

1 Mr. Judkins? Mr. Hayes? I received everybody's
2 suggestions for the jury instructions and we'll go over
3 that during the charge conference.

4 MR. HAYES: And, Your Honor, you mentioned wanting
5 to address the request for judicial notice.

6 THE COURT: I do want to address that. Okay. Would
7 you like to present any argument in regards to that?

8 MR. HAYES: Yes, Your Honor. The Court sustained an
9 objection on the basis that it was not an accurate
10 statement of law that Mr. Harvey could be criminally
11 prosecuted for failure to report. The relevant statute
12 that does in fact make Mr. Harvey a mandatory reporter is
13 39.201.

14 The language reads, in part: "Any person who knows
15 or has reasonable cause to suspect that a child is in
16 need of supervision and care, and has no parent
17 immediately known and available to provide supervision
18 and care, shall report such knowledge or suspicion to the
19 department."

20 In 2013, the statute was changed. The only
21 significance to someone's occupation is whether when they
22 report they must provide their name to the Department of
23 Children and Families, Your Honor. That is in --

24 THE COURT: Is this what the facts are providing,
25 though? Did he report? Did he call it in? Did he go

1 someplace? Did he call law enforcement? Did he call an
2 agency?

3 MR. HAYES: Well, Your Honor, he was interrupted in
4 the process. He believed that he needed enough
5 information to identify whether or not this was, in fact,
6 an adult or a child. He didn't believe -- he didn't form
7 the reasonable belief in his mind that he had reasonable
8 cause to suspect.

9 THE COURT: You can argue that, but what are you
10 asking for in regards to this statute? Because you just
11 requested judicial notice.

12 MR. HAYES: Yes, sir.

13 THE COURT: Do you want to present it before the
14 jury? Do you want to argue it in your --

15 MR. HAYES: Your Honor, this gets directly at
16 whether or not Mr. Harvey was, in fact, capable of being
17 prosecuted for failing to report the facts at issue. He
18 was, in fact, able to do that. It was an accurate
19 statement of law in the opening statements that
20 Mr. Harvey could have been prosecuted for failing to
21 report the facts at issue. He was interrupted by law
22 enforcement before he believed he had gathered enough
23 information to form a reasonable belief that he was
24 required to report.

25 And as the Court is certainly aware,

1 Chapter 39.205(1) makes a person who is required to
2 report and willfully fails to do so a third degree
3 felony.

4 THE COURT: You can argue that. It's whether or not
5 the jury is going to believe you or not or whether the
6 facts show that. I mean, you can argue all you want to
7 the jury that he was of the mindset that he had to report
8 something and he was going to check it out. I mean,
9 that's up to you. So, I mean, the statute is what it is
10 and you can argue that. I don't know what you're asking
11 for.

12 MR. HAYES: Merely that it has previously been
13 stated that it was inaccurate that Mr. Harvey was a
14 mandatory reporter.

15 The court has sustained objections that it was an
16 inaccurate statement of law to say that he was, in fact,
17 capable of being criminally prosecuted when the statute
18 by its plain language does, in fact, indicate that he
19 could have been prosecuted for failing to report these
20 facts, had the purported minor in this case, SaraSara14,
21 in fact, been a minor in need of supervision.

22 THE COURT: All right. I don't know what you're
23 referring to specifically, but what --

24 MS. FRAZIER: Well, I guess my question --

25 THE COURT: -- all we're dealing with is a request

1 for judicial notice. I don't know when or how or if
2 you're going to put it before the jury, but that's the
3 issue we're dealing with.

4 MR. JUDKINS: Maybe I can help. I don't -- I don't
5 recall the exact circumstances under which that exchange
6 occurred, but you sustained an objection to something;
7 and in the process, you read out loud part of the
8 statute. And you said that you sustained the objection
9 because he wasn't a mandatory reporter or for some other
10 reason.

11 THE COURT: I think it might have been during our
12 discussion when you had requested a certain jury
13 instruction, potentially. We were having argument on
14 that --

15 MS. FRAZIER: Yes.

16 THE COURT: -- and we were discussing that.

17 MR. HAYES: Your Honor, it was during opening
18 statements. Mr. Judkins made the statement that, you
19 know, he could have been prosecuted for failing to report
20 these facts. Mr. Hutchins objected and said it was an
21 inaccurate statement of law. The Court sustained that.
22 Mr. Judkins amended his statement to the jury and said he
23 believed he could have been criminally prosecuted, which
24 is a true statement.

25 But it was, in fact, an accurate statement that he

1 could have been prosecuted. And that does get to whether
2 or not the 39.201 jury instruction would be proper.

3 THE COURT: All right.

4 MS. FRAZIER: I'm not really sure what they're
5 asking for either, Judge.

6 THE COURT: I still don't know what you're asking
7 for.

8 MR. JUDKINS: we would like for the court, to the
9 extent that you made a misstatement of law that the jury
10 heard, to correct it --

11 MS. FRAZIER: He didn't.

12 MR. JUDKINS: -- either with an instruction now or
13 in your other instructions when you generally instruct
14 the jury that you may have said something different
15 earlier. I don't have the memory that Mr. Hayes has, but
16 he seems to have a real good recollection of what
17 happened. I remember we came up and had a sidebar on the
18 issue and you did, in fact, say that I could argue that
19 that was his state of mind. So I'm just afraid the jury
20 heard something different.

21 MS. FRAZIER: Your Honor, you did not tell the
22 jury --

23 THE COURT: Hold on, hold on a moment. Okay. If I
24 sustained an objection, then I don't know specifically,
25 because we've had a lot go under the bridge since that

1 point in time.

2 But if you want to argue this and if you want to
3 bring this statute in front of the jury, because it's a
4 Florida Statute and you're permitted to do that, you've
5 requested judicial notice and I will grant that.

6 MR. HUTCHINS: Judge --

7 THE COURT: And you can make that argument to the
8 jury that they are required, based on what this statute
9 says. Now whether the facts or not play that out, that's
10 up to the jury to decide, but certainly you can argue
11 that. And I don't think it's become a feature of the
12 trial or -- which certainly in opening statement and the
13 facts are what they are and the jury has determined the
14 facts. And you can make your argument in closing
15 argument and I don't think that there's any error in that
16 regard. But you can certainly argue this and bring the
17 statute before the jury --

18 MR. HUTCHINS: Judge --

19 THE COURT: -- because it's a Florida Statute.

20 MR. HUTCHINS: -- Judge, it's a Florida Statute, but
21 it's not an applicable Florida Statute. That statute
22 applies to mandatory first reporters. He is not a
23 mandatory first reporter.

24 THE COURT: You can make that argument then, too.
25 You're going to have to make that argument because it

1 doesn't say that here specifically. It says "any
2 person." It says, any person who knows or has reasonable
3 cause to suspect that a child is abused, abandoned or
4 neglected by a parent. So No. 1, I don't know if there's
5 any evidence --

6 MR. HUTCHINS: There's no evidence.

7 THE COURT: -- that a child is abused, abandoned or
8 neglected by a parent here, but they can argue that and
9 that's up to the jury to decide. But I, quite frankly,
10 haven't heard any evidence that there has been any abuse,
11 abandonment or neglect by a parent or other person or
12 caregiver or whatever, as defined in this chapter, or
13 that the child is in need of supervision and care, all
14 right. Well, maybe they can argue that --

15 MR. HUTCHINS: But there's no evidence that supports
16 it.

17 THE COURT: -- because they have argued that with
18 their questioning that there was no supervision over this
19 child, but that's up to the jury to decide. And that a
20 responsible adult, immediately known, available to
21 provide supervision and shall report such knowledge or
22 suspicion to the department in the manner prescribed in
23 this subsection.

24 And that can be -- that is a law that can be -- and
25 whether or not the facts mete that or whether or not the

1 defendant did that, that's up to the jury to decide.

2 MR. HUTCHINS: Right, and I understand that. And I
3 agree with everything the Court just said. But the Court
4 is not going to give them some type of instruction --

5 THE COURT: I am not.

6 MR. HUTCHINS: -- on the law. Okay. That's my only
7 concern.

8 THE COURT: I'm not.

9 MR. HUTCHINS: They can argue that and, like the
10 Court said --

11 THE COURT: No, and I don't think it's proper at
12 this point either for a jury instruction. And I've
13 already ruled on that.

14 MS. FRAZIER: Thank you, Your Honor.

15 MR. HAYES: Thank you, Your Honor.

16 THE COURT: All right. Okay. I think we're ready
17 for the jury. So, Deputy, if you would please get the
18 jury and we'll start back with the testimony.

19 (Jury returned to the courtroom at 8:46 a.m.)

20 THE COURT: Good morning.

21 THE JURORS: Good morning.

22 THE COURT: All right. Everyone may please be
23 seated. Thank you. And we're ready to continue with the
24 State's witnesses. And, Mr. Hutchins, you may call your
25 next witness.