

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

STATE OF TENNESSEE,)	
)	
v.)	No. <u>2011-A-779</u>
)	
TIMOTHY GUILFOY,)	
)	
Defendant.)	

ATTESTED PETITION FOR WRIT OF ERROR CORAM NOBIS

Comes the Petitioner, Timothy Guilfoy, by and through counsel and files this petition for a Writ of Error Coram Nobis pursuant to T.C.A §40-26-105, and in support of this petition would show this Honorable Court as follows:

INTRODUCTION

On March 18, 2009 Jennifer Astle called law enforcement and reported that her daughters had reported accusations of sexual abuse to her. The two alleged victims testified at trial (ages 11 and 12 at the time) that petitioner touched their privates with his hand on multiple occasions. The alleged touching was not supported by any physical evidence, and the witnesses were unable to identify a day, month, or year in which the touching allegedly occurred. The allegations arose amidst a financial dispute between their mother and petitioner relating to multiple months of unpaid rent she admittedly owed to petitioner. Petitioner has consistently maintained his innocence throughout the history of this case, and new evidence has been discovered that discredits the testimony underlying his conviction and supports his claim of innocence.

FACTS

- (1) Newly discovered evidence unavailable to the Defendant/Petitioner at the time of

his trial would have directly contradicted critical testimony of three material witnesses for the State of Tennessee.

(2) The newly discovered evidence came to be obtained directly from one of the three witnesses in an internet conversation that occurred on January 18, 2024, which is attached as an exhibit to this petition. (See attached Facebook message of Taylor Astle)

(3) Evidence that was presented by the State of Tennessee at the trial of the Defendant/Petitioner was exclusively testimonial.

(4) Testimony of the witnesses for the State of Tennessee was that on the day of the disclosure of harm, the two minor children that were the alleged victims attended school, and ostensibly gave a report of harm to at least one guidance counselor at the school that they attend.

(5) The new disclosures -made twelve years after petitioner's trial by one of the minor child witnesses (who is now an adult, Taylor Astle)- stated about the victims "The day my mother found out me and my younger sister were waiting for the bud. (*bus) My oldest was already at school¹ and started the process of getting answers (Emoji omitted). A second communication from this witness stated, "We didn't go to school we pulled my sister out (Emoji omitted) I'll testify till the day I die." (See attached Facebook message of Taylor Astle) A screen shot was secured by the sister of the Defendant/Petitioner in real time during the online conversation with the alleged victim. (See attached affidavit of Kathleen Guilfooy Byers)

(6) The post made by Taylor Astle was then immediately deleted, ostensibly by Taylor Astle herself.

¹ The alleged victims in this case were two of three sisters, all daughters of Jennifer Astle. The oldest of the three sisters was not an alleged victim in the instant case

(7) At trial, as discussed in greater detail below, both alleged victims (Jasmine and Taylor Astle) testified that they went to school on the day of disclosure. This detail was at the center of the disclosure narrative presented to the jury by the prosecution.

(8) As discussed further below, the children's mother, Jennifer Astle, testified at trial that on the day of the disclosure of harm, that her daughters went to school that day as normal, and most notably contradicted her daughters' testimony by claiming she did not learn of the accusations until AFTER they had left for school.

(9) At trial, the prosecution entered into the record a transcript of a recorded phone conversations between the Defendant/Petitioner and the mother of the alleged victims (Jennifer Astle) that purports that the minor children not only went to school the day of the disclosure, but also purports that a disclosure was made to a guidance counselor for the school. (See attached exhibit 15, 16, 17, 18, from Trial Transcript pg. 228, lines 7-12, transcripts of phone calls between Jennifer Astle and Timothy Guilfooy)

(10) During the direct testimony of Detective Ginger Fleischer, the prosecution played the controlled phone call between Jennifer Astle and the Petitioner for the jury:

6 Q. Was there a particular investigative technique
7 that you did think might be useful in this particular
8 situation?

9 A. Yes, ma'am.

10 Q. What was that?

11 A. Detective Fleming and I discussed doing a
12 controlled phone call, if the mother was willing to do
13 one.

(See Trial Transcript, pg. 277, lines 6-13, testimony of Detective Ginger Fleischer)

(11) At the onset of the phone call, Jennifer Astle explained how she learned of the allegations:

5 Tim Guilfooy: Hey

6 Jennifer Astle: Hey

7 TG: What's up.
8 JA: Well, I needed to talk to you about something
9 kind of serious.
10 TG: Yeah?
11 JA: Yeah. I um-I got a phone call today from
12 Jasmine's guidance counselor?

(See Trial exhibit 15b phone call transcript, pg. 1, lines 5-12)

(12) Jennifer Astle states in exhibit 15b phone call transcript to Timothy Guilfooy:

JA:

10 -- gone to her guidance - she's been having
11 trouble at school and had went to her guidance
12 counselor and ()
13 back and forth with things, so they just told me, and
14 uh, I mean, I
15 di - I didn't even know what to say to them, or -

(Trial exhibit 15b, phone call transcript pg. 5, lines 10-13)

(13) Jennifer Astle states that she initially learned of the allegations through the school
guidance counselor:

10 TG: Yeah?
11 JA: Yeah. I um-I got a phone call today from
12 Jasmine's guidance counselor?
13 TG: Oh yeah?
14 JA: And she had kind of insinuated to her that-that
15 somebody was touching her in the wrong ways.
16 TG: Really?
17 JA: Yeah.
18 TG: Oh man.
19 JA: And uh, I mean obviously I went and picked them
20 up.

(Trial exhibit 15b, pg. 1, lines 10-20)

JA: 23 -- and the guidance counselors something else, and
24 the gui-the guidance counselor thinks it's bullshit,
25 she's not
26 sure.

(Trial exhibit 15b, pg. 32, lines 23-25)

(14) Upon cross examination, Detective Ginger Fleischer (a.k.a. "Fittings") testified that she suggested to Jennifer Astle to suggest to petitioner that the guidance counselor did not believe the accusations, and that Ms. Astle did not plan on contacting police:

8 Q. "I want them to keep quiet, but if they are
9 upset with you, I am afraid they will tell a teacher.
10 The guidance counselor thinks it is BS. Let's keep it
11 that way. I need the truth so I can tell them you are
12 sorry for events."
13 Your suggestion?
14 A. Yes.
15 Q. And again, that suggestion is false?
16 A. Yes.

(See excerpt Trial Transcript, pg. 381, lines 8-16)

(15) The record is void of any indication that the disclosure to the guidance counselor did not occur, but instead Detective Fleischer states that the statement about the guidance counselor believing the minor children's disclosure was "BS" was false. (i.e. The guidance counselor disclosure *did* occur, and furthermore, the guidance counselor believed the allegations to be true.)

(16) Jasmine Astle testified that she told her mother regarding the allegations against the Petitioner/Defendant prior to going to school:²

16 Q. Tell me what you remember about telling your
17 mom.
18 A. Me and Taylor were going to go to school. And
19 she -- I guess Brian called. And she came outside and
20 asked me and Taylor what happened.
21 And Taylor -- and we didn't want to tell her,
22 but then I ended up telling her.
23
24 HE COURT: Say that again.

² Jennifer Astle's statement in exhibit 15b (controlled phone call) was contradicted by (Jasmine Astle) her daughter's testimony that the disclosure of harm was PRIOR to going to school.

26 WITNESS: We -- me and my sister were going to

(See excerpt Trial Transcript, pg. 37, lines 16-25)

1 go to school. And my mom came outside and asked us
what

2 happened.

3

4 Q. (By Ms. Reddick:) So it was the morning time,
5 before school?

6 A. Yes.

7 Q. Where were you and Taylor?

8 A. We were in the front yard, at our been bus stop.

9 Q. You were waiting for the bus in the front yard?

10 A. Yes.

11 Q. What do you remember about your mom coming out
12 there?

13 A. She just came outside and asked us what
14 happened.

15 Q. Did you know what she was talking about when she
16 asked you what happened?

17 A. Yes.

18 Q. Did you know she had talked to your grandfather?

19 A. Yes.

20 Q. What did she do when you told her?

21 A. We went to school. And she took us out early,
22 when we got to school.

23 Q. What did she do immediately, when you first told
24 her? What was the first thing she did?

25 A. She told her boyfriend.

(See excerpt Trial Transcript, pg. 38, lines 1-25)

1 Q. How did she act?

2 A. She was crying.

3 Q. What were you and Taylor doing when your mom was
4 crying?

5 A. We were actually at our bus stop because we
6 couldn't -- like we had to go to school.

7 Q. So you thought you still needed to go to school?

8 A. Yes.

9 Q. Your mom started crying, and you went on to
10 school?

11 A. Yes.

12 Q. What happened next? What happened later that
13 day?

14 A. When we got to school, at about like ten or
15 something, my mom came and got me and Taylor at
school.

(See excerpt Trial Transcript, pg. 39, lines 1-15)

(17) Taylor Astle also testified that she told her mother regarding the allegations against the Petitioner/Defendant prior to going to school:³

25 Can you tell us about the day that your mom

(See excerpt Trial Transcript, pg. 113, line 25)

1 found out?

2 A. We were about to go to school.

3 Q. Who is "we"?

4 A. Me and my little sister.

5 Q. Jasmine?

6 A. Yes.

7 Q. Okay.

8 A. We were on our way, like going to the bus stop.

9 And my grandfather had called my mom. He had told her

10 that something had happened to us and that we
needed to

11 tell her, she needed to ask us about it.

12 She came up to us right before we got on the

13 bus. And she asked us. And we told her -- my little

14 sister told her what had happened. And she started

15 crying.

16 Q. What did you do when your mom started crying?

17 A. I started crying.

18 Q. What did Jasmine do when you and your mom

19 started crying?

20 A. Crying.

21 Q. So you were all crying?

22 A. Yes.

(See excerpt Trial Transcript, pg. 114, lines 1- 22)

(18) Jennifer Astle testified that she did not speak to her daughters about the accusations

³ Jennifer Astle's statement in exhibit 15b (controlled phone call) was contradicted by (Taylor Astle) her daughter's testimony that the disclosure of harm was PRIOR to going to school.

until she picked them up from school, and was not first informed of the accusations until *AFTER* they had already left to go to school:⁴

19 Q. And again, I'm not going to try to pin you down
20 to any exact date or time. But do you remember anything
21 about that day, whether it was morning? Night? What
22 was going on?
23 A. I found out in the morning. It was a school
24 day. The girls were getting ready for school. They
25 went to school.

(See excerpt Trial Transcript, pg. 218, lines 19- 25)

1 My dad had been calling, probably three days in
2 a row, every morning.
3 The first two days, I don't guess I thought
4 anything of it. But by the third day, I thought
5 something was kind of weird. He had called every
6 morning for about three days.
7 Q. Encouraging you to talk to your daughters?
8 A. Encouraging my daughters to come to me.
9 Q. Did that occur?
10 A. Yes.
11 Q. Which one said something first?
12 A. He's actually the one that told --
13 Q. No. No. No. To you. We're sort of leaving
14 him out of this.
15 Did either of them, on that morning as they were
16 getting ready for school, say anything to you?
17 A. No.
18 Q. Did you speak to them?
19 A. Before they went on the bus?
20 Q. Yes.
21 A. I spoke to them, but not about the situation.
22 Q. How did that develop?
23 A. They got off the phone with my dad. And I
24 yelled, It's time to get off the phone; time to get on
25 the bus.

(See excerpt Trial Transcript, pg. 218, lines 19- 25)

1 They got on the bus. About as soon as they got

⁴ Confusingly, Jennifer Astle contradicts her own testimony in exhibit 15b by testifying that her father-in-law informed her of the accusations rather than the guidance counselor.

2 on the bus, he was calling back.
3 They were scared to tell me. And he was trying
4 to give them an opportunity to tell me because Jasmine
5 had told him what happened.
6 After about three days of trying to get them to
7 tell me and they didn't, he finally called and said, I
8 have to tell you.
9 Q. Again, we're going to leave that conversation
10 out because -- about what he told you.
11 A. Okay.
12 Q. Did that affect how you spent the rest of your
13 day?
14 A. Absolutely.
15 Q. Did you go to the school?
16 A. Yes. I did.
17 Q. Did you talk to either one or both of the girls
18 there?
19 A. I removed them from school.
20 Q. That is what I meant.
21 A. Yes.
22 Q. Did you sit them down there or get them back out
23 of school?
24 A. Alexis was in junior high, so I picked her up.
25 Q. Got her. Just gathering all of them.

(See excerpt Trial Transcript, pg. 220, lines 1 - 25)

1 A. Talked to her on my way to the other school.
2
3 THE COURT: Try to focus on Taylor and Jasmine.
4 THE WITNESS: Okay.
5
6 Q. (By Mr. Moore:) What you were doing that day was
7 getting all the girls all together?
8 A. Right.
9 Q. And you don't have to fool with picking somebody
10 else up later?
11 A. Right.
12 Q. Jasmine and Taylor, did you ultimately get them?
13 A. Yes. I did.
14 Q. And speak to them?
15 A. Yes. I did.
16 Q. And based on what they told you, did you call
17 the police?
18 A. I did call 911. Yes, sir.
19 Q. Did you relay the substance of the complaint to
20 the 911 call?

21 A. (Nods in the affirmative.)
22 Q. Where were you when you called 911?
23 A. I was at the Clarksville home.

(See excerpt Trial Transcript, pg. 221, lines 1 - 23)

(19) Testimony given by Jasmine Astle, Taylor Astle, and Jennifer Astle regarding the disclosure was almost completely contradictory, but had one single consistency prior to Petitioner acquiring new evidence of Facebook communication by Taylor Astle, and that consistency was that they went to school the morning of the disclosure.⁵

(20) To summarize, the State's witnesses provided at least three contradictory narratives at trial to the alleged disclosure of abuse:

(a) The two children (Taylor and Jasmine) testified that they disclosed the alleged abuse to their mother in the morning BEFORE they got on the school bus, then went to school.

(b) Jennifer Astle testified that she did not speak to her daughters about the alleged abuse before they went to school but received a phone call from Brian Schiff informing her of the allegations only AFTER they had left for school.

(c) Jennifer Astle testified on the recorded phone call that she was first informed of the alleged abuse via a phone call from her daughter's guidance counselor that Jasmine had insinuated somebody was touching her.

(21) Petitioner would respectfully state that the disclosure of allegations against him has now to date reached five (5) different versions of the disclosure narrative.

⁵ Testimony from prosecution witness, Brian Schiff was given in Petitioner/Defendant's first trial (July 2011) that resulted in a hung jury. His testimony in that trial was that the minor children had disclosed the abuse to him ten days prior to disclosing to their mother prior to going to school. While Mr. Schiff did not testify in the October 2011 trial, Jennifer Astle stated that Mr. Schiff had been trying to reach her for three days.

- (22) The new evidence in Taylor Astle's January 2024 Facebook post that the children did not go to school at all on the day of disclosure, if true, casts serious doubt on the already-contradictory narratives of disclosure presented to the jury.
- (23) Specifically, it would be impossible for Jasmine Astle to have disclosed abuse to her guidance counselor if neither of the two alleged victims even went to school on the day of disclosure. Likewise, it would have been impossible for the guidance counselor to call Jennifer Astle if Jasmine Astle had not disclosed abuse to them.
- (24) Had this information (that the children did not go to school on the day of disclosure) been presented to the jury at petitioner's trial, it would not have only damaged all three witnesses' credibility beyond repair, it would have also left the state's case logically irreconcilable. Without the ability to explain how Jennifer Astle was informed of the accusations, the jury would have only been able to conclude that she fabricated the accusations herself, which would establish the Petitioner's innocence.
- (25) Petitioner is without fault in failing to present his newly discovered evidence at the appropriate time, as the Facebook post from Taylor Astle did not exist until January 18, 2024, more than twelve years after his trial. Petitioner has been diligent in filing this motion within one (1) year of the creation of this new evidence, at which time the evidence became "available" to petitioner. See *Payne v. State*, 493 S.W.3d 478, 485–86 (Tenn. 2016) (citing *Brunelle v. State*, No. E2010-00662-CCA-R3-PC, 2011 WL 2436545, *10 (Tenn. Crim. App. June 16, 2011); T.C.A §40-26-105
- (26) Petitioner has obtained through a private investigator the identity of two guidance counselors from the Liberty Elementary School and continues to attempt to locate these individuals for his investigation, and Defendant/Petitioner has filed a subpoena

contemporaneously with this petition to contact them. (See attached affidavit of Joshua Treadway)

(27) Petitioner's investigator has also successfully located Robert Brown, the boyfriend of Jennifer Astle at the time of the alleged disclosures. According to the trial testimonies of the three Astles, Mr. Brown was the only other party present at the house when Jennifer Astle supposedly learned of the accusations. Presumably, Mr. Brown could either corroborate or refute the testimony that established the children went to school that day. He could also possibly corroborate or refute if Ms. Astle received a phone call informing her of the accusations from Mr. Schiff, her daughter's guidance counselor, both, or neither. The investigator was successful in speaking with Mr. Brown via conversation, however Mr. Brown refused to answer any questions regarding petitioner's case. (See attached affidavit of Joshua Treadway)

(28) It is unknown to the Defendant/Petitioner whether the prosecution had knowledge of this newly discovered evidence but would state that nothing disclosed during discovery, and nothing stated at trial, suggested to him that the alleged victims did not go to school on the day of disclosure, that there was no disclosure to the guidance counselor, or that the guidance counselor did not call Ms. Astle. Also, no witnesses were called by the prosecution from Liberty Elementary School at the trial of the Defendant/Petitioner.

PROCEDURAL HISTORY

(29) Petitioner is a person of the age of majority, is a present an inmate in the care and custody of the Tennessee Department of Corrections.

(30) Petitioner, TOMIS No. 00499702, currently resides a the Northwest Correctional

Complex located in Tiptonville, Tennessee where he is serving a forty (40) year sentence based upon his convictions in this cause.

- (31) On or about June 2009, petitioner was charged by indictment with three counts of aggravated sexual battery against J.A., a victim less than thirteen years old; two counts of aggravated sexual battery of T.A., a person less than thirteen years old; four counts of aggravated sexual battery of A.A., a person less than thirteen years old; and four counts of rape of a child, A.A.
- (32) On or about March 30, 2011, the State entered a nolle prosequi as the above enumerated charges.
- (33) On or about March 30, 2011, petitioner was charged by indictment with four counts of aggravated sexual battery of J.A., a person less than thirteen years old (Counts One through Four); one count of aggravated sexual battery of T.A., a person less than thirteen years old, (Count Five); and three counts of rape of a child, T.A. (Counts Six through Eight).
- (34) Petitioner was tried on or about July 2011, and the trial resulted in a hung jury.
- (35) Petitioner was tried again in the Criminal Court of Davidson County at Nashville on or about October 24–28, 2011. During that trial, the State entered a nolle prosequi as to Count Five, aggravated sexual battery of T.A., a person less than thirteen years old.
- (36) On or about October 28, 2011, the jury returned guilty verdicts on Counts One through Four and Counts Six through Eight, a nolle prosequi having been entered as to Count Five.
- (37) Sentencing was tentatively scheduled for December 1, 2011.

- (38) The sentencing hearing was held on January 13, 2012, at which time petitioner was sentenced to ten years for each of the four aggravated sexual battery convictions, twenty years for each of the two convictions of rape of a child and six months for the assault conviction.
- (39) The trial court ordered partial consecutive service such that the petitioner received an effective sentence of seventy years in the Tennessee Department of Correction.
- (40) On appeal, the Court of Criminal Appeals held that the convictions of aggravated sexual battery (Counts One and Two) must be merged into a single conviction of aggravated sexual battery.
- (41) On appeal the Court of Criminal Appeals further held that the conviction for assault (Count Four) must be merged into the conviction for aggravated sexual battery (Count Three).
- (42) Lastly, the Court of Criminal Appeals merged petitioner's two convictions of rape of a child (Counts Six and Seven) into a single conviction of rape of a child.
- (43) As a result of such alterations to petitioner's convictions, on remand, petitioner's sentence was reduced from seventy years to forty years.

LEGAL ARGUMENT

Petitioner relies upon the holding in *State v. Singleton*, 853 S.W. 2d 490, for support of this Petition for Writ of Error Coram Nobis, which identifies the legal standard our courts should apply in granting a new trial. The Tennessee Supreme Court states in *Singleton*

that:

In so ruling, we do no more than apply an “old rule” to a new set of facts. It has long been recognized under Tennessee law that a trial court should grant a defendant a new trial on the basis of newly discovered evidence when the defendant has been reasonably diligent in obtaining evidence, the materiality of the new evidence is apparent, and the evidence is likely to change the result. *State v. Goswick*, 656 S.W.2d 355 (Tenn.1983); *Taylor v. State*, 180 Tenn. 62, 171 S.W.2d 403 (1943); *United States v. Terry*, 729 F.2d 1063 (6th Cir.1984). It is true that newly discovered impeachment evidence will not constitute grounds for a new trial, as a general rule. But if the impeaching evidence is so crucial to the defendant's guilt or innocence that its admission will probably result in an acquittal, a new trial may be ordered. *State v. Rogers*, 703 S.W.2d 166, 169 (Tenn.Crim.App.1985); *Rosenthal v. State*, 200 Tenn. 178, 185–86, 292 S.W.2d 1, 4–5, *cert. denied*, 352 U.S. 934, 77 S.Ct. 222, 1 L.Ed.2d 160 (1956); *Evans v. State*, 557 S.W.2d 927, 938 (Tenn.Crim.App.1977). Moreover, when the verdict is already one of questionable validity, newly discovered evidence of relatively minor importance may be sufficient to create the probability of acquittal. *Cagle v. Davis*, 520 F.Supp. 297, 309 (E.D.Tenn.1980), *aff'd* 663 F.2d 1070 (6th Cir.1981).

State v. Singleton, 853 S.W.2d 490, 496 (Tenn. 1993)

A) The prosecution’s case against petitioner was weak, and the testimony it was based on was already problematic

In the instant case, the Petitioner is convicted through testimonial evidence only. The witnesses Taylor Astle, Jasmine Astle and the mother Jennifer Astle were inconsistent regarding the disclosure of the alleged sexual abuse with five different versions of the events of March 18, 2009.

First, in trial testimony by the two minor children, Taylor Astle and Jasmine Astle were that they made the disclosure to their mother, allegedly corroborating the grandfather’s phone call, prior to boarding the school bus. This version included emotional responses by the three of

them (crying). Taylor Astle's testimony was:

8 A. We were on our way, like going to the bus stop.
9 And my grandfather had called my mom. He had told
her
10 that something had happened to us and that we
needed to
11 tell her, she needed to ask us about it.
12 She came up to us right before we got on the
13 bus. And she asked us. And we told her -- my little
14 sister told her what had happened. And she started
15 crying.
16 Q. What did you do when your mom started crying?
17 A. I started crying.
18 Q. What did Jasmine do when you and your mom
19 started crying?
20 A. Crying.
21 Q. So you were all crying?
22 A. Yes.

(See excerpt Trial Transcript, pg. 114, lines 8- 22)

Jasmine Astle trial testimony regarding the same event was as follows:

18 A. Me and Taylor were going to go to school. And
19 she -- I guess Brian called. And she came outside and
20 asked me and Taylor what happened.
21 And Taylor -- and we didn't want to tell her,
22 but then I ended up telling her.
23
25 HE COURT: Say that again.
26 WITNESS: We -- me and my sister were going to

(See excerpt Trial Transcript, pg. 37, lines 16-25)

1 go to school. And my mom came outside and asked us
what
2 happened.
3
4 Q. (By Ms. Reddick:) So it was the morning time,
5 before school?
6 A. Yes.
7 Q. Where were you and Taylor?
8 A. We were in the front yard, at our been bus stop.

9 Q. You were waiting for the bus in the front yard?
10 A. Yes.
11 Q. What do you remember about your mom coming out
12 there?
13 A. She just came outside and asked us what
14 happened.
15 Q. Did you know what she was talking about when she
16 asked you what happened?
17 A. Yes.
18 Q. Did you know she had talked to your grandfather?
19 A. Yes.
20 Q. What did she do when you told her?
21 A. We went to school. And she took us out early,
22 when we got to school.
23 Q. What did she do immediately, when you first told
24 her? What was the first thing she did?
25 A. She told her boyfriend.

(See excerpt Trial Transcript, pg. 38, lines 1-25)

However, Jennifer Astle's testimony at trial was a different version of that same event. The mother's testimony at trial was as follows:

15 Did either of them, on that morning as they were
16 getting ready for school, say anything to you?
17 A. No.
18 Q. Did you speak to them?
19 A. Before they went on the bus?
20 Q. Yes.
21 A. I spoke to them, but not about the situation.
22 Q. How did that develop?
23 They got off the phone with my dad. And I
24 yelled, It's time to get off the phone; time to get on
25 the bus.

(See excerpt Trial Transcript, pg. 218, lines 19- 25)

1 They got on the bus. About as soon as they got
2 on the bus, he was calling back.
3 They were scared to tell me. And he was trying
4 to give them an opportunity to tell me because Jasmine
5 had told him what happened.
6 After about three days of trying to get them to
7 tell me and they didn't, he finally called and said, I
8 have to tell you.

9 Q. Again, we're going to leave that conversation
10 out because -- about what he told you.
11 A. Okay.
12 Q. Did that affect how you spent the rest of your
13 day?
14 A. Absolutely.
15 Q. Did you go to the school?
16 A. Yes. I did.
17 Q. Did you talk to either one or both of the girls
18 there?
19 A. I removed them from school.
20 Q. That is what I meant.
21 A. Yes.
22 Q. Did you sit them down there or get them back out
23 of school?
24 A. Alexis was in junior high, so I picked her up.
25 Q. Got her. Just gathering all of them.

(See excerpt Trial Transcript, pg. 220, lines 1 - 25)

Jennifer Astle's testimony was materially different than her children's testimony in that there was no disclosure whatsoever as the children waited for the bus. There was no testimony regarding the tearful revelation that was testimony offered by the alleged victims. In fact, it is the mother's testimony that she doesn't discuss the allegations until she collected them up from school. Mother's testimony conflicts significantly with the children's testimony, which lends itself to suspect fabrication by mother and ineffective coaching of the minor children in preparation for testimony in court.

Considering the fact the prosecution did not attempt to provide an explanation to the jury reconciling this inconsistent testimony, it is reasonable to believe that the jury set aside the entirety of this confusing testimony, and solely relied on the mother's statements on the recorded phone call with petitioner regarding her learning of the accusations via a phone call from her daughter's guidance counselor. A child disclosing abuse in this way is not uncommon, and no witness or counsel disputed that this disclosure occurred, or that the call from the guidance counselor was Ms. Astle's first time she learned of the existence of the accusations.

B) Motive to fabricate accusations

Jennifer Astle had financial motive to fabricate the accusations herself and coach her children on their testimony. She had a financial stake as she had failed to pay three months' rent to Petitioner prior to her phone call to police on March 18, 2009, and also failed to pay the March rent as well. She testified that she moved out "by April", but later stated that it could have been May. This would have benefited her in the amount of approximately four thousand dollars due to Petitioner's arrest.

5 Q. You and your family moved up to Clarksville in
6 September?

7 A. That sounds about right.

8 Q. You were still in school at that time?

9 A. Yes.

10 Q. How long did you continue in school?

11 A. Just a couple of months from the time we moved.

12 Q. Did you drop out or withdraw from school in
13 October?

14 A. Possibly October.

15 Q. Now, you began living -- excuse me.

16 You began living in the Clarksville home at or
17 near the start of the school year. Isn't that right?

18 A. I believe so.

19 Q. The children would have been living in that home
20 and going to that school in September of 2008. Isn't
21 that right?

22 A. Yes.

23 Q. You weren't able to pay rent in that month.

24 Isn't that right?

25 A. I don't recall what months I was able to pay it.

(See excerpt Trial Transcript, pg. 244, lines 16-25)

1 Q. At that time, you were in school?

2 A. Right.

3 Q. And you were not earning any income?

4 A. That could be possible. Yes, sir.

5 Q. So it stands to reason you were not able to pay

6 the rent?
7 A. Sure.
8 Q. And Mr. Guilfooy worked with you?
9 A. Yeah.
10 Q. Did he tell you, "Well, here's what we'll do:
11 Once you are able to pay, you can pay an extra fifty
12 dollars each month, until the overdue balance is paid
13 off?" Do you recall that agreement?
14 A. Yeah. I think so.
15 Q. So the rent would go from seven to seven-fifty
16 for fourteen months, if I did the math right?
17 A. Sure.

(See excerpt Trial Transcript, pg. 245, lines 16-25)

16 Q. That video shows you and Mr. Guilfooy discussing
17 your delinquency in the rent. Isn't that right?
18 A. Yes, sir.
19 Q. You say that you can file your tax return early,
20 get some money, and pay that to him?
21 A. Yes.
22 Q. Isn't that right?
23 A. Right.
24 Q. Because at that time, it appears that he is
25 concerned about the rent and about whether he can keep

(See excerpt Trial Transcript, pg. 247, lines 16-25)

1 the house?
2 A. Sure. Yes.
3 Q. He is saying to you, "We have got to do
4 something?"
5 A. Right.
6 Q. Your solution is, "I will do my taxes."
7 A. I will give you my tax return. Yes.
8 Q. You didn't do that, did you?
9 A. I don't believe I got one.

(See excerpt Trial Transcript, pg. 248, lines 1-9)

16 Q. Tell me if I am correct. During the six months,
17 September, October, November, December, January,
18 February, six months, you were working for just a short
19 time, perhaps two months?
20 A. That's probably right, yes.

21 Q. So for four months, your income was very
22 limited?

23 A. Yes.

24 Q. Is it reasonable that for three out of those six
26 months, you were unable to pay the rent?

(See excerpt Trial Transcript, pg. 249, lines 16-25)

1 A. Possible.

(See excerpt Trial Transcript, pg. 250, line 1)

8 Q. They went to another school somewhere else?

9 A. I actually drove them to their school the rest
10 of the school year from across town. We were out by
11 April.

12 Q. Do you recall ever speaking with a woman named
13 Crystal *Waltz, a private investigator from Clarksville,
14 Tennessee?

15 A. Yeah. If I remember her showing up at my house.

16 Q. And she showed up at the house on Lynnwood Drive
17 in Clarksville in the month of May. Isn't that right?

18 A. I moved in May.

19 Q. So then you were there March and April and some
20 portion of May.

21 A. I just recall moving into my other house in May.
22 I don't remember the exact date.

23 Q. Then you would have remained in the Clarksville
24 house for March, April and at least one or two days in
25 the month of May?

(See excerpt Trial Transcript, pg. 252, lines 8-25)

1 A. Maybe one or two days.

(See excerpt Trial Transcript, pg. 253, line 1)

C) How did Jennifer Astle learn of the accusations?

To be clear, Jennifer Astle called the police and reported her daughters made these

accusations to her. Jennifer Astle financially benefited from the Petitioner's arrest. At no point did Jennifer Astle claim that she witnessed the alleged abuse, or that she discovered some physical evidence that caused her to question her daughters about abuse. Counsel expects these facts to be undisputed by prosecutors in this case. If Jennifer Astle was informed of these accusations by another human being as the prosecutors insist, that moment would surely be branded in her memory as one of the worst moments of her life. Likewise, an eight and nine year-old child disclosing abuse to their mother would also rank as one of the most devastating moments in their memories. None of these witnesses have claimed to have forgotten this disclosure. On the contrary, all of these witnesses have given multiple different versions of this story. These narratives are as detailed as they are inconsistent with each other.

D) New evidence directly contradicts the State's case

This contradictory testimony certainly makes the verdict in the instant case questionable validity pursuant to *Cagle v. Davis*, 520 F.Supp. 297, 309 (E.D.Tenn.1980), *aff'd* 663 F.2d 1070 (6th Cir.1981) as cited in *Singleton*, there was one point upon which all three witnesses had agreed upon until now, and that was that the two girls went to school that day. However, the newly discovered evidence sent to the Petitioner's sister on January 18, 2024 destroys that consistency by the post made by Taylor Astle herself. She stated in her post that: "The day my mother found out me and my younger sister were waiting for the bud. (*bus) My oldest was already at school and started the process of getting answers (Emoji omitted). A second communication from this witness stated, "We didn't go to school we pulled my sister out (Emoji omitted) I'll testify till the day I die." (See attached Facebook message of Taylor Astle)



E) This new evidence is material, relevant, and would have resulted in a different result if heard by his jury

The *Singleton* Court holds that: It is true that newly discovered impeachment evidence will not constitute grounds for a new trial, as a general rule. But if the impeaching evidence is so crucial to the defendant's guilt or innocence that its admission will probably result in an acquittal, a new trial may be ordered. *State v. Rogers*, 703 S.W.2d 166, 169 (Tenn.Crim.App.1985); *Rosenthal v. State*, 200 Tenn. 178, 185–86, 292 S.W.2d 1, 4–5, *cert. denied*, 352 U.S. 934, 77 S.Ct. 222, 1 L.Ed.2d 160 (1956); *Evans v. State*, 557 S.W.2d 927, 938 (Tenn.Crim.App.1977). Moreover, when the verdict is already one of questionable validity, newly discovered evidence

of relatively minor importance may be sufficient to create the probability of acquittal. *Cagle v. Davis*, 520 F.Supp. 297, 309 (E.D.Tenn.1980), *aff'd* 663 F.2d 1070 (6th Cir.1981).

Another crucial point to consider, when an analysis of questionable validity is raised, is the fact that the Petitioner's first trial ended in a hung jury. This speaks to the weakness of the prosecution's case.

We conclude that the unavailable witness exception for statements against penal interest, Federal Rule of Evidence 804(b)(3) applied, so the parts of Paguio Sr.'s statement exonerating his son should have been admitted. We cannot characterize the error as harmless, because the hung jury at the first trial persuades us that the case was close and might have turned on this evidence.

United States v. Paguio, 114 F.3d 928, 935 (9th Cir. 1997)

The newly discovered standard has been met by the Petitioner. This is a case that consists of testimonial evidence alone, a literal "swearing contest" as sometimes referred to by some of our judges across our state. The case of *State v. Vasques* gives us our guide to the application of newly discovered evidence and application for coram nobis relief:

In an effort to amplify the standard established in *Mixon* and confirmed by our own decision in *Workman*, we hold that in a coram nobis proceeding, the trial judge must first consider the newly discovered evidence and be "reasonably well satisfied" with its veracity. If the defendant is "without fault" in the sense that the exercise of reasonable diligence would not have led to a timely discovery of the new information, the trial judge must then consider both the evidence at trial and that offered at the coram nobis proceeding in order to determine whether the new evidence *may have* led to a different result. In the Court of Criminal Appeals opinion in this case, Judge Joseph M. Tipton described the analysis as follows: "whether a reasonable basis exists for concluding that had the evidence been presented at trial, the result of the proceedings might have been different." Although imprecise, our standard, which requires determination of both the relevance and the credibility of the discovered information, offers a balance between the position of the State and that of the defense. In our view, this interpretation upholds the traditional, discretionary *528 authority of our trial judges to consider the new evidence in the context of the trial, to assess its veracity and its impact upon the testimony of the

other witnesses, and to determine the potential effect, if any, on the outcome.

State v. Vasques, 221 S.W.3d 514, 527–28 (Tenn. 2007)

Under *Vasques*, this Honorable Court should consider that had the Petitioner had this information at the time, this new evidence would not only “might” have led to a different result, but would likely have caused a different result, due to the weakness of the prosecution case, given the factors such as the mother’s motive to fabricate this story based upon her owing rent to the Petitioner. Furthermore, the likelihood of an acquittal is made even more apparent considering the nature of the case being one that did not rely on any physical evidence, but testimonial evidence alone, the results of Petitioner’s first trial resulting in a hung jury, and the fact the newly discovered evidence thoroughly impeaches all three witnesses’ testimony and adds a fifth version of the mother’s disclosure of harm story. Petitioner would have clearly prevailed had he had this evidence at the time of the trial and strongly confirms his declaration of innocence throughout the years.

Although not specifically addressed by the parties, it is our further view that whether the testimony qualifies as impeachment evidence may be relevant in the determination but is not controlling. *Cf. State v. Sheffield*, 676 S.W.2d 542, 549 (Tenn.1984); *State v. Arnold*, 719 S.W.2d 543, 550 (Tenn.Crim.App.1986). Impeachment evidence might be particularly compelling under the circumstances of a particular case. Moreover, a complete restriction on the availability of coram nobis relief in the case of any newly discovered impeachment evidence would be inconsistent with the discretion afforded to our trial courts. Finally, the language of Tennessee Code Annotated section 40–26–105 makes no distinction between impeachment evidence and all other evidence. Thus, the ultimate question is the effect of the newly discovered evidence on the outcome when viewed under the standards in *Mixon*, our decision in *Workman*, and our analysis in this case.

State v. Vasques, 221 S.W.3d 514, 528 (Tenn. 2007)

We agree with the Court of Criminal Appeals that the trial court erred when it held, as a matter of law, that recanted testimony does not constitute newly discovered evidence.¹⁶ We also agree that the *673 Court of Criminal Appeals enunciated the correct standard which should be applied by trial courts in determining whether a new trial should be granted upon the basis of newly discovered recanted testimony

State v. Mixon, 983 S.W.2d 661, 672–73 (Tenn. 1999)

F) This petition should be granted irrespective of whether prosecutors were previously aware of the information expressed in the new evidence or not

In response to this petition, the prosecution may decide to take the position regarding the revelation by Taylor Astle, that it would not be new evidence. If prosecutors were aware the children did not attend school as they testified they did go to school, then prosecutors would have been required to disclose that knowledge to the defense at that time. *Brady v. Maryland*, 373 U.S. 83 (1963). This would be a very difficult position to take as there is no dispute that the new evidence is in direct contradiction with the sworn testimony of their three main witnesses. To be clear, this version of the “disclosure story” has never been given nor communicated to the Petitioner or his counsel. Conversely, the prosecution may attempt to argue that this is truly new evidence, as they were not previously aware of it, but that any error which may have occurred is harmless error, upon which point Petitioner adamantly disagrees, and quotes the holding of the *Mixon* Court, as this case is strictly a credibility contest.

Moreover, we do not agree with the State's assertion that the error is harmless. This trial was strictly a credibility contest.

State v. Mixon, 983 S.W.2d 661, 675 (Tenn. 1999)

Furthermore, the new evidence is not only impeachment evidence, as it also entirely contradicts

the narrative prosecutors presented to petitioner's jury to win a conviction, as no reasonable juror would convict petitioner without an explanation as to how Ms. Astle initially learned of the accusations which caused her to report them to law enforcement.

G) The State's case is now fatally discredited

This newly discovered evidence strikes at the heart of the testimony of these three witnesses as it was the only consistent aspect of their testimony, and now that consistency has been directly eviscerated by the newly discovered evidence.

As this case stands today with the new evidence presented in this petition, the prosecution cannot present even a reasonable explanation as to how Jennifer Astle learned about the existence of these accusations from another human being. The only reasonable conclusion that any juror could reach if presented today is that Jennifer Astle fabricated these accusations herself to avoid her debt with petitioner, and to be able to continue to live in his rental house rent-free; and that Petitioner is innocent.

The newly discovered evidence that disproves all three disclosure narratives presented at trial clearly meets and exceeds the standard cited in *Vasquez* that "the materiality of the new evidence is apparent, and the evidence is likely to change the result." Furthermore, considering the apparent and extreme weakness of the case presented against the petitioner, the new evidence not only "may have" resulted in a different verdict as discussed in *Vasquez*, but indeed **WOULD HAVE** resulted in an acquittal considering the inability of the state to explain how Jennifer Astle learned of the accusations from someone else prior to her reporting them to law enforcement.

Respectfully Submitted, this the 17th day of December 2024.

BY: /s/ Patrick L. Looper
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document has been served upon all Counsel of interest in this case, by delivering a true and exact copy to the office of Counsel of Record shown at the address below by hand delivery or by placing a copy in the United States mail, first-class postage prepaid.

ROGER MOORE, BPR 005616
Assistant District Attorney
Office of the District Attorney General
Washington Square Building, Suite 500
Nashville, Tennessee 37201

This the 17th day of December, 2024

/s/ Patrick L. Looper
PATRICK L. LOOPER

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

STATE OF TENNESSEE,)	
)	
v.)	No. <u>2011-A-779</u>
)	
TIMOTHY GUILFOY,)	
)	
Defendant.)	

AFFIDAVIT OF JOSHUA TREADWAY

I, JOSHUA TREADWAY, having been duly sworn according to law, makes oath and says as follows:

1. That I am over eighteen (18) years of age and have personal knowledge of the facts contained in this affidavit.
2. I am a licensed by the State of Tennessee as private investigator and I am employed by Visions Private Investigation, 4813 Broadway, Knoxville, Tennessee 37918.
3. I have been retained by Attorney Patrick L. Looper to make an investigation into the above styled matter.
4. On May 31, 2024, I made contact with Robert Brown, the former boyfriend and roommate of Jennifer Astle in Hixon, Tennessee.
5. During my interview with Mr. Brown, he stated that he did not want to speak with me regarding the case.
6. During my investigation, I have been asked to locate the guidance counselor(s) that were employed by the Clarksville-Montgomery County School System,

during the year 2009, and working at Liberty Elementary School, 849 S. Liberty Church Rd., Clarksville, Tennessee 37042.

7. On November 15, 2024, I arrived at the school, introduced myself and asked to speak with the school resource officer, Officer Lamping.
8. After explaining the details of my investigation, I was permitted to speak with the principal Donna Gagliardi, Assistant Principal Ali Burks, to whom I relayed the same information.
9. Principal Gagliardi stated that she did not have that information currently and suggested that I make a request from the Human Resources department and instructed that I email her and then she would forward that request to their Human Resources office.
10. Principal Gagliardi assured me that as soon as they locate the information I requested, that she would forward that information to me via email.
11. On November 19, 2024, I received a reply from Principal Gagliardi and was informed that the information that I was requesting is considered public record and that I should make this request with proper documentation by completing the form on the Clarksville-Montgomery County School System website.
12. I completed the request form as instructed and emailed it to Clarksville-Montgomery County School System.
13. I received a reply from Anthony D. Johnson, Chief Communications Officer with CMCSS, that provided me with two matches for my request.

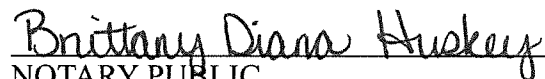
14. These two matches are as follows: Jill Hoskins (separated from employment on 5/26/2009) Mary Glover-Wright (separated from employment on 12/18/2009)
15. I have attempted to locate these two individuals, however there are numerous entries for persons with these names and due to this will require additional information from CMCSS that will require a subpoena.

Further the affiant saith not.

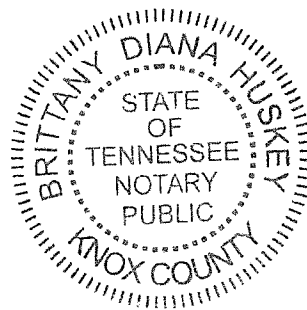


JOSHUA TREADWAY

Sworn to and subscribed before me this 17th day of December, 2024.



NOTARY PUBLIC
My Commission Expires: 10-31-2026



IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

STATE OF TENNESSEE,

v.

TIMOTHY GUILFOY,

Defendant.

)
)
)
)
)
)
)

No. 2011-A-779

AFFIDAVIT OF KATHLEEN BEYERS

I, KATHLEEN BEYERS, having been duly sworn according to law, makes oath and says as follows:

1. That I am over eighteen (18) years of age and have personal knowledge of the facts contained in this affidavit.
2. I am the sister of the Petitioner, Timothy Guilfoy.
3. I am the administrator of the Free Timothy Guilfoy website and Facebook supporters' group and have been the curator of these websites for the past twelve years.
4. As part of these websites, I have developed several subdivisions for the website that contain information regarding the various court proceedings and developments, that allow supporters to stay informed regarding my brother's case.
5. On January 14, 2024, I posted information in connection with my brother's federal habeas corpus appeal.
6. On January 18, 2024, I was confronted by Facebook messages that are purportedly from Taylor Astle.


7. The Facebook messages from Taylor Astle were unsolicited by me.
8. During the time that I have maintained this website, the names of the alleged victims have never been used on the website, until January 18, 2024
9. During the time that I have maintained this website, there has never been any post or use of photos or images of the alleged victims on the website, until January 18, 2024.
10. On January 18, 2024, Taylor Astle engaged in a three-hour barrage of Facebook posts/communications that attacked my brother, myself and his supporters.
11. During the exchange of communications on January 18, 2024, Taylor Astle posted: "The day my mother found out me and my younger sister were waiting for the bud. (*bus) My oldest was already at school and started the process of getting answers (Emoji omitted). (See attached Facebook message of Taylor Astle)
12. A second post/communication from Taylor Astle stated, "We didn't go to school we pulled my sister out (Emoji omitted) I'll testify till the day I die." (See attached Facebook message of Taylor Astle)
13. At this point, I confronted Taylor Astle through Facebook communication with a copy of the trial transcript in which she, her sister and her mother had all testified that they went to school on the day of the disclosure to their mother.
14. After confronting Taylor Astle with the trial transcript of the sworn testimony of her and her family, the Facebook posts/communications by Taylor Astle were deleted.

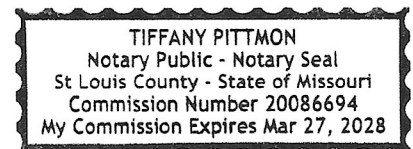
15. I assume Taylor Astle deleted the Facebook posts/communications herself because I did not delete it, and the only other user that has the ability to delete posts is the user who posted it.
16. After the Facebook posts/communications were deleted, Taylor Astle has not posted any more posts/communications as of this day.

Further the affiant saith not.


KATHLEEN BEYERS

Sworn to and subscribed before me this 12 day of December, 2024.


NOTARY PUBLIC
My Commission Expires: 03-27-2028



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IN DIVISION V CRIMINAL COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

STATE OF TENNESSEE)
)
vs.) Case No. 2011-A-779
)
TIMOTHY GUILFOY)

TRANSCRIPT OF THE PROCEEDINGS
Trial Testimony
October 24 through October 28, 2011

THE HONORABLE MONTE WATKINS, PRESIDING JUDGE

Volume One of Three Volumes

APPEARANCES:

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5 Jury Voir Dire (Not requested)
6 Opening Statements (Not requested)

7 Tuesday, October 25, 2011

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11 Redirect Examination by Ms. Reddick: 81

12 **TAYLOR ASTLE**

13 Direct Examination by Ms. Reddick: 87
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16 **(Examination of Taylor Astle continued)**

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18 **JENNIFER ASTLE**

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25 **GINGER FLEISCHER**

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1 (Whereupon on Monday, October 24, 2011,
2 this cause came on to be heard and a
3 jury of twelve and two alternates was
4 chosen; the Indictment was read by
5 counsel for the State; a plea of not
6 guilty was entered on behalf of the
7 Defendant; opening arguments were given
8 by counsel for the State and Defendant;
9 after which this cause was continued to
10 Tuesday, October 25, 2011 and the
11 following proceedings were had:)

12
13 THE COURT: Who is the State's first witness?

14 MS. REDDICK: Jasmine Astle.

15
16 **JASMINE ASTLE,**
17 **was called, and having been first duly sworn, was**
18 **examined and testified as follows:**

19 **DIRECT EXAMINATION**

20 **BY MS. REDDICK:**

21 Q. Good morning, Jasmine.

22 A. Good morning.

23 Q. Tell us your full name and if you could spell
24 your first and last name for this lady so she'll get it
25 down correctly.

1 A. Because some people's parents don't believe
2 them.

3 Q. You were just worried about what would happen?

4 A. Yeah.

5 Q. What kind of relationship did your mom have with
6 Tim?

7 A. They were friends.

8 Q. Did it seem like they were good friends?

9 A. Yes.

10 Q. So you didn't tell your mom, even though your
11 grandfather told you to?

12 A. Yes.

13 Q. At some point, though, did you tell your mom?

14 A. After my grandfather told her, he didn't say the
15 name, I told her.

16 Q. Tell me what you remember about telling your
17 mom.

18 A. Me and Taylor were going to go to school. And
19 she -- I guess Brian called. And she came outside and
20 asked me and Taylor what happened.

21 And Taylor -- and we didn't want to tell her,
22 but then I ended up telling her.

23

24 THE COURT: Say that again.

25 WITNESS: We -- me and my sister were going to

1 go to school. And my mom came outside and asked us what
2 happened.

3

4 Q. (By Ms. Reddick:) So it was the morning time,
5 before school?

6 A. Yes.

7 Q. Where were you and Taylor?

8 A. We were in the front yard, at our been bus stop.

9 Q. You were waiting for the bus in the front yard?

10 A. Yes.

11 Q. What do you remember about your mom coming out
12 there?

13 A. She just came outside and asked us what
14 happened.

15 Q. Did you know what she was talking about when she
16 asked you what happened?

17 A. Yes.

18 Q. Did you know she had talked to your grandfather?

19 A. Yes.

20 Q. What did she do when you told her?

21 A. We went to school. And she took us out early,
22 when we got to school.

23 Q. What did she do immediately, when you first told
24 her? What was the first thing she did?

25 A. She told her boyfriend.

1 Q. How did she act?

2 A. She was crying.

3 Q. What were you and Taylor doing when your mom was

4 crying?

5 A. We were actually at our bus stop because we

6 couldn't -- like we had to go to school.

7 Q. So you thought you still needed to go to school?

8 A. Yes.

9 Q. Your mom started crying, and you went on to

10 school?

11 A. Yes.

12 Q. What happened next? What happened later that

13 day?

14 A. When we got to school, at about like ten or

15 something, my mom came and got me and Taylor at school.

16 Q. What did you do after she came and got you at

17 school?

18 A. We went home. And she called the cops, Ginger.

19 Q. So did you know that she was calling the police?

20 A. Yes.

21 Q. After your mom called the police, not too long

22 after your mom called the police, did you -- I think

23 I've already asked you this -- did you go to a place

24 where you got interviewed or talked to by a lady named

25 Anne?

1 A. Yes.

2 Q. Eventually, did you find out from your sister
3 Jasmine that something similar had happened to her?

4 A. Yes.

5 Q. Did you, other than -- well, let me strike that.
6 Did you ever, yourself, tell an adult about what
7 had happened?

8 A. No.

9 Q. Did your sister, Jasmine, tell an adult?

10 A. Yes.

11 Q. Did you know she was going to tell an adult
12 about what was happening?

13 A. Yes.

14 Q. How did you feel about that?

15 A. I felt better that she told somebody.

16 Q. Why hadn't you told anyone?

17 A. I am not too sure.

18 Q. Well, what are some of the reasons?

19 A. I was just scared to see how they would relate
20 to it, like not believe me or something.

21 Q. Eventually, though, who did Jasmine tell?

22 A. My grandfather.

23 Q. At some point, did your mom also find out?

24 A. Yes.

25 Q. Can you tell us about the day that your mom

1 found out?

2 A. We were about to go to school.

3 Q. Who is "we"?

4 A. Me and my little sister.

5 Q. Jasmine?

6 A. Yes.

7 Q. Okay.

8 A. We were on our way, like going to the bus stop.
9 And my grandfather had called my mom. He had told her
10 that something had happened to us and that we needed to
11 tell her, she needed to ask us about it.

12 She came up to us right before we got on the
13 bus. And she asked us. And we told her -- my little
14 sister told her what had happened. And she started
15 crying.

16 Q. What did you do when your mom started crying?

17 A. I started crying.

18 Q. What did Jasmine do when you and your mom
19 started crying?

20 A. Crying.

21 Q. So you were all crying?

22 A. Yes.

23 Q. Then what happened after that?

24 A. She told her ex-boyfriend.

25 Q. He wasn't her ex-boyfriend then, was he? He was

1 absolute dates and times and hours and minutes, that *if
2 necessary, were you willing to lock in any specific date
3 that anything happened, other than we know the date of
4 the camping trip because it's Jasmine's birthday?

5 A. Not exact date. No.

6 Q. That is all I meant, just to keep things in the
7 same overall umbrella.

8 Now, moving on to -- we talked about what
9 happened at Saturn Drive, when you moved to the house in
10 Clarksville, which is Montgomery County, a couple of
11 counties away?

12 A. Right.

13 Q. And continued relationship with Mr. Guilfoy, and
14 everything is fine?

15 A. Yes.

16 Q. Did there come a time when you found out some
17 things about your girls?

18 A. Yes.

19 Q. And again, I'm not going to try to pin you down
20 to any exact date or time. But do you remember anything
21 about that day, whether it was morning? Night? What
22 was going on?

23 A. I found out in the morning. It was a school
24 day. The girls were getting ready for school. They
25 went to school.

1 They got on the bus. About as soon as they got
2 on the bus, he was calling back.

3 They were scared to tell me. And he was trying
4 to give them an opportunity to tell me because Jasmine
5 had told him what happened.

6 After about three days of trying to get them to
7 tell me and they didn't, he finally called and said, I
8 have to tell you.

9 Q. Again, we're going to leave that conversation
10 out because -- about what he told you.

11 A. Okay.

12 Q. Did that affect how you spent the rest of your
13 day?

14 A. Absolutely.

15 Q. Did you go to the school?

16 A. Yes. I did.

17 Q. Did you talk to either one or both of the girls
18 there?

19 A. I removed them from school.

20 Q. That is what I meant.

21 A. Yes.

22 Q. Did you sit them down there or get them back out
23 of school?

24 A. Alexis was in junior high, so I picked her up.

25 Q. Got her. Just gathering all of them.

1 A. Talked to her on my way to the other school.

2

3 THE COURT: Try to focus on Taylor and Jasmine.

4 THE WITNESS: Okay.

5

6 Q. (By Mr. Moore:) What you were doing that day was
7 getting all the girls all together?

8 A. Right.

9 Q. And you don't have to fool with picking somebody
10 else up later?

11 A. Right.

12 Q. Jasmine and Taylor, did you ultimately get them?

13 A. Yes. I did.

14 Q. And speak to them?

15 A. Yes. I did.

16 Q. And based on what they told you, did you call
17 the police?

18 A. I did call 911. Yes, sir.

19 Q. Did you relay the substance of the complaint to
20 the 911 call?

21 A. (Nods in the affirmative.)

22 Q. Where were you when you called 911?

23 A. I was at the Clarksville home.

24 Q. That would have gone into the Clarksville -- was
25 it the county or the city?

1 Clarksville, before the house came up.

2 Q. Tell me if I'm right. I think you went to
3 school through the summer months, June, July and August?

4 A. Yes.

5 Q. You and your family moved up to Clarksville in
6 September?

7 A. That sounds about right.

8 Q. You were still in school at that time?

9 A. Yes.

10 Q. How long did you continue in school?

11 A. Just a couple of months from the time we moved.

12 Q. Did you drop out or withdraw from school in
13 October?

14 A. Possibly October.

15 Q. Now, you began living -- excuse me.

16 You began living in the Clarksville home at or
17 near the start of the school year. Isn't that right?

18 A. I believe so.

19 Q. The children would have been living in that home
20 and going to that school in September of 2008. Isn't
21 that right?

22 A. Yes.

23 Q. You weren't able to pay rent in that month.
24 Isn't that right?

25 A. I don't recall what months I was able to pay it.

1 Q. At that time, you were in school?

2 A. Right.

3 Q. And you were not earning any income?

4 A. That could be possible. Yes, sir.

5 Q. So it stands to reason you were not able to pay
6 the rent?

7 A. Sure.

8 Q. And Mr. Guilfooy worked with you?

9 A. Yeah.

10 Q. Did he tell you, "Well, here's what we'll do:
11 Once you are able to pay, you can pay an extra fifty
12 dollars each month, until the overdue balance is paid
13 off?" Do you recall that agreement?

14 A. Yeah. I think so.

15 Q. So the rent would go from seven to seven-fifty
16 for fourteen months, if I did the math right?

17 A. Sure.

18 Q. I don't know if I did or not.

19 A. Okay.

20 Q. October, again, you were unable to pay the rent.
21 Isn't that right?

22 A. I am not sure.

23 Q. And again, you made an agreement with Mr.
24 Guilfooy, didn't you, that I'll work with you; we'll
25 increase it fifty, up to eight hundred dollars?

1 the house?

2 A. Sure. Yes.

3 Q. He is saying to you, "We have got to do
4 something?"

5 A. Right.

6 Q. Your solution is, "I will do my taxes."

7 A. I will give you my tax return. Yes.

8 Q. You didn't do that, did you?

9 A. I don't believe I got one.

10 Q. February, did you immediately go back to work
11 after losing the job at Kangeroo, or was there a period
12 when you were out of work?

13 A. There was a short period that I was out of work
14 again.

15 Q. Which meant that you were, again, unable to pay
16 the rent. Isn't that right?

17 A. I was receiving child support, so Tim was
18 getting money.

19 Q. Your child support is only nine hundred a month.
20 Isn't that right?

21 A. Yes.

22 Q. You have three kids?

23 A. Yes.

24 Q. You've got probably a cell phone bill and a land
25 line. Is that right?

1 A. Sure. Yeah.

2 Q. You've got gas, water and electricity?

3 A. Okay.

4 Q. You've got groceries for five people?

5 A. Yes.

6 Q. I don't even know. There's probably car
7 payments, car insurance, and things like that. Isn't
8 that right?

9 A. No car payments.

10 Q. Certainly car insurance?

11 A. Yes.

12 Q. There isn't very much of that nine hundred
13 dollars left, is there?

14 A. It didn't cost nine hundred dollars to live like
15 that. No, sir. He got money.

16 Q. Tell me if I am correct. During the six months,
17 September, October, November, December, January,
18 February, six months, you were working for just a short
19 time, perhaps two months?

20 A. That's probably right, yes.

21 Q. So for four months, your income was very
22 limited?

23 A. Yes.

24 Q. Is it reasonable that for three out of those six
25 months, you were unable to pay the rent?

1 A. Possible.

2 Q. Okay.

3 A. The full amount. Yes, sir.

4 Q. Tell me if I am correct. Some of the -- the
5 house on Saturn Drive is obviously small. We talked
6 about this before. Isn't that correct?

7 A. It's kind of small.

8 Q. It is a one bedroom house?

9 A. Originally. Yes.

10 Q. Maybe two, if you count the basement?

11 A. Correct. The original plan as to make it more
12 bedrooms. Yes.

13 Q. And you have yourself, Robert Brown, Brian
14 Schiff and sometimes and your mother, in that home.
15 Isn't that right?

16 A. Robert Brown was there for a very brief period
17 of time. But, yeah.

18 Q. Well, Robert Brown was in your life for a long
19 period. Isn't that right?

20 A. Off and on.

21 Q. You lived with him in Chattanooga, before coming
22 to Nashville?

23 A. That's correct.

24 Q. You lived with him at Saturn Drive for a period
25 of time. Isn't that right?

1 A. A short period.

2 Q. And then he made the move up to Clarksville,
3 also?

4 A. Eventually. Yeah.

5 Q. So at times, there were four adults in that
6 home?

7 A. Yeah.

8 Q. You had three girls in the dining room, where
9 they slept?

10 A. Yes.

11 Q. And that dining room did not have a door that
12 separated it from the family room or the living area.
13 Isn't that right?

14 A. That's correct.

15 Q. It was open?

16 A. Yes.

17 Q. And people could see into the dining room?

18 A. Yes.

19 Q. And for that reason, the girls didn't have any
20 privacy in the dining room. When they wanted to change
21 their clothes, they would use the bathroom. Isn't that
22 right?

23 A. Yeah.

24 Q. And Mr. Schiff -- tell me if I am right -- when
25 the basement flooded, he would sleep outside the dining

1 room, in the family room, on a futon. Is that right?

2 A. Yeah.

3 Q. You remained at Mr. Guilfooy's home in
4 Clarksville for the month of March and April and May.
5 And in fact, the girls finished the school year at their
6 school up in Clarksville. Isn't that right?

7 A. No.

8 Q. They went to another school somewhere else?

9 A. I actually drove them to their school the rest
10 of the school year from across town. We were out by
11 April.

12 Q. Do you recall ever speaking with a woman named
13 Crystal *Waltz, a private investigator from Clarksville,
14 Tennessee?

15 A. Yeah. If I remember her showing up at my house.

16 Q. And she showed up at the house on Lynnwood Drive
17 in Clarksville in the month of May. Isn't that right?

18 A. I moved in May.

19 Q. So then you were there March and April and some
20 portion of May.

21 A. I just recall moving into my other house in May.
22 I don't remember the exact date.

23 Q. Then you would have remained in the Clarksville
24 house for March, April and at least one or two days in
25 the month of May?

1 A. Maybe one or two days.

2 Q. And in June, am I right, you purchased a new
3 truck?

4 A. No.

5 Q. Now, living in -- I want to take you back to
6 Biltmore.

7 You and Mr. Guilfooy were next-door neighbors?

8 A. Yes.

9 Q. Tell me if I am correct. I think both of you
10 might have been smokers in nonsmoking households.

11 A. Correct.

12 Q. So the two of you were often out on the patio or
13 foyer, smoking a cigarette and making conversation?

14 A. Correct.

15 Q. Did you ever tell Mr. Guilfooy that your former
16 husband in Florida had made an allegation that the
17 children were being sexually abused and that an
18 investigation was being conducted?

19 A. No.

20 Q. Now, I believe we'll hear from police that the
21 phone call you made to 911 was made on Wednesday, March
22 18th.

23 You told Mr. Moore you wouldn't dispute that?

24 A. Right.

25 Q. The previous weekend, your daughter Jasmine had

1 some time?

2 A. Yes, ma'am.

3 Q. So there was no point in going back to that
4 location and trying to gather physical evidence?

5 A. No, ma'am.

6 Q. Was there a particular investigative technique
7 that you did think might be useful in this particular
8 situation?

9 A. Yes, ma'am.

10 Q. What was that?

11 A. Detective Fleming and I discussed doing a
12 controlled phone call, if the mother was willing to do
13 one.

14 Q. Detective Fleming is your contact here in
15 Davidson County?

16 A. Yes, ma'am.

17 Q. With the Metro police department?

18 A. Yes, ma'am.

19 Q. Tell the jury what a controlled phone call is.

20 A. A controlled phone call is basically one party
21 is aware that the line is being recorded. We use a
22 device that will stick in our ear, where it will record
23 both parts of the conversation.

24 It's basically used to get the perpetrator's
25 side of the story, to see if he will admit to it; see if

1 A. Yes.

2 Q. Your suggestion.

3 "I know you made a mistake. I know you feel bad
4 about it. I can't help fix it if you're not honest."

5 A. Yes.

6 Q. Your suggestion?

7 A. Yes.

8 Q. "I want them to keep quiet, but if they are
9 upset with you, I am afraid they will tell a teacher.
10 The guidance counselor thinks it is BS. Let's keep it
11 that way. I need the truth so I can tell them you are
12 sorry for events."

13 Your suggestion?

14 A. Yes.

15 Q. And again, that suggestion is false?

16 A. Yes.

17 Q. "I need to know what happened for my peace of
18 mind because I was molested and we fixed it within the
19 family, and I want to do that with you, but I need you
20 to be honest."

21 Again, your suggestion?

22 A. Yes.

23 Q. "I need to know that is only you sticking your
24 finger in them and not your dick?"

25 A. Yes.

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CERTIFICATE

I, the undersigned, Debbie Sanders, Official Court Reporter for the State of Tennessee, do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings, to the best of my knowledge and ability, of all the proceedings had and evidence introduced in the captioned cause.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Debbie Sanders
Official Court Reporter

1 Conversation #1 between Tim Guilfooy and Jennifer
2 Astle, 3-24-09

3 * * * * *

4
5 Tim Guilfooy: Hey.

6 Jennifer Astle: Hey.

7 TG: What's up?

8 JA: Well, I needed to talk to you about something
9 kind of serious.

10 TG: Yeah?

11 JA: Yeah. I um—I got a phone call today from
12 Jasmine's guidance counselor?

13 TG: Oh yeah?

14 JA: And she had kind of insinuated to her that—that
15 somebody was touching her in the wrong ways.

16 TG: Really?

17 JA: Yeah.

18 TG: Oh man.

19 JA: And uh, I mean obviously I went and picked them
20 up

21 TG: Sure, sure...man, that's, that's, man,
22 that's...fucking puke.

23 JA: Yeah. Well uh...they didn't really () to her
24 anything about who it was, and I'm trying to figure out, y'know...

25 TG: Yeah. I, I mean anybody...

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1 TG: Had said it was me?

2 JA: Yeah. And what I'm trying to do, is I've got
3 em outside, because I wanted to...I wanted to talk to you about this
4 before I get-

5 TG: Oh shit... (crosstalk)

6 JA: --upset, (crosstalk) y'know...

7 TG: Ye-yeah...yeah, oh my God..

8 JA: And we're like, best friends, so...

9 TG: Yeah! Yeah, yeah yeah yeah yeah...whoa...oh my God...

10 JA: Yeah, I mean I trust you more than anybody with
11 em, and I--before I started getting all freaked out and upset I
12 just need to, talk to you, before...

13 TG: Yeah. No, I--holy shit, I mean, that's, uh...No,
14 I mean, the the only the only--the only thing that I've noticed is
15 that the past couple times I've come they've all been...I d--I, I
16 don't know, kinda--

17 JA: I mean, I totally don't want to believe this, I
18 mean, is there anything they could have m-misunderstood is that,
19 er...no

20 JA:Right, well, right right... (crosstalk over Tim)

21 TG: Yeah, and...

22 JA: You know (inaudible), maybe they misconstrued
23 back scratching, or cuddling if you were sleeping, or...

24 TG: Right, and like I said, I haven't
25 even...(Crosstalk--inaudible)

1 JA: (Crosstalk) Anything touching them and maybe it
2 just woke em up and scared em..or, you know..

3 TG: Wow, and it's, it's specifically Jasmine is the
4 one that like, she uh, I rarely, it's been probably a year or so
5 since she's like even, she used to wanna, uh, to sleep in the same
6 bed and everything, and, and just like the other two, but..

7 JA: Well yeah, I mean, she didn't disclose to
8 anybody who it was, so, I mean, I didn't know, I-(inaudible)talking
9 to all three of em, and I--

10 TG: Yeah.

11 JA: I wasn't sure, I mean, I know you're always
12 scratching their backs and stuff like that and I wasn't sure

13 TG: Yeah, no that's, I mean, that's about () when
14 we're all fooling around and wrestling, that's, that's like, that's
15 the closest thing, to anything other than scratching backs and
16 stuff, uh, w--, did, well, I mean, (crosstalk--inaudible)

17 JA: (Crosstalk)That - I mean, I just don't, I don't
18 even want to believe this, (Crosstalk)

19 TG: (crosstalk, inaudible) No, I mean, yeah,

20 JA: (crosstalk) You know, we're friends, I wanted to
21 confront you..

22 TG: Yeah, yeah, yeah, yeah, yeah, yeah

23 JA: Before I flip out--

24 JA: So I mean, when (crosstalk)

25 TG: (crosstalk, inaudible)

1 JA: so I guess, when you were in bed or whatever,
2 laying down with them, they would y-you know, put your arms over
3 all n' just cuddle them and stuff,

4 JA: (crosstalk--inaudible) back-scratching

5 TG: Uh, it's, and I've been, Right...holy shit. I
6 mean, I'm fucking shakin, this is, this is insane.

7 JA: Yeah, no shit, this is not, this is not cool,
8 and she's--

9 TG: No.

10 JA: --gone to her guidance--she's been having
11 trouble at school and had went to her guidance counselor and ()
12 back and forth with things, so they just told me, and uh, I mean, I
13 di--I didn't even really know what to say to them, or--

14 TG: Yeah.

15 JA: Just something () did he scratch your back,
16 what's going on, and

17 TG: right, I mean, did they say was, did they, I-
18 (crosstalk inaudible)

19 TG: Goddamnit (crosstalk)

20 JA: --I was just talking to em and I just kinda
21 stopped and was like, uh, you guys--(crosstalk)

22 TG: Uh, yeah (crosstalk)

23 JA: --go play for a minute, and...

24 TG: Yeah...shit...

1 JA: And now I'm just kinda worried because--

2 (crosstalk--inaudible)

3 TG: Yeah (crosstalk)

4 JA: --now that she's talked to the guidance

5 counselor I'm not sure

6 TG: and I think that was, I-I, cause I remember if,
7 you know, every single time I've, uh, came like to the Nashville
8 house, they were uh, the () sleeping situation was uh, was pretty
9 scarce, we, you know, that was just, it was just kinda the way it
10 had to happen as far as like, you know, most, more times than not
11 there was a kid in the bed, but other than that, I mean, did-did
12 they,

13 TG: (crosstalk-inaudible)

14 JA: --you know I love you to death, I love you to
15 death--(crosstalk)

16 TG: (crosstalk-inaudible)

17 JA: --we've been best friends forever--(crosstalk)

18 TG: (crosstalk-inaudible)

19 JA: --so if there's anything that you can tell me,
20 or anything

21 TG: I mean

22 JA: Cause

23 JA: Right.

24 TG: I know that. Cause there was only two times
25 that I was in the bed with Taylor, and that there was one time, and

1 TG: Yeah

2 JA: You know, let's keep it that way, I don't, I
3 need the truth so I can tell them that you're sorry for everything

4 TG: I-tell em, I'm sorry for anything and
5 everything, and it's absolutely not their fault, and--

6 JA: Well I know that nothing's their fault, but
7 you're not telling me anything

8 TG: I'm not--I'm--I'm telling you all I, I--

9 JA: I mean, of all the situations and times that
10 this might have happened and they're saying it happened

11 TG: And-

12 JA: They're not lying to me

13 TG: And, if there's one thing, one thing that I'm
14 about, it's honesty, (crosstalk) especially with my friends

15 JA: (crosstalk) Exactly. And I'm trying
16 (crosstalk) to be your friend here.

17 TG: (crosstalk) I-I--and I'm, and I'm I'm being as
18 honest to you as I possibly can, it's, it's, if I, if I remember
19 anything, if I remember anything, it's, it's Jasmine hitting me and
20 Taylor running out of the room. (Crosstalk) And you know what?

21 JA: (Crosstalk) Why would they do that, Tim?

22 TG: If, if, if, and if, and if--

23 JA: Why would they come up with a story about you
24 of all people.

1 the second time where she got up in the middle of the night and I
2 thought she was getting something to drink, cause you know, I'm,
3 I'm a pretty decently light sleeper, so, I--I mean, I wake up every
4 time in--in the morning when you come in and, just to get the
5 girls' clothes or something like that

6 JA: Right.

7 TG: And uh, and and I-I just remember that as like,
8 you know, () gonna come back but she didn't, she went, slept, I
9 think, you know it was? It was when, I came one time, and y-you
10 were gone, you and Bobbo went to Chattanooga?

11 JA: Yeah

12 TG: And, uh, it was just, uh, just me and your--your
13 mom, Taylor, and uh, and yeah, there were a bunch of open beds, and
14 like, I-I slept in the big bed and I know she came, uh (crosstalk-
15 inaudible)

16 JA: (Crosstalk) All right, I just, you know--
17 (crosstalk)

18 TG: (Crosstalk--inaudible) This is (crosstalk-
19 inaudible)

20 JA: (crosstalk)--I just wanted to see if there was
21 anything you can enlighten me with, as far as--you know, I mean, why
22 would they say this,--

23 TG: Right, (crosstalk--inaudible)

24 JA: (crosstalk) --they, they love you just as much
25 as I do,

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