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WITNESS INDEX

<u>WITNESS:</u>	<u>EXAMINATION BY:</u>	<u>PAGE:</u>
HARLAN SCHWARTZ	Ms. Johnston	11 - 15
	Mr. Laufenberg	15 - 17

EXHIBIT INDEX

<u>NUMBER:</u>	<u>PAGE:</u>
1 --	
2 --	

OBJECTION INDEX

<u>BY:</u>	<u>PAGE:</u>
(No objections were made during the course of this hearing.)	

## PROCEEDINGS

1  
2 THE COURT: State of Wisconsin.

3 MS. JOHNSTON: State of Wisconsin vs.  
4 Robert Peterson, 00-CF-24 and 00-CM-2. State  
5 appears by District Attorney Mara Johnston. The  
6 defendant appears in person with his attorney,  
7 Wright Laufenberg.

8 MR. LAUFENBERG: Judge, we were set  
9 this morning for, I believe, a preliminary  
10 hearing, I believe, in the felony case. However,  
11 the defense has filed a motion to dismiss that  
12 allegation. It was filed May 24, and we are  
13 prepared to argue that motion first.

14 THE COURT: You may argue the motion.

15 MR. LAUFENBERG: Judge, what we have  
16 filed on behalf of Mr. Peterson is a motion to  
17 dismiss the sexual assault allegation against him  
18 for selective prosecution. The basis of this  
19 motion, judge, is the underlying charge against  
20 Mr. Peterson is that he is alleged to have had  
21 sexual relations without the consent and with the  
22 threat of use or force against a juvenile J.K.R.  
23 who was 15 and a half or 15 and three quarters at  
24 the time of these allegations which occurred  
25 approximately March, April and May of 1999, the

1 two separate allegations.

2 At the time of these allegations,  
3 Mr. Peterson was also a minor under the age of  
4 18. The information contained in the criminal  
5 complaint and the other discoverable information  
6 confirms that, in fact, a crime was perpetrated  
7 upon a body of Mr. Peterson also by the juvenile  
8 in this case, that being J.K.R. Basically,  
9 judge, under count two of the allegation, it's an  
10 allegation of oral sex in a car. Basically there  
11 were two boys and two girls and they were  
12 girlfriend/boyfriend or some type of a  
13 relationship, and the girl, not the alleged  
14 victim, made a statement to the police officers  
15 that they were driving down the road. These two  
16 boys had given them a ride and we will say T for  
17 T.A.G.. T.A.G. stated that J.K.R., meaning the  
18 victim, turns to her and asks whether or not  
19 they, meaning the two girls, were going to give  
20 the two boys, quotation marks, blow jobs for  
21 giving them a ride in the vehicle. The  
22 allegation is then that they did do that.

23 There is no evidence or there is other  
24 evidence from Mr. Peterson that the investigating  
25 officers looked into six months ago or nine



1 months ago confirming that the aggressor in that  
2 criminal action, judge, in initiating that sexual  
3 contact was the juvenile girl between a year and  
4 three quarters or two years difference in age.

5 Certainly there is the D.A.'s own  
6 information, and from the D.A.'s own charging  
7 section of the criminal complaint, there is a  
8 crime committed by this girl on Mr. Peterson.  
9 Now, I have asked for information and we have no  
10 information, and it is our belief that there has  
11 been no crime charged against the aggressor in  
12 that action, meaning the juvenile girl. There  
13 was the one that initiated the oral sex. It was  
14 her idea pursuant to her friend's statements to  
15 law enforcement. We believe this is a selective  
16 prosecution. They're prosecuting the male in  
17 this relationship because they believe that  
18 somehow this was not consensual or that he was  
19 two years older; but according to the laws of the  
20 State of Wisconsin, there has been a crime  
21 perpetrated on him by this person, and we believe  
22 that that is selective prosecution, that it is  
23 unfair. That denies the equal protection under  
24 the United States constitution and that the  
25 charge should be dismissed.

1 THE COURT: Would you like to respond?

2 MS. JOHNSTON: Yes. In order for  
3 something to be determined as selective  
4 prosecution under the law, there are two methods.  
5 One, it is a solitary prosecution. In order for  
6 the defense to succeed on that type of a motion,  
7 he must make a substantial showing that the  
8 state's discriminatory selection for prosecution  
9 is based on a desire to prevent the exercise of  
10 constitutional rights or motivated by personal  
11 vindictiveness. That is according to State vs.  
12 Barman, B-A-R-M-A-N, 183 Wis 2d 180. That's a  
13 Court of Appeals case from 1994. I don't think  
14 that the defense is making that claim and has  
15 definitely not made that showing.

16 The other type of selective  
17 prosecution is that the defense is claiming that  
18 the state has improperly decided to prosecute a  
19 defendant based on his membership in a vulnerable  
20 group. I believe the defense is claiming today  
21 that his vulnerable group is an adult male under  
22 the law. Mr. Peterson was, in fact, over the age  
23 of 16. He may not have been 18 at the time but  
24 he was nonetheless older than the juvenile at the  
25 time. He is claiming that a juvenile under the

1 age of 16 who cannot give consent under the law  
2 could possibly be an aggressor in a sexual  
3 situation. In fact, he has not provided the  
4 showing that it would be necessary to prove that  
5 Mr. Peterson is a member of a vulnerable group.  
6

7 In fact, the victim in this case is  
8 the one who is a member of a vulnerable group as  
9 a juvenile female in a sexual situation because  
10 the defense cannot prove that in any way  
11 Mr. Peterson is a member of such a vulnerable  
12 group. The motion based on selective prosecution  
13 has to fail. The case determining -- the case --  
14 there are several cases regarding selective  
15 prosecution. One being State vs. McCollum 159  
16 Wis 2d 184, a court of appeals case from 1990,  
17 and that's where the court has stated that the  
18 defense has to prove that the defendant is in a  
19 member -- is a member of a vulnerable group,  
20 which I don't think the defense has done here,  
21 and I don't think they can do. I have nothing  
22 further.

22 THE COURT: Response.

23 MR. LAUFENBERG: Judge, I forget where  
24 it was exactly in the state's argument but the  
25 state seemed to say that the 16-year-old girl or



1 15 and three quarters could not be the aggressor  
2 and the initiator, that somehow under the law,  
3 you can't -- she can't commit a crime, that she  
4 can't be the aggressor in a sexual situation.  
5 All of the information that the police have in  
6 their possession where three out of the four  
7 people involved in the car is that she is the one  
8 that says we will give these guys oral sex and  
9 they do it.

10 It is just so inherently unfair under  
11 the law to say she is the initiator. The police  
12 have all of the information that these girls  
13 initiated, perpetrated the act on him, but we  
14 will charge him with a sexual assault. I believe  
15 that violates the equal protection clause. He is  
16 a juvenile under the age of 18.

17 THE COURT: Juvenile for criminal  
18 purposes, that starts at 17.

19 MR. LAUFENBERG: He is a minor and  
20 under the age of 18.

21 THE COURT: He is an adult for  
22 criminal prosecution at age 17.

23 MR. LAUFENBERG: I'm talking about his  
24 role as a victim, judge. As a victim, he is in  
25 that class as a minor because he is under the age



1 of 18.

2 THE COURT: Novel argument,  
3 Mr. Laufenberg, totally without merit.  
4 Absolutely 100 percent no merit. He is 17, an  
5 adult for criminal purposes. He has duties. One  
6 of those duties is not to succumb to the  
7 enticements of a 15-year-old girl because he is  
8 supposed to know better. He is not being  
9 discriminated against in terms of this  
10 prosecution. There is no showing of any personal  
11 vindictiveness by the district attorney. He is  
12 not a member of a vulnerable group except maybe  
13 the vulnerable group of stupid guys, but I don't  
14 think they're entitled to constitutional  
15 protection. He was 17. She was 15. Under the  
16 law, she is the victim, he is not. The court is  
17 satisfied that the defense has failed to make a  
18 showing that this is a discriminatory prosecution  
19 and deny the motion.

20 MR. LAUFENBERG: A point for the  
21 record. You are saying that -- you've just said  
22 it is impossible that this girl committed a  
23 criminal act. Is that what the court has just  
24 ruled? That a girl has been the initiator in a  
25 sexual aggression, that she has to a 17-year-old

1 boy said they were going do this, unzipped his  
2 pants, started to have oral sex with them, and  
3 you are placing some type of a burden on a  
4 17-year-old boy and you are saying that is not a  
5 criminal act by a girl doing this to a gentleman  
6 under the age of 18, and I believe Wisconsin  
7 statutes has a specific statute that you are not  
8 allowed to have sex under the age of 18 and she  
9 is having sex under the age of 18. She is the  
10 initiator and you are telling us that that is not  
11 a crime?

12 THE COURT: I'm not saying that at  
13 all.

14 MR. LAUFENBERG: That is exactly what  
15 you said, Your Honor --

16 THE COURT: I don't think you should  
17 argue with the court, Mr. Laufenberg, because I  
18 think you will lose on this argument. The point  
19 is this, the state has charged an adult with  
20 having sex with a minor who cannot consent to  
21 have sex with anybody. Now, whether or not she  
22 might be a child in need of protection or  
23 services, maybe a juvenile in need of protection  
24 and services, perhaps even a delinquent is not  
25 relevant. The issue is your client's conduct in

1 his criminal proceeding, not hers, so the court  
2 stands by its ruling, it is denied. We will  
3 proceed to the preliminary hearing. Call your  
4 witnesses.

5 MS. JOHNSTON: State calls Harlan  
6 Schwartz.

7 THE COURT: Mr. Schwartz, please step  
8 up and the clerk will swear you.

9 HARLAN SCHWARTZ,  
10 after having been first duly sworn  
11 was examined and testified on oath  
12 as follows:

13 DIRECT EXAMINATION

14 BY MS. JOHNSTON:

15 Q Please state your name and spell your last name?

16 A Harlan Schwartz, S-C-H-W-A-R-T-Z.

17 Q And how are you employed?

18 A I'm a juvenile officer with the Sheriff's  
19 Department here in Taylor County.

20 Q Were you on duty on September 20 of 1999 at  
21 approximately 8:22 a.m?

22 A Yes, I was.

23 Q And what were your duties at that time?

24 A I believe at that time I met with Jerilyn Rakovek  
25 at her residence.



1 Q Did you have occasion on that morning to speak  
2 with the defendant?

3 A I'm not sure. I would need to review my records.  
4 There were several incidents of meeting with both  
5 the victim --

6 MS. JOHNSTON: Your Honor, may the  
7 witness review his notes to refresh his  
8 recollection?

9 THE COURT: Sure.

10 MR. LAUFENBERG: Judge, we will  
11 stipulate to -- I think what the state is seeking  
12 to do is confirm that a statement was given to  
13 this officer by Mr. Peterson, and they are  
14 seeking to use that as a basis for their seeking  
15 a bind over, and I have no objection to the  
16 introduction of that document.

17 THE COURT: Any objection to that  
18 then, Ms. Johnston?

19 MS. JOHNSTON: No.

20 THE COURT: The court will receive the  
21 document. Has it been marked?

22 MS. JOHNSTON: Not yet.

23 MR. LAUFENBERG: The September 20,  
24 1999 statement, Ms. Johnston?

25 MS. JOHNSTON: Yes.

1 THE CLERK: Number one and two being  
2 marked.

3 (Exhibit Nos. 1 and 2 were marked for  
4 identification.)

5 DIRECT EXAMINATION

6 BY MS. JOHNSTON:

7 Q When you met with Mr. Peterson on September 20,  
8 did you first read him his Miranda warnings?

9 A Yes, I did.

10 MR. LAUFENBERG: May I see that, Mara?  
11 Judge, I also have no objection for the purposes  
12 of today's hearing for the introduction of that  
13 document either.

14 THE COURT: The exhibit is received.

15 MS. JOHNSTON: Okay.

16 DIRECT EXAMINATION

17 BY MS. JOHNSTON:

18 Q Did Mr. Peterson ask you any questions about his  
19 Miranda warnings at that time?

20 A No, he did not.

21 Q Did he then proceed to give you a statement?

22 A Yes, he did.

23 Q I'm showing you Exhibit 2, which I guess has  
24 already been received. When you spoke to  
25 Mr. Peterson, did you ask him anything about his

1 relationship with the juvenile?

2 A Yes, I did.

3 Q And what did he tell you?

4 A He had indicated to me that he had been dating  
5 Jerilyn from December until May or June of 1999.

6 Q And did he tell you anything with regard to the  
7 nature of their relationship?

8 A Robert had indicated that they had been having  
9 sex and that I believe he had indicated it had  
10 started a month or two after they started dating.

11 Q Do you know Jerilyn's birth date?

12 A October of '83.

13 Q Which would make her how old at the time that  
14 Mr. Peterson indicated he was having sex with  
15 her?

16 A Provided that they had broke up in May or June,  
17 she would have been, I believe, 16 at the latest  
18 point.

19 Q And at the earliest point when Mr. Peterson  
20 admits to having sex with her?

21 A 15.

22 Q Did Mr. Peterson then sign the statement on  
23 Exhibit 2?

24 A Yes, he did.

25 Q Did he make any changes?



1 A Not that day.

2 MS. JOHNSTON: Nothing further.

3 THE COURT: Mr. Laufenberg.

4 CROSS-EXAMINATION

5 BY MR. LAUFENBERG:

6 Q Did he make statements regarding the sexual  
7 assault allegation to you, deputy, or excuse me  
8 is it investigator?

9 A Yes. During the statement, yes he did.

10 Q Are they noted in there by the crossing off of  
11 words and initials?

12 A Yes.

13 Q You're not saying he made a completely different  
14 three-page statement?

15 A No, I believe it was probably about a month later  
16 he had contacted me and advised me there were  
17 some parts of his statement that weren't  
18 completely correct and we basically did another  
19 statement indicating which parts of this one were  
20 not correct. I don't believe that any of that  
21 next statement had anything to do with the sexual  
22 contact between him and Jerilyn.

23 Q That was related to a different offense?

24 A Correct.

25 Q There were no major changes other than the little

1 cross-offs and initials relating to the statement  
2 about the sexual assault?

3 A Right.

4 Q Okay. It's fair to say, investigator, that in  
5 the statement Mr. Peterson gave, he certainly  
6 didn't confess to forcing the juvenile to do  
7 anything?

8 A No, I don't believe he did.

9 Q And he confirmed with relation to this incident  
10 in the car at least in his opinion that she was  
11 the aggressor and she is the one that initiated  
12 that contact?

13 A That was his version to me, yes.

14 Q And that was also the version of the other  
15 gentleman in the car, that being --

16 A Mr. Bacon.

17 Q -- is that correct?

18 A Yes.

19 Q And also the version of the other female in the  
20 car, that being T.A.G.?

21 A Yeah, I don't believe I was able to get a  
22 statement from her but --

23 THE COURT: Her being T.A.G.?

24 THE WITNESS: Correct.

25 CROSS-EXAMINATION.

1 BY MR. LAUFENBERG:

2 Q You received a copy of the one she gave to Wood  
3 County?

4 A Yes.

5 Q And the only one with a different story on what  
6 happened in that vehicle was the alleged victim  
7 in this case J.K.R.?

8 A Correct.

9 MR. LAUFENBERG: Okay. Thank you,  
10 investigator. I have no further questions.

11 MS. JOHNSTON: I have nothing further,  
12 Your Honor, and I don't have any further  
13 witnesses either.

14 THE COURT: You may step down, sir.

15 (The witness was excused.)

16 MR. LAUFENBERG: Judge, I have no  
17 witnesses on this issue at this time.

18 THE COURT: Any further argument then?

19 MS. JOHNSTON: Your Honor,  
20 Investigator Schwartz testified that Mr. Peterson  
21 gave him a statement admitting that he had sexual  
22 intercourse with Ms. Rakovek. He testified that  
23 her date of birth was 1983; and during the time  
24 period when Mr. Peterson admits to having sexual  
25 relationship with her, she would have been 15 and



1 at some point turned 16. The state believes that  
2 the evidence presented constitutes probable cause  
3 to believe that a felony was committed and that  
4 it was committed by the defendant and asks the  
5 court to bind him over for trial.

6 THE COURT: Mr. Laufenberg.

7 MR. LAUFENBERG: Judge, I would agree  
8 that that forms the basis of a belief that a  
9 felony was committed. It certainly does not form  
10 the basis that the charges in the criminal  
11 complaint were proven in any way, shape or form  
12 because those allegations allege the use of  
13 force. I have no further argument, judge.

14 THE COURT: The court is satisfied  
15 there is probable cause to believe that a felony  
16 was committed and probable cause to believe that  
17 Mr. Peterson did commit the felony. The court  
18 will bind him over for arraignment. Are you  
19 prepared for an information this morning?

20 MS. JOHNSTON: I am not. I ask that  
21 arraignment be held on July 11 at normal criminal  
22 intake at a time when Mr. Laufenberg would be  
23 available.

24 THE COURT: Do you have a time?

25 MS. JOHNSTON: 2:00, Your Honor.

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THE COURT: So ordered. 2:00 on  
July 11. Bond continued?

MS. JOHNSTON: Please.

THE COURT: Then court is in recess.

(The record was concluded at this  
point.)

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REPORTER'S CERTIFICATE

STATE OF WISCONSIN)  
COUNTY OF TAYLOR ) ss.

I, Lisa M. Weber, official court reporter/notary public, do certify that the attached transcript is a true and accurate transcript of my stenotype notes transcribed by me and that the same is a true and correct record of the proceedings held on the 29th day of June, 2000.

DATED THIS 18TH DAY OF APRIL, 2003.



LISA M. WEBER, RPR, CRR

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