392 (1976).

The Commissioner suppressed the admissions of Respondent on recordings which were transcribed and presented to the court at the November 19, 2014 hearing, that the sex in question was consensual.

The Commissioner refused to consider the testimony of Appellant when offered at the April 14, 2015 hearing, although Appellant was prepared to offer proof that Respondent was at all times married to an Italian named Gianluca Usai, that her real name was Leanne Usai, that she had committed bigamy in marrying (and divorcing) Franco Gohse, and that she had committed bigamy in marrying Appellant.

ER 404(b) states that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

Proof of motive is a proper basis for the admission of prior bad acts evidence under ER 404(b). *State v. Benn*, 120 Wn.2d 631, 652, 845 P.2d 289 (1993), *citing State v. Tharp*, 96 Wn.2d 591, 594, 637 P.2d 961 (1981).

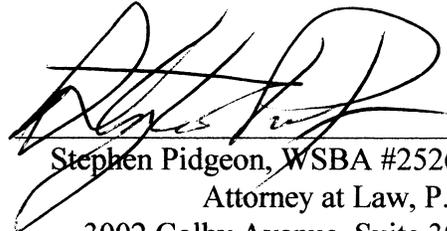
CONCLUSION

The facts of this case are such that the allegations of Gohse strain credulity. Gohse was, at all times, in the commission of the crime of bigamy in her marriage to Harris. Her identity as Leanne Gohse was false. Evidence of this was wrongfully excluded. The fact that Gohse was willing to enter into a marriage on false premises, willing to enter into marriage while married to another a second time, and willing to falsify information to obtain a passport under false name, her testimony should be discounted accordingly.

The testimony of Harris was disregarded and stricken inappropriately, while the testimony of Gohse was deemed truthful. This amounts to abuse of discretion.

Had the Commissioner admitted Harris's evidence, easily allowed under ER 1101(c)(4), the court could only have concluded that Gohse's testimony was not credible; that she had admitted that the sex was consensual, and that she was in commission of the crime of bigamy at the time of the event, giving credibility to the claim of Harris that her motive in both forcing a marriage, and, when that failed, making an accusation of non-consensual marital sex was a ploy to obtain a "U" Visa. A reasonable judge, based on these facts, would not have found in her favor.

Signed in Everett, this 16th day of December, 2015.



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ADDENDUM A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LEANNE HARRIS,)
)
) COA NO. 73607-8-1
)
) Petitioner,)
 v.) CAUSE NO. 14-1-00176-9 SEA
)
 JASON HARRIS,)
)
) VERBATIM TRANSCRIPT OF
) Respondent.) PROCEEDINGS
)

November 19, 2014

KING COUNTY SUPERIOR COURT

BEFORE THE HONORABLE

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1 SEATTLE, WASHINGTON; NOVEMBER 19, 2014

2 9:32 A.M., WEDNESDAY

3 * * *

4 MS. ZINNECKER: -- 14-2-28164-1 SEA.

5 THE COURT: Thank you.

6 Good morning.

7 MS. RICH: Good morning, your Honor.

8 THE COURT: Could you please identify yourselves for the record?

9 MS. ZINNECKER: Yes, your Honor. Rhe Zinnecker. I represent Ms.
10 Leanne Harris, who is the petitioner in this matter.

11 MS. RICH: And Janal Rich [phonetic], representing the respondent,
12 Jason Harris; here, to my right.

13 THE COURT: Thank you.

14 Could the parties please raise their right hands?

15 Do you swear or affirm any testimony you [inaudible] today will be
16 the truth?

17 MR. HARRIS: Yes.

18 MS. HARRIS: [Inaudible.]

19 THE COURT: I have an order -- I'm assuming this is, Ms. Zinnecker,
20 your proposed order?

21 MS. ZINNECKER: Yes, your Honor.

22 THE COURT: Okay. And I'm assuming, then, this is not agreed.

23 MS. RICH: That is correct.

24 THE COURT: Since there are no signatures on the other --

25 MS. RICH: Well, we were able to -- actually, I will say: we have
26 been able to agree to some small portion of it; and that would be the

1 exchange of property. But, we'll write that into the final order, your
2 Honor.

3 THE COURT: Thank you.

4 MS. RICH: And, your Honor, I know that you received an objection
5 by Ms. Zinnecker, with regards to our materials. I would also like to
6 make an objection with some of the materials that were given to me by
7 the petitioner, through counsel.

8 I actually received three declarations yesterday; even though the
9 order to continue said that all of her materials would be provided a
10 day sooner.

11 THE COURT: Which declarations are you referring to?

12 MS. RICH: The declarations, specifically, that I received late
13 were the declaration of Pastor Carrie Smith, the declaration of
14 Sergeant C.K. Todd [phonetic], and the declaration of Officer J. Weiss
15 [phonetic].

16 THE COURT: Ms. Zinnecker, were those declarations provided outside
17 of the bounds of the order?

18 MS. ZINNECKER: They were provided late, your Honor; however, I
19 would say that they didn't come in until late. And, this is in the
20 form of a reply declaration. Respondent didn't have any right to
21 reply. I don't think he's prejudiced in any way.

22 It is in strict response to what he said -- or, in strict reply to
23 what he said in his response.

1 MS. RICH: Your Honor, I actually object to her saying that it is
2 in strict response to what my client said; actually, several of her
3 declarations are not. But, in particular, these ones.

4 He doesn't talk about any conversation with Pastor Kelly. He
5 doesn't talk about -- he doesn't either deny or anything any incident
6 that happened with a previous girlfriend; and, in fact -- so, I mean,
7 those are prejudicial.

8 THE COURT: Well --

9 MS. RICH: That stuff was not even brought up until --

10 THE COURT: Ms. [inaudible]? Hang on just a second. I have the
11 declaration of Carrie Smith [phonetic]. I just want to make sure I
12 have those declarations that you're referring to, so I know what you're
13 talking about.

14 And you're talking about the other two declarations, from
15 Snoqualmie Police?

16 MS. RICH: Correct, your Honor.

17 THE COURT: Okay.

18 MS. RICH: But, as I was saying, your Honor, nothing was alluded to
19 to the fact of, "Oh, well, there's this past incident," or any
20 specifics; so that my client could actually respond to them in his
21 response, with regards, in her petition.

22 Before Ms. Zinnecker came on, there was nothing stated about this
23 incident with the girlfriend -- ex-wife, yes; girlfriend, no.

1 THE COURT: Ms. Zinnecker, in response to your objection and motion
2 to strike, I am granting the request, and I am striking the
3 transcripts, as they've been put forth.

4 MS. RICH: May I ask why, your Honor?

5 THE COURT: Ms. Rich, I don't find that they were consented to; and
6 they were based on recordings that took place between the parties. And
7 I don't find that there's a basis for entry of those, absent -- if we
8 follow 11.06, then, basically, we just have a shooting match, right?
9 Which is all fair and good.

10 But, my concern is that these are transcripts that were obtained,
11 absent the petitioner's consent, in --

12 MS. RICH: Your Honor, if I may, could we have the parties --

13 THE COURT: Would you please stop interrupting me? I will give you
14 every opportunity to respond?

15 Absent -- excuse me; in violation of the Washington Privacy Act.
16 And that is my concern, regarding those.

17 However, there are additional declarations of minors, which I'm not
18 sure why you would have proposed those to this Court, knowing what our
19 policy is on declarations of minors.

20 MS. RICH: W- w --

21 THE COURT: Now, I would appreciate your response.

22 MS. RICH: One of them, your Honor, is not a declaration of the
23 minors; it's one of the minors' girlfriends.

24 But, with regards --

25 THE COURT: Is she a minor?

1 MS. RICH: No, she's 18.

2 MS. ZINNECKER: We did not object to that [inaudible].

3 THE COURT: Oh, it's just the two twins: [inaudible] Kiernan
4 [phonetic].

5 MS. RICH: His children, who witnessed.

6 But, your Honor, with regards to the transcript, if we could
7 swear these parties in, my client would testify, with regard --

8 THE COURT: Your client's sworn in.

9 MS. RICH: -- to high. Or, if we could take testimony, rather,
10 with regards to how these transcripts were obtained, he will tell you
11 that the phone was in -- in particular, the one incident -- the phone
12 was in full view, sitting in front of them, between them, and she could
13 see that it was recording.

14 And I think that that might assuage your Honor's fear, with
15 regards to, at least, particularly, that particular phone call's being
16 with or without consent.

17 THE COURT: And which phone call is that?

18 MS. RICH: That would be the conversation from October 7th and
19 October 8th. The parties were together, talking about what may or may
20 not have happened on the night in question.

21 The phone was in clear view of Ms. Leanne Harris.

22 MS. RICH: Your Honor, there's nothing that indicates in the
23 transcript that that is the case, and my client denies that she knew.

1 THE COURT: Before you address any of the testimony contained in
2 the transcript, itself, I'll allow you to address the admissibility of
3 that transcript, only.

4 MS. RICH: The one from the 7th or the 8th, your Honor?

5 THE COURT: You're talking about the 7th is the one that she was
6 aware of, correct?

7 MS. RICH: Both?

8 MR. HARRIS: Both.

9 MS. RICH: My client corrected me; it's both the 7th and the 8th,
10 where Ms. Leanne Harris would have seen the telephone in full view,
11 recording.

12 THE COURT: But you just indicated to me that it was the 7th --

13 MS. RICH: No --

14 THE COURT: -- on which she, knowingly, was recorded.

15 MS. RICH: I said the 7th, and then I corrected myself, your
16 Honor; and I said "7th and 8th." To be fair, it was more than one
17 conversation.

18 THE COURT: Okay. And I see there's a third, on the 10th; I see.

19 MS. RICH: Right. And, obviously, that one was over the
20 telephone; he can't testify -- other than what's in the transcript, he
21 could not testify to say that she knew. So, those would not be -- the
22 pertinent ones, I guess I would say, would be the 7th and 8th, with
23 regards to whether they should be admissible.

24 THE COURT: Ms. Zinnecker. I am going to reserve ruling,
25 regarding admissibility of those documents for her argument; but I'm

1 going to let you proceed, because I don't think you need to address
2 this, although I'll allow you to address those transcripts, on reply.

3 This is your client's petition for a domestic violence order of
4 protection.

5 MS. ZINNECKER: Yes, your Honor.

6 THE COURT: I am allowing the declarations of Dr. Smith, Sergeant
7 Todd [phonetic], and Officer Weiss [phonetic]; realizing they were
8 obtained in reply.

9 Please proceed.

10 MS. ZINNECKER: Your Honor, I don't know if you have any specific
11 questions for my client, at this point.

12 THE COURT: I do. Is there an ongoing criminal investigation?

13 MS. ZINNECKER: Yes, there is, your Honor.

14 THE COURT: And I have not been provided a police report; is that
15 correct?

16 MS. ZINNECKER: Yes, your Honor; I didn't have access to it.

17 THE COURT: Everything else is [inaudible] to present your case;
18 thank you.

19 MS. ZINNECKER: Your Honor, as you know, the definition of DV
20 specifically includes sexual assault; RCW 26.50. The standard is
21 preponderance of the evidence.

22 Of course, these kinds of cases are very difficult to prove at a
23 criminal level -- the criminal-trial level; but, in this particular
24 case, given the standard of evidence, I think the Court has to find

1 that there needs to be an order of protection, in that my client was
2 sexually assaulted.

3 Your Honor, I would point to the facts, and the other [inaudible]
4 with regards to this. Mr. Harris was going through the cell phone,
5 deleting contacts, messages he deemed inappropriate; which is very
6 particular to what the other two women who have brought these types of
7 actions against him said.

8 He has become extremely jealous if he suspected she was in
9 contact, or even looking at another man; again, these are exactly the
10 same kinds of things that the other parties have complained about.

11 Now, we find he was tape-recording private conversations; and, he
12 refused to file the marriage certificate, as promised.

13 He's all [inaudible] of the coercive behavior of someone who is
14 domestic-violence perpetrator. And I'd ask the Court to enter an
15 order, finding such.

16 We have asked -- we had also asked, in the order of protection,
17 that it last for three years. I think that's appropriate, given this
18 case; given the level of violence that occurred in this marriage, in
19 such a short time; given the history, with regards to this perpetrator.

20 We have also asked that there be certain property returned. We
21 have dealt with some portions of it; but, in particular, your Honor,
22 Mr. Harris was ordered to turn over the iPhone 5s, and he has refused
23 to do that. He was ordered to deliver his guns to the King County
24 Sheriff's Department, and he refused to do that; and it's totally
25 inappropriate that his mother would have access or control of his guns.

1 Those should be turned over; and we have asked your Honor for
2 attorney's fees, under 26.50.060(1)(g), we would ask for \$2,250 in
3 attorney's fees.

4 THE COURT: There's been no allegations concerning the weapons,
5 though; is that correct?

6 MS. ZINNECKER: Not -- they were not used in this --

7 THE COURT: Ms. Rich, the nonverbal testimony is not okay,
8 either. Please, stop.

9 I'm sorry.

10 MS. ZINNECKER: Not in this situation; no. However, the guns
11 were present in the home; and, in that manner, were coercive.

12 Your Honor, my client does have some testimony, with regards to
13 that specific question with the guns.

14 THE COURT: Proceed.

15

16 LEANNE HARRIS, Witness herein, having been duly sworn, was
17 examined and testified as follows:

18

19 E X A M I N A T I O N

20 BY MS. ZINNECKER:

21

22 Q. Okay. I'm going to ask you a question, and you'll need to respond
23 to my question.

24 A. Okay.

1 Q. Ms. Harris, was there any times when guns were used in order to
2 force you?

3 A. Um, he had demonstrated the guns to myself, in my living room some.
4 And, um, [inaudible] something some day that, you know, that he was
5 demonstrating those weapons to us.

6 Q. Can you tell us the context of when that happened?

7 A. It was, um -- you mean the time?

8 Q. The time, and what is going on at the time that he displayed the
9 guns.

10 A. Um, we were, um, helping him, packing some belongings to move out
11 of his, uh, cottage. And, um, he demonstrated those weapons. I'd
12 never seen them before. And, um, there was, uh, it was, uh, a handgun
13 under the bed, which I was not aware of [inaudible].

14 And, um, he, uh, demonstrated it. And it was intimidating.
15 And the amounts of ammunition.

16 At no time was the weapons in- in a [inaudible] place; it was
17 just, uh, hidden.

18 MS. ZINNECKER: Thank you, your Honor; that's all.

19 THE COURT: Can you tell me approximately what time this incident
20 occurred?

21 MS. ZINNECKER: The incident with the weapon?

22 THE COURT: No, the incident [inaudible] that led to the filing
23 of this order for protection.

1 MS. ZINNECKER: That incident occurred on October 5th -- the
2 evening of October 5th, after the parties had been married on October
3 1st.

4 THE COURT: Okay, thank you. I just needed clarification; my
5 notes weren't clear.

6 Ms. Rich?

7 MS. RICH: Thank you, your Honor.

8 First, I guess, I'll take testimony, with regards to my client,
9 with regards to these transcripts.

10 THE COURT: Okay. Proceed.

11

12 JASON HARRIS, Witness herein, having been duly
13 sworn, was examined and testified
14 as follows:

15

16 E X A M I N A T I O N

17 BY MS. RICH:

18

19 Q. Much like Ms. Zinnecker, I'm going to give you the same
20 instructions; I'm going to ask you some questions, and then direct your
21 answers, okay?

22 A. Okay.

23 Q. With regards to the telephone conversation on -- or, regards to the
24 transcript of the audio, that says it happened on October 7th, 2014,
25 can you tell me the circumstances under which that recording was made?

1 A. Yes. I was in my son's room, sleeping. She had knocked on the
2 bedroom door, asking to come in and speak; at which I said, "Yes," and
3 pulled out my phone, set it on the bed, started the audio trans-, uh,
4 the audio recording. She sat on the bed, between me and the phone, of
5 which the phone sat during the entire duration of the conversation.

6 Face up, in clear view that it was being recorded.

7 Q. So, your thought was that Ms. Harris knew that that particular
8 conversation was being recorded?

9 A. Absolutely, evidently clear. I had been telling her for days that
10 I was recording conversations. She had asked me, "Why are you doing
11 it?" I said, "It's for my protection."

12 And then, -- yeah, very clearly aware that I had been recording.
13 I had made no hiding, in any shape, form, or fashion to keep that from
14 her.

15 Q. Okay. With regards to the October 8th transcript, do you recall
16 under what circumstances that was made?

17 A. Yes. I had just returned home, from signing a new lease, packed as
18 many personal belongings in my vehicle as I could fit; and, on my way
19 out the door, she wanted to talk to me. And I said, "Okay, I'm going
20 to record this," pulled my phone out of my pocket, initiated the app.
21 And I held my phone in front of me, in full view, during the course of
22 that conversation.

23 Q. So, again, your thought is that Ms. Harris knew --

24 A. Abs --

25 Q. -- that the conversation was being --

1 A. -- absolutely. Yes, absolutely.

2 Q. Okay. You said that you had told her that you were going to record
3 conversations, for your own protection?

4 A. For my protection; yes.

5 Q. What did you mean by that?

6 A. Um, because there had been so much deceit and lies going on that,
7 uh -- I, personally, have a hard time with memory recall at some
8 occasions, when I get stressed and anxiety. And, so, feeling that I
9 needed to protect myself.

10 I- I didn't trust with the things that she had been telling me,
11 uh, which led me to, immediately, two days after being married, inform
12 her that I was moving out, and why.

13 Q. Okay.

14 MS. RICH: That is all of my argument -- or, his testimony,
15 rather -- with regards to those two particular transcripts, your Honor.

16 Other than the fact that the last transcript that we did submit
17 does state that I'm recording this, like I have all previous recordings
18 -- or, all previous conversations.

19 I would ask that the transcripts -- at least, for October 7th and
20 8th -- be allowed, with regards to this issue.

21 MS. ZINNECKER: Your Honor, if you're going to consider that, and
22 actually respond to that; then, my client would like to testify with
23 regards to this, and I also would like some argument on that issue that
24 you had told me to keep that to reply.

25 THE COURT: Which is fine.

1 And I'm not inclined to grant the request. I've reviewed both
2 the transcripts for October 7th and October 8th. The [inaudible]
3 acknowledge of the recording occurs in a subsequent transcript.

4 MS. ZINNECKER: And, I do understand that, your Honor. To be
5 fair -- you know, neither one of these people, I think, are incredibly
6 legally savvy. And he did not know until after those conversations
7 that even if you tell her, you should make sure that that's part of the
8 recording.

9 Much like when you get a cold call from a company.

10 THE COURT: So noted.

11 So, I'll allow the transcript from October 19th, where he
12 indicates to her that he's recording, and there's some consents
13 involved in that. But that transcript will be admitted.

14 MS. ZINNECKER: Okay.

15 THE COURT: But, I'm not considering the other transcripts.

16 MS. RICH: Fair enough, your Honor.

17 Your Honor, I think that this case boils down to a woman scorned.
18 These parties had been courting a very, very short time. They got
19 married on October 1st. And, less than two days later, Ms. Harris'
20 husband, my client, tells her, "You know what? I think this was a
21 mistake; I'm going to move out."

22 That's what he told her. He told her that on the 3rd; he told her
23 that on the 4th; he told her that on the 5th, as stated in his
24 declaration.

25 He told her multiple times.

1 On the evening of the 5th -- I would say maybe in an effort to get
2 him to stay -- Ms. Harris is the one who initiated sexual intercourse,
3 as stated by my client.

4 He was asleep in the bed when she started.

5 She crawled into bed next to him, naked; and started to talk to
6 him, and to touch him with foreplay. This led to consensual sex, by
7 two married adults.

8 Now, 24 hours later -- and, you actually have the thing from the
9 police department -- Ms. Harris actually called the police. There was
10 no mention of nonconsensual sex, or rape, here, in the detailed history
11 of the police event.

12 But the police officer did come out, talk to both parties -- and
13 actually talked to Ms. Harris alone, which, I think, is standard
14 procedure for something like this -- and did not write a report,
15 because he did not find that there was nonconsensual sex.

16 And, in fact, I could take testimony from my client, with regards
17 to the fact that during this conversation on the 6th, he had asked the
18 parties, while both of them were there, you know, was this consensual.
19 And Ms. Harris said, "Yes," and that it wasn't rape.

20 She called again, on the 10th, when my client was moving some of
21 his belongings or trash out. And, again, there's no police report;
22 there was no mention of the fact that this is nonconsensual sex, that
23 this is rape.

24 Rather, I think it took until the third time, when my client
25 wasn't there that Ms. Harris may have called back, and said, "Wait a

1 minute; this is nonconsensual. I want him to be --" You know, "I want
2 the police to look after him for rape," which is, I think, what the
3 investigation is going -- currently going on.

4 But, your Honor, she had talked to the police officers at least
5 twice before that, and had never said, "This man raped me. This man
6 raped me."

7 In fact, the night of the sex, he was starting to move some of
8 his stuff out -- or, he was leaving -- and the police officer let him
9 go.

10 Again, no report was written, because the police said, "There's
11 nothing here." In fact, it says it was verbal with the husband. All
12 the guns are in a cabinet downstairs. But they were not involved. And
13 that my client was currently in the bedroom.

14 Now, if your Honor looks at his declaration, that was one of the
15 nights when he had gone through the house, trying to get away from her;
16 and had basically locked himself in a separate room. He had locked
17 himself in the master-bedroom closet, I believe?

18 MR. HARRIS: Yes.

19 MS. RICH: In an attempt just to try to get some peace and quiet,
20 and go to sleep in there.

21 And that, when it became obvious that she wouldn't leave him
22 alone, he packed a bag. And he was on his way out when the police got
23 there.

1 Q. What happened on the night of August 6th -- or, not August; excuse
2 me -- October 6th?

3 A. October 6th.

4 Q. When the police were called.

5 A. Yup. So, I had arrived home, um, after work. There was small talk
6 between Leanne and I about how are day went, uh, what we did. And, um,
7 normal routine, uh, or what normal routine could be considered, uh,
8 routine, from only having been in the house with her four days
9 together.

10 And, uh, but at some point during the conversation, it led to,
11 um, the -- earlier that morning, her smoking a cigarette. Don't care;
12 wasn't bent out of shape about smoking a cigarette. That had nothing
13 to do with it. It was just the fact that it was kind of done in
14 deceit.

15 Okay, fair enough.

16 Um, at that point, it led to questioning -- her questioning me if
17 I was still leaving. I said, "Yes, I'm still leaving the house. I'm
18 still looking for a place to live, and I will be filing for an
19 annulment."

20 At that point was when the aggression started. And it was with
21 three to four hours of just yelling and yelling and yelling, nonstop.
22 Following me from the laundry room to the bedroom to the bathroom to my
23 son's room to the kitchen. She would not stop.

24 Ultimately, is when I finally went into my son's room, to
25 actually get some sleep; and was able to fall asleep.

1 Only later -- and, on a timeline, I think it was about 10:30 --
2 came in, and started yelling some more.

3 I thought, "Good grief. I- I just can't deal with any more of
4 this." So, I went upstairs, into the master bedroom, closed the door -
5 - Leanne was downstairs, still, at time -- went into the clos-, the,
6 uh, bathroom, locked the door. Went into the master closet, closed
7 that door, laid down on the floor to sleep.

8 A few minutes later, I heard Leanne's -- running up the stairs,
9 down the hall -- barreled into the door, crashing into it. I come out,
10 open the bathroom door. She's layin' on the floor. I ask what's going
11 on. And she just continues to yell at me.

12 So, at that point, close the bathroom door again, lock it, and go
13 lay down.

14 She's bangin' on the door, yelling and continuing to scream.

15 After a few minutes, it's silent; it quiets down. And I'm
16 thinking, "Okay, I'll be able to rest for the night." Several minutes
17 go by of quietness. And then, the yelling starts again.

18 And, at that point, I said, "No more." I got dressed, packed a
19 bag, grabbed my work shirt and pants on a hanger, and walked out of the
20 house.

21 And when I got down to the front door, to leave, is when the
22 deputy officer was standing there.

23 Q. What happened when the deputy officer was there?

24 A. Um, well, he asked, uh, what was -- had taken place; and I gave him
25 a brief overview of the evening, that had been hours of this nonstop

1 yelling. And, I couldn't handle it any more, so I was leaving; trying
2 to defuse the situation.

3 At some point, during that time, Leanne had came downstairs. The
4 officer had, uh, questioned her about some things. Um, she ultimately,
5 um, then leads into -- stumbling over her words, and being inconsistent
6 -- then, comes out with an unexpected intercourse.

7 And when, in his questioning to her about that, he then
8 ultimately says, "Did he rape you?" Her answer was, "No." He asked
9 her, "Was it forceful?" Her answer was, "No."

10 Then, he took her inside, had a separate interview. Had me
11 outside, had a separate interview. Had us both together, and said,
12 "There's nothing here. You guys are married. Mr. Harris, you're free
13 to go."

14 And then, sent Leanne inside, closed the door, and I departed.

15 Q. Okay. With regards to the night in question -- October 5th -- can
16 you tell me what happened that night?

17 A. Yes. Um --

18 Q. And try to keep it clean.

19 A. Uh, Leanne was in the bathroom, bathing, and I had already prepared
20 for bed. I had my sleep pants on, dressed; t-shirt.

21 I get into bed, I fall asleep. I don't know what time it was;
22 but, at some time later, Leanne comes out of the bathroom. She is
23 unclothed. She gets into bed, she lays up next to me, she starts
24 touching me, fondling me. And, arousal; and, one things leads to
25 another: pants come down, clothes -- my -- all my clothes are off now.

1 And, we ended up having intercourse. It was absolutely
2 consensual; she was telling me she wanted me, among other things.
3 There were -- so, keepin' it clean -- there was a lot of words used.

4 And, she was sitting on top of me; eventually, slid over to her
5 side, pulling me on top of her. Said that she wanted me, wanted me
6 inside of her. And we commenced, and we had intercourse.

7 We were laughing; we were smiling; we were kissing passionately,
8 intimately, as husband and wife, making love to one another.

9 Immediately thereafter, she wanted more. She continued to say
10 she wanted more. I was tired and exhausted, um, but she wasn't
11 finished, and she wanted more.

12 And we ended up just fallin' asleep in each other's arms.

13 Q. At any time, did she give you any indication that she did not want
14 to have intercourse with you?

15 A. No, she did not. She never pushed away; she never said, "No."
16 Matter of fact, she asked for it; she said she wanted me, she wanted
17 me, she wanted me.

18 Q. Has there ever been any other type of aggression by you towards Ms.
19 Harris, during this brief marriage?

20 A. No, there hasn't. I've been fully supportive of Leanne; I've loved
21 her; I've believed in her; I put my trust in her; I helped her,
22 financially; provided food for her home and her children. I've been
23 nothing but a genuine, loving individual towards Leanne.

24 Only to find out that why I left was some deceitful things goin'
25 on around the way.

1 But, the whole time, I have never acted or addressed to Leanne,
2 or her children, in any physical or verbal aggression, at any time.

3 Q. Has Ms. Harris been aggressive towards you --

4 A. Yes.

5 Q. -- physically or verbally?

6 A. Yes, she has.

7 Q. Can you tell me an incident where she was physically aggressive?

8 A. While I was moving out, and in one of the occasions, of which I
9 have a transcribed audio, she, um -- I was recording, and letting her
10 know that -- I had -- was upstairs, picked up a box, set my phone on
11 top of the bannister, face up.

12 She came walking by, saw that it was recording, threw my phone
13 down the stairs. I put the box down. I go downstairs to pick up my
14 phone. All the while, then, she's pushing me, and shoving me up
15 against the wall.

16 I pick up my phone. I'm standing with my hands above my head,
17 with my phone in my hand. And she's hitting and beating me on my
18 chest. And I'm saying, "Stop hitting me, stop hitting me. Step away
19 from me."

20 And her daughter -- 17-year-old daughter, 18-year-old girlfriend
21 of my son, and my son, who's now 18, today -- all three witnessed that
22 entire event.

23 Q. And that event is kind of retold, not only in your declaration; but
24 I want to say it's Chelsea Meadows [phonetic] --

25 A. Yes.

1 Q. -- which is the girlfriend.

2 A. It's- it's in Chelsea's and Karen's witness statement; yes, it is.

3 Q. Yes.

4 A. And I continually backed away from her.

5 MS. RICH: Your Honor, I have no further testimony from my client
6 at this point, your Honor.

7 Your Honor, I think it's telling that she waited so long to do
8 the petition; not only that, I think it's telling that when my client
9 saw that things were not working out -- part of it was being the
10 aggressive and the verbal behavior -- that my client's the one who
11 moved out.

12 He did not want to be part of a toxic relationship, and he
13 realized the error of both these parties. And he was the one who said,
14 "Wait a minute; we have to be grown-ups. We're going to split."

15 And he's the one who moved out of the home.

16 He didn't stay there to continue to be an aggressive -- and I
17 don't think that there was any nonconsensual sex on the night of the
18 5th; not only based on my client's testimony, but based on the fact
19 that Ms. Harris didn't say that there was [inaudible] the cop on the
20 6th. But that's also stated in the statement from the police report.

21 That would have been the perfect time for her to say there was
22 nonconsensual sex; and yet, she didn't say it, right the next night.

23 I think that's quite telling.

24 And, obviously, your Honor's not considering the transcripts.
25 But, even in her own words, she had admitted that it was consensual.

1 But, regardless of those transcripts' not being admitted, I think
2 that it's the fact that even the police -- when she was questioned, she
3 didn't bring it up to the police; and the fact that this petition took
4 so long.

5 THE COURT: And you indicated, as well, that there is a current
6 investigation?

7 MS. RICH: There is. I believe that's from a subsequent, later
8 phone call, approximately, I think, around the 11th or 12th. But my
9 client is fully complying with that, and is giving them, you know, the
10 recordings, and anything and everything that he can to help with that
11 investigation.

12 With regard to Ms. Zinnecker's request for attorney's fees, I
13 understand that that is allowed by statute; but it was not part of the
14 initial petition, so my client did not respond to it.

15 I don't think that awarding fees in this case would be
16 appropriate. I understand that she has limited funds, but my client
17 does -- you know, obviously, the financials of these parties aren't
18 before the Court to say who has more, who has less.

19 But I don't think that it's necessarily appropriate. Obviously,
20 both parties are having to pay for their attorneys. And I do not think
21 that a three-year order of protection -- if your Honor should grant
22 one, which I don't think you should -- but, if you should grant one, I
23 didn't believe that it should be three years.

24 This was an extremely short courtship; it was an extremely,
25 extremely short marriage. And my client's the one who left.

1 Regardless of what his history was with his ex-wife -- and the one that
2 they allude to in their responsive materials with the girlfriend was
3 later dismissed, I'll have your Honor know -- my client -- you know,
4 he's the one who left. He didn't stay to perpetuate an abusive
5 relationship, which is what Ms. Harris would have you believe: that
6 he's the one who started all this abuse, he's the one who's trying to
7 have this abusive relationship.

8 He was the one who was being, actually, somewhat abused. And, so
9 he left.

10 THE COURT: Anything further?

11 MS. RICH: No, your Honor.

12 THE COURT: Thank you.

13 Ms. Zinnecker?

14 MS. ZINNECKER: Your Honor, I would prefer to not force my client
15 to testify about what happened. Do you have any specific questions for
16 her, with regards to -- she's already provided two statements about
17 what happened that night.

18 THE COURT: And I've reviewed those; I don't think it's necessary
19 that she --

20 MS. ZINNECKER: If you have any specific questions, I will ask
21 her those.

22 THE COURT: No

23 MS. ZINNECKER: But I don't think it's appropriate that she have
24 to testify about this again.

1 Mr. Jason claims, in his declaration, that he was ready to end
2 the marriage as of the first day after they were married. According to
3 the declaration of Pastor Carrie Smith, both Mr. Harris and Ms. Harris
4 went to her five days after the marriage, and said that it had not been
5 consummated yet, and that they were having difficulties; Ms. Harris
6 reported that there were difficulties in the marriage.

7 So, that specifically rebuts that claim.

8 As for the fact that my client did not report to the police that
9 she had been raped, I don't think that's very unusual at all, in this
10 kind of case; it's not unusual at all in most sexual assaults. But,
11 particularly, when you've just married a man, and you are still at the
12 point where you're hoping this relationship will work out, even though
13 this terrible thing happened, this would not be something that you
14 would automatically report to the police, or want to come forward with
15 publicly.

16 It's been a terrible thing for her to have to come forward with
17 this publicly. There is an investigation now; she has been able to
18 report it. But this is very typical in sexual assaults; much less, a
19 sexual assault this close in to when the parties were married.

20 My client, as she testifies, is an extremely religious person;
21 and her beliefs were that they needed to have a marriage in a church.
22 And, he got her to marry him on the basis that they would wait to
23 consummate the marriage until they had a church wedding. And then, he
24 did not honor that promise.

1 There is no evidence that the iPhone was for his daughter; it was
2 actually a phone that was used by Ms. Harris. And, I would submit to
3 the Court that there is evidence on that phone that is being withheld,
4 because he will not provide it to my client, as ordered under the first
5 order.

6 There are text messages, and whatever that was going on between
7 the two; and he has not provided that. That should be ordered to be
8 given to her immediately.

9 As far as the recordings, it appears that he has now testified
10 that he has been recording her since day one, which is something that
11 she didn't realize was happening, at all. And, I find that to be a
12 very scary thing -- for him to have been doing that.

13 So, I think that there is a preponderance of the evidence here
14 that this event did take place; that domestic violence is present. And
15 we ask the Court to enter the orders as proposed.

16 THE COURT: Thank you.

17 Can you tell me -- do you have any knowledge of the status of the
18 investigation?

19 MS. ZINNECKER: Your Honor, I do know that my client has been
20 interviewed, and that Mr. Harris has been interviewed. I do know that
21 there have been several other collateral contacts that have been made;
22 but I do think the investigation is ongoing, which may be why they
23 don't have any kind of report at this point to give you.

24 I know that as recently as two days ago, one of the people I was
25 talking to had been contacted by police. And that's all I know.

1 THE COURT: And, in regards to your proposal -- both parties have
2 actually proposed the exchange of property, notwithstanding the cell
3 phone.

4 MS. ZINNECKER: Your Honor, I believe -- you know, there are some
5 things we've agreed to; some things, not. I can mark through the
6 things that are not agreed to, and I understand --

7 THE COURT: I'm inclined not to grant your request to anything
8 that's not agreed, notwithstanding the phone; simply because of -- I'm
9 not quite sure how they fall under the bounds of "essential personal
10 belongings."

11 So, if you wanted to address that; and then, briefly, if you
12 would address your request for fees.

13 MS. ZINNECKER: I'm sorry. I didn't quite understand the first
14 thing that you asked me to address.

15 THE COURT: Could you address -- obviously, [inaudible] is strike
16 three things that weren't agreed, for property --

17 MS. ZINNECKER: Yes.

18 THE COURT: -- so, I'm guessing then, by that statement, that you
19 are not contradicting my assertion that those are not essential
20 personal belongings?

21 MS. ZINNECKER: No, your Honor. I'm not contradicting that,
22 except for the -- as I say -- the iPhone --

23 THE COURT: The iPhone; okay.

24 MS. ZINNECKER: -- and the marriage certificate, 'though I
25 understand he is going to --

1 THE COURT: Okay.

2 MS. ZINNECKER: -- provide the marriage certificate.

3 THE COURT: And then, could you please address your request for
4 fees?

5 MS. ZINNECKER: Your Honor, my client has no resources. She
6 needed help in order to address the volume, the voluminous declarations
7 Mr. Harris provided. This is, I think, an extremely complicated case;
8 and, I think, particularly, that he provided evidence that was
9 illegally got, and needs to be objected to. I think it was absolutely
10 reasonable that she have an attorney present today.

11 She has no resources. You have information, at least, about his
12 income from the Department of Defense, and that he is employed there.

13 We ask the Court to grant \$2,250. I think it's very reasonable,
14 given my reduced rate that I'm giving to Ms. Harris.

15 THE COURT: You supplied a pay stub for Mr. Harris. Is that
16 correct?

17 MS. ZINNECKER: Yes, we did, your Honor.

18 THE COURT: Okay.

19 MS. ZINNECKER: It is redacted, and it is --

20 MS. RICH: I know it was --

21 THE COURT: I have it; I just wanted to make sure that that was
22 correctly in my mind, and there it is.

23 MS. RICH: [Inaudible] reply materials.

24 MS. ZINNECKER: [Inaudible.]

25 THE COURT: Thank you.

1 This matter comes before this Court for determination of whether
2 or not a domestic violence order for protection should be granted. To
3 grant an order for protection, I must find by a preponderance of the
4 evidence -- which is more likely than not -- that domestic violence
5 exists, pursuant to RCW 26.50.010.

6 This was an extremely short-term relationship. I believe the
7 parties met in August, and were married in October, specifically, on
8 October 1st. There is an allegation of sexual assault, that occurred
9 on October 5th.

10 The evidence presented to this Court indicates that there was, in
11 fact, a police call on October 6th; and, at least on the CAD report
12 that has been submitted, there's no indication that there was a sexual
13 assault.

14 However, in his own testimony, the respondent indicated that when
15 the petitioner was contacted by law enforcement, she indicated there
16 was unexpected intercourse.

17 The question, then, becomes really: is "unexpected" the same as,
18 effectually, rape? And, I think that is, clearly, why we're here
19 today.

20 I've looked at all of the evidence that I have admitted for
21 consideration, for purposes of making this decision.

22 It is not unusual for the victim of a sexual assault --
23 especially, in light of the circumstances surrounding the alleged
24 events -- to delay filing; especially, if the incident was, in fact,
25 mentioned to law enforcement on the next day.

1 That leads me down the path of: there was clearly an indication
2 that something had gone wrong that night before

3 And, perhaps, the need to wrap one's head around those events was
4 the reason for the delay.

5 MS. RICH: Your Honor, if I may, we had also submitted proof with
6 that that she had used his debit card for Sprint; so, that kind of
7 contradicts the cell phone's being hers.

8 But also, the fact that she did this after she filed the
9 protection order petition, she used his debit card that was on file
10 with Sprint; and was contacting the loan officer for his personal
11 information.

12 MS. ZINNECKER: Your Honor, I'm going to object to any additional
13 argument on counsel's part.

14 THE COURT: Sustained.

15 In light of the extraordinary circumstances that have led us here
16 today, I'm going to reserve ruling on a permanent order for protection,
17 pending the conclusion -- or, at least some evidence -- of the criminal
18 investigation.

19 MS. ZINNECKER: Okay.

20 THE COURT: I'll reissue the temporary order, and I'll reissue
21 the order regarding the firearms. I am ordering [inaudible] that the
22 cell phone that had been given to Ms. Harris be returned to her, for
23 her use during the pendency of these proceedings.

24 If she was using it before, she should continue to be using it.

1 Ms. Zinnecker, I'm requesting that you provide documentation
2 surrounding the criminal investigation; whether that's the conclusion
3 of the investigation -- that letter from law enforcement, indicating
4 where that investigation has happened, and what information is
5 available to this Court.

6 I'll reserve on fees. I'm going to reissue for -- because of the
7 month that we're in, it just brings everybody back to a bad place,
8 timing-wise, I think.

9 Today is the --

10 MS. ZINNECKER: Nineteenth of November, your Honor.

11 THE COURT: Thank you.

12 Thirty -- sixty days? Is that enough time, Ms. Zinnecker?

13 MS. ZINNECKER: I don't know [inaudible].

14 THE COURT: Right; we'll hope that it is.

15 I would be [inaudible] 90 days; but, because it is law
16 enforcement, and, Lord knows that it can be challenging to get that
17 information. So, I'll reissue 'til February 19th.

18 MS. ZINNECKER: February 19th?

19 THE COURT: Either party, if there's information available.

20 MS. ZINNECKER: February 19th is a Thursday, so --

21 THE COURT: Oh.

22 MS. ZINNECKER: It's a Thursday, your Honor; if you want us to --

23 THE COURT: Can we do the 18th?

24 MS. RICH: Eighteenth?

1 THE COURT: Yeah. Although, it doesn't really matter, for my
2 purposes; just because the calendar's shifting. So --

3 MS. RICH: [Laughs.]

4 THE COURT: -- it should be heard by me, since I'm the one doing
5 this. So, you're probably right. Are you both available, as far as
6 you know, on the 17th of February?

7 MS. ZINNECKER: Let me look, your Honor. I know I don't have
8 trial.

9 THE COURT: Because I know that's a date.

10 MS. ZINNECKER: But that's not as far out as they -- that's the
11 only thing I know for sure.

12 THE COURT: I just happen to know that that's -- Tuesday is a day
13 I will be there; the other days for -- should be.

14 MS. ZINNECKER: So, you're reserving [inaudible].

15 THE COURT: I'm not going to reserve jurisdiction; it should be
16 heard by me, but I'm setting it for a day that I'll likely hear it. I
17 won't retain, just in case that happens, so that you don't have to
18 continue it is my goal.

19 MS. ZINNECKER: Okay.

20 THE COURT: Premise.

21 MS. RICH: And, I am available on the 17th, so --

22 THE COURT: Okay. So, the 17th of February, we'll reissue. Ms.
23 Harris will provide documentation surrounding the police investigation
24 -- whatever that is, or whatever it available -- on or before February
25 19th.

1 I'm re-instituting the order surrendering weapons.

2 MS. RICH: Your Honor, those are currently in his mother's
3 possession. So, do you want him to go -- can he keep them there, or do
4 you want him to surrender them to the County?

5 THE COURT: Well, the problem is that the recent law enforcement
6 requires that law enforcement not have that process in place until
7 January. So, I don't know -- we have lots of problems with people
8 being able to surrender firearms to law enforcement.

9 So -- because there's no place to keep them.

10 MS. RICH: Okay.

11 THE COURT: So, I'm not satisfied, per se, that his mother retain
12 the weapons; they should -- if there's an attempt made -- that they
13 should be submitted to law enforcement. If there's an attempt made
14 that law enforcement won't take them, then just provide that as
15 evidence that he attempted to do that.

16 MS. RICH: Fair enough, your Honor.

17 THE COURT: I've only seen that on two occasions, and I'm not
18 ever sure which law enforcement agency it was or wasn't.

19 MS. RICH: She wants them at the County. So, at least try to get
20 them to the King County Sheriff.

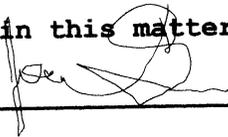
21 MS. ZINNECKER: Okay, your Honor, we'll prepare an order.

22 THE COURT: Thank you.

23
24 [END OF PROCEEDING]

25 * * *

1
2 I hereby certify that this is a true and correct record of the
3 proceedings. I do further certify I am in no way related to or
4 employed by any party in this matter, nor to any counsel, nor do I have
5 any interest in this matter.

6 Signed  Date 10-5-15
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LEANNE HARRIS,)
)
) COA NO. 73607-8-1
)
) *Petitioner,*)
 v.) CAUSE NO. 14-1-00176-9 SEA
)
)
 JASON HARRIS,)
)
) VERBATIM TRANSCRIPT OF
)
) *Respondent.*) PROCEEDINGS
)

November 19, 2014

KING COUNTY SUPERIOR COURT

BEFORE THE HONORABLE

COMMISSIONER MELINDA JOHNSON-TAYLOR

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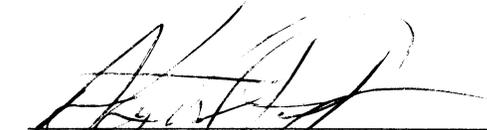
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CERTIFICATE OF SERVICE

The undersigned now certifies that a true copy of Appellants' Brief in Reply in this action was served on the following:

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by electronic mail, and by first class, U.S. Mail, postage prepaid, this 17th day of December, 2015.



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2015 DEC 17 PM 12:24
SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH