TABLE OF APPENDICES

APPENDIX A

FIRST DIVISION
BARNES, P. J.,
MERCIER and BROWN, JJ.

July 16, 2019

In the Court of Appeals of Georgia

A19A0813. LEEKOMON v. THE STATE.

MERCIER, Judge.

Following a jury trial, Mongkhon Leekomon was convicted of aggravated child molestation and child molestation.[1] The trial court denied Leekomon's motion for new trial, and he appeals, alleging that he received ineffective assistance of counsel at trial. He also claims that the trial court erred in charging the jury and improperly admitted evidence regarding his jailhouse telephone conversations. Finding no reversible error, we affirm.

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[1] The jury also found Leekomon guilty of incest, and he was initially convicted of that offense. The trial court, however, vacated the verdict and sentence entered on the incest conviction after the State agreed that the evidence as to incest was insufficient.

Viewed favorably to the jury's verdict, the evidence shows that Leekomon is the uncle of T. N., who was born on January 24, 1995. On numerous occasions beginning when T. N. was four years old, Leekomon touched her breasts, vagina, and buttocks with his hand. The conduct escalated as T. N. grew older, with Leekomon placing his mouth on her vagina during the incidents. The acts continued until T. N. was approximately 15 years old.

T. N. did not disclose the abuse to anyone until 2013, when she confided in her college boyfriend. The following year, she informed her therapist about the molestation, and she told her mother in November 2014. On January 5, 2015, T. N.'s mother took her to the police station, where T. N. reported Leekomon's conduct to the authorities.

1. Leekomon argues that he received ineffective assistance of counsel at trial. To prevail on this claim, Leekomon "must prove both that the performance of his lawyer was deficient and that he was prejudiced by this deficient performance." *Lupoe v. State*, 300 Ga. 233, 239 (2) (794 SE2d 67) (2016) (citations omitted). A defendant establishes deficient performance by demonstrating that counsel "performed his duties at trial in an objectively unreasonable way, considering all the circumstances, and in the light of prevailing professional norms." Id. at 240 (2)

(citations omitted). Prejudice is show when there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. (citation and punctuation omitted). In examining Leekomon's claim, we need not "address both components of the inquiry if [Leekomon] makes an insufficient showing on one." Id. (citation omitted).

(a) Leekomon first claims that trial counsel should have moved to dismiss the indictment filed against him on statute of limitation grounds. We disagree.

On January 6, 2016, the State charged Leekomon via indictment with aggravated child molestation and child molestation. As to both offenses, the indictment alleged that he committed the criminal acts against T. N., "a child under the age of sixteen (16) years," between August 1, 1998, and December 31, 2007. The indictment further alleged that these offenses were not "known to law enforcement until January 05, 2015."

Generally, "prosecution for felonies committed against victims who are at the time of the commission of the offense under the age of 18 years shall be commenced within seven years after the commission of the crime." OCGA § 17-3-1 (c). A statutory tolling provision, however, extends the limitation period for certain offenses, including aggravated child molestation and child molestation, committed

between July 1, 1992, and June 30, 2012. See OCGA § 17-3-2.1 (a). Pursuant to this statute:

> if the victim . . . is under 16 years of age on the date of the violation, the applicable period within which a prosecution shall be commenced . . . shall not begin to run until the victim has reached the age of 16 or the violation is reported to a law enforcement agency, prosecuting attorney, or other governmental agency, whichever occurs earlier.

Id.

At the hearing on Leekomon's motion for new trial, trial counsel testified that he reviewed the relevant law regarding the statute of limitation and determined that, given the statutory tolling provision, he had no "valid basis to file a plea in bar or a motion to dismiss the indictment" on that ground. This determination was correct. Although the indictment was filed more than seven years after the crimes were committed, T. N. turned 16 years of age on January 24, 2011, and she first reported the crimes to police on January 5, 2015. Trial counsel properly concluded that the January 6, 2016 indictment, filed within seven years of both T. N.'s sixteenth birthday and the date she reported the crimes to police, was timely. See OCGA § 17-3-2.1 (a).

Leekomon also argues that the indictment did not sufficiently inform him that the State intended use OCGA § 17-3-2.1 (a) to bring the offenses within the statute

of limitation. It is true that when an indictment relies upon an exception to the statute of limitation, the State must allege and prove that the exception applies. See *State v. Godfrey*, 309 Ga. App. 234, 238 (2) (709 SE2d 572) (2011). As we have explained, however, "an indictment alleging the molestation of a child 'under the age of 16' sufficiently invoke[s] the statute of limitation tolling provision set forth in OCGA § 17-3-2.1." *Lyde v. State*, 311 Ga. App. 512, 517 (2) (716 SE2d 572) (2011) (citations omitted). See also *Godfrey*, supra ("[A]n allegation that the victim was under the age of 16 is sufficient to satisfy [the] requirement" that the State allege and prove that OCGA § 17-3-2.1 (a) applies) (citation omitted).

Because the aggravated child molestation and child molestation counts asserted that T. N. was under the age of 16 at the time the crimes were committed, the indictment sufficiently placed Leekomon on notice that the State was relying on OCGA § 17-3-2.1 (a). See *Lyde*, supra; *Godfrey*, supra at 238-239 (2). Trial counsel's failure to file a motion to dismiss or plea in bar on this ground, therefore, was not a deficiency. See *Hantz v. State*, 337 Ga. App. 675, 678 (788 SE2d 567) (2016) ("Trial counsel's failure to file a meritless motion does not amount to ineffective assistance.") (punctuation and citation omitted).

(b) Leekomon also claims that he is entitled to a new trial because counsel failed to object to the trial court's jury charge regarding the statute of limitation. With respect to the limitation period and the applicable tolling provision, the trial court instructed the jury:

> The accused is on trial for the offense of aggravated child molestation [and] child molestation . . . . Under Georgia law, prosecution for these offenses must begin within seven years after the offense has been committed or within seven years of when the offense became known to law enforcement officers. If you find from the evidence that the indictment or accusation in this case was not filed within seven years after the offense was committed or seven years of when the offense became known to law enforcement officers, it would be your duty to acquit this Defendant as to that offense.

The court's charge failed to inform the jury that, under OCGA § 17-3-2.1 (a), the statute of limitation commences on one of two dates: when the violation is reported to specified authorities *or* the day the victim turns 16, "whichever occurs earlier." Although the court instructed jurors to consider the date the offense became known to law enforcement, it did not tell them that the victim's sixteenth birthday was a potentially relevant date for statute of limitation purposes. Trial counsel raised no objection to the inaccurate charge.

Leekomon argues that counsel's performance in this regard was deficient. The State, however, indicted Leekomon within seven years of both T. N.'s sixteenth birthday *and* her outcry to police. Regardless of which of these two dates the jury used to calculate the statute of limitation under OCGA § 17-3-2.1 (a), the indictment was timely. Accordingly, even if a complete charge on OCGA § 17-3-2.1 (a) had been given, "there is no reasonable probability that the outcome of the trial would have differed[.]" See *Shaw v. State*, 292 Ga. 871, 877 (3) (c) (742 SE2d 707) (2013). Leekomon, therefore, cannot show the prejudice necessary to support his ineffective assistance claim. See id.; *Hernandez-Garcia v. State*, 322 Ga. App. 455, 464 (4) (b) (745 SE2d 706) (2013) (trial counsel's failure to object to jury instruction did not prejudice defendant where "there is no reasonable possibility that the charge affected the outcome at trial").

2. In a related argument, Leekomon asserts that the trial court's jury instruction on the statute of limitation constituted plain error, requiring reversal despite counsel's failure to object. See OCGA § 17-8-58 (b) (failure to raise specific objection to jury instructions precludes appellate review "unless such portion of the jury charge constitutes plain error which affects substantial rights of the parties"). But to show plain error, Leekomon "must establish not only that the jury instruction was

erroneous, but also that . . . it likely affected the outcome of the proceedings." *Parker v. State*, 305 Ga. 136, 139 (3) (823 SE2d 313) (2019) (citation and punctuation omitted). And as discussed in Division 1 (b), Leekomon cannot demonstrate that the inaccuracy in the trial court's statute of limitation charge impacted the jury's verdict. It follows that no plain error occurred. See id. at 140 (4) n. 8 ("[T]he test for harm under plain error review is equivalent to the test in ineffective assistance of counsel cases for whether an attorney's deficient performance has resulted in prejudice of constitutional proportions.") (citation and punctuation omitted).

3. While in the Gwinnett County jail following his arrest, Leekomon made several telephone calls to his wife, which were intercepted and recorded by jail authorities. Leekomon moved in limine to exclude evidence of these conversations, asserting that the conversations were illegally recorded. The trial court denied the motion and admitted the evidence. Leekomon enumerates this ruling as error.

During a hearing on the motion in limine, defense counsel presented testimony from the commander in charge of jail administration, who indicated that when an individual is booked into the Gwinnett County jail, "there is a document that is given to the arrestee explaining the phone call, however the recordings are done, and the

policy how to set up the recordings." The evidence shows that Leekomon received and signed a copy of this document,[2] which states:

> The Gwinnett County Sheriff's Department reserves the authority to monitor and record all telephone conversations within this facility. Your use of the facility telephones constitutes consent to this monitoring and recording.

Georgia law prohibits any person from intentionally and secretly intercepting a telephone call. See OCGA § 16-11-62 (4). This restriction, however, does not apply "where one of the parties to the communication has given prior consent." *Boykins-White v. State*, 305 Ga. App. 827, 833 (5) (b) (701 SE2d 221) (2010) (footnote omitted); see also OCGA § 16-11-66 (a). "Such consent can be either express or implied." See *Boykins-White*, supra. And generally, implied consent to the monitoring and recording of a jail inmate's telephone calls may be demonstrated by evidence that the inmate was warned that calls might be monitored and informed that use of the facility telephone constitutes consent. See *Smith v. State*, 254 Ga. App. 107, 109 (2) (a) (561 SE2d 232) (2002).

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[2] Defense counsel conceded at the hearing on the motion in limine that Leekomon "signed his name" and "signed that document."

Although the document signed by Leekomon contains such a warning, he argues that it cannot establish any consent here because he is a native of Thailand, does not speak English, and required a Thai interpreter at trial. According to Leekomon, the warning, which is written in English, was insufficient for him. . The jail commander testified, however, that during booking, arrestees who speak a foreign language for which the jail does not have a live translator – such as Thai – are given an interpreter over the telephone via a "Language Line." The interpreter translates for the arrestee during the booking process, which includes translation of the document containing the recorded telephone call warning.

The commander noted that the officer who booked Leekomon into the jail could not specifically recall whether the warning was translated for Leekomon because "[s]he's probably booked in two thousand, three thousand people since then." But he testified that use of the Language Line or a live interpreter is "our policy," and jail records showed that Leekomon "was booked in at the same time that [the warning] form was signed." Under these circumstances, the trial court was authorized to find that Leekomon was informed about and consented to the recording of his telephone calls, and that the recordings were therefore admissible. See *Ramsey v. State*, 165 Ga. App. 854, 857 (3) (303 SE2d 32) (1983) ("Unless clearly erroneous,

a trial court's findings as to factual determinations and credibility relating to admissibility will be upheld on appeal.") (citation and punctuation omitted).

Judgment affirmed. Barnes, P. J., and Brown, J., concur.

APPENDIX B

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,	:	
	:	
v.	:	CASE NO. 16-B-00037-10
	:	
MONGKHON LEEKOMON	:	
	:	
Defendant.	:	

ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL

The Defendant's *Motion for New Trial* having come before the court for hearing on May 10 , 2018 with the Defendant being present and represented by counsel and after hearing argument of counsel and upon consideration of all matters of record in the case, the Court hereby makes the following findings of fact and conclusions of law:

1.

The State and Defendant stipulate that the evidence failed to prove the elements of the offense of incest as alleged in Count 3 of the indictment. Therefore, the jury's verdict of guilty on Count 3 is hereby vacated and set aside.

2.

The Defendant raises the so called "general grounds" asserting that the verdict in the case was "contrary to evidence and the principles of justice and equity" or that the verdict was "decidedly and strongly against the weight of the evidence." See O.C.G.A. §5-5-20 and §5-5-21. These statutes afford the trial court broad discretion to sit as a "thirteenth juror" and requires the Court to both weigh the evidence and exercise its discretion. Having done so, and concluding that the verdict in Count 1 and 2 is supported

by the evidence and is not contrary to justice and equity, the Defendant's motion based on the general grounds in DENIED.

3.

The Defendant also asserts that his trial counsel was ineffective in several respects. "In order to prevail on this claim, [the Defendant] must show both that counsel's performance was deficient, and that the deficient performance was prejudicial to his defense. Smith v. Francis, 253 Ga. 782 (1985), citing Strickland v. Washington, 466 U. S. 668 (1984). To meet the first prong of the required test, the defendant must overcome the 'strong presumption' that counsel's performance fell within a 'wide range of reasonable professional conduct,' and that counsel's decisions were 'made in the exercise of reasonable professional judgment.' Id. The reasonableness of counsel's conduct is examined from counsel's perspective at the time of trial and under the particular circumstances of the case. Id. at 784. To meet the second prong of the test, the defendant must show that there is a reasonable probability that, absent any unprofessional errors on counsel's part, the result of his trial would have been different." Leonard v. State, 292 Ga. 214 (2012).

The Court finds that the Defendant has failed to meet his burden.

The Defendant's motion based on ineffective assistance of counsel is therefore DENIED.

4.

The Court has also considered the other grounds asserted by the Defendant and find them each to be without merit.

The Defendant's *Motion for New Trial* is hereby DENIED.

SO ORDERED this 11 day of May, 2018.

FRED BISHOP
Judge, Superior Court of Gwinnett County by designation

Copies to:
District Attorney
Attorney for the Defendant

APPENDIX C

Court of Appeals of the State of Georgia

ATLANTA, September 17, 2019

The Court of Appeals hereby passes the following order

A19A0813. MONGKHON LEEKOMON v. THE STATE.

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, September 17, 2019.

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen, *Clerk.*

APPENDIX D

SUPREME COURT OF GEORGIA
Case No. S20C0283

May 04, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

MONGKHON LEEKOMON v. THE STATE.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A19A0813

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

APPENDIX E

IN THE SUPERIOR COURT FOR THE COUNTY OF GWINNETT

STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
-vs-	)	CRIMINAL CASE
	)	FILE NO. 16-B-0037-10
MONGKHON LEEKOMON,	)	
Defendant.	)	CERTIFIED COPY

Amended Transcript of the Motion for New Trial

before The Honorable Fred Bishop, presiding for the Honorable Warren P. Davis, held at the Gwinnett Justice and Administration Center on the ***10th day of May 2018.***

**** * TRANSCRIPT AMENDED TO ADD THE CONCLUSION OF THE HEARING, TO CORRECT HEARING DATE AND SPELLING OF ATTORNEY'S NAME * ****

APPEARANCES OF COUNSEL:

For the State:

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For the Defendant:

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CHRISTINE CLARK, CCR B-2074
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THE COURT: Is that -- D-1, is that for purposes of this hearing?

MS. KUO: Yes. For purposes of motion for new trial hearing.

THE COURT: Okay. What is it?

BY MS. KUO:

Q. Can you tell us what Defendant's Exhibit 1 is?

A. It is limitation on prosecutors, generally.

Q. Can you state the code section for the record?

A. It is 17-3-1.

Q. And what year is that statute?

A. 1998.

Q. Is that a statute that you reviewed prior to trial?

A. No, ma'am. I reviewed another statute that was a little bit sooner in time than this.

Q. Okay. I'm approaching with what is marked as Defendant's Exhibit 2. What is Exhibit Number 2?

A. It is subsection for Code Section 17-3-1, and it is from 2005.

Q. And so that is the 2005 version of O.C.G.A. 17-3-1?

A. Yes, ma'am.

Q. Did you review that prior to trial?

A. Yes, ma'am.

MS. KUO: I would move to admit Defendant's Exhibit 2 for purposes of this hearing.

THE COURT: All right. Any objection to D-1 and D-2?

MR. TITTSWORTH: No objection.

THE COURT: Admitted.

BYed MS. KUO:

Q. I'm approaching with what is marked as Defendant's Exhibit 3. Can you tell us what Defendant's Exhibit 3 is?

A. It is 17-3-2.1, limitation on prosecution of certain offenses involving a victim under 16 years of age.

Q. And is that a statute that you reviewed prior to trial?

A. Yes, ma'am, I did review the statute.

MS. KUO: The defendant moves to admit Defendant's Exhibit 3 for purposes of this hearing.

THE COURT: Any objection?

MR. TITTSWORTH: No objection.

THE COURT: Admitted.

BY MS. KUO:

Q. What year is that code section?

A. It is 1998.

Q. So you reviewed the 1998 O.C.G.A. 17-3-2.1 prior to trial?

A. Yes, ma'am.

Q. I'm showing what is marked as Defendant's Exhibit 4. What is Defendant's Exhibit's 4?

A. Limitation on the prosecution involving certain --

involving a victim under the 16 years of age.

Q. What year is that?

A. 2005.

Q. So Defendant's Exhibit 5 [sic], just so the record is clear, is the 2005 version of O.C.G.A. 17-3-2.1?

A. Yes, ma'am.

THE COURT: Okay. Let me make sure that I understand. D-4 is 17-3.2.1, that is the '05 version.

MS. KUO: That's correct.

THE COURT: Okay.

MS. KUO: And Defendant's Exhibit 3 is the 1998 version of the same statute.

THE COURT: Okay. I understand.

BY MS. KUO:

Q. Did you review Defendant's Exhibit 4 prior to trial?

A. Yes, ma'am.

MS. KUO: I would move to admit Defendant's 4 into evidence for purposes of this hearing.

THE COURT: Any objection?

MR. TITTSWORTH: No objection.

THE COURT: Admitted.

BY MS. KUO:

Q. Just so I understand your testimony, of those four exhibits the only statute that did you not review prior to trial is Defendant's Exhibit 1?

A. Yeah. I didn't review that one.

Q. I'm just going to show you a copy of the indictment in the case. If you could review that just to refresh your recollection.

A. Yes, ma'am.

Q. Okay.

A. I definitely remember the indictment, yes, ma'am.

Q. So your previous testimony indicated that you didn't file a motion for a plea in bar or a motion to dismiss the indictment on statute of limitation grounds because you believed that the indictment was timely filed. Is that a correct summary of what your statement was earlier?

A. Yes.

Q. So looking at the indictment, the statute of limitations is seven years in this case. Do you recall that?

A. Yes, ma'am.

Q. Okay. I think that's undisputed. So looking at that indictment, what about that indictment led you to believe that the indictment was timely filed?

A. Well, when I -- and this is my review of the code. When I looked at 17-3-2.1, it stated that basically the statute should not run until the victim has reached the age of 16 or the violation reported to law enforcement agency, a prosecuting attorney, or governmental agency, whichever occurs earlier. Such law enforcement or government agent shall promptly report

alleged allegation to the appropriate attorney. So my review of this particular indictment basically the last date of any type of incident was December of 2017 -- December 2007. So at the time, the victim in this case was under the age of 16. So my reading of the law is that the seven years do not apply until she turns the age of 16.

And being that she made her outcry I believe it was in 20 -- or to law enforcement January the 5th, 2015, I felt like that was within the seven years because she turned 16 January the 24th, 2011. So if the outcry was made to law enforcement on January 5th, 2015, that's within seven years. And the indictment, the case was indicted on January 6th, 2016. So if the outcry was made on the 5th of January and the case was indicted the following year, I felt like law enforcement knew about the case, the prosecuting attorney's office indicted the case.

So it should be in bounds based on whatever prong you want to look at. Because she was 16 years old -- she was under the age of 16. I believe that I argued the last incident occurred at 13, 14 years old. So she was 16 in 2011. And she made the outcry to law enforcement in 2015, so I felt like both prongs were satisfied.

Q. Okay. So did you review the State's requested charge in this case?

A. Yes, ma'am.

A. Said offense not being known to law enforcement until January 5th, 2015.

Q. Okay. So in your review of the case law, statutes, and cases prior to trial, were you aware of the fact that the actual knowledge of the victim is imputed to the State?

A. I don't think that's a correct legal assumption at all. I don't think the victim's knowledge is imputed on the State. I think the victims -- now, from my reading of the statute is when law enforcement actually becomes knowledgeable of the outcry and then the clock starts to run.

Q. Okay. But based on the plain language of the indictment, the tolling provision that the State relied upon to toll the statute of limitations is the fact that the offense was not known to law enforcement until January the 5th, 2015?

A. Yes.

Q. That language appears in Count 1? Does it appear in Count 1?

A. Yes, ma'am.

Q. Does it appear in Count 2?

A. Yes, ma'am.

Q. Does it appear in Count 3?

A. Yes, ma'am.

Q. So prior to trial, based on your review of the case law and the statutes, was it your understanding that the law

provides that if the State is going to rely on an exception or exclusion to the statute of limitations, it must not only be pled, but it must be proved?

A. I would say that in both instances --

Q. I mean, yes or no? Is that your understanding of what the law entails if the State is going to allege an exception to the statute of limitations that tolls the statute --

A. Yes, ma'am.

Q. That the States must both allege it in the indictment and prove it?

A. Yes, ma'am.

Q. So if you would look at the Defendant's Exhibit 1, which is admitted into the record.

A. Okay.

Q. Does that pertain to when the State must -- the time frame within which the State must commence a prosecution?

A. I mean, respectfully, counsel, I don't feel like this 1998 statute applies. I feel like the -- your Exhibit Number 2 -- I want to make sure I quote this right. I feel like your Exhibit 2 supersedes the older law. I don't even see the 1998 statute being applicable in this case at all. So I don't -- I guess I don't know why we're referring back to the 1998 statute.

Q. Well, is it your understanding that the definition of

the -- based on the offense as to the final statute that was in effect in 1998. So did you understand that was going on?

A. Yes, ma'am.

Q. So did you understand prior to trial that the rule of lenity not only applies to sentencing but also applies to the definition of the offense?

A. Well, we were not dealing with a definition of offense, counsel. We were dealing with the statute of limitations.

Q. Did you understand prior to trial that the rule of lenity applied to the statute of limitations?

A. Counsel, it's my position that it did not apply.

Q. Okay.

THE COURT: Let me ask to make sure I understand the contention. This is the case in which -- as I recall. I've not had an opportunity to review the transcript. As I recall the molestation issue or the sexual fondling or whatever with the child commenced when she was about four years old and continued until she was about --

THE WITNESS: About 15.

THE COURT: 15.

THE WITNESS: Yes, sir.

THE COURT: Then it shifted or included oral sex on her when she got about 13.

THE WITNESS: Yes, sir.

BY MS. KUO:

Q. In your review of the case law and the cases, did you understand that the period of time in which either the offense is unknown or the identity of the perpetrator is unknown that is the only -- that is an example of what may toll the statute of limitations.

A. About the victim not being known to law enforcement, is that what you're saying? Or the victim not making an outcry to law enforcement. I'm just trying to understand the question.

Q. If the offense is either unknown or the identity of the perpetrator is unknown, did you understand that that tolled the statute of limitations?

A. Yes, ma'am.

Q. I'm showing you -- I think this is Volume 4 of the trial transcript, page 936. If you could review that. That is a portion of the Court's jury instructions in the case.

MR. TITTSWORTH: Ms. Kuo, do you mind if I get up and look over Mr. Boddie's shoulder --

MS. KUO: Sure.

MR. TITTSWORTH: -- just to see which one that we're on?

MS. KUO: Sure. It's on the instruction on the statute of limitation.

MR. TITTSWORTH: Good. Just for a minute.

THE COURT: It's Ms. Kuo's examination. Just don't get in the way of it.

MS. KUO: I am sorry. What?

THE COURT: I said it's Ms. Kuo's examination. Just don't get in the way of it.

THE WITNESS: Yes, ma'am.

BY MS. KUO:

Q. Okay. And so does that reflect the jury instruction that the Court gave in finding of statute of limitations?

A. Yes, ma'am.

Q. And is it consistent with the charge that the State requested in the Defense Exhibit 5?

A. Yes. Charge number 2.

Q. Okay.

A. Yes, ma'am.

MS. KUO: Just before I forget, I would like to move to admit Defense Exhibit 5 for the purpose of the hearing.

THE COURT: Say again what 5 is.

MS. KUO: It's the State's supplemental requested charge.

MR. TITTSWORTH: No objection.

THE COURT: All right. Hold on just a moment. Did that have a number on it?

MS. KUO: 5.

THE COURT: I mean the requested charge. Did it have a number on it?

MS. KUO: Yes. It's called State's supplemental request to charge. And I believe it's two charges.

MR. TITTSWORTH: Number 1 and 2, Your Honor.

THE COURT: Okay. It's admitted.

BY MS. KUO:

Q. So in the definition of the statute of limitations that the Court gave the jury, it gave the jury a choice. Is that right?

A. Yes, ma'am.

Q. What two choices?

A. The prosecution of this offense must begin within seven years after the offense has been committed or within seven years of when the offense became known to law enforcement officers.

Q. And you previously said that you are not familiar with any law that says that the knowledge of the victim is imputed to the State?

A. No, ma'am.

Q. So from the charge that the Court gave, would you agree that this is a legal question whether or not the State proved the exception of law in this case?

A. No.

Q. You don't think it's a legal question?

almost ten years. The last offense itself occurred in December of 2017 when she was I believe 13, 14 years. So if we even look at that date, she is still within the seven years of when the act was made known to law enforcement or when the act was known about or brought to knowledge.

Q. So the date that you're relying upon is December 31st, 2005?

A. No.

Q. Okay. I just want to understand what it was.

A. No, December 31st of 2007. That was the date I was relying. That's the last date that we have in the indictment.

Q. Okay. That is the last date in the indictment?

A. Yes, ma'am, of when the acts could have occurred.

Q. Okay. So you add seven to that?

A. Yes, ma'am.

Q. And what is that?

A. You would get '14, 2014.

Q. Okay. When was the indictment filed?

A. The indictment was filed in 2016.

Q. So the indictment was too late?

A. No. Under the law that I read is that you have two prongs. So when law enforcement found out about the case, it was January 5th, 2015. At that point in time the prosecution office indicted the case in January 2016. So that was one year from when law enforcement found out about the incidents

themselves. So I feel like that the State was still within the statute of limitations.

Q. Well, in your review of the case law and statute of limitations, did you read cases in which you know a party filed a plea in bar or a motion to dismiss statute of limitations prior to trial to vet this exact legal issue before the Court so that maybe perhaps there would be no trial? Did you -- in your review of the case law, did you ever come across case an attorney like yourself actually filed a plea in bar?

A. Yes, ma'am.

Q. Okay.

A. What I'm saying is, counselor, my review of the law it was an "or," so you had two options. And under one of those options, the State has satisfied the statute of limitations we know for sure. And under the first option I felt that satisfied the statute of limitations.

Q. Okay.

A. No. I didn't feel like there was a need to file a plea in bar because the statute was just on its face.

Q. So following the Court's charge to the jury, was there a strategic reason that you did not object to Court's charge on statute of limitations?

A. Well, the reason why is because the dates -- to me the range of dates were more important in this particular case because I felt like the statute of limitations were met. So my

MS. KUO: Are we going too fast? If we are, let us know, okay?

THE INTERPRETER: Yeah, the going back and forth with the statute of limitations and the conversations.

THE COURT: Okay. Well, interpret what each is saying, okay, as we go along.

Okay. Go ahead.

BY MS. KUO:

Q. Okay. Well, my question was: Was there a strategic reason why you did not object to the Court's charge on the statute of limitations?

A. No. It was just a legal reason.

Q. Okay. Was there a strategic reason that you did not object to the Court's charge on incest?

A. No. No, ma'am.

Q. And was there a strategic reason why you did not object to the trial court's failure to charge on prior difficulties?

A. No, ma'am.

MS. KUO: No more questions.

CROSS-EXAMINATION

BY MR. TITTSWORTH:

Q. Good afternoon, Mr. Boddie. How are you?

A. Good afternoon, sir.

Q. I think you went over with Ms. Kuo all the questions

Honor.

THE COURT: All right. And which ones were in Gwinnett County?

MR. TITTSWORTH: All the offenses occurred -- for each allegation you have offenses that occurred in Gwinnett County. Whenever they moved to Gwinnett County, the abuse continued on an every other weekend process.

THE COURT: Which it started in DeKalb County.

MR. TITTSWORTH: It started in DeKalb. I believe the testimony at trial was they moved to Gwinnett. The defendant's family moved to Gwinnett in 2005. And then I have noted that in October of 2009, the defendant opened their restaurant in Covington. And that's when the victim's family begins visiting them at the restaurant instead of at the home, so the abuse would stop in October of 2009.

THE COURT: Okay. But my question was about the continuing offenses. Why -- if you had -- if you had -- and I'm saying continuing offense. I am using the word continuing offense not by conspiracy, but it's the act repeated. Okay. You know, it's this weekend. Two weeks later it's done again. Two weeks later again and it continues at that kind of interval over a period of time. And the first part of them when they start, which is five or six or something, you say, well, those are barred by

of August 1998 and the 31st day of December 2007. And that your argument is, okay, the child, regardless of age, the victim in 2007 knows about the offense, knows about who the offender is, and therefore the offense is complete and the knowledge of the offense is imputed to the State. And therefore the seven year statute of limitations starts running the 31st day of December 2007.

MS. KUO: No. It starts running based on the actual knowledge of the victim. So we don't know exactly when in 2005.

THE COURT: It could have been -- the latest could have been December 31st, 2007.

MS. KUO: Well, you're -- I'm talking about 2005. That's when they moved to Gwinnett. That is when the aunt and uncle moved to Gwinnett. That is when -- Teeda said that's when the incident forming the basis of the aggravated child molestation occurred. So --

THE COURT: And that was what date?

MS. KUO: It was 2005.

Do you know exactly when in 2005?

MR. TITTSWORTH: There was no -- all they gave in the trial transcript is the generality of 2005.

MS. KUO: So we have to assume that she was at least ten.

THE COURT: Well, whatever she was. But I'm saying,

okay, the allegation is the act occurred up until. So it was between those dates, ending December 2007. So you are saying --

MR. TITTSWORTH: I'm saying that the statute runs.

THE COURT: You're saying that the act was complete as far as the physical acts themselves, they were done. She was aware of it and that the knowledge, regardless of her age, that the knowledge is imputed to the State --

MS. KUO: Right.

THE COURT: -- at the very latest December of 2007, and you have got, if take that, and add seven years, that puts you in 2014 and your outside the statute of limitations by the time of the indictment is what you're saying.

MS. KUO: Well, my argument specifically is that the time starts running in 2005 because that is when she had actual knowledge. So I know that you are going by the last date, but the earliest date is the actual knowledge.

THE COURT: But let me pause there. If there was one act, I think that, you know, would be good a argument, at least. But it seems to me, the testimony as I recall it, I mean this was basically two acts a month over that period of time. Every other Sunday it occurred. And so if you've got -- if you've got -- if you've got basically

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
	)	**CASE NO 16-B-00037-10**
v	)	**JUDGE WARREN DAVIS**
	)	
MONGKHON LEEKOMON	)	

STATE'S SUPPLEMENTAL REQUEST TO CHARGE

Comes now the State of Georgia, by and through the District Attorney, and hereby requests the following attachments, **STATE'S SUPPLEMENTAL REQUEST TO CHARGE NUMBERS** __1_through 2___ be given as charges to the jury in the above-styled case

Respectfully submitted, this __15____ day of NOVEMBER, 2017

Charissa Henrich

Assistant District Attorney

Gwinnett County District Attorney

STATE'S REQUEST TO CHARGE NO 1

Statutes of Limitations

Members of the jury, the law of our state sets a time limit upon the State in starting prosecution of most criminal offenses

The Accused is on trial for the offenses of Aggravated Child Molestation and Child Molestation and Incest

Under Georgia Law, prosecution for these offenses must begin within seven (7) years after the offense has been committed or within (7) years of when the offense became known to law enforcement officers

If you find from the evidence, that the indictment in this case was not filed within seven years (7) after the offense was committed or seven (7) years of when the offenses became known to law enforcement officers, it would be your duty to acquit the defendant

STATE'S REQUEST TO CHARGE NO 2

When the statute of limitations is raised, the burden is on the State to prove that the offenses occurred within the statute of limitations or occurred within seven (7) years of when the offenses became known to law enforcement officers beyond a reasonable doubt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED THIS SUPPLEMENTAL JURY INSTRUCTIONS ON DEFENDANT'S COUNSEL, WILLIAM BODDIE

RESPECTFULLY THIS 15TH DAY OF NOVEMBER, 2017

CHARISSA HENRICH

ASSISTANT District Attorney

Gwinnett County District Attorney

C-E-R-T-I-F-I-C-A-T-E

STATE OF GEORGIA:

COUNTY OF GWINNETT:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the foregoing pages 1 through 109 represent a true and correct record of the evidence given.

I further certify that in accordance with O.C.G.A. 9-11-28(a), I am not a relative, employee, attorney, or counsel of any party, nor am I financially interested in the action.

This the 26th day of October, 2018.

CHRISTINE A. CLARK, CCR-B-2074