

NO. 2012-0252

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff-Appellant

-vs-

MATTHEW LINDSTROM
Defendant-Appellee



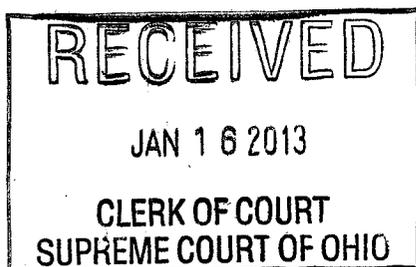
DEFENDANT-APPELLEE'S MOTION TO DISMISS STATE'S APPEAL AS
FRIVOLOUS AND MOTION TO DISMISS THE APPEAL AS BEING
IMPROVIDENTLY GRANTED

Now comes the Defendant-Appellee, Matthew Lindstrom, by his Counsel, John B. Gibbons, who respectfully moves this Honorable Court, pursuant to Rule 4.03(A) Ohio Supreme Court Rules of Practice to enter an order finding that the State's Appeal is now frivolous and to dismiss the case. Moreover, the Defendant-Appellee moves this Court to enter judgment by dismissing the State's Appeal as improvidently granted pursuant to Rule 7.10 Supreme Court Rules of Practice. Personal identifying information has been redacted from the Brief and exhibits. Arguments in support of said motions are contained in the attached brief accompanied with exhibits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John B. Gibbons".

John B. Gibbons (#0027294)
Counsel for Defendant-Appellee
Matthew Lindstrom
1370 Ontario Street, Suite 2000 The Standard Bldg.
Cleveland, Ohio 44113
(216) 363-6086, Fax (216) 363-6075
Email: jgibbons4@sbcglobal.net



CERTIFICATE OF SERVICE

A copy of the foregoing *Defendant-Appellee's Motion to Dismiss State's Appeal as Frivolous and Motion to Dismiss the Appeal as Being Improvidently Granted* has been sent to Timothy J. McGinty, Prosecuting Attorney and Dan Van, Esq., Assistant Prosecuting Attorney, by hand delivery and by ordinary United States mail to the Justice Center, 9th floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 15th day of January 2013.



John B. Gibbons
Attorney for Defendant-Appellee,
Matthew Lindstrom

I. Introduction
Factual and Legal Basis for Remedy of Dismissal Requested

The only evidence that supported the underlying Delinquency Complaint and the later unlawfully obtained indictment was the oral statement of the juvenile complaining witness which was obtained on January 8, 2010 in the State of Maine. The complaining witness is now an adult, has graduated from high school, has moved out of her parents' home in Maine and relocated to the State of Ohio to live with her grandmother and step-grandfather. She has recanted her prior allegation that her Brother, Matthew Lindstrom, engaged in unlawful sexual conduct and/or sexual contact with her. The Prosecuting Attorney has been placed on notice of these developments. The State has been placed on notice that the complaining witness has recanted the allegations and has requested, through her own Attorney, that any and all charges against Matthew Lindstrom be dismissed. However, the State of Ohio continues to pursue this Appeal relating to a purely jurisdictional question before this court which is based on a twisted set of facts which are unlikely ever to reoccur in this State within the next fifty years or ever again. At this point of the case, since the State has no underlying factual basis to support the charges in either the Juvenile Division or the felony division, the State's appeal is frivolous and should be dismissed as improvidently granted pursuant to the authority of Rule 4.03(A) and 7.10 Supreme Court Rules of Practice.

The Ohio Supreme Court Rules of Practice provide that if this Court accepts an appeal, it may limit the issues to be briefed and heard or, when appropriate, may enter judgment summarily.

The facts underlying this prosecution and appeal have fundamentally changed since the Court granted jurisdiction to hear the States' interlocutory appeal on a jurisdictional question

only. In general, when a case presented on the merits, it is not the same case as previously presented on a Motion to Certify a conflict or a case involving a substantial constitutional or a case presenting as question of great public interest, the appeal will be dismissed as having been improvidently granted. (See Williamson v. Rubich, 171 Ohio St. 253, 12 O.O.2d 379, 168 N.E.2d 876 (1960))

This appeal is not reasonably grounded in fact or warranted by existing law. The State does not have a good faith basis to pursue this appeal.

II. Facts and Procedural History

The Defendant-Appellee, Matthew Lindstrom, is the natural son of Barbara and Todd Lindstrom who formerly lived in Brook Park and Parma, Ohio. The victim J.E.L., as described in both a Juvenile Court Division complaint and later in an adult division indictment, is the natural daughter of Barbara and Todd Lindstrom. She is the natural sister of Matthew D. Lindstrom.

On January 8, 2010, Todd Lindstrom of Pittston, Maine telephonically contacted Detective Edwin Bing Lang-Awa of the Brook Park, Ohio Police Department and reported that his then fifteen year old daughter revealed to his wife that she had been sexually molested by her older brother, some years ago at various locations in Cuyahoga County, Ohio, possibly in Lorrain County, Ohio and possibly in Jonesboro, Arkansas. The Detective immediately contacted the Cuyahoga County Child and Family Services to advise the agency of the allegations and to request that a file be opened. The Lorain County Sheriff's Department and the Jonesboro, Arkansas Police Departments were also notified by the Detective. The Officer then advised Todd Lindstrom to immediately transport his daughter to the Kennebec County, Maine

Sheriff's Department for an interview. Sergeant Hatch of that department recorded the oral interview. He was the only police officer who interviewed the Complaining Witness.

When the statement was provided to the Officer, J.E.L. was a minor child who had moved previously with her parents from Cuyahoga County to live in Pittston, Maine. Her sole brother, Matthew D. Lindstrom, was over twenty years of age and continued to live in Cuyahoga County, Ohio. In her oral statement to the State of Maine Police Officer, J.E.L. told Sergeant Hatch that she had been subjected to separate instances of unlawful "sexual conduct" and "sexual contact" by her brother, Matthew D. Lindstrom. She said that these incidents occurred in both Brook Park and Parma, Ohio, possibly in Lorain County, Ohio and possibly in Jonesboro Arkansas. She further related to the officer that these series of incidents occurred when she was between the ages of five to nine and her brother Matthew D. Lindstrom was between the ages of nine to at most thirteen years of age.

After the interview the Maine State Deputy Sheriff re-contacted the Brook Park, Ohio Police Department in January 2010 and informed the Detective that the event that was described by J.E.L. occurred in his jurisdiction. The Brook Park Detective then conducted a follow up phone interview of J.E.L. On October 21, 2010 Detective Bialang-awa of the Brook Park, Ohio Police Department filed a sworn complaint with the Clerk of Court of the Juvenile Division of the Common Pleas Court for Cuyahoga County, Ohio. On that date, Lindstrom was twenty years old. The delinquency complaint was prepared by the Prosecuting Attorney for Cuyahoga County. The Complaint did not contain a request for an arrest warrant for the alleged delinquent, Matthew D. Lindstrom. The complaint was served by the Clerk by certified mail when Matthew D. Lindstrom was twenty years of age. On November 22, 2010 the alleged delinquent, Matthew D. Lindstrom, by then age twenty-one, reported to the courtroom of the assigned Judge Allison

L. Floyd with his Attorney for purpose of his Arraignment on the delinquency complaint. Without objection from the Prosecuting Attorney, the Juvenile Court Judge released Mr. Lindstrom on his own recognizance. Lindstrom also entered a formal denial to all of the allegations. (See attached Exhibit A, Journal Entry, Juvenile Division & attached Exhibit B, Delinquency Complaint)

On the same date, the Prosecuting Attorney filed a Motion Pursuant to O.R.C. 2152.10(B) to Relinquish Jurisdiction to the Common Pleas Court and for a Preliminary Hearing, moving the Court to transfer jurisdiction to the adult court. The Brief attached to the State's Motion argued as follows: "The Motion recited the request for an order to relinquish jurisdiction for the purpose of criminal prosecution pursuant to R.C. 2152.10(B) and for a preliminary hearing pursuant to Juv. R. 30(A) is based on a complaint filed in Juvenile Court, that Matthew Lindstrom is a delinquent child for committing an act that would be a felony if committed by an adult, and that said child was fourteen years of age or older at the time of the alleged commission of the act. Moreover, the attached brief recited similarly as follows:

"Movant submits that there is probable cause to believe said child committed the act alleged in the complaint and that there may be reasonable ground to believe that the child is not amendable to rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children, and that the safety of the community may require that the child be placed under legal restraint for a period extending beyond the child's majority." (See attached Exhibit C, Brief in Support of State's Motion to Relinquish Jurisdiction)

At the first scheduled pretrial, the assigned Juvenile Court Judge recognized the Jurisdiction issue which continues to be the controversy in this matter at every lower court proceeding and directed the parties to brief the issue.

In response to Lindstrom's Discovery Requests in the Juvenile Division, the State provided the undersigned Counsel with the recorded interview conducted of J.E.L. conducted by Sergeant Hatch, Kennebec County Sheriff's Department incident number 10 KSO-42-OF, call number 10-669, and Brook Park, Ohio report numbers 10-00864, 03-18678, 06-04050 and 07-14845. Therefore, the conclusion is that the only evidence that previously supported the allegations is the oral, uncorroborated statement of J.E.L to Detective Hatch. (See attached Exhibit D, D1 & D2, State's Discovery Responses in the Juvenile Court) The State of Ohio has never obtained or produced any other corroborative evidence to support these charges.

In accord with the Juvenile Judge's order, Counsel for the alleged delinquent Matthew Lindstrom submitted a written brief on February 22, 2010 to the Court arguing that jurisdiction to hear the delinquency allegations was proper in the juvenile division. The Prosecuting Attorney never submitted a brief as directed by the Juvenile Division Judge. No "bind-over" hearing as requested by the Prosecutor was ever conducted. The State's "bind-over" motion was never, therefore, ruled on and was pending when the case was voluntarily dismissed by the Prosecutor.

On March 8, 2011 while the case was pending in the Juvenile Division of the Common Pleas Court, the Prosecuting Attorney for Cuyahoga County presented the identical allegations to the Grand Jury for the Cuyahoga County Common Pleas Court and obtained a sealed "secret" ten (10) count indictment against Matthew D. Lindstrom. An arrest warrant for Lindstrom was sought by the Prosecuting Attorney and obtained from the Clerk. The existence of the

Indictment was not disclosed to the assigned Juvenile Court Judge although the delinquency Complaint was still pending. (See attached Exhibit E, Indictment, CR 547876State of Ohio v. Matthew Lindstrom) On March 9, 2011 the Prosecuting Attorney, without stating a reason, moved the Juvenile Court Judge to enter an order of dismissal of the delinquency complaint, without prejudice. (See attached Exhibit F, State's Motion to Dismiss Complaint in Juvenile Court) Counsel for Lindstrom was never informed of the filing of the motion until after the fact. The Juvenile Court did enter such an order. At no time did the Juvenile Division address the merits of the delinquency complaint. Nor did the Juvenile Judge ever address the question, presented by the State's "bind-over" motion, of which counts, if any, would be subject to transfer to the adult felony division.

On March 16, 2011 Matthew D. Lindstrom filed his motion in the general division of the Court of Common Pleas for Cuyahoga County moving the Court to remand the case back to the Juvenile Division, to hold the scheduled arraignment in abeyance and to recall the capias.

The State filed its "Brief in Opposition to Motion to Remand Case Back to Juvenile Court." In part the Prosecutor wrote "Defendant,... was indicted in the General Division of the Court for the criminal acts he committed against J.E.L." Therefore, the State has admitted on the record that the Juvenile Complaint is identical to the Indictment.

On March 21, 2011 acting Administrative Judge Richard McMonagle of the Common Pleas Court conducted a hearing on the sole question of jurisdiction and granted Lindstrom's motion to transfer the proceedings back to the Juvenile Division. The Court of Common Pleas never addressed the merits of the indictment. Lindstrom was never arraigned on the indictment as that proceeding was held in abeyance. The capias was ordered to be recalled.

On April 5, 2011 Judge Richard McMonagle entered the following order in connection with the case captioned State of Ohio v. Matthew D. Lindstrom, assigned case number CR 11-547876.

“This case is transferred to the juvenile court and the indictment is dismissed and all further proceedings are discontinued pursuant to R.C. 2152.03. This court finds under R.C. 2151.23(I) and R.C. 2152.02(C)(3) the defendant was ‘taken into custody or apprehended’ prior to defendant’s twenty-first birthday since the defendant committed the act while he was a ‘child’ and was charged in juvenile court prior to defendant’s twenty-first birthday. As such, this court finds that it lacks jurisdiction over the defendant and jurisdiction is proper in the juvenile court.”

The Prosecuting Attorney thereafter filed a Notice of Appeal with the Eighth District Court of Appeals. The case was captioned State of Ohio v. Matthew Lindstrom case number CA 11-096653.

In the Eighth District Court of Appeals, the State of Ohio raised the following assignment of error as an issue on Appeal:

“The trial court erred in dismissing the indictment and transferring the case to the juvenile court because jurisdiction was proper in the General Division of the Court of the Common Pleas. Whether the Juvenile Court has jurisdiction over defendant if the act was committed as a child and the defendant was “taken into custody or apprehended” prior to his or her twenty-first birthday. The Defendant was charged prior to his twenty- first birthday but was never “taken into custody

or apprehended” as ordinary understood. Does the Juvenile Court have exclusive jurisdiction or is jurisdiction proper in the General Division of the Court of Common Pleas?”

On December 29, 2011 the Eighth District Court of Appeals entered an order and opinion denying the State of Ohio’s Assignment of Error and affirming Judge McMonagle’s order. (See attached Exhibit G, Journal entry and Opinion, Case No. 96653, Court of Appeals, Eighth District)

Thereafter, the State of Ohio filed its Memorandum in Support of Jurisdiction in support of its interlocutory appeal in the Ohio Supreme Court suggesting the following: Proposition of Law:

“A person is not apprehended upon the issuance of a summons for purposes of R.C. 2151.23(I) and R.C. 2152.02(C)(3).”

The Defendant-Appellee filed his Memorandum opposing jurisdiction. This Court entered an order granting jurisdiction. The Prosecuting Attorney for Cuyahoga County, thereafter, filed its Merit Brief raising the same proposition of law. The Defendant-Appellee, Matthew D. Lindstrom filed his responsive Merit Brief. Finally, the Court has entered an order scheduling this case for oral argument on February 6, 2013.

III. Argument

In January 8, 2010, the complaining witness formally made the allegations of unlawful “sexual conduct” and “sexual contact” against her brother Matthew D. Lindstrom to Sergeant Gary Hatch of the Kennebec County Sheriff’s Department while she was then a minor child

living with her parents in the State of Maine. She was still a minor child living with her parents when she repeated these same allegations in a follow-up telephone interview the very next day to the Brook Park, Ohio Police Detective. That Officer waited for more than ten months before the delinquency allegations were formally presented by way of complaint to the Juvenile Division of the Common Pleas Court.

The facts have been known to the State of Ohio for over three full years. This case has now been pending first in the Juvenile Division, and then in General Felony Division of the Common Pleas Court, and next on an Appeal brought by the State to the Eighth District Court of Appeals and now before the Ohio Supreme Court for over two full years. In the Juvenile Division, the State chose to ignore the Judge's order to first address the jurisdiction issue. Moreover, at each and every subsequent lower Court proceedings, the State has attempted to establish the obscure jurisdictional point that now is the subject matter of this interlocutory appeal in the instant Supreme Court case.

However, the alleged victim has now become an adult, has graduated from high school and was finally thrown out of her parents' home in Pittston, Maine. Of her own volition, she relocated to her extended family in Lorain County, Ohio and presently lives with her Grandmother and step-Grandfather. She obtained the services of her own Counsel in order to obtain independent legal advice.

On or about September 10, 2012, J.E.L. provided a voluntary twenty-nine page, sworn transcribed statement to Counsel for Matthew Lindstrom wherein she has stated, in no uncertain terms, that her prior allegations of unlawful "sexual conduct" and "sexual contact" by her brother Matthew D. Lindstrom did not occur. She was represented by her own Counsel. (See attached Exhibit H, Sworn Transcribed twenty-nine (29) page statement of J.E.L.) Moreover, on October

25, 2012, J.E.L. re-examined her voluntary twenty-nine page sworn transcribed statement given to a Court Reporter and re-affirmed every fact in that sworn statement, as being true. The attached Affidavit was notarized to by her own Counsel. (See attached Exhibit I, Sworn statement of J.E.L.)

J.E.L., while she was living in the State of Maine, contacted the investigating Brook Park Detective, during the course of these proceedings in the lower courts, and informed him of the truth about these false allegations and attempted to have the Officer stop this underlying prosecution. The Officer informed her that nothing could be done at that point because the case was then in the hands of the Prosecuting Attorney.

Counsel for Defendant-Appellee, Matthew D. Lindstrom provided a copy of J.E.L.'s voluntary statement to the Prosecuting Attorney and requested that the State of Ohio dismiss this case, and every variation of the case pending in the lower courts, with prejudice. J.E.L., through her own counsel, who provided her with her own independent legal advice has independently notified the Prosecuting Attorney of her recantation and has attempted to stop the prosecution. Counsel for J.E.L. has contacted the Prosecuting Attorney requesting the dismissal of the case, with prejudice. (See attached Exhibit J, Letter of Robert E. Friedman, December 4, 2012) The State of Ohio has not acknowledged that request.

The State has no underlying factual basis to support its attempted prosecution of Matthew Lindstrom and to support its appeal to this Court. The State has consistently avoided litigation of the underlying facts. In fact, the State of Ohio has consistently avoided the litigation of its own charges. The only evidence to support the allegations of delinquency brought in the Juvenile Division and, which theoretically, support the counts of the indictment, is the oral statement of a then confused, attention-seeking teenager. That teenager has now become an

adult, has emancipated herself and removed herself from her parents' out of state home and now states under oath that the allegations of unlawful "sexual conduct" and "sexual contact" against her brother Matthew Lindstrom were fabricated in order to gain attention, are simply not true and have never been true.

Conclusion-Remedy of Dismissal of the State's Appeal is Being Improvidently

Granted

Based upon all of the foregoing factual and legal arguments, the Defendant-Appellee respectfully moves this Court to enter an order dismissing the State's interlocutory Appeal as being improvidently granted since the State's interlocutory appeal only addresses the question of proper jurisdiction of either the juvenile or adult division. This matter should be directed back to that Juvenile Court for disposition on the merits.

Respectfully submitted,



John B. Gibbons (#0027294)

Counsel for Defendant-Appellee

Matthew Lindstrom

1370 Ontario Street, Suite 2000 The Standard Bldg.
Cleveland, Ohio 44113

(216) 363-6086, Fax (216) 363-6075

Email: jgibbons4@sbcglobal.net

**COURT OF COMMON PLEAS, JUVENILE COURT DIVISION
CUYAHOGA COUNTY, OHIO**

IN THE MATTER OF: MATTHEW D. LINDSTROM

CASE NO: DL10119792
JUDGE: ALISON L. FLOYD

JOURNAL ENTRY
DELINQUENCY AND UNRULY

This matter came on for hearing this 22nd day of November, 2010 before the Honorable Judge Alison L. Floyd upon the complaint of the affiant as to the child alleged to be delinquent.

The Court found that notice requirements have been met.

The following persons were present for the hearing: ACP Stephanie Lingle, Counsel for State of Ohio; John B. Gibbons, Counsel for Matthew D. Lindstrom; Helen Laabs, Grandmother; Matthew D. Lindstrom, Child.

Reading of the complaint was waived.

The Court explained legal rights, procedures, and possible consequences of the hearing pursuant to Juv. R. 29. The child has counsel.

Whereupon the Court requested that the child admit to or deny the allegations of the complaint. The child denied the allegations of the complaint through counsel.

Said matter is continued to January 5, 2011 at 9:15 a.m. for further hearing.

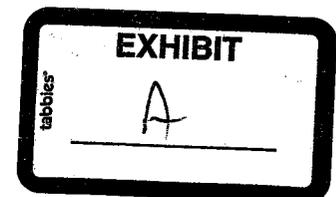
Child is released to his own recognizance pending further order of court.

Child, now 21, is to have no contact with the alleged victim pending further order of court.



Judge Alison L. Floyd
November 29, 2010

Filed with the clerk and journalized by Cuyahoga County Juvenile Court Clerks Office,
Volume 36, Page 8813, December 03, 2010, cjyet



Cuyahoga County Court of Common Pleas
Juvenile Court Division

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY

In the Matter of: Matthew Lindstrom Believed to be a Delinquent Child Date of Birth: 10/27/1989, Age: 9		A Complaint FILED 10 OCT 21 PM 1:12 CLERK OF COURTS	
Date of Offense (on or about) August 2, 1999 to August 2, 2000	Complainant Det. Edwin Biglang-Awa, Brook Park Police Department	Case Number 10119792	Complaint 1 of 4
Approximate Location of the Offense 5800 Laurent Dr., Parma, Ohio 44129		Co-Delinquents	Adult Defendants
Parents, Guardian, or Custodian of Said Child			
Relation	Name	Address	
Father	Todd Lindstrom	27 Capitol St., Pittston, ME 04345	
Mother	Barbara Lindstrom	27 Capitol St., Pittston, ME 04345	

Complainant being duly sworn states that Matthew Lindstrom, in Cuyahoga County, Ohio, on or about August 2, 1999 to August 2, 2000, did engage in sexual conduct with [REDACTED] L [REDACTED] who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: 08/02/1994, whether or not the offender knew the age of [REDACTED] L [REDACTED] in violation of Ohio Revised Code Section 2907.02(A)(1) (b).

THE STATE OF OHIO, CUYAHOGA COUNTY
Sworn to and subscribed in my presence on 10-21-10
Date

Det. [Signature] 36
Complainant

[Signature]
Assistant County Prosecutor

ORIGINAL

EXHIBIT
tabbles
B

Cuyahoga County Court of Common Pleas
Juvenile Court Division

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY

In the Matter of: Matthew Lindstrom Believed to be a Delinquent Child Date of Birth: 10/27/1989, Age: 10		A Complaint For Rape F1 - §2907.02(A)(1)(b)		FILED 10 OCT 21 PM 1:12 CLERK OF COURTS
Date of Offense (on or about) August 3, 2000 to August 2, 2001	Complainant Det. Edwin Biglang-Awa, Brook Park Police Department	Case Number 10119792	Complaint 2 of 4	
Approximate Location of the Offense 5800 Laurent Dr., Parma, Ohio 44129		Co-Delinquents	Adult Defendants	
Parents, Guardian, or Custodian of Said Child				
Relation	Name	Address		
Father	Todd Lindstrom	27 Capitol St., Pittston, ME 04345		
Mother	Barbara Lindstrom	27 Capitol St., Pittston, ME 04345		

Complainant being duly sworn states that Matthew Lindstrom, in Cuyahoga County, Ohio, on or about August 3, 2000 to August 2, 2001, did engage in sexual conduct with J [redacted] L [redacted] who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: 08/02/1994, whether or not the offender knew the age of J [redacted] L [redacted] in violation of Ohio Revised Code Section 2907.02(A)(1)(b).

THE STATE OF OHIO, CUYAHOGA COUNTY
Sworn to and subscribed in my presence on 10-21-10
Date

Det. J. J. [redacted]
Complainant

[Signature]
Assistant County Prosecutor

ORIGINAL

Cuyahoga County Court of Common Pleas
Juvenile Court Division

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
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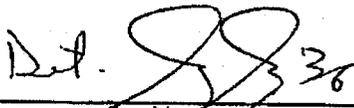
10 OCT 21 PM 1:12
CLERK OF COURTS

In the Matter of: Matthew Lindstrom Believed to be a Delinquent Child Date of Birth: 10/27/1989, Age: 11		A Complaint For Rape F1 - §2907.02(A)(1)(b)	
Date of Offense (on or about) August 3, 2001 to June 12, 2002	Complainant Det. Edwin Biglang-Awa, Brook Park Police Department	Case Number 10119792	Complaint 3 of 4
Approximate Location of the Offense 6550 Sandhurst Dr., Brookpark, OH 44142		Co-Delinquents	Adult Defendants
Parents, Guardian, or Custodian of Said Child			
Relation	Name	Address	
Father	Todd Lindstrom	27 Capitol St., Pittston, ME 04345	
Mother	Barbara Lindstrom	27 Capitol St., Pittston, ME 04345	

Complainant being duly sworn states that Matthew Lindstrom, in Cuyahoga County, Ohio, on or about August 3, 2001 to June 12, 2002, did engage in sexual conduct with J [REDACTED] L [REDACTED] who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: 08/02/1994, whether or not the offender knew the age of J [REDACTED] L [REDACTED] in violation of Ohio Revised Code Section 2907.02(A)(1)(b).

THE STATE OF OHIO, CUYAHOGA COUNTY

Sworn to and subscribed in my presence on 10-21-10
Date

Det. 
Complainant


Assistant County Prosecutor

ORIGINAL

Cuyahoga County Court of Common Pleas
Juvenile Court Division

COURT OF COMMON PLEAS
JUVENILE COURT DIVISION
CUYAHOGA COUNTY
FILED

10 OCT 21 PM 1:12
CLERK OF COURTS

In the Matter of: Matthew Lindstrom Believed to be a Delinquent Child Date of Birth: 10/27/1989, Age: 12		A Complaint For Rape F1 - §2907.02(A)(1)(b)	
Date of Offense (on or about) June 13, 2002 to August 2, 2003	Complainant Det. Edwin Biglang-Awa, Brook Park Police Department	Case Number 10119792	Complaint 4 of 4
Approximate Location of the Offense 6550 Sandhurst Dr., Brookpark, OH 44142		Co-Delinquents	Adult Defendants
Parents, Guardian, or Custodian of Said Child			
Relation	Name	Address	
Father	Todd Lindstrom	27 Capitol St., Pittston, ME 04345	
Mother	Barbara Lindstrom	27 Capitol St., Pittston, ME 04345	

Complainant being duly sworn states that Matthew Lindstrom, in Cuyahoga County, Ohio, on or about June 13, 2002 to August 2, 2003, did engage in sexual conduct with J [redacted] L [redacted] who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: 08/02/1994, whether or not the offender knew the age of J [redacted] L [redacted] in violation of Ohio Revised Code Section 2907.02(A)(1)(b).

THE STATE OF OHIO, CUYAHOGA COUNTY
Sworn to and subscribed in my presence on 10-21-10
Date

Det. [Signature]
Complainant

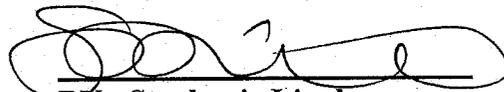
[Signature]
Assistant County Prosecutor

ORIGINAL

B R I E F

The Motion for an order to relinquish jurisdiction for the purpose of criminal prosecution pursuant to R.C. 2152.10(B) and for a preliminary hearing pursuant to Juv. R. 30(A) is based on a complaint filed in Juvenile Court, that Matthew Lindstrom is a delinquent child for committing an act that would be a felony if committed by an adult, and that said child was fourteen years of age or older at the time of the alleged commission of the act.

Movant submits that there is probable cause to believe said child committed the act alleged in the complaint and that there may be reasonable ground to believe that the child is not amendable to rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children, and that the safety of the community may require that the child be placed under legal restraint for a period extending beyond the child's majority.



BY: Stephanie Lingle
Assistant County Prosecutor
#0084286

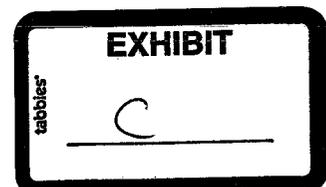
S E R V I C E

A copy of foregoing motion was sent by regular U.S. Mail to the alleged delinquent's attorney, John B. Gibbons, 2000 Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113 on this 22nd day of November, 2010.

Respectfully submitted,



BY: Stephanie Lingle
Assistant County Prosecutor
#0084286



THE FOLLOWING DOCUMENTS HAVE BEEN DELIVERED TO THE DEFENSE AT DEFENSE COUNSEL'S INDEPENDENT PORTAL AT DEFENSE.CCPOPORTAL.US. FOR TECHNICAL ASSISTANCE COUNSEL MAY CONTACT THE DISCOVERY SUPPORT LINE AT (216) 698-6400.

CERTIFICATION OF REDACTED MATERIAL.

As to any information being withheld from discovery, pursuant to Juvenile Rule 24(B), the State certifies to the defense and to the court that it is not disclosing certain material or portions of material.

The material is being redacted for one or more of the following reasons:

The State has reasonable grounds to believe that granting discovery may jeopardize the safety of a party, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, or impede the prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence.

The interests of justice require non-disclosure.

Documents delivered via web portal:

1. Other Documents - ATTORNEY LETTER
2. COUNSEL ONLY 1st Police Report
3. COUNSEL ONLY 2nd Police Report - BP 0318678
4. COUNSEL ONLY 2nd Police Report - BP 0604050
5. COUNSEL ONLY 2nd Police Report - BP 0714845

Respectfully submitted,
Bill Mason
Cuyahoga County Prosecutor



1/5/2011

BY: Justin Seabury Gould #0084584
Assistant County Prosecutor
2210 Cedar Avenue, 3rd Floor
Cleveland, OH 44115
(216) 443-3788

SERVICE

A copy of the foregoing Response to Delinquent Child's Request for Discovery pursuant to Juvenile Rule 24 has been filed and served electronically on January 05, 2011 upon: John B. Gibbons, Attorney for Delinquent Child, at: DEFENSE.CCPOPOTAL.US

(Select the option below to indicate service by U.S. mail)

_____ If selected, a copy of the foregoing Response to Delinquent Child's Request for Discovery pursuant to Juvenile Rule 24 has been filed and mailed this _____ day of _____, 2011, to:

_____,
Attorney for Delinquent Child, at:



1/5/2011

BY: Justin Seabury Gould #0084584
Assistant County Prosecutor

JOHN B. GIBBONS

ATTORNEY AT LAW
2000 STANDARD BUILDING, 1370 ONTARIO STREET
CLEVELAND, OHIO 44113
(216) 363-6086
FAX: (216) 363-6075
jgibbons4@sbcglobal.net

January 19, 2011

Justin Seabury Gould, Esq.
Assistant Prosecuting Attorney
Juvenile Court
2210 Cedar Road, 3rd Floor
Cleveland, Ohio 44115

VIA Facsimile to (216) 443-3787 and email to JGould@cuyahogacounty.us

Re: State of Ohio v. Matthew Lindstrom
Case Number 119792-10-DL

Mr. Gould:

Would you please forward to me the recording of the complaining witness' statements to the police officers? Would you please put the recording on the Portal and send a disk to me?

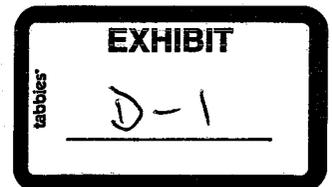
Should you have any questions, please contact me at the above number or at my cell phone, (216) 978-2033.

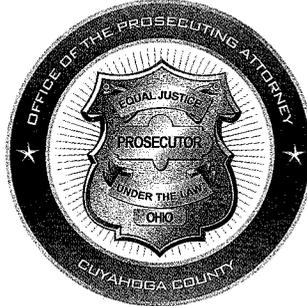
Sincerely,



John B. Gibbons

CC: Matthew Lindstrom





BILL MASON
CUYAHOGA COUNTY PROSECUTOR

January 20, 2011

John B. Gibbons, Esq.
2000 Standard Bldg.
1370 Ontario St.
Cleveland, OH 44113

RE: ~~State vs. Lindstrom (119792-10-DE)~~

Dear Mr. Gibbons:

In response to your attached request, please find enclosed a copy of the Kennebec County Sheriff's interview with J [REDACTED] L [REDACTED].

Should you have any questions, my contact information is below. Feel free to call.

Best regards,

Justin Seabury Gould
Assistant Prosecuting Attorney
Juvenile Justice Unit
2210 Cedar Avenue, Third Floor
Cleveland, Ohio 44115
Phone: (216) 443-3788
Fax: (216) 443-3787
jgould@cuyahogacounty.us

OFFICE OF THE PROSECUTING ATTORNEY
Juvenile Court • 2210 Cedar Avenue, 3rd Floor • Cleveland, Ohio 44115
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**Cuyahoga County Court of Common Pleas
Criminal Court Division**

State of Ohio, Plaintiff vs. Matthew Lindstrom, Defendant	A True Bill Indictment For Rape §2907.02(A)(1)(b) 9 Additional Count(s)	
Dates of Offense (on or about) 01/01/1999 to 12/31/2003	The Term Of January of 2011	Case Number 547876-11-CR

The State of Ohio, }
 Cuyahoga County } SS.

CR11547876-A

67579029



Count One	Rape §2907.02(A)(1)(b)
Defendants	Matthew Lindstrom
Date of Offense	On or about January 1, 1999 to December 31, 1999
<p><i>The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO, do find and present, that the above named Defendant(s), on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully</i></p> <p>did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Vaginal Intercourse (in Jane Doe (DOB: 08/02/1994)'s Bedroom at 5800 Laurent Drive, Parma, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).</p> <p>FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.</p> <p><u>Sexually Violent Predator Specification - §2941.148(A)</u></p> <p><i>The Grand Jurors further find and specify that</i></p> <p>the offender is a sexually violent predator.</p> <p><i>The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.</i></p>	

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MAR 08 2011

GERALD E. FURBIST

BY _____ DEP.

Kathleen Curran

Foreperson of the Grand Jury

Bill Mason

Prosecuting Attorney

EXHIBIT
E

Count Two **Rape**
 §2907.02(A)(1)(b)

Defendants Matthew Lindstrom

Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Vaginal Intercourse (in Jane Doe's (DOB: 08/02/1994)'s Bedroom at 5800 Laurent Drive, Parma, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Three **Rape**
 §2907.02(A)(1)(b)

Defendants Matthew Lindstrom

Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Vaginal Intercourse (in the Offender's Parents' Bedroom at 5800 Laurent Drive, Brookpark, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Kathleen Curran

Foreperson of the Grand Jury

Bill Mason

Prosecuting Attorney

Count Four **Rape**
 §2907.02(A)(1)(b)

Defendants Matthew Lindstrom

Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Vaginal Intercourse (in the Offender's Bedroom at 5800 Laurent Drive Parma, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Five **Gross Sexual Imposition**
 §2907.05(A)(4)

Defendants Matthew Lindstrom

Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

did have sexual contact with Jane Doe (DOB: 08/02/1994), to wit: touching of the breast area (in a Bathroom and/or a Bedroom at 5800 Laurent Drive, Parma, Ohio), not his spouse, whose age at the time of said sexual contact was under 13 years, to wit: DOB: 08/02/1994,.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Kathleen Curran

Foreperson of the Grand Jury

Bill Mason

Prosecuting Attorney

Count Six **Gross Sexual Imposition**
 §2907.05(A)(4)
Defendants Matthew Lindstrom
Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

did have sexual contact with Jane Doe (DOB: 08/02/1994), to wit: touching of the breast area (in a Bathroom and/or a Bedroom at 5800 Laurent Drive, Parma, Ohio), not his spouse, whose age at the time of said sexual contact was under 13 years, to wit: DOB: 08/02/1994,.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Seven **Gross Sexual Imposition**
 §2907.05(A)(4)
Defendants Matthew Lindstrom
Date of Offense On or about January 1, 1999 to December 31, 1999

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

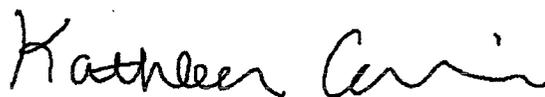
did cause Jane Doe (DOB: 08/02/1994), to wit: touching of the breast area (in a Bathroom and/or a Bedroom at 5800 Laurent Drive, Parma, Ohio), not his spouse, to have sexual contact with Matthew Lindstrom whose age at the time of said sexual contact was under 13 years, to wit: DOB: 08/02/1994,.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that

the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.



Foreperson of the Grand Jury



Prosecuting Attorney

Count Eight **Rape**
 §2907.02(A)(1)(b)
Defendants Matthew Lindstrom
Date of Offense On or about January 1, 2002 to December 31, 2003

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully
 did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Digital Vaginal Penetration at (6550 Sandhurst Drive, Brookpark, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that
 the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Count Nine **Rape**
 §2907.02(A)(1)(b)
Defendants Matthew Lindstrom
Date of Offense On or about January 1, 2002 to December 31, 2003

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully
 did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to Wit: Digital Vaginal Penetration (at 6550 Sandhurst Drive, Brookpark, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that
 the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Kathleen Curin

Foreperson of the Grand Jury

Bill Mason

Prosecuting Attorney

Count Ten **Rape**
 §2907.02(A)(1)(b)

Defendants Matthew Lindstrom

Date of Offense On or about January 1, 2002 to December 31, 2003

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully
 did engage in sexual conduct with Jane Doe (DOB: 08/02/1994), to wit: Digital Penetration of the Vagina (at 6550 Sandhurst Drive, Brookpark, Ohio) who was not the spouse of the offender, whose age at the time of the said sexual conduct was less than thirteen years of age, to wit: DOB: 08/02/1994, whether or not the offender knew the age of Jane Doe (DOB: 08/02/1994).

FURTHERMORE, FURTHERMORE, the defendant purposely compelled the victim to submit by force or threat of force.

Sexually Violent Predator Specification - §2941.148(A)

The Grand Jurors further find and specify that
 the offender is a sexually violent predator.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Kathleen Curran

Foreperson of the Grand Jury

Bill Mason

Prosecuting Attorney

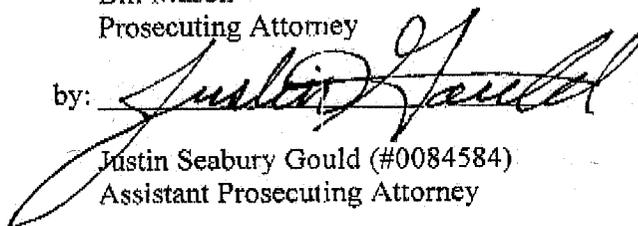
CERTIFICATE OF SERVICE

A copy of the attached Motion, was served on **John B. Gibbons, Esq.**, counsel for the Alleged Delinquent, at **1370 ONTARIO ST., STE. 2000, CLEVELAND, OH 44113, FAX (216) 363-6075**; this 9th day of March, 2011.

Respectfully Submitted,

Bill Mason
Prosecuting Attorney

by:


Justin Seabury Gould (#0084584)
Assistant Prosecuting Attorney

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96653

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

MATTHEW LINDSTROM

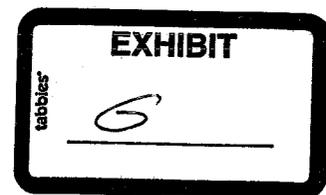
DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-547876

BEFORE: Stewart, P.J., Cooney, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: December 29, 2011



MELODY J. STEWART, P.J.:

Plaintiff-appellant, state of Ohio, appeals from the trial court's decision to dismiss its indictment and transfer the case to the Juvenile Division of the Court of Common Pleas. The state complains that its act of filing a complaint in juvenile court against then 20-year-old defendant-appellee, Matthew Lindstrom, did not constitute his being "taken into custody or apprehended" as contemplated by R.C. 2151.23(I). The state argues instead that since the juvenile court did not acquire exclusive jurisdiction over Lindstrom, the case should be heard in the general division of the Court of Common Pleas. For the reasons that follow, we affirm.

In January 2010, Lindstrom's sister complained to the Kennebec County, Maine Sheriff's Department that Lindstrom had forcibly raped her and engaged in other sexual conduct with her repeatedly between August 1999 and August 2003. At the time of the alleged offenses, the sister was approximately five to nine years of age and Lindstrom was approximately nine to 13 or 14 years old.

A complaint alleging four counts of rape was issued by the Brookpark Police Department and filed by the prosecutor in the Juvenile Division of the Cuyahoga County Court of Common Pleas on October 21, 2010, six days prior to Lindstrom's 21st birthday. Lindstrom was served by certified mail and appeared at his adjudicatory hearing with counsel on November 22, 2010. He

pointed out that the case in the juvenile division had been dismissed, had not been effectively "transferred up on a bindover," and, therefore, "[i]t's never going back." Lindstrom argued that "apprehension" takes place at the commencement of criminal proceedings. Two days later, the common pleas court granted Lindstrom's motions.

On April 5, 2011, the state filed a motion requesting the common pleas court to clarify its order for purposes of appeal. The court issued a second journal entry that stated, "[t]his case is transferred to the juvenile court and the indictment is dismissed and all further proceedings are discontinued pursuant to R.C. 2152.03. This court finds that under R.C. 2151.23(I) and R.C. 2152.02(C)(3) the defendant was 'taken into custody or apprehended' prior to defendant's 21st birthday since the defendant committed the act while he was a 'child' and was charged in juvenile court prior to defendant's 21st birthday. As such, this court finds that it lacks jurisdiction over the defendant and jurisdiction is proper in the juvenile court."

In its sole assignment of error, the state argues that the trial court erred in ruling that it did not have jurisdiction in the instant matter, and requests this court to reverse the trial court's decision and remand the case for further proceedings.

court's other divisions, including its general division, of jurisdiction to determine those same matters." *Perkins Local Dist. Bd. of Edn. v. Wooster City School Dist. Bd. of Edn.*, 183 Ohio App.3d 638, 2009-Ohio-4251, 918 N.E.2d 198, ¶14, quoting *Keen v. Keen*, 157 Ohio App.3d 379, 2004-Ohio-2961, 811 N.E.2d 565.

Juvenile courts have been granted exclusive initial subject matter jurisdiction to determine the case concerning any child alleged to be delinquent for committing an act that would constitute a felony. *State v. Golphin*, 81 Ohio St.3d 543, 544, 1998-Ohio-336, 692 N.E.2d 608. A juvenile court cannot waive exclusive subject matter jurisdiction. *State v. Wilson*, 73 Ohio St.3d 40, 1995-Ohio-217, 652 N.E.2d 196, paragraph two of the syllabus.

R.C. 2152.02(C)(2) states that: "[s]ubject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a 'child' irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held." However, "[a]ny person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act." R.C. 2152.02(C)(3).

the case should have been filed in juvenile court since "the defendant was a minor when the act was committed and was indicted prior to his 21st birthday."

Id. at ¶6.

In the case at bar, the juvenile court had exclusive original subject matter jurisdiction since Lindstrom was alleged to have committed the offense before age 18. The state filed its initial complaint and validly proceeded against Lindstrom on October 21, 2010 in the juvenile court because Lindstrom was 20 years old. Lindstrom was properly served with the complaint before his 21st birthday.

"A court acquires personal jurisdiction over a party in one of three ways: (1) proper and effective service of process, (2) voluntary appearance by the party, or (3) limited acts by the party or his counsel that involuntarily submit him to the court's jurisdiction." *Money Tree Loan Co. v. Williams*, 169 Ohio App.3d 336, 2006-Ohio-5568, 862 N.E.2d 885, ¶8, citing *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156, 464 N.E.2d 538.

A peace officer may cause an arrest or commence prosecution by filing "with a reviewing official¹ or the clerk of a court of record an affidavit charging the offense committed." R.C. 2935.09(C). If the affidavit charges the

¹"[R]eviewing official' means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses ***." R.C. 2935.09(A).

Ohio-1559, 775 N.E.2d 829 (“age of the offender upon apprehension [is] the touchstone of determining juvenile-court jurisdiction”). We find that he was.

Whether a suspect is “in custody” is a mixed question of law and fact and is subject to a de novo standard of review. *Thompson v. Keohane* (1995), 516 U.S. 99, 112-113, 116 S.Ct. 457, 465, 133 L.Ed.2d 383. “Both the Juvenile Court Law and the Rules of Juvenile Procedure provide that a child may be taken into custody pursuant to an order of the juvenile court or pursuant to the law of arrest.” 48 Ohio Jurisprudence 3d, Family Law, Section 1568. See, e.g., Juv.R. 6, R.C. 2151.31. “The word ‘custody’ in law signifies ‘the detainer of a person by virtue of a lawful authority’; ‘judicial or penal safe-keeping.’” *Rarey v. Schmidt* (1926), 115 Ohio St. 518, 522, 154 N.E. 914.

In *U.S. v. Wendy G.* (C.A.9, 2001), 255 F.3d 761, 765, the court determined that a juvenile was “in custody” at the point she was placed in a holding cell. See, also, *U.S. v. Curb* (C.A.6, 2010), 625 F.3d 968 (equating custody of juvenile with an arrest); but, see, *In re L—* (1963), 92 Ohio Law Abs. 475, 194 N.E.2d 797 (“the law of arrest does not apply to the taking into custody of minors [since] *** [d]elinquency has not been declared a crime in Ohio”). In this case, the state argues that Lindstrom had not been “taken into custody” when the complaint against him was filed in the juvenile court. We agree. However, our analysis does not end here.

& Sons Co. v. Court of Common Pleas of Cuyahoga Cty. (1948), 150 Ohio St. 349, 355, 82 N.E.2d 730.

The juvenile court had exclusive jurisdiction over Lindstrom at the time the indictment was filed against him in the common pleas court. Furthermore, the court of common pleas, as a court of general jurisdiction, possesses the authority to determine its own jurisdiction both over the person and the subject matter in an action. *State v. Mohamed*, 178 Ohio App.3d 695, 2008-Ohio-5591, 899 N.E.2d 1071, ¶12, citing *State ex rel. Miller v. Court of Common Pleas* (1949), 151 Ohio St. 397, 86 N.E.2d 464, paragraph three of the syllabus. The common pleas court in this instance determined that it lacked jurisdiction to proceed, noting that jurisdiction was proper in the juvenile court.

In *Gerak v. State* (1920), 22 Ohio App. 357, 153 N.E. 902, syllabus, the appellant complained that because he was a minor, the common pleas court did not have jurisdiction to try him for the crimes he committed. The court overruled his assignment of error and noted that the common pleas court had the right to try him for his crime because the juvenile court had not exercised jurisdiction first. The court stated that the defendant's status as a minor "does not relieve him of the consequences of his crime or abridge the right of the grand jury to indict him for such crime, or the right of the common pleas court to try him for such act, unless the juvenile court acquires jurisdiction of him for

turned 18 years old. He was then indicted by a grand jury and the assigned judge threatened "to bring the *** indictment on for trial." Id. at 826. The defendant petitioned the court of appeals for a writ of prohibition, and the court held that "since the [defendant] was a juvenile at the time of the commission of the offense and proceedings against him are pending in the [j]uvenile [c]ourt *** , the [trial] [c]ourt is without jurisdiction and *** is hereby prohibited from further proceeding against [him] on [the] [i]ndictment." Id. at 827-828.

We therefore find that Lindstrom was apprehended before his 21st birthday, and jurisdiction over his case was properly in the juvenile court. Accepting the state's argument that Lindstrom was not apprehended would lead to an absurd interpretation of the statute. The complaint against Lindstrom charged him with felony offenses that subjected him to arrest if the state had so requested. The fact that Lindstrom was not physically taken into custody stems from the state's choice to serve him with a complaint and summon his appearance in the juvenile court for an adjudicatory hearing. "It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result." *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, 872 N.E.2d 912, at ¶114. Accordingly, the state's assignment of error is overruled.

Judgment affirmed.

find this release signifies he was not "in custody" until he first appeared in juvenile court, after he reached age 21.

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO,

Plaintiff,

-vs-

CASE NO. CR-11-547876

MATTHEW LINDSTROM,

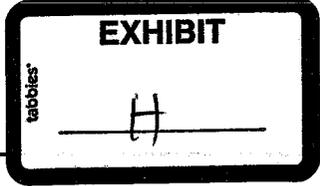
Defendant.

Deposition of J [REDACTED] L [REDACTED], taken as if upon cross-examination before Teresa R. Bade, a Notary Public within and for the State of Ohio, at the offices of John B. Gibbons, Esq., 1370 Ontario Street, Suite 2000, Cleveland, Ohio, at 2:55 p.m. on Monday, September 10, 2012, pursuant to notice and/or stipulations of counsel, on behalf of the Defendant in this cause.

MEHLER & HAGESTROM
Court Reporters

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720 Akron Centre
50 South Main Street
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APPEARANCES:

John B. Gibbons, Esq.
1370 Ontario Street, Suite 2000
Cleveland, Ohio 44113
(216) 363-6086,

On behalf of the Defendant;

Robert E. Friedman, Esq.
PO Box 38004
Olmsted Falls, Ohio 44138
(440) 503-4514,

On behalf of the Deponent.

1 J [REDACTED] L [REDACTED], of lawful age, called by
2 the Defendant for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as
6 follows:

7 CROSS-EXAMINATION OF JESSICA LINDSTROM

8 BY MR. GIBBONS:

9 Q. Ma'am, would you please state your name and spell
10 your last name for the record.

11 A. J [REDACTED] E [REDACTED] L [REDACTED] m, L- [REDACTED]

12 Q. What is your date of birth?

13 A. August 2nd, 1994.

14 Q. Where were you born?

15 A. I was born in Middleburg Heights, Ohio.

16 Q. I see.

17 And your mother's name is?

18 A. Barbara Lynn Dickerson is her maiden name, so
19 Barbara Lynn Lindstrom.

20 Q. I see.

21 And what is your father's name?

22 A. Todd Renhard Lindstrom.

23 Q. How do you spell the middle name?

24 A. R-e-n-h-a-r-d.

25 Q. You're here accompanied by your attorney?

1 A. Yes, sir.

2 Q. And your attorney is Mr. Robert E. Friedman?

3 A. Yes.

4 Q. That is F-r-i-e-d-m-a-n.

5 You understand hopefully the course that this
6 case has taken, do you not?

7 A. Not officially.

8 Q. Well, the case started out against Matthew D.
9 Lindstrom.

10 You understand that I'm Matthew D.
11 Lindstrom's attorney?

12 A. Yes.

13 Q. And it started out as a delinquency complaint in
14 the Court of Common Pleas of Cuyahoga County,
15 Juvenile Court Division with a Case Number of
16 DL-10119792 and it's, there was an indictment
17 later returned against Mr. Lindstrom in
18 connection with Case Number 547876 and that was
19 in the Court of Common Pleas for Cuyahoga County,
20 Ohio in the General Division.

21 The case was then remanded back to the
22 Juvenile Court; however, the State of Ohio took
23 an appeal to the 8th District Court of Appeals
24 for Cuyahoga County and that Case Number is
25 CA-96653.

1 And now the case is pending in the Ohio
2 Supreme Court and it's captioned State of Ohio
3 versus Matthew Lindstrom and that Case Number is
4 2012-0252.

5 You may or may not know that information.

6 A. I was kept out of the dark about that.

7 Q. Who is Matthew D. Lindstrom.

8 A. My brother.

9 Q. Your natural brother?

10 A. Yes, he's my blood brother.

11 Q. Do you have -- are there any other siblings in
12 the family?

13 A. No, just me and him.

14 Q. You are here in Cleveland, Ohio voluntarily?

15 A. Yes.

16 Q. I take it that you previously were living in the
17 State of Maine?

18 A. Yes.

19 Q. When did you move to live in Maine?

20 A. It was the middle of my 8th grade year, so 2007.

21 Q. Did you move up to the State of Maine from
22 Cuyahoga County, Ohio?

23 A. Yes, Brookpark.

24 Q. What was the reason why you moved to, is it
25 Pittston, Maine?

1 A. Yes.

2 Q. Could you spell that for the court reporter?

3 A. P-i-t-t-s-t-o-n.

4 Q. Why did you and your family move to Pittston,
5 Maine?

6 A. Because my father didn't know what he was going
7 to do. And he was instructed by Edwin it'd be in
8 his best interest to move out of the State of
9 Ohio.

10 Q. When you say "Edwin," who are you referring to?

11 A. Detective Edwin, he's a police officer in
12 Brookpark.

13 Q. Do you know what his last name is?

14 A. (Indicating.)

15 Q. Would it be Edwin Binglawawa?

16 A. Yeah.

17 Q. Binglawawa?

18 A. Something like that. I always refer to him as
19 Detective Edwin or just Edwin.

20 Q. I believe it's spelled B-i-n-g-l-a-w-a-w-a.

21 He was a police officer in the City of
22 Brookpark, Ohio?

23 A. Yes.

24 Q. Did you also move to the State of Maine because
25 of your parents' job change?

1 A. My dad was looking into it after Edwin, Detective
2 Edwin instructed him that it'd be in his best
3 interest to move. So that's when my father was
4 looking into transfers to other states.

5 Q. I see.

6 Your brother, Matthew, did he live or move to
7 the State of Maine with you?

8 A. No.

9 Q. If I can bring you back to Matthew, your brother
10 Matthew's senior year in high school at Berea
11 High School, do you have that in mind?

12 A. Yes.

13 Q. Did there come a time when he, after he graduated
14 from high school left the parental home?

15 A. He left the day before graduation.

16 Q. I see.

17 And do you know the reason why he left?

18 A. Honestly, no.

19 Q. You do not?

20 A. I don't know the real answer. I might never
21 know.

22 Q. I see.

23 You graduated from high school just recently,
24 did you not?

25 A. Back in June.

1 Q. Do you remember the specific date?

2 A. June 6th I do believe.

3 Q. Of 2012?

4 A. Of 2012.

5 Q. What was the name of your high school?

6 A. Gardiner Area High School.

7 Q. How do you spell that?

8 A. G-a-r-d-i-n-e-r.

9 Q. You graduated from the 12th grade and you got
10 your diploma?

11 A. Yes.

12 Q. This past summer were you living at home with
13 your parents in Pittston, Maine?

14 A. Yes, up to last week.

15 Q. Up to last week.

16 Was there a particular incident that occurred
17 last week at your parents' house in connection
18 with your living there?

19 A. My father kicked me out.

20 Q. Was there any particular reason why he kicked you
21 out that you'd care to share with us?

22 A. It's been an ongoing problem with me and my
23 father, our relationship, so it could have
24 sparked anything. But I didn't come home at the
25 right time and he freaked out on me in front of

1 my friend, Alicia, and he told me, quote,
2 unquote, pack my bags and get down the road.

3 Q. You're an adult now, are you not?

4 A. Yes, I was an adult when he kicked me out.

5 Q. I see.

6 When you mention your father, that's Todd
7 Lindstrom, correct?

8 A. Correct.

9 Q. After you were kicked out of your home, where did
10 you go to live?

11 A. I first stayed with my friend, Alicia, for, from
12 that Tuesday to that Monday. And then I stayed
13 with my good friend, Elise, Monday and Tuesday.

14 Q. These two young ladies live in Pittston, Maine?

15 A. No. Alicia lives in Wayne, Maine, W-a-y-n-e.
16 And my friend, Elise, lives in Winthrop.

17 Q. Maine?

18 A. Mm-hmm.

19 Q. Did there come a time when you put that phone
20 call into your grandmother?

21 A. Yes.

22 Q. What is your grandmother's name?

23 A. Helen Laabs.

24 Q. Where does she live?

25 A. Columbia Station, Ohio.

1 Q. This is your natural grandmother?

2 A. Yes.

3 Q. Mrs. Laabs is the mother of Todd, correct?

4 A. Correct.

5 Q. Had you spoken to your grandmother in the last
6 several years?

7 A. Not a word.

8 Q. Not a word?

9 A. No.

10 Q. So you've had no contact with her over the last
11 couple years?

12 A. Correct.

13 Q. Who initiated the phone call?

14 A. Myself.

15 Q. Why did you call your grandmother?

16 A. Because I wanted to come home and I missed my
17 home.

18 Q. What do you consider to be your home?

19 A. Her house.

20 Q. I see.

21 Mrs. Laabs also is married to Clayton Laabs?

22 A. Yes.

23 Q. So Clayton Laabs would be your step-grandfather?

24 A. Yes.

25 Q. Have you had any contact with Clayton Laabs for

1 the last several years?

2 A. No.

3 Q. Have you, in the last several years, have you had
4 any contact with your brother, Matthew?

5 A. Probably after the first year I moved to Maine.

6 Q. I see.

7 A. And that was the last.

8 Q. So how many years has it been since you'd had
9 contact with your brother?

10 A. It's been over two years, I know that.

11 Q. Whose idea was it to come to Cleveland, Ohio?

12 A. Mine.

13 Q. How was it that you were able to get to
14 Cleveland, Ohio?

15 A. My Aunt Tracy paid for a plane ticket.

16 Q. I see.

17 And you're presently living with your
18 grandparents and step-grandfather?

19 A. Correct.

20 Q. Now, you understand that you don't have to
21 participate or answer questions in this session,
22 correct?

23 A. Correct.

24 Q. And, in fact, you have your own lawyer who is
25 present here at this session.

1 And have you had an opportunity to consult
2 with Mr. Friedman?

3 A. Yes.

4 Q. You are presently not under the influence of any
5 narcotic drugs?

6 A. No.

7 Q. How about alcohol, are you presently under the
8 influence of alcohol?

9 A. No.

10 Q. How about are you on any prescription drugs that
11 would, prescription drugs or medication that
12 would interfere with your ability to understand
13 what's happening here?

14 A. No.

15 Q. So do you have a clear mind as to what is going
16 on here with the court reporter and my questions
17 of you?

18 A. Yes.

19 Q. I see.

20 Now, you contacted the Kennebec,
21 K-e-n-n-e-b-e-c, County Sheriff's Department on
22 January 13th of 2010, did you not?

23 A. Yes.

24 Q. You'll have to speak up.

25 A. Yes.

1 Q. Before you went to the Sheriff's Department to
2 give an interview, had you told certain things to
3 your mother and father about your brother,
4 Matthew?

5 A. Yes.

6 Q. So just so I understand how it came about in
7 January of 2010, you made certain allegations
8 about your brother Matthew's conduct, did you
9 not?

10 A. Yes.

11 Q. And you made those allegations to your mother and
12 father, correct?

13 A. Correct.

14 Q. As a result of that you were taken to the
15 Kennebec, K-e-n-n-e-b-e-c, County Sheriff's
16 Department to be interviewed.

17 Do you recall that?

18 A. Yes.

19 Q. That was on January 13th of 2010?

20 A. (Indicating.)

21 Q. You'll have to answer --

22 A. Yes.

23 Q. And you had made certain allegations to the
24 police officer in the State of Maine that while
25 you were living in the State of Ohio with your

1 parents and with your brother that your brother
2 had sexually molested you?

3 A. Yes.

4 Q. And you recall giving an interview, an oral
5 interview to the officer, Sergeant Hatch,
6 H-a-t-c-h, at the Sheriff's Department on that
7 date?

8 A. Yes.

9 Q. You spoke to him and the interview was tape
10 recorded, was it not?

11 A. Yes.

12 Q. Did you sign or were you ever called upon to give
13 a written statement --

14 A. No.

15 Q. -- by Sergeant Hatch?

16 A. No.

17 Q. And I'm going to ask you about these allegations
18 specifically, but what was your state of mind in
19 January, or on January 13, 2010 when you made
20 these allegations?

21 A. I wasn't there, completely there.

22 Q. When you say you weren't completely there, what
23 do you mean?

24 A. I wasn't emotionally there, mentally there,
25 physically there. I was exhausted all the time.

1 Q. Was there a certain reason that you were
2 exhausted at that point in time?

3 A. I was experiencing with marijuana a lot.

4 Q. I see.

5 Anything else? Did you have family issues or
6 specifically what was your state of mind at that
7 time?

8 A. I was not getting along with my father.

9 Q. And we won't go into any details about that, but
10 how is it that your not getting along with your
11 father, how does that lead you to make these
12 allegations against your brother? Can you
13 explain that.

14 A. It was a cry for help.

15 Q. A cry for help?

16 A. I wasn't in a good place at that time. I was
17 experiencing with drugs and alcohol and I was
18 depressed. I had an eating disorder, I was
19 bulimic. I begged my father for a therapist and
20 he wouldn't listen to me and I had no one to turn
21 to. And I know what I did was wrong and I regret
22 it. It was unexcuseable.

23 Q. So you were crying out for attention or help when
24 you made these allegations and submitted to the
25 interview?

1 A. Yes.

2 Q. Now, the allegations that you made that were
3 recorded in your interview with Sergeant Hatch,
4 are any of the allegations you made about your
5 brother Matthew true?

6 A. No.

7 Q. I see.

8 What I'm going to do is I'm going to have to
9 go through the Juvenile Court complaint item by
10 item and then I'm going to ask you if those
11 allegations are true or not --

12 A. Okay.

13 Q. -- so just bear with me.

14 The first count of the complaint alleges that
15 between June 13th, 2002 to August 2nd, 2003 at
16 the location of 6550 Sandhurst,
17 S-a-n-d-h-u-r-s-t, Drive, Brookpark, Ohio 44142,
18 that Matthew Lindstrom did engage in sexual
19 conduct with you, J [REDACTED] L [REDACTED], who was not
20 your spouse at the time and whose age at the time
21 of said sexual conduct was less than 13 years of
22 age, that being August 2nd, 1994.

23 Did that, in fact, occur?

24 A. No.

25 Q. The second count of the -- well, I misspoke,

1 that, in fact, was the fourth count of the
2 complaint, but is your answer the same?

3 A. Yes.

4 Q. The first count of the complaint alleges that
5 between August 2nd, 1999 to August 2nd, 2000 at
6 the address of 5800 Laurent, L-a-u-r-e-n-t,
7 Drive, Parma, Ohio 44129, that Matthew Lindstrom
8 did engage in sexual conduct with J [REDACTED]
9 [REDACTED], who was not then his spouse and whose
10 age at the time of said sexual conduct was less
11 than 13 years of age, to wit, August 2nd, 1994.

12 Did that occur?

13 A. No.

14 Q. So this particular count is untrue?

15 A. Yes.

16 Q. The second count of the complaint alleges that
17 between August 3rd, 2000 and August 2nd, 2001,
18 again, at the address of 5800 Laurent,
19 L-a-u-r-e-n-t, Drive, Parma, Ohio 44129 that
20 Matthew Lindstrom did engage in sexual conduct
21 with you, J [REDACTED] L [REDACTED], who was not then
22 your spouse and whose age at the time of said
23 sexual conduct was less than 13 years of age, to
24 wit, date of birth of August 2nd, 1994.

25 Now, did that occur?

1 A. No.

2 Q. So the allegations that I've read to you are
3 false?

4 A. Correct.

5 Q. The third count of the complaint indicates that
6 between August 3rd, 2001 to June 12th, 2002 at
7 the address of 6550 Sandhurst, S-a-n-d-h-u-r-s-t,
8 Drive, Brookpark, Ohio 44142 that Matthew
9 Lindstrom did engage in sexual conduct with you,
10 J [REDACTED] L [REDACTED], who was not your spouse and
11 whose age at the time of said sexual conduct was
12 less than 13 years of age, to wit,
13 August 2nd, 1994.

14 Did that in fact occur?

15 A. No.

16 Q. So what I've read to you from that count of the
17 complaint is, in fact, false?

18 A. Correct.

19 Q. Now, were you ever interviewed by any detective
20 from the Brookpark Police Department?

21 A. Yes.

22 Q. Was that an interview that was conducted in
23 person or over the phone?

24 A. It was over the phone.

25 Q. Did you know who you were talking to at that

1 time?

2 A. Yes, I did.

3 Q. The officer identified himself by name and by
4 position to you?

5 A. Yes.

6 Q. Had you met this officer on any prior occasions?

7 A. Several, because of family history.

8 Q. What is the family history that exists between
9 the officer and your family?

10 A. Between my brother and my father.

11 Q. Was that the episode where it was alleged that
12 Matthew had run away from home?

13 A. Yes.

14 Q. Do you know of any other relationship that exists
15 between the officer or any other officer on the
16 Brookpark Police Department and your family?

17 A. No, just the one.

18 Q. So getting back to the interview, did you
19 basically recite all of the allegations, the
20 factual allegations that you had told Sergeant
21 Hatch on January 13th, 2010?

22 A. Yes.

23 Q. Was everything you told the officer on the phone
24 in your interview, was that untrue?

25 A. Correct.

1 Q. Why is it that you repeated those allegations to
2 the Brookpark, Ohio detective?

3 A. I don't really remember.

4 Q. Did there ever come a time when you asked the
5 officer or inquired of the officer whether you
6 were required to go forward in a court proceeding
7 with these allegations?

8 A. He said it was possible.

9 Q. Did you ever indicate to the officer or any
10 officer that you did not want to pursue these
11 allegations in court?

12 A. Yes.

13 Q. Tell me about that.

14 A. I asked Detective Edwin if I could drop the
15 charges against my brother, Matthew, and he said
16 it was not possible because the State, I do
17 believe that's what he said, the State has now
18 taken it upon themselves, has taken the case. So
19 it was out of my hands to do it.

20 Q. Do you recall when you requested the officer to
21 consider dropping the charges?

22 A. It was probably over a year ago.

23 Q. How did that come about? Was it a telephone
24 conversation?

25 A. Yes.

1 Q. Who initiated the call?

2 A. He called checking up and everything, trying to
3 say a little bit what's going on with the case
4 and I asked if I could drop them and he said it
5 was not possible.

6 Q. Now, did you come to know that the Juvenile Court
7 allegations had been dismissed and that charges
8 had been brought against your brother by the
9 Grand Jury and that he was being prosecuted in
10 the Adult Felony Division?

11 A. I was not, no, I, I did not know at the time.

12 Q. Were you ever called upon to testify at a grand
13 jury proceeding?

14 A. Never.

15 Q. Were you ever re-interviewed by either a
16 prosecuting attorney or a police officer at the
17 time the allegations were presented to the Grand
18 Jury?

19 A. No.

20 Q. So just to recap, it's my understanding that at
21 no time did Matthew Lindstrom ever engage in any
22 type of unlawful sexual conduct or contact with
23 you?

24 A. Correct.

25 Q. So this is incorrect, it never happened?

1 A. It never happened.

2 Q. Have you had any contact with your brother,
3 Matthew, in the last several years?

4 A. Probably a year after we moved to Maine.

5 Q. How did that come about?

6 A. I found him on a website called Myspace and we
7 talked here and there, but then we stopped
8 talking.

9 Q. Did you always enjoy a good relationship with
10 your brother, Matthew?

11 A. Sometimes were tough. Of course, we're brother
12 and sister, we're going to fight. And sometimes
13 it was difficult because of the things I was
14 going through with my father and my brother and I
15 felt likes sometimes I was put in the middle of
16 it. But I feel like overall we had a good
17 sibling bond.

18 Q. Now, there was conflict that existed between your
19 brother, Matthew, and your father when they
20 lived, when you lived in Brookpark, Ohio?

21 A. That's correct.

22 Q. That immediately preceded his high school
23 graduation and him leaving the house?

24 A. Yes.

25 Q. Is there anything -- well, strike that. Let me

1 rephrase that.

2 Has anybody offered you anything of value in
3 order to make you say the things that you've said
4 on the record here?

5 A. No.

6 Q. Has anybody threatened you or coerced you into
7 coming down to the law office to make this
8 statement?

9 A. No.

10 Q. What is your relationship with your grandparents,
11 well, your grandmother and your step-grandfather
12 presently?

13 A. Weird.

14 Q. What do you mean by that?

15 A. I haven't seen them in almost ten years and they
16 still think of me as that eight-year little girl
17 that I once was. And it, it was weird seeing
18 them, but it's a good weird. It's like I'm home
19 but it's like we've both changed, our appearances
20 have changed, but it's okay.

21 Q. And you never had any conflict with your
22 grandmother, did you?

23 A. Never.

24 Q. Has she been supportive of you through the years
25 when you were growing up?

1 A. From what I can remember, yes.

2 Q. What's your relationship with her husband,
3 Clayton Laabs?

4 A. It's a wonderful relationship.

5 Q. I see.

6 Now, did anything, either sexual conduct or
7 sex contact, ever occur between you and Matthew
8 in the state of Arkansas?

9 A. No.

10 Q. How about any other state?

11 A. No.

12 Q. Well, why don't we do this, I'll just ask you one
13 final question, then you'll have an opportunity
14 to consult with your lawyer and we'll go off the
15 record, and if there's anything else you want to
16 say, we can go back on the record.

17 So everything you told the officer in
18 Brookpark and everything you told Sergeant Hatch
19 up in Kennebec, K-e-n-n-e-b-e-c, County, Maine
20 about Matthew Lindstrom is untrue?

21 A. Correct.

22 MR. GIBBONS: We can go off the
23 record for a minute.

24 - - - -

25 (Thereupon, a recess was had.)

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Q. When you were living in the State of Maine you made an effort to obtain some counseling or therapy for whatever problems you were experiencing, correct?

A. Correct.

Q. Well, tell us about that, what efforts did you make?

A. I would go to my dad and I would ask him if I could get a therapist because I had a lot of things going on in my mind and I felt like I couldn't tell my parents them because they would judge me or they wouldn't listen or they would say I was wrong. So I felt like in my heart I needed, I actually needed help.

Q. Did your parents get you the therapy you were asking for?

A. I had one, saw her once and then my parents stopped taking me. They said I didn't need it.

Q. I see.

Was this before you had your interview with Sergeant Hatch?

A. Yes.

Q. Was that part of your cry for help --

A. Yes.

1 Q. -- in making these allegations against Matthew?

2 A. Yes.

3 Q. Were you, in fact, trying to get their attention
4 to address your own issues by making these false
5 allegations against Matthew Lindstrom?

6 A. Yes.

7 Q. I see.

8 How about after you made the allegations to
9 the officer in Maine on January 13th of 2010, did
10 you attempt to get therapy or counseling at that
11 time?

12 A. Yes.

13 Q. Were you able to get that therapy?

14 A. I had a school therapist, but she was kind of
15 like freelance. Her name was Heather. I was on
16 my, I'm on my dad's insurance so my mom had to
17 like secretly get his insurance card and call the
18 lady up. But I felt like my dad had a right to
19 know that I was seeing a therapist, which I
20 needed, and he blew up and he said that I don't
21 need it. And he had my mother call her the next
22 day saying that, do not talk to my daughter and
23 she's not allowed to talk to you. And that was
24 done with that.

25 Q. That was it?

1 A. (Indicating.)

2 Q. Well, is there anything you'd like to add to the
3 statement?

4 A. I was heavily into like marijuana and drinking
5 and that's, that's why I wanted like a cry for
6 help because that's how I masked my pain. My mom
7 kind of knew like I was smoking and drinking, but
8 she never really did anything about it and that
9 just like made me more depressed and more, like I
10 need more therapy.

11 Q. I see.

12 And everything that you said here today is
13 the truth, correct?

14 A. Correct.

15 Q. And you've said everything you've said today
16 voluntarily?

17 A. Yes.

18 MR. GIBBONS: Mr. Friedman, is
19 there anything else you'd like to add?

20 MR. FRIEDMAN: No.

21 MR. GIBBONS: Okay. We can go off
22 the record.

23 - - - -

24 (Thereupon, a discussion was had off the
25 record.)

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- - - - -
MR. GIBBONS: I'm certain that the court reporter has taken everything down correctly. However, you have the right to review what she has taken down for accuracy.

Do you want to review her statement or you can always waive the right to review it, and you should consult with your attorney.

MR. FRIEDMAN: She wants to waive.

THE WITNESS: I want to waive it. I believe what she wrote down is exactly what I said.

- - - - -
(The reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel.)
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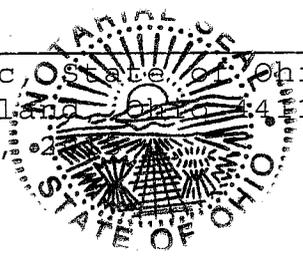
C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Teresa R. Bade, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 18th day of September, A.D. 20 12.

Teresa R. Bade
Teresa R. Bade, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires July 7, 2015



STATE OF OHIO)
CUYAHOGA COUNTY)

AFFIDAVIT OF J.E.L.

Now comes J.E.L., who after being first duly sworn, cautioned and placed under oath, does state that all of the following statements are true and correct as she does verily believe.

1. That I am J.E.L. (full name redacted) whose date of birth is August 2, 1994.
2. That I presently reside in Columbia Station (Lorain County), Ohio.
3. That I am represented by Counsel, Robert E. Friedman.
4. That I have examined the written transcription of the statement that I provided to Attorney John B. Gibbons on September 10, 2012, which has been attached and marked as Motion Exhibit A and everything that I recited in that statement is true, correct and accurate.

Further, Affiant says not.

J. E. L.
J.E.L.

The above named person, J.E.L. is known to me personally and after having been first duly sworn, cautioned and placed under oath, did state that all of the foregoing statements are true and correct as she does verily believe.

Robert Edward Friedman
Notary Public
Robert Edward Friedman, Attorney
NOTARY PUBLIC—STATE OF OHIO
My Commission has no expiration date.
Section 147.03 R.C.
10/25/12
Date



COPY

**ROBERT E. FRIEDMAN
ATTORNEY AT LAW
P.O. BOX 38004
OLMSTED FALLS, OHIO 22138
TELEPHONE (440) 503-4514**

December 4, 2012

**Cuyahoga County Prosecutor
Attn: Dan Van
Justice Center
Court Tower
9th Floor
1200 Ontario
Cleveland, Ohio 44130**

**Re State of Ohio v. Matthew Lindstrom
Ohio Supreme Court Case No. 2012-0252**

Dear Mr. Van,

**I am Robert E. Friedman, OSC 0026626 and as such I represent J [REDACTED]
L [REDACTED]. I am requesting that all contact with Ms. L [REDACTED] from your office or
from any law enforcement personnel for whatever reason come through me.**

**Ms. [REDACTED] has recanted the allegations against Matthew Lindstrom and it is
her desire to have the cases dismissed with prejudice.**

Sincerely,

Robert E. Friedman

