

2010

Korte H. Wamsley v. The State of Utah : Brief of Appellee

Utah Court of Appeals

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Case No. 20100617-CA

IN THE
UTAH COURT OF APPEALS

Korte H. Wamsley, Jr.,
Petitioner/Appellant,

vs.

State of Utah,
Respondent/Appellee.

Brief of Appellee

Appeal from a dismissal of a post-conviction petition in the Third
Judicial District Court of Utah, the Honorable Robert Adkins
presiding.

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STATEMENT OF JURISDICTION

Petitioner Korte Wamsley appeals the dismissal of his post-conviction petition. This Court has jurisdiction under Utah Code Annotated § 78A-4-103(2)(j) (West 2009).

STATEMENT OF THE ISSUE

1. Did the district court erroneously dismiss Wamsley's untimely post-conviction petition, where Wamsley's own petition demonstrates that he knew about all of the evidence now at issue more than 1 year before he was sentenced?
2. In his post-conviction petition, Wamsley also cited to the Factual Innocence Statute and claimed that he is innocent. Can this be construed as a factual innocence petition where Wamsley failed to comply with the other filing requirements of the

Factual Innocence Statute, and where Wamsley has failed to allege discovery of any new evidence demonstrating his factual innocence?

Standard of Review: "On appeal from a ruling on a petition for post-conviction relief, we review the post-conviction court's legal conclusions for correctness and its factual findings for clear error." *Tillman v. State*, 2005 UT 56, ¶ 14, 128 P.3d 1123.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Annotated § 78B-9-107 (West 2009) and Utah Code Annotated § 78B-9-402 (West 2009) are determinative in this case, and both are attached as Addendum A.

STATEMENT OF THE FACTS AND THE CASE

Underlying Criminal Case¹

On September 19, 2005, Petitioner Korte Wamsley was charged with six counts of aggravated sexual abuse of a child and one count of lewdness involving a

¹ This case involves an appeal from a dismissal of a post-conviction action. Wamsley never appealed his conviction, so the underlying criminal record is neither paginated nor included in the appellate record. The State will accordingly cite to those documents by name and include all relevant documents as attachments to this brief. When referring to the post-conviction record, the State will cite it as "PCR at ____."

For contextual reasons, the State refers to the minor victims in this case by first name. In so doing, the State does not intend to encourage this Court to depart from its practice of identifying minors in court decisions by initials only.

child. Information (Addendum B). In the accompanying probable cause statement, the State alleged that Wamsley had repeatedly molested his daughter Kaitlin, who was 13 years old at the time of the abuse. *Id.* at 6. The probable cause statement also alleged that Wamsley had molested his daughter Korynne on one occasion as well. *Id.* at 8. Korynne was 11 years old at the time of the abuse. *Id.*

Kaitlin and Korynne both detailed the abuse at the March 8, 2006, preliminary hearing. *See generally* Transcript of Prelim. Hrg. at 12-29 (Kaitlin), 58-72 (Korynne) (Addendum C). During Kaitlin's cross-examination, Wamsley's counsel asked her whether she had "ever accused anyone else of sexually abusing" her. *Id.* at 50. When the State objected to the question, defense counsel responded that if he could "prove . . . that she's made prior false allegations," it would go "directly to her credibility." *Id.* The district court allowed the questioning. *Id.* at 51. When defense counsel again asked her "who else" she believed had "sexually abused" her, Kaitlin responded that a former babysitter had abused her. *Id.* Defense counsel then asked her a series of questions about whether she believed other specific people had abused her. *Id.* at 52-53. In response, Kaitlin acknowledged having previously made allegations against a babysitter. *Id.* at 51-52.

Defense counsel also asked Kaitlin about the police statement she had written at the time charges were filed. *Id.* at 37. And during Korynne's direct examination,

the prosecutor referred to her police statement, asking whether she “remember[ed] writing a witness statement or having [her] mom help [her] write a witness statement.” *Id.* at 67.

Finally, the victims’ mother, Kathryn, also testified at the preliminary hearing. On cross-examination, Wamsley’s counsel questioned her about her role in preparing the girls’ police statements. *Id.* at 101-02. Among others, defense counsel asked her “when” she “type[d] up the statements,” and whether “the statement that they gave” her was “identical” to what they had initiall told her about the abuse. *Id.*

The magistrate bound Wamsley over on all charges. *Id.* at 123-24.

On September 13, 2006, Wamsley submitted a “Statement Regarding Other False Allegations By the Victim.” (Addendum D). Wamsley claimed that he had determined “through his investigator” that Kaitlin had previously made allegations of sexual abuse against a babysitter, but that the babysitter “denies this ever having happened in any form.” *Id.* Wamsley also claimed that Kaitlin had made similar allegations against two relatives, and that “it has been determined that those allegations also were false.” *Id.* Wamsley thus argued that the “predisposition of the victim to make inappropriate statements” should be admissible at trial. *Id.*

Wamsley nevertheless agreed to a plea bargain with the State on June 8, 2007. Under its terms, he entered an *Alford* plea to two counts of sexual abuse of a child,

both second degree felonies. In exchange, the State agreed to dismiss the remaining charges. Statement of Defendant in Support of Guilty Plea (Addendum E). In addition, the State and the court both agreed that Wamsley would not be sentenced to prison. *Id.* at 4-5.

Wamsley was sentenced on October 10, 2007. (Addendum F). Pursuant to the plea agreement, the district court suspended both prison sentences and ordered Wamsley to serve 365 days in jail. *Id.*

Wamsley's Post-Conviction Petition

Wamsley did not move to withdraw his guilty plea prior to sentencing, nor did he file a direct appeal. Instead, his first challenge to this plea came on April 21, 2009, –over a year and half after his sentencing– when he filed a “Petition for Writ of Habeas Corpus or Other Collateral Relief as Allowed by Law” in the underlying criminal case. The district court dismissed that petition, ruling that Utah Code Annotated § 78B-9-104(1) requires a post-conviction petitioner to file a “new action, separate from the criminal action.”

On June 22, 2009, Wamsley filed the post-conviction petition at issue here. *See generally* PCR at 1-244. That petition was titled “Petition for Relief Under the Post Conviction Remedies Act,” and its caption cited “Utah Code Ann. § 78B-9-101, et seq.” and “Utah Rules of Civil Procedure 65C” as the bases for relief. PCR at 1. In

the introduction, Wamsley asked for relief on two grounds: first, he asked for relief under Utah Code Annotated § 78B-9-104, claiming that his plea was unconstitutionally entered because it was unknowing and involuntary; second, he asked for relief under “Utah Code Ann. § 78B-9-402 and Utah Code § 78B-9-104(e),” claiming that “[n]ew evidence is being submitted with this Petition” that allegedly proved his innocence. PCR at 1-2.

In his supporting memorandum, Wamsley elaborated that newly discovered evidence on a variety of issues showed that his daughters had credibility problems, thereby rendering his plea unconstitutional. For example, Wamsley claimed to have recently discovered that there had been “lesbian involvement” between the two girls, and that, when coupled with their mother’s alleged lesbianism, this somehow affected the girls’ credibility. PCR 14-15, 168-70. Wamsley’s new wife also followed Kaitlin and surreptitiously took a photograph of her as she left church. Wamsley attached the photo to his PCRA petition and now claimed Kaitlin’s clothing conflicted with her claims about how she acted and dressed following the abuse. PCR at 209-10. Wamsley argued that this apparent inconsistency impacted Kaitlin’s credibility, rendering his earlier plea unconstitutional. PCR at 15-16, 209-10.

For purposes of this appeal, however, two of Wamsley’s claims are particularly relevant. First, Wamsley claimed that he had recently discovered that

his ex-wife Kathryn had “forged” several documents that were submitted under his daughters’ names during the criminal case. *See generally* PCR 3-6, 13-17. Though somewhat unclear from the voluminous pro se pleadings, Wamsley’s complaint ultimately focused on the girls’ police statements. *See also* 536: 52. Specifically, Wamsley claimed to have recently discovered that Kathryn had written and typed the statements, and that Kathryn had “forged” the girls’ signatures on them. *See id.* In addition, Wamsley also alleged that Kathryn had “forged” a letter that was submitted under Kaitlin’s name prior to sentencing. PCR at 6, 15.

Second, Wamsley claimed to have recently discovered that his daughter Kaitlin had previously made allegations of sexual abuse against other people as well. PCR at 4. According to Wamsley, this also impacted her credibility, thereby rendering his plea unconstitutional. *Id.*

Wamsley’s petition is dismissed on statute of limitations grounds

After conducting an initial review of Wamsley’s petition, the district court dismissed it sua sponte, concluding that it was barred by the PCRA’s statute of limitations. PCR at 249-50. This Court reversed, noting that while a district court “may raise a . . . time bar on its own motion in a post-conviction relief action,” Utah

Code Annotated § 78B-9-106(2) requires the court to give the parties “notice and an opportunity to be heard” before entering an order of dismissal. PCR at 256-57.²

On December 21, 2009, the district court issued a “Notice that the Petition for Relief Under the Post-Conviction Remedies Act May Be Time-Barred.” PCR at 265. In that notice, the court “on its own motion raise[d] the issue of whether Mr. Wamsley’s petition [was] time-barred.” PCR at 266. The court accordingly granted both parties the “opportunity to be heard on this issue.” *Id.*

² This Court’s order misapplied Utah Code Annotated § 78B-9-106(2). Utah Rule of Civil Procedure 65C “governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code Title 78B, Chapter 9.” Utah R. Civ. P. 65C(a). Under rule 65C(h)(1), the assigned judge conducts an initial frivolousness review before the petition is served on the State. If it is “apparent to the court that . . . any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim.” The rule expressly contemplates that dismissal occurs *before* service of the petition on the State, *see* Utah R. Civ. P. 65C(h)-(i), and this Court has accordingly affirmed such summary dismissals. *See e.g. Zarat v. State*, 2010 UT App 279U; *Lancaster v. Bigelow*, 2009 UT App 176U.

Utah Code Annotated 78B-9-106(1) does not apply to the limited frivolousness review. That provision requires a court to give notice to “the parties” if it sua sponte determines that a petition is time-barred. But the structure of the PCRA and Rule 65C make it plain that the discretionary, sua sponte time-bar review addressed in § 78B-9-106 is distinct from the frivolousness review, which is expressly mandated by Rule 65C. Moreover, the reference in § 78B-9-106 to the “parties” is also significant, given that the State has not yet been made a party to the case at the frivolousness review stage.

In any event, the State did not raise this issue below, and this Court accordingly need not address it here.

In his response, Wamsley argued that his petition was timely under each of the PCRA accrual dates set forth in Utah Code Annotated §§ 78B-9-107(2)(a)-(f), and he also argued that it was timely because the petition was based on newly discovered evidence. PCR 297-98. In addition, Wamsley claimed that his action was not “barred because Section 78B-9-402” – the Factual Innocence Statute – “applies to his petition.” PCR at 299.

In response, the State argued that Wamsley’s petition was barred by the PCRA’s statute of limitations, and that none of Wamsley’s statutory defenses were availing. *See generally* PCR at 431-46. In particular, the State argued that Wamsley’s cause of action began accruing when he failed to file a direct appeal, and that the alleged “newly discovered evidence” was all evidence that Wamsley either knew about, or should have known about, prior to sentencing. PCR at 434-38, 442-44.

With respect to Wamsley’s claim that he had filed a factual innocence petition, the State first argued that Wamsley had “not actually file[d] a proper factual innocence petition” under the terms set forth in Utah Code Annotated § 78B-9-402(2) (West 2009). PCR 439-40.³ Among others, the State noted that Wamsley had

³ The Factual Innocence Statute was substantively amended in the 2010 legislative session, and those amendments affect many of the provisions at issue in this appeal. Unless otherwise noted, all references to the Factual Innocence Statute in this brief refer to the version in effect at the time of this petition.

not requested a hearing on the question of factual innocence, included an assertion of "factual innocence under oath," or included an allegation of "newly discovered evidence" that "demonstrates innocence" and "is not merely impeachment evidence." PCR at 439. The State accordingly argued that the Factual Innocence Statute was not at issue. PCR at 439-40. In addition, the State argued that even if Wamsley had filed a factual innocence petition, that still would not "provide him with a basis for relief in this statute of limitations motion," because Wamsley's PCRA statute of limitations had already expired by the time he filed his alleged factual innocence petition. PCR at 440.

On June 10, 2009, Wamsley filed a motion to conduct discovery in support of his post-conviction petition. PCR at 517-19. Specifically, Wamsley requested the original witness statements from his two daughters, as well as "copies of handwriting samples" from "the approximate time that the signatures were made, as well as a set of handwriting samples from the complaining witnesses' mother with which to compare against the two signatures." PCR at 518.

The court held a hearing on the statute of limitations issue on June 16, 2010. At that hearing, State's counsel again argued that Wamsley's post-conviction petition was barred by the statute of limitations. PCR at 536: 22-40. State's counsel also argued that the Factual Innocence Statute had no bearing on this issue, because

there was no “factual innocence petition . . . before the Court.” PCR at 536: 7. Counsel argued: “If he wanted to file a factual innocence petition, he could have. He didn’t. So up until the point at which he actually does file a factual innocence petition, that statute is not before the court.” *Id.* at 536: 8.

During questioning, however, the court asked State’s counsel what the statute of limitations would be if it construed the petition as including a factual innocence petition. PCR at 536: 41. During the ensuing discussion, State’s counsel suggested that if the petition were construed as including a factual innocence petition, the factual innocence portion of the petition would likely be governed by the PCRA’s statute of limitations. PCR at 536: 58-59.⁴

Following arguments, the court first ruled that Wamsley’s PCRA petition was untimely and barred by the statute of limitations. PCR at 528; 536: 63. Second, without actually resolving the question of whether Wamsley’s petition included a factual innocence petition, the court held that “if” it did, “the same statute of limitations would apply,” and that Wamsley’s factual innocence petition would accordingly be barred. PCR at 528-29; 536: 63.

Wamsley now appeals the dismissal of his petition. PCR at 531.

⁴ As discussed in more detail below in Point II(B), that argument was incorrect.

SUMMARY OF ARGUMENT

Point I: Wamsley is incorrect when he claims that his post-conviction petition was timely. Wamsley was sentenced on October 10, 2007. Because he did not appeal, his post-conviction action accrued on November 9, 2007, the last day for filing an appeal. This gave him until November 9, 2008, to file his post-conviction petition. But he did not file his petition until June 22, 2009. His petition was therefore over seven months late.

Contrary to Wamsley's claim, his post-conviction cause of action did not begin accruing when he allegedly discovered several documents affecting his daughters' credibility in the fall of 2008. As set forth in the attachments to Wamsley's own petition, Wamsley knew about all of the claims and documents before he was even sentenced. His post-conviction action therefore accrued on the last day on which he could have appealed.

Wamsley is also incorrect when he claims that an alleged *Brady* violation tolled the statute of limitations. As an initial matter, this claim is inadequately briefed and should not be considered. But in any event, the record shows that Wamsley filed this claim more than a year after he had the information at issue. This claim, too, is therefore untimely.

Finally, Wamsley's petition is not timely under any interests of justice exception. Wamsley cannot rely on the old interests of justice exception to the PCRA's statute of limitations, because that exception had been removed from the statute before he filed this petition. Wamsley cannot rely on the interests of justice provision in the Factual Innocence Statute, because that statute is legally and analytically distinct from the PCRA. And Wamsley cannot rely on the equitable tolling doctrine that has been applied by federal courts interpreting the AEDPA, because that statute does not govern the proper interpretation of Utah's Post-Conviction Remedies Act.

Point II: Wamsley is also incorrect when he claims to have filed a factual innocence petition within his post-conviction petition. As noted, factual innocence petitions are legally distinct from post-conviction petitions. But more importantly, the petition at issue here did not comply with the basic requirements set forth by the Factual Innocence Statute.

In any event, even if Wamsley's petition is construed as including a factual innocence petition, the district court still properly dismissed the petition because Wamsley identified no newly discovered evidence proving his factual innocence as defined by the Factual Innocence Statute.

ARGUMENT

Wamsley argues that the district court erred when it dismissed his post-conviction petition on statute of limitations grounds. As set forth below, however, Wamsley's post-conviction petition was untimely under the PCRA, and the district court therefore correctly dismissed it.

Wamsley also argues that his post-conviction petition included an otherwise timely factual innocence petition. But Wamsley has never properly filed a factual innocence petition; and even if he had, it would be barred.

I.

THE DISTRICT COURT CORRECTLY HELD THAT WAMSLEY'S PCRA PETITION WAS TIME-BARRED

Wamsley first argues that his post-conviction petition was timely filed. But this argument is incorrect, because: (A) Wamsley did not file his petition within one year of the date on which his cause of action accrued; (B) Wamsley knew about all of the evidence at issue in his petition before his sentencing; and (C) no interests of justice exception excuses Wamsley's late filing.

A. Wamsley's petition was time-barred.

1. The district court could raise this sua sponte.

As an initial matter, Wamsley is incorrect when he claims that there "is a significant question whether or not the district court" could properly raise the

statute of limitations issue sua sponte. Appt. Br. 15. Under Utah Code Annotated § 78B-9-106(2) (West 2009), “[a]ny court may raise a procedural bar or time bar on its own motion, provided that it gives the parties notice and an opportunity to be heard.” This is precisely what occurred here.

Contrary to Wamsley’s argument, this Court’s decision in *Kell v. State*, 2008 UT 62, ¶ 46, 194 P.3d 913, does not demonstrate that the district court erred. The issue in *Kell* was whether a district court could grant summary judgment on an individual issue when the State had not asked for it. *Id.* at ¶¶ 45-46. The Utah Supreme Court explained that this was improper, because “only parties to the case may define the scope of a summary judgment motion.” *Id.* at ¶ 49. Here, however, the “scope” of this motion is not at issue, because the court’s sua sponte statute of limitations motion encompassed all of Wamsley’s claims. But more importantly, the PCRA expressly authorized the district court to raise the statute of limitations issue. Wamsley is therefore incorrect when he claims that the district court could not raise this issue sua sponte.⁵

⁵ Also, after the court invited both parties to address the timeliness issue, the State argued that all of Wamsley’s claims were untimely. This is not materially different than if the court had required a general response, and the State then raised the time bar on its own.

2. Wamsley's PCRA petition was untimely.

A post-conviction "petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued." Utah Code Ann. § 78B-9-107(1) (West 2009). In cases where a defendant did not file a direct appeal, the cause of action accrues on "the last day for filing an appeal from the entry of the final judgment of conviction." *Id.* § 78B-9-107(2)(a). For purposes of an appeal, a defendant must file his notice of appeal within 30 days of the date of final judgment, Utah R. App. P. 4(a), which runs from the date of sentencing in a criminal case. *See State v. Bowers*, 2002 UT 100, ¶ 4, 57 P.3d 1065.

Wamsley was sentenced on October 10, 2007. He therefore had until November 9, 2007, to file his direct appeal. He did not file a direct appeal, however, so he had until November 10, 2008, within which to file a post-conviction petition. Wamsley did not file his post-conviction petition until June 22, 2009. As such, the

district court correctly concluded that his petition was barred by the PCRA's statute of limitations.⁶

B. Wamsley's petition was not timely under the newly discovered evidence subsection.

Wamsley argues that he timely filed his post-conviction petition under the limitations statute's newly discovered evidence provision. Apl't. Br. 14. Under that provision, a post conviction cause of action begins accruing on "the date on which the petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based." Utah Code Annotated § 78B-9-107(2)(e).

This claim should be rejected for two reasons. First, Wamsley inadequately briefed it. Second, if reached, it also fails because Wamsley knew about all of the evidence at issue more than one year before he filed this petition.

⁶ Given this, Wamsley is incorrect when he suggests that the district court abused its discretion when it dismissed his PCRA petition without first allowing him to conduct discovery. Apl't. Br. 12. Discovery is not automatic in a post-conviction action. Instead, discovery is only allowed upon motion from a party and a determination by the court that there is good cause for it. Utah R. Civ. Proc. 65C(m). Here, Wamsley requested discovery only to develop evidence on the merits of his claims. Given this, there was no abuse of discretion where the district court essentially determined that Wamsley would not be allowed to conduct discovery on an untimely claim.

1. This claim is inadequately briefed.

This Court should not address this claim because it is inadequately briefed.

“A brief is inadequate when it merely contains bald citation[s] to authority [without] development of that authority and reasoned analysis based on that authority.”

Smith v. Four Corners Mental Health Ctr., 2003 UT 23, ¶ 46, 70 P.3d 904. “An appellate court is not a depository in which [a party] may dump the burden of argument and research.” *Allen v. Friel*, 2008 UT 56, ¶ 9, 194 P.3d 903. When a party does nothing more than “cursorily” raise an issue, this Court “declines to address” it on appeal. *State v. Arave*, 2009 UT App 278, ¶ 12 n.3, 220 P.3d 182; *see also State v. Green*, 2005 UT 9, ¶ 11, 108 P.3d 710 (“A brief which does not fully identify, analyze, and cite its legal arguments may be disregarded or stricken by the court.”).

After quoting § 78B-9-107(2)(e), Wamsley’s brief does little more than assert, without elaboration or explanation, that his petition “was filed within one year of the discovery of new evidence.” Aplt. Br. 14. Wamsley does not specify what that new evidence was, identify when he first discovered it, explain why it took him so long to discover it, or even argue that his unspecified actions during the undefined intervening period satisfied the “reasonable diligence” requirement of this provision. By omitting these critical details, Wamsley fails to satisfy his burden of showing that he proved to the district court that he filed his petition within one year

of when, with the exercise of reasonable diligence, he could have discovered the evidentiary basis for his claims.

Admittedly, Wamsley provides some additional detail in his Statement of Facts. Aplt. Br. 9-10. There, he alleges that during an unidentified “collateral juvenile court proceeding,” he “discovered that the State had withheld critical evidence regarding other, similar allegations made by the alleged victim that could also not be substantiated by any hard evidence,” and that he had then “determined that there was significant evidence to persuade a handwriting expert that the statements supposedly written by the alleged victims were written and signed by [his] ex-wife.” Aplt. Br. 9-10. But this is not sufficient, because rule 24(a)(9), Utah Rules of Appellate Procedure, requires a party to adequately brief a claim in the Argument section, rather than scattering the pieces of a claim seriatim throughout the different sections of the brief.

In any event, Wamsley’s fact statement still fails to adequately define his claim. Among others, Wamsley fails to identify what collateral juvenile court proceeding originally prompted his search, what prior allegations (and by which victim) he learned about, whether he knew about those allegations beforehand, what handwritten statements he uncovered, what he had done during the interim,

why he waited until the unidentified juvenile court proceeding to begin looking, and whether he actually knew about those statements beforehand.

In the absence of such detail, the State and this Court are left to guess at the precise contours of Wamsley's argument. Such an approach places the State at an unfair disadvantage, because the State is now forced to respond to arguments that Wamsley has not fully delineated, let alone actually made on appeal. Given that this claim is inadequately briefed, this Court should not address it. *See State v. Honie*, 2002 UT 4, ¶ 67, 57 P.3d 977 (reaffirming that a claim is inadequately briefed unless the appellant "clearly define[s] the issues and provide accompanying argument and authority").

2. In any event, Wamsley's claims are time-barred.

But even if this Court reaches this argument, it should still be rejected. As noted, the statute of limitations accrual date set forth in § 78B-9-107(2)(e) begins on "the date on which the petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based." Utah Code Ann. § 78B-9-107(2)(e).

When making such an argument, the "petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle [him] to relief." Utah Code Ann. § 78B-9-105(1) (West 2009). Once the statute of

limitations is placed at issue, a petitioner “has the burden to disprove its” applicability “by a preponderance of the evidence.” *Id.* § 78B-9-105(2). Thus, Wamsley must prove by a preponderance of the evidence when he discovered the evidence, as well as that, with the exercise of reasonable diligence, he did not and should not have discovered it sooner.

Though unclear from his appellate brief, it appears from the arguments below that Wamsley is arguing that in July 2008, he learned that his ex-wife Kathryn had written his daughters’ original police statements, and that Kathryn had also “forged” the girls’ signatures on those typewritten statements to make it appear that the girls had written them. PCR at 13; 536: 52. Wamsley also appears to be claiming that Kathryn forged a letter that was submitted under Kaitlin’s name at sentencing. PCR at 14. But the record shows that Wamsley knew, or should have known, about both claims more than one year before he filed this petition. This is demonstrated by three different sources.

First, both victims testified at the March 8, 2006, preliminary hearing, which was held 3 1/2 years before Wamsley filed this petition. *See generally* Transcript of Prelim. Hrg. at 12-29 (Kaitlin), 58-72 (Korynne). Wamsley’s counsel specifically referred to Kaitlin’s police statement at that hearing, *id.* at 37, thereby showing that he had already received a copy of it. And during Korynne’s direct examination, the

prosecutor not only referred to her police statement, but also the possibility that her mother had helped her write it. At that hearing, the prosecutor asked Korynne whether she “remember[ed] writing a witness statement *or having [her] mom help [her] write a witness statement.*” *Id.* at 67 (emphasis added). Moreover, the victims’ mother, Kathryn, also testified at the preliminary hearing. And on cross-examination, Wamsley’s counsel questioned her about her role in preparing the girls’ police statements. *Id.* at 101-02. Among others, defense counsel asked her “when” she “type[d] up the statements,” and whether “the statement that they gave” her was “identical” to what they had initialled told her about the abuse. *Id.* Thus, Defendant was clearly aware of this possible claim at least as early as the preliminary hearing.

Second, on July 25, 2007, two years before Wamsley filed his petition, he wrote an email to his attorney, Ron Yengich, which he later attached as Exhibit P to his post-conviction petition. PCR at 207. In that email, Wamsley claimed that his daughters’ police statements had been forged. *Id.* According to Wamsley, “the original letters from the girls were retyped and added to by Kathy to get enough detail for the DA to charge me in the first place.” *Id.* Wamsley also alleged that Kathryn forged Kaitlin’s sentencing letter: “I have had Kaitlins [sic] letter looked at by several people including a child therapist and its very apparent that she (a 15-

year old) did not write it. This letter seems to come from Kathy with Kaitlin's name on it. Kaitlin did not even sign it!" *Id.*

Third, on August 6, 2007, nearly 2 years before he filed his petition, Wamsley's current wife, Suzanne Wamsley, wrote a letter to Yengich, which Wamsley later attached as Exhibit N to his post-conviction petition. PCR at 198. In that letter, Wamsley's wife referred to the girls' police statements, and she also made both forgery claims at issue here. Specifically, she alleged that the "girls' original statements . . . were insufficient to charge [Wamsley] with anything," but that when "Det. Gordon told Kathy this, she asked what he had to have done for it to be a crime, & voila! She locks the girls in a room and types new statements for them." PCR at 198. Suzanne also alleged that Kathryn had forged Kaitlin's sentencing letter: "It also galls us that she blatantly submits a letter for sentencing under Kaitlin's name that is 100% written by her." PCR at 198.

Thus, it is clear from this record — indeed, it is clear just from the attachments to Wamsley's own postconviction petition — that Wamsley was aware of these documents and this potential issue long before he filed his petition. He therefore has not disproven the applicability of the PCRA's statute of limitations by a preponderance of the evidence.

Wamsley is also apparently claiming that he has only recently learned that Kaitlin made allegations of abuse against other people, thereby showing that his petition was timely. But Wamsley's claim again fails for lack of proof. Among others, he has not established when he actually learned about these claims or why he could not have discovered them earlier with the exercise of reasonable diligence.

In any event, the record shows that Wamsley knew that Kaitlin had made other claims of abuse long before he filed his petition. His counsel asked Kaitlin about the other allegations of abuse at the preliminary hearing. *See* Transcript of Prelim. Hrg. at 50-53. And Wamsley's attorney had an investigator looking into the issue; in fact, Wamsley filed a statement with the district court nine months before his plea alleging that his investigator had discovered previous allegations against a babysitter. *See* Wamsley's "Statement Regarding Other False Allegations By the Victim" (Addendum D).

In short, there is nothing newly discovered about any of this. Instead, the record shows that Wamsley had access to his daughters' police statements and Kaitlin's sentencing letter before his sentencing, and that he already believed they were "forged" by his ex-wife. The record also shows that he was aware of Kaitlin's prior abuse allegations, and in fact had an investigator looking into it long before he accepted the plea bargain. In spite of this, Wamsley never moved to withdraw his

plea, nor did he file a direct appeal. His belated attempt to fashion a post-conviction petition based on these claims does not surmount the PCRA's statute of limitations.⁷

C. The PCRA's state action tolling provision is also inapplicable to this case.

In his brief, Wamsley also vaguely argues that there was a *Brady* violation, and that this violation tolled the PCRA's statute of limitations under Utah Code Annotated § 78B-9-107(3). Aplt. Br. 11, 14. This claim should be rejected for two reasons.

First, this claim is inadequately briefed. Specifically, Wamsley never identifies what evidence he thinks was withheld or how the State allegedly withheld it. Wamsley also fails to offer any meaningful analysis about *Brady* or its progeny, nor does he demonstrate how that rule applies to a post-conviction case. In fact, other than citing to *Brady* by name, Wamsley's brief never even articulates the baseline *Brady* requirement.

But most importantly for purposes of this appeal, Wamsley never develops an argument as to how the unidentified *Brady* violation affected his ability to file the

⁷ In the proceedings below, Wamsley also argued that the cause of action also began accruing in December 2008, when he allegedly discovered a DCFS report "showing that the two alleged victims, Kaitlin and Korynne Wamsley, were sexually involved with each other for years prior to making any allegations against" him. PCR at 14-15. Wamsley does not raise this claim again on appeal.

post-conviction petition. As noted above, however, Wamsley bears the burden of proving by a preponderance of the evidence that this section applies. *See* Utah Code Ann. § 78B-9-105(2). In the absence of any specificity, there is nothing for the State to respond to or for this Court to evaluate. This claim is inadequately briefed, and it should not be considered.

Second, even if reached, the argument should still be rejected. A *Brady* violation occurs when the State “suppresses information that remains unknown to the defense both before and throughout trial.” *State v. Pinder*, 2005 UT 15, ¶ 24, 114 P.3d 551. A *Brady* violation could theoretically impact the statute of limitations on a postconviction petition in one of two ways: first, if the State’s unconstitutional suppression of exculpatory materials “prevented [the petitioner] from filing a petition” (Utah Code Ann. § 78B-9-107(3)); or second, if the State’s actions somehow impact “the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based” (Utah Code Ann. § 78B-9-107(2)(e)).

Though unclear from the record, Wamsley appears to be arguing that the State withheld evidence from him regarding the alleged forgeries, as well as Kaitlin’s other allegations of abuse. *See* PCR at 2, 4, 12, 14. But as discussed above, the record actually shows that Wamsley was given access to his daughters’ police

statements in advance of the preliminary hearing. And the record also shows that Wamsley knew about Kaitlin's allegations at least as early as the preliminary hearing, which was held several years before he filed this petition. Thus, any *Brady* claim was appropriately dismissed as part of the court's statute of limitations ruling.

D. No "interests of justice" exception existed to excuse Wamsley's untimely filing.

Wamsley next argues that his untimely filing should be excused in the "interests of justice." Wamsley advances three different arguments in support of this claim. First, he argues that the PCRA contains an interests of justice exception to its statute of limitations. Aplt. Br. 16-17. Second, he relies on the interests of justice exception to Factual Innocence Statute. Aplt. Br. 14-15, 18-19. And third, he asks this Court to adopt the equitable tolling doctrine as applied by federal courts when interpreting the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Aplt. Br. 19-21.

1. There is no interests of justice exception to the PCRA's statute of limitations.

Wamsley first argues that under *Adams v. State*, 2005 UT 62, 123 P.3d 400, and *Bluemel v. State*, 2007 UT 90, 173 P.3d 842, a court can consider the merits of an untimely PCRA petition when it is in the "interests of justice" to do so. Aplt. Br. 16-17. In addition, Wamsley argues that "if there is an allegation of factual innocence"

in a post-conviction petition, the interests of justice exception allows a district court to “waive” the PCRA’s statute of limitations. Aplt. Br. 12. Both claims are incorrect.

First, while *Adams* and *Blumel* both applied an interests of justice exception to the PCRA, those decisions did so because the prior version of the PCRA contained that exception. See Utah Code Ann. § 78B-9-107(3) (West 2004). But the Legislature removed the interests of justice exception from the PCRA in 2008 (and also added the present tolling provisions), over a year before Wamsley filed his petition for post-conviction relief. See Utah Code Ann. § 78B-9-107 (West 2009), Historical & Statutory Notes. Wamsley cannot rely on prior case law interpreting a now-defunct statutory provision as support for his otherwise untimely petition.

Second, Wamsley is incorrect when he claims that if a petitioner simply makes an “allegation of factual innocence,” a district court can “waive” the PCRA’s statute of limitations. Aplt. Br. 12. While it is true that a properly filed factual innocence petition can affect the timing of a post-conviction petition, the effect is not as broad as Wamsley claims. Specifically, the PCRA provides that its statute of limitations is “tolled during the pendency of the outcome of a petition asserting: . . . (b) factual innocence under Section 78B-9-401.” Utah Code Ann. § 78B-9-107(4). But, contrary to Wamsley’s claims, this provision does not excuse an untimely filing; rather, it only tolls the limitations period for a post-conviction petition while an innocence

petition is pending. Thus, while filing a compliant innocence petition pauses the running of the statute of limitations on a PCRA claim, nothing in the PCRA states that an innocence petition resuscitates a post-conviction claim that is already late.

As discussed below, Wamsley has never filed a factual innocence petition. Thus, this provision is inapplicable on its face. In any event, he did not file his PCRA petition until June 22, 2009. At that point, the statute of limitations on his PCRA petition had already expired. Thus, even if he had successfully filed a factual innocence petition alongside his PCRA petition, the district court still properly dismissed the PCRA petition because it was already time-barred when the factual-innocence-based tolling provision took effect.

2. The interests of justice provision in the Factual Innocence Statute does not excuse Wamsley's untimely PCRA petition.

Unlike the PCRA, the Factual Innocence Statute does contain an interests of justice provision. Specifically, while a factual innocence petition is ordinarily barred if based on information that the petitioner previously knew about or could have discovered, the Factual Innocence Statute nevertheless allows a court to waive that requirement "in the interest of justice." Utah Code Ann. § 78B-9-402(2)(a)(vi)(C) (2009). Contrary to Wamsley's suggestion, however, that does not save his PCRA petition. Aplt. Br. 14-15, 18-19. There are three reasons for this.

First, as discussed above, the PCRA did contain an interests of justice exception, but the Legislature specifically removed it in 2008, substituting the tolling provisions that are in the current version of the statute. Thus, the Legislature expressed its intent to *not* excuse late post-conviction petitions based on the interests of justice. Given this, Wamsley's suggestion that this Court should import the interests of justice exception from the Factual Innocence Statute into the PCRA runs contrary to this clear legislative directive. When interpreting statutes, this Court seeks to enforce the Legislature's intent, not undermine it. *See State v. Harker*, 2010 UT 56, ¶ 12, 240 P.3d 780 ("Our primary objective when interpreting statutes is to give effect to the legislature's intent."). As a matter of statutory interpretation, this argument fails.

Second, as explained in more detail below, the State does not believe that the Factual Innocence Statute contains a statute of limitations. For purposes of this argument, however, it is sufficient to note that the Factual Innocence Statute's interests of justice provision addresses the impact of a procedural bar, not a time-bar. Specifically, Utah Code Annotated § 78B-9-402(vi)(A)-(B) bars a petitioner from proceeding on an innocence petition if the petitioner or his counsel "knew of the evidence" earlier, or instead if the evidence "could have been discovered . . . through the exercise of reasonable diligence." This language is akin to language

found in the PCRA's procedural bar, not its time-bar. *See* Utah Code Ann. § 78B-9-106(1)(a)-(c).

Thus, the Factual Innocence Statute's interests of justice provision is not concerned with the passage of time, as is the case in the statute of limitations context; rather, this provision is concerned with the petitioner's ability to have raised these same claims in an earlier proceeding. It therefore is not analogous to the timeliness question at issue here.

Third, the provisions of the Factual Innocence Statute are of limited utility in interpreting the PCRA, because the two petitions address entirely different kinds of claims. While a PCRA petitioner can challenge the illegality or unconstitutionality of a conviction or sentence, a factual innocence petitioner is limited to the narrow claim that he did not commit the acts on the basis of which he was convicted. *Compare* Utah Code Ann. § 78B-9-104(1) *with* Utah Code Ann. § 78B-9-402(2)(a). The two petitions also have different filing requirements. *Compare* Utah Code Ann. § 78B-9-102(1) (West 2009) *with* Utah Code Ann. § 78B-9-402(2)(a). And the two petitions provide different remedies—specifically, unlike a post-conviction petitioner, a factual innocence petitioner is entitled to monetary relief if he prevails on his claim. *See* Utah Code Ann. § 78B-9-405.

Moreover, the two statutes refer to each other as separate provisions. The PCRA states that a postconviction court may not grant relief “based on a claim that the petitioner is innocent of the crime for which convicted except as provided” in “Part 4, Post-Conviction Determination of Factual Innocence.” Utah Code Ann. § 78B-9-104(3). And the Factual Innocence Statute likewise refers to claims that a factual innocence petitioner could not have included in “any previously filed post-trial motion or postconviction motion.” Utah Code Ann. § 78B-9-402(2)(a)(vi)(A).

The Factual Innocence Statute therefore expressly states that a “person who has already obtained postconviction relief that vacated or reversed the person’s conviction may *also* file a petition under this part if no retrial or appeal regarding the offense is pending.” Utah Code Ann. § 78B-9-402(2)(b) (emphasis added). The use of the word “also” in this provision is significant, underscoring the Legislature’s understanding that these are separate petitions that are governed by their own internal requirements.⁸

⁸ The Utah Legislature has since made this even more clear. In 2010, the PCRA and the Factual Innocence Statute were both amended to specifically state that a petitioner must file a factual innocence petition separately from any postconviction petition. See Utah Code Ann. § 78B-9-104(3) (2010); Utah Code Ann. § 78B-9-402(12) (2010).

Given this, Wamsley is incorrect when he suggests that the interest of justice provision in the Factual Innocence Statute somehow operates as a limitation on the PCRA's statute of limitations.

3. The AEDPA's equitable tolling doctrine decisions should not be imported into the PCRA.

Finally, Wamsley argues that his petition should be regarded as timely under a series of federal decisions interpreting the equitable tolling doctrine as it applies to the AEDPA. Aplt. Br. 19-21. Specifically, Wamsley argues that because he is asserting his innocence in this petition, principles of equitable tolling should allow him to proceed with his otherwise-untimely petition. *Id.* This claim fails for three reasons.

First, the federal AEDPA decisions have no bearing on the proper interpretation of Utah's PCRA. By statute, the PCRA "establishes the *sole* remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies." Utah Code Ann. § 78B-9-102(1) (emphasis added). Thus, if the Legislature wants to create an equitable tolling doctrine for Utah post-conviction actions, it can do so. But given that the PCRA provides the "sole" remedy for a state postconviction petitioner, federal decisions interpreting a federal statute have no bearing on this case.

Second, many of the cases cited by Wamsley applied the equitable tolling doctrine to claims of factual innocence within a federal habeas petition. *See, e.g., Escamilla v. Jungwirth*, 426 F.3d 868, 871-72 (7th Cir. 2005); *Souter v. Jones*, 395 F.3d 577, 588-90 (6th Cir. 2005); *Whitely v. Senkowski*, 317 F.3d 223, 225-26 (2d Cir. 2003). But Wamsley never explains how it is that a series of federal cases interpreting a federal statute are applicable to the proper interpretation of Utah's PCRA. In *Holland v. Florida*, 130 S.Ct. 2549, 2560-62 (2010), for example, the Supreme Court recently adopted the equitable doctrine for federal habeas petitions that are filed under AEDPA. But the Court did so only after interpreting the specific language of the federal statute. *See generally id.*

In Utah, however, the PCRA already contains its own analogous provision. Specifically, Utah Code Annotated § 78B-9-107(3) already tolls the PCRA's statute of limitations for "any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, or due to physical or mental incapacity." Thus, there is no need to interpret the federal equitable tolling doctrine, because an applicable provision in the Utah Code already governs.

But more importantly, the Supreme Court in *Holland* applied equitable tolling to the AEDPA only because there was no language in that statute "displac[ing]

courts' traditional equitable authority." *Holland*, 130 S.Ct. at 2560 (quotations and citations omitted). But there is such language in the PCRA. Specifically, the PCRA states that a court "*may not* grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted *except* as provided in Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA, or Part 4, Post-Conviction Determination of Factual Innocence." Utah Code Ann. § 78B-9-104(3) (emphasis added).

Thus, under the plain language of the Utah Code, a petitioner can only obtain relief based on a claim of innocence by complying with Utah's Postconviction DNA statute or Utah's Factual Innocence Statute. Given this, decisions from federal circuits interpreting a separate federal statute have no bearing on this case.

Third, even if the AEDPA equitable tolling doctrine applies to a Utah PCRA action, that doctrine still does not provide Wamsley with a basis for relief here. Under *Holland*, 130 S.Ct. at 2562, the statute of limitations in a federal habeas action is equitably tolled where the petitioner shows that "(1) he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." (Quotations and citation omitted).

Here, Wamsley has not demonstrated that this doctrine even applies to his case. Specifically, he has not demonstrated in his brief that he pursued his rights

diligently during the intervening years, nor has he demonstrated that any extraordinary circumstance exists, let alone one that actually prevented him from timely filing his petition. There is no reason to add a common law tolling provision to this otherwise clear statute, particularly in a case like this one when the petitioner has not shown that he would be excused even under that common law provision.

* * * * *

In short, Wamsley had until November 10, 2008, to file a post-conviction petition, but he did not file his petition until June 22, 2009. Although he has now asserted that newly discovered evidence should excuse his late filing, the attachments to his own post-conviction petition show that he knew about all of the relevant evidence before he was even sentenced. Regardless of whether Wamsley has properly filed a factual innocence petition, the district court's decision dismissing his postconviction petition should be affirmed.

II.

THERE IS NO FACTUAL INNOCENCE PETITION BEFORE THIS COURT

Wamsley also argues that he filed a factual innocence petition alongside his PCRA petition, and that the factual innocence petition was timely and therefore should not have been dismissed. Aplt. Br. 14, 16, 18-19.

As a threshold matter, the State notes that the resolution of this question does not change the result with respect to Wamsley's post-conviction petition. As discussed above, a post-conviction petition is distinct from a factual innocence petition. Thus, regardless of whether Wamsley's factual innocence petition were properly filed, that would not change the fact that his post-conviction petition was barred by the PCRA's statute of limitations.

With respect to the factual innocence question, the State maintains that there was nothing for the district court to dismiss, because Wamsley has never properly filed a factual innocence petition. But if this Court holds otherwise, the district court's dismissal of Wamsley's petition should still be affirmed. While the State now agrees that there is no statute of limitations on a factual innocence petition, any factual innocence petition that was filed in this case was still barred because, by his own admission, Wamsley knew of all relevant evidence in time to have included it during the criminal proceedings.

A. Wamsley never filed a factual innocence petition.

In the proceedings below, the district court never expressly ruled on the question of whether Wamsley filed a factual innocence petition. Instead, the court only addressed the timeliness of Wamsley's alleged factual innocence petition as a hypothetical proposition. See PCR at 528-29 (holding that "if" Wamsley had filed a

factual innocence petition, the PCRA's statute of limitations would apply); 536: 63 (same).

On appeal, however, this Court can affirm on the district court's ruling based on "any legal ground or theory apparent on the record, even if it differs from the district court's approach and was not urged by the parties." *Medel v. State*, 2008 UT 32, ¶ 16, 184 P.3d 1226 (quotations and citation omitted); *State v. Shepherd*, 1999 UT App 305, ¶ 31 n.4, 989 P.2d 503 (same). This Court should affirm this dismissal for two alternative reasons.

First, as discussed above, the 2009 version of the Factual Innocence Statute contemplated that a factual innocence petition would be separate from any PCRA petition. For example, the Factual Innocence Statute barred a petitioner from obtaining relief if the petitioner or his counsel "knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction motion." Utah Code Ann. § 78B-9-402(2)(a)(vi)(A). And the statute also stated that a "person who has already obtained postconviction relief that vacated or reversed the person's conviction may *also* file a petition under this part if no retrial or appeal regarding the offense is pending." Utah Code Ann. § 78B-9-402(2)(b) (emphasis added). Here, however, Wamsley only filed a single

postconviction petition. Thus, he did not properly file a separate factual innocence petition.⁹

Second, even if a petitioner in 2009 could file a post-conviction petition and a factual innocence petition within the same document, Wamsley failed to do so here because his petition did not comply with the requirements of the Factual Innocence Statute. Although Wamsley did cite to the Factual Innocence Statute and argue that he was innocent, PCR at 1-2, 13, this was not enough to properly file a factual innocence petition. Instead, Wamsley was required to include, among others: an “assert[ion]” of “factual innocence under oath” (Utah Code Ann. § 78B-9-402(2)(a)), as well as an allegation of “newly discovered material evidence” that was “not merely cumulative of evidence that was known,” was “not merely impeachment evidence,” and which “establishe[d] that [he was] factually innocent.” (Utah Code Ann. § 78B-9-402(2)(a)(i), (iii), (iv)).

Here, Wamsley’s petition contained no direct assertion of factual innocence under oath. Although he supported his petition with over a 100 pages of exhibits,

⁹ As noted above, the current version of the code expressly forbids a petitioner from filing both petitions within the same document. *See* Utah Code Ann. § 78B-9-104(3) (2010); Utah Code Ann. § 78B-9-402(12) (2010). Under current law, Wamsley therefore could not have filed both petitions in a single petition. To avoid confusion in any future cases, the State requests that any decision on this point expressly note this.

nowhere did he include an affidavit in which he expressly stated under oath that he was innocent of the crimes at issue. *See generally* PCR at 21-244. This, alone, rendered his petition insufficient to invoke the Factual Innocence Statute.

Wamsley's petition was also insufficient because he did not even allege the kind of evidence that the Factual Innocence Statute required him to have alleged. As noted, the statute required a petitioner to allege that there is "newly discovered material evidence" that established that he is "factually innocent" — i.e. that he did not "engage in the conduct for which [he] was convicted." Utah Code Ann. § 78B-9-402(1), (2)(a)(i).

Wamsley did not even allege that he had any evidence proving that he did not molest his daughters. For example, there was no allegation that he had newly discovered alibi evidence, nor was there any physical evidence showing that he could not have committed these crimes.

Instead, Wamsley's petition did nothing more than launch a post-hoc attack on his daughters' credibility. But the Factual Innocence Statute specifically provides that "mere[] impeachment" evidence will not suffice. Utah Code Ann. § 78B-9-402(2)(a)(iv). Wamsley has never alleged that non-impeachment evidence establishing his innocence actually exists.

While Wamsley's self-titled "Petition for Relief Under the Post Conviction Remedies Act" (PCR at 1) did contain an assertion that he was innocent, his petition did not comply with the threshold requirements for filing a factual innocence petition. Thus, there was no reason for the court to have treated it as a factual innocence petition, and this Court therefore need not address this issue further.

B. Even if viewed as a factual innocence petition, Wamsley's petition was still barred.

Although the State argued below that the Factual Innocence Statute is governed by the PCRA's statute of limitations, the State no longer maintains that that is so.

Unlike the PCRA, the Factual Innocence Statute does not contain a statute of limitations. *Compare* Utah Code Ann. § 78B-9-107 *with* Utah Code Ann. § 78B-9-402. As discussed above, the Factual Innocence Statute and the PCRA are also analytically distinct. Thus, absent a legislative directive, the State does not believe that the PCRA's statute of limitations should be imported into the factual innocence statute. The State accordingly believes that its prior suggestion to the contrary, as well as the district court's hypothetical ruling, were both incorrect.

This does not mean, however, that Wamsley's alleged factual innocence petition should have been allowed to proceed. Under the Factual Innocence Statute,

the petitioner must allege that “newly discovered material evidence” establishes that he “is factually innocent.” Utah Code Ann. § 78B-9-402. Moreover, the Factual Innocence Statute also states that a petition is barred unless the petitioner shows one of three things:

- Utah Code Ann. § 78B-9-402(2)(a)(vi)(A): that “neither the petitioner nor petitioner’s counsel” knew about the evidence in question “at the time of trial or sentencing or in time to include . . . in any previously filed post-trial motion or postconviction motion, and the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence”;
- Utah Code Ann. § 78B-9-402(2)(a)(vi)(B): that “a court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence”; or
- Utah Code Ann. § 78B-9-402(2)(a)(vi)(C): that “the court waives the requirements of Subsection (2)(a)(vi)(A) or (2)(a)(vi)(B) in the interest of justice”.

Wamsley cannot prevail under any of these provisions.

First, Wamsley clearly knew about the evidence in question “at the time of trial or sentencing or in time to include” it in a post-trial motion, as required by

Utah Code Ann. § 78B-9-402(2)(a)(vi)(A). As discussed above, the evidence at issue in this petition was previously known to Wamsley. At the preliminary hearing, the girls' police statements were specifically discussed, and the prosecutor even referred to the fact that Korynne might have had her "mom help [her] write a witness statement." Prelim. Transcript at 67. Moreover, Wamsley's correspondence with his counsel affirmatively shows that he thought the police statements and Kaitlin's sentencing letter were "forged," yet he still proceeded to sentencing anyway. Thus, his claim is barred under Utah Code Ann. § 78B-9-402(2)(a)(vi)(A).

Second, no court has "found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence," so Wamsley cannot obtain relief under Utah Code Annotated § 78B-9-402(2)(a)(vi)(B).

And third, while § 78B-9-402(2)(a)(vi)(C) allows a court to "waive" these requirements in the "interest of justice," nothing in this record indicates that this would be appropriate here. Contrary to Wamsley's claim, justice simply does not require a court to consider the merits of a long-delayed factual innocence claim, particularly where the substance of the claim was known to the petitioner several years earlier.

This is particularly true here, where Wamsley has already obtained the benefit of a lenient plea bargain. Based on the charges below, Wamsley faced the very real

possibility of spending the rest of his life in prison. Wamsley had been charged with six first degree felonies, and both of his victims had already testified under oath that he had molested them. According to Kaitlin's sworn testimony, Wamsley had inserted his finger into her vagina, groped her pubic area, repeatedly groped her breasts, and repeatedly stared at her while she was taking a shower or using the bathroom. Prelim. Transcript at 12-29. And according to Korynne's testimony, Wamsley had groped her pubic area on one occasion, and instructed her on another occasion to lay naked and spread eagle on a bed so that he could inspect her vagina. Prelim. Transcript at 58-73. Although Wamsley faced multiple life sentences for these crimes, the plea bargain nevertheless allowed him to walk free from jail less than a year later.

Wamsley now wants to undo all of this over two years after agreeing to the plea bargain — not because of evidence showing that he did not or could not actually commit these crimes — but because he has reassessed the evidentiary landscape and now wants to mount a full-fledged assault on the credibility of his underage daughters in a public trial. But the Factual Innocence Statute does not allow a post-hoc attack on an otherwise valid plea, particularly where the petitioner presents no valid reason why these very claims could not have been brought sooner.

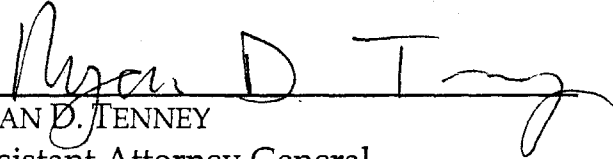
Thus, even if Wamsley's original post-conviction petition is interpreted as including a factual innocence petition as well, dismissal of the factual innocence petition was still warranted. The district court's ruling should accordingly be affirmed.

CONCLUSION

For the foregoing reasons, the district court's dismissal of Wamsley's post-conviction petition should be affirmed.

Respectfully submitted August 24, 2011.

MARK L. SHURTLEFF
Utah Attorney General



RYAN D. TENNEY
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on August 24, 2011, two copies of the foregoing brief were

☒ mailed ☐ hand-delivered to:

Randall W. Richards
Allen, Richards & Pace, P.C.
2550 Washington Blvd., Ste. 300
Ogden, UT 84401
Counsel for Petitioner Korte Wamsley

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2035 South 1300 East
Salt Lake City, UT 84105
Counsel for the Victims

A digital copy of the brief was also included: ☒ Yes ☐ No

Melina Fryer

Addenda

Addendum A

Utah Code Annotated § 78B-9-107 (West 2009) Statute of limitations for post-conviction relief

(1) A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued.

(2) For purposes of this section, the cause of action accrues on the latest of the following dates:

(a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;

(b) the entry of the decision of the appellate court which has jurisdiction over the case, if an appeal is taken;

(c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed;

(d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

(e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based; or

(f) the date on which the new rule described in Subsection 78B-9-104(1)(f) is established.

(3) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, or due to physical or mental incapacity. The petitioner has the burden of proving by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection (3).

(4) The statute of limitations is tolled during the pendency of the outcome of a petition asserting:

(a) exoneration through DNA testing under Section 78B-9-303; or

(b) factual innocence under Section 78B-9-401.

(5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period established in this section.

Utah Code Annotated § 78B-9-402 (West 2009) Petition for determination of factual innocence – Sufficient allegations – Notification of victim

As used in this part:

(1) “Factually innocent” means a person did not:

- (a) engage in the conduct for which the person was convicted;
- (b) engage in conduct relating to any lesser included offenses; or
- (c) commit any other felony arising out of or reasonably connected to the facts supporting the indictment or information upon which the person was convicted.

(2) (a) A person who has been convicted of a felony offense may petition the district court in the county in which the person was convicted for a hearing to establish that the person is factually innocent of the crime or crimes of which the person was convicted, if the person asserts factual innocence under oath and the petition alleges:

- (i) newly discovered material evidence exists that establishes that the petitioner is factually innocent;
- (ii) the petitioner identifies the specific evidence the petitioner claims establishes innocence;
- (iii) the material evidence is not merely cumulative of evidence that was known;
- (iv) the material evidence is not merely impeachment evidence;
- (v) viewed with all the other evidence, the newly discovered evidence demonstrates that the petitioner is factually innocent; and
- (vi) (A) neither the petitioner nor petitioner’s counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction motion, and the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence;
(B) a court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence; or
(C) the court waives the requirements of Subsection (2)(a)(vi)(A) or (2)(a)(vi)(B) in the interest of justice.

(b) A person who has already obtained postconviction relief that vacated or reversed the person’s conviction may also file a petition under this part if no retrial or appeal regarding this offense is pending.

(3) If some or all of the evidence alleged to be exonerating is biological evidence subject to DNA testing, the petitioner shall seek DNA testing pursuant to Section 78B-9-301.

(4) Except as provided in Subsection (6), the petition shall be in compliance with and governed by Rule 65C, Utah Rules of Civil Procedure, and shall include the underlying

criminal case number.

(5) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel shall cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which is the subject of the petition.

(6)(a) Notwithstanding paragraphs (g) and (h) of Rule 65C, Utah Rules of Civil Procedure, a person who files a petition under this section shall serve notice of the petition and a copy of the petition upon the office of the prosecutor who obtained the conviction and upon the Utah attorney general. The attorney general shall, within 30 days after receipt of service of the notice, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(b)(i) After the time for response by the attorney general under Subsection (6)(a) has passed, the court shall order a hearing if it finds there is a bona fide issue as to whether the petitioner is factually innocent of the charges of which the petitioner was convicted.

(ii) If the parties stipulate that the evidence establishes that the petitioner is factually innocent, the court may find the petitioner is factually innocent without holding a hearing.

(7) The court may not grant a petition for a hearing under this part during the period in which criminal proceedings in the matter are pending before any trial or appellate court, unless stipulated to by the parties.

(8) Any victim of a crime that is the subject of a petition under this part, and who has elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any hearing regarding the petition.

Addendum B

DAVID E. YOCOM
District Attorney for Salt Lake County
SEAN M. TORRIENTE, 9690
Deputy District Attorney
111 East Broadway, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

IN THE THIRD DISTRICT COURT, WEST JORDAN DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

KORTE H. WAMSLEY
DOB 02/19/61,
AKA NONE
11542 South 2950 West
South Jordan, UT 84095
SSN #554-19-4446
OTN
SO#

Defendant.

Screened by: S. Torriente
Assigned to: S. Torriente
DAO # 05017105

BAIL: \$150,000.00
Warrant/Release: Non-Jail

INFORMATION

Case No. *051400719*

The undersigned Detective A. Gordon - South Jordan Police Department, Agency Case No. 05F009915, under oath states on information and belief that the defendant committed the crimes of:

COUNT I

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about August 1, 2004 through August 31, 2004, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the

course of a kidnapping, or caused bodily injury or severe psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of prostitution or sexual acts by the victim with any other person or sexual performance by the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT II

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about August 1, 2004 through August 31, 2004, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the course of a kidnapping, or caused bodily injury or severe psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of

prostitution or sexual acts by the victim with any other person or sexual performance by the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT III

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about October 1, 2004 through October 31, 2004, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the course of a kidnapping, or caused bodily injury or severe psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of prostitution or sexual acts by the victim with any other person or sexual performance by the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT IV

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about April 1, 2005 through April 30, 2005, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the course of a kidnapping, or caused bodily injury or severe psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of prostitution or sexual acts by the victim with any other person or sexual performance by the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT V

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about November 2, 2004 through November 30, 2004, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the course of a kidnapping, or caused bodily injury or severe

psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of prostitution or sexual acts by the victim with any other person or sexual performance by the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT VI

AGGRAVATED SEXUAL ABUSE OF A CHILD, a First Degree Felony, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about May 1, 2005 through May 31, 2005, in violation of Title 76, Chapter 5, Section 404.1(3), Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, touched the anus, genitals, buttocks, or breasts of a child under the age of 14 years at the time of the offense, with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person, further that the defendant did during the course of committing the Sexual Abuse of a Child use or threaten the victim by the use of a dangerous weapon, or used force, duress, violence, intimidation, coercion, menace, or threat of harm or the Sexual Abuse of a Child was committed during the course of a kidnapping, or caused bodily injury or severe psychological injury to the victim during or as a result of the offense, or the defendant was a stranger to the victim or made friends with the victim for the purpose of committing the offense, or the defendant used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition, or the defendant has been previously convicted of any felony or of a misdemeanor involving a sexual offense, or the defendant committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct, or the defendant committed, in Utah or elsewhere, more than five separate acts which if committed in Utah would constitute an offense described in Title 76, Chapter 5, and were committed at the same time, or during the same course of conduct, or before or after the instant offense, or the defendant occupied a position of special trust in relation to the victim, or the defendant encouraged, aided, allowed or benefited from acts of prostitution or sexual acts by the victim with any other person or sexual performance by

the victim before any other person, or the defendant caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

COUNT VII

LEWDNESS INVOLVING A CHILD, a Class A Misdemeanor, at 11542 South 2950 West, in Salt Lake County, State of Utah, on or about September 1, 2004 through September 30, 2004, in violation of Title 76, Chapter 9, Section 702.5, Utah Code Annotated 1953, as amended, in that the defendant, **KORTE H. WAMSLEY**, a party to the offense, did intentionally or knowingly do any of the following to, or in the presence of, a child who is under 14 years of age: performed an act of sexual intercourse or sodomy; exposed his genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area; in a public place; or in a private place; under circumstances the actor should have known would likely cause affront or alarm; or with the intent to arouse or gratify the sexual desire of the actor or the child; masturbated; engaged in trespassory voyeurism; caused a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or performed any other act of lewdness.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

K.W., K.W., K. Wamsley, Det. A. Gordon, B. Wamsley

PROBABLE CAUSE STATEMENT:

Your Affiant, Detective A. Gordon, with the South Jordan Police Department, bases this Information upon the following:

The statement of K.W., age 13, that her father, KORTE WAMSLEY, began to sexually abuse her, in their home, at 11542 South 2950 West, in South Jordan, beginning in August, 2004.

On the first occasion, K.W.'s mother was out of the country, when KORTE WAMSLEY, asked K.W. if she would sleep in his bed with him. During the night, K.W. complained of an itch in her vaginal area. KORTE WAMSLEY officered K.W. Monistat, which she applied to her vagina. Afterwards, KORTE WAMSLEY, told K.W., that she had not applied the Monistat correctly and told her that he would do it. He had K.W. lie down on the bed without any pants or underwear on. He then placed Monistat on his hand and, "shoved it up" K.W.'s vagina several times, until K.W. complained that he was hurting her. KORTE WAMSLEY then asked K.W. to lie on top of him, "stomach-to-stomach" and began kissing her neck and asked her to kiss him on the lips. K.W. asked KORTE WAMSLEY to let her go, at which time he did. K.W. could feel KORTE WAMSLEY'S erect penis against her leg.

That same night, K.W., slept in KORTE WAMSLEY'S bed. During the night, she woke up when KORTE WAMSLEY'S hand was on her breast. K.W. removed his hand and went to sleep. When K.W. woke up in the morning, KORTE WAMSLEY'S hand was again on her breast squeezing.

Another day in August, 2004, while K.W.'s mother was still out of the country, K.W. was taking a shower. KORTE WAMSLEY entered the bathroom and pulled back the shower curtain enough to look in. K.W. covered her chest with her arms. KORTE WAMSLEY told K.W. to put her arm down, because he was just her father, and wasn't doing anything wrong. He then grabbed K.W.'s arm and pulled it down, after which he stayed for a moment, looking at K.W.

In October 2004, KORTE WAMSLEY, gave K.W. a massage, in which he rubbed her arms and legs, then pulled down her panties, touched her crotch area, rolled her over and touched her buttocks, also under her panties.

In November 2004, KORTE WAMSLEY gave K.W. another massage. This time, he went under K.W.'s shirt and touched her breasts. When K.W. tried to stop him, he told K.W. there was nothing wrong and that she needed to stop it. KORTE WAMSLEY then put his hands under K.W.'s panties and began to rub her vaginal area. K.W. quickly closed her legs together, after which, KORTE WAMSLEY, rolled her over and touched K.W.'s buttocks under her panties.

Several times in the early months of 2005, KORTE WAMSLEY touched K.W.'s breasts, telling her that he was checking for breast cancer.

The statement of K.W.'s younger sister, also K.W., age 11, that one night around May 2005, her father, KORTE WAMSLEY, entered her bedroom and told her that he needed to check her for something. He instructed K.W. to remove her pants and panties and lie on her stomach and open her legs. KORTE WAMSLEY then placed his hands near K.W.'s vagina, and opened her legs wider. K.W. told KORTE WAMSLEY, that he was hurting her. At that time, someone entered the front door of the home, causing KORTE WAMSLEY to stop and leave K.W.'s room.



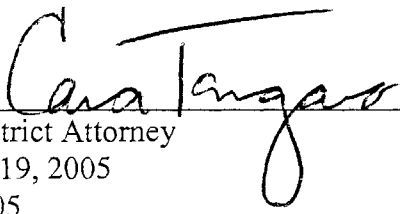
DETECTIVE A. GORDON
Affiant

Subscribed and sworn to before me this 19
day of September, 2005.



Authorized for presentment and filing:

DAVID E. YOCOM, District Attorney



Deputy District Attorney
September 19, 2005
/js/05017105

Addendum C

IN THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DEPT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

KORTE H. WAMSLEY,

Defendant.

: Case No. 051400719 FS
:
:
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:
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:
:

PRELIMINARY HEARING MARCH 8, 2006

BEFORE

JUDGE ROYAL I. HANSEN

FILED DISTRICT COURT
2006 APR 20 PM 3:13
WEST JORDAN DEPT.

FILED DISTRICT COURT
Third Judicial District

APR 19 2006

By Bn SALT LAKE COUNTY

Deputy Clerk

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

ORIGINAL

APPEARANCES

For the Plaintiff: SEAN M. TORRIENTE
Assistant District Attorney

For the Defendant: PAUL M. GRANT
Attorney at Law

* * *

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WEST JORDAN CITY, UTAH - MARCH 8, 2006

HONORABLE ROYAL I. HANSEN, JUDGE PRESIDING

(Transcriber's note: Speaker identification
may not be accurate with audio recordings)

P R O C E E D I N G S

THE COURT: Let's see, the next matter I have is
State versus Korte Wamsley, it's an 05 case ending 719. The
record should reflect Mr. Wamsley is present.

Appearances of counsel.

MR. TORRIENTE: Sean Torriente for the State, Your
Honor.

MR. GRANT: Paul Grant on behalf of the defendant.

THE COURT: And let's see. The State's ready to,
prepared to proceed; is that correct?

MR. TORRIENTE: We are ready to proceed, Your
Honor.

THE COURT: And Mr. Grant, you are as well?

MR. GRANT: We are, Your Honor.

THE COURT: Let's see. We apparently do not have a
court reporter here today and we need to take up that issue.
I've got two thoughts on it; one, the court reporter is not
available we've called downtown and we cannot get one out
here. If the parties are prepared and willing to stipulate
on the record, I'm willing to take a recording and use that
as our transcript for the preliminary hearing, if in fact you

1 are willing to go forward on that basis. You're certainly
2 not required to do so and the court reporter is something
3 that you're entitled to, either side. And so given your
4 input on that, Mr. Torriente, Mr. Grant?

5 MR. TORRIENTE: The State would like to proceed but
6 only if defense waives that.

7 THE COURT: Well, you're entitled to that, Mr.
8 Grant. I don't know if you talked to your client.

9 MR. GRANT: Your Honor, I'm prepared to proceed.
10 I've talked to Mr. Wamsley about that and he has the right to
11 have an actual typed recording of what occurs here.

12 Do you want to proceed today?

13 MR. WAMSLEY: Today?

14 MR. GRANT: Yes.

15 MR. WAMSLEY: Yes.

16 THE COURT: Under those circumstances you
17 understand, Mr. Wamsley, that your attorney, you talked to
18 your attorney about that; is that correct?

19 MR. WAMSLEY: Yes, sir.

20 THE COURT: You understand that you're entitled to
21 have a court reporter here and transcribe those proceedings?

22 MR. WAMSLEY: Yes, sir.

23 THE COURT: And that in lieu of the court reporter
24 what we would have is a recorded record of the proceedings
25 which is the way we do our trials and the way we do our other

1 hearings. That's what's going on right now. We have a
2 record and it's taken and then transcribed, and that's how
3 you would make a record out of this. Any questions that you
4 have with regard to that?

5 MR. WAMSLEY: No, sir.

6 THE COURT: You've explained that fully, Mr. Grant,
7 to your client; is that correct?

8 MR. GRANT: I have, Your Honor.

9 THE COURT: Do you need any more time to speak with
10 him concerning that issue?

11 MR. GRANT: I do not believe so.

12 THE COURT: And you're prepared to waive that right
13 to a court reporter and proceed on this basis?

14 MR. GRANT: Based on what my client has told me, we
15 are prepared to waive.

16 THE COURT: Okay, good.

17 Anything else that the State's concerned with with
18 regard to that issue?

19 MR. TORRIENTE: No.

20 THE COURT: Let's see. Tell me a little bit about
21 what the State intends to - witnesses and who you intend to
22 call.

23 MR. TORRIENTE: Your Honor, I intend to call three
24 witnesses: Katlin Wamsley, Corin Wamsley, both the alleged
25 victims in the case, and then the mother of the victims,

1 Katherine Wamsley.

2 THE COURT: Okay. And are you invoking the
3 exclusionary rule under these circumstances, Mr. Grant? Is
4 that something you would request?

5 MR. GRANT: Your Honor, yes, and there are several
6 potential witnesses here. We have a case manager, Mr. Barry
7 Potter who's a private investigator. He may be our witness
8 but ask that he be allowed to remain. We would identify
9 Bonnie Wamsley as a potential witness that the defense would
10 call at trial and maybe even the State would at trial. She's
11 here in the courtroom. Also present in the courtroom are
12 some women here on the row on the State's bench, that's
13 Christy Paul, Christy Hidreck and Renee Holt.

14 THE COURT: And are they potential witnesses?

15 MR. GRANT: Yes, they are and we would ask that
16 they be excluded.

17 THE COURT: Let me get the input from the State.

18 Are these witnesses that the State intends to call
19 or?

20 MR. TORRIENTE: They're certainly not on my witness
21 list, Your Honor. I don't know how they would be witnesses,
22 but if defense wants to articulate how that's fine. My
23 understanding is they're here for support of the victims.
24 But I don't have them listed as witnesses.

25 THE COURT: Well, and I guess the bottom line would

1 be maybe that if in fact they were to be called as witnesses
2 for some reason, you may be precluded from using them for
3 that reason, and so out of an abundance of caution you may
4 want to talk to your victims under these circumstances and
5 see if that's a possibility.

6 Any other information you have, Mr. Grant, that -

7 MR. GRANT: Yeah, Your Honor, it's just my
8 understanding that these individuals have had conversations
9 with the alleged victims and have talked with them about the
10 allegations. So therefore, you know, they're - what they've
11 heard and what they've - the discussions they've had I think
12 would be subject to them being examined. So I think they are
13 potentially witnesses.

14 THE COURT: Not somebody you intend to call?

15 MR. GRANT: Well, we may intend to call them, yes.

16 THE COURT: Mr. Torriente, I'm going to give you a
17 chance to communicate with your victims in the matter and
18 make a decision and I'm certainly willing to allow anyone to
19 remain in the courtroom as long as it's with the
20 understanding that they would be precluded from testifying at
21 a later date. And that's the restriction that I would place
22 on them.

23 MR. TORRIENTE: Your Honor, I don't anticipate it
24 would prejudice me for them not to take the stand. I imagine
25 - or for them to be witnesses at trial. I imagine it would

1 hurt the defense more because they'd bring them up as
2 potential inconsistent statements by victims, so I think it
3 would be more to the defense than me on that because I don't
4 have any reason to call them.

5 THE COURT: And the defense has said that they are
6 not on their list at the present time, but hey, they have the
7 potential to be there, and so that's the concern that I have.

8 MR. TORRIENTE: Sure. Can I speak to them briefly?

9 THE COURT: You may. I think that's appropriate to
10 do so.

11 (Off the record briefly)

12 MR. TORRIENTE: Your Honor, I discussed with them
13 that they will be excluded. Does the Court want to explain
14 to them about the -

15 THE COURT: Yeah, before everyone leaves let me
16 talk to you all so you know what - why don't you have a seat
17 here and -

18 MR. TORRIENTE: Do you want us to bring the victims
19 and other witnesses in?

20 THE COURT: Yeah, let's bring everybody in and talk
21 to them and see where we are.

22 Welcome to all of you to the West Jordan District
23 Court. This is the preliminary hearing in the matter of
24 Korte Wamsley, and I wanted to talk to everyone before we
25 started the proceedings. Let me tell you in this, number

1 one, this is not the trial in the matter, but it is a
2 determination as to whether or not there is probable cause to
3 bind defendant over, have him answer for the charges that are
4 set forth in the information. So that's the purpose of the
5 proceeding here today. We have a number of people that have
6 been identified as witnesses that will be called upon to
7 testify here today. We have other people that are in the
8 courtroom that may have some information and although if they
9 do not testify today, may be called upon at a later time to
10 testify to the truth of the fact of the matter goes forward.
11 So what the parties have asked for is that an exclusionary
12 rule be entered.

13 The exclusionary rule simply means that each of you
14 who are called to testify will come in individually. They'll
15 come up to the witness stand and they'll testify here in open
16 court, and it will not be in the presence of other people
17 that may be potential witnesses or that are actual witnesses.
18 So you'll be invited to come in on an individual basis and
19 anyone that falls within the category of being a potential
20 witness will be invited to wait in the hallway until the
21 proceeding is concluded.

22 One of the other things I would ask is that you
23 don't discuss this case one amongst the other of you so that
24 there are no discussions with anyone until the case is
25 concluded, until this preliminary hearing is concluded. And

1 after it's concluded then the exclusionary rule is addressed
2 and taken care of during that time. So I'm going to ask that
3 you come in number one, one at a time. There are some of you
4 that are not listed as witnesses but may have information to
5 be potential witnesses. We're going to invite you to wait in
6 the hallway during this proceeding and come in singly and
7 then at that point in time we'll take up the matter. When
8 you're finished with testifying in the case here, we'll
9 invite you to wait again outside and not discuss this matter
10 with anyone until it's concluded. And so those are the
11 ground rules with regard to this.

12 Anything else, counsel, that you're concerned with?

13 MR. TORRIENTE: Do you want to have my three
14 witnesses sworn in now together?

15 THE COURT: We could have them all sworn in at the
16 same time.

17 Anything else, Mr. Grant?

18 MR. GRANT: Well, and they would actually I think
19 the exclusionary rule if there is a bind over extended until
20 the trial as well.

21 THE COURT: And that's right. I appreciate your
22 clarification. I would ask that you don't communicate with
23 one another and the purpose of that is is that the
24 information that you have is the information that you know of
25 personally, it's not something that somebody else told you

1 under these circumstances. So that's in fact the rule that
2 we'll have with regard to the matter.

3 MR. TORRIENTE: And Detective Gordon is my case
4 manager, so I'd ask that she remain even though she might be
5 a witness.

6 THE COURT: You don't have any objection?

7 MR. GRANT: Of course not, but I ask to have her
8 sworn because I anticipate asking her a few questions.

9 THE COURT: The case manager?

10 MR. GRANT: Yes.

11 THE COURT: Let me take up the witnesses that are
12 going to be called by the State. I assume the case manager
13 is not.

14 MR. TORRIENTE: That's correct. I do not intend to
15 call her as a witness.

16 THE COURT: Anybody that you intend to call -

17 MR. GRANT: We may call Bonnie Wamsley who's the
18 grandmother of the victims, so we might as well swear her.

19 THE COURT: You've been - at the time of your case
20 I'll let you decide [inaudible].

21 MR. GRANT: Okay, all right.

22 THE COURT: But I'm going to invite the three
23 witnesses that are to be called by the State, I'm going to
24 invite all three of you to come up here, come over to the
25 clerk's stand right here and you can identify those, Mr.

1 Torriente.

2 MR. TORRIENTE: I have Katlin Wamsley, Corin
3 Wamsley and Katherine Wamsley.

4 THE COURT: Come on right up here. All of you I
5 need you to raise your right hand, okay?

6 (Whereupon the witnesses were sworn)

7 THE COURT: The record should reflect that all
8 three witnesses that have been here and appear and have all
9 been sworn in except the oath. Good. I'll let you have a
10 seat and then we'll call you individually and let you wait in
11 the hall during the pendency of this.

12 Anybody else that is a potential witness we're also
13 going to invite you to wait in the hallway until the
14 proceeding is concluded and so we'll excuse you. Thanks for
15 your presence here today. Okay? Okay, we've got -

16 MR. TORRIENTE: I was going to have my first
17 witness stay unless there's something to be discussed.

18 THE COURT: Anything else we need to take up,
19 counsel?

20 MR. GRANT: No.

21 THE COURT: You waive the formal reading of the
22 information, Mr. Grant?

23 MR. GRANT: We do waive the formal reading, Your
24 Honor.

25 THE COURT: Thank you. Anything else we need to

1 take up before we commence today?

2 MR. TORRIENTE: No, Your Honor.

3 THE COURT: Okay, good. I'll hear from the State.

4 Call your first witness.

5 MR. TORRIENTE: Katlin Wamsley.

6 THE COURT: Ms. Wamsley, I'm going to invite you to
7 [inaudible].

8 And all other witnesses you're invited - have been
9 invited to wait in the hallway; is that correct?

10 MR. TORRIENTE: That's correct, Your Honor.

11 THE COURT: Let's see. Ms. Wamsley, take that
12 microphone and bring it down to your height level, okay? I
13 want you first of all to tell us your name, how to spell your
14 last name for us, okay?

15 KATLIN WAMSLEY

16 having previously been duly sworn, testified
17 upon her oath as follows:

18 THE WITNESS: Okay, I'm Katlin Wamsley and it's
19 W-A-M-S-L-E-Y.

20 THE COURT: Tell us how old you are?

21 THE WITNESS: I'm 13.

22 THE COURT: Good. Thank you.

23 Your witness, Mr. Torriente.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. TORRIENTE:

3 Q What's your date of birth?

4 A June 2, 1992.

5 Q And you said you're 13 today?

6 A Yes.

7 Q Who is your father?

8 A Korte H. Wamsley, Jr.

9 Q Is he in the courtroom today?

10 A Yes, he is.

11 Q Would you please tell us where he is and what he's
12 wearing?

13 A He's right there and he's wearing a black suit.

14 Q What color shirt?

15 A He's wearing a white shirt and he's wearing a
16 bluish-greenish turquoise tie.

17 MR. TORRIENTE: Your Honor, would the record
18 reflect identification of the witness?

19 THE COURT: The record will reflect that the
20 witness has identified the defendant seated at defense table.

21 Q (BY MR. TORRIENTE) You told me earlier you prefer
22 to go by Katie?

23 A Yes.

24 Q Is it okay if I call you Katie here today?

25 A Yes.

1 Q Let me take your attention to the summer of 2004.

2 Where did you live then?

3 A We still live in the same exact house.

4 Q Where is that?

5 A 11542 South 2950 West, South Jordan, Utah 84095.

6 Q Did your father live with you at the time?

7 A Yes, he did.

8 Q Did anything occur that summer that affected your
9 relationship with him?

10 A Yes, it did.

11 Q How did that start?

12 A At first it started with him walking in on me while
13 I was going to the bathroom or in there doing certain things.
14 At first he would walk out and say he was sorry, but as time
15 progressed he would continue to come in and sit down and talk
16 with me.

17 Q What were you doing in the bathroom at these times?

18 A Sometimes taking a shower, going potty, other
19 things.

20 Q Would he knock before he came in?

21 A No.

22 Q How many times would you say that happened?

23 A I think about five.

24 Q How long would he remain in the bathroom?

25 A Until I was done pretty much.

1 Q Did you have discussions with him?

2 A Sometimes.

3 Q What were they about?

4 A Sometimes about things that he wanted me to do, or
5 sometimes about things that I wasn't very comfortable with.

6 Q What things were you not uncomfortable with or were
7 you uncomfortable with?

8 A Just different sexual things, pubic hairs, getting
9 them and other such things as that.

10 Q Did your mom go out of town sometime that summer of
11 2004?

12 A Yeah, she did.

13 Q Where did she go?

14 A She went to Chile.

15 Q Did anything happen with your father while your
16 mother was in Chile?

17 A Yes, it did.

18 Q What was that?

19 A My father wanted - had earlier asked me if I would
20 like to go and sleep in his bed while she was gone because
21 the other kids had already earlier.

22 Q So did you?

23 A Yes, on the last night we had stayed up and watched
24 an Arnold Schwarzenegger movie and then we had got in the
25 bed.

1 Q Okay. Anything happen that night?

2 A Yes, it did.

3 Q Tell me what happened.

4 A We had a few incidences with the Monistat cream.

5 First he had started talking about some different things and
6 then he noticed that I had been moving around a lot.

7 Q What types of different things was he talking to
8 you about?

9 A Sometimes it was about his father and him, and then
10 other times it would be about sexual things.

11 Q Do you specifically remember what sexual things?

12 A Intercourse.

13 Q Was he asking you questions about intercourse or
14 how did it come up?

15 A Sometimes he would tell me about different things
16 about what had happened and how it works.

17 Q Were you asking him questions or was he giving the
18 information or how was it coming about?

19 A I think that first he started by giving me
20 information and then I kind of asked one or two questions.

21 Q You mentioned Monistat.

22 A Yes, I did.

23 Q Tell me what led up to this?

24 A After that he had noticed that I had been moving
25 around and he asked me what was going on and I said that I

1 was just a little itchy down in the private area, and he said
2 that I probably had a yeast infection and that he had
3 something to help me.

4 Q What happened from there?

5 A Then he gave me the Monistat cream and then he kept
6 talking to me and he told me how to put it on after I'd ask
7 so how do you stick it on, and he said to put it within the
8 folds of your vagina, and I said okay. And so as I started
9 to walk downstairs and so on he said that he needed to make
10 sure that I had - that I had put it on the right way, so he
11 told me just to go ahead and do it on the bed in my mom and
12 dad's room.

13 Q Was he there in the room?

14 A Yes, he was.

15 Q And did you do that?

16 A Yes, I did.

17 Q What happened from there?

18 A Then after I started sticking it on and I was about
19 to pull up my panties and he said that I hadn't done it
20 right.

21 Q What happened from there?

22 A Then he started trying to put it on and he kept
23 shoving his finger down inside my crotch.

24 Q Did he have the Monistat on his fingers at the
25 time?

1 A Yes, he did.

2 Q And you said he was trying to shove his hands down
3 your crotch? What do you mean by that?

4 A He kept pushing his finger down farther inside my
5 vagina hole.

6 Thank you.

7 Q So did his finger actual go inside your vagina?

8 A Yes, it did.

9 Q How many times?

10 A Once, but he kept pushing it down in farther until
11 I said that it hurt.

12 Q Did he stop after that?

13 A He eased up a little but he wouldn't stop until he
14 finished.

15 Q How long would you say it lasted?

16 A I don't know.

17 Q That same night - or what happened after he did
18 that with the Monistat?

19 A That same exact night he had asked me to get on top
20 of him.

21 Q Was this in the bedroom as well?

22 A Yes, it was.

23 Q What did he say?

24 A He asked me if I would get on top of him and then I
25 was kind of uncomfortable about it and he said that, oh, it

1 was just kind of like when I was a little baby and he told me
2 to remember the picture out there that had the picture of me
3 as a little baby and I was on top of his tummy.

4 Q How long did he ask you to get on - from the time
5 he put the Monistat on you to when he asked you to lay on top
6 of him, how long of a -

7 A Not very long.

8 Q Minutes?

9 A I don't know. I think so.

10 Q So did you lay on top of him?

11 A Yes, I did.

12 Q And what happened?

13 A Then I started to feel uncomfortable so I told him
14 that after he had started kissing my neck and then he asked
15 me to kiss him, and then he kissed me on the lips, and then
16 he started telling me how much he loved me.

17 Q Did you notice anything else at that time?

18 A Yes, he started getting a boner.

19 Q How did you notice that?

20 A It was up against the leg that wasn't wrapped
21 around the other one.

22 Q Was this at the same time that he was kissing you?

23 A I think it was after.

24 Q How did that end?

25 A Excuse me?

1 Q How did that end at that point?

2 A I started telling him that it hurt and that I
3 definitely wasn't feeling comfortable, and he said that
4 nothing was going wrong and that I needed to calm down. And
5 so I started trying to get off of him and then he put his
6 arms around me until I started getting fed up with it and
7 [inaudible] and he let go of me and I was able to roll back
8 onto the side of my bed - of his bed, sorry.

9 Q Where did you sleep that night?

10 A Up in my mom and dad's bedroom.

11 Q Was your father in the bed that night as well?

12 A Yes.

13 Q Did anything happen during the night that made you
14 feel uncomfortable?

15 A I woke up during the middle of the night and I
16 found him holding my chest.

17 Q How as he doing that?

18 A He was just holding it and then I took it off and
19 just rolled back on to kind of the other side of the bed and
20 started falling asleep.

21 Q What was he holding your breast with?

22 A His hand.

23 Q So was it one hand?

24 A Yes.

25 Q Anything else happen that night?

1 A Then not that night, but when I woke up in the
2 morning I found him again with his hand on top of my chest,
3 but he was squeezing it.

4 Q What did you do?

5 A Then I told him to - then I took it off and then I
6 kind of woke up and then I said I was very uncomfortable and
7 he kind of asked me what was wrong and I said that he was
8 holding my chest during the night and when I woke up that he
9 was squeezing it.

10 Q Did he say anything to you?

11 A He said that that's what usually happens when he
12 was sleeping with my mother.

13 Q You talked a little bit earlier about him walking
14 in on you in the bathroom?

15 A Yes.

16 Q You mentioned that sometimes you were in the
17 shower?

18 A Yes.

19 Q Around this same time did anything occur in the
20 shower that made you feel uncomfortable?

21 A Yes.

22 Q Tell me about that.

23 A I was in the shower and he had come in and he'd
24 open the curtain up a little bit and he was standing there
25 looking at me.

1 Q Were you naked at the time?

2 A Yes, I was.

3 Q Did anything occur?

4 A Yes. I started putting my hands over me to cover
5 myself and then he started saying that he was my father and
6 that I needed to stop freaking out and that he wasn't doing
7 anything wrong.

8 Q Was there a curtain, shower curtain?

9 A Yes, there was.

10 Q Was it open at the time?

11 A Yes.

12 Q How did it get opened?

13 A He opened it.

14 Q So was it right when he opened it or a little while
15 later that covered yourself?

16 A When he opened it then he was looking at me and
17 then I covered myself because I just seen him just start to
18 open up the curtain.

19 Q So he said something along the lines I'm your
20 father, there's nothing wrong with this, and then what
21 happened?

22 A Then he asked me to take my arms down and I was
23 more hesitant on that and I said I kind of said, dad, no, I
24 don't want to do that. And then he asked me to do it again,
25 so I hesitantly put one of my hands down which was my right

1 arm, and had my left arm up still and he wanted me to take
2 that other one down, but I still just stood there and then he
3 just started to grab onto my wrist and pull it down.

4 Q So at one point was he able to see you entirely
5 naked?

6 A Yes.

7 Q Did he make any other statements to you at the
8 time?

9 A No. After I got fed up and he could tell that I
10 wasn't very happy, he walked out.

11 Q Let me talk to you about a little bit later in the
12 year around October of 2004. You talked with Detective
13 Gordon about a massage your father had given to you.

14 A Yes.

15 Q Would you tell me about that?

16 A I was sick that day and usually a lot of times I
17 can get, sometimes when I drink caffeine or I eat too much
18 sugar I can get a headache and I can start to feel very woozy
19 and sick. And I was feeling that same exact way that day.
20 I'd gone into the bathroom and I was just sitting there and
21 he asked me what was wrong and I just said I felt sick and so
22 then I was like I need to take a bath. So then I went to go
23 take a bath and then afterwards he came back and asked me how
24 I was doing and he sat there while I was sticking on my
25 pajamas and so on.

1 Q Did he eventually give you a massage?

2 A Yes, he did.

3 Q Tell me about that.

4 A I was laying in bed and he was kneeling on the
5 floor and he went underneath my clothes and he was rubbing my
6 tummy and my back, my bum and my legs and close to my pubic
7 hair and my chest.

8 Q What were you wearing at the time?

9 A Just some pajamas.

10 Q Where were his hands?

11 A On my bare skin.

12 Q What's that?

13 A On my bare skin underneath my pajamas.

14 Q When you said he massaged your bum, was that under
15 or over?

16 A Under my panties.

17 Q How long did he do that for?

18 A I don't know.

19 Q And when you said he massaged your chest?

20 A Not that time, no.

21 Q Did he touch you anywhere else during that massage?

22 A He started getting too close to my vagina area and
23 I let him know that I wasn't comfortable with that.

24 Q Tell me about him getting close. What do you mean
25 by that?

1 A He started to go on the just the tops where my,
2 most of my hair is.

3 Q So did he actually touch that -

4 A He only touched the top but he didn't touch inside.

5 Q But it's where you have pubic hair?

6 A Yes.

7 Q Was that under or over?

8 A Under my panties.

9 Q So you were wearing pajamas and panties? Is that
10 yes?

11 A Yes.

12 Q You talked to Detective Gordon about another
13 massage your dad gave you -

14 A Yes.

15 Q - about a month later? Tell me about that one.

16 A Well, we had just watched a family movie and my mom
17 had gone to bed and I had still felt sick and I was feeling
18 the same way that day, so I went and I had gone up to the
19 upstairs bathroom which we have and I started throwing up and
20 he came upstairs and he asked me how I felt and so on and he
21 was asking me what was wrong and I said I was sick and that I
22 wasn't feeling very well and I was having that same exact
23 problem that I had just a month or two ago.

24 Q Is that when he gave you a massage before?

25 A And then he asked me if I needed any help and I

1 said no, thanks. But if you could pour some Epsom salts in
2 the bath that would be great and then please leave. And he
3 poured some epsom salts in my bath but he didn't leave after
4 that.

5 Q What happened?

6 A He watched me take off my clothes and then get into
7 the tub and then I stuck a washcloth over my chest and then
8 he washed all of me except for my chest and my face and my
9 vagina.

10 Q What happened after that?

11 A Then after that we had gone into my bedroom and
12 then he watched me slip on my pajamas and then as I got in
13 the bed he did a massage again underneath both my
14 undergarments and my pajamas and he touched my breast at the
15 time.

16 Q Your what?

17 A My breasts.

18 Q How did he do that?

19 A He started rubbing them and I wasn't very
20 comfortable with it, so I started to stick my arms on top of
21 them and tell him.

22 Q Was he rubbing them with his hands?

23 A Yes, he was.

24 Q Both hands?

25 A Yes.

1 Q Is this over or under your shirt?

2 A Under.

3 Q How long did that go on for?

4 A I think a few minutes until I - 'cause I kept
5 saying that I wasn't comfortable and I didn't feel that this
6 was okay at all.

7 Q Was he saying anything?

8 A And then he told me he still kept saying the whole
9 line about calming down and I was acting weird and it was all
10 in my head.

11 Q Did he massage you anywhere else?

12 A He massaged me on my bum and the rest of my body
13 and the only thing he didn't do it on was my face and my
14 vagina.

15 Q When he massaged your bum that time was that over
16 or under your clothes?

17 A Under.

18 Q Under your panties as well?

19 A Yes.

20 Q You talked to Detective Gordon as well about your
21 father giving you cancer checks?

22 A Yes.

23 Q Would you tell me a little bit about that?

24 A I think it was either once or twice a month after
25 about December I think it was and he kept coming in and

1 checking me for whether or not I had stretch marks and so on
2 and he said that he was checking me for stretch marks and for
3 breast cancer and other things like lumps and so on.

4 Q Where were you when he would do this?

5 A I was in my bedroom.

6 Q Was anyone else around at the time?

7 A Sometimes, yes.

8 Q In the room?

9 A No.

10 Q When he would check you, how would he check you?

11 A He would ask me to take off my top and then he
12 would -

13 Q What do you mean your top?

14 A To take off my shirt and then take off my bra and
15 then he touched my breasts and look at them and see how they
16 were going.

17 Q How would he touch them? Was it with his hands?

18 A Yes.

19 Q How many times would you say he did that?

20 A He did it once or twice a month.

21 Q For how many months do you think?

22 A Up until about June, yeah.

23 Q June of 2005?

24 A Yeah.

25 Q So you said from about December 2004 to June 2005?

1 A Yes.

2 Q How long would he touch your breasts for during
3 these checks?

4 A Sometimes it would be five minutes, sometimes it
5 would be 10, just depending on how long he took to check both
6 my breasts and my legs and kind of the pubic hair on top of
7 my vagina.

8 Q When he checked you for pubic hair were your pants
9 on or off or how would he do that?

10 A He'd have me take off my pants and my panties.

11 Q Was that when you guys were alone?

12 A Yes.

13 Q Did he ever make any comments to you?

14 A Yes.

15 Q What were they?

16 A Sometimes he'd say that, yes, I had a bit of
17 stretch marks and that I need to take care of those and that
18 I was doing fine though.

19 Q Is this when he was checking your breasts?

20 A Yes, my breasts and my legs.

21 Q All these things you've talked about did they all
22 occur in your South Jordan home?

23 A Yes.

24 MR. TORRIENTE: I have no further questions of this
25 witness.

1 THE WITNESS: Okay, thank you.

2 THE COURT: Cross-examination?

3 MR. GRANT: Thank you.

4 CROSS-EXAMINATION

5 BY MR. GRANT:

6 Q Katlin, I'm Paul Grant, your father's attorney.

7 A Yes.

8 Q I've got a few questions for you.

9 A Okay.

10 Q Now in your family anytime somebody needed medical
11 treatment, which parent usually did that?

12 A Usually when it was the girls we'd go to our
13 mother.

14 Q So if you had a cut you'd go to your mom?

15 A Or we'd just take care of it ourselves.

16 Q Did you ever go to your dad for any kind of medical
17 treatment?

18 A If our mom wasn't around usually.

19 Q And regarding the Monistat incident in August of
20 2004, your mom was gone, right?

21 A Yeah, she was.

22 Q Now did you have - that, the problem the itching
23 that you had, it didn't just occur that night, right?

24 A No.

25 Q You'd had it for a few days before?

1 A Yes.

2 Q And you told your dad about it a few days before,
3 right?

4 A No.

5 Q You hadn't - now when did you first tell your dad
6 about the itching?

7 A On that same exact night when he'd asked me why I
8 was moving around so much.

9 Q So that was the first he knew about it, and he - so
10 he said I have some Monistat cream that you can use to treat
11 yourself, right?

12 A Yes.

13 Q And you put that on?

14 A Yes.

15 Q And he said you weren't putting it in there
16 thoroughly enough; is that right?

17 A Yes.

18 Q And you said he put his fingers inside your vagina.

19 A Yes.

20 Q And I apologize this stuff is kind of graphic, but
21 the details are important. Now did it go - when you mean
22 that did he go past your vulva or do you know the different
23 parts of your vagina or -

24 A I'm sorry, you need to rephrase that one I don't
25 completely understand it.

1 Q How far - if you said he put his finger on the
2 vagina, how far into your vagina would you say he went, like
3 the tip of his finger?

4 A He put his - almost his whole finger in.

5 Q So to the very end almost the entire end of his
6 finger?

7 A Yes.

8 Q But when he did that he had the cream on?

9 A Yes.

10 Q And he inserted it only one time?

11 A Yes.

12 Q And once the cream was inserted he didn't try to do
13 it again?

14 A No.

15 Q And once you told him it hurt he stopped, right?

16 A He eased up a little bit, but he did not stop, no.

17 Q You told him it hurt?

18 A And then he eased up a little bit and stopped
19 pushing it down so far, but he finished the rest of what he
20 was doing and then he stopped.

21 Q And once he finished putting the cream on you got
22 dressed?

23 A Yes.

24 Q Now were you in your pajamas at that time?

25 A Yes, I was.

1 Q And the other kid - had the other kids been
2 sleeping in his bed that night - or not that night but on
3 previous nights?

4 A Yes.

5 Q And that included your sister, Corin?

6 A Yes.

7 Q But you had - this is - now did you ask to be able
8 to sleep there or did he ask?

9 A He asked.

10 Q And when he - he put you on - asked you to get on
11 top of him did he give you a hug, put his arms around you?

12 A Yeah. He put his arms around me and then he asked
13 me to twist my leg around his.

14 Q Okay, and did he - did he bring your head next to
15 his head then?

16 A Kind of, yes.

17 Q And then when he kissed your neck, can you describe
18 that for us? How many times did he kiss you?

19 A I think once or twice.

20 Q Were they - was he sucking on your neck?

21 A No.

22 Q Just and how long did he kiss you for?

23 A I don't know, I'm sorry.

24 Q That's okay. And I - if you need a break or need
25 to stop, let me know.

1 A Okay.

2 Q I'm not trying to make this hard on you.

3 A Thank you.

4 Q When he kissed your lips, how many times did he -

5 he asked you to kiss his lips, right?

6 A Uh-huh (affirmative).

7 Q And did -

8 THE COURT: You have to, Katie, answer yes or no,

9 you can't say uh-huh (affirmative) or huh-huh (negative),

10 just because it doesn't pick up on that.

11 THE WITNESS: Okay, sorry.

12 Q (BY MR. GRANT) And was that while you were lying

13 on top of him?

14 A Yes.

15 Q And did you - how many times did you kiss him on

16 the lips?

17 A He just kissed me once.

18 Q And how long did that kiss last?

19 A I think it lasted a few seconds or so.

20 Q Okay, now did he open his mouth?

21 A No.

22 Q Did he open your mouth?

23 A No.

24 Q Did he - so he didn't stick his tongue out or

25 anything like that? Now -

1 THE COURT: You have to answer yes or no.

2 THE WITNESS: No.

3 THE COURT: Thanks.

4 MR. GRANT: Thank you, Your Honor.

5 Q (BY MR. GRANT) Did he in the past, I mean, your
6 dad gave - massages were not unusual events in your house,
7 were they?

8 A Huh-uh (negative).

9 Q Your dad gave massages to you a lot, right?

10 A No, I'm sorry, I didn't understand the question at
11 first.

12 Q Did your dad ever give you massages before the two
13 massages you told Mr. Torriente about?

14 A No.

15 Q Those were the only two massages you've ever had
16 from your dad?

17 A Yeah, pretty much.

18 Q Have you ever given your father massages before?

19 A A foot massage, yes.

20 Q Have you ever massaged any other - his back or
21 anything before?

22 A His shoulders and that was it.

23 Q Okay. When did you massage his shoulders?

24 A Usually sometimes when we were watching a movie and
25 he'd be really stressed out that day and he'd ask me to do

1 it. And so my sister and I would usually switch off and
2 Corin would start on the shoulders and I would do the foot.

3 Q Okay. Now was your dad, growing up, I mean, was he
4 affectionate, I mean, would he give you hugs?

5 A Yeah.

6 Q Would he, I mean, since you were a little girl,
7 let's even go back your whole lifetime with your dad. He
8 would give you hugs? Would he kiss you?

9 A Yes.

10 Q So him kissing you is not a particularly unusual
11 thing to occur is it?

12 A No.

13 Q Now you had told your story about what's happened
14 to other people, right?

15 A Yes.

16 Q Who have you told it to?

17 A My grandma and Bonnie which is my grammy and my
18 mother and I told - then my mother's kind of told some things
19 to some of her friends.

20 Q Now who have you told?

21 A Who have I told?

22 Q Yeah.

23 A Just those people pretty much and maybe a few of my
24 friends have asked what had happened and why I was acting the
25 way I was, and I just said because of some things that

1 happened to me between my dad and I.

2 Q Did you ever talk to any of your mom's friends
3 about things that - about these topics, about with your dad?

4 A No, not particularly.

5 Q Well, did you ever talk to Kristie Hydrick about
6 it?

7 A Yes, but not in detail.

8 Q Okay. How about Renee?

9 A What?

10 Q Did you talk to Renee Colby about these things?

11 A No, not really, no.

12 Q How about Christy Paul?

13 A Huh-uh (negative).

14 Q But who - so after your mom got back from Chile did
15 she - did you tell her about the Monistat incident?

16 A Actually it was kind of my dad who ended up telling
17 her kind of what had happened and why I did not feel very
18 well, why I wasn't comfortable being around my dad very much
19 during that time when she had just gotten home.

20 Q So your dad told your mom about it?

21 A Yes.

22 Q Did your mom talk to you about it?

23 A She tried to ask me a few questions and I just kind
24 of said, yeah, this is kind of what happened.

25 Q Now when you were in bed with your dad, you said

1 that he got a boner.

2 A Yes.

3 Q Now who told you the word boner?

4 A My cousin Aubrey.

5 Q And you'd never felt - I'm assuming you don't -
6 you've never felt a boner before.

7 A No.

8 Q And in fact, didn't you tell your mom in your
9 written statement that you thought you might have felt
10 something?

11 A Yes.

12 Q You don't know what it was that you felt?

13 A I was pretty sure I knew what it was though.

14 Q Okay. Now were you lying - can you describe the
15 position that you were lying, when you were lying on top of
16 your father what position you were in?

17 A I was tummy to tummy.

18 Q Okay. Now were his legs crossed, do you recall?

19 A No.

20 Q Were his legs spread wide open?

21 A They were just as in a regular - have you ever done
22 yoga?

23 Q Not really. How far apart were his legs?

24 A Not very far apart, they were just in like a
25 [inaudible] length.

1 Q Like six inches apart?

2 A Something like that, yes.

3 Q And how far were your legs apart?

4 A I don't know.

5 Q In what part of your body did you feel what you

6 thought might be an erection? What part of your body felt

7 that?

8 A My leg.

9 Q Your leg?

10 A Uh-huh (affirmative).

11 Q What part of your leg?

12 A My upper thigh.

13 Q Okay. And so - your upper thigh like how far down

14 from your pelvis? Saying your crotch area. About that area

15 then or lower?

16 A It was kind of just on my upper thigh right here.

17 Q Can you tell us, can you describe for the record

18 what that is? How far down, let's say your pelvis, you know,

19 or - the top of your pubic area?

20 A Yes.

21 Q And then we straight across from there is your

22 hips, right?

23 A Yes.

24 Q And if we go down from there is your upper thigh?

25 A Yes.

1 Q So going down from your hips, how far onto your
2 upper thigh do you believe it was?

3 A To the middle.

4 Q To the middle?

5 A Yes.

6 Q And at this time, this happened right after you
7 kissed your dad on the lips or at the same time or -

8 A I think it kind of started just after.

9 Q Now was it something you didn't feel before and
10 then all of the sudden you felt it?

11 A Yeah, 'cause he had asked me to twist my leg around
12 his and then I kind of put my leg in a more comfortable
13 position.

14 Q Okay. So were you - while you were on top of him
15 were you moving your hips at all or, I mean, to get more
16 comfortable?

17 A No.

18 Q Well you did once?

19 A I moved my leg but not my hips.

20 Q Okay. So you moved your leg once. Did that rub
21 against his groin or his crotch when you moved your leg?

22 A I think so, yes.

23 Q Okay. And so when you - what was your dad wearing?

24 A He was only wearing his garments until I kind of
25 told him how I was feeling uncomfortable and then he got up

1 and he stuck on a pair of green shorts.

2 Q And when was that? At what stage was that?

3 A After I had just gotten off of him.

4 Q So when you were on top of him he was wearing his
5 garments?

6 A Yes.

7 Q Now did he have - do you know if he had underwear
8 underneath the garments?

9 A No.

10 Q So the garments are the underwear?

11 A Yes.

12 Q And the garments - they fit pretty tight on the
13 skin? I mean are they tight, are they loose? Do you know?

14 A I don't know.

15 Q Now were the lights on in the bedroom?

16 A No.

17 Q Was there any light at all?

18 THE COURT: You'll have to answer yes or no.

19 THE WITNESS: No.

20 THE COURT: (inaudible).

21 THE WITNESS: I'm sorry.

22 Q (BY MR. GRANT) And I should be reminding you too.
23 So was there any, I mean, what could you see in there?

24 A I don't think I could probably see very much except
25 for there would be a little bit of light through the windows,

1 but other than that we pretty much had the shutters pretty
2 shut.

3 Q So when did you get off of him then?

4 A When I continued to say that I wasn't very
5 comfortable and I had - he can tell when I'm upset.

6 Q Uh-huh (affirmative).

7 A And so I wasn't - I wasn't happy. I was telling
8 him that I didn't feel comfortable and I wanted to get off.

9 Q Did you tell him, you know, dad, this is - I want
10 to go sleep in my own room or anything like that?

11 A I said that I might want to go sleep in my own room
12 because I wasn't feeling very comfortable.

13 Q But did he tell you not to?

14 A He didn't say anything.

15 Q But you decided to stay there anyway?

16 A I just stayed there.

17 Q And you then - everybody went to sleep; is that
18 right?

19 A Yeah.

20 Q And did you said - what point in the night did you
21 feel his hand on your breast?

22 A I really don't know, I'm sorry.

23 Q That's okay. Had you been asleep for some time
24 though?

25 A I think so, about two hours.

1 Q And that's hard to say. So did you wake your dad
2 up at that time?

3 A No, I just took his hand off my chest and I moved
4 towards the other side of the bed more.

5 Q And did he wake up when you did that?

6 A No.

7 Q And in the morning when you felt his hand on your
8 breast, did you wake him up at that time?

9 A I had moved his hand and then he ended up waking
10 up, yes.

11 Q So when his hand was on your breast he appeared to
12 be asleep?

13 A I believe so, yes.

14 Q Now you first - the first - when your mom came home
15 did you tell her that you thought that - I know we're kind of
16 revisiting this, but did you tell your mom that your dad had
17 put - had you get on top of him while she had been gone?

18 A A little bit when she asked.

19 Q Did you tell your mom at that time that you thought
20 you might have felt a - that your dad had an erection?

21 A No.

22 Q Now later on you told your grandmother about what
23 happened, right?

24 A Yes.

25 Q And did you tell your grandmother about, that you

1 thought your dad had an erection at that time when you were
2 in bed with him?

3 A I don't think so. I didn't talk to my grammy in
4 very descriptive things. I just kind of told her a little
5 bit because my sister Corin had ended up telling me about
6 some of the things that had happened to her -

7 Q Okay, why do you just tell me what you told your -
8 you did not tell your grandmother that?

9 A Not really, no. I didn't describe it in detail. I
10 said that I felt more uncomfortable with my dad and there
11 were a few times where we had - there had been some very
12 uncomfortable situations, but not in detail, no.

13 Q Did you - and you know who Detective Amy Gordon is,
14 right?

15 A Yes, I do.

16 Q Did you tell Detective Gordon about your dad having
17 an erection when you were in bed with him?

18 A No.

19 Q In fact, you didn't tell anybody about that until
20 later on, right?

21 A Until I told my mom.

22 Q Now you never saw your father's alleged erection or
23 anything on that night?

24 A On that night, no.

25 MR. GRANT: If I may have a moment?

1 THE COURT: You may, counsel.

2 Q (BY MR. GRANT) Are you okay?

3 A Yes, I am.

4 Q Now in the shower, let's go to that incident where
5 he pulled your arm down.

6 A Yes.

7 Q Now at that - he just walked into the shower?

8 A Yeah, he just walked into the bathroom and then he
9 opened the shower curtain kind of and then he poked his head
10 in and as soon as I noticed him I completely covered myself.

11 Q Now is this the first time - that was not the first
12 time he that walked in on you while you were in the shower?

13 A No.

14 Q And had he ever asked you to do that before when he
15 walked in on you?

16 A No.

17 Q But when he did that, do you know what month when
18 that was approximately?

19 A I believe it was later in 2004.

20 Q So October - September - after August? After your
21 mom -

22 A Sometime around that time I believe.

23 Q After your mom had returned from Chile?

24 A Yes.

25 Q And was there a lock on the bathroom door?

1 A Yes.

2 Q And you also have two little brothers who I imagine
3 charge in on you too?

4 A Yes.

5 Q Did you lock the bathroom doors?

6 A No, our dad had always told us we were not allowed
7 to.

8 Q So you - he had forbidden you from locking the
9 doors?

10 A Yes.

11 Q Now did you ever like - I mean, when you were in
12 the bathroom would your dad ever tell you, hey, you're in
13 there too long, Katlin, the family is sharing this bathroom?
14 Did that ever come up?

15 A Sometimes, but not really during the time. It was
16 usually afterwards he'd tell me that I need to get out of the
17 - I need to be faster in the shower, other things like that.

18 Q Well, did he - so on this time did he tell you,
19 hey, Katlin, it's time to get out of the shower, you're
20 taking too long in the shower, anything like that?

21 A No.

22 Q He just came into the shower?

23 A Yes.

24 Q And when he looked at you that time, did he do
25 anything to himself or did he just look at you?

1 A He just looked at me.

2 Q Did you see him - and again, I've got to be real to
3 the point here, did you ever see him touch his penis area
4 when he was looking at you?

5 A No.

6 Q Did he - when he was looking at you at that time in
7 the shower did he appear to be sexually aroused about
8 anything?

9 MR. TORRIENTE: Your Honor, I'm going to object.

10 THE WITNESS: I don't know.

11 MR. TORRIENTE: I think that would require some
12 speculation on the witness's part.

13 MR. GRANT: I withdraw the question.

14 THE COURT: Go ahead. Based upon that withdrawal,
15 thank you.

16 Q (BY MR. GRANT) Did he, when you were in the shower
17 that time did he say anything to you other than just remove
18 your arms?

19 A No.

20 Q Now were you, Katlin, were you having, I mean,
21 you're a growing girl, were you starting to have stretch
22 marks at all at that time?

23 A Yes.

24 Q Was that something that you ever talked to your
25 father about?

1 A No.

2 Q You never expressed any worries or concerns to him
3 about stretch marks?

4 A No, it was usually only to my mom.

5 Q Did your father express concerns to you about the
6 stretch marks?

7 A Yes.

8 Q And did he - what did he say to you about that?

9 A He kind of talked to me about it and he said that
10 it usually means that you're growing like too fast or
11 whatever, that you're eating too much, different things like
12 that. I'd always been told since I was a child that I needed
13 to eat less and I needed to watch what I ate and other things
14 like that.

15 Q So he'd talk to you about these stretch marks
16 because he thought you may be gaining too much weight?

17 A I guess so.

18 Q Did he get you to try to exercise about that same
19 time too to lose some weight?

20 A I don't think so, no.

21 Q Did you start jogging with him or going on walks
22 with him or anything?

23 A No, he didn't do that.

24 Q He never did any of that with you. Okay. Now the
25 time that you got sick the first time, did - you said that he

1 gave - you went in and you took a bath, right?

2 A Yes.

3 Q And then he, after the bath he said let - he asked

4 you if he could give you a massage or he just started giving

5 you - came in and gave you a massage?

6 A I think he just started giving me a massage.

7 Q Did he have any oils or anything like that?

8 A Yes, the first time he brought peppermint oil.

9 Q Did he tell you why he was doing oils?

10 A He wanted me to relax. That's what he said.

11 Q Now at that time - you said at that time he touched

12 your bum.

13 A Yes.

14 Q How far onto your bum did he touch?

15 A He touched kind of inside the crack area.

16 Q And so he put his hand inside there or?

17 A Yes.

18 Q How long did his hand touch your bum for?

19 A I don't know, I don't remember.

20 Q I mean, was it a second, two seconds? Was he

21 massaging your back and then he went onto your bum?

22 A He was massaging my back and then he went in

23 underneath my panties onto my bum.

24 Q And did you tell him to stop?

25 A I said that I wasn't comfortable with it and I said

1 that I'd like him to please stop.

2 Q Did he stop?

3 A No.

4 Q When he touched your bum, after you told him not to

5 touch your bum, he did not stop?

6 A No.

7 Q But you said you don't remember how long it was

8 there - his hand was on your bum?

9 A No.

10 Q And on that incident he did not touch your breasts

11 or your crotch, just your bum?

12 A Not inside my crotch, no.

13 Q Your father was pretty strict with you, right?

14 A Yes.

15 Q And he would often criticize you severely, right?

16 A Yes.

17 Q And he would yell at you?

18 A Yes.

19 Q And in fact in the past he's hit you, correct?

20 A Yes.

21 Q And he has thrown you down onto the ground, right?

22 A Yes.

23 Q So your dad is pretty tough on you?

24 A Yes.

25 Q Did that - did he get tougher on you in the last -

1 has he been tough on you your whole life or just in the last-

2 A He's been tough on me pretty much my whole life,
3 yes, but in the last time when we were having - when that was
4 going on, the sexual abuse was going on, he tried to ease up
5 a little bit on it unless I got - I'd get upset with him and
6 I'd try to talk to him and tell him I definitely didn't feel
7 this was okay. I didn't want him doing anything more with
8 me, and then he'd be ruder.

9 Q So in 2004 he kind of let up a little bit but then
10 he got tougher?

11 A Yeah, when he was upset at me.

12 Q Now Katlin, have you - has anybody else ever - have
13 you ever accused anyone else of sexually abusing you?

14 A Yes.

15 Q Who else have you abused of sexually abusing you?

16 MR. TORRIENTE: Your Honor, I don't know why this
17 is relevant.

18 THE COURT: Tell me what you - where we're going
19 with this?

20 MR. GRANT: Well, Your Honor, I think it's relevant
21 under State v. Martin if we can prove the allegation that
22 she's made prior false allegations, it goes directly to her
23 credibility.

24 THE COURT: I'm not assessing credibility -

25 MR. GRANT: You're not, however, under State v.

1 Talbot, State v. Pleasure, State v. Anderson, preliminary
2 hearings, one of the purposes of a preliminary hearing is to
3 allow the defense to develop evidence that they believe will
4 be favorable to them in their defense. It's part of a
5 preliminary hearing to engage in discovery. That's been
6 upheld numerous times by the Utah Supreme Court as being one
7 of the purposes of a preliminary hearing.

8 THE COURT: Mr. Torriente.

9 MR. TORRIENTE: I know that discovery is part of
10 the purpose of the preliminary hearing, but I still don't see
11 why maybe she was a victim in other crimes how that comes in.

12 THE COURT: I'm going to let you ask this but it's
13 going to be pretty short [inaudible].

14 MR. GRANT: Yes, Your Honor.

15 Q (BY MR. GRANT) Who else have you - who else do you
16 believe that sexually abused you?

17 A One of my babysitters.

18 Q And what was her name?

19 A I don't remember, but it was when we lived in
20 California.

21 Q If I told you her name would that help?

22 A I think so, maybe.

23 Q Would it be a Janell Cooley?

24 A I think so. Does she have red hair that's curly?

25 Q I don't know. But you believe that might be the

1 name?

2 A I think that may be the name.

3 Q And what did you allege that she did to you?

4 A She used to make me suck or kiss on her chest
5 before she'd let me go to bed each night.

6 Q Anything else?

7 A No.

8 Q Did she ever have you touch her vagina?

9 A No.

10 Q Did you ever make any allegations against Aubrey
11 and Megan Starr?

12 A Not against Megan, no. I can tell you right now
13 that there have been a few things that I didn't think was
14 okay between myself and between Aubrey when we were younger,
15 much younger.

16 Q Do you believe that Aubrey's ever sexually abused
17 you?

18 A No. I think it was partly both her and my fault.
19 We went over playing doctor.

20 Q Have you made - is there anyone else that you've
21 made any allegations against or you believe that's sexually
22 abused you?

23 A I don't think so, no.

24 Q Not Mrs. Slight - anybody named Joanie Slight?

25 A Jory Slight?

1 Q Yes.

2 A I don't think there was anything there, no.

3 Q You never alleged that she has?

4 A No.

5 Q Regarding the breast exams, did you ever tell
6 Detective Gordon about those?

7 A I don't know. I don't remember.

8 Q Did you tell your mom about the breast exams as
9 they were going on?

10 A I told my mother, yes.

11 Q Throughout the whole - when did you tell your mom?

12 A I told my mom when I was telling her everything
13 after my grammy had started to talk to her a little bit.

14 Q Now Katlin, did you ever tell a story about you
15 being kidnaped when you were at school? Did you ever say
16 that somebody at school tried to kidnap you?

17 A No.

18 Q Is there a story about that?

19 MR. TORRIENTE: Your Honor, I don't know why that's
20 relevant.

21 THE COURT: I'm finding less relevance as we go.

22 MR. GRANT: Well, we believe that there's a story
23 that a drug dealer tried to kidnap her, and it turned out to
24 be a tall tale and I think we've got -

25 THE COURT: And I think that's far enough out of

1 bounds, Mr. Grant, and I'm going to sustain the objection.

2 MR. GRANT: Well, Your Honor, if I may just make a
3 record?

4 THE COURT: You may.

5 MR. GRANT: If there a story that she's fabricated
6 a story about somebody trying to kidnap her or a drug dealer
7 trying to kidnap her at school, and then she recanted that
8 story, I mean, I think that would go to her credibility as
9 far as fabricating stories which would be our defense that
10 that's what she's doing there.

11 THE COURT: And I'm going to sustain the objection.

12 Q (BY MR. GRANT) Now when these - when you're in the
13 bathtub or in the shower, was anybody else present?

14 A No.

15 Q When you were in the - when he was doing the breast
16 exams was anybody else present?

17 A No.

18 Q Was anybody else - we know when you were in the
19 shower and he saw your - and he allegedly looked at your
20 breast, was there anyone else in the home?

21 A I think so, yes.

22 Q Who was in the home, do you know?

23 A My sister, Corin and I think my sister Kyle.

24 Q Did you tell them about it?

25 A No.

1 Q When he examined your breast, was there anybody
2 else in the home?

3 A Yes.

4 Q And did you tell them about it after it happened?

5 A No.

6 Q Did anybody witness any of these allegations?

7 A Other than me and my father.

8 Q No?

9 A No.

10 Q Your answer is no?

11 A No.

12 MR. GRANT: If I may just have a moment.

13 THE COURT: You may.

14 Q (BY MR. GRANT) When you would go to the bathroom
15 and using it, the times that your father would walk in, where
16 was - what was the door? Was it open, was it shut?

17 A It was usually shut.

18 Q Was it sometimes open?

19 A Sometimes my brother would end up leaving it open,
20 but I think that was only once or twice and the times that he
21 walked in.

22 Q But how about in the incidence that you had - on
23 the incident where he walked in when you were in the shower,
24 was the door open that time do you recall?

25 A No.

1 Q It was not? It was shut?

2 A No.

3 Q I'm sorry, we've got -

4 A No, it was not open. It was shut.

5 MR. GRANT: That's all I have.

6 THE COURT: Thank you.

7 Any redirect?

8 MR. TORRIENTE: Just a couple follow-up questions.

9 REDIRECT EXAMINATION

10 BY MR. TORRIENTE:

11 Q Have you seen your father have an erection or the
12 word you used boner before?

13 A No.

14 Q Defense asked you a lot of questions about who you
15 told and who you didn't tell. What made you finally tell
16 somebody?

17 A Finding out that some things were happening to my
18 sister.

19 Q Is that when you talked to your grandma?

20 A That was when I talked to my grammy. My sister was
21 a little concerned about it and I was concerned that the fact
22 that after me being hurt now she was and I was definitely not
23 okay with that.

24 MR. TORRIENTE: I have no further questions.

25 THE COURT: Katie, thank you for being here. I

1 know this isn't easy and I appreciate your participation in
2 this. I'm going to excuse you, but I'm going to ask that you
3 don't talk to other people about your testimony here today
4 until the proceeding's concluded until the court advises you
5 otherwise, okay?

6 THE WITNESS: Okay. Yes, Your Honor.

7 THE COURT: Thank you.

8 MR. TORRIENTE: The State calls Corin Wamsley.

9 While we're waiting for that witness, Your Honor,
10 I'm a little concerned about the exclusionary rule being
11 applied from now until -

12 THE COURT: And I'm going to hear you out on that
13 with regard to the issue. It's going to be at least until
14 the end of the proceedings.

15 MR. TORRIENTE: Okay.

16 THE COURT: And we'll talk about it following that,
17 but before I modify what I've said heretofore, I will give
18 you a chance to address the court.

19 CORIN WAMSLEY

20 having previously been duly sworn,
21 testified upon her oath as follows:

22 THE COURT: Corin, come on forward here in the
23 courtroom. I'm going to invite you to have a seat up here on
24 the witness stand and if you'll have a seat there and then
25 that microphone adjusts so you can pull that down so it's

1 right at your proper height right there. We want to have you
2 tell us your name and then how to spell your last name too,
3 okay?

4 THE WITNESS: Okay. I'm Corin Louise Wamsley,
5 W-A-M-S-L-E-Y.

6 THE COURT: Tell us how old you are?

7 THE WITNESS: I am 12.

8 THE COURT: And let me just tell you at the onset.
9 I know this isn't necessarily easy and if you need a break or
10 you need to compose yourself or anything, you're certainly
11 entitled to do that as well, okay? So just let me know if
12 you need some time to do so. Okay?

13 Your witness, Mr. Torriente.

14 MR. TORRIENTE: Thank you.

15 DIRECT EXAMINATION

16 BY MR. TORRIENTE:

17 Q What's your date of birth?

18 A 9/18/93.

19 Q So you said you're 12 right now?

20 A Uh-huh (affirmative).

21 THE COURT: Let me tell you one other thing. When
22 you're talking you need to say yes or no, you can't nod your
23 head or say uh-huh (affirmative) or huh-huh (negative)
24 because it doesn't pick it up on our recording what you're
25 saying.

1 THE WITNESS: Okay.

2 Q (BY MR. TORRIENTE) Where do you go to school?

3 A South Jordan Middle.

4 Q South Jordan Middle School?

5 A Uh-huh (affirmative).

6 Q What grade are you in now?

7 A I'm in seventh.

8 Q What do you like to do for fun?

9 A I like to play with my friends.

10 Q You have quite a few friends?

11 A Uh-huh (affirmative).

12 Q Play any sports?

13 A I play softball.

14 Q I heard you like to sing too.

15 A Uh-huh (affirmative).

16 THE COURT: You have to say yes so that

17 [inaudible].

18 THE WITNESS: Yes.

19 THE COURT: That will be a hard thing to remember

20 but see if you can do that.

21 Q (BY MR. TORRIENTE) Who is your dad, Corin?

22 A Korte H. Wamsley, Jr.

23 Q Do you see him in the court today?

24 A Yeah.

25 Q And where is he sitting and what's he wearing?

1 A He's wearing a bluish-greenish tie and black suit
2 and a white shirt..

3 MR. TORRIENTE: Your Honor, will the record reflect
4 the identification of the defendant?

5 THE COURT: The record will reflect that the
6 witness has identified the defendant seated at defense table.

7 Q (BY MR. TORRIENTE) Has anything happened with your
8 father that's made you feel uncomfortable?

9 A Yes.

10 Q Tell me about the first time.

11 A The first time we were going home from seeing my GG
12 and -

13 Q Is that your grandma?

14 A Huh-huh (negative), she's my great-grandma.

15 Q Okay.

16 A And my mom called because it was really foggy and
17 cold and it was getting really icy, so my mom was scared that
18 we might get in a car wreck or something. So we stopped and
19 bought a swim suit and then we went - we were in Elko and we
20 went to this hotel. I don't know what it was called.

21 Q Okay, so who was with you?

22 A My dad and Katlin.

23 Q So you three?

24 A Uh-huh (affirmative).

25 Q And you stopped in Elko, Nevada?

1 A Yeah.

2 Q What happened there?

3 MR. GRANT: I'm going to object, it's out of this
4 court's jurisdiction.

5 MR. TORRIENTE: Your Honor, it is out of the
6 court's jurisdiction but this case boils down to intent and
7 this event the defense has notice of and it's something we're
8 going to do a 404(b) motion for trial and I think asking
9 questions now gives the defense as well as myself opportunity
10 to explore this. Now certainly I don't have to do a 404(b)
11 motion before prelim, so.

12 THE COURT: And I'm concerned, to let you proceed
13 subject to a motion from [inaudible] as to whether or not
14 that comes in but let's hear it and then if it's appropriate
15 to be struck, I'm prepared to strike it.

16 MR. TORRIENTE: Sure.

17 Q (BY MR. TORRIENTE) What happened in Elko?

18 A My dad took us, we went swimming right when we got
19 there. And then we got out and my dad took a shower and then
20 Katlin then me. And I didn't know how to use the faucet
21 thing to turn the water, so I asked my dad to come help me
22 and I was naked in the shower. And my dad opened the shower
23 curtain to show me and then he asked me are any pubic hairs
24 growing. And I said no, not that I know of. And my dad
25 looks and then he - he was kind of like a spongy motion right

1 where my pubic hair start growing, and then that's probably
2 about for only like one to two minutes, and then he just says
3 okay and leaves.

4 Q Okay, so he asks you if you're growing pubic hair?

5 A Uh-huh (affirmative).

6 Q Did he see you at that time?

7 A Yeah.

8 Q And you said you were naked?

9 A Uh-huh (affirmative).

10 Q Could he -

11 THE COURT: Remember to say yes or no.

12 THE WITNESS: Yes.

13 Q (BY MR. TORRIENTE) Could he see if you had pubic
14 hair or not?

15 A No.

16 Q You said he did a spongy thing motion with his
17 hand.

18 A Yes.

19 Q Describe that a little more for me please.

20 A I don't get that question.

21 Q What did he - did he do something to check if you
22 had pubic hair?

23 A Yes.

24 Q And what did he do? Did he just look to see if you
25 had pubic hair?

1 A No.

2 Q Did he do something with his hand to check if you
3 had pubic hair?

4 A Yes.

5 Q What did he do with his hand?

6 A He touched where my pubic hair started growing with
7 a spongy hand motion.

8 Q So was it with his hand?

9 A Yes.

10 Q And you weren't wearing anything at the time?

11 A Huh-huh (negative).

12 Q Where exactly did he touch you?

13 A Like right at the top.

14 Q The top of what?

15 A Of my crotch.

16 Q Is it where - do you know where pubic hair would
17 grow?

18 A Yeah.

19 Q And did he touch you in the area where pubic hair
20 normally is?

21 A Uh-huh (affirmative). Yes.

22 Q How long did you say he touched you there for?

23 A For one to two minutes.

24 Q And describe a little more about the motion with
25 his hand.

1 A It's kind of like a spongy hand motion like - kind
2 of like this, I don't know.

3 Q Like a squeezing motion?

4 A I don't know.

5 Q Did he say anything to you?

6 A No, he just said okay and then left.

7 Q Did you say anything to him?

8 A Huh-huh (negative).

9 Q Had any pubic hair started to grow at that time?

10 A Huh-huh (negative).

11 THE COURT: Remember to answer yes or no.

12 THE WITNESS: No.

13 Q (BY MR. TORRIENTE) Could he have looked to make
14 sure there was no pubic hair?

15 A Yes.

16 MR. GRANT: Objection on that, it calls for
17 speculation.

18 THE COURT: And I'm going to sustain the objection.

19 Q (BY MR. TORRIENTE) Was there anything blocking his
20 view from your pubic area?

21 A Not unless it was dark.

22 Q Was it dark in the bathroom?

23 A Where the shower curtain was there was no light.

24 Q So could you see his hand?

25 A Yeah.

1 Q Was it light enough to see a couple feet away?

2 A Yes.

3 Q And when he asked if you had pubic hair growing,
4 how close was he to you?

5 A Right where the stool thing is that keeps you in
6 the shower.

7 Q So was his head inside the shower?

8 A No.

9 Q How far away from the shower?

10 A I would say right in between where the block part
11 is.

12 Q Anything else happen on that occasion on that day?

13 A Huh-huh (negative). No.

14 MR. GRANT: I'm going to renew my motion and ask
15 the court to strike that evidence. It don't see how it's
16 relevant. (inaudible).

17 THE COURT: I'm going to hear that I'll hear the
18 motion. It's certainly timely objection, so I'll note that
19 you're entitled to raise an objection.

20 Q (BY MR. TORRIENTE) Did anything else happen that
21 made you feel uncomfortable with your father?

22 A There's a second time.

23 Q Tell me about the second time.

24 A The second time I was - I just got out of the
25 shower and I was in my room and my door was unlocked.

1 Q Is this in your house?

2 A Yes.

3 Q The house in South Jordan?

4 A Uh-huh (affirmative). Yes.

5 Q So go ahead. Sorry.

6 A I was - I had -

7 MR. GRANT: I object on foundation [inaudible] like
8 date and time.

9 THE COURT: And you'll put together your foundation
10 regarding this?

11 MR. TORRIENTE: Yes, I will.

12 THE COURT: Thank you.

13 Q (BY MR. TORRIENTE) Go ahead and tell me a little
14 bit more about this.

15 A I was wearing panties and a bra and my dad come -
16 he just walks right in without knocking, and I kind of had my
17 hands over where I'm not showing anything or have no clothes
18 on, and I - my dad asked me if - well, he really didn't ask
19 me, he just said like has your period started and - or I need
20 you to lay on the bed for me.

21 Q Did he say both of those things?

22 A I'm not quite sure.

23 Q Okay. So did you lay on the bed?

24 A I asked why first and then -

25 Q What did he say?

1 A He just said for reasons. And then I asked why
2 again and he just said to do it, so then I did. And so I
3 laid on my bed and he asked me to pull down my pants and my
4 panties and open my legs.

5 Q What happened next?

6 A And then he told me to open my legs and I did. I
7 did. And my dad stretched out my legs more and I told him
8 that it hurt, so he let go slightly and then my mom came into
9 the door from getting her hair cut and then my dad left.

10 Q Before I ask you some more questions about this,
11 when did this happen?

12 A This happened last year.

13 Q In 2005?

14 A Uh-huh (affirmative).

15 Q Do you remember when in 2005?

16 A Not exactly.

17 Q Do you remember if it was warm outside, cold
18 outside, winter, summer?

19 A I think it was warm.

20 Q Do you remember writing a witness statement or
21 having your mom help you write a witness statement?

22 A Yeah. Yes.

23 Q Do you know if you wrote on there when it happened?

24 A Huh-huh (negative). No.

25 Q Would looking at it help you remember when it

1 happened?

2 A Maybe.

3 Q I'm showing you the typed up written statement.

4 Would you look at the last full paragraph?

5 A I think it was in May, but I don't know the exact
6 date.

7 Q Does your witness statement say May?

8 A Uh-huh (affirmative).

9 Q But you think it was sometime around then?

10 A Uh-huh (affirmative).

11 Q Can I take that back from you? But it was after
12 your trip to Elko, Nevada?

13 A Yes.

14 Q Tell me exactly where your dad was when he had you
15 lay on the bed?

16 A He was right in between where my legs had opened
17 kind of, but he wasn't on the bed.

18 Q Was he standing up?

19 A Yeah, he was standing up.

20 Q And are you laying down towards the end of the bed
21 or in the middle of the bed? Where?

22 A I was like in the middle of the bed, this way.

23 Q Where was he compared to your legs?

24 A I don't get that question.

25 Q Where was he standing?

1 A Where the bed was along the very end in the middle
2 of the bed where you sleep. I have like kind of a couch bed
3 and he was in the middle of where I was.

4 Q And were your feet close to him?

5 A Yes.

6 Q And your head was further away from him?

7 A Yes.

8 Q How did your - how far down did your panties go
9 down?

10 A I think it was to my ankles.

11 Q How did they get that far down?

12 A I'm not sure. I think I did it or he pulled them
13 down more, I don't know.

14 Q Where - did he ever touch you during that time?

15 A Only on my legs.

16 Q Where exactly on your legs did he touch you?

17 A Kind of right where my knees and my thighs were.

18 Q What did he do when he touched you?

19 A He just took grip of me and he just pulled them,
20 pushed them down.

21 Q Would you say that again? I didn't hear you.

22 A He just pushed them down.

23 Q Pushed your legs down?

24 A Yeah.

25 Q How far open were your legs?

1 A I don't get how to answer that question.

2 Q Were your legs closed or open?

3 A Open.

4 Q Were they very wide open or just a little bit open?

5 A Pretty wide.

6 Q Did you open them that wide by yourself?

7 A No.

8 Q How did they get open that wide?

9 A My dad pushed them.

10 Q So when he pushed you it opened your legs wider?

11 A Uh-huh (affirmative). Yes.

12 Q And what was he doing with the rest of his body at

13 this time?

14 A He was just leaning over with his head.

15 Q Leaning over what?

16 A Leaning over my bed where I was laying down.

17 Q Was he leaning close to you?

18 A In a way.

19 Q How close would you say his head was to you?

20 A Right where my knees were if you went straight up.

21 Q So if you went straight up, his head was between

22 your legs?

23 A Uh-huh (affirmative).

24 Q What was he doing?

25 A He was just looking.

1 Q What was he looking at?
2 A My crotch.
3 Q And you said you had your panties and pants were
4 down?
5 A Uh-huh (affirmative).
6 Q How long did he look there?
7 A I couldn't be exact, but I would say two minutes.
8 Q Was he saying anything?
9 A No.
10 Q Were his hands on your legs the whole time?
11 A Yes.
12 Q Was he moving his hands at all or were they still?
13 A They just stayed in the right position, just right
14 where they were.
15 Q And you said that was where again?
16 A In between where your knees were and your thighs.
17 Q Was he using both hands?
18 A Yes.
19 Q And why did it stop?
20 A Because my mom walked in through the door from
21 getting her hair cut.
22 Q How did that stop it?
23 A I don't know probably because my dad was scared.
24 Q But you heard a door open?
25 A Yes.

1 Q Did you know it was your mom?

2 A No, but I just know that her hair cutter Kristen is

3 really, really fast.

4 Q So as soon as the door - you hear the door open -

5 A Uh-huh (affirmative).

6 Q What does your dad do?

7 A He says okay and leaves.

8 Q And you said that was for a couple minutes?

9 A Uh-huh (affirmative).

10 Q Did you say anything else to him?

11 A No.

12 Q Did you ever say that it was hurting or it made you

13 feel uncomfortable or anything like that?

14 A Yes, I said that it was hurting when he pushed my

15 legs down and he let go a little bit.

16 Q But he kept his hands on?

17 A Uh-huh (affirmative).

18 Q Anything else that's made you feel uncomfortable

19 with your father?

20 A Just him walking in when I only have panties and a

21 bra on to tell me something.

22 Q Where would he walk in on you?

23 A What do you mean?

24 Q You said he'd walk in when you just had bra and

25 panties on?

1 A Yeah, it's like when I was getting dressed in the
2 morning going to school if he needed to tell me something.

3 Q Did he knock first?

4 A Sometimes.

5 Q At other times did he not knock?

6 A Yes.

7 Q Would he leave if he saw you without all your
8 clothes on?

9 A Not all the time.

10 Q What would he do?

11 A He would just stand there and tell me and then he'd
12 leave.

13 Q Did he ever walk in on you in the bathroom?

14 A No.

15 Q How about when you were using the shower besides in
16 Elko?

17 A No.

18 MR. TORRIENTE: I have no further questions of this
19 witness, Your Honor.

20 THE COURT: Thank you. Cross-exam.

21 MR. GRANT: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GRANT:

24 Q Hi, Corin, my name is Paul Grant. I'm your dad's
25 lawyer. I have a couple of questions to ask you. There's a

1 - you mentioned two minutes a couple times?

2 A Yes.

3 Q We have a clock here, I'm going to time two minutes
4 and I want you to tell me if this is right. So I'm going to
5 start right now for two minutes. We're at a half a minute
6 now, Corin. So you said your dad touched your - when you
7 were in Elko he touched your crotch, pubic area for two
8 minutes?

9 A I didn't really say two, I'd say one then.

10 Q We're not even at one minute yet. You still say
11 one minute?

12 A Uh-huh (affirmative).

13 Q We're still not - now we're at one minute.

14 A Uh-huh (affirmative).

15 Q How about when he was in your bedroom and you're on
16 the bed and he's looking at your crotch?

17 A That would have be exactly two minutes.

18 Q I'm not at two minutes yet. So still longer?

19 A Yes.

20 Q So he's still looking now we're in your bedroom?
21 When - you said - how high is your bed?

22 A I don't know.

23 Q And if your dad's standing, would have come to your
24 thighs, knees, waist?

25 A Maybe the second one right there. The second -

1 yeah.

2 Q So we would say that's probably thigh level, so two
3 and a half feet? So you say you believe the bed is about two
4 and a half feet high?

5 A Yeah.

6 Q And your dad was standing in front of you while
7 you're lying on the bed?

8 A Uh-huh (affirmative). Yes.

9 Q And he's standing straight up?

10 A Yes.

11 Q Does he get down on his knees or anything?

12 A I'm not sure. I wasn't paying attention.

13 Q So you don't really know - you weren't paying
14 attention to what your dad was doing?

15 A Yeah, because I didn't want to.

16 Q So your eyes were shut?

17 A No. I was looking at the ceiling.

18 Q So your dad may not have been in front of you at
19 all?

20 A He was in front of me, I know that.

21 Q But you don't know whether your dad was looking at
22 you or not?

23 A I do know that he was looking at me.

24 Q When he was looking at you, do you know if he - but
25 you weren't looking at him?

1 A No, I was not looking at him.

2 Q So you don't - how do you know what he was doing if

3 you weren't looking at him?

4 A Because I wasn't looking straight up like this, I

5 was half-way.

6 Q But you didn't see him get down on his knees?

7 A No.

8 Q You didn't see him bend over?

9 A No, he just went kind of like this with his head.

10 Q But he was standing straight up as far as you know?

11 A Yes.

12 Q And how far away from him was - from you was he?

13 A He was right at the end of my bed where I was

14 laying down.

15 Q Now was your - were your legs entirely on your bed?

16 A Yes.

17 Q They weren't hanging off the bed?

18 A No.

19 Q Were your legs flat on the bed?

20 A No.

21 Q Were your knees bent?

22 A Yes.

23 Q Did your dad tell you why he did that?

24 A No, he just said he was checking for my period.

25 Q So he did tell you he was seeing if you were having

1 a period or not?

2 A Yeah, because I -

3 Q Or if you were mature yet. Now that was in May of
4 2005?

5 A Uh-huh (affirmative). Yes.

6 Q And at that time were you in puberty? Had you
7 started getting pubic hair yet?

8 A No.

9 Q No? And when were you in Elko about, do you know?

10 A No, I don't know.

11 Q But it was before?

12 A Yes.

13 Q And you told Mr. Torriente you were not - you
14 didn't have pubic hair then?

15 A Yes, I told him that I did not have any pubic hair.

16 Q Okay, thank you. Now who provides most of the - or
17 who provided most of the family medical care for you?

18 A My dad.

19 Q So if Katlin were to say that it was your mom did
20 most of the medical stuff would she be mistaken?

21 A What do you mean by that?

22 Q If Katlin testified that it was your mom who did
23 most of the medical care was she wrong?

24 MR. TORRIENTE: Your Honor, I don't see why it's
25 relevant what the other witness testified to.

1 THE COURT: I'm going to let her testify as to what
2 she knows and I'll have her respond [inaudible].

3 Q (BY MR. GRANT) So your dad provided most of the
4 medical care?

5 A Yes.

6 Q So if somebody was hurt he put the bandaids on?

7 A Not all the time.

8 Q But most of the time?

9 A No. He would just pay for the bills and take us to
10 the doctors a lot.

11 Q He would take you to the doctors?

12 A Yes.

13 Q What - did you have a rash or anything or stuff
14 like that your dad would treat it?

15 A No.

16 Q Have you ever had any kind of medical problems that
17 you asked your dad to take care of?

18 A No.

19 Q What happens if you got sick? Who would take care
20 of you mostly your mom or your dad?

21 A My mom because my dad was at work.

22 Q What if everybody was home at night?

23 A My dad would be working outside still.

24 Q So it was your mom who would take care of you if
25 you were sick?

1 A Yes.

2 Q So when you say who provided most medical care, you
3 mean your dad took you to the doctors?

4 A Yes, but not all the time.

5 Q Do you know when your younger siblings were born,
6 were they born in the house, in the home?

7 A Only Kaleb was.

8 Q Did your dad deliver Kaleb?

9 A My mom and dad did, yes.

10 Q Now we know your mom did. Now when you're having -
11 when your dad came into your bedroom that time and you were
12 in your panties, now did you get - did you put your pants on?

13 A I put my pants on when he left.

14 Q Now so when you said you took your panties down,
15 you didn't take your pants down too, just your panties?

16 A I took my pants and my panties down.

17 Q So your dad came in and you got dressed?

18 A No.

19 Q So when your dad came in did you have pants and
20 panties on?

21 A I - he told me that I could get on pants on, so I
22 got on pants.

23 Q Now when your dad was in the bedroom there, I mean,
24 did he do anything else that you noticed - did he - to
25 himself or anything?

1 A No.

2 Q He just stood there as far as you know?

3 A Yeah.

4 Q Now who did you tell about - tell this to? Did you
5 tell anybody about it?

6 A I told my grammy, Bonnie, and my mom and then I
7 told Kristie Renee, and then my mom and me and Katie and my
8 mom talked to Kristie because she's a good friend.

9 Q Did you - has Katlin ever told you that she - or
10 have you ever heard Katlin state other people have sexually
11 abused her?

12 A I knew that Katlin has, sometimes my dad.

13 Q Other than your dad. Did she ever say someone else
14 other than your dad sexually abused her, do you know, that
15 you heard?

16 A No.

17 Q Now when did you first tell your mom about your dad
18 looking at you when you were on your bed?

19 A When she asked us.

20 Q And that was in August?

21 A Yes.

22 Q So you didn't tell anybody from May until August?

23 A Yes.

24 Q Now did anybody explain to you what about menstrual
25 periods when you were a kid?

1 A No, but my sister told me.

2 Q Did your dad ever explain anything to you about it?

3 A No.

4 Q When he said I'm - when he told you he was checking
5 you for your menstrual period, did he tell you what he meant
6 by that?

7 A What does menstrual mean?

8 Q Okay. When you - do you know what your period is?

9 A Yes.

10 Q And did - and that's what I mean by menstrual
11 period. So now let me ask you that question again. Did your
12 dad ever talk to you about your menstrual period?

13 A No.

14 Q He just - but when he checked you that's why he
15 said he was checking you?

16 A Yes.

17 Q And that's the only time he's ever mentioned
18 anything to you about it?

19 A Yes.

20 Q Did you have a lock on your bedroom door?

21 A I think I did in May, but I'm not sure.

22 Q And did you lock your door ever?

23 A Not all the time 'cause I just came in through the
24 door.

25 Q Did you ever tell your dad that you didn't want him

1 coming in without knocking?

2 A Yes.

3 Q When did you tell him that?

4 A I don't know exactly when, but I know that I did
5 tell him and I told other people in my family because the
6 boys used to come into my room all the time without knocking.

7 Q Did you tell him that and like before he would come
8 in or after he'd done it a few times or?

9 A When he came in or after.

10 Q And you said, dad, don't do that please?

11 A Uh-huh (affirmative). Yes.

12 MR. GRANT: May I have a moment, please?

13 THE COURT: You may.

14 Q (BY MR. GRANT) Do you know who put the locks on
15 that door?

16 A My dad.

17 Q And do you know when he put those on?

18 A No.

19 Q Do you know why he put those on?

20 A Because the boys would come into our rooms.

21 Q And so after you asked your dad to stop coming into
22 your bedroom he stopped, right?

23 A No.

24 Q He continued to come into your bedroom?

25 A Yes, 'cause sometimes he wouldn't know that I was

1 undressed or undressing.

2 Q And then once he came in and you were undressed he
3 would leave, correct?

4 A Not all the time.

5 Q Sometimes he would leave?

6 A Yes.

7 Q When you asked him to leave would he leave?

8 A Yes, sometimes.

9 Q Just to save Mr. Torriente the question, would he
10 sometimes remain when you asked him to leave?

11 A What does remain mean?

12 Q Would he stay in the room after you asked him to
13 leave?

14 A Yes, if he thought it was very important to tell me
15 something.

16 Q So when he would come into the room, would he
17 usually have something to tell you?

18 A Yes.

19 Q And then as soon as he was finished telling you
20 would he leave?

21 A Yes.

22 MR. GRANT: No further questions.

23 THE COURT: Thank you. Any redirect?

24 MR. TORRIENTE: No, Your Honor.

25 THE COURT: Corin, you may step down. Thank you

1 for being here. Let me just give you one caution. Please
2 don't talk about this case with anyone else until the court
3 tells you that you can do so, okay? Thanks, you're excused.

4 MR. TORRIENTE: Before I call my next witness, can
5 I address something briefly on -

6 THE COURT: You bet. Let's do that.

7 MR. TORRIENTE: Which will deal with the first
8 statement. I just realized count six, which is the one
9 dealing with Corin, the language does not include taking
10 indecent liberty with a child, which is what's in the statute
11 and which has been my theory on the case. It was just a
12 mistake. So I need to amend that -

13 THE COURT: To follow the statute?

14 MR. TORRIENTE: To follow the statute to add in
15 where it says [inaudible] of a child at least 14 years at the
16 time of the offence, Korte took indecent liberties with a
17 child. I need to add that there and I think -

18 THE COURT: You'll prepare an amended information
19 to conform with that?

20 MR. TORRIENTE: I will, and there may be other
21 issues, but I just wanted to bring it up now since we were
22 going to discuss the issue of whether or not her testimony
23 regarding the first incident in Elko, Nevada is relevant.

24 THE COURT: Any concerns that you have, Mr. Grant,
25 regarding that?

1 MR. GRANT: I've gone over that I don't believe
2 we're prejudiced by that in any regard, Your Honor, I don't
3 object to it - the amendment.

4 THE COURT: We'll allow you to amend to include
5 that language with regard to that.

6 MR. TORRIENTE: Thank you. And we're going to save
7 the - as far as whether the Court consider it towards the
8 end?

9 THE COURT: Let's do that. Tell me about where we
10 are time-wise and what we're looking at?

11 MR. TORRIENTE: I anticipate calling one other
12 witness, the mother, and it's just essentially corroboration
13 type information.

14 THE COURT: And you have an estimate as far as time
15 goes?

16 MR. TORRIENTE: I don't anticipate me taking more
17 than 15 minutes.

18 THE COURT: Do you need a break? Anybody could use
19 that or are you ready to go forward? If anybody does, I'm
20 certainly willing to give you a break right now.

21 MR. GRANT: I wouldn't mind taking a five minute
22 one.

23 MR. TORRIENTE: I think that's a good idea.

24 THE COURT: Let's do that and then we'll reconvene
25 about 10 minutes. This court's in recess.

1 (Whereupon a recess was taken)

2 THE COURT: The record should reflect that the
3 parties and counsel have returned and are all present.

4 Is the State ready to proceed?

5 MR. TORRIENTE: Yes, Your Honor.

6 THE COURT: Call your next witness.

7 MR. TORRIENTE: Kathryn Wamsley.

8 KATHRYN RENEE WAMSLEY

9 having previously been duly sworn, testified
10 upon her oath as follows:

11 THE COURT: Ms. Wamsley, if you want to come
12 forward as well. Have a seat up here. You realize you're
13 under oath?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Adjust that microphone if you
16 would, first of all so it's at your proper height and then if
17 you'll state your name for us, and spell your first and last
18 name for us please.

19 THE WITNESS: Do you want the middle or -

20 THE COURT: Yeah, you can tell us your middle name
21 too, that'll be great.

22 THE WITNESS: Kathryn Renee Wamsley.

23 K-A-T-H-R-Y-N R-E-N-E-E W-A-M-S-L-E-Y.

24 THE COURT: Thank you.

25 Your witness, Mr. Torriente.

DIRECT EXAMINATION

BY MR. TORRIENTE:

Q What's your relationship with Korte Wamsley?

A He is my husband.

Q How long have you been married for?

A Fourteen and a half years now.

Q Do you have children in common?

A Yes.

Q How many?

A Well, we have six but only five are living.

Q Let me take your attention to August of 2004. Did you go to Chile that month?

A Yes, I did.

Q Was that to visit family or?

A My sister lives in Chile.

Q When did you return?

A After 10 days, so something like August 19th.

Q How did you get from the airport to your house?

A Korte and the children came to pick me up.

Q Did anything stick out to you during that time?

A Katie was sitting in the front seat of the suburban and was overwhelmingly sad as if the weight of the world had descended upon her.

Q Did she tell you why at that time?

A No. I just asked her if she was okay.

1 Q What did she say?

2 A "Yeah."

3 Q Did you go from the airport to your house?

4 A Yes, we did.

5 Q Is this the house in South Jordan?

6 A Yes.

7 Q What happened when you got to the house?

8 A Korte took me into the bedroom to tell me about
9 things that had happened the night before.

10 Q What did he tell you?

11 A He said that he and Katlin had stayed up late
12 watching I believe a Arnold Schwarzenegger movie and then
13 they stayed up talking. He'd invited her to come and sleep
14 or come into the room with him and because she wasn't ready
15 for bed and they had stayed up talking and then he told me
16 that as she was sitting there she kind of wiggled around and
17 had had a vaginal - a yeast infection. And so that he'd
18 given her cream earlier that week, a few days before and
19 since it hadn't helped he said that he had then helped her
20 put it on correctly.

21 And then he told me that apparently they'd been
22 gone to sleep and she'd slept in bed with him and that he had
23 rolled over apparently in the middle of the night because
24 when they'd awakened in the morning she had thrown his hand
25 off her chest. He was holding her breast when they awoke.

1 Q Was that the first thing that happened when you got
2 home?

3 A I think so. I don't remember to tell you the
4 truth.

5 Q Did anything - let me take your attention to a
6 couple months later, October, November time 2004. Did you
7 notice your husband coming to bed late a few times during
8 that time period?

9 A Yes.

10 Q Did he say what had happened?

11 A There were a couple times that Katlin wasn't
12 feeling well and so he had gone to check on her. I was
13 pregnant, I was remarkedly tired and at times not feeling
14 great, and so he'd left and about the time I become really
15 uneasy because it seemed as if he'd leave for a long period
16 of time, he came back and would say something like one time
17 she had been - she needed a bath and so he'd helped her with
18 it and then had helped her to her room because she supposedly
19 had a hard time getting - was having a hard time standing up
20 or whatever.

21 Q Okay.

22 A And that happened twice I believe.

23 Q Did you ever see your husband walk in on the girls
24 while they were in the bathroom?

25 A Yes.

1 Q How many times would you say you saw that?

2 MR. GRANT: Your Honor, I'm going to just ask for
3 some further foundation.

4 THE COURT: Yeah, I think that's appropriate,
5 [inaudible].

6 MR. TORRIENTE: It's coming, Your Honor.

7 Q (BY MR. TORRIENTE) How many times would you say?

8 MR. GRANT: Generally one lays foundation before
9 the question is asked.

10 THE COURT: Go ahead, get the time frame and do
11 that, if you could give us a time frame to begin with, that
12 would be [inaudible].

13 Q (BY MR. TORRIENTE) When did you observe your
14 husband walking in on the girls in the bathroom?

15 A From time to time at least from August on.

16 Q August of 2004?

17 A Particularly Katlin, yeah, he would walk in on
18 Katlin.

19 THE COURT: The time frame is when, counsel?

20 MR. TORRIENTE: She just stated beginning of August
21 2004.

22 THE COURT: Thank you.

23 THE WITNESS: It may have even happened before
24 then, but I honestly can't remember exactly when it began,
25 but I know that there would be times when he would be yelling

1 at her whatever and he'd just walk in on her or she'd be in
2 the bathroom or he'd tell me about times when he'd walk in on
3 her changing her clothes and -

4 MR. GRANT: I'm going to object on hearsay grounds.

5 MR. TORRIENTE: Your Honor, statements by the
6 defendant and the party opponent-

7 MR. GRANT: Statements that Katlin made.

8 THE COURT: And I'm going to have the witness
9 testify as to what her knowledge is in regard to that. So
10 let's just back up and start [inaudible].

11 MR. TORRIENTE: And I believe her statement was
12 what the defendant told her.

13 THE COURT: You may want to clarify.

14 MR. GRANT: And I'm not going to - I think some
15 latitude is allowed because it's a preliminary hearing, but
16 it isn't an admission by a party opponent, it's not a hearsay
17 exception.

18 THE COURT: I'm not treating it as that, counsel.
19 I want you to proceed by the Rules of Evidence, okay?

20 MR. TORRIENTE: So you're saying it's not - it
21 wouldn't be an admission by party opponent? I guess I'm
22 confused, Your Honor.

23 THE COURT: I'm saying that I'm going to allow you
24 to have her testify as to what she's aware of and her
25 [inaudible].

1 MR. TORRIENTE: What about statements the defendant
2 made to her because I think that is the main basis of her
3 knowledge.

4 MR. GRANT: Well, an admission by a party opponent
5 is testimony given under oath under Rule 801 I guess. So it
6 would have to be under oath.

7 MR. TORRIENTE: That's not true.

8 THE COURT: And I think [inaudible] I'm going to
9 allow you to do that and proceed on that basis.

10 Q (BY MR. TORRIENTE) You were talking - you made
11 some statements that the defendant or your husband made to
12 you about walking in on the girls. What did he state to you?

13 A I remember one time in particular he stated that -

14 MR. GRANT: You know, I'm sorry, Your Honor, I just
15 need to make a record. I think -

16 THE COURT: Go ahead. I want you to make the
17 record so feel free to do that.

18 MR. GRANT: And I think Mr. Torriente, I mean, it
19 could be an excited utterance or something like that, but
20 Rule 801 prior statements by a witness or an admission by a
21 party opponent, it's - is he doing it by prior statement by
22 witness or an admission by a party opponent?

23 MR. TORRIENTE: Admission by party opponent. Any
24 statements someone makes to a police officer which is rarely
25 under oath, that comes in and used against them. I don't see

1 why -

2 THE COURT: That may be excited utterances is
3 separate under the rules.

4 (All talking)

5 MR. GRANT: - Mr. Torriente state exact hearsay
6 exception that he's bringing this under and lay some
7 foundation of that.

8 MR. TORRIENTE: Okay, 801(d), excuse me, (d) says
9 statements which aren't hearsay, (d)(2) says admission by a
10 party opponent. The statement is offered against a party,
11 being the defendant, and is the party's own statement in
12 either an individual or a representative capacity.

13 THE COURT: And I'm going to allow you to pursue
14 that based upon that.

15 Q (BY MR. TORRIENTE) Would you continue with what,
16 the statements your husband made?

17 A He came to me after walking in on Katlin in the
18 shower and told me that when he pulled back the curtain that
19 she had her arms over - covering herself and that he said,
20 "well, you don't have to leave your arms - you don't have to
21 do that, I'm your dad." And then had pulled one of her arms
22 down and she'd left the other one where it was.

23 Q So that's what he told you happened?

24 A Yes.

25 Q Did this ever become a concern enough to you where

1 you discussed it with him?

2 A Well, when we were visiting Florida that December
3 of 2004 we were in a condo so all the bathrooms, of course,
4 are right across from each other right there, and I noticed
5 that he walked in on Katlin a number of times. And it
6 bothered me a great deal. And so I asked him about it, I
7 said, "What are you doing? You're walking in on Katlin
8 constantly when she's in the bathroom." And he admitted that
9 he had - had said something like, well, she was only washing
10 her face this time, or she was only whatever, but had told me
11 some different things about it, and I said, well, it's just
12 not appropriate. And he said, well, I'm - and I - told him
13 that it bothered me a great deal. And he said, well, I'm
14 just having some feelings and - then I said, "Well you need
15 to stop.

16 Q Did he elaborate on what these feelings were?

17 A No, and I didn't ask - I didn't restate it, I
18 didn't ask him to elaborate particularly because at the time
19 at least it seemed very clear to me.

20 Q Did you see it occur, him walking in on the girls
21 after that discussion?

22 A If I did it wasn't very often.

23 Q Okay. Were there any changes in your relationship
24 with your husband around this time, this period end of 2004?

25 A Yes, at the same time while we were in Florida,

1 normally when we were making love or even just kissing or
2 whatever, he would get excited very easily and he had a very
3 hard time having an erection.

4 Q When did that start?

5 A I would say sometime during that month. I'm not
6 really positive.

7 Q In 2004?

8 A Yes.

9 Q Did you notice any changes with Corin?

10 A At that time or?

11 Q Between August 24th or August 2004 and when this
12 case was reported to police?

13 A Yes. Somewhere around February or so she began
14 having these moments of absolute rage at her father and she
15 would literally go in and just bang on the piano -

16 MR. GRANT: I'm going to object on relevance.

17 THE COURT: Where are we going with this, counsel?

18 MR. TORRIENTE: Well, a couple things. First of
19 all I think it's consistent and I may have an expert come in
20 at trial to discuss changes that often occur or consistent
21 changes with victims of these types of cases. Also it comes
22 up to another question. Specifically I'm going to eventually
23 ask if, based on this did you ask the defendant about getting
24 counseling for the girls and what his response was to that
25 because I think that's extremely important in this case. But

1 I'll keep it very limited.

2 THE COURT: Thank you. I'm going to give you
3 license to do that but keep it on that track.

4 Q (BY MR. TORRIENTE) Did you discuss these changes
5 with Corin?

6 A I may have at the time asked her why she was so
7 angry because she had never done that before. She had never
8 sat down and literally just banged whatever song she was
9 learning or playing on the piano with such intensity and then
10 walked out into the back pasture and walked and walked and
11 walked and walked and walked and then come in and sat down
12 and write hundreds of I hate dad notes on hundreds of pieces
13 of paper.

14 Q Did you discuss that with your husband?

15 A Later yes, in August after our baby had died. And
16 I had seen Corin enraged and she had been enraged one more
17 time after we'd - well, the day we were coming home from Wolf
18 Creek, and she was so enraged it just wasn't going away and
19 after we had stopped at Lagoon and she didn't even want to be
20 there which isn't normal for Corin. Corin loves to play, she
21 loves to go and do things, she just doesn't normally want to
22 just go home and she was angry the whole time.

23 Q Did she ask you a question that gave you specific
24 concern?

25 A Finally I just - I told Korte and all the children

1 I said, you go on the rides and we'll meet you toward the
2 front. I'm going to sit down on this bench with Corin until
3 she tells me what's wrong. So we just sat there for a long
4 time and -

5 Q You said this was August. Are you talking now
6 August 2005?

7 A Yes. And finally she just turned to me and she
8 said, "Mom, why did he do that?" And I said, "Why did he do
9 what?" And she said, "Why did he check me for my period?" I
10 said, "I don't know."

11 Q Had your husband talked to you about checking for
12 the period before?

13 A I think he may have, but I don't remember
14 absolutely.

15 Q Would you remember if he told you he had her naked
16 to do it or?

17 A Yes, because that wasn't the picture in my mind.
18 Even when Corin told me at that time I had imagined him
19 picking up a pair of her panties and just looking at them for
20 blood.

21 Q So after this did you discuss getting counseling
22 for the girls with your husband?

23 A Yes, we came home on a Thursday, and Friday Corin
24 was still enraged. It was not going away. And so I went to
25 Korte and I said, you know, you may not have been trying to

1 abuse them but I know that these situations have happened and
2 they're registering them as abuse, from what I understand are
3 the indications of abuse, and so I really think they need
4 counseling. And he said we don't have the money for that
5 right now, so they would have to give up piano or something,
6 but we just - we can't afford it right now.

7 Q So did he later or any other time encourage the
8 girls to get counseling about this?

9 A No, but that was, everything came out just a couple
10 days - well, yeah, a couple days after that.

11 Q Did he ever state counseling would be a good idea
12 for the girls? Did he do anything to encourage it?

13 A No.

14 Q When did you contact the police? Or did you
15 contact police?

16 A Yes. Well, I contacted - when I put Korte on the
17 airplane on Saturday, Friday was the day I talked to him
18 about the girls, feeling like the girls needed counseling,
19 Saturday when I put him on the plane and his mother had
20 earlier talked to me about some of the things that the girls
21 had talked to her about, and as I left many of the things
22 that they had told me or he had told me had occurred or that
23 she had just vaguely, very vaguely mentioned were just
24 whirling around in my mind and I thought this is so yucky.
25 There is just something not okay about this. How could

1 somebody not know that this isn't all right.

2 Q And who did you contact?

3 A So I contacted my bishop because I also knew that
4 Korte's temper after Caroline died and we were up at Wolfe
5 Creek was just huge. And so I thought, well, you know, it's
6 time. I need to talk to the bishop and I need to get
7 counseling and I know we can't afford it right now, but I
8 need to know what the bottom line ought to be. And so I went
9 to talk to the bishop and just told him some of the things
10 that had occurred, that I was concerned and that I needed a
11 counselor to be able to say yes, this ought to be your bottom
12 line or this ought to be the consequence so that there would
13 be someone to back me up.

14 And during the course of our interview he said,
15 well, there hasn't been any sexual abuse, has there? He said
16 because if the girls know that you're here - and I had told
17 them that I was going to go talk to the bishop - I don't want
18 them to feel as if everything isn't taken care of if that's a
19 problem - if there is a problem with that. And so I said,
20 well, I don't think so but let me go home and ask some very,
21 very specific questions.

22 So I went home and sat down with them and asked
23 them some very specific questions and found out that indeed
24 abuse had taken place and it was much worse than anything
25 that Korte had told me, and realized that, for example, the -

1 my picture of him looking at a pair of panties was hardly
2 what had occurred and there were other things that had
3 occurred with Katlin as well that she had not wanted to tell
4 me earlier.

5 Q So it was after you talked to the girls that you
6 contacted authorities?

7 A Yes. That night I called the bishop back and I
8 said, yes, there has been sexual abuse, and the next morning
9 - he said, well let me call the hotline. And he couldn't get
10 a hold of them that day, so he apparently got a hold of them
11 that next morning and said that they had indicated to him
12 that I needed to call DCFS which I did and reported it and
13 then they put us in touch with Detective Gordon and set up
14 the interview process, etc.

15 Q Do you remember when that was that you called
16 authorities?

17 A Monday morning.

18 Q Of?

19 A Monday of August - it was August the - probably
20 around the -

21 Q August 2005?

22 A Yes.

23 MR. TORRIENTE: I have no further questions of this
24 witness.

25 THE COURT: Your witness, Mr. Grant.

1 CROSS-EXAMINATION

2 BY MR. GRANT:

3 Q Mrs. Wamsley, I just want to get a time line on
4 things. So you did a - sat down and did a very specific
5 interview of Katlin and Corin?

6 A That I did?

7 Q Yes, in August of 2005?

8 A Yes.

9 Q And then based on that specific interview, did you
10 type up their statements?

11 A Not then, no.

12 Q So when did you type up the statements? How much
13 later after you interviewed them?

14 A I would say one and a half to two weeks later.
15 Detective Gordon suggested that that would be helpful.

16 Q So you did that from your memory of what they told
17 you two weeks before?

18 A No, I did not.

19 Q Did you re-interview them?

20 A I sat and I said, okay, Corin, tell me what to
21 write down. And she said this is what happened, mom. And if
22 there was a word or a wording that sounded funny, I said, so
23 this is what happened? And she would clarify.

24 Q And was the statement that they gave you two and a
25 half weeks later identical to what they told you two and a

1 half weeks before?

2 A There were a few things that were even more, but
3 with Corin's no, it was basically exactly what she had told
4 me previously.

5 Q But Katlin added more specifics the second time?

6 A Yes, because she was - the detective had asked her
7 to write a complete chronology, and so I had asked her, okay,
8 what's the very earliest thing you recall and then I typed
9 it.

10 Q And then when the girls - you called the police or
11 called DCFS and then the police were contacted and then the
12 detective - you took the girls into Children's Justice Center
13 for an interview with Detective Gordon, right?

14 A That's correct.

15 Q And that was on August 23rd about of 2005?

16 A Something like that.

17 Q But you had spoken to the girls and they had
18 provided specifics to you before they went in and met with
19 Detective Gordon, right?

20 A Yes, from that Sunday when I asked them those
21 specific questions, yes.

22 Q Now I'm going to go back in time to the 2004 time,
23 August 2004, when you'd been to Chile. And Korte then told
24 you about the Monistat thing, right?

25 A Uh-huh (affirmative).

1 Q And he told you that she'd had that infection for a
2 few days and she treated it herself?

3 A I believe that's what he said that he had given her
4 some cream a couple days before.

5 Q And that's what he told you in August of 2004?

6 A I believe so.

7 Q And did you talk - but Katlin seemed pretty upset
8 about this?

9 A She seemed overwhelmingly sad.

10 Q And did you - was Katlin, I mean, can you describe
11 what your relationship was like with Katlin as far as her
12 divulging secrets and confiding with you in things at that
13 time?

14 A Generally she was very open with me.

15 Q Comfortable talking with you?

16 A Generally, yes.

17 Q And at that time did you talk to Katlin about the
18 Monistat incident?

19 A Yes, I did.

20 Q And how much detail did she give you then? What
21 did she tell you?

22 A Pretty much just, I asked her, "Well, did dad put
23 it on you? Did you ask him to?" And at least I think I
24 asked her that question, and she said, "Well, yeah, he put it
25 on me." And I don't remember what her response was if I

1 asked her specifically did you ask him to, I don't remember.

2 Q Did she tell you that he'd inserted his finger deep
3 into her vagina when he applied the cream?

4 A No, because I didn't ask her that specific
5 question. I just said did he help you put it on, and she
6 said yes.

7 Q Did she tell you that when he put it on that it
8 hurt her?

9 A I don't recall asking her that, so she was very -
10 she wasn't saying a lot.

11 Q She didn't volunteer that it hurt her?

12 A No.

13 Q And then I'm going to go to when she slept in the
14 bed with him issue. Did she tell you that she got on top -
15 that he had her get on top of him while she was - while they
16 were in the bed at that time?

17 A At that time I don't believe so.

18 Q Did she tell you that she thought she felt an
19 erection from him while she was on top of him?

20 A I don't believe so.

21 Q And if she had that would be something that you
22 would remember certainly.

23 A I would think, yes.

24 Q Now when you would sleep together, would Korte -
25 when you and Korte would share a bed together, would Korte

1 put his hand on your breast?

2 A Yes.

3 Q He'd sleep with his hand on your breast?

4 A Yes.

5 Q Who was the primary person who provided medical
6 care for the kids, you know, just day-to-day medical stuff,
7 you or Korte?

8 A Both of us.

9 Q Shared equally?

10 A It depended. During the course of that year he
11 seemed to try to take over more and more things.

12 Q Now Korte was a fairly hands on person as far as
13 providing medical care for the kids, wasn't shy about doing
14 it?

15 A No.

16 Q And has he ever been shy throughout your marriage?

17 A No.

18 Q Korte was pretty hard on Katlin?

19 A Very.

20 Q Throughout her whole life or I guess not - I mean,
21 tell me when he started getting real tough on her.

22 A I can't say for sure whether it was before or after
23 August, but about the time she was hitting puberty and being
24 more rebellious as teenagers tend to be, he didn't like to
25 put up with her talking back to him, etc., and at times would

1 be very rough with her even calling her a bitch and etc.

2 Q Did he ever hit her, slap her?

3 A Yes.

4 Q Throw her down?

5 A Yes.

6 Q Now did Corin begin to act out, I mean, you spoke
7 about her acting out some. Did she act out in other ways
8 like stealing or lying or things like that?

9 A Yes, from time to time.

10 Q Did Korte ever ask you if you had a theory on why
11 she was beginning to act out in these ways?

12 A I said maybe it's because she's reaching puberty,
13 maybe it's worse then, it's possible, but you know, because
14 teenagers do have more hormones.

15 Q And when about did you tell him that in like the
16 spring of 2005?

17 A Probably.

18 Q Did Korte ever tell you that he had sexual feelings
19 towards his daughters?

20 A I don't know that he used those words, but I got
21 that indication in Florida in December when he said, yes,
22 that he was having feelings when I told him that he kept
23 walking in on Katlin.

24 Q Describe that for me in a little more detail. What
25 about that incident? I mean, when did this conversation take

1 place?

2 A We were back at the condo. I had just observed him
3 walk in on her for the - somewhere between fifth and tenth
4 time and -

5 Q How long had you been in Florida? I'm sorry to
6 interrupt.

7 A Honestly I don't remember. Probably at least three
8 days to a week.

9 Q So anyway so you were in the condo.

10 A And I noticed once again that he walked in on her
11 when the bathroom door was shut and so I said, "What are you
12 doing?" And I said, "You know, that's not appropriate.
13 She's growing up. You can't just walk in on her." And I
14 just told him that it really bothered me. And I said, are
15 you - I'm not positive but I think I asked are you having
16 feelings or something? And it seems as if he said something
17 about having her sit on his lap and that he did have
18 feelings. And then I said, well, you just - you need to
19 apologize and you need to stop doing that. And later that
20 night when we were making love once again he was having a
21 hard time having an erection.

22 Q And you're saying that he never had problems with
23 erections before that?

24 A No.

25 Q And when was the trip to Florida?

1 A It was over - I think it was after Christmas.

2 Q What year?

3 A 2004.

4 Q After that did you become hyper-vigilant about
5 things with the kids or?

6 A I tried to notice but hyper-vigilant, no. I mean,
7 who ever expects that their husband is - and I'm a remarkably
8 trusting person.

9 Q So exactly he - I'm just trying to narrow this
10 down. He said - what did he say about the feelings? You
11 asked him if he was having feelings for Katlin?

12 A Yes, I believe so.

13 Q We need to know -

14 A I wish I could remember, but I don't remember the
15 exact words.

16 Q I don't need the exact words. What is essentially
17 the meaning of what you said.

18 A It just was in conjunction. I said, "You're
19 walking in on her all the time. Is there a problem here that
20 I need to know about? Are you having - are you interested in
21 that way?"

22 Q In?

23 A In Katlin.

24 Q And what did he say?

25 A "I'm having feelings." Now did I have him restate

1 well, what does that mean exactly? No, I didn't at the time.

2 MR. GRANT: May I have a moment, Your Honor?

3 THE COURT: You may, counsel.

4 Q (BY MR. GRANT) Was it unusual for the family -
5 your family to give one another massages?

6 A Not necessarily, no.

7 Q And so the family - would Korte massage the girls?

8 A From time to time, yes. He was the one who more
9 often would give them massages or would ask them to give him
10 massages. It's not that everybody in the family gave
11 everybody massages.

12 Q And would they be like Christmas presents for
13 massages and stuff like or - you know what I mean, as a
14 Christmas present I'll give you a massage?

15 A Not per se. But he would at times say, "Well, if
16 you" - his shoulders were always very sore and his legs were
17 almost always sore, so if he went and bought the kids
18 something there were a few times when he would say, well, can
19 you massage my shoulders when we get back or whatever.

20 Q And would they massage his legs too?

21 A Sometimes. Though most of the time not. More
22 feet.

23 Q Feet and shoulders?

24 A Most the time.

25 MR. GRANT: I don't have any further questions.

1 THE COURT: Thank you. Any redirect?

2 MR. TORRIENTE: No, Your Honor.

3 THE COURT: Mrs. Wamsley, you may step down and I
4 appreciate your being here and refrain from discussing the
5 case with anyone until we conclude the hearing here.

6 Other witnesses?

7 MR. TORRIENTE: Your Honor, the State doesn't have
8 any other witnesses. I would like to - I guess we already
9 addressed the issue of amending the information for -

10 THE COURT: We've got that taken care of as to
11 count seven.

12 MR. TORRIENTE: It's count six, Your Honor.

13 THE COURT: Count six.

14 MR. TORRIENTE: I guess the victims were Katlin
15 were clear on the dates of count one and count two. I'm a
16 little more concerned about the dates on count three, four,
17 five and six and seven. As well, Corin wasn't really sure. I
18 showed her a witness statement. So what I'd like to do is
19 amend the dates on those charges to be from August 2004 to
20 August 2005.

21 THE COURT: You would have it for a year period to
22 include that?

23 MR. TORRIENTE: Yes.

24 THE COURT: And Mr. Grant?

25 MR. GRANT: They're allowed to do that.

1 THE COURT: They are. And her testimony would be,
2 include those time frames that are there. When you're making
3 the amendment, that's probably an appropriate amendment to
4 make with the amended pleadings.

5 MR. TORRIENTE: And I'll leave the first two -

6 THE COURT: As is?

7 MR. TORRIENTE: Yes.

8 THE COURT: Let's see. Anything else that the
9 State has?

10 MR. TORRIENTE: I don't believe so, Your Honor. We
11 rest.

12 THE COURT: Thank you.

13 Defense?

14 MR. GRANT: I just thought we'd call Detective
15 Gordon.

16 THE COURT: Detective Gordon, do you want to come
17 forward? Come over hear and be sworn in.

18 MR. GRANT: You may want to grab your - do you have
19 your police report?

20 DETECTIVE GORDON: I do, sir.

21 MR. GRANT: You may want to -

22 AMY GORDON

23 having first been duly sworn, testified
24 upon her oath as follows:

25 THE COURT: And I'll make the same invitation. Get

1 comfortable in the chair and then if you'll adjust the
2 microphone a bit, Detective Gordon, and if you would state
3 your name, spell your last name for us.

4 THE WITNESS: You bet. It's Amy Gordon,
5 G-O-R-D-O-N.

6 THE COURT: By whom are you employed?

7 THE WITNESS: South Jordan Police Department.

8 THE COURT: Thank you.

9 Your witness, Mr. Grant.

10 DIRECT EXAMINATION

11 BY MR. GRANT:

12 Q Detective Gordon, when did you do the Children's
13 Justice Center interview of the girls?

14 A If I may just refer to my report. I know the
15 [inaudible]R or what was faxed to us from DCFS arrived to us
16 on the 22nd, but I'm afraid in my report I didn't put the
17 exact date of the CJC interviews. I don't see that.

18 Q But does August 23rd sound probably like about a
19 time -

20 A It sounds like a reasonable time, yes.

21 Q And at that time were you under the impression that
22 the girls had disclosed to Kathryn Wamsley already?

23 A I know that the information we had in the
24 [inaudible]R, the initial report from DCFS was that Kathy had
25 talked to her bishop and some disclosures were offered to

1 Kathy, yes.

2 Q Did you have any notes or had anything been given
3 to you by anyone at that time?

4 A Just only the [inaudible]R report, yes.

5 Q Did you have the grandmother's notes about what
6 she'd been told? Grandmother Wamsley?

7 A I'm trying -

8 Q Do you recall?

9 A I don't. I'm sorry.

10 Q When was Korte Wamsley interviewed?

11 A Upon his return into town we picked him up at the
12 airport that day.

13 Q Do you have a date for that?

14 A I do, I should here. It just says the day of his
15 return. It doesn't say a specific date in my report.

16 Q Now you had Katlin Wamsley fill out a written
17 statement?

18 A That's correct.

19 Q What was the date on that? Do you know?

20 A It's at the desk at the table.

21 MR. GRANT: [inaudible]?

22 MR. TORRIENTE: Sure.

23 THE COURT: You might give those to the witness and
24 she can refresh her recollection.

25 MR. GRANT: Yes, Your Honor.

1 THE WITNESS: Thank you. The written statement
2 from Katlin?

3 Q (BY MR. GRANT) Yes.

4 A Was dated the 29th of August.

5 Q And why did you have her do a written statement
6 after she'd done the Children's Justice Center interview?

7 A During an interview oftentimes there's so much
8 discussed that some of the detail is lost. And after
9 bringing up and after discussing incidents, especially where
10 we have multiple incidents, it's often prudent and helpful
11 for them to write it down after the fact so it's on - just an
12 additional record too.

13 Q And then did you again request Kathryn - or did
14 Korte - did Corin Wamsley do a written statement?

15 A She did a typed statement.

16 Q Now did you request Kathy Wamsley to do an
17 additional statement for Katlin?

18 A When we finished the CJC interviews I had talked to
19 Kathy about having the girls write down their accounts in the
20 event something was lost or not mentioned in the CJC. At
21 that time both girls were - I requested Kathy to have both
22 girls write statements.

23 Q Do you recall your interview of Mr. Wamsley very
24 well?

25 A I recall some. Mostly what's in my report.

1 Q Do you recall him stating that he thought it might
2 be important that he have an attorney present during the
3 interview?

4 A I note that he was offered Miranda and did agree to
5 talk - he may have mentioned do - I honestly can't recall for
6 certain, I'm sorry.

7 Q That's fine.

8 A It is on videotape. We do have that tape.

9 MR. GRANT: I don't have any further questions.

10 THE COURT: Thank you.

11 Anything from the state?

12 MR. TORRIENTE: No, Your Honor.

13 THE COURT: You may step down. Thank you for being
14 here today.

15 MR. GRANT: Your Honor, if I may have the benefit
16 of the record and advise Mr. Wamsley.

17 THE COURT: You may.

18 MR. GRANT: Mr. Wamsley, you have a right to
19 testify at a preliminary hearing. It's my advice at this
20 time that you don't testify here today. Do you wish to
21 follow my advice?

22 MR. WAMSLEY: Yes.

23 MR. GRANT: The defense would rest.

24 THE COURT: Thank you.

25 Let's see. Argument from the State or rebuttal.

1 MR. TORRIENTE: Your Honor, maybe the easiest way
2 to do it is to go along what the counts are. Count one the
3 charge is the incident with the Monistat. I guess I'll save
4 my argument for rebuttal, but just so the Court knows where I
5 am on all the counts.

6 THE COURT: Okay.

7 MR. TORRIENTE: Count two is the same night but
8 grabbing the breasts during the middle of the night and in
9 the morning - the morning of the next day.

10 Time line the next one discussed was count seven,
11 actually was the shower incident where he had Katlin expose
12 herself to him. Count three was the first massage where she
13 maybe talked about rubbing the top of the crotch and then
14 massaged her bum she stated. Count four was another massage
15 which first involved a bath, putting her pajamas on, rubbing
16 her breasts and then she stated her bum as well there. I
17 don't recall exact details. And then count five is checking
18 the breasts several times for lumps and stretch marks.

19 The only other remaining count is count six and
20 that was dealing with Corin and with the amended information
21 it would say that basically he took indecent liberties with
22 her and that's the having her lay on the bed, having her
23 spread her legs open and looking at her. So I'll save any
24 argument for rebuttal.

25 THE COURT: Okay. And let me hear from you, Mr.

1 Grant.

2 MR. GRANT: Okay, Your Honor. [inaudible] broken
3 down a little difficult. But going to that Monistat
4 incident, the testimony is that she came to Korte with a
5 yeast infection, said she had or came to him and told him
6 that she had that she had itchy vagina and difficulties
7 there. And he applied, you know, responded and applied the
8 medicinal cream. I mean, there's just no evidence whatsoever
9 he did that for sexual gratification. There's no evidence
10 that it was not a legitimate reason for him applying that
11 cream. She's, at times - I was going to get into credibility
12 issue, but I won't do that.

13 THE COURT: Thank you.

14 MR. GRANT: You're welcome.

15 Count two, we're at a preliminary hearing, I mean,
16 she's testifying that he touched her breasts, I think we
17 still have the point of why he touched her breasts. I think
18 they can make out a class A lewdness on that. He touched her
19 breasts. What evidence did he do it for sexual
20 gratification. And that I can't say. I'm sorry, I'm skipping
21 to count three on the massage where he touched her buttocks
22 and then count - and I would make the same argument on count
23 four where he touched her breasts on a massage. He did the
24 touching, but did he do it for sexual gratification? Again,
25 I don't think there's any evidence that he did it for sexual

1 gratification.

2 Count five she's alleging that there breasts exams.
3 Well, you know, maybe that's something that should cause
4 [inaudible] alarm. Maybe that is lewdness and made out a
5 probable cause case for that. But did they present any
6 evidence that he did this for sexual gratification? And they
7 have not. The evidence is wholly lacking in that respect.

8 And in the same argument go with count six
9 regarding Corin. He examined her for her menstrual period.
10 The evidence is evident that he is looking to see whether she
11 is menstruating. The evidence is evident that he's worried
12 about her puberty. The evidence is evident that he's worried
13 about and that his wife has told him that her erratic
14 behavior is associated with her entering puberty. The
15 examination of Corin is a class A and it falls strictly under
16 the statute, if someone looks at a child's genitalia or
17 breasts, then it's a class A misdemeanor, and you know, I
18 think the State didn't recognize that in their count - their
19 class A misdemeanor when he walked in on Katlin in the
20 shower. Just merely looking is a class A misdemeanor. If it
21 was - could be done under the knowledge that it would cause a
22 [inaudible] alarm and I think they probably have made out a
23 class A misdemeanor.

24 But count two when she's in bed with him and he
25 touches her breasts, it was Katlin's testimony that he was

1 asleep. Katlin testified that he was asleep when he did
2 that. It is Kathryn Wamsley's testimony that he slept with
3 her with his hand on her breast. That was the way they
4 slept. There just is utterly lacking any evidence whatsoever
5 to support count two that it was done as aggravated sex abuse
6 of a child, and that count should be dismissed, Your Honor.
7 That's all.

8 THE COURT: Thank you, Mr. Grant.

9 Let me hear from the State.

10 MR. TORRIENTE: Your Honor, I mean, one thing to
11 remember here is at a preliminary hearing that the standard
12 is look at all evidence in the light most favorable to the
13 State. I think defense's argument requires you to look at
14 everything in the light most favorable to the defense which
15 is not the standard here today.

16 If you look at count one, what evidence was there
17 as far as sexual gratification. He didn't need to apply the
18 Monistat to her. He didn't need to stick his finger in her
19 vagina. He didn't need to ask her afterwards to lay on top
20 of me. When he has her lay on top of him he kissed her on
21 the neck, kissed her on the lips. When she notices what she
22 believes to be, the term she used was a boner, so an
23 erection, I think that clearly shows some sexual
24 gratification. But you don't have to just consider what
25 happened that day. You can consider everything that was

1 presented as to whether he intended to get some sexual
2 gratification out of these things. He continues to walk in
3 especially on Katlin while she's using the bathroom. Doesn't
4 just walk out; starts talking to her, she says sometimes
5 about sexual things. So I think you ought to consider all of
6 those things to show what his intent really was.

7 We're not going to have, in most cases, someone
8 saying I intended to sexually gratify myself. That's the
9 only thing that we don't have here. But we have every other
10 evidence to show he did intend to gratify himself.

11 Count two as far as whether or not he was asleep,
12 the defense position would obviously be he was asleep. The
13 victim states he appeared to be asleep. We don't know
14 whether or not he was asleep, but the fact that two times
15 during the night the victim wakes up and her father's hands
16 are on her breasts. The second time she said he was
17 squeezing. I think it leads to a, in the light most
18 favorable to the State to show his intent. Especially when
19 considered all the other counts and all the other evidence
20 presented.

21 As far as count six goes, the theory on that is
22 having your daughter lay on a bed, take down her pants and
23 her panties, spread her legs while you're standing between
24 them, put your hands on her legs, have them spread further to
25 look in her vagina is an indecent liberty. If his real

1 concern was to find out if she was starting her period, he
2 could have asked. Other things he could have done and it's
3 clear indecent liberties is not the same thing as touching,
4 because it wouldn't have the language in the statute if it
5 were the same thing as touching. Because if you look at
6 sexual abuse of a child, 76-5-404.1 there's a couple
7 different ways to prove it. The actor touches the anus,
8 buttocks or genitalia of any child, the breast of a female
9 child, that's one part and we didn't prove that today with
10 this count. But then it says or otherwise takes indecent
11 liberties with a child. I think this is a classic example of
12 what an indecent liberty is. Have your child at that age, I
13 believe she was 11 at the time, spread her legs open in a bed
14 with her pants down while he's putting his hands on her legs
15 spreading them wider and sitting there looking at her vagina
16 to see if she's started her period. That's pretty
17 [inaudible]. And then also the victim stated that he stopped
18 as soon as a door opened to the house indicating someone else
19 had come home. I think that goes to show what his intent was
20 at the time.

21 THE COURT: What about the no gratification with
22 regard to six?

23 MR. TORRIENTE: I think there's two - if you look
24 at all the things he did, it shows every time he did these
25 things he intended to gratify himself. When, specifically

1 when we talked about Elko, Nevada incident, that's why I
2 think this is relevant. The two times he did anything with
3 this daughter, the first time in Elko he asked her if she has
4 pubic hair growing and instead of taking her word for it or
5 just looking when it's apparently visible, he sticks his hand
6 down there for a minute and rubs her pubic area. There's no
7 other reason to do that but for sexual gratification.
8 Consider that plus the next time he wants to check her he has
9 her spread her legs open on the bed. I don't think it's an
10 unreasonable inference to assume he had some sexual
11 gratification from it. Of course, we don't have statements
12 from him saying he did, but I don't think we need that in
13 this case if you look at the evidence in the light most
14 favorable to the State. Plus his statement to his wife that
15 he's having feelings when asked what's going on and their
16 specifically talked about walking in on the girls in the
17 bathroom and how it was a concern. He admitted he was having
18 feelings about that, and I think that goes to show what his
19 intent was. And I'd submit it on that, Your Honor, with the
20 amended changes.

21 THE COURT: Thank you.

22 Let's see. One of the concerns I had as you were
23 talking about the Elko incident and testimony and there was
24 an objection raised by the defense with regard to that.

25 Anything else that I ought to know to make the

1 record complete, Mr. Grant, regarding that incident?

2 MR. GRANT: Your Honor, I would like to make my
3 objection known to you.

4 THE COURT: And it is not charged as a specific
5 incident with regard to conduct there I assume, Mr.
6 Torriente?

7 MR. TORRIENTE: That's correct. If the Court has
8 concerns about it, I'd be happy to argue my position on it.

9 THE COURT: Well, I'm not using it for the purposes
10 of charging here under these circumstances. I will simply
11 note it for the record.

12 Let's see, Mr. Wamsley, as your counsel has already
13 said to you, this is not the trial case and this is simply a
14 determination as to whether or not there is sufficient
15 evidence to charge you with the crimes that are set forth in
16 the information right here, and as counsel stated the
17 inferences are drawn in favor of the State and it's not one
18 where I weigh evidence or testimony and even if you were to
19 testify and controvert everything that was said here today,
20 that would not be something that would necessarily be helpful
21 to your cause and your counsel's reviewed that and talked to
22 you about those issues.

23 But based upon the testimony that I've received
24 here, and based upon the standard of probable cause, I find
25 that the crimes that have been alleged in counts one, two,

1 three, four, five, six and seven have, in fact. been
2 committed based upon that standard of probable cause, and
3 that you, Mr. Wamsley, as the defendant in this matter
4 committed the crimes that have been alleged in counts one,
5 two, three, four, five, six and seven, and as raised by your
6 counsel, I think the issues concerning the gratification are
7 close issues and I think that there are some current concerns
8 that the Court has with regard to those. But I think based
9 upon the standard that I'm obligated to review them under
10 that I'm finding based upon the totality of the conduct that
11 there is an inference of and testimony with regard to
12 gratification, and based upon that I'm prepared to bind over
13 on all of those charges. I'm going to order that you be
14 bound over to respond in the district court with regard to
15 each of these counts and that all pleadings and records be
16 transferred there. We've not taken any exhibits. I assume,
17 counsel, here nothing needs to be transferred there.

18 Let's set a date up, counsel, for the arraignment
19 in this matter and let's talk about arraignment dates.

20 COURT CLERK: March 30th at 8:30 before Judge
21 Adkins.

22 MR. GRANT: 8:30?

23 COURT CLERK: At 8:30.

24 THE COURT: That works, counsel?

25 MR. GRANT: It doesn't work too well for me.

1 THE COURT: Okay.

2 MR. GRANT: I'm sorry. Is there any way I can do
3 it just later that morning or - if I can do it at 9:30 I'm -

4 THE COURT: My guess is that he's still going to be
5 going at 9:30.

6 COURT CLERK: On the 10th there's a [inaudible]
7 scheduled at 8:30 but the calendar -

8 MR. GRANT: And I've got in trouble here once
9 before with that. Is there any way we can say it's 9:30?

10 COURT CLERK: If I do, then they probably won't see
11 it on the calendar. The calendar at 8:30 [inaudible] at that
12 time.

13 THE COURT: I think if you have any concerns at
14 all, if you would contact Judge Adkins's clerk and simply
15 advise her that you're going to be there at 9:30, that it
16 will be on the 8:30 calendar but you are going to be there as
17 will your client.

18 MR. TORRIENTE: And I'm note that on my file as
19 well.

20 THE COURT: And if you'll note that too.

21 MR. TORRIENTE: And if I'm mad at him at the time
22 I'll -

23 MR. GRANT: I'm a single guy that day and I know
24 I'm not going to get everybody -

25 THE COURT: I don't want to get you in trouble, but

1 if that will work right there and with that understanding.

2 Anything else we need to take up, counsel, today?

3 MR. GRANT: No, Your Honor.

4 THE COURT: I guess the remaining issue that the
5 concern I had was that about whether or not witnesses need to
6 refrain from discussing this matter through dates beyond the
7 date of the preliminary hearing. Tell me your basis.

8 MR. GRANT: I don't think there's any prohibition
9 from them talking with Mr. Torriente or the victim's
10 advocate, but I do have an issue with the witnesses talking
11 among themselves about who testified to what and who said
12 what because I think-

13 THE COURT: I think they're going to be better off
14 if they don't but I don't know that there's an absolute
15 prohibition with regard to that.

16 MR. GRANT: Well, I think [inaudible] I mean,
17 follow the exclusionary rule and sort of, you know, gut the
18 purpose of it if they're allowed to then discuss the case and
19 change their testimony before trial.

20 MR. TORRIENTE: Your Honor, I don't think that's
21 what the rule says. It specifically talks about during the
22 proceedings as well as this is a case where one of the
23 witnesses is a mother of these two girls, I think it would be
24 unfair to suggest that they can't talk with their mother
25 about the case. As well as any time they do discuss it,

though it may be unwise, the defense can bring it up at trial and it goes to credibility, so.

THE COURT: Well, and like I say I think as a practical matter the less they discuss this with anybody else, the better off they are. Tell the same thing to Mr. Wamsley that he's not entitled to, absolutely not entitled to discuss this matter but I don't think, Mr. Grant, the rule provides for that. If there's some basis for it, I will further address it, but at this point in time I'm going to not enter a prohibition with regard to discussion concerning that, but simply indicate that it makes sense for the parties to refrain from doing so.

Anything else, counsel?

MR. TORRIENTE: No, Your Honor.

MR. GRANT: No, Your Honor.

THE COURT: Thank you. Thanks for your help. This court's in recess.

(Whereupon the hearing was concluded)

-C-

CERTIFICATE

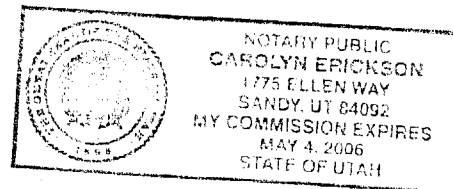
I HEREBY CERTIFY that the foregoing transcript in the before mentioned proceedings held before Judge Royal I. Hansen transcribed by me from a CD recording and is a full, true and correct transcription of the requested proceedings as set forth in the preceding pages to the best of my ability.

Signed this 15th day of April, 2006 in Sandy, Utah.



Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

My Commission expires May 4, 2006



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Addendum D

10/10/06
8:30
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WEST JORDAN DEPT.

12

RONALD J. YENGICH (#3580)
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320

IN THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

v.

KORTE WAMSLEY,

Defendant.

DEFENDANT'S STATEMENT
REGARDING OTHER FALSE
ALLEGATIONS BY THE VICTIM

Case No. 051400719

Judge Robert Adkins

Counsel for the defendant has through his investigator determined that the alleged victim in this case has previously stated to her mother, her sister, and her grandmother that she was previously molested by J.C., a baby sitter and that J.C. made her (the victim) touch her breasts, kiss and lick her breasts, and also kiss and lick her vaginal area. J.C. denies this ever having happened in any form. The alleged victim in this case also has made allegations against A.S. and M.S., relatives of the alleged victim, stating that while with them in California, she was forced to do the same identical thing as the allegations made against J.C. Through the investigation in the above-entitled case, it has been determined that those allegations also were false. The predisposition of the victim to make inappropriate statements is admissible as previously argued in the defense memo.

RESPECTFULLY SUBMITTED this 8th day of September, 2006.

YENGICH, RICH & XAIZ
Attorneys for Defendant

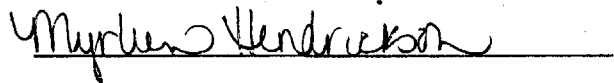
By



RONALD J. YENGICH

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Motion to Suppress this 11th day of September, 2006, to the District Attorney's Office, 8080 South Redwood Road, Suite 1100, West Jordan, Utah 84088.



Addendum E

RONALD J. YENGICH, #3580
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320

IN THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	STATEMENT OF DEFENDANTS
	:	IN SUPPORT OF GUILTY PLEA
Plaintiff,	:	AND CERTIFICATE OF COUNSEL
vs.	:	
<u>KORTE WAMSLEY,</u>	:	CASE NO. <u>051400719</u>
Defendant.	:	

I, Korte Wamsley, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

Notification of Charges

I am pleading guilty to the following crime(s):

Crime & Statutory Provision

- | | | | |
|----|---|----|---|
| A. | <u>RWA</u>
Forcible Sex Abuse of a Child,
§76-5-404.1(3), Utah Code
Annotated, 1953 (as amended)
Second Degree Felony under
400 U.S. 25(1970) | B. | <u>RWA</u>
Forcible Sex Abuse of a Child,
§76-5-404.1(3), Utah Code
Annotated, 1953 (as amended)
Second Degree Felony under
400 U.S. 25(1970) |
|----|---|----|---|

Degree**Punishment****Min/Max and/or Minimum Mandatory**2nd Degree Felony1 - 15 years prison and/or \$10,000 fine plus 85% surcharge2nd Degree Felony1 - 15 years prison and/or \$10,000 fine plus 85% surcharge

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime to which I am pleading guilty.

The elements of the crimes of which I am pleading guilty are:

Count I:

On or about August 1, 2004, through August 31, 2004, the defendant touched the child under the age of 14 years at the time of the offense. The defendant does not admit to touching the child with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person; but accepts this element under North Carolina vs. Alford 400 U.S. 25(1970) in order to protect the children from having to testify further in open Court

Count II:

On or about August, 2004, through August, 2005, the defendant touched the child under the age of 14 years at the time of the offense. The defendant does not admit to touching the child with the intent to arouse or gratify the sexual desires of any person, or to cause substantial emotional or bodily pain to any person; but accepts this element under North Carolina vs. Alford 400 U.S. 25(1970) in order to protect the children from having to testify further in open Court

I understand that by pleading guilty I will be admitting that I committed the crimes listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty pleas and prove the elements of the crime to which I am pleading guilty:

Is reflected in the above paragraph for Counts I and II.

Waiver of Constitutional Rights

I am entering these pleas voluntarily. I understand that I have the following rights under the Constitutions of Utah and of the United States. I also understand that if I plead guilty I will give up all the following rights:

208 **Counsel:** I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

208 I have not waived my right to counsel.

208 If I have waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea. under North Carolina vs. Alfred.

208 If I have not waived my right to counsel, my attorney is Ronald J. Yengich. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

208 **Jury Trial.** I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

208 **Confrontation and cross-examination of witnesses.** I know that if I were to have a Jury trial (a) I would have the right to see and observe the witnesses who testified against me and (b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me. The reason for the defendant's under North Carolina v. Alfred. is so that the children will not have testimony.

208 **Right to compel witnesses.** I know that if I were to have a jury trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

208 **Right to testify and privilege against self-incrimination.** I know that if I were to have a jury trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

208 **Presumption of innocence and burden of proof.** I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime. If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

208 I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime stated above. In so far as is consistent with the North Carolina vs. Alfred plea.

208 **Appeal.** I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty. I understand that if I wish to appeal my sentence, I must file a notice of appeal within 30 days after my sentence is entered.

304 I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty Plea

308 **Potential penalties.** I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

308 I know that in addition to a fine, an eighty-five percent (85%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

308 **Consecutive/concurrent prison terms.** I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have pled guilty, my guilty plea now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

308 **Plea agreement.** My guilty plea is the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

308 Upon defendant's plea of guilty under North Carolina vs Alford, 400 U.S. 25(1970) to the amended charges of two 2nd Degree Felony Forcible Sexual Abuse of a Child, defendant will enter into said Alford Plea. Defendant will not serve prison time. The defendant does **not** admit that he touched any child at any time for the purpose of sexual gratification or to cause substantial or other harm. He accepts this element **only** to protect the children from further public testimony and cross-examination. The defendant further states that his statements on August of 2005 as attached constitute his conduct in this case. North Carolina vs. Alford, 400 U.S. 25(1970) permits a defendant such as Mr. Wamsley to "expressly waive his right to trial while making no admission guilt:" Mr. Wamsley will argue through counsel for probation without jail. The defendant will move to reduce the offense one degree upon successful

completion of probation under §76-3-402 U.C.A. (1953 as amended). In regards to any probation or counseling, the Alford nature of the plea must be acknowledged by AP & P or other agency.

8 **Trial judge not bound.** I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge. *The Court has approved the arrangement of stated in paragraph on page four of this agreement*

Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats of unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

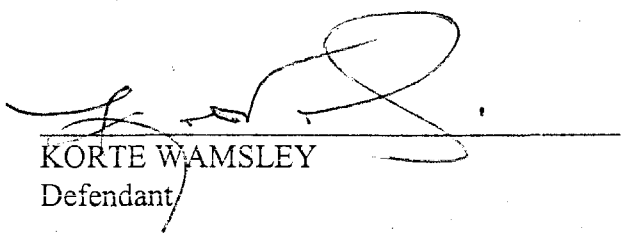
I am satisfied with the advice and assistance of my attorney.

I am ⁴⁶~~21~~ years of age. I have attended school through the 12th grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

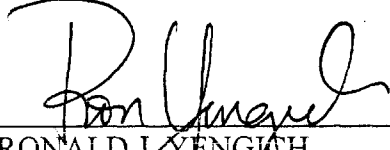
I understand that if I want to withdraw my guilty plea, I must file a written motion to withdraw my plea before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

Dated this 7 day of June, 2007.


KORTE WAMSLEY
Defendant

Certificate of Defense Attorney

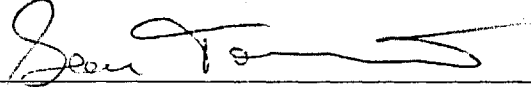
I certify that I am the attorney for Korte Wamsley, the defendant above, and that I know he/she has read the statement or that I have read it to him/her; I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.



RONALD J. YENGICH
Attorney for Defendant
Bar No. 3580

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against Korte Wamsley, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense for which the plea is entered and that the acceptance of the plea would serve the public interest.



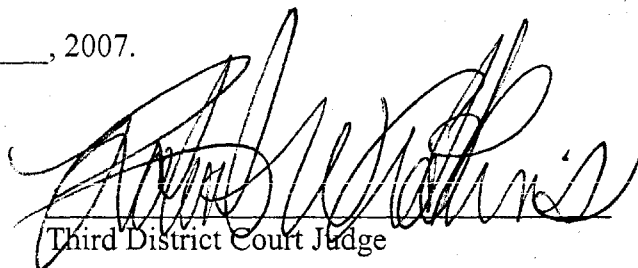
SEAN M. TORRIENTE
Assistant District Attorney
Bar No. 9690

Order

Based on the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that defendant's guilty plea is freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED, that the defendant's guilty plea to the crime set forth in the Statement be accepted and entered.

Dated this 7 day of June, 2007.



Third District Court Judge

Addendum F

3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 051400719 FS
	:	
KORTE H WAMSLEY,	:	Judge: ROBERT ADKINS
Defendant.	:	Date: October 10, 2007

PRESENT

Clerk: deniseo

Prosecutor: TORRIENTE, SEAN M

Defendant

Defendant's Attorney(s): YENGICH, RONALD J

DEFENDANT INFORMATION

Date of birth: February 19, 1961

Audio

Tape Number: 07172 Tape Count: 1.55

CHARGES

1. SEX ABUSE CHILD - 2nd Degree Felony
- Disposition: 06/08/2007 Guilty
2. SEX ABUSE CHILD - 2nd Degree Felony
- Disposition: 06/08/2007 Guilty

SENTENCE PRISON

Based on the defendant's conviction of SEX ABUSE CHILD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

The prison term is suspended.

Based on the defendant's conviction of SEX ABUSE CHILD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

The prison term is suspended.

Case No: 051400719
Date: Oct 10, 2007

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Count 2 to run consecutive to count 1.

SENTENCE FINE

Charge # 1 Fine: \$10000.00
 Suspended: \$9000.00
 Surcharge: \$472.97
 Due: \$1000.00

Charge # 2 Fine: \$10000.00
 Suspended: \$10000.00
 Due: \$0.00

 Total Fine: \$20000
 Total Suspended: \$19000
 Total Surcharge: \$472.97
 Total Principal Due: \$1000
 Plus Interest

ORDER OF PROBATION

The defendant is placed on probation for 72 month(s).
Probation is to be supervised by Adult Probation & Parole.
Defendant is to pay a fine of 1000.00 which includes the surcharge.
Interest may increase the final amount due.
Pay fine to The Court.


PROBATION CONDITIONS

No other violations.
Comply with Adult Probation and Parole.
Notify the court of any address change.
Maintain fulltime verifiable employment/education.
Complete DNA and/or health testing as required by law.
Report to AP&P within 24 hours of release from jail.
Serve 365 days at ADC, defendant to report by 5PM on 10/12/07

Case No: 051400719
Date: Oct 10, 2007

Pay restitution to Crime Victim Reparations in the amount of \$105.60 and any additional amounts as determined by their office.
Pay \$1000 fine to APP as directed by APP
Abide by sex offender special conditions Group A, including registration as a sex offender and any treatment deemed necessary by APP
Have no contact with the two victims.
Complete 50 community service hours by 10/1/09
Abide by Standard conditions of APP
The Court will review this case in 90 days

Dated this 10 day of Oct, 20 07


ROBERT ADKINS

District Court Judge
STAMP USED AT DIRECTION OF JUDGE

