

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES R. BUTLER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D21-2082

[December 16, 2021]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey Dana Gillen, Judge; L.T. Case No. 502009CF004111AXXXMB.

James R. Butler, Bristol, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

DAMOORGIAN, CIKLIN and ARTAU, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Appendix A

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

 **COPY**

CASE NO.: 2009-CF-004111A W MB

STATE OF FLORIDA

v.

JAMES R. BUTLER,
Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court on Defendant James R. Butler's Motion for Postconviction Relief which was filed on December 26, 2019, pursuant to Florida Rule of Criminal Procedure 3.850. (DE #680). The State filed its Response to the instant Motion on March 23, 2021. (DE #703). The Court has reviewed the Motion, the State's Response, and the court file and is fully advised in the premises.

STATEMENT OF THE CASE

Defendant was charged by Information with two counts of sexual battery on a person less than 12 years of age. (State Resp., Ex. "A," Information.) The case proceeded to trial where, on February 16, 2017, a jury found Defendant guilty as charged in the Information on both counts. (State Resp., Ex. "B," Verdict.) The trial court adjudicated Defendant guilty, sentenced him to two concurrent life sentences, and designated Defendant a sexual predator pursuant to section 775.21, Florida Statutes. (State Resp., Ex. "B," Judgment and Sentence.) Defendant appealed his conviction and sentence to the Fourth District Court of Appeal which affirmed the trial court in a written opinion and issued its mandate on November 9, 2018. *Butler v. State*, 254 So. 3d 651 (Fla. 4th DCA 2018), *rev. denied* No. SC18-1873, 2019 WL 586282 (Fla. Feb. 11, 2019); (State Resp., Ex. "C," Mandate.)

Appendix B
10 Pgs

LEGAL ANALYSIS AND RULING

All of the grounds for relief in Defendant's Motion allege ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). A successful ineffective assistance of counsel claim must meet two criteria. First, the defendant must show that his attorney made errors "so serious" that counsel's performance fell below the threshold of "reasonably effective assistance." *Id.* at 687. There is no "checklist" defense counsel must follow to be considered reasonably effective, and courts must be highly deferential by presuming that counsel's conduct was reasonable. *Id.* at 688–89. An attorney's actions will only be considered deficient if, in light of the context and circumstances at the time, counsel's "acts and omissions were outside the wide range of professionally competent assistance." *Id.* at 689–90; *see also Morton v. State*, 995 So. 2d 233, 244 (Fla. 2008). Even if the defendant can demonstrate that counsel made such an error, they must also demonstrate that the error is "prejudicial," or, in other words, the error was great enough that there is a "reasonable probability" the result of the proceeding would have been different absent the error. *Mendoza v. State*, 87 So. 3d 644, 652 (Fla. 2011).

Defendant's Motion contains five grounds for relief labeled Grounds "A" through "E" with Ground "A" being comprised of seven additional sub-claims. For the purposes of review, the Court considered eleven separate claims for postconviction relief: 1) counsel was ineffective for failing to properly object to the introduction of extrinsic evidence during the State's opening statement, 2) counsel was ineffective for failing to properly object to the State deliberately misleading the Court and jury as to a material fact, 3) counsel was ineffective for failing to properly object to the improper bolstering of the victim through extrinsic evidence, 4) counsel was ineffective for failing to properly object to the introduction of Defendant's statements in violation of his Fifth Amendment rights, 5) counsel was ineffective for failing to properly object to extrinsic evidence used to show Defendant's consciousness of guilt, 6) counsel was ineffective for failing to object to a witness' in-court identification of Defendant, 7) cumulative error related to the testimony of

Jennifer Hale, 8) counsel was ineffective for failing to properly object to a remote witness being sworn in without a proper oath, 9) counsel failed to properly object to the introduction of extrinsic, prejudicial evidence, 10) counsel was ineffective for not calling an exculpatory witness on behalf of Defendant, and 11) cumulative error.

As an initial matter, the Court adopts the State's Response as to Grounds "B" and "D" of Defendant's Motion and herein denies those claims. As to Ground B, the district court definitively held on direct appeal that the oath administered to the remote witness was a legally valid oath since the witness could have been extradited and subjected to prosecution for perjury; therefore, Defendant could not have been prejudiced by defense counsel failing to "properly object." *Butler*, 254 So. 3d at 657–58 (quoting *Harrell v. State*, 709 So. 2d 1364, 1371 (Fla. 1998)). In Ground D, Defendant argues that a private investigator named Mark Muman had investigated every person involved in the instant case and that he could have provided exculpatory evidence that refuted the testimony of several witnesses at trial. We agree with the State that such a claim is speculative and lacks any evidentiary basis in the record. *See Maharaj v. State*, 778 So. 2d 944, 951 (Fla. 2000). The Court will address each of the remaining claims and sub-claims in turn.

A. Ground A(1): Failure to Object During Opening Statement

Most of Ground "A" involves the testimony of Jennifer Hale, a former investigator with the 27th District Attorney's Office in the State of Oklahoma. In her role as an investigator, Ms. Hale interviewed Defendant in 1998 to investigate allegations of child abuse, and the State relied on this testimony to show that Defendant had been sexually abusing his daughter, the victim in the instant case. In Ground A(1), Defendant argues that counsel was ineffective for failing to "properly object" to the following statement made by the State during its opening:

You will hear that sexual activity between James Butler, also known as Christopher Lott, continued for years. It continued the entire time they lived in Palm Beach County, Florida. From 1993 to 1996. And [the victim] will tell you that her dad would tell her after he would touch her with his penis or his hand [that] you can't tell anyone because I'll go to jail . . . [the victim] is going to tell you that she moved

along with her dad and her mom and her brother, they move[d] to Oklahoma where the sexual acts continued. And then one day—

(Court's Ex. "A," Trial Tr. 281:20–282:10) (emphasis added).

The record reflects that defense counsel did object based on a *Williams*¹ Rule violation. (*Id.* at 282:11–19.) The conversation between the Court, the State, and defense counsel then moved to whether or not these acts in Oklahoma were inextricably intertwined with the charged offenses which took place in Florida; the Court ultimately overruled the objection. (*Id.* at 282:20–284:9.) Defendant argues that defense counsel erred in essentially conceding the *Williams* Rule-based objection and allowing the Court to overrule the objection based on the evidence being inextricably intertwined.

The *Williams* Rule prevents evidence of prior crimes or bad acts from being admitted unless it is relevant to prove something other than a person's character or propensity to do bad acts. *See* § 90.404(2)(a), Fla. Stat. (2016). However, evidence of other bad acts that are "inextricably tied to or inseparable from the charged crime" are admissible to establish the proper context of which the charged conduct arose. *Pagan v. State*, 830 So. 2d 792, 805 (Fla. 2002). Such inextricably intertwined acts "are inseparable from the crime charged" and are not considered *Williams* Rule evidence because of its purpose is to describe the alleged crime. *Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994) (citations omitted). The *Williams* Rule can be overcome if the inextricably intertwined evidence is used to adequately describe the charged act, to provide an intelligent account of the crime charged, to establish the entire context out of which the charged crime arose, or to describe the events leading up to the charged offense. *McGee v. State*, 19 So. 3d 1074, 1078 (Fla. 4th DCA 2009) (quoting *Dorsett v. State*, 944 So. 2d 1207, 1213 (Fla. 3d DCA 2006)).

¹ *Williams v. State*, 110 So. 2d 654 (Fla. 1959); *see also* § 90.404(2), Fla. Stat. (2016) (codifying *Williams*).

The record here reflects that the Court properly overruled the objection because the State's comment concerned inextricably intertwined conduct. The record shows that this statement alluded to the fact that Defendant had been sexually abusing the victim for years and that this continued abuse in Oklahoma is what ultimately led to how the charged offenses "came to light." *See Shively v. State*, 752 So. 2d 84, 85 (Fla. 5th DCA 2000) (holding that an uncharged act of "French-kissing" the victim was inextricably intertwined because it led to the disclosure of the charged conduct). Even if the Court erred in finding that this evidence was inextricably intertwined, Defendant cannot show prejudice because the evidence was still admissible under section 90.404(2)(b), Florida Statutes. That statute allows for other acts of "child molestation" to be admitted "for its bearing on any matter to which it is relevant" if the defendant is charged with a crime involving child molestation. § 90.404(2)(b), Fla. Stat. While evidence under section 90.404(2)(b) can still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, the collateral evidence here was "applied in a case in which the identity of the defendant is not an issue and the provision is used to admit evidence to corroborate the alleged victim's testimony," and was therefore admissible under section 90.404(2)(b). *McLean v. State*, 934 So. 2d 1248, 1263 (Fla. 2006). The Court denies Ground A(1) as legally insufficient.

B. Ground A(2): Failure to Object to Misleading Testimony

Defendant argues in Ground A(2) that the State asked Jennifer Hale specifically-worded questions on direct and redirect examination that were meant to confuse the jury and that counsel was ineffective for failing to raise an appropriate objection. The Court concurs with the State that these questions, when viewed in their full context, were appropriate and not designed to be misleading or confusing. (Court's Ex. "B," Trial Tr. 369:1-23, 403:12-404:11.) The Court hereby adopts the reasoning of the State's Response and denies Ground A(2).

C. Ground A(3): Failure to Object to Improper Bolstering

Ground A(3) alleges that the State improperly bolstered the credibility of the victim during the direct examination of Jennifer Hale and the cross-examination of Defendant. Specifically, Defendant notes that in both instances there was testimony that the victim was described as “an honest child” during an interview between Defendant and Jennifer Hale in 1998. Generally, it is improper for one witness to bolster the credibility of another witness as part of their testimony. *See Page v. State*, 733 So. 2d 1079, 1081 (Fla. 4th DCA 1999). However, as the State points out, neither Jennifer Hale nor Defendant simply testified that the victim was honest. Both testified to the fact that Defendant himself said that the victim “was an honest child,” but that there were occasions that she would lie, during an interview between the two in 1998. (Court’s Exs. “B,” “C,” Trial Tr. 374:4–24, 621:18–23.) The testimony adduced at trial was not an ultimate opinion as to whether or not the victim was honest but instead merely confirmed that Defendant himself had referred to the victim as being “honest” at that time. In addition, Defendant raised the same claim on direct appeal as it relates to his cross-examination by the State. (State Resp., Ex. “F,” Initial Brief 22–24.) That argument was considered by the district court on direct appeal and was “affirm[ed] without discussion,” therefore, Defendant cannot demonstrate prejudice under *Strickland* when the same claims were rejected by the appellate court. *See Lowe v. State*, 2 So. 3d 21, 37–38, 42 (Fla. 2008). Because Defendant did not suffer prejudice, Ground A(3) is denied.

D. Ground A(4): Failure to Object to Evidence Taken in Violation of *Miranda*

Ground A(4) of the instant Motion claims that defense counsel erred in failing to object to the introduction of Defendant’s statements that were made to Jennifer Hale. Defendant argues that these statements were inadmissible and should have been objected to by defense counsel since Jennifer Hale did not inform Defendant of his Fifth Amendment rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant also argues that the State knowingly presented false testimony in violation of *Giglio v. United States*, 405 U.S. 150 (1972).

Regarding the Defendant's *Miranda* argument, Jennifer Hale testified that she read Defendant a *Miranda* warning prior to interviewing him. (State Resp., Ex. "B," Trial Tr. 385:24–386:7.) However, since there was no recording or transcription of this interview presented at trial, there was some dispute as to whether or not a *Miranda* warning was given. (*Id.* at 387–94.)² The Court also notes that defense counsel did raise concerns based on *Miranda*, but that it is unclear from the face of the record whether a formal objection was made. (*Id.* at 378:2–12.) Nevertheless, even if we assume that no *Miranda* warning was read, Defendant has not alleged sufficient prejudice. While the United States Supreme Court has held that law enforcement must inform interviewees of their constitutional rights, *Miranda* warnings are only required during custodial interrogations. *Miranda*, 384 U.S. at 468–70; *Ross v. State*, 45 So. 3d 403, 414–15 (Fla. 2010).

Whether or not a custodial interview took place is a mixed question of law and fact, with the ultimate inquiry being whether or not “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.” *Mansfield v. State*, 758 So. 2d 636, 644 (Fla. 2000) (quoting *Ramirez v. State*, 739 So. 2d 568, 573 (Fla. 1999)). The Florida Supreme Court has provided a four-factor test to help determine whether or not a person was in custody: 1) the manner in which the suspect is summoned for questioning, 2) the purpose, place, and manner of the interrogation, 3) the extent to which the suspect is confronted with evidence of their guilt, and 4) whether the suspect is informed that they are free to terminate and leave the interrogation. *Ramirez*, 739 So. 2d at 574.

The Court finds that the *Ramirez* factors and the totality of the circumstances indicate that no custodial interrogation took place and counsel could not be deficient for failing to object based on a meritless argument. Although Defendant was confronted with evidence of his guilt, the other *Ramirez* factors indicate that Defendant was not in custody. Both Jennifer Hale and Defendant himself testified that he voluntarily appeared at the interview. (Court's Exs. "B," "C," Trial Tr.

² This dispute is the basis of Defendant's *Giglio* claim and will be discussed *infra*.

370:21–371:2, 618:18–619:1.) Defendant was also explicitly told that he was not under arrest and that the interview would not be recorded. (*Id.* at 371:3–17.) Finally, Defendant was not only told that he could terminate the interview if he wished but was, in fact, allowed to leave after the interview concluded. (*Id.* at 372:1–8, 379:19–21.) The Court concludes that the totality of the circumstances surrounding the interview did not transform it into a custodial interrogation, and so *Miranda* violation could have occurred. *Cf. State v. Scott*, 786 So. 2d 606, 607, 610 (Fla. 5th DCA 2001) (holding that a defendant who was confronted with her guilt but allowed the leave after she was questioned was not a custodial interrogation even though the defendant was not told she was free to leave during the interview).

Moving to the claims of a *Giglio* violation, Defendant argues that the State purposely lied about the documents it received from the State of Oklahoma and that it used knowingly false and misleading evidence to secure a conviction. This claim appears to arise from a bench conference between the parties about other reports Jennifer Hale may have prepared that were not provided to either the State or the defense. (Court’s Ex. “B,” 387:7–393:19.) Based on the record, there is no evidence that the State purposely presented false testimony, let alone that the State knew any testimony was false. *See Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003). For these reasons, Ground A(4) is denied.

E. Grounds A(5)/C: Failure to Object to Consciousness of Guilt Evidence

Defendant raises substantially similar arguments in Grounds A(5) and C. In both grounds, Defendant claims that counsel was ineffective for failing to object to extrinsic evidence that tended to show his consciousness of guilt. Ground A(5) involves Jennifer Hale’s testimony that, after she secured a warrant for Defendant’s arrest, Defendant apparently fled the State of Oklahoma and could not be found. Ground C concerns the testimony of two witnesses who testified that Defendant had been living in the State of Kentucky under the alias of “Christian Lott.” Ground C had been specifically raised on direct appeal and rejected by the district court, and so Defendant

cannot demonstrate prejudice as it relates to Ground C. (State Resp., Ex. “F,” Initial Brief 25–30); *Lowe*, 2 So. 3d at 42.

However, even if these claims had not been raised on direct appeal, Defendant cannot show prejudice because the State properly introduced the consciousness of guilt evidence. Evidence that a defendant evaded prosecution is admissible when the evidence is relevant to show the defendant’s consciousness of guilt. *See Mathis v. State*, 287 So. 3d 1268, 1270 (Fla. 1st DCA 2019). In contrast, consciousness of guilt evidence lacks probative value, and is therefore inadmissible, if: 1) the defendant was unaware at the time of the flight that they were under criminal investigation, 2) there are no clear indications that the defendant fled, or 3) there was a significant delay from the commission of the crime to the time of flight. *Escobar v. State*, 699 So. 2d 988, 995 (Fla. 1997) (quoting *Bundy v. State*, 471 So. 2d 9, 21 (Fla. 1985)), *abrogated on other grounds by Connor v. State*, 803 So. 2d 598 (Fla. 2001). The evidence here clearly shows that Defendant fled within days of being confronted with the fact that he was being investigated for sexually abusing his daughter and that his use of an alias thereafter was to avoid prosecution. The type of evidence elicited in Grounds A(5) and C was correctly admitted to show Defendant’s consciousness of guilt, and thus no prejudice could have resulted from counsel’s failure to object. Both Ground A(5) and C are denied.

F. Ground A(6): Failure to Object to In-Court Identification

Defendant argues in Ground A(6) that counsel was ineffective for failing to object to his in-court identification by Jennifer Hale. Defendant argues that such an identification was extremely prejudicial and improper. The Court agrees with the State that no prejudice can be shown since Defendant’s identity was stipulated to and was not an issue at trial. Also, in contrast to other in-court identification cases, Jennifer Hale’s identification was not for the purpose of establishing that Defendant was the perpetrator of the charged offense. Ground A(6) is denied.

G. Grounds A(7)/E: Cumulative Error

Since the Court has denied all of the other grounds for relief in the instant Motion, Defendant's cumulative error claim must also be denied. *See Parker v. State*, 904 So. 2d 370, 380 (Fla. 2005) ("when the individual claims of error alleged are either procedurally barred or without merit, the claim of cumulative error also necessarily fails.").

Accordingly, it is hereby

ORDERED that the Court adopts and incorporates into this Order the exhibits attached to the State's September 22, 2020 Response (DE #731). It is further

ORDERED that the Court hereby adopts the facts, legal analyses, and conclusions of law contained in the State's Response for Grounds "B" and "D" as its own, it is further

ORDERED that Defendant's March 11, 2019 "Motion for Postconviction Relief and Incorporated Memorandum of Law" (DE #698) is **DENIED**. Defendant may appeal this Order within thirty (30) days of rendition of this Order.

DONE AND ORDERED, in Chambers, at West Palm Beach, Palm Beach County, Florida.

  
502009CF004111AXXXMB 06/21/2021
Jeffrey Gillen Circuit Judge

502009CF004111AXXXMB 06/21/2021
Jeffrey Gillen
Circuit Judge

FURNISHED BY METHOD INDICATED TO:

Name	Address	Email
LINDA HARRISON	DC# B15441 LIBERTY C.I.	e-postconviction@sa15.org
JAMES BUTLER	11064 NW DEMPSEY BARRON ROAD BRISTOL, FL 32321	

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

April 08, 2022

CASE NO.: 4D21-2082

L.T. No.: 502009CF004111AXXXMB

JAMES R. BUTLER

v. STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellant's February 25, 2022 motion for rehearing and rehearing en banc is denied.

Served:

cc: Attorney General-W.P.B. James R. Butler

kr

Lon Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



Appendix C
page 1

Supreme Court of Florida

TUESDAY, MAY 17, 2022

CASE NO.: SC22-603

Lower Tribunal No(s).:

4D21-2082; 502009CF004111AXXXMB

JAMES R. BUTLER

vs. STATE OF FLORIDA

Petitioner(s)

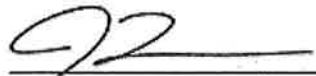
Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



Appendix D

APPENDIX - E

Exhibits For Ground A:

Exhibit A-1, (R.*) 001468, 001467

Exhibit A-2, (R.*) 000910

Exhibit A-3, (R.*) 000911

Exhibit A-4, (R.*) 001437, 001438

Appendix - E

1 THE COURT: All right. You may bring in the
2 jury.

3 THE BAILIFF: Jury entering.

4 THE COURT: Welcome back, ladies and
5 gentlemen. I apologize for the delay. It's
6 technology. So, our next witness is on the
7 monitor. If you can't see, we're going to ask you
8 go ahead if you want to move down in the box so
9 that you can see the monitor. Anywhere you like
10 inside the box. Wherever you're comfortable.

11 Mr. Noble, can you see from there?

12 MR. NOBLE: Yes, I can. Can I just move this,
13 this podium?

14 THE COURT: Yes.

15 MR. NOBLE: Is this blocking you all?

16 THE COURT: You're good, Mr. Noble, that's
17 fine.

18 Ms. Mixon, if you would ask that they swear
19 the witness there.

20 MS. MIXON: Okay.

21 Hi, can you hear me?

22 [REDACTED]: Yep.

23 MS. MIXON: And I'm going to ask him to swear
24 you in.

25 MR. JENKINS: Hi. This is Marcus Jenkins, a

Appendix E, Exhibit A-1
Pg. 1 of 2

1 MS. MIXON: Right.

2 THE COURT: -- opportunity to observe at all
3 times --

4 MS. MIXON: Right.

5 THE COURT: -- the demeanor of the witness.
6 The defendant has to have the opportunity to see the
7 witness and, obviously, the parties have to have the
8 opportunity to cross-examine.

9 And another issue that I was a little
10 understand clear on in Harrell they apparently I
11 guess okayed a procedure where I was able to -- or
12 the clerk here was able to swear the witness there.
13 That's not normally what you do on a telephonic
14 hookup but I guess maybe this is a little bit
15 different because you can actually observe the
16 witness, perhaps, but that's another issue is
17 administering the oath.

18 MS. MIXON: And I inquired about -- in the
19 course of swearing the witness in over there but, I
20 mean --

21 MR. NOBLE: Yeah.

22 MS. MIXON: -- I guess I can talk to Defense
23 about that (Indiscernible Words).

24 THE COURT: Well, apparently that was done in
25 Harrell. It's not normally absent stipulation done.

GILLIAN LAWRENCE, OFFICIAL TRANSCRIPTIONIST
Page 72

Appendix E, Exhibit A-2

000910
000587

1 I don't know --

2 MR. NOBLE: I have done that -- I haven't done
3 what they did in Harrell but I've done where when
4 you call -- you call somebody from a bank and they
5 have the notary there. The notary shows them the
6 ID.

7 THE COURT: No, I've done that before, too.
8 I'm just saying that in Harrell the procedure that
9 the trial court followed, apparently without any
10 problem recognized by the Supreme Court was, they
11 swore straight from the courtroom. They didn't use
12 -- they didn't use a notary at the location of the
13 witness is what I'm saying.

14 MR. NOBLE: Okay.

15 THE COURT: Yeah, typically absent -- absent
16 stipulation you can't even have telephonic testimony
17 so.....

18 MR. NOBLE: And, Your Honor, Mr. Butler just
19 wanted me to remind the Court that with the
20 satellite comes the opportunity -- there's no
21 consequences of being untruthful. He wanted me to
22 raise that with the Court.

23 THE COURT: Well, that's an issue -- that's a
24 factor you're supposed to consider in Harrell but I
25 don't think it's dispositive but I understand that

GILLIAN LAWRENCE, OFFICIAL TRANSCRIPTIONIST
Page 73

Appendix E, Exhibit A-3

000911
000588

1 THE COURT: Okay. Call Sean, he'll come in.

2 MS. MIXON: Yes.

3 THE COURT: All right. Why don't you go
4 ahead and do that, and we'll try to set this up and
5 get a connection.

6 MS. MIXON: Okay.

7 THE COURT: I'll step off for just a minute,
8 but if you need me, I'll come back out.

9 (COURT IN RECESS AT 2:29:50 O'CLOCK P.M.):

10 (THEREUPON, COURT BACK IN SESSION AT 2:55:31
11 O'CLOCK P.M. AND THE FOLLOWING PROCEEDINGS WERE
12 HAD):

13 THE BAILIFF: Court is back in session.

14 THE COURT: I just want to check on one thing,
15 I'll step off. You have no had an opportunity to
16 speak yet?

17 MR. NOBLE: No.

18 THE COURT: Did you want her sworn for what
19 you're doing and then resworn when the jury comes
20 in?

21 MR. NOBLE: Your Honor, we could do both. I
22 have no problem of the Court taking judicial notice
23 that she's been sworn in.

24 THE COURT: You're going to want to swear her
25 in front of the jury, but I'm saying do you want

Appendix E, Exhibit A-4
pg. 1 of 2

Lisa M. Martin, Certified Electronic Transcriptionist

001437

APPENDIX - F

Exhibits For Ground B

Exhibit m-1, Order of Release

Exhibit m-2, (T.*) 385

Exhibit m-3, (T.*) 403

Exhibit m-4, (R.*) 002169, 002170

Exhibit m-5, interview with J.R. Butler, 5-12-88

Exhibit m-6, interview with P.S. Butler, 5-13-88

Appendix F

ORDER OF RELEASE FROM CUSTODY

TO THE SHERIFF OF SEQUOYAH STATE OF OKLAHOMA, it is ordered that said defendant be released, if in your custody for no other cause, immediately upon receipt of this order.
 (last name, first, middle, suffix (please print or type) (show alias)

BUTLER, JAMES

268-56-2485

09-09-56

WARRANT/CASE NUMBER	REASON FOR RELEASE	DESCRIPTION OF CHARGE
CM-98-286	BONDED TO	Viol. of EPO
	MERRICK	
	BONDING	
	\$2,500.00	
		SEQUOYAH COUNTY, OKLAHOMA FILED IN DISTRICT COURT
		MAY 27 1998
		BERNELL EDWARDS, COURT CLERK BY <u>ew</u> DEPUTY

In aid of the District Court of Sequoyah County, State of Oklahoma, witness my hand this the 13 day of
 MAY 1998

White Copy - Court
 Yellow Copy - Sheriff's File

Signature

AUTHORIZED BY

JUDGE OF THE DISTRICT COURT

Appendix F, Exhibit M-1

1 right?

2 A Yes.

3 Q And one of the things they teach you in the academy
4 is when you're drafting a police report, it's actually for
5 all intents and purposes a probable cause affidavit, right?

6 A The basic report, yes.

7 Q What I'm getting at is the purpose of filing a
8 report in the majority of cases is to affect an arrest,
9 right?

10 A Yes. And I do not have a copy of that report.

11 Q Okay.

12 A I have a copy of my interviews.

13 Q Okay. But you don't have them. And you have a
14 copy of your recorded interview with Peggy Sue Butler, right?

15 A No, I do not.

16 Q Did you have an opportunity to look at it before
17 you came to court today?

18 A No, I haven't.

19 Q But, regardless of that, you don't have - - there's
20 no way you could have anything recorded for Mr. Butler,
21 right?

22 A I don't.

23 Q Okay.

24 Now, when you said you invited Mr. Butler and he came in
25 and you did not read him Miranda?

Appendix F, Exhibit M-2

Lisa M. Martin, Certified Electronic Transcriptionist

1 THE COURT: Disregard what, forensic
2 examination?

3 MS. RICHARDSON: (Inaudible, 11:59:04.)

4 THE COURT: I'm just going to sustain the
5 objection, have her move in a different direction.
6 It's not responsive to your question is the real
7 objection.

8 (THEREUPON, BENCH CONFERENCE CONCLUDED AT
9 11:59:15 O'CLOCK A.M. AND THE FOLLOWING PROCEEDINGS
10 WERE HAD):

11 BY MS. RICHARDSON:

12 Q So, Ms. Hale, I just want to make sure that we're
13 clear, May 12, 1998, you take your two page notations of your
14 interview with Peggy Sue Butler?

15 A Yes.

16 Q Six days later, May 18, you take your typed written
17 notes of your interview with James Butler?

18 A Yes.

19 Q Both of those separate sets of typed written notes
20 from those non-recorded interviews are all forwarded to the
21 State Attorney's Office?

22 A Yes.

23 Q Subsequent to that, a June 23rd videotaping was done
24 for the purposes of the Florida investigation where Peggy Sue
25 gave a statement on video?

Appendix F, Exhibit-M3

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1 A I read him Miranda.

2 Q You did read him Miranda, okay.

3 Is reading Miranda something that's extremely important
4 before you interview somebody?

5 A Yes, it is.

6 Q Okay. And when you read Miranda, is that something
7 you include in a report that you write?

8 A It would be in the basic report sent to the DA.

9 Q Okay.

10 Do you recall - - now you took notes, you said earlier
11 you took notes of the interview with Mr. Butler, right?

12 A Yes.

13 Q Okay. And I believe you send that to the district
14 attorney's office?

15 A Yes.

16 Q Would that be the 27th district attorney's office?

17 A Yes, 27th district.

18 MR. NOBLE: Your Honor, if I may approach this
19 witness?

20 THE COURT: Yes.

21 MR. NOBLE: Okay.

22 BY MR. NOBLE:

23 Q Do you recognize this document?

24 A Yes.

25 Q Okay. What is that document?

Appendix F, Exhibit M-4
pg. 1 of 2

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002169

M

27th DISTRICT ATTORNEY'S OFFICE

REPORT:

INTERVIEW WITH JAMES R. BUTLER

James R. Butler (w/m) DOB: 09/09/56 SSN: 2684562485

Address: Unknown

On May 12, 1998 myself and child welfare worker Paula Padget conducted an interview with James Butler at the office of the District Attorney in Sequoyah county. Padget informed me that she had conducted an interview with the alleged victim, P. S. B. (a juvenile). This interview revealed that Butler was allegedly having sex with P. S. B., his biological daughter.

Butler describes his daughter as being the "light of his life." He advised she was born early and almost didn't make it. They became really close. P. S. B. has always been "special." She slept with Butler and his wife Josie just until recently. He stated that P. S. B. was "frightened at night" and if she slept in the bed, she was in there either before he went to bed or after he went to bed. Never at the same time. He credits "pulling through things" because of P. S. B. being a responsibility to him. He advised he would buy her anything she wants.

Butler states he has no relationship with his son R. B. (a Juvenile). Butler advised that R. B. has been trouble ever since he was little. Advised it was his fault because he taught R. B. to make his own decisions. He also stated that he and R. B. "used" to do things together, like hunt and fish, and the cub scouts. Butler states he was a leader for R. B.'s scout troop. When asked how he would discipline R. B. Butler stated he yelled at him, grabbed his hair (because R. B. could outrun him). Also advised that he "threw rocks" at him, but also advised he "never hit him." Butler advised that R. B. spent a lot of time away from home. Stated that mother would sometimes "throw him out".

Butler advises that he has taught his children "100% of their education". He stated that Josie "doesn't know book learning." Stated that R. B. was very intelligent. Butler advised that R. B. had been expelled from school and that he was doing home schooling. He stated that the school said he could only go to alternative school for 10 days.

INVESTIGATOR: J. HALE

DATE: 05/12.98 TIME: 2:00 P.M. LOCATION: DISTRICT ATTORNEY'S OFFICE

CASE #: OFFENSE: CHILD SEXUAL ABUSE

VICTIM: PEGGY SUE BUTLER (A JUVENILE)

27TH DISTRICT ATTORNEY'S OFFICE

REPORT:
INTERVIEW WITH P. S. B. (A JUVENILE)

P. S. B. (w/f) DOB: 09/10/88 SSN: 592767793
ADDRESS: Rt. 1, Box 208-5
Vian, OK 74962

On May 18, 1998 I conducted an interview with P. S. B. at the Child Welfare Office in Sallisaw. She was taken into D. H. S. custody on the 15th of May because D. H. S. didn't feel the mother could protect the child from the father. There has been a history of violence in the home initiated by the father. Everyone in the home is afraid of him.

When I first met with P. S. B. she appeared to have a bubbly personality. I introduced myself and we talked about school and her friends and other things that would break the ice. I asked her if she knew why I was there and she shrugged her shoulders and said "I don't know."

I asked her if she knew the difference between a truth and a lie. She stated that she did and said a truth was good and a lie was bad. I asked her if I told her it was raining outside (it was not) would that be a truth or a lie. She advised it would be a lie. I then held up a pink comb and asked her if I told her the comb was pink, would that be a truth or a lie and she stated it would be a lie.

I asked her to tell me what was going on at home. She stated that her dad was mean and he had to leave. When I asked her how he was mean, she stated that he had hit R. B. and had thrown rocks at him. Then he hit her mother, so they left the house and went somewhere else until her daddy was in jail.

I asked her if anything else was going on in the house that she wanted to tell me about. At first she just put her head down and shrugged her shoulders again. There was a short silence and then she told me that her dad would touch her were he shouldn't touch her. I asked her what area's was she not supposed to be touched in. She stated the area that her bathing suit covered. I asked her to show me the area that he had touched and she point to her vaginal area. I asked her what that area was called and she it her privates.

INVESTIGATOR: J. HALE
DATE: 05/18/98 TIME: 8:30 A.M. LOCATION: D. H. S. Child Welfare Office
CASE #: OFFENSE: CHILD SEXUAL ABUSE
VICTIM: PEGGY SUE BUTLER (A JUVENILE)

1

Appendix F, Exhibit m-6

APPENDIX-G

Exhibits for Ground G.

Exhibit G1, (T*) 388

Exhibit G2, (R*) 001349, 001350

Exhibit G3, Felony Evidence Checklist

Appendix-G

1 discovery violation, I am not alleging that the
2 State's failure to furnish me with a copy was
3 willful. But, Your Honor, this is key because this
4 is the first time we've heard about Miranda being
5 given.

6 MS. RICHARDSON: It's a 1998 case. When we
7 request all the documents in Oklahoma, we only have
8 what they give us. What they gave us are, two
9 written statement reports from Mrs. Hale. So, we
10 have two typed written reports from the victim's
11 statement as well as this defendant's statement.
12 No other documents from law enforcement or the
13 State attorney's office in the State of Oklahoma
14 have been provided to us. We have nothing else to
15 turn over.

16 MR. NOBLE: Which is why I'm not alleging a
17 willful violation.

18 THE COURT: Right. But the question becomes
19 whether it's a discovery violation.

20 MR. NOBLE: Yes.

21 THE COURT: Initially before you even get to
22 the Richardson hearing, whether it's willful or
23 substantial and all that.

24 MR. NOBLE: It is mistaken, correct me if I'm
25 wrong, and I think Your Honor knows this too, but

Appendix G, Exhibit G-1

Lisa M. Martin, Certified Electronic Transcriptionist

001348

1 the case law is pretty clear that documents in the
2 possession of law enforcement and the discovery
3 that's in possession of law enforcement is imputed
4 to the State. So, what I'm saying is by no means
5 am I alleging that these two state attorney's, let
6 alone, any state attorney in Palm Beach County
7 willfully - -

8 THE COURT: Keep it down, because they can
9 hear.

10 MR. NOBLE: I am not alleging any willful
11 misconduct on the part of the state attorney's
12 office. What I'm alleging is inadvertently conduct
13 to the extent that there are documents that exist.
14 They did - -

15 THE COURT: Well, we don't know that they
16 exist at this point. It's 18 years ago and - -

17 MR. NOBLE: Well, she just said they did.

18 THE COURT: No, she said existed at one time.
19 The question is do they exist now. I'm assuming
20 the State requested all documents related to this
21 investigation.

22 MS. RICHARDSON: Correct.

23 THE COURT: And whether they've maintained
24 those or, you know, for how long, I don't know. I
25 mean, the problem is it's 18 years ago. So, the

Appendix G, Exhibit G-2
pg 1 of 2

Lisa M. Martin, Certified Electronic Transcriptionist

001349

FELONY DIVISION EVIDENCE CHECKLIST

<u> </u> Narcotics	<u> </u> Fingerprints
<u> </u> Paraphernalia	<u> </u> fingerprint analysis
<u> </u> U.S. currency	<u> </u> DNA
<u> </u> Video tape	<u> </u> Photographs
<u> </u> Citations/Driving Records	<u> </u> Photo line up
<u> </u> Miranda Card	<u> </u> 911 tape/CAD report
	<u> </u> Property Receipts

STATEMENTS:

 Defendant

 Co-Defendant

 X Witness (victims [redacted] (audio) (victims [redacted] (video) (victims [redacted] (video))

 Other

Other:

ROUGH ARREST (victims [redacted]; P.C. AFFIDAVIT (1 PAGE, VICTIM [redacted];
OFFENSE/INCIDENT REPORT (2 PAGES, VICTIM [redacted]; NARRATIVE
CONTINUATION (1 PAGE, VICTIM [redacted]; COPY OF A.D.W.; P.C. AFFIDAVIT
SUPPLEMENTAL REPORT (3 PAGES, VICTIM [redacted] PREPARED BY YUNGK);
P.C. AFFIDAVIT (3 PAGES, VICTIM [redacted]; OFFENSE REPORT (2 PAGES, VICTIM
[redacted]; C.I.D. CASE ACTIVITY REPORT (4 PAGES, VICTIM [redacted];
INTERVIEW REPORT FROM [redacted] FROM 27th D.A. OFFICE (2 PAGES);
INTERVIEW REPORT WITH JAMES BUTLER FROM 27th D.A. OFFICE (4 PAGES);
JUSTICE CENTER REPORT (6 PAGES); OKLAHOMA DEPT. OF HUMAN SERVICES
REFERRAL REPORT (8 PAGES); AFFIDAVIT, INFORMATION, WARRANT, BOND
AND ORDER OF RELEASE FROM OKLAHOMA; ROUGH ARREST (victims [redacted];
P.C. AFFIDAVIT (1 PAGE, VICTIM [redacted]; OFFENSE REPORT (2 PAGES, VICTIM [redacted];
FLORIDA PROTECTIVE SERVICES ABUSE REPORT) P.C. AFFIDAVIT (1 PAGE, VICTIM [redacted])

All items in offense reports and property receipts.

Copies of all recordings are to be obtained from the Police Department.

KENTUCKY OFFENDER DISPOSITION REPORT; KYBERS REPORT; KENTUCKY STATE POLICE
KENTUCKY UNIFORM CITATION; KENTUCKY WARRANT OF ARREST; ARREST DATA SHEET;
KENTUCKY CRIMINAL COMPLAINT; KYBERS REPORT SUPPLEMENT (2 PAGES);

301 N. Dixie Highway, Royal Palm Beach, Florida 33401-0204
 (561) 352-7100

Appendix G, Exhibit EC-1

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