

* * * PARTIAL TRANSCRIPT * * *

V I R G I N I A

CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

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 :
 COMMONWEALTH OF VIRGINIA :
 :
 -vs- :
 :
 TROY LEE VANDIVER, :
 :
 Defendant :
 :
 - - - - - x

CASE NOS. 14001529-01
16000624 through 16000631

Courtroom 6

Manassas, Virginia

Thursday, November 10, 2016

The above-entitled matter came on to be heard before the HONORABLE CARROLL A. WIEMER, Judge, in and for the Circuit Court of Prince William County, in the Courthouse, 9311 Lee Avenue, Manassas, Virginia, beginning at 10:22 o'clock a.m. when there were present on behalf of the parties:

APPEARANCES:

On Behalf of the Commonwealth:

Lauren T. Pomerantz, Esquire
 Emily Langston, Esquire
 Assistant Commonwealth Attorney
 Prince William County

On Behalf of the Defendant:

Kristen M. Frost, Esquire

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
AMY ASHWORTH	3	15	--	--

* * * * *

E X H I B I T S

<u>EXHIBIT</u>	<u>MARKED</u>	<u>RECEIVED</u>
DEFENSE EXHIBIT A Email dated August 4, 2016	39	39

P R O C E E D I N G S

(The Court Reporter was duly sworn by the
Court.)

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Whereupon,

AMY ASHWORTH

a witness, was called for examination by counsel on behalf
of the Commonwealth, and after having been duly sworn by
the Clerk of the Court, was examined and testified, as
follows:

D I R E C T E X A M I N A T I O N

BY MS. POMERANTZ:

Q Ma'am, would you state your name, please?

A Amy Ashworth.

Q Ms. Ashworth, are you currently working as an
associate in a local law firm?

A No, I'm a partner in a local law firm.

Q Pardon me. Thank you for that correction.

Prior to your employment as a partner in a
local law firm were you working as an Assistant
Commonwealth's Attorney in the Office of the

1 Commonwealth's Attorney in Prince William County?

2 A Yes.

3 Q How many years were you with that office?

4 A Eleven years.

5 Q And before you took your position as a partner
6 in another law firm, were you recently assigned within the
7 Office of the Commonwealth's Attorney to a unit for crimes
8 against children?

9 A Yes.

10 Q And as a prosecutor in that unit were you
11 assigned to work with specific detectives in the police
12 department's counterpart to that unit?

13 A Yes.

14 Q That's the Special Victims Bureau of the
15 police department, correct?

16 A Yes.

17 Q And were you assigned at some point to work
18 with Detective Whitney Lanier in that companion unit in
19 the police department?

20 A Yes.

21 Q Okay.

22 Were you working with Detective Lanier in
23 2013?

1 A Yes.

2 Q At some point in 2013 did you become aware of
3 allegations of sexual abuse involving this defendant, Troy
4 Vandiver, and his granddaughter Lexi Guinn?

5 A Yes.

6 Q Was that through Detective Lanier who made you
7 aware of those allegations?

8 A Yes.

9 Q Okay.

10 After hearing from Detective Lanier about
11 those allegations, did you understand that Mr. Vandiver
12 was being prosecuted in Colorado for offenses involving
13 that same victim?

14 A Yes.

15 Q Okay.

16 Did you make a decision with Detective Lanier
17 to monitor the progress of that trial in Colorado before
18 making decisions about your prosecution in Virginia?

19 A I don't believe so. I believe we charged -- I
20 authorized warrants right away.

21 Q Okay.

22 And at some point did you learn that that the
23 Colorado trial had concluded?

1 A Yes.

2 Q Did you authorize Detective Lanier to
3 extradite Mr. Vandiver from Colorado to bring him back to
4 Virginia for those Virginia charges?

5 A Yes.

6 Q Were you aware that Detective Lanier herself
7 was going to go out to Colorado for the purpose of that,
8 to effectuate that extradition?

9 A Yes.

10 Q Did you provide Detective Lanier with any
11 specific instructions about how she was to perform that
12 extradition?

13 A No.

14 Q Did you provide her with any specific
15 instructions about what if any investigation you wanted
16 her to do while she was in Colorado?

17 A I don't recall giving her specific
18 instructions. I mean we would have discussed the case
19 generally.

20 Q Before she went or after she went?

21 A Both.

22 Q Okay.

23 Did you know when she was going out to

1 Colorado that she was going to make contact with the
2 alleged victim Lexi Guinn?

3 A Yes.

4 Q Did you know that she was going to sit down
5 and do an interview with her at that point in Colorado?

6 A I think she was going to attempt an interview
7 with her.

8 Q Okay.

9 I want to talk for a minute, Ms. Ashworth,
10 about how you and Detective Lanier shared information with
11 one another when you worked together at that time.

12 Back in 2013 in June, I'm sorry, in 2014 in
13 June when this extradition was attempted, you and
14 Detective Lanier were still working assigned to each
15 other, correct?

16 A Yes.

17 Q At that point in time were you having monthly
18 meetings?

19 A I met with the detectives every three weeks.

20 Q Okay.

21 Did you meet with Detective Lanier every three
22 weeks?

23 A Well, we scheduled it every three weeks.

1 Sometimes things came up and there were periods of time
2 that we didn't meet.

3 Q After Detective Lanier would get a case, would
4 she prepare a file for you?

5 A I don't remember if Lanier -- each detective
6 had a different manner. Some of them prepared files with
7 copies of everything, some of them just gave me the
8 information and police reports and I prepared the file.

9 Q Okay.

10 Did you rely on items that they would give to
11 you to sort of begin your personal file?

12 A Of course.

13 Q At these monthly meetings or every three week
14 meeting when you would meet with Detective Lanier, would
15 she sometimes give you more information as she sort of got
16 it as the case developed?

17 A Yes.

18 Q Sometimes when she shared that information
19 with you would she keep -- for example if it were
20 documents, would she keep some of that in her file? Like
21 she would share it with you but then retain the copy in
22 her personal file?

23 A Yes.

1 Q Okay.

2 In practice and in this case in particular did
3 your personal file that you maintained mirror at all times
4 Detective Lanier's file to the best of your knowledge?

5 A No.

6 Q Did you prepare for a preliminary hearing in
7 this case?

8 A Yes.

9 Q And that occurred in August of 2014 in JDR?

10 A I'll trust your recollection of the date.

11 Q Okay.

12 How did you prepare for the preliminary
13 hearing in this case?

14 A You know, I don't have any specific
15 recollection of what steps I took to prepare for it. I
16 can tell you generally what I would do to prepare for a
17 preliminary hearing.

18 Q Generally what would you do to prepare for a
19 preliminary hearing?

20 MS. FROST: I'm going to object if the witness
21 doesn't recall what she specifically did with this
22 preliminary hearing.

23 THE COURT: What difference what she generally

1 does? I mean --

2 MS. POMERANTZ: Well, I can ask her if she
3 recalls if she did anything in this case that was
4 exceptional or different from her usual practice.

5 THE COURT: Okay. I'll allow it. Go ahead.

6 THE WITNESS: You want me to tell you what I
7 generally did or what I specifically remember doing in
8 this case?

9 BY MS. POMERANTZ:

10 Q Well, do you specifically remember how you
11 prepared for preliminary hearing in this case?

12 A I do remember meeting with Lexi prior to the
13 preliminary hearing, that was with our victim witness
14 advocate. I believe her mother was present. I remember
15 going to show her what the courtroom looked like, giving a
16 general speech about testifying which includes telling the
17 truth and if you don't remember and what to do if you
18 don't understand or if you need a break. Something of
19 that nature.

20 Q Do you recall if prior to putting on that
21 preliminary hearing if you listened to the recorded
22 interview of Lexi and Detective Lanier?

23 A I don't believe that I did.

1 Q Is that something that you made a practice of
2 doing, listening to the recordings prior to preliminary
3 hearing?

4 A No.

5 Q Why not?

6 A In the Commonwealth's Attorneys Office the
7 volume of cases doesn't allow us the luxury of listening
8 to the audios. Typically the detective prepares a police
9 report that has a summary and Detective Lanier was
10 detailed in her summaries. So I could read the report and
11 be familiar with what the charges were.

12 Q Is that --

13 A What evidence I needed.

14 Q Is that what you did in this case?

15 A I believe I did.

16 Q So after preliminary hearing, did you follow
17 the case in Circuit Court for the purpose of motions and
18 other things that came up?

19 A Yes.

20 Q And at one point the cases were nolle prossed
21 and later brought back, is that correct?

22 A Yes.

23 Q Okay.

1 Did you ever go into your method of full blown
2 trial preparation in this case?

3 A Never.

4 Q Why is that?

5 A Because typically when you're going to do a
6 jury trial, if you're lucky you get -- you can start
7 preparing six to four weeks before. My trial schedule had
8 typically two or three juries a month scheduled. So, you
9 know, as they would -- some of them would get continued,
10 some of them would work out. So you were constantly
11 looking ahead at what was coming up.

12 In this case we did the preliminary hearing
13 and then we did motions and it was after the motions
14 docket that the decision was made we were going to nolle
15 pross it. So it never got to the time period where we
16 would be preparing full blown for trial.

17 In the second circumstance where the charges
18 were brought back, I handled the motions and shortly after
19 that I left the office and the case was turned over to
20 you.

21 Q Okay.

22 Do you recall receiving from Detective Lanier
23 a copy of that recorded interview of her and Lexi in

1 Colorado?

2 A No.

3 Q Do you recall ever having the opportunity to
4 review a recorded interview between Lexi and Detective
5 Lanier in Colorado?

6 A I don't know if I ever reviewed it or I didn't
7 review it. I certainly would have known that it existed
8 because in Lanier's report typically she would say - and I
9 don't remember if she said it in this case or no - but
10 typically her reports would say, if there's a recorded
11 interview it will say this report is a summary of the
12 interview, for the full interview see the recording.

13 So I would have known that it existed, but I
14 wouldn't have had reason to ask her for it or to get a
15 copy of it because I had never gone into the trial prep
16 where you would do that.

17 Q And in practice, and in this case in
18 particular, did you rely on her summary when -- in forming
19 how you looked at the case and the type of questions you
20 would ask for example at preliminary hearing?

21 A Yes.

22 Q At any point, Ms. Ashworth, while you had
23 charge of this case, did you ever look at that summary or

1 review that video and make a decision that that interview
2 was favorable to this defendant?

3 A No.

4 Q At any point while you had charge of this
5 case, did you look at that written summary of the
6 interview or review the interview itself and made a
7 decision to purposely withhold those items from this
8 defendant?

9 A There was never a decision to withhold them.
10 In my review of it, there didn't appear to be a need to
11 turn it over.

12 Q And what do you mean by that?

13 A Well, we're required to turn over anything
14 that's exculpatory. So had I reviewed that and seen
15 anything in it that was exculpatory, I would have turned
16 it over.

17 There was never a decision oh I'm not going to
18 turn this over, do you know what I mean? I just reviewed
19 it. Nothing in reviewing it triggered the thought this
20 needs to be turned over.

21 Q So to put it a different way, did you ever
22 look at it and think to yourself this is something that I
23 should turn over and then decide not to do that?

1 A Absolutely not.

2 Q Thank you, Ms. Ashworth. Please answer any
3 questions that Ms. Frost may have.

4 THE COURT: Cross.

5 MS. FROST: Thank you.

6 THE COURT: Before you start, I want to make
7 sure that I understand the last question that was asked
8 and the last answer that was given. It seemed to be a
9 multi part question.

10 Did you ever review -- when you say review the
11 video, did you ever view the video, watch the video,
12 listen to the video?

13 THE WITNESS: I don't believe I did, no.

14 THE COURT: Okay. That's all I needed to ask.
15 Go ahead.

16 MS. FROST: Thank you.

17 CROSS EXAMINATION

18 BY MS. FROST:

19 Q Good afternoon, Ms. Ashworth.

20 A Good afternoon.

21 Q I'm confused. You're saying that you don't
22 believe you watched the video?

23 A I don't have any recollection of watching the

1 video.

2 Q But at the end of the questions Ms. Pomerantz
3 was just asking you, you stated that there was nothing in
4 the video that you thought was worth turning over, nothing
5 exculpatory.

6 How would you know that if you didn't watch
7 the video?

8 A What I said was in my review of her report,
9 which is a summary of the video, there was nothing that I
10 read that triggered anything that I believed needed to be
11 turned over.

12 Q And you talked about the fact that Detective
13 Lanier's detailed in her reports?

14 A Yes.

15 Q And that's your experience with her. And so
16 the report that you're stating you read that triggered the
17 belief that you didn't need to turn anything over, that
18 would have been a detailed report about the interview with
19 Lexi in Denver, right?

20 A So you changed the phrasing of what I said. I
21 didn't say that it triggered that I didn't have to turn
22 anything over. Nothing in what I read triggered that
23 there was anything exculpatory that needed to be

1 disclosed.

2 Q What did you read?

3 A The report.

4 Q What did the report say about the interview?

5 A It said what it said. I don't remember now
6 what it said. It would have been a year ago that I read
7 it.

8 Q Okay.

9 So if the report were detailed and reflected
10 the interview between Lexi and Detective Lanier, the
11 report would have included the fact that Lexi made
12 inconsistent statements to the prior statements that she
13 had been making for the last year about her accusations
14 against Mr. Vandiver?

15 A I think that's your characterization of her
16 statements. I did not read them as inconsistent.

17 Q Okay.

18 Well how about the fact that there was a new
19 witness, Max Haines, who had never before been identified,
20 that Detective Lanier first learns about on June 2 of
21 2014? That's a new witness that's never been discussed
22 before.

23 A What is your question for me?

1 Q You would have learned about that if you read
2 Detective Lanier's report about the interview because that
3 would have been a detail Detective Lanier would have
4 included in her report about the interview.

5 A If it was included in the report then I read
6 it.

7 Q Right.

8 And so new witnesses are talked about in the
9 interview, correct?

10 A The report speaks for itself. Whatever's in
11 the report is in the report.

12 Q But you can't tell us what's in the report
13 today as you sit here?

14 A No.

15 Q And you don't recall if you ever watched the
16 video?

17 A Correct.

18 Q Okay. Let's talk about the timing of some of
19 this.

20 You've been involved in the case since
21 approximately August of 2013 when the warrants were issued
22 in Virginia for Mr. Vandiver, correct?

23 A So I would have been involved before the

1 warrants were issued.

2 Q Okay. June or July?

3 A Approximately.

4 Q Okay.

5 And you're communicating with the Denver
6 District Attorney's Office from when you first get
7 involved up through when we're supposed to go to trial in
8 May of 2014?

9 A I don't remember when my first communication
10 with the Denver Attorney's Office was.

11 Q You're in communication with the Denver
12 District Attorney's Office in the year before we are
13 scheduled to go to trial here in Virginia in May of 2014?

14 A It was either myself or Detective Lanier.

15 Q Right.

16 A I don't have any recollection of actually
17 speaking to Denver until I believe they were ready to go
18 to trial and there was a conversation about possible
19 resolutions.

20 Q And if I approach and show you an email that
21 documents the fact that you had spoken with Denver --

22 A When I say actually speaking, I mean on the
23 telephone.

1 Q Okay.

2 A I don't know when I first communicated by
3 email.

4 Q Okay.

5 Would it refresh your recollection --

6 THE COURT: How does she know until she see's
7 it? Why don't you approach and show it to her?

8 MS. FROST: May I approach?

9 (Ms. Frost handed a document to the witness
10 for her examination)

11 THE WITNESS: Okay. So what was the question?

12 THE COURT: First of all, does that refresh
13 your recollection with regard to when you spoke with
14 people in Denver?

15 THE WITNESS: Well, I'm looking at what
16 appears to be an email from the attorney in Denver to
17 Kristen Frost, it's dated December 17, 2013 and she
18 indicates she's been speaking with the DA and detective in
19 Virginia about working out a global disposition.

20 THE COURT: Okay.

21 BY MS. FROST:

22 Q So at the very latest you had been chatting on
23 the phone about the global disposition by December 17 of

1 2013?

2 A Correct.

3 Q Thank you.

4 And the Denver District Attorney's Office had
5 provided you and your office and/or Detective Lanier with
6 all of the discovery in the Denver case by latest December
7 of 2013, correct?

8 A I can't speak to when they provided things to
9 Detective Lanier or myself. You're referring to discovery
10 in Denver. I don't know what that includes.

11 Q Well, you filed an answer to discovery in our
12 first case, correct?

13 A Yes.

14 Q Here in Virginia, correct?

15 A In the Circuit Court. I don't think it was
16 ever requested in the Juvenile and Domestic Relations
17 Court.

18 THE COURT: What does all this have to do with
19 whether or not the Commonwealth intentionally withheld the
20 video?

21 MS. FROST: Because Ms. Ashworth has testified
22 that -- about her trial prep and I'm getting to the date
23 of which the nolle prosequi is filed, what was in her

1 possession, how she mistakenly wouldn't have --

2 THE COURT: All right. Go ahead.

3 BY MS. FROST:

4 Q On August 1st of 2014 you filed an answer to
5 discovery that references Denver police reports, arrest
6 warrants, our defense report and other information
7 pertaining to the Denver case, correct?

8 A I don't know.

9 Q Would looking at a copy of your answer refresh
10 your recollection

11 A Most likely.

12 (Ms. Frost handed a document to the witness
13 for her examination)

14 All right. So I was mistaken. I did file an
15 answer in the J&DR Court, yes.

16 THE COURT: Your next question.

17 BY MS. FROST:

18 Q And then the defense, and by this time that
19 means me and Mr. (Unintelligible), filed a bunch of
20 pretrial motions in the first sex case and one of them is
21 a specific motion to compel the production of Brady
22 information. And if you need me to refresh your
23 recollection on the motion I'll be happy to do that.

1 A I don't have a cataloged memory of all the
2 motions that you filed.

3 Q If you don't recall I can approach with the
4 motion.

5 THE COURT: Well, what difference does it make
6 whether she recalls it? The record is replete with those
7 motions.

8 MS. FROST: Because I --

9 THE COURT: There's motions -- okay. Because
10 what?

11 BY MS. FROST:

12 Q After you received the Brady motion from the
13 defense in March of 2015, did you not think to go back and
14 check your file to see if there was any Brady material?

15 A I imagine that I did.

16 Q And you asserted to this Court that in fact on
17 the motions hearing on April 9 of 2015 that the
18 Commonwealth has complied with its Brady obligations when
19 we were discussing this motion.

20 A I believed that I had.

21 Q And then we were set to go to trial on May 18
22 of 2015 the first time.

23 A I'll accept your recollection of the dates.

1 Q You filed a motion to nolle pross that case on
2 May 8 - I'm sorry, May 4 of 2015, correct?

3 A I don't know if that's the day I filed it or
4 not.

5 Q Okay.

6 MS. POMERANTZ: Judge, I'm going to object at
7 this point. She's answered the questions that deal with
8 at what point she would have received that video if she
9 had, when she might have reviewed it if she ever had, and
10 now we're far afield of the issue which is did she
11 purposely withhold this evidence from defense counsel.

12 MS. FROST: We're not far afield from the fact
13 that we're about a week away from trial.

14 MS. POMERANTZ: But that speaks for itself.

15 THE COURT: All right. I'm going to allow her
16 a little latitude.

17 Go ahead.

18 BY MS. FROST:

19 Q And so at this point, Ms. Ashworth, that
20 you're filing the motion to nolle pross, it's shortly
21 before we're scheduled to go to this jury trial, correct?

22 A The date was May 4 that it was filed?

23 Q May 6 that it was filed, May 8 that we have

1 the hearing on the motion to nolle pross.

2 A And the trial is set for when?

3 Q May 18.

4 A Okay. Yes.

5 Q So ten days before trial?

6 A Yes.

7 Q And that includes weekends obviously?

8 A Yes.

9 Q And so you're stating that although you've had
10 information from Denver for two years, a year and a half,
11 there's been a ton of litigation in this case, that you
12 hadn't started your trial preparation even though we were
13 ten days, including weekends, away from trial?

14 A So the decision to nolle pross the charges was
15 made back at the motions hearing or the beginning of are
16 we going to proceed with trial or not or are we going to
17 move to nolle pross.

18 THE COURT: That was in April of 2015? April
19 9 of 2015 there was a motions hearing at which the
20 question was asked about Brady and you said you complied
21 with it?

22 THE WITNESS: Correct.

23

1 BY MS. FROST:

2 Q And so if your testimony --

3 A If that -- if April 9 is the day of the
4 lengthy motions when the defense asked us to pay for their
5 out of state witnesses, there was a motions day where that
6 incident occurred, which was what triggered our looking
7 into how it was that he had claimed indigency in the first
8 place.

9 Q And getting back to what we were talking
10 about, on April 9 -- first of all, the defense filed those
11 motions under a code provision that allows for costs for
12 witnesses, correct?

13 THE COURT: File a motion?

14 THE WITNESS: The defense didn't actually file
15 a motion. You asked me after motions day to sign an
16 agreed order ordering the Commonwealth to pay for those
17 witnesses.

18 BY MS. FROST:

19 Q Right and during that conversation you did not
20 let the defense know that you were thinking about not
21 going to trial because you were possibly going to nolle
22 pross this case.

23 A During that conversation where you asked --

1 Q During that entire day in court you never once
2 mentioned to the Court or the defense that you were
3 thinking about nolle prosequing --

4 A Because I wasn't. It was after you -- at the
5 end -- the conclusion of the motions you asked me to sign
6 an order allowing the Commonwealth to pay for those
7 witnesses. It was after that. That was the conversation
8 that triggered myself and my office to look into his claim
9 of indecency and that led to the perjury charges.

10 Q Right.

11 But you were the sole person on the perjury
12 case. Until you delegated that to Ms. Berning it was your
13 decision to bring the perjury case, correct?

14 A It was Mr. Ebert's decision. It was after
15 consulting with Mr. Ebert. That's not a decision I made
16 on my own and there were multiple conversations with other
17 prosecutors in my office.

18 Q Okay.

19 And so while you were talking with Mr. Ebert
20 and having these multiple conversations, you still have to
21 be ready to go to trial in case you don't get approval to
22 bring the perjury case or Judge Wiemer doesn't grant your
23 motion to nolle prosequi, correct?

1 A What is your question? Is it did I prepare
2 the case for trial after that?

3 Q Yes.

4 A If that's your question the answer is no. I
5 did not go into full trial preparation where I would
6 listen to the interviews and start getting into the
7 details of everybody's testimony.

8 Q What about your out of state witnesses or
9 other out of state issues you would have had to have dealt
10 with had you had to go to trial on the 18th of 2015?
11 [sic] You just wouldn't have been prepared for those?

12 A Are you asking me to speculate what I would
13 have done if Mr. Ebert had disagreed with the strategy
14 that we put in place? I don't know what I would have
15 done.

16 Q Okay.

17 When did you look at Detective Lanier's report
18 about the June 22, 2016 interview?

19 A It would have been before the preliminary
20 hearing. I can't give you an exact date of when I looked
21 at it.

22 Q So it was before August 15 of 2014?

23 A If that's the date of the preliminary hearing,

1 yes.

2 Q Okay.

3 And you didn't think to revisit that interview
4 or watch that CD in the weeks leading up -- even if you
5 weren't in full blown trial preparation?

6 MS. POMERANTZ: She's already answered that
7 question.

8 THE COURT: I agree.

9 BY MS. FROST:

10 Q And, Ms. Ashworth, the interview with Lexi
11 Guinn and Detective Lanier is about an hour and a half,
12 correct?

13 A I don't know.

14 Q Okay.

15 You've been a prosecutor for 11 years?

16 A I was, yes.

17 Q Okay.

18 So you're a seasoned prosecutor who's handled
19 several types of sex cases in your career, correct?

20 A Yes.

21 Q You're familiar with Brady v Maryland and what
22 it requires, right?

23 A Yes.

1 Q You're familiar with Bagley and Giglio and all
2 of Brady's progeny, correct?

3 A If we're going to get into questions on those
4 cases I'm not prepared to answer those.

5 Q Generally speaking as a prosecutor, as a
6 seasoned prosecutor, you understood your obligation the
7 minute you have any type of material related to
8 inconsistent statements and exculpatory material you have
9 a duty to give that to the defense immediately, you
10 understand that?

11 A Yes.

12 Q And you understood it in April of 2014,
13 correct?

14 A Yes.

15 Q And you understood it throughout the entire
16 Vandiver case until you left this office on August 4,
17 2016?

18 A Yes.

19 Q You also understand that the Virginia courts
20 have embraced your duties as a prosecutor to provide Brady
21 material?

22 A Yes.

23 THE COURT: It doesn't matter whether she

1 embraced it or whether she knew it or not, she had that
2 obligation. The prosecutor had that obligation.
3 Hopefully someone passed it along to the assistants.

4 BY MS. FROST:

5 Q And you understood that you have that
6 obligation under the Rules of Professional Conduct,
7 especially your special responsibilities as a prosecutor,
8 Rule 3.8 here in Virginia?

9 A Yes.

10 Q And you did --

11 MS. POMERANTZ: Judge, this is the same --
12 this is her argument. This is all her argument to make to
13 Your Honor and as Your Honor stated it really doesn't
14 matter. We've already conceded that this is Brady
15 material. We've conceded it wasn't turned over until
16 late.

17 THE COURT: Yeah, I mean that (Inaudible)
18 We're getting very far afield about whether or not there
19 was any intentional withholding of this --

20 BY MS. FROST:

21 Q Why did you violate that duty?

22 A I never intentionally violated that duty,
23 ma'am.

1 Q You didn't go back and look at your file when
2 the defense requested Brady materials in both the old case
3 and this case?

4 MS. POMERANTZ: Judge, that wasn't her
5 testimony.

6 MS. FROST: I'm cross examining her.

7 THE COURT: She's asking whether she did it.

8 MS. POMERANTZ: But, Judge, she's already
9 answered that question. The defense counsel asked her did
10 you look at your file after we filed those motions to
11 compel for Brady evidence. She said that I would have
12 done that after those motions were filed. She answered
13 that question and it's not the answer that Ms. Frost
14 suggests that it was.

15 THE COURT: I'm going to allow it.

16 Go ahead.

17 THE WITNESS: I would have gone through the
18 file and looked at things and there was -- your office had
19 provided to us most of the information that was in my
20 file. I mean there was --

21 BY MS. FROST:

22 Q So didn't that make Detective Lanier's
23 interview with Lexi stick out even more for you?

1 A No, because it appeared consistent with
2 everything Lexi had always said.

3 Q We can agree that in a case where there is
4 physical evidence and no eye witnesses and the credibility
5 of one person is very significant, everything they say in
6 every interview is important, correct?

7 MS. POMERANTZ: Judge, I don't understand --

8 THE COURT: Okay. She's answered that.

9 BY MS. FROST:

10 Q Let's put it this way.

11 If the shoe were on the other foot and
12 Detective Lanier had found some witness who said I saw
13 Troy Vandiver attach Lexi and Detective Lanier recorded
14 that video taped interview, that would be an important
15 piece of evidence for you in this case, correct?

16 MS. POMERANTZ: Judge, she's asking her to
17 speculate on things that we know just simply aren't the
18 case --

19 THE COURT: Yes.

20 MS. POMERANTZ: -- and there's no --

21 THE COURT: You're not going to answer the
22 question for her, but I don't think it's an appropriate
23 question.

1 BY MS. FROST:

2 Q Why didn't you take the time to watch the
3 video?

4 A I didn't have the time to watch the video. I
5 had a lot of cases.

6 Q It was in your file, correct?

7 A Physically in my file?

8 Q You had a copy of it?

9 A I don't know that I did.

10 Q Okay.

11 And you have access to Detective Lanier's
12 files, correct?

13 A Yes.

14 Q And when you have these every three week
15 meetings, it's important -- you want to know the status of
16 your case and what Detective Lanier's doing, correct?

17 A Correct.

18 Q And you talked about Detective Lanier going to
19 Colorado to get Mr. Vandiver before he left or before she
20 left, correct?

21 A Say that again. Did we talk about her going
22 to Colorado?

23 Q To extradite Mr. Vandiver back here to

1 Virginia.

2 A I'm sure we did.

3 Q And you knew that she was going to interview
4 Lexi?

5 THE COURT: She's already testified to that.

6 MS. FROST: And, Your Honor, at this time the
7 binder that I previously submitted with all the court
8 documents and other copies of the interviews --

9 THE COURT: You've given me two binders.

10 MS. FROST: Yeah, one is transcripts. The
11 other one was the exhibit notebook.

12 THE COURT: Right, November 10, 2016 hearing
13 exhibits.

14 MS. FROST: Yeah. At this point I'd like to
15 move that into evidence or to be part of the record in the
16 court file.

17 THE COURT: Well, aren't they all part --
18 already part of the record? They're all --

19 MS. FROST: Yeah, it's just --

20 THE COURT: They're all -- I mean I guess I'm
21 questioning why we need to have the clerk scan into
22 evidence things that are already in the court's file.

23 MS. FROST: The only thing additionally would

1 be the second CD, the older interview of Lexi from -- the
2 forensic interview from Denver is in there. I don't know
3 -- that's in a court file. I don't know if it's in this
4 one.

5 THE COURT: Okay.

6 MS. FROST: The rest of them are in files. I
7 don't know if it's too laborious --

8 THE COURT: No one's asked me to review a
9 forensic interview. I reviewed -- I watched the interview
10 from June 2, 2014.

11 MS. FROST: The forensic interview is in the
12 file. It might be in the first sex case. It's already in
13 there.

14 THE COURT: Right, but in preparation for
15 today, no one said anything about that interview being
16 needed - that I need to review that interview before
17 today.

18 MS. FROST: At this point we've all agreed
19 it's Brady. So it's really --

20 THE COURT: Right.

21 MS. FROST: I was going to put it in the file
22 for thorough purposes.

23 THE COURT: The Commonwealth has agreed that

1 the documents or that the interview, the video tape of the
2 interview of Lexi Guinn is exculpatory evidence, is Brady
3 material.

4 MS. FROST: Correct.

5 THE COURT: I don't know that we need to --

6 MS. FROST: We don't need to go there with the
7 prior forensic interview.

8 THE COURT: The sole question that I need to
9 answer is whether or not the withholding of that interview
10 from the defense was intentional or --

11 MS. FROST: Reckless.

12 THE COURT: Yeah, I'm not even sure reckless
13 applies, but it's got to be so reckless as to be close to
14 being intentional.

15 MS. FROST: Agreed, Your Honor, but also in
16 terms of credibility of some of the testimony about not
17 recalling and conveniently not watching things, we do get
18 some latitude in which to cross examine the witness.

19 THE COURT: Right. Well, we've already done
20 that. So what else --

21 MS. FROST: I just want to approach --

22 THE COURT: -- do you want to be made part of
23 the record?

1 BY MS. FROST:

2 Q Ms. Ashworth, I'm showing you Defense Exhibit
3 A.

4 (Ms. Frost handed a document to the witness
5 for her examination)

6 And Defense Exhibit A is a copy of an email
7 that you sent to us when you were leaving the office, the
8 Commonwealth Attorney's Office, correct?

9 A Correct.

10 Q And that's a true and accurate copy of the
11 email you sent --

12 A Yes.

13 Q -- on August, what's the date, the 2nd?

14 A August 4.

15 Q August 4.

16 MS. FROST: At this time, Your Honor, I'd move
17 that email into evidence.

18 THE COURT: Any objection?

19 MS. POMERANTZ: Yes to relevance, Your Honor.

20 MS. FROST: I think Your Honor would have to

21 --

22 THE COURT: Tell me why it's relevant.

23 MS. FROST: Because Ms. Ashworth is emailing

1 -- it goes to Ms. Ashworth's personal stake in the outcome
2 of this case, the animosity, the background and the
3 history because the email clearly states that Ms. Ashworth
4 is writing me personally --

5 THE COURT: All right. I'm going to allow it.

6 MS. FROST: Okay.

7 THE COURT: And I can't really determine
8 relevance until I see it. So give me a moment.

9 (Brief pause)

10 Okay. For what it's worth, it's admitted.

11 (The document referred to above
12 was marked for identification as
13 Defense Exhibit No. A and was
14 received into evidence)

15 MS. FROST: I don't have any further
16 questions, Your Honor.

17 THE COURT: Anything further?

18 MS. POMERANTZ: No, Your Honor.

19 (Whereupon, at approximately 2:15 o'clock,
20 p.m., the witness stood down)

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(Whereupon, at approximately 4:25 o'clock,
P.m., hearing of the above captioned matter was
concluded.)

CERTIFICATE OF COURT REPORTER

I, JUDY F. HENDERSON, a Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

JUDY F. HENDERSON