

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

Case No.: 2010-CF-0057

JOHN W. FORREST,

Defendant.

**ORDER GRANTING DEFENDANT'S AMENDED MOTION FOR POSTCONVICTION
RELIEF, GRANTING DEFENDANT A NEW TRIAL ON ALL COUNTS, VACATING
AND SETTING ASIDE JUDGMENT AND SENTENCE ON ALL COUNTS, VACATING
ORDER CLASSIFYING DEFENDANT A SEXUAL OFFENDER, VACATING
PROBATION ORDERS, AND SETTING CASE FOR CALENDAR STATUS**

THIS CAUSE is before the Court after an evidentiary hearing held on April 19, 2017, on Defendant's Amended Motion for Postconviction Relief with Oath timely filed by and through counsel on September 14, 2015, pursuant to Florida Rule of Criminal Procedure 3.850. Having reviewed Defendant's motion, the State's response, Defendant's amended reply, the evidence and arguments presented at the evidentiary hearing, and applicable law, the Court finds that Defendant's motion should be granted.

On October 1, 2010, the State filed a second amended information charging Defendant with three counts of promoting sexual performance by a child in violation of section 827.071(3), Florida Statutes (2009) (Counts 1, 2, and 3) and 27 counts of possessing photos, motions pictures, etc. which include sexual conduct by a child in violation of section 827.071(5), Florida Statutes (2009) (Counts 4 through 30). On January 24, 25, and 26, 2012, a jury trial was held.

The jury ultimately found Defendant guilty as charged on all counts with a special finding on each count that he possessed 10 or more images of child pornography. On March 7, 2012, a sentencing hearing was held. The Court adjudicated Defendant guilty, classified him a sexual offender, and sentenced him to a total of 45 years in prison, followed by 15 years on probation.

Defendant appealed his judgment and sentence to the First District Court of Appeal in case number 1D12-1511. On October 24, 2013, the First District *per curiam* affirmed Defendant's judgment and sentence. On December 9, 2013, the First District issued the mandate.

On September 14, 2015, Defendant timely filed the instant motion raising seven grounds of ineffective assistance of counsel (Grounds 1 through 7) and one ground of cumulative error (Ground 8). On October 7, 2015, the Court entered an order directing the State to file a response to the instant motion. On January 28, 2016, the State filed a response. On March 11, 2016, Defendant filed an amended reply. On April 7, 2016, the Court entered an order granting an evidentiary hearing on Grounds 1 through 7 of the instant motion. Defendant subsequently withdrew Grounds 2, 3, and 4 of the instant motion. On April 19, 2017, the evidentiary hearing was held.

In Ground 1, Defendant claims that counsel was ineffective for failing to properly advise him of the mistrial option offered by the Court after the State's expert witness, Investigator Chuck McMullen, radically changed his testimony at trial.¹ He alleges that counsel did not properly explain the mistrial option, the pros and cons associated with accepting such an option, or the fact that he could enter a plea following a mistrial. He also alleges that he would have accepted the mistrial option if counsel had properly explained the option to him.

¹ Exhibit A, Excerpt of Trial Transcripts, Volume III, pp. 376-91.

At the evidentiary hearing, Michael Weinstock testified to the following. Dean Boland, an out-of-state attorney, was the first chair on the case, and Weinstock, a local attorney, was the second chair on the case. Boland handled the case, and Weinstock was assigned a certain number of ministerial duties. After Investigator McMullen's radical change in testimony, the Court asked whether the defense wanted a continuance or a mistrial. The Court gave Boland time to talk with Defendant about possible options. Weinstock was not aware of any time where the option of a mistrial was explained to Defendant. Boland discussed the option of a continuance with Defendant, but advised Defendant that a continuance was not necessary because he could overcome Investigator McMullen's testimony on cross-examination.²

Defendant testified that Boland did not explain the option of a mistrial to him. He also testified that, if Boland had explained that option to him, then he would have elected that option.³ Boland did not testify.

The Court finds the testimony of Weinstock and Defendant to be credible. Based on that testimony, the Court finds that Defendant has established that trial counsel was ineffective for failing to advise him of his option to move for a mistrial. *See Middleton v. State*, 984 So. 2d 522, 522 (Fla. 1st DCA 2007) (*Middleton I*). The Court also finds that Defendant has established prejudice by showing that he would have requested, and the Court would have granted, a mistrial if trial counsel had properly advised him of such an option. *See Middleton v. State*, 41 So. 3d 357, 362 (Fla. 1st DCA 2010) (*Middleton II*). The Court therefore concludes that Ground 1 of the instant motion should be granted. Based on this conclusion, the Court will not address Grounds 5 through 8 on the merits.

² Evidentiary Hearing Transcript, pp. 11-12, 16-20, 25-28, 34-35.

³ Evidentiary Hearing Transcript, pp. 39-41, 44, 46-47.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1) Defendant's Amended Motion for Postconviction Relief with Oath is **GRANTED**.

2) Defendant is **GRANTED** a new trial on all counts.

3) The judgment and sentence imposed on all counts on March 7, 2012, and the written Judgment and Sentence entered on March 15, 2012, is **VACATED AND SET ASIDE**.

4) The Order Classifying Defendant as a Sexual Offender entered on March 12, 2012, is **VACATED**.

5) The Order of Sexual Offender Probation entered on March 19, 2012, and the Order of Modification of Probation entered on March 19, 2012, are **VACATED**.

6) The instant case will be placed back on the Court's docket, and a separate order to transport returning Defendant to the custody of the Okaloosa County Sheriff's Department will be prepared by the Court.

7) **Calendar status will be scheduled for Friday, June 23, 2017, at 9:00 a.m. (Central Standard Time) at the Okaloosa County Courthouse Annex Extension, 1940 Lewis Turner Boulevard, Fort Walton Beach, Florida 32547.** Docket day will be scheduled for Monday, July 3, 2017, at 9:00 a.m., and the jury trial will be scheduled for Monday, July 10, 2017, at 8:30 a.m.

If you are a person with a disability who needs any accommodation in order to participate in these proceedings, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:

**Court Administration, ADA Liaison
Okaloosa County Courthouse
1940 Lewis Turner Boulevard
Fort Walton Beach, Florida 32547**

Phone: (850) 609-4700 Fax: (850) 651-7725
Email: ADA.Okaloosa@flcourts1.gov

at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before your scheduled appearance is less than 7 days. If you are hearing or voice impaired, call 711.

DONE AND ORDERED in Chambers at the Okaloosa County Courthouse Annex Extension, Fort Walton Beach, Florida.



eSigned by CIRCUIT COURT JUDGE MICHAEL A FLOWERS in 01 JUDGE FLOWERS
on 06/09/2017 15:39:41 ZJK821Ve

MICHAEL A. FLOWERS
CIRCUIT JUDGE

MAF/cl

Copies to be served by the Okaloosa County Clerk of Court on:

- John W. Forrest (DC#P47402), Blackwater River Correctional Facility, 5914 Jeff Ates Road, Milton, Florida 32583-0000
- Michael Ufferman, Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, Florida 32308-3881 (ufferman@uffermanlaw.com)
- Paul M. Villeneuve, Law Office of Paul M. Villeneuve, 1102 North Gadsden Street, Tallahassee, Florida 32303-6328 (paul@paulvilleneuve.com)
- Christine R. Bosau, Assistant State Attorney, 401 McEwen Drive, Niceville, Florida 32578 (spowell@sa01.org)

Exhibit A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs. CASE NO. 2010-CF-000057

JOHN W. FORREST,
Defendant.

ORIGINAL

VOLUME III

THE ABOVE CAUSE came on for JURY TRIAL in Open Court on the 25th day of January, 2012, with the Honorable Michael A. Flowers, Judge of the Circuit Court in and for The First Judicial Circuit of Florida presiding, and the following proceedings were had:

A P P E A R A N C E S

FOR THE PLAINTIFF: CHRISTINE BOSAU, ESQUIRE
JENNIFER LEIB, ESQUIRE
Assistant State Attorneys
Crestview, Florida

FOR THE DEFENDANT: MICHAEL WEINSTOCK, ESQUIRE
795 E. John Sims Parkway
Suite 1
Niceville, Florida

PRO HAC VICE: DEAN BOLAND, ESQUIRE
Boland Legal, LLC
18123 Sloane Avenue
Lakewood, Ohio 44107

FILED
DON W. HOWARD
2012 MAY 2 PM 12 49
CLERK OF CIRCUIT COURT
OKALOOSA COUNTY FLA.
CRESTVIEW FLA.

I N D E X
(V O L U M E III)

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JANUARY 25, 2012

PAGE

WITNESSES:

CHARLES MCMULLEN

314

JEREMIAH GILE

447

STATE RESTS

464

MOTION FOR JUDGMENT OF ACQUITTAL

465

RULING

478

E X H I B I T S

STATE'S NO.:

8 - Four-page document "V" folder

435

9 - Computer Saved Folder contents "V" folder

435

1 something that you didn't think an expert needed to
2 advise you on prior to asking those questions?

3 MR. BOLAND: Yes, Your Honor. Yes, Your Honor.

4 THE COURT: That's it. All right. We'll be back
5 in at 10:30.

6 (RECESS)

7 THE COURT: Everyone be seated. Thank you very
8 much. Would counsel approach?

9 (AT THE BENCH:

10 THE COURT: All right. Everybody doesn't need to
11 hear this. We are very much on the record. I am going
12 to make a couple things very clear.

13 It could not be more clear or more obvious to me
14 that counsel for both State and defense have conducted
15 themselves in an exemplary manner in the representation
16 of their various positions in this case.

17 I find that every objection that has been posed,
18 the arguments have been made completely in good faith,
19 with the interest of their respective positions, and
20 the interest of justice being protected at all times.
21 The Court cannot be more pleased with the manner in
22 which the trial is being conducted.

23 Here we are with a problem that is a difficult one
24 that we don't encounter very often. That is this, a
25 witness, in good faith, testified under a very vigorous

1 cross-examination yesterday by Mr. Boland, making, from
2 the defense's standpoint, very valid and necessary
3 points, necessary to the presentation of their case.

4 This morning when we resumed the questioning of
5 that very same witness, it would be fair to say that
6 his testimony radically -- radically changed. Not
7 because he in any way misrepresented anything to the
8 jury intentionally at all. I disagree with
9 Mr. Boland's position that he made up evidence. I
10 don't agree with that, but I do agree that the
11 testimony was far different -- actually the polar
12 opposite, in some respects, than was presented
13 yesterday, with respect to the creation time and access
14 time, that Mr. Boland went through with this witness
15 yesterday.

16 The Court found that based on yesterday's
17 testimony of the State's witness, that the witness did
18 testify that the creation time was the time -- and I
19 could stand to be corrected -- was the time that
20 information is downloaded onto a computer from an
21 external source.

22 He had earlier testified that the access time, as
23 reflected, would be the last time that that particular
24 file had either been reviewed, or accessed, or anything
25 of that nature. It was further, from this Court's

1 perspective, the testimony of the witness, that if an
2 item were downloaded on a computer, a creation time
3 would be created, and then if that information was
4 accessed three days later, a different access time
5 would be reflected. Yesterday's testimony -- does
6 anyone disagree with what I believe the testimony was
7 with respect to the access creation time that was
8 testified to yesterday?

9 MR. BOLAND: No, Your Honor.

10 MS. BOSAU: Generally, that's correct.

11 THE COURT: All right. And that under the
12 cross-examination as conducted by Mr. Boland, this
13 witness admittedly was unsure whether it was Windows
14 Vista or Windows Seven or another program was utilized.
15 It was his experience that the access time would change
16 if the files were subsequently viewed.

17 This morning, after a further investigation by the
18 witness, he testified that he had looked and evaluated
19 the computer again, and his testimony is that because
20 of the Windows Vista that was being used, that he
21 researched Windows Vista, as well as this computer, and
22 found that on this computer, even if items were
23 accessed at a later point in time, the original access
24 time would remain, in fact, the same and would not
25 change.

1 Is that your recollection, Ms. Bosau, of the
2 testimony this morning?

3 MS. BOSAU: Yes, Your Honor.

4 THE COURT: Mr. Weinstock?

5 MR. WEINSTOCK: Not -- not exactly, because he did
6 not look at Mr. Forrest's computer. Only thing he did
7 was go through his forensic FTK report.

8 THE COURT: All right.

9 MS. BOSAU: No, he did not. No.

10 THE COURT: In any event -- in any event, whatever
11 he looked at, he testified today that on this
12 gentleman's computer, that if he -- if items were
13 accessed at a later point in time, that because of the
14 nature of the program the access date would not change.
15 That was his testimony today.

16 And I think if the State were to stand up and
17 argue that to a jury, it would be consistent with the
18 testimony. Would you disagree with that,
19 Mr. Weinstock?

20 MR. WEINSTOCK: No.

21 MR. BOLAND: No, Your Honor.

22 THE COURT: All right. The Court views that as
23 material -- very material evidence. So when we left
24 here yesterday, it would be reasonable if one on the
25 jury found that to be the key to the case or a major

1 key to the case. And so Mr. Boland has requested an
2 opportunity to have an expert look at that which this
3 witness looked at last night, to see if, in fact, that
4 is accurate testimony or inaccurate testimony.

5 What's your position with respect to that, Ms.
6 Bosau?

7 MS. BOSAU: Your Honor, we would still object to
8 it because it is not new evidence. It's not anything
9 that has not been available to the defense. This
10 additional view that Chief McMullen did is on the exact
11 same evidence that was available to the defense for
12 their analysis. It is not up to the State to tell or
13 direct the defense how they are going to do their
14 analysis. We must provide unfettered access, which we
15 did. Their analyst had full access. They could have
16 checked anything.

17 As the Court did point out, Mr. Boland knew he was
18 going down this road with questioning, and he
19 presumably was in contact with his experts. They could
20 have checked this.

21 THE COURT: Mr. Boland, what do you have to say to
22 the State's statement that this was clearly a position
23 that the defense knew we would be in with respect to
24 the questioning of this witness, and I believe you were
25 well prepared for cross-examination to point out the

1 access date, creation date times. I do also find that
2 this morning you would have been certainly surprised by
3 that which was testified to by the witness and that's
4 reasonable to assume, given it was very different than
5 yesterday. But what do you have to say with the State
6 saying, look, you should have been ready for this?
7 What do you say to that?

8 MR. BOLAND: Well, Your Honor, we took the
9 opportunity, as the Court directed, to do a little bit
10 of research and have a discussion, and this might head
11 off the issue at the pass. We would be willing to
12 withdraw any motion for continuance, if the State would
13 agree that the witness may not be -- is not entitled to
14 testify about any research he did since his
15 cross-examination began, and the jury is instructed to
16 sort of disregard that research and those results.

17 THE COURT: Well, we --

18 MR. BOLAND: If that happens, we would be -- we
19 would be willing to withdraw our motion.

20 THE COURT: Okay. In other words, leave things as
21 they were yesterday afternoon when we left? Okay.
22 State, my guess is you're not willing to concede that?

23 MR. BOLAND: I have one other issue, Your Honor.

24 THE COURT: Okay.

25 MR. BOLAND: In our research that we did, Florida

1 Rule of Evidence 90.705 talks about the disclosure of
2 facts and data underlying an expert opinion. And while
3 I actually can't say maybe this witness will disclose
4 the facts and data underlying his opinion with the
5 cross-examination from Ms. Bosau, I can't honestly say
6 if that will be the case, but up to this point on
7 cross-examination, the rule requires him to specify the
8 facts or data underlying his opinion, and as the Court
9 will recall, he mentioned blogs, and addresses on
10 Microsoft's website that he could not recall, and then
11 he mentioned reviewing the registry key.

12 THE COURT: I recall that.

13 MR. BOLAND: Now the registry key, he can testify
14 about that, he did it, no problem. Now, but what his
15 explanation to the jury of what that key means, he
16 derived from blogs and Microsoft's website data and
17 facts, he has not provided -- State has not provided to
18 us. So that's a basis by which, if they're going to
19 provide it to us, then we don't have an objection, but
20 if they're not, that rule we believe is evidence that
21 is not proper expert opinion as a result.

22 THE COURT: All right. Bottom line, the defense
23 wishes, and is entitled to obtain that information. He
24 just didn't have it with him when he sat on the stand,
25 but he can -- he must provide that. I mean, he did

1 further research, and did testify he relied upon
2 information gleaned from various sources. So the
3 defense is entitled to see those sources. That's
4 clear.

5 Now, where does that leave us from the standpoint
6 of we've got a jury sitting out there? The defense
7 wants someone to look at that testimony and that
8 testimony is whether or not Windows Vista does what he
9 says it does. All right. How much time do you need to
10 do that, Mr. Boland?

11 MR. BOLAND: The expert we had previously hired,
12 Your Honor, is out of state, so that's not very
13 efficient. I would have to confer with Mr. Weinstock
14 to see if there's a computer -- there's probably a
15 computer forensics expert somewhere nearby here that we
16 would have to retain, to do this small amount of work,
17 but they would have to have access to the copy of the
18 computer and --

19 MR. WEINSTOCK: Let me emphasize one thing that's
20 not been brought out, is that Mr. McMullen may have a
21 disc with all the files on it, or a forensic report
22 printed out in 300 some odd pages, but in order to take
23 a look at this computer to say, okay, lets run an
24 impact file, an AVI file on Windows Media Player and
25 lets see what happens, that means he's got to go to the

1 physical machine, not to a -- not to a clone.

2 THE COURT: I mean, you're telling me that, but
3 how do I know that?

4 MR. WEINSTOCK: Sir?

5 THE COURT: I don't doubt your word, but how do I
6 know that's what he has to do?

7 MR. WEINSTOCK: Well, the only thing I can say to
8 that -- good point.

9 THE COURT: Have you become a defense expert in
10 that area?

11 MR. WEINSTOCK: Can I point out to the Court that
12 I owned a computer store.

13 THE COURT: Yes, sir. I am aware of that.

14 MR. WEINSTOCK: Okay. and I'm aware -- I'm A-plus
15 certified on computer repairs, or was, before I became
16 a real attorney.

17 THE COURT: I know that, Mr. Weinstock.

18 MR. WEINSTOCK: What I'm trying to say is that I
19 think there's going to be no -- no denying from
20 Ms. Bosau the fact that if you want to see what his
21 machine is going to do, you are going to have to go to
22 his machine.

23 THE COURT: Okay. Where is his machine?

24 MS. BOSAU: Go to his machine?

25 THE COURT: Where is his machine?

1 MS. BOSAU: Judge, the copy of the hard drive is
2 what Chief McMullen has.

3 MR. WEINSTOCK: No.

4 MR. BOLAND: The actual computer, the actual hard
5 drive.

6 MR. WEINSTOCK: No, it's the operating system.
7 The operating system has the commands that say, put a 1
8 here, put a 0 there. Now, if you take out a copy of
9 the hard drive and put it into someone else's machine,
10 that's not necessarily going to have the same
11 parameters.

12 THE COURT: Here's what's not going to happen.
13 Okay. What's not going to happen is lets just move on
14 and pretend he didn't change his testimony this morning
15 without the defense having an opportunity to find out
16 where he went to obtain that. Out of an abundance of
17 caution, they need to know where he went and then take
18 appropriate steps.

19 So the question is how much time do we need to do
20 that which is necessary for the defense to do that?
21 Which leaves us two options, we move to continue this
22 matter. No. We continue this matter after the defense
23 has already moved to do so, to a date certain.
24 Understanding I've got an impaneled jury. We do have
25 two alternates. And so the turnaround would not need

1 to be a long turnaround. Okay.

2 Now if it's not possible to do it in a short
3 turnaround, that leaves us another question, you know
4 what that question is. Do we come back and do it all
5 over again? But let me make one thing perfectly clear.
6 There's been no bad faith at all, no inappropriate
7 conduct at all.

8 I will hear arguments if either counsel wants to
9 make that argument. That's not been my observation.
10 So that's where we are. Which means, lets say we had
11 to do this all over again, we would not have, from this
12 Court's perspective, any double jeopardy problems
13 because there's been no wrongful conduct at all.

14 Does anyone disagree with that? If you want to,
15 go talk about it.

16 MR. WEINSTOCK: Well, Your Honor, inasmuch -- if I
17 may --

18 MR. BOLAND: Yes. Go ahead.

19 MR. WEINSTOCK: Inasmuch as I feel that we are
20 here in front of you right now only because of the
21 State's witness, not because of any of our witnesses,
22 and therefore, this is basically a State's problem that
23 brought us here today, and therefore, I contend that
24 because it is the State's problem, that double jeopardy
25 does attach.

1 THE COURT: Well, it's not the State's problem.
2 It's the defense problem, for this reason: The State's
3 expert has, in the interest of justice, corrected
4 misinformation he had previously been provided to the
5 trier of fact, as we would want any witness to do.

6 And the defense wishes, based on that scenario,
7 wishes to research to see if, in fact, his statements
8 are true or not true, or we can continue the trial, and
9 you just call him a liar, and see if the jury believes
10 it. You know, that's an option that we have.

11 But I will tell you that I do not find a witness
12 who has tried to correct -- and what he did, Mr. Boland
13 will agree because he painstakingly took this
14 cross-examination, pointed out that that witness was
15 unclear whether or not Windows Vista or Windows Seven
16 was in place on this computer. He was uncertain about
17 that. And it was his experience, with respect to the
18 default settings, that a certain thing would occur with
19 respect to the access/creation times, and that's what
20 he believed to be true, but he discovered that that was
21 not true, and pointed that out to this jury. That's
22 where we are.

23 I certainly would hope that a witness wouldn't
24 find out that he had misstated something and not want
25 to bring that to everyone's attention that he had

1 misstated something. I would trust Mr. Weinstock
2 wouldn't want that to occur either, would you, sir?

3 MR. WEINSTOCK: No, sir. Was it Gile or McMullen
4 that said that Windows -- I don't know if it's XP or
5 Vista, and he said Vista?

6 MR. BOLAND: My recollection was the witness
7 initially -- McMullen initially did say, I don't know
8 which one it is, and he flipped through his report, but
9 that eventually he did discover it, and said, oh, here
10 it is, it's Windows Vista. That was my recollection.

11 MR. WEINSTOCK: I remember that. I remember that.

12 MR. BOLAND: But we probably should confer with
13 our client about the options, is that okay, Your Honor,
14 for a moment?

15 THE COURT: Yes.

16 MR. BOLAND: Because it matters to him.

17 THE COURT: I understand.

18 MR. BOLAND: Can we just step away from the
19 microphones a little bit, Your Honor?

20 THE COURT: Of course.

21 MR. BOLAND: Your Honor, because the jury is out
22 that door, we're going to go in the opposite direction.

23 COURT SECURITY: You may have some witnesses.
24 There's a couple of people out here.

25 THE COURT: Very well.

1 MR. BOLAND: We won't speak around anyone until we
2 get to a closed area.

3 THE COURT: You go with them and ensure there's no
4 witnesses around them and that way there will be no
5 taint at all.

6 (PAUSE IN PROCEEDINGS)

7 THE COURT: All right. We are back. All of the
8 parties are here.

9 Mr. Forrest, you had an opportunity to discuss
10 matters with your attorneys?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Let me go ahead and ask you these
13 questions: During the course of the proceedings today,
14 you've been participating, I've noticed, with your
15 attorneys, discussing matters. Would you agree with
16 that assessment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. We had discussed
19 various -- here at the bench, various matters with
20 respect to the following: The defense requested a
21 continuance. Likewise, the State made a request for
22 the admission of certain items of evidence citing the
23 Williams Rule. We've discussed various things here at
24 the bench.

25 Having done that, Mr. Boland, Mr. Weinstock and

1 Mr. Forrest stepped outside for some privacy to discuss
2 matters.

3 Mr. Boland, from the defense standpoint, where are
4 we, sir?

5 MR. BOLAND: Yes, Your Honor. We are trying to be
6 sensitive, as the Court indicated, to the jury waiting,
7 and we would propose this, that if the Court would
8 allow us during breaks and whatnot during the day,
9 we'll attempt to locate an expert that Mr. Weinstock
10 has used, but just proceed on with the trial, and then
11 by the end of the day, let the Court know whether we
12 found someone, and whether we would need a morning or a
13 day of a continuance to prepare that person, if at all,
14 to testify.

15 THE COURT: All right. From the State's
16 standpoint, does that sound reasonable?

17 MS. BOSAU: That would sound reasonable.

18 THE COURT: All right. That sounds reasonable to
19 the Court, also. Okay. And so the request for a
20 continuance at this time -- we are kind of setting that
21 aside.

22 MR. BOLAND: Yes, Your Honor.

23 THE COURT: Certainly, in the event circumstances
24 dictate, defense may have to once again make such a
25 motion. Is that where we are, Mr. Boland?

1 MR. BOLAND: Yes, Your Honor. On that issue, yes.

2 THE COURT: Okay. The next issue is this, the
3 State has sought a ruling, prior to any further
4 testimony from this witness, with respect to the
5 admissibility of items purported to be located in the
6 saved file, in the V file, is that my understanding?

7 MS. BOSAU: That is correct, Your Honor.

8 THE COURT: And the defense has objected to the
9 admissibility of that. The Court had dealt with that
10 earlier, and wanted to see, before finally making such
11 a determination, how the evidence would be presented
12 during the course of the trial, what questions, and
13 specifically what answers were given to questions by
14 both the State and the defense.

15 The Court does find that the test of the
16 admissibility under the Williams Rule for the items
17 sought to be introduced have been met. The Court finds
18 that the prejudicial effect does not substantially
19 outweigh probative value, which may be attributed to
20 the introduction of this evidence. The Court finds
21 that it is reasonable, fair, and therefore, the State
22 having furnished notice of intent to utilize Williams
23 Rule evidence to the defense consistent with the
24 Florida Rules of Evidence and Procedure, the Court, of
25 course, in allowing the Williams Rule, will give the