THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2009-0110

State of New Hampshire

v.

Joel Verenbec

Appeal Pursuant to Rule 7 from Judgment
of the Merrimack County Superior Court

BRIEF FOR THE DEFENDANT

Lisa L. Wolford
Assistant Appellate Defender
Appellate Defender Program
2 White Street
Concord, NH 03301
NH Bar #15389
(603) 228-9218
(5 Minutes 3JX Panel Oral Argument)

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QUESTION PRESENTED

Did the trial court err in denying Joel Verenbec's motion for a new trial based on newly discovered evidence?

Issue preserved by Verenbec's motion for new trial, App. 1*, the State's objection, App. 78, and the trial court's ruling, App. 89.

*Reference to the record are as follows:
"App." refers to the Appendix filed with this brief;
"NOA" refers to the Notice of Appeal;
"H" refers to the transcript of the hearing on the motion for new trial, held August 21, 2008;
"T" refers to the transcript of the trial, held April 28-30, 2008; and
"TM" refers to the excerpted transcript of the trial testimony of Lena Martin.

STATEMENT OF THE CASE

Joel Verenbec was charged with pattern aggravated felonious sexual assault, alleging that on more than one occasion over a period of two months or more and within a period of five years, he intentionally touched J.P.'s genitalia with his hand, when J.P. was under the age of thirteen. T 4-5. A second charge of pattern aggravated felonious sexual assault alleged that he had also touched J.P.'s genitalia with his mouth. T 3-4. Finally, Verenbec was charged with felonious sexual assault, alleging that he had directed Jennifer to touch his penis. T 5.

After the close of the State's case, the trial court dismissed the felonious sexual assault indictment. T 324. The jury found Verenbec guilty of the two aggravated felonious sexual assaults. T 444.

Before sentencing, Verenbec filed a motion for a new trial based on newly discovered evidence. App. 1. The court denied the motion after a hearing. App. 89. Verenbec was sentenced to a total of to five to ten years, stand committed. NOA 2.

STATEMENT OF THE FACTS

(A) Evidence at Trial

Joel Verenbec lived with his then-girl friend, Michelle Paille, from about the spring of 2003 until he moved out in November, 2004. T 169, 172, 335. At the time Verenbec moved into Paille's apartment in Boscawen, she had two children: J.P, who was six years old; and Cody, who was two years younger. T 55. Unbeknownst to Paille in the spring of 2003, she was also pregnant with Caleb, who was born in October of 2003. T 169, T 47.

Paille was a licensed nursing assistant. T 137, 140. While she and Verenbec lived together, she worked every other weekend at the Pleasant View Nursing Home. T 140-141. Verenbec took care of Paille's children while she worked. T 173-174. They were thus in his care every other weekend from seven in the morning to three in the afternoon on Saturday and Sunday. Id. Paille testified that although she dated a series of men both before and after Verenbec, Verenbec was the only man with whom she left her children alone. T 150, 156, 161, 166, 211-212.

Verenbec never mistreated Paille's children. T 209. There was no indication that the children were not getting along with Verenbec, or that they were afraid of him. T 215. Indeed, J.P. did not complain when Verenebec moved back in with them after

moving out for a brief period, and never "balked" when Paille left her with him to go to work. T 220.

In the summer of 2006, Cody and J.P. went to visit their aunt, Lena Martin, and her husband at their farm in West Virginia. TM 13-14. Martin had previously lived in New Hampshire. TM 5. J.P. was 9 years old. T 31 (testimony that her birth date was September 7, 1996). Martin is Paille's younger sister. TM 6. She testified that J.P. felt closer to her than J.P. did to her own mother, and that she was someone that J.P "has always been able to come to and confide in." TM 8-9.

During the visit, Martin and her husband had concerns about Cody. TM 14. They discussed their concerns with him. Id. J.P. was present during one of these discussions, became very upset, and told Martin that she needed to speak with her. Id. J.P. then disclosed her allegations. T 89, 61-62. Based on what J.P. told Martin, Martin spoke to her mother, DCYF, her sister (that is, Paille), and her husband. TM 19.

On cross examination, Martin acknowledged that during a pre-trial deposition, she had not disclosed that she modeled for Playboy. TM 25. When asked who else she modeled for, Martin replied that she modeled for herself, for Ultimate Swimwear, and "for whoever." TM 28. Asked to provide names, Martin said she had modeled for Becky Lebow, Perfect 10, and Video Bliss. Id.

When pressed further, she explained that Video Bliss was run by a friend of hers and that it involved nude modeling. Id. She explained that modeling for herself meant shooting pictures of herself to promote herself. TM 29. The State objected during the course of this questioning, arguing that the information sought was irrelevant and that it was "basically a character assassination." TM 26-27, 29. The Court ruled that while the defense "hadn't crossed the line yet...[t]he line might be crossed very soon." TM 27.

J.P. was eleven years old at the time of trial. T 31. She testified that when she was "around six or sevenish," while her mother was at work, Verenbec would do inappropriate things to her. T 115, T 61-62. Caleb, the baby, would be sleeping, and Verenbec would make Cody go into his bedroom and shut the door. T 63, 55. J.P. testified that he would touch her with his mouth on her face, neck and privates, using his tongue on her neck. T 64-65. He would touch her with his hands on her forehead, neck, legs, arms, and privates. T 64, 69. He used two fingers to go on the outside and on the inside of her privates. T 70.

J.P. remembered that she was sometimes sitting and sometimes lying down when Verenbec touched her private with his tongue, but did not remember what position she was in when he touched her private with his hands. T 67, 69. She did not remember where his body or legs were when he was touching her. T 69. Although

she testified that the abuse usually started with Verenbec telling her to put away her toys and turn off the television, she could not remember what toys she was playing with or what was on television. T 71. She did not have a clear recollection of touching Verenbec's penis. T 76-77.

J.P. did not tell anyone about the abuse because, she said, Verenbec told her that if she did, he would keep doing it. T 82. She did not report the allegations even after Verenbec moved out because she was scared, though at that point she had no reason to be scared, and did not know what specifically she feared. T 83. One of the reasons she told her aunt, Martin, was that she felt close to her, though J.P. also testified she was just as close to Paille and did not talk to Martin "more about things" than she did with Paille. T 89-90; T 45.

There were no witnesses to J.P.'s allegations, and no other corroborating evidence. There were no physical or medical indications of sexual abuse. See generally, T 245-257 (testimony of J.P.'s pediatrician, William Storo).

Verenbec testified that he had taken care of Paille's children every other weekend while she was at work. T 340. He testified that while living with them, he loved Paille and her children. T 362. He tried to be a parent to the children. T 363. Before moving out for good in November of 2004, he had moved out "a couple of times," for a few weeks each time. T

335-337. He denied each of J.P.'s allegations, and said that he did not know why she would make them up. T 348.

(B) Investigation Into Martin's Occupation, and Post-Conviction Proceedings.

Trial in this case began on Monday, April 28, 2008. About a week before trial, Verenbec's family told his attorney they had heard that Martin was a pornography star. H 6, 19. Although Martin had been deposed by the defense on April 7, 2008, at deposition, when asked what she did for a living, Martin testified only that she modeled "all kinds of stuff," including lingerie and swimwear. App. 13.

On the basis of the defendant's family's suspicions, the defense conducted an internet search under the names Lena Paille, Lena Paille-Martin and Lena Martin, but the search produced no results. App. 2; H 6, 19. Verenbec's attorney consequently asked the State whether it had any information about the allegations. H 19. Just before jury selection on the day on which trial commenced, the State informed Verenbec's attorney that Martin had disclosed over the weekend that she also modeled for Playboy.[1] H 35, 25. As described above, when questioned

[1] At the hearing on the Motion for New Trial, Verenbec asserted that he did not learn about Video Bliss until his cross examination of Ms. Martin at trial. H 12, 25. The prosecutor asserted that it was her recollection that the information about Video Bliss had been provided prior to trial, at the time the Playboy information was disclosed, but she suggested could not confirm her recollection. H 27. Despite the prosecutor's lack of certainty on this issue, the trial court found that before jury selection, "the State also informed the defense that Ms. Martin had done modeling work for Video Bliss." NOA 15. There was neither testimony nor findings that the State or the defense knew what Video Bliss was at any time during the proceedings.

further about her modeling at trial, Martin first testified that she modeled for herself, and then conceded she modeled for Video Bliss and that that modeling involved nudity.

Subsequent to his convictions, Verenbec learned that Lena Martin had a pseudonym, Erica Rose Campbell, under which she performed pornographic acts for still photography and video. H 8, 17. An internet search using the pseudonym yielded a wealth of pornographic imagery featuring Martin. H 10; App. 15-65. On the basis of these discoveries, the defense filed a motion for a new trial, which the trial court denied. App. 1; NOA 89.

SUMMARY OF THE ARGUMENT

The trial court erred in ruling that Verenbec had not established grounds for a new trial based on the discovery of evidence of Martin's pornography. Because Martin deliberately concealed the evidence, Verenbec cannot be faulted for failing to discover it prior to trial. Further, the evidence substantiated an alternate source of J.P.'s sexual knowledge and, based on State v. Howard, 121 N.H. 53 (1981), was thus material to Verenbec's defense. Finally, given the paucity of evidence tending to corroborate J.P.'s allegations; the absence of an alternate explanation for J.P.'s explicit descriptions of the sexual contact alleged; and the State's argument at closing that it would not make sense for "an eleven year-old [to] make this up," and that the allegations could not have been made "unless [J.P.] experienced this and lived it," T 412, the evidence at issue is of such a character that a different result will probably be reached upon retrial.

Even if the Court does not believe that a new trial is warranted at this stage in the proceedings, other relief may be ordered. Martin's actions, and her dishonest deposition and trial testimony, indicate an attempt to perpetrate a fraud upon the court. Under these circumstances, to complete the record or prevent injustice, the Court may remand to the trial court for further evidentiary proceedings.

I. THE TRIAL COURT ERRED IN DENYING VERENBEC'S MOTION FOR NEW TRIAL.

"The right to a new trial on the basis of newly discovered evidence is intended to prevent a miscarriage of justice." State v. Kelly, 120 N.H. 904, 906 (1980); see also RSA 526:1 ("A new trial may be granted in any case when through accident, mistake, or misfortune justice has not been done and a further hearing would be equitable."). To prevail on a motion for a new trial based upon newly discovered evidence, the defendant must prove: (1) that he was not at fault for failing to discover the evidence at the former trial; (2) that the evidence is admissible, material to the merits and not cumulative; and (3) that the evidence is of such a character that a different result will probably be reached upon another trial. State v. Cossette, 151 N.H. 355, 361 (2004). This Court reviews the trial court's denial of a motion for a new trial under the abuse of discretion standard, sustaining the decision unless the conclusion is clearly unreasonable. State v. Davis, 143 N.H. 8, 11 (1998).

In its order denying Verenbec's motion, the trial court found that Verenbec "could have sought to investigate into whether Ms. Martin had been using a professional name in these activities." App. 94. The court found that Verenbec had "not established that the evidence was material to the merits of this action, and not cumulative." App. 94-95. Finally, the court ruled that it could not conclude "that the evidence is of such a

character that a different result would probably be reached upon another trial." App. 95. Because the trial court's determinations were clearly unreasonable, this Court must reverse.

A. Verenbec Was Not at Fault for Failing to Discover the Evidence.

At the time of Martin's deposition on April 9, 2008, Verenebec had no reason to question her representation that she was a part-time model of lingerie and swimwear. Once he had researched her name online and was told by the State that she modeled for Playboy, in direct response to his query as to her involvement with pornography, he had no basis to insist that she performed explicit sexual acts for public viewing. This is so even if he had also been told prior to trial the she worked for Video Bliss.[2]

Contrary to the trial court's assertion, there was no reasonable basis for anyone to assume that, given what Martin told the State before trial, she "engaged in modeling in the adult entertainment field" - if by adult entertainment the court meant pornography - and moreover no reasonable basis to "assume that a model in the adult entertainment field would not be likely to model under his or her true name." App. 94. The trial

[2] The record contains no information about what Video Bliss is, other than Martin's statement that it involves nude modeling.

court's conclusions in this regard are unsupported by the evidence and are clearly unreasonable.

The record makes evident that Martin continually sought to conceal her pornographic activities from both the State and the defense. She withheld the truth from the prosecutor when asked just before trial whether she was engaged in pornography. She was at best evasive when questioned at deposition and trial; at worst, she gave deliberately incomplete, misleading, and dishonest testimony. The nature of the evidence at issue, and the obvious efforts made by Martin to conceal it, make clear that Verenbec could not have readily discovered the evidence except by possessing the key that Martin withheld: her pornography pseudonym.

Because of her deliberate deception, this case differs from those in which the Court has found the defendant at fault for failing to discover assertedly new evidence. In those cases, the evidence was always available but not examined, or not "critically examined," by the defense. See, e.g., State v. Steed, 140 N.H. 153, 157 (1995)(defendant at fault for failing to discover evidence, where defense attorney possessed and viewed the videotape at issue before trial, but did not "critically review" it); State v. Cote, 129 N.H. 358, 371 (1987)(defendant at fault where "newly discovered" witnesses' names appeared in the list of alibi witnesses submitted by the defendant in advance of

trial, but defendant "apparently did not interview these witnesses"); State v. Kelly, 120 N.H. 904, 906-907 (1980) (defendant at fault for not presenting evidence that he did not commit the crime of sale of a controlled substance, where defendant's brother after trial asserted it was he who sold the cocaine); Robertson Motor Co. v. Blanchard, 102 N.H. 433, 435 (1960) (defendant at fault for failing to interview a witness of whom he was aware and who "lived continuously at the same premises prior to and during the trial").

The concealment of evidence by a witness in this case makes it more akin to the circumstances in Rollins v. Rollins, 122 N.H. 6 (1982). Rollins was a divorce case in which a decree concerning child custody, support, and the use and division of property had been finalized. Id. at 8. A few weeks later, the wife discovered evidence that the husband had deliberately concealed assets owned by him in the town in which they lived, amongst other allegedly intentional nondisclosures. Id. at 8-9. The marital master denied the wife's motion for rehearing. Id. This Court remanded, finding that a limited rehearing was warranted "because the defendant's new evidence was not available before the final decree, and because the evidence suggests the existence of fraud and deception." Id.

Like Rollins, Verenbec's case involves evidence deliberately suppressed by a witness. Concealment by its very nature may make

discovery impossible in some cases; here, it presented obstacles to discovery for which Verenbec cannot be faulted. Because the record indicates that Verenbec cannot be held responsible for failing to discover evidence that is intentionally concealed, the trial court's decision in this regard was clearly unreasonable.

B. Evidence of Martin's Pornography Was Material to the Merits, Admissible, and Not Cumulative.

(1) The Evidence is Material and Admissible

Lena Martin was a porn star. According to one internet cite, she (as Erica Campbell) attended the "AVN Awards" in January of 2006, excited to find out who would win "an award for Best Anal scene," a reference to anal sex. App. 46. At that time - a matter of months before J.P. came to stay with her in West Virginia - Martin also reported that she had "swinger parties" with her Penthouse Pet friend Crystal Klein. Id.

The imagery discovered by Verenbec's attorney after trial included a number of very explicit images showing the digital penetration of female genitalia. See, e.g., App. 23-25, 33. It also included specific references to images of Ms. Martin inserting two fingers into her vagina. App. 45, 51. There were also a multitude of images showing Ms. Martin with her legs apart, and of her being licked on her face, neck, and body. See, e.g., App. 23-33.

Further, Martin apparently manufactured at least some of her pornography at home. Statements in the pornography material

refer to Martin directing and acting in her own "erotic" video, and to pornographic video of her "at home in New Hampshire." App. 61, 62. In addition, Martin testified at trial that she modeled for herself, which meant shooting pictures of herself. TM 28-29.

Although J.P.'s testimony only ambiguously described the circumstances of the abuse, she provided details concerning the specific manner of the digital and lingual penetration for which Verenbec was convicted. She said that Verenbec used two fingers to go inside and outside her vagina. T 69-70. She said that he held her knees apart. T 68. She also testified clearly about conduct for which he was not charged: using his tongue on her neck. T 64-65. All of this activity is either referenced or shown in the Martin pornography material. Under these circumstances, one can infer that J.P. must have seen her aunt's pornography - whether live, in printed materials, on video, or on the internet - when J.P. was in Martin's company or at her home.

In Verenbec's trial, given J.P.'s age, a key issue was how she would have known to describe the conduct charged if not from the events as alleged. As the Court made clear in Howard:

> We believe that the average juror would perceive the average 12 year-old girl as a sexual innocent. Therefore, it is probable that jurors would believe that the sexual experience she describes must have occurred in connection with the incident being prosecuted; otherwise, she could not have described it. However, if ... rape victims

> have had other sexual experiences, it would be possible for them to provide detailed, realistic testimony concerning an incident that had never happened. To preclude a defendant from presenting such evidence to the jury, if otherwise admissible, would be obvious error.

121 N.H. at 61-62. Exposure to her aunt's pornography provided an alternate explanation for J.P.'s sexual knowledge. It was thus material to the merits of Verenbec's case. C.f. Davis, supra (affirming trial court's denial of a motion for new trial, on the basis that new evidence did not refute a key issue during the trial). Because its admissibility would not have otherwise been prohibited under the New Hampshire Rules of Evidence, the evidence would have been admissible at trial.

(2) The Evidence is Not Cumulative

Evidence of Martin's pornography is not cumulative of other evidence presented at trial. "Cumulative evidence is defined as additional evidence of the same kind to the same point. Evidence which goes to a point upon which no evidence was adduced at the former trial is not cumulative." Davis, 143 N.H. at 12 (citation omitted).

No evidence of the explicit pornographic images or acts at issue in the newly discovered evidence was adduced at Verenbec's trial. Martin testified about modeling for Playboy, and Video Bliss, which she characterized as involving "nude modeling."

Pornography, however, is not "nude modeling." The latter connotes an artistic endeavor respectful of the human form; the former involves sexual penetration and other sexual acts depicted for the purpose of sexual stimulation. Further, even assuming that Verenbec might have been able to pry more explicit information from Martin on cross, the State prohibited that endeavor by objecting and characterizing Verenbec's questions as "character assassination."

Nor was there any other evidence of an alternate source of J.P.'s sexual knowledge. First, while Verenbec made an effort to establish that J.P. might have been molested by any number of her mother's boyfriends, no evidence admitted at trial supported that suggestion. Second, assuming *arguendo* that the fact of the multiple boyfriends was some evidence of an alternate source of sexual knowledge, it is not the type of direct evidence, given the similarity between allegations on which Verenbec was convicted and the acts depicted in and referred to in the new evidence, that the pornography was.

C. <u>Evidence of Martin's Pornographic Imagery Was of Such a Character That a Different Result Will Probably be Reached Upon Re-Trial</u>.

For two reasons, the pornography evidence would have had a significant impact at trial. First, there was no evidence tending to corroborate J.P.'s allegations; trial therefore amounted to a credibility contest between Verenbec and J.P..

Second, Verenbec was unable to provide the jury with an alternate explanation for J.P.'s explicit descriptions of the sexual contact alleged. In the face of the State's argument at closing that it would not make sense for "an eleven year-old [to] make this up," and that the allegations could not have been made "unless she experienced this and lived it," T 412, the absence of evidence to the contrary left the jury with no choice but to believe that J.P. had experienced what she described. Under these circumstances, evidence of an alternate source of sexual knowledge would have altered the credibility balance in Verenbec's favor, while providing the jury with a reasonable source-of-knowledge explanation. This evidence would therefore probably have led to acquittal, and it was clearly unreasonable for the trial court to find otherwise.

In 2006, J.P. spent time with Martin at her farm, during which time she disclosed, for the first time, that Verenbec had touched her inappropriately in 2003 and 2004. J.P.'s memory of the time period at issue in her allegations was alternately vague and contradictory. See, e.g. T 59 (does not really remember what she and her brothers did when Verenbec watched them); T 63-64, 79 (does not really remember when Verenbec began touching her inappropriately; but later says it happened a couple of weeks after he moved in). She was unable to provide many details about the circumstances surrounding her allegations. In addition,

although Verenbec was charged with having her touch his penis, she did not remember doing that; indeed, that indictment was dismissed for insufficiency of evidence. T 76, 324.

Further, there was no physical evidence of abuse. Nor was there emotional evidence of abuse observed by any witness. See, e.g., T 215 (Paille testified that there was no evidence that her children were not getting along with Verenbec or that they were afraid of him); T 220 (Paille testified that J.P. did not complain when Verenebec moved back in with them after moving out for a brief period, and never "balked" when Paille left her with him to go to work).

Despite the deficiencies of her testimony, J.P. was able to provide precise detail about the acts alleged: the number of fingers Verenbec used, for example, and Verenbec's use of his tongue on her neck. Given the absence of any other explanation for J.P.'s detailed description of the alleged sexual acts, the question of her source of knowledge assumed central prominence at Verenbec's trial. The jury would have perceived J.P. as a sexual innocent. Verenbec could make no headway against the State's arguments in closing that the allegations could not have been made "unless [J.P.] experienced this and lived it." Without any evidence to the contrary, the jury would have had no option but to resolve the question of the genesis of J.P.'s description of the sexual acts in favor of the prosecution. See Howard, supra.

The new evidence casts substantial doubt on Verenbec's guilt. C.f. State v. Boisvert, 119 N.H. 174, 177 (1979)(finding that a different result upon retrial was neither probable nor merely possible, where the new evidence casts no substantial doubt on the defendant's guilt). The evidence would provide a jury with an alternate source of J.P.'s sexual knowledge, and with an explanation of why her description of the specific sexual acts was so vivid, while her description of the time and circumstances of her allegations were indistinct. Given the significance of the evidence to a key issue at Verenbec's trial, and the lack of any corroborating evidence about the alleged abuse, this Court should find that the new evidence is "of such character that a different result will probably be reached upon another trial." Steed, supra.

D. If the Court Determines That Justice Would Otherwise Not Be Served, Or That the Record is Not Sufficiently Developed to Enable a Conclusion About Retrial, the Court Can In the Alternative Remand for Further Proceedings Below.

This Court has found, in cases in which retrial is sought on the basis of newly discovered evidence, that "a case may be continued in this court and remanded whenever we conclude from the briefs or oral arguments that it is necessary to complete the record or prevent injustice." Carbonneau v. Rye, 120 N.H. 96, 99 (1980). Should the Court not be inclined to reverse and remand for retrial, then it should at least remand to the trial court

for a hearing on the issue of J.P.'s exposure to Martin's pornography.

First, the facts of this case "are strongly suggestive of an attempt to perpetrate a fraud upon the court." Rasquin v. Cohen, 92 N.H. 440, 442 (1943). Martin testified dishonestly, and deliberately withheld material evidence from the State and the defense. At the least, remand for a hearing on the issue of J.P.'s exposure to Martin's pornography is necessary to prevent the injustice wrought in Verenbec's case by Martin's deception and dishonest testimony.

The Court has set aside civil verdicts in cases in which a party has testified dishonestly. See Rasquin, supra ("When a party is given a verdict and it later appears that he testified falsely on a material issue, and the evidence proves, or strongly tends to prove, that the false testimony is dishonest, the verdict will be set aside even if it is not found that a new trial will produce a different result.") While Verenbec's is not a civil case and Martin is not a party, the record indicates that her actions were intended to subvert the truth. Under these circumstances, a further evidentiary hearing is necessary to prevent injustice in this case. See also Rollins, discussed supra (Where material evidence is concealed, Court remands for a limited rehearing "so that the defendant can supplement her offers of proof and present any relevant testimony.").

Second, to the extent that the Court finds that a new trial in Verenbec's case is dependent on direct evidence that J.P. viewed the pornography or Martin's creation of it, further proceedings in the trial court would be "necessary to complete the record." Carbonneau, supra. The proceedings would include, for example, an evidentiary hearing at which both Martin and J.P. would be available to be questioned. At such a hearing, Martin could be questioned about her pornographic pursuits. This inquiry would include questions about pornography filmed or photographed at home; sexual activity engaged in at home (given the reference in the printed internet materials to "swinger parties" with a friend who is a Penthouse Pet, App. 46); pornography kept at home, including printed material and video in any format; pornography website design; and internet pornography access from her home. J.P. could provide testimony about her knowledge of Martin's modeling and whether she had been exposed to pictures, video or live acts of a sexual nature while at Martin's home or in her care.

Martin's deception presents a special need for J.P. to testify at an evidentiary hearing. Because Martin has demonstrated a determination to obfuscate the truth even under oath, her testimony is not reliable. The testimony of J.P. at an evidentiary hearing will provide the trial court with a more reliable record of J.P.'s exposure to sexual imagery and

information, than might Martin's testimony alone.

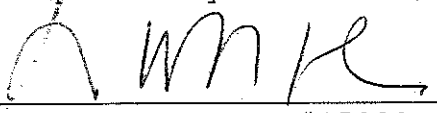
Testimony from either Martin or J.P. that sexually explicit material and/or activity was present during any time that J.P. spent with Martin, up until the date of her disclosure, would establish an alternative source of J.P.'s sexual knowledge. With the record complete, the trial court would then be permitted to reexamine Verenbec's request for a new trial.

CONCLUSION

WHEREFORE, Mr. Verenbec respectfully requests that this Honorable Court order the relief requested.

Undersigned counsel requests 5 minutes oral argument before a 3JX Panel.

Respectfully submitted,

By 

Lisa L. Wolford #15389
Assistant Appellate Defender
Appellate Defender Program
2 White Street
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief have been mailed, postage prepaid, to the Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301, this 3rd day of November, 2009.

Lisa L. Wolford

DATED: November 3, 2009